

**TOWN OF STRATTON, COLORADO
ORDINANCE NO. 29B**

**AN ORDINANCE DEFINING AND REGULATING PUBLIC NUISANCES WITHIN
THE TOWN OF STRATTON, COLORADO**

WHEREAS, the Town of Stratton (the “Town”) is a municipal corporation and body politic, organized under the laws of the State of Colorado and possessing the maximum powers, authority, and privileges to which it is entitled under Colorado law;

WHEREAS, Section 31-15-103, C.R.S., authorizes the Board of Trustees of the Town of Stratton, (the “Board”) to make and publish ordinances which are necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the morals, order, comfort and convenience of the Town and the inhabitants thereof;

WHEREAS, pursuant to Section 31-15-401(1)(c), the Town possesses the express authority to declare nuisances, abate the same, and impose fines in relation thereto; and

WHEREAS, the Town desires to exercise this authority and regulate public nuisances within the Town.

**NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF
STRATTON, KIT CARSON COUNTY, COLORADO, THAT:**

Section 1. Public nuisances located within the Town of Stratton shall be regulated according to the following:

Section 1-1. Definitions.

- a. “Animals” are any animal, except cats and dogs.
- b. “Dangerous Building or Structure” is any fence, wall, shed, deck, house, garage, building, structure or any part of any of the aforesaid which is so decayed, broken down, disintegrated, dilapidated or poorly constructed as to constitute a fire or safety hazard to person and property within its vicinity.
- c. “Inoperable Motor Vehicle” is a vehicle that is not capable in its present condition of being promptly started and driven under its own power or does not comply with the minimum safety requirements of the Colorado Motor Vehicle Law.
- d. “Junk Motor Vehicle” is a vehicle which is inoperable, or does not have a current license plate, or does not comply with the minimum safety requirements of the Colorado Motor Vehicle Law, or which lacks one or more of the following items which is otherwise standard factory equipment on any particular vehicle model:
 - i. Windshield
 - ii. Side or rear window
 - iii. Door

- iv. Fender
- v. Headlamp
- vi. Muffler
- vii. Wheel
- viii. Properly inflated tire

Junk Motor Vehicle does not mean riding lawn mowers, golf carts, motorized wheel chairs, scooters, or similar vehicles or vehicles defined by §41-1-102(59)(a) and (59)(b), C.R.S., as amended.

- e. “Motor Vehicle” means any automobile, truck, trailer, tractor, motorcycle, or any other means of transportation, as set forth in §41-1-102(58), C.R.S. Motor Vehicle does not mean riding lawn mowers, golf carts, motorized wheel chairs, scooters, or similar vehicles and those vehicles as defined by §41-1-102(59)(a) and (59)(b), C.R.S., as amended.
- f. “Owner” means any person or persons who hold any right, title or interest in any real property located within the established and legal boundaries of the Town. No person shall be deemed to be the owner of any right, title or interest in any real property located within the established legal boundaries of the Town unless this interest is show of record in the office of the Clerk and Recorder of Kit Carson County, Colorado, at the time of any alleged violation of the conditions of this ordinance. Owner also means the owner of a vehicle as set forth in §41-1-102(66), C.R.S., as amended.
- g. “Person” a person is any natural person, Corporation, Partnership, Association, or other legal entity created by law or otherwise who holds any recorded right, title or interest in real property located within the established and legal boundaries of the Town, except a person who holds a legal or equitable interest in the real property by virtue of and under the terms and conditions of any mortgage, Deed of Trust, or Judgment Lien.
- h. “Poultry” includes, but is not limited to chickens, ducks, geese, turkeys, and other fowl.
- i. “Public Nuisance” is a substance, act, omission, occupation, condition or use of property which is of such nature and continues for such length of time as to substantially annoy, injure or endanger the comfort, health, repose or safety of the public, or cause any hurt, harm, inconvenience, discomfort, damage or injury to any one or more individuals in the Town, in any one or more of the following particulars:
 - i. By reason of being a menace, threat and/or hazard to the general health, comfort and safety of the community.
 - ii. By reason of being a fire hazard.
 - iii. By reason of being unsafe for occupancy, or use on, in, upon, about or around the aforesaid property.
 - iv. By reason of lack of sufficient or adequate maintenance of the property, and/or being vacant, any of which depreciates the enjoyment and use of the property in the immediate vicinity to such an extent that it is harmful to the community in which such property is situated or such condition exists.

- v. By reason of interfering with, obstructing or tending to obstruct or render dangerous for passage any lake, stream, canal or other body of water, public park, street, alley or other public way.
- vi. By reason of being offenses which are known to the common law of the land and statutes of Colorado as nuisances.
- j. "Trash, garbage, rubbish or refuse" means but is not limited to the following: any dead yard residue, grass clippings, leaves, trees, bushes, hay, straw, shavings, excelsior, paper, clothing, animal waste, ashes, containers, boxes, glass, cans, bottles, garbage, waste, discarded building and construction materials, and any other worthless or discarded material or object; and any other materials commonly known as rubbish or refuse or trash of any kind or character or by any means known.
- k. "Town" means the Town of Stratton, Colorado, a municipal corporation created and existing under the laws of the State of Colorado, and being located in Kit Carson County, Colorado.
- l. "Weeds" are those plants identified as noxious weeds by the Commissioner of the Department of Agriculture by rule as provided by the Colorado Noxious Weed Act, C.R.S. § 35-5.5-101 *et seq.*, and any weeds, grasses or other rank, offending or undesired vegetation regarded as a common nuisance or posing a public health or safety hazard. This definition shall not include cultivated plants in flower and vegetable gardens or small grain plots such as those planted with wheat, barley, oats or rye.

Section 1-2. Declared Nuisances. The following matters are declared to be public nuisances, regardless of location, except where indicated below:

- a. **Junk or Inoperable Motor Vehicles.** A junk motor vehicle or inoperable motor vehicle which has remained on the same property for thirty (30) or more consecutive days is hereby declared a public nuisance, unless such vehicle is located in any one of the following locations:
 - i. In an enclosed building; or
 - ii. Behind or within a storage structure or a 6 foot tall fence which does not obstruct traffic flow, which completely shields the junked or inoperable motor vehicle from the view of any other parcel of property; or
 - iii. On property located in a commercial zone as set forth by the applicable zoning ordinances of the Town of Stratton, when the owner of such property is a licensed car dealer.
- b. **Vacant Buildings.** It is declared a public nuisance for the owner of any vacant building to fail to secure means of entry into such building within seventy-two (72) hours after notice is given by the town. Notice shall be as set forth in Section 1-5(c).
- c. **Dangerous Building or Structure.** Any dangerous building or structure is hereby declared a public nuisance.

- d. Junkyards and dumping grounds. All places used or maintained as junkyards or dumping grounds or for the wrecking or disassembling of automobiles, trucks, tractors or machinery of any kind or for the storing or leaving of any machinery or equipment used by contractors or builders or by other persons, which places essentially interfere with the comfortable enjoyment of life or property by others, are hereby declared to be public nuisances.
- e. Discharge of noxious liquids. The discharge out of or from any house or place of foul or noxious liquid or substance of any kind whatsoever into or upon any adjacent ground or lot or into any street, alley or public place in the Town of Stratton is hereby declared a public nuisance.
- f. Stale matter. The accumulation of any stale, putrid or stinking fat or grease or other matter is hereby declared to be a public nuisance.
- g. Sewer inlet. Any article or materials accumulated in any sewer, sewer inlet or privy vault that shall have a sewer connection, which causes or might cause such sewer inlet or privy vault to become noxious or offensive to others or injurious to public health, are hereby declared to be public nuisances.
- h. Dead animals. The body of any animal which has died and which has not been disposed of by burial or other suitable means twenty-four (24) hours after death, is hereby declared to be a public nuisance.
- i. Stagnant ponds. Any cellar, vault, drain, sewer, pond of water or other place in the Town of Stratton that shall be noxious or offensive to others, or injurious to public health, through an accumulation or deposit of noxious, offensive or foul water or other substances shall be deemed a public nuisance. This applies in all cases for which no other specified provisions are made in this Section or any other Ordinance of the Town of Stratton.
- j. Open wells, cisterns or excavations. It is hereby declared that excavations exceeding five (5) feet in depth, cisterns and wells or an excavation used for storage of water are public nuisances unless the same are adequately covered with a locked lid or other covering weighing at least sixty (60) pounds or are securely fenced with a solid fence to a height of at least five (5) feet. Any well or cistern on any property within the limits of the Town of Stratton, whenever a chemical analysis or other proper test or the location of the same shows that the water of the said well or cistern is probably contaminated, impure or unwholesome, shall be deemed a nuisance. Any abandoned or unused well or cistern shall be filled with dirt and covered.
- k. Unused appliances. Any unused refrigerator, washer, dryer, freezer or other appliance within any accessible yard or lot within the limits of the Town of

Stratton without the door of the same being removed, is hereby declared a public nuisance.

- l. Transporting of garbage or manure. The transport of manure, garbage, swill or offal upon any street in the Town of Stratton in a vehicle, which is not fitted with a substantially tight enclosed box thereon allowing no portion of such filth to be scattered or thrown into such street, is hereby declared a public nuisance.
- m. Accumulation of trash, garbage, rubbish or refuse. Any accumulation of trash, garbage, rubbish, refuse or other waste or discarded material, is hereby declared to be a public nuisance
- n. Accumulation of manure. The accumulation of manure or other animal waste in quantities which endanger or tend to endanger the public health and safety is hereby declared to be a public nuisance. This Section does not apply to a light spread of manure upon lawns or gardens or which is plowed under the surface of the ground.
- o. Animals and Pens and Enclosures. All pens, places, or premises in which any number of animals shall be kept within the Town of Stratton so as to be offensive or an annoyance to any person is hereby declared a public nuisance.
- p. Accumulation of metals. Any piling, storing or accumulation of old iron, brass, copper, tin, lead or other base metals, or any combination of base metals, or any scrap metal such as unused metal machinery, tools, or equipment, that endangers the public health and safety, is hereby declared to be a public nuisance.
- q. Weeds which have grown to a height in excess of six (6) inches above ground level, are hereby declared to be a public nuisance.

Section 1-3. Unlawful Acts. It shall be unlawful for any owner, lessee, agent, occupant or person in possession or control of all or any portion of an occupied or unoccupied lot or tract of land within the Town of Stratton to permit, allow, maintain, or fail to eliminate and remove from such lot or tract of land, a public nuisance.

Section 1-4. Right of Entry; Emergency. The Marshall responsible for the enforcement of this ordinance or his or her designee is hereby authorized to enter upon private property for the purpose of ascertaining the existence of a public nuisance when:

- a. Necessary to make an inspection to enforce any of the provisions of this ordinance, or whenever an authorized representative of the Town of Stratton shall have reasonable cause to believe that there exists in any building or upon any premises any condition which constitutes a nuisance hereunder, the Marshall or his or her designee may enter such building or premises at all reasonable times to inspect the same or to perform any duty imposed on them. If such building or premises is occupied, the Marshall or his or her designee shall first present proper

credentials and demand entry; and if such building or premises is unoccupied, the Marshall or his or her designee shall first make a reasonable effort to locate the owner or occupant or other person or persons having charge or control of the building or premises and, upon locating said owner, occupant or other person or persons, shall present proper credentials and demand entry. If entry is refused, such person shall give owner or occupant, or, if said owner or occupant cannot be located after a reasonable effort, he shall leave at the building or premises, a twenty-four (24) hour written notice of intention to inspect. The notice given to the owner or occupant or left on the premises as aforesaid shall state that the property owner has the right to refuse entry and that in the event that such entry is refused, inspection may be made only upon issuance of a search warrant by the Municipal Judge of the Town of Stratton or a Judge of any other court having jurisdiction.

- b. After expiration of said twenty-four (24) hour period from the giving or leaving on notice, the Marshall or his or her designee, may appear before the Municipal Judge of the Municipal Court of the Town of Stratton and, upon a showing of probable cause, shall obtain a search warrant entitling the Marshall or his or her designee to enter such building or go upon such premises. Upon presentation of said search warrant and proper credentials, or, possession of the same in the case of an unoccupied premises, said person may enter into said building or go upon said premises, using such reasonable force as may be necessary to gain entry.
- c. For the purposes of Subsection 1-4(b), a determination of probable cause will be based upon reasonableness, and if a valid public interest justifies the intrusion contemplated, then there is probable cause to issue a search warrant. It shall be unlawful for any owner or occupant of said building or premises to resist reasonable force used by any authorized agent pursuant to this Subsection 1-4(c).
- d. An emergency situation exists in relation to the enforcement of any of the provisions of this Ordinance, the Marshall or his or her designee, upon a presentation of proper credentials or identification in the case of an unoccupied building or premises, or possession of said credential in the case of an unoccupied building or premises, may enter into any building or go upon any premises within the jurisdiction of the Town of Stratton. In said emergency situation, such Marshall or his or her designee may use such reasonable force as may be necessary to gain entry into said building or upon said premises.
- e. The Marshall or his or her designee has obtained the consent of the person in possession of the property.
- f. The Marshall determines that an emergency exists and the immediate removal of trash, garbage, rubbish or refuse is necessary for the health, safety and welfare of the citizens of the Town of Stratton.

Section 1-5. Abatement.

- a. Each and every nuisance declared or defined by any ordinance of the Town of Stratton or otherwise is hereby prohibited, and the Marshall or his or her designee, is hereby authorized, in their discretion, to cause the same to be summarily abated in such manner as they may direct, subject to the limitations herein provided. If any nuisance is found to exist on public property, it shall be the duty of the Town of Stratton to abate such nuisance.
- b. Upon authorization by the Marshall or his or her designee, if any nuisance is found to exist shall cause such imminent danger to the life, limb, property or health as to require immediate abatement, any such nuisance may be summarily abated by action of the Marshall or his or her designee.
- c. In the case of any nuisance not requiring summary abatement, it shall be the duty of the Marshall or his or her designee to cause notice to be served upon the person responsible for any nuisance which may be found, requiring said person to abate the same in a reasonable time and in such reasonable manner as prescribed, and such notice may be given or served by any Officer directed or deputized to give or make the same. In causing notice to be served the Marshall or his or her designee may authorize town officials, inspectors or any other appropriate town employee to issue notice of abatement. The reasonable time for abatement shall not exceed three (3) days unless it appears from the facts and circumstances that compliance could not reasonably be made within three (3) days or that a good-faith attempt at compliance is being made. Such notice shall be in writing, signed by the official issuing the same and shall be personally served upon the owner or occupant of the premises upon which said nuisance exists or, if not occupied, then by posting the same prominently at some place on the premises upon which said nuisance exists. If service is by posting as aforesaid, then a copy of said notice shall also be mailed by certified mail, return receipt requested, to the owner of such property as shown upon the tax rolls of Kit Carson County, Colorado, at the address of such owner as therein shown.
- d. Extension of Time. The Marshall may, upon written application by the owner or occupant within the owner's abatement period as defined by Subsection 1-5(c) above, grant additional time for the owner to effect the abatement of the public nuisance, provided that such extension is limited to a definite period of time, not to exceed thirty (30) days.
- e. If, after notification, a nuisance is not voluntarily abated, the following procedures shall apply:
 - i. If the person notified in accordance with Subsection 1-5(c) shall neglect or refuse to comply with the requirements of said notice to abate the nuisance within the time specified, such person shall be guilty of a violation of this Ordinance, and the Marshall or other authorized Town official, may proceed at once, upon the expiration of the time specified in such notice, to commence appropriate legal action

to cause such nuisance to be abated, provided that, if the owner is unknown or cannot be found, the Marshall may proceed to abate such nuisance after notice has been posted for the period equal to the time specified to abate said nuisance. In either case, the expense of such abatement shall be collected from the owner of the property upon which said nuisance existed.

- ii. When any owner has responsibility for a nuisance and such nuisance shall exist or be found and said owner fails to abate the same after the giving of such notice as provided for in Subsection 1-5(c), within the time limited therein, or as extended, then the Town Attorney or Marshall is authorized to institute proceedings in a court of competent jurisdiction to obtain a judicial determination that such nuisance exists, to abate such nuisance, to enjoin the same and for such other and further relief as may seem necessary or proper, including but not limited to the costs and expenses of abatement.
- iii. Upon a judicial determination that a nuisance exists, the Marshall or his or her designee may be authorized to abate such nuisance or cause the same to be abated, employing such forces and persons as may be necessary to abate said nuisance or cause the same to be abated, including the employees of the Town of Stratton or by contract or otherwise. All other Town officials and employees are hereby authorized and directed to render such assistance to the Marshall as may be required for the abatement of such nuisance and in connection with the enforcement thereof.
- iv. Any Officer or employee of the Town of Stratton who shall be authorized herein to abate any nuisance specified in this ordinance shall have authority to engage the necessary assistance and incur the necessary expenses thereof. In any case where a nuisance is to be abated by the Town of Stratton, it shall be the duty of said authorized person to employ such assistance and adopt such means as may be necessary to effect abatement of said nuisance. It shall also be the duty of the Town of Stratton or any of its representatives to proceed in all abatement cases with due care and without any unnecessary destruction of property.

Section 1-6. Costs of Abatement and Collection Thereof.

- a. The person or persons responsible for any nuisance within the Town of Stratton shall be liable for and pay and bear all costs and expenses of the abatement of said nuisance, which costs and expenses may be collected by the Town of Stratton in any action at law, referred for collection by the Town Attorney in his or her discretion or collected in connection with an

action to abate a nuisance or assessed against the property as hereinafter provided.

- b. The notice required by this Ordinance shall, in addition to other requirements herein, state that, if the nuisance is not abated within the time stated in the notice, the cost of such abatement may be assessed as a lien against the property pursuant to the terms of this Ordinance, referring to this Ordinance, together with an additional five-percent assessment for inspection and incidental costs and an additional ten-percent assessment for costs of collection, and collected in the same manner as real estate taxes against the property. If the owner of the property is not personally served with a copy of such notice, then a true copy of such notice shall be mailed by registered or certified mail, return receipt requested, to the owner of such property as shown upon the tax rolls of Kit Carson County, Colorado, at the address of such owner as therein shown or posted on the premises.
- c. If after the expiration of the period of time provided for in said notice, or as extended, costs or expenses are incurred by or on behalf of the Town of Stratton in the abatement or in connection with the abatement of a nuisance, and said costs are not otherwise collected, the Town Treasurer may certify to the Town Clerk the legal description of the property upon which such work was done, together with a statement of the work performed, the date of performance and the costs thereof.
- d. Upon receipt of such a statement from the Town Treasurer, the Town Clerk shall mail a notice to the owner of said premises as shown by said tax roll, at the address shown upon the tax rolls, by first class mail, postage pre-paid, or by posting on the premises, notifying such owner that work has been performed pursuant to this Ordinance, stating the date of performance of the work, the nature of the work and demanding payment of the costs thereof (as certified by the Town Treasurer), together with five-percent assessment for inspection and other incidental costs in connection therewith. Such notice shall state that if said amount is not paid within thirty (30) days after mailing the notice, it shall become an assessment on and a lien against the property of said owner, describing the same, and will be certified as an assessment against such property, together with ten-percent assessment for costs of collection, and the above-mentioned assessments will be collected in the same manner as a real estate tax upon the property.
- e. If the Town Clerk shall not receive payment within the period of thirty (30) days following the mailing of such notice, the Clerk shall inform the Board of Trustees of such fact, and the Board shall thereupon enact a resolution assessing the whole costs of such work, including a charge of five-percent of said whole cost for inspection and other incidental costs in

connection therewith upon the lots and tracts of land upon which the nuisance was abated, together with a charge of ten-percent of said whole costs for costs of collection.

- f. Following passage of such resolution, the Town Clerk shall certify the same to the County Treasurer, who shall collect the assessment, including the ten-percent charge for costs of collection, in the same manner as other taxes are collected.
- g. Each such assessment shall be lien against each lot or tract of land until paid and shall have priority over other liens except general taxes and prior special assessments.

Section 1-7. Cumulative and Nonexclusive Remedies.

- a. No remedy provided herein shall be exclusive, but the same shall be cumulative, and the taking of any action hereunder, including charge or conviction of violation of this chapter in the Municipal Court of the Town of Stratton, shall not preclude or prevent the taking of other action hereunder to abate or enjoin any nuisance found to exist.
- b. Whenever a nuisance exists, no remedy provided for herein shall be exclusive of any other charge or action, and when applicable, the abatement provisions of this Ordinance shall serve as and constitute a concurrent remedy over and above any charge or conviction of any municipal offense or any other provision of law. Any application of this Ordinance that is in the nature of a civil action shall not prevent the commencement or application of any other charges brought under the municipal ordinances or any other provision of law.

Section 1-8. Violations and Penalties.

- a. Whenever in any section of this Ordinance, the doing of any act is required, prohibited or declared to be unlawful and no definite fine or penalty is provided for a violation thereof, any person, firm or corporation who shall be convicted of a violation of any such section shall be subject to such penalties as are provided in the general penalty ordinance in effect at the time of the violation.
- b. Any person who shall have possession or control of any private ground or premises, whether he is owner thereof or not, in, or upon which any such nuisance shall exist or may be found, whether such nuisance has been heretofore or shall be hereafter created, shall be deemed guilty of a separate offense, as the author of a nuisance, for every period of twenty-four (24) hours continuance of such nuisance after due notice give to abate the same.

Section 2. Safety Clause. The Board of Trustees hereby finds, determines and declares that this ordinance is promulgated under the police powers of the Town of Stratton, that it is promulgated for the health, safety, morals and general welfare of the public and that this

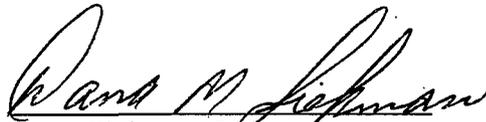
ordinance is necessary for the preservation of the public health and safety and for the protection of public convenience and welfare. The Board of Trustees further determines that this ordinance bears a rational relationship to the proper legislative objective sought to be attained.

Section 3. Severability. If any clause, sentence, paragraph, or part of this ordinance or the application thereof to any person or circumstances shall for any reason be judged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this ordinance or its application to other persons or circumstances.

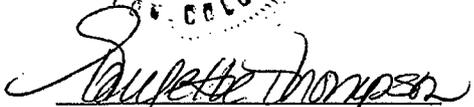
Section 4. Effective Date. This ordinance shall become effective on the date it is adopted.

Passed and adopted this 11 day of October, 2007.

Town of Stratton, Colorado


Dana Siekman, Mayor




Paulette Thompson, Town Clerk

STATE OF COLORADO)
)
COUNTY OF KIT CARSON)
)
TOWN OF STRATTON)

The Board of Trustees of the Town of Stratton, Colorado, met in regular session in full conformity with law and the ordinances and rules of the Town, at 132 Colorado Avenue, in Stratton, Colorado, on Thursday, the 13th day of December, 2007, at 7:00 P.M.

Upon roll call the following were present, constituting a quorum:

Mayor:	Dana Siekman
Mayor Pro Tem:	Larry Shutte
Trustees:	Jeff Flynn
	Jodi Gray
	Mitch Menke
	Richard Mann
	Steven Glenn Holding

Also present:

Town Clerk:	Paulette Thompson
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Absent: Jodi GRAY

Thereupon ^{MAYOR} Trustee TRUSTEE SIEKMAN introduced, and there was read in full, the following Ordinance: