

**CITY OF LEADVILLE, COLORADO**  
**Ordinance No. 8, Series of 2011**

**AN ORDINANCE OF THE CITY OF LEADVILLE REPEALING CHAPTER 8.08, CHAPTER 8.16 AND CHAPTER 8.24 OF THE LEADVILLE MUNICIPAL CODE CONCERNING NUISANCES, WEEDS, JUNK AND GARBAGE GENERALLY, AND ADOPTING A NEW CHAPTER 8.08 CONCERNING NUISANCES, WEEDS, JUNK AND GARBAGE, SETTING PENALTIES FOR VIOLATIONS THEREOF, AND DECLARING AN EMERGENCY.**

**WHEREAS**, the City of Leadville, Colorado, is a statutory municipality and is empowered under its general police powers to adopt such ordinances as are necessary and convenient for the purposes of protecting the health, safety, and welfare of the City's residents; and

**WHEREAS**, the City of Leadville is specifically authorized under Section 31-15-401(1)(c) of the Colorado Revised Statutes to declare what is a nuisance, to abate the same, and to impose fines upon parties who may create or continue nuisances or suffer nuisances to exist; and

**WHEREAS**, the City Council finds that the current provisions of Chapters 8.08, 8.16 and 8.24 of the Leadville Municipal Code fail to adequately address many circumstances which the City Council determines to be nuisances and fail to provide sufficient information on the procedure to be followed for abatement of such nuisances; and

**WHEREAS**, the City Council desires to set forth more comprehensive provisions governing the enforcement against and abatement of nuisances within the City, including the setting of fines and other sanctions or penalties for violations thereof; and

**WHEREAS**, the City Council finds that an emergency exists in that, without the immediate passage of this Ordinance determining what is a nuisance and the abatement process and penalties and other sanctions for violation thereof, the City will be unable to advance or to immediately preserve the health, peace, and safety of the public.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LEADVILLE, COLORADO:**

**Section 1.** Chapters 8.08, 8.16 and 8.24 are hereby repealed and replaced in their entirety by a new Chapter 8.08 to be entitled "Nuisances, Weeds, Junk and Garbage" and to read in full as follows:

## **Chapter 8.08**

### **Nuisances, Weeds, Junk and Garbage**

#### **8.08.010 Purpose, scope and authority.**

The purpose of this chapter is to promote the health, safety, convenience, order, prosperity and welfare of the present and future inhabitants of the city. This chapter governs the prohibition and control of nuisances throughout the city. The authority to enforce the provisions of this chapter is vested in any authorized city officer.

#### **8.08.020 Unlawful acts.**

- A. It is unlawful for any responsible party to:
  - 1. Create, operate, maintain or conduct any nuisance as defined in this chapter.
  - 2. Allow any property, including any private residence, to deteriorate, either through abandonment or neglect, to the extent that such property becomes an unsightly nuisance and a detriment or danger to surrounding property or the general public. Evidence of abandonment or neglect which could render a property either an unsightly nuisance or a detriment or a danger to surrounding property may include a combination of some of the following occurrences or conditions, or occurrences and conditions which are similar to the following: broken shutters or fascia in such manner that the interior wall is exposed, broken windows (not to include glass pane cracks), detached doors, holes in roofs and/or siding in such manner that the interior wall is exposed and/or, broken or damaged fencing, encroaching on public or private property of another.
  - 3. Knowingly fail to act where such failure causes or constitutes a nuisance.
  - 4. Permit any activity or conditions constituting a nuisance.
  - 5. Aid or abet the creation or maintenance of a nuisance.
  - 6. Interfere with or prevent, or attempt to interfere with or prevent, the abatement of any nuisance by an officer of the city.
- B. Each day during which any responsible party commits, or allows to remain unabated, any of the actions specified as unlawful in this chapter shall constitute a separate offense. Multiple violations of this chapter may be included on a single notice to abate or a single summons and complaint.
- C. It shall be unlawful and a separate violation for each day during which a responsible party fails to comply with any injunction or order issued by the municipal court or other court with jurisdiction in an action to abate a nuisance and such violation may be punished in accordance with Section 1.20.010 of this Code.

#### **8.08.030 Voluntary compliance; discretionary authority of code enforcement officers.**

In furtherance of the city's policy of encouraging voluntary compliance, any person deemed or alleged to be in violation of or not in compliance with any of the provisions of this chapter may, to the extent possible or practical, in the sole discretion of the code enforcement officer, be notified of such alleged violation or lack of compliance prior to the initiation either of abatement or enforcement proceedings, and may be offered an opportunity to bring the property or use of the property into compliance. Code enforcement officers are authorized to exercise discretion in investigation and enforcement of violations of this chapter in furtherance of this policy.

#### **8.08.040 Right of entry.**

- A. *Right of entry generally.* Whenever necessary to make an inspection to enforce this chapter, or whenever a code enforcement officer has reasonable cause to believe there exists in any building or upon any premises any condition which constitutes a nuisance, the code enforcement officer shall first present proper credentials and request entry. If entry is refused, such officer shall give the responsible party, or if the responsible party cannot be located after a reasonable effort shall leave at the building or premises, a written notice of

intent to inspect not sooner than twenty-four (24) hours after the time specified in the notice. The notice shall state that the responsible party has the right to refuse entry and that in the event such entry is refused, inspection may be made only upon issuance of a search warrant by the municipal judge, or by a judge of any other court having jurisdiction.

- B. *Search warrants.* The code enforcement officer may appear before the municipal judge and, upon a showing of probable cause, shall obtain a search warrant entitling him to enter the building or upon the premises, using such reasonable force as may be necessary to gain entry. The person applying for such warrant shall not be required to demonstrate specific knowledge of the condition of the particular structure or premises at issue in order to obtain a search warrant, but must show some factual or practical circumstances that would cause an ordinary prudent person to act. A municipal judge shall have power to issue search warrants upon a showing of probable cause as provided in subsections (B) and (C) of this section.
- C. *Emergencies.* Whenever an emergency situation exists in relation to the enforcement of any of the provisions of this chapter, a code enforcement officer may enter into any building or upon any premises within the city, using such reasonable force as may be necessary. An emergency situation includes any situation of imminent danger of loss of, or injury or damage to, life, limb, property or threat to public safety. It is unlawful for any owner or occupant of the building or premises to deny entry to any code enforcement officer or to resist reasonable force used by the officer acting pursuant to this subsection.

#### **8.08.050 Definitions.**

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. The terms defined below shall be broadly interpreted to achieve the purposes intended. In the interpretation of the definitions of garbage, trash and junk set forth herein, it is the intent that these definitions be liberally construed to include like matters, materials, objects or substances, whether or not the same be specifically identified. It is further the intent that the definitions not be considered mutually exclusive, and that in the interpretation, it be recognized that any substance or material or object may constitute trash, garbage and junk at the same time. Liberal construction is deemed necessary by the city council in order to fulfill the public purpose of this chapter, which is to ensure that the city is maintained in a clean, healthy and attractive condition by eliminating described outside storage of garbage, trash and junk, and related matters, objects or materials as set forth herein.

- A. *Abate* means to bring into compliance, halt, eliminate or remedy.
- B. *Agent* means and includes any person acting on behalf of or in place of a responsible party, including tenant, manager or lessee.
- C. *Code enforcement officer* means the employee or contractor authorized by the City to enforce the provisions of this chapter.
- D. *Embankments of lakes, reservoirs and ponds* means all land fifty (50) feet from the base of the bank, dam, dike, fill or natural barriers as defined in the official maps and plats maintained by the city.
- E. *Garbage* means waste resulting from the handling, preparation, cooking and consumption of food or wild animal carcasses, and wastes from handling, storage and sale of produce.
- F. *Junk* means scrap or remnant building materials, metals, including without limitation, brass, scrap copper, scrap iron, scrap lead, scrap tin, scrap zinc and all other scrap metals and alloys, bones, rags, used cloth, discarded furniture, rope, used rubber, used tinfoil, used bottles, old, used or dismantled machinery of any type, used tools, used appliances, fixtures, utensils, lumber, used boxes or crates (fabricated of any material), used pipe or pipe fittings, used conduit or conduit fittings, automobiles in nonoperative condition, motor vehicle parts, trailers, used tires and other manufactured goods that are so worn, deteriorated or obsolete as to make them unusable in their existing condition.

- G. *Lakes, reservoirs and ponds* means places where water is collected and/or stored regardless of whether water is currently being collected and/or stored there or not.
- H. *Litter* means and includes any and every rubbish, waste material, refuse, garbage, trash, debris, excrement, urine, offal composed of animal matter (except in the course of actively butchering game animals) or vegetable matter or both, or any noxious or offensive matter whatever, including but not limited to, any discarded dead animal, fishing line, bait, chemical, chemical compound, petroleum product or compound, automobile part or accessory, tire, wheel, junk, paper, cardboard, can, lid, bottle, cap, carton, wrapper, box, wooden object, plastic object, clothing, cloth, metal object, rubber object, leather object, hide, feathers, grass clippings, leaves, cut weeds, branches cut from trees or bushes, brick, cinderblock, building material, paint, concrete, soil, sand, gravel, stone, glass, asphalt, ashes, cigarette, cigar, food or food product, solvent, dye, beverage, and liquid except water.
- I. *Nonoperative condition*, when applied to a motor vehicle, means that, in the reasonable opinion of a code enforcement officer, the motor vehicle is either legally or mechanically incapable of operating. Indicia of such conditions include any one or more of, but are not restricted to:
1. No current license plates;
  2. No current motor vehicle registration;
  3. Flat tire or tires;
  4. Missing body parts;
  5. Missing engine, transmission, running gear or wheels;
  6. Missing windows;
  7. Missing or inoperable lights;
  8. Engine will not start or run;
  9. Transmission will not engage; or
  10. Otherwise not legally or mechanically capable of running.
- J. *Nuisance* includes, but is not limited to:
1. The conducting or maintaining of any business, occupation or activity prohibited by statute or by this chapter, or in violation of any regulation of the city, the county, or the state.
  2. The continuous or repeated conducting or maintaining of any business, occupation, operation, activity, building, land or premises in violation of any statute or this chapter, or in violation of any regulation of the city, the county, or the state.
  3. Any building, structure or land open to or used by the general public, the condition of which presents a substantial danger or hazard to public health or safety.
  4. Any of the following unsanitary, fly-producing, disease-causing conditions:
    - a. Any accumulation of manure on premises where animals are kept, unless the premises are kept clean and the manure is kept in a box or vault which is screened from flies and emptied at least once each week;
    - b. Privies, vaults, cesspools, pits or like places which are not securely screened to protect them from flies;
    - c. Garbage in any quantity which is not covered or screened to protect it from flies; or
    - d. Trash, litter, rags or anything whatsoever in which flies may breed or multiply.
  5. Any of the following conditions:
    - a. Any animal or fowl enclosure in which any animal or fowl may be kept, or in any other place in which manure or liquid discharges of such animals or fowls may accumulate, and which is maintained in an unsanitary condition, allowing an offensive odor to escape therefrom, or providing an insect or rodent attractant.
    - b. Manure or any other organic material used on premises for fertilizing purposes which are allowed to become offensive to sight, an attraction to insects or rodents, or to otherwise create an unsanitary condition.

- c. Whenever manure or any other organic material shall accumulate and affect the health of the public.
- d. To allow any building or premises or appurtenance thereof, or any use made or maintained on or within property, to become offensive in odor, offensive to sight, or to create an unsanitary or hazardous health condition.
6. Unless property is specifically zoned to allow for such accumulation, deposit or storage in the manner in which the accumulation, deposit or storage occurs, the deposit, accumulation, storage, keeping, abandoning or allowing of the deposit, accumulation, storage, keeping, or abandoning of junk, rubbish and debris on private or public property resulting in dangerous and unsanitary conditions constituting a fire hazard and/or threat to public health, safety and welfare, and otherwise eroding the aesthetic conditions of the community and degrading the quality of life of the citizens of the city.
7. Maintaining any lot or lots or vacant land so as to allow the blowing of dust, soil, or sand from such property to be deposited on other property, or to be deposited upon or within any public street, public highway or public way, or otherwise to the detriment of the health, safety and general welfare of the inhabitants of the city or to cause damage to the real or personal property of any person or of the city.
8. Any of the following locations:
  - a. *Stagnant ponds.* Any cellar, vault, drain, sewer, pond of water, or other place that shall be noxious or offensive to others, or injurious to public health, safety or welfare through an accumulation or deposition of noxious, offensive or foul water, or other substances, or be conducive to the breeding of mosquitoes, shall be unlawful and deemed a nuisance.
  - b. *Open wells, cisterns or excavation.* Excavations exceeding five (5) feet in depth, cisterns and wells or an excavation used for storage of water, are nuisances unless the same are adequately covered with a locked lid, or other covering weighing at least sixty (60) pounds or are securely fenced to a height of at least five (5) feet, and it shall be unlawful for any responsible party to permit such nuisance to remain on any premises.
  - c. *Stale matter.* It shall be unlawful and deemed a nuisance to keep, collect, or use or cause to be kept, collected, or used, or permit to be kept or used, any stale, putrid, or stinking fat or grease or other matter.
  - d. *Sewer inlet.* It shall be unlawful and deemed a nuisance to deposit in or throw into, or permit to be deposited in or thrown into, any sewer, sewer inlet, or privy vault that shall have a sewer connection, any article whatsoever that might cause such sewer, sewer inlet, or privy vault, to overflow, backup or otherwise become noxious or offensive to others, or to become injurious to public health, safety or general welfare of the residents of the city.
9. Any unlawful pollution or contamination of any surface or subsurface waters in this city, or of the air, or of any water intended for human consumption.
10. Any premises within the city which are infested with rodents or on which is kept any uncovered garbage or waste materials of any kind which might attract, sustain, or cause an infestation of rodents.
11. Any activity, operation or condition which, after being ordered abated, corrected or discontinued by a lawful order of an agency or officer of the city or the county, continues to be conducted or continues to exist in violation of any statute or this chapter or in violation of any regulation of the city, the county, or the state.
12. Any activity, operation, condition, building, structure, place, premises or thing which is injurious to the health or safety of the citizens of the city, such as, by way of illustration and not limitation, storage of junk, garbage, trash or vehicles in non-operative condition on public property.

13. Littering as follows:

- a. For any person to deposit, throw or place any litter upon any street, alley, sidewalk, or public grounds in the city except in public receptacles or authorized private receptacles.
  - b. The failure of any responsible party in control of any private property to, at all times, maintain the premises free of litter, trash, garbage or refuse. No person shall throw or deposit litter on any private property, whether owned by such person or not; provided, however, that the owner or person in control of private property may maintain authorized private receptacles for the deposit of rubbish or other waste materials in such a manner that waste materials will be prevented from being carried or deposited onto any public or private property. Weed or grass clippings shall not be left or stored by the responsible party in such a manner as to allow the clippings to be windblown onto other private property or public property.
  - c. For any person, while an operator or passenger in any vehicle, to deposit, throw or place any litter in or upon any street, alley, sidewalk or public grounds except in public receptacles and authorized private receptacles.
  - d. To operate any truck, trailer or vehicle in such manner that the load or any portion of the content of such truck, trailer vehicle is blown or deposited in or upon any street, alley, sidewalk or public grounds in the city.
  - e. For any person to deposit, throw or place any papers, newspapers, handbills, letters, samples or literature in or upon any public street, alley, sidewalk or public grounds.
  - f. For any person, except an authorized public employee or officer, or a person who has previously obtained a permit to do so from the city to post, place, glue, staple, nail, affix, or attach any handbill, poster, placard, sign, announcement or other painted or printed material upon or to any street, alley, sidewalk, lawful sign, telephone pole, power pole, or any public or private dwelling, store, or other building or fence without the permission of the owner or occupant of such property.
  - g. To keep or store any construction materials unless such materials are covered or secured if necessary to prevent such materials from being blown, scattered about or otherwise moved.
  - h. To deposit litter, junk or garbage on any area designated in this chapter as a watercourse or water storage area. This subsection is intended to provide for the general protection of waterways and to prevent encroachment upon them, but it is not intended to preclude the construction and/or installation of bridges or culverts for bridge purposes properly designed so as to not impede the flow of water in a watercourse or adversely affect a water storage area; said construction and/or installation shall be approved by the city prior to issuance of any building permits. This subsection is not intended to prohibit the grazing of animals or the spreading of manure for agricultural purposes, nor shall this section apply to such property as designated by the city council or any of the city departments for the disposal of litter or receptacles or containers installed for such purpose.
14. The pursuit of any trade, business or manufacturing or the maintenance of any substance or condition of things resulting in a condition detrimental to the health, safety, general welfare or comfort of the inhabitants of the city, such as, by way of illustration, but not limitation, the pursuit of the following trades or businesses:
- a. *Junkyards and dumping grounds.* All places used or maintained, or permitted to be 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 worn out, wrecked or abandoned automobiles, machinery of any kind, or for any of the parts thereof, or for the storing or leaving of any machinery or equipment used by contractors or builders or by other persons, when such places are kept in such manner as to cause a detriment to the public health, safety or welfare.

Nothing in this subsection shall be deemed or construed to prevent the city from acquiring, operating and maintaining a facility for the storage of motor vehicles, vehicles, boats, machinery or equipment pursuant to this Code.

- b. *Improper construction sites.* All places at which construction or excavation operations occur and from which trucks or other vehicles emerge from the site and carry onto or deposit in any street or other public place any mud, dirt, sticky substance or other litter which causes a hazard to automobile traffic or which otherwise causes a detriment to the health, safety or welfare of the inhabitants of the city or their property, or to any property of the city.
  - c. *Improper storage operations.* All places at which the responsible party keeps, stores or permits to be kept or stored any building materials, construction materials, paper, trash, waste material, junk, or litter upon any property in such a manner to cause a fire hazard or other detriment to the health, safety or general welfare of the inhabitants of the city, or in such a manner that the stored materials may be blown or deposited upon any other public or private property.
  - c. *Slaughtering of animals.* Any use of residential property for animal slaughtering or butchering whether for private use or for sale in a manner which causes a detriment to the public health, safety or welfare.
15. Any of the following unlawful activities:
- a. Storing upon property, placing upon property, or allowing to remain on property any trash or garbage, as described, for a period in excess of seven (7) days *unless contained in a rodent proof container.*
  - b. Dumping or depositing, or causing to be dumped or deposited, garbage, trash or junk on the property of another, or on any property owned by the city, unless such property is clearly marked and designated as a proper dump or receptacle for the deposit of trash, garbage or junk.
  - c. Placing or permitting to remain anywhere in the city any garbage or other material subject to decay other than leaves or grass, except in a covered metal or plastic container, or in a sealed plastic bag, awaiting pickup and disposal.
  - d. Driving or moving any truck or other vehicle unless such vehicle is loaded or covered so as to prevent any load, contents or litter from being blown or deposited upon any street, alley or other public place.
  - e. Operating or causing to be operated on any highway or public way, any truck or vehicle transporting garbage, trash or junk, unless such vehicle or truck is fitted with a substantial, tight box or other container thereon so that no portion of such garbage, trash or junk shall be thrown or fall upon the highway or public way.
  - f. Causing or permitting to accumulate any dust, dirt, ashes or trash, or any such material that can be blown away by the wind anywhere in the city except in a covered container or in a sealed plastic bag awaiting pickup and disposal.
  - g. Storing, or causing or allowing to be stored, upon property any junk, unless the junk is completely contained within a house, garage or other permanent building on the property.
  - h. Storing upon property or allowing to be viewed by the general public, or any member thereof, goods, materials or substances not otherwise or specifically defined or definable as trash, garbage or junk, but which goods, materials or substances are of a type, kind, quantity or description not commonly associated with the zoning classification or permitted use of the property. This subsection shall apply to storage of firewood, unless stacked within a reasonable time of delivery.
  - i. Depositing household or commercial solid waste in any city-owned solid waste receptacle maintained on a sidewalk, in a public park, or in any other public place.
  - j. Repairing or dismantling any motor vehicle in any residential zone district or on any private property primarily used for residential purposes, unless such repair is:

1. Minor tune-up or repair which is accomplished within twenty-one (21) consecutive days or less; or
  2. Fully shielded from the view of any member of the general public; or
  3. Conducted by a licensed auto repair business in full compliance with all other provisions of this Code.
16. Allowing or permitting weeds to grow or to remain when grown upon the property or on or along any alleys behind or sidewalk areas in front of the same, and/or failing to cut and remove weeds.
17. Any condition which, in the reasonable judgment of a code enforcement officer, constitutes a nuisance within the scope of this chapter.
- K. *Occupant* means and includes any person who occupies the whole or a part of a building, premises, or land, whether alone or with others, whether for residential or commercial purposes. "Occupant" means and includes "a tenant" or "lessee".
- L. *Owner* means and includes:
1. Any owner or holder of any legal or equitable estate in real property, except a future or reversionary interest and except the interest of a public trustee, lien holder, mortgagee, or beneficiary of a deed of trust.
  2. The owner of record, as reflected by the Lake County assessor.
- M. *Person* includes a natural person, association, corporation, partnership, limited liability company and any other legal entity capable of owning, using, or occupying real property.
- N. *Public place* or *public property* means and includes:
1. Any street, highway, public right-of-way, sidewalk, driveway or alley, school building, school grounds, public building, library, fire station, public park or any parking lot.
  2. The entire premises of any shopping center, restaurant, bar, store, service establishment, service station, theater, auditorium or place of amusement, except any portion of the premises reserved for the use of the owner or operator thereof or the employees of such owner or operator, and except any portion of the premises from which the general public is excluded.
  3. Any lobby, corridor, elevator, stairway, public room, common room or recreation room in a hotel, motel, office building or apartment building.
- O. *Responsible party* means any person who makes or causes any nuisance to exist, or who has possession or control of any real property or premises, whether as owner, occupant or tenant, where any nuisance is found, or, in the case of a motor vehicle, as owner or operator of the same.
- P. *Rodent* means any of an order (*Rodentia*) of relatively small gnawing mammals (as a mouse, rat, squirrel, or beaver) that have in both jaws a single pair of incisors with a chisel-shaped edge.
- Q. *Statute* means a statute of the State of Colorado.
- R. *Streams* means all rivers, watercourses, creeks and canals flowing in or through the city, as such creeks and canals are defined in the official maps of the city.
- S. *Stream embankments* means all publicly and privately owned land included within one hundred fifty (150) feet of the any stream, as defined in the official maps and plats maintained by the city; and publicly- and privately-owned land included within fifty (50) feet of the centerline of all creeks, canals and watercourses, as defined in the official maps and plats maintained by the city.
- T. *Trash* means waste, refuse, rejected matter, whether animal, vegetable or mineral, including, but not limited to paper, cartons, boxes, barrels, wood (except stacked firewood and stacked construction material), tree branches, yard trimmings, dead plant material, wood or upholstered furniture, or bedding; or any similar substance or material; noncombustible refuse, including but not limited to metals, tin or aluminum cans, metal furniture, dirt, rock, pieces of concrete, glass, crockery or other minerals or mineral wastes; street rubbish, including but not limited to street sweepings, dirt, leaves, catch-basin dirt and contents of

litter receptacles. Trash shall not include earth and waste from building construction during the period in which a valid building or dumping permit, issued by the city, is active, nor shall it include solid wastes resulting from industrial processes and manufacturing operations so long as the property is zoned for such use and such business is registered with the city, nor shall it include natural products customarily stored in an agricultural zone so long as the property is zoned agricultural and the natural products relate to an agricultural use on the property.

- U. *Watercourses* means all creeks, ditches, laterals and gullies within the city, as defined in the official maps and plats maintained by the city.
- V. *Weed* means weeds, grass, other than native grasses, over six (6) inches in height, brush or other rank or noxious vegetation, and shall not include flower gardens, plots of shrubbery, vegetable gardens, legitimate xeriscape plants and grain plots. "Weed", as used in this chapter, shall not apply to and shall not be construed to require removal of any weeds from the city's owned or leased greenbelt natural area with the exception of noxious weeds which shall be controlled.
- W. *Xeriscape* means a method of landscaping that uses native or low water plantings, efficient irrigation techniques, and alternative turf practices to promote water conservation.

#### **8.08.060 Enforcement alternatives; remedies.**

- A. When, in the reasonable judgment of a code enforcement officer, a violation of this chapter exists, the officer may, on behalf of the city, initiate one or more of the following enforcement alternatives:
  - 1. A civil action to abate, as provided by section 8.08.070;
  - 2. A criminal action, as provided by section 8.08.080;
  - 3. Abatement, as provided by section 8.08.090; and/or
  - 4. Emergency abatement, as provided by section 8.08.100.
- B. The remedies set forth in this chapter are cumulative. The initiation of any action or the imposition of any penalty shall not preclude the city from instituting any other proceeding to require compliance with the provisions of this chapter and with any orders and determinations made hereunder. No provision herein shall be construed to limit the right of any person to bring a private action to abate a private nuisance.

#### **8.08.070 Civil action.**

When an alleged violation of this chapter has not been abated within the time specified in any notice to abate, the city may bring a civil action in the municipal court or in any other court with jurisdiction to have the nuisance declared as such by the court and for an order enjoining the nuisance or authorizing its restraint, removal, termination or abatement by the responsible party or the chief of police or his or her designated representatives.

#### **8.08.080 Criminal action.**

A code enforcement officer or the city attorney may, on behalf of the city, initiate a criminal action to prosecute any alleged violation of this chapter.

- 1. The city may bring a criminal action in the municipal court to have a nuisance declared as such by the court and to have the court impose sentence pursuant to subsection (2) below upon the responsible party.
- 2. The responsible party served with the summons shall have the right to enter a plea of guilty or not guilty in the municipal court. If the responsible party is found guilty, the court shall impose sentence and order abatement in accordance with this chapter.

#### **8.08.090 Abatement.**

- A. *Notice to abate.* Any authorized code enforcement officer, upon the discovery of any nuisance on public or private property in the city, may, in the exercise of his discretion, notify the

responsible party in writing, requiring the responsible party to remove and abate from the property the thing or things therein described as a nuisance. For any nuisance which does not threaten imminent danger of damage or injury, and for which a discretionary notice to abate has been issued, the reasonable time for abatement shall not exceed seven (7) days unless it appears from the facts and circumstances that compliance could not reasonably be made within seven (7) days or that a good faith attempt at compliance is being made.

- B. *Service of notice.* If written notice to abate is given, it shall be served by:
1. Personally delivering a copy of the notice to the responsible party described in the notice if the responsible party also resides at the property; or
  2. Mailing a copy of the notice by certified mail, return receipt requested, to the last known address of the responsible party as reflected in the Lake County real estate records; or
  3. Posting a copy of the notice in a conspicuous place at the unoccupied premises.
- C. *Abatement order:* Upon the expiration of the period of notice, or at any time thereafter, if the nuisance has not been abated on the property described in such notice, the city may apply to the municipal court for an abatement order, as follows:
1. The application shall be accompanied by an affidavit affirming that the city has complied with the notice requirements of subsection (B) of this section and that the owner has failed to abate the identified nuisance upon the property.
  2. The city shall give notice to the responsible party of its application for the abatement of order in the same manner as provided in subsection (B) of this section for service of the original notice to abate.
  3. The notice of application for an abatement order shall include a copy of the city's application and its affidavit in support thereof, as well as the time, date, and place at which the city will appear before the municipal court to request entry of the abatement order.
  4. At the stated time, date, and place, the municipal court judge shall review the application for an abatement order, the affidavit, any statement of the city in support thereof, as well as any statement and evidence presented by the responsible party, if present.
  5. Thereafter, the municipal court is authorized to enter an order permitting the city to enter upon such property, abate the same and recover its costs as provided by section 8.08.120.
- D. *Abatement without notice or court order.* Any nuisance located or found in or upon any street, avenue, alley, public sidewalk, highway, public right-of-way, public grounds, park, recreation facility, or public property in the city may be abated without notice.

#### **8.08.100 Emergency abatement.**

If, in the judgment of the code enforcement officer, a nuisance is a cause of imminent danger to the public health, safety or welfare, any such nuisance may be summarily abated by the city, and costs of abatement shall be charged and recovered as provided by section 8.08.120.

#### **8.08.110 Violations and penalty.**

- A. Nothing contained in this section or section 1.20.010 of this Code shall impair the ability of the city to enforce the other remedial provisions provided in this chapter.
- B. Any responsible party violating any provision of this chapter shall be guilty of a municipal offense and, upon conviction, shall be subject to a possible maximum penalty, including jail, as set forth in section 1.20.010 of this Code and the following minimum fines shall apply:
1. Upon the first conviction for violation of this chapter, a fine of not less than one hundred dollars (\$100.00) per count, plus court costs.
  2. Upon the second conviction of a violation of this chapter, a fine of not less than two hundred dollars (\$200.00) per count, plus court costs.
  3. Upon the third conviction of a violation of this chapter, a fine of not less than three hundred dollars (\$300.00) per count, plus court costs.

4. Upon the fourth conviction or any subsequent conviction, a fine of not less than four hundred dollars (\$400.00) per count, plus court costs.
- C. In levying and imposing fines upon conviction of any of the sections specified herein, the court shall have no authority to reduce or suspend all or any portion of the minimum fine amounts specified herein, it being the expressed intent of the city council that the minimum fines specified herein be strictly adhered to.
- D. In addition to any penalty otherwise levied upon conviction of a violation of this chapter, if the underlying nuisance giving rise to the violation has not been fully abated at the time such penalty or sanctions are imposed, the court shall order that the nuisance be abated within a reasonable time established by the court, considering the nature of the violation and the required abatement actions. Failure to abate within the time so ordered may constitute contempt of court, and may be punishable by the court as such. Any such abatement order shall provide that, in the event the convicted responsible party fails to abate the nuisance within the timeframe for abatement ordered by the court, the city or its agents are authorized to do so and to assess the costs thereof to the defendant, to be collected as set forth in section 8.08.120
- E. In addition to any fines levied hereunder, the court shall impose, as a portion of the costs assessed against a convicted responsible party, any costs incurred by the city in prosecuting, enforcing and abating the nuisance.

**8.08.120 Recovery of expense of abatement.**

- A. The actual costs of abatement, plus five percent (5%) of such abatement costs for inspection shall be assessed upon the lot, lots or tracts of land upon which such nuisance is abated.
- B. Such costs shall be paid to the city within thirty (30) days after the city has mailed notice of the assessment by certified mail to the owner of the property; provided, however, that if the property is occupied by someone other than the owner, the city shall mail such notice of assessment by certified mail, to both the occupant and the owner. Service shall be complete upon depositing the notice within the United States Postal Service, postage prepaid for certified mail. Every such assessment shall be a lien in the several amounts assessed against such lot, lots or tract of land until paid and shall have priority over all other liens except general taxes and prior special assessments.
- C. Failure to pay such assessment within such period of thirty (30) days shall cause the city to certify the lien to the county treasurer who shall collect the assessment, together with a ten percent (10%) penalty which shall be recovered by the city for the cost of collection, in the same manner as other taxes are collected under the laws of the state for collection of general taxes, and the laws for the sale and redemption of property for taxes shall apply to the collection of such assessments.

**Section 2. Severability.** Should any one or more sections or provisions of this Ordinance be judicially determined invalid or unenforceable, such judgment shall not affect, impair or invalidate the remaining provisions of this Ordinance or of the Municipal Code, the intention being that the various sections and provisions are severable.

**Section 3. Repeal.** Any and all ordinances or codes or parts thereof in conflict or inconsistent herewith are, to the extent of such conflict or inconsistency, hereby repealed; provided, however, that the repeal of any such ordinance or code or part thereof shall not revive any other section or part of any ordinance or code provision heretofore repealed or superseded and this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance or code hereby repealed prior to the taking effect of this ordinance.

**Section 4. Emergency Declared.** The City Council finds and determines that without the immediate passage of this Ordinance determining what is a nuisance and the abatement process and penalties and other sanctions for violation thereof, the City will be unable to advance or to immediately preserve the public health, peace and safety. This Ordinance shall therefore take effect immediately upon adoption as provided by law.

**INTRODUCED, READ, APPROVED AND ORDERED PUBLISHED in full on first reading this 16<sup>th</sup> day of August, 2011.**

CITY OF LEADVILLE, COLORADO

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Bud Elliott, Mayor

ATTEST:

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Joseph Swyers, City Clerk

PUBLISHED in full in *The Herald Democrat*, a newspaper of general circulation in Leadville, Colorado, on the 25<sup>th</sup> day of August, 2011.

**PASSED AND ADOPTED ON FINAL READING AND ORDERED PUBLISHED BY TITLE ONLY WITH AMENDMENTS ON THE 20<sup>th</sup> DAY OF September, 2011.**

CITY OF LEADVILLE, COLORADO

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Bud Elliott, Mayor

ATTEST:

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Joseph Swyers, City Clerk

PUBLISHED by title only with any amendments in *The Herald Democrat*, a newspaper of general circulation in the City of Leadville, Colorado, on the 29<sup>h</sup> day of September, 2011.