

TOWN OF WINTER PARK  
ORDINANCE NO.455  
SERIES OF 2012

AN ORDINANCE AMENDING TITLE 4 OF THE WINTER PARK TOWN CODE  
BY ADDING A CHAPTER ADDRESSING NUISANCES

WHEREAS, C.R.S 31-15-401 (1)(c) authorizes the Town to declare what is a nuisance and abate the same; and

WHEREAS, the Town Code generally defines nuisances but does not have procedures for abatement of nuisances; and

WHEREAS, the Town Council hereby declares that the purpose of this chapter is to protect the public health, safety and welfare of the people of the town by limiting exposure to nuisances; and

WHEREAS, the Town Council further finds and determines that the new chapter is in compliance with C.R.S. 31-15-401 (1)(c).

NOW THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL FOR THE TOWN OF WINTER PARK, COLORADO, THAT:

**Section 1.** Title 1, Chapter 3 of Winter Park Municipal Code is amended and shall read as follows:

**Section 1-3-2 – Definitions**

NUISANCE: Anything offensive or obnoxious to the health and welfare of the inhabitants of the Town; or any act or thing repugnant to, or creating a hazard to, or having a detrimental effect on the property of another person or to the community as further defined in Title 4, Chapter 12 of the Winter Park Municipal Code.

**Section 2.** Title 4, Chapter 4 of Winter Park Municipal Code is amended and shall read as follows:

**Section 4-4-6 Inoperable Vehicles**

A. Any inoperable vehicle parked, stored or left or permitted to be parked, stored or left upon any private property within the Town for a period longer than thirty (30) days constitutes a public nuisance. But nothing in this Section applies to an antique vehicle, a vehicle in an enclosed building, a vehicle on the premises of a business enterprise that services and repairs such vehicles, a vehicle in an appropriate storage place or depository maintained for impounded vehicles, or a vehicle deemed inoperable solely because it lacks a current license plate or validation sticker.

B. Whenever the Town Manager has probable cause to believe that an inoperable vehicle is on private property in violation of subsection A of this Section, the Manager shall follow the abatement procedures outlined in Chapter 12 of this Title. ~~give written notice by certified mail to the owner and the lessee or occupant of the property, if known, declaring the existence of the nuisance, ordering such persons to remove the vehicle or request a hearing within seven days from the date the notice is mailed, and stating that failure to remove the vehicle or request a hearing within such seven day period will result in the vehicle being removed and impounded and expenses being assessed jointly and severally against the owner and the lessee or occupant of the property.~~

~~C. If an inoperable vehicle has not been removed from private property within seven (7) days of the date on which the notice prescribed by subsection B of this Section is mailed to the owner and the lessee or occupant of the property, a police officer may cause the vehicle to be removed and impounded by an operator, unless a hearing requested pursuant to Section ~~4-4-3~~ is pending or unless a hearing officer has determined that there~~

~~is no probable cause to conclude that the vehicle was parked, stored or left on private property in violation of subsection A of this Section.~~

~~D. If any property owner fails or refuses to pay when due any charge imposed under this Section, the Town Manager, may, in addition to taking other collection remedies, certify due and unpaid charges, including interest, to the Grand County Treasurer to be levied against the person's property for collection by the County in the same manner as delinquent general taxes are collected.~~

**Section 3.** Title 4 of Winter Park Municipal Code is amended to add a new chapter that shall read as follows:

**4-12-1: PURPOSE:**

The purpose of this chapter is to protect the public health, safety and welfare by prohibiting the existence of nuisances in the town.

**4-12-2: DEFINITIONS:**

Unless otherwise required by context or usage, words and terms used in this chapter shall be defined as follows:

EMERGENCY: Any situation where there is imminent danger of loss of life, limb and/or property.

INFECTED TREE: a) a tree, alive or dead, which is, or has been, infested with a tree pest (beetle or insect); b) any tree infested with a parasitic plant (i.e. mistletoe) that can affect the growth and vigor of the tree and expose it to attacks by diseases and insects; c) a tree that has blown down or is leaning precariously toward a structure; d) timber fuels that have accumulated on the urban forest floor as a result of dead or diseased trees which may present a fire hazard to the community (with exceptions for firewood piles and other appropriate tree piles); and e) any tree stumps or root balls that are severely damaged or exposed more than fifty percent (50%) due to falling trees.

INOPERABLE VEHICLE: A vehicle meeting the definition in section 4-4-1 of this code.

NUISANCE: Any substance, act, occupation, condition or use of property which is:

- A. Declared to be a nuisance by any provision of this code; any law of the state, or by any court or agency thereof; or
- B. Known as a nuisance at common law.

OCCUPANT: A person in physical possession of property who is not the owner of such property.

OWNER: A person who owns property.

PROPERTY: Any lot, tract or parcel of real property located within the corporate limits of the town, excluding easements and rights-of-way.

**4-12-3: NUISANCES PROHIBITED:**

It is unlawful for any owner, agent or occupant of any building, premises or property within the limits of the town, or who has the same under such person's control, to maintain or allow any nuisance to be or remain on or in such building, premises or property.

#### **4-12-4: LIABILITY OF OWNER:**

The owner of real property shall be liable under this chapter for any nuisance committed on the owner's property by a tenant or other person in lawful possession of the property.

#### **4-12-5: NUISANCES DECLARED:**

The following activities and uses are declared to be nuisances:

- A. **Junkyard and Dumping Grounds:** All places used or maintained as junkyard or dumping grounds for: 1) the wrecking or disassembling of automobiles, trucks, tractors or machinery of any kind; 2) the storage of worn out, wrecked or abandoned automobiles, trucks, tractors, trailers, boats, house trailers, manufactured housing or machinery of any kind or of any of the parts thereof; or 3) the storage of any machinery or equipment which interferes with the comfortable enjoyment of life or property by others.
- B. **Rubbish, Trash and Refuse:** As defined in title 4, chapter 1 of this Code.
- C. **Noxious Liquids:** The discharge out of or from any place within the town of fluid or noxious liquids or substances of any kind whatsoever into or upon any adjacent ground or lot or upon any street, alley or public place.
- D. **Stale Matters:** The accumulation of any stale, putrid or stinking fat, grease or other matter, other than in approved containers or receptacles.
- E. **Sewage:** Any materials accumulated in any sewer, sewer inlet or privy vault that has a sewer connection, which cause or might cause such sewer, sewer inlet or privy vault to become noxious or offensive to others or injurious to public health.
- F. **Dead Animals:** The body of any animal which has died and which is undisposed of twenty four (24) hours or more after death.
- G. **Contaminated or Impure Wells and Cisterns:** A contaminated or impure well or cistern when the water therein is used or intended for use for human consumption.
- H. **Appliances:** A refrigerator, icebox, deep freeze locker, stove, oven, trunk or any self-latching container having a capacity of one and one-half ( $1\frac{1}{2}$ ) cubic feet or more, which is no longer in use and which has not had the door removed or the hinges and such portion of the latch mechanism removed as to prevent latching or locking of the door. This subsection shall not apply to any vendor of such appliances who keeps or stores them for sales purposes in a showroom or salesroom which is ordinarily watched or attended by sales personnel during business hours and which is locked to prevent entry when not open for business, or if the vendor takes reasonable precautions to effectively secure the door of any such appliance so as to prevent entrance by children small enough to fit therein.
- I. **Dangerous Buildings:** Any building declared to be a dangerous building by the uniform code for the abatement of dangerous buildings, as adopted by the town.
- J. **Transportation of Garbage or Manure:** The transporting of manure, garbage, swill or offal upon any street in the town 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 nuisance.
- K. **Inoperable Vehicles:** Any inoperable vehicle, other than in an enclosed structure.
- L. **Piles:** Piles of dirt, sand, gravel, mulch, compost and the like, in excess of two (2) cubic yards, except those:
  - 1. Created and utilized in conjunction with a use by right, conditional use, or special use;

2. Created and maintained temporarily in conjunction with construction pursuant to a building permit, during the period from issuance of a building permit until issuance of the occupancy permit or expiration of the permit whichever occurs first;
  3. Created and maintained temporarily in conjunction with approved construction plans for a subdivision or PD, during the period from approval of a Development Improvements Agreement until its expiration;
  4. Created and maintained in accordance with an approved grading permit or other permit issued by the town for construction activities unrelated to a building permit, subdivision or PD; or
  5. Created and maintained in conjunction with a government building and facility.
- M. Infected Trees. Trees dead, dying or diseased or are in the process of dying as a result of being blown over or leaning precariously toward a structure.
- N. Slash Piles: Accumulated debris (limbs, trunk, needles) piled together from cutting brush or trimming trees.

**4-12-6: COMPLAINTS:**

Complaints concerning nuisances may be made to any town official. The complaint shall state the nature of such nuisance, the location, including street address, name of the owner, agent or occupant of the building or lot, if known, and the name and address of the complainant.

**4-12-7: ANNUAL TREE INSPECTION AND REMOVAL:**

- A. An owner shall annually inspect its property to determine if there are any infected trees on the property.
- B. Not later than July 15th of each year, the owner shall remove all infected trees from the property; provided that, upon request made prior to July 15th of any year, and for good cause shown, the town manager may extend the deadline for a specific property by a maximum of one year.
- C. The owner of the property may submit an acceptable plan and schedule for removal of the infected trees if the trees can't reasonably be removed prior to the July 15th deadline.
- D. The town manager may also extend the July 15th deadline on a townwide or areawide basis if the town manager determines that such an extension is required due to weather or other unanticipated conditions or circumstances that make compliance with the July 15th deadline unreasonable. The length of the extension shall be determined by the town manager based upon all relevant facts. If the town manager exercises such authority, notice of the extended deadline for removal shall be published on the town's website.

**4-12-8: INSPECTIONS; RIGHT OF ENTRY; EMERGENCIES:**

- A. When necessary to make an inspection to enforce this chapter, or when an authorized representative of the town has reasonable cause to believe that there exists upon any premises any condition which constitutes a nuisance under this chapter, the town manager or designee may enter such building or premises at all reasonable times to inspect the same or to perform any duty imposed on any of them. If such building or premises is occupied, such person shall first present proper credentials and demand entry; and if such building or premises is unoccupied, such person shall first locate the owner, occupant or other person in control of the premises and, upon locating said owner, occupant or person in control, shall present proper credentials and request entry.

If entry is refused, such person shall give the owner, occupant or person in control (or, if said owner or occupant cannot be located after a reasonable effort, leave at the building or premises) a twenty four (24) hour written notice of intention to inspect. The notice given shall state that the property owner, occupant or person in control 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 a judge of a court having jurisdiction. When any of the persons enumerated in this subsection A has reasonable cause to believe that a motor vehicle is an inoperable vehicle, such person may, upon the presentation of proper credentials, lawfully request the owner or person having control of such vehicle to demonstrate if the vehicle is capable of moving under its own power. The owner or person having control of such vehicle may lawfully refuse the request. If the request is refused, the person making the request shall give the owner or person having control of the vehicle a twenty four (24) hour notice of intention to inspect in accordance with this subsection A.

- B. After the expiration of said twenty four (24) hour period from the giving or leaving of the notice, the town manager or designee may appear before the municipal judge and, upon a showing of probable cause, obtain a search warrant entitling such person to enter the premises or motor vehicle. Upon presentation of the search warrant and proper credentials, or possession of the same in the case of an unoccupied building or premises, said person may enter said premises or motor vehicle using such reasonable force as may be necessary to gain entry. If the search warrant authorizes the entry into a motor vehicle for the purpose of determining whether it is an inoperable vehicle, the person executing such warrant may lawfully inspect the vehicle to determine if it is capable of being operated under its own power.
- C. For purposes of subsection B of this section, a determination of probable cause shall be based upon reasonableness, and if a valid public interest justifies the intrusion contemplated, then there is probable cause to issue a search warrant. The person applying for such warrant shall not be required to demonstrate specific knowledge of the condition of the particular structure or premises in issue in order to obtain a search warrant.
- D. When an emergency exists, the town manager or designee upon presentation of proper credentials in the case of an occupied building or premises, or possession of said credentials 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. In an emergency, such persons may use such reasonable force as may be necessary to gain entry into said premises.
- E. It is unlawful for any owner, occupant or person in charge or control of said building or premises to resist reasonable force used by the town manager or designee.
- F. An owner or occupant whose property may have located on it one or more infected trees shall grant permission to the town manager to enter such property for the purpose of immediate inspection of the trees located on such property when at least one of the following events has occurred, provided that if the owner or occupant refuses to grant such permission, the town manager shall not enter the property without a valid warrant, except in emergencies as set forth in subsection D hereof:
  - 1. The owner or occupant has requested the inspection;
  - 2. A neighboring landowner or occupant has reported a suspected infected tree(s) and requested an inspection; or
  - 3. The town manager has made a visual observation from other property or a public right-of-way and has reason to believe that infected trees exist on the property.

**4-12-9: ABATEMENT OF NUISANCES; FAILURE TO COMPLY:**

- A. The chief of police or designee is hereby authorized, in his or her discretion, to cause any nuisance which is found to exist on private property within the town to be abated in accordance with this chapter.

- B. Any nuisance which presents such an imminent danger to life, limb, property or health as to require immediate abatement, may be summarily abated by action of the chief of police or designee.
- C. In the case of any nuisance not requiring summary abatement, the town manager or designee may cause a notice to be served upon the person responsible under this chapter for any nuisance.
1. The notice shall be in writing, signed by the town official issuing the same, and shall be personally served upon the owner, occupant or person in charge or control 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, then a copy of the notice shall also be mailed by certified mail, return receipt requested, to the owner of such property as shown upon the tax rolls of Grand County, Colorado, at the address of such owner as therein shown. The notice shall specifically describe the property where the nuisance is alleged to exist and shall state that if the nuisance is not abated within the time stated in the notice, the costs of abatement may be assessed as a lien against the property, with an additional fifteen percent (15%) assessment for administrative costs and the reasonable attorney fees incurred by the town in abating the nuisance, and that such sums may be collected in the same manner as property taxes. 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 Grand County, Colorado, at the address of such owner as therein shown.
  2. The reasonable time for abatement shall not exceed fourteen (14) days, unless: 1) it appears from the facts and circumstances that compliance could not reasonably be made within fourteen (14) days; or 2) the nuisance involves an inoperable vehicle which is dismantled or partially dismantled for maintenance or repairs; or 3) the nuisance involves dead or diseased trees.
  3. In the case of a nuisance involving an inoperable vehicle which is dismantled or partially dismantled for maintenance or repairs, the reasonable time for abatement shall not exceed thirty (30) days.
  4. In the case of a nuisance involving dead or diseased trees, the reasonable time for abatement shall be extended to September 15 of the year in which the notice is given, or if the notice is issued after August 15, to September 15 of the following year. The notice for dead or disease tree abatement shall include town approved methods for the removal and destruction of trees. If the owner disputes that the property contains one or more trees that are infected, the landowner shall notify the manager of such dispute within ten (10) days of receipt of the manager's notice. If a timely notice of dispute is given, the town shall not proceed with the procedures in subsection D hereof until the town manager has met with the owner in an effort to resolve the dispute. If the dispute cannot be resolved at such meeting, or if the owner fails to appear at such meeting, the town may proceed with the procedures in subsection D hereof.
- D. If, after notification as provided above, a nuisance is not voluntarily abated, the following procedures shall apply:
1. When an owner fails to abate the nuisance within the time provided in the notice, the town may institute proceedings in a court of competent jurisdiction to obtain a judicial determination that such nuisance exists, to abate such nuisance, to enjoin the nuisance and for such other and further relief as necessary or proper, including, but not limited to, recovery of the costs and expenses of abatement, including reasonable attorney fees.
  2. Upon a judicial determination that a nuisance exists, the town manager or designee is authorized to abate said nuisance, or cause the same to be abated, employing such force as necessary to abate the nuisance.

3. The town shall have authority to engage the necessary assistance and incur the necessary expenses for abatement of any nuisance, and to charge such expenses to the person responsible for the nuisance.

**4-12-10: RESPONSIBILITY FOR COSTS OF ABATEMENT; COLLECTION; FAILURE TO PAY:**

- A. The person responsible for a nuisance shall be liable for all costs of the abatement of such nuisance. Such costs may be collected by the town in any action at law, in connection with any criminal proceeding, in connection with any civil action to abate the nuisance, or they may be assessed against the property.
- B. 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 in connection with the abatement of the nuisance, and such costs are not otherwise collected, the finance director may thereafter certify to the town clerk the legal description of the property upon which such work was done, together with the name of the owner thereof as shown by the tax rolls of Grand County, Colorado, and a statement of the work performed, the date of performance and the costs thereof.
- C. The town clerk shall mail a notice to the owner of said premises, at the last known address of the owner, by first class mail, postage prepaid, notifying such owner that work has been performed pursuant to this chapter, stating the date of performance of the work, the nature of the work, and demanding payment of the costs thereof (as certified by the finance director), together with fifteen percent (15%) assessment for administrative expenses, and the reasonable attorney fees incurred by the town in abating the nuisance. Such notice shall state that if the total amount is not paid within thirty (30) days after mailing the notice, it shall become an assessment on and lien against the property, together with ten percent (10%) for costs of collection, and that the whole amount will be collected in the same manner as property taxes.
- D. If the clerk does not receive payment within thirty (30) days after mailing the notice, the clerk shall inform the town council of such fact, and the council shall thereupon assess the whole cost of such work, including a charge of fifteen percent (15%) of said whole cost for administrative expenses and the town's reasonable attorney fees incurred in the abatement of the nuisance, upon the property, together with ten percent (10%) for costs of collection.
- E. Following such assessment, the clerk shall certify the same to the county treasurer, who shall collect the assessment in the same manner as other taxes are collected.
- F. Each assessment shall be a lien against the property described in such assessment until paid and shall have priority over other liens and assessments, except general taxes and prior special assessments.

**4-12-11: REMEDIES CUMULATIVE AND NONEXCLUSIVE:**

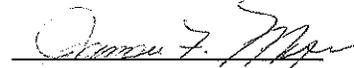
No remedy provided herein shall be exclusive, but the same shall be cumulative, and the taking of any action hereunder, including charge or conviction of violation of this chapter in the municipal court, shall not preclude or prevent the taking of other action hereunder to abate or enjoin any nuisance found to exist.

**4-12-12: VIOLATIONS AND PENALTIES:**

Each person shall be guilty of a separate offense for each and every day during any violation of this chapter is committed, continued or permitted by such person, and such person shall be punished as provided in title 1, chapter 4 of this code.

INTRODUCED, APPROVED ON FIRST READING, AND ORDERED PUBLISHED IN SUMMARY this 6<sup>th</sup> day of March, 2012. A public hearing shall be held at the regular meeting of the Winter Park Council on the 20<sup>th</sup> day of March, 2012 at 8:00am., or as soon thereafter as possible, at the Winter Park Town Hall.

TOWN OF WINTER PARK

  
James F. Myers, Mayor

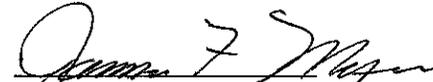


ATTEST:

  
Katie Buss, Town Clerk

READ, ADOPTED AND ORDERED PUBLISHED on second and final reading by a vote of 5 to 0 on the 20<sup>th</sup> day of March, 2012.

TOWN OF WINTER PARK

  
James F. Myers, Mayor

ATTEST:

  
Katie Buss, Town Clerk

