

ORDINANCE NO. 59A

AN ORDINANCE PROVIDING FOR THE REGULATION OF NUISANCE IN THE TOWN OF STRATTON, COLORADO, AND PROVIDING FOR ABATEMENT PROCEDURE AND PENALTY FOR THE VIOLATION THEROF.

Whereas, the Board of Trustees has determined that it is for the best interests of the citizens of the Town of Stratton that nuisances within the corporate limits of the Town of Stratton be prohibited:

NOW THEREFORE THE BOARD OF TRUSTEES OF THE TOWN OF STRATTON, COLORADO, ORDAINS:

SECTION 1. NUISANCE

Definitions. As used in this ordinance, the following terms shall have the meanings indicated:

NUISANCE - Any substance, act, occupation, condition or use of property declared a "nuisance" by this chapter or declared a "nuisance" by the State of Colorado or by any court or agency thereof, or known as a "nuisance" at common law, or which is of such nature and duration as to:

- A. Substantially annoy, injure or endanger the comfort, health, repose or safety of the public.
- B. In any way render the public insecure in life or in the use of property.
- C. Unlawfully and substantially interfere with, obstruct or tend to obstruct or render dangerous for passage any street, alley, highway or other public way.

Nuisances prohibited. No person being the owner, agent or occupant or having under his control any building, lot or premises or unimproved real estate within the town limits of the Town of Stratton, Colorado, shall maintain or allow any nuisance to be or remain therein.

Authority of town to declare nuisances. Any act, condition, substance, occupation or use of property which substantially meets the criteria of a nuisance as defined above may be so declared by the Board of Trustees, and nothing herein shall be construed to limit the power of the town to make such declaration.

Nuisances declared.

- A. 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 worn out, wrecked or abandoned automobiles, trucks, tractors, trailers, boats and housetrailer or machinery of any kind, or of 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, which places essentially interfere with the comfortable enjoyment of life or property by others, are hereby declared to be nuisances.
- B. 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 is hereby declared a nuisance.
- C. Stale matter. The accumulation of any stale, putrid or stinking fat or grease or other matter is hereby declared to be a nuisance.
- D. Sewer inlet. Any article or materials accumulated in any sewer, sewer inlet or privy vault that shall have 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, are hereby declared to be nuisances.
- E. Dead animals; removal. The body of any animal which has died and which is undisposed of after twenty-four (24) hours after death is hereby declared to be a nuisance.
- F. Stagnant ponds. Any cellar, vault, drain, sewer, pond of water or other place in this town 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 nuisance. This applies in all cases for which no other specific provisions are made in this chapter or any other ordinance of the town.
- G. 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, and it shall be unlawful for any person to permit such nuisance to remain on premises owned or occupied by him. 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.

- H. 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 nuisance.
- I. Vacant buildings. It is declared a 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.
- J. Transporting of garbage or manure. The transport of manure, garbage, swill or offal upon any street in this 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. Accumulation of garbage, refuse, etc. Any accumulation of refuse, trash or other waste or discarded material, including discarded building and construction materials, that endangers the public health and safety is hereby declared to be a nuisance.
- L. 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 a nuisance. This provision does not apply to a light spread of manure upon lawns or gardens or which is plowed under the surface of the ground.

Complaints. Complaints of nuisances may be made in writing to the Town Marshall or Deputy Town Marshall. Whenever possible, any 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.

Inspections; right of entry; emergencies.

- A. Whenever necessary to make an inspection to enforce any of the provisions of this ordinance, or whenever an authorized representative of the town shall have reasonable cause to believe that there exists in any building or upon any premises any condition which constitutes a nuisance hereunder, the Town Marshall or Deputy Town Marshall may enter such building or premises at all reasonable times to inspect the same or to perform any duty imposed on either 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, he 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 the 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) hours, 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 the expiration of said twenty-four-hour period from the giving or leaving of notice, the Town Marshall or Deputy Town Marshall, or other authorized Town Official, 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 him to enter said 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 building or 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 the Subsection 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. 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. It shall be unlawful for any owner or occupant of said building or premises to resist reasonable force used by any authorized agent acting pursuant to this section.

- D. Whenever an emergency situation exists in relation to the enforcement of any of the provisions of this chapter, the Town Marshall or Deputy Town Marshall, or other authorized Town Official, upon a presentation of proper credentials or identification 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 of Stratton. In said emergency situation, such person or his authorized representative may use such reasonable force as may be necessary to gain entry into said building or upon said premises.
- E. For purposes of the above Subsection D, an emergency situation shall include but not be limited to any situation where there is imminent danger of loss of life, limb and/or property. It shall be unlawful for any owner or occupant of said building or premises to resist reasonable force used by the authorized official acting pursuant to this subsection.

Abatement of nuisances; failure to comply.

- A. Each and every nuisance declared or defined by any ordinance of the town or otherwise is hereby prohibited, and the Town Marshall and Deputy Town Marshall are 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 upon public property, it shall be the duty of the town to abate such nuisance immediately.
- B. Upon authorization of the Town Marshall or Deputy Town Marshall, if any nuisance 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 Town Marshall or Deputy Town Marshall.
- C. In the case of any nuisance not requiring summary abatement, it shall be the duty of the Town Marshall or Deputy Town Marshall 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 Town Marshall or Deputy Town Marshall may authorize town officials, inspectors or any other appropriate town employee to issue notice of abatement. The reasonable time for abatement shall not exceed fourteen (14) days unless it appears from the facts and circumstances that compliance could not reasonably be made within fourteen (14) 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. If, after notification, a nuisance is not voluntarily abated, the following procedures shall apply:

- (1) If the person notified in accordance with Subsection 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 chapter, and the Town Marshall or Deputy Town 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 Town Marshall or Deputy Town 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.
- (2) 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 this chapter, within the time limited therein, or as extended, then the Town Attorney 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.

- (3) Upon a judicial determination that a nuisance exists, the Town Marshal or Deputy Town Marshall may be authorized to abate said 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 or by contract or otherwise. All other town officials and employees are hereby authorized and directed to render such assistance to the Town Marshal or Deputy Town Marshall as may be required for the abatement of such nuisance and in connection with the enforcement thereof.
- (4) Any officer or employee of the Town of Stratton who shall be authorized herein to abate any nuisance specified in this chapter 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, 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 or any of its representatives to proceed in all abatement cases with due care and without any unnecessary destruction of property.

Responsibility for costs of abatement; collection; failure to pay.

- A. The person or persons responsible for any nuisance within the Town 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 in any action at law, referred for collection by the Town Attorney in his 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 chapter 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 (describing the same) pursuant to the terms of this chapter, referring to this chapter, 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.

- 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 in the abatement or in connection with the abatement of the nuisance, and said costs are not otherwise collected, then the Town Treasurer 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 Kit Carson County, Colorado, 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 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 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 the 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 cost of such work, including a charge of ten percent (10%) 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 (10%) of said whole costs for costs of collection.

- F. Following the 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 a lien against each lot or tract of land until paid and shall have priority over other liens except general taxes and prior special assessments.

Remedies cumulative and nonexclusive.

- 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 chapter 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 chapter 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.

Violations and penalties.

- A. Whenever in any section of this chapter, 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.
- 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 given to abate the same.

Section 2. ELECTION AND AMENDMENT

Before this ordinance shall become effective, it shall be submitted to and receive the approval of a majority of the ~~un~~qualified electors of the Town of Stratton voting at special electin to be held on the 7th day of July, 1992. The Board of Trustees may alter, amend, or change this Ordinance, subsequent to adoption by a majority of the Board of Trustees. Such alteration, amendment or change need not be submitted to the electors of the Town of Stratton for their approval.

Section 3. The Board of Trustees finds and declares that this ordinance is necessary for the immediate preservation of the public peace, health and safety and, therefore, an emergency exists, and this ordinance, shall be recorded in the Book of Ordinances of the Town of Stratton, Colorado, authenticated by the signature of the Mayor and attested by the Clerk under the corporate seal of the Town and shall be published in "The Stratton Spotlight," a public weekly newspaper published within the corporate limits of the Town of Stratton and the County of Kit Carson and State of Colorado and shall be in full force and effect five days after such publication.

PASSED AND ADOPTED this 19th day of May, 1992.

(SEAL)

Ronald L Smullin
Mayor

ATTEST:

Jackie L. Garrett
Town Clerk

STATE OF COLORADO)

)

County of Kit Carson)

) ss.

CLERK'S CERTIFICATE

Town of Stratton)

That I, Jackie Garrett, the official Town Clerk of the Town of Stratton, do by these presents say that the foregoing Ordinance No. 59A was passed and adopted by the Board of Trustees of the Town of Stratton on the 19th day of May, A.D., 1992, and that the above entitled Ordinance is a true, correct and full copy of the Ordinance as shown in the records of the Town of Stratton, Stratton, Colorado.

Dated this 11th day of June, A.D., 1992.

Jackie L. Garrett
Town Clerk

STATE OF COLORADO)

)

County of Kit Carson)
PUBLICATION)

)

) ss.

CLERK'S CERTIFICATE OF

Town of Stratton)

I, Jackie Garrett, the official Town Clerk of the Town of Stratton, do by these presents say that the foregoing Ordinance No. 59A and Clerk's Certificate attached thereto was published in the Stratton Spotlight, a weekly newspaper of general circulation in Stratton, Kit Carson County, Colorado, on June 16, 1992, and "Proof of Publication" is filed therewith.

Jackie L. Garrett
Town Clerk