

ORDINANCE NO.2005-01

AN ORDINANCE OF THE CITY OF FRUITA, COLORADO, REPEALING AND REENACTING CHAPTER 9.11 OF THE FRUITA MUNICIPAL CODE, CONCERNING PUBLIC NUISANCES.

WHEREAS, The City desires to address nuisances that affect the general health, safety, and welfare of City residents at the local level; and

WHEREAS, The City Council finds it necessary to update the current regulations so that the needs of the community can be better met.

NOW THEREFORE, BE IT HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF FRUITA, COLORADO:

Section 1. That Chapter 9.11 of the Fruita Municipal Code, concerning public nuisances, is hereby repealed and reenacted to read as follows:

Chapter 9.11

PUBLIC NUISANCES

Sections:

- 9.11.010 Definitions - General.
- 9.11.020 Public Nuisances - Policy.
- 9.11.030 Public Nuisances - Defined.
- 9.11.040 Bringing Nuisance Into City.
- 9.11.050 Author of Nuisance - Defined.
- 9.11.060 Jurisdiction - Parties - Process.
- 9.11.070 Temporary Restraining Order - Preliminary Injunction - When to Issue.
- 9.11.080 Judgment - Relief.
- 9.11.090 Redelivery of Seized Premises.
- 9.11.100 Violation of Injunction.
- 9.11.110 Fees - Costs and Fines - Liens and Collection.

9.11.010 DEFINITIONS - GENERAL. As used in this Chapter, unless the context otherwise requires:

- A. “Action to abate a public nuisance” means any action authorized by this Chapter to restrain, remove, terminate, prevent, abate, or perpetually enjoin a public nuisance.
- B. “Building” means any dwelling, office building, commercial or industrial structure, or any other structure of any kind, whether or not such building is permanently affixed to the

ground upon which it is situated, and includes any trailer, semi-trailer, trailer coach, mobile home, modular home, manufactured home or other vehicle designed or used for occupancy by persons for any purposes.

9.11.020 PUBLIC NUISANCES - POLICY. It is the policy of the City pursuant to Section 31-15-401(c), C.R.S., that every public nuisance shall be restrained, prevented, abated, and perpetually enjoined. It is the duty of the City Attorney or his designee to bring and maintain an action, pursuant to the provisions of this Chapter, to restrain, prevent, abate, and perpetually enjoin any such public nuisance. Nothing contained in this Chapter shall be construed as an amendment or repeal of any of the criminal laws of this City or the State of Colorado, but the provisions of this Chapter, insofar as they relate to those laws, shall be considered a cumulative right of the people in the enforcement of such laws.

9.11.030 PUBLIC NUISANCES - DEFINED. The following are deemed to be a public nuisance:

- A. Any place where people congregate, which encourages the disturbance of the peace, or where the conduct of persons in or about that place is such as to annoy or disturb the peace of the occupants of or persons attending such place, or the residents in the vicinity, or the passersby on the public streets or highways; or
- B. Any public or private place or premises which encourages professional gambling, unlawful use of drugs, unlawful sale or distribution of drugs, furnishing or selling intoxicating liquor or fermented malt beverages to persons under the legal drinking age, solicitation for prostitution, or trafficking in stolen property; or
- C. Any offensive or unwholesome business or establishment, or any business or establishment carried on in a manner dangerous to the public health, safety, or welfare, or to create such an offensive smell as may taint the air and render it unwholesome or disagreeable within the City or within one (1) mile beyond the outer limits of the City; or
- D. Any building, fence, structure, tree or other vegetation, or land within the City, the condition of which presents a substantial danger or hazard to public health or safety, including any “dangerous building,” as defined in the building codes, as adopted by reference by the City; or
- E. Any dilapidated building of whatever kind which is unused by the owner, or uninhabited because of deterioration or decay, which condition constitutes a fire hazard or subjects adjoining property to danger of damage by storm, soil erosion, or rodent infestation, or which becomes a place frequented by trespassers and transients seeking a temporary hideout or shelter; or
- F. Any unlawful pollution or contamination of any surface or subsurface waters in this City or of the air, or any water, substance or material intended for human consumption, but no action shall be brought under this subsection if the Colorado Department of Public Health and Environment or any other agency of the State of Colorado charged by and acting pursuant

- to statute or duly adopted regulation has assumed jurisdiction by the institution of proceedings concerning that pollution or contamination; or
- G. Erection of a building or continued use of any building or other place for the exercise of any trade, employment or manufacture, which by causing noxious emissions, offensive smells, or otherwise, is offensive or dangerous to the health of individuals or of the public.
 - H. Any cellar, vault, sewer, drain, place, property, or premises within the City which is damp, unwholesome, nauseous, offensive, or filthy, or which is covered for any portion of the year with stagnant or impure water, or which is in such condition as to produce unwholesome or offensive odors, or which unreasonably creates fly or mosquito breeding conditions, or which is otherwise injurious to the public health; or
 - I. Permitting any garbage container to remain on a premises when it has become unclean, offensive, or which is injurious to the public health; or
 - J. Allowing vegetable or animal waste, garbage, litter, filth or refuse of any nature to accumulate within or upon any private alley, yard, or area except when it is temporarily deposited for immediate removal; or
 - K. Permitting the unreasonable accumulation of manure in any stable, stall, corral, feed yard, yard, or in any other building or area in which any animals are kept; or
 - L. Discharging, placing, or tracking any offensive water, liquid waste, dirt, mud, construction debris, or refuse of any kind into any street, alley, sidewalk, gutter, stream, wash, natural watercourse, ditch, canal, or any vacant lot, or which as the result of continued discharge will render the place of discharge offensive or likely to become so; or
 - M. Keeping any drinking vessel for public use without providing a method of decontamination between uses; or
 - N. Corrupting or rendering unwholesome or impure any spring, stream, pond or lake; or
 - O. Any toilet or sanitary wastewater facilities not constructed and maintained in accordance with the ordinances of the City or the laws and regulations of the State of Colorado; or
 - P. Any animal or human fecal material, dead animal, or other filthy or offensive substance upon any lot, street, alley, highway, park or other place; or
 - Q. Neglecting or refusing to discontinue use of, clean out, disinfect, and fill up all privy vaults, septic tanks and cesspools or other individual wastewater disposal systems within twenty (20) days after notice from any enforcement officer or official of the City; or
 - R. Obstructing or tending to obstruct or interfere with or render dangerous for passage any street or sidewalk, lake, stream, drainage, canal or basin, or any public park without first obtaining the written permission of the City, specifically including the placement of portable

toilets, construction dumpsters, construction materials, construction debris, topsoil, and/or landscaping material on City streets or sidewalks; or

- S. The obstruction or maintenance of any drainage system, drainage easement, canal, ditch, conduit or other water course of any kind or nature, natural or artificial, in a manner which will become obstructed and/or cause the water to backup and overflow therefrom, or to become unsanitary; or
- T. Cross-connecting with the Ute Water District's water supply system by introducing into such system any foreign water not a part of the treated water supply system. It shall be permissible to introduce into the Ute Water District water supply system water of another approved water system upon approval by the Ute Water District; or
- U. Any use of premises or of building exteriors which are deleterious or injurious, noxious or unsightly, which includes, but is not limited to, keeping or depositing on, or scattering over the premises, lumber, junk, trash, debris, or abandoned, discarded or unused objects or equipment such as motor vehicles, machine parts, furniture, stoves, refrigerators, freezers, cans or containers; or
- V. Continuous or repeated conducting or maintaining of any business, occupation, operation, activity, building, land, or premises in violation of provisions of the Fruita Municipal Code, or a statute of this State; or
- W. Unsheltered storage of old, unused, stripped and junked machinery, implements, or personal property of any kind which is no longer safely usable for the purposes for which it was manufactured, for a period of thirty (30) days or more (except in licensed junkyards) within the City; or
- X. Outside storage or accumulation of:
 - 1. Any new or marketable used tires that are not neatly stacked or displayed in a marketable manner and allowed in the applicable zone district; or
 - 2. Non-marketable tire(s) in any manner for a period of greater than one month. "Non-marketable tires" are defined as those tires which are incapable of holding air or which have less than 2/32 of tread, or both. Any person charged with a violation of this subparagraph (X)(2) may produce a receipt evidencing the removal and quartering of non-marketable tires during the thirty-one (31) days prior to the notice of violation, which receipt shall create a rebuttable presumption that no such violation has occurred; or
 - 3. Any tires on property located in a residential district, except that up to two (2) tires per dwelling unit may be kept outside for up to one (1) week on any property within a residential zone district; or

- Y. Any building, lot, land, premises, or business, occupation or activity, operation, or condition which, after being ordered abated, corrected, or discontinued by lawful order of the City or any officer thereof, continues to be conducted or continues to exist in violation of:
 - 1. Any ordinance of this City; or
 - 2. Any regulation enacted pursuant to the authority of an ordinance of this City; or
- Z. Those offenses which are known to the common law of the land and the statutes of Colorado as nuisances when the same exist within the City limits.
- AA. Any "graffiti" or "graffiti and/or related vandalism" which shall mean any unauthorized inscription, symbol, design or configuration of letters, numbers or symbols, or any combination thereof written, drawn, scribed, etched, marked, painted, stained, stuck on or adhered to any surface (public or private), including, but not limited to, trees, signs, poles, fixtures, utility boxes, walls, windows, roofs, paths, walks, streets, underpasses, overpasses, bridges, trestles, buildings, and any other surface or surfaces, regardless of the material of the component.

9.11.040 BRINGING NUISANCE INTO CITY. No person shall bring into the City or keep therein for sale or otherwise, either for food or for any other purpose whatever, any animal, dead or alive, matter, substance or thing which shall be or which shall occasion a nuisance in the City or which shall be dangerous or detrimental to health.

9.11.050 AUTHOR OF NUISANCE - DEFINED. Where a nuisance exists upon property and is the outgrowth of the usual, natural, or necessary use of the property, the owner or his agent, the tenant or his agent, and all other persons having control of the property on which such nuisance exists shall be deemed to be authors thereof and shall be jointly and equally liable and responsible. Where any such nuisance shall arise from the unusual or unnecessary use of such property or from the business thereon conducted, then the occupants and all other persons contributing to the continuance of such nuisance shall be deemed the authors.

9.11.060 JURISDICTION - PARTIES - PROCESS.

- A. An action to abate a public nuisance under this Chapter shall be brought in Fruita Municipal Court.
- B. Except as otherwise may be provided in this Chapter, the practice and procedure in an action to abate a public nuisance shall be governed by the Colorado Rules of Civil Procedure.
- C. An action to abate a public nuisance shall be brought by the City Attorney or his designee in the name of the State of Colorado and the City of Fruita.
- D. An action to abate a public nuisance, and any action in which a temporary restraining order,

temporary writ of injunction, or preliminary injunction is requested, shall be commenced by the filing of a complaint, which shall be verified or supported by affidavit. A summons shall be issued and served as in civil cases.

- E. All complaints of nuisances made to the Mesa County Health Department, or the City Manager or his authorized agent shall state the nature of such nuisance; where it is, giving street name and number, the name of the owner, agent or occupant of the building or lot, if known, and the name and address of the complainant.

9.11.070 TEMPORARY RESTRAINING ORDER - PRELIMINARY INJUNCTION - WHEN TO ISSUE.

- A. If the existence of a public nuisance is shown in such action to the satisfaction of the Municipal Court, either by verified complaint or affidavit, the Court may issue a temporary restraining order to abate and prevent the continuance or reoccurrence of the nuisance. Such temporary restraining order may direct the City Manager or his designee to seize and close the public nuisance and to keep the same effectually closed against its use for any purpose, until further order of the Court. Within ten (10) days following the filing of a motion of any person adversely affected by a temporary restraining order, the Court shall conduct a hearing and determine whether the temporary restraining order shall be continued pending final determination of the action.
- B. The Court may, as part of a preliminary injunction, direct the Chief of Police or Community Development Department Director to seize and close such public nuisance and to keep the same closed against its use for any purpose, until further order of the Court. While the preliminary injunction remains in effect, the building or place seized and closed shall be subject to the orders of the Municipal Court. Preliminary injunctions may issue as provided by the Colorado Rules of Civil Procedure. No bond or security shall be required of the City Attorney or the People of the State or in the City in any action to abate a public nuisance.

9.11.080 JUDGMENT - RELIEF.

- A. The judgment in an action to abate a public nuisance may include a permanent injunction to restrain, abate, and prevent the continuance or reoccurrence of the nuisance. The Court may grant declaratory relief, mandatory orders, or any other relief deemed necessary to accomplish the purposes of the injunction and enforce the same, and the Court may retain jurisdiction of the case for the purpose of enforcing its orders.
- B. The judgment in an action to abate a public nuisance may include an order directing the City Manager or his designee to seize and close the public nuisance, and to keep the same effectually closed until further order of the Court, not to exceed one (1) year.

- C. The judgment in an action to abate a public nuisance may include, in addition to or in the alternative to other injunctive relief, an order requiring the removal, correction, or other abatement of a public nuisance, in whole or in part by the owner or operator of the public nuisance. The judgment may include an order directing the Chief of Police or the Community Development Department Director to remove, correct or abate the public nuisance if the author of the nuisance fails or refuses to do so within a reasonable time as determined by the Court, at the cost of the owner or operator of the public nuisance.
- D. The judgment in an action to abate a public nuisance may include, in addition to or in the alternative to any other relief authorized by the provisions of this Chapter, the imposition of a fine of not more than one thousand dollars (\$1,000.00), conditioned upon failure or refusal of compliance with the orders of the Court within any time limits therein fixed.

9.11.090 REDELIVERY OF SEIZED PREMISES. If the owner or operator of a building or place seized and closed as a public nuisance has not been guilty of any contempt of court in the proceedings, and demonstrates by evidence satisfactory to the Court that the public nuisance has been abated and will not recur, the Court may require the posting of bond, in an amount fixed by the order by the Court, for the faithful performance of the obligation of the owner or operator thereunder to prevent recurrence of or continuance of the public nuisance.

9.11.100 VIOLATION OF INJUNCTION. Any violation or disobedience of any injunction or order issued by the Court in an action to abate a public nuisance shall constitute a Class A municipal offense, and each day on which the violation or disobedience of an injunction or order continues or recurs may be considered as a separate action of contempt of Court.

9.11.110 FEES - COSTS AND FINES - LIENS AND COLLECTION.

- A. For seizing and closing any building or premises as provided in this Chapter, or for performing other duties pursuant to the direction of the Court in accordance with the provisions of this Chapter, the City shall be entitled to a reasonable sum fixed by the Court, in addition to the actual costs incurred or expended.
- B. All fees and costs allowed by the provisions of this Section, the costs of a Court action to abate any public nuisance, and all fines levied by the Court in contempt proceedings incident to any action to abate a public nuisance shall be a first and prior lien upon any real property where the nuisance was located, and the same shall be enforceable and collectible by execution issued by order of the Court, from the property of any person liable therefor.
- C. Nothing contained in this Chapter shall be construed in such a manner as to destroy the validity of a bona fide lien upon real or personal property appearing of record prior to the recording of Court orders involving real estate as authorized under this Chapter.
- D. In addition to the remedies set forth in paragraphs (A) through (C) above, the assessment, together with up to fifteen percent (15%) for inspection and other incidental costs in connection therewith, shall be a lien against each lot or tract of land until paid and shall have

priority over all other liens except general taxes and prior special assessments. In accordance with Section 31-20-105, C.R.S., such assessment may be certified by the City Manager's designee to the Mesa County Treasurer, to be placed on the tax list for the current year, and collected and paid over in the same manner as provided by law for the collection of taxes. Any amount charged on the tax roll of the succeeding year, and any unpaid balance so carried over shall bear interest at the rate of eighteen percent (18%) per annum, until paid.

PASSED AND ADOPTED by the Fruita City Council this 4th day of January, 2005

CITY OF FRUITA, COLORADO

By: _____
E. James Adams, Mayor

ATTEST:

Margaret Steelman, City Clerk