

**ORDINANCE NO. 2020-02**

**AN ORDINANCE AMENDING CHAPTER 28 OF TITLE 2 AND  
CHAPTER 11 OF TITLE 9 OF THE FRUITA MUNICIPAL CODE TO  
PROVIDE FOR MORE EFFICIENT ENFORCEMENT OF AND  
MONETARY PENALTIES RELATED TO PUBLIC NUISANCE  
VIOLATIONS**

**WHEREAS**, Chapter 28 of Title 2 of the City of Fruita (the “City”) Municipal Code (the “Code”) sets forth procedures for noncriminal offenses; and

**WHEREAS**, Chapter 28 of Title 2 of the Code does not explicitly set forth procedures by which penalties may be assessed for nuisance violations; and

**WHEREAS**, Chapter 11 of Title 9 of the Code sets forth remedies for certain nuisances, including abatement and fines, but does not specifically identify a public nuisance as a noncriminal offense subject to the provisions of Chapter 28 of Title 2; and

**WHEREAS**, Chapter 11 of Title 9 of the Code only provides for abate of public nuisances through filing of a civil action; and

**WHEREAS**, the Code prohibits overgrowth of weeds and brush as a matter of public health and safety, but does not identify such growth as a public nuisance; and

**WHEREAS**, to provide for a more efficient process to address public nuisances, and to include excessive growth or weeds and brush as a public nuisance, the City wishes to amend Chapter 28 of Title 2 and Chapter 11 of Title 9.

**NOW, THEREFORE, IT IS ORDAINED BY THE CITY COUNCIL OF THE CITY OF FRUITA, COLORADO, THAT:**

**Section 1. Amendment to Chapter 2.28.190.** Chapter 28.190 is hereby by amended by the following addition of subsection P:

- P. PURSUANT TO CHAPTER 9.11.110, THE CITY MANAGER OR A OFFICER OF THE CITY IS AUTHORIZED TO ISSUE A PENALTY ASSESSMENT NOTICE AND HAVE SAID PENALTY ASSESSMENT NOTICE PROCESSED BY THE MUNICIPAL COURT IN ACCORDANCE WITH THIS SECTION 2.28.190. THE PENALTY ASSESSMENT NOTICE ISSUED BY THE CITY MANAGER OR A CITING OFFICER SHALL BE A SUMMONS AND COMPLAINT CONTAINING IDENTIFICATION OF THE ALLEGED OFFENDER, SPECIFICATIONS OF THE OFFENSE AND THE APPLICABLE FINE AS SET FORTH IN SECTION 9.11.110, A REQUIREMENT THE OFFENDER PAY THE FINE OR APPEAR TO ANSWER THE CHARGE AS SET FORTH IN THE SUMMONS AND COMPLAINT AND A WAIVER OF THE RIGHT TO A HEARING ON THE OFFENSE SPECIFIED ON THE SUMMONS AND COMPLAINT. IF THE PERSON

ISSUED A PENALTY ASSESSMENT NOTICE HEREUNDER CHOOSES TO ACKNOWLEDGE THEIR GUILT, THEY MAY PAY THE SPECIFIED FINE IN PERSON OR BY MAIL WITH THE CLERK OF THE COURT ON OR BEFORE THE DATE SPECIFIED IN THE PENALTY ASSESSMENT NOTICE. UPON TRIAL, IF THE ALLEGED OFFENDER IS FOUND GUILTY, THE FINE IMPOSED SHALL BE THAT SET FORTH IN THE NOTICE OF THE OFFENSE FOR WHICH THE OFFENDER WAS FOUND GUILTY, BUT ADDITIONAL FEES AND COSTS PROVIDED IN THIS CHAPTER MAY BE ASSESSED IN ADDITION TO THESE FINES.

**Section 2. Amendment to Chapter 9.11.030.** Chapter 9.11.030 is hereby amended by the following addition of subsection BB”

BB. ALL WEEDS, BRUSH AND RUBBISH PROHIBITED BY CHAPTER 8.04.

**Section 3. Amendment to Chapter 9.11.060.** Chapter 9.11.060 is hereby amended as follows:

- A. UPON THE DISCOVERY OF ANY NUISANCE ON PUBLIC OR PRIVATE PROPERTY WITHIN THE CITY, THE CITY MANAGER OR A CITING OFFICER OF THE CITY SHALL NOTIFY THE OWNER OR OCCUPANT OF THE PROPERTY TO REMOVE AND ABATE FROM THE PROPERTY THE THING OR THINGS HEREIN DESCRIBED AS A NUISANCE WITHIN THE TIME SPECIFIED IN THE NOTICE.
  - 1. THE TIME FOR ABATEMENT OF A NUISANCE POSING AN IMMINENT DANGER OF DAMAGE OR INJURY TO OR LOSS OF LIFE, LIMB, PROPERTY OR HEALTH OR WHERE THERE IS AN ILLICIT DISCHARGE SHALL NOT EXCEED TWENTY-FOUR (24) HOURS.
  - 2. THE REASONABLE TIME FOR ABATEMENT FOR ALL OTHER NUISANCES 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.
  - 3. IF THE OWNER OR OCCUPANT FAILS TO ABATE THE NUISANCE WITHIN THE TIME STATED IN THE NOTICE, THE CITY MANAGER MAY PROCEED TO HAVE THE NUISANCE REMOVED OR ABATED FROM THE PROPERTY WITHOUT DELAY.
  - 4. IN NO EVENT SHALL THE NOTICE DESCRIBED BY THIS SECTION BE REQUIRED FOR NUISANCES FOUND ON

PUBLIC PROPERTY OR FOR NUISANCES CREATED BY THE PLACEMENT OF EVICTED PROPERTY.

5. THE CITY MAY SERVE WRITTEN NOTICE TO ABATE BY ONE (1) OF THE FOLLOWING METHODS:
  - A. PERSONALLY DELIVERING A COPY OF THE NOTICE TO THE OWNER OF THE PROPERTY DESCRIBED IN THE NOTICE;
  - B. PERSONALLY DELIVERING A COPY OF THE NOTICE TO THE NONOWNER OCCUPANT OR RESIDENT OF THE PROPERTY DESCRIBED IN THE NOTICE AND MAILING A COPY OF THE NOTICE BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE LAST KNOWN ADDRESS OF THE OWNER AS REFLECTED IN THE COUNTY REAL ESTATE RECORDS; OR
  - C. MAILING ONE (1) COPY OF THE NOTICE BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, AND A SECOND COPY OF THE NOTICE BY REGULAR MAIL TO THE LAST KNOWN ADDRESS OF THE OWNER OF THE PROPERTY DESCRIBED IN THE NOTICE AS REFLECTED IN THE COUNTY REAL ESTATE RECORDS. IF THE PROPERTY IS UNOCCUPIED, A COPY OF THE NOTICE SHALL ALSO BE POSTED IN A CONSPICUOUS PLACE AT THE UNOCCUPIED PREMISES.
  - D. PERSONAL SERVICE SHALL BE DEEMED COMPLETE UPON THE DATE OF PERSONAL DELIVERY OR THREE (3) BUSINESS DAYS AFTER THE DATE OF MAILING AS REQUIRED HEREIN.
  
6. ANY WRITTEN NOTICE ISSUED PURSUANT TO SUBSECTION (B) ABOVE SHALL INCLUDE:
  - a. A DESCRIPTION OF THE NUISANCE;
  - b. A DATE BY WHICH THE NUISANCE MUST BE ABATED;
  - c. A STATEMENT INFORMING THE OWNER OR OCCUPANT THAT, IF THE NUISANCE IS NOT ABATED WITHIN THE TIME SPECIFIED, THE NUISANCE MAY BE ABATED BY THE CITY AND THE INDIVIDUAL MAY BE SUBJECT TO CIVIL ACTION OR PROSECUTION OF A NONCRIMINAL OFFENSE

FOR VIOLATING THE PROVISIONS OF THIS CHAPTER.

- d. A STATEMENT THAT, IF THE CITY ABATES THE NUISANCE, THE CITY IS ENTITLED TO RECOVER THE ACTUAL COST OF ABATEMENT, PLUS AN ADMINISTRATIVE FEE OF FIFTEEN PERCENT (15%) OF THE ABATEMENT COSTS.
- e. A STATEMENT THAT, IF THE COST OF ABATEMENT IS NOT PAID, A LIEN MAY BE PLACED UPON ANY PROPERTY ON WHICH THE ABATEMENT WAS PERFORMED. FAILURE TO SUBSTANTIALLY COMPLY WITH THIS NOTICE SHALL NOT INVALIDATE THE PROCEEDINGS.
- f. A STATEMENT THAT THE OWNER OR OCCUPANT OF THE PROPERTY, WITHIN THE PERIOD OF NOTICE, MAY PROTEST THE FINDINGS OF THE AUTHORIZED INSPECTOR PURSUANT TO SECTION C BELOW.

~~B.A.~~ IF, AFTER WRITTEN NOTICE HAS BEEN PROVIDED, THE OWNER OR OCCUPANT OF THE BUILDING OR PREMISES REFUSES OR FAILS TO ABATE THE NUISANCE IN THE TIME SPECIFIED IN THE NOTICE, AND IF THE CITY MANAGER ELECTS NOT TO SUMMARILY ABATE THE NUISANCE PURSUANT TO SECTION A HEREIN, THE CITY MANAGER MAY INITIATE A CIVIL ACTION IN MUNICIPAL COURT TO HAVE THE NUISANCE DECLARED AS SUCH BY THE COURT AND FOR AN ORDER ENJOINING THE NUISANCE AND AUTHORIZING ITS RESTRAINTS, REMOVAL, TERMINATIONS OR ABATEMENT. 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. 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. 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. 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.

- C. THE OWNER, THEIR AGENT OR THE OCCUPANT OF THE PROPERTY SUBJECT TO A NOTICE OF ABATEMENT, WITHIN THE TIME STATED IN SUCH NOTICE FOR REMOVAL OF THE THING OR THINGS OR ABATEMENT OF THE CONDITIONS DESCRIBED THEREIN, MAY PROTEST THE FINDINGS OF THE CITY WITH RESPECT TO ANY MATTER STATED IN THE NOTICE, BY FILING A WRITTEN NOTICE OF PROTEST WITH THE MUNICIPAL COURT. THE MUNICIPAL COURT SHALL DELIVER A COPY OF THE PROTEST TO THE AUTHORIZED INSPECTOR WHO ISSUED THE NOTICE. UPON RECEIPT OF A NOTICE OF PROTEST, THE AUTHORIZED INSPECTOR SHALL FILE WITH THE MUNICIPAL COURT THE NOTICE TO ABATE AND THE WRITTEN NOTICE OF PROTEST. WITHIN TEN (10) DAYS AFTER RECEIPT OF THE PROTEST BY THE CITY, THE MUNICIPAL COURT SHALL SCHEDULE AND CONDUCT A HEARING ON THE PROTEST. AT THE HEARING, THE PROTESTING PARTY AND REPRESENTATIVES OF THE CITY SHALL APPEAR IN PERSON. BOTH PARTIES MAY BE REPRESENTED BY LEGAL COUNSEL. THE PARTIES SHALL HAVE THE RIGHT TO PRESENT EVIDENCE AND ARGUMENTS, TO CONFRONT AND CROSS-EXAMINE ANY WITNESS AND TO OPPOSE ANY TESTIMONY OR STATEMENT RELIED UPON BY AN ADVERSE PARTY. THE MUNICIPAL COURT MAY RECEIVE AND CONSIDER ANY EVIDENCE THAT HAS PROBATIVE VALUE COMMONLY ACCEPTED BY REASONABLE AND PRUDENT PERSONS IN THE CONDUCT OF THEIR AFFAIRS. ONCE THE MUNICIPAL COURT HAS SCHEDULED A HEARING ON THE PROTEST, WRITTEN NOTICE OF SUCH HEARING SHALL BE MAILED TO THE PROTESTING PARTY AND GIVEN TO THE AUTHORIZED INSPECTOR WHO SIGNED THE NOTICE OF ABATEMENT. SUCH NOTICE OF HEARING SHALL BE MAILED TO THE PROTESTING PARTY AND GIVEN TO THE AUTHORIZED INSPECTOR NOT LESS THAN SEVEN (7) DAYS PRIOR TO THE SCHEDULED HEARING. UPON THE FILING OF A WRITTEN PROTEST AS PROVIDED HEREIN, THE PERIOD OF TIME FOR REMOVAL OF THE THING OR THINGS OR ABATEMENT OF THE CONDITION DESCRIBED IN THE ORIGINAL NOTICE OF ABATEMENT SHALL BE EXTENDED UNTIL FINAL DISPOSITION OF THE PROTEST BY THE MUNICIPAL COURT, PLUS THE AMOUNT OF TIME GRANTED IN THE ORIGINAL NOTICE, OR AS OTHERWISE ORDERED BY THE MUNICIPAL COURT.

- ~~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.~~

**Section 4. Amendment to Chapter 9.11.110.** Chapter 9.11.110 is hereby amended as follows:

- 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 E.~~ In addition to the remedies set forth in ~~paragraphs (A) through (C) above~~ THIS SECTION, 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.

F. IN THE EVENT THE CITY MANAGER CHOOSES TO SUMMARILY ABATE A NUISANCE UNDER SECTION 9.11, THE AUTHOR OF THE NUISANCE, THE OWNER OR THE OCCUPANT OF THE PROPERTY SHALL BE LIABLE FOR THE ACTUAL COST OF ABATEMENT, PLUS AN ADMINISTRATIVE FEE EQUALING FIFTEEN PERCENT (15%) OF THE ABATEMENT COST. THE COSTS OF ABATEMENT MAY BE RECOVERED BY (1) A CLAIM FOR RESTITUTION IN A MUNICIPAL COURT PROCEEDING; (2) THE INSTITUTION OF A CIVIL ACTION FOR DAMAGES; OR (3) IF THE COSTS OF ABATEMENT HAVE NOT BEEN OTHERWISE COLLECTED, THE CITY MAY PREPARE A STATEMENT ENUMERATING THE ACTUAL COSTS OF ABATEMENT AND ANY OTHER ADMINISTRATIVE FEE AND COSTS AND FILE A FIRST AND PRIOR LIEN UPON THE PROPERTY RELATING BACK TO THE DATE UPON WHICH THE ABATEMENT WAS PERFORMED.

G. IN ADDITION TO THE ABATEMENT PROCEDURES SET FORTH IN THIS CHAPTER AND THE REMEDIES SET FORTH IN THIS SECTION, A VIOLATION OF THIS CHAPTER 9.11 SHALL CONSTITUTE A NONCRIMINAL OFFENSE SUBJECT TO THE PROCEDURES SET FORTH IN CHAPTER 2.28.190. THE CITY MANAGER OR CITING OFFICER OF THE CITY MAY, AT THEIR SOLE DISCRETION, DETERMINE TO ISSUE A PENALTY ASSESSMENT NOTICE FOR PUBLIC NUISANCES BASED ON THE FOLLOWING FINE SCHEDULE:

- 1. FIRST VIOLATION: ONE HUNDRED DOLLARS (\$100.00)
- 2. SECOND VIOLATION: TWO HUNDRED DOLLARS (\$200.00)
- 3. THIRD VIOLATION: TWO HUNDRED FIFTY DOLLARS (\$250.00)

EACH AND EVERY DAY DURING WHICH ANY NUISANCE CONTINUES SHALL BE DEEMED A SEPARATE OFFENSE AND

SHALL BE PROSECUTABLE AND PUNISHABLE AS A SEPARATE OFFENSE.

**Section 5. Codification of Amendments.** The codifier of the City's Code is hereby authorized to make such numerical and formatting changes as may be necessary to incorporate the provisions of this Ordinance within the Code. The City Clerk is authorized to correct, or approve the correction by the codifier, of any typographical error in the enacted regulations, provided that such correction shall not substantively change any provision of the regulations adopted in this Ordinance. Such corrections may include spelling, reference, citation, enumeration, and grammatical errors.

**Section 6. Violations Continue.** Nothing in this Ordinance shall be construed to release, extinguish, alter, modify, or change in whole or in part any penalty, liability or right or affect any audit, suit, or proceeding pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing which may have been incurred or obtained under any ordinance or provision hereby repealed or amended by this Ordinance. Any such ordinance or provision thereof so amended, repealed, or superseded by this Ordinance shall be treated and held as remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions, for the enforcement of such penalty, liability, or right, and for the purpose of sustaining any judgment, decree or order which can or may be rendered, entered, or made in such actions, suits or proceedings, or prosecutions imposing, inflicting, or declaring such penalty or liability or enforcing such right, and shall be treated and held as remaining in force for the purpose of sustaining any and all proceedings, actions, hearings, and appeals pending before any court or administrative tribunal.

**Section 7. Severability.** If any provision of this Ordinance, or the application of such provision to any person or circumstance, is for any reason held to be invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable. The City Council hereby declares that it would have passed this Ordinance and each provision thereof, even though any one of the provisions might be declared unconstitutional or invalid. As used in this Section, the term "provision" means and includes any part, division, subdivision, section, subsection, sentence, clause or phrase; the term "application" means and includes an application of an ordinance or any part thereof, whether considered or construed alone or together with another ordinance or ordinances, or part thereof, of the City.

**Section 8. Effective Date.** This Ordinance shall take effect thirty (30) days after final adoption in accordance with Section 2.13(G) of the Fruita Home Rule Charter.

**Section 9. Safety Clause.** The City Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the City, that it is promulgated for the health, safety and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The City Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained.

**Section 10. Publication.** The City Clerk is ordered to publish this Ordinance in accordance with Chapter 2.13(F) of the Code.

**PASSED AND ADOPTED BY THE Fruita City Council  
THIS 4<sup>TH</sup> DAY OF AUGUST, 2020.**

CITY OF FRUITA

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Joel Kincaid, Mayor

ATTEST:

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City Clerk