

Town of Coal Creek

Coal Creek, Colorado

NUISANCE ORDINANCE ORDINANCE NO. 2 - SERIES 2017

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Section 1. Repeal.

Ordinance No. 3-Series 2003 is hereby repealed in its entirety.

Section 2. Definitions.

As used in this ordinance:

“**Abate**” shall mean to put an end to or suppress a nuisance or; to suspend or extinguish.

“**Approved garbage, rubbish or debris storage container**” shall mean a plastic or metal container with a tight, insect and rodent-proof cover; or a plastic bag of sufficient strength, filled not more than seventy-five (75) percent of capacity and securely tied at the opening; or a paper bag baled from a mechanical compactor; or an approved dumpster bin designed for mechanical lifting into a rubbish vehicle; or any other container approved by the Board of Trustees of the Town of Coal Creek.

“**Building**” shall mean any house, office building, store, warehouse, or 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, manufactured home, or other vehicle designed or used for occupancy by persons for any purposes.

“**Garbage**” shall mean any and all rejected or waste, household food, offal, swill, kitchen refuse, and every refuse accumulation of animal, fruit or vegetable matter, liquid or otherwise, that attends the preparation, use, cooking and dealing in or storing of food, or meat, fish, fowl, fruit or vegetable.

“**Junk**” shall mean any and all iron, brass, copper, tin, lead or other base metals; ropes, rags, fibers or fabrics; old bottles or other glass; rubber or rubber products; machinery, motor vehicle parts, junk trailers and junk motor vehicles as defined herein; tools, appliances, fixtures, lumber, unstacked firewood, utensils, cartons, containers, pipe and pipe fittings, conduit and conduit fittings; wastepaper; or other waste or discarded goods.

“**Junk motor vehicle**” shall mean:

1. A motor vehicle which is inoperable, or does not have a current license plate, or which lacks one or more of the following items which is otherwise standard factory equipment on any particular vehicle model:
 - *Windshield*
 - *Side or rear window*
 - *Door*
 - *Fender*
 - *Headlamp*
 - *Muffler*
 - *Wheel*
 - *Properly inflated tire*
 - *Engine*
 - *Body panel*
2. An “inoperable motor vehicle” shall mean any vehicle (including but not limited to motor vehicles, trailers, snowmobiles and ATVs) which does not have current license or registration, is incapable of moving or operating on its own power or as originally manufactured, or is missing, in the judgment of authorized Town officials, any significant component part.

“**Junk trailer**” shall mean a trailer that is inoperable due to a flat tire, lack of a wheel, lack of structural integrity, or other similar reasons that render it inoperable.

“**Nuisance**” shall mean a substance, act, occupation, condition, or use of property that is of such a nature and continues for such a length of time as to:

1.
 - a. Substantially annoy, injure or endanger the comfort, health, repose or safety of the public; or
 - b. In any way render the public insecure in life or in the use of property; or
 - c. Unlawfully and substantially interfere with, obstruct or tend to obstruct or render dangerous for passage any street, alley, highway or other public way; or
 - d. Constitute a failure to maintain detention ponds, drainage way, landscaping, lighting, trash enclosures, signage, retaining walls, irrigation systems, screening, fencing, parking lots, private driveways and streets and other conditions of private property in accordance with the provisions of a rezoning, plat, official development plan, fencing or landscaping plan, site plan, design standards, permit, or any other land development document approved by the Town.

2. In all cases where no provision is made defining nuisances and how the same may be removed, abated or prevented, in addition to what may be declared such herein, those offenses which are known to the common law of the land and statutes of Colorado as nuisances may, in case the same exist within the town, be treated as such and proceeded against as provided in this ordinance, or in accordance with any other provision of law.

“**Person**” shall mean any natural person, firm, association, joint venture, joint stock company, partnership, organization, club, company, corporation, business trust, or any of their managers, officers, or employees.

“**Public view**” shall mean an observation from any location exterior to the property.

“**Rubbish**” shall mean, but is not limited to, all solid and liquid waste and litter, whether combustible or noncombustible, and includes but is not limited to ashes, cans, paper, rags, fiber, refuse, fabric, wrappings, cigarettes, cardboard, yard clippings, leaves, dead plant material, branches, wood, waste-building materials, glass, crockery, abandoned or unsafe household furnishings and appliances, discarded clothes or wearing apparel, carcasses of dead animals and other like materials, and animal feces.

“**Storage**” shall mean maintaining or allowing an item to remain unused or unmoved on the property for ten days or more.

“**Town Official**” shall mean the official authorized by the Town Board or his or her designee.

“**Weed**” shall mean any unsightly or noxious plant or vegetation in excess of twelve inches in height that is out of place at the location where the same is growing and which is regarded as a common nuisance. The word *weed* shall not include flower gardens, plots of shrubbery, vegetable gardens and grain plots.

Section 3. Unlawful condition on property -- Responsibility.

- A.
 1. It is unlawful for any person having or being entitled to the possession of any real estate or leasehold, residence, apartment building, tenement, store, building or premises within this town, or any part thereof, to permit or allow:

The existence or storage of junk, rubbish, garbage or a nuisance upon any such premises, or part thereof, or on the sidewalk or the alleys abutting such premises, except as otherwise provided in this section.

 - i. Garbage shall not be allowed to accumulate beyond the capacity of the storage container used for such purpose,
 - ii. Garbage containers are expected to be removed from the right-of-way within 24 hours of garbage collection.
 2. The growth of weeds or grass in excess of twelve (12) inches upon a tract or lot occupied by a habitable structure, or sixteen (16) inches upon a tract or lot without a habitable structure or in irrigation and drainage ditches.
 - i. Such height limitations do not apply to flower gardens, xeriscape gardens, vegetable gardens, plots of shrubbery, grain plots, pastures used for feed, fodder, or forage; or city-owned developed, undeveloped, or open space or parks; or in situations where slope stabilization or erosion control is the purpose of the planting or vegetation; or on any city or privately owned tract where the property is managed to maintain a xeriscape treatment.

- B. *Storage of Motor Vehicles.*
Not more than two (2) unlicensed vehicles owned by the owner or occupant of the property may be stored, for repair or restoration purposes only, and not for sale, in a garage, or in the rear yard of the property if screened from public view by a permanent opaque wall or fence at least six (6) feet in height.
- C. *Storage of Recreational Vehicles and Boats.*
Not more than Two (2) recreational vehicles and/or boats may be stored on property.
- D. *Removal of inoperable vehicle.*
Any inoperable vehicle parked on any lot or parcel of property in the Town is a nuisance.
- E. *Storage in Buildings.*
This section shall not apply to enclosed structures or as otherwise provided by law, except as provided in Section 17(c).
- F. Each day of continuing violation shall be deemed a separate violation.

Section 4. Unlawful condition of right-of-way.

It shall be the responsibility of the owner, agent, or lessee of any real property abutting a public right of way to provide landscape maintenance including, but not limited to, mowing of all right of way area between the property line and the curb line or edge of roadway or right-of-way. The vegetation in said area shall be maintained to the same levels required under Section 3.

Section 5. Unlawful Noise Level.

A. *Noise prohibited.*

It is unlawful for any person to make, or cause to be made, any continuous, impulsive, or periodic noise which:

- 1. Is of such unusual or exceptional character, intensity or duration that it disturbs, injures, or endangers the comfort, repose, health, peace, or safety of any person or causes damage to any property; or
- 2. Exceeds the levels set forth in

B. *Maximum permissible noise levels.*

Every activity to which this section is applicable shall be conducted in a manner so that any noise produced is not objectionable due to intermittence, beat frequency, or shrillness. Sound levels of noise radiating from a property line at a distance of twenty-five (25) feet or more therefrom in excess of the db(A) established for the following time periods and zones shall constitute prima facie evidence that such noise is a public nuisance and an infraction hereunder:

ZONE	10:00 p.m. to 7:00 a.m.
Residential	50 db(A)
Commercial	55 db(A)

C. Periodic, impulsive, or shrill noises shall be considered a public nuisance and an infraction hereunder when such noises are at a sound level of five (5) db(A) less than those listed in subsection A of this section.

D. In all sound measurements, consideration shall be given to the effect of the ambient noise level created by the encompassing noise of the environment from all sources at the time and place of such sound level measurement.

Section 6. Method of abatement.

In order to abate or remove any weeds, junk, garbage, rubbish, or nuisance, the Town may elect to:

- A. Initiate legal action in Coal Creek Municipal Court or Fremont County District Court; or
- B. Cause abatement or removal by means of a notice and demand pursuant to Section 7; or
- C. Cause abatement or removal by means of an Order to Show Cause pursuant to Section 8.

Section 7. Notice.

- A. Any person in violation of this chapter shall be given written notice of such fact, including costs and charges, unless the Town initiates an action in Coal Creek Municipal Court or Fremont County District Court, by the Town Official posting such notice on the property in a conspicuous place, directing the removal of weeds, junk, garbage, rubbish, or nuisance. The date of posting of the notice by the Town shall be included in the notice. A true copy of such notice shall also at the same time be mailed to the owner of such property as of that date as shown upon the tax rolls of Fremont County, Colorado, at the address of such owner as therein shown. The notice shall inform the addressee that if such weeds, junk, garbage, rubbish, or nuisance are not removed within thirty (30) days of the date of the posted notice, or if a notice of appeal in writing is not filed with the Town Official within seven (7) days of the posted notice, the Town Official can cause such weeds, junk, garbage, rubbish, or nuisance to be removed, and assess the costs of such removal as a lien against the property (describing the same) pursuant to the terms of this chapter. The notice shall further state, and it shall be the law, that costs and charges relating to the removal of weeds, junk, garbage, rubbish, or nuisance shall be assessed as set forth at Section 11. A reasonable extension of time to effect such removal may be granted by the Town Official.
- B. Any appeal filed with the Town Official shall be heard within thirty (30) days after receipt of appellant's notice of appeal. The hearing shall be conducted as set forth in Section 8 (C) through (E).

Section 8. Abatement procedure.

The Town shall give notice, as set forth in Section 6, that weeds, junk, garbage, rubbish, or nuisance must be abated. If such weeds, junk, garbage, rubbish, or nuisance are not removed or abated as required in the

notice, or if an appeal to the Town Official has not been commenced within the seven (7) days stipulated therein, the Town Official is authorized and empowered to:

- A. Cause such weeds, junk, garbage, rubbish, or nuisance to be removed or abated and assess the costs as a lien against the property as stated in Section 11; or
- B. Issue a show cause order as set forth in Section 8.

Section 9. Show cause.

- A. If the owner or occupant shall fail to eliminate weeds, junk, garbage, rubbish, or nuisance after receiving notice to do so, and the Town Official chooses to issue a show cause order, the Town Official shall give written notice to the owner or occupant or lessee or any party in interest, as determined from the records of the County Clerk and Recorder, to appear at a hearing before the Town Official on a specified date to show cause why conditions complained of should not be removed or eliminated.
- B. The notice to show cause referred to in subsection (A) above shall be specific as to the condition of rubbish, weeds, junk or nuisance or other violation, shall state that the owner's property may be subject to assessment for all costs associated with removal or elimination by the Town of the stated conditions, and shall be served on the necessary parties personally or by mail. In addition, a copy of the notice of hearing shall be posted in a conspicuous place on the premises where the rubbish, weeds, garbage, junk, or nuisance are found to exist. No further notice shall be necessary.
- C. At the hearing referred to in subsections (A) and (B) above, the Town Board or his or her designee shall hear such statements and consider such evidence as the Town Official, or other enforcement officers, the owner, occupant, lessee, or other party in interest, or any other witness shall offer relevant to the existence of and removal or elimination of the weeds, junk, garbage, rubbish, or nuisance. The Town Official shall make findings of fact from the statements and evidence offered as to whether the condition complained of exists and must be eliminated. If the Town Official determines that weeds, junk, garbage, rubbish, or nuisance do exist, and must be removed or eliminated, he shall issue an order based on the findings of fact within seven (7) days of the hearing directing the owner or occupant or lessee or any other party in interest to remove or eliminate said weeds, junk, garbage, rubbish, or nuisance.
- D. The order of the Town Official made pursuant to subsection (C) above, shall be a final decision and may be appealed to the District Court pursuant to Colorado Rules of Civil Procedure 106(a)(4). Failure of a party in interest to timely appeal said order constitutes a waiver by him of any right he may otherwise have to contest the Town's right to eliminate or remove the weeds, junk, garbage, rubbish, or nuisance from his or her property, and charge the resulting costs against him and/or the property.
- E. If an order issued by the Town Official has not been complied with within thirty days after its issuance, the Town, at the discretion of the Town Official or his or her designee, may cause the elimination or removal of the rubbish, weeds, junk, or nuisance.

Section 10. Summary abatement authorized.

- A. Each and every condition of rubbish, junk, weeds, or nuisance mentioned, declared or defined by any ordinance of the Town is prohibited, and the Town Official, Law Enforcement Officer or their designee is authorized, in his or her discretion, to cause the same to be summarily abated in such manner as he may direct subject to the limitations of subsection (B) of this section.
- B. Upon authorization by the Town Official, Law Enforcement Officer or their designee, if any rubbish, junk, weeds, or nuisance is a cause of imminent danger to the public health, safety or welfare, any such rubbish, junk, weeds or nuisance may be summarily abated by action of the Town Official, Law Enforcement Officer, or their designee, and costs of abatement shall be charged to the landowner. Action for summary abatement shall be taken only where the Town Official, the Law Enforcement Officer, or their designee determines that there is imminent danger to the public health, safety, or welfare, which cannot await abatement, by any other means available under this Section.

Section 11. Initiate legal action in court.

If the Town elects to initiate legal action in Coal Creek Municipal Court or Fremont County District Court, notwithstanding Section 6, no prior notice regarding the abatement or removal need be given to the defendant.

Section 12. Costs and charges.

- A. The person or persons responsible for any weeds, rubbish, junk or nuisance within the Town shall be liable for and pay and bear all costs and expenses of the abatement of the same, including reasonable attorneys' fees for costs of collection, which costs and expenses may be collected by the Town in any action at law, or collected in connection with an action to abate a nuisance, or assessed against the property as hereinafter provided.
- B. The notice required in Section 6 shall state, in addition to the requirements of that section, that if the weeds, rubbish, junk or nuisance are not abated or removed within the time stated in the notice, the cost of such abatement or removal, together with an additional fee of at least *FIFTY* dollars (\$50) for inspection and incidental costs, shall be assessed as a lien against the property pursuant to the terms of this chapter, and collected in the same manner as real estate taxes against the property. The notice shall further state that if the cost of abatement or removal plus the *FIFTY* dollar fee for inspection and incidental costs is not paid to the Town within thirty days, the amount owed will be certified to the Treasurer of Fremont County as set forth in subsections (D) and (E) of this section, and an additional amount of at least seventy-five dollars (\$75) for administrative fees plus the amount of the Fremont county clerk and recorder filing fee and the treasurer fee will be assessed for administrative and other incidental costs incurred in certifying said amount to the county.
- C. If after the expiration of the thirty-day period of time provided for in the notice, or as extended, those costs or expenses incurred by or on behalf of the Town in the abatement or in connection with that abatement of the weeds, junk, garbage, rubbish, or nuisance, are not otherwise collected, then the Town Official shall mail a notice to the owner of the premises as shown by the tax roll, at the address shown upon the tax rolls, 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 Official or his or her representative), together with a fee of at least fifty dollars (\$50) for inspection and other incidental costs in connection therewith. Such notice shall state that if said amount is not paid within thirty days of mailing the notice, it shall become an assessment on and a lien against the property of the owner, describing the same, and will be certified as an assessment against such property, together with an additional fee of at least seventy-five dollars (\$75) for administrative fee plus the amount of the Fremont county clerk and recorder filing fee and the treasurer fee and other incidental costs incurred in certifying said amount to the Treasurer of Fremont County, and the above-mentioned assessments will be collected in the same manner as a real estate tax upon the property.

- D. If the Town Official does not receive payment within the period of thirty days following the mailing of such notice, the Town Official shall transmit all relevant information to the Town Clerk who shall subsequently certify to the Treasurer of Fremont County the whole cost of such work, including a charge of at least one hundred, twenty five dollars (\$125) plus the amount of the Fremont county clerk and recorder filing fee and the treasurer fee which is the total amount owing for inspection costs, administrative costs and other incidental costs in connection therewith, upon the lots and tracts of land upon which the nuisance was abated. The Treasurer of Fremont County shall collect the assessment in the same manner as other taxes are collected.
- E. 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.
1. The minimum amount of such inspection, administrative and incidental costs, which shall be certified to the Treasurer of Fremont County as an assessment, shall be one hundred, twenty five dollars \$125 plus the amount of the Fremont county clerk and recorder filing fee and the treasurer fee.
 2. The amount of such inspection, administrative and incidental costs which shall be certified to the Treasurer of Fremont County as an assessment for a second violation on the same property within a time period of twenty-four (24) months may be up to two hundred, fifty dollars (\$250) plus the amount of the Fremont county clerk and recorder filing fee and the treasurer fee.
 3. The amount of such inspection, administrative and incidental costs which shall be certified to the Treasurer of Fremont County as an assessment for a third violation or more on the same property within a time period of twenty-four (24) months may be up to five hundred dollars (\$500) plus the amount of the Fremont county clerk and recorder filing fee and the treasurer fee.
 4. Notwithstanding the foregoing, any person or persons responsible for any weeds, rubbish, junk or nuisance which has been removed or abated by the Town, and for which the person or persons have paid the Town the costs of removal or abatement, shall be subject to an inspection and administrative charge of two hundred, fifty dollars (\$250) for a second violation of this chapter within twenty-four (24) months, in addition to the costs of removal or abatement. A third violation within twenty-four (24) months shall subject the person or persons to an inspection and administrative charge of five hundred dollars (\$500), in addition to the costs of removal or abatement plus the amount of the Fremont county clerk and recorder filing fee and the treasurer fee.

Section 13. Right of entry.

- A. It is lawful for the Town Official or his or her designee or a law enforcement officer to go upon private property to ascertain the existence of weeds, junk, garbage, rubbish, or nuisance only if:

1. Emergency conditions dangerous to the public health, safety or welfare exist;
2. The Town Official or law enforcement officer has obtained a search warrant or;
3. The Town Official or law enforcement officer has obtained the consent of the person in possession of the property.

B. *Search Warrants Jurisdiction of the Municipal Court.* Any municipal judge of the municipal court of the Town shall have the power to issue search warrants upon a showing of probable cause that emergency conditions dangerous to the public health, safety, or welfare exist.

Section 14. Cumulative remedies.

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, shall not preclude or prevent the taking of other action hereunder to abate or enjoin any nuisance found to exist.

Section 15. Concurrent remedies.

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.

Section 16. Affirmative defense.

It is an affirmative defense to a charge of storage of junk or rubbish if the zone district where such junk or rubbish is stored allows for such use. It shall not be an affirmative defense, unless indicated otherwise, that a specific nuisance or use existed prior to the adoption and /or effective date of this ordinance or any prior nuisance ordinance.

Section 17. Towing.

The towing, storage and sale of any junk motor vehicle, as defined herein, shall be subject to the public tow provisions for abandoned motor vehicles, pursuant to Section 42-4-1801, et seq., C.R.S.

- A. Any section of the Colorado Revised Statutes in conflict with this chapter is superseded by the ordinance codified in this chapter.
- B. At the time of towing and storage, the Town shall perform a documented inventory search of the vehicle.
- C. The Town Official shall have the power to adopt rules and regulations for implementation of the towing and storage of junk motor vehicles by the Town.

Section 18. Declared nuisances.

The following matters are declared to be nuisances:

- A. *Compost.* It is unlawful and constitutes a nuisance for any person to maintain a compost pile that, substantially annoys, injures, or endangers the comfort, health, or safety of the public. Such annoyance includes, but is not limited to, strong offensive odors or the presence of mice, rats, or other vermin.
- B. *Scattering Debris.*
1. Dumping, throwing, placing or allowing any rubbish, junk, cans, boxes, debris, grass clippings or other waste materials on any public place in the Town is a nuisance and is prohibited. Dumping of waste materials in a public area specifically designated by order of the Town Official or his or her designee in compliance with such regulations the Town Official may direct shall not be deemed a violation of this section.
 2. Depositing garbage, rubbish or debris in any alley, street, ash pit, vacant lot or place other than as may be prescribed by the Town Board is a nuisance and is prohibited.
- C. *Violations of Codes or Ordinances.* It is unlawful and constitutes a nuisance for any person to maintain any property or building or any other structure in the Town in a condition that is in violation of the codes or ordinances of the Town.
- D. *Stagnant Water, Contaminated or Impure Well or Cistern.*
1. Any well or cistern on any property within the limits of the Town, whenever a chemical analysis or other proper test shows that the water of the well or cistern is contaminated, impure, or unwholesome, or where the location of the well or cistern is dangerous, is a nuisance.
 2. Every owner, tenant, occupant, lessee or other person in possession of any premises or any part thereof, upon which there is located a well containing contaminated, impure or unwholesome water, shall abandon the use of the same, and cause the same to be filled with earth or such other material as may be designated by the Town Official or his or her designee.
- E. *Obscenity.* Any activity which takes place in or on any structure shall be deemed a nuisance and prohibited when such structure is:
1. Used to promote or display with intent to promote or display obscene material or obscene performances;
 2. Used as a public or private place of prostitution;
 3. The definition of “obscene” is that found at Section 18-7-101, C.R.S.
- F. *Failure to Maintain Site.* It shall be unlawful and shall constitute a nuisance for any person to fail to install or maintain any detention ponds, drainage ways, landscaping, lighting, trash enclosures, signage, retaining walls, irrigation systems, screening, fencing, parking lots, private driveways and streets and other conditions of private property required to be installed and maintained through the provisions of a rezoning, plat, official development plan, fencing or landscaping plan, site plan, design standards, permit or any other land development document approved by the Town.
- G. *Fences in disrepair.* Any fence that comes into disrepair or is not maintained is hereby declared a nuisance.
- H. *Weeds.* It shall be unlawful and shall constitute a nuisance for any person to fail to maintain any unsightly or noxious plant or vegetation as set forth in Section 3.

- I. *Barking, yelping, howling by dogs.* Any dog, which, by loud or frequent or habitual barking, yelping, howling, causes a serious annoyance to the neighborhood, is hereby declared a nuisance.
- J. *Dilapidated Buildings.* Any dilapidated building of whatever kind which is used or 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 is declared a nuisance.

Section 19. Severability Clause.

If any provision of this ordinance, or the application thereof to any person or circumstances, is held invalid, such invalidity shall not affect other provisions or applications of the ordinance that can be given effect without the invalid provision or application, and to this and the provisions of this ordinance are declared to be severable.

Section 20. Violation – Misdemeanor.

Any person, firm, association or corporation violating any of the provisions of this Ordinance shall, upon conviction thereof, be fined in a sum not to exceed \$300, or be imprisoned for a term not to exceed 90 days, or both such fine and imprisonment.

Section 21. Safety Clause.

The Town Board of Trustees hereby finds, determines, and declares that this Ordinance is necessary for the immediate preservation of public welfare, health, and safety.

Introduced as a bill and passed on its first reading and ordered published in the Canon City Daily Record by title only this 2nd day of May, 2017.

Passed on its second reading and;

ADOPTED THIS 6th day of June, 2017 A.D.

John Bechtelheimer, Mayor

ATTEST:

Connie Gjelsness, Town Clerk