

ORDINANCE NO. 244

AN ORDINANCE DEFINING, DECLARING AND
PROHIBITING PUBLIC NUISANCES AND PROVIDING
FOR PENALTIES FOR VIOLATION THEREOF.

WHEREAS, the Town of Sugar City is desirous of adopting the formal manner of handling nuisances which occur within the Town of Sugar City; and

BE IT THEREFORE ORDAINED AS FOLLOWS:

SECTION 1. That Ordinance 226, 241 and 242 are repealed in their entirety.

SECTION 2. A new Ordinance is enacted as follows:

A. DEFINITIONS. When used in this section the following words shall be interpreted as follows, unless the context indicates otherwise.

Action to Abate a Public Nuisance: Any action authorized by this Ordinance to declare and then restrain, remove, terminate, prevent, abate, or perpetually enjoin a public nuisance.

Building: Any dwelling, office building, store, warehouse, or structure of any kind, whether or not the building is permanently affixed to the ground upon which it is located, and any trailer, semitrailer, coach, manufactured home, mobile home, or any other vehicle designed or used for occupancy by persons for any purpose.

Person: Any individual, partnership, corporation, association, or agent, servant, or employee of any individual, partnership, corporation, association or other type of organization.

Inoperable Vehicle: Any automobile, truck or self-propelled vehicle incapable of moving under its own power or does not comply with the minimum safety requirements of the Colorado

Motor Vehicle Law.

Nuisance: Any substance, act, occupation, condition or use of property declared a "nuisance" by this Ordinance 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.

Town Official: The Mayor or the Mayor's authorized representative.

SECTION 3. NUISANCES - DEFINED AND DECLARED. Public nuisance shall include, but shall not be limited to, the following acts or conditions:

- A. Fire Hazards: Dry or dead shrubs, dead trees, combustible refuse and waste, or any material growing on a street, sidewalk or upon private property within the Town, which by reason of its size, manner of growth and location constitutes a fire hazard to a building, improvement, crop or other property, or when dry, will in reasonable probability constitute a fire hazard.
- B. Hazardous Obstructions: An obstacle, landscaping or thing installed, or maintained in the sight triangle reaching a height higher than three (3) feet above the adjoining top of curb at the applicable corner of the street intersection, or three (3) feet above the nearest pavement surface where there is no curb, or the existing traveled roadway at the corner in question where there is no curb or pavement. Hazardous obstructions do not include existing or future permanent buildings otherwise constructed or maintained in accordance with applicable

zoning and building regulations, public utility poles, and trees trimmed at the trunk at least eight (8) feet above the level of the ground surface, provided that such trees are spaced so that trunks do not obstruct the vision of motorists.

- C. Polluted Water: A swimming pool, pond or other body of water which is abandoned, unattended, unfiltered, or not otherwise maintained, resulting in the water becoming polluted. For purposes of this section "polluted water" means water contained in a swimming pool, pond, or other body of water, which contains one or more of the following: bacterial growth, including algae; remains of

insects; remains of deceased animals; reptiles; rubbish; feces; refuse; debris; papers; and any other foreign matter or material which because of its nature or location constitutes an unhealthy, unsafe or unsightly condition.

Any unlawful pollution or contamination of any surface or subsurface waters in this Town 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 State Department of Health 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 on the pollution or contamination.

- D. Public Burning: No person shall set on fire or burn any garbage, rubbish or waste material or any hay, grass clippings, or other combustible materials in any ash pit or other receptacle or upon the ground without a permit from the Fire Chief or his authorized representative.

Any smoke and odor resulting from the burning of refuse, trash or other materials, including but not limited to those materials outlined in this subsection, is hereby declared to be a nuisance.

E. Refuse, Waste and Junk:

- (1) "Refuse, waste matter and junk", which by reason of its location and character is dangerous to public health, safety or welfare, unsightly, or interferes with the reasonable enjoyment of property by neighbors, detrimentally affects property values in the surrounding neighborhood or community, or which would materially hamper or interfere with the prevention or suppression of fire upon the premises.
- (2) "Refuse, waste and junk" include but are not limited to: rubbish, refuse, debris, rubble, asphalt, concrete, plaster, tile, rocks, bricks, soil, crates, cartons, containers, boxes, inoperable machinery or parts thereof, scrap metal and other pieces of metal whether ferrous or non-ferrous, dead plants and trees, trimmings from plants and trees, cans, bottles, barrels, bones, rags, used rubber or used rope.
- (3) "Junk" shall also be defined as any material or object used or new, which is not presently usable, including, but not limited to: scrap metals and their alloys, bones, rags, cloth, rubber pieces, rope, tinfoil, bottles, tools, fixtures, utensils, lumber, boxes, crates, pipe or pipe fittings, unmounted tires (of any sort that are unmounted or not on display in a retail showroom), machinery and appliances. Objects or material shall be considered junk if they are so worn, deteriorated or obsolete as to make them unusable in their existing condition. If they are not capable of being used in their present location on the property, or if they cannot legally be used due to the absence of legal prerequisites to use.

Keeping of junk restricted: It shall be unlawful for any person to store or keep or allow to be stored or kept any articles or materials which may be classified as junk according to the definition contained in this Ordinance, adjacent to or in close proximity to any schoolhouse, church, public park, residence, or in a zoning district prohibiting outdoor storage or processing of junk unless such junk is kept in a proper enclosure.

An enclosure will be considered proper for the storage of junk if it totally and completely encloses its contents on all sides and it effectively shields its contents from view of the public. Junk stored or kept in violation of this section is declared to be a public nuisance, and may be abated pursuant to the provisions specified in this Ordinance.

- F. Weeds: Every person, firm or corporation shall remove all weeds, brush, and rubbish from the lot or property, sidewalk area in front of and the alley behind the lot or property, and shall keep such lot or property free from such weeds, brush, and rubbish at all times during the year.



Maintenance of Property: Owning, leasing, occupying, managing or having possession of any premises in this Town in such manner that any of the following conditions are found to exist thereon:

- (1) The premises are a detriment to public health, safety or general welfare;
- (2) The premises are so defective, unsightly, or in such condition of disrepair that they substantially diminish the value of surrounding property or are otherwise substantially detrimental to surrounding properties. Manifestation of this condition shall include, but shall not be limited to, the keeping on, or disposing of on, or the scattering over the premises of any of the following:
 - (a) junk, trash or debris;
 - (b) abandoned, discarded or unusable objects or equipment such as furniture, stoves, hot water heaters, refrigerators, or freezers;
 - (c) stagnant water or an excavation;
 - (d) any device, decoration, design, fence, or structure which is unsightly by reason of its condition or its inappropriate location.
- (3) The premises are so out of harmony or conformity with the maintenance standards of adjacent properties as to cause substantial diminution of the enjoyment, use, or property values of such adjacent properties.
- (4) The premises are abandoned, boarded up, partially destroyed, or left unreasonably in a state of partial construction.
- (5) Buildings have dry rot, warping, or termite infestation.
- (6) The premises have a substantial number of broken windows which cause hazardous conditions and invite trespassers and malicious mischief.
- (7) The landscaping on the premises has not been maintained as follows:
 - (a) the majority of plant material have not been adequately irrigated and maintained and are dead or dying;
 - (b) lawns have grown over six inches or shrubs have not been trimmed and are overhanging public rights-of-way;
 - (c) noxious weeds have grown over six inches and have not been

removed; or

- (d) dead or diseased plantings have not been removed or replaced.
- (8) The exterior of commercial establishments or multifamily buildings had not been maintained so as to present a neat and orderly appearance which is compatible with the area as follows:
- (a) a substantial number of windows are cracked or broken;
 - (b) painted surfaces are substantially cracked or peeling or the paint has deteriorated to the point where the bare surface is substantially exposed; or
 - (c) the building has otherwise not been substantially maintained.
- (9) Parking lots have not been repaired or cracks, potholes or other breaks in the parking lot surface have not been filled.
- (10) 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.
- (11) Permitting any garbage container to remain on a premises when it has become unclean, offensive, or which is injurious to the public health.
- (12) 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.
- (13) Permitting the accumulation of manure or feces in any stable, stall, corral, feed yard, yard, or in any other building or area in which any animals are kept including but not limited to domesticated animals. 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.
- (14) Permitting any slaughterhouse, market, meat shop, stable, feed yard, or other place or building wherein any animals are slaughtered, kept, fed, or sold to remain unclean or in any state or condition detrimental to health or creating a nuisance because of odors, or in which flies or rodents breed.
- (15) Keeping or collecting any stale or putrid grease of other offensive matter.

- (16) Having or permitting upon any premises any fly or mosquito producing condition.
 - (17) Keeping any drinking vessels for public use without providing a method of decontamination between uses.
 - (18) Any toilet or sanitary sewer facilities not constructed and maintained in accordance with the ordinances of the Town.
 - (19) Neglecting or refusing to discontinue use of, clean out, disinfect, and fill up all privy vaults, septic tanks and cesspools or other individual waste water disposal systems within twenty (20) days after notice from any enforcement officer or official of the Town.
- H. Any building, land, premises, or business, occupation or activity, operation, or condition which, after being ordered abated, corrected, or discontinued by lawful order of the Town or any officer thereof, continues to be conducted or continues to exist in violation of:
- (1) any ordinance of this Town;
 - (2) Any regulation enacted pursuant to the authority of an ordinance of this Town.
- I. 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 passerby on the public streets or highways.
- J. 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 to minors, furnishing or selling fermented malt beverages to persons under the age of twenty-one, solicitation for prostitution, or trafficking in stolen property.
- K. 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 within the Town.
- L. Any building, fence, structure, or land within the Town, the condition of which presents a substantial danger or hazard to public health and safety.

- M. Any cellar, vault, sewer, drain, place, property or premises within the Town 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 so as to produce unwholesome or offensive odors, or which is injurious to the public health.
- N. Discharging or placing any offensive water, liquid waste, 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.
- O. 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 Town.
- P. The maintenance of any drainage system, canal, ditch, conduit or other water course of any kind or nature, natural or artificial, in a manner so as to become so obstructed so as to cause the water to backup and overflow therefrom, or to become unsanitary.
- Q. 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.
- R. 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 Town.
- S. 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, inoperable or abandoned automobiles, trucks, tractors, trailers, boats and housetrailers or machinery of any kind, or 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.
- T. Those offenses which are known to the common law of the land and the statutes of Colorado as nuisances when the same exists within the Town limits or within a mile thereof.

- U. Dead animals: The body of any animal which has died and which is undisposed of after twelve (12) hours after death.
- V. Noisemaking devices to attract children: The use of bells, whistles, sirens, music, horns or any other noisemaking devices for the purpose of attracting children or minors to any vehicle upon the streets, highways, rights-of-way, alleys or public ways of the Town for the purpose of selling, distributing or giving away any product whatsoever to such minors is hereby declared to be a public nuisance and hazard and is expressly prohibited and shall be unlawful, except such activities carried on as part of duly authorized public parades or processions.
- W. 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, 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.
- X. It shall be unlawful for any person to leave or permit to remain outside of any dwelling, building or other structure, or within any unoccupied or abandoned building, structure or dwelling under his control, in a place accessible to children, any abandoned, unattended or discarded icebox, refrigerator, or other container which has a door or lid, snaplock, or other locking device, which may not be released from the inside, without first removing said door or lid, snaplock or other locking device. Such icebox, refrigeration or other container shall be a public nuisance which may be abated without judicial proceedings by removal of the door or lid, snaplock or other locking device.
- Y. Vacant buildings: It is declared a nuisance for the owner of any vacant building to fail to replace any broken window or fail to secure any other means of entry into such building within seventy-two (72) hours after notice is given by the Town.
- Z. 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.
- AA. Barking, yelping, howling dogs: Any dog which, by loud or frequent or habitual barking, yelping, or howling, causes a serious annoyance to the neighborhood or to

persons passing to and fro upon the streets or sidewalks.

BB. It shall be unlawful for any person to store or keep or permit to be stored or kept any junk vehicle, or parts thereof, on public or private property, unless in a fully enclosed structure or unless otherwise exempted pursuant to Subsection BB(2).

(1) The following definitions shall apply in the interpretation and enforcement of this subsection:

- (a) Enclosed structure will be considered proper for the storage of junk vehicles if the structure totally and completely encloses its contents on all sides and it effectively shields its contents from view of the public.
- (2) "Person" shall mean the owner of the vehicle or parts thereof, or the owner, manager, lessee or possessor of the property where the vehicle or parts are stored.
- (3) "Vehicle" means a machine propelled by power other than human power designed to travel along the ground by use of wheels, treads, runners or slides to transport persons or property, or pull machinery and shall include, without limitation, automobile, airplane, truck, trailer, motorcycle, motorscooter, tractor, buggy and wagon.
- (d) "Antique vehicle" means any vehicle, at least twenty-five years old, which is valued principally because of its early date of manufacture, design, historical interest or as a collector's item and licensed as a collector's series or horseless carriage by the State of Colorado or another state with similar license provisions.
- (e) "Junk vehicle" means any vehicle not capable of travel under its own power, or any vehicle not bearing current registration plates, or if bearing such plates, which remains stationary or unused for more than thirty (30) consecutive days; or any automobile, truck or self-propelled vehicle which does not comply with the minimum safety requirements of the Colorado Motor Vehicle Law.
- (f) "Private property" means real property which is owned by a private person or entity.
- (7) "Hobby vehicle" means any vehicle which is used in competitive racing such as demolition derby, mud racing, etc., except that not more than two hobby vehicles may be stored at any one location.

- (2) Hobby vehicles (as defined above) and antique vehicles (as defined above) are not junk vehicles as defined herein.

SECTION 4. AUTHORITY OF THE TOWN TO DECLARE NUISANCE. Any act, condition, substance, occupation or use of property which substantially meets the criteria of a nuisance as defined in this section may be so declared by the Town Board of Trustees and nothing in this section shall be construed to limit the power of the Town to make such declaration.

SECTION 5. COMPLAINTS. A person may make a complaint of the existence of a public nuisance to any Town official. Such complaint shall include, whenever possible, the nature of the public nuisance, the location, including the address, the name of the owner, occupant, or manager of the property, the duration of the nuisance and the name and address of the complainant.

SECTION 6. INSPECTION; RIGHT OF ENTRY; EMERGENCIES.

- (1) Whenever a Town official has reason to believe that a public nuisance exists, and that such public nuisance constitutes an emergency presenting imminent danger of serious injury to persons or property, the Mayor or his authorized representative, may immediately enter into any building or upon any premises within the jurisdiction of the Town for purposes of inspection or abatement.

Whenever an emergency situation exists in relation to the enforcement of any of the provisions of this section, the Mayor, or his authorized representative, upon a presentation of proper credentials or identification in the case of an occupied building or premises, may enter into any building or go upon any premises within the jurisdiction of the Town. 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.

- (2) Whenever necessary to make an inspection to enforce any of the provision of this section, or whenever the Mayor, or his authorized representative, shall have reasonable cause to believe that there exists in any building or upon any premises any condition which constitutes a nuisance herein, such the Mayor 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, 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 if 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 judge of the court having jurisdiction.

- (3) After the expiration of said twenty-four hour period from the giving or leaving of notice, the Mayor, or authorized representative, may appear before the Municipal Judge or other State Court Judge 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 persons may enter into said building or go upon said premises using such reasonable force as may be necessary to gain entry.
- (4) For the purposes of the Section 3 above, 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.

SECTION 7. JURISDICTION - PARTIES - PROCESS.

- A. An action to abate a public nuisance may be brought in Municipal Court or any other State Court where appropriate.
- B. Except as otherwise may be provided in this section, the practice and procedure in an action to abate a public nuisance shall be governed by the Colorado Rules of Civil Procedure and the Colorado Rules of Municipal Court Procedure.
- C. An action to abate a public nuisance may be brought by the Town Attorney in the name of the People of the State of Colorado and the Town of Sugar City.
- 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. The Respondent or Defendant shall not be entitled to a jury trial.

SECTION 8. ABATEMENT OF NUISANCE; 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 officials are hereby authorized in their discretion to cause the same to be 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. Summary abatement. Whenever a public nuisance exists which constitutes an emergency presenting imminent danger or serious injury to persons or property, an administrative officer may order with notice or judicial action that the public nuisance be summarily abated by removal, destruction or mitigation.
- C. Unless a specific provision of this code states otherwise, when a public nuisance does not require summary abatement, a Town official may prepare and serve a notice to abate on the owner, manager, occupant or possessor of any property which constitutes the public nuisance of the person conducting or maintaining the business, occupation, operation, or activity which constitutes the public nuisance. Such notice shall:
- (1) State that if the nuisance is not abated within seven (7) days an action may be brought in the Municipal Court or other State Court to abate the nuisance and that all costs of abatement, plus ten percent (10%) of such costs for inspection, and other additional administrative costs including but not limited to reasonable attorney fees, may be assessed against the person found by the court to have caused, allowed to be caused or allowed to continue the public nuisance and may become a lien upon any property on which the abatement was performed.
 - (2) Be in writing, signed by the official issuing the notice, and be served, either personally or by means of posting on the premises upon which the nuisance exists. If notice is served by posting, a copy of the notice shall also be mailed by certified mail, return receipt requested, to the owner of record of the property at the last known address.
- D. When a public nuisance has not been voluntarily abated within the time specified in the notice to abate, the following procedure shall apply:
- (1) The Town shall bring action in the Municipal Court or other State Court to have the nuisance declared as such by the court and for an order enjoining the public nuisance or authorizing its restraint, removal, termination or abatement by the owner or the person who caused the nuisance or the person who

allowed the nuisance to be caused or to continue, or Town official or his duly authorized representative or any person under contract with the Town to perform such services.

- (2) The action to declare and abate a public nuisance shall be brought by the Town in the name of the people of the Town, by the filing of a complaint, which shall be verified or supported by an affidavit. Summons shall be issued and served as in civil cases, and any employee of the Town, including employees, who is over the age of eighteen (18) may serve the summons and verified complaint upon the respondent. Trial shall be to the Municipal Court or in State Court.
- (3) A notice of appearance shall be served with the summons and complaint. The appearance date shall be not less than thirty (30) days from the date of service of the summons and complaint. The trial shall be held upon the appearance date, unless the court grants a continuance for good cause shown.
- (4) The respondent shall file a response on or before the appearance date set forth in the notice of appearance.
- (5) Upon the date and at the time set for appearance and trial, if the respondent has filed no response and fails to appear and if the Town proves that proper service was made on the respondent at least thirty (30) days prior to the appearance date, the court may grant such orders as are requested by the Town; except that, the court shall order that enforcement by the Town be stayed for ten days and that a copy of the court's order be mailed to the respondent at his last known address. Failure to appear on any other date set for trial shall be grounds for entering a default and judgment thereon against a non-appearing party. For good cause shown, and prior to enforcement, the court may set aside any entry of default and the judgment entered thereon.
- (6) Upon a judicial determination that a nuisance exists, the Mayor 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 Mayor as may be required for the abatement of such nuisance and in connection with the enforcement thereof.

The remedies specified in this section shall be in addition to all other remedies provided by law.

SECTION 9. 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 order.
- B. The judgment in an action to abate a public nuisance may include an order directing the Mayor, or the Mayor's authorized representative, to seize and close the public nuisance, and to keep the same effectually closed until further order of the court, not to exceed one 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 Mayor, or the Mayor's authorized representative, at the expense 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 Ordinance, the imposition of a fine of not more than \$1,000.00 and imprisonment of up to 90 days, conditioned upon failure or refusal of compliance with the orders of the court within any time limits therein fixed.

SECTION 10. 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 reoccur, the court may order the premises delivered to the owner or operator. As a condition of such order, 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 on the owner or operator thereunder to prevent recurrence or continuance of the public nuisance.

SECTION 11. RESPONSIBILITY FOR COSTS OF ABATEMENT; COLLECTION; FAILURE TO PAY.

- A. A person found by the court to have caused a public nuisance or allowed the nuisance to be caused or to continue shall be liable for the costs specified in this section including reasonable attorney fees. Such costs may be collected by the Town in the civil action to abate the nuisance or assessed and filed as a lien against any property on which the abatement was performed as specified in this section.

- B. If the costs of abatement have not been otherwise collected, the Mayor shall prepare a statement enumerating the actual costs of abatement and collection plus ten percent (10%) of the abatement costs for inspection and other additional administrative costs. The costs enumerated in this statement shall be a first and prior lien upon the property relating back to the date upon which the abatement was performed. A copy of this statement shall be mailed by registered or certified mail, return receipt requested, to the owner of such property as shown upon the tax rolls of the county, at the address of such owner as therein shown.

The owner may request a hearing before the Municipal Court to contest the amount of the costs. Such request must be made in writing and be filed with the Town within ten (10) days of the date of mailing or service of the first statement to the owner. The owner shall be given at least two weeks written notice of the date, time and place of any hearing scheduled. The decision of the Municipal Court shall be final. If the statement remains unpaid, the amount shall be certified to the County Treasurer of the county in which the property is located.

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 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 the county together with a statement of the work performed, the date of performance and the costs thereof.

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 certified mail, return receipt requested, notifying such owner that work has been performed pursuant to this Ordinance, stating the date of performance of the work, the nature of the work and demanding payment of the costs thereof, together with five percent (5%) 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 (10%) 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.

For 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.

SECTION 12. 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 section in the Municipal Court 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 section 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 Ordinance 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 13. VIOLATIONS AND PENALTIES.

- A. Whenever in any section of this section, 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 Section 10 above.
- 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.
- C. Any violation or disobedience of any injunction or order issued by the court in an action to abate a public nuisance shall be punished as a contempt of court by a fine of not more than \$2,000.00 and imprisonment of not more than 180 days; but the court may treat each day on which the violation or disobedience of any injunction order continues or recurs as a separate contempt.
- D. Fees - Costs and Fines - Liens and Collection.
 - 1. For seizing and closing any building or premises as provided in this Ordinance, or for performing other duties pursuant to the direction of the court pursuant to the provisions of this Ordinance, the Town shall be entitled to a reasonable sum fixed by the court, in addition to the actual costs incurred or expended.
 - 2. 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 seized or closed under the provisions of this chapter, and the same shall be enforceable and collectible by execution issued by order of the court, from the property of any person liable therefor.

3. Nothing in this section 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 recording of court orders involving real estate as authorized under this Ordinance.

SECTION 14. SAVINGS CLAUSE. If any part, section, subsection, sentence, clause, or phrase of this section is for any reason held to be invalid, such decisions shall not affect the validity of the remaining parts of this section or of said code; the Town Board of Trustees hereby declares that it would have passed this section and adopted said codes in each part, section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more parts, sections, subsections, sentences, clauses or phrases may be declared invalid.

PASSED AND ADOPTED this 21 day of June, 2006.

TOWN OF SUGAR CITY

Ronnie H. Conel
By: _____, Mayor

ATTEST:

Brenda McCracken
Brenda McCracken
Town Clerk