

## CHAPTER XVIII

### NUISANCES

#### ARTICLE 1

#### GENERAL PROVISIONS

18-1-1	Public Nuisance Defined
18-1-2	Common Law and Statutes Adopted
18-1-3	Penalties
18-1-4	Responsibility for Nuisances
18-1-5	Complaints of Nuisances
18-1-6	Right of Entry
18-1-7	Abatement Authorized
18-1-8	Notice of Abatement
18-1-9	Abatement procedures
18-1-10	Costs and Charges
18-1-11	Cumulative Remedies
18-1-12	Concurrent Remedies
18-1-13	Penalties
18-1-14	Miscellaneous

#### 18-1-1 Public Nuisance Defined

A public nuisance is a substance, act, occupation, condition or use of property which is of such nature and shall continue for such length of time as to: (1) substantially annoy, injure or endanger the comfort, health, repose or safety of the public; or (2) in any way render the public insecure in life or in the use of property; or (3) unlawfully and substantially interfere with, obstruct or tend to obstruct or render dangerous for passage any street, alley, highway or other public way.

#### 18-1-2 Common Law And Statute's' Adopted

In all cases where no provision is made defining what are 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 of Hotchkiss be treated as such and proceeded against as in this Article provided, or in accordance with any other provision of law.

## **NUISANCES: General Provisions**

### **18-1-3 Penalties**

Any person in the Town who is responsible for any nuisance as provided for in this chapter and who shall fail to abate the same after the giving of adequate notice shall be in violation of this Article and subject to the penalties as provided in this Code.

### **18-1-4 Responsibility for Nuisances**

- (a) Where a nuisance exists upon private property, and is the outgrowth of the usual, natural or necessary use of the property, the owner or owners thereof or his or their agents are hereby declared the authors thereof; but where any such nuisance shall arise from the unusual use to which any such property may be put, or from any business thereon conducted, the occupant or occupants shall also be deemed the author or authors thereof; and any person who shall by himself or an agent cause or create the same shall be deemed the author of such nuisance.
- (b) In the event a nuisance must be abated by the Town, no provision of this section should be construed to relieve any property owner from any of the provisions contained in 18-1-10 of this Chapter.

### **18-1-5 Complaints of Nuisances**

Complaints of nuisances may be made to the Town Clerk. Whenever possible any complaint shall state the nature of such nuisance, the location including street address, the name of the owner, agent or occupant of the building or lot, if known, and the name and address of the complainant.

## **NUISANCES: General Provisions**

### **18-1-6 Right of Entry**

#### **(a) Right of Entry, Generally**

Whenever necessary to make an inspection to enforce any of the provisions of this Article, or whenever an authorized representative of the Town or the Town Marshall shall have reasonable cause to believe that there exists in any building or upon any premises any condition which constitutes a nuisance hereunder, said authorized representative of the Town or Town Marshall may enter such building or premises at all reasonable times to inspect the same or to perform any duty imposed on any of them; provided, that if such building or premises be occupied, such person shall first present proper credentials and demand entry; and if such building or premises be unoccupied, he shall first make a reasonable effort to locate the owner and/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 and/or occupant, or if said owner and/or occupant cannot be located after a reasonable effort, he shall leave at the building or premises, a twenty-four hours' written notice of intention to inspect. The notice given to the owner and/or occupant or left on the premises as aforesaid, shall state that the property owner has the right to refuse entry and that in the event such entry is refused, inspection may be made only upon issuance of a search warrant by a municipal judge of the Town of Hotchkiss, or judge of any other Court having jurisdiction.

## **NUISANCES: General Provisions**

### **(a) Right of Entry, Generally, cont.**

After the expiration of said twenty-four hour period from the giving or leaving of such notice, an authorized representative of the Town or Town Marshall may appear before any municipal judge of the Municipal Court of Hotchkiss and upon a showing of probable cause shall obtain a search warrant entitling him to enter said building or upon said premises. Upon presentation of said search warrant and proper credentials, or possession of same in the case of an unoccupied building or premises, said person may enter into said building or upon said premises using such reasonable force as may be necessary to gain entry therein.

For the purposes of this subsection, 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 and/or occupant of said building or premises to resist reasonable force used by the authorized Town representative or Town Marshall.

### **(b) Right of Entry--Emergencies**

Whenever an emergency situation exists in relation to the enforcement of any of the provisions of this ordinance, an authorized representative of the Town, or the Town Marshall, upon a presentation of proper credentials or identification, in the case of an occupied building or premises, or possession of said credentials in the case of an unoccupied building or premises, may enter

## **NUISANCES: General Provisions**

### **Right of Entry—Emergencies, cont.**

into any building or upon any premises within the jurisdiction of the Town of Hotchkiss. In said emergency situation such person may use such reasonable force as may be necessary to gain entry into aid building or upon said premises. For the purposes of this subsection, an emergency situation shall include, but not be limited to, any situation where there is imminent danger of loss of life, limb and/or property, It shall be unlawful for any owner and/or occupant of said building or premises to resist reasonable force used by the authorized official acting pursuant to this subsection.

### **(c) Search Warrants, Jurisdiction of the Municipal Court**

The Municipal Judge of the Municipal Court of the Town of Hotchkiss shall have power to issue search warrants upon a showing of probable cause for the implementation of inspections as provided for in subsection (a) of this Section.

## **18-1-7 Abatement Authorized**

- (a) Each and every nuisance mentioned, declared or defined by this Code or any ordinance of the Town is hereby prohibited, and the Mayor is hereby authorized, in his 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 and only upon authorization of the Mayor, if any nuisance found to exist shall cause such imminent danger to the life, limb property or health as to require immediate abatement; any such nuisance may be summarily abated by action of the Town Marshall as may be directed by the Mayor. Summary abatement shall be taken only where the Mayor shall determine that there is imminent danger to life, limb, health or property which cannot await abatement of the nuisance by any other means available under this Article.

## **NUISANCES: General Provisions**

### **18-1-8 Notice of Abatement**

In the case of any nuisance not requiring summary abatement in the judgment of the Mayor, it shall be the duty of the Town Clerk to cause notice to be served upon the person responsible for any nuisance which may be found, requiring said person to abate the same in a reasonable time and in such reasonable manner as prescribed, and such notice may be given or served by any officer directed or deputized to give or make the same. The reasonable time for abatement shall not exceed fourteen (14) days unless it appears from the facts and circumstances that compliance could not reasonably be made within fourteen (14) days or that a good faith attempt at compliance is being made. Such notice shall be in writing, signed by the official issuing the same and shall be personally served upon the person responsible for said nuisance if said person occupies the premises upon which said nuisance exists, but if not occupied by said responsible person then by posting the same prominently at some place on the premises upon which said nuisance exists. If service is by posting as aforesaid, then a copy of said notice shall also, be mailed by certified mail, return receipt requested, to the owner of such property as shown upon the tax rolls of Delta County, Colorado, at the address of such owner as therein shown.

## **NUISANCES: General Provisions**

### **18-1-9 Abatement Procedures**

- (a) Upon notification, if the person so notified shall neglect or refuse to comply with the requirements of said notice to abate the nuisance within the time specified, such person shall be guilty of a violation of the Municipal Code, and the Mayor may proceed at once, upon the expiration of the time specified in such notice, to commence appropriate legal action to cause such nuisance to be abated; provided, that if the owner or person responsible for said nuisance is unknown or cannot be found, the Mayor may proceed to abate such nuisance after notice has been posted for the period equal to the time specified to abate said nuisance. In either case, the expense of such abatement shall be collected from the person who caused, created, continued or suffered said nuisance to exist.
- (b) When any person has responsibility for a nuisance as provided in Section 18-1-4 of this Article and such nuisance shall exist or be found and said responsible person fails to abate the same after the giving of such notice as provided for in Section 18-1-8 of this Article, within the time limited therein, or as extended, then the Mayor shall institute proceedings in a court of competent jurisdiction to obtain a judicial determination that such nuisance exists, to abate such nuisance, to enjoin the same, and for such other and further relief as may seem necessary or proper, including but not limited to collection of the costs and expenses of abatement, including reasonable attorney's fees.
- (c) Upon a judicial determination that a nuisance exists, the Mayor shall be authorized to abate said nuisance or cause the same to be abated, employing such forces and persons as may be necessary to abate the same, including the employees of the City or by contract or otherwise.

## **NUISANCES: General Provisions**

### **18-1-9 Abatement Procedures, cont.**

- (d) Any officer or employee of the Town of Hotchkiss who shall be authorized herein to abate any nuisance specified in this ordinance shall have authority to engage the necessary assistance and incur the necessary expenses thereof. In any case where a nuisance is to be abated by the Town, it shall be the duty of said authorized person to employ such assistance and adopt such means as may be necessary to effect abatement of said nuisance. It shall also be the duty of the Town or any of its representatives to proceed in all abatement cases with due care and without any unnecessary destruction of property.

### **18-1-10 Costs and Charges**

- (a) The person or persons responsible for any nuisance within the Town shall be liable for and pay and bear all costs and expenses of the abatement of said nuisance, including reasonable attorney's fees for costs of collection, which costs and expenses may be collected by the Town in any action at law, referred for collection by the Town Attorney on a contingency basis, in his discretion, or collected in connection with an action to abate a nuisance, or assessed against the property as hereinafter provided.



## **NUISANCES: General Provisions**

### **18-1-10      Costs and Charges, cont.**

- (b) The notice required in Section 18-1-8 of this Article shall, in addition to the requirements of that Section, state that if the nuisance is not abated within the time stated in the notice, the cost of such abatement may be assessed as a lien against the property (describing the same) pursuant to the terms of this Article, referring to this Article, together with an additional five percent (5%) assessment for inspection and incidental costs and an additional ten percent (10%) assessment for costs of collection, and collected in the same manner as real estate taxes against the property. If the owner of the property is not personally served with a copy of such notice, then a true copy of such notice shall be mailed by registered or certified mail, return receipt requested, to the owner of such property as shown upon the tax rolls of Delta County, Colorado, at the address of such owner as therein shown.
  
- (c) If after the expiration of the period of time provided for in said notice, or as extended, costs or expenses are incurred by or on behalf of the Town in the abatement or in connection with the abatement of the nuisance, and said costs are not otherwise collected, then the Town Clerk may thereafter certify to the County Treasurer 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 Delta County, Colorado, together with a statement of work performed, the date of performance, the costs thereof, and assessments as described in subsection (b). All such costs and assessments shall thereafter constitute a lien against the property and shall be collected in a manner similar to other property taxes.

### **18-1-11      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 ordinance in the Municipal Court of the Town of Hotchkiss, shall not preclude or prevent the taking of other action hereunder to abate or enjoin any nuisance found to exist.

## **NUISANCES: General Provisions**

### **18-1-12 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 remedy over and above any charge of any municipal offenses or any other provision of the 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 Town Code or any other provision of the law.

### **18-1-13 Penalties**

The person or persons responsible for the nuisance and in violation of the provisions herein shall be liable for a fine of up to \$1,000.00 for each violation. Each day of violation shall constitute a separate offense.

### **18-1-14 Miscellaneous**

Code Sections pertaining to ticketing, penalty assessments, penalties and fines, may be used in conjunction with these Code Sections, in addition to and regarding the abatement of nuisance or either procedures may be used separately.

## **ARTICLE 2**

### **DECLARED NUISANCES**

18-2-1	Stagnant Ponds
18-2-2	Open Wells, Cisterns or Excavations
18-2-3	Stale Matter
18-2-4	Discharge of Nauseous Liquids
18-2-5	Dangerous Structures, Houses and Buildings
18-2-6	Accumulation of Refuse
18-2-7	Uncontrolled Growth or Accumulation of Weeds
18-2-8	Accumulation of Manure
18-2-9	Non-removal of Rubbish from Construction Sites
18-2-10	Non-removal of Refuse from Businesses
18-2-11	Non-removal of Dead Animals
18-2-12	Accumulation of Garbage; Scattering Rubbish etc.

#### **18-2-1 Stagnant Ponds**

Any cellar, vault, drain, sewer, pond of water, or other place, upon or within any private premises or grounds in this Town, that shall be nauseous or offensive to others or injurious to public health through an accumulation or deposition of nauseous, offensive or foul water, or other substances, shall be deemed a nuisance. This applies in all cases for which no other specific provisions are made in this Article, Code or any other ordinance of the Town.

#### **18-2-2 Open Wells, Cisterns or Excavations**

It is hereby declared that excavations exceeding five 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 pounds or are securely fenced with a solid fence to the height of at least five feet, and it shall be unlawful for any person to permit such nuisance to remain on premises owned or occupied by him.

#### **18-2-3 Stale Matter**

It is hereby declared a nuisance to keep, collect or use, or cause to be kept, collected or used in this Town, any stale, putrid or stinking fat or grease or other matter.

#### **18-2-4 Discharge of Nauseous Liquids**

It is hereby declared a nuisance to discharge out of or from, or permit to flow from any house or place, foul or nauseous liquids or substances of any kind whatsoever, into or upon any adjacent ground or lot, or into any street, alley or public place in the Town.

## **NUISANCES: Declared Nuisances**

### **18-2-5 Dangerous Structures, House and Building**

Any standing and unoccupied building, house or other structure which is in such a state of repair that it may collapse at any time or is in such a state of disrepair that it provides a hazard to children who may enter upon said premises is declared a nuisance. Indications of such a "state of disrepair" may be: All or some of the windows are out, providing easy access to children; the walls or roof may be falling in or in danger of so doing; the shingles may be falling off the roof or boards may be coming off the sides of the house; the building does not substantially comply with the standards set by the Hotchkiss Building Code; nails or other dangerous objects are protruding from the building; construction of a new building which is partially completed but has been abandoned for a period of three months without any reasonable explanation given to the Board of Trustees of the Town of Hotchkiss.

### **18-2-6 Accumulation of Refuse**

Any accumulation of refuse beyond a reasonable time on any premises, improved or unimproved, in the Town is prohibited and is hereby declared to be a nuisance. For purpose of this Code, the word "refuse" shall mean and include any grass clippings; leaves; hay; straw; manure; shavings; excelsior; paper; ashes; rubbish; containers; boxes; glass; cans; bottles; garbage; waste and discarded building and construction materials, including but not limited to plaster, broken concrete, bricks, cinder blocks, stones, wood, roofing material, wire or metal binding, sacks, or loose, discarded or unused material; all rubbish of any kind or nature whatsoever; and any other materials commonly known as rubbish or refuse of any kind or character or by any means known.

### **18-2-7 Uncontrolled Growth or Accumulation of Weeds**

The uncontrolled growth or accumulation of weeds within the Town is a fire hazard, allows for accumulation of harmful vermin, rodents and insects and is unsightly to the public. Such uncontrolled growth is hereby declared a nuisance.

### **18-2-8 Accumulation of Manure**

Storage or accumulation of manure for anything other than immediate use for fertilizing purposes is hereby prohibited and declared a nuisance.

## **NUISANCES: Declared Nuisances**

### **18-2-9      Non-removal of Rubbish from Construction Sites**

The non-removal of rubbish, plaster, broken concrete, bricks, cinder blocks, stones, wood, roofing material and any other discarded or unused material resulting from any wrecking, constructing or reconstructing within the Town is hereby prohibited and deemed a nuisance.

### **18-2-10     Non-removal of Refuse from Businesses**

Discarded automobile parts, stoves, furniture, and other discarded inventory and refuse which is not within a reasonable time removed from the premises of the business establishment is hereby declared a nuisance.

### **18-2-11     Non-removal of Dead Animals**

When any animal shall die in Town it shall be the duty of the owner or keeper thereof to remove the body of such animal at least one mile beyond the limits of the Town and a failure to do so is hereby declared a nuisance.

### **18-2-12     Accumulation of Garbage; Scattering Rubbish, etc.**

The accumulation of garbage beyond a reasonable time which in no event shall exceed thirty (30) days and the permitting of the scattering by wind or otherwise of refuse, debris, garbage, waste materials, or ashes is hereby declared a nuisance.

## ARTICLE 3

### JUNKED MOTOR VEHICLES

18-3-1	Definitions
18-3-2	Prohibited Storage
18-3-3	Permitted Storage
18-3-4	Nonconforming Storage Uses
18-3-5	Investigation of Premises
18-3-6	Notice of Removal
18-3-7	Penalties
18-3-8	Miscellaneous

**18-3-1** DEFINITIONS: For the purpose of this ordinance the, following definition shall be applicable:

- a. Junked motor vehicle means any motor vehicle which is partially dismantled, wrecked or is inoperable, cannot safely or legally be operated upon public roads, and is not being diligently worked on to promptly and efficiently restore or repair such vehicle to a condition that would be safe and legal to operate upon public roads.
- b. Motor vehicle means any self-propelled land vehicle which can be used for towing or transporting people or materials, including but not limited to automobiles, trucks, buses, motor homes, motorized campers, motorcycles, motor scooters, tractors, snowmobiles, dune buggies and other off the road vehicles.
- c. Motor vehicle accessories means any part or parts of any motor vehicle.
- d. Person includes any individual, firm, partnership or corporation.
- e. Private property means any real property not owned by the federal government, state, county, Town, Board of Education or other public subdivisions.
- f. Public way means any real property owned by the public or open for public access or use.
- g. Removal means the physical relocation of a motor vehicle to an authorized location.

**18-3-2** Prohibited Storage. It shall be unlawful for any person owning any. real property within the Town of Hotchkiss, Colorado, or owning or having custody of any junked motor vehicle or motor vehicle accessories to store or permit any such vehicle or accessories to remain on the real property owned, or on any private property or the public way within the Town of Hotchkiss, Colorado, for a period of more than five (5) days after the receipt of a notice requiring such removal, and it shall be further unlawful for any person owning any real property in the Town to store or to permit to remain any such vehicles or accessories on his property for more than a like period. Such storage is declared to be a public nuisance and may be abated and penalties imposed as provided herein and in other sections of the Code of the Town of Hotchkiss, Colorado.

**NUISANCES: Junked Motor Vehicles**

**18-3-2 Prohibited Storage, cont.**

It shall be unlawful for any person, after notification has been given, to move any junked motor vehicle or motor vehicle accessories from any private property or public way to any other property upon which such storage is not permitted or onto any public highway or other public property for purposes of storage.

**18-3-3 Permitted Storage.** This section shall not apply to seasonal use vehicles such as snowmobiles, motorcycles, motor scooters and non-motorized campers, or to any motor vehicle or motor vehicle accessories stored within an enclosed building, in a storage place or depository maintained in a lawful place and manner or on the premises of a business enterprise operated in a lawful place and manner when necessary to the operation of such business enterprise, provided that the motor vehicle or accessories shall not be visible from any public street or highway. Such business enterprises shall include auto junk yards, auto repair and auto body shops, but shall not include automobile service stations or tire, battery and accessory sales stores. An opaque fence not more than six (6) feet in height may be utilized to shield the motor vehicles or motor vehicle accessories from view.

Motor vehicles which are more than twenty-five (25) years old and which are presently undergoing restoration by private parties may be stored, provided that such vehicles:

a. Are continuously covered by a tarpaulin or otherwise shielded from public view;

b. Number no more than two (2) vehicles per unit or parcel of property owned, used, or occupied by the owner of said motor vehicle(s); and

c. Are restored, licensed and removed from storage status within a one (1) year period.

d. If restoration is not substantially complete within the one (1) year period, the owner of the vehicle(s) may apply, prior to the end of such time limit, to the Town Council for an extension of such time limit.

**18-3-4 Nonconforming Storage Uses.** Certain storage uses necessary to the operation of an existing storage business enterprise within the Town of Hotchkiss, Colorado, may be found to exist at the time of the passage of this ordinance which do not meet the requirements hereof.

Such nonconforming storage use shall be allowed to continue for one (1) year from the date of the passage of this ordinance, by which time such use must conform to the terms hereof providing, however, it shall not be enlarged in number or area involved, nor shall it be allowed to continue should the nonconforming use be discontinued for a period of one (1) month.





## **NUISANCES: Junked Motor Vehicles**

### **18-3-5 Investigation of Premises**

The Town Marshal, or any member of his department, on routine inspection or upon receipt of a complaint may investigate a suspected junked motor vehicle or motor vehicle accessories and record the make, model, style and identification numbers and its situation.

**18-3-6 Notice Of Removal.** Whenever the Town Marshal or any member of his department finds or is notified that any junked motor vehicle or motor vehicle accessories have been stored or permitted to remain on any private property or public w.2.y within the Town, the Town Marshal shall serve by personal service or send by certified mail a notice to the owner of record of such motor vehicle or accessories, if such owner can be ascertained by the exercise of reasonable diligence, and also to the owner of the private property, if any, on which the same is located, as shown on the tax assessment records, by similar means, to remove same within five (5) days. Such notice shall also contain the following additional information:

- a. Nature of complaint;
- b. Description and location of the motor vehicle and/or motor vehicle accessories;
- c. Statement that removal from the location specified in the notification to another location upon which such storage is not permitted is prohibited and shall subject the person to additional penalties;
- d. Statement that if removal is made within the time limits specified, that notification of such shall be given in writing to the Town Clerk or Town Marshal., prior to the end of the five (5) day notice period.
- e. Statement of the penalties provided for noncompliance with such notice.

**18-3-7 PENALTIES:** The owner of the motor vehicle or motor vehicle accessories in violation, and the owner or tenant of the private property upon which the motor vehicle or accessories are stored shall be liable for a fine of up to \$1,000.00 for each improperly stored motor vehicle and/or accessories, if said vehicles and/or accessories are not removed after proper notice. Each day said motor vehicles or accessories are improperly stored after proper notice is given shall constitute a separate offense.

**18-3-8 Miscellaneous:** Code Sections pertaining to ticketing, penalty assessments, penalties and fines, may be used in conjunction with these Code Sections, in addition to and regarding the abatement of nuisance or either procedures which may be used separately.