

TOWN OF WIGGINS HEALTH AND SAFETY CODE

Article 8 CHAPTER 1

NUISANCES & ABATEMENT PROCESS

SECTION:

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8-1-1 DEFINITIONS.

Building Official: The Town Manager or his/her designee.

Person: A natural person, association, corporation, partnership, limited liability company and any other legal entity capable of owning, using, or occupying real property.

Public Place: Any street, highway, public right-of-way, sidewalk, driveway or alley, school building, school grounds, public building, library, fire station, public park or any parking lot.

Responsible Party: Any person who makes or causes any nuisance to exist, or who has possession or control of any real property or premises, whether as owner, occupant or tenant, where any nuisance is found, or, in the case of a motor vehicle, as owner or operator of the same.

8-1-2 DECLARATION OF NUISANCES.

- A. Common Law and Statutory Nuisances.** Any nuisance defined or declared as such by state statute or case law (common law) is hereby declared a nuisance for purposes of this Article 8. It shall be unlawful for any person to create any common law or statutory nuisance in the town or to permit a common law or statutory nuisance to occur or continue to occur on any property under such person's control. Further, it is unlawful for any person to permit a common law or statutory nuisance to occur in conjunction with any personal property under such person's control.

- B. Specified Nuisances.** Any act, action, condition, situation, circumstance or state of being identified in this article as prohibited or unlawful is hereby declared a nuisance.

8-1-3 VIOLATION – PENALTY.

The following penalties, set out in this section, shall apply to each chapter of this Article 8:

- A.** It is unlawful for any person to violate any of the provisions stated or adopted in this Article 8.
- B.** Every person who violates any provision stated or adopted in this Article 8 shall be punished by a fine in an amount set forth in the fine schedule adopted by ordinance of the Board of Trustees from time to time. Where any violation is a continuing offense, each day that the violation continues shall be considered and held to be a separate and distinct offense. However, no jail sentence or other form of imprisonment may be imposed, a fine being the exclusive punishment, and no imprisonment shall be allowed under this Article.

8-1-4 ABATEMENT PROCESS.

- A.** Whenever the police chief, a police officer, code enforcement officer, or another employee authorized by the Town Manager (referenced, collectively hereafter, as authorized officers) determines that a nuisance exists on or in any lot, building or premises, under any chapter under this Article 8, the authorized officer may give notice in the manner prescribed in paragraph B & C.
- B.** Such notice prescribed in paragraph A. shall:
 - 1.** Be in writing.
 - 2.** Include a description of the property sufficient for identification.
 - 3.** Include a statement of the violation or violations and why the notice is issued.
 - 4.** Include a correction order allowing at least 14 days to make the repairs and improvements required to abate the nuisance.
 - 5.** Inform the property owner of the right to appeal pursuant to paragraph G.

6. Include a statement of the town's right to abate the nuisance and file a lien in accordance with this section.
- C. The authorized official shall promptly post a copy of the notice in a visible location on the property. Besides such posting, the authorized official shall, if practicable, provide a copy of the notice to the property owner by one or more of the following methods:
1. By personal delivery to the owner, or the owner's designated agent;
 2. By U.S. mail or other commercial mail service to any address for the owner appearing in the County Tax Assessor's records, for real property;
 3. By U.S. mail or other commercial mail service to any address for the owner appearing in the Colorado Department of Revenue or other official title or registration records, for other property;
 4. By any other means reasonably calculated to provide notice.
- D. It shall be the duty of the owner, occupant or agent of any lot, building or premises, in or upon which any nuisance may be found, to abate the same in such manner as the officer serving such notice prescribes, within the time specified in the abatement notice and correction order. Timely filing of an appeal from the abatement notice and correction order under this section shall extend the time for abatement until a final ruling on that appeal. In addition to any other available sanction or relief, if such owner, occupant or agent neglects or refuses to comply with the requirements of such order within the time specified, he or she commits a violation of this Code, punishable according to Section 8-1-3.
- E. Upon the expiration of the time for abatement specified in such notice, and including any extension for appeal, as provided above, the authorized officer may cause abatement of such nuisance, and payment of the abatement expense by the person so refusing or neglecting.
- F. The authorized officer shall certify, to the Town Clerk, as a proposed charge and lien against the subject property, the cost, plus a 20 percent administrative service charge, of any such action taken pursuant to such court action or pursuant to this Article 8.
- G. Notice of assessment; appeal of charges.

1. Upon receipt of the statement of charges, the Town Clerk shall mail to the owner of record of the subject property a notice, stating the amount and grounds for the charges; that the town proposes to assess the charges against the property; and that, any objections to the proposed assessment must be made in writing and filed with the Town Clerk within 14 days from the date of receipt of such notice. Upon the expiration of the 14-day period, if the Town Clerk receives no appeal, the Town Clerk shall, pursuant to C.R.S. section 31-20-105, certify such charges to the office of the treasurer of the county that includes the property, for collection in the same manner as taxes, as authorized by C.R.S. title 31.
2. If the property owner files an appeal with the Town Clerk before the expiration of the 14-day period, the Town Clerk shall refer the matter to a hearing officer appointed by the Town Clerk for determination.
3. Upon conclusion of administrative review, the hearing officer shall determine, in writing, whether the charges are proper. The town shall have the burden of proof, by a preponderance of the evidence. According to that determination, the hearing officer shall affirm, cancel or reduce the charges. The hearing officer shall furnish a copy of this determination to the person making the objections together with a notice of such person's right to appeal to the district court.
4. The hearing officer, on appeal, may reduce or cancel a proposed assessment if it is determined that any of the following did not conform to the provisions of this Ordinance:
 - a. Any required notice to correct the subject violations; or
 - b. The work performed in abating the nuisance; or
 - c. The computation of charges.
5. Upon a final determination by the hearing officer affirming or reducing the charges, the hearing officer shall certify a copy of the determination to the Town Clerk, who shall certify such charges to the office of the treasurer of the county, as provided above.
6. The Town Clerk may delegate to employees of the Town of Wiggins any of the functions this section vests in the Town Clerk.

- H. Assessments against property for abatement costs under this section shall not apply to the town's expenses where other parts of this Code expressly provide specific alternate processes for assessment or collection of those abatement costs.

- I. In addition to the penal remedy and abatement procedure stated in this section, any violation of this article is a public nuisance, for which there is no adequate remedy at law, and therefore any court of competent jurisdiction shall, upon the town attorney's proven application, enjoin a nuisance, as defined in this Article 8. Nothing in this Article 8 shall prevent the town attorney from seeking other appropriate legal or equitable relief from any court of competent jurisdiction. In addition, the owner of any property constituting a nuisance shall be liable to the town, jointly and severally with every person creating or maintaining the nuisance, for the town's reasonable expense of abating the nuisance and the town attorney may commence and prosecute to final judgment an action at law in any court of competent jurisdiction to collect those expenses. As used in this section, court of competent jurisdiction includes, without limitation, the Wiggins municipal court, which, insofar as practicable, shall consider and determine applications for legal or equitable relief according to the procedures otherwise applicable to proceedings in Colorado district courts.

8-1-5 EMERGENCY ABATEMENT.

- A. Whenever an authorized officer finds that a nuisance exists under this Article that places the public health, or safety or welfare in immediate danger, the officer may issue an emergency correction order, which shall comply with section 8-1-4, except that the emergency correction order shall:
 - 1. Allow a time less than 14 days, as is reasonable in the circumstances, to abate the nuisance;
 - 2. State that, if the nuisance remains unabated at the end of the reasonable time given, the authorized officer will cause abatement of the nuisance according to section 8-1-4.E; and
 - 3. State that, due to the emergency need for abatement, a timely appeal, according to section 8-1-4.G, may be heard after abatement.

- B. Timely filing of an appeal from the emergency correction order shall not extend the time for abatement.

- C. If the nuisance remains unabated at the end of the reasonable time given, the authorized officer shall cause abatement of the nuisance according to section 8-1-4.E.

- D. If the hearing officer, upon a timely and proper appeal, finds the correction order justified, but the time given for correction unreasonably short, in the circumstances, it may determine the amount the appellant would have reasonably incurred to abate the nuisance himself, if given a reasonable time, and that amount shall be the most the authorized officer shall certify and the most the town shall recover, as a charge and lien against the property.
- E. If the hearing officer, upon a timely and proper appeal, finds the correction order unjustified, the authorized officer shall not certify and the town shall not recover abatement costs as a charge or lien against the property, and the town shall pay to the owner the reasonable amount of any damages caused by the town's abatement under the unjustified correction order, but not more than the fair market value of the property before the town's abatement activities.

8-1-6 INSPECTIONS

- A. **Entry.** Whenever necessary to make an inspection to enforce any provision of this Article, or whenever there is probable cause to believe that there exists a violation of this Article in any building or upon any premises within the jurisdiction of the Town, any public inspector of the Town may, upon presentation of proper credentials and upon obtaining permission of the occupant or if unoccupied, the owner, enter such building or premises at all reasonable times to inspect the same or to perform any duty imposed upon him or her by ordinance. In the event the occupant, or if unoccupied, the owner, refuses entry to such building or premises, or the public inspector is unable to obtain permission of such occupant or owner to enter such building or premises, the public inspector is empowered to seek assistance from any court of competent jurisdiction in obtaining such entry.
- B. **Authority to enter premises under emergency.** Law enforcement officers certified with the State, members of the Fire Department, other fire departments operating under a mutual assistance agreement or automatic aid agreement with the Town, certified emergency medical technicians and paramedics during the course of employment with a governmental agency are hereby granted the authority to enter private residences within the Town without invitation from the occupant of the residence at any time such person has reasonable grounds to believe a medical emergency is in progress within the subject premises and the occupant of such premises is incapable of consenting to the entry because of such medical emergency.