

CHAPTER 10

NUISANCE ABATEMENT

- Sec. 10-1. Definitions
- Sec. 10-2. Nuisance Complaint & Investigation
- Sec. 10-3. Summary Abatement
- Sec. 10-4. Abatement in Other Cases; Notice, etc.
- Sec. 10-5. Abatement by Owner
- Sec. 10-6. Appeal Procedures; Hearing
- Sec. 10-7. Abatement by Town
- Sec. 10-8. Notice of Assessment; Appeal of Charges
- Sec. 10-9. Personal Liability of Owner
- Sec. 10-10. Cost of Abatement; Low income, Elderly Persons
- Sec. 10-11. Overhead Charge; Civil Penalties
- Sec. 10-12. criminal Penalties
- Sec. 10-13. Severability

Legal references; W.S. § 15-1-103(a)(xix); W.S. § 15-1-103(a)(xli); W.S. § 15-1-114-116.

Sec. 10-1. Definitions.

(a) *Abatement* means the removal, stoppage, prostration, or destruction of that which causes or constitutes a nuisance, whether by breaking or pulling it down, or otherwise destroying, removing, eliminating or effacing it.

(b) *Owner* means the owner of record based on the County Clerk's or County Assessor's record or any person with legal, financial or equitable interest in the property on which the alleged public nuisance exists at the time of the violation.

(c) *Property* means any real or personal property, premises, structure or location on which a public nuisance is alleged to exist.

(d) *Public nuisance* means any fence, wall, shed, deck, house, garage, building structure or any part of any of the aforesaid; or any tree, pole, smokestack, or any excavation, hole, pit, basement, cellar, sidewalk subspace; or any lot, land yard, premises or location which in its entirety, or in any part thereof, by reason of the condition in which the same is found or permitted to be or remain, shall or may endanger the health, safety, life, limb or property, or cause any hurt, harm, inconvenience, annoyance, discomfort, damage or injury to any one or more individualism the Town, in any one or more of the following particulars:

(1) By reason of being a menace, threat and/or hazard to the general health and safety of the community.

(2) By reason of being a fire hazard;

(3) By reason of being unsafe for occupancy, or use on, in, upon, about or around the aforesaid property;

(4) By reason of lack of sufficient or adequate maintenance of the property, and/or being vacant, any of which depreciates the enjoyment and use of the property;

(5) By emitting obnoxious and offensive odors; the tainting of the air rendering it offensive and/or unwholesome so as to affect the health or comfort of persons residing or transacting business in the area thereof;

(6) By piling or throwing or discharging from any house, person or premises and flow from or out of any house or premises, of any filthy, foul or offensive matter or liquid of any kind, into any street, alley or public place, or upon any adjacent lot or ground, shall constitute a public nuisance.

The features of the public nuisances described herein shall not be construed as exclusive, and any act or commission or omission and any condition which constitutes a nuisance by state or federal statute, or common law, or any other federal, state or local law, when committed, omitted or existing within the Town limits, is hereby declared to constitute a public nuisance.

(e) *Summary abatement* means abatement of the nuisance by the Town Council, or a representative, agent or designee of the Town Council, by removal, repair, or other acts without notice to the owner, agent, or occupant of the property except for the notice required by this Ordinance.

(f) *Town* means the Town of Meeteetse, Wyoming.

(g) *Town Council* means the Mayor and current elected councilmen and councilwomen for the Town of Meeteetse, Wyoming municipality organized under the laws of the State of Wyoming.

Sec. 10-2. Nuisance Complaint & Investigation.

(a) Any person may file a written Complaint with the Town Council regarding the existence of a public nuisance. Whenever a complaint is submitted to the Town Council that sufficiently supports the existence of a public nuisance, as defined in Sec. 10-1, the Town Council shall make arrangements for the prompt inspection and investigation of the property on which it is alleged that such public nuisance exists. A written report of the investigation and the findings shall be submitted to the Town Council.

Sec. 10-3. Summary Abatement.

(a) Should the representative, agent or designee of the Town Council, as appointed by the Mayor, find that a public nuisance exists, and that the public health, safety or welfare may be in immediate danger, then summary abatement procedures shall be implemented and the Town Council may cause the nuisance to be immediately removed or abated. The investigator of the alleged public nuisance shall submit a written report of the inspection and the findings to the Town Council as soon as possible after the completion of the investigation. If the nuisance involves a building that is declared structurally unsafe by the Town's building inspector, then a report shall also be submitted by said building inspector with a summary of his/her findings.

(b) When summary abatement is authorized, notice to the owner, agent or occupant of the property is not required. Following summary abatement, the Town Council shall cause to be posted on the property liable for the abatement a notice describing the action taken to abate the nuisance.

Sec. 10-4. Abatement in Other Cases; Notice, etc.

(a) If, after inspecting the property on which the nuisance is reported, the inspector/representative of the Town Council declares the existence of a public nuisance, but the nature thereof is not such as to require the summary abatement of such nuisance, then, regular abatement procedures shall be followed. Reports of the findings and inspections shall be made and filed with the Town Council.

(b) The Town Council shall immediately cause a written notice to be served on the individual, firm, corporation or other entity who appears to be the titled owner of the aforesaid property by personal service or by leaving a copy of the notice at the usual place or residence or business of such owner, or address of such owner shown in the County Clerk's records, or by copy mailed to such owner at such place or address by United States certified mail return receipt. If service of such written notice is unable to be perfected by any of the methods described above, the Town Council shall cause a copy of the aforesaid notice to be published in a newspaper of general circulation in Park County, once a week for two consecutive weeks, and shall further cause a copy of the aforesaid notice to be left with the individual, if any, in possession of such property on which it is alleged such public nuisance exists, or if there is no individual in possession thereof, the Town Council shall cause a copy of the notice to be posted at such structure, location or premises. The Town Council may also determine from the County Clerk's office the identity of any lien holder of the property, if any, as documented therein, and may cause a written notice to be served on such lien holder by United States mail return receipt.

(c) The aforesaid notice to the owner, and lien holder, if any, of the property shall state clearly and concisely the findings of the Town Council with respect to the existence of a public nuisance. The notice/order shall further state that unless the owner thereof shall cause the abatement of the public nuisance, pursuant to the orders contained in the Town Council's notice, the public nuisance shall be abated by the Town Council at the expense of the owner.

(d) Any person who is the record owner of the premises, location or structure at the time an order pursuant to this Ordinance is issued and served upon said owner, shall be responsible for complying with that order, and liable for any costs incurred by the Town therewith, notwithstanding the fact owner conveys owner's interests in the property to another after such order was issued and served.

(e) It shall not be a defense to the determination that a public nuisance exists that the property is boarded up or otherwise enclosed.

Sec. 10-5. Abatement by Owner.

(a) Within fifteen (15) days after the posting and mailing of a notice to abate a nuisance, the owner, agent of the owner, or individual in possession of the affected property shall remove and abate such nuisance or show that no nuisance in fact exists. Such showing shall be made by filing a written statement that no nuisance exists. The statement shall be filed with the Town Council at the Town of Meeteetse, Town Hall, P.O. Box 38, Meeteetse, Wyoming 82433.

(b) The Town Council, upon written application by the owner within the fifteen (15) day period after the notice has been served, may grant additional time for the owner to affect the abatement of the public nuisance, provided that such extension is limited to a specific time period.

Sec. 10-6. Appeal Procedures; Hearings.

(a) The owner or occupant of the property who has been served with a notice pursuant to this ordinance that a public nuisance exists and that it must be abated within fifteen (15) days, may, within seven (7) calendar days after receipt of such notice, make a written demand to the Town Council for a hearing on the request of whether a public nuisance in fact exists. The hearing shall be held within seven (7) calendar days following receipt by Town Council of the written demand and at least two (2) day's notice of the hearing shall be given to the individual who made the written demand for the hearing.

(b) The hearing shall be conducted by the Town Council. The Town Council may amend or modify the notice and/or order, or extend the item for compliance with the abatement order by the owner by such date as the majority of the Town Council may determine.

(c) The owner, agent of the owner, occupant and lien holder, if any, of the subject property shall be given the opportunity to present evidence to the Town Council in the course of the hearing.

(d) In those instances where the nuisance has been abated by the Town Council, the Town Council shall have discretion to waive the costs of abating a nuisance, in whole or in part, if, in the course of hearing reviewing the decision, the Town Council finds that any of the following did not conform the provisions of the Ordinance:

- (1) The notice to remove the nuisance;
- (2) The work performed in abating the nuisance; or
- (3) The computation of charges.

Sec. 10-7. Abatement by Town.

(a) Should any public nuisance not be abated at the expiration of time stated in the notice/order or within such additional time as the Town Council may grant, the Town Council, with the assistance of local law enforcement, if necessary, shall have the authority to enter upon the property and abate the public nuisance found thereon. In abating such nuisance, the Town Council may go to whatever extent may be necessary to complete the abatement of the public nuisance and should it be practicable to salvage any material derived in the aforesaid abatement, Town Council may sell the salvaged material at private or public sale at the best price obtainable and shall keep an accounting of the proceeds thereof.

(b) The proceeds, if any, obtained from the sale of any material salvaged as a result of an abatement of a public nuisance by the Town Council shall be deposited to the General Fund of the Town and any deficit between the amount so received and the costs of the abatement may be levied as an assessment against the property in question by the Town Council and collected as any other assessment by the Town; however, any other alternative collection method may be utilized by the Town to recoup the deficit. Should the proceeds of the sale of such salvaged material exceed the cost of abatement, the surplus, if any, shall be paid to the owner of the property from which the public nuisance was abated when a property claim to the excess is established.

(c) In abating a public nuisance, the Town Council may call upon any law enforcement person or other necessary or helpful individuals to provide whatever expertise or assistance that shall be deemed necessary or may by private contract, at owner's expense, cause the abatement of the public nuisance.

(d) The Town Council shall, after completing the removal and abatement, prepare a statement of costs involved with the abatement.

Sec. 10-8. Notice of Assessment; Appeal of Charges.

(a) Upon completion of the statement of costs from the Town Council, the Town Clerk or Treasurer shall mail to the owner of the property upon which the public nuisance has been abated notice of the amounts set forth in the statement plus an additional amount sufficient to defray the costs of the notice and stating that the Town proposes to assess against the property the amount set forth in the notice and that objections to the proposed assessment must be made in the amount set forth in the notice and that objections to the proposed assessment must be made in writing and received by the Town Council within twenty (20) days from the date of mailing such notice. Upon the expiration of the twenty (20) day period, if no objections have been received by the Town Council, the Town shall therefore be entitled to have a lien against the real and personal property of the owner for all amounts due and owing including all costs and expenses incurred, including reasonable attorney's fees, for enforcing the lien and recovering the money owed.

(b) If objections of either the property owner or their representative are received by the Town Council prior to the expiration of the twenty (20) day period, the Town Council shall hold a hearing to consider the objection.

(c) Upon conclusion of the hearing, the Town Council shall make a written determination that the amount of the charges shall be canceled, reduced, increased or remain the same. A copy of this determination shall be furnished to the person making the objections together with a notice of such person's right to appeal to Municipal Court within thirty (30) days.

(d) If no appeal of a determination by the Town Council is filed within the time period allowed, a copy of the determination will be furnished to the Town Clerk who shall be entitled to a lien in the amount determined by the Town Council and other remedies as provided in subsection (a).

(e) If a timely appeal is received by the Municipal Court, a hearing shall be scheduled and held on the matter. If, after the hearing, the Municipal Court determines that the proposed assessment does not comply with subsection (g) herein, the Municipal Court shall so certify to the Town Clerk and the proposed assessment shall be canceled. If, after the hearing, it is determined that the proposed assessment or any part of it is properly authorized, the Municipal Court shall so certify to the Town clerk who shall be entitled to a lien in the amount determined by the Town Council and other remedies as provided in subsection (a).

(f) The determination of the Municipal Court is a final administrative decision and is not appealable.

(g) (1) The Town Council, in administrative review, or the Municipal Court, on appeal, may reduce or cancel a proposed assessment if it is determined that:

(i) Any of the following did not conform to the provisions of this

Ordinance:

- (A) The notice to remove the nuisance; or
- (B) The work performed in abating the nuisance; or
- (C) The computation of charges; or

(ii) The owner of the property was eligible for a waiver of costs under Sec. 10-10.

(2) The Town Council, in administrative review, or the Municipal Court, on appeal, may reduce a proposed assessment by eliminating the civil penalty portion of the invoice if it is determined that:

(i) The lien may be canceled or reduced by the Town Council, in administrative review, or the Municipal Court, on appeal, if it is determined that the owner did not receive notice of the proposed assessment, did not previously have knowledge of the lien or of the nuisance abatement work constituting the basis of the line, could not in the exercise of reasonable care of diligence, have had such knowledge, and in addition, that the circumstances are such that a reduction or cancellation of the charges would have been appropriate had the matter been reviewed pursuant to this Section prior to assessment. Upon receipt of a certification from the Town Council, pursuant to subsection, (e), the Town Clerk shall cancel or reduce the lien if required by the determination of the Town Council and/or Municipal Court.

Sec. 10-9. Personal liability of Owner.

The person who is the owner of the property at the time at which the notice required under Sec. 10-4 of this Ordinance is given shall be personally liable for the amount of the assessment including all interest, civil penalties, and other charges.

Sec. 10-10. Cost of Abatement; Low Income, Elderly Persons.

(a) Notwithstanding the other provisions of this Ordinance, the cost of abating a nuisance shall be waived for low income and elderly persons, if upon application it appears to the Town Council that the conditions set forth in subsection (b) are met.

(b) To be eligible for waiver of nuisance abatement costs, a person must:

(1) be classified as “very low income,” for Park County, Wyoming as defined by the Federal Housing and Urban Development, or

(2) must be more than sixty-five (65) years of age and:

(i) be a person living alone, whose total income for the preceding calendar year did not exceed one and one-half (1 1/2) times the maximum amount a Social Security recipient at age 65 may have earned in that year without having any benefits withheld; or

(c) All persons wishing to qualify for waiver of nuisance abatement costs must:

(1) Furnish proof of the age and/or income requirements as set forth above in the manner and form designated by the Town Council;

(2) Must own, or be in the process of purchasing the property from which the nuisance is abated; and

(3) Must be living on the property from which the nuisance is abated.

(d) The removal of the nuisance in question must have been required by the Town Council and the person requesting the waiver of costs must have been officially notified by the Town Council to remove the nuisance.

(e) Applications for waiver of nuisance abatement costs shall be filed with the Town Council within ten (10) days after receipt of a notice to remove a nuisance or a work order notice unless the Town Council extends the time for good cause shown. All information required to be given on such form shall be supplied and verified by the applicant.

(f) The maximum amount that may be waived under this Section for any one parcel or real property or any one person shall be five hundred dollars (\$500) per calendar year.

(g) No overhead charge or civil penalty shall be imposed for any real property for which a waiver, pursuant to this Section, shall have been approved.

Sec. 10-11. Overhead Charge, Civil Penalties.

(a) Whenever a nuisance is abated by the Town, the Town Council shall keep an accurate account of all expenses incurred, including an overhead charge of twenty-five percent (25%) for administration and a civil penalty of two hundred dollars (\$200) for each nuisance abated.

(b) When the Town has abated a nuisance maintained by any owner of real property, for each subsequent nuisance that is abated by the town within two (2) consecutive calendar years concerning real property, owned by the same person, an additional civil penalty of fifty percent (50%), minimum of fifty dollars (\$50), of the cost abatement shall be added to the costs, charges and civil penalties provided for in subsection (a.). The civil penalties shall be imposed without regard to whether the nuisances abated by the Town involve the same real property or are of the same character.

Sec. 10-12. Criminal Penalties.

(a) Whenever a nuisance has not been abated by the owner as required under Sec. 10-5 or 10-6 or by the Town pursuant to Sec. 10-7, the owner may be cited by law enforcement and upon conviction for failing to timely abate a nuisance, owner shall be deemed guilty of a misdemeanor and subject to a fine of up to seven hundred fifty dollars (\$750).

Sec. 10-13. Severability.

If any section, subsection, sentence, clause, phrase or portion of the Ordinances is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, such decisions shall not affect the validity of the remaining portions of this ordinance. The Town Council declares that it would have adopted this Ordinance and each

section, subsection, sentence, clause, phrase, or portion thereof, despite the fact that any one or more section, subsection, sentence, clause, phrase, or portion would be declared invalid or unconstitutional.