

ORDINANCE NO. 277

AN ORDINANCE PROHIBITING NUISANCES WITHIN THE TOWN OF RICO, PROVIDING MEANS FOR ABATING SAME, AND PROVIDING PENALTIES FOR VIOLATION THEREOF.

SECTION 1 - DEFINITIONS.

As used in this Ordinance, the following terms shall have the meanings indicated:

INOPERABLE VEHICLE - Any automobile, truck or self-propelled vehicle incapable of moving under its own power and which lacks a valid current license plate 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.

SECTION 2 - NUISANCES PROHIBITED.

No person being the owner, agent or occupant or having under his control any building, lot or premise or unimproved real estate within the town limits of the Town of Rico, Colorado, shall maintain or allow any nuisance to be or remain therein.

SECTION 3 - AUTHORITY OF TOWN TO DECLARE NUISANCES.

Any act, condition, substance, occupation or use of property which substantially meets the criteria of a nuisance as defined in Section 1 above may be so declared by the Board of Trustees, and nothing in Section 4 below shall be construed to limit the power of the town to make such declaration.

SECTION 4 - NUISANCES DECLARED.

A. Unwholesome business. Offensive or unwholesome businesses or establishments are prohibited. From and after the effective date of this ordinance, it shall be unlawful for any

person of any kind to allow or suffer upon his premises or any premises which he is entitled to possess any offensive or unwholesome business or establishment within the town, or within one (1) mile beyond the outer limits of the town as such outer limits are now, or may be hereafter, constituted. Any slaughterhouse or other place for slaughtering animals within this town is therefore declared to be a nuisance.

B. 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 or abandoned automobiles, trucks, tractors, trailers, boats and house trailers or machinery of any kind, or of any of the parts thereof, or for the storing or leaving of any kind, or of 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, are hereby declared to be nuisances.

C. Discharge of noxious liquids. The discharge out of or from any house or place of foul or noxious liquid or substance of any kind whatsoever into or upon any adjacent ground or lot or into any street, alley or public place in the town is hereby declared a nuisance.

D. Stale matter. The accumulation of any stale, putrid or stinking fat or grease or other matter is hereby declared to be a nuisance.

E. 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, are hereby declared to be nuisances.

F. Dead animals; removal. The body of any animal which has died and which is undisposed of after twenty-four (24) hours after death is hereby declared to be a nuisance.

G. Stagnant ponds. Any cellar, vault, drain, sewer, pond of water or other place in this town that shall be noxious or offensive to others, or injurious to public health, through an accumulation or deposit of noxious, 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 ordinances or any other ordinances of the town.

H. Open wells, cisterns or excavations. It is hereby declared that permanent excavations exceeding five (5) feet in depth, cisterns and wells or any 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 of Rico, whenever a chemical analysis or other proper test or the locations 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.

I. Noise making devices to attract children. The use of bells, whistles, sirens, music, horns or any other noise making 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 purposes 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.

J. Handbills, posters and placards. Any handbill, poster, placard or painted or printed matter which shall be stuck, posted or pasted upon any public or private house, store or other building or upon any fence, power pole, telephone pole or other structure without the permission of the owner, agent or occupant of the house shall be deemed a nuisance.

K. Unused appliances. Any unused refrigerator, washer, dryer, freezer or other appliance within any accessible yard or lot or carport or residential garage within the limits of the Town of Rico without the door of the same being removed is hereby declared a nuisance.

L. 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.

M. Transporting of garbage or manure. The transport of manure, garbage, swill or offal upon any street in this town in a vehicle so as to allow such filth to be scattered or thrown into such street is hereby declared a nuisance.

N. Removal of inoperable or abandoned vehicle. Any inoperable and abandoned vehicle, or any abandoned vehicle, parked out of doors on any lot or piece of ground in the Town of Rico not removed from the town within thirty (30) days after the expiration of its registration, as determined by examining the license plate on the exterior of the vehicle, is a nuisance.

O. Barking, yelping, howling or mewling by dogs or cats.

Any dog or cat which, by loud or frequent or habitual barking, yelping, howling or mewling, causes a serious annoyance to the neighborhood or to persons passing to and fro upon the streets or sidewalks is hereby declared a nuisance.

P. Accumulation of garbage, refuse, etc. Any accumulation of refuse, trash or other waste or discarded material outside of a designated landfill, including discarded building and construction materials, that endangers the public health and safety is hereby declared to be a nuisance.

Q. Smoke and odor from burning. Any smoke and odor resulting from the burning of refuse, trash or other materials outside of a solid fuel burning device, including but not limited to those material outlined in Subsection P above, is hereby declared to be a nuisance.

R. Accumulation of manure. The accumulation of manure or other animal waste in quantities which endanger or tend to endanger the public health and safety is hereby declared a nuisance. 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

SECTION 5 - COMPLAINTS.

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

SECTION 6 - INSPECTIONS; RIGHT OF ENTRY; EMERGENCIES.

A. Whenever necessary to make an inspection to enforce any of the provisions of this chapter, or whenever an authorized representative of the town shall have reasonable cause to believe that there exists in any building or upon any premises any conditions which constitutes a nuisance hereunder, the Town Clerk, Mayor, Marshal or police officer 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, state the nature of the complaint, and request 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, state the nature of the complaint, and request 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) hour written notice of intention to inspect. The notice given to the owner 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 that such entry is refused, inspection may be made only upon issuance of a search warrant by the Municipal Judge of the Town of Rico or a judge of any other court having jurisdiction.

B. After the expiration of said twenty-four (24) hour period from the giving or leaving of notice, the Town Clerk, Mayor, Marshal or police officer, or any of them, or their authorized representative, may appear before the Municipal Judge of the Municipal Court of the Town of Rico 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 person may enter into said building or go upon said premises using such reasonable force as may be necessary to gain entry.

C. For the purpose of the above Subsection B, a determination of probable cause will be based upon reasonableness, and if a valid public interest justified 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 on 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.

D. Whenever an emergency situation exists in relation to the enforcement of any of the provisions of this ordinance, the Town Clerk, Mayor, Marshal or police officer, or the authorized representative of any of them, upon a presentation of proper credentials or identification and upon stating the nature of the complaint 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 into any building or go upon any premises within the jurisdiction of the Town of Rico. 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.

E. For purpose of the above Subsection D, 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 or occupant of said building or premises to resist reasonable force used by the authorized official acting pursuant to this subsection.

SECTION 7 - ABATEMENT OF NUISANCES; 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 Mayor and Town Marshal are hereby authorized, in their discretion, to cause the same to be summarily 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. Upon authorization of the Mayor, Town Clerk or Marshal, 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 Mayor, Town Clerk, Marshal, police officer or Fire Marshal or their designated representative.

C. In the case of any nuisance not requiring summary abatement, it shall be the duty of the Town Clerk or Marshal 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. In causing notice to be served, the Mayor, Town Clerk or Marshal may authorize town officials, inspectors or any other appropriate town employee to issue notice of abatement. 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 owner or occupant of the premises upon which said nuisance exists or, if not occupied, then by the posting of 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 Dolores County, Colorado, at the address of such owner as therein shown.

D. If, after notification, a nuisance is not voluntarily abated, the following procedures shall apply:

(1) If the person notified in accordance with Subsection C 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 this ordinance, and the Mayor, Town Clerk, Marshal and Town Attorney, or their authorized agent, 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 is unknown or cannot be found, the Town Clerk 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 owner of the property upon which said nuisance existed.

(2) When any owner has responsibility for a nuisance and such nuisance shall exist and said owner fails to abate the same after the giving of such notice as provided for in this ordinance, within the time limited therein, or as extended, then the Town Attorney is authorized to 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 the costs, attorney fees and expenses of abatement.

(3) Upon a judicial determination that a nuisance exists, the Mayor or Town Marshal may be authorized to abate said nuisance or cause the same to be abated, employing such force 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 or Town Marshal as may be required for the abatement of such nuisance and in connection with the enforcement thereof.

(4) Any officer or employees of the Town of Rico 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.

SECTION 8 - RESPONSIBILITY FOR COSTS OF ABATEMENT; COLLECTION; FAILURE TO PAY.

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, which costs and expenses may be collected by the town in any action at law, referred for collection in connection with an action to abate a nuisance or assessed against the property as hereinafter provided.

B. The notice required by this ordinance shall, in addition to other requirements herein, 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 ordinance, referring to this chapter, 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 Dolores 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 Treasurer may thereafter certify to the Town Clerk the legal description of the property upon which such work was done, together with the name and the owner thereof as shown by the tax rolls of Dolores County, Colorado, together with a statement of the work performed, the date of performance and the costs thereof.

D. Upon receipt of such a statement from the Town Treasurer, 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 first-class mail, postage prepaid, 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 (as certified by the Board of Trustees, 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 for costs of collection, including a reasonable attorney fee, and the above mentioned assessments will be collected in the same manner as a real estate tax upon the property.

E. If the Clerk shall not receive payments within the period of thirty (30) days following the mailing of such notice, the Clerk shall inform the Board of Trustees of such fact, and the Board shall thereupon enact an ordinance assessing the whole cost of such work, including a charge of five-percent (5%) of said whole cost for inspection and other incidental costs in connection therewith upon the lots and tracts of land upon which the nuisance was abated, together with a charge of ten percent (10%) of said whole costs for costs of collection.

F. Following the passage of such ordinance, the Clerk shall certify the same to the County Treasurer, who shall collect the assessment, including the ten-percent (10%) charge for costs of collection, in the same manner as other taxes are collected.

G. Each such assessment shall be a lien against each lot of tract of land until paid and shall have priority over other liens except general taxes and prior special assessments.

SECTION 9 - 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 ordinance in the Municipal Court of the Town of Rico, 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 ordinance shall serve 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 10 - VIOLATION AND PENALTIES.

A. Whenever in any section of this ordinance, the doing of any act is required, prohibited or declared to be unlawful, any person, firm or corporation who shall be convicted of a violation of any such section shall be subject to a \$300.00 fine or 90 days in the contract jail of the Town or both such fine and imprisonment. Unless otherwise indicated, each day or portion thereof in violation of this Ordinance shall constitute a separate offense.

B. The Town may, in its discretion, also proceed against any violation or violations of this Ordinance by any person, partnership, corporation or other entity, in a civil action for abatement, injunction, damages, specific performance or by a lien foreclosure or through other equitable remedies, and these remedies shall be in addition to the criminal penalties provided in this section.

SECTION 11 - SEVERABILITY.

This ordinance is hereby declared to be severable, and in the event any section hereof is declared unconstitutional, it

shall not effect the validity of any other section or sections.

SECTION 12 - EFFECTIVE DATE.

The provisions of this ordinance shall be in effect on the 8th day of March 1988 and thereafter until repealed.

READ, PASSED, APPROVED AND ADOPTED by the Board of Trustees of the Town of Rico, Colorado, this 8th day of March 1988.

ATTEST:

TOWN OF RICO:

Linda Yellowman
Town Clerk

M.G. Maxwell
Mayor