

**ORDINANCE NO. 2015-08**

**AN ORDINANCE AMENDING CHAPTER 7.04 OF THE CODE OF ORDINANCES OF THE TOWN OF TERRY, MONTANA**

**WHEREAS**, pursuant to Mont. Code Ann. § 7-5-4104 the Town Council has the power to define and abate nuisances and impose fines upon persons guilty of creating, continuing, or suffering a nuisance to exist on the premises that they occupy or control; and

**WHEREAS**, the Town Council has determined that it is necessary to amend Chapter 7.04 pertaining to nuisances to better define and abate nuisances and impose fines upon persons guilty of creating, continuing, or suffering a nuisance to exist on the premises that they occupy or control.

**NOW THEREFORE BE IT RESOLVED BY THE TOWN COUNCIL FOR THE TOWN OF TERRY, MONTANA**, that Chapter 7.04 is amended as follows:

**Chapter 7.04: Nuisances**

**Section 7.04.010: Purpose**

- (1) The intent of this Chapter is to provide a comprehensive mechanism for the identification and abatement of public nuisances within the Town.
- (2) The remedies provided for in this Chapter are supplemental and complementary to all of the provisions of this Code, and state and federal law, and nothing herein shall be read, interpreted or construed in any manner to limit any existing right or power of the Town to abate any and all public nuisances.

**Section 7.04.020: Application**

The provisions of this Chapter shall apply to all property throughout the Town wherein any of the conditions hereinafter specified are found to exist; provided, however, that any condition which would constitute a violation of this Chapter but which is duly authorized under any other Town, state or federal law, shall not constitute a violation.

**Section 7.04.030: Responsibility for maintenance**

Every owner, occupant, lessee or holder of any possessory interest of real property within the Town is required to maintain such property so as not to violate the provisions of this Chapter.

**Section 7.04.040: Public nuisance defined**

(1) *Public nuisance* means:

- (a) A condition which endangers safety or health, is offensive to the senses, or obstructs the free use of property so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood or by any considerable number of persons, including but not limited to, the following:

The enumeration, below, shall not be deemed exclusive, but merely illustrative, it being the intent and purpose of this subsection to include as nuisances, all actions or things of the character described in subsection (1)(a), above.

- i. Accumulating, maintaining or storing in public view on any lot or other parcel of land, any abandoned, discarded, or unused furniture, appliances, stoves, sinks, toilets, cabinets, household fixtures or equipment, or junk;
- ii. Accumulating, maintaining or storing in public view on any lot or other parcel of land, any junk vehicle, component part of a motor vehicle, or any abandoned, wrecked, dismantled, or inoperative vehicles, trailers, campers, boats or other water craft. Any person possessing one or more junk vehicles, regardless of ownership, shall shield the vehicles from public view or remove the vehicles to a licensed motor vehicle wrecking facility or to a licensed motor vehicle graveyard, as defined by MCA § 75-10-501;
- iii. Dumping, piling, or stacking of bricks, concrete blocks, waste wood and similar material on any lot or other parcel of land, unless said material is stacked in neat piles and all waste materials from the cleaning of such items, such as mortar, wood splinters, broken and unusable bricks, are removed;

- iv. Accumulating, maintaining or storing of a significant amount of cardboard boxes, broken packing boxes, paper, or other similar items on any lot or other parcel of land;
- v. Piling, dumping or depositing of any dirt, demolition wastes including wood, bricks, concrete, used road blacktop and other similar materials on any lot or other parcel of land, unless such material is to be utilized for fill material to fill a land depression, and provided that, if such material is used as fill material, all such material is completely covered with clean fill material once every ten (10) days and the fill area is adequately fenced to restrict access to the area; and further provided that the failure to comply with the periodic cover and access control requirements shall constitute a violation of this Chapter. The storage by a governmental entity of used road blacktop, cold mix, gravel and other similar materials for road maintenance and repair is expressly permitted;
- vi. Maintaining or accumulating on any lot or other parcel of land, garbage, refuse, decaying vegetation, animal bedding, waste or feces, cesspool, water holes, unsealed water tanks, stagnant water, or any other condition which is or may reasonably become infested or inhabited by rodents, reptiles, vermin or wild animals or may furnish a breeding place for mosquitoes or flies;
- vii. Maintaining, or causing or permitting the same on any lot or other parcel of land, any building or premises which is determined to be dangerous or dilapidated. Any building or structure which has any or all of the conditions or defects hereinafter described shall be deemed to be a dangerous or dilapidated building, if such conditions or defects exist to the extent that the life, health, property, value of property or safety of the occupants or the public are jeopardized:
  - a. Broken or missing window or windows which have remained in such condition for a period exceeding thirty (30) days;
  - b. Broken or missing exterior door or doors which have remained in such condition for a period exceeding thirty (30) days;
  - c. Holes in the roof or exterior walls, other than normal construction, which have remained in such condition for a period exceeding thirty (30) days;

- d. Fire or other casualty damage in public view which remains unrepaired for a period exceeding six months;

A building which is undergoing construction or remodeling for which a valid building permit has been issued by the Town shall not be deemed in violation of this subsection so long as work thereon is prosecuted with reasonable diligence and so long as the building permit has not expired.

- (b) Any premises where persons gather for the purpose of engaging in unlawful conduct;

- (c) A condition which renders dangerous for passage any public highway or right-of-way or waters used by the public.

(2) A person commits the offense of maintaining a public nuisance if such person knowingly creates conducts or maintains a public nuisance. The owner of a parcel of property and the occupant, lessee or holder of the parcel of property is jointly and severally liable for any violation of this Section. There is a rebuttable presumption that the person named as owner of the property on the current assessment list of the state department of revenue is the owner of the property for purposes of this Chapter.

(3) Any act which affects an entire community or neighborhood or any considerable number of persons (as specified in subsection (1)(a) of this Section) is no less a nuisance because the extent of the annoyance or damage inflicted upon individuals is unequal.

**Section 7.04.050: Enforcement**

Local law enforcement shall have the primary responsibility for the abatement of a public nuisance under this Chapter.

**Section 7.04.060: Penalty for violation of Chapter**

(1) Unless otherwise specified by the provisions of this Chapter, any person who violates the provisions of this Chapter shall be deemed guilty of creating and maintaining a public nuisance, and upon conviction thereof shall be punishable by a fine for the first offense of not less than \$100.00 and not more than \$500.00 or by imprisonment for a term not to exceed six (6) months, or both. The second offense shall be punishable by a fine of not less than \$300.00 and not more than \$500.00 or by imprisonment for a term not to exceed

six (6) months, or both. A third or subsequent offense shall be punishable by a fine of \$500.00 or by imprisonment for a term not to exceed six (6) months, or both.

(2) Each day of failure to comply with the provisions of this Chapter shall constitute a separate offense.

**Section 7.04.070: Severability**

If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The Town Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, phrase, and words thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or words have been declared invalid or unconstitutional, and if for any reason any provisions of this ordinance should be declared invalid or unconstitutional, then the remaining ordinance provision will be in full force and effect.

**DATE OF EFFECT:**

This ordinance shall take effect thirty (30) days from the date of its final passage by the Town Council.

**FIRST READING AND PASSAGE** by a majority vote of the members present this \_\_\_\_\_ day of \_\_\_\_\_, 2015

YEAS \_\_\_\_\_

NAYS \_\_\_\_\_

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Town Clerk

**POSTED IN THREE (3) PUBLIC PLACES AND MADE AVAILABLE TO THE PUBLIC** this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Town Clerk

**SECOND READING AND PASSAGE** by a majority vote of the members present this \_\_\_\_\_ day of \_\_\_\_\_, 2015

YEAS \_\_\_\_\_

NAYS \_\_\_\_\_

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Town Clerk