

Town of Haxtun
ORDINANCE NO. 2019-4

AN ORDINANCE AMENDING CHAPTERS 8.04 AND 8.24 OF THE HAXTUN MUNICIPAL CODE CONCERNING NUISANCES AND JUNK

WHEREAS, pursuant to C.R.S. § 31-15-401, the Town of Haxtun is authorized to declare what is a nuisance, abate the same, and impose fines upon parties who may create or continue nuisances or suffer nuisances to exist; and

WHEREAS, in Ordinance No. 2011-3, the Board of Trustees merged Chapter 8.04 (Nuisances) and Chapter 8.24 (Junk) of the Haxtun Municipal Code into a comprehensive Chapter 8.04 prohibiting nuisances, providing for abatement of the same, and imposing fines and other penalties for violations of the same; and

WHEREAS, the Board of Trustees desires to amend Chapter 8.04 (Nuisances) by adopting definitional changes, removing a penalty (imprisonment), and making other updates.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF HAXTUN, COLORADO:

Section 1. Chapter 8.04 (Nuisances) of the Haxtun Municipal Code is hereby repealed in its entirety and replaced with a new Chapter 8.04 to read as follows:

Chapter 8.04
Nuisances

Sections

8.04.010	Definitions.
8.04.020	Nuisances prohibited.
8.04.030	Specific nuisances declared.
8.04.040	Abatement.
8.04.050	Emergency abatement.
8.04.060	Recovery of expenses; assessment policy.
8.04.070	Authority to enter on property.
8.04.080	Effect of any zoning on other ordinances.
8.04.090	Penalties for violation; continuing violations.

8.04.010. Definitions.

In the interpretation of the definitions set forth in this section, it is the express intent of the Board of Trustees that such definitions be liberally construed to include like matters, materials, objects, or substances, whether or not the same are specifically identified. It is further the expressed legislative intent of the Board of Trustees that the definitions not be considered mutually exclusive, and that, in the interpretation of such definitions, it is recognized that any substance, material or object may constitute litter, trash, garbage and junk at the same time. Liberal construction of definitions is deemed necessary by the Board of Trustees in order to

fulfill the public purpose of this Chapter, which is to ensure that The town is maintained in a clean, healthy and attractive condition by eliminating all nuisances, including but not limited to, the outside storage of garbage, trash, junk and related matters, objects or materials as set forth in this Chapter. The following words, terms, and phrases, when used in this Chapter, shall have the meanings ascribed to them in this Chapter, except where the context clearly indicates a different meaning:

A. “Abandoned vehicle” means any motor vehicle that is:

(1) Left unattended on private property for a period of twenty-four (24) hours or longer without the consent of the owner, occupant, or tenant of such property or his legally authorized agent;

(2) Left unattended on public property, including any portion of a street or highway right-of-way, within the limits of the Town for a period of twenty-four (24) hours or longer, unless the owner or driver has conspicuously affixed thereto a dated notice, or otherwise notified the Town of his intention to remove such vehicle within seventy-two (72) hours, or the vehicle is parked on a public street within fifty (50) feet of the property of the owner; or

(3) Any motor vehicle determined to be lost, stolen, or unclaimed.

B. “Brush” means woody shrubs not part of a planned and maintained landscape of either a highly structured, manicured type or a natural appearance.

C. “Garbage” means wastes resulting from the handling, preparation, cooking, or consumption of food and wastes from the handling, storage, or sale of produce.

D. “Graffiti” means the defacing of public or private property by means of painting, drawing, writing, etching, or carving with paint, spray paint, ink, knife, or any other similar method.

E. “Hobby” means the repairing, reconditioning, or rebuilding of all vehicles that is done for personal enjoyment or entertainment only, with no profits, compensation, or reimbursements of any kind involved.

F. “Junk” means scrap brass, scrap copper, scrap iron, scrap lead, scrap zinc and all other scrap metals and alloys, bones, rags, used cloth, used rope, used rubber, used tinfoil, used bottles, old or used machinery of any type, used tools, used appliances, used fixtures, used utensils, used lumber, used boxes or crates (fabricated of any material), used pipe or pipe fittings, used conduit or conduit fittings, used tires and other manufactured goods that are so worn, deteriorated, or obsolete as to make them unusable in their existing condition. This does not include items which are placed into the yard and used in a manner as to enhance the features of the yard.

G. “Junked vehicle” means any nonoperating vehicle or any dismantled, partially dismantled, discarded, wrecked, demolished or partially demolished vehicle.

H. “Nonoperating vehicle” means any vehicle that is not capable of traveling under its own power or trailers not capable of being towed or pulled in its existing mechanical condition, or any vehicle not bearing a valid current registration license plate unless specifically excluded by the State of Colorado to require registration.

I. “Litter” means and includes any manmade or man-used waste that, if deposited within the Town other than in a litter receptacle, tends to create a danger to public health, safety, and welfare or to impair the environment of the people of the Town. “Litter” includes any garbage, trash, refuse, confetti, debris, rubbish, grass clippings or other lawn or garden waste, newspaper, magazine, glass, metal, plastic or paper container, used construction materials, motor vehicles or parts thereof, furniture, appliances such as refrigerators, freezers, ranges, stoves, washers, and dryers, carcass of a dead animal, nauseous or offensive (as related to the senses of a person of ordinary intelligence, sensibility and reasonableness within the community) matter of any kind, or any object that does or may tend to injure any person or create a traffic hazard.

J. “Person” means the owner of, or resident of, any parcel of property, as well as any member of the household residing therein.

K. “Public nuisance” or “nuisance” means a thing, act, failure to act, occupation, activity, condition or use of property which:

- (1) Annoys, injures, or endangers the safety, health, comfort or repose of persons;
- (2) Offends the public decency;
- (3) Interferes with, obstructs or tends to obstruct or render dangerous for passage any waterway, canal or other body of water or a public park, street, alley or other public way;
- (4) In any way renders persons insecure in life or use of property; or
- (5) Otherwise constitutes or is known or declared a public nuisance by virtue of common law, state statutes, or ordinances of the Town.

L. “Street or highway” means the entire width between the boundary lines of every right-of-way publicly maintained where any part thereof is open to the use of the public for purposes of vehicular travel.

M. “Trash” means combustible refuse, including but not limited to paper, cartons, boxes, barrels, wood (except stacked firewood and stacked construction materials), tree branches, yard trimmings, dead plant material, wood or upholstered furniture or bedding, or similar substance or material, noncombustible refuse including but not limited to metals, tin, or

aluminum cans, metal furniture, dirt, rock, pieces of concrete, glass, crockery, or other minerals or mineral wastes, street rubbish including but not limited to street sweepings, dirt, leaves, catch bag dirt, and contents of litter receptacles; provided, however, that “trash” does not include earth and waste from building construction during the period in which a valid building permit issued by the Town is active.

N. “Vehicle” means a machine propelled by power other than human power, designed to travel along the ground or water by use of wheels, treads, runners, or slides to transport persons or property or pull machinery and includes, without limitation, automobile, airplane, truck, trailer, motorcycle, motor scooter, tractor, buggy, wagon, water craft and recreational vehicles.

O. “Weeds” means any unsightly, useless, troublesome, or injurious plants, grass, brush, or other noxious vegetation and includes, but is not limited to, all noxious weeds designated in the Colorado Noxious Weed Act in C.R.S. § 35-5.5-101, *et seq.*, as may be from time to time amended. “Weeds” shall also include all rank vegetable growth, to include flower gardens, shrubbery, vegetable garden, and small grain plots that may conceal filthy deposits of rubbish, trash, garbage, junk, or litter or that may conceal any health hazards or unsafe conditions.

P. “Recycling” means the act of processing used or abandoned materials (beyond its intended use) for use in creating new products.

Q. “Commercial or Business” means and includes all kinds of vocations, occupations, home occupations, professions, enterprises and establishments, any of which are conducted on any premises or are otherwise carried on within the town or anywhere else within its jurisdiction.

8.04.020. Nuisances prohibited.

A. It is unlawful for any person to own, occupy, or have under his control any property, building, lot, or premises with any nuisance located thereon. It is unlawful and an offense for any person to:

- (1) Do any act constituting a nuisance;
- (2) Knowingly fail to act where such failure causes or continues a nuisance;
- (3) Permit any activity or condition constituting a nuisance; or
- (4) Aid or abet in the creation or maintenance of a nuisance.

B. The prohibitions of this Section shall apply only to persons in a position to avoid, prevent, or discontinue a nuisance.

C. The prohibitions of this Section shall not apply to items specifically used in the course of normal commercial business activity as described by this ordinance.

8.04.030. Specific nuisances declared.

The following are declared to be public nuisances except that this Section 8.04.030 shall not be construed to limit or exclude in any way any thing, act, failure to act, occupation, activity, condition or use of property which constitutes a nuisance as provided in Section 8.04.010.K:

A. Unclean or Defective Drain, Ditch, Garbage Box. Any unclean, foul, unsafe, unhealthy, dangerous, defective, or filthy drain, ditch, tank, or gutter, or any leaking or broken sloop, garbage, or manure box or receptacle of like character shall be deemed a nuisance.

B. Accumulation of Manure. Any accumulation of manure on property where animals are kept, unless the premises are kept clean and the manure kept in a box or vault that is screened from flies and emptied at least once a week, shall be deemed a nuisance.

C. Pond or Pool. Any pond, pool, stream, ditch, or deposit of water or other liquid or viscous body that is unsafe, dangerous, or detrimental to the public health or safety, or unwholesome or offensive in odor, shall be deemed a nuisance.

D. Dense Smoke, Noxious Fumes, Gas, Soot, or Cinders. The creation of dense smoke, noxious fumes or odors, gas, soot, or cinders in such quantities as to render the same objectionable to the public or harmful to people or property shall be deemed a nuisance; provided, however, this shall not apply to fireplaces, wood stoves, or barbeque facilities.

E. Dangerous or Dilapidated Buildings and Structures. Any building or structure which is so decayed, broken down, disintegrated, dilapidated or poorly constructed as to constitute a fire hazard or other health or safety hazard to persons or property shall be unlawful.

F. Fences and Walls. It shall be unlawful to fail to maintain fences and walls so that they are structurally sound and in good repair or to permit broken, loose, damaged, removed or missing parts (i.e., pickets, slats, posts, wood rails, bricks, panels) on such fence or wall. It is also unlawful to build or use a fence to cover or disguise litter, trash, garbage, or junk as described by this ordinance.

G. Loud and Disturbing Noises. Any continuous or repetitious loud noises which disturb or disrupt the peace and quiet of persons shall be deemed a nuisance. Such noises include, but are not limited to, malfunctioning or excessively noisy mufflers.

H. Litter, Garbage, Trash, and Junk. It is unlawful for any person to:

(1) Permit litter, junk, trash or garbage to accumulate on any property not zoned for such purposes. All litter, junk, trash or garbage shall be stored in a container or

sealed plastic trash bag awaiting prompt pickup and disposal, and the storage area shall be kept free of loose refuse. Any litter, trash, or garbage which by its nature is incapable of being stored in containers or sealed plastic trash bags may be neatly stacked or stored for prompt pickup and disposal. Containers and trash bags shall be secured and placed where they are not susceptible to being spilled by animals or wind or other elements;

(2) Place or to permit to remain anywhere in the Town any garbage or other material subject to decay other than leaves or grass, except in watertight and airtight cans or containers, which neither creates an odor or stench or is accessible to animals. This subsection (2) shall not apply to vegetable materials in any properly layered, actively working compost pile;

(3) Dump or deposit, or to cause to be dumped or deposited, litter, garbage, trash, or junk on the property of another or on property owned by the Town unless such property is clearly marked and designated as a proper dump or receptacle for the deposit of trash, garbage, junk, or litter;

(4) Drive or move any loaded truck or other loaded vehicle within the Town, unless such vehicle is loaded or covered so as to prevent any load, contents, or litter from being blown or deposited upon any street, alley, or other public place;

(5) Operate or cause to be operated on any highway or public way in the Town, any truck or vehicle transporting garbage, trash, or junk unless such vehicle or truck is fitted with a substantial, tight box or other container thereon so that no portion of such garbage, trash, or junk shall be thrown or fall upon the highway or public way;

(6) Display, or cause or allow to be displayed, upon the property any nuisance, as defined in this ordinance;

(7) Keep or store any construction materials for construction at that location unless such materials are covered;

(8) Store upon his property or to allow to be viewed by the general public, or any member thereof, goods, material, or substances not otherwise or specifically defined or definable as litter, trash, garbage, or junk but which goods, materials, or substances are of a type, kind, quantity or description not commonly associated with the zoning classification or permitted use of the property;

(9) Use any trailer, whether covered or uncovered, to store any litter, garbage, trash and junk upon his property, unless the trailer is used for the purposes of recycling; Recycling trailer must be moved and emptied every 45 days.

(10) Deposit in or on any street, alley, or public place debris, sod, earth, sand, gravel, concrete, or any other construction waste or material.

(11) Notwithstanding the foregoing, the prohibitions in (1) and (6) - (9) above shall not apply if such uses of the property are incidental to and necessary for the carrying out of any business or occupation lawfully being carried on upon the property in question and are permitted in the applicable zoning district.

I. Weeds, Brush, Leaves, and Grass Clippings. It shall be unlawful and is hereby declared a nuisance for any person, corporation or entity owning, occupying or managing any lot, tract or parcel of land within the Town:

(1) To permit weeds, grasses or brush to grow to a height in excess of eight inches upon any lot, tract or parcel owned or occupied by such person;

(2) To store, keep or permit to remain on any lot, tract or parcel owned or occupied by such person trees, limbs or branches of trees, shrubs or plants, whether alive or dead, which are dangerous to health or property;

(3) To fail to remove trees, limbs or branches of trees, shrubs or plants, whether alive or dead, which are dangerous to health or property, together with all litter of all kinds, from any lot, tract or parcel owned or occupied by such person;

(4) Cause or permit to accumulate any grass clippings or leaves anywhere in the Town. This subsection (4) shall not apply to vegetable materials in any properly layered, actively working compost pile, or to a thin layer of grass clippings used as mulch, provided the grass clippings are not able to blow from the property and do not cause an odor that can be detected from any adjacent property;

(5) To permit weeds, grasses or brush to grow to a height in excess of eight inches, to store, keep or permit to remain any trees, limbs or branches of trees, shrubs or plants, whether alive or dead, which are dangerous to health or property, or to fail to remove the same together with all litter of all kinds, upon and from the area from any lot, tract or parcel owned or occupied by such person to the middle of any alley abutting behind or on the side of the lot, tract or parcel, or upon and from the area from any lot, tract or parcel owned or occupied by such person to the street abutting to the front or on the side of the lot, tract or parcel, such area to include but not limited to the curb, gutter and sidewalk.

J. Graffiti.

(1) Upon the discovery of graffiti on public or private property, the Town may send a notice to the owner thereof directing the removal of the graffiti. The notice shall state that the owner may elect to remove the graffiti or to have the graffiti removed by the Town, shall include provisions for the owner to make the election and to defend, indemnify, and hold the Town, its officers, and its employees harmless from any and all liability, claims, and demands resulting therefrom, and shall include such other information as determined appropriate by the Town. For the purpose of this Section 8.04.030.J, "owner" means each person who owns, occupies, or has under the person's control any building, property, lot, or premises.

(2) If the owner does not remove the graffiti within the time allotted in the notice, or if the owner elects to have the graffiti removed by the Town, the Town may proceed to enter the property and remove the graffiti. Recovery of costs for such removal may be pursued in accordance with Section 8.04.060 of the Town Code.

(3) The failure of an owner to remove the graffiti within the time allotted in the notice shall be conclusively deemed to be an election by the owner to have the Town enter the property and remove the graffiti.

(4) Nothing in this Section 8.04.030.J shall create any duty to any person with regard to the enforcement thereof. No person shall have any civil liability remedy against the Town, its officers, employees, or agents for any damages arising out of or in any way connected with the enforcement or non-enforcement of this Section, including but not limited to any acts of omissions of any Town officer, employee, or agent who undertakes any action to enter property and remove graffiti therefrom.

K. Nonoperating, junked or abandoned vehicles.

(1) No person shall abandon any motor vehicle upon public property in the Town.

(2) It is unlawful for any person to own or have under his control any abandoned vehicle. It shall be an affirmative defense to any criminal charge arising under this paragraph that the vehicle was abandoned without the knowledge and consent of the person charged.

(3) It is unlawful for any person to leave any abandoned or junked vehicle on any street or highway within the Town.

(4) It is unlawful for any person who is the owner of any vehicle, or any person who is in charge or control of property, or any tenant, lessee, occupant, renter, or otherwise, to permit or allow any abandoned or junked vehicle to remain on such property for a time period in excess of seventy-two (72) hours, provided that this subsection shall not apply with regard to:

a. A vehicle or parts of a vehicle in a completely enclosed building; or enclosed behind a privacy fence that shields the vehicles from all adjacent properties. Fencing materials must be on the approved list by ordinance for residential and commercial properties.

b. A vehicle on the premises of a business enterprise operated in a lawful place and manner, when necessary to the operation of such business enterprise; or

c. A vehicle in an appropriate storage place or depository maintained for impounded vehicles by the Town or vehicles that are each covered by a fitted, cloth car cover, manufactured for such purpose. Tarps may not be used at any time to cover such vehicles within the Town, and storage of such vehicles is limited to three (3) on any single property.

(5) Vehicle hobby repair. It is unlawful for any person to repair, recondition, rebuild, or work on any motor vehicle as a hobby unless such hobby is conducted in and totally contained within a residential or commercial garage, or enclosed behind a privacy fence that shield the vehicles from all adjacent properties. Fencing materials must be on the approved list by ordinance for residential and commercial properties. Maintenance shall be conducted in a manner so as not to create a safety, health, or fire hazard. This paragraph shall not apply to minor repair and maintenance activities such as, by way of illustration only, the changing of oil, spark plugs, or tires.

8.04.04 Abatement.

A. Purpose. The purpose of this section is to provide a procedure by which the Town can enforce the various nuisances addressed by this Chapter, and to establish a policy authorizing the Town to take corrective enforcement measures should any landowner, tenant, or occupant of any property located within the Town fail to voluntarily comply with any provision of this Chapter. Abatement of any nuisance as set forth in this Section 8.04.040 shall be optional at the sole discretion of the Town, and shall not prevent the Town from availing itself of any other enforcement or criminal action, including the issuance of a summons to appear in municipal court or by obtaining a temporary restraining order, injunction, or other appropriate relief in a court of a competent jurisdiction.

B. Abatement procedure.

(1) In all cases where a nuisance shall be found in any building or upon any ground or other premises within the jurisdiction of the Town, notice shall be given in writing, signed by the Town Superintendent or Police Chief, or either's designee, to the owner of the premises or occupant or person in possession, charge, or control of such building or premises, or person creating such nuisance where such person is known and can be found to remove such nuisance. Should any such nuisance, within or upon any public or private premises or as aforesaid, not be corrected within the time period stated in the notice, which period shall be at least three (3) days, the Town Superintendent or the Police Chief, or either's designee shall have the authority to abate such nuisance.

(2) In case of any such nuisance in or upon any street, avenue, alley, sidewalk, highway, or public grounds in the Town, the Town may abate the nuisance forthwith without such notice being given.

(3) The Town may abate any nuisance by authorizing a private contractor to enter the property and remove the condition or conditions and by engaging such other necessary assistance and incurring necessary expenses to abate such nuisance.

8.04.050. Emergency Abatement.

Where, in the opinion of the Town Superintendent, or the Police Chief, or their designee, a nuisance constitutes an immediate and serious danger to the public health, safety, or welfare, such persons shall have the authority to summarily abate the nuisance without notice of any kind. Recovery of expenses for such emergency abatement may be pursued in accordance with Section 8.04.060 of the Town Code.

8.04.060. Recovery of expenses; assessment policy.

A. Upon the Town or contractor abating the nuisance pursuant to Section 8.04.040, a notice of assessment, including the right to a hearing as set forth in this Section, shall be sent by first class mail by the Town Clerk to the property owner at the address listed for the property owner in the county records and to the property address. If any such notice is returned, the property shall be posted with the notice. For purposes of this Section 8.04.060, "property owner" shall include renters, lessees, occupants or persons in possession of the property.

B. The amount of the assessment shall include, in addition to all contractors' charges, all direct Town costs including inspection costs, attorney fees, court costs, and all other associated costs. The assessment may be paid any time prior to the assessment being certified to the county treasurer. All payments must be made directly to the Town Clerk.

C. The property owner shall have thirty (30) days from the date the notice of assessment is mailed, or if the notice is returned from the date the property was posted, to pay the assessment. Failure to pay within the time specified in the notice will cause the assessment to be recorded against the property. The assessment will constitute a continuing lien against such property.

D. A property owner may file a written objection to such assessment with the Town Clerk within thirty (30) days from the date the notice of assessment was mailed, or if the notice is returned from the date the property was posted. The objection must include a phone number and address of the objecting party, and must state with specificity the basis for the objection.

E. Upon receipt of an objection, the Town Clerk or a designated hearing officer shall set a hearing date, which hearing shall be held within thirty (30) days from receipt of the written objection. Notice of the hearing date shall be mailed to the person making the objection. Failure to include all required information in the objection, including the address of the objecting party, will constitute a waiver of the right to file an objection.

F. The hearing held pursuant to this Section 8.04.060 shall be conducted in an informal manner, and shall not strictly follow the technical rules of evidence. The Town shall have the burden of establishing there was probable cause to determine a violation existed on the property prior to abatement, and that an abatement was conducted by the Town. The standard of proof at such hearing shall be by a preponderance of the evidence. A written decision shall be

prepared at the conclusion of the hearing and mailed to the property owner, which decision shall be deemed effective upon execution of the written decision.

G. A property owner who requests a hearing pursuant to this Section 8.04.060 will be charged an additional administrative cost in the amount of the actual cost of the hearing, as determined by the Town Clerk or hearing officer, should the Town Clerk or hearing officer find in favor of the Town. Failure of such person to attend the hearing at the date and time scheduled shall constitute a waiver of such right to a hearing and a determination of all issues regarding the assessment.

8.04.070. Authority to enter on property.

The Police Chief or designee may, where reasonable suspicion exists, with or without a warrant issued by a court of competent jurisdiction, including the municipal court, enter upon any land to examine the same to ascertain whether any nuisance exists, or to abate a nuisance in the manner provided in this Ordinance. The Town, the Police Chief or either's designee, and each such duly authorized designated agent and officer of the Town shall be free from any action or liability on account thereof. Such authority does not allow entry into any building or structure without consent, a court order or under other circumstances allowed by law.

8.04.080. Effect on any zoning or other ordinances.

Notwithstanding the provisions of any zoning ordinance or other ordinance, now or hereafter enacted, authorizing certain uses or location of property, it is the intention of the Board of Trustees, and is hereby so declared, that any use, location, or activity otherwise authorized by zoning ordinances or any other ordinance shall be subject to this Chapter 8.04 prohibiting nuisances.

8.04.090. Penalty for violation; continuing violations.

Whenever in any section of this Chapter the doing of any act is required, prohibited, or declared to be unlawful, any person who shall be convicted of a violation of any section of this ordinance shall be fined in a sum not more than three hundred dollars (\$300.00). Each day that such condition continues shall be regarded as a new and separate offense

Section 2. Chapter 8.28 (Milk Products) of the Haxtun Municipal Code is hereby repealed in its entirety.

Section 3. If any portion of this ordinance is held to be invalid for any reason, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Trustees hereby declares that it would have passed this ordinance and each part hereof irrespective of the fact that any one part be declared invalid.

Section 4. The repeal or modification of any ordinance of the Town of Haxtun by this ordinance shall not release, extinguish, alter, modify, or change in whole or in part any penalty, forfeiture, or liability, either civil or criminal, which shall have been incurred under such

provision, and each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings, and prosecutions for the enforcement of the penalty, forfeiture, or liability, as well as for the purpose of sustaining any judgment, decree, or order which can or may be rendered, entered, or made in such actions, suits, proceedings, or prosecutions.

Section 5. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

INTRODUCED, READ, APPROVED, ADOPTED, AND ORDERED PUBLISHED IN FULL THIS _____ DAY OF _____ 2019.

TOWN OF HAXTUN, COLORADO

Todd Workman, Mayor

ATTEST:

Karie L. Wilson, Town Clerk