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To: Mayor Kudron and the Grand Lake Board of Trustees

From: John Crone, Town Manager

Re: Ordinance 09-2023, AN ORDINANCE AMENDING CHAPTER 7 ARTICLE 4 OF THE GRAND LAKE MUNICIPAL CODE REGARDING ADMINISTRATION AND ABATEMENT OF NUISANCES

Date: September 11, 2023

Background

The Town of Grand Lake's current municipal code sections dealing with nuisance abatement are hopelessly out of date. The enforcement provisions refer to Colorado statutes that are no longer in existence. This makes it impossible to enforce or abate any nuisance occurring within the Town.

Under the Town Code, nuisances are defined as "(a)nything which is injurious to the health or morals or indecent or offensive to the senses or an obstruction to the free use of property so as to interfere with the comfortable enjoyment of life or property is declared a nuisance and as such shall be abated." GLMC 7-4-1.

Our Town Attorney has recommended that the Town adopt the attached ordinance to replace our current code provisions. The new code would allow for expedited abatement of nuisances and would even allow the Town to take any necessary emergency steps if they are required to protect the public health, safety or welfare of the people of Grand Lake.

The new code also allows for more stringent enforcement of non-emergency nuisances. It also provides for a shorter time frame for violators to correct the problems. (Although it also allows for flexibility in cases where the violators are making good faith efforts to correct the problems).

Staff feels that it is very important that the Board adopt the proposed changes to the Town Code.

Proposed Motion

If the Board wishes adopt the changes to the Town Code as detailed in Ordinance 09-2023 it should approve the following motion:

I MOVE TO ADOPT ORDINANCE 09-2023, AN ORDINANCE AMENDING CHAPTER 7 ARTICLE 4 OF THE GRAND LAKE MUNICIPAL CODE REGARDING ADMINISTRATION AND ABATEMENT OF NUISANCES.

ORDINANCE NO. 09-2023

AN ORDINANCE AMENDING CHAPTER 7 ARTICLE 4 OF THE GRAND LAKE MUNICIPAL CODE REGARDING ADMINISTRATION AND ABATEMENT OF NUISANCES

WHEREAS, the Board of Trustees of the Town of Grand Lake, Colorado (the "Board"), pursuant to Colorado statute, is vested with the authority of administering the affairs of the Town of Grand Lake ("Town"); and

WHEREAS, the Grand Lake Municipal Code (the "Town Code") currently requires abatement of nuisances following the procedures set forth in C.R.S. § 16-13-301 et seq.; and

WHEREAS, the Town Board is responsible for protecting the health, safety, and welfare of the citizen of Grand Lake, including timely and efficiently abating nuisances from time to time; and

WHEREAS, the Town Board finds it necessary to revise the procedures set forth in Chapter 7 Article 4 of the Town Code to abate such nuisances in a cost effective, efficient, and effective manner; and

WHEREAS, the Town Board has determined that it is in the best interest of the health, safety, and welfare of the Town and its citizens to revise the procedures set forth in Chapter 7 Article 4 of the Town Code to abate such nuisances in a cost effective, efficient, expedient, and effective manner.

NOW THEREFORE BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF GRAND LAKE, COLORADO AS FOLLOWS:

1. Section 7-4-3 of the Grand Lake Municipal Code shall be amended by removing the existing language and adding the following language to read in its entirety as follows:

Sec. 7-4-3. – Procedure for abatement of nuisance.

(1) When, in the reasonable judgment of the Code Enforcement Officer, the Town Manager, or their designee, a nuisance violation exists, he or she may, on behalf of the Town, initiate one (1) or more of the following enforcement alternatives:

- (A) A civil action to abate, as provided by subsection (2) below; or
- (B) Prosecution in Municipal Court, as provided by subsection (3) below; or
- (C) Abatement after notice, as provided by subsection (4) below; or
- (D) Emergency abatement, as provided by subsection (5) below.

(2) - Civil action.

When an alleged nuisance has not been abated within the time specified in any notice to abate, the Town may bring a civil action in the Municipal Court or in any other court with jurisdiction to have the nuisance declared as such by the court and for an order enjoining the nuisance or authorizing its restraint, removal, termination or abatement by the responsible party, by the Code Enforcement Officer, the Town Manager, or their designee or by any other authorized agent or officer of the Town.

(3) - Prosecution.

The Town Attorney, or any Town Prosecutor, or the Town Manager may, on behalf of the Town, initiate an action in the Municipal Court to prosecute an alleged nuisance violation.

(4) - Abatement.

(a) Notice to abate. The Code Enforcement Officer, the Town Manager, or their designee, upon the discovery of any nuisance on public or private property in the Town, may, in the exercise of his or her discretion, notify the responsible party in writing, requiring the responsible party to remove and abate from the property the thing or things therein described as a nuisance. For any nuisance which does not threaten imminent danger, damage or injury, the reasonable time for abatement provided by the notice shall not exceed seven (7) days unless it appears from the facts and circumstances that compliance could not reasonably be made within seven (7) days or that a good faith attempt at compliance is being made.

(b) Service of notice. Written notice to abate shall be given by any one (1) of the following methods:

- (1) Personally delivering a copy of the notice to the responsible party;
- (2) Mailing a copy of the notice by first class mail and by certified mail, return receipt requested, to the last known address of the responsible party as reflected in the county real estate records; or
- (3) Posting a copy of the notice in a conspicuous place upon unoccupied premises upon which the nuisance is located.

For purposes of Paragraph (2) above, proof that either: (i) the return receipt was signed and returned to the Town; or (ii) the notice sent by first class mail was not returned to the Town by the Post Office; shall constitute prima facie evidence that notice was properly served upon the responsible party.

(c) Abatement after notice. Upon the expiration for the period for abatement provided by the notice, or at any time thereafter, if the nuisance has not been abated on the property described in such notice, the Town may enter upon such property, abate the nuisance, and recover its costs as provided by Section 7-4-5 below.

(d) Abatement on public property. Any nuisance located or found in or upon any street, avenue, alley, public sidewalk, highway, public right-of-way, public grounds, park, recreation facility or area, or any other public property in the Town may be abated by the Town without notice.

(5) - Emergency abatement.

If, in the reasonable judgment of the Code Enforcement Officer, the Town Manager, or their designee, a nuisance is a cause of imminent damage to the public health, safety or welfare, any such nuisance may be summarily abated by the Town without notice, and costs of abatement charged and recovered as provided by Section 7-4-5 below.

2. The Grand Lake Municipal Code shall be amended by adding Section 7-4-4 to read in its entirety as follows:

Sec. 7-4-4. – Violations and penalties.

(1) Any Person who violates any of the provisions of this Chapter shall be subject to the provisions of section 1-1-9 of this Code; provided however, that nothing contained in this Section or in Section 1-1-9 shall impair the ability of the Town to enforce the other remedial provisions provided by this Article.

(2) As a portion of any judgment levied upon conviction of a violation of this Chapter, the Municipal Court may order that the nuisance condition be abated within a reasonable time established by the Court. Failure to abate within the time so ordered shall constitute contempt of court and shall be punishable as such. In the event the defendant has not abated the nuisance condition as directed by court order, the Court may order the Town or its agents to do so.

(3) In addition to any fines levied upon conviction of a violation of this Chapter, the Court shall impose, as a portion of the costs assessed against a convicted responsible party, any costs incurred by the Town in prosecuting, enforcing and abating the nuisance, as applicable.

(4) Each day during which any responsible party commits, or allows to remain unabated, any of the actions specified as unlawful in this Chapter shall constitute a separate offense. Multiple violations of this Chapter may be included on a single notice to abate or a single summons and complaint.

3. Section 7-4-5 of the Grand Lake Municipal Code shall be added to the Town Code by including the underlined language to read in its entirety as follows:

Sec. 7-4-5. - Recovery of abatement expense.

- (a) The actual costs of abatement, plus fifteen percent (15%) of such abatement costs for inspection, and any other incidental costs incurred by the Town as a result of its abatement action, shall be assessed upon the lot, lots or tracts of land upon which the nuisance is abated.
- (b) Such costs shall be paid to and received by the Town within thirty (30) days of the date the Town mails notice of the assessment by certified mail to the owner of the property to be assessed; provided, however, that if the property is occupied by someone other than the owner, the Town shall mail such notice of assessment by certified mail to both the occupant and the owner.
- (c) Failure to pay such assessment within such thirty-day period shall cause such assessment to become a lien against the lot, lots or tracts of land, and the same may be certified at any time after such failure to pay, by the Town to the County Treasurer to be placed upon the tax list for the current year and to be collected in the same manner as other taxes are collected, together with a fifteen-percent penalty to defray the costs of collection.

3. The Grand Lake Municipal Code shall be amended by r adding Section 7-4-6 to read in its entirety as follows:

Sec. 7-4-6. - Cumulative remedies.

No remedy provided herein shall be exclusive, but the same shall be cumulative, and the taking of any action hereunder, including charge, conviction or violation of this Chapter in the Municipal Court, shall not preclude or prevent the taking of other action hereunder to abate or enjoin any nuisance found to exist. No provision herein shall be construed to limit the right of any person to bring a private action to abate a private nuisance.

4. That nothing in this Ordinance hereby adopted shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action

acquired or existing, under any act or ordinance hereby repealed as cited in Sections 1, 2, or 3 of this ordinance; nor shall any just or legal right or remedy of any character be lost, impaired, or affected by this legislation.

5. That the Town Clerk of Grand Lake is hereby ordered and directed to cause this Ordinance to be published and take such further steps or actions as may be required by law to adopt this Ordinance.

6. That this Ordinance and the rules, regulations, provisions, requirements, orders, and matters be established and adopted hereby shall take effect and be in full force and effect thirty (30) days from and after the date of its final passage and adoption.

7. Repeal. Existing ordinances or parts of ordinances covering the same matters embraced in this ordinance are hereby repealed and all ordinances or parts of ordinances inconsistent with the provisions of this ordinance are hereby repealed except that this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the effective date of this ordinance.

8. Severability. If any article, section, paragraph, sentence, clause, or phrase of this Ordinance is held to be unconstitutional or invalid for any reason such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The Town Board of Trustees hereby declares that it would have passed this ordinance and each part or parts thereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

INTRODUCED, APPROVED AND ADOPTED AT A REGULAR MEETING OF THE BOARD OF TRUSTEES OF THE TOWN OF GRAND LAKE THIS 28TH DAY OF AUGUST 2023.

Votes Approving: _____
Votes Opposed: _____
Absent: _____
Abstained: _____

ATTEST:

**BOARD OF TRUSTEES OF THE
TOWN OF GRAND LAKE,
COLORADO**

Alayna Carrell
Town Clerk

By: _____
Stephan Kudron
Mayor

