

TOWN OF JOHNSTOWN, COLORADO

ORDINANCE NO. 2020-182

**AN ORDINANCE AMENDING ARTICLES I, II, III, V AND VI OF
CHAPTER 7 OF THE JOHNSTOWN MUNICIPAL CODE
CONCERNING NUISANCES**

WHEREAS, the Town of Johnstown, Colorado is a municipal corporation duly organized and existing under its Home Rule Charter adopted pursuant to Article XX of the Constitution of the State of Colorado; and

WHEREAS, Town Council is vested with authority to administer the affairs of the Town; and

WHEREAS, Town Council recognizes that certain of the nuisance provisions contained in the Johnstown Municipal Code may be updated to reflect current practice and, among other revisions, omit the involvement of Town Council in the declaration and abatement of nuisances; and

WHEREAS, based on the request of the Johnstown Police Department, Town Council desires to amend and modify Articles I, II, III, V and VI of Chapter 7 of the Johnstown Municipal Code; and

WHEREAS, Town Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town, that it is promulgated for the preservation of the public health, welfare, peace, safety and property and that this Ordinance is in the best interests of the citizens of the Town.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF JOHNSTOWN, COLORADO, AS FOLLOWS:

Section 1. Article I of Chapter 7 of the Johnstown Municipal Code shall be deleted and replaced in full with the following:

ARTICLE I - Administration and Abatement of Nuisances

Sec. 7-1. Definitions.

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

Abatement means the act or process of putting an end to, or reducing in degree or intensity of, any nuisance.

Authorized inspector means the Town Manager, a police officer, code enforcement officer, or other Town personnel authorized by the Town Manager to inspect and examine public or private property in the Town to ascertain the nature and existence of any nuisance. Authorized inspectors may issue notices of violations, give verbal direction and implement other enforcement actions pursuant to this Chapter.

Code enforcement officer means any officer(s) or employee(s) of the Town designated or authorized by the Chief of Police or by the Chief's authorized representative to enforce the provisions of the Code.

Nuisance means a thing, act, failure to act, occupation, activity, condition or use of any building, land, substance or property which:

- (1) The continuous use or condition of which presents a substantial danger or hazard to the health, safety or welfare of the community, or works some substantial annoyance, inconvenience or injury to the public; or
- (2) The continuous use or condition of which violates any ordinances of the Town; or
- (3) Shall otherwise constitute or be known or declared a nuisance by state statutes or the ordinances of the Town; or
- (4) Pollutes or contaminates any surface or subsurface waters; or
- (5) The activity, operation or condition of which, after being ordered abated, corrected or discontinued by a lawful order of any authorized inspector, department or officer of the Town, continues to be conducted or continues to exist.

Occupant means and includes any person occupying the whole or part of a building, premises, or land, whether alone or with others.

Owner means any person owning, leasing, occupying, residing or having the right to possession and/or control of any property located within the Town boundaries, including agents of such persons.

Person means any individual, corporation, partnership, association, organization or other entity owning, occupying, keeping, leasing or having control of real property or any improvements thereon located within the Town boundaries.

Property means the owner's lot, tract or parcel of land in the Town, whether improved or vacant, and the area to the center of an alley abutting the lot or tract of land, if any, all easements of record, and the side lot, curb, gutter and parking area of any street abutting such lot or tract of land.

Property owner means the person who owns the property pursuant to the county real estate records. For purposes of this Chapter, unless the context otherwise provides, the term *property owner* may be distinct from the phrase *owner of property*, the latter being inclusive of all persons included in the definition of *owner*.

Public place means any place commonly or usually open to the general public or which is accessible to members of the general public.

Refuse means any grass clippings, leaves, hay, straw, manure, shavings, paper, ashes, containers, boxes, glass, cans, bottles, garbage, waste and discarded building and construction materials, and all other items of whatever kind or nature whatsoever which are commonly known as rubbish, garbage, trash or waste. For purposes of this definition, *building and construction materials* mean plaster, broken concrete, bricks, cinder blocks, stones, wood, roofing material, wire, metal binding, sacks and all other items which are commonly known as building and construction materials.

Rubbish means any type of debris, refuse, trash, waste or rejected matter.

Trash means any worn out, broken up or used refuse, rubbish, toppings, twigs, leaves of trees or worthless matter or material.

Sec. 7-2. Prohibition of nuisances; abatement; separate offenses.

No person shall make or cause any nuisance to exist, and no person, being the owner or occupant or having under his or her control any property within the limits of the Town, shall maintain or allow any nuisance to be or remain thereon. All nuisances shall be abated or removed. A person shall be guilty of a separate offense for every 24-hour period after notice is given to abate the same.

Sec. 7-3. Ascertaining nuisances for trade, business or manufacturing.

Whenever the pursuit of any trade, business or the manufacturing or maintenance of any substance or condition of things is, upon investigation, considered by the Town Manager, or his or her designee, dangerous to the health of any of the inhabitants of the Town, the same shall be considered a nuisance.

Sec. 7-4. Filing complaint.

In addition to or in lieu of any procedure for abatement, an authorized inspector may file a direct complaint of nuisance with the Municipal Court by issuance of, or by authorizing a police officer or code enforcement officer to issue, a summons and complaint.

Sec. 7-5. Right of entry.

- (a) Authorized inspectors, with probable cause, may enter upon or into any property to examine the same and to ascertain whether a nuisance exists. In the event that the owner or occupant refuses entry after a request to enter has been made, the authorized inspector is hereby empowered to seek assistance from the court, including the Municipal Court, to obtain a search warrant for such entry.
- (b) If there is probable cause to believe that an apparent nuisance constitutes an immediate danger to public health or public safety, the authorized inspector is authorized to enter upon the property, without giving prior notice, and may take any and all measures necessary to abate or remove the nuisance.
- (c) No person shall deny an authorized inspector entry to property when conditions exist under Subsection (b) above or when entry is made pursuant to a lawful search warrant.
- (d) Authorized inspectors who lawfully perform duties in good faith under this Chapter shall be free from any action or liability on account thereof.

Sec. 7-6. Abatement of nuisance; procedures.

- (a) Notice of abatement. An authorized inspector, upon the discovery of any nuisance on property in the Town, shall notify the owner or occupant in writing, requiring the owner or occupant to abate or remove the nuisance within the time specified in the notice.
 - (1) Time for abatement.
 - A. The time for abatement of a nuisance posing an imminent danger of damage or injury to or loss of life, limb, property or health shall require the owner to immediately abate or remove the nuisance from the property.
 - B. Except as provided above or as otherwise provided in this Chapter, the reasonable time for abatement 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.

- (2) If the owner fails to abate the nuisance as provided in the notice, the Town may abate or remove the nuisance as provided in this Section.
 - (3) In no event shall the notice described in this Section be required prior to issuance of a summons and complaint.
- (b) Service of notice. An authorized inspector shall serve a written notice to abate by any one or more of the following methods:
- (1) Personally delivering a copy of the notice to the property owner;
 - (2) Personally delivering a copy of the notice to the non-owner occupant of the property and mailing a copy of the notice by certified mail, return receipt requested, to the last known address of the property owner as reflected in the county real estate records;
 - (3) Mailing a copy of the notice by certified mail, return receipt requested, to the last known address of the property owner as reflected in the county real estate records if the property is unoccupied, and posting a copy of the notice in a conspicuous place at the unoccupied property; or
 - (4) If the property owner's address is not readily available, posting a copy of the notice in a conspicuous place at the property.
- (c) Delivery of notice. Notice shall be deemed delivered on the date of personal delivery, three (3) days after deposit in the mail or upon posting, whichever is earlier.
- (d) Contents of notice. Notice issued pursuant to this Section shall describe the condition that is a nuisance and the time in which the condition is to be abated or removed from the property and shall contain a statement that, if the nuisance is not abated or removed within the time period allotted therein, the Town may abate or remove the nuisance and recover the costs of abatement plus an administrative fee.
- (e) Procedure for protest and abatement.
- (1) The person duly served with notice of a nuisance may protest such designation no later than 24 hours before the expiration of the final date to abate the nuisance named in the notice to abate. The protest must be filed in writing with the Town Manager and be conspicuously designated as such.
 - (2) Upon receipt of a protest, the Town Manager shall, within a reasonable time, determine whether the matter set forth in the notice constitutes a nuisance and provide written notice of the decision to the protestor. If the Town Manager determines that the matter does not constitute a nuisance, the person shall not be required to abate the same. If the Town Manager declares that the matter constitutes a nuisance, the person shall promptly abate the nuisance within three (3) days, unless the Town Manager extends the deadline or an appeal is filed with the Municipal Court as set forth below.
 - (3) In the event the person served with the notice to abate a nuisance desires to protest the Town Manager's declaration of nuisance, such person has the right to appeal the decision solely regarding the legal issue of the existence of a nuisance. Such protest must be filed in writing with the Municipal Court within three (3) days of the declaration of nuisance by the Town Manager.
 - (4) If no protest is made or appealed and/or the nuisance is not abated as set forth herein, the Town Manager may declare the subject of the notice to be a nuisance and order the Chief of Police,

the Chief's designee or other authorized personnel to abate the nuisance. Such person shall have the authority to call for the necessary assistance and incur the necessary expenses therefor.

Sec. 7-7. Emergency abatement.

Notwithstanding any other provision contained in this Article, whenever the Town determines that any real property or any building, structure or condition thereon is dangerous or constitutes an immediate threat to public health or safety, the Town shall, without being required to observe the provisions of this Article with reference to abatement procedures, immediately and forthwith abate such nuisance or condition. Where the abatement of such condition is immediately required, the Town shall prepare a statement of costs in respect thereto, and serve it upon the property owner, utilizing the cost recovery and assessment procedure set forth in this Article.

Sec. 7-8. Town owned property.

The Town shall abate all nuisances found to exist on property owned by the Town as soon as practicable.

Sec. 7-9. Assessment of costs.

- (a) Upon the completion of an abatement by the Town, a description of the work performed shall be provided in a written report to the Town Manager. The report shall include a clear statement of the work performed and the expense incurred in abating the nuisance.
- (b) After considering the report of costs, the Town Manager shall determine and assess the whole cost for the abatement of the nuisance, including an administrative fee and other incidental costs in connection therewith, upon the property from which the nuisance was abated.

Sec. 7-10. Notice of assessment.

The Town, as soon as practicable after the assessment is made, shall send notice of such assessment by certified mail, return receipt requested, addressed to the property owner at the last known address as reflected in the county real estate records or, if there is no known address, to the address of the subject property. The notice shall contain the name of the owner, state that work has been performed pursuant to this Chapter, include the report of costs and the assessment, demand payment of the assessment and advise that, if the assessment is not paid within thirty (30) days after receipt, the assessed amount shall become a lien against the property once the assessment is certified to the County Treasurer. The notice shall be deemed to be received three (3) days after notice is sent.

Sec. 7-11. Payment of assessment.

- (a) The property owner shall pay the assessment within thirty (30) days after receipt of such notice. If payment is not made, the property owner shall be personally liable for the amount of the assessment. The same shall be a lien upon the respective property from the time of such assessment until it is paid, and the Town shall have all remedies for collection thereof provided by state statutes for the purpose of having the same placed upon the tax list and collected in the same manner as taxes are collected. The assessment shall have priority over all other liens except general taxes and prior special assessments.
- (b) The amount of an assessment shall be made payable to the Town and submitted to the Town Clerk at any time before the tax list is placed in the hands of the County Treasurer, but thereafter must be paid only to the County Treasurer.

Sec. 7-12. Objection to assessment; hearing.

In the event the property owner desires to object to the assessment, the property owner shall, within thirty (30) days after the receipt of a notice of assessment, file a written objection thereto with the Town Clerk, who shall thereupon designate a regular meeting of the Town Council as the date when said property owner may appear and have a hearing before the Town Council.

Sec. 7-13. Certified assessment.

In case the property owner fails to pay an assessment within the required time as provided above, the Town shall certify the amount of the assessment to the County Treasurer, who shall collect the assessment as provided for by state law for the collection of delinquent general taxes.

Sec. 7-14. Cumulative remedies; concurrent remedies.

- (a) No remedy provided herein shall be exclusive, but the same shall be cumulative. The taking of any action hereunder, including a charge or conviction of a 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.
- (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 Article shall serve as 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 Chapter that is in the nature of a civil action shall not prevent the commencement or application of any other charges brought under this Code or any other provision of law.

Sec. 7-15. Specific nuisances not exclusive.

The enumerated nuisances described in this Chapter are not exclusive, and nuisances not otherwise described herein shall be subject to the provisions of this Chapter.

Sec. 7-16. Violations and penalties.

Any person who violates any provision of this Chapter, unless otherwise provided herein, shall be punished in accordance with the provisions of Section 1-62 of the Code.

Secs. 7-17 - 7-20 Reserved.

Section 2. Article II of Chapter 7 of the Johnstown Municipal Code shall be deleted and replaced in full with the following:

ARTICLE II – Specific Nuisances

Sec. 7-21. Accumulation to constitute nuisance.

Whenever there exists in or upon any public or private property within the limits of the Town any damaged merchandise, litter, trash, rubbish, garbage, wrecked car, inoperable car or other wrecked vehicle, or an accumulation of junk vehicles or junk of any type, except in areas specifically zoned for said purposes or otherwise designated by the Town for such purposes, the existence of any such material or items shall hereby constitute a nuisance.

Sec. 7-22. Posting handbills, posters and placards.

Any handbill, poster, placard or painted or printed matter which is stuck, posted or pasted upon any public or private property or other building or upon any fence, power pole, telephone pole or other

structure without the permission of the owner shall constitute a nuisance. Exceptions include handbills, posters and placards placed by any governmental entity or utility (e.g., cable, telephone, gas, electric) for the purpose of informing the public of dangerous conditions or activities, construction notifications and other public information deemed necessary for the good of the general public.

Sec. 7-23. Streets, streams and water supply.

No person shall throw or deposit, or cause or permit to be thrown or deposited, any offal composed of animal or vegetable substance or both, any dead animal, excrement, garbage, trash or other offensive matter upon any street, avenue, alley, sidewalk or other public or private property. No person shall throw or deposit or cause or permit to be thrown or deposited in the Town any such items, or any other substance that would tend to have a polluting effect, into the water of any stream, ditch, pond, well, cistern, trough or other body of water, whether artificially or naturally created, or so near any such place as to be liable to pollute the water. Any item thrown or deposited in violation of this Section is hereby declared to be a nuisance.

Sec. 7-24. Stagnant ponds.

No person shall permit or maintain stagnant water on property within the Town limits, and any such allowance or maintenance is hereby declared to be a nuisance. Every owner of property within the Town is hereby required to drain or fill up said property whenever the same is necessary so as to prevent stagnant water or other nuisance accumulating thereon.

Sec. 7-25. Sewer inlet.

No person shall throw or deposit into any sewer (sanitary or storm), sewer inlet or privy vault that has a sewer connection any article that might cause such sewer, sewer inlet or privy vault to become nauseous to others or injurious to public health. Such deposits are hereby declared to be a nuisance.

Sec. 7-26. Nauseous liquids.

No person shall discharge out of or from or permit to flow from any residence or property any foul or nauseous liquid or substance of any kind into or upon any adjacent ground or lot or into any street, alley or public place. Such discharge is hereby declared to be a nuisance. For purposes of this Section and as otherwise used in this Chapter, *nauseous* shall mean something that causes nausea or is sickening.

Sec. 7-27. Stale matter.

No person shall keep, collect, use or cause to be kept, collected or used any stale, putrid or stinking fat or grease or other stale matter, other than normal weekly trash accumulation. Such conditions are hereby declared to be nuisances.

Sec. 7-28. Littering prohibited.

- (a) No person shall litter in the Town. For purposes of this Section and as otherwise used in this Chapter, *litter* shall mean rubbish, waste material, refuse, garbage, trash, debris or other foreign substances, solid or liquid, of every form, size, kind and description.
- (b) Any person who deposits, throws or leaves any litter on any public or private property or in any waters commits littering, unless:
 - (1) Such property is an area designated by law for the disposal of such material and such person is authorized by the proper public authority to so use such property;
 - (2) The litter is placed in a receptacle or container installed on such property for such purpose; or

- (3) Such person is the owner in lawful possession of such property, or has first obtained written consent of the owner in lawful possession, or unless the act is done under the personal direction of said owner.
- (c) The phrase *public or private property*, as used in this Section includes, but is not limited to, the right-of-way of any road or highway, any body of water or watercourse, including frozen areas thereof or the shores or beaches thereof, any park, playground or building, any refuge, conservation or recreation area, and any residential, farm or ranch properties or timberlands.
- (d) Whenever litter is thrown, deposited, dropped or dumped from any motor vehicle in violation of this Section, the operator of said motor vehicle is presumed to have caused or permitted such litter to have been so thrown, deposited, dropped or dumped therefrom.

Sec. 7-29. Transporting garbage or manure.

Every vehicle or trailer used to transport manure, garbage, swill or offal in any street shall be fitted with a substantial tight box thereon so that no portion of such filth will be scattered or thrown into such street. The scattering or throwing of any such items is hereby declared to be a nuisance.

Sec. 7-30. Accumulation and use of manure.

Other than a light spread of manure which may be applied on lawns or gardens for fertilizing purposes or on property zoned and used for agricultural purposes, manure shall not be kept on any property for any purpose or kept in any place for later use, but shall be either plowed under or removed by the owner. The retention of manure, other than as set forth herein or approved by the Town in writing, is hereby declared to be a nuisance.

Sec. 7-31. Dumping on property.

No person shall use any land, premises or property within the Town for the dumping or disposal of any garbage, trash, litter, rubbish, offal, filth, excrement, discarded building materials or combustible materials of any kind. Such use is hereby declared to be a nuisance.

Sec. 7-32. Removal of hazardous waste.

Any accumulation of hazardous waste, as that term is defined by federal or state law, or hazardous waste that is highly explosive or flammable and which might endanger life or property, shall only be removed and handled pursuant to applicable federal, state and county regulations. Any accumulation prohibited by this Section is hereby declared to be a nuisance.

Sec. 7-33. Storage containers.

No person shall place, store or maintain a storage container on any public property unless such person is an employee or official contractor of the Town acting within the scope of his or her official municipal function. Any storage prohibited herein is hereby declared to be a nuisance. For purposes of this Section, *storage container* shall mean any temporary building, trailer (whether on axles or not), roll-off, PODS (Portable on Demand Storage) or other facility used to store personal or business property.

Sec. 7-34. Portable toilets.

No person shall place portable toilets on public property unless expressly authorized in writing by the Town. Any placement of portable toilets prohibited by this Section is hereby declared to be a nuisance. For purpose of this Section, *portable toilet* shall mean an enclosed, freestanding toilet not requiring a foundation, whether intended to be temporary or permanent.

Sec. 7-35. Dumpsters.

No person shall place, store or maintain a dumpster on any public property unless expressly authorized in writing by the Town or unless such person is a contractor for Town acting within the scope of his or her official function. Any placement of dumpsters prohibited herein is hereby declared to be a nuisance.

Sec. 7-36. Dead animal removal.

When any animal dies in the Town, the owner or keeper thereof shall promptly and properly dispose of such animal. If such body is not disposed of, the same shall be deemed a nuisance and such owner or keeper will be the author of such nuisance. When the body of any dead animal is in any street, highway or public grounds in the Town, the Town shall cause such body to be removed forthwith and properly disposed of.

Sec. 7-37. Removal of inoperable vehicles.

No person, either as owner or occupant of any property within the Town, shall park, store, deposit or permit to be parked, stored or deposited thereon an inoperable vehicle unless such vehicle is enclosed in a garage or other building. The provisions of this Section shall not apply to any person with one vehicle inoperable for a period of less than thirty (30) consecutive days, or to any person or his or her agent who is conducting a business enterprise in compliance with existing zoning regulations. The retention of inoperable vehicles prohibited by this Section is hereby declared to be nuisance.

For purposes of this Section, and as otherwise used in this Chapter, *inoperable vehicle* means any automobile, truck, tractor, motorcycle or self-propelled vehicle which is in a condition of being junked, wrecked, wholly or partially dismantled, discarded, abandoned or unable to perform the functions or purpose for which it was originally constructed. The existence of any of the following conditions shall raise the presumption that a vehicle is inoperable:

- (1) Absence of a license plate or current registration upon such vehicle;
- (2) Placement of the vehicle or parts thereof upon jacks, blocks, chains or other supports; or
- (3) Absence of one or more parts of the vehicle necessary for the lawful operation of the vehicle upon the streets and highways.

Sec. 7-38. Broken windows in vacant dwellings.

No property owner shall allow broken windows in a vacant dwelling for a period exceeding seven (7) days. A broken window not replaced is hereby declared to be a nuisance.

Sec. 7-39. 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 machinery or equipment used by contractors or builders or by other persons, which places are kept in such manner as to essentially interfere with the comfortable enjoyment of life or property by others, are hereby declared to be nuisances.

Sec. 7-40. Slaughterhouses.

No slaughterhouse or other place for slaughtering animals shall be kept within the Town. Such places are hereby declared to be nuisances.

Sec. 7-41. Open wells, cisterns or excavations.

Excavations exceeding five (5) feet in depth, cisterns and wells or an excavation used for storage of water are hereby declared to be 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. No person shall permit such nuisance to remain on premises owned or occupied such person.

Sec. 7-42. Building and construction materials to be removed from construction sites; excavations to be backfilled.

All building and construction materials, including, but not limited to, plaster, broken concrete, bricks, cinder blocks, stones, wood, roofing material, wire or metal binding, sacks or loose, discarded or unused material of any kind resulting from the wrecking, constructing or reconstructing of any room, basement, wall, fence, sidewalk or building, shall be promptly removed or discarded by the person responsible for such work. Such person shall be held liable for any scattering of such building and construction materials upon adjacent property. Excavations related to demolitions shall be completed and promptly backfilled with dirt to the existing grade of the surrounding area. Building and construction materials when not properly removed and excavations when not promptly backfilled are hereby declared to be nuisances.

Secs. 7-43 - 7-50 Reserved.

Section 3. Article III of Chapter 7 of the Johnstown Municipal Code shall be deleted and replaced in full with the following:

ARTICLE III - Garbage and Refuse

Sec. 7-51. Accumulation of refuse prohibited.

Any accumulation of refuse or other prohibited material on any property, improved or unimproved, in the Town is prohibited and is hereby declared to be a nuisance. No owner or occupant of property shall accumulate, or allow the accumulation of, refuse or other prohibited material on property in the Town.

Sec. 7-52. Responsibility for refuse on premises.

It is the duty of every owner of any vacant lot, building or premises, including any place of business, hotel, restaurant, dwelling house, apartment, tenement or any other establishment, at all times to maintain the premises in a clean and orderly condition, permitting no deposit or accumulation of refuse or materials other than those ordinarily attendant upon the use for which such premises are legally intended.

Sec. 7-53. Removal of refuse from business.

Discarded refuse, including automobile parts, stoves, furniture and junkyard refuse, shall be removed by the proprietor so that the premises are clean and orderly at all times. Silt and similar deposits from automobile wash racks shall be removed from the Town by the establishment creating such deposit. Such removal shall be handled by the establishment responsible therefor.

Secs. 7-54 - 7-60 Reserved.

Section 4. Article V of Chapter 7 of the Johnstown Municipal Code shall be deleted and replaced in full with the following:

ARTICLE V – Brush and Weeds

Sec. 7-81. Definitions.

For purposes of this Article, and as otherwise used in this Chapter, the following terms shall have the meanings indicated:

Brush means voluntary growth of bushes and such as are growing out of place at the location where growing and includes all cuttings from trees and bushes and high and rank shrubbery growth which may conceal filthy deposits; and

Weed means an unsightly, useless, troublesome or injurious growing herbaceous plant, and includes all rank vegetable growth which exhales unpleasant and noxious odors and high and rank vegetable growth that may conceal filthy deposits.

Sec. 7-82. Growth and accumulation of weeds and brush prohibited.

Weeds or brush growing on property in the Town are hereby declared to be nuisances. No owner of any property shall allow or permit weeds or brush exceeding six (6) inches to grow, or remain when grown, on any such property, or on or along any sidewalk adjoining the same, or in the alley behind the same. All such weeds and brush shall be cut to a height of six (6) inches or less and kept so cut. Notwithstanding the foregoing, owners of commercial lots may cut a ten (10) inch buffer around the entire lot to a height of six (6) inches or less and allow the weeds and brush in the interior of the lot to grow to a height of up to twelve (12) inches.

Sec. 7-83. Notice to cut weeds or brush.

- (a) An authorized inspector shall provide written notice to the owner of property to cut any weeds or brush from property within three (3) days of delivery of such notice. Notice shall be deemed delivered on the date of hand delivery or posting on the property or three (3) days after depositing the notice in the mail, whichever is earlier.
- (b) In case of the failure of any owner of such property to cut or remove the weeds or brush, the Town Manager may order the cutting and removal of the weeds or brush and recover the costs of abatement and an administrative fee as set forth in this Chapter.

Sec. 7-84. Removal from Town.

All weeds and brush cut in accordance with this Article shall, immediately upon being cut, be removed from the Town or otherwise entirely destroyed by the owner or occupant of the property upon which the weeds and brush have been cut.

Sec. 7-85. Undesirable Plant Management Advisory Commission designated.

Pursuant to the Colorado Noxious Weed Act, §§ 35-5.5-101, *et seq.*, the Town Council is appointed to act as the local advisory board for the Town and shall have the duties and responsibilities as provided by state statute.

Secs. 7-86 - 7-100 Reserved.

Section 5. Article VI of Chapter 7 of the Johnstown Municipal Code shall be deleted and replaced in full with the following:

ARTICLE VI - Trees

Sec. 7-101. Prohibited trees.

- (a) It is unlawful and deemed a nuisance to sell or import into the Town or plant or cause to be planted within the Town limits any box-elder trees (*Acer negundo*), cotton-bearing cottonwood trees (*Genus populus spices*), Chinese or Siberian elm trees (*Ulmus pumila*) or other undesirable plants as designated by ordinance upon any property within the Town, and the planting or setting out of these certain plants is hereby declared to be a menace to public health, safety and welfare and a nuisance.
- (b) The owner of any property within the Town, upon which any tree listed in Subsection (a) above has been planted, shall cut and remove such tree from the property after being given written notice to do so by the Town.
- (c) In case of the failure of any owner of property to cut and remove such tree as required in Subsection (b) above, the Town shall cut and remove such tree and recover its costs and an administrative fee as provided in this Chapter.

Sec. 7-102. Inspection of trees for signs of breeding of elm bark beetles.

The Town shall, or shall allow a representative of the State Department of Agriculture to, examine and inspect all trees within the Town on public or private property for signs of breeding of elm bark beetles.

Sec. 7-103. Maintenance of trees, storage of wood furnishing breeding places for elm bark beetles prohibited.

It shall be unlawful for any owner of property to maintain trees or store wood furnishing breeding places for the elm bark beetles. Such trees or wood shall include the following:

- (1) Dead or dying or obviously weakened elm trees, regardless of species or variety;
- (2) Dead or dying or obviously weakened branches in otherwise healthy elms;
- (3) Stumps of cut trees on which the bark remains; or
- (4) Elm wood cut from trees, whether or not they were diseased, that is cut and piled for fireplace wood, whether stored indoors or out.

Sec. 7-104. Trees and limbs in public right-of-way.

It shall be the duty of the owner of property adjacent to the public right-of-way to remove any trees or limbs located in or above the public right-of-way when such trees or limbs constitute a danger to public safety. Such trees and limbs shall constitute a nuisance. For the purposes of this Section, a *danger to public safety* shall include all trees and limbs which hinder visibility or which may otherwise affect public health, safety and welfare, and trees and limbs which present a structural defect which may cause the tree or limb to fall on a person or on property of value. An authorized inspector, in such person's discretion, shall determine whether the trees or limbs constitute a danger to public safety.

Sec. 7-105. Control of trees and shrubs.

- (a) Trees, shrubs and other vegetation which are dead, broken, diseased or infested by insects so as to endanger the well-being of other trees, shrubs or vegetation or constitute a potential threat or hazard to people or property within the Town are hereby declared a nuisance.
- (b) The Town shall give written notice as provided in this Chapter to the owner of property abutting Town rights-of-way or other public property of any condition deemed unsafe caused by trees and other vegetation overhanging or projecting from such abutting property and onto or over such right-of-way or other public property with such unsafe condition and require abatement. The Town shall correct any such unsafe condition immediately upon the expiration of the notice period specified in the notice of abatement and recover its costs and an administrative fee as provided in this Chapter.
- (c) It is unlawful and hereby declared to be a nuisance for any person to cut, trim, spray, remove, treat or plant any tree, vine, shrub, hedge or other woody plant upon access-controlled arterials or other public parks and greenbelts within the Town, unless authorized or directed by the Town.
- (d) It is unlawful and hereby declared to be a nuisance for any person to injure, damage or destroy any tree, shrub, vine, hedge or other vegetation in or upon public rights-of-way or other public property within the Town. Any person who notifies the Town of such injury, damage or destruction and promptly repairs or replaces such vegetation or pays for the cost of such repair or replacement shall not be charged with a nuisance violation.

Secs. 7-106 - 7-120 Reserved.

Section 6. Severability. If any part or provision of this Ordinance, or its application to any person or circumstance, is adjudged to be invalid or unenforceable, the invalidity or unenforceability of such part, provision, or application shall not affect any of the remaining parts, provisions or applications of this Ordinance that can be given effect without the invalid provision, part or application, and to this end the provisions and parts of this Ordinance are declared to be severable.

Section 7. Code revisions. Minor changes such as the format and other changes to unify the revised Code may be necessary. The Town Clerk is hereby authorized to make such changes, provided that neither the intent nor substantive content will be altered by such changes.

Section 8. Publication; Effective Date; Recording. This Ordinance, after its passage on final reading, shall be numbered, recorded, published and posted as required by the Town's Home Rule Charter and the adoption, posting and publication shall be authenticated by the signature of the Mayor and the Town Clerk and by the Certificate of Publication. This Ordinance shall become effective upon final passage as provided by the Home Rule Charter of the Town of Johnstown, Colorado. Copies of the entire Ordinance are available at the office of the Town Clerk.

INTRODUCED, AND APPROVED on first reading by the Town Council of the Town of Johnstown, Colorado, this _____ day of _____, 2020.

TOWN OF JOHNSTOWN, COLORADO

ATTEST:

By: _____

By: _____

Diana Seele, Town Clerk

Gary Lebsack, Mayor

PASSED UPON FINAL APPROVAL AND ADOPTED on second reading by the Town Council of the Town of Johnstown, Colorado, this ____ day of _____, 2020.

TOWN OF JOHNSTOWN, COLORADO

ATTEST:

By: _____
Diana Seele, Town Clerk

By: _____
Gary Lebsack, Mayor