

ORDINANCE NO. 2
(Series 1984)

AN ORDINANCE OF THE TOWN OF LAKE CITY, COLORADO, AMENDING THE LAKE CITY MUNICIPAL CODE TO PROVIDE REVISED REGULATIONS FOR AND CONCERNING EXCAVATIONS IN PUBLIC PROPERTY, JUNK, LITTER, NUISANCES, NOISE, COMMERCIAL ACTIVITIES, MISCELLANEOUS OFFENSES, AND PENALTIES AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF LAKE CITY, COLORADO, as follows:

Section 1:

Section 10.2 of the Lake City Municipal Code is repealed and Chapter 10 of the Lake City Municipal Code is amended by the addition of a new Section 14 to read as follows:

CHAPTER 10

Section 14

EXCAVATION AND BARRACADE REQUIREMENTS

- 10.14-1: General Provisions
- 10.14-2: Permits
- 10.14-3: Specific Requirements
- 10.14-4: Penalties and Enforcement

10.14-1: General Provisions

- A. The provisions of this Section shall be administered and enforced by the Town street superintendant or such other Town employees or officials as may be designated by the Board of Trustees.
- B. If there is any conflict between any provision of this Section and any other provision of any ordinance of the Town or other applicable State or Federal regulations, those regulations providing the more stringent or more strict requirements shall apply.
- C. It shall be unlawful for any person, corporation, political subdivision, cable t.v. company, power company, or telephone company to cut any street, pavement or sidewalk within any Town-owned street, alley, easement or right-of-way, or to excavate in any Town owned right of way or property without first obtaining a permit in accordance with the requirements of this Section.
- D. It shall be unlawful for any person to violate any provisions of this Section or any excavation permit issued pursuant to this Section.

10.14-2: Permits

- A. A permit may be issued upon application to the Gunnison County Electric Association, without charge or bond, pursuant to the provisions of their franchise.
- B. A permit may be issued to CATV companies, without charge or bond, subject to complete compliance with the provisions of this Section. The location of CATV facilities shall be subject to Town review and approval pursuant to Section 10-13 of the Lake City Municipal Code.
- C. A permit may be issued to the Telephone Company and Lake City Area Water and Sanitation District, without charge or bond, subject to full compliance with the other provisions of this Section and review and approval of the location of any proposed facilities.
- D. The Gunnison County Electric Company, the Telephone Company, CATV Companies and The Lake City Area Water and Sanitation District may be issued a blanket permit, without charge or bond, by the Town to allow for excavation, as necessary, for the maintenance of existing utility lines, but any new construction for the installation of new facilities shall require a separate excavation permit.
- E. Applications and permits shall be on forms provided by the Town, which may require any information necessary or convenient for the administration of the provisions of this Section. Applications shall be accompanied by an application fee in the amount of \$25.00.
- F. The permit may contain such terms and conditions, as necessary, to protect the public health, safety and welfare, to insure the proper restoration and reconstruction of road or other surfaces on public property to Town specifications, to protect public and private property, and to insure compliance with the requirements of this Section, including the requirement for a bond adequate to guarantee compliance with the permit and this Section and compliance with Part VI of the "Manual on Uniform Traffic Control Devices for Streets and Highways, 1978", as published by the United States Department of Transportation.

10.14-3: Specific Requirements

- A. No excavation shall be made which would obstruct traffic across the entire width of a street without the prior approval of the Town's street superintendant and notification of the Chief of the Lake City Area Fire Department and Town Marshall.

- B. Excavation shall be performed or conducted in a workmanlike manner and shall not unreasonably interfere with access to fire hydrants or existing utility structures.
- C. Excavations in areas other than streets shall be protected by signs, barricades, and railings, as reasonably required, to warn and protect persons and property.
- D. Excavated materials shall not be piled or stored in a place or manner which endangers persons or property, unnecessarily obstructs traffic, or creates a nuisance.
- E. Any damage to existing property, improvements, utilities, or survey monuments caused by the excavation shall be fully repaired and restored by the permittee and all excess earth, rock or other debris resulting from the work shall be removed.
- F. The requirements of Part VI of the "Manual on Uniform Traffic Control Devices for Streets and Highways" shall apply to all street excavations and construction.
- G. The permittee and owner of any utility or facility installed within public property shall be jointly and severally responsible to repair any damage to the street, sidewalk, utilities or other improvements, including subsidence, which results from their installation, operation or maintenance of their facility. In the event they fail to make such repairs upon request, the Town may make the repairs and collect the cost of doing so from such parties.

The Lake City Area Water and Sanitation District shall be responsible for any damage to street surfaces, sidewalks, utilities or other improvements, including subsidence, which is caused or results from their excavation or their installation, operation or maintenance of all water and sewer lines and facilities owned or served by the District which are located within Town-owned property. In the event the District shall fail to make such repairs after notice, the Town may cause the repairs to be made and collect the cost of doing so from the District.

10.14-4: Penalties and Enforcement

- A. Any person convicted of a violation of any provision of this Section shall be punished by a fine not to exceed \$300 or by a jail sentence of up to ninety (90) days, or by both such fine and jail sentence; provided,

however, no person under the age of eighteen years may sentenced to a term in jail, except for contempt of court.

- B. Any situation created in violation of the requirements of this Section or a permit issued pursuant hereto or by failure to comply with the requirements of this Section or permit issued pursuant hereto is hereby declared to be a nuisance which may be abated as provided by Town ordinance or other law.

Section 2:

Chapter 12 (Sections 12.1 to 12.30) of the Lake City Municipal Code and Ordinance No. 3 (Series 1980) are hereby repealed and new Sections 1 and 2 of Chapter 12 are enacted to read, as follows:

CHAPTER 12

Section 1

MISCELLANEOUS OFFENSES

- 12.1-1: Applicability
- 12.1-2: Complicity
- 12.1-3: Criminal Liability of a Corporation
- 12.1-4: Criminal Liability of an Individual for Corporate Conduct
- 12.1-5: Criminal Attempt
- 12.1-6: Accessory to an Offense
- 12.1-7: Destruction of Property
- 12.1-8: Unlawful Entry
- 12.1-9: Trespass
- 12.1-10: Discharge of Guns Prohibited
- 12.1-11: Interference with an Officer
- 12.1-12: Resisting Arrest
- 12.1-13: Liquor Laws
- 12.1-14: Indecent Conduct
- 12.1-15: Disorderly Conduct
- 12.1-16: Limitations on the Use of Public Sewer System
- 12.1-17: Sleeping in Unlawful Places
- 12.1-18: Abandoned Containers
- 12.1-19: Fireworks Exhibitions
- 12.1-20: Explosives
- 12.1-21: Impersonating an Officer
- 12.1-22: Petty Theft
- 12.1-23: Posting of Handbills

12.1-1: Applicability

All provisions of this Chapter shall apply within the Lake City Town Limits and upon any property owned or under the control of the Town outside of the Town.

12.1-2: Complicity

A person is legally accountable as principal for the behavior of another constituting a violation of any provision of any City ordinance, if, with the intent to promote or facilitate the commission of the offense, he aids, abets, or advises the other person in planning or committing the offense.

12.1-3: Criminal Liability of a Corporation

A corporation is guilty of an offense if the conduct constituting the offense consists of an omission to discharge a specific duty of affirmative performance imposed on the corporation by ordinance; or the conduct constituting the offense is engaged in, authorized, solicited, requested, commanded or knowingly tolerated by the board of directors, or by a high managerial agent, acting within the scope of employment or in behalf of the corporation.

12.1-4: Criminal Liability of an Individual for Corporate Conduct

A person is criminally liable for conduct constituting an offense which he performs or causes to occur in the name of or on behalf of a corporation to the same extent as if that conduct were performed or caused by him in his own behalf.

12.1-5: Criminal Attempt

- A. A person commits criminal attempt, if, acting with the kind of culpability otherwise required for commission of a violation of a Town ordinance, he engages in conduct constituting a substantial step towards the commission of the offense. A substantial step is any conduct, whether act, omission or possession which is strongly corroborative of the firmness of the actor's purpose to complete the commission of the offense. Factual or legal impossibility of committing the offense is not a defense, if the offense could have been committed had the attendant circumstances been as the actor believed them to be, nor is it a defense if the crime attempted was actually perpetrated by the accused.
- B. A person who engages in conduct intending to aid another to commit an offense commits criminal attempt if the conduct would establish his complicity under Subsection 12.1-2 were the offense committed by the other person, even if the other is not guilty of committing or attempting the offense.
- C. It is an affirmative defense to the charge under this Subsection that the defendant abandoned his effort to commit the offense or otherwise prevented its commission under circumstances manifesting the complete and voluntary renunciation of his criminal intent.

12.1-6: Accessory to an Offense

- A. A person is an accessory to an offense, if, with intent to hinder, delay, or prevent the discovery, detection, apprehension, prosecution, conviction or punishment of another for the commission of a violation of a Town ordinance, he renders assistance to such person.
- B. "Renders Assistance" means to:
 - 1. Harbor or conceal the other; or
 - 2. Warn such person of impending discovery or apprehension; or
 - 3. Provide such person with money for transportation, weapon, disguise, or other things to be used in avoiding discovery or apprehension; or
 - 4. By force, intimidation, or deception, obstruct anyone in the performance of any act which might aid in the discovery, detection, apprehension, prosecution, conviction or punishment of such person.

12.1-7: Destruction of Property

- A. It shall be unlawful for any person to willfully deface, destroy or damage real or personal property belonging to another.
- B. This Subsection shall not apply where, in a single criminal episode, the aggregate damage to personal and real property exceeds one hundred dollars (\$100.00).

12.1-8: Unlawful Entry

- A. It shall be unlawful for any person to enter upon the premises of another which are enclosed in a manner designed to exclude intruders, or are fenced, when he is not licensed, invited or otherwise privileged to do so.
- B. For purposes of this Subsection, "premises" shall mean real property, buildings and other improvements on real property, excluding a dwelling or a motor vehicle.

12.1-9: Trespass

- A. It shall be unlawful for any person to remain on the premises of another if he has been advised that his permission, license or privilege to be there has been revoked by the owner of the premises or other authorized person.

- B. For purposes of this Subsection, "premises" shall mean real property, buildings and other improvements thereon, except a dwelling or a motor vehicle.

12.1-10: Discharge of Guns Prohibited

- A. It is unlawful for any person, other than a law enforcement officer, to discharge a firearm, spring gun, air gun, pellet gun, BB gun or any other gun within the Town, except upon a range totally enclosed within a building adequately constructed so that no noise or odor is observable and no projectiles travel off of the range premises.
- B. This Subsection shall not apply to the lawful use of a gun in protection of persons or property.
- C. This Subsection shall not apply when a permit has been granted by the Board of Trustees for a special event. No permit shall be granted unless the Board determines that no nuisance, unreasonable noise or safety hazard will be created.

12.1-11: Interference with an Officer

It shall be unlawful for any person to interfere with, or by using or threatening to use violence, force or physical interference or obstacle, to obstruct, impair, or hinder the enforcement of the law or preservation of the peace by a peace officer acting under color of his official authority, or the performance of a governmental function by an officer, employee or agent of the Town acting in the lawful performance of his duties.

12.1-12: Resisting Arrest

- A. It shall be unlawful to prevent or attempt to prevent a peace officer acting under color of his official authority, from effecting the arrest of the actor or another person by using or threatening to use physical force or violence against the peace officer or another, or by using any other means which creates a substantial risk of causing physical injury to the peace officer or another.
- B. It is no defense to a prosecution under this Subsection that the peace officer was attempting to make an arrest which in fact was unlawful, if he was acting under the color of his official authority, and in attempting to make the arrest he was not resorting to unreasonable or excessive force giving rise to the right of self-defense.

12.1-13: Liquor Laws

- A. **Licensing Authority:** The Board of Trustees is hereby designated the local licensing authority for purposes of exercising the duties and powers provided by the Colorado Beer Code and the Colorado Liquor Code.
- B. As used in this Subsection 12.1-13, the following definitions shall apply:
 - 1. "Alcoholic beverage" shall mean any "fermented malt beverage" as defined by the Colorado Beer Code and all "malt, vinous or spiritous liquors" as defined by the Colorado Liquor Code; including, but not limited to, beverages commonly known as liquor, wine and beer with an alcohol content of more or less than 3.2% by weight.
 - 2. "Fermented malt beverage" shall mean any beverage defined as such by the Colorado Beer Code including, but not limited to, beverages commonly referred to as "3.2% Beer" or beer containing not more than 3.2% alcohol by weight.
 - 3. "Malt, vinous or spiritous liquors" shall have the meaning as defined by the Colorado Liquor Code, and shall include, but not be limited to, liquor, wine and beer having more than 3.2% alcohol content by weight.
- C. **Unlawful Acts:** It shall be unlawful for any person to commit any of the following acts:
 - 1. To consume any alcoholic beverage in or at any of the following stated places unless the premises are licensed by the State for consumption of the alcoholic beverage on the premises.
 - a. Restaurants, retail liquor stores, pool halls, dance halls.
 - b. Public school premises, public buildings and property.
 - c. Places of public gathering for amusement and entertainment.
 - d. Streets, sidewalks or alleys.
 - e. Any other public place.
 - f. Parking areas surrounding the premises of any of the aforementioned stated places.

2. To possess an unsealed or opened container containing any alcoholic beverage in any of the following stated places other than premises licensed by the State for consumption on the premises of the alcoholic beverage.
 - a. Restaurants, retail liquor stores, pool halls, dance halls.
 - b. Public school premises, public buildings and property.
 - c. Places of public gathering for amusement and entertainment.
 - d. Streets, sidewalks or alleys.
 - e. Any other public place.
 - f. Parking areas surrounding the premises of any of the aforementioned stated places.
3. For any person owning or having possession or control of any premises to allow consumption of an alcoholic beverage or the possession of an unsealed or opened alcoholic beverage container upon such premises by any person in violation of Subsections 12.1-13(C)(1) or (C)(2) of this Section.
4. For any person under the age of 18 years to possess, purchase or consume any alcoholic beverage.
5. For any person under the age of 21 years of age to purchase, possess or consume any malt, vinous or spiritous liquors.

D. Presumptions:

1. It shall be prima facie evidence that any beverage or liquid is an alcoholic beverage if it is or was contained within a container labeled as an alcoholic beverage container of any sort and it either looks like, smells like or tastes like an alcoholic beverage.
2. Except for those offenses in this Subsection which specifically involve only malt, vinous or spiritous liquors, it shall not be necessary in order to prove a violation of any provisions of this Subsection to distinguish between beers having more or less than 3.2% alcohol by weight or to offer

proof as to the alcoholic content of the beer or other malt liquors or fermented malt liquors or fermented malt beverage involved.

- E. Notwithstanding the provisions of Subsections 12.1-13(C)(1)(2) and (3), alcoholic beverages may be consumed or possessed in open containers, as follows:
1. In the Town Park, provided no glass containers are used to serve or contain the beverages.
 2. When the Town Board has granted a permit for a special event. Such permits shall be granted only to established Hinsdale County civic or charitable groups or associations for special events. A condition of each permit shall be that the permit holder shall maintain order and clean up any public areas after the event. Other conditions shall be imposed, as necessary, to protect the public health, safety and welfare. Upon violation of any condition, the permit may be terminated immediately by the Marshall. The sale of alcoholic beverages requires a licence pursuant to the State Liquor and Beer Code.

12.1-14: Indecent Conduct

It shall be unlawful for any person to urinate or defecate in any place except sanitary facilities constructed for that purpose connected to an authorized sewage collection system or authorized individual sewage disposal system.

12.1-15: Disorderly Conduct

It is unlawful for any person to intentionally, knowingly or recklessly:

- A. Make a coarse and obviously offensive utterance, gesture or display in a public place and the utterance, gesture or display tends to invite the immediate breach of peace; or
- B. Fight with another person in a public place, except in an amateur or professional contest of athletic skill; or
- C. Not being a peace officer, display a deadly weapon in a public place in a manner calculated to alarm; or
- D. Make unreasonable noise in a public place or near a private residence that he has no right to occupy; or

- E. Abuse or threaten a person in a public place in an obviously offensive manner; or
- F. Strike, shove, kick or otherwise touch a person or subject him to physical contact with intent to harass, annoy or alarm.

12.1-16: Limitations on the Use of Public Sewer Systems

- A. It shall be unlawful to do any of the following:
 - 1. To permit or cause the discharge into any public sewer system of any water or other liquids containing toxic, poisonous or other solids, liquids or gases which, in sufficient quantities, either singly or in interaction with other wastes, could contaminate the sludge produced by the treatment plant; interfere with or injure any sewage treatment process; constitute a hazard to humans or animals; create a public nuisance; or create any hazard in or have an adverse affect on any waters discharged from a public sewage treatment works.
 - 2. To connect any device to a public sanitary sewer system other than sanitary plumbing facilities, including, but not limited to, any down spout, foundation drain, area way drain, storm drain, storm sewer, or other source of surface runoff or ground water.
 - 3. To operate a wash rack with drains connected to a public sewer system unless a trap which effectively prevents the entry of sand, mud and gravel has been installed in accordance with specifications approved by the owner of such system.
 - 4. To make any discharge into a public sewer system from a hotel, restaurant, club, commercial or institutional kitchen, unless a trap for grease and oil, approved by the owner of the system, has been installed.
 - 5. To discharge or permit to be discharged into a public sewer system any of the following:
 - a. Any liquid or vapor having a temperature higher than one hundred fifty degrees (150°).
 - b. Any gasoline, benzene, naptha, fuel oil, mineral oil, or other volatile, flammable or explosive liquids, solids or gas.
 - c. Any solid or viscous substances in quantities

or of a size capable of causing obstruction to flow in sewers or interference with the proper operation of sewage treatment facilities, including, but not limited to, ashes, cinders, sand, mud, gravel, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, unground garbage, whole blood, hair, flushings, entrails, paper, dishes, cups or containers.

- d. Garbage that has not been properly shredded or ground by a garbage disposal or grinder.
- e. Wastewater containing more than twenty five (25) milligrams/liter of petroleum oil, nonbiodegradable cutting oils or products of mineral oil origin.
- f. Wastewater from industrial plants containing floatable oil, fat or grease.
- g. A slug of wastewater of such size or concentration that the treatment process is not capable of meeting discharge requirements.
- h. Any substance which the sewage treatment plant cannot treat sufficiently to meet plant effluent standards, which causes the release of obnoxious gases, or is harmful to the sewer system and plant.

12.1-17: Sleeping in Unlawful Places

It shall be unlawful for any person to sleep in any public or private place without permission of the owner or lawful occupant, or without license or privilege to do so, during the hours of darkness.

12.1-18: Abandoned Containers

- A. It shall be unlawful for any person to leave or permit to be left any ice box, refrigerator or other device, container or appliance, which has a door, lid or locking device which cannot be released from the inside, in any place outside, or inside an unoccupied building which is accessible to children, without first removing the lid or locking device or otherwise limiting any possible access.
- B. Any item in violation of this Subsection is declared to be a nuisance which may be abated pursuant to law.

12.1-19: Fireworks Exhibitions

Permits for fireworks displays may be granted by the

Board of Trustees pursuant to the procedures and requirement of C.R.S. 12-28-103.

12.1-20: Explosives

The storage, transportation, use and manufacture of explosives within the Town shall be subject to the applicable provisions of State Law.

12.1-21: Impersonating an Officer

It shall be unlawful for any person to impersonate a peace officer or other Town officer, agent or employee and perform any act in that pretended capacity.

12.1-22: Petty Theft

- A. It is unlawful for any person to knowingly obtain or exercise control over anything of value, having a value of less than three hundred dollars (\$ 300.00), of another without authorization or by threat or deception, or knowing said thing of value to have been stolen; and
1. Intend to deprive the other person permanently of the use or benefit of the thing of value; or
 2. Knowingly use, conceal, or abandon the thing of value in such a manner as to deprive the other person permanently of its use or benefit; or
 3. Use, conceal or abandon the thing of value intending that such use, concealment, or abandonment will deprive the other person permanently of its use and benefit; or
 4. Demand any consideration to which he is not legally entitled as a condition of restoring the thing of value to the other person.
- B. If any person wilfully conceals unpurchased goods, wares or merchandise owned or held by and offered or displayed for sale by any store or any other mercantile establishment, whether such concealment is on his own person or otherwise, and whether on or off the premises of such store or mercantile establishment, such concealment shall constitute prima facie evidence that such person intended to commit the offense of petty theft.
- C. The offense of petty theft shall not include theft from the person of another.

12.1-23: Posting of Handbills

- A. It shall be unlawful to post or attach any handbill, placard, poster, or printed material upon any building, fence, utility pole or other structure without permission of the owner or party in lawful possession of such structure.
- B. Anything posted or attached in violation of this Subsection is hereby declared to be a nuisance which may be abated pursuant to law.

CHAPTER 12

Section 2

NOISE REGULATIONS

- 12.2-1: Unreasonable Noise
- 12.2-2: Prohibited Noises
- 12.2-3: Factors
- 12.2-4: Affirmative Defenses
- 12.2-5: Special Noise Permits

12.2-1: Unreasonable Noise

- A. It is unlawful for any person to make, continue, or cause or permit to be made or continued any unreasonably excessive, unnecessary or unusually loud noise or any noise which unreasonably annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others.
- B. Unreasonable noise is hereby declared to be a nuisance which may be abated pursuant to law.

12.2-2: Prohibited Noises

The following noises shall be prima facie a violation of this Section:

- A. The sounding of any vehicle's horn or signaling device except for a danger warning.
- B. The operation or use of any musical instrument, radio, tape recorder, music instrument, phonograph, or similar device between the hours of eleven p.m. and seven a.m. in such a manner as to be plainly audible at a distance of fifty feet from the building, structure or vehicle in which it is located. (In those areas zoned "Business", said distance shall be one hundred fifty feet.)
- C. The use of loudspeakers, amplifiers or other devices for amplification of sound which is broad cast over public property for the purpose of commercial advertising or attracting the attention of the public to any building or structure, or to a performance, show or sale.
- D. Any animal or bird which makes unreasonably frequent, loud or continuous noises audible off the premises upon which it is kept.
- E. The blowing of any locomotive steam whistle or steam

whistle attached to any stationary boiler except to give notice of the time to begin or stop work or as a warning of fire or danger or upon request of proper Town authorities.

- F. Unmuffled or improperly muffled engine exhaust noise or blower noises.
- G. Loud noises resulting from defective or overloaded vehicles.

12.2-3: Factors

Factors which may be considered in determining whether a noise is unreasonable include the following:

- A. The volume of the noise;
- B. The intensity of the noise;
- C. Whether the nature of the noise is usual or unusual;
- D. Whether the origin of the noise is natural or unnatural;
- E. The volume and intensity of the background noise, if any;
- F. The proximity of the noise to residential sleeping facilities;
- G. The nature and zoning of the area within which the noise emanates;
- H. The density of inhabitation of the area within which the noise emanates;
- I. The duration of the noise;
- J. The time of the day or night the noise occurs;
- K. Whether the noise is recurrent, intermittent or constant;
- L. Whether the noise is produced by a commercial or noncommercial activity.

12.2-4: Affirmative Defenses

It shall be an affirmative defense that the noise was emitted under the following circumstances:

- A. As a safety or warning signal or from emergency pressure relief valves;

- B. From any authorized emergency vehicle, when responding to any emergency call or acting in time of emergency;
- C. From activities of a temporary duration permitted by law and for which a license or permit therefor has been granted by the Town pursuant to Section 12.2-5.

12.2-5: Special Noise Permits

The Town Board of Trustees or their duly authorized representatives may grant a special noise permit specifying all appropriate terms, limits and conditions in the following circumstances:

- A. Additional time is necessary for the permittee to alter or modify his activity or operation to comply with this Section; or
- B. The activity, operation or noise source will be of temporary duration, and cannot be done in a manner that would comply with this section; or
- C. No other reasonable alternative is available to the permittee.

Section 2:

Chapter 5 (Sections 5.1 thru 5.3) of the Lake City Municipal Code and Ordinance No. 4 (Series 1980) are hereby repealed and Sections 1 and 2 of Chapter 5 of the Lake City Municipal Code are reenacted to read, as follows:

CHAPTER 5

HEALTH AND SANITATION

Section 1

Litter and Junk

- 5.1-1: Littering
- 5.1-2: Storage of Litter
- 5.1-3: Keeping of Junk
- 5.1-4: Definitions

5.1-1: Littering

- A. It shall be unlawful for any person to deposit, throw, or leave any litter or junk on any public or private property or in any waters.
- B. It shall be an affirmative defense that:
 - 1. The litter or junk is placed in a receptical or container installed on such property for such purpose which such person is authorized to use; or
 - 2. Such person is the owner or tenant in lawful possession of such property, or he has first obtained written consent of the owner or tenant in lawful possession, or the act is done under the personal direction of said owner or tenant.
- C. Whenever litter or junk is thrown, deposited, dropped or dumped from any motor vehicle in violation of this subsection, the operator of said motor vehicle is presumed to have caused or permitted the litter or junk to be so thrown, deposited, dropped or dumped therefrom.

5.1-2: Storage of Litter

- A. It shall be unlawful for any person to keep, store, or deposit or allow to be kept, stored or deposited any litter upon his own property or upon property of which he is a tenant in lawful possession, except within a

trash can or container which has a tight fitting lid, or a trash bag, or unless the litter is totally enclosed within a building.

- B. The keeping, storage or deposit of litter in violation of this Subsection is hereby declared to be a nuisance which may be abated in accordance with law.

5.1-3: Keeping of Junk

- A. It shall be unlawful for any person to keep, store or deposit or allow to be kept, stored or deposited junk upon his own property or upon property of which he is a tenant in lawful possession, unless the junk is totally enclosed within a building or is screened by a fence or other enclosure from view off such person's property or is kept within a receptacle for such purpose with a tight fitting lid.
- B. The keeping, storage or deposit of junk in violation of this Subsection is hereby declared to be a nuisance which may be abated in accordance with law.
- C. It shall be an affirmative defense that:
 - 1. A motor vehicle without license plates is operable and meets equipment requirements of Part 2, Article 4, Title 42, C.R.S., as amended, and does not have a license plate merely because of problems of obtaining proper title, or
 - 2. The owner or occupant has no more than two (2) "junked" motor vehicles upon his premises, which are in the process of being repaired and the motor vehicles are covered by an opaque covering at all times that are not actually being worked on.
 - 3. The used building materials or firewood are stored or stacked in a reasonably neat and orderly manner.
 - 4. The garbage has been properly composted for use in gardening.

5.1-4: Definitions:

- A. For the purpose of this Section, "litter" shall mean all rubbish, waste material, refuse, garbage, trash, debris or other foreign substances, solid or liquid of every form, size, kind and description.
- B. For the purpose of this Section, "junk" shall include, but not be limited to: discarded, unusable or broken machinery, appliances, furniture, furnishings, or sporting equipment; used building or construction

materials; motor vehicles without current license plates or State safety inspection stickers, if they are required by the State; motor vehicles which are substantially wrecked, demolished, or dismantled; motor vehicles which cannot be started, stopped, and driven forward and backward under their own power; motor vehicles without serviceable tires on all wheels; and all other items commonly known as junk.

- C. An item may be both "junk" and "litter" as defined in this Subsection.

CHAPTER 5

Section 2

NUISANCES

- 5.2-1: Nuisances Prohibited
- 5.2-2: Abatement of Nuisances
- 5.2-3: Cost of Abatement

5.2-1: Nuisances Prohibited

- A. It shall be unlawful for any person to create, cause, or maintain any nuisance, or to permit any nuisance to exist upon or in connection with any premises owned by him or under his control.
- B. The following are hereby declared to be a nuisance.
 - 1. Anything or activity which unreasonably annoys or interferes with the use or enjoyment of public or private property or which constitutes a health or safety hazard.
 - 2. Anything declared to be a nuisance by any Town ordinance or by the statutes or regulations of the State.
 - 3. Any other thing or activity which, under law, constitutes a nuisance.
 - 4. Any excavation exceeding five (5) feet in depth, which is not properly marked and barricaded, enclosed or fenced and, all cisterns, wells, or excavations which are abandoned, or not being used or operated, and are not adequately covered with a locked lid or other covering weighing at least 60 pounds, or securely enclosed or fenced with a fence to the height of at least six (6) feet.
 - 5. Any unoccupied building, house or other structure which is in such a state of disrepair that it may collapse at any time or poses a safety hazard to persons upon the premises.
 - 6. Manure stored for any purpose other than immediate use as fertilizer.
- C. Any use or the manner of use of any property which is

declared a nuisance by this Section shall be a nuisance subject to abatement under this Section notwithstanding the fact that such a use might otherwise be allowed under the Town's zoning, land use, building or other regulations.

5.2-2: Abatement of Nuisances:

- A. In addition to any other powers granted to the Town by law to abate nuisances, any nuisance may be abated in accordance with the provisions of this Subsection.
- B. The Town may maintain an action in a court of competent jurisdiction to enjoin or abate a nuisance.
- C. The Town may prosecute any person maintaining or allowing a nuisance to exist in Municipal Court, and upon conviction, the Court may enter an order on such items as it deems appropriate for the abatement of the nuisance in addition to any fine or jail sentence.
- D. The Town may give notice, in writing, to any person responsible for the maintenance of a nuisance, which notice shall allow a reasonable time for such person to correct and eliminate the nuisance. If such person shall fail to correct or eliminate the nuisance by the time specified in the notice, the Town may take action for the correction or elimination of the nuisance and shall have the right to enter upon private property for such purpose. The Town may collect the cost of doing so in accordance with Subsection 5.2-3. Prior to entering upon private property, the Town shall request the permission of the owner or party in possession of the premises. If such permission is denied or such persons are not located, the Town shall not enter onto private property until the Municipal Court issues an order authorizing entry, which may be issued upon a showing of probable cause and compliance with the notice requirements of this Subsection.
- E. The Town may take all necessary steps, including the entry upon private property, to abate or eliminate a nuisance without notice when such nuisance constitutes an immediate health or safety hazard. In such event, the cost incurred by the Town may be collected in accordance with Subsection 5.2-3. Prior to entry, the Town shall obtain an order from the Municipal Court authorizing entry, which order the Court may issue on a showing of probable cause.

5.2-3: Cost of Abatement

- A. The Town may recover all costs, including reasonable

attorney's fees, interest and penalties, it incurs in abating any nuisance as provided in this Section.

- B. The Town may maintain an action in a court of competent jurisdiction for such costs incurred in abating a nuisance.
- C. Such costs incurred shall be an assessment and lien upon the property affected which may be foreclosed by the Town in accordance with law which shall have priority over all other liens except general taxes and prior special assessments.
- D. Such costs incurred by the Town may be certified to the County Treasurer to be collected as delinquent charges together with interest and penalties authorized by law in a manner similar to property taxes against the property upon which the nuisance was maintained.

Section 3:

Sections 9.2 and 9.3 (including Subsections 9.3-1,2, and 3) and Chapter 11 (including Sections 11.1 thru 11.5) of the Lake City Municipal Code and Ordinance No. 7 (Series 1977) are hereby repealed and Chapter 11, Section 1 is reenacted to read, as follows:

CHAPTER 11

Section 1

OPEN BURNING

11.1-1: Open Burning

It shall be unlawful to burn any substances on any open premises, except for the non-commercial burning of private household trash in a freestanding incinerator or fireplace constructed of masonry, with a capacity of less than ten (10) cubic feet which does not allow the emission of particles greater than 1/2 inch in size.

Section 4:

Chapter 15 (including Sections 15.1 thru 15.8) of the Lake City Municipal Code is hereby repealed and Sections 1 and 2 of Chapter 15 are reenacted to read, as follows:

CHAPTER 15

FINES, PENALTIES AND ENFORCEMENT

Section 1

General Penalty

15.1-1: General Penalty

- A. It shall be unlawful to violate any provision of the Lake City Municipal Code or Town ordinances. Any person convicted of a violation of any provision of any Town ordinance, the Lake City Municipal Code, or any code adopted by reference thereby, may be punished by a fine in an amount not to exceed three hundred dollars (\$300) or by imprisonment in jail for a period of not more than ninety (90) days, or by both such fine and imprisonment, unless a lower maximum sentence is specified.
- B. Provided, however, no person under the age of eighteen (18) years may be sentenced to any period of imprisonment, except for a conviction of a violation of a traffic offense or on account of contempt of court.
- C. A separate offense shall be deemed committed upon each day any violation continues.

CHAPTER 15

Section 2

Inspection and Enforcement

15.2-1: Inspection and Enforcement

- A. Whenever necessary to make an inspection to enforce any of the provisions of the Lake City Municipal Code, any Code adopted by reference therein, or any Town Ordinance, authorized officers or employees of the Town shall have the right to enter upon any building or premises at all reasonable times for purposes of inspection or to perform any other duty imposed by such Ordinance. Prior to entry, they shall identify themselves and request permission to enter from the occupant or person in charge of the premises if they can be found by reasonable efforts. If entry is refused, they shall have recourse to any remedy provided by law to secure entry.
- B. The Town may maintain an action in a court of competent jurisdiction to enjoin any violation of the Lake City Municipal Code, any code adopted by reference therein, or of any provision of any Town ordinance.
- C. Any delinquent charges due the Town may be certified to the County Treasurer, together with interest or penalties, as allowed by law, to be collected similarly as ad valorem taxes with respect to the real or taxable personal property concerning which such delinquent charge was assessed or incurred.

Section 5: Savings Clause

The repeal and amendment of various provisions of the Lake City Municipal Code and Town ordinances, as provided in this Ordinance, shall not affect any offense or act committed, any penalty incurred, any contract, right, or duty established or accruing before the effective date of this Ordinance.

Section 6: Penalty Clause

It shall be unlawful for any person to violate any of the provisions of this Ordinance. Any person convicted of such a violation may be punished by a fine of up to \$300, or a jail sentence of up to 90 days, or by both such fine and imprisonment; provided, however, no person under the age of 18 years shall be subject to any term of imprisonment, except for contempt of Court.

Section 7: Severability Clause

If any provision of this Ordinance or the application of it to any person or circumstance is held invalid by a Court of competent jurisdiction, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provisions or applications. The provisions of this Ordinance are expressly declared to be severable.

Section 8: Emergency Declared

Because certain provisions of the Lake City Municipal Code, as amended by this Ordinance, are archaic, obsolete and unenforceable, and because it is necessary to update and amend such provisions so that the public health, safety and welfare can be protected, the Board of Trustees finds that an emergency exists and this Ordinance shall take effect immediately upon adoption.

INTRODUCED, READ and ADOPTED by the Board of Trustees of the Town of Lake City, Colorado, by a ^{unan-}imous vote this 6th day of June, 1984.

TOWN OF LAKE CITY, COLORADO

By Robert E. Hall
Mayor

ATTEST:

June Fehfeld
Town Clerk