

Special Meeting

- I. CALL TO ORDER
- II. PLEDGE OF ALLEGIANCE
- III. ROLL CALL
- IV. APPROVAL OF AGENDA
- V. NEW BUSINESS
 - a. Consideration and possible approval of AN ORDINANCE OF THE CITY OF CREEDE, COLORADO DECLARING AN EMERGENCY AND AMENDING CHAPTER 7 OF THE MUNICIPAL CODE OF THE CITY OF CREEDE, COLORADO RELATED TO NUISANCES AND THE ABATEMENT OF NUISANCES;
- VI. ADJOURN – NEXT MEETING JULY 2ND, 2024

OPEN TO THE PUBLIC

POSTED 6/26/2024

ZOOM: Meeting ID – 607 290 8885 & Passcode - Cr33d32276

VIRTUAL MEETING EXPECTATIONS: All participants will be expected to enter meeting muted and stay muted unless speaking; Any participant that wishes to speak or ask a question will be expected to ask for time in the chat or use the “raise hand” feature and be recognized before speaking.

**CITY OF CREEDE, COLORADO
ORDINANCE NO. 454**

AN ORDINANCE OF THE CITY OF CREEDE, COLORADO DECLARING AN EMERGENCY AND AMENDING CHAPTER 7 OF THE MUNICIPAL CODE OF THE CITY OF CREEDE, COLORADO RELATED TO NUISANCES AND THE ABATEMENT OF NUISANCES.

WHEREAS, CRS §31-15-101(2) provides that All such municipalities shall have the powers, authority, and privileges granted by this title and by any other law of this state together with such implied and incidental powers, authority, and privileges as may be reasonably necessary, proper, convenient, or useful to the exercise thereof. All such powers, authority, and privileges are subject to the restrictions and limitations provided for in this title and in any other law of this state; and

WHEREAS, CRS §31-15-103 provides that municipalities shall have power to make and publish ordinances not inconsistent with the laws of this state, from time to time, for carrying into effect or discharging the powers and duties conferred by this title which are necessary and proper to provide for the safety of such municipality and the inhabitants thereof not inconsistent with the laws of this state; and

WHEREAS, because the Board of Trustees has declared that there is a public safety issue specifically regarding the lateral support for 3d Street, this Ordinance concerns the immediate and ongoing administration and operation of the Town, its adoption as an emergency measure is necessary to the immediate preservation of the public health, safety and welfare.

WHEREAS, as a statutory municipality, the City has authority to declare what is a nuisance and abate the same, C.R.S. 31-15-401(1)(c);

WHEREAS, further, the City has authority to impose fines upon any party who creates a nuisance or allows a nuisance to continue, C.R.S. 31-15-401(1)(c);

WHEREAS, the Board of Trustees deems it necessary and appropriate to enact provisions to provide for the abatement of nuisances by establishing procedures for the City to identify and abate the same.

WHEREAS, the Board of Trustees previously adopted Ordinance 453 on June 25, 2024 which Ordinance will not take effect until July 25, 2024; and

WHEREAS, a significant situation has arisen regarding public safety, the Board of Trustee has determined that Ordinance 453 should be repealed immediately and Ordinance 454 adopted immediately as an emergency ordinance.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE CITY OF CREEDE, COLORADO, AS FOLLOWS:

Section 1. Ordinance 453 is hereby repealed in its entirety.

Section 2. CHAPTER 7, Article 1 of the Municipal Code of the City of Creede, Colorado, entitled “Administration and Abatement of Nuisances,” is hereby repealed and re-enacted to read as follows:

ARTICLE 1 Administration and Abatement of Nuisances

Sec. 7-1-10. Definitions.

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

Abatement proceeding: A civil proceeding before the Hearing Officer requested by the City to confirm any penalties and to seek an abatement order.

Abatement Order / Enforcement order: An order issued by the Hearing Officer upon conclusion of an abatement proceeding, after a responsible a party fails to appear at or take part in a hearing, or a responsible party appears at the hearing, and is found to be liable for one or more nuisance violations.

Hearing Officer: Pursuant to the provisions of this article, an individual appointed by the Board of Trustees as an Administrative Hearing Officer to preside over administrative hearings as designated by this Code and to issue such rulings, orders and decisions as may be required.

Notice of violation: A written notice provided to a responsible party identifying, among other things, the violations existing at, on, about or within the property identified in the notice.

Responsible party: The property owner, the occupant or an individual or entity who, acting as an agent for or in any other legal capacity on behalf of the owner, has authority over property subject to a notice of violation under this Chapter, including but not limited to, any mortgagee, loan servicer or loan holder, whether in trust or otherwise, and any employee, agent or representative thereof including real estate brokers.

Secretary: The personnel assigned by the City Manager to support the Hearing Officer with response to proceedings under this Article.

Violation: Any act or omission that would constitute non-compliance with any provision of this Code, any other provision of this Code that is authorized to be enforced through the City’s administrative hearing process, or any provision of this Code designated as a civil infraction.

Sec. 7-1-20. Administrative hearing officer and secretary.

(a) The Board of Trustees is authorized and empowered to appoint one or more Administrative Hearing Officers to act as Hearing Officer as provided in this Code. The Hearing Officer shall be an attorney licensed to practice law in the State of Colorado.

(b) The Hearing Officer shall conduct all abatement proceedings. The Hearing Officer may also conduct civil hearings as specifically designated in this Code. In each case, the Hearing Officer is charged with performing all functions necessary to render a final determination and order.

(c) In addition to any functions and powers assigned in this Article and elsewhere in this Code, the Hearing Officer has the authority to do all things necessary and incidental to hearing matters before it including, but not limited to the following:

- (1) Swearing in, calling and questioning witnesses;
- (2) Ruling on evidentiary questions and witness qualifications;
- (3) Upon the request of any party, issuing subpoenas for witnesses and documentary and other tangible evidence where the attendance of the witness or the admission of evidence is deemed necessary to the determination of the issues at the hearing, provided all costs related to subpoenas, including witness fees in an amount established by the hearing officer, and mileage fees at the rate provided for witnesses by statute, shall be borne by the party requesting the subpoena;
- (4) Hearing all evidence;
- (5) Requiring the submission of briefing;
- (6) Determining the order of proceedings; and
- (7) Generally conducting the hearing as a quasi-judicial proceeding.

(d) The Hearing Officer shall issue rules of procedure regulating the conduct of its hearings.

(e) The City Manager shall assign personnel to serve as the Secretary to the Hearing Officer, which personnel shall provide secretarial and reporting services, post any required public notices, and perform such other duties necessary for the fair and impartial conduct of any hearings. In the absence of such assignment, the City Clerk shall serve as the Secretary.

Sec. 7-1-30. Penalties and costs; collection.

(a) Penalties imposed on the responsible party for a civil infraction enforced under this Article shall be as follows:

(1) A minimum penalty of one hundred dollars (\$100.00) shall be imposed against the responsible party for the first violation of a particular code provision within any consecutive twelve-month period.

(2) For each successive violation of the same code provision within any twelve-month period, minimum penalties shall be imposed against the responsible party as follows:

- a. Second violation: three hundred dollars (\$300.00);
- b. Third violation: five hundred dollars (\$500.00);

- c. Any subsequent violation: nine hundred and ninety-nine dollars (\$1,000.00).
- (3) Where multiple violations of a single Code provision are found, the applicable minimum penalty may be imposed for each count.
- (4) Payment of a penalty shall neither excuse the failure to correct a violation nor bar further enforcement action by the City.
- (b) Costs and fees may be assessed against the responsible party in addition to any applicable penalties under this article as follows:
- (1) Any fees and/or costs authorized by the Board of Trustees;
- (2) Actual costs of the administrative abatement process, to include costs incurred by the City including, but not limited to, the per-hour fee charged to the City by the Hearing Officer, and other costs incurred by the City in the matter and awarded by Hearing Officer, including the costs of investigation, staffing costs to prepare for and conduct the hearing, and all re-inspections necessary to enforce compliance;
- (3) Reasonable costs of abating the violation, if applicable, plus an administrative fee equal to fifteen percent (15%) of the costs of the abatement, unless administrative costs have been awarded and paid in full by the responsible party.
- (c) Penalties, fees, and costs assessed pursuant to this Article shall be paid to the City within thirty (30) days after service of a notice of assessment by first-class mail to the responsible party; provided, however, that if the property is occupied by someone other than the owner of the property, the notice of assessment shall be mailed to both the occupant and the property owner. Service shall be deemed complete upon depositing the notice of assessment in the United States mail, postage prepaid. The failure of any person to receive any assessment required under this Chapter shall not affect the validity of the assessment or any collection efforts under this section.
- (d) The City shall assess a late fee in an amount set by Board of Trustees resolution if the responsible party fails to pay any assessment in full within the thirty-day period.
- (e) Failure to pay any such assessment within the thirty-day period shall cause the unpaid amount of the assessment plus any late fee to become a lien against the property identified in the notice of assessment, which lien shall be a first lien having priority over all liens of whatever kind or nature, regardless of date, except general taxes and prior special improvement district assessments. Furthermore, at any time after such failure to pay the assessment and late fee, the same may be certified to the county treasurer, as provided by state statute, to be placed upon the tax list for the current year and to be collected in the same manner as other taxes are collected, with a fifteen percent (15%) penalty added to defray the cost of collection.
- (f) The City Manager may refer any unpaid penalties, fees, and costs for collection by whatever means are available to the City. Any action or other process provided by law may be maintained by the City to recover or collect any amounts, including late fees, interest and administrative costs, owing under this Article.

Sec. 7-1-40. Relief from assessment.

(a) If the responsible party is unable to pay the entire assessment within thirty (30) days, the responsible party may request leave from the Hearing Officer to make payments over time. A written request under this Section shall be submitted to the Secretary before the expiration of the time for payment. No late fee shall be imposed pending the determination of such a request.

(b) A responsible party may object to an assessment imposed pursuant to Sec. 7-1-30 by filing a written notice of such objection with the City Manager within fifteen (15) days of the date of service of the notice of assessment. After reviewing the written objection and any written response filed by the City, the City Manager may reduce or cancel the assessment if they determine that the amount of the assessment is unreasonable or that extenuating circumstances regarding the ability to pay exist supporting the reduction or cancellation of the assessment. The City Manager shall not question the validity of the notice of violation or enforcement order in making the decision. The City Manager's decision is final and not appealable.

(c) At any time before a lien imposed under this Article is paid, the City Manager may cause any lien imposed under this article to be canceled upon their determination that the lien was imposed in error, or in the interests of fairness. The City Manager shall not question the validity of the notice of violation or the enforcement order. The City Manager's decision is final and not appealable.

Sec. 7-1-50 Notice of Violation, authority, enforcement.

(a) Any person or entity may be issued a notice of violation as provided in this Article.

(b) Each day a violation exists or continues shall constitute a separate and distinct violation for which a separate notice of violation may be issued.

(c) Remedies not exclusive. The City's pursuit of an abatement order shall not preclude any other lawful remedy available to the City, including prosecution of violations into a court of law.

Sec. 7-1-60 Notice of Violation, issuance.

(a) Upon discovering a violation, the City Manager, or designee, may issue a notice of violation to a responsible party; provided, however, that if a notice of violation is issued to the owner of property for a violation caused by a tenant in lawful possession of the property, the City Manager, or designee, must notify both the property owner and the tenant.

(b) For violations not related to snow and ice removal, the City Manager, or designee, shall establish an appropriate date by which any violation must be corrected based on the

nature of the violation, not to exceed twenty-one (21) calendar days, and to extend such time to correct the violation(s) if, in their discretion, additional time is reasonably required to do so, provided, however, that any such extension shall be noted in writing by the City Manager, or designee, and notice shall be given to the responsible party and the property owner, if applicable.

Sec. 7-1-70 Notice of Violation, contents.

A notice of violation shall contain the following information:

- (1) The date and location of the violation(s). The notice of violation shall identify the property in violation by address, legal description, or other description to sufficiently identify the subject property.
- (2) Each specific Code provision(s) violated and a brief written description of the facts resulting in each violation, including photographs, if available.
- (3) A requirement that the responsible party correct the violation(s), the actions required to do so and the date by which the violation(s) must be corrected. The effective date of service shall be considered in determining the date of correction.
- (4) The following, or substantially similar statements:
 - a. This notice of violation will be dismissed and no penalty imposed if each violation is corrected by the date stated in the notice.
 - b. Failure to correct the violation may result in the assessment of penalties for each violation as provided at Sec. 7-1-30, Creede Municipal Code, and you may be responsible for any costs of abatement.
 - c. Please contact the City Manager, or the City employee identified on this notice, to request an extension to comply and/or seek clarification.
 - d. You will receive a notice of assessment of any penalties, fees, and costs before they are due. Any penalties, fees, or costs assessed and not paid within thirty (30) days will be assessed a late fee and will be filed as a lien against your property. If not timely paid, the assessment may be collected through your property tax bill or through any other lawful means.
 - e. Each day a violation exists or continues shall constitute a separate and distinct violation for which a separate notice of violation may be issued. You may receive additional notices of violation and additional penalties may be imposed if you fail to correct the violation(s).
- (5) The name, phone number and e-mail address of the City Manager, or designee, who issued the notice of violation.

Sec. 7-1-80 Notice of violation, service.

- (a) The City Manager, or designee, shall serve the notice of violation on the responsible party at the site of the violation by personal delivery, by leaving a copy of the

notice of violation with any adult residing at the property, or if the property is non-residential, by leaving a copy with a manager or other responsible adult at the premises. If neither are available, the notice of violation may be served by:

- (1) Personally serving a copy of the notice of violation on the responsible party at another location;
 - (2) Posting a copy of the notice of violation in a conspicuous place at the premises.
- (b) In the event personal service of the notice of violation is not successful, the City Manager, or designee, shall mail a copy of the notice by first-class mail to the last known address of the responsible party as reflected in the city's or county assessor's records.
- (c) Service shall be deemed complete upon personal delivery, posting, or three (3) days after the date of mailing, as applicable.
- (d) If it is determined that the responsible party is not the owner of the property upon which a violation is alleged to exist, a copy of the notice of violation shall be mailed, on the same date the notice of violation is served on the responsible party, to the owner of the property at such person's last known address as reflect in the city's or county assessor's records.
- (e) The failure of any person to receive any notice required under this section shall not affect the validity of any proceedings or assessment under this article.

Sec. 7-1-90. Abatement proceedings.

- (a) If the responsible person or property owner fails to bring the property into full compliance by the deadline set forth in the notice of violation, the City may, in its discretion, request that the Hearing Officer conduct an abatement proceeding for the limited purposes of authorizing the abatement of such violation and obtaining an award of costs of abatement in addition to other penalties or costs imposed as a matter of law.
- (b) At least seven (7) days prior to the date of the abatement proceeding, the City shall provide written notice to each responsible party identified by the City of the City's request and the date, time and location of the abatement proceeding. Notice shall be given personally or by first-class mail. A responsible party may waive the notice requirement. The failure to any person to receive any notice required under this section shall not affect the validity of any proceedings taken under this article.
- (c) Abatement proceedings shall be limited to determining the existence of a violation(s) on the premises, the authority of the City to abate a violation, penalties to be imposed in the event the Hearing Officer finds one or more violations exist on the property, and the costs of abatement. Any responsible party may present evidence and argument regarding the alleged violation(s) on the premises, the reasonableness and legality of the abatement and penalties.

7-1-100. Abatement proceeding, procedure.

- (a) Abatement proceedings, while quasi-judicial in nature, are intended to be informal. With the exception of qualifying expert witnesses, formal rules of evidence and discovery shall not apply. There shall be no right to a trial by jury.
- (b) The parties to an abatement proceeding shall be the City and each responsible party identified by the City. Parties may be represented by legal counsel, may call and question witnesses and shall have the opportunity to present evidence and cross-examine witnesses.
- (c) The City shall bear the burden to establish by a preponderance of the evidence the existence of each alleged violation and administrative costs sought.
- (d) All testimony shall be given under oath.
- (e) With the exception of qualifying expert witnesses, the conduct of abatement proceedings and the admission of evidence shall generally be as set forth herein, without regard to whether such strictly conform to common law, statutory rules of procedure, rules of evidence or other technical rules. The admissibility of evidence shall be encouraged; however, the Hearing Officer may limit evidence that has no probative value, is cumulative, confusing, speculative, or irrelevant. The Hearing Officer may call upon his or her own experience, technical competence and specialized knowledge in the evaluation of evidence presented.
- (f) Witnesses intended to give opinion testimony as experts must be qualified as such, and their qualifications shall be submitted to the Hearing Officer at least five (5) days in advance of the hearing.
- (g) For good cause shown, as determined by the Hearing Officer, an abatement proceeding may be continued to a date certain. Either party may submit a written request for a continuance of the hearing to the Secretary. A written request to continue the abatement hearing shall be filed with the Secretary at least five (5) days prior to the scheduled hearing.
- (h) At the discretion of the Hearing Officer, he or she may appear at the abatement proceedings virtually. Unless ordered otherwise, the responsible party or parties, and all witnesses, shall appear in person for the abatement hearing at Council Chambers, Creede Town Hall. For good cause only, the Hearing Officer, in his or her sole discretion, may allow a responsible party or witness to appear at a hearing virtually. In the event a responsible party/witness is authorized to appear at a hearing virtually, but is unable to connect to the virtual hearing, or their connection is weak and/or sporadic, the Hearing Officer has authority to continue the hearing to a new date and require appearance of all parties in person at Council Chambers, Creede Town Hall.
- (i) Abatement proceedings shall be recorded by electronic means and the transcripts of such recordings shall be made available upon request at the expense of the requesting

party. In no event shall either party, or other person present at the proceeding, record the proceedings.

Sec. 7-1-110. Failure to attend or participate in abatement proceeding.

Provided notice of the abatement proceeding has been properly made, the failure of the responsible party to appear or participate in the hearing shall, in the Hearing Officer's sole discretion, constitute a waiver of any substantive challenge the responsible party shall have regarding the violation(s), the legality of the abatement or the penalties imposed.

Sec. 7-1-120. Enforcement order; appeal.

(a) Within fourteen (14) days of the abatement proceeding, the Hearing Officer shall issue an enforcement order as follows:

(1) If the Hearing Officer determines that the City established existence of the nuisance(s) listed in the notice of violation, the reasonableness of and lawful basis for the abatement of a violation(s) as of the date of the violation that still exists as of the date of hearing, the Hearing Officer shall grant the City's request and issue an enforcement order containing the following items:

- a. Written findings of fact and conclusions of law supporting the finding of liability;
- b. A provision imposing penalties and costs as provided in this Article; and
- c. If applicable, a requirement that the responsible party remedy or abate the violation(s) within a specified period of time and, if the responsible party fails to do so, authorizing the City without further order, to take reasonable steps to abate the violation(s) as long as the same may be accomplished without entering any building upon the property.
- d. If the City takes action to abate the nuisance violations(s), the City may assess the reasonable costs of the abatement action to the property owner.

(2) If the hearing officer determines that the City has not established the existence of the nuisance(s) listed in the notice of violation, and the reasonableness of and lawful basis for the abatement of the violation(s) as of the date of the notice of violation, the Hearing Officer shall deny the City's request for an enforcement order and dismiss the matter.

(b) Any enforcement order issued may include an award of administrative costs if the Hearing Officer determines that the City has established the costs by a preponderance of the evidence. The Hearing Officer may take judicial notice of the administrative fees related to his or her time in conducting the hearing, issuance of the enforcement order and other time associated with the matter.

(c) The enforcement order shall be mailed to each responsible party identified by the City by first-class mail to the address of the responsible party as reflected in the City's

records. The failure of any person to receive the enforcement order under this Section shall not affect the validity of any proceedings or assessment under this article.

(d) The enforcement order shall, upon mailing to each responsible party identified by the City, constitute a final action unless appealed directly to the District Court of the 12th Judicial District for judicial review of such decision pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure. Failure to timely appeal constitutes a waiver of any right any party may otherwise have to contest the enforcement order.

Sec. 7-1-130. Failure to comply with enforcement order.

It is unlawful for a responsible party who has been served a copy of the enforcement/abatement order to fail to comply with the order. Any responsible party who fails to comply with an enforcement order is guilty of a violation of this section and upon conviction thereof shall be punished by a fine, or by confinement in jail or both, as specified in Sec. 1-4-20, "General penalty for violation," of this Code. Prosecution for failure to comply with an enforcement order as provided herein shall not commence until the time to appeal such order has lapsed.

Sec. 7-1-140. Abatement not exclusive remedy.

The abatement of real property and assessment of penalties and costs incurred as provided in this Article shall not preclude the prosecution of any violations of this Code in the appropriate court of record. The City may pursue abatement of violations, prosecution of violations, and/or pursue enforcement as otherwise provided by law. These remedies are not exclusive.

Section 3. "CHAPTER 7, Article 2 of the Municipal Code of the City of Creede, Colorado, entitled "Nuisances Enumerated," is hereby repealed and re-enacted to read as follows:

Article 2. Nuisances Enumerated.

Division 1. General Provisions.

Sec. 7-2-10. Purpose.

The purpose and intent of this Article 2 is to protect the public health, safety and welfare by regulating conduct or conditions that may create fire, health or safety hazards, impair the aesthetic appearance of city neighborhoods, or unreasonably interfere with the comfort of city inhabitants. According, the Board of Trustees declares that every nuisance shall be unlawful and shall be restrained, prevented, abated and enjoined.

Sec. 7-2-20. Definitions

As used in this chapter, the following terms shall have the meaning ascribed to them in this section, except where the context clearly indicates that a different meaning is intended:

Owner or occupant means and includes any person, other than the City, who alone, jointly or severally with others, for residential or commercial purposes:

- (1) Has any legal or equitable interest in, or possession or control of, the whole or part of a dwelling unit, lot, open area or any real property, with or without accompanying actual possession thereof;
- (2) Acts as the agent of a person having a legal or equitable interest in a lot, open area, or any real property, dwelling or dwelling unit thereof;
- (3) Is the general representative or fiduciary of an estate through which a legal or equitable interest in a lot, open area, any real property or dwelling unit is administered; or
- (4) Is a homeowners' association having the legal authority to enforce any covenants, rules or regulations against the dwelling unit, lot, open area or real property or owner or occupant thereof. This subsection shall only apply when the dwelling unit, lot, open area or real property reasonably appears to have abandoned and the owner or occupant, as defined herein, cannot be located by the city through reasonably diligent efforts.

Responsible party means any person who makes or causes any nuisance to exist, or who is the owner or occupant of any property, real or personal, on or with which any nuisance is found or created.

Sec. 7-2-30. Proscribed acts.

It shall be unlawful for any person to create any nuisance in the City, to permit a nuisance to occur or continue to occur on any property under such person's control, or to permit a nuisance to be caused by or continued with any personal property under such person's control. Further, it shall be unlawful for any person to interfere with or prevent, or attempt to interfere with or prevent, the abatement of any nuisance by an employee of the City, or other person charged with such abatement.

Sec. 7-2-40. Violations designated as civil infractions.

Unless indicated otherwise, a violation of any provision of this Chapter shall be deemed a civil infraction and, as such, may be prosecuted in the municipal court or through the City's administrative hearing process, or both. In either event, the City shall be required to prove the violation only by a preponderance of the evidence except when a defendant is charged with committing multiple civil infractions, and incarceration is a penalty. In such event, in a municipal court prosecution, the standard of proof shall be beyond a reasonable doubt. The standard of proof in any administrative abatement hearing shall be by a preponderance of the evidence.

Sec. 7-2-50. Abatement without hearing, assessment of costs.

(a) Nuisance 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 public property in the City may be abated without notice or a hearing. In addition to abatement, the City Manager, or designee, may issue a summons or notice of violation regarding the nuisance.

(b) Emergency abatement. If the City Manager reasonably believes that a nuisance poses imminent danger to the health, safety or welfare of any person or to property, the City Manager may cause the nuisance to be abated without notice of hearing; however, in addition to abatement, the City Manager, or designee, may issue a summons or notice of violation regarding the nuisance and set the matter for hearing no earlier than 24 hours after service of the summons or notice of violation.

(c) Recovery of expense of abatement. The City may recover the costs of abatement, plus a fifteen (15) percent administrative fee in the manner provided for the collection of costs of abatement in Sec. 7-1-30 of this Code.

Division 2 Specified nuisances

Sec. 7-2-60. Nuisances declared.

(a) Common law and statutory nuisances. Any nuisance defined or declared as such by state statute or case law (common law) is hereby declared a nuisance for purposes of this Chapter. It shall be unlawful for any person to create any common law or statutory nuisance in the City or to permit a common law or statutory nuisance to occur or continue to occur on any property under such person's control. Further, it is unlawful for any person to permit a common law or statutory nuisance to occur in conjunction with any personal property under such person's control.

(b) Specified nuisances. Any act, action, condition, situation, circumstance or state of being identified in this Article as prohibited or unlawful is hereby declared a nuisance.

Sec. 7-2-70. Posting of circulars, printed materials.

(a) Definitions. The following words, terms and phrases, when used in this Section, shall have the following meanings:

(1) *Commercial circular* means any flier, notice or poster intended to advertise, direct or attract the attention of the public to a business, intended to induce the purchase of goods, services, property or entertainment, or to promote business or employment opportunities.

(2) *Fasten* means to securely place a circular in such a manner as to prevent it from being moved or removed by the elements of weather.

(3) *Noncommercial circular* means any flier, notice or poster, including, but not limited to, circulars conveying a political, ideological or personal message, which is not intended to advertise, direct or attract the attention of the public to a business, not

intended to induce the purchase of goods, services, property or entertainment and not intended to promote business or employment opportunities.

(4) *Public property* means any real property, pole, post, tree, barricade, bridge, fence, railing, utility box, curb, sidewalk, wall, bench, building or structure of any kind that is either publicly owned or located in the public right-of-way.

(5) *Public right-of-way* means the area between property boundaries that is owned by a government or quasi-governmental entity, dedicated to public use, or impressed with an easement for public use, which is primarily used for pedestrian or vehicular travel and is publicly maintained, in whole or in part, for such use, and includes, but is not limited to, the street, gutter, curb, shoulder, sidewalk, sidewalk area, parking or parking strip, and any public way.

(b) Public property restrictions. It shall be unlawful for any person, firm or corporation to place on or in, fasten, affix or attach to public property, in any way, any commercial or noncommercial circular without the direct authorization of the property owner.

(c) Private property restrictions. It shall be unlawful for any person, firm or corporation to place on or in, fasten, affix, or attach to private property, including any motor vehicles and other personal property, in any way, any commercial or noncommercial circular, without the permission of the owner or occupants of such property. Permission to fasten such materials to the entrances of private residences shall be implied from the presence of an improved walkway connecting such residence directly to a public right-of-way unless:

(1) Access to such walkway is physically restricted by a fence, gate or other permanent structure; or

(2) A “No Trespassing” or “No Solicitation” sign or a sign prohibiting posting is posted at or near the entrance to such residence.

(d) Causing violation prohibited. It shall be unlawful for any person or entity to cause another person to violate the provisions of this Section. Any person whose business, interests or activities are advertised, furthered or promoted by any circular shall be presumed to have caused the violation.

Sec. 7-2-80. Defaced property.

(a) As used herein, deface includes, but is not limited to, painting, drawing, writing, etching, scratching, scribbling, carving or otherwise marking any surface owned, operated or maintained by any such person.

(b) It shall be unlawful for any person to permit any property under such person’s control to remain in a defaced condition for longer than fifteen (15) days when such defacement is visible to the public.

Sec. 7-2-90. Streets, streams and water supply.

(a) Streets. It shall be unlawful and a nuisance to 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 or other offensive material upon any street, avenue, alley, sidewalk or public or private grounds.

(b) Waterworks. It shall be unlawful and a nuisance for any person to throw or discharge into the waterworks of the City, including but not limited to all reservoirs, streams, ditches, inlets, pipes, drains, filters, sedimentation basins or other equipment or appliance used in the construction, maintenance or operation of the same, any obnoxious substance which is subject to decay in or pollute the waters thereof or reasonably threaten to pollute the waters thereof.

(c) Livestock. It shall be unlawful and a nuisance for any person to allow any livestock, or any animals of any kind, to graze within two hundred fifty (250) yards of any such open waterworks of the City, including but not limited to all reservoirs or collection points of water for distribution, streams, trenches, inlets, pipes or drains.

(d) No person shall throw or deposit or cause or permit to be thrown or deposited in the City anything specified in this Section, 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.

Sec. 7-2-100. Littering on streets or transporting garbage, manure.

(a) No person shall drive or move any vehicle of any kind within the City unless such vehicle is constructed and loaded to prevent any load, contents or litter from falling from the vehicle or being deposited in any way upon any street, alley, or other public place.

(b) Every vehicle or trailer of any kind used to transport manure, garbage, trash, debris, or any matter of any kind, within the City shall be sufficiently secure to ensure that no portion of the load will fall from the vehicle or trailer, or otherwise be deposited on any street, alley or other public place.

Sec. 7-2-110. Inoperable vehicles.

(a) It shall be unlawful and a nuisance to store or keep any inoperable vehicle or tractor within the City except on property zoned for keeping such vehicles, regardless of whether such inoperable vehicle or tractor is stored upon a licensed, operable trailer or vehicle.

(b) Exceptions. The prohibitions contained in this section shall not apply to:

(1) Motor vehicle collector's items as defined and regulated by state law that are licensed and stored in compliance with such laws; or

- (2) Inoperable vehicles or tractors that are stored and kept within a completely enclosed building; or
- (3) Any damaged motor vehicle, for which the owner is awaiting an insurance settlement, limited to 60 days.

(c) “Inoperable vehicle” means any competition vehicle, regardless of condition; any motor vehicle or trailer that does not display a current license plate and validation sticker; any motor vehicle that is not capable of travel under its own power in its existing condition, including one or more flat or missing tires; or any motor vehicle or trailer that would be unlawful to use or operate on public streets or state highways in its existing condition.

Sec. 7-2-120. Junkyards and dumping grounds.

All places used or maintained as junkyards or dumping grounds for the wrecking or disassembling of vehicles of any kind, trucks, tractors or machinery of any kind; for the storing or leaving of worn-out, wrecked or abandoned vehicles of any kind, trucks, trailers, boats, house trailers, or machinery of any kind, or for the storing or leaving of any machinery or equipment; 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 unlawful and a public nuisance.

Sec. 7-2-130. Vacant buildings.

(a) The owner, tenant or agent of any property located within the City shall replace, or board up, all broken windows in any vacant structure on the property within seventy-two (72) hours after the City provides written notice. In the event the broken windows are boarded up, the material used shall be painted to match as much as possible the color of the main body of the structure.

(b) All doors, including any garage door, of any vacant structure on any property located within the City shall be adequately locked, secured or boarded up to prevent entry of any unauthorized persons, or any animals. Any material used to board up doors shall be painted to match as much as possible the color of the main body of the structure.

Sec. 7-2-140. Outdoor storage of materials.

(a) Outdoor storage prohibited. It shall be unlawful for the owner or occupant of any residential property to store or keep outdoors on such property, or permit the outdoor storage or keeping on such property, any materials not customarily stored outdoors in residential neighborhoods, regardless of whether or not the materials are sheltered, covered, placed upon a trailer, or placed within a carport or other partially enclosed structure. Materials inappropriate for outdoor storage or keeping on a residential property include, for purposes of illustration but not limitation, any tires, machinery, furniture not manufactured or intended for outdoor use, fixtures and appliances.

- (b) Exceptions. The prohibitions contained in this section shall not apply to:
 - (1) Materials stored or kept within a completely enclosed building and out of public view.

Sec. 7-2-150. Portable toilets.

- (a) Prohibited. It shall be unlawful for any person to construct, keep, use or maintain any portable toilet at any place within the City.
- (b) Exceptions. The prohibition contained in this section shall not apply to portable toilets that are kept, used or maintained:
 - (1) By the City;
 - (2) In conjunction with a special event permit approved by the City; or
 - (3) On a construction site during the time of construction.

Sec. 7-2-160. Public health nuisance.

- (a) Public health nuisance defined. Every act, thing or condition that is caused, created, maintained, operated, permitted, allowed, or continued on or through any property, real or personal, within the City that is harmful to health, safety, welfare or property of any of the inhabitants of the City is a public health nuisance, is unlawful, and is hereby prohibited. Without limiting the generality of the foregoing, the following are hereby declared to be nuisances affecting public health:
 - (1) All decayed or unwholesome food offered for sale to the public;
 - (2) All pools of stagnant water or vessels holding stagnant water in which mosquitoes can breed;
 - (3) Abandoned, unattended or discarded refrigerators, freezers, or other devices with compartments large enough to enclose a person, adult or child, unless the doors of such devices have been removed;
 - (4) Carcasses of animals not buried or otherwise disposed of in a sanitary manner within twenty-four (24) hours of death;
 - (5) Accumulation of manure, rubbish, litter, trash, rubble, refuse, debris, paper, combustible materials, garbage, improperly stored building materials or matter of any kind or form in which flies, mosquitoes or other vermin can breed.
 - (6) Excavations exceeding five (5) feet in depth, wells, or cisterns that are not covered with a locking lid or enclosed by a secure, locked fence;
 - (7) Leaking septic tanks or sewer lines or other sewage existing in an unsanitary manner that could cause disease transmission;
 - (8) All structures, vehicles, or property that are maintained or operated in such a manner that endanger the health, safety, property or welfare of the inhabitants of the City;
 - (9) The depositing of petroleum products, automotive fluids or hazardous waste materials, as define by state law, on or below the surface of the ground, in any manner, except on property designed by law for the disposal of such material by a person authorized to so use the property.

(10) The depositing of any material whatsoever, including, but not limited to dirt, rock, debris, snow, ice, trash, garbage, rubbish, debris, discarded materials of any kind, into the Willow Creek Flume.

(b) Public health nuisance prohibited. It shall be unlawful for any person to create any public health nuisance in the City or to permit a public health nuisance to occur or continue to occur on any property under such person's control. Further, it shall be unlawful for any person to permit a public health nuisance to occur in conjunction with any personal property under the person's control.

Sec. 7-2-170. Maintenance of property.

(a) Definitions. When used in this section, the following words, terms and phrases shall have the meanings ascribed herein:

Blight means to have a deleterious effect on or to ruin.

Brush means the cuttings from trees and/or bushes and shall include fallen branches in excess of two (2) inches thick at the widest point and three (3) feet in length and all stacks of wood, excluding lumber and neatly stacked firewood.

Noxious weeds means any plant that has been designated as such on the noxious weed table as may be posted on the City's website or available from the City Clerk's office.

Poisonous plant means any plant that may be detrimental to health of persons or animals including, without limitation, poison ivy and ragweed.

Property means the owner or occupant's real property including its fixtures and appurtenances, regardless of size. The phrase "extended property" shall include, in addition to the privately owner property, the "adjacent public right-of-way." The phrase "adjacent public right-of-way" shall include all land and improvements located in the right-of-way from the centerline, and in any public alley from the centerline of the alley to the property line. If the centerline is within a roadway, then the extended property shall include only that portion up to the edge of the roadway. The term "adjacent public right-of-way" shall not include: (1) any city-designated open space, or (2) center medians within a right-of-way of a principal or minor arterial roadway.

Roadway means any street or road, regardless of construction method or surface material, regularly open to the public for travel.

Undeveloped property means any property that lacks structures or is not serviced by water, sewer, electrical, and natural gas infrastructure.

Weed means any herbaceous plant that, due to height, smell, appearance or injurious nature, has a blighting influence on the neighborhood.

(b) Duty to maintain.

(1) Weeds and grass.

a. The owner or occupant of any developed property and any property less than or equal to one (1) acre in size shall maintain weeds and grass to a height of no more than eight (8) inches anywhere on or within the extended property.

b. The owner or occupant of any developed property, the size of which is greater than one (1) acre shall maintain weeds and grass to a height of no more than sixteen (16) inches anywhere on the property and eight (8) inches anywhere on or within the adjacent public right-of-way.

c. Two or more contiguous lots, tracts or parcels of undeveloped property under single ownership, whether or not platted, will be aggregated to constitute a single property for purposes of this section. Lots, tracts or parcels of property separated by a public or private roadway or other right-of-way, regardless of ownership, shall not be considered contiguous for purposes of this section.

d. Exceptions. Notwithstanding the foregoing, the duty to maintain set forth in this subsection (b)(1) shall not apply to the following:

1. Ornamental grasses;

2. Wetlands;

3. Native grasses and other native plant materials identified in the City's approved plant list available at the City Clerk's office;

4. Public right-of-way adjacent to property that (1) has been actively farmed with commercial crops for the past three (3) years, (2) is greater than one (1) acre; and (3) lacks curb, gutter and sidewalk.

(2) Diseased or dead wood vegetation. All trees, shrubs, hedges and other wood vegetation within the City shall be adequately pruned or removed when such trees, shrubs, bushes, hedges or other woody vegetation harbor insects or disease that constitute a threat to other trees, shrubs, bushes, hedges or other woody vegetation, or constitute a hazard in general to the public health, safety and welfare. The stump of any tree removed due to disease must be completely removed from the ground unless, in the opinion of a certified arborist, the diseased stump poses no danger to surrounding vegetation. Stumps that do not pose a danger to surrounding vegetation may remain on the property at a height not to exceed twenty-four (24) inches.

(3) Poisonous plants and noxious weeds. The owner or occupant of any property shall maintain the property such that no noxious weed or poisonous plant grows upon the property and shall not allow seed, pollen or other particles or emanations from such noxious weeds and poisonous plants to be carried from such property.

(4) Brush. It shall be unlawful for the owner or occupant of any real property to permit brush to remain upon such extended property for more than fourteen (14) days.

(5) Encroachment of vegetation on public spaces. The owner or occupant of any property shall cut, trim, prune or remove as necessary any trees and other vegetation located upon such extended property in accordance with the following requirements:

- a. Branches, trees and other vegetation shall be maintained so as not to obscure any street name signs, traffic signs, traffic control devices or sight triangles.
- b. Branches or trees that are broken, hanging, decayed or that otherwise threaten public property or the safe use thereof shall be removed.

Section 4. “CHAPTER 7, Article 3, Section 7-3-30, “Abatement,” and Section 7-3-120, “Violations Designated,” of the Municipal Code of the City of Creede, Colorado, entitled are hereby amended to read as follows:

7-3-30. Abatement. The abatement of any nuisance established in this Article 3, “Refuse Regulations,” shall be governed by Chapter 7, Article 1 of this Code.

Sec. 7-3-120. Violations designated.

- (a) It shall be unlawful and a nuisance for any person to:
 - (1) Permit the accumulation of any garbage, rubbish, trash or debris on premises owned, occupied or controlled by such person.
 - (2) Throw or permit to be deposited any garbage, rubbish, trash or debris upon any street, alley or public or private way within the City.
 - (3) Keep or maintain any garbage in an unsanitary, unhealthy or unsafe condition.

Section 5. “CHAPTER 7, Article 5 of the Municipal Code of the City of Creede, Colorado, entitled “Weeds and Brush,” is hereby repealed in its entirety.

Section 6. Emergency Measure. The Board of Trustees finds and determines that because this Ordinance concerns the immediate and ongoing administration and operation of the Town, its adoption as an emergency measure is necessary to the immediate preservation of the public health, safety and welfare, and this Ordinance shall therefore take effect immediately upon adoption as provided by law.

Section 7. Severability. If any part, section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such invalidity shall not affect the validity of the remaining sections of the ordinance. The Town Board hereby declares that it would have passed the ordinance including each part, section, subsection, sentence, clause or phrase thereof, irrespective of the fact that one or more parts, sections, subsections, sentence, clauses or phrases are declared invalid.

Section 8. Repealer. All ordinances or resolutions and motions of the Board of Trustees of the City of Creede or parts thereof, in conflict with this ordinance are to the extent of such conflict hereby superseded and repealed, provided that such repealer shall not repeal the repealer clauses of such ordinance, resolution or motion, nor revive any ordinance, resolution or motion thereby.

**INTRODUCED, READ, PASSED, ADOPTED AND ORDERED PUBLISHED THIS
27th DAY OF June 2024.**

ATTEST:

CITY OF CREEDE

Josie Bielenberg, City Clerk

Jeffrey Larson, Mayor