

ORDINANCE

AN ORDINANCE REPEALING AND REENACTING SECTIONS 6.08.010 AND 6.08.030 AND AMENDING SECTIONS 6.08.040 AND 6.08.050 CONCERNING NUISANCES AND ADDING A NEW CHAPTER 6.75 CONCERNING VACANT OR ABANDONED BUILDINGS OR PROPERTY

WHEREAS, Section 31-15-401(1)(c), C.R.S. and Section 2.2 of the City Charter authorize the City of Manitou Springs (the “City”) to declare and abate public nuisances;

WHEREAS, the City Council desires to repeal and reenact Sections 6.08.010 and 6.08.030 to more clearly define public nuisances and to amend Sections 6.08.040 and 6.08.050 to clarify remedies and the abatement process for nuisances, all for the protection of public health, safety and welfare;

WHEREAS, the City Council finds that the presence of vacant or abandoned structures can lead to lower property values, result in human injury and criminal activity, and deteriorating conditions that undermine the quality of life and affect the public health, safety and welfare of the public; and

WHEREAS, in accordance with its police power to protect the health, safety and welfare of the public, the City Council desires to add a new chapter to the Manitou Springs Municipal Code to require maintenance of vacant and abandoned structures and property.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MANITOU SPRINGS, COLORADO THAT:

Section 1. Section 6.08.010 of the Manitou Springs Municipal Code is hereby repealed in its entirety and reenacted as follows:

6.08.010 - Definitions.

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

- A. *Act of nuisance* means the actual committing of an act which creates a nuisance.
- B. *Condition of nuisance* means a continuing condition which constitutes a nuisance whether or not the perpetrator of the nuisance is present.
- C. *Junk* means items that are outdoors and that are trash, waste, rubbish, broken, discarded or not reasonably useable, including but not limited to salvage materials, discarded fence posts, tires, motor vehicle bodies or parts, scrap metal, bedsprings, discarded furniture and all other household goods or appliances, used lumber and similar objects.

- D. *Litter* shall have the meaning set forth in Section 6.24.010(1).
- E. *Public nuisance* also referred to herein as a *nuisance* is declared to be and includes, but is not limited to:
1. Any condition or activity that 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 city ordinance or by the statutes or regulations of the State;
 3. The accumulation or storage, other than by the city at the city's maintenance and material storage facility, of garbage, junk, refuse, litter, rubbish or debris that injures or endangers the comfort, repose, health or safety of any person, is offensive to the senses, interferes with, obstructs, or renders dangerous for passage on any public or private street, sidewalk, alley or right of way, tends to or could depreciate the value of property of any persons, or is accumulated or stored for a period longer than seven consecutive days;
 4. The dumping, placing or accumulation of garbage, junk, litter, refuse, rubbish or debris on private property, or in any spring, stream or river, or upon public property other than by the city at the city's maintenance and material storage facility;
 5. The emission of any noxious gases or vapors from any place within the city. "Noxious gases or vapors" means any gas or vapor that causes anyone encountering the same to suffer coughing, choking or watering of the eyes. Wood and coal smoke from the chimney of a private residence and cigarette, cigar and pipe smoking are expressly excluded from this definition as are the emissions from motor vehicles;
 6. Permitting animal waste to be deposited on public property or on private property without the expressed permission of the private property owner. The owner, licensee or person claiming possession of the animal shall be strictly responsible for such offense;
 7. Any unlawful pollution or contamination of any surface or subsurface waters in the city, of the air or of any water, substance or material intended for human consumption;

8. The conduct or maintenance of any business, occupation or activity prohibited by statute or ordinance;
9. Any building, structure, place, land, premises or property, the condition of which presents a substantial danger or hazard to public health or safety. An unsafe building or structure includes, but is not limited to, one that is structurally unsound or a fire hazard;
10. Any activity, operation or condition which, after being ordered abated, corrected or discontinued by a lawful order of a department or officer of the city or the County, continues to be conducted or continues to exist in violation of statute or ordinance or in violation of any regulation of the city, the County or the State;
11. The operation of a non-cigarette tobacco product retailing business without a valid non-cigarette tobacco product retailer license pursuant to Chapter 5.89;
12. The operation of a retail marijuana establishment without a valid license pursuant to Chapter 5.91;
13. Any violation of Section 6.08.020 concerning unnecessary sound;
14. Any violation of Chapter 6.12 concerning manure and dead animals;
15. Any violation of Sections 6.16.010, 6.16.020, 6.16.060, and 6.16.100 concerning pollution in creeks and water;
16. Any violation of Chapter 6.18 concerning the watershed district;
17. Any violation of Chapter 6.24;
18. Any solid waste disposal site or facility which is operated or closed in violation of any provision of Chapter 6.26 or any rule or regulation implemented thereunder;
19. Any violation of Chapter 6.28;
20. Those matters identified as a nuisance in Chapter 6.50;
21. Any violation of Chapter 6.75 concerning vacant or abandoned buildings and property;

22. All buildings or portions thereof which are determined to be substandard as defined in Chapter 15.08; or
 23. Any other thing or activity which under the law constitutes a nuisance, including but not limited to a condition of nuisance or act of nuisance.
- F. *Refuse* means any grass, clippings, leaves, hay, straw, manure, shavings, paper, ashes, rubbish, containers, boxes, glass, cans, bottles, garbage, waste and discarded building and construction materials, including but not limited to plaster, broken concrete, bricks, cinder blocks, stones, wood, roofing, material, wire or metal binding, sacks or loose discarded or unused material; all rubbish of any kind or nature whatsoever; and any other materials commonly known as rubbish or refuse of any kind or character or by any means known.

Section 2. Section 6.08.030 of the Manitou Springs Municipal Code is hereby repealed in its entirety and reenacted as follows:

6.08.030 - Committing of nuisance unlawful.

- A. It shall be unlawful and a violation of this Chapter for any person:
1. To create, operate, maintain, conduct or continue any nuisance as defined in this Chapter;
 2. To commit an act of nuisance or to create or suffer a condition of nuisance within the corporate limits of the city; or
 3. To interfere with or prevent, or attempt to interfere with or prevent, the abatement of any nuisance by the city, pursuant to the provisions of this Chapter.
- B. Any person who makes or causes any nuisance to exist shall be deemed the author of the nuisance. Moreover, any person who is an owner of or who has possession or control of any private building, structure, place, land, premises, or property whether he or she is the owner of the property or not, where any nuisance exists or is found, shall be deemed the author of the nuisance.

- C. Each and every day during which any nuisance continues shall be deemed a separate offense and shall be prosecutable and punishable as a separate offense.

Section 3. Section 6.08.040 of the Manitou Springs Municipal Code is hereby amended as follows:

6.08.040 – Violation – Penalty.

- A. Violation of any of the provisions of this chapter shall be punished as provided in Section 1.01.100 of this code. In addition to such penalties, if the act or condition of nuisance occurs on a property for which a business license or a license for the sale of malt, vinous or spirituous liquors is issued by the city, three convictions for any type of nuisance upon the licensed premises within any calendar year shall be ground for the revocation or suspension of such license.
- B. The city may institute injunction, abatement or any other appropriate action to prevent, enjoin, abate or remove any violation of this Chapter in which event Manitou Springs shall be entitled to recover court costs and attorney fees.
- C. The remedies provided herein shall be cumulative and not exclusive and shall be in addition to any other remedies provided by law.

Section 4. The heading of Section 6.08.050 of the Manitou Springs Municipal Code is hereby amended to read as follows:

6.08.050 – Abatement of nuisances.

Section 5. Section 6.08.050 A of the Manitou Springs Municipal Code is hereby amended to read follows:

In addition to, or in lieu of, proceeding in municipal court, the city, acting through the city administrator or his or her designee, may cause to be delivered to the owner of any property within the city upon which the city administrator, or his or her designee, determines that a nuisance exists, a notice requiring the abatement of the nuisance therein described within the period stated in the notice, which shall be not less than five days. Such notice is not a prerequisite to the issuance of summons for appearance in municipal court, nor is the failure of the city to issue such a notice a defense to prosecution for a condition of nuisance in municipal court.

Section 6. Section 6.08.050 D of the Manitou Springs Municipal Code is hereby amended to read as follows:

If the initial notice period expires without receipt by the city administrator, or his or her designee, of a petition for hearing, or the period following the mailing of the city administrator's, or his or her designee's determination, expires without the condition of nuisance being abated by the owner, the condition of nuisance may, in the

discretion of the city administrator, or his or her designee, be abated by the city. Upon completion of the work of abatement, the city administrator, or his or her designee, shall cause a notice to be mailed to the owner of the property, setting forth the cost of the abatement, which shall include time devoted to such work by each city employee or contractor at an hourly rate set by resolution of the city council, plus an administrative fee set by resolution of the city council.

Section 7. A new Subsection (H) is hereby added to Section 6.08.050 to read as follows:

A nuisance abatement that will or reasonably could impact a contributing resource in the historic district shall comply with the applicable requirements of the Historic Preservation Regulations of the City of Manitou Springs, Colorado.

Section 8. The Manitou Springs Municipal Code is hereby amended by the addition of the following Chapter:

Chapter 6.75 – Vacant or abandoned building or property.

6.75.010 – Definitions.

- A. *Approved* means acceptable to the city administrator or his or her designee.
- B. *Boarding sheet material* means boarding sheet material that is a minimum ½ inch thick (12.7 mm) wood structural panels complying with the International Building Code.
- C. *Boarding and framing material* means boarding and framing material that is a minimum nominal 2-inch by 4- inch (51mm by 102 mm) solid sawn lumber complying with the International Building Code.
- D. *Boarding fasteners* means boarding fasteners that are a minimum 3/8-inch diameter (9.5mm) carriage bolts of such a length as required to penetrate the assembly and as required to adequately attach the washers and the nuts. Washers and nuts shall comply with the International Building Code.
- E. *Evidence of vacancy* means a condition that on its own or combined with other conditions present would lead a reasonable person to believe that a building or property is vacant. Such conditions may include, but not be limited to, overgrown and/or dead vegetation, accumulation of litter, junk, or rubbish as defined in Chapter 6.08, statements by neighbors, passers-by, delivery agents, among other evidence that a building or property is vacant.
- F. *Vacant or abandoned building or property* means a building, structure or property or portion thereof, including but not limited to, all accessory or appurtenant structures such as garages, sheds or storage facilities, which are:
 - 1. unoccupied and unsecured;

2. unoccupied and secured by other than normal means;
3. unoccupied and unsafe;
4. illegally occupied; or
5. unoccupied and the subject of violations or notices of violation of the Manitou Springs Municipal Code.

In determining whether a property is vacant or abandoned, the city may consider evidence of vacancy.

6.75.020 – Obligation of owner to secure vacant or abandoned building or property.

The owner of vacant or abandoned building or property shall be responsible for securing all points of entry as follows:

- A. Closing and locking windows, doors, gates and other openings of such size that may allow access by persons or animals to enclosed areas of the vacant or abandoned building or property;
- B. In the event windows, doors, gates or other openings are damaged or do not function as intended, then windows, doors, gates or other openings shall be repaired or shall be boarded in an approved manner using boarding sheet material, boarding and framing material and boarding fasteners, as applicable, to prevent entry by unauthorized persons and animals and shall be painted to correspond to the color of the existing structure.
- C. Any boarding sheet material to be applied to vacant or abandoned building or property shall be cut to fit the door or window opening neatly or shall be cut to provide an equal overlap at the perimeter of the door or window.
- D. Windows of vacant or abandoned building or property requiring the application of boards, shall be boarded such that the window shall be opened to allow the carriage bolt to pass through or the window sash shall be revoked and stored. The 2-inch by 4-inch (51mm by 102 mm) strong back framing material shall be cut minimum 2-inches (51mm) wider than the window opening and shall be placed on the inside of the window opening 6-inches (152mm) minimum above the bottom and below the top of the window opening. The framing and boarding shall be pre-drilled. The assembly shall be aligned and the bolts, washers and nuts shall be installed and secured.
- E. Door walls of vacant or abandoned building or property requiring the application of boards, shall be boarded such that the door opening shall be

framed with minimum 2-inch by 4-inch (51mm by 102mm) framing material secured at the entire perimeter and vertical members at a maximum of 24-inches (610 mm) on center. Blocking shall also be secured at a maximum of 48-inches (1219 mm) on center vertically. Boarding sheet material shall be secured with screws and nails alternating every 6-inches (152 mm) on center.

- F. Doors of vacant or abandoned building or property requiring the application of boards shall be secured by the same method as for windows or door openings. One door to the structure shall be available for authorized entry and shall be secured and locked in an approved manner.
- G. Once occupied in accordance with the Manitou Springs Municipal Code, all boarded openings must be repaired with glazing, or functioning windows or doors.

6.75.030 – Obligation of owner to maintain vacant or abandoned building or property.

All vacant or abandoned buildings or property shall at all times be maintained in accordance with each of the following:

- A. The exterior of the building or structure shall be free of loose or rotten materials as well as holes. Any exposed metal, wood or other surface shall be protected from the elements by appropriate weather-coating materials (matching paint or similar treatment).
- B. Any balconies, canopies, signs, awnings, stairways, other overhanging extensions shall be in good repair and appropriately anchored. The exposed metal and wood surface of any such overhanging extension shall be protected from the elements by appropriate weather-coating materials (matching paint or similar treatment).
- C. Walls and fences surrounding the property or any portion thereof shall be maintained in good repair.
- D. The property shall be maintained free of graffiti or similar markings by removal or painting over with an exterior grade paint that matches the color of the exterior structure.
- E. All combustibles must be removed from the interior of all buildings and the exterior of the property.

- F. Smoke and carbon monoxide detectors shall be installed and maintained in operable condition at all times.
- G. Utilities to the property or building shall be shut off at the valve, meter or circuit box serving the property or building.
- H. Watering, cutting and mowing of landscaping, removal of yard waste and debris.
- I. Such other acts reasonably necessary to maintain the property and to comply with the Manitou Springs Municipal Code.

6.75.040 – Repeat Call Service Fees – lien

- A. This section applies to all owners of private property that is the subject or location of repeat calls requiring services or a response by the city in connection with vacant or abandoned building or property.
- B. The city may impose a repeat call service fee upon the owner of private property if the city has rendered services or responded to the vacant or abandoned building or property on three or more occasions within a calendar year in response to or for violation of this Chapter. This fee is in addition to all other fees, costs or fines that may be otherwise imposed by the city. The repeat call service fee for the third call shall be established by the city council.
- C. The city may not impose a repeat service call fee against an owner for a police response relating to emergency assistance, including, but not limited to, domestic, spousal and child abuse.
- D. No repeat call service fee may be imposed against an owner of the vacant or abandoned building or property without first providing the owner with written notice of the previous service calls that are the basis for the fee. The written notice shall:
 - 1. identify the dates of prior service calls and statement of the conduct or activity requiring a response;
 - 2. state that the city has right to seek other legal remedies or actions for abatement of a nuisance or compliance with the law; and
 - 3. be hand delivered to the owner or sent by U.S. mail to the owner at the address for the property as set forth in the records of the El Paso County assessor.

- E. When the city mails a billing statement imposing a repeat call service fee, the city will inform the owner of the right to appeal the repeat call service fee and to request a hearing. The owner upon whom the repeat call service fee is imposed must request a hearing within ten business days of the mailing of the billing statement imposing the repeat call service fee, excluding the day the statement is mailed. The request for a hearing from the owner must be in writing and delivered to the city administrator. The city administrator shall set a time and place for the hearing as soon as practicable. At the hearing, the city administrator will conduct the hearing in an informal manner and will consider information to determine whether there is a sufficient factual and legal basis to support the assessment of the repeat call service fees. The city administrator shall not be bound by technical rules of evidence but any decision shall be based upon substantial and reliable evidence. The city administrator may uphold or deny the imposition of the repeat call service fee and will serve his or her decision upon the owner, in writing by U.S. Mail within five calendar days of the hearing. If owner fails to request a hearing within the time and in the manner required or fails to appear at a hearing scheduled under this Section, the right to a hearing is waived.
- F. Upon waiver of the right to hearing or upon service of the decision that the repeat call service fee is upheld, the owner must pay the fee imposed within thirty calendar days. If the repeat call service fee is not paid by the owner within thirty days the city's claim for repeat call service fees shall become a lien against the property and the finance director of the city shall certify said fee to the El Paso County treasurer. The liens hereby created shall be superior to the all prior liens, regardless of date, except liens for general property taxes and special improvement district taxes.
- G. Any unpaid fees for repeat call service fees may be certified to the treasurer of El Paso County for collection in the same manner as is provided by state statute for the collection of general property taxes.

6.75.050 – Violation –Penalty.

Any person who violates any provision of this chapter shall be punished in accordance with the provisions of Section 1.01.100 of this code. Each day shall be deemed a separate offense. The city may institute injunction, abatement or any other appropriate action to prevent, enjoin, abate or remove such violation in which event the city shall be entitled to recover court costs and attorney fees. A violation of this chapter is declared to be a public nuisance and may be abated pursuant to Chapter 6.08 of this code.

Section 9. If any article, section, paragraph, sentence, clause or phrase of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares

that it would have passed this ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

Section 10. This ordinance is deemed necessary for the protection of the health, welfare and safety of the community.

Passed on first reading and ordered published this 18 day of April, 2017.

/s/ Donna Kast
City Clerk, Donna Kast

A Public Hearing on this ordinance will be held at the May 2, 2017, City Council meeting.

The Council Meeting will be held at 6:00 P.M. at City Hall, 606 Manitou Avenue, Manitou Springs, Colorado.

Ordinance Published: April 20, 2017 (in full)
City's Official Website and City Hall

Passed on second reading and approved by City Council this 2 day of May, 2017.

/s/ Nicole Nicoletta
Mayor, Nicole Nicoletta

Attest: /s/ Donna Kast
City Clerk, Donna Kast

Ordinance Published: May 4, 2017 (in full)
City's Official Website and City Hall