

**ORDINANCE NO. 8**

Series 2003

June 17, 2003: Introduced as Council Bill 06-03 by Councilmember Doug Tisdale, seconded by Councilmember Bonnie Blum, and considered by the title only on first reading. Passed unanimously.

August 5, 2003: Considered in full text on second reading. Passed unanimously. Designated as Ordinance No. 8, Series 2003.

**A BILL FOR AN ORDINANCE  
REPEALING AND REENACTING CHAPTER 1 OF TITLE 4  
OF THE CITY CODE FOR THE CITY OF CHERRY HILLS VILLAGE,  
COLORADO PERTAINING TO PUBLIC NUISANCES**

WHEREAS, pursuant to its Home Rule Charter, the City Council of the City of Cherry Hills Village holds all powers of self-government and home rule power possible under the Constitution and laws of the State of Colorado; and

WHEREAS, as a home rule municipal corporation, the City of Cherry Hills Village possesses the authority to govern and regulate matters of local interest such as nuisances; and

WHEREAS, the residents of the City generally enjoy a rural or semi-rural environment in which nuisances may adversely impact the peaceful and comfortable enjoyment of owners of property; and

WHEREAS, the City of Cherry Hills Village has long-regulated and enforced local laws governing nuisances and such laws are codified at Chapter 1 of Title 4 of the City Code for the City of Cherry Hills Village; and

WHEREAS, the City Council desires to update and substantially revise the local laws governing nuisances by repealing Chapter 1 or Title 4 and reenacting new provisions governing nuisances.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CHERRY HILLS VILLAGE, COLORADO, ORDAINS:

Section 1. Chapter 1 of Title 4 of the City Code for the City of Cherry Hills Village is hereby repealed in its entirety and a new Chapter 1 is enacted to read in full as follows:

**CHAPTER 1**

**PUBLIC NUISANCES**

**SECTION:**

- 4-1-1: Purpose
- 4-1-2: General Definitions
- 4-1-3: Nuisances Identified and Declared
- 4-1-4: Exceptions to Nuisances
- 4-1-5: Nuisance Unlawful
- 4-1-6: Nuisance a Continuing Offense
- 4-1-7: Methods of Nuisance Abatement
- 4-1-8: Summary Abatement of Nuisances
- 4-1-9: Judicial Enforcement
- 4-1-10: Notice and Demand for Abatement
- 4-1-11: Costs and Expenses as Lien Against Property
- 4-1-12: Review of Costs and Expenses of Abatement
- 4-1-13: Certain Defenses Not Available
- 4-1-14: Right of Entry for Inspection
- 4-1-15: Right of Entry for Abatement
- 4-1-16: Administrative Regulations Authorized
- 4-1-17: Extension of Deadlines Authorized

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**4-1-1: PURPOSE:** The purpose of this Chapter is to preserve and protect the health, safety, welfare, quality of life, and quiet enjoyment of property through a uniform procedure for the identification and enforcement of nuisances within the City of Cherry Hills Village.

**4-1-2: DEFINITIONS:**

*Abatement* means the removal, stoppage, prostration, or destruction of that which causes or constitutes a nuisance, whether by breaking or pulling it down, or otherwise destroying, or effacing it.

*City Manager* means the City Manager for the City of Cherry Hills Village or a person or persons designated by the City Manager to act on behalf of the City Manager in the administration of all or any part of this Chapter. The City Manager's designee may be a City employee, hearing officer, or attorney.

*Investigating Official* means the City Manager, the City Manager's designee, a police officer, or the City's code enforcement officer engaged in the investigation and determination of the existence of a nuisance.

*Nuisance* means any nuisance as identified or defined by this Chapter or any other provision of the City Code for the City of Cherry Hills Village.

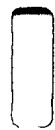
*Owner* means: (1) the owner of record as evidenced by the records of the Arapahoe County Assessor; or (2) any person known to the City of Cherry Hills Village to possess a legal, financial or equitable interest in the property on which an alleged nuisance exists at the time of the violation. The term "owner" may include but not be limited to: (a) a tenant or lessee where such tenant or lessee is lawfully authorized, by written lease or other agreement with the owner, to occupy the property upon which a nuisance is alleged to exist or is maintained; or (b) a person acting on behalf of the owner as evidenced by a power of attorney or other form of fully executed and notarized form of written authorization.

*Property* means any real property, premises, structure, or location.

**4-1-3: NUISANCES IDENTIFIED AND DECLARED:**

Each of the following conditions, events, or circumstances existing in whole or in part upon property located within the City of Cherry Hills Village are hereby declared nuisances:

- A. **General Nuisance:** It shall be a nuisance and unlawful for any person in possession or entitled to the possession of any property within the City of Cherry Hills Village, or any part thereof, to cause, maintain, permit, or allow any fence, wall, shed, deck, house, garage, building, structure, tree, pole, smokestack, excavation, hole, pit, basement, cellar, sidewalk, dock, or any lot, land, yard, premises or location which in its entirety, or in any part thereof, to be or to remain in a condition that endangers the health, safety, life, limb, or property, or cause any hurt, harm, inconvenience, discomfort, damage, or injury to any one or more individuals in the City, in any one or more of the following particulars:
1. By reason of being a menace, threat and/or hazard to the general health and safety of the community.
  2. By reason of being a fire hazard.
  3. By reason of being unsafe for occupancy, or use on, in, upon, about or around such property.
  4. By reason of lack of sufficient or adequate maintenance of the property, and/or being vacant, any of which depreciates the enjoyment and use of the property in the immediate vicinity to such an extent that it is harmful to the community in which such property is situated or such condition(s) exists.



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B. Air Pollution: The emission or escape into the open air from any source or sources of smoke, ashes, dust, dirt, grime, acids, fumes, gases, vapors, odors or any other substances or combination of substances in such manner or in such amounts as to endanger or tend to endanger the health, comfort, safety or welfare of the public or to cause unreasonable injury or damage to property or to interfere with the comfortable enjoyment of property or normal conduct of business is declared a nuisance.

C. Water Pollution:

1. Certain Ponds or Pools a Nuisance: Any pond, pool, stream, ditch or deposit of water or other liquid or viscous body which is unsafe, dangerous or detrimental to the public health or safety, or unwholesome or offensive in odor is declared a nuisance.
2. Wells That Overflow: Any well maintained or operated so that it overflows or waste is discharged therefrom into or over any street or other public way or place or upon or over private property so as to form ice, create a health or safety hazard, or in any other manner inconvenience or endanger persons or property is declared a nuisance.
3. Septic Tanks, Underground Fuel Storage and Leaching Fields: Any septic tank, underground fuel storage, or leaching field which is unsafe, dangerous or detrimental to the public health or safety, or in any other manner inconvenience or endanger persons or property is declared a nuisance.

D. Noise:

1. It shall be a nuisance and unlawful for any person to make, continue, or cause to be made or continued any unreasonable noise within the City. For purposes of this subsection, an unreasonable noise shall include, but not be limited to, the following:
  - a. Any continuous or repetitious noise from any source or cause that disturbs or disrupts the peace and quiet of two or more persons residing at separate households.
  - b. Any bell, chime, or other device for the production or reproduction of the sounds of bells or chimes between the hours of 10:00 p.m. of one day and 7:00 a.m. of the following day.
  - c. Operation of any radio receiving set, musical instrument, television, phonograph, drum, or other machine or device for the production or reproduction of sound in such a manner as to disturb or disrupt the peace and quiet of two or more persons residing at separate households.
2. It is declared a nuisance and unlawful for any person to make, continue, or cause to be made or continued any noise measured or registered in the manner provided in this subsection from any source at a level which is in excess of the following dB(A) levels established for the time period and land uses listed below:

Uses/Zone District	Maximum Noise in dB(A)
Residential Uses within Districts R-1, R-2, R-3, R-3A, R-4, and R-5	7:00 a.m. to 7:00 p.m.: 55 dB(A) <sup>1</sup> All Other Times: 50 dB(A)
Non-Residential Uses within Districts R-1, R-2, R-3, R-3A, R-4, or R-5	7:00 a.m. to 9:00 p.m.: 65 dB(A) <sup>2</sup> All Other Times: 50 dB(A)



All Uses within the C-1 or C-2 Zone Districts	70 dB(A)
All Uses within the O-1 Zone District	60 dB(A)

- <sup>1</sup> Between the hours of 7:00 a.m. and 7:00 p.m., the designated noise level may be increased by ten (10) decibels for a period not to exceed fifteen (15) minutes in any one-hour period.
- <sup>2</sup> Between the hours of 7:00 a.m. and 9:00 p.m., the designated noise level may be increased by ten (10) decibels for a period not to exceed fifteen (15) minutes in any one-hour period.

Noise shall be measured at a height of not less than four (4) feet and not greater than seven (7) feet above ground level at or within approximately ten (10) feet of the property line of the property on which the noise is emanating. Noise shall be measured on a weighing scale on a sound level meter of standard design and quality and in accordance with the standards promulgated with the American National Standards Institute. For the purposes of this subsection, measurements with sound level meters shall be made when a wind velocity at the time and place of such measurement is either: (i) not more than five (5) miles per hour; or (ii) not more than twenty-five (25) miles per hour with a windscreen attached to the microphone.

E. Lighting Nuisance: Any flood light, spot light, or other source of artificial light or illumination is declared a nuisance where:

1. The City received a complaint that a source of lighting or illumination interferes with the a person's enjoyment of his or her property and the City contacted the owner or occupant of the property upon which the source of the lighting or illumination is located in an effort to resolve or remedy the complaint; and
2. An owner or occupant of property neighboring the property upon which the source of the lighting or illumination is located submits a written complaint to the City stating that the lighting or illumination interferes with the owner's or occupant's enjoyment of his or her property; and
3. The light or illumination produces, generates, or discharges light at a level exceeding 0.2 foot-candles above the ambient light level when measured at ground level at the property line of the property upon which the source of the lighting or illumination is located.

This subsection shall not apply to public street lighting, authorized traffic control devices, or lighting necessary for the installation, repair, or maintenance of public streets and public improvements by the City of Cherry Hills Village, the Colorado Department of Transportation, or other governmental agency.

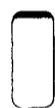
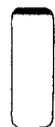
- F. Unclean or Defective Drain, Ditch, Garbage Box, Etc.: Any unclean, foul, unsafe, unhealthy, dangerous, defective or filthy drain, ditch, tank or gutter, or any leaking or broken slop, garbage or manure box or receptacle of like character is declared a nuisance.
- G. Unclean Stable or Stall: Any stable, stall, shed, yard or appurtenance thereto in which refuse shall collect and accumulate to an extent offensive or unhealthy to others, or which shall not be kept protected from flies and other insects and rodents and in a clean or wholesome conditions, is declared a nuisance.
- H. Disposal of Certain Substances: The filling, placing, depositing or location of any dung, carrion, dead animal, offal, garbage or any putrid or offensive substance, or





the contents of any privy, vault or cesspool, on any street, alley, public or private ground or upon any lake, creek or other body of water is declared a nuisance.

- I. Deposit on Public Property or Streets: The deposit in or on or to litter any street, alley or public place with garbage, rubbish, debris, sod, earth, sand, gravel, concrete or any other construction or waste material is declared a nuisance.
- J. Garbage, Rubbish, and Trash:
1. Stale or Uncovered Garbage: Any garbage stored otherwise than in watertight and airtight cans or containers or which creates odor, stench, or is accessible to animals, or otherwise creates a health hazard is declared a nuisance.
  2. Dumping or Disposal of Trash, Garbage or Debris: The storage, dumping or disposal of trash, garbage or debris within the City is deemed a nuisance; provided, however, that it shall be permissible for owners or occupants of property, other than residentially zoned property, to bury, or otherwise destroy or dispose of (except by fire) used concrete, structural materials or other similar solid debris upon such property so long as no health hazard is created and such disposal conforms with all federal, state and local health department regulations and requirements.
  3. Improper Accumulation and Storage of Rubbish and Trash: Any rubbish or trash that is allowed to accumulate in or around cans or containers in such a manner as to foster the propagation of rats, vermin, flies and other insects or is stored in such a manner as to be accessible to animals or littered about by wind is declared a nuisance.
  4. Compost: A compost pile that substantially annoys, injures, or endangers the comfort, health or safety of the public is declared a nuisance. Such annoyance includes, but is not limited to, strong offensive odors or the presence of mice, rats, or other vermin.
- K. Junk Nuisances:
1. It shall be a nuisance for any person entitled to the possession of any real estate or leasehold, residence, store, building or premises within the City of Cherry Hills Village, or any part thereof, to permit or allow the existence or storage of junk as defined in this subsection.
  2. For purposes of this section and Chapter, "junk" shall mean and include: iron, brass, copper, tin, lead, or other metals; ropes, rags, fibers, or fabrics; bottles or other glass; rubber or rubber products; machinery; motor vehicle parts; junk motor vehicles as defined below; junk trailers as defined below; tools; appliances; unstacked firewood; cartons, pallets, barrels, and other containers; building materials such as but not limited to lumber, pipe and pipe fittings, conduit and conduit fittings (except where such building materials are stored for use upon property that is subject to a valid building permit which permit authorizes construction utilizing such building materials); wastepaper; or other waste or discarded goods.
  3. For purposes of this section and Chapter, "junk motor vehicle" means a motor vehicle that is inoperable, or does not have a current license plate, or which lacks one or more of the following items that is otherwise standard factory equipment on the particular vehicle model: windshield, side or rear window, door, fender, headlamp, muffler, wheel, and/or properly inflated tire.
  4. For purposes of this section and Chapter, an "inoperable motor vehicle" means any vehicle not capable in its present condition of being promptly started and driven under its own power.
  5. For purposes of this section and Chapter, "junk trailer" means a trailer that is inoperable due to a flat tire, lack of a wheel, lack of structural integrity, or other similar reason that renders the trailer inoperable.



6. Nothing in this subsection shall apply to the existence or storage of junk within a fully enclosed and lawfully existing permanent structure.

L. Dangerous Conditions on Property:

1. Abandoned, Unattended or Discarded Refrigerators, Containers: Any abandoned, unattended or discarded icebox, refrigerator or other airtight container is declared a nuisance.
2. Pits, Unkept Wells, Tunnels and Excavations: Any abandoned or unguarded pit, well, tunnel or excavation hazardous to life or property is declared a nuisance.
3. Dangerous or Dilapidated Buildings, Structures or Vehicles: Any building, structure, wall, or tree house which is so decayed, broken down, disintegrated, dilapidated or poorly constructed as to constitute a fire hazard or other health or safety hazard to persons or property is declared a nuisance.

- M. Diseased, Dead or Dangerous Trees and Plants Nuisance: Any trees, shrubs, vines, hedges or other plants that are diseased, infected or dead or which are placed as to be dangerous to the public health and safety is declared a nuisance.

N. Property Maintenance Nuisance:

1. Failure to Maintain Site as Approved. It shall be unlawful and shall constitute a nuisance for any person to fail to install or fail to maintain any detention ponds, drainageways, landscaping, lighting, trash enclosures, signage, retaining walls, irrigation systems, screening, fencing, parking lots, private driveways and streets and other conditions of private property required to be installed and maintained through the provisions of a rezoning, conditional or special use permit, subdivision plat, development plan, variance, fencing or landscaping plan, site plan, design standards, building permit, or any other land development consent or document approved by the City of Cherry Hills Village, its boards, commissions, and officials.
2. It shall be unlawful and constitute a nuisance to allow and to fail to prevent the erosion of soil caused by drainage originating within any property.

**4-1-4: EXCEPTIONS TO NUISANCE:** The provisions of this Chapter shall not apply to:

- A. Property, actions, or activities owned, controlled, or conducted by the City of Cherry Hills Village, its officials, contractors, and employees in the performance of official municipal functions.
- B. Any noise resulting from any authorized emergency vehicle in responding to an emergency call or acting in time of emergency;
- C. Any noise resulting from a security system licensed with the City;
- D. The operation of aircraft or aircraft activities that would otherwise constitute a nuisance under this Chapter but is authorized by federal law;
- E. Air pollution or noise generally emanating from the operation of a public right-of-way other than air pollution or noise emanating from a single identifiable vehicle.
- F. An activity that would constitute a nuisance in accordance with this Chapter but is expressly described in a valid City-issued permit provided that such activity is ceased, terminated, or abated with seventy-two (72) hours of commencement or within such other period of time specifically identified in the permit.
- G. Noise emanating from a lawfully permitted construction or demolition project for the period within which construction or demolition is to be completed pursuant to any applicable permit issued by the City or, if no time limitation is imposed, for a reasonable period of time for completion of the construction or demolition project.



- H. Non-amplified noise associated with lawfully conducted sporting, athletic, educational, worship, theatrical, musical, or other similar events or services conducted upon property owned by and used for nonprofit institution, private club, public recreational facility, or nonprofit recreational facility as these uses are defined by section 6-1-1 of Article 6 of the City Code.

**4-1-5: NUISANCE UNLAWFUL:** It shall be an offense and unlawful for any person being the owner, agent or occupant of, or having under his control any building, lot or premises to maintain or allow any nuisance to be or remain thereon. It shall further be unlawful and an offense for any person to:

- A. Do any act constituting a nuisance,
- B. Fail to act where such failure causes or continues a nuisance,
- C. Permit any activity or condition constituting a nuisance, or
- D. Aid or abet in the creation or maintenance of a nuisance.

**4-1-6: NUISANCE A CONTINUING OFFENSE:** Each calendar day that a nuisance exists shall be a separate offense and violation of this Chapter.

**4-1-7: METHODS OF NUISANCE ABATEMENT:**

- A. In order to abate any nuisance, the City may elect to pursue any one or more of the following methods:
  - 1. Pursue summary abatement pursuant to section 4-1-8 of this Chapter; or
  - 2. Initiate an action for judicial enforcement in the City of Cherry Hills Village Municipal Court or an Arapahoe County court pursuant to section 4-1-9 of this Chapter; or
  - 3. Cause abatement or removal by means of Notice and Demand, together with either judicial enforcement or City abatement pursuant to section 4-1-10 of this Chapter.
- B. No remedy provided in this Chapter shall be exclusive. All remedies shall be cumulative and available concurrently. The taking of any action authorized by this Chapter or any other provision of the City Code, including charge or conviction of violation of this Chapter, shall not preclude or prevent the taking of other action to abate any nuisance. Any application of this Chapter that is in the nature of a civil action shall not prevent the commencement or application of any other charges brought under the municipal ordinances or any other provision of law.

**4-1-8: SUMMARY ABATEMENT OF NUISANCES:**

- A. The City Manager may authorize the immediate and summary abatement of any nuisance where the following criteria or circumstances are determined by the City Manger to exist:
  - 1. An Investigating Official certifies in writing to the City Manager that a condition, activity, or circumstance exists upon property located within the City of Cherry Hills Village which constitutes a nuisance as identified and described in this Chapter. Such written certification should, when possible, include photographs, illustrations, and other evidence to describe the scope and extent of the nuisance; and
  - 2. The Investigating Official certifies in writing to the City Manager that the nuisance presents an immediate and imminent danger to the public health, safety, or welfare; and
  - 3. The delay associated with abatement of the nuisance by another method as provided in this Chapter will potentially result in harm or damage to person or property from the nuisance. By way of example and not limitation, such harm or damage may include: the release of sewage onto adjacent property,



injury to persons resulting from open pits or cesspools; or the deposit of water upon public streets or sidewalks that results in potentially hazardous conditions.

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- B. Following the City Manager's determination as required in (A) of this section, the Manager may authorize abatement of all or a portion of the nuisance as the Manager deems necessary to remedy the nuisance and to resolve the immediate and imminent danger to the public health, safety, or welfare resulting from the nuisance. When summary abatement is authorized by the City Manager, prior notice of such abatement action to the owner, agent, or occupant of the property is not required.
  - C. Following abatement, the City Manager shall deliver to the owner a written description of the circumstances resulting in the abatement or other action together with an itemized invoice or other detailed statement of the cost and expenses incurred by the City in abating the nuisance and demand for payment within twenty (20) days of the owner's receipt of the invoice or statement.
  - D. Within twenty (20) days following the owner's receipt of the City Manager's invoice or statement of costs and expenses, the owner shall deliver to the City Manager payment in full for the costs and expenses. Failure to timely pay an invoice or statement of costs and expense shall constitute a violation of the Municipal Code which shall be subject to the penalties provided by section 1-4-1 of the City Code. The City may, at its discretion and only where such costs and expenses exceed \$150.00, assess the costs and expenses of abatement as a lien against the owner's property and certify such lien to the Clerk and Recorder for Arapahoe County for collection in the same manner as real estate taxes against the property. Each such lien shall have priority over other liens except general taxes and prior special assessments.

**4-1-9: JUDICIAL ENFORCEMENT:**

- (A) The City Manager may initiate a civil action or criminal prosecution for the judicial enforcement of this Chapter against any nuisance at anytime. Judicial enforcement shall also be available to abate a nuisance following efforts to abate the nuisance through the delivery of a Notice and Demand as provided in section 4-1-10. The Manager shall endeavor to advise and consult with the City Council regarding the nuisance prior to commencing judicial enforcement.
- (B) If the City Manager elects to initiate judicial enforcement in the City of Cherry Hills Village Municipal Court or an Arapahoe County court, no prior notice regarding the nuisance or abatement need be provided to the defendant other than service of a summons and/or complaint in accordance with the applicable court rules.
- (C) Upon a finding of a nuisance and violation of any provision of this Chapter by any defendant, the court shall impose the following minimum penalty, unless the City, through the City prosecutor, requests or consents to a lesser or different penalty:
  - (1) Enjoin or otherwise order the defendant to fully abate and remedy the nuisance within a specified and reasonable period of time not to exceed ten (10) days following the entry of the court's order; and
  - (2) Fine the defendant for each violation an amount not less than \$250.00 nor more than \$1000.00 for the first violation, not less than \$400.00 nor more than \$1000.00 for the second violation, and not less than \$500.00 nor more than \$1000.00 for the third and for each subsequent violation for the same nuisance. No portion of any minimum fine may be suspended or held in abeyance by the court; and
  - (3) Order the defendant to forthwith pay restitution to the City for the actual costs or loss caused to the City by the violation(s) including but not limited to administrative expenses, costs to protect the public from the nuisance, court costs, and attorney fees; and





- (4) Authorize the City to assess any unpaid costs and expenses for abatement imposed by the court in (3) above as a lien against the owner's property and certify such lien to the Clerk and Recorder for Arapahoe County for collection in the same manner as real estate taxes against the property. Each such lien shall have priority over other liens except general taxes and prior special assessments.

(D) In addition to the minimum penalty required by this subsection, the court shall be authorized to:

- (1) Imprison the defendant for a term not more than three hundred sixty five (365) days for each violation;
- (2) Permanently enjoin the defendant from further engaging in the use of the property in a manner that would constitute a nuisance;
- (3) Find the defendant in contempt of court and assess a penalty as specified by the court including a fine and/or imprisonment for failure to abide by, comply with, or conform to any court order or injunction; and/or
- (4) Impose any other penalty authorized by law.

**4-1-10: NOTICE AND DEMAND FOR ABATEMENT:**

A. Where an Investigating Official has reason to believe that a nuisance may exist upon property within the City of Cherry Hills Village, the Investigating Official may seek abatement of the nuisance in accordance with the following procedures:

1. **Personal Contact:** The Investigating Official shall first attempt to personally contact the owner or occupant of the property (by personal visit, by telephone, or by letter) in an effort to seek voluntary abatement of the nuisance. The Investigating Official shall provide the owner or occupant a reasonable time, and in no event less than seventy-two (72) hours, to voluntarily abate the nuisance unless the nuisance is subject to summary abatement.
2. **Written Description:** Where the nuisance remains unabated following personal contact with the owner or occupant, the Investigating Official shall prepare a written description of the condition, activity, or circumstance that is believed to constitute a nuisance as described in this Chapter. Such written certification should, whenever possible, include photographs, illustrations, and other evidence to describe the scope and extent of the nuisance.
3. **Notice and Demand:** The Investigating Official shall prepare a written notice titled "Notice and Demand for Nuisance Abatement" ("Notice and Demand"). Such Notice and Demand shall substantially conform to the following content requirements:
  - a. A written description of the condition, activity, or circumstance that constitutes a nuisance and violation of this Chapter;
  - b. A statement that the condition, activity, or circumstance constitutes a nuisance together with a citation to the specific provision(s) of this Chapter that declares such condition, activity, or circumstance to be a nuisance and unlawful;
  - c. A copy of this Chapter, as it may be amended;
  - d. A demand that the nuisance be abated on or before a specified time and date. The time and date shall be not less than seven (7) days nor more than fourteen (14) days from the date of the Notice and Demand;



- e. A statement that if the nuisance is not abated on or before the date and time stated in the Notice and Demand, the City may at its option pursue an action to enforce this Chapter in an appropriate court and/or abate the nuisance. Such statement may also inform the addressee of the potential fines and other penalties that may be imposed upon a finding by a court that a nuisance exists on the property. Such statement may also inform the addressee that the cost and expense of abatement incurred by the City will be assessed as a lien against the owner's property and that the City may certify such lien to the Clerk and Recorder for Arapahoe County for collection in the same manner as real estate taxes against the property; and
- f. Any other information as determined by the Investigating Official to enable to addressee to properly address the abatement of the nuisance and to contact the Investigating Official.
4. Delivery of Notice and Demand. The Investigating Official shall cause the Notice and Demand to be distributed in accordance with this subsection. Provided that the Notice and Demand is mailed or posted in substantially conformity with this subsection, the failure of the owner, occupant, or another person to receive such Notice and Demand shall not constitute a failure to comply with the requirements of this section. The Investigating Official shall cause the Notice and Demand to be distributed as follows:
- a. The Notice and Demand shall be mailed, by certified U.S. Mail return receipt requested, to the owner of the property as such owner's name and address appear in the records of the County Assessor for Arapahoe County; and
- b. Either:
- (i) Where the property includes a residential or commercial structure, the Notice and Demand shall be mailed, by first class U.S. Mail, addressed to "Occupant" at the address of the property upon which the nuisance is located; or
- (ii) Where the property is vacant or undeveloped, one sign measuring not smaller than two (2) feet by three (3) feet shall be posted on the property at a conspicuous location visible from a traveled thoroughfare. Such sign shall be titled "Notice and Demand for Nuisance Abatement" and shall state that the property is subject to City enforcement of this Chapter, shall include a brief statement of the nuisance being abated, and include the words "additional information is available at the Village Center for the City of Cherry Hills Village during normal business hours" together with the address of the Village Center and telephone number of the Investigating Official.
5. Failure to Timely Abate Following Notice and Demand. If the owner or occupant shall fail to abate the nuisance on or before the date and time stated in the Notice and Demand, the City Manager may:
- a. Authorize abatement of all or a portion of the nuisance as the City Manager deems necessary to remedy the nuisance. No additional or prior notice of such abatement action to the owner, agent, or occupant of the property is required. Following abatement, the City Manager shall deliver to the owner a written description of the action taken to abate the nuisance together with an itemized invoice or other detailed statement of the cost and expenses incurred by the City in abating the nuisance and demand for payment within twenty (20) days of the owner's receipt of the invoice or statement. Within twenty (20) days following the owner's receipt of the City Manager's invoice or statement of costs and expenses, the owner shall deliver to the City Manager payment in full for the costs and expenses. Failure to timely pay an invoice or statement of costs and expense shall



constitute a violation of the Municipal Code which shall be subject to the penalties provided by section 1-4-1 of the City Code. The City Manager may, at the Manager's discretion, assess the costs and expenses of abatement as a lien against the owner's property and certify such lien to the Clerk and Recorder for Arapahoe County for collection in the same manner as real estate taxes against the property. Each such lien shall have priority over other liens except general taxes and prior special assessments.

- b. Pursue an action for judicial enforcement of the nuisance violation as provided by section 4-1-9 of this Chapter.

**4-1-11: COSTS AND EXPENSES AS LIEN AGAINST PROPERTY:**

- A. Whenever this Chapter authorizes the City to assess against any person or property the cost and expense of abatement of nuisances, such costs and expenses shall include all costs actually incurred by the City and reasonably related to the abatement, including but not limited to an hourly rate for each hour of City staff time employed in administering this Chapter in the abatement of the nuisance, attorney fees and legal costs, equipment charges, contractors and other service personnel expenses charged to the City, transportation and storage charges, trash disposal charges and fees, insurance, and equipment and services necessary to protect the property and the general public from harm. The City Manager may establish reasonable and uniform charges for property inspection, preparation and delivery of notices, and other administrative tasks customarily undertaken in the administration of this Chapter.
- B. Whenever this Chapter authorizes the City to assess against any person or property the cost and expense of abatement of nuisances, the City shall be authorized to assess any unpaid and delinquent costs and expenses as a lien against the property and to certify the costs and expense to the County Treasurer or other appropriate County official for collection in the same manner as real estate taxes against the property. Each such assessment shall be a lien against each lot or tract of land until paid and shall have priority over other liens except general taxes and prior special assessments.

**4-1-12: REVIEW OF COSTS AND EXPENSES OF ABATEMENT:**

- A. Any owner of property subject to an assessment for the costs and expenses of the City's abatement of a nuisance imposed in accordance with section 4-1-10 of this Chapter may request an administrative review of the assessment by the City Council.
- B. A request for an administrative review must be made in writing by the owner and delivered to the City Manager prior to 5:00 p.m. on the date upon which payment of costs and expenses are due. The written request shall describe in detail the specific reasons why the assessment is unreasonable together with any other written information the owner asserts demonstrates the unreasonableness of the assessment. Upon the timely submission of a request, the deadline for payment of assessed costs and expenses shall be postponed until the earlier of the City Council's decision following review or such later time the City Council directs payment to be made following review.
- C. The review shall be for the sole purpose of considering the reasonableness of the assessed costs and expenses. As an administrative matter, no notice or hearing shall be required prior to review of the owner's request by the City Council.
- D. Following review of the City Manager's assessment, the written request for review, and any explanation of the City Manager concerning the costs and expenses, the City Council shall either affirm the City Manager's assessment or reduce the assessment upon a finding that the assessment is unreasonable.

**4-1-13: CERTAIN DEFENSES NOT AVAILABLE:**



- A. Any person who is the record owner of the premises, location or structure at the time a Notice and Demand or other order pursuant to this Chapter is issued and served upon him or her, shall be responsible for complying with that order, and liable for any costs and expenses incurred by the City, notwithstanding the fact that he or she conveys interests in the property to another after such notice or order was issued and delivered.
- B. It shall not be a defense to the determination that a nuisance exists or to an action to abate a nuisance that the property is boarded up or otherwise enclosed, or that the nuisance is not visible by the general public.

**4-1-14: RIGHT OF ENTRY FOR INSPECTION:**

- A. Any Investigating Official is authorized to enter upon private property to ascertain the existence of a nuisance if:
  1. Emergency conditions dangerous to the public health, safety, or welfare are reasonably believed to exist upon such property or upon property that is accessible from the entered property; or
  2. The Investigative Official has obtained a search warrant; or
  3. The private property is undeveloped or vacant;
  4. The Investigative Official has obtained the consent of a person who purports to be in possession of the property or authorized to consent to entry.
  5. Investigative Official, after reasonable efforts to contact a person in possession by telephone, personal visit, or posting or mailing of a request to enter, is unable to make contact to request the consent of the person in possession.
- B. An Investigating Official shall not enter private property where the owner or person in possession denies consent except where emergency conditions are believed to exist or a search warrant authorizing entry is obtained.
- C. The municipal judge of the municipal court of the City shall have the power to issue a search warrant to permit the investigation of the existence of nuisance upon a showing by an Investigating Official of either: (1) probable cause that a nuisance exists; or (2) emergency conditions dangerous to the public health, safety or welfare exist.

**4-1-15: RIGHT OF ENTRY FOR ABATEMENT:**

Whenever the City exercises its right to abate a nuisance in accordance with this Chapter, the City shall have the authority to enter upon the property and abate the nuisance. In abating such nuisance, the City may take such action as necessary to complete the abatement of the nuisance and, should it be practicable to salvage any material derived in the abatement, the City may sell the salvaged material at private or public sale at the best price obtainable and shall keep an accounting of the proceeds from such sale. The proceeds, if any, obtained from the sale of any material salvaged as a result of the City's abatement of a nuisance shall be deposited to the General Fund of the City and any deficit between the amount so received and the cost of the abatement may be levied as an assessment against the property and collected as any other assessment by the City. Should the proceeds of the sale of such salvaged material exceed the cost of abatement, the surplus, if any, shall be paid to the owner of the property from which the nuisance was abated.

**4-1-16: ADMINISTRATIVE REGULATIONS AUTHORIZED:**

The City Manager is authorized to promulgate administrative regulations and forms in order to implement the provisions of this Chapter. No administrative regulation shall conflict with a specific requirement of this Chapter.





**4-1-17: EXTENSION OF DEADLINES AUTHORIZED:** A reasonable extension of any time deadline established by this Chapter or in the administration of this Chapter may be granted by the Investigating Official or City Manager upon a showing of just cause for an extension.

**4-1-18: EFFECT ON OTHER ORDINANCES:** Notwithstanding the provisions of any zoning ordinance or other ordinance now or hereafter enacted authorizing certain uses or location of property, it is the intention of the city council, and it is hereby so declared that any use, location or activity otherwise authorized by zoning ordinances or any other ordinance shall be subject to this Chapter prohibiting nuisances.

**4-1-19: ENFORCEMENT BY TRI-COUNTY DISTRICT HEALTH DEPARTMENT:** Upon consent by the City Manager, the provisions of this Chapter may be enforced by the Tri-County District Health Department or by the City with the assistance of the Health Department.

Section 2. Severability. If any provision of this ordinance should be found by a court of competent jurisdiction to be invalid, such invalidity shall not affect the remaining portions or applications of this ordinance that can be given effect without the invalid portion, provided that such remaining portions or applications of this ordinance are not determined by the court to be inoperable. The City Council declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, despite the fact that any one or more section, subsection, sentence, clause, phrase, or portion would be declared invalid or unconstitutional.

Section 3. Nothing in this ordinance shall be construed to affect any suit or proceeding pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any ordinance hereby repealed by this ordinance, or any just or legal right or remedy of any character be lots, impaired, or affected by this ordinance.

Adopted as Ordinance No. 8 Series 2003, by the City Council of the City of Cherry Hills Village, Colorado this 5<sup>th</sup> day of August, 2003.

Viola Lahana  
Viola Lahana, Mayor Pro-tem

ATTEST:  
Jennifer Pettinger  
Jennifer Pettinger, City Clerk

APPROVED AS TO FORM:  
Robert C. Widner  
Robert C. Widner, City Attorney

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