

Chapter 9.04

NUISANCES*

Sections:

- 9.04.030 Fireworks and firearms.
- 9.04.050 Authorization for handling bulletin boards.
- 9.04.070 Permit to cut trees.
- 9.04.080 Flowers.
- 9.04.090 Traps.
- 9.04.100 Public nuisances defined.
- 9.04.110 Junkyard.
- 9.04.120 Acts prohibited.
- 9.04.130 Civil or criminal action not affected by abatement.
- 9.04.140 Abatement by civil action.
- 9.04.150 Abatement by council.
- 9.04.155 Administrative penalties.
- 9.04.160 Abatement expenditure.
- 9.04.165 Attorney's fees.
- 9.04.170 Immediate abatement of nuisance by town--Lien on property.
- 9.04.210 Drunkenness.
- 9.04.230 Picketing prohibited.
- 9.04.240 Picketing defined.
- 9.04.250 Penalty.

* For state law authorizing towns to make and enforce within their limits such local police regulations as are not in conflict with general laws, see Const. Art. II, §11.
For statutory provisions empowering towns to define and punish nuisances, see Gov. C.A. §38771.
For statutory provisions pertaining to the regulation by towns of outdoor advertising, see Gov. C.A. §38774. As to firearms, see Pen. C.A. §12606 et seq.
As to destroying town property, see Pen. C.A. §622. As to the use of profane language, see Pen. C.A. §415. As to drunkenness, see Pen. C.A. §647(f).
For state law relating to the abatement of nuisances, see Gov. C.A. §38773 et seq.
Note: 9.04.020, 9.04.040, 9.04.060, 9.04.180, 9.04.190, 9.04.200, 9.04.220 repealed by Ord. No. 608 (part), 2008.

9.04.030 Fireworks and firearms. It is hereafter unlawful for any person to fire or discharge within the town, any firearms, explosive fireworks, or contrivances, air guns or other machines for discharging projectiles. (Ord. 267 §4(part), 1967: prior code §4202).

9.04.050 Authorization for handling bulletin boards. It is unlawful for any person, unless duly authorized by the town council, to alter, injure, deface, mutilate, obliterate, remove, tear down, or destroy any notice, advertisement, ordinance or other paper, document or writing

affixed to or posted upon an official bulletin board pursuant to law or the order of the council, or to affix thereto or post thereon any notice, placard, bill, poster, advertisement, sign, or other paper, document or writing. (Ord. 267 §4(part), 1967: prior code §420)

9.04.070 Permit to cut trees. It is unlawful for any person to cut, girdle, trim, top, disfigure, remove, destroy or in any manner injure, or to cause to be cut, girdled, trimmed, topped, disfigured, removed, destroyed or in any manner injured, or to aid or assist in cutting, girdling, trimming, topping, disfiguring, removing, destroying or in any manner injuring any tree, shrub, or plant growing or standing upon any street, sidewalk, lane, alley or public park or place, without first having obtained a written permit from the director of public works as provided in Chapter 12.24. (Ord. 467 §3, 1988; Ord. 341 §1, 1974: Ord. 267 §4(part), 1967: prior code §4207).

9.04.080 Flowers. It is unlawful for any person to cut, pick or gather, or to cause to be cut, picked or gathered, or to assist in cutting, picking or gathering, any flowers, ferns, fruit or foliage from any tree, bush, shrub, vine or plant of any character or description, growing, planted or standing in or upon any public park, square or place. (Ord. 267 §4(part), 1967: prior code §4208).

9.04.090 Traps. It is unlawful for any person to set or assist in setting any single or double spring game trap or traps, or any kind of traps which maims, mutilates or injures an animal caught thereby, for the purpose of trapping, taking or killing any animal or animals within the town; provided, however, that this section shall not prohibit the setting of traps known as gopher, mole, rat or mouse traps, for the purpose of trapping, taking or killing gophers, moles, rats or mice. (Ord. 267 §4(part), 1967: prior code §4209).

9.04.100 Public nuisances defined. A public nuisance is a thing, act, occupation or use of property which:

- (1) Shall annoy, injure or endanger the safety, health, comfort, welfare, or repose of any considerable number of persons;
- (2) Shall offend the public decency;
- (3) Shall unlawfully interfere with, obstruct or tend to obstruct, or render dangerous for passage, public park, square, street, alley or highway;
- (4) Shall in any way render any considerable number of persons insecure in life or in use of property;
- (5) Shall in any way offend the senses of any considerable number of persons;
- (6) Is declared to be a public nuisance by the ordinances or laws of the town or the state, and the items in this chapter are hereby declared to be public nuisances, and shall be abated as such, subject to the definitions of this section and in addition to any other provisions of this code. (Ord. 267 §4(part), 1967: prior code §4300).

9.04.110 Junkyard. The maintenance, existence or presence of a junkyard, storage or deposit, presence or accumulation of junk, old metal parts, construction materials and equipment, vehicles in a state of disrepair, piles of fertilizer, manure or other goods, materials and equipment which are not normally a part of the residential use of any property is hereby declared a nuisance. (Ord. 267 §4(part), 1967: prior code §4327).

9.04.120 Acts prohibited. It is unlawful and a public nuisance for any person to keep or maintain, or suffer or permit to be kept or maintained upon any premises within the town, owned

or controlled by him, any dead tree, or any dead limbs upon any tree, if the dead tree, or dead limbs, are so located upon the premises that in the event the same, or any portion thereof, should break off and fall, damage or injury would result to neighboring property or to the public using the streets, highways or public places, or to maintain upon the premises any bush, shrub or hedge, wholly or partially dead, and so located as to cause a fire menace. (Ord. 267 §4(part), 1967: prior code §4370).

9.04.130 Civil or criminal action not affected by abatement. Abatement shall not prejudice or affect any other action, civil or criminal, for the maintenance of a nuisance. (Ord. 267 §4(part), 1967: prior code §4380).

9.04.140 Abatement by civil action. A civil action may be brought in the name of the people of the state to abate a public nuisance as defined in this chapter, by the city attorney, or by the district attorney or county counsel, and each of the officers shall have concurrent right to bring such action for a public nuisance within this town. The town attorney, shall bring such action when directed to do so by the council. (Ord. 267 §4(part), 1967: prior code §4381).

9.04.150 Abatement by council. Whenever the town determines a nuisance exists upon private property within the definition of this chapter, the town shall mail written notice to the owner at the address shown upon the last tax roll and, if different, a mailed notice to the occupant, or other person in charge of the property demanding that the nuisance be discontinued, abated or that proper precautions be immediately taken to prevent the nuisance from recurring. Where, after the notice, the nuisance continues unabated for a period of ten days after the mailing, a notice shall be posted on the property affected and at the Town Hall, the notice to demand that the nuisance be discontinued, abated or that proper precautions be immediately taken to prevent the nuisance from reoccurring and that if action is not taken within ten days after the posting, the council will cause the nuisance to be abated at the expense of the property owner. If such action is not taken within the ten-day period, it shall be the duty of the council to cause the nuisance to be abated or removed at once through the adoption of a nuisance abatement order. (Ord. 556 (part), 2001: Ord. 547 § 1(part), 1999: Ord. 267 §4(part), 1967: prior code §4382).

9.04.155 Administrative penalties. (a) The council may impose penalties upon persons responsible for creating, maintaining or fostering a public nuisance in an amount not to exceed a maximum of one thousand dollars per day for each day that the public nuisance occurs, except that the total administrative penalty imposed pursuant to this chapter shall not exceed one hundred thousand dollars, exclusive of administrative costs, attorneys' fees, and interest

(b) In determining the amount of the penalty, the council may take any or all of the following factors into consideration:

- (1) The period of time during which the public nuisance occurred;
- (2) The nature, frequency and recurrence of the public nuisance;
- (3) The ease with which the public nuisance could have been abated;
- (4) The good faith efforts made to deter the public nuisance or ameliorate its

effects;

- (5) The economic impact of the penalty upon persons responsible for payment;
- (6) The impact of the public nuisance on the community; and/or
- (7) Such other factors as justice may require.

(c) Penalties imposed by the council may accrue from a date no earlier than the compliance date specified in the nuisance abatement order and shall cease to accrue on the date

the nuisance abatement order has been complied with as determined by the town attorney. When the violation pertains to building, plumbing, electrical, or other similar structural or zoning issues, which do not create an immediate danger to health or safety, the nuisance abatement order shall provide for a reasonable period of time, under the circumstances, for a person responsible for a violation to correct or otherwise remedy the violation prior to the imposition of any administrative penalties.

(d) Penalties assessed by the council shall be due by the date specified in the nuisance abatement order.

(e) Penalties assessed by the council are a personal debt owed to the town and, in addition to all other means of enforcement and collection where the person against whom the penalties are assessed is an owner of the subject real property, may, at the council's option, be enforced and collected through the placement of a lien against the subject real property.

(f) Penalties shall continue to accrue on a daily basis until the nuisance abatement order has been complied with, subject to the maximum amount set forth in this section.

(g) If a person subject to the nuisance abatement order gives written notice to the town attorney that the nuisance abatement order has been complied with and if the town attorney finds that compliance has been achieved, the date that the written notice was postmarked or personally delivered to the town attorney or the date of the town's final inspection, whichever first occurred, shall be deemed to be the date of compliance with the nuisance abatement order. (Ord. 547 §1(part), 1999).

9.04.160 Abatement expenditure. The cost of the abatement of a nuisance upon a parcel of land shall become a special assessment and lien against that parcel, which assessment may be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary municipal taxes. All laws applicable to the levy, collection and enforcement of municipal taxes shall be applicable to such special assessment. (Ord. 267 §4 (part), 1967: prior code §4383).

9.04.165 Attorneys' fees. In any action, administrative proceeding, or special proceeding to abate a nuisance, the prevailing party shall be entitled to recover attorneys' fees. Recovery of attorneys' fees by the prevailing party is limited to those individual actions or proceedings in which the town elects, by the initiation of that individual action or proceeding, to seek recovery of its own attorneys' fees. In no action, or administrative proceeding, or special proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the town in the action or proceeding. (Ord. 546 §1, 1999).

9.04.170 Immediate abatement of nuisance by town--Lien on property. (a) Whenever there is imminent or immediate danger to the public or a large portion thereof, in the existence or continuance of any nuisance endangering the public health, welfare or safety, arising from any act, condition or use or occupation of property, or otherwise amounting to a nuisance per se, it is the duty of the town council, the police chief, the fire chief, the building inspector, or the town engineer, as duly authorized agents or officials of this town to abate such nuisance.

(b) The officials of this town acting in the public interest on nuisances requiring prompt abatement are responsible for their acts and the acts of their subordinates hereunder, but the expense or costs resulting from such summary abatement shall be a collectable lien against the property concerned as hereinbefore provided. (Ord. 267 §4(part), 1967: prior code §4384).

9.04.210 Drunkenness. It is unlawful for any person to be drunk or intoxicated on any public highway, or in or about any motor vehicle, or in any public place, or in any place open to public view, in the town. (Ord. 267 §4(part), 1967: prior code §4342).

9.04.230 Picketing prohibited. It is unlawful for any person to picket directly in front of the residence or dwelling of any individual in the town of Ross. A separate offense shall occur for each day of picketing. (Ord. 597 (part), 2007).

9.04.240 Picketing defined. “Picketing” is defined as the posting of one or more persons for a demonstration or protest which is focused on and taking place directly in front of a particular residence or dwelling, without invitation or consent from the resident or residents. (Ord. 597 (part), 2007).

9.04.250 Penalty. Violation of this provision is a misdemeanor and shall be punishable by a fine not exceeding one thousand dollars or imprisonment for a term not to exceed six months, or by both such fine and imprisonment.

If any section, subsection, sentence, clause, phrase, or portion of this section for any reason is held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this section. The town council further declares that it would have passed this and each section, subsection, sentence, clause, phrase, or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared unconstitutional on their face or as applied. (Ord. 597 (part), 2007).