

**TOWN OF SEDGWICK
ORDINANCE #03-2011**

AN ORDINANCE OF THE BOARD OF TRUSTEES OF THE TOWN OF SEDGWICK, SEDGWICK COUNTY, COLORADO CONCERNING NUISANCES, THEIR DEFINITION, MITIGATION AND PROVISIONS FOR THE VIOLATION THEREOF, FOR THE PROTECTION OF PUBLIC HEALTH, SAFETY AND WELFARE AND COMMUNITY STANDARDS AND REPEALING ORDINANCE #5.

WHEREAS, pursuant to C.R.S. § 31-15-401, the Town is authorized to declare what is a nuisance, abate the same, and impose fines upon parties who may create or continue nuisances or suffer nuisances to exist; and

WHEREAS, the Board of Trustees finds it is in the best interest of the health, welfare and safety of its residents to adopt an updated ordinance prohibiting nuisances, providing for abatement of the same, and imposing fines and other penalties for violations of the same; and

WHEREAS, the abatement of nuisances will help preserve and protect community standards for the purpose of encouraging future economic development and improving the general appearance of the Town for current Town residents and anyone who may consider Sedgwick as a future home; it is,

HEREBY, ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF SEDGWICK, AS FOLLOWS:

Section 1. Definitions.

In the interpretation of the definitions set forth in this Section 1, it is the express intent of the Board of Trustees that such definitions be liberally construed to include like matters, materials, objects, or substances, whether or not the same are specifically identified. It is further the expressed legislative intent of the Board of Trustees that the definitions not be considered mutually exclusive, and that, in the interpretation of such definitions, it is recognized that any substance, material or object may constitute litter, trash, garbage and junk at the same time. Liberal construction of definitions is deemed necessary by the Board of Trustees in order to fulfill the public purpose of this Ordinance, which is to ensure that the Town is maintained in a clean, healthy and attractive condition by eliminating all nuisances, including but not limited to, the outside storage of garbage, trash, junk and related matters, objects or materials as set forth in this Ordinance. The following words, terms, and phrases, when used in this Ordinance, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

- A. "Abandoned vehicle" means any motor vehicle that is:

(1) Left unattended on private property for a period of twenty-four (24) hours or longer without the consent of the owner, occupant, or tenant of such property or his legally authorized agent;

(2) Left unattended on public property, including any portion of a street or highway right-of-way, within the limits of the Town for a period of twenty-four (24) hours or longer, unless the owner or driver has conspicuously affixed thereto a dated notice, or otherwise notified the Town of his intention to remove such vehicle within seventy-two (72) hours, or the vehicle is parked on a public street within fifty (50) feet of the property of the owner; or

(3) Any motor vehicle determined to be lost, stolen, or unclaimed.

B. "Brush" means woody shrubs not part of a planned and maintained landscape of either a highly structured, manicured type or a natural appearance.

C. "Garbage" means wastes resulting from the handling, preparation, cooking, or consumption of food and wastes from the handling, storage, or sale of produce.

D. "Hobby" means the repairing, reconditioning, or rebuilding of all vehicles that is done for personal enjoyment or entertainment only, with no profits, compensation, or reimbursements of any kind involved.

E. "Junk" means scrap brass, scrap copper, scrap iron, scrap lead, scrap zinc and all other scrap metals and alloys, bones, rags, used cloth, used rope, used rubber, used tinfoil, used bottles, old or used machinery of any type, used tools, used appliances, used fixtures, used utensils, used lumber, used boxes or crates (fabricated of any material), used pipe or pipe fittings, used conduit or conduit fittings, used tires and other manufactured goods that are so worn, deteriorated, or obsolete as to make them unusable in their existing condition.

F. "Junked vehicle" means any nonoperating vehicle or any dismantled, partially dismantled, discarded, wrecked, rusted, demolished or partially demolished vehicle.

G. "Nonoperating vehicle" means any vehicle that is not capable of traveling under its own power in its existing mechanical condition or any vehicle not bearing a valid current registration license plate.

H. "Litter" means and includes any manmade or man-used waste that, if deposited within the Town other than in a litter receptacle, tends to create a danger to public health, safety, and welfare or to impair the environment of the people of the Town. "Litter" includes any garbage, trash, refuse, confetti, debris, rubbish, grass clippings or other lawn or garden waste, newspaper, magazine, glass, metal, plastic or paper container, used construction materials, motor vehicles or parts thereof, furniture, appliances such as refrigerators, freezers, ranges, stoves, washers, and dryers, carcass of a dead animal, nauseous or offensive (as related to the senses of a person of ordinary intelligence, sensibility and reasonableness within the community) matter of any kind, or any object that does or may tend to injure any person or create a traffic hazard.

I. "Person" means the owner of, or resident of, any parcel of property, as well as any member of the household residing therein.

J. "Public nuisance" or "nuisance" means a thing, act, failure to act, occupation, activity, condition or use of property which:

- (1) Annoys, injures, or endangers the safety, health, comfort or repose of persons;
- (2) Offends the public decency;
- (3) Interferes with, obstructs or tends to obstruct or render dangerous for passage any lake, stream, canal or other body of water or a public park, street, alley or other public way;
- (4) In any way renders persons insecure in life or use of property; or
- (5) Otherwise constitutes or is known or declared a public nuisance by virtue of common law, state statutes, or ordinances of the Town.

K. "Street or highway" means the entire width between the boundary lines of every right-of-way publicly maintained where any part thereof is open to the use of the public for purposes of vehicular travel.

L. "Trash" means combustible refuse, including but not limited to paper, cartons, boxes, barrels, wood (except stacked firewood and stacked construction materials), tree branches, yard trimmings, dead plant material, wood or upholstered furniture or bedding, or similar substance or material, noncombustible refuse including but not limited to metals, tin, or aluminum cans, metal furniture, dirt, rock, pieces of concrete, glass, crockery, or other minerals or mineral wastes, street rubbish including but not limited to street sweepings, dirt, leaves, catch bag dirt, and contents of litter receptacles; provided, however, that "trash" does not include earth and waste from building construction during the period in which a valid building permit issued by the Town is active.

M. "Vehicle" means a machine propelled by power other than human power, designed to travel along the ground by use of wheels, treads, runners, or slides to transport persons or property or pull machinery and includes, without limitation, automobile, airplane, truck, trailer, motorcycle, motor scooter, tractor, buggy, wagon, and recreational vehicle.

N. "Weeds" means any unsightly, useless, troublesome, or injurious plants, grass, brush, or other noxious vegetation and includes, but is not limited to, all noxious weeds designated in the Colorado Noxious Weed Act in C.R.S. § 35-5.5-101, *et seq.*, as may be from time to time amended. "Weeds" shall also include all rank vegetable growth that may conceal filthy deposits of rubbish, trash, garbage, junk, or litter or that may conceal any health hazards or

unsafe conditions, but does include flower gardens, shrubbery, vegetable gardens, or small grain plots.

Section 2. Nuisances prohibited.

A. It is unlawful for any person to own, occupy, or have under his or her control any property, building, lot, or premises with any nuisance located thereon. It is unlawful and an offense for any person to:

- (1) Do any act constituting a nuisance;
- (2) Knowingly fail to act where such failure causes or continues a nuisance;
- (3) Permit any activity or condition constituting a nuisance; or
- (4) Aid or abet in the creation or maintenance of a nuisance.

B. The prohibitions of this Section shall apply only to persons in a position to avoid, prevent, or discontinue a nuisance.

Section 3. Specific nuisances declared.

The following are declared to be public nuisances except that this Section 3 shall not be construed to limit or exclude in any way any thing, act, failure to act, occupation, activity, condition or use of property which constitutes a nuisance as provided in Section 1.J:

A. Unclean or Defective Drain, Ditch, Garbage Box. 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 shall be deemed a nuisance.

B. Accumulation of Manure. Any accumulation of manure on property where animals are kept, unless the premises are kept clean and the manure kept in a box or vault that is screened from flies and emptied at least once a week, shall be deemed a nuisance.

C. Pond or Pool. Any pond, pool, stream, ditch, or deposit of water or other liquid or viscous body that is unsafe, dangerous, or detrimental to the public health or safety, or unwholesome or offensive in odor, shall be deemed a nuisance.

D. Dense Smoke, Noxious Fumes, Gas, Soot, or Cinders. The creation of dense smoke, noxious fumes or odors, gas, soot, or cinders in such quantities as to render the same objectionable to the public or harmful to people or property shall be deemed a nuisance; provided, however, this shall not apply to fireplaces, wood stoves, or barbeque facilities.

E. Dangerous or Dilapidated Buildings and Structures. Any building or structure 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 shall be unlawful.

(7) Keep or store any construction materials for construction at that location unless such materials are covered;

(8) Store upon his property or to allow to be viewed by the general public, or any member thereof, goods, material, or substances not otherwise or specifically defined or definable as litter, trash, garbage, or junk but which goods, materials, or substances are of a type, kind, quantity or description not commonly associated with the zoning classification or permitted use of the property;

(9) Use any trailer, whether covered or uncovered, to store any items upon his property; or

(10) Deposit in or on any street, alley, or public place debris, sod, earth, sand, gravel, concrete, or any other construction waste or material.

I. Weeds, Brush, Leaves, and Grass Clippings. It shall be unlawful and is hereby declared a nuisance for any person, corporation or entity owning, occupying or managing any lot, tract or parcel of land within the Town:

(1) To permit weeds, grasses or brush to grow to a height in excess of ten inches (10') upon any lot, tract or parcel owned or occupied by such person for a period of more than five (5) days;

(2) To store, keep or permit to remain on any lot, tract or parcel owned or occupied by such person trees, limbs or branches of trees, shrubs or plants, whether alive or dead, which are dangerous to health or property;

(3) To fail to remove trees, limbs or branches of trees, shrubs or plants, whether alive or dead, which are dangerous to health or property, together with all litter of all kinds, from any lot, tract or parcel owned or occupied by such person;

(4) Cause or permit to accumulate any grass clippings or leaves anywhere in the Town except in a container or a sealed, plastic bag awaiting prompt pickup and disposal. This subsection (4) shall not apply to vegetable materials in any properly layered, actively working compost pile, pit, or trench, or to a thin layer of grass clippings used as mulch, provided the grass clippings are not able to blow from the property and do not cause an odor that can be detected from any adjacent property; or

(5) To permit weeds, grasses or brush to grow to a height in excess of ten inches (10'), to store, keep or permit to remain any trees, limbs or branches of trees, shrubs or plants, whether alive or dead, which are dangerous to health or property, or to fail to remove the same together with all litter of all kinds, upon and from the area from any lot, tract or parcel owned or occupied by such person to the middle of any alley abutting behind or on the side of the lot, tract or parcel, or upon and from the area from any lot, tract or parcel owned or occupied by such person to the street abutting to the front or on the side of the lot, tract or parcel, such area to include but not limited to the curb, gutter and sidewalk.

J. Nonoperating, junked or abandoned vehicles.

(1) No person shall abandon any motor vehicle upon public property in the Town.

(2) It is unlawful for any person to own or have under his control any abandoned vehicle. It shall be an affirmative defense to any criminal charge arising under this paragraph that the vehicle was abandoned without the knowledge and consent of the person charged.

(3) It is unlawful for any person to leave any abandoned or junked vehicle on any street or highway within the Town.

(4) It is unlawful for any person who is the owner of any vehicle, or any person who is in charge or control of property, or any tenant, lessee, occupant, renter, or otherwise, to permit or allow any abandoned or junked vehicle to remain on such property for a time period in excess of seventy-two (72) hours, provided that this subsection shall not apply with regard to:

a. A vehicle or parts of a vehicle in a completely enclosed building;

b. A vehicle on the premises of a business enterprise operated in a lawful place and manner, when necessary to the operation of such business enterprise; or

c. A vehicle in an appropriate storage place or depository maintained for impounded vehicles by the Town or vehicles that are each covered by a fitted, cloth car cover, manufactured for such purpose. Tarps may not be used at any time to cover such vehicles within the Town, and storage of such vehicles is limited to three (3) on any single property, unless otherwise approved in writing by the Board of Trustees or its designee.

(5) Vehicle hobby repair. It is unlawful for any person to repair, recondition, rebuild, or work on any motor vehicle as a hobby unless such hobby is conducted in and totally contained within a residential or commercial garage, and conducted in a manner so as not to create a safety, health, or fire hazard. This paragraph shall not apply to minor repair and maintenance activities such as, by way of illustration only, the changing of oil, spark plugs, or tires, so long as such minor work does not exceed two (2) days. The sale and/or marketing of more than one (1) each calendar year of any repaired, reconditioned, or rebuilt motor vehicle and of more than one (1) each calendar year of any motor vehicle repair, rebuilding, or reconditioning for which a person receives any compensation shall be deemed a business and must be performed in accordance with all applicable Town ordinances.

K. Keeping of livestock and poultry. It shall be unlawful for any person to keep any livestock or poultry, including but not limited to swine, cattle horses, mules, sheep or goats, turkeys, geese or other farm animals of any kind or nature within the corporate limits of the Town. Notwithstanding the foregoing, the Board of Trustees may issue exceptions to this subsection K. for the temporary housing (not to exceed 72 hours) of livestock and for the keeping of up to ten (10) live chickens for the purposes of harvesting eggs.

L. Sewer and septic systems and wells. It shall be unlawful and is hereby declared a nuisance for any person to maintain or permit within the Town any unauthorized or uncertified sewer or septic system or illegal water well for domestic consumption (this shall not include adjudicated domestic wells for domestic consumption).

Section 4. Abatement.

A. Purpose. The purpose of this section is to provide a procedure by which the Town can enforce the various nuisances addressed by this Ordinance, and to establish a policy authorizing the Town to take corrective enforcement measures should any landowner, tenant, or occupant of any property located within the Town fail to voluntarily comply with any provision of this Ordinance. Abatement of any nuisance as set forth in this Section 4 shall be optional at the sole discretion of the Town, and shall not prevent the Town from availing itself of any other enforcement or criminal action, including the issuance of a summons to appear in municipal court or by obtaining a temporary restraining order, injunction, or other appropriate relief in a court of a competent jurisdiction.

B. Abatement procedure.

(1) In all cases where a nuisance shall be found in any building or upon any ground or other premises within the jurisdiction of the Town, notice shall be given in writing, signed by the Mayor or his or her designee, to the owner of the premises or occupant or person in possession, charge, or control of such building or premises, or person creating such nuisance where such person is known and can be found to remove such nuisance. Should any such nuisance, within or upon any public or private premises or as aforesaid, not be corrected within the time period stated in the notice, which period shall be at least ten (10) days, the Town shall have the authority to abate such nuisance.

(2) In case of any such nuisance in or upon any street, avenue, alley, sidewalk, highway, or public grounds in the Town, the Town may abate the nuisance forthwith without such notice being given.

(3) The Town may abate any nuisance by authorizing a private contractor to enter the property and remove the condition or conditions and by engaging such other necessary assistance and incurring necessary expenses to abate such nuisance.

Section 5. Emergency Abatement.

Where, in the opinion of the Mayor or Mayor Pro Tem, a nuisance constitutes an immediate and serious danger to the public health, safety, or welfare, such persons shall have the authority to summarily abate the nuisance without notice of any kind. Recovery of expenses for such emergency abatement may be pursued in accordance with Section 6 of this Ordinance.

Section 6. Recovery of expenses; assessment policy.

A. Upon the Town or contractor abating the nuisance pursuant to Section 4, a notice of assessment, including the right to a hearing as set forth in this Section, shall be sent by first class mail by the Town Clerk to the property owner at the address listed for the property owner in the county records and to the property address. If any such notice is returned, the property shall be posted with the notice. For purposes of this Section 6, "property owner" shall include renters, lessees, occupants or persons in possession of the property.

B. The amount of the assessment shall include, in addition to all contractors' charges, all direct Town costs including inspection costs, attorney fees, court costs, and all other associated costs. The assessment may be paid any time prior to the assessment being certified to the County Treasurer. All payments must be made directly to the Town Clerk.

C. The property owner shall have thirty (30) days from the date the notice of assessment is mailed, or if the notice is returned from the date the property was posted, to pay the assessment. Failure to pay within the time specified in the notice will cause the assessment to be recorded against the property. The assessment will constitute a continuing lien against such property.

D. A property owner may file a written objection to such assessment with the Town Clerk within thirty (30) days from the date the notice of assessment was mailed, or if the notice is returned, from the date the property was posted. The objection must include a phone number and address of the objecting party, and must state with specificity the basis for the objection.

E. Upon receipt of an objection, the Town Clerk or a designated hearing officer shall set a hearing date, which hearing shall be held within thirty (30) days from receipt of the written objection. Notice of the hearing date shall be mailed to the person making the objection. Failure to include all required information in the objection, including the address of the objecting party, will constitute a waiver of the right to file an objection.

F. The hearing held pursuant to this Section 6 shall be conducted in an informal manner, and shall not strictly follow the technical rules of evidence. The Town shall have the burden of establishing there was probable cause to determine a violation existed on the property prior to abatement, and that an abatement was conducted by the Town. The standard of proof at such hearing shall be by a preponderance of the evidence. A written decision shall be prepared at the conclusion of the hearing and mailed to the property owner, which decision shall be deemed effective upon execution of the written decision.

G. A property owner who requests a hearing pursuant to this Section 6 will be charged an additional administrative cost in the amount of the actual cost of the hearing, as

determined by the Town Clerk or hearing officer, should the Town Clerk or hearing officer find in favor of the Town. Failure of such person to attend the hearing at the date and time scheduled shall constitute a waiver of such right to a hearing and a determination of all issues regarding the assessment.

Section 7. Authority to enter on property.

The Mayor or his or her designee may, where reasonable cause exists, with or without a warrant issued by a court of competent jurisdiction, including the municipal court, enter upon any land to examine the same to ascertain whether any nuisance exists, or to abate a nuisance in the manner provided in this Ordinance. The Mayor or his or her designee and each such duly authorized designated agent and officer of the Town shall be free from any action or liability on account thereof. Such authority does not allow entry into any building or structure without consent, a court order or under other circumstances allowed by law.

Section 8. Effect on any zoning or 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 Board of Trustees, and is hereby so declared, that any use, location, or activity otherwise authorized by zoning ordinances or any other ordinance shall be subject to this Ordinance prohibiting nuisances.

Section 9. Penalty for violation; continuing violations.

Whenever in any section of this Ordinance the doing of any act is required, prohibited, or declared to be unlawful, any person who shall be convicted of a violation of any section of this ordinance shall be fined in a sum not less than three hundred dollars (\$300.00) and not more than one thousand dollars or imprisoned for a period not to exceed thirty (30) days, or both. Each day that such condition continues shall be regarded as a new and separate offense.

Section 10. Ordinance # 5 of the Town of Sedgwick is hereby repealed in its entirety.

Section 11. If any portion of this ordinance is held to be invalid for any reason, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Trustees hereby declares that it would have passed this ordinance and each part hereof irrespective of the fact that any one part be declared invalid.

Section 12. The repeal or modification of any ordinance of the Town of Sedgwick by this ordinance shall not release, extinguish, alter, modify, or change in whole or in part any penalty, forfeiture, or liability, either civil or criminal, which shall have been incurred under such provision, and each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings, and prosecutions for the enforcement of the penalty, forfeiture, or liability, as well as for the purpose of sustaining any judgment, decree, or order which can or may be rendered, entered, or made in such actions, suits, proceedings, or prosecutions.

17. SERVICE TO TOWN

Grantee shall provide and maintain one (1) free connection of basic cable service to the Town. Said free connection will be to any one (1) Town owned or occupied building.

18. MISCELLANEOUS

(a) Severability If any law, ordinance, regulation, or court decision shall render any provision of this Franchise invalid, the remaining provisions of the Franchise shall remain in full force and effect.

(b) Force Majeure Prevention or delay of any performance under this Franchise due to circumstances beyond the control of Grantee or Town, unforeseen circumstance, or Acts of God, shall not be deemed noncompliance with or violation of this Franchise.

(c) Nonexclusive This Franchise is nonexclusive. The Town reserves the right to award additional franchises; provided, however, that the Town shall not authorize or permit a cable television system to operate with the Town on terms or conditions more favorable or less burdensome to such operator than those applied to Grantee pursuant to this Franchise.

(d) Entire Agreement This Franchise and all attachments hereto, if any, represent the entire understanding and agreement between the parties hereto with respect to the subject matter hereof, supersedes all prior oral negotiations between the parties, and can be amended, supplemented, modified or changed only by an agreement in the appropriate attachment and which is signed by both the Town and Grantee.

19. LAWS GOVERNING; VENUE

This Franchise shall be governed by and construed in accordance with the laws of the State of Colorado, and applicable federal law. The venue for any dispute related to this Franchise shall be in the United States District Court for the District of Colorado or in the Sedgwick County District Court.

20. NOTICE


All notices shall be in writing and shall be sufficiently given and served upon the other party by hand delivery, first class mail, registered or certified, return receipt requested, postage prepaid, or by reputable overnight courier service and addressed as follows:

To the Town:


Attn: Town Clerk
Sedgwick Town Hall
29 Main Avenue
Sedgwick, CO 80749

Section 13. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

INTRODUCED, READ, VOTED ON ADOPTED AND APPROVED BY THE BOARD OF TRUSTEES OF THE TOWN OF SEDGWICK, SEDGWICK COUNTY, COLORADO AT A REGULAR MEETING HELD THIS 12TH DAY OF DECEMBER, 2011 AND IS HEREBY ORDERED PUBLISHED BY "TITLE ONLY" IN COMPLIANCE WITH ORDINANCE #01-2006 AND SHALL BECOME EFFECTIVE THIRTY (30) DAYS FOLLOWING PUBLICATION OF SUCH.



Alan G. Otsuka, Mayor



Attest:
Rhonda K. Jones, Town Clerk

SEAL