

Sponsor: Billbrough
First Reading: 6/7/2021
Second Reading: 7/12/2021

ORDINANCE #58-21

AN ORDINANCE REPEALING ORDINANCES #16-11 AND #17-07 AND ALL AMENDMENTS THERETO AND ADOPTING A NEW ORDINANCE REGULATING AND ABATING PUBLIC NUISANCES AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF

WHEREAS, Sections 18.1 and 18.2 of the Charter of the Town of Wyoming authorize the Town to “[e]nact ordinances to preserve the health of the Town” and to “prevent, abate, and remove all nuisances, obstructions, unsanitary conditions, or any other condition detrimental to the public safety, health, and welfare”;

WHEREAS, Section 29 of the Town Code empowers the Town to “take necessary or appropriate action to prevent injuries to trees from electric wires or from any other source or cause whatsoever;”

WHEREAS, the Town Council of the Town of Wyoming finds that public nuisances, including dead, damaged, diseased, and otherwise dangerous trees, are detrimental to the public health, safety, and welfare and can cause damage or injury to person or property; and

WHEREAS, in the opinion of the Town Council, it is in the best interest of the public health, safety, and welfare to adopt regulations prohibiting the maintaining of public nuisances and establishing procedures for abating public nuisances at the expense of the person causing or maintaining the nuisance.

NOW THEREFORE, BE IT HEREBY ENACTED by the Town Council of the Town of Wyoming, a majority thereof concurring in council duly met, that Ordinance #17-07 “An Ordinance Establishing A Procedure for the Determination and Abatement of Public Nuisances within the Town of Wyoming, and Providing Penalties for Violations Thereof” adopted July 2, 2007, including Amendment #1 dated December 5, 2011, and all other amendments thereto, and Ordinance #16-11 “An Ordinance Relating to Dead and Damaged Trees” adopted December 5, 2011, including any amendments thereto, be and hereby are repealed in their entirety and a new ordinance is enacted, as follows, to wit:

AN ORDINANCE REGULATING AND ABATING PUBLIC NUISANCES AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF

Section 1. Purpose and Intent. The Town hereby finds that public nuisances are detrimental to the physical, mental and social well-being of citizens of the Town of Wyoming, as well as to their comfort, living conditions, and to the general health, safety, and welfare of the public. The Town finds that dead, damaged, diseased, and dangerous trees can negatively impact nearby trees, cause damage to private property and structures, and cause injury and death to individuals. People have a right to live in an environment free from public nuisances that endanger

the health, welfare or safety of citizens or jeopardize property values and erode the integrity of the environment of the Town. The Town hereby declares this Ordinance to be necessary to provide for the greater good and more effective regulation of public nuisances.

Section 2. Definitions. The following terms as used in this ordinance shall be defined as follows.

Hazardous tree means any dead, damaged, diseased, or otherwise dangerous tree that constitutes a hazard to life or property or harbors insects or disease which constitute a potential threat to other trees within the town.

Person means any natural person, firm, partnership, company, corporation, or unincorporated association.

Property means any building, structure, property, premises, or lands, including manufactured homes and mobile homes, situated within the Town of Wyoming.

Public Nuisance shall mean any conduct or condition which endangers life, health, safety, or the general welfare of residents or visitors of the Town of Wyoming, or any conduct or condition which obstructs the reasonable and comfortable use of any property, gives offense to a reasonable person of normal sensitivities, or violates common decency, including any particular conduct or condition which the Town Council of the Town of Wyoming may by resolution determine to be unreasonable, unlawful, annoying, inconvenient, discomforting, or damaging to any property or person.

Section 3. Public Nuisances Prohibited. It shall be unlawful for any person to cause or allow to exist any public nuisance within the Town of Wyoming. The Town of Wyoming is hereby authorized to take appropriate action, as set forth herein, for the determination and abatement of any public nuisance.

Section 4. Removal of hazardous trees. Hazardous trees are hereby declared to be a public nuisance. The owners and occupants of all lands shall remove or cause to be removed all hazardous trees from such lands when such hazardous trees constitute a threat (a) to personal safety or real or personal property due to the possibility of a hazardous tree, or a limb, branch, or other portion thereof, falling down or being blown over; or (b) of spreading insects or diseases to other trees within the Town. The Town shall have the right to require the removal of all hazardous trees at the expense of the owner of the property on which the hazardous tree is located.

Section 5. Determination of Public Nuisance; Notice. The Town Code Enforcement Official may investigate and determine when a particular conduct or condition constitutes a public nuisance. Upon the determination that a public nuisance exists, the Official shall give written notice, which shall specify the following:

- A. A statement that a public nuisance exists in violation of this Ordinance and a description of the property and the conduct or condition that has been determined to constitute a public nuisance;

- B. The action required to remediate the conduct or condition constituting the public nuisance, and a statement that such action must be completed within thirty (30) days from receipt of said notice or the Town may proceed to abate the public nuisance at the expense of the property owner;
- C. That any interested party may appeal the Town Code Enforcement Official's finding that a public nuisance exists and must be remediated by filing a written notice of appeal with the Town Council within fifteen (15) days of receipt of the violation notice;
- D. A description of the civil penalties that may be imposed for violations of this Ordinance, including the Town's ability to cause the civil penalties and abatement costs to become a lien against the property on which the public nuisance is located.

The written notice shall either be delivered (a) in person or (b) via both certified mail and regular mail to the owner of the property and, if different, to the occupant of the property upon which the public nuisance is located. Such notice shall be presumed to have been received upon personal delivery or upon the date such notice was deposited in the mail. The fact that such notice was not received shall not be a defense against enforcement of this Ordinance.

Section 6. Opportunity for Public Hearing. Any person receiving a violation notice may within fifteen (15) days of receipt of the notice file a written appeal with the Town Council requesting a hearing to prove that a public nuisance does not exist and the Town should not proceed to abate the conduct or condition deemed to constitute a public nuisance. If the appeals period expires without an appeal being filed, the Town may proceed to abate the public nuisance upon the expiration of thirty (30) days from the date of the notice. If an appeal is filed and the Town Council affirms the decision of the Code Enforcement Official, the Town Council may proceed to abate the public nuisance if the person does not remediate the public nuisance within fifteen (15) days from the date of the Town Council's decision.

Section 7. Abatement of Public Nuisance. If any person fails to remediate a public nuisance within the timeframe prescribed herein, the Town of Wyoming may take whatever action is appropriate and reasonably necessary to abate such public nuisance, including but not limited to the physical removal or correction of said conduct or condition, and the Town of Wyoming or its designated agent is hereby authorized, as permitted by applicable state and federal law, to enter upon any private property within the Town of Wyoming to accomplish this purpose. Any and all costs or expenses incurred by the Town of Wyoming to abate a public nuisance and any civil penalties assessed shall be a debt of the person causing the public nuisance to exist. Additionally, pursuant to 25 Del. C. § 2901, all civil penalties assessed for violations of this Ordinance and costs incurred by the Town to abate public nuisances shall constitute a lien against the property with the public nuisance and, if not paid within 30 days, may be added by the Town to the property tax bill.

Section 8. Alternate Remedies. In lieu of or in addition to the aforesaid procedure for the abatement of any public nuisance, the Town of Wyoming may file a civil action for injunctive relief to enjoin any violation of this Ordinance, or any appropriate civil or criminal action for enforcement of the penalty provided herein, or both, in any court of competent jurisdiction.

Section 9. Penalties. Any person to whom a citation is issued for a violation of this ordinance shall be subject to a civil penalty of \$100.00. Each and every day that such violation

occurs or continues shall constitute a separate violation. Civil penalties shall not be assessed until the timeframe prescribed herein for remediating the public nuisance has expired.

Section 10. General provisions.

- A. *Severability.* If any of the sections, paragraphs, sentences, clauses, or phrases of this ordinance shall be declared unconstitutional or invalid by the valid judgement or decree of any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining sections, paragraphs, sentences, clauses or phrases of the ordinance.
- B. *Effective date.* This ordinance shall take effect after the second reading and approval by the Town Council.

SYNOPSIS

This ordinance defines public nuisances, which definition includes dangerous trees, and authorizes the Town to abate public nuisances that are not remediated by the responsible person. The Town is required to give notice to property owners and occupants outlining the conditions that need to be remediated to eliminate the public nuisance. An appeal may be filed with the Town Council within 15 days of the notice of violation, and the Town may impose a civil penalty of \$100 for any public nuisances that are not remediated within the prescribed time periods. All civil penalties and abatement costs incurred by the Town become a debt of the person perpetuating the nuisance and a lien against any property on which a public nuisance is occurring.

This shall certify that this is a true and correct copy of the ordinance duly adopted by the Town Council of the Town of Wyoming at a duly-noticed and convened meeting at which a quorum was present on July 12, 2021.

Attest: 
Town Clerk

So Certifies:

Mayor

This shall certify that a copy of this Ordinance was posted at the Town Hall on July 16, 2021.

7/16/2021
Date

So Certifies:
