

# **Town of Peralta**

## **Public Nuisance Ordinance**

### **Number 2015-06**

**An Ordinance Amending Ordinance 2009-013, Dated 27 January 2010 to  
Ordinance 2015-06, Dated 28 October 2015**

**This Ordinance shall be known and may be cited as the Town of Peralta Public  
Nuisance Ordinance**

**WHEREAS**, the Town of Peralta adopts this ordinance setting forth definitions, abatement and enforcement and penalties for public nuisances to better protect and promote the public health and welfare of the citizens of the Town of Peralta now

Be it ordained by the Town Governing Council of the Town of Peralta, New Mexico that the following regulations be adopted, and made a part of the Comprehensive Zoning Ordinance.:

#### **SECTION 25. REGULATIONS FOR PUBLIC NUISANCES**

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**GENERAL PROVISIONS:**

**25.1 TITLE**

This chapter may be cited as the Town of Peralta Public Nuisance Chapter (hereinafter, this chapter)

**25.2 PURPOSE AND SCOPE**

A). The general purpose of this chapter is to provide a comprehensive method for the identification and abatement of certain public nuisances within the Town of Peralta's (Town) municipal boundary.

B). Provisions of this chapter are to be supplementary and complementary to state law, and any law cognizable at common law or in equity, and nothing herein shall be read, interpreted or construed in any manner so as to limit my existing right of power of the Town or private parties to abate any and all nuisances as may otherwise be permitted by law.

C). The provisions of this chapter apply throughout the Town's enforcement jurisdiction wherein any of the conditions, herein specified, are found to exist.

**25.3 EXCLUSIONS**

A). Regulated uses. Nuisance uses and activities that are preempted by the state of New Mexico or the federal government shall be excluded from the provisions of this chapter.

B). Agricultural Activities. All agricultural uses, agricultural facilities, agricultural operations, and agricultural activities as defined herein, which does not cause a health or safety hazard, are excluded from the provisions of this chapter.

**25.4 DEFINITIONS**

***“Abate”*** means to repair, replace, remove, destroy or otherwise remedy the condition by such means and such manner and to such extent as the enforcing entity, in its judgement, shall determine is necessary in order to achieve compliance with the provisions of this chapter.

***“Agricultural Activities”*** means activities which are agricultural in nature and which include:

1. The plowing, tilling, planting, rotation of, growing, fertilizing, other preparation of soil for the production of harvesting of plants, crops, trees, forest products, orchard crops, livestock, poultry, captive deer or elk, or fish; the application of pesticides, herbicides, or other chemicals, compounds or substances to crops, weeds or soil in connection with the production of crops, livestock, animals, poultry or other fowl;
2. The breeding, hatching, raising, producing, slaughtering, processing, feeding, keeping, or boarding of livestock, hogs, aquatic animals, equines (which term shall include a llama, horse, pony, mule, donkey, zonkey, zebra, hinny or other similar animal), chickens, turkeys, poultry or other fowl, cattle, sheep, goats, rabbits or other similar farm animals for any lawful purposes;
3. The production and keeping of honey bees, production of honey bee products and honey bee processing facilities;
4. The production, processing or packaging of eggs or egg products;
5. The manufacturing of feed for poultry or other fowl, or livestock, captive deer or elk, of fish, hogs, aquatic animals, equines, chickens, turkeys, mules, cattle, sheep, goats, rabbits or similar farm animals;
6. Commercial agricultural activities;
7. Recreational or education agricultural activities including without limitation the training or teaching of any agricultural activities, and including without limitation rodeos, gymkhanas, livestock shows or auctions, or the relevant activities of participants in 4H, FFA, or other similar organizations;
8. The application of existing, changed or new technology, practices, processes or products to an agricultural operation;
9. The operation of a roadside market or farmer's market;
10. Equine shows, fairs, competitions, rodeos, gymkhanas, performances or parades that involve any or all breeds of equines and any of the equine disciplines, rides, races, shows, clinics, trips, hunts, or other equine occasions of any type, however informal or impromptu; and,
11. Riding, driving, leading, or otherwise interacting with an equine.

***“Antique Car”*** is the same as ***“Historic or Special Interest Vehicle”*** which means a vehicle of any age which, because of its significance, is being collected, preserved, restored or maintained by a hobbyist as a leisure pursuit. There shall be a rebuttable presumption that an inoperative and unregistered vehicle is not an antique car. The person claiming that a vehicle is an antique car has the burden of proving that the car is, in fact, an antique car.

***“Collector”*** means the owner of one or more antique cars who collects, purchases, acquires, trades or disposes of these vehicles or parts thereof for his own use in order to preserve, restore and maintain a vehicle for hobby purposes.

***“Construction”*** means any site preparation, assembly, erection, substantial repair, alteration, or similar action, or related services or activities, for, of or to private property, structures, utilities, or public rights-of-way,

***“Cost of Abatement”*** means the total cost incurred by the Town in connection with a public nuisance including but not limited to the following:

1. Any cost incurred in removing or remedying a public nuisance;
2. The notice and order, appeal and termination fees for administrative services rendered by the Town in connection with the inspection, notification, prosecution and abatement procedures authorized by this chapter;
  - a. The notice and order, appeal and termination fees will be calculated based upon services rendered from the time of the initial complaint intake for the purpose of documenting a violation of this chapter until the violation is corrected; and
  - b. The notice and order, appeal and termination fees are not intended to be a penalty imposed for violation of this chapter or other laws.
3. Any cost incurred by the Town in collecting the costs enumerated in 1 and 2 above.

***“Dead Animals”*** means any animals owned (or in possession) by the resident. This includes domestic pets, livestock, hogs, aquatic animals, equines (which term shall include a llama, horse, pony, mule, donkey, zonkey, zebra, hinny or other similar animal), chickens, turkeys, poultry or other fowl, cattle, sheep, goats, rabbits or other similar farm animals.

***“Department”*** means the Code Enforcement Office and its authorized representatives, including the planning and zoning manager, zoning inspectors, animal control inspectors, the emergency services personnel, the building inspector and his authorized representative.

***“Emergency”*** means any occurrence or set of circumstances involving actual or imminent physical trauma or substantial property damage that demands immediate action.

***“Emergency Work”*** means any work performed for the purpose of preventing or alleviating the physical trauma or substantial property damage threatened or caused by an emergency.

***“Inoperative Vehicle”*** means any motor vehicle which cannot be moved under its own power due to removal of, damage to, or deterioration of, or inoperative conditions of any component part or the lack of an engine, transmission, wheels, tires, doors, windshields or any other component part necessary for such movement. However, this definition excludes vehicles that are antique cars or parts cars, as defined in this chapter, and which vehicles are stored in accordance with NMSA 1978, SS 66-11-1 to 66-11-5, as amended.

***“Junk (Debris)”*** means any inoperative vehicle, or cast-off, damaged, discarded, junked, obsolete, salvaged, scrapped, unusable, worn-out, or wrecked objects, tires, air conditioners, home appliances, things, or material composed in whole or part of asphalt, brick, carbon, cement, plastic, or other synthetic substances, rubber, fiber, glass, metal, paper, plaster, plaster of Paris, rubber, terra cotta, wool, cotton, cloth, canvas, organic matter, including weeds or other substances, having no substantial market value or requiring reconditioning in order to be used for its original purpose.

***“Junk Yard”*** means any premises on which any junk is abandoned, bailed, bartered, bought, bundled, deposited, disassembled, disposed of, exchanged, handled, kept, packed, processed, scattered, shipped, sold, stored, or transported, regardless of whether or not such activity is done for a profit.

***“Motor Vehicle”*** means every vehicle that is self-propelled and every vehicle that is propelled by electric power obtained from batteries or from overhead trolley wires, except devices moved exclusively by human power or used exclusively upon stationary rails or tracks.

***“Nuisance”*** means notwithstanding any criteria otherwise provided by this chapter, a nuisance is an unreasonable and significant interference with another's interest in the use and enjoyment of land. The location, character, and habits of the particular community within the Town's limits are to be taken into account in determining what is unreasonable and significant to an individual living in it. If persons living in the community would regard the invasion as definitely offensive, seriously annoying or intolerable, it is significant. If most persons in the locality would not be substantially annoyed or disturbed, the invasion is not significant, even though the idiosyncrasies of the particular complainant may make it unendurable to him.

***“Nuisance Use”*** means any use of land that constitutes a nuisance as provided by Section 25.5 to 25.10.

***“Off-Road Vehicle”*** means a motor vehicle which is to be operated or used exclusively off the roadways and highways of this state.

***“Owner”*** means any person, association, partnership or corporation that has dominion over, control of, or title to real property. For purposes of this section, a homeowner's association which exercises management and/or control over a common area shall be deemed the owner of the area over which control is exercised. Exercising control includes but is not limited to maintenance, ownership, easements, and/or assessing fees on property owners pursuant to agreements, deeds, or recorded documents.

***“Parts Car”*** means a motor vehicle generally in inoperative condition which is owned by a collector to furnish parts that are usually not obtainable from normal sources, thus enabling a collector to preserve, restore and maintain a motor vehicle of historic or special interest. There shall be a rebuttable presumption that in inoperative and

unregistered vehicle is not a parts car. The person claiming that a vehicle is a parts car has the burden of proving the vehicle is, in fact, a parts car.

**“Person”** means an individual, partnership, joint venture, corporation, association, social club, fraternal organization, trust, estate, receiver, or any other legal entity.

**“Personal Property”** means including but not limited to, junk, abandoned, wrecked, or dismantled automobiles, automotive parts and equipment, appliances, furniture, containers, packing materials, scrap metal, wood, building materials, rubbish and debris.

**“Premises”** means any building, lot, parcel, real estate, or land or portion of land, whether improved, unimproved, occupied or unoccupied as the case may be, including but not limited to, an area designated as a common area within a subdivision of similar project.

**“Property”** See **“Premises”**.

**“Responsible Person”** means any owner, user or other person in control of a property.

**“Service Station”** means any premises upon which the improvements are designed and built for the primary purpose of selling to or providing others with fuels for motor vehicle, whether or not providing related automotive maintenance and repair services.

**“Solid Waste”** means having the meaning given *solid waste* by NMSA 1978, SS 74-9-2 (N), the Solid Waste Act, s may be amended from time to time.

**“Visible”** means visually observable as is, without magnification or other modification or enhancement, by a person whose visual acuity may be presumed to no greater than 20/20 vision, corrected or uncorrected.

## **25.5 PUBLIC NUISANCES PROHIBITED**

It is hereby declared to be a public nuisance for any owner, responsible person, or other person in control of a property or premises located within the Town municipal limits to keep, maintain or use such property or premises in such a manner as to violate any of the provisions set forth in this chapter or in any subsequent versions of this chapter. To constitute a nuisance, the person’s activities must meet the general nuisance definition set forth in the Definitions Section 25.4, above and violate one of the enumerated nuisances, and not be excluded in Section 25.3.

## **25.6 SOLID WASTE**

A). Dumping. No person shall discard solid waste anywhere outdoors within the boundaries of the Town municipal limits except at a time and place approved for collection of that person’s solid waste under the terms of this chapter or other

ordinances of the Town. No person shall place solid water in the solid waste receptacle of another person without permission.

B). Unauthorized Accumulation. It shall be unlawful to allow any solid waste to collect or accumulate on any lot or other premises within the Town's municipal limits. Any such unauthorized accumulation of collection is hereby declared to be a nuisance and is prohibited.

C). Scattering of Solid Waste. No person shall cast, place, sweep or deposit anywhere in the Town any solid waste in such a manner that it may be carried or deposited by the elements upon any street, sidewalk, parkway, sewer, ditch, arroyo, other public place, vacant lot, or into any premises within the Town's municipal limits.

D). Accumulation of Construction and Demolition Debris. Debris resulting from construction or demolition of structures may be collected within an active construction site if and only if the solid waste with contained in such a manner that it will not be carried or deposited by the elements upon any street, sidewalk, parkway, sewer, ditch, arroyo, other public place, vacant lot, or into any premises within the Town's municipal limits.

E). Burden of Proof. In the event any person's name or other identification is affixed or found on any illegally disposed of such solid waste or rubbish on three or more separate items, such evidence shall constitute *prima facie* evidence and presumptive proof of a violation of this chapter shall be on such person(s).

#### **25.6.1 DEAD ANIMAL DISPOSAL:**

It is the responsibility of the resident to dispose of any dead animals on their property per NM Statute 77-3-4 through 77-3-19. The bodies of dead animals shall be buried, burned, or disposed of by the owners as provided by the regulations of the Town within thirty-six (36) hours of notification to the owner. The Town will notify the owner by written notice that they have thirty-six (36) hours to become compliant. The following guidelines shall be followed when disposing of dead animals:

- Bury animals within thirty-six (36) hours unless otherwise authorized.
- Add quick or slaked lime, if necessary to control odors and discourage scavenging.
- Cover animals with a minimum of 3' of soil.

### **25.7 VERMIN NUISANCE**

A). All buildings, lots and premises shall be kept free of infestation of harborage or rodents, roaches, flies, mosquitoes, or other vermin of public health significance. The person in control shall not allow the accumulation of water, refuse, animal wastes, garbage, trash or other harborage.

B). When any building, lot or premises is determined by investigation to be so infested the person in control shall utilize extermination measures as specified by the enforcing entity.

## **25.8 PREMISES NUISANCE**

No responsible person shall maintain any premises in such a manner that any one or more of the conditions or activities described in the following subsection are found to exist:

- A). The operation of a junk yard or automobile dismantling yard, except as permitted by law;
- B). Any condition in violation of the applicable Building Code or Uniform Building Code adopted by the Town;
- C). Any condition in violation of the federal National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5401 et seq., as amended, as adopted by the State of New Mexico pursuant to NMSA 1978, SS 60-14-4 (I), and any other regulations enforceable by the Manufactured Housing Division of the New Mexico Regulation and Licensing Department;
- D). Any condition in violation of the Town Animal Control Ordinance, in affect at the time;
- E). Any condition in violation of the Comprehensive Zoning Ordinance;
- F). Any condition recognized in law or in equity as constituting a public nuisance;
- G). Any unimproved real property which has become a dumping ground for litter, garbage, junk, debris, or discarded vehicles, inoperative vehicles, vehicle parts and/or vehicle hulks;
- H). Any illegal activity occurring on the property which is detrimental to the life, health, safety and welfare of the residents, neighbors or public. For purpose of this section, illegal activity is defined as any violation for state or federal law, rules, regulations, or Town ordinances.

## **25.9 VEHICLE NUISANCE**

- A). Motor Vehicle Nuisances. Any motor vehicle left on or in private and/or public right-of-way after an enforcing entity has attached a red tag notice, in a conspicuous location, on said vehicle for a period of time of twenty-four (24) hours or longer is hereby declared to be a nuisance and subject to forfeiture pursuant to the provisions of NMSA SS 66-3-127, as amended, and related statutory sections. Such vehicles shall be disposed of in accordance with NMAA 1978 SS 66-3-121, as amended, and related statutory sections. Any enforcing entity, as defined in this chapter, shall be considered

"law enforcement" for the purposes of this section. Nothing in this section shall be construed to limit any other remedy provided by law.

**B). Off-Road Vehicle Use.**

1. The use of off-road vehicles on private property without the permission of the owner or occupier is prohibited.
2. The use of off-road motor vehicles on any roadways or easements posted with a sign prohibiting such use is prohibited.
3. A complaint to any law enforcement agency (not code enforcement officer) by the owner, or agent or occupier of such property shall be rebuttable proof that such consent was not requested, or was denied or withdrawn.
4. This section does not apply to the off-road vehicles owned and operated by governmental entities, agricultural uses of off-road vehicles, as specified in NMSA SS 66-3-1005, as amended.
5. Where any off-road vehicle use may be permitted, such vehicle must be equipped with a working muffler and spark arrestor.

**25.10 BARRIERS OR SIGNS; REMOVAL OR DESTRUCTION**

No person shall remove, cut, damage or take down any barrier or sign placed on or across any trail, path, road or boundary by an entity authorized to place said barrier or sign.

**25.11 BURDEN OF PROOF**

Unless otherwise provided herein, the burden of establishing a nuisance has occurred is on the enforcing entity, who shall establish that the individual charged has created the nuisance beyond a reasonable doubt.

**25.12 ENFORCEMENT**

The Code Enforcement Officer, or any duly authorized law enforcement officer shall enforce the provisions of this chapter.

**25.13 RIGHT OF ENTRY**

To the extent authorized by law, the enforcing entity may enter on such premises at reasonable time to make inspections to determine compliance with this chapter.

**25.14 REPORTING ALLEGED VIOLATIONS**

Any person may report an alleged violation of this chapter to the Town of Peralta administration or to the Mayor or his staff, or to the Zoning authority or to the law enforcement agency duly authorized to enforce law within the Town's municipal limits.

Upon receipt of such report, the zoning authority shall ascertain the location, date, time and specific nature of the alleged violation.

## **25.15 AUTHORITY OF ENFORCING ENTITY**

If the investigation determines that a violation of this chapter exists, the enforcing entity shall have the following authority:

- A). To require immediate abatement of the offending condition by the responsible person(s); or where immediate abatement is deemed by the enforcing entity to be impossible or impractical, to issue a written warning. In such case, the responsible person(s) shall have 10 days to commence abatement of the offending condition and 30 days to complete abatement, unless specified otherwise in this chapter; and,
- B). To issue a written citation for violation of this chapter when the offending condition has not been abated within the time allowed or when immediate abatement is required.

## **25.16 ABATEMENT BY ENFORCING ENTITY**

Upon order of a court of competent jurisdiction for failure, neglect, or refusal to correct the violation, the enforcing entity is hereby authorized and empowered to pay for correcting the violation on behalf of the owner and/or renter and at the expense of the owner and/or renter of the property.

## **25.17 CONTINUED FAILURE TO ABATE**

Each day an offending condition remains unabated beyond the time allowed for abatement by an appropriate Judge and court shall constitute a separate violation of this chapter.

## **25.18 INJUNCTIVE RELIEF**

In the event a building or other structure is, or is proposed to be located, constructed, maintained, repaired, altered, or used, or any land is, or is proposed to be used, the Town may, in addition to other remedies provided by law, institute a civil action to abate or for injunction, mandamus abatement, or other appropriate proceedings to prevent, temporarily or permanently enjoin, abate, or remove the unlawful location, construction, maintenance, repair, alteration or use.

## **25.19 OTHER REMEDIES NOT AFFECTED**

Other remedies may be provided by law, for any conditions described in this chapter, are not affected by the terms of this chapter.

## 25.20 PENALTY

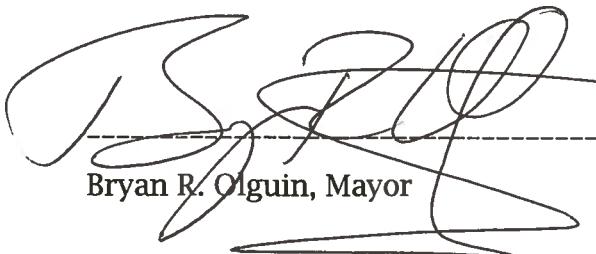
Each violation of this chapter shall be punished by affine of nor more than \$300.00, or imprisonment for no more than ninety (90) days, or both.

### EFFECTIVE DATE

This ordinance is hereby declared to be an emergency measure, but will not take effect and will not be in force until the expiration of thirty (30) days after it is published AND adopted by the Town Council as required by law.

ADOPTED THIS 15<sup>th</sup> DAY OF November, 2015

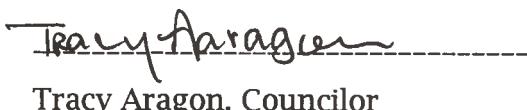
Town of Peralta Governing Body:



Bryan R. Oguin, Mayor



Michael Leon Otero, Councilor Mayor Pro-tem



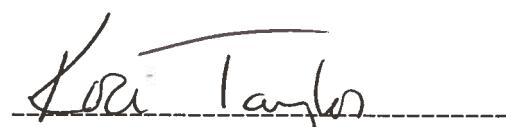
Tracy Aragon

Tracy Aragon, Councilor



Joseph Romero

Joseph Romero, Councilor



Kori Taylor

Kori Taylor, Councilor

ATTEST:



Julie Pluemer

Julie Pluemer, Town Clerk



11/19/15

Date