

**TOWN OF LYONS
COLORADO**

ORDINANCE NO. 1084

**AN ORDINANCE OF THE TOWN OF LYONS AMENDING CERTAIN SECTIONS OF
CHAPTER 1, ARTICLES 1, 4, AND 5 OF THE LYONS MUNICIPAL CODE CONCERNING
CIVIL ENFORCEMENT OF THE LYONS MUNICIPAL CODE**

WHEREAS, pursuant to Sections 31-15-401 and 31-23-301, C.R.S., the Town of Lyons ("the Town") has broad authority to exercise its police powers to promote and protect the health, safety and welfare of the community and its residents; and

WHEREAS, the Town previously adopted regulations regarding a general penalty for violations of the municipal code and inspections in Articles 4 and 5, respectively, of Chapter 1 of the Lyons Municipal Code ("LMC"); and

WHEREAS, it is necessary to update the LMC to create more effective code enforcement tools to ensure the health, safety, and welfare of the citizens of Lyons; and

WHEREAS, as part of these updates it also necessary to update the general definitions of the LMC in Chapter 1, Article 2 to better define the roles of those responsible for enforcing the LMC; and

WHEREAS, the necessary changes to the LMC are reflected in **Exhibit A**, attached hereto and incorporated by reference; and

WHEREAS, The Lyons Board of Trustees desire to amend Article 1, 4, and 5 of Chapter 1, of the LMC, as recommended by the Lyons Ecology Board and as set forth in this Ordinance, and determines that such amendments promote the health, safety and welfare of the citizens of and visitors to the Town of Lyons.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF LYONS, COLORADO:

Section 1. Recitals Incorporated. The recitals set forth above are hereby incorporated by reference and are adopted as findings and determinations of the Board of Trustees.

Section 2. Chapter 1, Article 2, of the Lyons Municipal Code is amended to add or amend the following definitions, all other definitions shall remain unchanged:

Sec. 1-2-10. - Definitions.

Building Official means an Agent of the Town of Lyons charged with enforcing the Town of Lyons Building Code. The Building Official may also be referred to as Building Inspector.

Code Enforcement Officer means an Agent of the Town of Lyons charged with enforcing the Lyons Municipal Code. The Code Enforcement Officer may also be referred to as the Code Compliance Official or Officer.

Peace Officer means a person who is an Agent of the Town of Lyons and who qualifies as a Peace Officer pursuant to requirements of C.R.S § 16-2.5-101.

Town Administrator means the officer of the Town of Lyons established pursuant to C.R.S. 31-4-304 and Lyons Municipal Code Section 2-3-40. The term Town Administrator also includes his or designee except where the Town Administrator is specifically prohibited from delegating his or her duties pursuant to the Code and Colorado law.

Section 2. Chapter 1, Article 4, Section 20 of the Lyons Municipal Code is amended as follows:

Sec. 1-4-20. - General penalty for violation.

- (a) Any person found to have committed of a non-criminal violation of the Code, as either designated in Section 1-4-50(a) of this Article or any other non-criminal violation of the Code where there is not a monetary penalty already specified in the Code, may be fined by an amount not to exceed one thousand dollars (\$1,000.00) per violation.
- (b) Any person convicted of a criminal violation, as designated in Section 1-4-40(b) of this Article, may be incarcerated for a period not to exceed three hundred sixty-four (364) days or fined by an amount not to exceed two thousand six hundred and fifty dollars (\$2,650.00), or both, except as hereinafter provided in Section 1-4-30 below. Any voluntary plea of guilty of nolo contendere to the original charge or to a lesser or substituted charge shall subject the person so pleading to all of the fines and/or penalties applicable to the original charge.
- (c) Where any violation is a continuing offense, each day such violation continues shall be considered a separate and distinct offense.
- (d) Notices of violations under this Article shall be served by the Town by either by sending such notice via certified mail or posting the notice on the violator's property.
- (e) The remedies specified in this Section shall be in addition to all other remedies provided by law.

Section 3. A new Section 30 of Chapter 1, Article 4 of the Lyons Municipal Code is created as follows:

1-4-30. - Civil enforcement.

- (a) Upon finding a violation of the Code, the Town may administratively issue notices of violation stating both the basis of violation and the penalty. Unpaid penalties shall be collected in the manner set forth in Section 1-4-40 below. In the event of noncompliance with a notice of violation, the Town is authorized to initiate an action in municipal court to enjoin a violation, order its abatement, and to receive a judgment for penalties as provided in this Section 1-4-30.

- (b) With approval from the Board of Trustees, the Town is authorized to initiate civil action in municipal court for an alleged non-criminal violation of the Code except the provisions of, Chapters 8, and 10 pertaining to general offenses and vehicles and traffic. Violations of Chapters 8 and 10 and any criminal violation of the Code, shall be prosecuted in accordance with the applicable provisions of the Code. The Town may seek to have the municipal court declare a violation of the Code and request that the court enjoin the violation or order its restraint, removal, termination, or abatement by the owner, agent, entity, occupant or person who caused the violation or such person or entity who allowed the violation to continue, or authorize the Town Administrator or the Administrator's designee to terminate or abate such violation.
- (c) A civil action to declare and abate a violation of the municipal code shall be brought in the name of the Lyons, Colorado, by filing a complaint, which shall be verified or supported by an affidavit. Summons and subpoenas shall be issued and served in accordance with the municipal court's rules of procedure. Any employee or agent of the Town who is over the age of 18 may serve a summons and verified complaint upon the owner, agent, entity, occupant or the person who caused or allowed the violation (hereinafter "Respondent") or a subpoena upon any person in relation to the alleged violation. Trial or hearing of such action shall be to the court and the respondent shall not be entitled to a trial by jury.
- (d) A notice of appearance shall be served with the summons and complaint. The appearance date in court shall be not less than fourteen (14) days from the date of service of the summons and complaint. The respondent shall file a response or answer on or before the appearance date specified in the notice of appearance. The trial shall be held upon the appearance date, unless the court grants a continuance for good cause shown. No case shall be continued for more than seven days after the appearance date.
- (e) Upon the date and time specified for appearance and trial or hearing, if the respondent has not filed a response and fails to appear, and if the Town proves that proper service was made on respondent at least fourteen (14) days prior to the appearance date, the court may grant such orders as are requested by the Town; except that, the court shall order that the enforcement by the Town shall be stayed for ten (10) days and that a copy of the court's order be mailed to the respondent at respondent's last known address. Failure to appear on any date set for hearing or trial shall be grounds for entering a default and default judgment against the non-appearing party. Prior to enforcement, and upon good cause shown, the court may set aside an entry of default and the default judgment entered thereon.
- (f) Any disobedience to or interference with any injunction or order issued by the municipal court in an action to abate a violation of the municipal code may be punished as a contempt of court or by a fine not to exceed one thousand dollars (\$1000.00). Such penalties may be imposed in addition to the penalties imposed for underlying violation as provided for in Section 1-4-20. Each day's failure to comply with an injunction or order to abate shall constitute a separate act of contempt for which an additional penalty may be imposed for each such day.
- (g) In order to facilitate the just speedy, informal, and inexpensive determination of claims wherein civil enforcement is sought, the municipal court, unless specifically specified herein, shall adhere to its rules of procedure.

- (h) In any case in which the Town prevails in a civil action initiated pursuant to this section, the Town may recover its reasonable costs of abating the violation including reasonable attorneys' fees and costs of litigation, plus 15 percent in administrative costs. Said costs may be assessed against the subject property in the form of a lien against the property.
- (i) The remedies specified in this Section shall be in addition to all other remedies provided by law.

Section 4. A new Section 40 of Chapter 1, Article 4 of the Lyons Municipal Code is created as follows:

Sec. 1-4-40. - Failure to pay penalties.

- (a) Civil penalties not paid and received by the city within 30 days of issuance of the latter of the notice of civil penalty or decision of the municipal court, shall be deemed delinquent and subject to delinquency charges. Civil penalty assessments not paid before the due date may result in the imposition of a late fee of \$25.00 and interest at 1½ percent per month shall accrue.
- (b) In the event of failure to pay all penalties assessed, the Town Administrator may refer the matter for collection by whatever means are available to the Town.
- (c) In the case of violations associated with specific real property, the Town shall have as security for the collection of such late fees, penalties, interest, and administrative costs, a lien upon such real property. The Town Finance Director shall certify such charges to the office of the treasurer of the county that includes the property, for collection in the same manner as the collection of general property taxes.
- (d) Any action or other process provided by law may be maintained by the Town to recover or collect any amounts, including late fees, penalties, interest, and administrative costs, owing under this Code

Section 5. Chapter 1, Article 5, Section 10 of the Lyons Municipal Code is amended as follows:

Sec. 1-5-10. - Search warrants

A Peace Officer, the Building Official, or Code Enforcement Officer may appear before the municipal judge and upon a showing of probable cause of violation of this Code, shall obtain a search warrant entitling such individual to enter the building or upon the premises, using such reasonable force as may be necessary to gain entry. The individual applying for such warrant shall not be required to demonstrate specific knowledge of the condition of the particular structure or premises at issue in order to obtain a search warrant, but must show some factual or practical circumstances that would cause an ordinary prudent person to believe the Code is being violated. Any municipal judge of the municipal court of the Town shall have power to issue search warrants upon a showing of probable cause of the existence of a nuisance or other violation of the municipal code.

Section 6. Severability. Should any one or more sections or provisions of this Ordinance be judicially determined invalid or unenforceable, such judgment shall not affect, impair or invalidate the remaining provisions of this Ordinance, the intention being that the various sections and provisions are severable.

Section 7. Repeal. All other ordinances or resolutions or parts of ordinances or resolutions in conflict with the provisions of this Ordinance are hereby repealed, provided that such repeal shall not repeal any repealer clauses in such ordinances nor revive any ordinance thereby.

Section 8. Effective Date. This Ordinance shall become effective thirty (30) days after publication following final passage in accordance with Section 2-2-160 of the Lyons Municipal Code.

Section 9. Codification Amendments. The codifier of the Town's Municipal Code, Municipal Code Corporation, is hereby authorized to make such numerical and formatting changes as may be necessary to incorporate the provisions of Sections 2,3,4, and 5 of this Ordinance within the Lyons Municipal Code.

INTRODUCED AND PASSED ON FIRST READING THIS 3rd DAY OF June 2020.

INTRODUCED, PASSED, ADOPTED AND ORDERED PUBLISHED THIS 15th DAY OF June, 2020.

TOWN OF LYONS, COLORADO


Nicholas Angelo, Mayor



Exhibit A – Redline of Changes

Exhibit A

Sec. 1-2-10. - Definitions.

The following words and phrases, whenever used in this Code or the ordinances of the Town, shall be construed as defined in this Section, unless a different meaning is intended from the context or unless a different meaning is specifically defined and more particularly directed to the use of such words or phrases:

Agent means a person acting on behalf of another.

Bank means a duly statutorily licensed or supervised state or federal institution empowered to receive deposits of money to make loans or to issue notes, which shall include savings and loan associations licensed under state or federal statute.

Board of Trustees means the Board of Trustees of the Town of Lyons.

Building Official means an Agent of the Town of Lyons charged with enforcing the Town of Lyons Building Code. The Building Official may also be referred to as Building Inspector.

Code means the Lyons Municipal Code as published and subsequently amended, unless the context requires otherwise.

Code Enforcement Officer means an Agent of the Town of Lyons charged with enforcing the Lyons Municipal Code. The Code Enforcement Officer may also be referred to as the Code Compliance Official or Officer.

Contractor means one who, in pursuit of independent business, undertakes to perform a job or piece of work, retaining in himself or herself the control of means, method and manner of accomplishing the desired result.

County means the County of Boulder, Colorado.

C.R.S. means the Colorado Revised Statutes, including all amendments thereto.

Employee, whenever reference is made to a Town employee by title only, shall be construed to mean any person who is paid a salary by the Town, except elected officials, and as though followed by the words "of the Town of Lyons."

Fee means a sum of money charged by the Town for any purpose other than an imposition of a fine or a levy of a tax.

Fine means a pecuniary punishment imposed by lawful tribunal upon a person convicted of a crime or misdemeanor.

Law denotes applicable federal law, the Constitution and statutes of the State, the ordinances of the Town and, when appropriate, any and all rules and regulations which may be promulgated thereunder.

License means the permission granted for the carrying on of a business, profession or occupation.

May is permissive.

Misdemeanor means any offense deemed a violation of the provisions of this Code which is a lesser offense than a felony as defined by state law.

Month means a calendar month.

Oath shall be construed to include an affirmation or declaration in all cases in which, by law, an affirmation may be substituted for an oath, and in such cases the words *swear* and *sworn* shall be equivalent to the words *affirm* and *affirmed*.

Occupant, as applied to a building or land, means any person who occupies the whole or any part of such building or land, whether alone or with others.

Offense means any act forbidden by any provision of this Code or the omission of any act required by the provisions of this Code.

Operator means the person who is in charge of any operation, business or profession.

Ordinance means a law of the Town; provided that a temporary or special law, administrative action, order or directive may be in the form of a resolution.

Owner, applied to a building, land, motorized vehicle, animal or other real or personal property, includes any part owner, joint owner, tenant in common, joint tenant, lessee, tenant by the entirety or any other person with a possessory interest in the whole or a part of said building, land, motorized vehicle, animal or other real or personal property.

Peace Officer means a person who is an Agent of the Town of Lyons and who qualifies as a Peace Officer pursuant to requirements of C.R.S § 16-2.5-101.

Person means a natural person, corporation, firm, partnership, association, organization, joint venture, joint stock company, club, company, business, trust, government or any other group acting as a unit, or the manager, lessee, agent, servant, officer or employee of any of them.

Personal property includes every description of money, goods, chattels, effects, evidence of rights in action and all written instruments by which any pecuniary obligation, right or title to property is created, acknowledged, transferred, increased, defeated, discharged or diminished, and every right or interest therein.

Preceding and *following* mean next before and next after, respectively.

Property includes real and personal property.

Real property includes lands, tenements and hereditaments.

Recreation vehicle means a powered vehicle used primarily for travel and camping and not used for a primary residence; i.e., a mobile home or motored home.

Right-of-way means the privilege of the immediate use of any property for utility, access and street purposes for persons and vehicles.

Shall and *must* are both mandatory.

Sidewalk means that portion of a street between the curbline and the adjacent property line intended for the use of pedestrians.

State means the State of Colorado.

Street includes all alleys, lanes, courts, boulevards, streets, highways, avenues, public ways, public squares, public places, sidewalks, curbs or other public ways in the Town which have been or may hereafter be dedicated and open to public use, or such other public property so designated by any state law.

Tax means a pecuniary contribution made by persons liable for the support of government.

Tenant and *occupant*, applied to a building or land, includes any person who occupies the whole or any part of such building or land, whether alone or with others.

Three-quarters of the Board means six (6) members of the Board of Trustees, including the Mayor.

Town means the Town of Lyons, a municipal corporation in Boulder County, Colorado, or the area within the territorial limits of the Town of Lyons, and such territory outside of the Town over which the Town has jurisdiction or control by virtue of any constitutional or statutory provision.

Town Administrator means the officer of the Town of Lyons established pursuant to C.R.S. 31-4-304 and Lyons Municipal Code Section 2-3-40. The term *Town Administrator* also includes his or designee except where the *Town Administrator* is specifically prohibited from delegating his or her duties pursuant to the Code and Colorado law.

Travel trailer means a non-powered trailer that is used primarily for travel and camping and not used for a primary residence, such as mobile home or modular home.

Written or in writing includes any representation of words, letters, symbols or figures; however, this definition does not affect any law relating to signatures.

Year means a calendar year.

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Sec. 1-4-20. - General penalty for violation.

- (a) Any person convicted-found to have committed of a non-criminal violation of the Code, as either designated in Section 1-4-540(a) of this Article or any other non-criminal violation of the Code where there is not a monetary penalty already specified in the Code, may be fined by an amount not to exceed one thousand dollars (\$1,000.00) per violation.
- (b) Any person convicted of a criminal violation, as designated in Section 1-4-540(b) of this Article, may be incarcerated for a period not to exceed three hundred sixty-four (364) days or fined by an amount not to exceed two thousand six hundred and fifty dollars (\$2,650.00), or both, except as hereinafter provided in Section 1-4-30 below. Any voluntary plea of guilty of nolo contendere to the original charge or to a lesser or

substituted charge shall subject the person so pleading to all of the fines and/or penalties applicable to the original charge.

- (bc) Where any violation is a continuing offense, each day such violation continues shall be considered a separate and distinct offense.
- (d) Notices of violations under this Article shall be served by the Town by either by sending such notice via certified mail or posting the notice on the violator's property.
- (e) The remedies specified in this Section shall be in addition to all other remedies provided by law.

1-4-30. - Civil enforcement.

- (a) Upon finding a violation of the Code, the Town may administratively issue notices of violation stating both the basis of violation and the penalty. Unpaid penalties shall be collected in the manner set forth in Section 1-4-40 below. In the event of noncompliance with a notice of violation, the Town is authorized to initiate an action in municipal court to enjoin a violation, order its abatement, and to receive a judgment for penalties as provided in this Section 1-4-30.
- (b) With approval from the Board of Trustees, the Town is authorized to initiate civil action in municipal court for an alleged non-criminal violation of the Code except the provisions of Chapters 8, and 10 pertaining to general offenses and vehicles and traffic. Violations of Chapters 8 and 10 and any criminal violation of the Code, shall be prosecuted in accordance with the applicable provisions of the Code. The Town may seek to have the municipal court declare a violation of the Code and request that the court enjoin the violation or order its restraint, removal, termination, or abatement by the owner, agent, entity, occupant or person who caused the violation or such person or entity who allowed the violation to continue, or authorize the Town Administrator or the Administrator's designee to terminate or abate such violation.
- (c) A civil action to declare and abate a violation of the municipal code shall be brought in the name of the Lyons, Colorado, by filing a complaint, which shall be verified or supported by an affidavit. Summons and subpoenas shall be issued and served in accordance with the municipal court's rules of procedure. Any employee or agent of the Town who is over the age of 18 may serve a summons and verified complaint upon the owner, agent, entity, occupant or the person who caused or allowed the violation (hereinafter "Respondent") or a subpoena upon any person in relation to the alleged violation. Trial or hearing of such action shall be to the court and the respondent shall not be entitled to a trial by jury.
- (d) A notice of appearance shall be served with the summons and complaint. The appearance date in court shall be not less than fourteen (14) days from the date of service of the summons and complaint. The respondent shall file a response or answer on or before the appearance date specified in the notice of appearance. The trial shall be held upon the appearance date, unless the court grants a continuance for good cause shown. No case shall be continued for more than seven days after the appearance date.
- (e) Upon the date and time specified for appearance and trial or hearing, if the respondent has not filed a response and fails to appear, and if the Town proves that proper service

was made on respondent at least fourteen (14) days prior to the appearance date, the court may grant such orders as are requested by the Town; except that, the court shall order that the enforcement by the Town shall be stayed for ten (10) days and that a copy of the court's order be mailed to the respondent at respondent's last known address. Failure to appear on any date set for hearing or trial shall be grounds for entering a default and default judgment against the non-appearing party. Prior to enforcement, and upon good cause shown, the court may set aside an entry of default and the default judgment entered thereon.

- (f) Any disobedience to or interference with any injunction or order issued by the municipal court in an action to abate a violation of the municipal code may be punished as a contempt of court or by a fine not to exceed one thousand dollars (\$1000.00). Such penalties may be imposed in addition to the penalties imposed for underlying violation as provided for in Section 1-4-20. Each day's failure to comply with an injunction or order to abate shall constitute a separate act of contempt for which an additional penalty may be imposed for each such day.
- (g) In order to facilitate the just speedy, informal, and inexpensive determination of claims wherein civil enforcement is sought, the municipal court, unless specifically specified herein, shall adhere to its rules of procedure.
- (h) In any case in which the Town prevails in a civil action initiated pursuant to this section, the Town may recover its reasonable costs of abating the violation including reasonable attorneys' fees and costs of litigation, plus 15 percent in administrative costs. Said costs may be assessed against the subject property in the form of a lien against the property.
- (i) The remedies specified in this Section shall be in addition to all other remedies provided by law.

Sec. 1-4-40. - Failure to pay penalties.

- (a) Civil penalties not paid and received by the Town within 30 days of issuance of the latter of the notice of violation or decision of the municipal court, shall be deemed delinquent and subject to delinquency charges. Civil penalty assessments not paid before the due date may result in the imposition of a late fee of \$25.00 and interest at 1½ percent per month shall accrue.
- (b) In the event of failure to pay all penalties assessed, the Town Administrator may refer the matter for collection by whatever means are available to the Town.
- (c) In the case of violations associated with specific real property, the Town shall have as security for the collection of such late fees, penalties, interest, and administrative costs, a lien upon such real property. The Town Finance Director shall certify such charges to the office of the treasurer of the county that includes the property, for collection in the same manner as the collection of general property taxes.
- (d) Any action or other process provided by law may be maintained by the Town to recover or collect any amounts, including late fees, penalties, interest, and administrative costs, owing under this Code

- **ARTICLE 5 – Inspections, Entry, and Warrants**

Sec. 1-5-10. - Search warrantsEntry.

A Peace Officer, the Building Official, or Code Enforcement Officer may appear before the municipal judge and upon a showing of probable cause of violation of this Code, shall obtain a search warrant entitling such individual to enter the building or upon the premises, using such reasonable force as may be necessary to gain entry. The individual applying for such warrant shall not be required to demonstrate specific knowledge of the condition of the particular structure or premises at issue in order to obtain a search warrant, but must show some factual or practical circumstances that would cause an ordinary prudent person to believe the Code is being violated. Any municipal judge of the municipal court of the Town shall have power to issue search warrants upon a showing of probable cause of the existence of a nuisance or other violation of the municipal code. Whenever necessary to make an inspection to enforce any provision of this Code or any ordinance, or whenever there is probable cause to believe that there exists an ordinance violation in any building or upon any premises within the jurisdiction of the Town, any public inspector of the Town may, upon presentation of proper credentials and upon obtaining permission of the occupant or if unoccupied, the owner, enter such building or premises at all reasonable times to inspect the same or to perform any duty imposed upon him or her by ordinance. In the event the occupant, or if unoccupied, the owner, refuses entry to such building or premises, or the public inspector is unable to obtain permission of such occupant or owner to enter such building or premises, the public inspector is empowered to seek assistance from any court of competent jurisdiction in obtaining such entry.

Sec. 1-5-20. - Authority to enter premises under emergency.

Law enforcement officers certified with the State, fire departments operating under a mutual assistance agreement or automatic aid agreement with the Town, certified emergency medical technicians and paramedics during the course of employment with a governmental agency are hereby granted the authority to enter private residences within the Town without invitation from the occupant of the residence at any time such persons have reasonable grounds to believe a medical emergency is in progress within the subject premises and the occupant of such premises is incapable of consenting to the entry because of such medical emergency.

Sec. 1-5-30. - Announcement of purpose and authority to enter premises.

Unauthorized entry pursuant to Section 1-5-20 shall be permissible only after the individuals seeking entry have announced both their purpose and authority in a loud and conspicuous voice and have waited a reasonable period of time for the occupant to respond before making entry.