

ORDINANCE NO. 2010-5

BILL NO. 104

AN ORDINANCE AMENDING TITLE 8, PUBLIC PEACE, SAFETY AND MORALS, CHAPTER 8.08, NUISANCES, SECTION 8.08.030, DEFINITIONS, BY ADDING A DEFINITION OF "CRIMINAL GANG"; AMENDING SECTION 8.08.070, NUISANCES PER SE, BY PROVIDING THAT CERTAIN ACTIVITIES RELATING TO CRIMINAL GANGS ARE NUISANCES PER SE; AND AMENDING CHAPTER 8.09, ENFORCEMENT PROVISIONS FOR NUISANCES, BY ADDING A NEW SECTION, SECTION 8.09.490, INJUNCTIONS AGAINST MEMBERS OF CRIMINAL GANGS, WHICH AUTHORIZES THE DISTRICT ATTORNEY TO SEEK CIVIL INJUNCTIONS AGAINST MEMBERS OF CRIMINAL GANGS; AND OTHER MATTERS PROPERLY RELATING THERETO.

THE BOARD OF SUPERVISORS OF CARSON CITY DO ORDAIN:

SECTION I:

That Section 8.08.030 of the Carson City Municipal Code is hereby amended as follows:

8.08.030 Definitions.

The following definitions will be used in this chapter unless the context otherwise requires:

1. "Abandoned structure" means any structure:
 - a. That has been vacant for a period in excess of 6 months and is not for sale or lease; or
 - b. That has been vacant for any period of time creating an attractive nuisance, a health hazard, an imminent or existing danger or hazard.
2. "Abandoned vehicle" means any vehicle:
 - a. That has been left unattended and dangerously close to a travel lane on a city street, highway or road so as to possibly impede traffic; or
 - b. Which has not been moved or used for more than 7 consecutive days and reasonably appears to have been deserted. [Reference NRS 487.210]
3. "Antique old timer vehicle" means any vehicle entitled to be registered with the Nevada Department of Motor Vehicles as an "old timer" as a model manufactured more than 40 years before the date of application for registration. [Reference NRS 283.381]
4. "Attractive nuisance" means property, buildings or premises which are in such an unsecured state so as to potentially constitute an attraction to children, a harbor for vagrants, criminals, or other unauthorized persons, or so as to enable persons to resort thereto for the purpose of committing a nuisance or unlawful act.
5. "Blight" means any condition which substantially impairs the livability or community appearance, or the safe, social or economic conditions of the community.

6. "Boarded" means secured against entry by apparatus which is visible off the premises and is not both lawful and customary to install on occupied structures.
7. "Building" means any structure used or intended for supporting or sheltering any use or occupancy.
8. "Brush" means shrubs or growth which present or may present a blight, safety or fire hazard.
9. "City" means Carson City, Nevada.
10. "Classic rod" means any passenger car or light commercial vehicle entitled to registration with the Nevada Department of Motor Vehicles as a "classic rod" which:
 - a. Has a manufacturer's rated carrying capacity of 1 ton or less; and
 - b. Was manufactured not earlier than 1949, but at least 20 years before the date of application for registration. [Reference NRS 283.3814]
11. "Classic vehicle" means any passenger car or light commercial vehicle entitled to registration with the Nevada Department of Motor Vehicles as a "classic vehicle" which:
 - a. Has a manufacturer's rated carrying capacity of 1 ton or less;
 - b. Was manufactured at least 25 years before the date of application for registration; and
 - c. Contains only the original parts which were used to manufacture the vehicle or replacement parts that duplicate those original parts. [Reference NRS 283.3816]
12. "Code" means the Carson City Municipal Code.
13. "Criminal activity" means any activity punishable as a misdemeanor under the Carson City Municipal Code or as a misdemeanor, gross misdemeanor or felony under NRS Title 15.
14. "Criminal gang" means any combination of persons, organized formally or informally, so constructed that the organization will continue its operation even if individual members enter or leave the organization, which:
 - (a) Has a common name or identifying symbol;
 - (b) Has particular conduct, status and customs indicative of it; and
 - (c) Has as one of its common activities engaging in criminal activity punishable as a felony, other than the conduct which constitutes the primary offense. [Reference NRS 193.168.]
15. "Debris" means substance of little or no apparent economic value, which may be present in a state of apparent unpremeditated disarray.
- [15.] 16. "Dangerous structure or condition" means a structure or condition that may cause injury to or endanger the health, life, property or safety of the general public or the occupants, if any, of the real property on which the structure or condition is located. The term includes without limitation, a structure or condition that:
 - a. Does not meet the requirements of a code or regulation adopted pursuant to NRS 244.3675 with respect to minimum levels of health or safety; or
 - b. Violates an ordinance, rule or regulation regulating health and safety enacted, adopted or passed by the Carson City board of supervisors, the violation of which is designated as a nuisance in the ordinance, rule or regulation. [Reference NRS 268.4122]
- [16.] 17. "Enforcement official" shall have the meaning set forth in Carson City Resolution 2008-R-8 [Reference NRS 171.17751 and NRS 280.125].

[17.] 18. "Excavation" means wells, shafts, basements, cesspools, septic tanks, swimming pools, fish ponds, and other like or similar conditions more than 6 inches in diameter and 3 feet in depth.

[18.] 19. "Facilities/building, service and equipment" means plumbing, piping and/or fixtures that convey or dispose of liquid waste and gas, electric wiring components and/or fixtures, mechanical heating/cooling equipment, duct work and/or fixtures.

[19.] 20. "Fences, screen walls and/or retaining walls" mean self standing structures designed to provide semi-privacy, security, or bank retention between grade separations.

[20.] 21. "Garbage" means swill, offal, and any accumulation of animal, vegetable or other matter associated with the preparation, handling, consumption, storage or decay of plant and animal matter including meats, fish, fowl, buds, fruits, vegetable or dairy products and the waste wrappers or containers thereof and filthy or odoriferous objects. [Reference CCMC 8.32.010]

[21.] 22. "Hazardous waste" means any waste or combination of wastes, including solids, semisolids, liquids or contained gases, which;

a. Because of its quantity or concentration or its or its physical, chemical or infectious characteristics may:

(1) Cause or significantly contribute to an increase in mortality or serious irreversible or incapacitating illness; or

(2) Pose a substantial hazard or potential hazard to human health, public safety or the environment when it is given improper treatment, storage, transportation, disposal or other management.

b. Is identified as hazardous by the health department as a result of studies undertaken for the purpose of identifying hazardous wastes.

c. The term includes, among other wastes, toxins, corrosives, flammable materials, irritants, strong sensitizers and materials which generate pressure by decomposition, heat or otherwise. [Reference NRS 459.430]

[22.] 23. "Health hazard" means the presence of any item(s) which adversely impact or jeopardize the well being or health of an individual. Such items may be inclusive of human/animal waste, medical or biological waste, sharps, gaseous or combustible materials, radioactive waste, dangerous and/or corrosive chemicals/liquids, flammable and/or explosive materials, friable asbestos, offal and decay matter, and any other condition constituting a health hazard under the Nevada Revised Statutes. In addition, evidence of occupancy without adequate facilities shall be considered a health hazard. Such items constitute an imminent danger.

[23.] 24. "Horseless carriage" means any vehicle entitled to registration with the Nevada Department of Motor Vehicles as a "horseless carriage" which is a model manufactured during or before 1915. [Reference NRS 283.380]

[24.] 25. "Imminent danger" means the existence of any structure or condition that could reasonably be expected to cause injury or endanger the safety or health of:

a. The occupants, if any, of the real property on which the structure or condition is located; or

b. The general public.

[25.] 26. "Incipient hazard" means condition of real property that can become an imminent danger or health danger if further deterioration occurs that can cause unreasonable risk or death or severe personal injury.

[26.] 27. "Infestation" means the apparent presence of damaging, or unhealthful insects, rodents, or reptiles.

[27.] 28. "Junk vehicle" means a vehicle, including component parts which:

- a. Has been ruined, wrecked, dismantled, or rendered inoperative; or
- b. Is unfit for further use in accordance with the original purpose for which it was constructed.
- c. Is not registered with the Nevada Department of Motor Vehicles; and
- d. Has value principally as scrap which does not exceed \$500.00; or
- e. Any motor vehicle which is inoperative cannot be moved under its own power, or cannot be operated lawfully on a public street or highway due to removal of, damage to, or deterioration of, or inoperative condition of any component part or the lack of an engine, transmission, wheels, tires, doors, windshield or windows or, any other component part necessary for such movement or lawful operation.

[28.] 29. "Litter" means rubbish which is non-decaying, decaying or solid and semi-solid wastes, including but not limited to, both combustible and noncombustible wastes, such as paper, trash, cardboard, waste material, tin cans, yard clippings, wood, glass, bedding, or debris, scrap paving material, discarded appliances, discarded furniture, bedding, dry vegetation, weeds, dead trees and branches, overgrown vegetation and trees which may harbor insect or rodent infestations or may become a fire hazard, piles of earth mixed with any of the above or any foreign object, including junk or abandoned vehicles, without regard to value.

[29.] 30. "Nuisance" or "nuisance activity" means that which is injurious to health, or injurious, indecent and offensive to the senses, or an obstruction to the free use of property so as to interfere with the comfortable enjoyment of life or property, or is against the interest of public morals, decency, safety, peace and order, including, but not limited to, an attractive nuisance, a nuisance per se, criminal activity, the presence of debris, litter, graffiti, garbage, rubble, abandoned, unregistered or junk vehicles or junk appliances, curfew violations, violations of building codes, housing codes, or any other codes regulating the health or safety of occupants of real property, excessive noise, the excessive emission of dense smoke and air pollution caused by excessive soot, cinders, fly ash, dust, noxious acids, fumes and gases, or any other activity, behavior or conduct defined by the Carson City board of supervisors to constitute a public nuisance. [Reference NRS Chapter 40 & 244]

[30.] 31. "Occupant" means legal entity that, through the rights of ownership or rental, has the use and enjoyment of the subject real property for residential or commercial purposes.

[31.] 32. "Owner" means a legal entity as current or rightful owner(s) as recorded in the official records of the Carson City recorder's office.

[32.] 33. "Person associated with property" means:

- a. The owner of the property;
- b. The manager of assistant manager of the property;
- c. The tenant of the property; or

d. A person who, on the occasion of a nuisance activity, has:

(1) Entered, patronized or visited the property or a person present on the property;

(2) Attempted to enter, patronize or visit the property or a person present on the property;

(3) Waited to enter, patronize or visit the property or a person present on the property.

[Reference NRS 244.3603]

[33.] 34. "Pond/pool" means an in-ground body of water that is at least 18 inches deep and 8 feet or greater in any dimension. Ponds that meet these conditions are subject to the provisions of this chapter.

[34.] 35. "Premises" means land and the buildings or structures upon it.

[35.] 36. "Property" means any real property, real estate, land, lot, or part of real property, real estate, land or lot.

[36.] 37. "Recreational/architectural pool" means a constructed (above-ground) or excavated (below-ground) exterior area designed to contain a regular supply of water.

[37.] 38. "Rubble" means broken fragments resulting from the decay or deconstruction of a building, or miscellaneous mass of broken or apparently worthless materials.

[38.] 39. "Street rod" means any passenger car or light commercial vehicle entitled to registration with the Nevada Department of Motor Vehicles as a "street rod" which:

a. Has a manufacturer's rated carrying capacity of 1 ton or less; and

b. Was manufactured not later than 1948. [Reference NRS 482.3812]

[39.] 40. "Structure" means that which is built up or constructed, or an edifice or building of any kind or any piece of work artificially built up or composed of parts joined together in some definite manner.

[40.] 41. "Swimming pool" means artificial basin, chamber, or tank constructed and used, or designed to be used for swimming, diving, bathing or wading.

[41.] 42. "Unauthorized" means without the prior permission of the property owner.

[42.] 43. "Unregistered vehicle" means any vehicle or component thereof on which evidence of current registration with the Nevada Department of Motor Vehicles or current registration with a similar agency of another state is not displayed.

[43.] 44. "Unsafe building" means as specified in the International Fire Code, as may be amended from time to time, buildings or structures which are structurally unsafe or not provided with adequate egress, or which constitute a fire hazard or are otherwise dangerous to human life, or which, in relation to existing use, constitute a hazard to safety, health or public welfare by reason of inadequate maintenance, dilapidation, obsolescence, fire hazard, disaster, damage or abandonment as specified in the Carson City Municipal Code, International Building Code, International Fire Code or Nevada Revised Statutes.

[44.] 45. "Unsecured structure" means any structure that is vacant with a damaged or open door, window or other opening not secured.

[45.] 46. "Vegetation" means plants of any kind.

[46.] 47. "Vehicle" means a piece of mechanical equipment intended for the conveyance or temporary housing of persons or personal property or parts thereof, including, but not limited to, automobiles, trucks, boats, campers, camper shells, vans, motor homes, converted buses and similar vehicles.

[47.] 48. "Weeds" means a useless and troublesome plant of negligible or no value and usually of uncontrolled growth.
(Ord. 2008-9 § 1, 2008: Ord. 2005-18 § 2 (part), 2005).

SECTION II:

That Section 8.08.070 of the Carson City Municipal Code is hereby amended as follows:

8.08.070 Nuisances per se.

Any of the following conditions are a nuisance per se as constituting conditions which annoy, injure or endanger the safety, health or welfare of any considerable number of persons:

1. A dangerous structure or condition;
2. Unoccupied buildings or unoccupied structures with boarded-up windows or entryways that have been opened and unsecured for more than 10 business days;
3. Buildings or structures in a state of partial un-progressing construction, without a permit, for more than 60 days;
4. Property, buildings, structures or premises with barricades, fencing, screen walls or retaining walls which are unsound, damaged or in disrepair;
5. Property, buildings, structures or premises which contain debris, garbage, hazardous waste, a health hazard, an imminent danger, an incipient hazard, infestation, litter, rubble or overgrown vegetation that constitute a blight to adjoining property, the neighborhood or the city, or a health, safety or fire hazard;
6. Wells, shafts, basements, cesspools, septic tanks, swimming pools, recreational/architectural pools, ponds and other like or similar excavations where it appears that such are abandoned or not maintained and that create a public health hazard;
7. Unlawful for any person to throw or cause to be thrown or deposited in any reservoir, ditch, or other stream within the city, any rubbish, garbage, trash, filth, or other matter tending to make waters thereof impure, unwholesome, or offensive;
8. Any tree which is in a dead or dying condition located anywhere in the city, that may serve as a breeding place for any infectious insects or disease;
9. Any property whereon any condition or object obscures the visibility of a public street intersection to the public so as to constitute a hazard, including, but not limited to, vegetation, signs, posts or equipment;
10. A building or place used for the purpose of unlawfully selling, serving, storing, keeping, manufacturing, using or giving away a controlled substance, immediate precursor as defined in NRS 453.086 or controlled substance analog as defined in NRS 453.043; or
11. Any other condition which, in the judgment of the enforcement official, creates a blight to adjoining property, the neighborhood or the city, or a health, safety or fire hazard under the conditions set forth in the International Fire Code, International Building Code, Carson City Solid Waste Management Code, or any other Carson City

Municipal Code or the Nevada Revised Statutes. [Reference NRS 40.140, NRS 202.450]; or

12. Burning refuse, sawdust or other material in such a manner as to cause or permit fire, sparks, any burning or ignited material, ashes, smoke, soot or cinders to be cast or fall upon any street, alley or any premise of considerable number of persons in such quantity or manner as to injure or endanger the property, lives, health, comfort or repose of said persons; or

13. Maintaining or operating in the city any burner or incinerator which emits or throws off fire, sparks, ashes, smoke, sawdust, soot, cinders or any other burning or ignited material in such a manner as to injure or endanger the property or the health, comfort or repose of any considerable number of persons.

14. A building, premise or place regularly and continuously used by members of a criminal gang to engage in, or facilitate the commission of, criminal activity by the criminal gang. [Reference NRS 40.140, NRS 202.450]

(Ord. 2005-18 § 2 (part), 2005).

SECTION III:

Chapter 8.09 of the Carson City Municipal Code is hereby amended by adding there to a new section, Section 8.09.490, Injunctions against members of criminal gangs, as follows:

Chapter 8.09 ENFORCEMENT PROVISIONS FOR NUISANCES

Sections:

8.09.010 Declaration of purpose.

8.09.020 Conflict of ordinances.

8.09.030 Administrative enforcement authority.

8.09.040 Definitions.

8.09.050 Authority to inspect.

8.09.060 Recovery of administrative fees--Purpose.

8.09.070 Amount of administrative fees.

8.09.080 Notification of assessment of administrative fees.

8.09.090 Collection of administrative fees.

8.09.100 Service of notices.

8.09.110 Notice of violation--Procedures.

8.09.120 Recording notices of violation--Purpose.

8.09.130 Procedures for recording notices of violation.

8.09.140 Service of notice of violation.

8.09.150 Procedures to request administrative hearing on recordation.

8.09.160 Administrative hearing--Recordation of notice.

8.09.170 Notice of compliance--Removal procedures.

8.09.180 Prohibition against issuance of city permits.

8.09.190 Administrative citations and fines--Authority.

8.09.200 Administrative citations--Procedures.

- 8.09.210 Contents of administrative citation.
- 8.09.220 Fines for administrative citations.
- 8.09.230 Failure to pay administrative citation fine.
- 8.09.240 Abatements--Purpose.
- 8.09.250 Authority.
- 8.09.260 Notice to abate--General procedures.
- 8.09.270 Service of notice to abate.
- 8.09.280 Abatement by the city.
- 8.09.290 Summary abatement.
- 8.09.300 Summary abatement--Procedures.
- 8.09.310 Procedures for recording code enforcement lien.
- 8.09.320 Service of code enforcement lien.
- 8.09.330 Cancellation of code enforcement lien.
- 8.09.340 Administrative hearing procedures.
- 8.09.350 Appointment of hearing officer.
- 8.09.360 Disqualification of hearing officer.
- 8.09.370 Powers of hearing officer.
- 8.09.380 Failure to obey subpoena.
- 8.09.390 Procedures for requesting an administrative hearing.
- 8.09.400 Procedures for notification of administrative hearing.
- 8.09.410 Procedures at administrative hearing--Admission of evidence.
- 8.09.420 Standard of proof.
- 8.09.430 Representation.
- 8.09.440 Failure to attend administrative hearing.
- 8.09.450 Administrative order--Compliance with administrative order.
- 8.09.460 Failure to comply with the administrative order.
- 8.09.470 Appeal of administrative order to justice/municipal court--Procedure.
- 8.09.480 Service of appeal decision--Time limits for repair, correction, or abatement.
- 8.09.490 Injunctions against members of criminal gangs.

SECTION IV:

That Section 8.09.490 of the Carson City Municipal Code is hereby added to Chapter 8.09, Enforcement Provisions for Nuisances, as follows:

8.09.490 Injunctions against criminal gangs.

1. The District Attorney, or his designee, may file a civil action to seek a temporary or permanent civil injunction against a specific member of a criminal gang or a criminal gang to enjoin criminal activity associated with the criminal gang that is occurring in Carson City.
2. In addition to seeking a permanent or temporary injunction pursuant to subsection 1, the District Attorney, or his designee, may seek the recovery of money damages, attorney's fee and costs from:

(a) A member of a criminal gang that is engaging in criminal activities occurring within Carson City; and

(b) The owner of a building, premise or place located within Carson City that has been found to be a nuisance per se because the building, premise or place is regularly and continuously used by members of a criminal gang to engage in, or facilitate the commission of, criminal activity by the criminal gang if the owner of the building, premises or place has actual notice that the building, premise or place is regularly and continuously used by members of a criminal gang to engage in, or facilitate the commission or, criminal activity by the criminal gang.

3. Any money damages awarded in an action brought pursuant to this section must be:

(a) Paid by, or collected from:

(1) Any assets of the criminal gang or its members that were derived from the criminal activity or the criminal gang or its members;

(2) Any assets of the owner of a building, premise or place that has been found to constitute a nuisance per se; or

(3) Any combination of the assets described in subparagraphs (1) and (2).

(b) Deposited into a separate fund in the Carson City treasury, to be used solely for the benefit of the specific community or neighborhood that has been injured by the criminal activity of the criminal gang or the existence of the building, premise or place that constitutes a nuisance per se.

4. Any member of a criminal gang who is subject to a temporary or permanent injunction granted pursuant to this section and who knowingly and intentionally commits a material violation of the terms of that injunction is guilty of a misdemeanor. If the violation also constitutes a criminal offense under another provision of law, the violation may be prosecuted pursuant to this section, the other provision of law or both.

SECTION V:

That no other provisions of the Carson City Municipal Code are affected by this ordinance.

PROPOSED April 15, 2010 by Supervisor Shelly Aldean.

PASSED May 6, 2010 by the following vote:

AYES: Supervisor Molly Walt
Supervisor Robin Williamson
Supervisor Shelly Aldean
Supervisor Pete Livermore
Mayor Robert Crowell

NAYS: None.

ABSENT: None.

ROBERT L. CROWELL, Mayor

ATTEST:

ALAN GLOVER, Clerk / Recorder

This ordinance shall be in force and effect from and after the 9th day of May, 2010.