

ORDINANCE NO. 21-05

IN ORDINANCE AMENDING THE CITY OF ELK RIDGE PUBLIC HEALTH AND SAFETY 4-2A-2, NUISANCE DEFINITIONS AND PUBLIC HEALTH AND SAFETY 4-2A-3 , SPECIFIC NUISANCES, CORRECTION OF SCRIVENER'S ERRORS, SEVERABILITY, AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Elk Ridge has adopted the Elk Ridge City Public Health and Safety 4-2a-2, Nuisance Definitions and Public Health and Safety 4-2a-3, Specific Nuisances; and

WHEREAS, the Elk Ridge City held a public meeting on _____, 2021 at 7:00pm, for the purpose of the proposed amendment to Public Health And Safety 4-2a-2, Nuisance Definitions and Public Health and Safety 4-2a-3, Specific Nuisances; and

WHEREAS, the public meeting was preceded by the posting of a notice of public meeting in at least three (3) public places: city office, city public works building, pole located at 11200 South and North Twilight Way along with notification to the Payson Chronicle Newspaper, a newspaper of general circulation within the city, at least 24 hours prior to the Public Meeting; and

WHEREAS, the notice of the meeting, which was posted and published, by the City Council contains specific advance notice that the proposed ordinance amendment, as set forth herein, would be considered and that copies thereof were available for inspection in the city ' offices; and

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF ELK RIDGE CITY, UTAH, AS FOLLOWS: (red text is added text, ~~strikeout-text is deleted text~~)

4-2A-2: DEFINITION:

The following words and phrases used in this chapter shall have the following meaning unless a different meaning clearly appears from the context:

ABATE: To repair, replace, remove, destroy, correct or otherwise remedy a condition which constitutes a nuisance by such means, in such a manner and to such an extent as the code enforcement officer, or his designee, determines is necessary in the interest of the general health, safety and welfare of the community.

CODE ENFORCEMENT OFFICER: An enforcement officer hired or assigned by the city to enforce city codes.

COMPLETION DATE: The date by which the responsible person must abate a nuisance. The "completion date" is originally set by the code enforcement officer in the voluntary correction agreement or in the administrative citation. The "completion date" may be modified by the hearing officer.

EMERGENCY: A situation which, in the opinion of the code enforcement officer, requires immediate action to prevent or eliminate an immediate threat to the health or safety of a person or property.

HEARING OFFICER: The person designated to hear appeals pursuant to this chapter. The hearing officer shall be the Elk Ridge City administrator or his or her designee. The designee need not be a city employee. The city administrator may also appoint a committee to function as the hearing officer.

OWNER: Any person who, alone or with others, has title or interest in any building or premises, with or without accompanying actual possession thereof. For the purpose of giving notice, the term "owner" also includes any person in physical possession.

PREMISES: A plot of ground, whether occupied or not.

PROPERTY: A building or structure, or the premises on which the building or structure is located, or undeveloped land.

PUBLIC PLACE: An area generally visible to public view and includes alleys, bridges, driveways, parking lots, parks, plazas, sidewalks, streets and buildings open to the general public, including those that serve food or drink or provide entertainment, and the doorways and entrances to buildings or dwellings and the grounds enclosing them.

RESPONSIBLE PERSON: The person responsible for correcting or abating a nuisance pursuant to this chapter. The responsible person includes the property owner and any person who causes or permits a nuisance to occur or remain upon property in the city, and includes, but is not limited to, the owner, lessor, lessee or other person entitled to control, use and/or occupy property where a nuisance occurs. In cases where there IS more than one responsible person, the city may proceed against one, some or all of them.

This section defines nuisance by providing four (4) general definitions of what constitutes a nuisance and then providing specific examples in section 4-2A-3 of this article of situations, conduct or activities that constitute nuisances. The purpose of the general definitions is to allow the city to classify an offending situation, conduct, or activity as a nuisance, even though the situation, conduct, or activity may not be listed as a nuisance in the specific examples. The first three (3) general definitions are taken directly from Utah state law. The purpose of listing the specific examples is to identify some of the specific situations, conduct and activities that the city intends to abate as nuisances. ~~Any activity that meets any one or more of the four (4) definitions set forth below shall constitute a nuisance if it occurs within the city of Elk Ridge:~~

1. General Definitions of Nuisance: Any activity that meets any one or more of the four (4) definitions set forth below shall constitute a "nuisance" if it occurs within the city:

~~A. Anything which is injurious to health, indecent, 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.~~

A. Section 4-2A-2(A) "Nuisance", as defined in Utah Code Annotated as subsequently amended or modified. Anything which is injurious to health, indecent, offensive to the senses, or an obstruction of the free use of property, so as to interfere with the comfortable enjoyment of life or property.

~~B. Any item, thing, manner, or condition whatsoever that is dangerous to human life or health or renders soil, air, water, or food impure or unwholesome.~~

B. Section 4-2A-2(B): "Nuisance", as defined in Utah Code Annotated as subsequently amended or modified. Any item, thing, manner or condition whatsoever that is dangerous to human life or health or renders soil, air, water or food impure or unwholesome.

~~C. Unlawfully doing any act or omitting to perform any duty, which act or omission annoys, injures, or endangers the comfort, repose, health, or safety of three (3) or more persons; or offends public decency; or unlawfully interferes with, obstructs, or tends to obstruct; or renders dangerous for passage, any lake, stream, canal, or basin, or any public park, square, street, or highway; or in any way renders three (3) or more persons insecure in life or the use of property. An act which affects three (3) or more persons in any of the ways specified in this subsection is still a nuisance regardless of the extent to which the annoyance or damage inflicted on individuals is unequal.~~

C. Section 4-2A—(C): "Nuisance", as defined in Utah Code Annotated as subsequently amended or modified. Unlawfully doing any act or omitting to perform any duty, which act or omission:

- a. Annoys, injures or endangers the comfort, repose, health or safety of three (3) or more persons;
- b. Offends public decency;
- c. Unlawfully interferes with, obstructs or tends to obstruct, or renders dangerous for passage, any lake, stream, canal or basin, or any public park, square, street or highway;
- d. In any way renders three (3) or more persons insecure in life or the use of property.

An act which affects three (3) or more persons in any of the ways specified in this subsection is still a nuisance regardless of the extent to which the annoyance or damage inflicted on individuals is unequal.

~~D. A condition which wrongfully annoys, injures, or endangers the comfort, repose, health or safety of others; or unlawfully interferes with, obstructs or tends to obstruct, or render dangerous for passage, any public park, square, street or highway, or any other public place; or in any way renders other persons insecure in life, or in the use of property, and which affects the rights of an entire community or neighborhood, although the extent of the damage may be unequal. (Ord. 09-7, 10-27-2009, eff. 11-2-2009)~~

D. Nuisance Conditions: A condition which:

- a. Wrongfully annoys, injures or endangers the comfort, repose, health or safety of others; or
- b. Unlawfully interferes with, obstructs or tends to obstruct, or render dangerous for passage, any public park, square, street or highway, or any other public place; or
- c. In any way renders other persons insecure in life, or in the use of property, and which affects the rights of an entire community or neighborhood, although the extent of the damage may be unequal.

4-2A-3: SPECIFIC NUISANCES:

Every situation, conduct, or activity listed in this section constitutes a nuisance and may be abated pursuant to this chapter. The listed examples are not all inclusive; a situation, conduct or activity not listed below, but coming within one of the general definitions of nuisance defined in section 4-2A-2 of this article, shall also constitute a nuisance.

- A. Accessory Apartments; Illegal: Any violation of the city's accessory apartment ordinance.
- B. Alcohol: Every property or premises not licensed under applicable state law or city ordinance where any intoxicating liquors or alcohol are kept for unlawful use, sale, or distribution.

C. Animals: Any animal that is dangerous, vicious, creates excessive noise, creates odors that can be smelled from adjacent property, or is kept against the city zoning ordinance.

D. Attractive Nuisances: Any attractive nuisance dangerous to children and other persons including, but not limited to, abandoned, broken, or neglected household appliances, equipment and machinery, abandoned foundations or excavations, or improperly maintained or secured pools.

~~—E. Buildings; Illegal Or Abandoned: Any building or structure set up, erected, constructed, altered, enlarged, converted, moved or maintained contrary to the provisions of city ordinances, or any use of land, buildings or premises in violation of city ordinances or buildings which are abandoned, partially destroyed, or left in an unreasonable state of partial construction for a period of six (6) months or longer. An "unreasonable state of partial construction" is defined as any unfinished building or structure where the appearance or condition of the building or structure does not meet the requirements for finished buildings or structures as required by applicable city ordinances or building codes. Buildings or conditions that violate any building, electrical, plumbing, fire, housing, or other code adopted by the city. The building or structure shall not be considered to be a nuisance if it is under active construction.~~

E. Dangerous Buildings:

1. Any building or structure which is unfit for human habitation, or which is an unreasonable hazard to the health of people residing in the vicinity thereof, or which presents an unreasonable fire hazard in the vicinity where it is located; or

2. Any building or structure set up, erected, constructed, altered, enlarged, converted, moved or maintained contrary to the provisions of city ordinances, or any use of land, buildings or premises in violation of city ordinances; or

3. Buildings which are abandoned, partially destroyed or left in an unreasonable state of partial construction for a period of six (6) months or longer. An "unreasonable state of partial construction" is defined as any unfinished building or structure where the appearance or condition of the building or structure does not meet the requirements for finished buildings or structures as required by applicable city ordinances or building codes. The building or structure shall not be considered to be a nuisance if it is under active construction

~~—F. Buildings; Maintenance And Upkeep: Maintenance of buildings and/or structures in such condition as to be deemed defective or in a condition of deterioration or disrepair including which is unfit for human habitation, or which is an unreasonable hazard to the health of people residing in the vicinity thereof, or which presents an unreasonable fire hazard in the vicinity where it is located. Buildings having dry rot, warping, termite infestation, decay, excessive cracking, peeling, or chalking, as to render the building unsightly and/or in a state of disrepair. Buildings with missing doors and/or windows containing broken glass and/or no glass at all where the window is of a type which normally contains glass, building exteriors, walls, fences, gates, driveways, sidewalks, walkways, signs or ornamentation, or alleys maintained in such condition as to render them unsightly and/or in a state of disrepair.~~

F. Buildings; Maintenance and Upkeep: Maintenance of buildings and/or structures in such condition as to be deemed defective or in a condition of deterioration or disrepair, including, but not limited to:

1. Buildings having dry rot, warping, termite infestation, decay, excessive cracking, peeling or chalking, as to render the building unsightly and/or in a state of disrepair; or
2. Buildings with missing doors and/or windows containing broken glass and/or no glass at all where the window is of a type which normally contains glass; or
3. Building exteriors, walls, fences, gates, driveways, sidewalks, walkways, signs or ornamentation, or alleys maintained in such condition as to render them unsightly and/or in a state of disrepair; or
4. Buildings or conditions that violate any building, electrical, plumbing, fire, housing or other code adopted by the city.

G. City Code Nuisances: Any violation of a section of ~~this code~~ **the city code section** that expressly declares a specific situation, conduct, or activity to be a nuisance.

H. Construction Equipment: Construction equipment or machinery of any type or description parked or stored on property when it is readily visible from a public street, alley or adjoining property, except while excavation, construction or demolition operations covered by an active building permit are in progress on the subject property or an adjoining property, or where the property is zoned for the storage of construction equipment and/or machinery. Any construction equipment stored in a public right of way, overnight.

~~I. Dangerous Conditions: Any fence, wall, shed, deck, house, garage, building, structure or any part of any of the aforesaid; or any tree, pole, smokestack; or any excavation, hole, pit, basement, cellar, sidewalk, subspace, dock, or loading dock; or any lot, land, yard, premises or location which in its entirety, or in any part thereof, by reason of the condition in which the same is found or permitted to be or remain, shall or may endanger the health, safety, life, limb or property, or cause any hurt, harm, inconvenience, discomfort, damage or injury to any one or more individuals in the city, in any one or more of the following particulars: by reason of being a menace, threat and/or hazard to the general health and safety of the community; or by reason of being a fire hazard; or by reason of being unsafe for occupancy, or use on, in, upon, about or around the aforesaid property; or by reason of lack of sufficient or adequate maintenance of the property, and/or being vacant, any of which depreciates the enjoyment and use of the property in the immediate vicinity to such an extent that it is harmful to the community in which such property is situated or such condition exists.~~

I. Dangerous Conditions: Any fence, wall, shed, deck, house, garage, building, structure or any part of the aforesaid; or any tree pole or smokestack; or any excavation, hole, pit, basement, cellar, sidewalk, subspace, dock or loading dock; or any lot, land, yard, premises or location which in its entirety, or in any part thereof, by reason of the condition in which the same is found or permitted to be or remain, shall or may endanger the health, safety, life, limb or property, or cause any hurt, harm, inconvenience, discomfort, damage or injury to any one or more individuals in the city, in any one or more of the following particulars:

- 1. By reason of being a menace, threat and/or hazard to the general health and safety of the community;**
- 2. By reason of being a fire hazard;**

3. By reason of being unsafe for occupancy, or use on, in, upon, about or around the aforesaid property;

4. By reason of lack of sufficient or adequate maintenance of the property, and/or being vacant, any of which depreciates the enjoyment and use of the property in the immediate vicinity to such an extent that it is harmful to the community in which such property is situated or such condition exists.

J. ~~Debris~~ Improper Accumulation: Accumulation of soil, litter, debris, plant trimmings, or trash, visible from the street or an adjoining property.

K. Drug Houses: Every building or premises where the unlawful sale, manufacture, service, storage, distribution, dispensing, or acquisition of any controlled substance, precursor, or analog specified in the Utah Code Annotated (Utah controlled substance act) as subsequently amended or modified controlled substances act occurs.

L. Dust: Any premises or activity which causes excessive dust due to lack of landscaping, nonmaintenance or other cause. This includes dust from construction sites.

M. Family: Keeping or allowing people at a premises in violation of the city's single-family residence requirements.

N. Fire Hazard: A fire hazard.

O. Gambling: Every building or premises where gambling is permitted to be played, conducted, or dealt upon which creates the conditions of a "nuisance", as prohibited in Utah Code Annotated as subsequently amended or modified.

P. Gangs: Every building or premises wherein criminal activity is committed in concert with two (2) or more persons, as defined in Utah Code Annotated section as subsequently amended or modified.

Q. Garbage Can: The leaving of any garbage can, refuse, or recycle container in the street, other than on collection day, for more than twenty four (24) hours before or after the collection day.

R. Graffiti: Graffiti which remains on the exterior of any building, fence, sign, or other structure and is visible from a public street.

S. Hazardous Conditions: Any wall, sign, fence, gate, hedge, or structure maintained in such condition of deterioration or disrepair as to constitute a hazard to persons or property.

~~T. Inappropriate Conduct: Every property or premises where there exists an environment which causes, encourages or allows individuals or groups of individuals to commit one or more of the following acts on the property, premises or adjacent public place:~~

~~These acts include, but are not limited to, illegally using or possessing any controlled substance, precursor, analog or possessing any item of drug paraphernalia; or illegally consuming intoxicating liquor or alcohol; or publicly urinating or defecating; or by physical action, intentionally causing or attempting to cause another person to reasonably fear imminent bodily injury or the commission of a criminal act upon their person or upon property in their immediate possession; or engaging in acts of violence, including fighting amongst themselves; or discharging a firearm or explosive in violation of city~~

~~ordinance or state law; or creating unreasonable noise which disturbs others; or intentionally obstructing pedestrian or vehicular traffic; or soliciting acts of prostitution.~~

T. Disorderly House Or Premises: Every property or premises where there exists an environment which causes, encourages or allows individuals or groups of individuals to commit one or more of the following acts on the property, premises or adjacent public place, including, but not limited to:

- a. Illegally consuming intoxicating liquor or alcohol;
- b. Publicly urinating or defecating;
- c. By physical action, intentionally causing or attempting to cause another person to reasonably fear imminent bodily injury or the commission of a criminal act upon their person or upon property in their immediate possession;
- d. Engaging in acts of violence, including fighting amongst themselves;
- e. Discharging a firearm or explosive in violation of city ordinance or state law;
- f. Creating unreasonable noise which disturbs others;
- g. Intentionally obstructing pedestrian or vehicular traffic; or
- h. Soliciting acts of prostitution.

U. Junk Accumulation: Accumulation of used or damaged lumber; junk; salvage materials; abandoned, discarded or unused furniture; stoves, sinks, toilets, cabinets, or other fixtures or equipment stored so as to be visible from a public street, alley, or adjoining property. However, nothing herein shall preclude the placement of stacked firewood for personal noncommercial use on the premises.

V. Parking: Long term parking or storage of any recreational vehicle boat or trailer on the street, within the city right-of-way, or in any clear view area is prohibited. Long term is defined as more than three (3) days. Recreational vehicles and trailers may be parked on the street for loading and unloading purposes only, and if towed must remain attached to the tow vehicle. A reasonable amount of time, generally up to two (2) weeks, to load/unload, clean, or maintain these vehicles. The unsafe parking of any of the above-mentioned vehicles is prohibited and may be cited or removed by law enforcement personnel or the city administrator. All vehicles parked, at any time, on the street or within city right-of-way must be registered and legal.

W. Landscaping; Required: Failure to install or maintain landscaping required by city ordinance.

X. Noise; Public Disturbance: Noise that constitutes a public disturbance after once being requested to stop making the noise. A public disturbance shall be any sound which unreasonably disturbs or interferes with the peace, comfort or repose of owners or possessors of real property and which emanates from any of the following sound sources: music, stereo or sound systems; loud arguing, threatening or yelling in a manner likely to incite violence, boisterous conduct, animals.

Y. Noise; Construction Work/Machinery: Construction work and the use of machinery or motorized power tools and equipment in or adjacent to a residential area between the hours of ten o'clock (10:00) P.M. and seven o'clock (7:00) A.M. Specialized equipment used for seasonal and periodic snow removal,

agricultural uses, commercially zoned business, and all emergency equipment shall not be considered a nuisance.

Z. Noise; Motor Vehicles: The repetitive or continuous starting, testing or operation of a motor vehicle, including motorcycles, all-terrain vehicles, and recreational vehicles.

AA. Noise; Sports/Outdoor Activities: Sports and other outdoor entertainment activities in or adjacent to a residential area between the hours of ten thirty o'clock (10:30) P.M. and seven o'clock (7:00) A.M. Friday and Saturday nights the time allowed extends to eleven thirty o'clock (11:30) P.M.

BB. Noxious Emanations: Emanation of noxious or unreasonable odors, fumes, gas, smoke, soot or cinders. These include odors from animals, animal housing, and animal food.

CC. Noxious Weeds: Weeds include, but are not limited, to vegetation growth that has become a fire hazard, capable of being ignited and which would contribute to fire growth; or any vegetation that is noxious, a nuisance, or dangerous as determined by the enforcement officer or other city staff that is assigned. Also included is any vegetation which has been designated a noxious weed by the Utah Commissioner of Agriculture. (Utah Administrative Code, ~~R68-9~~ Utah Noxious Weed Act.) For weeds on developed lots refer to the ~~10-12-36-G~~ of city Development Code this code.

1. Weeds located on vacant lots, vacant land, along public sidewalks, public streets, or weeds in any other location which constitute a fire hazard must be cut to a height of four inches (4") or less in areas thirty feet (30') from any public sidewalk, public street, or structure and cut to a height of twelve inches (12") or less in areas fifty feet (50') from any public sidewalk, public street, or structure.
2. All noxious weeds must be cut to a height of twelve inches (12') or less on vacant lots, vacant land, along public sidewalks, public streets, or noxious weeds in any location, and not allowed to reseed. Also, noxious weeds must be cut a height of four (4") or less in areas thirty (30') from any public sidewalk, public street, or structure.
3. Should the city fire marshal determine the cut back of weeds on a vacant lot, vacant land, along public sidewalks, public street, or weeds in any other location is insufficient to protect persons or property he may order through the code enforcement officer that the cut back distance be increased to a distance the fire marshal determines would mitigate the fire hazard.

DD. Parking Or Storage; Distressed Vehicles: Parking or storage of inoperative, unregistered, abandoned, wrecked or dismantled vehicles, or vehicle parts, outside of an enclosed structure or fenced area on premises, in the public right of way, on a street, on a vacant lot or parcel, or in view from a street.

EE. Parking Or Storage; Trailers, Boats, Recreation: The parking of vehicles and trailers may only be done by permission of the property owner. Long term parking or storage of inoperable, unregistered and junk vehicles within the front or street side setbacks is prohibited. Parking of inoperable or junk vehicles on any city street is prohibited. Any vehicle deemed a nuisance by law enforcement or the city administrator may be cited or removed by the city administrator or law enforcement personnel.

FF. Party Houses: Every building or premises where parties occur frequently which create the conditions of a nuisance. Some of the factors the city may examine in determining whether a party house exists include: an increase in the number of emergency response calls due to parties being held; any pattern of activity that suggests that parties creating a nuisance are taking place; any pattern of activity which diminishes the quiet enjoyment of those buildings and premises around the alleged party house or which cause the immediate neighbors to fear for their safety or the safety of their family members due to the party activity.

GG. Prostitution: Every building or premises where prostitution or the promotion of prostitution is ~~regularly~~ carried on by one or more persons, **as defined in Utah Code Annotated as subsequently amended or modified.**

HH. Refuse: Keeping or storing of any refuse or waste matter which interferes with the reasonable enjoyment of nearby property.

II. Signs: Improper maintenance of a sign; or signs which advertise a business that is no longer extant on the property. Keeping or allowing banner signs in violation of city ordinance.

JJ. Stagnant Water: Polluted or stagnant water which constitutes an unhealthy or unsafe condition.

KK. Storage Of Materials; General: The keeping, storing, depositing, accumulating, or maintenance of dirt, sand, gravel, concrete, or other similar materials on any lot or parcel for an unreasonable period of time, generally over one week. The placement of dirt, sand, gravel, concrete or any similar material on the streets or within the public right of way is prohibited. The unsafe placement of any object on the street or within the public right of way is prohibited. Any violations of this section may result in a citation. If the condition is an immediate safety concern, corrective action may be taken by law enforcement or the city administrator, at the expense of those responsible for the violation.

LL. Storage Of Materials; New Construction: The keeping, storing, depositing or accumulating on a site construction materials, dirt, sand, gravel, concrete, debris or other similar materials prior to a grading permit, construction bond, or building permit is approved. The keeping, storing, depositing or accumulating on a site construction materials, dirt, sand, gravel, concrete, debris or other similar materials outside of trash bins or located outside the designated storage area identified on an approved site plan. Material stored in the public rights of way. ~~for an unreasonable period of time.~~ Any construction debris or items allowed to be blown from the construction site. Any debris or construction materials left after construction is complete.

MM. Tobacco Smoke: Tobacco smoke that drifts into any residential unit, two (2) times or more within a seven (7) day period.

NN. Unsafe Condition: A condition that unreasonably or unlawfully affects the health or safety of one or more persons.

OO. Vandalism: Any act of vandalism toward public or private property.

PP. Vegetation: Dead, decayed, diseased, or hazardous trees, weeds, hedges, and overgrown or uncultivated vegetation which is in a hazardous condition, is an obstruction to pedestrian or vehicular traffic, or which is likely to harbor rats, vermin or other pests.

AFFIDAVIT OF POSTING

STATE OF UTAH)
COUNTY OF UTAH) ss.

I, ROYCE SWENSEN, City Recorder of the City of Elk Ridge, Utah, do hereby certify and declare that I posted in three (3) public places Ordinance #_____, which is attached hereto on the ____ day of _____, 2021.

The three places are as follows:

1. The Elk Ridge City Office, 80 E Park Drive
2. The Elk Ridge Public Works Building, 645 W. Goosenest Drive
3. The pole located at 11200 South and North Twilight Way

I further certify that copies of the ordinance so posted were true and correct copies of said ordinance.

ROYCE SWENSEN
Elk Ridge City Recorder

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by ROYCE SWENSEN.

My Commission Expires:

Notary Public

Residing at:

Utah County