

## ARTICLE B. NUISANCE PROCESS

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4-2B-1: ABATE DEFINED:

"Abate" means 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 enforcement officer determines is necessary in the interest of the general health, safety, and welfare of the community.

(Ord. 09-7, 10-27-2009, eff. 11-2-2009; amd. Ord. 19-5, 9-10-2019)

4-2B-2: RESPONSIBLE PERSON FOR NUISANCE:

Any person or persons, whether as owner, agent, or occupant, who creates, aids in creating, or contributes to a nuisance, or who supports, continues, or retains a nuisance, is responsible for the nuisance and is therefore a responsible person pursuant to this chapter. Every successive owner or tenant of a property or premises who fails to abate a continuing nuisance upon or in the use of such property or premises caused by a former owner or tenant is responsible therefor in the same manner as the one who first created it.

(Ord. 09-7, 10-27-2009, eff. 11-2-2009; amd. Ord. 19-5, 9-10-2019)

4-2B-3: AFFECTED PARTY ACTION:

An action may be brought by any person whose property is injuriously affected, or whose personal enjoyment is lessened by the nuisance.

(Ord. 09-7, 10-27-2009, eff. 11-2-2009; amd. Ord. 19-5, 9-10-2019)

4-2B-4: ENFORCEMENT OFFICER:

This chapter shall be administered and enforced by the enforcement officer, law enforcement, fire marshal or other authorized city staff assigned. In case of nuisances involving dangerous buildings, this chapter shall may be administered and enforced by the building inspector, fire marshal or other authorized city staff, ~~that the building inspector assigns.~~

(Ord. 09-7, 10-27-2009, eff. 11-2-2009; amd. Ord. 19-5, 9-10-2019)

4-2B-5: FINDING OF NUISANCE:

If the enforcement officer finds that a nuisance exists, the officer shall attempt to have the responsible person abate the nuisance. Although the officer's first step in correcting or abating the nuisance will always be to obtain voluntary compliance, the officer may pursue any remedy or combination of remedies available pursuant to this chapter, state law, or common law in order to abate the nuisance. Nothing in this section shall be interpreted to prohibit the city from engaging in its standard prosecution practices. Therefore, the city may prosecute violators of city ordinances or state laws without first having to comply with the provisions of this chapter, even though the activity or conduct prosecuted may also constitute a nuisance under this chapter.

Nothing in this chapter shall be interpreted to prevent the city from enforcing applicable city ordinances, building codes, or the abatement of dangerous buildings code without first treating the offending conduct, situation, or activity as a nuisance pursuant to this chapter.

A. Finding Of Nuisance Form: The officer shall fill out the finding of nuisance form and shall clearly site what portion of the code has been violated. Photos, citizen accounts, and other evidence of the nuisance ~~should~~ may be collected to document the nuisance. Citizen accounts can be anonymous. The form ~~shall~~ may also state a time frame for abatement of the nuisance, penalties for noncompliance, and the availability of a voluntary correction agreement as set forth in section 4-2B-6 of this article.

Before taking other steps to abate the nuisance, the enforcement officer ~~should~~ may make a reasonable attempt to secure voluntary correction or abatement of the nuisance by contacting the responsible person, where possible; explaining the nuisance; requesting the responsible person to abate the nuisance; and agreeing to terms with the responsible person to abate the nuisance. (Ord. 09-7, 10-27-2009, eff. 11-2-2009; amd. Ord. 19-5, 9-10-2019)

#### 4-2B-6: VOLUNTARY CORRECTION AGREEMENT:

A. Enter Into Agreement: If the enforcement officer and the responsible person agree to terms for abating the nuisance, they may enter into a voluntary correction agreement. The voluntary correction agreement is a contract between the city and the responsible person in which the responsible person agrees to abate the nuisance within a specified time and according to specified conditions. The voluntary correction agreement ~~shall~~ may include the following terms:

1. The name and address of the responsible person;
2. The street address of the nuisance, or a description sufficient to identify the building, structure, premises, or land upon or within which the nuisance is occurring;
3. A description of the nuisance;
4. The necessary corrective action to be taken, and a date by which correction must be completed;
5. An agreement by the responsible person that the city enforcement officer may inspect the premises as may be necessary to determine compliance with the voluntary correction agreement;
6. An agreement by the responsible person that the city may abate the nuisance and recover its costs and expenses to abate the nuisance, as well as a monetary fine pursuant to this chapter from the responsible person, if terms of the voluntary correction agreement are not met;
7. An agreement by the responsible person acknowledging that he/she waives the right to appeal the enforcement officer's finding that a nuisance exists and waives the right to appeal the specific corrective action required in the voluntary correction agreement; and
8. An agreement by the responsible person that failure to comply with the voluntary correction agreement may be grounds for criminal prosecution.

B. Extension: The enforcement officer may grant an extension of the time limit for correcting or abating the nuisance if the responsible person has shown due diligence and/or substantial progress in correcting or abating the nuisance but unforeseen circumstances render abatement under the original conditions unattainable. If the responsible person complies with the terms of the voluntary correction agreement, the city shall take no further action against the responsible person related to the nuisance described in the voluntary correction agreement unless the nuisance recurs.

C. Failure To Abide: Failure to abide by the agreement and/or abate the nuisance within the time frame stated on the finding of nuisance form or the voluntary correction agreement ~~can~~ may result in further action being taken, as outlined in this section.

(Ord. 09-7, 10-27-2009, eff. 11-2-2009; amd. Ord. 19-5, 9-10-2019)

**4-2B-7: NO AGREEMENT:**

If the enforcement officer and the responsible person cannot agree to terms for correcting or abating the nuisance, the officer may still abate the nuisance using one or more of the procedures set forth in this chapter, state law, or common law.

(Ord. 09-7, 10-27-2009, eff. 11-2-2009; amd. Ord. 19-5, 9-10-2019)

**4-2B-8: ADMINISTRATIVE CITATION:**

When the enforcement officer determines that a nuisance exists, and is unable to secure voluntary correction pursuant to this article, the officer may issue an administrative citation to the responsible person. The officer may issue an administrative citation without having attempted to secure voluntary correction if it is found that an emergency exists or when the officer is unable to locate or determine the identity of the responsible person or owner of record.

A. Administrative Citation Form: The administrative citation ~~shall~~ may include the following:

1. The name and address of the responsible person; and
2. The street address of the nuisance or a description sufficient for identifying the building, structure, premises, or land upon or within which the nuisance is occurring; and
3. A description of the nuisance; and
4. The required corrective action; and
5. A required completion date and a notice that the city may abate the nuisance and charge the responsible person for all abatement costs if the responsible person does not correct the nuisance before the completion date; and
6. The time for appealing the administrative citation to the hearing officer and the procedure for filing an appeal.
7. A statement indicating that no monetary fine will be assessed if the enforcement officer approves the completed, required corrective action prior to the required completion date; and
8. A statement that the city may abate the nuisance and assess costs and expenses of abatement and a monetary fine against the responsible person if the correction is not completed by the responsible person and approved by the enforcement officer before the required completion date.

B. Service Of Administrative Citation: The enforcement officer shall serve the administrative citation upon the responsible person, either personally or by mailing, certified with a return receipt requested, a copy of the administrative citation to the responsible person at his/her last known address. If the responsible person cannot, after due diligence, be personally served within Utah County and if an address for mailed service cannot after due diligence be ascertained, notice shall be served by posting a copy of the administrative citation conspicuously on the affected property or structure. Proof of service shall be made by a written declaration under penalty of perjury executed by the person effecting the service, declaring the time and date of service, the manner by which the service was made, and if by posting, the facts showing that due diligence was used in attempting to serve the person personally or by mail.

C. No Extension: No extension of the time specified in the administrative citation for correction of the nuisance may be granted, except by order of the hearing officer.

(Ord. 09-7, 10-27-2009, eff. 11-2-2009; amd. Ord. 19-5, 9-10-2019)

**4-2B-9: ABATEMENT BY THE CITY:**

The city may abate a nuisance when the terms of a voluntary correction agreement have not been met, or the requirements of an administrative citation have not been complied with, or, if the administrative citation is appealed to a hearing officer and the terms of the administrative citation

are amended by the hearing officer, the terms of the hearing officer's order have not been complied with. Whenever a nuisance is occurring which constitutes an immediate and emergent threat to the public health, safety, or welfare or to the environment, the city may summarily and without prior notice abate the condition. Notice of such abatement, including the reason for it, shall be given to the responsible person as soon as reasonably possible after the abatement.

A. City Removal Of Nuisance: Using any lawful means, the city may enter upon the subject property and may remove or correct the condition which is subject to abatement. The city may seek, but is not required to seek, such judicial process as it deems necessary to effect the removal or correction of such condition.

B. Property Confiscation: During an abatement proceeding, any personal property constituting a nuisance, as defined by this chapter, may be confiscated as part of the abatement process. Any property that has been confiscated by the city as part of an abatement will be held pending the resolution of the nuisance. The owner of the abated property may recover the property upon showing that the nuisance has been corrected or that substantial efforts, as determined by the enforcement officer, have been made to correct the nuisance. The property owner shall pay the cost of storage of the property. If, after ninety (90) days of the property being confiscated, the property owner fails to claim the confiscated property, the city shall notice the responsible person noting the item(s) to be disposed. The city may dispose of the property, to include sale at auction, etc., and seek to collect the cost of storage from the property owner and any other remedies as provided by law.

C. Abatement Costs: The costs, including incidental expenses, of correcting or abating the violation shall be billed to the responsible person and/or the owner, lessor, tenant or other person entitled to control, use and/or occupy the property and shall become due and payable to the city within ten (10) days of actual receipt of the bill (within 15 days of the mailing date if the bill is mailed). The term incidental expenses include, but are not limited to:

1. Personnel costs, both direct and indirect, including attorney fees and costs;
2. Costs and fees incurred in documenting the violation;
3. Hauling, storage and disposal expenses;
4. Actual expenses and costs for the city in preparing notices, specifications and contracts, and in accomplishing and/or contracting and inspecting the work; and
5. The costs of any required printing and mailing.

D. Monetary Fine: The responsible person shall pay the city a monetary fine for each day the nuisance continues after the required completion date listed on an administrative citation. The nuisance shall be considered to continue until the enforcement officer approves the responsible person's actions to correct or abate the nuisance. The amount of the monetary fine shall be adopted by resolution of the city council and be listed on the city fee schedule. The fine will be charged for each day that the nuisance remains uncorrected or unabated after the required completion date.

E. Monetary Fine Cumulative: The monetary fine shall be cumulative and may not be waived by the enforcement officer. Payment of a monetary fine pursuant to this section does not relieve the responsible person from the duty to abate the nuisance as required by the voluntary consent agreement or the administrative citation. The monetary fine constitutes a personal obligation of the responsible person. Any monetary fine assessed must be paid to the city within ten (10) days of actual receipt of the bill (within 15 days of the mailing date if the bill is mailed).

F. Payment Of Fines: The city attorney or designee authorized city staff is authorized to take appropriate action to negotiate the amount of the monetary fine, collect the monetary fine,

determine the time period in which the fine shall be paid and take any other action necessary to resolve the fine. In determining the time period in which to pay, the city attorney or designee may take into consideration the number of days between the required completion date and the actual completion date, enforcement officer input, the responsible person's cooperation, etc. The city may also seek to collect reasonable attorney fees and costs incurred in collecting the monetary fine where allowed by law.

G. Civil Action: Either the city or any private person directly affected by a nuisance may bring a civil action to abate or enjoin the nuisance, or for damages for causing or maintaining the nuisance (including the cost, if any, of cleaning the subject property). The civil action may be brought pursuant to this chapter or pursuant to state law.

H. Criminal Action: Criminal actions may be initiated by criminal citation from the enforcement officer or by long form information. Any person who maintains or assists in maintaining a nuisance is guilty of a class C misdemeanor. No person shall be prosecuted under this subsection unless the enforcement officer first attempted to obtain voluntary correction. If the alleged nuisance is also a violation of a provision of this code (other than this nuisance chapter) or state law, the responsible person may be charged under the specific provision of this code or state law, even if the enforcement officer did not first attempt to obtain voluntary correction. Any person who knowingly obstructs, impedes, or interferes with the city or its agents, or with the responsible person, in the performance of duties imposed by this chapter, or a decision and order issued by the hearing officer, or a voluntary correction agreement, is guilty of a class B misdemeanor.

I. Abatement By Eviction: Whenever there is reason to believe that a nuisance is kept, maintained, or exists in the city, the city attorney or any citizen(s) residing in the city, or any person or entity doing business in the city, in his or their own names, may maintain an action in a court of competent jurisdiction to abate the nuisance and obtain an order for the automatic eviction of the tenant of the property harboring the nuisance. The eviction shall take place as specified in Utah law.

J. Nonexclusive Remedies: The city may take any or all of the above mentioned remedies (administrative, civil, or criminal) to abate a nuisance and/or to punish any person or entity that creates, causes or allows a nuisance to exist. The abatement of a nuisance does not prejudice the right of the city or any person to recover damages or penalties for its past existence.

K. Collection Through Taxes: In the event that the enforcement officer or other city staff that is assigned elects to refer the expenses of destruction or removal to the county treasurer for inclusion in ~~the~~ the tax notice of the property owner, they shall make ~~in triplicate~~ an itemized statement of all expenses incurred in the destruction and removal of the same, and shall deliver ~~three (3)~~ the required copies of the statement to the county treasurer within ten (10) days after the completion of the work ~~to abate, of destroying or removing such weeds, refuse, garbage, objects or structures~~. Thereupon, the costs of the work shall be pursued by the county treasurer in accordance with the provisions of section 10-11-4, Utah Code Annotated, as amended, and the recalcitrant owner shall have such rights and shall be subject to such powers as are thereby granted.

(Ord. 09-7, 10-27-2009, eff. 11-2-2009; amd. Ord. 19-5, 9-10-2019)

4-2B-10: HABITUAL NUISANCE:

"Habitual nuisance" means any premises or property located within the city that generates repeated responses from law enforcement officials or the enforcement officer because of nuisance related activities. Any premises or property that generates two (2) or more voluntary

correction agreements or administrative citations for drug or party house nuisance related activities or three (3) or more voluntary correction agreements or administrative citations for other nuisances, within an eighteen (18) month time period, shall be deemed a habitual nuisance. Any property determined to be a habitual nuisance shall be subject to a fine adopted by resolution by the city council listed in the city fee schedule. The fine will be additional to any fine issued as part of an administrative citation. A building or premises may not be declared a habitual nuisance nor may any fine be collected unless notice to the responsible person has been given. Notice that a property may be declared a habitual nuisance shall be stated on the face of an administrative citation or through some other documentation delivered to the responsible person. The notice shall state that future responses to the property may result in the property being declared a habitual nuisance, subject to a fine.

(Ord. 09-7, 10-27-2009, eff. 11-2-2009; amd. Ord. 19-5, 9-10-2019)

#### 4-2B-11: APPEALS:

A. Issues Appealed: Any person receiving an administrative citation may appeal the administrative citation to the hearing officer. Only the following issues may be appealed to the hearing officer:

1. The person charged in the administrative citation as the responsible person, is not the responsible person as defined by this article.
2. The condition described as a nuisance in the administrative citation is not a nuisance as defined by this chapter.
3. The method required by the administrative citation to abate the nuisance is inappropriate or is not the most cost effective method of effectively correcting or abating the nuisance.
4. The time period given to abate the nuisance in the administrative citation is unreasonable.
5. The enforcement officer refused to approve a corrective action that met the requirements of the administrative citation.
6. The responsible person claims that the requirement(s) of the administrative citation violates his/her constitutional rights.

B. Filing: A person desiring to appeal an administrative citation must file a notice of appeal at the city within ten (10) days of being served with the administrative citation or within fifteen (15) days of the mailing date if the administrative citation is mailed. A person who has made corrective action in response to an administrative citation, which corrective action the enforcement officer refused to approve, may appeal within ten (10) days from the completion date. The notice of appeal shall clearly and concisely set forth all the reasons for the appeal. The hearing officer shall examine the notice of appeal to determine whether a valid appeal has been stated. If the appellant has not stated a valid cause for appeal, or if the appellant has failed to show by a preponderance of the evidence, that he/she has an appealable issue, the appeal shall be denied and no hearing shall be held. If the appellant has not shown due diligence and/or substantial progress in correcting the nuisance or has made no attempt to correct the nuisance, the filing of an appeal will not stop the accrual of the fines. If the appellant has filed an appeal, the filing of such appeal will not prevent law enforcement officers from responding to the property on reports of new nuisance violations.

C. Hearing: The hearing before the hearing officer shall be informal according to rules and procedures established by the hearing officer. The hearing officer shall be appointed by the city and is the same officer that handles adjustments of land use decisions made by the city council. The appellant may, but is not required to, bring an attorney or other representative to assist him or her. The appellant and the enforcement officer may each call witnesses at the hearing. The

hearing officer may, with or without the parties present, visit the site of the alleged nuisance. If the hearing officer allows the parties at the site visit, both parties must be given the opportunity to be present. The hearing officer shall schedule the hearing within thirty (30) days of when the notice of appeal is filed with the city. The city attorney, or his designee, shall be present for the hearing and act as legal adviser for the hearing officer.

D. Burden Of Proof: In appellant's notice of appeal, the appellant shall have the initial burden of proof to demonstrate by a preponderance of the evidence that he/she has stated legitimate grounds for an appeal as listed in subsection A of this section. If the appellant has timely filed his/her appeal and a hearing has been scheduled, the burden then shifts to the city to show by a preponderance of the evidence that a nuisance does exist. The determination of the enforcement officer as to the need for the required corrective action shall be accorded substantial weight by the hearing officer in determining the reasonableness of the corrective action.

E. Authority Of Hearing Officer: The hearing officer shall have authority to affirm or vacate the administrative citation, or to modify or waive specific provisions of the administrative citation. If the appellant fails to attend the hearing, the hearing officer shall affirm the administrative citation. The hearing officer shall not vacate the administrative citation unless he/she finds that no nuisance exists. The hearing officer shall modify the administrative citation if he/she finds that a nuisance exists, but that one or more of the requirements of the administrative citation are improper or inappropriate. A requirement is improper if it is contrary to this chapter. A requirement is inappropriate if the hearing officer finds that there is a better means of resolving the problem or that the proposed solution is inappropriate given the nature or severity of the problem. When determining whether to waive or modify a requirement of the administrative citation, the hearing officer may also consider:

1. Whether the appellant responded to the enforcement officer's attempts to contact the appellant and cooperated with efforts to correct the nuisance;
2. Whether the appellant has shown due diligence and/or substantial progress in correcting the nuisance;
3. The financial ability of the appellant and the amount, if any, that the appellant has benefited financially by maintaining the nuisance.
4. Any other relevant factors. If the appellant appeals the enforcement officer's refusal to approve appellant's corrective action, the hearing officer shall visit the site and determine if the appellant complied with the requirements of the administrative citation.

F. Order: The hearing officer shall issue a written order to the appellant and the city notifying them of his/her decision. The order shall include the hearing officer's findings of fact and ultimate decision. If the hearing officer modifies or waives provisions of the administrative citation, the order shall specify which portions are modified and how they are modified. The hearing officer shall mail a copy of the order to the appellant and the city within five (5) working days of the close of the hearing.

G. Appeal To District Court: Either the city or the appellant may appeal the hearing officer's order by filing a petition for review of the order. The petition must be filed in the fourth district court within thirty (30) calendar days from the date the hearing officer's order was mailed to the appellant. In the petition, the plaintiff may only allege that the hearing officer's order was arbitrary, capricious, or illegal. The hearing officer shall transmit to the reviewing court the record of its proceedings, including any minutes, findings, orders and, if available, a true and correct transcript of its proceedings. If, in the opinion of the court, there is a sufficient record to review the hearing officer's order, the court's review is limited to the record provided by the



hearing officer. The court may not accept or consider any evidence outside of the hearing officer's record unless the evidence was offered to the hearing officer and the court determines that it was improperly excluded by the hearing officer. If, in the opinion of the court, there is not a sufficient record to review the hearing officer's order, the court may call witnesses and take evidence. No petition or appeal may be filed in court unless the responsible person first appeals to the hearing officer pursuant to the terms set forth in this article.  
(Ord. 09-7, 10-27-2009, eff. 11-2-2009; amd. Ord. 19-5, 9-10-2019)

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