

ORDINANCE NO. 19-0

AN ORDINANCE AMENDING THE CITY OF ELK RIDGE CITY CODE 1-3-2 GENERAL DEFINITIONS AND 4-2A-1 NUISANCES DEFINED **REGARDING WEED CONTROL** CODIFICATION, INCLUSION IN THE CODE, CORRECTION OF SCRIVENER'S ERRORS, SEVERABILITY, AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Elk Ridge has adopted the Elk Ridge City Code Title 1, Chapter 3 Section 2 Definitions, General, and Title 4, Chapter 2A Section 3 Specific Nuisances Article A and B setting forth the requirement for weed control and enforcement.

WHEREAS, the City of Elk Ridge desires to amend Section 1-3-2, General Definitions and 4-2A-1 Article A and B Specific Nuisances and

WHEREAS, the Elk Ridge City Council held a public meeting on September 10, 2019 at 6:00 pm, for the purpose of the proposed amendment to Title 1, Chapter 3 Section 2 General Definitions and Title 4, Chapter 2A Section 3 Specific Nuisances Article A and B 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, Strikethrough text is deleted text)

1-3-2: DEFINITIONS, GENERAL:

Whenever the following words or terms are used in this code, they shall have such meanings herein ascribed to them, unless the context makes such meaning repugnant thereto:

AGENT: A person acting on behalf of another with authority conferred, either expressly or by implication.

BUSINESS: Includes any trade, profession, calling, activity, operation or enterprise for which a license or permit is required by any ordinance of the city.

CITY: The city of Elk Ridge City, Utah County, Utah.

CITY COUNCIL: Unless otherwise indicated, the city council of the city of Elk Ridge City, Utah.

CITY RECORDER: The individual appointed to act as the city recorder of the city.

CODE: The city code of Elk Ridge City, Utah.

COUNTY: Utah County, Utah.

EMPLOYEES: Whenever reference is made in this code to a city employee by title only, this shall be construed as though followed by the words "of Elk Ridge City".

FEE: A sum of money charged by the city for the carrying on of a business, profession or occupation, or fees charged for services.

GENDER: A word importing either the masculine or feminine gender only shall extend and be applied to the other gender and to persons.

HIGHWAY; ROAD: Includes public bridges, and may be equivalent to the words "county way", "county road", "common road" and "state road".

INDIVIDUAL: A human being.

LICENSE: The permission granted for the carrying on of a business, profession or occupation. The term "license" includes any certificate, permit or license issued by the city.

NUISANCE: Anything offensive to the sensibilities of reasonable persons, or any act or activity creating a hazard which threatens the health and welfare of inhabitants of the city, or any activity which by its perpetuation can reasonably be said to have a detrimental effect on the property of a person or persons within the community.

OCCUPANT OR TENANT: As applied to a building or land, shall include any person who occupies the whole or any part of such building or land whether alone or with others.

OFFENSE: Any act forbidden by any provision of this code or the omission of any act required by the provisions of this code.

OFFICERS OR OFFICIALS: Any elected or appointed person employed by the city, unless the context clearly indicates otherwise. Whenever reference is made in this code to a city officer or official by title only, this shall be construed as though followed by the words "of Elk Ridge City".

OPERATOR: The person who is in charge of any operation, business or profession.

OWNER: As applied to a building or land, shall include any part owner, joint owner, tenant in common, joint tenant or lessee of the whole or of a part of such building or land.

PERSON: Any public or private corporation, firm, partnership, association, organization, government or any other group acting as a unit, as well as an individual person.

PERSONAL PROPERTY: Shall include 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.

PROPERTY: Includes both real and personal property.

REASONABLE TIME: In all cases where any ordinance requires that an act be done in a reasonable time or that reasonable notice be given, such reasonable time for such notice shall be deemed to mean such time as may be necessary for the expeditious performance of such duty or compliance with such notice.

RETAILER: Unless otherwise specifically defined, shall be understood to relate to the sale of goods, merchandise, articles or things direct to the consumer.

RIGHT OF WAY: The privilege of the immediate use of the roadway or other property.

STATE: The state of Utah.

STREET: Includes alleys, lanes, courts, boulevards, public ways, public squares, public places, sidewalks, gutters and culverts, crosswalks and intersections.

STRUCTURE: Anything constructed or erected with a fixed location on the ground. Among other things, structures include buildings, mobile homes ('manufactured homes'), walls fences, billboards, and poster panels.

TENANT OR OCCUPANT: As applied to a building or land, shall include any person who occupies the whole or any part of such building or land, whether alone or with others.

TIME COMPUTED: The time within which an act is to be done as provided in any ordinance or in any resolution or order of the city, when expressed in days, shall be determined by excluding the first day and including the last day, except if the last day be a Sunday or a legal holiday, then the last day shall be the day next following such Sunday or legal holiday which is not a Sunday or legal holiday. When time is expressed in hours, Sunday and all legal holidays shall be excluded.

VACANT LAND OR VACANT LOT: Land that is unoccupied and unused, and /or has no buildings on it.

WEEK: Shall be construed to mean any seven (7) day period.

WHOLESALE: The terms "wholesaler" and "wholesale dealer", as used in this code, unless otherwise specifically defined, shall be understood to relate to the sale of goods, merchandise, articles or things to persons who purchase for the purpose of resale.

WRITTEN, IN WRITING: May include printing and any other mode of representing words and letters, but when the written signature of any person is required by law to any official or public writing or bond, it shall be in the proper handwriting of such person, or in case such person is unable to write, by such person's proper mark. (2003 Code)

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.
- 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.
- G. City Code Nuisances: Any violation of a section of this code 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.

- J. Debris 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 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.
- P. Gangs: Every building or premises wherein criminal activity is committed in concert with two (2) or more persons.
- 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.

- 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. Landscaping; Parking: Parking in an area required to be landscaped by city ordinance. Also, parking in a yard area that previously was a landscaped area, but has not been converted to a parking area with the use of concrete, asphalt, or gravel.
- 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 10-12-36-G of this code. 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. 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. 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.

~~Noxious weeds located on vacant lots or other property, along public sidewalks or the outer edge of any public street, or weeds in any other location which constitute a fire hazard. Front yards with overgrown weeds. Weeds over four inches (4") tall in areas thirty feet (30') from the side or rear of a structure. Weeds over four inches (4") tall in areas ten feet (10') from a road. Weeds in areas where earth has been disturbed for construction or other activities over twelve inches (12") tall. Noxious weeds must be controlled in areas designated for revegetation. (Ord. 09-7, 10-27-2009, eff. 11-2-2009)~~

- 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: Parking or storage of multiple trailers, boats, all-terrain vehicles, or recreational vehicles between the front or side of a residence and a street is prohibited - storage of these items in the interior side and rear yards is permitted. A total of one of the aforementioned vehicles can be parked or stored in the front or side yard areas adjacent to a street provided that the vehicle is located in an area improved for parking (gravel, asphalt, or cement). Parking or storage of these vehicles within the street public right of way is prohibited. A reasonable amount of time, generally up to two (2) weeks, to load/unload, clean, or repair these vehicles between the front or side of a residence and the street shall not be considered a nuisance. (Ord. 10-6, 2-23-2010, eff. 2-26-2010)
- 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.
- 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. (Ord. 09-7, 10-27-2009, eff. 11-2-2009)

- KK. Storage Of Materials; General: The keeping, storing, depositing, accumulating, or maintenance of dirt, sand, gravel, concrete, or other similar materials on a lot, in the public right of way, on a street, or on a vacant lot or parcel for an unreasonable period of time, generally over one week. (Ord. 10-6, 2-23-2010, eff. 2-26-2010)
- 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.
- QQ. Weapons: Every building or premises where illegal weapons occur on the premises. (Ord. 09-7, 10-27-2009, eff. 11-2-2009)

4-2A-4: EXCEPTIONS:

No act which is done or maintained under the express authority of an authoritative statute, ordinance, or court ruling shall be declared a nuisance. (Ord. 09-7, 10-27-2009, eff. 11-2-2009)

ARTICLE B. NUISANCE PROCESS

4-2B-1: ABATE DEFINED:

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

4-2B-3: AFFECTED PARTY ACTION:

4-2B-4: ENFORCEMENT OFFICER:

4-2B-5: FINDING OF NUISANCE:

4-2B-6: VOLUNTARY CORRECTION AGREEMENT:

4-2B-7: NO AGREEMENT:

4-2B-8: ADMINISTRATIVE CITATION:

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

4-2B-10: HABITUAL NUISANCE:

4-2B-11: APPEALS:

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)

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)

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)

4-2B-4: ENFORCEMENT OFFICER:

This chapter shall be administered and enforced by the zoning enforcement officer or other city staff. ~~that the zoning enforcement officer assigns assigned.~~ In case of nuisances involving dangerous buildings, this chapter shall be administered and enforced by the building inspector or other city staff that the building inspector assigns. (Ord. 09-7, 10-27-2009, eff. 11-2-2009)

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 be collected to document the nuisance. Citizen accounts can be anonymous. The form shall 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 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)

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 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 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 result in further action being taken, as outlined in this section. (Ord. 09-7, 10-27-2009, eff. 11-2-2009)

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)

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 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)

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 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 changed 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 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. (Ord. 09-7, 10-27-2009, eff. 11-2-2009)
- 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 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) copies of the statement to the County Treasurer within ten (10) days after the completion of the work 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.

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)

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)

Passed and duly adopted this 8th day of January, 2019.

TY ELLIS, MAYOR

Councilmember Nelson Abbott	Voted ____
Councilmember Tricia Thomas	Voted ____
Councilmember Paul Crook	Voted ____
Councilmember Jared Peterson	Voted ____
Councilmember Jim Chase	Voted ____

ATTEST:

Royce Swensen
Elk Ridge City Recorder

STATE OF UTAH)

) ss.

COUNTY OF UTAH)

I, ROYCE SWENSEN, City Recorder of the City of Elk Ridge, Utah, do hereby certify and declare that the above and foregoing is a true, full, and correct copy of

Ordinance # 19-5, passed by the City Council of the City of Elk Ridge, Utah, on the
10TH day of September, 2019, entitled

"AN ORDINANCE AMENDING THE CITY OF ELK RIDGE RIDGE 1-3-2 DEFINITIONS, GENERAL AND 4-2A-1 SPECIFIC NUISANCES ARTICLES A AND B CODIFICATION, INCLUSION IN THE CODE, CORRECTION OF SCRIVENER'S ERRORS, SEVERABILITY, AND PROVIDING AN EFFECTIVE DATE."

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Corporate Seal of Elk Ridge City Utah this 10TH day of September, 2019.

ROYCE SWENSEN
Elk Ridge City Recorder

[illegible]

The three places are as follows:

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

The foregoing instrument was acknowledged before me this _____ day of September, 2019,
by ROYCE SWENSEN.

Notary Public

Residing at: Utah County

1-3-2: DEFINITIONS, GENERAL:



Whenever the following words or terms are used in this code, they shall have such meanings herein ascribed to them, unless the context makes such meaning repugnant thereto:

AGENT: A person acting on behalf of another with authority conferred, either expressly or by implication.

BUSINESS: Includes any trade, profession, calling, activity, operation or enterprise for which a license or permit is required by any ordinance of the city.

CITY: The city of Elk Ridge City, Utah County, Utah.

CITY COUNCIL: Unless otherwise indicated, the city council of the city of Elk Ridge City, Utah.

CITY RECORDER: The individual appointed to act as the city recorder of the city.

CODE: The city code of Elk Ridge City, Utah.

COUNTY: Utah County, Utah.

EMPLOYEES: Whenever reference is made in this code to a city employee by title only, this shall be construed as though followed by the words "of Elk Ridge City".

FEE: A sum of money charged by the city for the carrying on of a business, profession or occupation, or fees charged for services.

GENDER: A word importing either the masculine or feminine gender only shall extend and be applied to the other gender and to persons.

HIGHWAY; ROAD: Includes public bridges, and may be equivalent to the words "county way", "county road", "common road" and "state road".

INDIVIDUAL: A human being.

LICENSE: The permission granted for the carrying on of a business, profession or occupation. The term "license" includes any certificate, permit or license issued by the city.

NUISANCE: Anything offensive to the sensibilities of reasonable persons, or any act or activity creating a hazard which threatens the health and welfare of inhabitants of the city, or any activity which by its perpetuation can reasonably be said to have a detrimental effect on the property of a person or persons within the community.

OCCUPANT OR TENANT: As applied to a building or land, shall include any person who occupies the whole or any part of such building or land whether alone or with others.

OFFENSE: Any act forbidden by any provision of this code or the omission of any act required by the provisions of this code.

OFFICERS OR OFFICIALS: Any elected or appointed person employed by the city, unless the context clearly indicates otherwise. Whenever reference is made in this code to a city officer or official by title only, this shall be construed as though followed by the words "of Elk

Ridge City".

OPERATOR: The person who is in charge of any operation, business or profession.

OWNER: As applied to a building or land, shall include any part owner, joint owner, tenant in common, joint tenant or lessee of the whole or of a part of such building or land.

PERSON: Any public or private corporation, firm, partnership, association, organization, government or any other group acting as a unit, as well as an individual person.

PERSONAL PROPERTY: Shall include 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.

PROPERTY: Includes both real and personal property.

REASONABLE TIME: In all cases where any ordinance requires that an act be done in a reasonable time or that reasonable notice be given, such reasonable time for such notice shall be deemed to mean such time as may be necessary for the expeditious performance of such duty or compliance with such notice.

RETAILER: Unless otherwise specifically defined, shall be understood to relate to the sale of goods, merchandise, articles or things direct to the consumer.

RIGHT OF WAY: The privilege of the immediate use of the roadway or other property.

STATE: The state of Utah.

STREET: Includes alleys, lanes, courts, boulevards, public ways, public squares, public places, sidewalks, gutters and culverts, crosswalks and intersections.

STRUCTURE: Anything constructed or erected with a fixed location on the ground. Among other things, structures include buildings, mobile homes ('manufactured homes'), walls fences, billboards, and poster panels.

TENANT OR OCCUPANT: As applied to a building or land, shall include any person who occupies the whole or any part of such building or land, whether alone or with others.

TIME COMPUTED: The time within which an act is to be done as provided in any ordinance or in any resolution or order of the city, when expressed in days, shall be determined by excluding the first day and including the last day, except if the last day be a Sunday or a legal holiday, then the last day shall be the day next following such Sunday or legal holiday which is not a Sunday or legal holiday. When time is expressed in hours, Sunday and all legal holidays shall be excluded.

VACANT LAND OR VACANT LOT: Land that is unoccupied and unused, and /or has no buildings on it.

WEEK: Shall be construed to mean any seven (7) day period.

WHOLESALE: The terms "wholesaler" and "wholesale dealer", as used in this code, unless otherwise specifically defined, shall be understood to relate to the sale of goods,

merchandise, articles or things to persons who purchase for the purpose of resale.

WRITTEN, IN WRITING: May include printing and any other mode of representing words and letters, but when the written signature of any person is required by law to any official or public writing or bond, it shall be in the proper handwriting of such person, or in case such person is unable to write, by such person's proper mark. (2003 Code)

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.
- 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.

- G. City Code Nuisances: Any violation of a section of this code 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.
- J. Debris 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 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.
- P. Gangs: Every building or premises wherein criminal activity is committed in concert with two (2) or more persons.
- 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.
- 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. Landscaping; Parking: Parking in an area required to be landscaped by city ordinance. Also, parking in a yard area that previously was a landscaped area, but has not been converted to a parking area with the use of concrete, asphalt, or gravel.
- 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. 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 10-12-36-G of this code. 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. 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. 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: Parking or storage of multiple trailers, boats, all-terrain vehicles, or recreational vehicles between the front or side of a residence and a street is prohibited - storage of these items in the interior side and rear yards is permitted. A total of one of the aforementioned vehicles can be parked or stored in the front or side yard areas adjacent to a street provided that the vehicle is located in an area improved for parking (gravel, asphalt, or cement). Parking or storage of these vehicles within the street public right of way is prohibited. A reasonable amount of time, generally up to two (2) weeks, to load/unload, clean, or repair these vehicles between the front or side of a residence and the street shall not be considered a nuisance. (Ord. 10-6, 2-23-2010, eff. 2-26-2010)
- 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.

- 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. (Ord. 09-7, 10-27-2009, eff. 11-2-2009)
- KK. Storage Of Materials; General: The keeping, storing, depositing, accumulating, or maintenance of dirt, sand, gravel, concrete, or other similar materials on a lot, in the public right of way, on a street, or on a vacant lot or parcel for an unreasonable period of time, generally over one week. (Ord. 10-6, 2-23-2010, eff. 2-26-2010)
- 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.
- QQ. Weapons: Every building or premises where illegal weapons occur on the premises. (Ord. 09-7, 10-27-2009, eff. 11-2-2009)

4-2A-4: EXCEPTIONS:

No act which is done or maintained under the express authority of an authoritative statute, ordinance, or court ruling shall be declared a nuisance. (Ord. 09-7, 10-27-2009, eff. 11-2-2009)

ARTICLE B. NUISANCE PROCESS

4-2B-1: ABATE DEFINED:

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

4-2B-3: AFFECTED PARTY ACTION:

4-2B-4: ENFORCEMENT OFFICER:

4-2B-5: FINDING OF NUISANCE:

4-2B-6: VOLUNTARY CORRECTION AGREEMENT:

4-2B-7: NO AGREEMENT:

4-2B-8: ADMINISTRATIVE CITATION:

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

4-2B-10: HABITUAL NUISANCE:

4-2B-11: APPEALS:

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)

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)

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)

4-2B-4: ENFORCEMENT OFFICER:

This chapter shall be administered and enforced by the enforcement officer or other city staff. In case of nuisances involving dangerous buildings, this chapter shall be administered and enforced by the building inspector or other city staff that the building inspector assigns. (Ord. 09-7, 10-27-2009, eff. 11-2-2009)

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 be collected to document the nuisance. Citizen accounts can be anonymous. The form shall 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 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)

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 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 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 result in further action being taken, as outlined in this section. (Ord. 09-7, 10-27-2009, eff. 11-2-2009)

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)

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 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)

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 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 changed 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 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. (Ord. 09-7, 10-27-2009, eff. 11-2-2009)
- 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 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) copies of the statement to the County Treasurer within ten (10) days after the completion of the work 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.

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)

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)