

Chapter 1
NUISANCE ENFORCEMENT

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7-1-1: PURPOSE

The purpose of this ordinance is to provide a means for the Town and individuals to identify nuisances within the Town and to provide a means for correcting or abating the nuisances. The Town needs the ability to abate nuisances in order to protect the health and safety of the public, to foster neighborhood stability, to preserve the appearance, character, and beauty of neighborhoods, to encourage community pride, to preserve the value of property, and to protect the general welfare of the Town and its residents, businesses, and visitors. This ordinance provides for progressive enforcement measures to abate nuisances; the most aggressive forms of enforcement are generally reserved for the most recalcitrant violators of the ordinance.

7-1-2: DEFINITIONS

Abandon: to surrender ones claim to, right to, or interest in.

Abate: to repair, replace, remove, destroy, correct or otherwise remedy a condition which constitutes a nuisance by such means, in such a manner and to such an extent as the Enforcement Officer determines is necessary in the interest of the general health, safety, and welfare of the community.

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Completion Date: the date by which the Responsible Person must abate a nuisance. The Completion Date is originally set by the Enforcement Officer in the Voluntary Correction Agreement or in the administrative citation. The Town Board or Hearing Officer may modify the Completion Date.

City Designated Representative: the person(s) designated to hear appeals pursuant to this ordinance. The City designated representative shall be the mayor or a person appointed by the mayor with the advice and consent of the Town Board. The designee need not be a City Employee.

Dwelling Unit: one (1) or more rooms in a residential building or residential portion of a building that are arranged, designed, used, or intended for use as a complete, independent living facility for a single family and that includes permanent provisions for living, sleeping, eating, cooking and sanitation.”

Emergency: a situation, which, in the opinion of the Enforcement Officer, requires immediate action to prevent or eliminate an immediate threat to the health or safety of a person or property.

Enforcement officer: any person or persons authorized by the Town Board to receive, initiate or investigate complaints that a nuisance or nuisances exist(s), and any person or persons authorized by the Town Board to engage in abatement practices on behalf of the Town.

Family: 1) An individual living alone; or 2) two or more people related by blood, marriage, adoption, and their foster children; or 3) up to four unrelated individuals who live and cook together as a single housekeeping unit; or 4) twenty (20) or fewer unrelated disabled individuals who live together. The definition of family includes nonpaying guests of up to two in number, if the guests live and cook together with the family in a single dwelling unit.

Habitual Nuisance means any premises or property located within the Town that generates repeated responses from law enforcement officials because of nuisance related activities. Excluding calls for drug or party houses, any premises or property that generates three (3) or more calls for nuisance related activities within an eighteen (18) month time period shall be deemed a “habitual nuisance.” Any premises or property that generates two (2) or more calls for nuisance related activities within an eighteen (18) month time period to abate any drug or party conditions as set forth in this chapter shall be deemed a “habitual nuisance.”

Hearing Officer: the person(s) designated to hear appeals pursuant to this ordinance. The Hearing Officer shall be the Town Board or a Town Board designee. The designee need not be a Town employee. However, it may be an endorsed off-duty Police Officer

Illegal Rental: any dwelling unit that is rented to persons constituting more than one family.

Inoperable/Junked motor Vehicles: any motor vehicle, as defined herein, which does not have lawfully affixed unexpired license plate or plates, and a current motor vehicle safety inspection

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certificate; and the condition of the vehicle is wrecked, dismantled, partially dismantled, inoperative, abandoned, or discarded as well as the following:

- a. No person, firm or corporation shall keep, place, store locate, maintain, discard, dispose of or scrap more than two unlicensed and/or inoperative motor vehicles located outside of an enclosed structure upon any property in any zoning district unless it is a permitted use on review as a salvage yard operation.
- b. Operation of a salvage yard, military surplus or vehicle recycling and storage shall conform to all zoning district requirements and be fully surrounded by a view obscuring fence at a height of least six (6) ft and/or at a height equal to the height of the materials stored within.
- c. A vehicle not currently registered or licensed in this state or another state, or a vehicle that is or has any of the following conditions: dismantled, broken windows, flat tires, no tires, missing doors, missing windows, missing fenders, missing hood, missing trunk, will not start, or is in a condition that would result in the vehicle's failure to pass state safety inspection pursuant to the Motor Vehicle Act, Utah Code Ann. 41-1a-101, et seq.

Marshal: the police chief of the municipality or sheriff performing law enforcement functions within the municipality.

Motor Vehicle: Any vehicle which is self propelled and designed to travel along the ground and shall include, but is not limited to automobiles, buses, motor-bikes, motorcycles, motor-scooters, trucks, tractors, go- carts, golf carts, campers and trailers.

Municipality: the Town of Randolph

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

Premises: a plot of ground, whether occupied or not.

Property: a building or structure, or the premises on which the building or structure is located or undeveloped land.

Person: shall mean any person, firm, partnership, association, corporation, company, or organization of any kind.

Private property: shall mean any real property within the municipality which is privately owned and which is not public property as defined in this section.

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

Public Property: shall mean any street or highway which shall include the entire width between the boundary lines of every way publicly maintained for the purposes of vehicular travel, and shall also mean any other publicly owned property or facility.

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

Town or City: the Town of Randolph

Voluntary Correction Agreement: A letter or written note listing the voluntary correction that has been established by the Enforcement Officer and the Responsible Person.

Vehicle: any means of transportation, whether driven, pulled, or pushed and whether transporting persons, goods, or materials as defined in the Motor Vehicle Act, Utah Code Ann. 41-1a-1-1, et seq.

7-1-3: NUISANCE - DEFINITION

This section defines nuisance by providing five general definitions of what constitutes a nuisance (subsection A), and then providing specific examples of situations, conduct or activities that constitute nuisances (subsection B). The purpose of the general definitions is to allow the Town to classify an offending situation, conduct, or activity as a nuisance, even though the situation, conduct, or activity may not be listed as a nuisance in the specific examples. The first three general definitions are taken directly from Utah State law. The purpose of listing the specific examples is to identify some of the specific situations, conduct and activities that the Town intends to abate as nuisances.

A. General Definitions of Nuisance: Any activity that meets any one or more of the five definitions set forth below shall constitute a nuisance if it occurs within the Town of Randolph:

- 1. Nuisance as Defined in Utah Code Annotated:** Anything which is injurious to health, indecent, offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property.

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2. **Nuisance as Defined in Utah Code Annotated:** Any item, thing, manner, or condition whatsoever that it is dangerous to human life or health or renders soil, air, water, or food impure or unwholesome.
3. **Nuisance as Defined in Utah Code Annotated:** Unlawfully doing any act or omitting to perform any duty, which act or omission:
 - a. annoys, injures, or endangers the comfort, repose, health, or safety of three or more persons;
 - b. offends public decency;
 - c. unlawfully interferes with, obstructs, or tends to obstruct, or renders dangerous for passage, any lake, stream, canal, or basin, or any public park, square, street, or highway; or
 - d. in any way renders three or more persons insecure in life or the use of property.

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

4. **Nuisance:** A condition which:
 - a. wrongfully annoys, injures, or endangers the comfort, repose, health or safety of others; or
 - b. unlawfully interferes with, obstructs or tends to obstruct, or render dangerous for passage, any public park, square, street or highway, or any other public place; or
 - c. in any way renders other persons insecure in life, or in the use of property, and which affects the rights of an entire community or neighborhood, although the extent of the damage may be unequal.
5. **Specific Nuisances Listed in Subsection B:** Anything specifically listed as a nuisance in subsection (B), below.

B. Nuisances Enumerated: Every situation, conduct or activity listed below constitutes a nuisance and may be abated pursuant to this ordinance. The listed examples are not exhaustive; a situation, conduct or activity not listed below, but coming within one of the general definitions of nuisance listed above, shall also constitute a nuisance. The first six listed nuisances are also listed as nuisances pursuant to **Utah Code Annotated**.

1. **Accumulation of Junk:** Accumulation of used or damaged lumber; junk; salvage materials; abandoned, discarded or unused furniture; stoves, sinks, toilets, cabinets, or

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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 non-commercial use on the premises.

2. **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.
3. **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, unfinished building or improperly maintained or secured pools.
4. **Banner Signs:** Keeping or allowing banner signs in violation of Town ordinance.
5. **Town Code Nuisances:** Any violation of a Randolph Town Code section that expressly declares a specific situation, conduct, or activity to be a nuisance.
6. **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.
7. **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 Town, in any one or more of the following particulars:
 - a. By reason of being a menace, threat and/or hazard to the general health and safety of the community.
 - b. By reason of being a fire hazard.
 - c. By reason of being unsafe for occupancy, or use on, in, upon, about or around the aforesaid property.
 - d. 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

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- immediate vicinity to such an extent that it is harmful to the community in which such property is situated or such condition exists.
- 8. Dead Animals:** Any Premises that contains any decaying animals, animal parts, or animal matter of any kind.
 - 9. Drug Houses:** Every building or premises where the unlawful sale, manufacture, service, storage, distribution, dispensing, or acquisition of any controlled substance, precursor, or analog specified in the Utah Code (Utah Controlled Substances Act).
 - 10. Dust:** Any Premises which causes excessive dust due to lack of landscaping, non-maintenance or other cause.
 - 11. Family:** Keeping or allowing people at a premise in violation of the Town's single-family residence requirements.
 - 12. Fire Hazard:** Any situation, process, material or condition that, on the basis of applicable data, may cause a fire or explosion or provide a ready fuel supply to augment the spread or intensity of the fire or explosion and that poses a threat to life and/or property.
 - 13. Gambling:** Every building or premises where gambling is permitted to be played, conducted, or dealt upon as prohibited in f the Utah Code (Gambling), which creates the conditions of a nuisance as defined in Section 7-1-3(A)(1) of this ordinance.
 - 14. Gangs:** Every building or premises wherein criminal activity is committed in concert with two or more persons as provided in the Utah Code Annotated.
 - 15. Graffiti:** Graffiti which remains on the exterior of any building, fence, sign, or other structure and is visible from a public street.
 - 16. 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.
 - 17. Hazardous Materials/Substance:** a substance or material in a quantity and form, determined by the United States Department of Transportation, to be capable of posing an unreasonable risk to health and safety or property.
 - 18. Illegal Accessory Apartments:** Any violation of the Town's accessory structure requirements with in each zone.
 - 19. Improper Accumulations:** Accumulation of soil, litter, debris, plant trimmings, or trash, visible from the street or an adjoining property.

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

- a. Any building or structure which is unfit for human habitation, or which is an unreasonable hazard to the health of people residing in the vicinity thereof, or which presents an unreasonable fire hazard in the vicinity where it is located; or
- b. Any building or structure set up, erected, constructed, altered, enlarged, converted, moved or maintained contrary to the provisions of Town ordinances, or any use of land, buildings or premises in violation of Town ordinances; or
- c. 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 Town ordinances or building codes. The building or structure shall not be considered to be a nuisance if it is under active construction; or
- d. Buildings having dry rot, warping, termite infestation, decay, excessive cracking, peeling, or chalking, as to render the building unsightly and/or in a state of disrepair; or
- e. Buildings with missing doors and/or windows containing broken glass and/or no glass at all where the window is of a type which normally contains glass; or
- f. Building exteriors, walls, fences, gates, driveways, sidewalks, walkways, signs or ornamentation, or alleys maintained in such condition as to render them unsightly and/or in a state of disrepair; or
- g. Buildings or conditions that violate any building, electrical, plumbing, fire, housing, or other codes adopted by the Town.

21. Improper Parking or Storage:

- a. Parking or storage of inoperative vehicles, or vehicle parts, on a premises within 25 feet or in the public right-of-way.
- b. Parking or storage of inoperative, unregistered, abandoned, wrecked, or dismantled vehicles, boats, trailers, or vehicle parts, including recreational vehicles, on a premises or in the public right-of-way. Storage or parking that is specifically allowed by the Town's zoning ordinance shall not be considered a nuisance.

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- c. Parking or storage of registered vehicles, trailers, or boats in violation of Town requirements for winter parking or other parking seasons.
- 22. Improper Sign:** Improper maintenance of a sign; or signs which advertise a business that is no longer extant on the property.
- 23. Improper Storage:** The keeping, storing, depositing or accumulating on the premises or in the public right-of-way for an unreasonable period of time; dirt, sand, gravel, concrete, or other similar materials, or maintenance of such material on public rights-of-way. Material stored as part of an active construction project shall not be considered a nuisance.
- 24. 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, including but not limited to:
- a. Illegally using or possessing any controlled substance, precursor, analog or possessing any item of drug paraphernalia.
 - b. Illegally consuming intoxicating liquor or alcohol;
 - c. Publicly urinating or defecating;
 - d. 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;
 - e. Engaging in acts of violence, including fighting amongst themselves;
 - f. Discharging a firearm or explosive in violation of Town ordinance or State law;
 - g. Creating unreasonable noise which disturbs others;
 - h. Intentionally obstructing pedestrian or vehicular traffic; or
 - i. Soliciting acts of prostitution.
- 25. Noise Disturbances:** any sound that annoys or disturbs a reasonable person(s) with normal sensitivities or that injures or endangers the comfort, repose, health, hearing, peace, or safety of another person(s)..
- 26. Noxious Emanations:** Emanation of noxious or unreasonable odors, fumes, gas, smoke, soot or cinders.

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- 27. Noxious Weeds:** 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, source of contamination or pollution of the water, air or property, a breeding place or habitation of insects or rodents or other forms of life deleterious to humans or are unsightly or deleterious to their surroundings, or in excess of twelve, (12) inches tall.
- 28. Parking on Landscaping:** Parking in an area required to be landscaped by Conditional use or by Town ordinance.
- 29. Party Houses:** Every building or premises where parties occur frequently which create the conditions of a nuisance as defined in Section 7-1- 3(A)(1) of this ordinance. Some of the factors the Town may examine in determining whether a party house exists include:
- a. An increase in the number of emergency response calls due to parties being held;
 - b. Any pattern of activity that suggests that parties, creating a nuisance as defined by this ordinance, are taking place;
 - c. 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.
- 30. Prostitution:** Every building or premises where prostitution or the promotion of prostitution is regularly carried on by one or more persons as provided in the Utah Code (Prostitution).
- 31. Refuse:** Keeping or storing of any refuse or waste matter which interferes with the reasonable enjoyment of nearby property.
- 32. Required Landscaping:** Failure to install or maintain landscaping required by Town ordinance.
- 33. Slaughtering Animals:** Killing, butchering, and dressing of animals in a residential and commercial zones other than for personal use.
- 34. Stagnant Water:** Polluted or stagnant water which constitutes an unhealthy or unsafe condition.
- 35. Unsafe Condition:** A condition that unreasonably or unlawfully affects the health or safety of one or more persons.

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36. 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.

37. Weapons: Every building or premises where a violation of the Utah Code (weapons) occurs on the premises.

7-1-4: EXCEPTIONS

No act which is done or maintained under the express authority of an authoritative statute, ordinance, conditional use permit, or court ruling shall be declared a nuisance.

Vehicles retained by the owner for antique collection purposes must be stored on private property.

7-1-5: RESPONSIBILITY FOR NUISANCES:

The Responsible Person(s) is accountable for abating nuisances pursuant to this ordinance. Any person, 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 ordinance. 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 therefore in the same manner as the one who first created it.

7-1-6: NUISANCE ABATEMENT - ADMINISTRATION

This ordinance shall be administered and enforced by the Town Staff. In case of nuisances involving dangerous buildings or violations, this ordinance may also be administered and enforced by the Building Inspector, County Health Department or others that have been requested by the Town Board and will be considered the Enforcement Officer.

7-1-7: FINDING OF NUISANCE

If the Enforcement Officer finds that a nuisance exists, the Enforcement Officer shall attempt to have the Responsible Person abate the nuisance. Although the first step in correcting or abating the nuisance will always be to obtain voluntary compliance, the Enforcement Officer may pursue any remedy or combination of remedies available pursuant to this ordinance, 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 Town may prosecute violators of Town ordinances or State laws without first having to comply with the provisions of this ordinance, even though the activity or conduct prosecuted may also constitute

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a nuisance under this ordinance. Nothing in this ordinance shall be interpreted to prevent the Town from enforcing applicable Town 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 ordinance.

7-1-8: VOLUNTARY CORRECTION

This section applies whenever the Enforcement Officer determines that a nuisance exists.

A. Contact: Before taking other steps to abate the nuisance, the Enforcement Officer shall make a reasonable attempt to secure voluntary correction or abatement of the nuisance by:

1. Determine the name and last-known address of the property owner or occupant and a description of the premises where the violation exists. This information can be obtained from the Town Recorder or County Assessor.
2. Verify if the violation exists and take pictures of the violation noting the date and time of the pictures.
3. Serve written notice of the violation on the owner of the property either personally, or by certified mail, return receipt requested, addressed to the owner as determined above.
4. Agreeing to terms with the Responsible Person to abate the nuisance.
 - a. Verbal agreement. The responsible person and the officer may agree verbally as to what actions must be taken to abate the nuisance. Failure to abide by the verbal agreement can result in further action being taken, as outlined in this Article.
 - b. Voluntary Correction Agreement. The responsible person and the officer may memorialize the terms of their agreement as set forth in this section.

B. Voluntary Correction 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 (in the form of a letter) 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;

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4. The necessary corrective action to be taken, and a date or time by which correction must be completed;
5. An agreement by the Responsible Person that the Town 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 Town may abate the nuisance and recover its costs and expenses to abate the nuisance, as well as a monetary fine pursuant to this ordinance 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.

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. No Agreement:** If the Enforcement Officer and the Responsible Person cannot agree to terms for correcting or abating the nuisance, the Enforcement Officer may still abate the nuisance using one or more of the procedures set forth in this ordinance, State law, or common law.

7-1-9: ADMINISTRATIVE CITATION

- A. Administrative Citation:** When the Enforcement Officer determines that a nuisance exists, and is unable to secure voluntary correction pursuant to Section 7-1-8, the Enforcement Officer may issue an administrative citation to the Responsible Person. The Enforcement Officer may issue an administrative citation without having attempted to secure voluntary correction as provided in Section 7- 1-8 under the following circumstances:

1. When an emergency exists; or
2. When the Enforcement Officer is unable to locate or determine the identity of the Responsible Person.

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B. Content of Administrative Citation: The administrative citation shall include the following:

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1. 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
2. A description of the nuisance; and
3. The required corrective action; and
4. The Completion Date; and
5. The time for appealing the administrative citation to the Hearing Officer and the procedure for filing an appeal.
6. A statement indicating that no monetary fine will be assessed if the Enforcement Officer approves the completed, required corrective action prior to the Completion Date; and
7. 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 Completion Date.

C. Service of Administrative Citation: The Enforcement Officer shall serve the administrative citation upon the Responsible Person, either personally or by mailing, certified, 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 Rich 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.

D. 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 Town Board.

7-1-10: ABATEMENT BY CITY

The City may take one or more of the following actions against any Responsible Person who fails to comply with the terms of a Voluntary Consent Agreement, an administrative citation, or an order of the Town Board:

A. Abatement by the City:

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1. The City may abate a nuisance when:
 - a. The terms of a Voluntary Correction Agreement have not been met; or
 - b. The requirements of an administrative citation have not been complied with, or, if the administrative citation is appealed to a Town Board and the terms of the administrative citation are amended by the Town Board, the terms of the Town Board's Order have not been complied with; or
 - c. The condition is subject to summary abatement as provided for in subsection 2, below.
2. 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.
3. 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.
4. During an abatement proceeding, any personal property constituting a nuisance, as defined by this Article, may be confiscated as part of the abatement process. Any property that has been confiscated by the City as part of 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 Officers, have been made to correct the nuisance. The property owner shall pay the cost of storage of the property. If, after 90 days of the property being confiscated, the property owner fails to claim the confiscated property, after complying with the requirements of the **Utah Code Annotated**, the City may dispose of the property, including sale at auction, disposal, etc. and seek to collect the cost of storage from the property owner and any other remedies as provided by law.
5. 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 Town within ten (10) days of actual receipt of the bill (within fifteen days of the mailing date if the bill is mailed). The term incidental expenses include but is not limited to:
 - a. Personnel costs, both direct and indirect, including attorneys fees and costs;
 - b. Costs incurred in documenting the violation;

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- c. Hauling, storage and disposal expenses;
 - d. Actual expenses and costs for the Town in preparing notices, specifications and contracts, and in accomplishing and/or contracting and inspecting the work; and
 - e. The costs of any required printing and mailing.
6. The owner of any vehicle or property seized under the provisions of this Ordinance may redeem such vehicle or property at any time after its removal but prior to the sale or destruction thereof on proof of ownership and payment to the municipality such sum as he may determine and fix for the actual expense of removal, and any preliminary sale advertising expenses, not to exceed \$75.00 plus \$5.00 per day for storage for each vehicle or item of property redeemed.

B. Monetary Fine and Collection of Costs Incurred:

1. The Responsible Person shall pay the City a monetary fine for each day the nuisance continues after the Completion Date. 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 as follows:
 - a. Fifty Dollars (\$50.00) minimum for non-compliance.
 - b. Twenty Five Dollars (\$25.00) per day, per violation, for each day the nuisance remains uncorrected or unabated after the Completion Date;
 - c. Maximum of One Thousand dollars (\$1000.00) accumulation for daily violations.
2. 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 thirty (30) calendar days from the date of mailing of a notice from the City that the fine is due.
3. The City Attorney or his designee is authorized to take appropriate action to negotiate the amount of the monetary fine and costs incurred due to City abatement, collect the monetary fine and costs, determine the time period in which the monetary fine and costs shall be paid, and take any other action necessary to resolve the fine and costs, including recording a Lien on the property, or collecting through the County Taxes via the County Treasurer.

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In the event the City elects to refer the matter to the County Treasurer for inclusion in the tax notice of the property owner, the City shall make in triplicate an itemized statement of all expenses incurred in the removal and destruction of the same, and shall deliver the three (3) copies of the statement to the County Treasurer within fourteen (14) days after the completion of the work of removing nuisances.

In determining the time period in which to pay, the City Attorney or his 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.

4. The City may also seek to collect reasonable attorney's fees and costs incurred in collecting the monetary fine where allowed by law.

C. Civil Actions: 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 ordinance or pursuant to State law.

D. Criminal Actions: Criminal actions may be initiated by criminal citation from the Enforcement Officer or by long form Information.

1. 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 (1) unless the Enforcement Officer first attempted to obtain voluntary correction as provided in section 7-1-8-B of this ordinance.
2. If the alleged nuisance is also a violation of a provision of City Code (other than this nuisance ordinance) or State law, the Responsible Person may be charged under the specific provision of City Code or State law, even if the Enforcement Officer did not first attempt to obtain voluntary correction as provided in section of 7-1-8-B of this ordinance.
3. 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 ordinance, or a decision and Order issued by the Hearing Officer, or a Voluntary Correction Agreement, is guilty of a Class B misdemeanor.

E. Non-exclusive Remedies: Notwithstanding anything contained herein to the contrary, the City may proceed pursuant to **Utah Code Annotated** without complying with any of the provisions of this ordinance. In addition the City may take any or all of the abovementioned 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.

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7-1-11: HABITUAL NUISANCE

- A. Penalty for Habitual Nuisance:** Any property determined to a habitual nuisance shall be subject to a fine of \$500.00 per day.
- B. Notice of Nuisance:** A building or premises may not be declared a habitual nuisance nor may the \$500.00 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.

7-1-12: APPEALS

- A. Grounds:** 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 ordinance.
 2. The condition described as a nuisance in the administrative citation is not a nuisance as defined by this ordinance.
 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:**
1. A person desiring to appeal an administrative citation must file a notice of appeal at the City Building 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

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(10) days from the completion date if that person has grounds to appeal under subsections A(4) or A(5) of this section.

2. 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, as set forth in Section 7-1-12-A of this code, 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.
3. 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.
4. 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 appellant and the Enforcement Officer may each be called on to state their issues. 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 Town. 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:

1. 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 a legitimate grounds for an appeal based upon reasons as set forth in Section 7-1-12A of this code.
2. 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.
3. 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

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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 is improper or inappropriate. A requirement is improper if it is contrary to this ordinance. 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 benefitted 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 Town notifying them of their/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 Town within five (5) working days of the close of the hearing.

G. Appeal to District Court. Either the Town 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 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 District 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 District 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 District 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 District Court unless the Responsible Person first appeals to the Hearing Officer pursuant to the terms set forth in this ordinance.