

## **PART 13-1080. PUBLIC NUISANCES.**

### **13-1081 “PUBLIC NUISANCE” DEFINED**

A “public nuisance” is a crime against the public order of this municipality and consists in doing any act or omitting to perform any duty, which act or omission either:

- A. Injures, annoys or endangers the health, comfort, repose or safety of three or more persons;  
or
  - 1. Offends public morals or decency; or
  - 2. In any way renders three or more persons insecure in life or the use of property.
- B. An act which affects three or more persons in any of the ways specified in this chapter is still a nuisance regardless of the extent to which the annoyance or damage inflicted on individuals is unequal.

### **13-1082 AUTHOR OF NUISANCE DEFINED.**

Where a nuisance exists upon property and is the outgrowth of the usual, natural or necessary use of the property, the landlord or his agent, the tenant or his agent, and all other persons having control of the property on which such public nuisance exists shall be deemed to be the authors thereof and shall be equally liable and responsible. Where any such public nuisance shall arise from the unusual or unnecessary use of such property or from the business thereon conducted, then the occupants and all other persons contributing to the continuance of such public nuisance shall be deemed the authors.

### **13-1083 NUISANCES DECLARED:**

It shall be unlawful and declared a public nuisance for any person owning, renting, leasing, occupying or having charge or possession of any property in the City to allow any of the following conditions to exist on such property:

- A. A condition that impairs the reasonable and lawful use of property;
- B. Vegetation designated as noxious by the Utah Commissioner of Agriculture.
- C. Keeping or storing of any refuse and waste matter outside of a refuse container;
- D. Accumulation of abandoned, discarded or unused furniture, bedding, packing materials, rotting lumber, stoves, sinks, toilets, cabinets, or other fixtures or equipment stored so as to be visible from a public street, or which may attract flies, mosquitoes, disease-carrying insects, rats or where other vermin may breed. However, nothing herein shall preclude the placement of stacked firewood for personal non-commercial use on the premises;
- E. Any attractive nuisance dangerous to children and other persons including, but not limited to, abandoned, broken, or neglected household appliances, equipment and machinery, ponds, abandoned foundations or excavations, or improperly maintained pools;
- F. Dead, decayed, diseased, or hazardous trees, weeds, hedges, and overgrown or uncultivated vegetation which is an obstruction to pedestrian or vehicular traffic, or which may become a risk of fire or fire hazard to neighboring buildings;
- G. Inoperative, abandoned, wrecked or dismantled vehicles or vehicle parts, stored so as to be visible from a public street, and unregistered vehicles parked in any street right-of-way;
- H. Graffiti which remains on the exterior of any building, fence, sign or other structure and is visible from a public street;
- I. Maintenance of buildings and/or structures in such condition as to be deemed defective or in a condition of deterioration or disrepair including, but not limited to:
  - 1. 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;

2. Any building or structure set up, erected, constructed, altered, enlarged, converted, moved or maintained contrary to the provisions of Chapter 10-300, Enoch City Revised Ordinances;
  3. Buildings which are abandoned, partially destroyed, or left in an unreasonable state of partial construction for a period of six (6) months or longer. An "unreasonable state of partial construction" is defined as any unfinished building or structure where the appearance or other conditions violate conditions as listed in Subsection (a) above;
  4. 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; and,
  5. Buildings or conditions that violate any building, electrical, plumbing, fire, housing, or other code adopted by Enoch City;
- J. Surface storm water infrastructure directly adjacent to private property must be maintained by the property owner and/or tenant and if such is allowed to be restricted or stopped or to become unsanitary, any harm incurred to others as a result are the responsibility of the noncompliant property owner and/or tenant. The same may be subject to abatement;
- K. Failure to effectively secure any vacant structure.
- L. Noise of any kind which causes an annoyance or interference with the comfort or repose of three or more people after 10:00 p.m. and before 7:00 a.m.
- M. Agricultural activities not conducted in accordance with sound agricultural practices.

**13-1084 DUTY OF MAINTENANCE OF PRIVATE PROPERTY.**

No person owning, leasing, occupying or having charge of any premises shall maintain or keep any public nuisance thereon, nor shall any such person keep or maintain such premises in a manner causing substantial diminution in the value of the other property in the neighborhood in which such premises are located.

**13-1085 MAINTAINING, COMMITTING OR FAILING TO REMOVE PUBLIC NUISANCE – CLASSIFICATION OF OFFENCE.**

Every person who maintains or commits any public nuisance, the punishment for which is not otherwise prescribed, or who willfully omits to perform any legal duty relating to the removal of a public nuisance, is guilty of an infraction.

**13-1086 NOT TO AFFECT OTHER PROVISIONS OF MUNICIPAL ORDINANCES.**

Nothing contained in this Municipal Criminal Code shall affect any other provisions of these municipality's ordinances, rules, or regulations that regulate, prohibit or affect public nuisances.

**13-1087 ACTION FOR ABATEMENT OF PUBLIC NUISANCES.**

- A. Notice. Except as otherwise provided by this chapter or city ordinance, whenever a nuisance is found to exist within the city, the enforcement officer shall serve written notice to the responsible person in person or by mailing notice, postage prepaid, addressed to the responsible person at the last-known post-office address as shown in the records of the county assessor, or by personally delivering a copy of Notice directly to the responsible person.
- B. Contents of Notice. The notice to abate a nuisance issued under the provisions of this chapter shall contain:
1. The location of the nuisance, if the same is stationary;
  2. A description of what constitutes the nuisance;
  3. A statement of acts necessary to abate the nuisance;
  4. A statement that abatement must occur within thirty days of service of notice; and
  5. A statement that, if the nuisance is not abated as directed, the city will take necessary actions, as listed in this chapter, to abate the nuisance.

- C. Repeating Offense. If notice has already been served once during the calendar year directing abatement, no further notice need be served to compel such abatement during such calendar year.

**13-1087.1 VIOLATION OF ORDER ENJOINING A PUBLIC NUISANCE.**

A person who knowingly violates any judgment or order abating or otherwise enjoining a public nuisance is guilty of an infraction on the first offense and a class B misdemeanor on any subsequent offense of the same nature.

**13-1087.2 VOLUNTARY CORRECTION AGREEMENT.**

The enforcement officer, at the direction of the City, should attempt to obtain voluntary correction from the responsible person and to enter into a voluntary correction agreement with the responsible person before other remedies are undertaken. A 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 purpose of the voluntary correction agreement is to provide a mechanism for the responsible person to abate the nuisance voluntarily before more severe remedies are undertaken by the City. If the responsible person complies with the terms of the agreement, the City shall take no further action against the responsible person related to the nuisance(s) described in the agreement unless the nuisance(s) recurs. Because the maintenance of a nuisance is a criminal violation, this option is a privilege and not a right and the responsible person has no entitlement. Thus, the City may choose to abate the nuisance using one or more of the other procedures set forth in this chapter, state law, or common law.

- A. The voluntary correction agreement shall include the following:

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 or time by which correction must be completed ("completion date"). The date or time by which correction must be completed shall not be longer than six months;
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, if the terms of the agreement are not met, the city may:
  - a. Issue a criminal citation(s),
  - b. Abate the nuisance, recover its costs and expenses, and place a lien on the property,
  - c. Issue a monetary fine pursuant to this chapter, and/or
  - d. Pursue any other legal remedy available;
7. An agreement by the responsible person acknowledging that he or she waives the right to appeal the finding that a nuisance exists and the right to appeal the specific corrective action required by the voluntary correction agreement to the City Council; 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 of Time. The enforcement officer may grant an extension of time for correcting or abating the nuisance pursuant to the voluntary correction agreement 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.

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

### **13-1087.3 ABATEMENT BY CITY.**

- A. Abatement. When a responsible person fails to comply with the notice of abatement, the terms of a voluntary correction agreement, a criminal citation, or a court order, the City is authorized to employ necessary assistance and cause that such nuisance be destroyed or removed. The City shall prepare an itemized statement of all expenses incurred in the removal and destruction of the same and shall mail a copy thereof to the responsible person demanding payment within sixty days of the date of mailing. Such notice shall be deemed to be delivered when served upon the responsible person or when mailed by registered mail and addressed to the last known address of the responsible person.
- B. Emergency Abatement. 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.
- C. Entering onto Property. 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.
- D. Confiscation of Property. 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 days of the property being confiscated, the property owner fails to claim the confiscated property, and after the city complies with the requirements of U.C.A. Section 77-24a-5 (as currently amended), 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. The city may also pursue any other remedies as provided by law.
- E. Costs Declared Lien. Any and all costs incurred by the city in the abatement of a nuisance under the provisions of this chapter shall constitute a lien against the property upon which such nuisance existed, which lien shall be filed, proven, and collected as provided for by law. Such lien shall be notice to all persons from the time of its recording, and shall bear interest at the legal rate thereafter until satisfied.
- F. City Not Civilly Liable. Neither the city, nor its officers or agents or employees, shall be civilly liable to any responsible person for the abatement of a nuisance.

### **13-1087.4 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 chapter or pursuant to state law.

### **13-1087.5 ABATEMENT BY EVICTION.**

Pursuant to U.C.A. Sections 78B-6-1108 and 78B-6-1111 (as currently amended), whenever there is reason to believe that a nuisance under this chapter is kept, maintained, or exists in Enoch City, the city attorney, any citizen or citizens of the state residing in the city, or any corporation,

partnership, or business doing business in the city, in his or her 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.

### **13-1087.6 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.

### **13-1088 APPEALS.**

A. Grounds. Any person receiving a notice to cure nuisance pursuant to 13-1087 may appeal the Notice to the hearing officer. Only the following issues may be appealed to the hearing officer.

1. The person charged in the Notice as the responsible person is not the responsible person as defined by this chapter.
2. The condition described as a nuisance in the Notice is not a nuisance as defined by this chapter.
3. The method required by the notice to cure nuisance 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 is unreasonable.
5. The enforcement officer refused to approve a corrective action that met the requirements of the notice of nuisance or this chapter.

B. Filing. The person desiring to appeal the notice to cure nuisance must file a notice of appeal at the city clerk within thirty days of being served in person or by mail with the notice to cure nuisance.

1. 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 this Section, or if the appellant has failed to show by a preponderance of the evidence that he or she has an appealable issue, the appeal shall be denied and no hearing shall be held.
2. 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 enforcement of the abatement.
3. If the appellant has filed an appeal, the filing of such appeal will not prevent the City from responding to the property on reports of new nuisance violations.

C. Hearing. The hearing before the hearing officer shall be informal and proceed according to rules and procedures established by the hearing officer. The hearing officer may, with or without the party's present, visit the site of the alleged nuisance. The hearing officer shall schedule the hearing within thirty days of when the notice of appeal is filed with the City.

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 or she has stated a legitimate grounds for an appeal based upon reasons as set forth in this Section. If the appellant timely filed the appeal and a hearing has been scheduled, the burden then shifts to the City to show by a preponderance of the evidence that the Notice is appropriate.

E. Authority of Hearing Officer. The hearing officer shall have authority to affirm or vacate Notice or to modify or waive specific provisions of the Notice. If the appellant fails to attend the hearing, the hearing officer shall affirm the Notice. The hearing officer shall not vacate the Notice unless he or she finds that the city has not met its burden of proof. The hearing officer shall modify the Notice if he or she finds that a nuisance exists, but that one or more of the requirements of the Notice 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 Notice, 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; and
3. Any other relevant factors.

(Revised June 19, 2019)