

## **HEALTH AND SANITATION**

### **ARTICLE I - NUISANCES**

Section 25-1	Purpose
Section 25-2	Definitions
Section 25-3	Nuisance - Definition
Section 25-4	Exceptions
Section 25-5	Responsibility for Nuisances
Section 25-6	Nuisance Abatement - Administration
Section 25-7	Finding of Nuisance
Section 25-8	Voluntary Correction
Section 25-9	Administrative Citation
Section 25-10	Other Remedies
Section 25-11	Habitual Nuisance
Section 25-12	Appeals
Section 25-13	Article I Review Schedule

### **ARTICLE II - WEEDS AND OFFENSIVE ACCUMULATIONS**

Section 25-14	Inspection and Notice
Section 25-15	Compliance with the Notice
Section 25-16	Abatement by City
Section 25-17	Appeals
Section 25-18	Administrative Charge

### **ARTICLE III - MISCELLANEOUS PROVISIONS**

Section 25-19	Severability Clause
Section 25-20	Enforcement of Nuisances found elsewhere in City Ordinance in accordance with this chapter
Section 25-21	Repealing specific provisions of existing City Ordinance
Section 25-22	Effective date

**CHAPTER 25**

**HEALTH AND SANITATION**

**ARTICLE 1. NUISANCES**

Section 25-1	Purpose
Section 25-2	Definitions
Section 25-3	Nuisance - Definition
Section 25-4	Exceptions
Section 25-5	Responsibility for Nuisances
Section 25-6	Nuisance Abatement - Administration
Section 25-7	Finding of Nuisance
Section 25-8	Voluntary Correction
Section 25-9	Administrative Citation
Section 25-10	Other Remedies
Section 25-11	Habitual Nuisance
Section 25-12	Appeals
Section 25-13	Article I Review Schedule

**SECTION 25-1. Purpose.**

The purpose of this ordinance is to provide a means for the City and individuals to identify nuisances within the City and to provide a means for correcting or abating the nuisances. The City 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 City and its citizens, 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.

**SECTION 25 -2. Definitions.**

“**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 Neighborhood Preservation Officer determines is necessary in the interest of the general health, safety and welfare of the community.

“**Completion Date**” means the date by which the Responsible Person must abate a nuisance. The Completion Date is originally set by the Neighborhood Preservation Officer in the Voluntary Correction Agreement or in the administrative citation. The Hearing Officer may modify the Completion Date.

**“Corrective Action”** means entering into a cooperative agreement with the owner to abate the nuisance, issuance of an administrative citation, or any other enforcement action the neighborhood preservation officer is legally authorized to take.

**“Developed Property”** means property which has been altered from its natural state by the construction or erection of materials located upon the land which, per city ordinance, requires a building permit.

**“Dwelling Unit”** One or more rooms providing complete living facilities for one family, including equipment for cooking or provisions for the same, and including room or rooms for living, sleeping and eating.

**“Emergency”** means a situation, which, in the opinion of the Neighborhood Preservation Officer, requires immediate action to prevent or eliminate an immediate threat to the health or safety of a person or property.

**“Family”** An individual or two (2) or more persons related by blood, marriage, or adoption living together in a dwelling unit. For the purpose of this ordinance, guests in excess of two (2) shall be considered as boarders, and the building in which they abide shall be considered as a boarding house. (See definition of Boarding and Lodging House under Planning and Zoning, Chapter 26).

**“Habitual Nuisance”** Excluding calls for drug or party houses, any premises or property that generates three (3) or more substantiated calls where corrective action is taken for nuisance related activities within an (18) month time period shall be deemed a “habitual nuisance.” Any premises or property that generates two (2) or more substantiated calls where corrective action is taken 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”** means the person(s) designated to hear appeals pursuant to this ordinance. The Hearing Officer shall be the Cedar City Manager or his or her designee. The designee need not be a City employee. The City Manager may also appoint a committee to function as the Hearing Officer.

**“Illegal Rental”** means any dwelling unit that is rented to persons constituting more than one family.

**“Neighborhood Preservation Officer”** means a code enforcement officer, community service officer, or police officer(s) hired by the City to enforce this ordinance.

**“Owner”** means 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 or premises.

**“Premises”** means a plot of ground, whether occupied or not.

**“Property”** means a building or structure, or the premises on which the building or structure is located, or undeveloped land.

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

**“Responsible Person”** means 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 City, 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 City may proceed against one, some or all of them.

### **SECTION 25-3. 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 City to classify an offending situation, conduct or activity as a nuisance, even though the situation, conduct or activity may not be listed as a nuisance in the specific examples. The first three general definitions are taken directly from Utah State law. The purpose of listing the specific examples is to identify some of the specific situations, conduct and activities that the City intends to abate as nuisances.

**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 Cedar City:

1. **Nuisance as Defined in U.C.A. 78B-6-1101(1).** 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.
2. **Nuisance as Defined in U.C.A. 76-10-801.** Any item, thing, manner, or condition whatsoever that is dangerous to human life or health or renders soil, air, water, or food impure or unwholesome.
3. **Nuisance as Defined in U.C.A. 76-10-803.** 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 to 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, sidewalk 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 U.C.A. 78-38-9

1. **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 Title 57, Chapter 37 of the Utah Code (Utah Controlled Substances Act) occurs.
2. **Gambling.** Every building or premises where gambling is permitted to be played, conducted, or dealt upon as prohibited in Title 76, Chapter 10, Part 11 of the Utah Code (Gambling) which creates the conditions of a nuisance as defined in Section 25-3-(A) (1) of this ordinance.
3. **Gangs.** Every building or premises wherein criminal activity is committed in concert with two or more persons as provided in Section 76-3-203.1 of the Utah Code.
4. **Party Houses.** Every building or premises where parties occur twice or more per month which create the conditions of a nuisance as defined in Section 25-3 (A) (1) of this ordinance. Some of the factors the City 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 the 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.
5. **Prostitution.** Every building or premises where prostitution or the promotion of prostitution is regularly carried on by one or more persons as provided in Title 76, Chapter 10, part 13 (Prostitution) of the Utah Code.
6. **Weapons.** Every building or premises where a violation of Title 76, Chapter 10, Part 5 (Weapons) of the Utah Code occurs on the premises.
7. **Unsafe Condition.** A condition that unreasonably or unlawfully affects the health or safety of one or more persons.
8. **Fire Hazard.** Defined as a condition which encourages a fire to start or increases the intensity or severity of a fire.
9. **Noxious Emanations.** Emanation of noxious or unreasonable odors, fumes, gas, smoke, soot or cinders.
10. **Noxious Weeds.** Noxious weeds located on vacant lots or other property, along public sidewalks or the outer edge or any public street, or weeds in any other location which constitute a fire hazard. Noxious Weeds also includes all weeds designated under R68-9-2 of the Utah Administrative Code. As applied to developed property only, the definition of noxious weeds shall include all common weeds and wild grasses permitted to exceed the height limit of twelve (12) inches.
11. **Refuse.** Keeping or storing of any refuse or waste in a manner which interferes with the reasonable enjoyment of nearby property.
12. **Stagnant Water.** Polluted or stagnant water which constitutes an unhealthy or unsafe condition.
13. **Improper Accumulations.** Accumulation of soil, litter, debris plant, trimmings, or trash, visible from the street or an adjoining property.
14. **Accumulation of Junk.** Accumulation of used or damaged lumber; junk; salvage materials; abandoned, discarded or unused furniture; stoves, sinks, toilets, cabinets, or 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.

15. **Attractive Nuisances.** Any attractive nuisance dangerous to children and other persons including, but not limited to, abandoned foundations or excavations, or improperly maintained or secured pools.
16. **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.
17. **Improper Storage.** The keeping, storing, depositing or accumulating on the premises longer than sixty (60) days, or in the public right-of-way longer than forty-eight (48) hours, any dirt, sand, gravel, concrete, or other similar materials, or maintenance of such material. Storage of any material on sidewalks is prohibited. Any materials left in the public right of way shall be clearly marked with appropriate safety measures as determined by the superintendent of streets.
18. **Garbage Can.** The leaving of any city, commercial, or privately owned garbage can or refuse container in the street, other than on collection day, for more than twenty-four (24) hours after the collection day.
  - A. **Exception:** Commercial refuse containers may be left on the public streets as long as the party who is the primary user of the container first obtains a thirty (30) day permit from the streets supervisor, pays the applicable fee, and complies with necessary and appropriate restrictions as to placement of the container and posting of safety measures.
19. **Construction Equipment.**
  - a. Construction Equipment of any type or description parked or stored on property when it is readily visible from the ground level of 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.
  - b. Construction equipment or machinery shall not be considered a nuisance when stored in a zone not zoned for such storage and

covered by a tarp or similar covering, stored in a shed, garage, or stored behind a site obscuring fence.

- c. Construction equipment or machinery does not include tools and yard equipment used to maintain personal property and home no larger than a riding lawn mower or a four-wheeler.

20. **Improper Sign.** Improper maintenance or a sign; or signs which advertise a business that is no longer extant on the property.

21. **Improper Parking or Storage.**

- a. 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 City Zoning Ordinance shall not be considered a nuisance.

- b. Parking or storage of registered vehicle, trailers or boats in violation of City Ordinance.

- c. It shall not be considered a nuisance to park or store inoperative, unregistered, wrecked or dismantled vehicles, boats, trailers, or vehicle parts, including recreational vehicles, on private property so long as said inoperative, unregistered, wrecked, or dismantled vehicles, boats, trailers, or vehicle parts, including recreational vehicles, are covered by a tarp or similar covering, stored in the garage or shed, or stored behind a site obscuring fence. All of the above items are those that are being kept temporarily for parts, repairs, reconstruction, etc. And have a use in an ongoing project.

22. **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.

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

24. **Improper Maintenance.** Maintenance of building 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 City ordinances, or any use of land, buildings, or premises in violation of City 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 City 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 code adopted by the City.
25. **City Code Nuisances.** Any violation of a Cedar City Code section that expressly declares a specific situation, conduct or activity to be a nuisance.
26. **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.
27. **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. Public 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 City ordinance or State law;
  - g. Creating unreasonable noise which disturbs others;
  - h. Intentionally obstructing pedestrian or vehicular traffic; or
  - i. Soliciting acts of prostitution.
28. **Dangerous Conditions.** Any fence, wall, shed, deck, house, garage, building, structure on 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:
- 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 immediate vicinity to such an extent that it is harmful to the community in which such property is situated or such condition exists
29. **Parking on Landscaping.** Parking in an area required to be landscaped by City ordinance.
30. **Required Landscaping.** Failure to install or maintain landscaping required by City ordinance.

**SECTION 25-4. Exceptions**

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

**SECTION 25-5. Responsibility for Nuisances**

The Responsible Person(s) is responsible 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.

**SECTION 25-6. Nuisance Abatement - Administration**

This ordinance shall be administered by the Police Department. In case of nuisances involving dangerous buildings or violations of codes typically administered and enforced by the Building Department, this ordinance may also be administered and enforced by the Building Department.

**SECTION 25-7. Finding of Nuisance**

If a Neighborhood Preservation Officer has probable cause to believe a nuisance exists, the Neighborhood Preservation Officer shall attempt to have the Responsible Person abate the nuisance. Although the Neighborhood Preservation Officer's first step in correcting or abating the nuisance will always be to obtain voluntary compliance, the Neighborhood Preservation 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 City may prosecute violators of City 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 a nuisance under this ordinance. Nothing in this ordinance 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 ordinance.

**SECTION 25-8. Voluntary Correction.**

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

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

1. Contacting the Responsible Person, where possible;
2. Explaining the nuisance;

3. Requesting the Responsible Person to abate the nuisance; and
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 Neighborhood Preservation 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 or time 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. Inspections must be by appointment with the responsible person, or his/her designee;
6. An agreement by the Responsible Person that the City may abate the nuisance and recover its costs and expenses to abate the nuisance, and place a lien on the property, 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 Neighborhood Preservation Officer's finding that a nuisance exists and waives the right to appeal the specific corrective action required by 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 Neighborhood Preservation 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 Neighborhood Preservation Officer and the Responsible Person cannot agree to terms for correcting or abating the nuisance, the Neighborhood Preservation Officer may still abate the nuisance using one or more of the procedures set forth in this ordinance, state law, or common law.

**SECTION 25-9. Administrative Citation.**

- A. **Administrative Citation.** When the Neighborhood Preservation Officer has probable cause to believe a nuisance exists, and is unable to secure voluntary correction pursuant to Section 25-8, the Neighborhood Preservation Officer may issue an administrative citation to the Responsible Person. The Neighborhood Preservation Officer may issue an administrative citation without having attempted to secure voluntary correction as provided in Section 25-8 when an emergency exists.
- B. **Content of Administrative Citation.** 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(s) is occurring; and
  3. A description of the nuisance; and
  4. The 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
  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 Neighborhood Preservation 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 Neighborhood Preservation Officer before the Completion Date.

- C. **Service of Administrative Citation.** The Neighborhood Preservation 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 as shown on the current County Recorders ownership maps. If the Responsible Person cannot after due diligence be personally served within Iron 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 and 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 Hearing Officer.

**SECTION 25-10. Other Remedies.**

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 Hearing Officer:

- A. **Abatement by the City.**
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 the administrative citation is appealed to a Hearing Officer and the terms of the administrative citation are amended by the Hearing Officer and subsequently, the terms of the Hearing Officer'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 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 Neighborhood Preservation 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 Section 77-24a-5 U.C.A., the City may dispose of the property, to include 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 cost, 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 occupancy of the property and shall become due and payable to the City within thirty (30) days of actual receipt of the bill, or thirty (30) of the date of mailing if the bill is mailed. The term incidental expenses includes but is not limited to:
  - a. Personnel costs, both direct and indirect, including attorney's fees and costs;
  - b. Costs incurred in documented violation;
  - c. Hauling, storage and disposal expenses;
  - d. Actual expenses and costs for the City in preparing notices, specifications and contracts, and in accomplishing and contracting and inspecting the work; and
  - e. The cost of any required printing and mailing.

**B. Monetary Fine**

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 Neighborhood Preservation Officer approves the Responsible Person's actions to correct or abate the nuisance. The amount of the monetary fine shall be as follows:

- a. A fine not to exceed a maximum of One Hundred Dollars (\$100.00) per week for each week that the nuisance remains uncorrected or unabated after the Completion Date. The hearing officer may set a fine in the amount of zero dollars (\$0);
  - b. A fine not to exceed a maximum of Two Hundred Dollars (\$200.00) per week the nuisance is uncorrected or abated according to the terms set forth in the administrative citation, the hearing officer may set a fine in the amount of zero dollars (\$0).
  - c. Upon notification by the responsible party or his/her designee that the agreed upon abatement is complete, all fines (if any) shall cease at the beginning of the day if notification is received before 12:00 noon. A neighborhood preservation officer shall inspect and pass it off as completed, and if not completed fines shall continue to accrue in accordance with Section 25-8(c).
2. The monetary fine shall be cumulative and may not be waived by the Neighborhood Preservation 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) calendar days from the date of mailing of a notice from the City that the fine is due.
  3. When a criminal action is pursued, any restitution ordered by the court is to be collected and received by the City and deposited into the Nuisance Abatement account whereby the City may access and use said funds to help pay for the costs associated to abate nuisances.
  4. The City Attorney or his 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 his designee may take into consideration the number of days between the required completion date and the actual completion date, Neighborhood Preservation Officer input, the Responsible person's cooperation, etc.

5. The City may also seek to collect reasonable attorney's fees and cost 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 Neighborhood Preservation Officer or by long form Information.
1. Any person who maintains or assists in maintaining a nuisance is guilty of a Class B misdemeanor. No person shall be prosecuted under this subsection unless the Neighborhood Preservation Officer first attempted to obtain voluntary correction as provided in section 25-8 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 Neighborhood Preservation Officer did not first attempt to obtain voluntary correction as provided in Section 25-8 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. Abatement by Eviction.** Whenever there is reason to believe that a nuisance under Section 25-3 (B) (1 - 6) 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.
- F. Lien for Costs.** If a person fails to pay any fines or costs related to nuisance abatement when due, the City may record a lien on the property or premises for the full amount of the unpaid fines and costs.
- G. Non-exclusive 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.

**SECTION 25-11 Habitual Nuisance**

- A. **Penalty for Habitual Nuisance.** Any property determined to be a habitual nuisance shall be subject to a maximum possible fine of \$500.00 per week.
- 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.

**SECTION 25-12 Appeals.**

A. **HEARING BOARD**

1. Upon appointment by the Mayor, and approval of the City Council a board consisting of five (5) persons shall hear administrative appeals.
2. The hearing board shall consist of, one resident from North of Center Street and West of Main Street, one resident from North of Center Street and East of Main Street, one resident from South of Center Street and West of Main Street, and one resident from South of Center Street and East of Main Street, and one resident selected at large from the City.
3. The term of office of the members shall be for not more than two (2) years and each member shall be allowed to serve two terms.
4. The members shall serve for no compensation and they shall be charged with the duties of carrying out the administration of this Ordinance as provided in Section 25-12.
5. Upon appointment of the initial five members, the Mayor shall appoint three to serve two year terms and two to serve one-year term thus allowing the final terms of office for the members to be staggered.

6. Board members may be removed by the Mayor for commission of criminal acts or for neglecting their duties as a board member.
7. Any individual appointed to replace a board member shall serve the remainder of the term and be allowed one (1) the term and be allowed one (1) reappointment.

**B. 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 Neighborhood Preservation 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.

**C. Filing.**

1. The person desiring to appeal the administrative citation must file a notice of appeal at the City's Police Department 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.
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 25-12.A, 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.

D. **Hearing.** The hearing before the Hearing Officer shall be informal according to rules and procedures established by the Hearing Officer. The appellant may, but is not required to, bring an attorney or other representative to assist him or her. The appellant and the Neighborhood Preservation 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.

E. **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 25-12A.
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 Hearing Officer, in determining the reasonableness of corrective action, shall give equal weight to both parties. The Hearing Officer may either adopt the recommendations of the party who produces the most appropriate corrective plan, by a preponderance of the evidence. Otherwise the Hearing Officer may adopt a plan that the Hearing Officer determines to be the most reasonable.

F. **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 the city has not met its burden of proof. 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 Neighborhood Preservation 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 Neighborhood Preservation 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.

**G. Factors to Be Considered When Determining Appropriate Fine Amount.**

When the hearing officer is assessing a monetary penalty pursuant to Section 25-11(A) or Section 25-10(B), the hearing officer shall consider the following factors:

1. The responsible parties' financial circumstances, as verified to the community officer by the responsible party;
2. The responsible parties' physical ability to abate the nuisance as verified by either the community officer or the responsible party.
3. The responsible parties' mental ability to comprehend the scope of the nuisance and abate the nuisance.

- H. **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.
  
- I. **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 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

**SECTION 25-13 Article I Review Schedule**

Article I of Chapter 25 shall be reviewed in February, 2005. The review shall consist of public hearings with notice published at least fourteen (14) days in advance of the public hearing. Future reviews shall be at dates determined by the City Council.

**ARTICLE II. WEEDS AND OFFENSIVE ACCUMULATIONS**

Section 25-14	Inspection and Notice
Section 25-15	Compliance with the Notice
Section 25-16	Abatement by City
Section 25-17	Appeals
Section 25-18	Administrative Charge

**SECTION 25-14 Inspection and Notice**

Developed or undeveloped lots which have weeds, grass or other growth which constitute an existing or potential fire hazard shall be abated by the owner of the property. Weed abatement compliance shall be accomplished by discing, plowing or mowing weeds within 4 inches of the ground. The City shall survey properties within the City and identify those needing abatement and then serve notice in writing upon the owner or occupant at the last known post office address as indicated by the records of the County Assessor. The notice shall require the owner or occupant as the case may be to abate the weeds by a specific time, which shall not be less than ten (10) days from the date of service of such notice. One notice shall be deemed sufficient on any lot or parcel of property for the entire season of weed growth during that year. The City shall make proof of service of such notice under oath, and file the same in the office of the County Treasurer.

#### **SECTION 25-15 Compliance with the Notice**

The failure of any person to comply with a notice issued pursuant to this article shall be unlawful.

#### **SECTION 25-16 Abatement by City**

If any owner or occupant of land described in the notice issued pursuant to Section 25-13 shall fail or neglect to eradicate or destroy and remove weeds, or growth, in accordance with such notice, the City may employ the necessary assistance and cause such weeds to be removed or destroyed. The City shall prepare an itemized statement of all expenses incurred in their removal and destruction, and shall mail a copy thereof to the owner demanding payment within thirty (30) days of the date of the mailing. The notice shall be deemed delivered when mailed by registered mail addressed to the property owner's last known address. In the event the owner fails to make payment of the amount set forth in the statement to the City Treasurer with the thirty (30) days, the City may cause suit to be brought in an appropriate court of law or may refer the matter to the County Treasurer as hereinafter provided. In the event collection of the costs are pursued through the courts, the City may sue for and receive judgment upon all of the costs of removal and destruction together with reasonable attorney's fees, interest and court costs. The City may execute on such judgment in the manner provided by law. 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 ten (10) days after the completion of the work of removing such weeds.

#### **SECTION 25-17 Appeals**

Any person aggrieved by a weed abatement decision is entitled to a hearing by filing a request for such in the Police Department within ten (10) days of receiving notice from the City. The hearing shall be before the Hearing Officer. The Hearing Officer shall have the authority to uphold or overturn any decision properly before him or her regarding weed abatement under this

article. Either the City or the appellant may appeal the Hearing Officers Order by filing a petition for review of the Order as outlined in Chapter 25-12

**SECTION 25-18 Administrative Charge**

An administrative charge in the amount of itemized actual costs incurred by the City pursuant to City abatement procedures shall be levied on all property owners who do not abate identified problems located on their property within the required time allotted them under this Article, in cases where the problems are subsequently abated by the City.

**ARTICLE III MISCELLANEOUS PROVISIONS**

Section 25-19	Severability Clause
Section 25-20	Enforcement of Nuisances found elsewhere in City Ordinance in accordance with this chapter
Section 25-21	Repealing specific provisions of existing City Ordinance
Section 25-22	Effective date

**Section 25-19 Severability Clause**

Should a court of competent jurisdiction hold any portion of this Chapter, or the application of any provision of this Chapter to any person or circumstance invalid, then: (1) the invalid portion or application shall be severed; and (2) the remainder of this Chapter shall remain in effect without the invalid portion or application.

**Section 25-20 Enforcement of Nuisances found elsewhere in City Ordinance in accordance with this chapter**

Any activity or condition that is defined as a nuisance anywhere in Cedar City Ordinance shall be abated in accordance with the procedures set forth in this chapter.

**Section 25-21 Repealing Specific Provisions of Existing City Ordinance**

The passage of this ordinance shall serve to repeal the following provisions of existing Cedar City Ordinance, to wit:

- (A) All of Chapter 25, Nuisance

- (B) Section 26-105, Nuisance Abatement
- (C) Section 26-106, Nuisance Abatement
- (D) Section 26-107, Nuisance Abatement
- (E) Section 27-22, Weed Abatement

**AMENDED BY ORDINANCE NUMBER 0111-17-1**