

REPORT AND PROPOSAL  
OF THE  
AMERICAN FORK CITY  
NUISANCE ABATEMENT COMMITTEE

Presented to  
The Honorable Ted B. Barratt, Mayor  
and  
Members of the City Council

March 17, 2004

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March 10, 2004

The Honorable Ted B. Barratt  
Mayor  
American Fork, Utah

Dear Mr. Mayor:

In the summer of 2003 you and the City Council appointed a Nuisance Abatement Committee to examine American Fork's existing nuisance abatement laws and their enforcement, and to recommend improvements.

The Nuisance Abatement Committee has met regularly since that time. It has examined specific cases of nuisances in the City and tracked the enforcement of relevant existing ordinances; has consulted with certain City officials; and has studied and discussed nuisance abatement ordinances and enforcement as they currently exist in several other municipalities in Utah and Salt Lake Counties.

The Committee hereby presents this report, adopted 10 March 2004 in the Committee by **unanimous** vote of the committee members present. It briefly discusses the **importance** of effective nuisance abatement, current **public opinion** about nuisance abatement, and **budgetary and other administrative implications** of the proposed changes. It presents **a plan and a rough timetable** for implementing the recommended changes in such a way as **to attract widespread public support and minimize opposition**. The bulk of the report is the **proposed text for a new city ordinance** to replace our current nuisance abatement statutes.

We wish to emphasize our conviction that effective nuisance abatement is crucial to the present and future quality of life in American Fork City, and our sense that this view predominates among City residents. We view effective nuisance enforcement as an essential element of current and future efforts in the areas of economic development, law enforcement, and downtown rehabilitation, and in the important causes of fostering stability and a sense of community in City neighborhoods.

We urge you, the City Council, and the appropriate City officers to review, consider, and adopt this proposal with all deliberate speed.

As a committee largely composed of American Fork residents who are not paid or elected City officials, we applaud your demonstrated interest in and support of

volunteer public participation in this process. We thank you and other City officials for providing essential assistance.

Respectfully Submitted,

**The Nuisance Abatement Committee**

Doug Bethers, Acting Chair

Vicki Thompson, Secretary

Larry Hunter

Guy Ivins

Carol Robinson

David Rodeback

Luana Searle

Donna Smith

## MEMBERS OF THE COMMITTEE

The following individuals were appointed to the Nuisance Abatement Committee and have served actively during the preparation of this report and recommendation.

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## ACKNOWLEDGMENTS

The Committee gratefully acknowledges the assistance of the following American Fork residents and City officials, who met with, consulted with, or otherwise assisted the Committee during the preparation of these recommendations.

**Howard Denney**

*American Fork City Engineer*

**Chief Terry Fox**

*American Fork Police Department*

**James K. Hardy**

*American Fork City Enforcement Officer*

**Juel Belmont**

*Member, American Fork City Council*

**Richard Colborn**

*American Fork City Recorder*

**Alexis McMurdie**

*Member, Beautification Committee*

**Hunter Hight**

*Resident*

**Paul Strong**

*Member, Beautification Committee*

## MAJOR CONSIDERATIONS

The Committee was guided in its work by several major concerns:

- that the measures proposed be effective;
- that due regard be shown for the rights of property owners, including property owners in the neighborhood of a nuisance;
- that the measures proposed include ample provision for voluntary compliance prior to imposing fines or other penalties;
- that penalties, including fines, imposed on habitual offenders and responsible parties who refuse to comply voluntarily be both reasonable and sufficiently large to encourage compliance;
- that the actual imposition of fines not require action by the City Attorney or a court of law, but that fines may be imposed by the enforcement officer; and
- that the measures proposed be reasonable and useful to implement under the current City budget, notwithstanding any recommendations that additional personnel be hired.

We believe that this proposal answers all these concerns.

## WHY VIGOROUS NUISANCE ABATEMENT IS DESIRABLE

The Committee believes that American Fork City's need for revised nuisance statutes and improved enforcement of such statutes is significant and urgent. This is not just for the sake of appearance or beautification itself, but for the following additional reasons:

- A wealth of evidence affirms that dealing conscientiously with nuisances decreases and discourages criminal activity in neighborhoods, including drug-related activity; and that tolerating persistent nuisances, or the development of new nuisances, tends to invite increased criminal activity.

- Certain types of nuisances, such as the improper parking of vehicles on city streets, decrease the safety of automobile, bicycle, and pedestrian traffic.
- Certain types of nuisances attract children and teenagers. These “attractive nuisances” particularly threaten the safety of those groups.
- Besides common sense, there is anecdotal evidence that the run-down appearance of certain neighborhoods in the City has actually discouraged economic development within the City in some instances. Clearly, the elimination of nuisances would have the opposite effect.
- There is anecdotal evidence (again, in addition to common sense) which indicates that in at least a few instances, the City’s inattention to long-term nuisances is encouraging law-abiding residents to move to other neighborhoods or cities.
- According to the Fall 2003 American Fork Neighbors in Action Quality of Life Survey, reported to the City Council on November 11, 2003, residents who reported that “better enforcement of speed limits, nuisance ordinances, etc.” would make them *more likely* to stay in American Fork outnumber residents who would be *less likely* by **more than 9 to 1**.
- The same survey reported that residents who would be *more likely to stay* in American Fork if zoning regulations were better enforced outnumber residents who would be *more likely to leave* by **more than 16 to 1**.

## USING OREM’S CODE AS A MODEL

The Committee studied the nuisance ordinances and enforcement in several communities in Utah and Salt Lake Counties. It was the most compatible with the concerns outlined above (see “Major Considerations”). It was also the clearest, least ambiguous, and the easiest for non-specialists to read and understand; it is much more so than American Fork’s present nuisance ordinances. Because educating the public is a key component of this proposal’s success, the Committee regards this accessibility of the ordinances themselves as a major advantage.

The Committee reviewed the Orem statute in detail on two occasions. The language proposed here is identical to that statute in all substantive ways except the following: In the Orem statute, the penalties imposed after voluntary compliance has failed begin at \$100 per day and escalate to \$200 per day after a specified period; and the fine for habitual offenders is \$500 per day. The Committee judged these amounts to be higher than necessary and also impolitic in American Fork. The corresponding fines in this proposal are \$25 per day, \$50 per day, and \$100 per day, respectively.

The Committee recommends that the officer(s) engaged in enforcement of the proposed statute be called the Neighborhood Preservation Officer(s), as in Orem, and that said officer(s) be officially part of the American Fork Police Department.

Because the legality of any such proposal must be reviewed as part of the City Council's official consideration, the Committee notes that Orem's statute has already undergone a careful review prior to its passage in Orem, and that the statute has remained intact since its passage.

## **A BUDGET ISSUE**

The Committee is aware that this proposal is submitted as the end of a fiscal year approaches, when the budget process for the next fiscal year is already in process. For practicality's sake, we have fashioned our recommendations in such a way that the proposed statute, if adopted, can be usefully enforced to a significant degree under the existing budget.

Specifically, we recommend that the City employ two full-time Neighborhood Preservation Officers, that is, two officers *in addition* to the AFPD's current complement. We understand that at least one full fiscal year may pass before the City Council can budget for these officers, even if the Council is inclined to do so. In the interim, we recommend that the current part-time enforcement officer be made responsible to the AFPD, and that he pursue the enforcement of the proposed statute, upon its passage, as completely as circumstances and resources allow. We believe that the activities even of a single, part-time enforcement officer under the proposed statute will be considerably more effective in abating nuisances than his equivalent activities under the present statute.

## IMPLEMENTATION AND PUBLIC EDUCATION

The Committee believes in the great importance of enlisting widespread resident support of the proposed measures from the beginning, not only for political reasons, but to improve both compliance and enforcement. We therefore propose the following program to follow adoption of the proposed ordinance and any hearings or other publicity which may precede or accompany the City Council's deliberations.

1. The proposed statute, if adopted, should take effect no less than 90 days and no more than 180 days after its adoption.
2. In the period between the statute's adoption and its taking effect, the following **public relations campaign** should be conducted, for the purposes of educating the public and encouraging their support:

One or two water bill inserts should acquaint the public with the requirements and their enforcement, including the ample and flexible provisions for voluntary compliance prior to the imposition of penalties.

The local print media should be supplied with the necessary materials and contacts to facilitate detailed coverage of the changes in the newspaper.

The Mayor, members of the City Council, and members of the Nuisance Abatement Committee should invite the enforcement officer *and the local print media* to do a quick walk-by inspection of their residences for nuisances that need to be abated according to the new statute, should abate those nuisances promptly, and should see that the enforcement officer *and the local print media* are invited back to inspect. This overt compliance by City leaders will go a long way toward persuading the public that the proposed statute is reasonable and that enforcement will be fair.

The City should make public a list of all its properties within City limits, have them inspected for violations by the enforcement officer, make public (including informing the local media) all the violations reported, promptly and conscientiously abate each reported nuisance, and publicly report the progress and ultimate completion of that abatement before the new ordinance takes effect.

Accurate and complete information about the statute, including its full text, should be made readily available at the City's World Wide Web site shortly after the proposed statute is passed by the City Council.

It must be made clear to the public repeatedly that enforcement will begin with the worst and most urgent nuisances, rather than the slightest violation of any portion of the statute.

If the law permits such disclosure, the City should consider publicizing the nature and location of habitual offenses, the measures taken against them, and the identities of the responsible parties.

The Committee believes that a high-profile campaign of this sort will mostly mitigate potential opposition to the proposed statute and significantly build support for it.

The Committee recommends that City officials work with American Fork Neighbors in Action on this PR campaign.

**PROPOSED NEW ORDINANCE**  
**(to replace existing American Fork City nuisance ordinances)**

**PROPOSED NUISANCE ABATEMENT ORDINANCE**

**ARTICLE 1. NUISANCES.**

**Section 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 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.

**“Dwelling Unit”** shall mean 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”** 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”** shall mean: 1) An individual living alone; or 2) two or more people related by blood, marriage, adoption, and their foster children; or 3) up to three 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 City 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”** means the person(s) designated to hear appeals pursuant to this ordinance. The Hearing Officer shall be the American Fork City Administrator or his or her designee. The designee need not be a City employee. The American Fork City Administrator 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(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 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 American Fork City:

1. Nuisance as Defined in U.C.A. 78-38-1(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 it 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 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 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 3(A)(1) of this article.
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 frequently which create the conditions of a nuisance as defined in Section 3(A)(1) of this article. 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 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.
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. A fire hazard.
  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 of any public street, or weeds in any other location which constitute a fire hazard.
  11. Refuse. Keeping or storing of any refuse or waste matter 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 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.
  15. Attractive Nuisances. Any attractive nuisance dangerous to children and other persons including, but not limited to, abandoned, broken, or neglected household appliances, equipment and machinery, abandoned foundations or excavations, or improperly maintained or secured pools.
  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. Dust. Any Premises which causes excessive dust due to lack of landscaping, non-maintenance or other cause.

18. 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.
19. Garbage Can. The leaving of any garbage can or refuse container in the street **or right of way**, other than on collection day, for more than 24 hours after the collection day.
20. 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.
21. Improper Sign. Improper maintenance of a sign; or signs which advertise a business that is no longer extant on the property.
22. 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 the City's zoning ordinance shall not be considered a nuisance.
  - b. Parking or storage of registered vehicles, trailers or boats in violation of existing City ordinances.
23. 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.
24. Graffiti. Graffiti which remains on the exterior of any building, fence, sign, or other structure and is visible from a public street.
25. 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 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.
26. City Code Nuisances. Any violation of an American Fork Municipal Code section that expressly declares a specific situation, conduct or activity to be a nuisance.
27. 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.
28. 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 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.
29. Dangerous Conditions. Any fence, wall, shed, deck, house, garage, building, structure or any part of any of the aforesaid; or any tree, pole, smokestack; or any excavation, hole, pit, basement, cellar, sidewalk, subspace, dock, or loading dock; or any lot, land, yard, premises or location which in its entirety, or in any part thereof, by reason of the condition in which the same is found or permitted to be or remain, shall or may endanger the health, safety, life, limb or property, or cause any hurt, harm, inconvenience, discomfort, damage or injury to any one or more individuals in the City, in any one or more of the following particulars:
- 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.
30. Illegal Accessory Apartments. Any violation of the City's accessory apartment ordinance.

31. Family. Keeping or allowing people at a premises in violation of the City's single family residence requirements.
32. Parking on Landscaping. Parking in an area required to be landscaped by City ordinance.
33. Banner Signs. Keeping or allowing banner signs in violation of City ordinance.
34. Required Landscaping. Failure to install or maintain landscaping required by City ordinance.

#### **Section 4. Exceptions.**

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

#### **Section 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 6. Nuisance Abatement – Administration.**

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

#### **Section 7. Finding of Nuisance.**

If a Neighborhood Preservation Officer finds that 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 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;
6. An agreement by the Responsible Person that the City may abate the nuisance and recover its costs and expenses to abate the nuisance, as well as a monetary fine pursuant to this 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 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 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 9. Administrative Citation.**

### **A. Administrative Citation.**

When the Neighborhood Preservation Officer determines that a nuisance exists, and is unable to secure voluntary correction pursuant to Section 8 of this Article, 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 8 under the following circumstances:

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

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

8. A statement that the City may abate the nuisance and assess costs and expenses of abatement and a monetary fine against the Responsible Person if the correction is not completed by the Responsible Person and approved by the 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. If the Responsible Person cannot after due diligence be personally served within Utah County and if an address for mailed service cannot after due diligence be ascertained, notice shall be served by posting a copy of the administrative citation conspicuously on the affected property or structure. Proof of service shall be made by a written declaration under penalty of perjury executed by the person effecting the service, declaring the time and date of service, the manner by which the service was made, and if by posting, the facts showing that due diligence was used in attempting to serve the person personally or by mail.

### **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 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, if the administrative citation is appealed to a Hearing Officer and the terms of the administrative citation are amended by the Hearing Officer, the terms of the Hearing Officer's Order have not been complied with; 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 costs, including incidental expenses, of correcting or abating the violation shall be billed to the Responsible Person and/or the owner, lessor, tenant or other person entitled to control, use and/or occupy the property and shall become due and payable to the City within ten (10) days of actual receipt of the bill (within fifteen days of the mailing date if the bill is mailed). The term incidental expenses includes but is not limited to:
  - a. Personnel costs, both direct and indirect, including attorneys fees and costs;
  - b. Costs incurred in documenting the 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/or contracting and inspecting the work; and
  - e. The costs 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. Twenty-Five Dollars (\$25.00) per day for each day during the first week that the nuisance remains uncorrected or unabated after the Completion Date;
  - b. Fifty Dollars (\$50.00) per day for each day thereafter until the nuisance is corrected or abated according to the terms set forth in the administrative citation.
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. 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.

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 Neighborhood Preservation 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 Neighborhood Preservation Officer first attempted to obtain voluntary correction as provided in Article 1, Section 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 Article 1, Section 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 Article 1, Section 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 11. Habitual Nuisance.**

### **A. Penalty for Habitual Nuisance.**

Any property determined to a habitual nuisance shall be subject to a fine of One Hundred Dollars (\$100.00) per day.

### **B. Notice of Nuisance.**

A building or premises may not be declared a habitual nuisance nor may the \$100.00 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 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 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.

### **B. Filing.**

1. The person desiring to appeal the administrative citation must file a notice of appeal at the City's Public Safety 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.
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 Article 1, Section 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.

### **C. 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.

### **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 Article 1, Section 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 determination of the Neighborhood Preservation Officer as to the need for the required corrective action shall be accorded substantial weight by the Hearing Officer in determining the reasonableness of the corrective action.

### **E. Authority of Hearing Officer.**

The Hearing Officer shall have authority to affirm or vacate the administrative citation, or to modify or waive specific provisions of the administrative citation. If the appellant fails to attend the hearing, the Hearing Officer shall affirm the administrative citation. The Hearing Officer shall not vacate the administrative citation unless he/she finds that no nuisance exists. The Hearing Officer shall modify the administrative citation if he/she finds that a nuisance exists, but that one or more of the requirements of the administrative citation 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.

#### **F. Order.**

The Hearing Officer shall issue a written Order to the appellant and the City notifying them of his/her decision. The Order shall include the Hearing Officer's findings of fact and ultimate decision. If the Hearing Officer modifies or waives provisions of the administrative citation, the Order shall specify which portions are modified and how they are modified. The Hearing Officer shall mail a copy of the Order to the appellant and the City within five (5) working days of the close of the hearing. G. Appeal to District Court. Either the City or the appellant may appeal the Hearing Officer's Order by filing a petition for review of the Order. The petition must be filed in the Fourth District Court within thirty (30) calendar days from the date the Hearing Officer's Order was mailed to the appellant. In the petition, the plaintiff may only allege that the Hearing Officer's order was arbitrary, capricious, or illegal. The Hearing Officer shall transmit to the reviewing court the record of its proceedings, including any minutes, findings, orders and, if available, a true and correct transcript of its proceedings. If, in the opinion of the 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.

### **ARTICLE 2. WEEDS AND OFFENSIVE ACCUMULATIONS**

#### **Section 1. Inspection and notice.**

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 ten (10) 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 of such land in person or by mailing notice, postage prepaid, addressed to 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 2. Compliance with the notice.**

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

#### **Section 3. Abatement by City.**

If any owner or occupant of land described in the notice issued pursuant to Article 2, Section 1, 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 twenty (20) 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 within the twenty (20) 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 4. Appeals.**

Any person aggrieved by a weed abatement decision is entitled to a hearing by filing a request for such in the office of the Director of Public Safety within ten (10) days of receiving notice from the City. The hearing shall be before a hearing officer appointed by the City Manager. The hearing officer shall have authority to uphold or overturn any decision properly before him or her regarding weed abatement under this article.

#### **Section 5. 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 3. HAZARDOUS MATERIALS**

#### **Section 1. Definitions.**

“**Discharge**” means leakage, seepage, or other release.

“**Hazardous**” material means 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. Person means any natural person or individual, governmental body, firm, association, partnership, co-partnership, joint venture, company, corporation, joint stock company, trust, estate, or any other legal entity, or their legal representative, agent or assigns.

#### **Section 2. Declaration of Nuisance.**

The actual or threatened discharge of hazardous materials within American Fork City is hereby declared a nuisance.

**Section 3. Liability for Abatement of Nuisance.**

Any person who owns, leases, operates, or controls any facility, equipment, or vehicle from which a discharge of hazardous materials has occurred, or is threatened to occur, shall be liable to American Fork City for any expenses incurred by the City in connection with preventing, assessing, containing, cleaning up, or disposing of any hazardous material discharged or threatened to be discharged.