

COTTONWOOD HEIGHTS

ORDINANCE No. 420

AN ORDINANCE AMENDING CHAPTER 9.05, COTTONWOOD HEIGHTS CODE OF ORDINANCES, REGARDING NUISANCES

WHEREAS, effective 14 January 2005, the city council (the “*Council*”) of the city of Cottonwood Heights (the “*City*”) adopted a code of ordinances (the “*Code*”) for the City; and

WHEREAS, Chapter 9.05 (“*Chapter 9.05*”) of the Code describes, *inter alia*, conditions and actions which are considered to be nuisances and provides the legal framework for the City to address and abate such nuisances; and

WHEREAS, on 20 August 2024 the Council met in regular session to consider, among other things, amending Chapter 9.05 to conform certain provisions thereof with recent amendments to UTAH CODE ANN. 10-11-1 *et seq.*, entitled “Inspection and Cleaning;” and

WHEREAS, after careful consideration, the Council has determined that it is in the best interest of the health, safety and welfare of the City’s residents to amend Chapter 9.05 of the Code as proposed;

NOW, THEREFORE, BE IT ORDAINED by the city council of the city of Cottonwood Heights as follows:

Section 1. **Adoption of Amended Chapter 9.05.** The Council hereby amends Chapter 9.05 of the Code as shown on the attached exhibit, which shows any deletions to Chapter 9.05 ~~struck through~~ and any additions to Chapter 9.05 underlined.

Section 2. **Action of Officers.** All actions of the officers, agents and employees of the City that are in conformity with the purpose and intent of this ordinance (this “*Ordinance*”), whether taken before or after the adoption hereof, are hereby ratified, confirmed and approved.

Section 3. **Severability.** It is hereby declared that all parts of this Ordinance are severable, and if any section, paragraph, clause or provision of this Ordinance shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of any such section, paragraph, clause or provision shall not affect the remaining sections, paragraphs, clauses or provisions of this Ordinance.

Section 4. **Repealer.** All ordinances or parts thereof in conflict with this Ordinance are, to the extent of such conflict, hereby repealed.

Section 5. **Effective Date.** This Ordinance, assigned no. 420, shall take immediate effect as soon as it shall be published or posted as required by law and deposited and recorded in the office of the City’s recorder, or such later date as may be required by Utah statute.

PASSED AND APPROVED this 20th day of August 2024.

ATTEST:

COTTONWOOD HEIGHTS CITY COUNCIL

By: 
Paula Melgar, Recorder



By: 
Michael T. Weichers, Mayor

VOTING:

Michael T. Weichers	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Matt Holton	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Suzanne Hyland	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Shawn E. Newell	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Ellen Birrell	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>

DEPOSITED in the Recorder's office this 20th day of August 2024.

POSTED this 21 day of August 2024.

Chapter 9.05

NUISANCES AND ABATEMENT

Sections:

- 9.05.010 Purpose.
- 9.05.020 Definitions.
- 9.05.030 Nuisance—Definition.
- 9.05.040 Exceptions.
- 9.05.050 Responsibility for nuisances.
- 9.05.060 Nuisance abatement—Administration.
- 9.05.070 Finding of nuisance.
- 9.05.080 Voluntary correction.
- 9.05.090 Administrative notice.
- 9.05.100 Other remedies.
- 9.05.110 Appeals.
- 9.05.120 Severability

9.05.010 Purpose.

The purpose of this chapter 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 chapter provides for progressive enforcement measures to abate nuisances; the most aggressive forms of enforcement are generally reserved for the most recalcitrant violators of this chapter.

9.05.020 Definitions.

For the purpose of this chapter, the following terms shall have the meaning herein prescribed:

A. “*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 city designated representative determines is necessary in the interest of the general health, safety and welfare of the community.

B. “*Completion date*” means the date by which the responsible person must abate a nuisance. The completion date is originally set by the city designated representative in the voluntary correction agreement or in a notice from the city. The completion date may be modified by the hearing officer.

C. “*Emergency*” means a situation which, in the opinion of the city designated representative, requires immediate action to prevent or eliminate an immediate threat to the health or safety of a person or property.

D. “*Hearing officer*” means the person(s) designated to hear appeals pursuant to this chapter. The hearing officer shall be the mayor or his designee. The designee need not be a city employee.

E. “*Inoperable vehicle*” means a vehicle not currently registered or licensed in this state or another state, or a vehicle that is or has any of the following conditions: dismantled, broken windows, flat tires, no tires, missing doors, missing windows, missing fenders, missing hood, missing trunk, will not start, or is in a condition that would result in the vehicle’s failure to pass state safety inspection pursuant to the Motor Vehicle Act, UTAH CODE ANN. §41-1a-101, *et seq.*

F. “*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.

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

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

I. “*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.

J. “*Responsible person*” means the person(s) responsible for correcting or abating a nuisance pursuant to this chapter. 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 are more than one responsible persons, the city may proceed against one, some or all of them.

K. “*Vehicle*” includes, but is not limited to, trailers, travel trailers, semi-trailers, road tractor, recreational vehicle, pick-up truck, motorboat, manufactured home, motor vehicle, motorcycle, off-highway vehicle, farm truck, farm tractor, commercial vehicle, camper, all-terrain type I and type II vehicles, off-highway vehicle, reconstructed vehicle, sailboat, special interest vehicle, specially constructed vehicle, all as defined in the Motor Vehicle Act, UTAH CODE ANN. §41-1a-101, *et seq.*

9.05.030 Nuisance--Definition.

A. This section defines “nuisance” by providing five general definitions of what constitutes a nuisance (subsection B), and then providing specific examples of situations, conduct or activities that constitute nuisances (subsection C). 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.

B. *General Definitions of Nuisance.* Any activity that meets any one or more of the five definitions set forth below shall constitute a “nuisance” if it occurs within the city:

1. Nuisance as Defined in UTAH CODE ANN. §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 UTAH CODE ANN. §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 UTAH CODE ANN. §76-10-803.

(a) Unlawfully doing any act or omitting to perform any duty, which act or omission:

(i) Annoys, injures, or endangers the comfort, repose, health, or safety of three or more persons, at separate and distinct addresses in the effected neighborhood of the city;

(ii) Offends public decency;

(iii) 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

(iv) In any way renders three or more persons, at separate and distinct addresses in the effected neighborhood of the city, insecure in life or the use of property.

(b) An act which affects three or more persons, at three separate and distinct addresses in the effected neighborhood of the city, 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 C. Anything specifically listed as a nuisance in subsection (C), below.

C. Nuisances Enumerated. Every situation, conduct or activity listed below constitutes a nuisance and may be abated pursuant to this chapter. The listed examples are not exhaustive; a situation, conduct or activity not listed below, but coming within one of the general definitions of nuisance listed above, shall also constitute a nuisance. The first six listed nuisances are also listed as nuisances pursuant to UTAH CODE ANN. § 78B-6-1107(1):

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 UTAH CODE ANN. Title 57, Chapter 37 (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 UTAH CODE ANN. Title 76, Chapter 10, Part 11 (Gambling), which creates the conditions of a nuisance as defined in UTAH CODE ANN. §78B-6-1101(1).

3. Gangs. Every building or premises wherein criminal activity is committed in concert with two or more persons as provided in UTAH CODE ANN. §76-3-203.1.

4. Party Houses. Every building or premises where parties occur frequently which create the conditions of a nuisance as defined in UTAH CODE ANN. §78B-6-1101(1).

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 UTAH CODE ANN. Title 76, Chapter 10, Part 13 (Prostitution).

6. Weapons. Every building or premises where a violation of UTAH CODE ANN. Title 76, Chapter 10, Part 5 (Weapons) 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; scrap metal; machinery or machinery parts; salvage materials; abandoned, discarded or unused furniture;

stoves, sinks, toilets, boxes, barrels, bottles, cans, containers, ice boxes, refrigerators, 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 construction, 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, other than on collection day, or for more than 12 hours before or after the collection day or the use of worn-out, rusted or filthy garbage containers.

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. 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 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;

(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;

(c) Buildings which are abandoned, partially destroyed, or left in an unreasonable state of partial construction for a period of six months or longer. An “*unreasonable state of partial construction*” means 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;

(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;

(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;

(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 the city's code of ordinances 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 consuming intoxicating liquor or alcohol, and/or drugs;

(b) Publicly urinating or defecating;

(c) 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;

(d) Engaging in acts of violence, including fighting amongst themselves;

(e) Discharging a firearm or explosive in violation of city ordinance or state law;

(f) Creating unreasonable noise which disturbs others;

(g) Intentionally obstructing pedestrian or vehicular traffic; or

(h) Soliciting acts of prostitution.

28. 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, open well, 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; or

(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. Family. Keeping or allowing people at a premises in violation of the city's single family residence and zoning requirements.

30. Parking on Landscaping. Parking in an area required to be landscaped by city ordinance.

31. Banner and Snipe Signs. Keeping or allowing banner and/or snipe signs in violation of city ordinance.

32. Required Landscaping. Failure to install or maintain landscaping required by city ordinance.

33. Fly Control. Any premises that contains any one of the following unsanitary conditions:

(a) A privy, cesspool, sink, pit or like place that is not securely protected from flies;

(b) Garbage that is not securely protected from flies; or

(c) Vegetable waste, trash, litter, rags or refuse of any kind which flies may breed.

34. Habitat for Insects. Any condition that creates a habitat for mosquitoes or other harmful insects.

35. Weeds and Refuse. Any violation of chapter 9.60 of this code.

36. Rats. Accumulation of garbage or refuse that constitutes a health or safety hazard, consisting of waste, animal or vegetable matter upon which rats may feed.

37. Dead Animals. Any premises that contains any dead animals, animal parts, animal matter of any kind (except fertilizer), or any violation of section 8.32.160 of this title.

38. Nuisance Animal. Any animal that is considered to be a nuisance under title 8 of this title.

9.05.040 Exceptions.

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

9.05.050 Responsibility for nuisances.

The responsible person(s) is responsible for abating nuisances pursuant to this chapter. 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 a responsible person pursuant to this chapter. Every successive owner or tenant of a property or premises who fails to abate a continuing nuisance upon or in the use of such property or premises caused by a former owner or tenant is responsible therefore in the same manner as the one who first created it.

9.05.060 Nuisance abatement—Administration.

This chapter shall be administered and enforced by the city's police department or other designee. In case of nuisances involving dangerous buildings or violations of codes typically administered and enforced by the health department, this chapter may also be administered and enforced by the city's community development department.

9.05.070 Finding of nuisance.

If a city designated representative finds that a nuisance exists, the representative will usually attempt to have the responsible person abate the nuisance. Although the representative's first usual step in correcting or abating the nuisance will be to attempt to obtain voluntary compliance, the representative may pursue any remedy or combination of remedies available pursuant to this chapter, state law or common law in order to abate the nuisance. Subject to the requirement of Section 9.05.100(D)(1) below requiring the city representative to seek voluntary compliance before initiating criminal prosecution, Nothing in this chapter shall be interpreted to prohibit the city from engaging in its standard prosecution or abatement practices. ~~Therefore, the city may prosecute violators of city ordinances or state laws without first attempting to give notice as stated in this chapter.~~ Further, Nothing in this chapter shall be interpreted to prevent the city from enforcing applicable city ordinances, or building codes without first treating the offending conduct, situation or activity as a nuisance pursuant to this chapter.

9.05.080 Voluntary correction.

This section applies whenever the city designated representative determines that a nuisance exists.

A. Contact. Before taking other steps to abate the nuisance, the city designated representative will usually 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.

B. No Agreement. If the city designated representative and the responsible person cannot agree to terms for correcting or abating the nuisance, the city representative may still abate the nuisance using one or more of the procedures set forth in this chapter, state law, or common law.

C. Voluntary Correction Agreement.

1. If the city representative and the responsible person agree to terms for abating the nuisance, they shall enter into and sign 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:

- (a) The name and address of the responsible person;
- (b) 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;
- (c) A description of the nuisance;
- (d) The necessary corrective action to be taken, and a date or time by which correction must be completed;
- (e) An agreement by the responsible person that the city may enter the premises and inspect the premises as may be necessary to determine compliance with the voluntary correction agreement;
- (f) An agreement by the responsible person that the city may abate the nuisance and recover its costs and expenses to abate the nuisance, as well as a monetary fine pursuant to this chapter from the responsible person, if terms of the voluntary correction agreement are not met;
- (g) An agreement by the responsible person acknowledging that he waives the right to appeal the city representative's finding that a nuisance exists and waives the right to appeal the specific corrective action required in the voluntary correction agreement; and
- (h) An agreement by the responsible person that failure to comply with the voluntary correction agreement may be grounds for criminal prosecution.

2. The city representative 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.

9.05.090. Administrative notice.

A. *Administrative Notice.* When the city designated representative determines that a nuisance exists, and is unable to secure voluntary correction pursuant to section 9.05.080 of this chapter, the representative may issue an administrative notice to the responsible person. The representative may issue an administrative notice without having attempted to secure voluntary correction as provided in section 9.05.080 of this chapter under the following circumstances:

1. When an emergency exists; or
2. When the representative is unable to locate or determine the identity of the responsible person.

B. *Content of Administrative Notice.* The administrative notice shall include the following:

1. The name and address of the property owner according to the records of the Salt Lake County Recorder~~responsible person~~;

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;

3. A description of the nuisance, including identifying the relevant ordinance or regulation being violated;

4. The required corrective action, such as eradication, destruction or removal of any identified item(s);

5. A description of each order, fine, or penalty that may be imposed absent timely corrective action;

6. For a structure or any real property closed to occupancy or entry by the local health department because of hazardous materials (as defined in UTAH CODE ANN. §19-6-902, as amended), an explanation of the right of the responsible person to abate the hazardous materials or appeal the notice within 180 days after the day on which the notice is delivered in person or the date the notice is post-marked;

7. The completion date for the responsible person to eradicate, destroy, or remove any identified item(s) or otherwise abate the specified nuisance, which shall not be less than 20 days after the day the notice is hand-delivered or postmarked or 180 days after the notice is hand-delivered or post-marked in the case of hazardous materials;

8. A statement indicating that no monetary fine will be assessed if the city representative approves the completed, required corrective action prior to the completion date;

9. ~~and a n~~Notice that the city may abate the nuisance and charge the owner or other responsible person for all abatement costs, expenses and monetary fine as specified in the notice if the nuisance is not abated and responsible person does not corrected the nuisance before the a specified completion date; A statement indicating that no monetary fine will be assessed if the representative approves the completed, required corrective action prior to the completion date; and

106. The time for appealing the administrative notice to the hearing officer and the procedure for filing an appeal;

7. ~~A statement indicating that no monetary fine will be assessed if the representative 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 representative before the completion date. An appeal~~

shall be timely if it is filed within 20 days after the date that the administrative notice is personally-delivered or postmarked.

C. *Service of Administrative Notice.*

1. The representative shall serve the administrative notice upon ~~the either:~~

(a) The record owner of the property as shown on the Salt Lake County Recorder's records by personal delivery or by certified mailing, return receipt requested, to that owner's record address;
or

(b) The non-owner occupant or other responsible person for the property by personal delivery or by certified mailing, return receipt requested, to the property address.

~~2. responsible person, either personally or by mailing, certified, return receipt requested, a copy of the administrative notice to the responsible person at his last known address. If the responsible person cannot after due diligence be personally served within Salt Lake 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 notice 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 of Time.* No extension of the time specified in the administrative notice for correction of the nuisance may be granted, except by order of the hearing officer, who may extend the date for corrective action after taking into account the cost of curing the violation.

9.05.100 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 notice, 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;

(b) The requirements of an administrative notice have not been complied with, or, if the administrative notice is appealed to a hearing officer and the terms of the administrative notice 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, when abatement by the city is available under this section 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. The costs, including incidental expenses, of correcting or abating the violation shall be billed to the owner, occupant or other responsible person ~~and/or the owner, lessor, tenant or other person~~ entitled to control, use and/or occupy the property. Such billing statement shall be mailed by certified mail, return receipt requested, to the property owner's last-known address according to the records of the Salt Lake County Recorder. Amounts due thereunder shall be paid and shall become due and payable to the city within 30ten days after the billing statement is postmarked of actual receipt of the bill (within 15 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.

5. The billing statement shall:

- (a) Include the address of the property;
- (b) Include an itemized list of and demand for payment of all costs and expenses incurred by the city as described in subsection 4(b) above;
- (c) Specify the address of the city's treasurer where payment may be made for the expenses;
- (d) Notify the property owner that failure to pay the charges may result in a lien on the property in accordance with UTAH CODE ANN. §10-11-4;
- (e) Notify that the property owner may file a written objection to all or part of the billing statement within 20 days after the statement is hand-delivered or postmarked; and
- (f) Specify the address where the owner may file the objection, including the city office and address.

B. *Monetary Fine.*

1. The owner, occupant or other responsible person shall pay the city a monetary fine for each day the nuisance continues after the specified completion date. The nuisance shall be considered to continue until the representative approves the responsible person's actions to correct or abate the nuisance. The amount of the monetary fine shall be as follows:

- (a) \$100.00 per day for each day during the first week that the nuisance remains uncorrected or unabated after the completion date; and
- (b) \$200.00 per day for each day thereafter until the nuisance is corrected or abated according to the terms set forth in the administrative notice.

2. The monetary fine shall be cumulative and may not be waived by the representative. 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 notice. The monetary fine constitutes a personal obligation of the responsible person. Any monetary fine assessed must be paid to the city within 15ten calendar days from the date of mailing of the hearing officer's decision and order or a notice from the city that the fine is due. The city attorney or designee is authorized to take appropriate action to collect the monetary fine, plus reasonable attorneys' fees and costs incurred in collecting said monetary fine.

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 chapter or pursuant to state law.

D. *Criminal Actions.* Criminal actions may be initiated by criminal citation or by 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 city designated representative first attempted to obtain voluntary correction as provided in section 9.05.080 of this chapter.

2. If the alleged nuisance is also a violation of a provision of city code (other than this chapter~~nuisance ordinance~~) or Utah state law, the responsible person may be charged under the specific provision of city code or state law, even if the city designated representative did not first attempt to obtain voluntary correction as provided herein.

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 chapter, 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 this chapter 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, or the city attorney in the name of the city, 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 in accordance with 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. Notwithstanding anything contained herein to the contrary, the city may proceed pursuant to UTAH CODE ANN. § 10-11-1 through 4 (the “Inspection and Cleaning Act”) without complying with any of the provisions of this chapter. In addition, 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 who 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.

H. Buildings Closure. Whenever conditions inside or under occupied business buildings provide extensive harborage for rats, in the opinion of the city, the city is empowered, after due notification in accordance with this chapter, to close the business buildings until such time as the conditions are abated by rat-proofing and harborage removal including, if necessary, the installation of suitable concrete floors in basements or replacement of wooden ground floors with concrete or other major repairs necessary to facilitate rat eradication.

I. Buildings Destruction. Whenever conditions inside or under unoccupied business buildings provide extensive harborage for rats, in the opinion of the city, the city is empowered, after due notification in accordance with this chapter, to institute condemnation and destruction proceedings.

9.05.110 Appeals.

A. *Grounds.* Any person receiving an administrative notice may appeal the administrative notice to the hearing officer. Only the following issues may be appealed to the hearing officer:

1. The person charged in the administrative notice as the responsible person is not the responsible person as defined by this chapter;
2. The condition described as a nuisance in the administrative notice is not a nuisance as defined by this chapter;
3. The method required by the administrative notice 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 notice is unreasonable;
5. The monetary fine set forth in the administrative notice is unreasonable;
6. The city designated representative refused to approve a corrective action that met the requirements of the administrative notice; or
7. The responsible person claims that the requirement(s) of the administrative notice violates their constitutional rights.

B. *Filing.* The person desiring to appeal must file a notice of appeal with the city within ~~20 ten~~ days ~~after of receipt of~~ the administrative notice ~~is personally delivered or postmarked~~ (within ~~15 days after the mailing date if the administrative notice is mailed~~).

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 representative 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 shall be scheduled by the hearing officer within 30 days after the notice of appeal is filed with the city.

D. *Burden of Proof.* The appellant shall have the burden of proof to demonstrate by a preponderance of the evidence that they had legitimate grounds for an appeal. The determination of the representative 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.*

1. The hearing officer shall have authority to affirm or vacate the administrative notice, or to modify or waive specific provisions of the administrative notice. If the appellant fails to attend the hearing, the hearing officer shall affirm the administrative notice. The hearing officer shall not vacate the administrative notice unless they find that no nuisance exists. The hearing officer shall modify the administrative notice if they find that a nuisance exists, but that one or more of the requirements of the administrative notice is improper or inappropriate. A requirement is improper if it is contrary to this chapter. A requirement is inappropriate if the hearing officer finds that there is a better means of resolving the problem or that the proposed solution is inappropriate given the nature or severity of the problem. When determining whether to waive or modify a requirement of the administrative notice, the hearing officer may also consider:

- (a) Whether the appellant responded to the representative's attempts to contact the appellant and cooperated with efforts to correct the nuisance;
- (b) Whether the appellant has shown due diligence and/or substantial progress in correcting the nuisance;
- (c) The financial ability of the appellant and the amount, if any, that the appellant has benefited financially by maintaining the nuisance; and
- (d) Any other relevant factors.

2. If the appellant appeals the city designated representative'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 notice.

F. *Order*. The hearing officer shall issue a written order to the appellant and the city notifying them of their decision. The order shall include the hearing officer's findings of fact conclusion of law, and an ultimate decision. If the hearing officer modifies or waives provisions of the administrative notice, 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 business 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 district court within 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 chapter.

9.05.120 Severability

The provisions of this chapter are severable and are subject to any contrary provisions of the Inspection and Cleaning Act and any other applicable Utah state law.