

ORDINANCE #2021-O-06

ORDINANCE AMENDING TITLE 5 CHAPTER 4 REGARDING NUISANCE DEFINITIONS AND ENFORCEMENT FOR SOLID WASTE AND STAGNANT WATER AND AMENDING TITLE 13 CHAPTER 4 INSPECTION PROCEDURES AND CHAPTER 8 13.08 RECOVERY OF CODE ENFORCEMENT PENALTIES AND COSTS.

WHEREAS, residential and commercial construction projects produce significant solid waste and refuse that accumulate at the construction site and adjoining properties;

WHEREAS, such accumulation of solid waste is hazardous to the health and safety of people, pets, and wildlife, and creates a public nuisance.

WHEREAS, residential and commercial construction purposely or incidentally create collections of surface water either through excavations or water features;

WHEREAS, when such surface water is not allowed to drain or treated the water becomes stagnant;

WHEREAS, stagnant water repels wildlife, creates a foul smell, becomes a breeding ground for unwanted insects, and is hazardous to the health and safety of people and pets which creates a public nuisance;

WHEREAS, the Hideout Town Council has determined it is advisable to amend the nuisance ordinance to protect the health and safety of residents and visitors.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF HIDEOUT, UTAH, THAT:

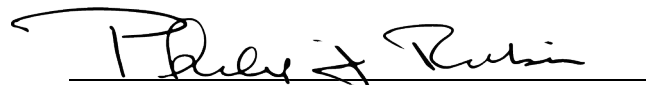
SECTION I: Amend Chapter 5.04 Sections 5.04.010 through 5.04.040 and 5.04.100 of the Hideout Town Code is hereby amended as redlined (Exhibit 1).

SECTION II: Amend Chapter 13.04 Section 13.04.050 and Chapter 13.08 Section 13.08.010 of the Hideout Town Code is amended as redlined (Exhibit 2).

Section III: Effective Date. These amendments shall take effect upon publication.

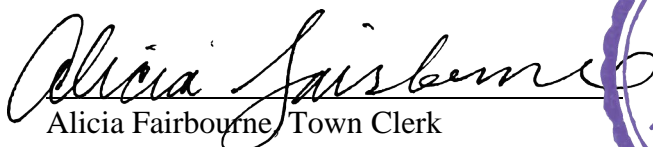
PASSED AND ADOPTED by the Town Council of Hideout, Utah, this 10th day of June in the year 2021.

TOWN OF HIDEOUT



Phil Rubin, Mayor

ATTEST:



Alicia Fairbourne Town Clerk



Exhibit 1: Chapter 5.04 Sections 5.04.010 through 5.04.040 and 5.04.100

Exhibit 2: Section 13.04.050

EXHIBIT 1

TITLE 5 Health and Sanitation

CHAPTER 4 Nuisances

5.04.010 FINDINGS AND PURPOSE

- A. The Town of Hideout council finds that conditions on real property in the town may constitute nuisance in that these conditions:
1. Provide a breeding ground for insects and vermin;
 2. Provide habitations for insects and vermin;
 3. Create a fire hazard;
 4. May attract children to unsafe areas; and
 5. Detract from the attractiveness of neighborhoods in the town.
- B. Such conditions include:
1. Storing of junk, garbage, trash, refuse, and solid waste on real property;
 2. Allowing weeds and other vegetation to become overgrown or otherwise uncared for; and
 3. Storing and maintaining abandoned or unsightly vehicles on real property.
 - 3.4. Stagnant water.
- C. It is the purpose of this chapter to:
1. Prevent fire hazards;
 2. Prevent insect, rodent, and other vermin infestations;
 3. Prevent induction of pollens into the air;
 4. Prevent further spread of vegetation that threatens the public health, safety and welfare;
 5. Abate the existence of conditions or objects, structures, or solid waste that threaten the public health, safety or welfare, or that create a public nuisance;
 6. Prevent the continued existence of unsightly or deleterious objects and structures upon property resulting from lack of maintenance, repair, or cleaning; and
 7. Enhance the appearance of property and reduce communication between criminal elements by elimination of graffiti on structures within the town.
- D. This chapter accomplishes its purposes by:
1. Identifying conditions on real property which are considered nuisances;
 2. Providing a procedure for abating these nuisances; and
 3. Providing penalties for the violation of this chapter.

5.04.020 DEFINITIONS - NUISANCES

As used in this chapter, the following words shall have the following meanings unless clearly indicated otherwise by the context:

ABANDONED OR UNSIGHTLY VEHICLE:

- A. Any vehicle which is inoperable by virtue of being wrecked, dismantled, partially dismantled or some similar condition.
- B. A vehicle which is kept in an enclosed structure out of sight of the general public shall not be considered abandoned for purposes of this chapter. For the purpose of this chapter, enclosed structure shall be a structure with four (4) walls and a roof and shall not include any type of fenced area.
- C. A vehicle which is being repaired or restored pursuant to a restoration permit issued under this code shall not be considered abandoned for purposes of this chapter. An abandoned or unsightly vehicle shall not include a vehicle that is properly located in an approved area of a business engaged in the sale, repair or restoration of vehicles, provided such approval is granted as part of a conditional use permit with site plan approval of the planning commission and town council. A vehicle used in a lawful agricultural use shall not be considered abandoned or unsightly under this chapter. Where the status of the vehicle is in question, the enforcement officer shall make the determination.

ABATE: To put an end to a condition which is considered to be a nuisance under the terms of this chapter.

ENFORCEMENT OFFICER: The Mayor, the Mayor's designee, or enforcement officer or sheriff's deputy appointed to enforce the terms of this chapter.

ERADICATION: The destruction of weeds by chemicals, cutting, disking, root removal, rototilling, or any other method approved by the enforcement officer.

GRAFFITI: The unauthorized spraying of paint or marking of ink, chalk, dye, or other similar substances on public or private property or structures. For the purposes of Utah Code § 10-11-1, graffiti is deemed to be deleterious and unsightly.

OWNER: Any person who, alone or jointly or severally with others:

- A. Has legal title to any real property, premises, dwelling or dwelling unit, with or without accompanying possession; or
- B. Has charge, care or control of any property, dwelling or dwelling unit, as legal or equitable owner, agent of the owner, lessee, as the executor, executrix, administrator, administratrix or guardian of the estate of the owner, or as trustee of any trust which owns the property.

PERSON: An individual, public or private corporation and its officers, partnership, limited liability company, association, firm, trustee, executor or executrix of an estate, administrator or administratrix of an estate, the state of Utah or its departments, institution, bureau, agency, municipal corporation, county, town, political subdivision, or any other entity recognized by law.

STAGNANT WATER: Any body of water on real property including a: lake, pond, stream, marshland, river, tank, canal, raceway, pond, or reservoir, that is not flowing, running, filtered or agitated, and stale or foul smelling.

PROPERTY: Any form of real property, together with all improvements to the real property, such as:

- A. Habitable structures,
- B. Other structures,
- C. All other items which are appurtenant to the property,
- D. Visible or tangible objects on the property, such as hedges, other vegetation, and automobiles, and
- E. Park strip contiguous to a parcel of property.

SOLID WASTE: An accumulation of any of the following that is not contained in a covered waste receptacle.

- A. Garbage, refuse, trash, rubbish, junk, hazardous waste, dead animals, sludge, liquid or semi-liquid waste;
- B. Spent, useless, worthless, or discarded materials;
- C. Material stored or accumulated for the purpose of discarding the materials;
- D. Materials which have served their original purpose and have become worthless or useless; or
- E. Waste or abandoned materials resulting from construction, building, industrial, manufacturing, mining, commercial, agricultural, residential, institutional, recreational, or community activities.
- F. Animal waste.
- G. The term "solid waste" does not include:
 1. Solid or dissolved materials in domestic sewage or in irrigation return flows, or discharges for which a permit is required under the Utah water quality act, Utah Code § 19-5-101 et seq., or
 2. Materials regulated under the federal water pollution control act, 33 United States Code §1251 et seq.

STRUCTURE: Anything constructed or erected on property which is located above or below ground, specifically including, but not limited to, fences, wells, poles, buildings, homes, dwellings, and sheds.

UNSIGHTLY: Dilapidated, ill-kept, or in disrepair to the extent that it is offensive to the visual sense to a reasonable person, in accordance with the findings and purposes of this chapter. Any water retention mechanism displaying a visible liner is considered unsightly.

WEEDS:

- A. Vegetation which poses a fire hazard;
- B. Vegetation that is noxious, a nuisance or dangerous as reasonably determined by the enforcement officer;
- C. Grasses, stubble, brush, tumbleweeds, clippings, and cuttings that endanger the public health and safety by creating:
 1. A fire hazard,
 2. A breeding ground for insects, rodents or other vermin, or

3. A habitation for insects, rodents or other vermin;
- D. Poison ivy; or
 - E. Plants specified as noxious weeds in the Utah noxious weed act, Utah Code § 4-17-1 et seq., and any regulations promulgated under the Utah Noxious Weed Act.
 - F. Plants which are growing on a hillside with a slope of twenty five percent (25%) and which are necessary to stabilize the hillside or to prevent erosion of the hillside shall not be considered weeds.

5.04.030 JURISDICTION

The municipality has jurisdiction to declare what shall be a nuisance, and abate the same, and impose fines upon persons who may create, continue or suffer nuisances to exist under Utah Code § 10-8-60 or its successor.

All enforcement of this chapter, including the issuing of notices and citations and abatement as described in this chapter shall be subject to the direction and control of the enforcement officer. The enforcement officer may call upon other town departments and employees in accomplishing the purposes of this chapter.

5.04.040 RESPONSIBILITIES OF ENFORCEMENT OFFICER

The enforcement officer shall make inspections of property located within the town and may issue notices and citations under this chapter or issue an administrative citation. The enforcement officer may also abate nuisances as described in this chapter.

A. Inspections:

1. The enforcement officer may make inspections on the property with the consent of the owner of property.
2. If the owner refuses to consent to an inspection, the enforcement officer may observe conditions on the property from a public place or from neighboring property with the consent of the owner of the neighboring property. The enforcement officer may issue a notice or a citation under this chapter based upon his observations from public property or from neighboring property.
3. If the owner refuses to consent to an inspection, the enforcement officer may obtain an administrative search warrant from an appropriate court to complete the inspection.
- ~~3.~~ The enforcement officer may not inspect the interior of a structure unless such inspection is required for the demolition and removal of the structure.

B. Records: The enforcement officer shall keep records of all of his enforcement activities and all facts which the enforcement officer shall find which relate to whether a particular property is in compliance with the terms of this chapter. During any period that the town provides its own enforcement, a property owner shall submit a request for records or reports to the enforcement officer, who shall provide the owner with a copy of the reports as required by law.

C. If the enforcement officer conducts an inspection, the enforcement officer shall deliver written notice of the inspection as follows:

1. The municipal inspector shall serve written notice to a property owner of record according to the records of the county recorder or
2. The municipal inspector may serve written notice to a non-owner occupant of the property or another person responsible for the property who is not the owner of record, including a manager or agent of the owner, if the property owner is not an occupant of the property:
3. The municipal inspector may serve the written notice:
 - (i) _____ in person or by mail to the property owner of record, if mailed to the last-known address of the owner according to the records of the county recorder; or
 - (ii) _____ in person or by mail to a non-owner occupant or another person responsible for the property who is not the owner of record if mailed to the property address.
4. In the written notice, the municipal inspector shall:
 - (i) _____ identify the property owner of record according to the records of the county recorder;
 - (ii) _____ describe the property and the nature and results of the examination and investigation conducted; and
 - (iii) _____ require the property owner, occupant, or, if applicable, another person responsible for the property to:
 - (A) eradicate or destroy and remove any identified item examined and investigated; and
 - (B) comply with Subsection (4)(iii)(A) above in a time period designated by the municipal inspector but no less than 10 days after the day on which notice is delivered in person or post-marked.
5. (d) For a notice of injurious and noxious weeds described in Subsection (2)(a), the municipal inspector is not required to make more than one notice for each annual season of weed growth for weeds growing on a property.

4.6. _____ The municipal inspector shall serve the notice under penalty of perjury.

5.04.100 NUISANCE CONDITIONS

The following conditions on real property shall constitute a nuisance under this chapter and the Enforcement Officer may abate these conditions, or issue a criminal citation to the owner under HMC 5.04.190, "Criminal Prosecution", with or without providing notice as provided in HMC 5.04.120, "Notice" or issue an administrative citation:

- A. Vegetation on private property which, due to its proximity to any public property or right of way interferes with the public safety or lawful use of the public property or right of way, or interferes with the town's clear view as defined in this code.
- B. Weeds on property (including abutting park strips, alleys, or street edges) which have grown to a height exceeding six inches (6") or which have grown on or over a sidewalk.

- C. An accumulation of weeds, solid waste, structures, or other objects on the property which is detrimental to health or safety.
- D. An accumulation of weeds, solid waste, structures, or other objects on the property which has become a fire hazard.
- E. An accumulation of weeds, solid waste, structures, or other objects on the property which has become a source of contamination or pollution of water, air, soil or property.
- F. An accumulation of weeds, solid waste, structures, or other objects on the property which has become a breeding place or habitation for insects, rodents, or other vermin.
- G. Weeds determined to be especially injurious to public health, crops, animals, land, or other property.
- H. An accumulation of solid waste, structures, equipment, or vehicles on a property that is unsightly unless there is an active building permit that requires the use of such items.
- G.I. Stagnant Water.

EXHIBIT 2.

Chapter 13.04 ADMINISTRATIVE CODE ENFORCEMENT PROCEDURES

13.04.040 INSPECTIONS

It shall be the duty of the responsible person served with a Notice of Violation to request an inspection when his or her property has been brought into compliance. It is prima facie evidence that the violation remains on the property if no inspection is requested. Civil penalties accumulate daily until the property has been inspected and a notice of compliance is issued. Reinspection fees shall be assessed if more than one inspection is necessary.

1. The enforcement officer may make inspections on the property with the consent of the owner of property.
2. If the owner refuses to consent to an inspection, the enforcement officer may observe conditions on the property from a public place or from neighboring property with the consent of the owner of the neighboring property. The enforcement officer may issue a notice or a citation under this chapter based upon his observations from public property or from neighboring property.
3. If the owner refuses to consent to an inspection, the enforcement officer may obtain an administrative search warrant from an appropriate court to complete the inspection.
3. The enforcement officer may not inspect the interior of a structure unless such inspection is required for the demolition and removal of the structure .

Chapter 13.08 RECOVERY OF CODE ENFORCEMENT PENALTIES AND COSTS

13.08.010 CODE ENFORCEMENT TAX LIENS

- A. Declaration of Purpose: The Town Council finds that recordation of code enforcement tax liens will assist in the collection of civil penalties, administrative costs, and administrative fees assessed by the administrative code enforcement hearing program or judicial orders. The Town Council further finds that collection of civil penalties, costs, and fees assessed for code enforcement violations is important in deterring future violations and maintaining the integrity of the Town's code enforcement system. The procedures established in this Section shall be used to complement existing administrative or judicial remedies that may be pursued to address violations of the Town Code or applicable state codes.
- B. Procedures for Tax Liens Without a Judgement:
 1. Once the Town has abated a property for weeds, garbage, refuse, or unsightly or deleterious objects or structures, the Ordinance Enforcement Officer shall prepare three copies of the Itemized Statement of Costs incurred in the removal and destruction of the violations and deliver it to the Town Treasurer within 10 days after completion of the work of removing the violations.

2. The Ordinance Enforcement Officer shall send, by ~~registered-certified~~ mail to the property owner's last known address, the occupant of the property, or other person responsible for the real property, a copy of the Itemized Statement of Costs informing him or her that a code enforcement tax lien is being recorded for the amount of actual costs of abatement. Payment shall be due within 20-30 calendar days from the date ~~of mailing~~ which the statement is post-marked.
3. Upon receipt of the Itemized Statement of costs, the Town Treasurer shall record a Code Enforcement Tax Lien against the property with the county treasurer's office.
4. The failure of any person with a financial interest in the property to actually receive the notice of the lien shall not affect the validity of the lien or any proceedings taken to collect the outstanding costs of abatement.

C. The itemized statement of costs shall include:

1. The address of the real property;
2. An itemized list of and demand for payment for all expenses, including administrative expenses, incurred by the municipality to enforce municipal code requirements;
3. The address of the municipal treasurer where payment may be made for the expenses; and
4. Notify the property owner:
 1. That failure to pay the expenses described in the itemized statement may result in a lien on the property pursuant to Utah Code Ann. § 10-11-4.
 2. That the owner may file a written objection to all or part of the statement within 20 days after the day of the statement post-mark; and
 3. Where the owner may file the objection, including the municipal office and address.

D. Objection and Hearing Procedure

1. If a property owner files a timely, written objection to the itemized statement, the municipality shall:
 - i. Hold a hearing in accordance with Title 52, Chapter 4, Open and Public Meetings Act; and
 - ii. Mail or deliver notice of the hearing date and time to the property owner.
2. At the hearing described in this section, the municipality shall review and determine the actual cost of abatement, if any, incurred by the municipality to enforce code requirements.
3. The property owner shall pay any actual cost due after a decision by the municipality at the hearing described in this subsection to the municipal treasurer within 30 days after the day on which the hearing is held.

C.E. Procedures for Tax Liens With a Judgement: Once a judgment has been obtained from the appropriate court assessing costs against the responsible person(s), the Town Ordinance Enforcement Officer may record a code enforcement tax lien against any real property owned by the responsible person(s).

D.F. Cancellation of Code Enforcement Tax Lien: Once payment in full is received for the outstanding civil penalties and costs, or the amount is deemed satisfied pursuant to a subsequent administrative or judicial order, the Town Ordinance Enforcement Officer shall either record a notice of satisfaction of judgment, or provide the property owner or financial institution with the notice of satisfaction of judgment so that it can record this notice with the county recorder's office. The notice of satisfaction of judgment shall include the same information as provided for in the original code enforcement tax lien. Such notice of satisfaction of judgment shall cancel the code enforcement tax lien.