

CHAPTER 4 - NUISANCE

Sections:

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Section 8-4-1: General Enforcement:

- A. Duty of Director: It shall be the duty of the Director to enforce these regulations and to issue citations and fines as necessary to enforce this Ordinance. The Director shall also coordinate as necessary with the Prosecuting Attorney to enforce any violations or lack of compliance herewith. The Elmore County Sheriff, and his or her authorized representatives, shall have the authority to enforce this Ordinance and assist the Director in enforcement actions as set forth in Idaho Statute and this Ordinance.
- B. Issuance of Building Permit: No building permit shall be issued for the construction, renovation or addition of any building or structure located on a parcel, lot or plat in violation of this Ordinance.
- C. Appropriate actions and proceedings may be taken at law or in equity to prevent any violation of this Ordinance, to prevent unlawful construction, to recover damages, to restrain, correct or abate a violation, to prevent illegal occupancy of a building, structure or premises, and these remedies shall be in addition to the penalties described in this Ordinance.

Section 8-4-2: Definitions:

ABATABLE NUISANCES: Enumerated nuisance conditions that may be abated by the county in accordance with the provisions of this chapter, specifically including, without limitation, the following nuisance conditions:

- A. Nuisance materials leaked, drained, seeped, dripped, sprayed, or dumped onto the ground on private property; or
- B. Nuisance weeds; or
- C. Graffiti; or
- D. Snow or ice on a public sidewalk abutting or adjoining any privately-owned premises; or

- E. Personal property/vehicles on any portion of a public property, right of ways or property in the County, except as specifically allowed by law or by written permit issued by the county or other governing authority.

GENERAL NUISANCES: Nuisance conditions that may lead to criminal charges without any prior attempt by the county to obtain abatement thereof, specifically including, without limitation, nuisance materials leaked, drained, seeped, dripped, sprayed, or dumped onto the ground on public property, or any other nuisance condition not enumerated in the definition of "abatable nuisances".

GRAFFITI: Any inscription, work, figure, symbol, drawing, mark, or design that is marked, etched, scratched, drawn, or painted on any real or personal property or improvement, including, but not limited to, walls, fences, gates, pavement, buildings, rocks, trees, bridges, streets, sidewalks, and/or signs, whether such property is public, private, temporary, or permanent, without the consent of the owner of such property or the owner's authorized agent, and which inscription, work, figure, symbol, drawing, mark, or design is visible from any publicly accessible location.

JUNK ABANDONED/VEHICLE: Any vehicle, or parts thereof, which:

- A. ~~Cannot be safely operated under its own power;~~
- ~~B. Is missing any one of the following: foot brakes, hand brakes, headlights, taillights, horn, muffler, rear view mirrors, windshield wipers, or adequate fenders;~~
- C. Has been declared salvage, or has been physically damaged to the extent that the cost of parts and labor minus the salvage value would make it uneconomical to repair or rebuild such vehicle; or
- BD. Is otherwise in a wrecked, partially dismantled, inoperative, or dilapidated condition.

C. Limit of two (2) per parcel.

NUISANCE: Anything which unreasonably injures or offends the health or senses; obstructs the free passage, comfortable enjoyment, or customary use of public or private property; or creates an actual or potential safety, health, or fire hazard. To included but not limited to: swimming pool, spa, or other body of water that is not secured with a fence.

NUISANCE MATERIALS: Hazardous, noxious, dangerous, or offensive materials, including, but not limited to, oil, gasoline, fuel, antifreeze, paint, pesticides, or herbicides.

TREES: Any trees are hereby declared a public nuisance if:

A: Any portion of the tree interferes with vehicular or pedestrian traffic in a public right of way, including the vision triangle; or

B: They are diseased, damaged, or insect-ridden so as to constitute a threat to life or property.

WEEDS: Undesirable plant growth, whether living or dead, that is unkempt, unsightly, fifty (50%) percent or more of the lot, twelve (12") inches or more in height, possible fire hazard, deleterious and/or injurious to the public. This definition shall not include cultivated grasses and pastures, though such vegetation may be declared a nuisance where otherwise appropriate.

Section 8-4-3: Enforcement, Violations and Penalties:

- A. **Enforcement Duties:** All departments, officials and employees of Elmore County vested with the authority to issue permits shall conform to the provisions of this Ordinance and shall issue no permit, buildings or purposes in conflict with the provisions of this Ordinance. Any such permit issued in conflict with the provisions of this Ordinance shall be null and void. The Director shall maintain a nuisance enforcement program to promote the abatement of violations of this Ordinance and to provide assistance in the prosecution of such violations. It shall be the duty of the Director, Code Enforcement Officer and/or the Building Official, or their authorized agent(s), to enforce the provisions of this Ordinance pertaining to the erection, construction, reconstruction, moving, conversion, alteration, addition, location, or raising of any building or structure. It shall further be the duty of the Director, or his/her authorized agent(s) to enforce the provisions of this ordinance pertaining to nuisance regulation, including compliance with the wrecking, salvage, and/or junk yard provisions.
- B. **Enforcement:** Enforcement of this Ordinance may be by criminal prosecution, a civil lawsuit or an abatement action. Selection of the enforcement procedure shall be at the sole discretion of the County and commencement of one procedure shall not preclude commencement of another.
- C. No owner, occupant, tenant, manager, person or entity having control of or a legal interest in a property within Elmore County shall maintain a nuisance in common law or nuisance as defined in this Ordinance on said property.
- D. **Violation of Ordinance Unlawful:** Penalties and Restitution. It shall be unlawful for any owner, occupant, tenant, manager, or any person or entity having control of, or a legal interest in, property to violate any requirement or duty imposed by this Ordinance. Upon conviction of any violation of any of the provisions of this Ordinance such person shall be punished by a fine of not more than one thousand dollars (\$1,000.00), or by imprisonment for not more than six (6) months, or both such fine and imprisonment. Each and every day of continuing violation shall be considered a separate criminal offense. Upon conviction, violators shall be

responsible for and pay all incurred investigation, prosecution and court costs as determined by the court having jurisdiction over the proceeding.

E. Administrative Procedure: Code Enforcement cases commence by a citizen complaint or any time knowledge of a possible violation becomes known to the County. Complainants may be anonymous or the complainant may leave a name and number so that they can be contacted in the future. Following commencement of the case, the following administrative procedure is followed:

1. A site inspection is performed to verify that a violation exists on the property.
2. The property owner, tenant, and/or occupant of the property where there exists a violation of the provisions of this Ordinance are then notified that a violation(s) exists. Such notice shall include (1) a description of the property where the violation exists, (2) a description of the details of the violation or violations and that there is a fifteen (15) day opportunity to correct the violation(s) after receipt of notice. This Notice may be made by personal service or certified mail, return receipt requested. The Code Enforcement Officer may extend the fifteen (15) day requirement for good cause, but under no circumstances shall the time period be extended for public health and safety issues for longer than ninety (90) days.
3. A follow up inspection is performed to verify that the violation(s) has/have been corrected after the fifteen (15) days from receipt of notice.
4. If compliance cannot be achieved through administrative channels, or if the landowner, tenant and/or occupant of the property fails or refuses to respond or accept correspondence to said Notice of Violation within the prescribed time period, the County may commence enforcement action.
5. Compliance with the above administrative procedure either completely or partially is at the discretion of the Director, Code Enforcement Officer and/or Building Official and failure to follow these procedures shall not bar commencement of a criminal, civil, or abatement proceeding by the County.

F. Enforcement Actions.

1. Criminal Actions shall commence by issuance of a misdemeanor criminal citation signed by the Code Enforcement Officer, Building Official and/or Director, any county law enforcement officer, any county employee so authorized by the Board or by a formal criminal complaint filed by the Elmore County Prosecuting Attorney.
2. Civil Actions shall commence by filing a civil complaint by the Elmore County Prosecuting Attorney in the District Court of the State of Idaho having jurisdiction.

The County may seek any relief deemed appropriate including, but not limited to, monetary damages, and

3. **Abatement:** The County may abate any nuisance in Elmore County or any conditions caused by a violation of this Ordinance. The expenses associated with abatement and abatement proceedings (including any expenses arising from contractors hired by the County to perform said abatement, investigatory costs and costs of suit) shall be charged to the owner, occupant or person in charge or possession of the premises or property upon which the nuisance exists. The Prosecuting Attorney may seek recovery of these expenses and costs under Idaho Statute §§ 31-604, 52-202 and 52-205. Said costs shall attach as a lien upon the subject property if unpaid.

G. **Remedies and Sanctions not Exclusive:** The remedies and sanctions set forth in this Chapter shall not be construed so as to exclude any other remedies or sanctions, either criminal or civil, elsewhere prohibited by this Chapter.

H. **Severability:** The provisions of this chapter are severable, and if any sentence, section or other part of this chapter shall be found to be invalid, such invalidity shall not affect the remaining provisions and the remaining provisions shall continue in full force and effect.

I. **Chronic Nuisance Property:**

1. **Purpose:** Chronic nuisance properties present grave health, safety and welfare concerns and occur when the property owners or persons in charge of such properties fail to take corrective action to abate the nuisance conditions with more than one (1) violation notice. Chronic nuisance properties have a tremendous negative impact upon the quality of life, safety and health of the neighborhoods where they are located. Additionally, chronic nuisance properties are a financial burden to the county; repeated calls for service to the properties because of the nuisance activities that repeatedly occur or exist on such properties.

This chapter is a means to ameliorate those conditions by providing a process for abatement and hold responsible the owners or persons in charge of such properties. This remedy is not an exclusive remedy available under any state or local laws and may be used in conjunction with such other laws.

a. **Chronic Nuisance Property Violation:**

- i. Any property within the unincorporated areas which becomes a chronic nuisance property is in violation of this section and subject to its remedies.
- ii. Any person(s) who permits property under his or her ownership or control to be a chronic nuisance property shall be in violation of this section and subject to its remedies.

2. Procedure:

- a. When the code enforcement officer, or his designee, receives documentation confirming the occurrence of three (3) or more nuisance activities within a twelve (12) month ~~ninety (90) day~~ period on the property, the code enforcement officer, or his designee, may review such reports with the Director to determine whether they describe the nuisance activities enumerated above. For the purposes of this section, an arrest or conviction of an individual for the above described nuisance activities shall not be necessary to qualify as a nuisance. Upon a finding of the occurrence of three (3) or more nuisance activities within a twelve (12) month ~~ninety (90) day~~ period on the property, the code enforcement officer, or his designee, shall notify a property owner at the address shown in the Elmore County Assessor records and shall notify the person in charge of the property in writing that the property is in danger of being declared a chronic nuisance property.
- b. The notice shall contain:
- i. The street address or a legal description sufficient for identification of the property;
 - ii. A concise description of the nuisance activities that exist, or that have occurred on the property;
 - iii. A demand that the owner or person in charge respond to the code enforcement officer, or his designee, within ten (10) days of receipt of the notice to discuss the nuisance activities and create a plan to abate the chronic nuisance;
 - iv. Offer the person in charge an opportunity to abate the nuisance activities giving rise to the violation; and
 - v. A statement describing that if legal action is sought, the property could be subject to closure, civil penalties and cost assessed up to one hundred dollars (\$100.00) per day after the notice of the chronic nuisance is received.
 - vi. Such notice shall be either: a) personally served; or b) delivered by certified and first-class mail to the person in charge of the property, with a copy mailed certified and first class to the owner indicated by the Elmore County assessor, if different than the person in charge of the property.
 - vii. If the person in charge fails to respond to the notice within the time prescribed, the code enforcement officer, or his designee, shall post such notice at the

property. If the person in charge fails to respond to the notice of chronic nuisance, the matter shall be referred to the office of the county attorney for further action.

viii. If the person in charge responds as required by the notice and agrees to abate the nuisance activity, the code enforcement officer, or his designee, and person in charge and/or property owner, may work out an agreed upon course which would abate the nuisance activity. If an agreed course of action does not result in the abatement of the nuisance activities or if no agreement concerning abatement is reached, the matter shall be forwarded to the office of the county attorney for enforcement action.

ix. It is a defense to an action for chronic nuisance property that the person in charge at all material times could not, in the exercise of reasonable care or diligence, determine that the property had become chronic nuisance property, or could not in spite of the exercise of reasonable care and diligence, control the conduct leading to the determination that the property is chronic nuisance property.

J. Commencement of Action; Enforcement:

1. Once the matter is referred to the county attorney, the county attorney shall ~~immediately~~ review and make a determination whether to initiate legal action authorized under this section or state statute or may seek alternative forms of abatement of the nuisance activity. The county attorney may initiate legal action on the chronic nuisance property and seek civil penalties and costs in district court for the abatement of the nuisance.
2. In determining whether a property shall be deemed a chronic nuisance property and subject to the court's jurisdiction, the county shall have the initial burden of proof to show by a preponderance of the evidence that the property is a chronic nuisance property. The county may submit official sheriff reports, code enforcement reports and other affidavits outlining the information that led to the investigation of nuisance activities occurring or existing at the property. The failure to prosecute an individual, or the fact no one has been convicted of a crime is not a defense to a chronic nuisance action.
3. Once a district court determines the property to be a chronic nuisance under this section the court may impose a civil penalty against any or all of the persons in charge of the property and/or the owner of the property and may order any other relief deemed appropriate. A civil penalty may be assessed for up to one hundred dollars (\$100.00) per day for each day the nuisance activity continues to occur following the date of the original notice by the code enforcement officer or sheriff

department, as described above. In assessing the civil penalty, the court may consider the following factors, citing to those found applicable:

- a. The actions taken by the person in charge and/or owner to mitigate or correct the nuisance activity;
 - b. The financial condition of the persons in charge;
 - c. The cost to the county of investigating and correcting or attempting to correct the condition;
 - d. The repeated or continuous nature of the nuisance activity;
 - e. The statements of the neighbors or those affected by the nuisance activity;
 - f. Any other factor deemed relevant by the court.
4. The district court which determines the property to be a chronic nuisance property shall also assess costs against the person in charge and/or owner in the amount it costs the county to abate, or attempt to abate, the nuisance activity.
 5. If the district court determines the property to be a chronic nuisance property, the district court may order the property closed and secured against all unauthorized access, use and occupancy for a period of six (6) months, and may impose a civil penalty and costs.
 6. Once a determination has been made by the district court that the chronic nuisance property shall be subject to closure, the court may authorize the county to physically secure the premises and initiate such closure. Costs for such closure shall be submitted to the court for review. Any civil penalty and/or costs awarded to the county may be filed with the county treasurer, who shall cause the same to be filed as a lien on the property with the Elmore County assessor.
 7. The district court shall retain jurisdiction during any period of closure or abatement of the property.
- K. County Abatement Option: Nuisances which remain unabated after notice, may, at the option of the county, be removed, abated or destroyed by the county or its agents, after the following steps have been taken:
- i. If after fifteen (15) days from the date a written violation notice is received by first-class and certified mail to the property's owner's address as shown in the current official Elmore County assessor records, no abatement of the nuisance has occurred, the designated enforcement officer shall provide a second fifteen (15) day notice to be delivered to the property owner by certified mail or personal service, which shall indicate the following:
 - a. That if the property owner fails to abate the nuisance, the county shall take steps to abate the same.
 - b. That the property owner may contract with the county to abate the nuisance and pay costs of the same.

- c. That if the county abates the nuisance, all costs and expenses of the abatement shall be billed and assessed against the property owner, and if unpaid, shall become collectible as a special assessment with property taxes.
- d. That the property owner has a right to appear before the county Board to show cause as to why he or she should not be forced to abate or pay for abatement of the nuisance; furthermore, that if the property owner desires such a hearing, a request for hearing, in writing, shall be given to the designated enforcement officer prior to expiration of the thirty (30) day notice, and that abatement by the county will proceed if the property owner has not exercised this option to request a hearing.
- e. If said certified notice is returned as undeliverable, or is unclaimed by the property owner, nothing shall preclude the county from exercising its abatement option as specified herein.
- ii. When the thirty (30) day notice has expired without a request for hearing, the Board's designated enforcement officer is authorized to remove, abate or destroy the nuisance. The designated enforcement officer is authorized to utilize county personnel to abate the nuisance or to contact the Board or Sheriff in regard to contracting for an outside party to abate the nuisance.
- iii. If the county abates any nuisance under the provisions of this section, a statement of charges billed to the property owner shall be mailed by first-class and certified mail to the property owner.
- iv. If payment is not received from the property owner within thirty (30) days, the amount billed shall, in accordance with state law, be assessed as a special assessment collectable against the subject property as other state, county and municipal taxes.
- v. If the property owner requests a hearing to show cause before the Board, the hearing shall, if feasible, be placed on the agenda of the next regularly scheduled Board meeting. The decision of the Board shall be final. A thirty (30) day period shall be given to the property owner after the Board decision so that the property owner shall have additional opportunity to abate the nuisance or to pursue any legal remedies or defenses at the district court level.

L. Penalty:

- 1. A violation of any provision of this section shall be a general misdemeanor punishable by a fine not to exceed one thousand dollars (\$1,000.00).

2. Notice of violations of this chapter shall be recorded in the office of Elmore County Recorder and shall run with the land. Once a violation has been resolved, a Notice of Release of Violation shall be recorded in the office of Elmore County Recorder.

M. Appeals:

1. Appeal to Commission: Any aggrieved person having an interest in real property which may be adversely affected by a decision of the Director made in interpreting or enforcing this Ordinance, may appeal such a decision to the Commission by filing a written notice of appeal. A written notice shall be made by submitting the appropriate fee and application to the Director within fourteen (14) days of the date of such decision. Appeals shall be based on one of the following:
- a) The decision was in violation of constitutional or statutory provisions; or
 - b) In excess of the statutory authority of the agency; or
 - c) Made upon unlawful procedure; or
 - d) Not supported by substantial evidence on the record as a whole; or
 - e) Arbitrary, capricious, or an abuse of discretion.
2. Hearing by Commission: The Commission shall hold a public hearing on all appeals from decisions of the Director/Code Enforcement Officer after notice has been given in accordance with this Ordinance. The public record shall remain open and the Commission may accept new additional material and testimony.
3. Decision by Commission: After the Public hearing, the Commission shall, enter a written order affirming, reversing or modifying the Director/Code Enforcement Officer's decision. The order shall also contain the reasons for the Commission's decision.