

12.20.04

**KANE COUNTY ORDINANCE NO. 2004-4**

**AN ORDINANCE PROVIDING A COMPREHENSIVE MEANS FOR DEFINING, IDENTIFYING AND ABATING NUISANCES.**

**WHEREAS**, the citizens of Kane County, State of Utah, are concerned about the conditions and proliferating within Kane County which are dangerous to the public health, safety and welfare, and which require an expeditious means of abatement; and;

**WHEREAS**, the nuisance laws which are provided in Utah Law are helpful, but often do not always provide workable means to abate nuisances quickly; and

**WHEREAS**, the citizens of Kane County wish to promulgate new administration and judicial means complementary to established Utah Law in order to swiftly and amicably deal with nuisance situations which arise in Kane County.

**NOW THEREFORE, BE IT ORDAINED BY THE COUNTY COMMISSIONERS OF KANE COUNTY, STATE OF UTAH, AS FOLLOWS:**

**Purpose:**

The purpose of this ordinance is to provide a means for Kane County and individuals to identify nuisances within the County, and to provide a means of correcting or abating nuisances. Kane County needs the ability to abate nuisances in order to protect the health, welfare and safety of the public; to preserve the character, appearance and beauty of the County; to preserve the value of property, to encourage community pride, and to protect the general welfare of the county and its citizens, visitors, and businesses. This Ordinance provides for progressive enforcement measures to abate nuisances; the most aggressive

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forms of enforcement are generally preserved for the most recalcitrant violators of the terms of this Ordinance.

**Definitions:**

1. **“Abate”** means to replace, repair, remove, correct, destroy or otherwise remedy a condition which constitutes a nuisance by such means, in such a manner and to such an extent as the Building Inspector, the Sheriff, or their agents or deputies, determine is necessary in the interest of the general health, safety and welfare of the community.
2. **“At large”** means off the premises of the owner and not under the control of the owner or a member of his/her immediate family either by leash, cord, chain or otherwise.
3. **“Completion date”** means the date by which the Responsible Person must abate a nuisance. The Completion Date is originally set by the Building Inspector, or the Sheriff in the Voluntary Correction Agreement or in the Administration Citation. The Completion Date may be modified by the Building Inspector, or the Sheriff.
4. **“Dog”** means any male, female or spayed female dog of any age.
5. **“Emergency”** means a situation which, in the opinion of the Building Inspector, or the Sheriff, requires immediate action to prevent or eliminate threat to the health or safety of a person or property.
6. **“Hazard/hazardous”** means a condition or situation that is potentially dangerous.
7. **“Impounded”** means having been received into the custody of the pound or into the custody of any authorized agent or representative of the county.

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8. **“Owner”** when applied to the proprietorship of a dog, means any person or persons, firm, association or corporation owning, keeping or harboring a dog.
9. **“Owner”** means any person whom, 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.
10. **“Pound”** means an animal shelter, lot, premises or buildings maintained by or authorized or employed by the county for the confinement or care of dogs seized either under the provision of this chapter or otherwise.
11. **“Premises”** means a plot of ground, whether occupied or not.
12. **“Property”** means a building or structure, or the premises on which the building or structure is located, or undeveloped land.
13. **“Public Place”** mean an area generally visible to public view and includes, bridges, alleys, parking lots, driveways, plazas, parks, streets, sidewalks, and buildings open to the general public, including those that provide entertainment, or serve food or drink, and the doorways and entrances to buildings or dwellings and the grounds enclosing them.
14. **“Responsible Person”** means the person(s) responsible for correcting or abating a nuisance pursuant to this Ordinance. The Responsible Person includes the owner and any person who causes or permits a nuisance to occur or remain upon property within Kane County, and includes, but is not limited to, the owner(s), lessor(s), lessee(s), or other persons entitled to control, occupy or use property where a nuisance occurs. In cases

where there is more than one Responsible Person, the County may proceed against one, some or all of them.

15. “Vicious dog” means a dog that has bitten a person without provocation or a dog that has a known propensity to attack or bite human beings.

**Nuisance Definition:**

This Section defines “nuisance” by providing five general definitions of what constitutes a nuisance (Subsection A), and then provides specific examples of conduct, situation or activities that constitute nuisances (Subsection B). The purpose of the general definitions is to allow Kane County 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 County intends to abate as nuisances.

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

1. **Nuisance as defined in Utah Code Annotated §76-10-801.** Any item, thing, manner, or condition whatsoever that is dangerous to human life or health or renders soil, air, water or food impure or unwholesome.
2. **Nuisance as defined in Utah Code Annotated §78-38-1(1).** Anything which is injurious to health, indecent, offensive to the senses, or an obstruction to the free

use of property, so as to interfere with the comfortable enjoyment of life or property.

3. **Nuisance as defined in Utah Code Annotated §76-10-803.** Unlawfully doing any act or omitting to perform any duty, which act or omission:
  - a. offends public decency;
  - b. annoys, injures or endangers the comfort, repose, health, or safety of three or more persons who are not related or living in the same residence.
  - c. in any way renders three or more persons who are not related or living in the same residence insecure in life or the use of property or;
  - d. 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.

Any act which affects three or more persons who are not related or living in the same residence 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 injures, or endangers the comfort, repose, health or safety of others; or
  - b. unlawfully interferes with, obstructs or tends to obstruct, or render dangerous for passage, any public park, square, street or highway, or any

other public place; or;

- c. in any way renders other persons insecure in life, or in the use of property, and which affects the rights of an entire community or neighborhood, although the extent of the damage may be unequal.

5. **Specific Nuisances listed in Subsection B.** Anything specifically listed as a nuisance in Subsection (B) below:

**B. Nuisances Enumerated.** Every situation, conduct or activity listed below constitutes a nuisance and may be abated pursuant to this ordinance. The listed examples are not exhaustive; a situation, activity or conduct 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 Annotated §78-38-9.

1. **Gambling.** Every building or premises where gambling is permitted to be played, conducted, or dealt upon as prohibited in Title 76, Chapter 10, Part 11, Utah Code Annotated (Gambling) which creates the conditions of a nuisance as defined in this Section.
2. **Drug Houses.** Every building or premises where the unlawful sale, manufacture, service, distribution, storage, dispensing, or acquisition of any controlled substance, precursor, or analog specified in Title 57, Chapter 37, Utah Code Annotated (Utah Controlled Substance Act) occurs.
3. **Gangs.** Every building or premises wherein criminal activity is committed in

concert with two or more persons as provided in §76-3-203.1, Utah Code Annotated.

4. **Party Houses.** Every building or premises where parties occur frequently which create the conditions of a nuisance defined in Utah Code Annotated §76-10-803.
5. **Weapons.** Every building or premises where a violation of Title 76, Chapter 10, Part 5 (weapons), Utah Code Annotated, occurs on the premises.
6. **Prostitution.** Every building or premises where prostitution or the promotion of prostitution is regularly carried on by one or more persons as provided in Title 76, Chapter 10, Part 13 (prostitution), of the Utah Code Annotated.
7. **Fire Hazard.** A fire hazard.
8. **Unsafe Condition.** A condition that unlawfully or unreasonably affects the health or safety of three or more persons who are not related or living in the same residence.
9. **Noxious Emanations.** Emanation of noxious or unreasonable odors, gas, fumes, smoke, cinders or soot. This paragraph is not intended to prohibit the daily heating of dwellings or businesses.
10. **Noxious Weeds.** Noxious weeds, which are consistent with the Utah noxious weed list or designated by Kane County, 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 constitutes a fire hazard. Example: Bermudagrass, Canada thistle, Diffuse knapweed, Dyers Woad, Field bindweed, Hoary cress, Johnsongrass, etc.

11. **Stagnant Water.** Polluted or stagnant water which constitutes an unhealthy or unsafe condition.
12. **Animal Carcasses.** Carcasses of animals not buried or destroyed within twenty four (24) hours after death.
13. **Refuse.** Storing or keeping of any refuse or waste matter which interferes with the reasonable enjoyment of nearby property.
14. **Improper Accumulations.** Accumulation of litter, debris, soil, plant trimmings, or trash, visible from the street or an adjoining property.
15. **Accumulation of Junk.** Accumulation of used or damaged lumber, junk; salvage materials, abandoned, discarded or unused furniture, stoves, sinks, toilets, cabinets, or other fixtures or equipment stored as to be visible from a public street.  
  
However, nothing herein shall preclude the placement of stacked firewood for personal noncommercial use on the premises.
16. **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.
17. **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.

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. **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 when excavation, construction or demolition operations covered by an active building permit are in process on the subject property or an adjoining property, or where the property is zoned for the storage of construction equipment and/or machinery. Excluded from this are farm equipment used in the normal course of business or operation.
20. **Improper Sign.** Improper maintenance of a sign; or signs which advertise a business that is no longer in operation on the property.
21. **Improper Parking or Storage.**
  - a. Parking or storage of inoperative (defined as: lacking vital component parts essential to the mechanical functioning of the vehicle), unregistered or dismantled vehicles, boats, trailers, or vehicle parts, including recreational vehicles, on a premises or in the public right-of-way. Storage or parking

that is specifically allowed by a Kane County's zoning ordinance shall not be considered a nuisance.

- b. Parking or storage of registered vehicles, trailers or boats in violation of a City ordinance.

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, sign, fence or other structure and is visible from a public street.

24. **Improper Maintenance.** Maintenance of building and/or structures in such condition as to be deemed defective or in a condition of deterioration or disrepair including, but not limited to:

- a. Any building or structure which is unfit for human habitation, or which is an unreasonable hazard to the health of people residing in the vicinity thereof, or which presents an unreasonable fire hazard in the vicinity where it is located; or
- b. Any building or structure set up, erected, constructed, altered, enlarged, converted, moved or maintained contrary to the provisions of State Laws, Building Codes or Ordinances, or any use of land, buildings or premises in violation of State Laws, Building Codes or Ordinances.

- c. Buildings which are abandoned, partially destroyed, or left in an unreasonable state of partial construction for a period of six (6) months or longer. An “unreasonable state of partial construction” is defined as any unfinished building or structure where the appearance or condition of the building or structure does not meet the requirements for finished buildings or structures as required by applicable State Laws, Building Codes or City or County Ordinances. The building or structure shall not be considered to be a nuisance if it is under active construction; and
- d. Buildings or other structures having dry rot, warping, termite infestation, decay, excessive cracking, peeling, or chalking, as to render the building or structure unsafe 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 unsafe and/or in a state of disrepair; and
- g. Buildings, structures or conditions that violate any building, electrical, plumbing, fire, housing, or other code adopted by the State of Utah as of the date of final completion of the building or structure.

25. **Noise related Nuisances.** It shall be unlawful for any person in the County in a public or private place to make, cause to be made or allow the making of any noise which is inconsistent with the zoning area between the hours of eleven o'clock (11:00) P.M. and sunrise which is unnecessary or unusual, which noise annoys, disturbs or affects the comfort, repose, health or peace of others. Any such noise hereinbefore described, heard outside the limits of the real estate from which said noise has its source and heard by another person, shall be a noise as is hereby prohibited, which noise constitutes the basis of the violation of this Section.
  
26. **Dangerous Conditions.** Any fence, wall, deck, shed, garage, house, building, structure or any part of any of the aforementioned; or any pole, tree, smokestack; or any excavation hole, pit, basement, cellar, sidewalk, subspace, dock, or loading dock; or any lot, land yard, premises or location which in its entirety, or in any part thereof, by reason of the condition in which the same is found or permitted to be or remain, shall or might unreasonably endanger the health, safety, life, limb or property, or cause any hurt, harm, inconvenience, discomfort, damage or injury to any one or more individuals within Kane County, in any one or more of the following particulars:
  - a. By reason of being a menace, threat and/or hazard to the general health and safety of the community.
  - b. By reason of being a fire hazard.

- c. By reason of being unsafe for occupancy, or use on, in, upon, about or around the aforesaid property.
- d. By reason of lack of sufficient or adequate maintenance of the property, and/or being vacant, any of which depreciates the enjoyment and use of the property in the immediate vicinity to such an extent that is it harmful to the community in which such property is situated or such condition exists.

**27. Dogs**

**a. Running at Large Prohibited**

- 1. It shall be unlawful for the owner or keeper of any dog to permit such dog to run at large.
- 2. It shall be unlawful for an owner of a dog to permit such dog to go upon or be upon the private property of any person without the permission of the owner or person entitled to the possession of such private property.
- 3. The owner of any dog running at large shall be deemed in violation of this section regardless of the precautions taken to prevent the escape of the dog and to prohibit it from running at large.
- 4. Any dog running at large in violation of the provisions of this section is hereby declared to be a nuisance and a menace to the public health and safety, and the dog shall be taken up and

impounded as provided in this chapter.

b. **Female in Heat**

The owner of a female dog in heat shall cause such dog to be penned or enclosed in such a manner as to preclude other dogs from attacking such female dog or being attracted to such female dog so as to create a public nuisance.

c. **Strays**

It shall be unlawful for any person to harbor or keep within the county any lost or strayed dog. Whenever any dog shall be found which appears to be lost or strayed, it shall be the duty of the finder to notify the county sheriff who shall impound for running at large contrary to the terms of this chapter. If there shall be attached to such dog a license tag for the then current fiscal year, the poundmaster, agent or officer shall notify the person to whom such license was issued, at the address given in the license.

d. **Rabies**

Every owner of any dog over the age of six months within the county shall have the dog vaccinated against rabies by a duly licensed veterinarian, shall secure from the veterinarian a certificate thereof, and shall attach to the collar or harness, which such person is hereby required to place upon the dog, a tag showing that such vaccination has been done, provided that the

governing body may, by resolution provide that the owners of any dog may themselves purchase serum and vaccinate their own dogs.

e. **At Large During Rabies Emergency**

It shall be unlawful for the owner of any dog to suffer, allow or permit such to be or go upon any sidewalk, street, alley, public place or square within the county without first having had such dog vaccinated against rabies as above provided within the past two years, and without there being on such dog a collar or harness with license tag thereon showing that such dog has been so vaccinated.

f. **Dogs Which Disturb Neighborhood**

No person, persons, firm or corporation shall own, keep, or harbor any dog which by loud, continued or frequent barking, howling, yelping, or by noxious or offensive odors shall annoy, disturb or endanger the health and welfare of any three persons or neighborhood.

g. **Vicious Animals - Special Provisions**

1. It shall be unlawful for any person to own and possess a vicious dog within the county. Whenever a prosecution for this offense is commenced under this section, the dog so involved may not be redeemed, pursuant to the provisions of this chapter, while awaiting final decision of the court as to the disposition to be made of such

dog.

2. Upon the trial of any offense under this ordinance, the court may, upon conviction and in addition to the usual judgment of conviction, order the poundmaster or other authorized personnel of the county to put the dog to death or may order such other disposition of the dog as will protect the inhabitants of the county.
3. In the interest of public health, safety and welfare, any sheriff's officer or designated animal control officer may enter the premises of any person or entity in order to take possession and control of any dog which such officer reasonably believes to be injured, diseased, fierce, dangerous or vicious, for the purpose of impoundment, and other appropriate treatment authorized by this chapter.

h. **Dog Pound**

The governing body may contract with some humane person as poundmaster, with an adjoining county or with a private enterprise for the purpose of providing suitable premises and facilities to be used by the county as the dog pound. It shall be maintained in some convenient location and shall be sanitary and so operated as to properly feed, water and protect the dogs from injury.

i. **Impounding**

It shall be the duty of every sheriff's officer or other designated animal control officer to apprehend any dog found running at large, not wearing its rabies tag, or which is otherwise in violation of this chapter, and to impound such dog in the pound or some other suitable place. The poundmaster, or some other designated official, upon receiving any dog, shall make a complete registry, entering the breed, color and sex of such dog and whether or not it is licensed. If it is licensed he or she shall enter the name and address of the owner and the number of the license, and shall immediately contact the owner, either in person, by telephone, or in writing. Every reasonable effort shall be made to contact the owner of such dog, if known, to advise him or her of such impoundment.

j. **Record of Impounding Animals**

The poundmaster, agent or officer shall keep a record of each animal impounded by him or her, the date of receipt of such animal, the date and manner of its disposal and if redeemed, reclaimed or sold, the name of the person by whom redeemed, reclaimed, or purchased, the address of such person, the amounts of all fees received or collected for or because of the impounding, reclaiming or purchasing thereof, together with the number of any tag and the date of any tag exhibited or issued upon the redemption or

sale of such animal.

k. **Redemption of Impounded Dogs**

Any dog, other than a vicious dog, as defined herein, may be redeemed and taken from such pound, by the owner or by any other authorized person, upon paying the person in charge of the pound a reasonable impounding fee as set by the pound. All impounded dogs not redeemed within five days after impounding shall be sold for the best price obtainable, at either private or public sale or be redeemed by the Best Friends Animal Sanctuary. All moneys received from such sales, if applicable shall be paid immediately to the county clerk. All dogs that are not sold or redeemed within the required time shall be disposed of in a humane manner. The impounding as provided above, shall apply to the first and second times that any particular dog is impounded. On the third time such dog is impounded, it shall be disposed of, in a humane manner, or redeemed by the Best Friends Animal Sanctuary in accordance with this chapter.

l. **Disposition of Unclaimed and Infected Dogs**

All impounded dogs not redeemed within five days of the date of impounding may be destroyed or sold to the person first making written request for purchase at such price as may be deemed agreeable. In the case of dogs severely injured or having contagious disease other than rabies and

which in the poundmaster's, officer's or agent's judgment are suffering and recovery is doubtful, the poundmaster, officer or agent may destroy the dog without waiting the five-day period.

m. **Interference with Impounding Prohibited**

It shall be unlawful for any person to hinder, delay, interfere with or obstruct the sheriff, poundmaster or any of their deputies while engaging in capturing, securing or taking to the dog pound any dog or dogs liable to be impounded, or to break open or in any manner directly or indirectly aid, counsel or advise the breaking open of any dog pound or ambulance, wagon or other vehicle used for the collecting or conveying of dogs to the dog pound.

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

**Responsibility for Nuisances.** The Responsible Person shall be responsible for abating nuisances pursuant to this Ordinance. Any Person, whether as owner, agent, or occupant, who creates, aids in creating, or contributes to a nuisance, or who supports, continues, or retains a nuisance, shall also be responsible for the nuisance and is therefore a Responsible Person pursuant to this Ordinance. Every successive owner or tenant of a property or premises caused by a former owner or tenant is responsible therefore in the same manner as the one who first created it.

**Finding of Nuisance.** If the Building Inspector or Sheriff find that a nuisance exists, they, or one of their agents or deputies, shall encourage the Responsible Person to voluntarily abate the nuisance. Although the Building Inspector or Sheriff shall generally first attempt to obtain voluntary compliance from the Responsible Person, nothing herein shall be interpreted to prevent or prohibit the Building Inspector or Sheriff from pursuing any remedy or combination of remedies available pursuant to this Ordinance, or State or Federal law to abate the nuisance. Therefore, Kane County may prosecute violators of County ordinances or State laws without being first required to comply with the provisions of this Ordinance, even though the activity or conduct prosecuted may also constitute a nuisance under this Ordinance. Nothing in this ordinance shall be interpreted to prevent or prohibit Kane County from enforcing applicable State laws, County Ordinances and/or building codes without first treating the offending conduct, situation or activity as a nuisance pursuant to this Ordinance.

**Voluntary Corrections** The terms of this Section shall apply whenever the Building Inspector or Sheriff determines that a nuisance exists:

- A. **Contact.** Before taking other steps to abate the nuisance, the Building Inspector or Sheriff shall make a reasonable attempt to secure voluntary correction or abatement of the nuisance by:
1. Contacting the Responsible Party, where possible;
  2. Explaining the nuisance.

3. Requesting the Responsible Person to abate the nuisance; and
  4. Agreeing to a deadline for compliance and other terms necessary to abate the nuisance.
- B. **No Agreement.** If the Building Inspector or Sheriff and the Responsible Person cannot agree on a deadline for compliance and to other necessary terms for correcting or abating the nuisance, the Building Inspector or Sheriff may still abate the nuisance using one or more of the procedures set forth in this Ordinance, or State or Federal law.
- C. **Voluntary Correction Agreement.** If the Building Inspector or Sheriff and the Responsible Person agree to a deadline and terms for abating the nuisance, they shall enter into and sign a Voluntary Correction Agreement. The Voluntary Correction Agreement is a contract between the County 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 Party;
  - b. The street address of the nuisance, or a description sufficient to identify the building structure, premises, or land upon 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 designated agents of Kane County may periodically inspect the premises as may be necessary to determine compliance with the Voluntary Correction Agreement;
- f. An agreement by the Responsible Person that Kane County may abate the nuisance and recover its costs and expenses to abate the nuisance, as well as a monetary fine pursuant to this Ordinance from the Responsible Person, should the Responsible Person fail to comply with all of the terms of the Voluntary Correction Agreement;
- g. An agreement by the Responsible Person acknowledging that he/she waives the right to appeal the Building Inspector or Sheriff'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.

The Building Inspector or Sheriff 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 impractical. If the Responsible Person complies with the terms of the Voluntary Correction Agreement, Kane County shall take no further

action against the Responsible Person related to the nuisance described in the Voluntary Correction Agreement unless the nuisance occurs again.

**Administrative Citation.**

**A. Administrative Citation.** When the Building Inspector or Sheriff determines that a nuisance exists, and is unable to secure a Voluntary Correction, the Building Inspector or Sheriff may issue an Administrative Citation to the Responsible Person. The Building Inspector or Sheriff may issue an Administrative Citation, without having attempted to secure a Voluntary Correction under the following circumstances:

1. When an emergency exists; or
2. When the Building Inspector or Sheriff is unable to locate or determine the identity of the Responsible Person.

**B. Content of Administrative Citation.** The Administrative Citation shall include the following

- a. The name and address of the Responsible Person; and
- b. The street address of the nuisance or a description sufficient for identifying the building, structure, premises, or land upon or within which the nuisance is occurring; and
- c. A description of the nuisance; and
- d. The required corrective action; and
- e. The Completion Date and notice that the County may abate the nuisance

and charge the Responsible Person for all abatement costs if the Responsible Person does not correct the nuisance before the Completion Date; and

- f. The time for appealing the administrative citation to the Hearing Officer and the procedure for filing an appeal.
- g. A statement indicating that no monetary fine will be assessed if the Building Inspector or Sheriff approves the completed, required corrective action prior to the Completion Date; and
- h. A statement that Kane County 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 Building Inspector or Sheriff before the Completion date.

**C. Service of Administrative Citation.** The Building Inspector or Sheriff shall serve the Administrative Citation upon the Responsible Person, either personally or by mailing, certified, return receipt requested, a copy of the Administrative Citation to the Responsible Person at his/her last known address. If the Responsible Person cannot after due diligence be personally served within Kane County and if an address for mailed service cannot after due diligence be obtained, notice shall be served by posting a copy of the Administrative Citation conspicuously on the affected property or structure. Proof of service shall be made by a written declaration under penalty of perjury executed by the person effecting the service, declaring the time and date of service, the manner by which the service was made,

and if by posting, the facts showing that due diligence was used in attempting to serve the person personally or by mail.

**D. No Extension.** No extension of the time specified in the Administrative Citation for correction of the nuisance may be granted, except by order of the Hearing Officer.

**Other Remedies.**

Kane County 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, and Administrative Citation; or an order of the Hearing Officer.

**A. Abatement by the County.**

1. Kane County may abate a nuisance when:
  - a. The terms of a Voluntary Correction Agreement have not been met;  
or
  - b. The requirement of an Administrative Citation have not been complied with, or, if the Administrative Citation is appealed to a Hearing Officer and the terms of the Administrative Citation are amended by the Hearing Officer, the terms of the Hearing Officer's Order have not been complied with; or
  - c. The Condition is subject to summary abatement as provided in subsection 2, below.
2. Whenever a nuisance is occurring which constitutes an immediate and

emergency threat to the public health, safety or welfare of the environment, the County may summarily and without prior notice, abate the condition.

Notice of such abatement, including the reason for it, shall be given to the Responsible Person as soon as reasonably possible after the abatement.

3. Using any lawful means, the County may enter upon the subject property and may remove or correct the condition which is subject to abatement. The County 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 Responsible Person and/or the owner, lessor, tenant or other person entitled to control, use and/or occupy the property and shall become due and payable to Kane County within ten (10) days of actual receipt of the bill or within fifteen (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 attorney's fees and costs;
  - b. Costs incurred in documenting the violation;
  - c. Hauling, storage and disposal expenses; and
  - d. Actual expenses and costs for the County in preparing notices, specifications and contracts, and in accomplishing and/or contracting

and inspecting the work; and

- e. The costs of any required printing and mailing.

**B. Monetary Fine.** The Responsible Person shall pay the County a monetary fine for each day the nuisance continues after the Completion Date. The nuisance shall be considered to continue until the Building Inspector or the Sheriff approves the Responsible Person's actions to correct or abate the nuisance. The amount of the monetary fine shall be as follows:

1. One Hundred Dollars (\$100.00) per day for each day during the first week that the nuisance remains uncorrected or unabated after the Completion Date.
2. Two Hundred Dollars (\$200.00) per day for each day thereafter until the nuisance is corrected or abated according to the terms set forth in the Administrative Citation.

The monetary fine shall be cumulative and may not be waived by the Building Inspector or the Sheriff. Payment of a monetary fine pursuant to this section does not relieve the Responsible Person from the duty to abate the nuisance as required by the Voluntary Consent Agreement or the Administrative Citation. The monetary fine constitutes a personal obligation of the Responsible Person. Any monetary fine assessed must be paid to the County within ten (10) calendar days from the date of mailing of the Hearing Officer's decision and order or a notice from the County that penalties are due. The County Attorney

or his/her designee is authorized to take appropriate action to collect the monetary fine, plus reasonable attorney's fees and costs incurred in collecting said monetary fine.

**C. Civil Actions.** Either the County 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 Ordinances or pursuant to State law.

**D. Criminal Actions.**

1. Any person who maintains or assists in maintaining a nuisance is guilty of a Class B misdemeanor. No person shall be prosecuted under this subsection unless the Building Inspector or Sheriff first attempted to obtain voluntary correction as provided in this Ordinance.
2. If the alleged nuisance is also a violation of a provision of Utah State law, the Responsible Person may be charged under the specific provision of said law, even if the Building Inspector or Sheriff did not first attempt to obtain voluntary correction.
3. Any person who knowingly obstructs, impedes, or interferes with Kane County or its authorized agents, or with the Responsible Person, in the performance of duties imposed by this Ordinance, or a decision and Order issued by the Hearing Officer, or a Voluntary Correction Agreement, is guilty of a Class B misdemeanor.

**E. Abatement by Eviction.** Whenever there is reason to believe that a nuisance is kept, maintained, or exists in the County, the County attorney, his/her designee, or any citizen residing in the County, or any person or entity doing business in the County, 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 the procedure outlined in Utah law.

**F. Lien for Costs.** If a person fails to pay any fines or costs related to nuisance abatement when due, the County may record a lien on the property or premises for the full amount of the unpaid fines and costs.

**G. Non-exclusive Remedies.** Kane County may take any or all of the above-mentioned remedies (administrative, civil or criminal) to abate the 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 County or any person to recover damages or penalties for its past existence.

**Appeals.**

**A. Grounds.** Any person receiving an Administrative Citation may appeal the Administrative Citation to the Hearing Officer. Only the following issues may be appealed to the Hearing Officer:

1. The person charged in the Administrative Citation as the Responsible Person is not the Responsible Person as defined by this Ordinance.

2. The condition described as a nuisance in the Administrative Citation is not a nuisance as defined by this Ordinance.
3. The method required by the Administrative Citation to abate the nuisance is inappropriate or is not the most cost effective method of effectively correcting or abating the nuisance.
4. The time period given to abate the nuisance in the Administrative Citation is unreasonable.
5. The monetary fine set forth in the Administrative Citation is unreasonable.
6. The Building Inspector or Sheriff refused to approve a corrective action that met the requirements of the Administrative Citation.
7. The Responsible Person claims that the requirements of the Administrative Citation violates his/her constitutional rights.

**B. Filing.** The person desiring to appeal must file a notice of appeal at the County Office within ten (10) days of the receipt of the Administrative Citation, or within fifteen (15) days of the mailing date if the Administrative Citation was mailed rather than personally delivered.

**C. Hearing.** The hearing before a Hearing Officer shall be informal according to rules and procedures established by the Hearing Officer. The appellant may, but is not required to be represented by counsel. The appellant and the Building Inspector or Sheriff 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 thirty (30) days of when the notice of appeal is filed with the County.

**D. Burden of Proof.** The appellant shall have the burden of proof to demonstrate by a preponderance of the evidence that he/she had legitimate grounds for an appeal. The determination of the Building Inspector or Sheriff as to the need for the required corrective action shall be accorded substantial weight by the Hearing Officer in determining the reasonableness of the corrective action.

**E. Authority of Hearing Officer.** The Hearing Officer shall have authority to affirm or vacate the Administrative Citation. If the appellant fails to attend the hearing, the Hearing Officer shall affirm the Administrative Citation unless he/she finds that no nuisance exists. The Hearing Officer shall modify the Administrative Citation he/she finds that a nuisance exists, but that one or more of the requirements of the Administrative Citation is improper or inappropriate. A requirement is improper if it is contrary to this Ordinance. A requirement is inappropriate if the Hearing Officer finds that there is a better means of resolving the problem or that the proposed solution is inappropriate given the nature or severity of the problem. When determining whether to waive or modify a requirement of the Administrative Citation, the Hearing Officer may also consider:

1. Whether the appellant responded to the Building Inspector or Sheriff's

attempts to contact the appellant and cooperated with efforts to correct the nuisance.

2. Whether the appellant has shown due diligence and/or substantial progress in correcting the nuisance; and
3. The financial ability of the appellant and the amount; if any, that the appellant has benefitted financially by maintaining the nuisance.
4. Any other relevant factors.

If the appellant appeals the Building Inspector or Sheriff's refusal to approve the appellant's corrective action, the Hearing Officer shall visit the site and determine if the appellant complied with the requirements of the Administrative Citation.

**F. Order.** The Hearing Officer shall issue a written Order to the appellant and the County notifying them of his/her decision. The Order shall include the Hearing Officer's findings of fact and ultimate decision. If the Hearing Officer modifies or waives provisions of the Administrative Citation, the Order shall specify which portions are modified and how they are modified. The Hearing Officer shall mail a copy of the Order to the appellant and the County within five (5) working days of the close of the hearing.

**G. Appeal to District Court.** Either the County 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 Sixth District Court within thirty (30) calendar days from the date the Hearing Officer's Order was mailed to the appellant. In the petition, the plaintiff may only allege that the

Hearing Officer's order was arbitrary, capricious, or illegal. The Hearing Officer shall transmit to the reviewing court the record of its proceedings, including any minutes, findings, orders and, if available, a true and correct transcript of its proceedings. If, in the opinion of the District Court, there is a sufficient record to review the Hearing Officer's Order, the Court's review is limited to the record provided by the Hearing Officer. The District Court may not accept or consider any evidence outside of the Hearing Officer's record unless the evidence was offered by the Hearing Officer. If, in the opinion of the District Court, there is not a sufficient record to review the Hearing Officer's Order, the Court may call witnesses and take evidence. No petition or appeal may be filed in District Court unless the Responsible Person first appeals to the Hearing Officer pursuant to the terms set forth in this Ordinance.

**Severability:** If any portion of this ordinance shall be held invalid or inoperative, then insofar as is reasonable and possible:

1. The remainder of the Ordinance shall be considered valid and operative; and
2. Effect shall be given to the intent manifested by the portion held invalid or inoperative.

This Ordinance shall become effective immediately after passage and posting as required by law.

**PASSED, APPROVED and ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

**KANE COUNTY:**

By: *Kary Zerna*

**ATTEST:**

*Karloplusun*



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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 by the Hearing Officer. If, in the opinion of the District Court, there is not a sufficient record to review the Hearing Officer's Order, the Court may call witnesses and take evidence. No petition or appeal may be filed in District Court unless the Responsible Person first appeals to the Hearing Officer pursuant to the terms set forth in this Ordinance.

**Severability:** If any portion of this ordinance shall be held invalid or inoperative, then insofar as is reasonable and possible:

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2. Effect shall be given to the intent manifested by the portion held invalid or inoperative.

This Ordinance shall become effective immediately after passage and posting as required by law.

**PASSED, APPROVED and ADOPTED** this 22<sup>nd</sup> day of November, 2004.

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**KANE COUNTY:**

By: Ray Zerna

**ATTEST:**

Karloplus

