

4-2-3: ABATABLE NUISANCES; PROCEDURES AND PENALTIES:

A. Applicability: The procedures set forth in this section shall apply to abatable nuisances.

B. Abatable Nuisance Unlawful: It shall be unlawful for any owner, occupant, user, or person in charge or control of any property to create, cause, commit, maintain, or allow the existence of any abatable nuisance on such property, or upon any street, sidewalk or public right-of-way abutting such property including the area behind curbs, sidewalks, parking areas, and property to the center of alleys and ditches. Further, it shall be unlawful for any person to create, cause, allow, or commit any nuisance upon any public property, right-of-way, or infrastructure, including sidewalks, streets, gutters, or storm drains.

C. Procedure: If it is determined by a Code Enforcement Officer that an abatable nuisance exists, the Code Enforcement Officer shall cause a notice of violation and order to abate to be issued to the owner, occupier, and/or person in control of such property. Such notice and order shall contain the street address and parcel number of the property, describe the nuisance existing thereon, order the abatement of the nuisance, establish the time period for abatement, specify the penalty for noncompliance, and describe the opportunity and time for appeal. The Code Enforcement Officer shall issue such notice and order to the owner, occupier, or person in control of the property on which the nuisance exists in one of the following ways:

1. By personal service upon such owner, occupier, or person in charge or control of the property; or
2. By regular mail to such owner, occupier, or person in charge or control of the property, at the address shown on the last available assessment roll, or as otherwise known; or
3. By posting such notice and order at a conspicuous place on the property and publishing one notice in the official newspaper of the City that the property has been posted in accordance with this chapter and ordering the owner, occupier, or person in charge or control of the property.

D. Time Period For Abatement: It shall be the duty of the owner, occupier, or person in charge or control of any property where any abatable nuisance exists, to abate such nuisance within five (5) calendar days from the date of personal service, mailing, or publication, except that the Code Enforcement Officer may require summary abatement of an abatable nuisance where such condition presents an imminent or ongoing threat to or impairment of human health or safety. Abatement of graffiti shall meet the following standards:

1. Abatement of graffiti shall meet the following standards:
 - a. The removal of such graffiti shall not follow the pattern of the graffiti such that the inscription, work, figure, symbol, drawing, mark, or design of such graffiti remains apparent.
 - b. The removal of such graffiti by painting over it shall be reasonably similar or identical to the original color of the surface upon which such graffiti was applied.
 - c. If the surface is heavily covered with graffiti, the entire surface shall be repainted.
2. Abatement of a nuisance tree shall include tree removal, pruning, and/or removal of branches, debris, roots, stump, and/or soil, at the direction of the Code Enforcement Officer.

E. Appeal: Within five (5) calendar days from the date of service, mailing, or publication of the notice of violation and order to abate, the owner, occupier, and/or person in charge or control of the subject property may appeal to the City Council by filing a written appeal with the City Clerk, which appeal shall enumerate the grounds for appeal. The City Clerk may schedule such appeal for hearing at the next regular meeting of City Council. City Council shall consider written and oral testimony from the appellant and shall affirm, withdraw, or modify the order to abate. The decision of the City Council shall be final. If City Council affirms the order, the appellant shall have five (5) calendar days from the date of such affirmation to abate the nuisance as ordered.

F. Criminal Penalties: If, following notice of violation and order to abate, any person allows the existence of an abatable nuisance, such person shall be guilty of a misdemeanor. Each and every day in which any such violation continues may be deemed a separate offense. Upon conviction for a violation of this section, the City shall request from the Criminal Court an order of restitution for any and all costs of abatement and/or other related costs incurred by the City. Peace officers and Code Enforcement Officers shall have the authority to issue uniform citations to violators of this section.

G. Civil Penalties: In addition to any other penalties described in this section, the City may also take civil action to obtain an order enjoining the ongoing maintenance of such property free from nuisance, and/or to recover any and all costs of abatement, enforcement, litigation, and/or prosecution including, but not limited to, attorney fees and court costs.

H. Abatement; Administrative Penalties: In addition to pursuing criminal and/or civil penalties, and notwithstanding the imposition of any civil or criminal fine, penalty or imprisonment, the Code Enforcement Officer, after providing notice and hearing as provided herein, may abate or cause the abatement of any abatable nuisance where the owner, occupant, agent or person in control of property does not comply in all respects with an order to abate, the Code Enforcement Officer may abate or cause the abatement of such nuisance. The owner, occupier, and/or person in charge or control of the subject property shall be billed, assessed, and/or held responsible for any and all actual expenses of such work, and any related charges, including fees and fines that may be imposed pursuant to this chapter and/or adopted by fee schedule, pursuant to the following procedures:

1. Recovery Of Abatement Costs And Fees: Within thirty (30) days of abatement of the nuisance, the City shall send to the owner, occupier, and/or person in charge or control of the subject property, by regular mail, a billing statement requiring payment to City the costs of abating the nuisance and administrative fee as established by fee schedule.
2. Nonpayment Of Abatement Costs: If full payment is not made to City within fifteen (15) days of the mailing of the billing statement requiring payment of abatement costs and fees, the City may:

a. Attempt to recover such amount through the City bill collection procedures;

b. Add the amount due and owing to the Municipal utility service account related to the property on which the nuisance was abated and collect such amount in accordance with utility bill collection procedures; and/or

c. Levy a special assessment against the subject property pursuant to Idaho Code sections 50-1008 and 50-334 and/or any subsequently adopted or otherwise applicable laws. Notice of the special assessment shall be sent by regular mail to the owner of the subject property, and shall state the address and parcel number of the subject property, date of abatement action taken, and state the amount to be assessed, including any applicable administrative and/or late fees, and shall state that if the assessment is not paid within thirty (30) days, the assessment will be placed on the real property tax rolls and will become a lien against such property. If payment to the City Clerk is not made within thirty (30) days after mailing the notice of special assessment, the assessment shall be declared delinquent and shall be certified, including a ten percent (10%) late fee, to the Ada County Assessor by the City Clerk, not later than August 1 of each year. Upon such certification, the assessment shall be placed upon the tax roll and shall thereafter become a lien against the property described in the notice and shall be collected in the same manner and subject to the same penalties as other City taxes. Upon payment of the assessment, fees and penalties in full, the City Clerk shall file a release of lien with the Ada County Assessor.

I. Summary Abatement: Nothing contained herein shall prevent a Code Enforcement Officer, peace officer, or Fire Marshal from requiring, undertaking, or causing summary abatement of an abatable nuisance where such condition presents an imminent or ongoing threat to or impairment of human health or safety.

J. Noxious Weeds: In addition to other remedies set forth in this chapter, the Code Enforcement Officer may notify Ada County of the presence of any noxious weeds. (Ord. 17-1759, 12-19-2017; amd. Ord. 20-1875, 3-10-2020)