

ORDINANCE NO. 2011-_____

AN ORDINANCE OF THE NORTH OGDEN CITY COUNCIL AMENDING AND CLARIFYING CHAPTERS 4-1, 4-1A, 4-3, 5-1 AND 10-8D OF THE NORTH OGDEN CITY CODE TO ELIMINATE POSSIBLE CONFLICTS WITH CHAPTERS 8 AND 9, OF TITLE 1 OF THE CITY CODE.

WHEREAS: the City Council of North Ogden City created an administrative hearing process to provide for more effective enforcement of City ordinances and to resolve disputes between the City and its citizens; and

WHEREAS: the administrative hearing provisions are largely contained in Title 1, Chapters 8 and 9 of the North Ogden City Code; and

WHEREAS: the Council now desires to amend, clarify and resolve potential conflicts between those administrative hearing provisions and other pre-existing areas of the City Code,

NOW THEREFORE, BE IT ORDAINED that chapters 4-1, 4-1A, 4-3, 5-1 and 10-8D of the North Ogden City Code are amended and clarified to read as follows:

4-1-11: REVOCATION OF LICENSE:

- A. Authority: All licenses which have been issued or which may hereafter be issued by the city shall be subject to revocation as hereinafter provided, without regard to any expiration date on such license as issued.

- B. Hearing; Notice: ~~Whenever, in the opinion of the mayor or city council, the public interest will be best served by it appears to the City's Business License Official that a license holder has engaged in conduct warranting revocation of any license or licenses issued by the city, the city council or the mayor may Business License Official may direct that notice be sent to the holders of such licenses directing such holders to appear before the city council at a definite date and hour to be stated in such notice and as provided under Title 1, Chapter 8 of this code to show cause, if any, why such license or licenses should not be revoked;~~ provided, however, that the time set for such appearance by such licensee shall be not less than five (5) days after the date of mailing such notice; and provided further, that such notice shall be mailed to such licensee by regular mail, postage prepaid, and addressed to the address of such licensee as shown on the application for such license, or at any subsequent address which has been given to the city by such licensee.

- C. Appearance By Licensee: At the hour and date stated in such notice, the licensee shall have an opportunity to appear before the ~~city council~~ Administrative Law Judge and show cause why such license should not be revoked. ~~and cancelled, and may appear in person or by counsel, and the city council shall thereupon proceed to hear all persons interest in the matter and determine whether or not such license should be revoked.~~

- D. ~~Determination Of City Council~~ the Administrative Law Judge: In the event that the ~~city council~~ Administrative Law Judge on such hearing shall determine that the public interests are best served by the revocation of such license or that the licensee has failed to comply with the city zoning code or international building code or codes of professional ethics for licensee's particular profession, or has been convicted of a felony or a crime involving moral turpitude or has admitted to conduct which is tantamount to violating laws relating to felonious conduct or moral turpitude, or has violated any laws relating to the sale, display or distribution of pornographic materials or has failed to comply with the requirement of this chapter, including article A, relating to business licenses, the ~~city council~~ Administrative Law Judge shall thereupon order such license cancelled and revoked, and thereupon such license shall become null and void.
- E. Refunds Or Rebates: In the event of revocation as provided in this section, there shall be no refund or rebate of any part of the original license fee paid by the licensee.
- F. Failure Of Licensee To Appear: In the event that the licensee fails, neglects or refuses to appear at the hour and date set for such hearing, the ~~city council~~ Administrative Law Judge may proceed to determine the matter in the absence of the licensee, or may in ~~its~~ his sole discretion, continue the date of such hearing to some later date and at such later date proceed to act on the matter without further notice to the licensee.
- G. Operation With Revoked License Prohibited: It is unlawful for any person to carry on, conduct or operate any business, trade or profession for which a city license is required after such person's license has been revoked or cancelled in accordance with the provisions of this chapter.

4-1A-3: HEARING:

- A. Notice: ~~The notice to be given by the city council of the hearing to consider action to revoke or refuse to issue licenses under this article shall be a written notice mailed first class mail, postage prepaid, addressed to the licensee at the address shown on the application for business license sought to be revoked or on the license application which is sought to be refused. The notice required, if the nonlicensing of the premises is involved, shall be to the owner of those premises at the address then shown on the records of the Weber County recorder for that property shall be in accordance with Title 1, Chapter 8 of this code.~~
- B. Conduct: ~~The hearing provided for in this section shall be informal and at a regular city council meeting, with the licensee or applicants for license, or the property owner, to have reasonable opportunity to be heard~~ proceed in accordance with the provisions of Title 1, Chapter 8 of this code.

4-3-27: APPEAL PROCEDURES:

The denial, suspension or revocation of any license issued pursuant to this chapter may be appealed ~~to the city council~~ in accordance with Title 1, Chapter 8 of this code.

5-1-1: ACCUMULATION PROHIBITED:

- A. Specified; Authority: It is unlawful for the owner or occupant of any real property or estate, or its agent, to cause or permit upon such property, or right of way adjacent thereto, the accumulation of, or, after notice as provided in this chapter, to fail to eradicate or remove any injurious and noxious weeds, garbage, refuse, dead trees, tree stumps, abandoned or inoperable vehicles, boats or trailers, or any unsightly or deleterious objects or structures pursuant to the powers granted to the city by Utah Code Annotated Title 10, Chapter 11.
- B. Public Nuisance Declared: It is declared that the above listed objects shall constitute a public nuisance when they create a fire hazard, a source of pollution to water, air or land, or they create a breeding place or habitation for insects, rodents or other forms of life deleterious to human habitation, or are unsightly or deleterious to their surroundings.

5-1-2: INOPERABLE MOTOR VEHICLE STORAGE:

- A. Inoperable Defined: For the purposes of this chapter, a motor vehicle, boat, recreational vehicle or trailer shall be deemed inoperable if it is not currently licensed, as required by state code, and operable for the use for which it was intended. The same shall be deemed abandoned if it has been left unattended for a period of seven (7) days or more upon any public or private property.
- B. Fence Required: Any inoperable or abandoned vehicle must be stored in an enclosed structure or behind an opaque six foot (6') fence, which is intended to shield the vehicle from view from any adjoining public or private property.

~~5-1-3: ADMINISTRATION AND ENFORCEMENT:~~

~~A. Code Enforcement Officer: The city appoints the code enforcement officer as the city official responsible for administering the provisions of this chapter. The code enforcement officer, or his designee, shall, under the direction of the chief building inspector, enforce the provisions of this chapter, except those duties that relate to the eradication, removal and control of weeds and other vegetative matter, in which case the North View fire marshal, or his designee, shall act as the code enforcement officer.~~

~~B. Powers And Duties:~~

- ~~1. The code enforcement officer is authorized and directed to inspect and examine real property situated within the corporate limits of the city for the purpose of determining whether it contains objects or conditions of the kind and nature described in sections [5-1-1](#) and [5-1-2](#) of this chapter. If it is determined that the objects or conditions constitute a "nuisance", as defined in this chapter, the code enforcement officer, or his designee, shall:~~
 - ~~a. Ascertain the names of the owners and/or occupants and a description of the premises where the objects and/or conditions exist.~~
 - ~~b. Serve notice, in writing, upon the owners and occupants of the premises, either personally or by mailing the notice, postage prepaid, addressed to the owners and/or occupants at their last known~~

addresses, as disclosed by the records of the county assessor, or as otherwise ascertained. The written notice shall require the owners and/or occupants to eradicate, or destroy and remove the items that are found to be in violation of this chapter within such time as the code enforcement officer may designate, which shall not be less than ten (10) days from the date of service of such notice. If the service is mailed, then the service shall be deemed complete upon mailing.

2. One notice shall be deemed sufficient on any lot or parcel of property for the entire season of weed growth during that year. The code enforcement officer, or fire marshal, shall make proof of such notice under oath, and file the same in the office of the county treasurer.
3. The code enforcement officer shall include in the written notice a statement informing the owners and/or occupants of their right to request, in writing, a hearing before the city council to review the code enforcement officer's decision requiring the eradication or removal of said items. Such written appeal must be filed within ten (10) days of service of the notice and, if timely filed, shall stay the time within which the owners and/or occupants must conform to the provisions of this chapter. In the event the owners and/or occupants make the written request for a hearing, the code enforcement officer, or the city recorder, shall set the time and place for hearing the appeal and shall notify the owners and/or occupants in writing of the time and place at which the owners and/or occupants may appear to present their appeal to the city council. Such hearing shall not be held less than five (5) days from the date of service of such notice.

5-1-4: APPEAL:

- A. **Hearing:** Upon the written request of an owner and/or occupant objecting to the decision of the code enforcement officer to eradicate or destroy and remove any objects or conditions described in this chapter, the city council shall conduct a hearing wherein such owners and/or occupants may present such evidence and argument as is pertinent to determine if the notice for eradication is properly within the purview of this chapter. The city council shall also permit the presentation of evidence and argument by the code enforcement officer, or other interested parties. Within ten (10) days of the hearing, the code enforcement officer or city recorder shall mail, postage prepaid, or personally deliver a written copy of the city council's decision regarding the appeal.
- B. **Uphold Decision:** In the event the decision of the city council upholds the determination of the code enforcement officer, the notice originally given shall be deemed sufficient to require the owners and/or occupants to eradicate, or remove such objects or conditions in the manner and within the time limits described therein; provided, however, that the owners and/or occupants shall have at least ten (10) days from the date of the hearing within which to conform thereto.
- C. **Overrule Or Modify Decision:** In the event the city council overrules or modifies the decision of the code enforcement officer, the decision of the city council shall set forth the time, other details, and extent to which the owners and/or occupants must eradicate or remove the objects and/or conditions. The decision of the city council shall be deemed the modified decision of the code enforcement officer.

5-1-5: ERADICATION AND REMOVAL BY CITY:

~~If the owners or occupants of the premises described in the written notice of the code enforcement officer or the modified decision of the code enforcement officer shall fail or neglect to conform to the requirements thereof, relating to the eradication or removal of such objects and/or conditions, the code enforcement officer shall employ all necessary assistance to cause such materials or conditions to be eradicated or removed at the initial expense of the city.~~

5-1-6: EXPENSE STATEMENT TO OWNER:

~~Upon completion of the eradication and removal, the city treasurer shall prepare an itemized statement of all expenses incurred and shall mail a copy thereof to the owners and/or occupants demanding payment within twenty (20) days from the date of mailing.~~

5-1-7: REFERRAL TO COUNTY TREASURER:

~~A. In the event the owner and/or occupant fails to make payment of the amount set forth in the statement from the city treasurer within twenty (20) days, the city treasurer or code enforcement officer may refer the matter to the county treasurer, or, with the mayor's approval, may cause suit to be brought in an appropriate court of law.~~

~~B. In the event that the expenses for eradication or removal is referred to the county treasurer for inclusion in the tax notice of the property owner, an itemized statement in triplicate of all expenses incurred in the eradication or removal of the same shall be delivered to the county treasurer. The expenses incurred will then be pursued by the county treasurer in accordance with the provisions of Utah Code Annotated section [10-11-4](#). (Ord. 2010-11, 10-12-2010)~~

5-1-8: SUIT AND JUDGMENT FOR EXPENSES:

~~In the event the collection of expenses for eradication and removal are pursued through the courts, the city shall sue for all such expenses of eradication or removal, together with attorney fees, interest and court costs, and shall execute upon such judgment in the manner provided by law.~~

5-1-9: PENALTY:

~~Any person who violates this chapter or any provision thereof shall be guilty of a class B misdemeanor, subject to penalty as provided in section [1-4-1](#) of this code and may also be charged under Utah Code Annotated section [26-23-3](#).~~

10-8D-1: CIVIL PENALTIES FOR VIOLATIONS:

A. Any person violating any provision of articles A, B and C of this chapter shall be liable for a civil penalty. Any penalty assessed under this article may be in addition to other penalties that may be provided in other applicable laws. Each day that a violation occurs shall constitute a separate offense.

- B. If, as the result of the violation of any provision of articles A, B and C of this chapter, the city or any other party suffers damages and is required to make repairs and/or replace any materials, the cost of repair and/or replacement shall be borne by the violating party and shall be in addition to any civil fines and/or penalties.
- C. Violators of articles A, B and C of this chapter may also be subject to prosecution, fines and penalties from the state and the United States EPA.

10-8D-2: AMOUNT OF PENALTIES SET BY RESOLUTION:

The amount of any civil penalty assessed under section [10-8D-1](#) of this article shall be established by ordinance and adopted by the city council. (Ord. 2004-07, 7-13-2004; amd. 2006 Code)

10-8D-3: ENFORCEMENT OFFICERS:

Employees of the building inspection department, police department or the code enforcement officer shall have the authority to issue notices under this article.

10-8D-4: NOTICES:

- A. Requirements: Whenever the city finds that a person or company has violated, or failed to comply with a requirement of articles A, B and C of this chapter, the city will order compliance by written notice of the violation. Such notice may require without limitation:
 - 1. The performance of monitoring, analyses and reporting;
 - 2. The elimination of illicit connections or discharges;
 - 3. That violating discharges, practices or operations shall cease and desist;
 - 4. The abatement, remediation or cleanup of storm water pollution or contamination hazards and the restoration of any affected property;
 - 5. Payment to cover administrative, remediation, monitoring, analyses and reporting costs; and
 - 6. The implementation of source control or treatment BMPs.
- B. Immediate Legal Action: The city may skip the notice requirements set forth in this section and immediately proceed with criminal and/or civil action against the violator if:
 - 1. The violator has committed the same violation in the past; or
 - 2. The violation, in the opinion of the city, creates a serious risk to persons, the environment or property; or

3. The city deems the violation to constitute an emergency. (Ord. 2004-07, 7-13-2004)

10-8D-5: GENERAL CONTRACTOR RESPONSIBILITY:

Whenever any violation of this chapter, including articles A, B, C and D, is found, there shall be a rebuttable presumption that the general contractor for the project from where the violation originated is responsible for the violation and subject to the civil penalty provided.

10-8D-6: PROPERTY OWNER RESPONSIBILITY:

Whenever any violation of articles A, B, C and D of this chapter is found, and there is no general contractor responsible for the project, there shall be a rebuttable presumption that the property owner for the project from where the violation originated is responsible for the violation and subject to the civil penalty provided.

10-8D-7: PAYMENT ASSESSMENT OF PENALTIES:

~~Any civil penalty imposed under this article, which is paid within ten (10) days of the notice, shall be reduced by the sum of twenty five dollars (\$25.00). All monetary penalties, expenses and/or damages must be paid in full within forty (40) days of the notice, unless other arrangements have been made with the city hearing officer.~~ Civil penalties may be assessed for violation of any article of this chapter as provided in Title 1, Chapter 9 of this code.

10-8D-8: HEARINGS:

~~A. Appointment Of Hearing Officer: The mayor, with the advice and consent of the city council, shall appoint the hearing officer, as he or she deems appropriate to consider matters relating to violations of articles A, B, C and D of this chapter. The hearing officer may be a city employee. Hearings regarding violations of articles A, B, C and D of this chapter shall be provided in accordance with Title 1, Chapter 8 of this code.~~

~~B. Request For Hearing: Within thirty (30) days after receiving the notice described in section 10-8D-4 of this article, the person who received the notice may request a hearing on the allegation that he or she violated this chapter, including articles A, B, C and D, except that a person may not request a hearing under this section if the violation is alleged to have occurred in conjunction with a criminal violation as part of a single criminal episode and the criminal violation will be prosecuted in a criminal proceeding. A person desiring to have a hearing under this section shall file a written request for the hearing with the court clerk. Any person who received a notice and does not request a hearing within thirty (30) days shall be deemed to have waived the right to a hearing.~~

~~C. Conduct Of Hearing: Within ten (10) days after receiving the request for a hearing, the hearing officer shall schedule a hearing on the alleged violation of this chapter. The hearing shall:~~

~~1. Be a public meeting held during the city's regularly scheduled business hours;~~

~~2. Provide due process to all of the parties, including the right to be represented by counsel.~~

~~D. Burden Of Proof: The burden to prove any defense shall be upon the person raising the defense.~~

~~E. Dismissal: The hearing officer shall dismiss the notice of the violation if:~~

- ~~1. The hearing office finds that no violation of this chapter, including articles A, B, C and D, occurred;~~
- ~~2. The city attorney has recommended dismissal and provided the hearing officer with good cause for the dismissal.~~

~~F. Reduction Of Penalty:~~

- ~~1. The hearing officer may reduce the penalty provided in this article if:
 - ~~a. The hearing officer finds good cause for the reduction; or~~
 - ~~b. The city attorney recommends the reduction of the penalty and provides the hearing officer with good cause for the reduction.~~~~
- ~~2. In no event shall the hearing officer reduce the penalty below the sum of twenty five dollars (\$25.00).~~

~~G. Agreement For Payment: If the hearing officer finds that a violation of articles A, B, C and D of this chapter occurred and no applicable defense exists, the hearing officer may, in the interests of justice and on behalf of the city, enter into an agreement for the timely payment of the applicable penalty.~~

10-8D-9: COLLECTION:

~~If any penalty, expenses and/or damages imposed pursuant to this article remains unpaid after forty (40) days from the receipt of the notice, or after ten (10) days from the date of a hearing pursuant to section [10-8D-7](#) of this article, the city may act to recover the penalty, expenses and/or damages.~~

10-8D-10: APPEALS:

~~The hearing officer shall make final administrative determinations in all matters in which a violation of articles A, B, C and D of this chapter has been alleged.~~

This Ordinance shall take effect upon the first publication and filing of a copy thereof in the office of the City Recorder.

DATED this 27th day of September, 2011.

BY THE CITY COUNCIL:

Richard G. Harris, Mayor

ATTEST:

**S. Annette Spendlove, MMC
City Recorder**

CITY COUNCIL VOTE AS RECORDED:

	Aye	Nay
Council Member Bigler:	___	___
Council Member Flamm:	___	___
Council Member Harris:	___	___
Council Member Taylor:	___	___
Council Member Turner:	___	___
(In event of a tie vote of the Council):		
Mayor Harris:	___	___