

February 28 changes from Town Council meeting tracked in Violet, as Word refers to this color.

Recommend we consider the following:

- Eliminate reference to this ordinance declaring an emergency I agree
- Use the Utah code definition of nuisance
- Eliminate any nonconsensual access to property to avoid a possible trespass\ I agree
- Define only one type of nuisance, rather than a nuisance and a public nuisance I agree  
(This would eliminate requirements of at least 3 persons being offended)
- Make the owner of property ultimately responsible for any expenses of abating a nuisance I agree

General Comments: Language too non-specific.

Unlawful is easily defined, unreasonable is not.

Repetitiveness on definitions of junk and refuse. Also, danger in long list – argument as to why something not on list would meet the definition.

Request of those making General Comments: Wherever possible, please propose specific, revised language.

#### ORDINANCE NO.

#### AN ORDINANCE REGULATING NUISANCES WITHIN THE TOWN OF LEEDS

WHEREAS, the Town of Leeds, Utah (“Town”) is a political subdivision of the state of Utah, authorized and organized under the provisions of Utah law;

WHEREAS, the Town has legal authority, pursuant to Title 10, Chapter 8, Section 60, Utah Code Annotated, as amended, to declare what is a nuisance, provide for the abatement of the same, and to provide for criminal and civil action to be taken against persons who create, continue or suffer nuisances to exist; and

WHEREAS, the Town has found it to be in the best interest of the public to regulate nuisances.

NOW THEREFORE, the Town Council hereby ordains as follows.

0-2-1. **DEFINITIONS.** The following words and phrases used in this chapter shall have the following meanings unless a different meaning clearly appears from the context:

**ABATEMENT:** The removal, stoppage, prostration or destruction of that which causes or constitutes a nuisance ~~or public nuisance, whether by breaking or pulling it down, or otherwise destroying or effacing it.~~

**JUNK:** Any ~~for all~~ worn out, cast off, destroyed or discarded article or material which is ready for

destruction, disposal, or salvage ~~has been collected and stored for salvage or conversion to some other use. Any article or material which, unaltered, unchanged and without further reconditioning, can be used for its original purpose as readily as when new, shall not be considered "junk".~~

JUNK CARS: Any ~~used car or~~ motor vehicle not in the process of reconditioning or repair, which has been abandoned for use as a motor vehicle on a public highway and which is in unsafe operating condition and shall have remained in such condition for a period in excess of thirty (30) days; or portions of a junk cars, such as hoods, fenders, radiators, rims, motors, hubcaps, tires, etc.,

Should portions of this be included in the JUNK definition only?

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not being ~~immediately~~ timely utilized in the repair of a motor vehicle.

NUISANCE: ~~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~~

The unreasonable, unwarranted and/or unlawful use of property, which causes inconvenience or damage to others, either to individuals and/or to the general public.

A nuisance is 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.

OWNER: The person, ~~firm or corporation~~ in whose name property is listed in the records of the county recorder's office for Washington County, Utah.

One who has legal title or right to property.

PERSON: An individual, trust, firm, estate, company, corporation, partnership, association, state, ~~state or federal United States~~; government agency or entity, ~~municipality~~, commission, or political subdivision of a state.

PROPERTY: Any real property, premises, or structure, ~~whether privately or publicly owned or location on which a nuisance or public nuisance is alleged to exist.~~

Anything that is owned by a person or entity.

**PUBLIC NUISANCE:**

~~A. An offense against the order and economy of the Town and consists in unlawfully doing an act or omitting to perform any duty, which act or omission:~~

~~1. Annoys, injures or endangers the comfort, repose, health or safety of three (3) or more persons;~~

~~2. Offends public decency;~~

~~3. Unlawfully interferes with, obstructs or renders dangerous for passage any lake, stream, canal, public street, park, square or highway; or~~

~~4. In any way renders three (3) or more persons insecure in life or the use of property.~~

~~B. An act which affects three (3) or more persons in any of the ways specified in this section is still a public nuisance regardless of the extent to which the annoyance or damage inflicted on individuals is unequal.~~

~~C. If any condition designated herein as an offense against the order and economy of the Town is determined by the fire authority to constitute a fire hazard, or is determined by the law enforcement authority to constitute a safety hazard, or is determined by the state division of health to be a health hazard, there shall be a rebuttable presumption that such act or omission is within the designations of subsection A of this section.~~

RUBBISH: Means and includes wire, chips, shavings, boxes, barrels, bags, rags, bottles, broken glass, crockery, tin, cast or wooden ware, iron, stumps, tree trunks, paper circulars, handbills, boots, shoes, ashes, trash, or any similar waste material.

**Comment [WP1]:** Should be permitted if used for landscaping or erosion control purposes.

Anyone who allows or aids in creating, maintaining or allowing, or contributes to a nuisance ~~or public nuisance~~, or who supports, continues, or retains a nuisance as proscribed in this chapter ~~or a public nuisance~~, is guilty of a class B misdemeanor. ~~Each day that any violation occurs shall constitute a separate offense for each successive day the nuisance or public nuisance is continued.~~ Each day's violation of a provision of this chapter constitutes a separate offense. The abatement of a nuisance is not a penalty for violation of this chapter but is an additional remedy. The imposition of a penalty does not relieve a person of the duty to abate a nuisance. If a nuisance is properly and thoroughly addressed within seven days of a first offense, the violation will only be deemed to have been in existence for a single day.

**Comment [WP2]:** Would ten be preferable?

#### 0-2-XX THE FOLLOWING SHALL CONSTITUTE A NUISANCE:

0-2-3. **REFUSE IN PUBLIC STREETS AND OTHER PUBLIC AREAS.** It shall be unlawful for any person ~~intentionally or carelessly~~ to throw, cast, put into, drop or leave in any street, gutter, sidewalk or public place any stones, gravel, sand, dirt, debris, garbage, leaves, lawn or tree clippings, paper material, handbills, ashes, rubbish of any kind, or any other item, material, or ~~similar substance. substance which shall either constitute a nuisance as designated herein, which shall interfere with the free and unobstructed use and movement of either traffic or water on a public street or right-of-way in the opinion of a police officer, or which shall constitute a fire hazard in the opinion of the Fire District.~~

Should this be covered in littering laws? More than just littering – leaves & gravel to street – landscapers

Defining nuisances in public areas are less challenging than trying to define a nuisance on

private properties and respect the rights of property owners. The condition must clearly cause an offense, damage, and detriment to health, safety, or welfare of others.

**0-2-4. OFFENSIVE CONDITION OR REFUSE ON PRIVATE PROPERTY.** It shall be unlawful for any person to maintain, or allow to be maintained, ~~Whenever there shall be found~~ on or about any lot or parcel of property, whether vacant or occupied, any garbage, refuse, junk, used materials and merchandise, effluvia, kitchen waste, trash, inoperable motor vehicles, broken machinery, or other unsightly or deleterious objects or conditions, such as old tin, aluminum and iron cans and containers, old wood and paper boxes, scrap iron, wire, rope, cordage, bottles, bags and bagging, rubber and rubber tires, scrap vehicle bodies, engines, and parts thereof, paper, wood shavings, and all used and castoff articles or material, including scrap lumber, plaster, concrete, brick, cement, glass, other building materials, branches, leaves, yard trimmings, or similar items or conditions. ~~conditions that are offensive to the order and economy of the Town, they shall be deemed a nuisance.~~

**Comment [WP3]:** Move 0.2.11 here, deleting vehicles in 0-2-4

**0.2.5. RANK AND NOXIOUS WEEDS. NOXIOUS GROWTH:** It shall be unlawful for any person to permit weeds or other noxious vegetation to grow upon property. It shall be the duty of an owner or person in charge of the property to cut down or to destroy grass, shrubbery, brush, bushes, weeds, or other noxious vegetation as often as needed to prevent them from becoming unsightly, from becoming a fire hazard, or, in the case of weeds or other noxious vegetation, from maturing, or from going to seed. ~~Whenever there shall be found on or about any property, whether vacant or occupied, any rank or noxious weeds, grass or other growth which constitute an existing or potential fire hazard, such growth shall be deemed a nuisance.~~ Any weed listed on the Washington County Weed Abatement list as a noxious weed shall be deemed a nuisance when such is growing on property. ~~Abatement shall be accomplished by discing or plowing the property or by County authorized spraying, or by cutting the weeds to within four (4) inches of the ground, or as otherwise directed by employees of the Washington County Weed Abatement Department. Follow up weed removal shall be conducted as necessary.~~

**Comment [WP4]:** Be mindful that not all unwanted weeds are on the noxious list

**0.2.6. DEAD ANIMALS.** It shall be unlawful to allow any dead domestic animal to remain on property unburied or not otherwise disposed of more than two (2) days after its death. It is the responsibility of the owner, agent or occupant property, or other person responsible for such any domestic animal which dies, to bury or otherwise dispose of it within two (2) days after death. ~~If the person shall fail to do so within the time herein provided, such omission shall be deemed a nuisance.~~ If the owner or other person responsible for such an animal cannot be found, ~~it is the duty of the animal control officer to bury the dead animal. In such event, the Town shall take measures to bury or dispose of the animal and shall be entitled to reimbursement from the owner, agent or occupant of the property for all expenses incurred. or the owner of the dead animal.~~

**Comment [WP5]:** Look to Health Department

**0.2.7. INFESTATION.** It shall be unlawful for any person to maintain a condition within the Town which unreasonably promotes or encourages ~~the~~ a breeding area for ~~breeding of~~ flies, mosquitos, rats or other form of animal life which may be disease carriers, and the same shall constitute a nuisance.

**0.2.8. NOISES.** ~~It shall be unlawful and constitute a nuisance, for any person It~~

During standard business hours, some of these examples can be normal.

**Comment [WP6]:** Is this already covered somewhere else as Disturbing the Peace?

shall be unlawful for any person to make, continue, or cause to be made or continued, any loud, unnecessary or unusual noise, or any noise which annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others, ~~within the limits of the Town.~~ Such prohibited noises include, but are not limited to, ~~The following acts when prolonged, unusual and unnatural in their time, place and use, are deemed a detriment to the public health, comfort, convenience, safety, welfare and prosperity:~~ horns, radios, stereos, loudspeakers, yelling or shouting, exhausts, motor vehicles, drums or musical instruments, construction equipment, airplanes or blasting.

Comment [WP7]: Should this be combined with 0.2.8?

0.2.9. **BARKING DOGS.** It shall be unlawful for any person to keep any dog which by barking, howling or yelping in excess of 10 minutes, or by any other action, on three or more occasions constitutes a nuisance.

0.2.10. **GARBAGE; IMPROPER PLACEMENT.** It shall be unlawful to place ~~Placement of~~ garbage in right-of-way at curbside or in other than a protected area shall be considered a nuisance within the meaning of this chapter, except during the period of twenty four (24) hours preceding or following scheduled collection of such garbage, without previously obtaining permission from Town Hall. On garbage collection days, garbage and waste placed at curbside ~~must shall~~ be contained within bags, cans or other receptacles, unless the trash material is of such size and nature that it would not be practical to fully enclose it.

I cannot support language monitoring garbage can placement time periods.

Comment [WP8]: Move to Sanitation Ordinance

0.2.11. **TRASH, JUNK, INOPERABLE VEHICLES, VESSELS, AND SIMILAR MATERIALS.** It shall be unlawful for any person to allow ~~No~~ trash, rubbish, noxious growth, weeds or other combustible material ~~shall be allowed~~ to remain on any lot outside of approved containers in any residential zone. ~~Or to allow~~ ~~No~~ junk, debris, abandoned, inoperable, junk or dismantled vehicles or vessels or vehicle or vessel parts or similar materials ~~shall to~~ be stored ~~or allowed~~ to remain on any lot in any residential or commercial zone. ~~Failure to abide by this section constitutes a nuisance.~~

Some of these examples can be problematic in RR and RA zones.

~~0.2.12. DUTY TO LOCATE; RIGHT OF ENTRY.~~ The Mayor shall designate the person or persons to be charged or entrusted with the duty of enforcing this ordinance. ~~Such person(s) shall locate and discover all nuisances and public nuisances which may offend the order and economy of the Town, and they shall have authority, by themselves or by their agents, in the daytime, to enter upon any lot or other premises, or any building or structure, in order to inspect and examine the same for the purpose of determining whether or not any conditions, nuisances, or public nuisances exist which are prohibited by this chapter.~~

0.2.13. **ABATEMENT PROCEDURES.** The following procedure shall be followed by the Town in seeking to abate a nuisance ~~or public nuisance.~~

A. Notice To Abate: The Town shall notify may in writing the owner, ~~agent or occupant of~~ of any property within the Town upon which a nuisance ~~or public nuisance~~ may be found, ~~or~~ and it may also notify such other person who causes or permits a nuisance ~~or public nuisance~~ to

exist, advising that there is a nuisance ~~or public nuisance~~, describing the same, and requiring the nuisance ~~nuisance or public nuisance~~ to be abated in a manner described in the notification within ten (10) days after receipt thereof, unless some other time is specified in the notice. Notice shall be given by personal delivery or by certified mail to the last known address of the owner; ~~agent or occupant~~ of the property. Failure to give notice as provided herein shall not relieve the owner or person responsible for the ~~author of a~~ nuisance ~~or public nuisance~~ from the obligation to abate such nuisance ~~or public nuisance~~, or from the penalty provided herein for violation of this ~~the maintenance of that nuisance or public nuisance~~ ordinance.

**Comment [WP9]:** Clarify that this prevents an ongoing, unnoticed nuisance from being defended basis lack of notification when it first occurred.

B. Publication: If service of such notice is unable to be perfected by any of the methods described in subsection A of this section, a copy of the aforesaid notice shall be published in a newspaper of general circulation in the county, once a week for three (3) consecutive weeks, and a copy of the aforesaid notice shall be left with the ~~person individual~~, if any, in possession of such property on which it is alleged such nuisance or public nuisance exists, or if there is no ~~individual person~~ in possession thereof, a copy of the notice shall be posted at such property, structure, location or premises.

C. Demand For Hearing: The owner or occupant of the property who has been served with a notice pursuant to this chapter that a nuisance ~~or public nuisance~~ exists and that it must be abated within ten (10) days, may, within seven (7) calendar days after receipt of such notice, make a written demand to the Town Recorder for a hearing on the question of whether a nuisance ~~or public nuisance~~ in fact exists. The hearing shall be held as soon as practicable following receipt by the Town Recorder of the written demand, and at least two (2) days' notice of the hearing shall be given to the ~~individual person~~ who made the written demand for hearing.

D. Conduct Of Hearing: The Town Council shall conduct the hearing. The Town Council may amend or modify the notice and/or extend the time for compliance with the notice by the owner ~~or occupant of the property~~ by such date as ~~the majority of~~ the Town Council may determine.

**Comment [WP10]:** More specific language on conduct of hearing

E. Evidence: The owner, agent of the owner, and occupant, if any, of the subject property shall be given the opportunity to present evidence to the Town Council in the course of the hearing.

F. Refusal Failure To Abate: Upon the failure, neglect or refusal of any person to abate a nuisance ~~or public nuisance~~ after notice in writing has been given, the Town is hereby authorized and empowered to order the ~~disposal abatement~~ of the nuisance ~~or public nuisance~~, or to pay for the ~~disposing abatement~~ of the same. When the Town effects ~~removal abatement~~ of a nuisance ~~or public nuisance~~, or pays for such removal, the actual cost thereof, plus accrued interest at the rate of twelve percent (12%) per annum from the date of the completion of the work, shall be charged to the owner of the property on which the nuisance ~~or public nuisance~~ existed. The Town may cause a sworn statement to be recorded in the office of the county recorder showing the cost and expense incurred for the work, the date the work was done, and the location of the property on which the work was done. Such recordation of the sworn statement shall constitute a lien on the property and shall remain in full force and effect for the amount due in principal and interest, plus collection costs, if any, until final payment has been made. A sworn statement recorded in accordance with the provisions hereof shall be prima facie evidence that

**Comment [WP11]:** Troublesome to at least some.

all legal formalities have been complied with and that the work has been done properly and satisfactorily, and shall be full notice to every person concerned that the amount of the statement, plus interest, constitutes a charge against the property ~~designated or~~ described in the statement and that the same is due and collectible as provided by law.

G. **Record Owner Responsible:** Any person who is the record owner of the property, ~~premises, location or structure~~ at the time a notice is issued pursuant to this chapter, shall be responsible for complying with that notice and liable for any costs incurred by the Town, notwithstanding the fact that ~~he— such owner has conveyed conveys his interests in~~ the property to another, ~~whether before or~~ after such notice was issued and served.

**Comment [WP12]:** What about illegal dumping?

H. **Collection by Suit:** In the event the owner, ~~agent or occupant~~ fails to make payment of the amount set forth in such statement to the county treasurer within twenty (20) days of the date of mailing of the statement to the owner, ~~agent or occupant~~, the Town may cause suit to be brought in an appropriate court of competent jurisdiction. In the event collection of expenses for the abatement of any nuisance ~~or public nuisance~~ are pursued through the court, the Town shall sue for and be entitled to receive judgment for all expenses for the ~~abatement destruction and removal~~ of the nuisance ~~or public nuisance~~ together with reasonable attorney fees, interest and court costs. The Town may execute upon such judgment in the manner provided by law.

I. **Town Not Civilly Liable:** Neither the Town, nor its officers, agents, employees or attorneys, shall be civilly liable to any owner or occupant or person having an interest in real property for the ~~removal abatement~~ of a nuisance ~~or public nuisance~~ under the provisions of this chapter.

0.2.14. **LEGAL ACTION TO ABATE NUISANCES.** The Town attorney, upon direction of ~~the~~ Town Council, ~~or by his own volition~~, may institute an action in the name of the Town to abate a nuisance ~~or public nuisance~~. The action shall be brought in the Fifth District Court of the State of Utah, Washington County and shall be in the form prescribed by the Rules of Civil Procedure of the State of Utah for injunctions. No bond is required to be posted with respect to the action. A person who knowingly violates any judgment or order abating or otherwise enjoining a nuisance ~~or public nuisance~~ is guilty of a class B misdemeanor.

**Comment [WP13]:** This and the following two sections should be updated by the Town's Prosecutor when they review the entire document

0.2.15. **REMEDIES SEPARATE AND CUMULATIVE.** In seeking to abate nuisances ~~or public nuisances~~, the Town may commence a criminal action against the owner, agent or occupant of the property, may give notice to abate as set forth above and thereafter abate the nuisance ~~or public nuisance~~ upon the owner's, agent's or occupant's failure to do so, ~~or and also~~ may commence a civil action for abatement as set forth above. These remedies are ~~separate and cumulative~~, and the Town may pursue any or all of such remedies ~~simultaneously~~.

**Comment [WP14]:** Some didn't like using criminal, others felt it necessary.

### 0.2.XX SUMMARY ABATEMENT

The procedures for abatement provided by this chapter are not exclusive. In addition to procedures provided by this ordinance, the health officer, the Fire Chief, or the ~~Police Chief~~ law enforcement officer having jurisdiction over the Town may proceed summarily to abate an existing health, fire or safety nuisance which endangers human life or property.

~~EFFECTIVE DATE. An emergency is hereby declared, the preservation of peace, health and safety of Leeds and the inhabitants thereof so requiring. Immediately after its adoption, this ordinance shall be signed by the Mayor and Town Recorder and shall be recorded in the ordinance book kept for that purpose. This ordinance shall take effect immediately upon its passage and approval.~~

This Ordinance shall be effective \_\_\_\_\_, 2017~~8~~.

TOWN OF LEEDS

ATTEST:

\_\_\_\_\_  
Wayne D. Peterson  
Mayor

\_\_\_\_\_  
Kristi Barker  
Town Clerk

Council Member Elliott Sheltman voted	Aye _____	Nay _____
Council Member Nate Blake voted	Aye _____	Nay _____
Council Member <del>Angela Rohr</del> Alan Roberts voted	_____	Aye ___ Nay
Council Member <del>Ron Cundick</del> Danielle Stirling voted	_____	Aye ___ Nay
Mayor Wayne D. Peterson voted	Aye _____	Nay _____