



CITY OF VICTOR

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City Council Staff Report

REPORT DATE: November 4, 2023

MEETING DATE: November 13, 2023

SUBJECT **Ordinance O617, An Ordinance Establishing a Nuisance Notice and Abatement Procedure**

ITEM TYPE Public Hearing Work Session Action Item

PRESENTER Jeremy Besbris, City Administrator

APPLICABLE VICTOR VALUES

Culturally Historic Sustainable Connected to Nature
 Small Town Feel Family Friendly Administrative Need

PURPOSE & PROCESS

The purpose of this item is for the Council to consider the adoption of a Nuisance Abatement Ordinance to facilitate the “abatement” of nuisance property if and when a property owner is unwilling or unable to remedy the nuisance by establishing a notice procedure and an abatement procedure.

BACKGROUND/ALTERNATIVES

The City’s existing nuisance ordinance only allows for criminal penalties where a property owner maintains the condition of their property in such a condition that it constitutes a public nuisance. When and where a criminal penalty is insufficient to cause a property owner to remedy a nuisance on their own, the City’s current nuisance ordinance leaves it with few tools to address the problem.

Based on the legal research of the City’s Prosecuting Attorney, Sam Hall, and review by the City Attorney, staff recommends the city council adopt the attached ordinance establishing a notice procedure and enabling the City to enforce the abatement of nuisance properties by civil action if necessary.

ATTACHMENTS

Memo, Hall Angell & Associates, LLP
Draft Ordinance

FISCAL IMPACT

Positive. If adopted, the proposed ordinance would improve the City’s probability of recouping costs associated with enforcement.

STAFF IMPACT

Positive. Significant resources have been expended using the current code’s procedures to mixed results.

LEGAL REVIEW

Complete

RECOMMENDATION

Approve the ordinance as written or approve the ordinance with amendments.

SUGGESTED MOTION

I move to approve and adopt Ordinance O617, to read by title only and waive the first reading in full of Ordinance O617, an ordinance adding Section 4-1-11, to the Victor City Code, establishing a nuisance notice and abatement procedure.

[General vote]

I move to further approve Ordinance O617, waive the second and third reading in full and to direct the City Clerk to publish accordingly.

[Roll Call Vote]

ORDINANCE O617, An Ordinance Adding Section 4-1-11 to the Victor City Code, and Establishing
a Nuisance Notice and Nuisance Abatement Procedure

4-1-11 NUISANCE ABATEMENT

- A. Notice. Whenever a nuisance, as outlined within this chapter, is found to exist within the city limits, the mayor, planning & building director, chief of police, public works director, parks director, chief of police, or some other duly designated officer of the city and/or health director of the county health department, shall give written notice to the owner and/or occupant of the property upon which such nuisance exists, or upon the person causing or maintaining the nuisance. Notice shall be deemed complete upon the completion of any of the following:
- i. Personal service upon any of the individuals listed above; or,
 - ii. Mailing to the property owner's address as shown in current official Teton County assessor records and affixing or posting in a readily visible location upon the property upon which such nuisance exists.
- B. Contents. Any written notice caused to be served shall indicate the following:
- i. That, if the property owner fails to abate the nuisance, the City shall take steps to abate the same.
 - ii. That the property owner may contract with the City to abate the nuisance, at the sole expense of the property owner.
 - iii. That, if the City abates the nuisance, all costs and expenses of abatement shall be billed and assessed against the property owner and if unpaid shall become collectable as a special assessment with property taxes; If the city must abate the violation, then the responsible party will be required to pay an administrative fee of one-hundred dollars (\$100.00) in addition to the actual costs incurred through the abatement process.
 - iv. That the property owner has a right to request a hearing in front of the City Council to show cause as to why the nuisance should not be abated. Should the property owner elect such a hearing, the owner must so state in writing, submitted to the Clerk of the City of Victor, no later than ten (10) days after service of the notice as stated in 4-1-11(A), and that abatement will proceed absent said notice.
- C. Enforcement. If, after ten (10) days of posting notice as stated in 4-1-11(A), the nuisance on the property persists, and the property owner has not requested a hearing before the City Council, the City shall proceed to abate the same and the property owner shall be subject to costs and fees as identified under 4-1-11(B)(i). The City may impose a special assessment which shall constitute a lien against the property upon which the nuisance exists. Notwithstanding the foregoing, the City shall be authorized to collect any and all amounts due, if unpaid, by any lawful means, and shall not be limited solely to the special assessment.
- D. Hearing. If the property owner requests a hearing before the City Council, the hearing shall, if feasible, be placed on the agenda of the next regularly scheduled City Council meeting. The decision of the City Council shall be final. A thirty (30) day period shall be given to the property owner after any such decision to allow the

property owner time to abate the nuisance or to pursue any legal remedies or defenses that may be available through the court system.

- E. Civil Action. Nothing in the foregoing paragraphs shall prohibit the City from pursuing a civil action for abatement of any nuisance. In the event that the City pursues a civil action for abatement, a Judgment in said action shall supersede the requirements set forth in 4-1-11 and shall be sufficient to allow for abatement of the nuisance by the City. Notwithstanding, the property owner shall still be responsible for any and all costs incurred in the abatement and shall be subject to those penalties identified in 4-1-11(B)(i) and (C). Furthermore, in any civil action, the City may request costs and fees incurred in prosecuting said action.



Hall Angell & Associates LLP
Attorneys at Law

October 6, 2023

sent via email: hheimerl@beardstclair.com

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RE: City of Victor v. Holden Abatement Process

Herb:

I have done some research in preparation of resolving the nuisance on Mr. Holden's property. As you are aware, the City Code for Victor is silent with regard to abatement of nuisances under 4-1 et seq. The only enforcement provision contained within the City Code for nuisances is the criminal provision found in 4-1-10. While criminal punishment may serve as a deterrent, it does not allow the City the means to remedy a nuisance for which the property owner refuses to abate themselves. Idaho Code §50-335 allows for cities to declare buildings or structures a nuisance and remove the same; however, the City would be best served to have its own abatement procedure within its' City Code. This would allow the City to establish a process it deems appropriate in addressing nuisances within its city limits as they may arise. Idaho precedent supports a City adopting nuisance abatement measures, including summarily abating such nuisances. *See Porter v City of Lewiston*, 41 Idaho 324, 238 P. 1014 (1925) (holding that cities have the right under the policing powers of the constitution to determine what constitutes a nuisance and to summarily abate said nuisances); *see also Roell v. Boise City*, 130 Idaho 199, 938 P.2d 1237 (1997) (holding that the City has the authority to define 'litter' or 'debris' and may exercise its discretion in determining what qualifies; however, noting that the City is still subject to abuse of discretion challenges); *see also Albert v. City of Mountain Home*, 81 Idaho 74, 337 P.2d 377 (1959) (holding that in order for a building to be summarily destroyed, it must be a nuisance per se and adequate notice provided to the property owner). It is important to note that, while the Court will uphold an abatement on private property, the municipality must take care to evaluate what sort of nuisance it is dealing with. If the property falls into the classification of Nuisance Per Se, or an obvious nuisance by objective standards, then the municipality may summarily abate the nuisance. If the nuisance fits the classification of nuisance in fact, or that the situation is such that it establishes a nuisance, the municipality should use more caution as if a court determines that the facts did not amount to a nuisance, the municipality will be liable. *Albert* at 79, 380. In situations where the municipality is uncertain, it may be prudent to file an abatement action and receive a judgment allowing abatement under the City Code.

In consideration of the foregoing, I have prepared a proposed nuisance abatement ordinance for the City's review. The proposed ordinance establishes a notice procedure and abatement procedure. Furthermore, it allows for the City to charge any abatement costs to the property owner and establishes those costs as a lien against the property through special assessment.

If you have any questions, please feel free to contact my office.

Very truly yours,

Sam L. Angell
/lmh

Blake G. Hall
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Cory R. Stegelmeier
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Logan M. Haglund
Justin R. Walter

