

ORDINANCE 15-03

**AN ORDINANCE REGULATING OFFENSES AGAINST PUBLIC PEACE AND PROPERTY
IN NIBLEY CITY**

OFFENSES AGAINST PUBLIC PEACE AND PROPERTY

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- II. Definitions
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I. **Purpose:** It is hereby declared that the provisions and prohibitions hereinafter contained and enacted are in the necessity of the public interest and that said provisions and prohibitions are enacted in pursuance of and for the purpose of securing and promoting the public health, comfort, convenience, safety and welfare, and the peace and quiet of the city and its inhabitants.

II. **Definitions:** For the purposes of this chapter, the following words shall have the following meanings:

AUTHORIZED RECEPTACLE: A public or private litter storage and collection receptacle.

CHILD: Any non-emancipated person, male or female, under the age of eighteen (18) years.

COMMERCIAL HANDBILL: Any printed or written matter, any sample or device, dodger, circular, leaflet, pamphlet, paper, booklet or any other printed or otherwise reproduced original or copies of any matter or literature:

- A. Which advertises for sale any merchandise, product, commodity or thing;
- B. Which directs attention to any business or mercantile or commercial establishment, or other activity, for the purpose of either directly or indirectly promoting the interest in sales thereof;
- C. Which directs attention to or advertises any meeting, theatrical performance, exhibition or event of any kind, for which an admission fee is charged for the purpose of private gain or profit. However, the terms of this clause shall not apply where an admission fee is charged or a collection is taken up for the purpose of defraying the expenses incident to such meeting, theatrical performance, exhibition or event of any kind, when either of the same is held, given or takes place in connection with the dissemination of

Comment [SP1]: The definitions are taken from our current ordinances on graffiti, littering, etc.

The following definitions have been added:
-Child
-Emancipated

information which is not restricted under the ordinary rules of decency, good morals, public peace, safety and good order; provided, that nothing contained in this clause shall be deemed to authorize the holding, giving or taking place of any meeting, theatrical performance, exhibition or event of any kind without a license, where such license is or may be required by any law of this state, or under any ordinance of the city; or

- D. Which, while containing reading matter other than advertising matter is predominantly and essentially an advertisement, and is distributed or circulated for advertising purposes or for the private benefit and gain of any person so engaged as advertiser or distributor.

EMANCIPATED: Any person either eighteen (18) years of age or older, or if under the age of eighteen (18) any person who is married or has been married; or any person who is in active military service; or any person who is both self-supporting and neither resides with nor is subject to parental control.

EMERGENCY: An unforeseen combination of circumstances or the resulting state that calls for immediate action. The term includes, but is not limited to, a fire, natural disaster, an automobile accident, or any situation requiring immediate action to prevent serious bodily injury or loss of life.

ENFORCEMENT AGENT: Any person or department designated by the city to enforce the provisions of this chapter.

ESTABLISHMENT: Any privately owned place of business operated for a profit to which the public is invited, including, but not limited to, any place of amusement or entertainment.

EXCESSIVE NOISE: Any noise which, due to its volume, duration or location, annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others within City limits.

GARBAGE: Waste from the preparation, cooking or consumption of food, condemned food products and all refuse and waste from the handling, storage, preparation and sale of produce. Garbage originates primarily in kitchens, stores, markets, restaurants, hotels and other places where food is handled, stored, sold, cooked and consumed.

GRAFFITI: The unauthorized spraying of paint or markings of ink, chalk, dye or other similar substances on public and private structures.

GUARDIAN:

- A. A person who, under court order, is the guardian of the person of a minor; or
- B. A public or private agency with whom a minor has been placed by a court.

LITTER: "Garbage", "refuse" and "rubbish", as defined herein, and all other waste material which, if thrown or deposited as herein prohibited, tends to create a danger to public health, safety, welfare or appearance of the city.

NEWSPAPER: Any newspaper of general or local circulation or any periodical or current magazine regularly published with not less than four (4) issues per year and sold to the public.

NONCOMMERCIAL HANDBILL: Any printed or written matter, any sample or device, dodger, circular, leaflet, pamphlet, newspaper, magazine, paper, booklet or any other printed or otherwise reproduced original or copies of any matter of literature not included in the aforesaid definitions of a "commercial handbill" or "newspaper".

OBLITERATE: To conceal from view any condition which is considered a violation of this chapter which is visible from the street or from any other public property, or which is visible from private property whose owner thereof has requested the removal of the condition which is considered a violation of this chapter.

OPEN CAMPUS: When a compulsory school age minor is allowed by school officials to leave school for lunch purposes.

OPERATOR: Any individual firm, association, partnership or corporation operation, managing or conducting any establishment. The term includes the members or partners of an association or partnership and the officers of a corporation.

OWNER: Any person, who alone or jointly or severally with others:

- A. Has legal title to any premises, dwelling or dwelling unit, with or without accompanying actual possession thereof; or
- B. Has charge, care or control of any premises, dwelling or dwelling unit, as legal or equitable owner, agent of the owner, lessee, or is an executor, executrix, administrator, administratrix, trustee or guardian of the estate of the owner.

PARENT: A person who is:

- A. A natural parent, adoptive parent or step-parent of another person; or
- B. At least eighteen (18) years of age and authorized by a parent or guardian to have the care and custody of a minor.

PARK: A park, reservation, playground, beach, recreation center or any other public area in the city, owned or used by the city.

PERSON: Any individual, public or private corporation and its officers, partnership, association, firm, trustee, executor of an estate, the state or its departments, institution, bureau, agency, municipal corporation, county, city, political subdivision, or any legal entity recognized by law.

PROPERTY: Any form of real property, including a habitable structure or any structure that is appurtenant thereto, object, or anything that is visible or tangible, specifically including, but not limited to, hedges, automobiles, trucks, fences, walls, water and storage tanks, or any other object that can be defaced with graffiti.

PUBLIC PLACE: Any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, highways and the common area of schools, hospitals, apartment houses, office buildings, public property and shops.

REFUSE: Putrescible and nonputrescible solid wastes (except body wastes), including garbage, rubbish, ashes, street cleanings, dead animals and solid market and industrial wastes.

REMAIN: To:

- A. Linger or stay; or
- B. Fail to leave premises when requested to do so by a police officer or the owner, operator or other person in control of the premises.

RUBBISH: Nonputrescible solid wastes consisting of both combustible and noncombustible waste, such as paper, wrapping, cigarettes, cardboard, tin cans, yard clippings, leaves, wood, glass, bedding, crockery and similar materials.

SERIOUS BODILY INJURY: Bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

VEHICLE: Every device in, on or by which any person or property is or may be transported or drawn upon a highway, including devices used exclusively on stationary rails or tracks.

III. CURFEW AND TRUANCY

A. **Curfew:**

1. It is unlawful for any minor under eighteen (18) years of age to remain or loiter in any of the sidewalks, streets, alleys or public places in the city between twelve o'clock (12:00) midnight and five o'clock (5:00) A.M. except as provided herein.
2. It is unlawful for any parent, guardian or other person having legal care and custody or any minor under eighteen (18) years of age to allow or permit any such minor to remain or loiter on any of the sidewalks, streets, alleys or public places in the city, within the times provided in subsection 1 of this section, except as provided in subsection 3 of this section.

Comment [SP2]: Rather than have separate times for during the week and weekends, P&Z felt it was appropriate to just pick one curfew time that is applicable all week, all year round.

3. The provisions of subsections 1 and 2 of this section shall not apply when the minor under the age of eighteen (18) is:
 - a. Married or otherwise emancipated;
 - b. Accompanied by a parent, guardian or other adult person having care of such minor;
 - c. Returning home from, going to or being in attendance at any religious or school function, organized dance, theater, sports event or other such associational activity; provided however, that going to or from such activity shall be by a direct route and within a reasonable time of the commencement or termination of such event;
 - d. Engaged in a legitimate emergency errand;
 - e. Engaged in a legitimate employment and can produce evidence of such employment; or
 - f. In a motor vehicle engaged in normal travel, while traveling to, from or through the city on an interstate trip.

Comment [SP3]: These exemptions are identical to what is currently in ordinance.

B. TRUANCY

For purposes of this section, Nibley City adopts and incorporates, by reference, those terms, policies and provisions related to truancy, as defined and outlined in Compulsory Education Requirements, §53A-11-1, Utah Code Annotated, 1953, as amended.

Comment [SP4]: The section of State law cited below governs truancy regulations, and the City does not enforce truancy laws, so P&Z and staff feel it just wise to adopt and incorporate State Code for this regulation.

IV. DISTURBING THE PEACE

A. Excessive Noise Prohibited: Noise which due to its volume, its duration, or its location disturbs, injures or endangers the comfort, repose, health, peace, or safety of persons not voluntary listeners thereto is hereby declared to be excessive and inimical to the welfare of the citizens of the municipality. It is unlawful for any person to make, continue, or cause to be made, or allow to be made on any premises or any public place or public right of way from any device capable of producing, reproducing, playing or otherwise making music, including, but not limited to, radio, CD player, mp3 player, tape player, musical instrument, phonograph, or sound amplifier or similar device, any excessive, loud, unnecessary or unusual noise, whether that device is free standing or part of a larger sound system mounted to a vehicle. Specifically prohibited is the playing, using, operating, or permitting to be played, used or operated, any device for playing, producing, or reproducing sound at a louder volume than is necessary for the hearing of persons who are voluntary listeners on the premises, or in the building, room, or chamber in which the sound is being played, produced, or reproduced.

Comment [SP5]: The hardest part about noise complaints is enforcement. Even with these regulations in place, unless the complaining party is willing to come in and sign a complaint, then enforcement becomes almost impossible. We usually don't get calls about the problem until after it is over. And, if we do get a call in the middle of a situation, we aren't always able to get over there while the problem is ongoing.

We can't issue citations based only on a person's word, if that person isn't willing to be a complaining witness. If we do issue a citation, then all the recipient has to do is deny it and then we either have to take it through court (at which point, if the complaining party isn't willing to come forward, the issue will always be dropped) or we have to drop the issue ourselves.

I'm not saying we shouldn't move forward with this, I think we should. I'm just making the point that enforcement is almost impossible because most people are not willing to come in and sign a complaint against their neighbor.

1. Persons engaged in school related or sports related promotional activities and lawful parades shall be exempt from the provisions of this section for the duration of the activity.

Comment [SP6]: The thinking behind including this provision is feeling that we needed to put something in ordinance which would handle daytime noise situations. Often, the complaints I get are regarding things like garage bands.

B. In addition to the above, it is unlawful for any person to:

1. Engage in prolonged shouting, yelling, hooting, whistling, singing, or playing of music or musical instruments loud enough to disturb the peace, quiet and comfort of persons who are involuntarily subject to such noise, between the hours of ten o'clock (10:00) p.m. and seven o'clock (7:00) a.m.

a. Persons engaged in school related or sports related promotional activities and lawful parades shall be exempt from the provisions of this section for the duration of the activity.

C. Construction or Repair of Buildings : No construction or repair of buildings, including site excavation and grading, shall take place between the hours of ten o'clock (10:00) p.m. and seven o'clock (7:00) a.m., except in case of urgently necessity in the interest of public health and safety and with the permission of the Public Works Director.

D. No chainsaws and/or other woodcutting equipment capable of producing noise, or gasoline or electric powered lawn care equipment, shall be used between the hours of ten o'clock (10:00) p.m. and seven o'clock (7:00) a.m. in any residential area, regardless of the underlying zoning district.

E. Exceptions: The prohibitions against disturbing the peace as set out in this section shall not apply to the following:

1. Emergency work;
2. A governmental agency acting within the scope of its functions (e.g.: snow removal);
3. Utility work performed by employees of utility companies within the hours permitted for construction set out in this chapter;
4. Such other work or activities as may be authorized by the City Planner, Public Works Director, or the City Manager.

F. Unlawful Assembly: It is unlawful for two (2) or more persons to assemble together for the purpose of disturbing the peace or for the purpose of committing an unlawful act and not to disperse upon the command to do so by an officer. It is unlawful for any person, except public officers and persons assisting in preserving the peace, to remain present at the place of such lawful assembly.

G. Injury to Property: It is unlawful for any person to wilfully or maliciously destroy, injure, deface, mutilate, remove, pull down, break, or in any other manner interfere with public property; or any real or personal property belonging to, or under the control of, any person, or any public entity.

V. **GRAFFITI**

Comment [SP7]: I did a fair amount of research across Utah to see what time-of-day restrictions other cities have in place. What I found is that 10 pm-7 am is fairly standard. For example:

Park City: . . . 10pm-7am
Salt Lake City: . . . 9pm-7am
Eagle Mountain: . . . 10pm-7am (res) 10pm-6am (com)
Holladay: . . . 10pm-8am
Provo: . . . 10pm-7am
Ivins: . . . 10pm-6am
Hyrum: . . . 10pm-7am
Smithfield: . . . 10pm-7am
Logan: . . . 9:30pm-7am

Comment [SP8]: Something to consider when discussing working hour limits for construction-when this was being discussed at P&Z, Wayne brought up the point that in a lot of situations, it is easier/less costly for contractors to pay a fine and do the work early in the morning anyways, especially when they are working with weather dependent materials.

Comment [SP9]: If you wanted to compare how this stacks up against State code, here is the section on graffiti:
http://le.utah.gov/xcode/Title76/Chapter6/76-6-S107.html?v=C76-6-S107_1800010118000101

A. It shall be unlawful for any person owning or occupying property within the city, after receiving written notice from the City, to fail to remove or obliterate any graffiti, as defined in this chapter, from or on any structure located upon any property within the city, when the graffiti is visible from the street or other public property, or which is visible from private property whose owner thereof has requested the removal of the condition which is considered a violation of this chapter.

B. Abatement: Graffiti, as defined in this chapter, is hereby declared to be a nuisance and abatement procedures shall be followed as outlined in S _____ of the Nibley City Code by City policy.

Comment [SP10]: P&Z would rather see the abatement procedures adopted as a policy rather than codified as an ordinance. Also, having one consistent abatement procedure for all types of nuisances makes enforcement much simpler. That is why we suggest deleting the separate abatement procedure outlined in current code and wrapping it up in one policy.

VI. LITTERING

A. Placement In Receptacles: Persons placing litter in authorized receptacles shall do so in such a manner as to prevent it from being carried or deposited by the elements on any street, sidewalk or other public place or on private property. Where authorized receptacles are not provided, such litter shall be carried away from the public place or private property and properly disposed of elsewhere, as provided herein

Comment [SP11]: The difference in this and our current ordinance is that our current ordinance talks about sweeping things into the gutter, whereas this does not. The prohibition against sweeping things into the gutter is dealt with through our ordinance on our stormwater system, particularly 8-5-6 of the City code.

B. It is unlawful for any person to wilfully or negligently throw from any vehicle or from any other location, or to place or deposit upon or along any street, alley, public thoroughfare, or public property, or private property, both vacant and developed, without the consent of the owner, any debris, paper, litter, glass, can, nail, tack, wire, trash or garbage, lighted material or other waste substance.

C. No vehicles shall be driven or moved on any city right of way unless the vehicle is so constructed, loaded or covered as to prevent any of its load from dropping, sifting, leaking or otherwise escaping therefrom.

D. No vehicle loaded with garbage, swill, cans, bottles, wastepapers, ashes, refuse, trash, rubbish, waste, paper, cartons, or any other material susceptible to blowing or bounding from a moving vehicle, shall be moved or driven on a city right of way unless the load is covered with a sufficient cover to prevent the load or any part of it from spilling, blowing, sifting, or otherwise leaving the vehicle and being deposited onto the right of way or the surrounding property.

E. No person owning or occupying a place of business shall sweep into or deposit in any street or other public place, the accumulation from any building or lot or from any public or private sidewalk or driveway on or adjacent to the location of said business, nor shall said person allow litter to accumulate on the property of said business

- F. No person shall operate any vehicle so as to track or drop mud, stones, gravel, dirt, sand or other similar material on any city street, alleyway, or other municipal right of way except as provided in subsection D of this section.
- G. Lakes And Fountains: No person shall throw or deposit litter in any fountain, pond, lake, stream or any other body of water in a park or elsewhere within the city.

VII. HANDBILL REGULATIONS

- A. No person or business shall post, stick, stamp, paint or otherwise affix, or cause the same to be done by any person, any notice, placard, bill, card, poster, advertisement or other paper or device calculated to attract the attention of the public upon any sidewalk, curb or any other portion or part of any public way or public place or any lamppost, electric light, telegraph, telephone or railway structure, hydrant, shade tree or tree box, or upon the columns, trusses, girders, railings, gates or other parts of any bridge or other public structure or building, or upon any pole, box or fixture of the fire alarm or police telegraph system, except such as may be authorized or required by the laws of the United States or state, and the ordinances of the city.
- B. Throwing Or Distributing In Public Places: No person shall throw or deposit any commercial or noncommercial handbill in or on any sidewalk, street or other public place within the city nor shall said handbills be deposited in or on any vehicle; provided, however, that it shall not be unlawful on any sidewalk, street or other public place for any person to hand out or distribute, without charge to the receiver thereof, any noncommercial handbill to any person or occupant of a vehicle willing to accept it.
- C. Prohibiting Distribution Where Properly Posted: No person shall throw, deposit or distribute any commercial or noncommercial handbill on any private premises, if requested by anyone thereon not to do so or if there is placed on said premises in a conspicuous position near the entrance thereof a sign being the words "No Trespassing", "No Peddlers or Agents", "No Advertisements", or any similar notice, indicating in any manner that the occupants of the premises do not desire to be molested or to have their right of privacy disturbed or to have any such handbills left on such premises.
- D. Distributing At Private Premises:
 - 1. No person shall throw, deposit or distribute any commercial or noncommercial handbill in or on private premises which are inhabited, except by handing or transmitting any such handbill directly to the owner, occupant or other person then present in or on such private premises.

Comment [SP12]: This is expanded from our current ordinance to include the restriction against placing signs anywhere in the public right of way. Right now, we only prohibit signs/handbills/notices from being posted on poles, posts, trees and public buildings.

Comment [SP13]: Our current ordinance has separate paragraphs regarding vehicles and I thought the two could be combined into one.

2. In case of inhabited private premises which are not posted, as provided in this section, and where no person is present on said premises, a person may place or deposit any such handbill in or on such inhabited private premises if such handbill is so placed or deposited as to secure or prevent such handbill from being blown or drifted about such premises or sidewalks, streets or other public places, and except that mailboxes may not be so used when prohibited by federal postal law or regulations.
 3. No person shall throw or deposit any commercial or noncommercial handbill in or on any private premises which are temporarily or continuously uninhabited or vacant.
- E. Exception For Mail And Newspapers: The provisions of this chapter shall not apply to the distribution of mail by the United States, nor to newspapers, except that newspapers shall be placed on private property in such a manner so as to prevent their being carried or deposited by the elements on any street, sidewalk or other public place or on private property.

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