

1 **PROPERTY DECONTAMINATION AMENDMENTS**

2 2022 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Karen Mayne**

5 House Sponsor: Clare Collard

6 Cosponsor:

7 Wayne A. Harper

8

9 **LONG TITLE**

10 **General Description:**

11 This bill modifies the authority of a municipality to regulate the abatement of certain
12 conditions on the property of an owner or occupant.

13 **Highlighted Provisions:**

14 This bill:

- 15 ▶ defines the term "hazardous materials";
- 16 ▶ authorizes a municipality to designate and regulate the abatement of hazardous
17 materials;
- 18 ▶ modifies a municipality's authority regarding municipal inspectors and enforcement
19 of abatement ordinances; and
- 20 ▶ makes technical changes.

21 **Money Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 None

25 **Utah Code Sections Affected:**

26 AMENDS:

27 **10-11-1**, as last amended by Laws of Utah 2011, Chapters 144, 172 and last amended
28 by Coordination Clause, Laws of Utah 2011, Chapter 144

29 **10-11-2**, as repealed and reenacted by Laws of Utah 2011, Chapter 172

30 **10-11-3**, as last amended by Laws of Utah 2011, Chapter 172

31

32 *Be it enacted by the Legislature of the state of Utah:*

33 Section 1. Section **10-11-1** is amended to read:

34 **10-11-1. Abatement of weeds, garbage, public nuisances, and hazardous**
35 **materials -- Selection of service provider.**

36 (1) As used in this chapter, "hazardous materials" means the same as that term is
37 defined in Section 19-6-902.

38 ~~(1)~~ (2) A municipal legislative body may:

39 (a) designate and regulate the abatement of:

40 (i) the growth and spread of injurious and noxious weeds;

41 (ii) garbage and refuse;

42 (iii) a public nuisance; ~~or~~

43 (iv) an illegal object or structure; ~~and~~ or

44 (v) for a structure or any real property closed to occupancy or entry by a local health
45 department, hazardous materials; and

46 (b) appoint a municipal inspector for the purpose of carrying out and in accordance
47 with the provisions of this chapter.

48 ~~(2)~~ (3) A municipal legislative body may not:

49 (a) prohibit an owner or occupant of real property within the municipality's
50 jurisdiction, including an owner or occupant who receives a notice in accordance with Section
51 **10-11-2**, from selecting a person, as defined in Section **10-1-104**, to provide an abatement
52 service for injurious and noxious weeds, garbage and refuse, a public nuisance, or an illegal
53 object or structure; or

54 (b) require that an owner or occupant described in Subsection ~~(2)~~ (3)(a) use the
55 services of the municipal inspector or any assistance employed by the municipal inspector
56 described in Section **10-11-3** to provide an abatement service described in Subsection ~~(2)~~

57 (3)(a).

58 ~~[(3)]~~ (4) A municipality may require that an owner or occupant described in Subsection
59 ~~[(2)]~~ (3)(a) use the abatement services, as described in Section 10-11-3, of the municipal
60 inspector, including the use of a certified decontamination specialist as described in Section
61 19-6-906, or any assistance employed by the municipal inspector if:

62 (a) the municipality adopts an ordinance providing a reasonable period of time of at
63 least 10 days for an owner or occupant to abate the owner's or occupant's property after
64 receiving a notice described in Section 10-11-2; and

65 (b) the owner or occupant fails to abate the property within the reasonable period of
66 time and in accordance with the notice.

67 (5) A municipality may require that an owner or occupant use the abatement services of
68 a certified decontamination specialist to abate hazardous materials.

69 (6) Nothing in this chapter may be construed:

70 (a) as authorizing a municipality to regulate items that are within the exclusive
71 jurisdiction of the Department of Agriculture and Food as provided in Section 4-2-305,
72 including commercial feed, fertilizer, pesticides, and seeds; or

73 (b) as limiting or abrogating the authority of a local health department under Section
74 19-6-905.

75 Section 2. Section **10-11-2** is amended to read:

76 **10-11-2. Inspection of property -- Notice -- Penalties.**

77 (1) (a) If a municipality adopts an ordinance describing the duties of a municipal
78 inspector appointed under Section 10-11-1, the ordinance:

79 (i) may, subject to Subsection (1)(b), direct the inspector to examine and investigate
80 real property for:

81 (A) the growth and spread of injurious and noxious weeds;

82 (B) garbage and refuse;

83 (C) a public nuisance; ~~[or]~~

84 (D) an illegal object or structure; ~~[and]~~ or

85 (E) hazardous materials; and

86 (ii) if an inspector conducts an examination and investigation under Subsection (1)(a),
87 shall direct the inspector to deliver written notice of the examination and investigation in
88 accordance with Subsection (2).

89 (b) An ordinance described in Subsection (1)(a) may not direct an inspector or
90 authorize a municipality to abate conditions solely associated with the interior of a structure,
91 unless required:

92 (i) for the demolition and removal of the structure[-]; or

93 (ii) to eliminate or remove hazardous materials within a structure that has been closed
94 to occupancy or entry by a local health department or fire department.

95 (c) An ordinance described in Subsection (1)(a) may direct an inspector or authorize a
96 municipality to issue an order limiting or restricting access to a structure and the real property
97 appurtenant to the structure while the municipal inspector or a certified decontamination
98 specialist destroys, removes, or abates hazardous materials within the structure.

99 (d) If a municipality has adopted an ordinance establishing an administrative
100 proceeding process for the violation of a municipal ordinance in accordance with the
101 requirements of Section 10-3-703.7, the municipality may adopt an ordinance imposing the
102 following for a violation of an order issued under Subsection (1)(c):

103 (i) a civil penalty in accordance with Subsection 10-3-703(2); or

104 (ii) in accordance with Subsection 10-3-703(1), a criminal penalty, including by a fine
105 not to exceed the maximum class B misdemeanor fine under Section 76-3-301, by a term of
106 imprisonment up to six months, or by both the fine and term of imprisonment.

107 (e) An ordinance adopted in accordance with Subsection (1)(d) shall provide 180 days
108 after the day on which the written notice from an inspector is delivered in person or the date the
109 notice is post-marked for the recipient of the notice to:

110 (i) abate the hazardous materials; or

111 (ii) appeal the notice and begin the administrative proceeding process.

112 (2) (a) (i) The municipal inspector shall serve written notice to a property owner of

113 record according to the records of the county recorder in accordance with Subsection (2)(b).

114 (ii) The municipal inspector may serve written notice in accordance with Subsection
115 (2)(b) to a non-owner occupant of the property or another person responsible for the property
116 who is not the owner of record, including a manager or agent of the owner, if:

117 (A) the property owner is not an occupant of the property; and

118 (B) the municipality in which the property is located has adopted an ordinance
119 imposing a duty to maintain the property on an occupant who is not the property owner of
120 record or a person other than the property owner of record who is responsible for the property.

121 (b) The municipal inspector may serve the written notice:

122 (i) in person or by mail to the property owner of record as described in Subsection
123 (2)(a)(i), if mailed to the last-known address of the owner according to the records of the
124 county recorder; or

125 (ii) in person or by mail to a non-owner occupant or another person responsible for the
126 property who is not the owner of record as described in Subsection (2)(a)(ii), if mailed to the
127 property address.

128 (c) In the written notice described in Subsection (2)(a), the municipal inspector shall:

129 (i) identify the property owner of record according to the records of the county
130 recorder;

131 (ii) describe the property and the nature and results of the examination and
132 investigation conducted in accordance with Subsection (1)(a); ~~and~~

133 (iii) identify the relevant regulation or ordinance at issue and describe the violation of
134 the relevant regulation or ordinance;

135 (iv) describe each order, fine, or penalty that may be imposed;

136 (v) for a structure or any real property closed to occupancy or entry by a local health
137 department because of hazardous materials, explain the right of a property owner, occupant, or,
138 if applicable, another person responsible for the property to abate the hazardous materials or
139 appeal the notice within 180 days after the day on which notice is delivered in person or the
140 date the notice is post-marked; and

141 [(iii)] (vi) require the property owner, occupant, or, if applicable, another person
142 responsible for the property to:

143 (A) eradicate or destroy and remove any identified item examined and investigated
144 under Subsection (1)(a); and

145 (B) comply with Subsection (2)(c)(iii)(A) in a time period designated by the municipal
146 inspector but no less than 10 days after the day on which notice is delivered in person or
147 post-marked, or for a notice related to hazardous materials, no less than 180 days after the day
148 on which notice is delivered in person or post-marked.

149 (d) For a notice of injurious and noxious weeds described in Subsection (2)(a), the
150 municipal inspector is not required to make more than one notice for each annual season of
151 weed growth for weeds growing on a property.

152 (e) The municipal inspector shall serve the notice required under Subsection (2)(a)(i)
153 under penalty of perjury.

154 (f) For a structure or any real property closed to occupancy or entry by a local health
155 department because of hazardous materials, unless an order issued by a court of competent
156 jurisdiction states otherwise, a municipality may not impose a fine or penalty on a property
157 owner, occupant, or another person responsible for the structure or real property, and may not
158 authorize a municipal inspector or a certified decontamination specialist to begin abatement of
159 the hazardous materials, until:

160 (i) the appeal and administrative proceeding process is completed; or

161 (ii) the property owner, occupant, or another person responsible for the property has
162 missed the deadline for filing the appeal.

163 Section 3. Section 10-11-3 is amended to read:

164 **10-11-3. Neglect of property owners -- Removal or abatement by municipality --**
165 **Costs of removal or abatement -- Notice -- File action or lien -- Property owner objection.**

166 (1) (a) If an owner of, occupant of, or other person responsible for real property
167 described in the notice delivered in accordance with Section 10-11-2 fails to comply with
168 Section 10-11-2, a municipal inspector may:

169 (i) at the expense of the municipality, employ necessary assistance to enter the property
170 and ~~[destroy or remove an item]~~ destroy, remove, or abate one or more items or conditions
171 identified in a written notice described in Section 10-11-2; and

172 (ii) (A) prepare an itemized statement in accordance with Subsection (1)(b); and

173 (B) mail to the owner of record according to the records of the county recorder a copy
174 of the statement demanding payment within 30 days after the day on which the statement is
175 post-marked.

176 (b) The statement described in Subsection (1)(a)(ii)(A) shall:

177 (i) include:

178 (A) the address of the property described in Subsection (1)(a);

179 (B) an itemized list of and demand for payment for all expenses, including
180 administrative expenses, incurred by the municipality under Subsection (1)(a)(i); and

181 (C) the address of the municipal treasurer where payment may be made for the
182 expenses; and

183 (ii) notify the property owner:

184 (A) that failure to pay the expenses described in Subsection (1)(b)(i)(B) may result in a
185 lien on the property in accordance with Section 10-11-4;

186 (B) that the owner may file a written objection to all or part of the statement within 20
187 days after the day of the statement post-mark; and

188 (C) where the owner may file the objection, including the municipal office and address.

189 (c) A statement mailed in accordance with Subsection (1)(a) is delivered when mailed
190 by certified mail addressed to the property owner's of record last-known address according to
191 the records of the county recorder.

192 (d) (i) A municipality may file a notice of a lien, including a copy of the statement
193 described in Subsection (1)(a)(ii)(A) or a summary of the statement, in the records of the
194 county recorder of the county in which the property is located.

195 (ii) If a municipality files a notice of a lien indicating that the municipality intends to
196 certify the unpaid costs and expenses in accordance with Subsection (2)(a)(ii) and Section

197 10-11-4, the municipality shall file for record in the county recorder's office a release of the lien
198 after all amounts owing are paid.

199 (2) (a) If an owner fails to file a timely written objection as described in Subsection
200 (1)(b)(ii)(B) or to pay the amount set forth in the statement under Subsection (1)(b)(i)(B), the
201 municipality may:

202 (i) file an action in district court; or

203 (ii) certify the past due costs and expenses to the county treasurer of the county in
204 which the property is located in accordance with Section 10-11-4.

205 (b) If a municipality pursues collection of the costs in accordance with Subsection
206 (2)(a)(i) or (4)(a), the municipality may:

207 (i) sue for and receive judgment for all removal and destruction costs, including
208 administrative costs, and reasonable attorney fees, interest, and court costs; and

209 (ii) execute on the judgment in the manner provided by law.

210 (3) (a) If a property owner files an objection in accordance with Subsection (1)(b)(ii),
211 the municipality shall:

212 (i) hold a hearing in accordance with Title 52, Chapter 4, Open and Public Meetings
213 Act; and

214 (ii) mail or deliver notice of the hearing date and time to the property owner.

215 (b) At the hearing described in Subsection (3)(a)(i), the municipality shall review and
216 determine the actual cost of abatement, if any, incurred under Subsection (1)(a)(i).

217 (c) The property owner shall pay any actual cost due after a decision by the
218 municipality at the hearing described in Subsection (3)(a)(i) to the municipal treasurer within
219 30 days after the day on which the hearing is held.

220 (4) If the property owner fails to pay in accordance with Subsection (3)(c), the
221 municipality may:

222 (a) file an action in district court for the actual cost determined under Subsection
223 (3)(b); or

224 (b) certify the past due costs and expenses to the county treasurer of the county in

225 which the property is located in accordance with Section 10-11-4.

226 (5) This section does not affect or limit:

227 (a) a municipal governing body's power to pass an ordinance as described in Section
228 10-3-702; or

229 (b) a criminal or civil penalty imposed by a municipality in accordance with Section
230 10-3-703.