

ABATEMENT OF NUISANCES

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SECTION 70.010 Title. This ordinance shall be known as the “Abatement of Nuisances Ordinances of the Ely Shoshone Tribe” and may be cited as such and will be referred to hereafter as “Ordinance”.

SECTION 70.020 Definitions. As used in this Ordinance, unless the context requires otherwise, the following terms shall be defined as set forth in this section.

1. “Authorized Official” means any person designated and empowered by the Tribal Council to enforce the provisions of this Ordinance.
2. “Tribal Council” means Ely Shoshone Tribal Council.
3. “Tribal Police” means Ely Shoshone Tribal Police.
4. “Reservation” means the Ely Shoshone Tribe Reservation.
5. “Public Nuisance” means any of the following conditions:
 - a. Abandoned vehicle. A vehicle to which the registered owner has relinquished all further ownership and control; or
 - b. A vehicle which is inoperative under conditions indicating the owner has no intention of restoring the vehicle to operating condition. A vehicle without a valid registration, currently in effect, will be presumed to be an abandoned vehicle
 - c. Attractive Nuisance. Property, buildings or premises which by its nature, location or character would tend to attract and substantially endanger the safety of any minor person, become a harbor for vagrants, criminals or other unauthorized person(s), or so as to enable person(s) to resort thereto for the purpose of committing a nuisance.
 - d. Air Pollution. The emission or escape of smoke, soot, noxious odors, fumes, stenches, gases, industrial dust, or particulate matter within or affecting the Reservation in such quantities as to annoy, discomfort, injure or inconvenience the health of any person; or, threaten or cause

- substantial injury to property, (excluding smoke originating from residential fireplaces).
- e. Water Pollution. Such alteration of the physical, thermal, chemical, biological, or radioactive properties of any waters, or such discharge into any surface or underground body of water as will, or is likely, to render such waters harmful, detrimental or injurious to the public health and safety.
 - f. Groundwater Depletion. Extracting more water from any groundwater source underlying the Reservation that can be extracted annually, year after year, without eventually depleting the groundwater source.
 - g. Refuse and Waste. See ESTC-60
 - h. Noise. All loud or unusual noises and annoying vibrations which offend the peace and quiet, of persons of ordinary sensibilities.
 - i. Graffiti. The unauthorized spraying of paint or markings of ink, chalk, dye or other similar substances on public or private buildings, structures, and other places.
 - j. Nuisances in General. Any act or condition which, by its nature, character, or location interferes with the reasonable use and enjoyment of adjacent or nearby properties; which unreasonably annoys, harms, or endangers the safety, health, comfort or repose of any person; or, which has a detrimental effect upon adjacent or nearby property values. Nuisances in general shall include, but not be limited to the following:
 - (1) Using any building or structure contrary to the lawful authority, permit or license issued by the Tribe or any provision of the Law and Order Code specifically designed to control, limit or regulate such building or structure.
 - (2) All explosives, flammable liquids, corrosive, reactive, toxic or other dangerous substances.
 - k. Unregistered Motor Vehicles. Means a vehicle or component there of on which there is not displayed evidence of current registration with the Department of Motor Vehicles and Public Safety of the State of Nevada or current registration with a similar agency of another state.

SECTION 70.030 Nuisance Prohibited. Every person who:

- 1. Shall cause or maintain a public nuisance as defined in this ordinance; or
- 2. Shall willfully omit or refuse to perform any legal duty relating to the abatement of such nuisance, shall be guilty of a **Category C, D, or E offense.**

SECTION 70.040 Registered or Unregistered Motor Vehicles.

- 1. If a Tribal Police Officer or authorized official determines and declares that the uncontrolled storage of registered, or unregistered, motor vehicles on property used for residential purposes create actual and potential safety hazards and public nuisance. The Tribal Police Office, or authorized official, finds and declares that uncontrolled storage of those vehicles on

real property generates solid waste, contributes to scenic blight and to the degradation of the environment.

2. The intent of the Tribal Police Office, or authorized official, is to place control and storage of unregistered vehicles to mitigate the deleterious effects of uncontrolled storage described in Section (1) of this section. It is not the intent of the Tribal Police Office, or authorized official, to prevent responsible, participation in the collecting of, preserving, restoring and maintaining of motor vehicles of classic or historic significance.

SECTION 70.050 Citation for Violation. If a Tribal Police Officer, or authorized official, determines that a public nuisance exists, that official may sign and serve on the persons alleged responsible for a violation of this Ordinance, a written citation that contains the name and address of the accused person(s), a description of the alleged violation and the length of time to remedy the nuisance. The remediation period shall not be less than forty eight (48) hours nor greater than sixty (60) days.

SECTION 70.060 Service of Citation. A Citation for a violation of this Ordinance may be served by the Tribal Police Officer, or authorized official, in any of the following ways:

1. By personal service; or
2. By mailing the Notice by certified mail, return receipt requested, to the responsible person at his or her last known address; or
3. By posting the Notice in a conspicuous place on the offending property; provided however, that service by posting shall only be used when the Tribal Police Office, or authorized official, cannot determine the last known address of the person.

SECTION 70.070 Emergency Action. If a Tribal Police Office, or authorized official, determines that a public nuisance may present an imminent and substantial threat to the health, safety, peace; or, the environment of the community, the Tribal Police Officer, or authorized official, may take such actions as may be necessary to protect the interests governed by this Ordinance.

Before a Tribal Police Officer, or authorized official, may take emergency action, a Citation for violation of this Ordinance must be served on the alleged responsible parties. Emergency action may include issuing written orders to cease and desist; or, to take corrective action.

SECTION 70.080 Order to Abate and Other Remedies. If an action brought under this Ordinance seeks to abate the nuisance and the Tribal Court finds, by a preponderance of the evidence a violation of this ordinance, the Tribal Court shall enter an Order directing that the nuisance be abated; or, such other proper remedy.

SECTION 70.090 Enforcement of Orders to Abate. All orders entered by the Tribal Court directing that a public nuisance be abated shall be carried out by the Tribal Police Officer, or authorized official. The Tribal Police Officer, or authorized official, shall give Notice to the Defendant; and, to any person who is occupying the land on which the

public nuisance exists. The Defendant and the owner or occupier shall have an opportunity to voluntarily abate the public nuisance with a specific and reasonable time. If the public nuisance is not voluntarily abated, the Tribal Police Officer, or authorized official, shall cause the nuisance to be abated. The Tribal Police Officer, or authorized official, shall have the authority to authorize any and all action necessary to abate the public nuisance. A fifteen percent (15%) administrative fee shall be added to the contract price, if any, of abating the public nuisance. All abatement costs may be collected by the Tribe by all appropriate remedies.

SECTION 70.100 Penalty. The violation of any provisions of this ordinance shall be a infraction punishable as a **Category C, D, or E offense**. The fines imposed under this section are intended as a remedial measure designed to compensate the Tribe for the harm caused by the violation of this Ordinance regardless of the fact that the quantum of damage in some cases may be incapable of precise measurement. This section is also designed to provide a means to fund the administration and enforcement of this Ordinance.

SECTION 70.110 Remedies Cumulative. Any and all remedies provided in this chapter shall be deemed cumulative. The Tribal Police, or authorized official, shall in addition thereto have the right to exercise and enforce all rights and remedies otherwise created or existing, including the right of injunction, the right of abatement of nuisances, the right of action for damages, and the right of prosecution for violation of any of the provisions of this chapter.