

2008

# Hyde Park City v. Jerald Rio Davis : Brief of Appellee

Utah Court of Appeals

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THE UTAH COURT OF APPEALS

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HYDE PARK CITY

Plaintiff/Appellee,

vs.

JERALD RIO DAVIS

Defendant/Appellant.

BRIEF OF APPELLEE

Priority No. 2

Case No: 20080055-CA

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BRIEF OF APPELLEE

Appeal from an Order of the Honorable Clint S. Judkins  
Judge of the First Judicial District Court  
Cache County, State of Utah

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## **JURISDICTIONAL STATEMENT**

This Court has jurisdiction to hear those matters originating out of the Justice Court where the District Court has ruled on the constitutionality of a statute or ordinance. See U.C.A. § 78-5-120(7) (current version at Utah Code Ann. § 78a-7-118 (2008)).

## **STATEMENT OF FACTS**

1. On November 30, 2006, Defendant Rio Davis appealed the conviction of “maintaining a nuisance” entered in the Hyde Park Justice Court. See Notice of Appeal. (Record P. 054).
2. On March 29, 2007, Davis filed a Motion and Memorandum in the First District Court to dismiss and quash his conviction based upon alleged unconstitutionality of the Justice Court system. See Memorandum in Support of Motion to Dismiss and Quash. (Record P. 072).
3. On or about April 13, 2007, Davis filed a second Motion to Dismiss the pending action based upon the alleged unconstitutionality of the Hyde Park City nuisance ordinance. See Motion to Dismiss Pending Action. (Record P. 098).
4. On April 27, 2007, Plaintiff Hyde Park City filed an opposition to both of Defendant’s motions to dismiss. See Response to Motion to Dismiss and Response to Motion to Dismiss and to Quash Conviction. (Record pp. 119, 128).

5. On July 30, 2007, the First District Court orally announced a decision denying both of Davis' motions. See Minutes Ruling on Motion Notice. (Record P. 141).
6. During the July 30, 2007 hearing, the Court directed Hyde Park City to prepare a proposed order. Id.
7. The city prepared the order, circulated the order to Mr. Davis, and filed the same with the Court. See generally, Objection to Plaintiff's Order on Motion to Dismiss and to Quash Conviction. (Record P. 145).
8. On August 24, 2007, Davis filed an objection to Hyde Park's proposed order. See Objection to Plaintiff's Order on Motion to Dismiss and to Quash Conviction. (Record P. 145).
9. On September 28, 2007, Mr. Davis was tried and convicted in the District Court for maintaining a nuisance. See Sentence, Judgment and Commitment. (Record P. 153).
10. On October 11, 2007, Davis filed an objection to the Court's verdict, judgment and sentence on the nuisance conviction. See Objection to Oral Verdict, Judgment and Sentence. (Record P. 154).
11. On October 15, 2007, Mr. Davis filed a Notice of Appeal to the Utah Court of Appeals. See first notice of appeal. (Record P. 156).
12. The District Court having received objections to the decisions stated orally from the bench, and also receiving a notice of appeal from the Defendant, never signed a final order denying defendant's motions

regarding constitutionality of the city nuisance ordinance and the constitutionality of the justice court system. See, generally, Judgment Roll and Index).

13. On March 4, 2008, while awaiting a final signed order as to the constitutional issues, Davis filed a Notice to Submit for Decision on its Objection to the Oral Verdict, Judgment and Sentence. See Notice to Submit for Decision. (Record P. 177).
14. On March 14, 2008, Mr. Davis filed another notice of appeal (“Amended Notice of Appeal”). See Amended Notice of Appeal. (Record P. 187).

### **SUMMARY OF THE ARGUMENT**

This Court lacks appellate jurisdiction because Defendant / Appellant Jerald Rio Davis (hereinafter “Mr. Davis” or “Davis”) has not appealed a final order from the District Court. The final judgment rule precludes a party from taking an appeal from any orders that are not final. Mr. Davis has continued to seek adjudication of his constitutional issues at the District Court level after filing his appeal. The District Court has only made an oral pronouncement denying Defendant’s Motion to Dismiss Pending Action and Motion to Quash. Such an oral pronouncement made by the District Court is not a final, appealable order. Moreover, the Hyde Park City nuisance ordinance is not unconstitutionally vague nor does it conflict with state statutes. Finally, Mr. Davis has failed to overcome the presumption of constitutionality regarding the Justice Court structure as well



as the nuisance ordinance and penalty. Based upon the foregoing, Mr. Davis' appeal must be denied.

### **LEGAL ARGUMENT**

#### **I. THIS COURT DOES NOT HAVE APPELLATE JURISDICTION OVER THIS CASE BECAUSE THE DISTRICT COURT HAS NOT ISSUED A FINAL ORDER ON APPELLANT'S MOTION TO DISMISS PENDING ACTION AND MOTION TO QUASH**

This Court lacks appellate jurisdiction because Mr. Davis has not appealed a final order from the District Court. Rather, Davis has appealed the District Court's oral pronouncement denying Appellant's Motion to Dismiss Pending Action and Motion to Quash (hereinafter "Motions" or "Appellant's Motions"). Under the well established final judgment rule, this Court only has appellate jurisdictions over appeals of final orders and those eligible for certification under Utah Rule of Civil Procedure 54(b). Mr. Davis' Appeal of the District Court's oral pronouncement does not satisfy the final judgment rule and must be dismissed.

The final judgment rule generally precludes a party from taking an appeal from any orders that are not final. Mackay Co. v. Okland Constr. 817 P.2d 323, 325 (Utah 1991). Furthermore, the law "is well settled in the state that the statements made by a trial judge are not the judgment of the case and it is only the signed judgment that prevails." State v. Gerrard, 584 P.2d 885, 887 (Utah 1978). Appeals from oral pronouncements of the court are not properly taken. Mackay Co., 817 P.2d at 325. When an order appealed from is not final and not certified or eligible for certification, it is not properly taken and the remedy is dismissal of the appeal Id citing Crossland v. Peck, 738 P.2d 631, 633 (Utah 1987).

“A judgment is final when it ends the controversy between the parties litigant.”

Kennedy v. New Era Industries, Inc., 600 P.2d 534, 536 (Utah 1979).

Mr. Davis has not appealed a final judgment, nor has the District Court’s oral pronouncement been certified under Utah Rule of Civil Procedure 54(b). Rather, contrary to the final judgment rule, Davis has appealed an oral pronouncement given by the District Court during a hearing held on July 30, 2007. (Record P. 141). In particular, Mr. Davis seeks to appeal the District Court’s oral denial of his motions. (See Appellant’s Brief, p. 53, ¶ 2).

While Mr. Davis may suggest that the September 28, 2007, trial judgment is the final order, this should not be the case because Davis’s constitutional claims were not ruled upon in the trial and said claims remained open for further adjudication based upon Davis’ own action. After the September 28, 2007 trial, Mr. Davis continued to seek adjudication of the constitutional issues at the District Court. As late as March 5, 2008, Mr. Davis filed a Notice to Submit for Decision on his earlier filed objection to the constitutional claims pronouncement. (Record P. 177). The District Court had earlier directed Hyde Park City to take further action in the case by drafting an order on Davis’ Motions. (See Appellant’s Brief, pp. 53-54, ¶103). The proposed order was objected to by Mr. Davis and thus never signed by the District Court. (See Appellant’s Brief, pp. 53-54, ¶ 103; See, also, Record P. 145). Davis’ objections to the proposed order were to have been addressed before a final order could be entered.

If the court had reconsidered its position with respect to the constitutional claims after receiving Mr. Davis' Notice to Submit for Ruling, it would have caused the Davis appeal to become moot. Clearly, Davis himself believed that the controversy regarding the constitutional issues was alive, and had not been resolved by the court because he was asking the court to readjust its oral ruling<sup>1</sup> before issuance of the signed order. (See Record P. 177). Again, this action was occurring nearly five months after filing the first notice of appeal.

Accordingly, because the District Court's oral pronouncement denying the constitutional claims was not reduced to a written order, and because the September 28, 2007 trial judgment on Davis' nuisance violation did not address or resolve the pending constitutional claims, there is not a final order in this case. Mr. Davis' appeal is not properly taken and must be dismissed.

**II. ALL ORDINANCES ARE PRESUMED CONSTITUTIONAL. THE DEFENDANTS HAVE FAILED TO PROVE THE CITY NUISANCE ORDINANCE IS OTHERWISE.**

Mr. Davis' next argument is based on a claim that the Hyde Park City nuisance ordinance is unconstitutional. It is essential to begin this response with two well-established, basic principles, courts follow when reviewing the constitutionality of a statute or ordinance. The first principle was restated in State v. Willis, 100 P.3d 1218, 1219; 2004 UT 93 (Utah 2004), where the Utah Supreme Court affirmed that, "[w]hen addressing a constitutional challenge to a statute, we

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<sup>1</sup> "Trial courts have clear discretion to reconsider and change their position with respect to any orders or decision as long as no final judgment has been rendered." U.P.C., Inc. v. R.O.C. Gen., Inc., 990 P.2d 945, 945 (Utah Ct App. 1999)

*presume that the statute is valid and resolve any reasonable doubts in favor of constitutionality.* (Emphasis added.) The second principle is found restated in Midvale City Corp. v. Haltom, 73 P.3d 334, 339; 2003 UT 26, ¶18 (Utah 2003). In Midvale the Utah Supreme Court cautioned that courts should be “reluctant to entertain facial attacks because the statute [or ordinance] may be declared unconstitutional in all instances. The usual approach is to wait until a statute is applied in the suspected and offensive way.” Mr. Davis’ attack of the city nuisance ordinance is facial rather than in its application.

Normally in criminal cases the prosecution has the burden of proof. However, following Willis, Appellant in the immediate case has the burden of overcoming the presumption of constitutionality and proving that the ordinance is defective. This Court should avoid holding the city nuisance ordinance unconstitutional unless the Appellant’s claim is so clear that it overcomes the long standing presumption of constitutionality. Further, according to Midvale City, even if this Court has some question regarding the constitutionality of the ordinance, it should be reluctant to find it unconstitutional until after it can review the ordinance as against the facts of the immediate case. Hyde Park City submits that the ordinance is constitutional. Mr. Davis has no law to the contrary. He cannot overcome the presumption of validity here. The ordinance in question was drafted by a team associated with the Utah League of Cities and Towns and presented to all municipalities as part of a model ordinance more than 30 years ago. The same language found in the Hyde Park nuisance ordinance has been

enacted by most cities and towns across the state. And used in untold numbers of prosecutions. Despite all this, in a memorandum where Appellant cites to dozens of cases, that are largely off-point. *they do not refer to a single case that questions the constitutionality of this model nuisance ordinance.*

The ordinance is constitutional.

**III. THE CITY NUISANCE ORDINANCE IS NOT IN CONFLICT WITH STATE STATUTES. IN FACT, IT IS SPECIFICALLY AUTHORIZED BY STATE STATUTE.**

Mr. Davis' alleges, based upon a constitutional challenge, that the city nuisance ordinance impermeably conflicts with the state nuisance statute. This assertion is not grounded in fact or law. Utah law specifically authorizes cities, such as Hyde Park, to define nuisances and enforce the same.

U.C.A. § 10-8-84(1) provides that "The municipal legislative body may pass all ordinances and rules, and make all regulations, not repugnant to law, necessary for carrying into effect or discharging all powers and duties conferred by this chapter, and as are necessary and proper to provide for the safety and preserve the health, and promote the prosperity, improve the morals, peace and good order, comfort, and convenience of the city and its inhabitants, and for the protection of property in the city."

U.C.A. § 10-8-84(1), quoted above, is a general statement granting authority to cities to pass ordinances such as the city's nuisance ordinance. But directly on point, U.C.A. § 10-8-60 is a specific statutory grant of authority to cities to pass nuisance ordinances as they deem fit. U.C.A. § 10-8-60 provides

that cities “may declare what shall be a nuisance, and abate the same, and impose fines upon persons who may create, continue or suffer nuisances to exist.” The state statute does not say that cities may enforce the state’s definition of nuisance—it directly states that cities may declare what shall be a nuisance in their city.

It is true, as Davis alleges, but completely immaterial here, that Utah statutes, U.C.A. § 76-10-801, 802, 803 and 78-38-9, define a “nuisance” or “public nuisance” differently than the city defines a “nuisance.” *Because, as set forth above, U.C.A. § 10-8-60 provides express authority to cities to “declare what shall be a nuisance.”*

Davis cites to several Utah cases in an attempt to support his allegation that the City ordinance is in conflict with state law. All of these cases are completely off-point.

The first case cited by Davis is Allgood v. Larson, 545 P.2d 530 (Utah 1976). Contrary to Davis’ assertion, Allgood stands for the proposition that where the state and city both define the same conduct as a criminal offense, the “city cannot impose a greater sentence than that provided by state law . . . .” Id. at 530. In the immediate case, the city ordinance does not impose a greater sentence for violating the city nuisance ordinance than is imposed for a violation of the state nuisance statute. Allgood is inapplicable to the immediate case.

The second case Davis cites to is Richfield City v. Walker, 790 P.2d 87 (Utah App. 1990). Again, this case does not suggest the City nuisance ordinance is

in conflict with state law. In Richfield City, the Court of Appeals reviewed a case where the defendant was prosecuted for a DUI. The facts in Richfield City are that the defendant was found in actual physical control of his vehicle in the parking lot of a hotel with a blood alcohol level of .21 percent. The issue on appeal was to the language of the city ordinance Walker was prosecuted under. When originally adopted, the city ordinance was identical to the controlling state statute. However, subsequent to the city's enactment, the Utah Legislature amended the controlling, state DUI, statute. Richfield City did not correspondingly amend its ordinance. Consequently, at the time Walker was prosecuted under the city ordinance, it was not identical to the controlling state statute. Nevertheless, the court held that the city "ordinance need not be identical to the controlling state statute to be consistent with it" and upheld Walker's conviction. Id. at 90. Although this case is more likely to support the prosecution's position in the immediate case, it is largely inapplicable. Richfield City presents a situation where a controlling state statute is compared to a subordinate city ordinance. There is no controlling state statute in the immediate case. U.C.A. § 10-8-60 specifically provides that cities "may declare what shall be a nuisance." City's have never been given the authority to define what shall be a DUI.

The next two cases cited by Mr. Davis are not criminal cases but rather civil. Cannon v. Neuberger, 268 P.2d 425 (Utah 1954) is a case where the plaintiff brought a nuisance law suit against his neighbor seeking an order of the court requiring the defendant to top and trim three Carolina Poplar trees and two

Siberian Elm trees. Dahl v. Utah Oil Refining, 262 P. 269 (Utah 1927) is a case where the plaintiff brought a nuisance law suit seeking damages to his home on account of the gases, odors and fumes that drifted from the oil refinery onto plaintiff's property and rendered it uncomfortable and undesirable for residence purposes. In the former case, the court upheld the finding of nuisance; in the later, the court ordered a new trial. *The undersigned fails to see the relevance of these cases to the allegation that the Hyde Park City ordinance is in conflict with state law.* The next cases cited by defendants are similar and go to factual issues rather than legal. They are not relevant to Davis' appeal. They do not provide any guidance as to whether the city ordinance is in conflict with state law.

Based on clear statutory authority, Hyde Park has the right to define what a nuisance is even if its definition is dissimilar to the state definition of nuisance. Mr. Davis' appeal, as based on conflict with state law, should be rejected.

#### **IV. THE CITY NUISANCE ORDINANCE IS NOT UNCONSTITUTIONALLY VAGUE. THE ORDINANCE ADEQUATELY DEFINES NUISANCE.**

Mr. Davis set forth numerous maximums in his memorandum similar to the following: "It is a basic principle of due process that an enactment is void for vagueness if its prohibition is not clearly defined." (See Appellant's Brief p. 23. ¶43.) The city agrees with these various statements. However, the city disagrees with the allegation that the city nuisance ordinance is vague. The ordinance clearly defines what is prohibited.



It appears that the only case cited by Davis suggesting that the city nuisance ordinance is void for vagueness is Jones v. Logan City, 428 P.2d 160; 19 Utah 2d 169 (Utah 1967). More so than the Davis' cases referred to above, this case is completely off point. The facts in Jones are as follows: Logan City created a Board of Condemnation. The Board was given authority from the City Commission (City Council) to determine whether any building or structure constituted a menace to public health or public safety. The City Commission did not, in any manner, define what might be "a menace to public health or public safety." Without any standards upon which the Board could base its findings, the Board was left to use its complete subjective discretion to decide what constituted "a menace to public health or public safety." The Board determined that Jones' house was a nuisance and ordered it to be demolished. On appeal the Utah Supreme Court invalidated the city ordinance—not because it was unconstitutionally vague, but rather because it constituted an unconstitutional delegation of power from the City Commission to the Board of Condemnation. The court held, "[w]e are of the opinion that the ordinance attempts to make an unlawful delegation of power to the City's Board of Condemnation. We are of the opinion that by reason of the delegation of powers by the City Commission the ordinance above referred to is invalid." Id. at 171.

The city nuisance ordinance is not vague on its face. The ordinance has specific language defining what constitutes a nuisance and Jones v. Logan City is completely inapplicable.

**V. APPELLANT’S ARGUMENT AS TO PENALTY IS INACCURATE.**

Mr. Davis’ argument is that “the city cannot impose a greater sentence than that provided by state law.” (See Appellant’s Brief at p. 28, ¶56.) The city’s response is simple. despite Appellant’s insinuation, the city ordinance does not allow for a sentence greater than allowed by state law or provided by the state nuisance statutes. Davis’ memorandum includes a discussion about the sentence available under city ordinances but completely fails to mention the available sentence under comparable state law or the state’s specific grant of sentencing authority to cities.

**VI. MR. DAVIS HAS FAILED TO OVERCOME THE PRESUMPTION FAVORING THE CONSTITUTIONALITY OF THE JUSTICE COURT SYSTEM.**

Mr. Davis’ brief contains a lengthy discussion about justice courts, the essence of which is a general allegation that justice is not found in the Justice Court system. Davis first argues that the Justice Court structure violates the separation of powers of the Utah Constitution. (See Appellant’s Brief p. 40, ¶60). Davis further alleges that Justice Courts are not capable of rendering independent decisions because they are controlled by the municipal corporations that will only retain them so long as the fines they impose are financially remunerative to the cities. (See Appellant’s Brief p 33, ¶66). In making both arguments, Davis has provided no evidentiary support in favor of his conclusions and therefore cannot overcome the presumption of constitutionality.

The Utah Supreme Court has held that for a party to succeed in making claims that a justice court system is unconstitutional, it “would need to support them with specific evidence and cogent legal argument.” West Jordan City v. Goodman, 135 P.3d 874, 883; 2006 UT 27 (Utah App 2006). The Courts have consistently declined to address state constitutional claims that have been inadequately briefed. See State v. Norris, 48 P.3d 872, 880 (Utah 2001); People v. Lafferty, 749 P.2d 1239, 1247 (Utah 1988). In reviewing a separation of powers argument, the Court has applied a three part test to determine whether a law violates separation of powers principals:

First, are the [actors] in question “charged with the exercise of power properly belonging to” one of the three branches of government? Second, is the function that the statute has given the [actors] one “appertaining to” another branch of government? The third and final step in the analysis asks: if the answer to both of the above questions is “yes,” does the constitution “expressly” direct or permit exercise of the otherwise forbidden function? If not, article V, section 1 is transgressed.

West Jordan City v. Goodman, 135 P.3d 874, 881 (Utah 2006)(citing Jones v. Utah Bd. Of Pardons & Parole, 2004 UT 53, ¶ 23, 94 P.3d 283)).

The Utah Supreme Court considered identical claims to those of Mr. Davis in West Jordan City v. Goodman. In that matter, Defendant Christopher Goodman alleged that the West Jordan Justice Court structure violated the separation of powers principal of the Utah Constitution. Id. Second, he claimed that the Judges in that matter had an inherent conflict of interest because they were controlled by the cities that benefited from the fines they imposed. Id. The Utah Supreme Court

affirmed the lower court's ruling because the Defendant had failed to offer factual support other than "mere speculation" regarding the claims. The Court held:

In short Goodman fails to explain why or how he believes the district court erred. These deficiencies in Goodman's briefing, coupled with the presumption that statutes passed by the legislature are constitutional, require that we affirm the ruling of the district court of Goodman's separation of powers claim. We also affirm the district court's ruling rejecting Goodman's claim that Judge Kunz has a conflict of interest in every case because Goodman failed to establish the factual predicate for this claim. Goodman offered only three pieces of evidence to the district court. As the district court found, however, none of this evidence established an actual conflict of interest.

Id. at 882.

In the instant case, Davis has provided no legal precedent, or analysis to indicate why he should prevail. The bulk of Mr. Davis' discussion draws upon broad conclusions wholly absent in fact. Davis cites to newspaper editorials and county council minutes regarding a criminal justice assessment conducted in Salt Lake County (See Appellant's Brief at pp 35-37, ¶70, ¶75). It is interesting to note, that the stated purpose of the county assessment was to find ways to reduce the current and future jail population in Salt Lake County. (See Appellant's Brief, Appendix VV, Page 1). To say nothing of the unreliable and unauthenticated nature of these documents themselves, the record is devoid of grounds as to why the assessment conclusions or editorials would be applicable in the present case.

Like Goodman, Mr. Davis makes unsubstantiated claims that Utah Justice Courts are profitable and concludes therefore that a constitutional violation has occurred. However, unlike the Goodman case, Davis candidly acknowledges that

he has no factual basis to suggest that the Hyde Park Justice court falls within the scope of the allegations: “Defendant/Appellant *does not and cannot allege* that the justice court judge is actually influenced by the fact that he is beholden to the City’s leaders” (See Appellant’s Brief p. 47 ¶93). *Emphasis Added*.

Because Davis does not acknowledge the controlling test set forth in Goodman, or provide any facts from the record that would support his conclusions, he fails to overcome the presumption that the justice court system is constitutional.

**VI. THE TRIAL COURT AND THE DISTRICT COURT DID NOT EXCEED THE MAXIMUM SENTENCE AS ALLOWED BY STATE LAW.**

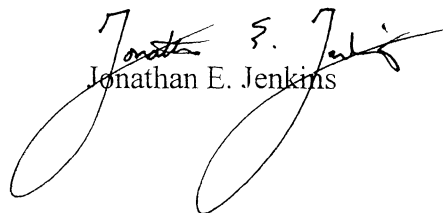
Davis argues that the \$50 fine imposed by the District Court was at odds with the powers extended to cities and towns and was therefore repugnant to law. (See Appellant’s Brief p. 52, ¶ 101). Mr. Davis does not elucidate his argument or application further. As discussed earlier in this brief, U.C.A. § 10-8-60 allows the cities to declare “what shall be a nuisance, and abate the same, and impose fines upon persons who may create, continue or suffer nuisances to exist.” Because the Hyde Park City ordinance does not exceed the penalty allowed by state statute, and because the fine imposed upon the Davis was only \$50.00, there is no violation.

## CONCLUSION

This Court should deny relief requested in Mr. Davis' appeal. The District Court has not entered a final order on Mr. Davis' constitutional claims. The city nuisance ordinance and justice court is constitutional and nothing presented in Appellant's memorandum overcomes the long-standing presumption of constitutionality as to the city ordinance or the structure of the justice court.

Respectfully submitted this 18th of December, 2008

DAINES & WYATT, LLP

  
Jonathan E. Jenkins

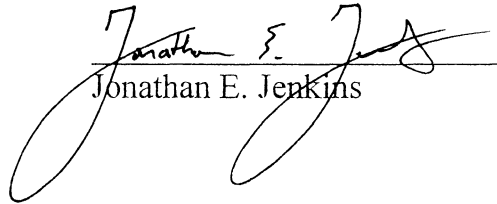
CERTIFICATE OF SERVICE

On December 18, 2008, I hereby certify that a true and correct copy of the foregoing Brief of Appellee was delivered by depositing a copy in the U.S. Mail to:

A.W. Lauritzen

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Jonathan E. Jenkins

## ADDENDUM



**10-8-60**

**Title 10 - Utah Municipal Code**

**Chapter 08 - Powers and Duties of All Cities**

**10-8-60. Nuisances.**

They may declare what shall be a nuisance, and abate the same, and impose fines upon persons who may create, continue or suffer nuisances to exist.

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No Change Since 1953

**10-8-84**

**Title 10 - Utah Municipal Code**

**Chapter 08 - Powers and Duties of All Cities**

**10-8-84. Ordinances, rules, and regulations -- Passage -- Penalties.**

(1) The municipal legislative body may pass all ordinances and rules, and make regulations, not repugnant to law, necessary for carrying into effect or discharging powers and duties conferred by this chapter, and as are necessary and proper to provide for the safety and preserve the health, and promote the prosperity, improve the morals, peace and good order, comfort, and convenience of the city and its inhabitants, and for the protection of property in the city.

(2) The municipal legislative body may enforce obedience to the ordinances with fines or penalties in accordance with Section **10-3-703**.

Amended by Chapter 323, 2000 General Session

**76-10-801**

**Title 76 - Utah Criminal Code**

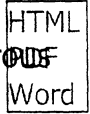
**Chapter 10 - Offenses Against Public Health, Safety, Welfare, and Morals**

**76-10-801. "Nuisance" defined -- Violation -- Classification of offense.**

(1) A nuisance is any item, thing, manner, condition whatsoever that is dangerous to human life or health or renders soil, air, water, or food impure or unwholesome.

(2) Any person, whether as owner, agent, or occupant who creates, aids in creating, or contributes to a nuisance, or who supports, continues, or retains a nuisance, is guilty of a class B misdemeanor.

Enacted by Chapter 196, 1973 General Session



**76-10-802**

**Title 76 - Utah Criminal Code**

**Chapter 10 - Offenses Against Public Health, Safety, Welfare, and Morals**

**76-10-802. Befouling waters.**

A person is guilty of a class B misdemeanor if he:

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(1) Constructs or maintains a corral, sheep pen, goat pen, stable, pigpen, chicken coop, or other offensive yard or outhouse where the waste or drainage therefrom shall flow directly into the waters of any stream, well, or spring of water used for domestic purposes; or

(2) Deposits, piles, unloads, or leaves any manure heap, offensive rubbish, or the carcass of any dead animal where the waste or drainage therefrom will flow directly into the waters of any stream, well, or spring of water used for domestic purposes; or

(3) Dips or washes sheep in any stream, or constructs, maintains, or uses any pool or dipping vat for dipping or washing sheep in such close proximity to any stream used by the inhabitants of any city or town for domestic purposes as to make the waters thereof impure or unwholesome; or

(4) Constructs or maintains any corral, yard, or vat to be used for the purpose of shearing or dipping sheep within twelve miles of any city or town, where the refuse or filth from the corral or yard would naturally find its way into any stream of water used by the inhabitants of any city or town for domestic purposes; or

(5) Establishes and maintains any corral, camp, or bedding place for the purpose of herding, holding, or keeping any cattle, horses, sheep, goats, or hogs within seven miles of any city or town, where the refuse or filth from the corral, camp, or bedding place will naturally find its way into any stream of water used by the inhabitants of any city or town for domestic purposes.

Enacted by Chapter 196, 1973 General Session

**76-10-803**

**Title 76 - Utah Criminal Code**

**Chapter 10 - Offenses Against Public Health, Safety, Welfare, and Morals**

**76-10-803. "Public nuisance" defined -- Agricultural operations.**

(1) A public nuisance is a crime against the order and economy of the state and consists in unlawfully doing any act or omitting to perform any duty, which act or omission:

(a) annoys, injures, or endangers the comfort, repose, health, or safety of three or more persons;

(b) offends public decency;

(c) unlawfully interferes with, obstructs, or tends to obstruct, or renders dangerous for passage, any lake, stream, canal, or basin, or any public park, square, street, or highway;

(d) is a nuisance as defined in Section **78B-6-1107**; or

(e) in any way renders three or more persons insecure in life or the use of property.

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

(3) (a) Agricultural operations that are consistent with sound agricultural practices are presumed to be reasonable and do not constitute a public nuisance under Subsection (1) unless the agricultural operation has a substantial adverse effect on the public health and safety.

(b) Agricultural operations undertaken in conformity with federal, state, and local laws and regulations, including zoning ordinances, are presumed to be operating within sound agricultural practices.

Amended by Chapter 3, 2008 General Session



**78A-7-118**

**Title 78A - Judiciary and Judicial Administration**

**Chapter 07 - Justice Court**

**78A-7-118. Appeals from justice court -- Trial or hearing de novo in district court.**



(1) In a criminal case, a defendant is entitled to a trial de novo in the district court only if the defendant files a notice of appeal within 30 days of:

(a) sentencing after a bench or jury trial, or a plea of guilty in the justice court resulting in a finding or verdict of guilt; or

(b) a plea of guilty in the justice court that is held in abeyance.

(2) If an appeal under Subsection (1) is of a plea entered pursuant to negotiation with the prosecutor, and the defendant did not reserve the right to appeal as part of the plea negotiation, the negotiation is voided by the appeal.

(3) A defendant convicted and sentenced in justice court is entitled to a hearing de novo in the district court on the following matters, if he files a notice of appeal within 30 days of:

(a) an order revoking probation;

(b) an order entering a judgment of guilt pursuant to the person's failure to fulfil the terms of a plea in abeyance agreement;

(c) a sentence entered pursuant to Subsection (3)(b); or

(d) an order denying a motion to withdraw a plea.

(4) The prosecutor is entitled to a hearing de novo in the district court on:

(a) a final judgment of dismissal;

(b) an order arresting judgment;

(c) an order terminating the prosecution because of a finding of double jeopardy or denial of a speedy trial;

(d) a judgment holding invalid any part of a statute or ordinance;

(e) a pretrial order excluding evidence, when the prosecutor certifies that exclusion of that evidence prevents continued prosecution; or

(f) an order granting a motion to withdraw a plea of guilty or no contest.

(5) Upon entering a decision in a hearing de novo, the district court shall remand the case to the justice court unless:

(a) the decision results in immediate dismissal of the case;

(b) with agreement of the parties, the district court consents to retain jurisdiction;  
or

(c) the defendant enters a plea of guilty in the district court.

(6) The district court shall retain jurisdiction over the case on trial de novo.

(7) The decision of the district court is final and may not be appealed unless the district court rules on the constitutionality of a statute or ordinance.

Renumbered and Amended by Chapter 3, 2008 General Session

**78-38-4.7. Transportation of forest products or native vegetation into or through the state.**

Timber forest products, or native vegetation transported into or through the state must be accompanied by a shipping permit or proof of ownership. 1987

**78-38-4.8. Exemptions.**

The provisions of this chapter do not apply to the transportation of:

- (1) wood chips, sawdust, and bark;
- (2) products transported by the owner of the property or his agent from which the products were removed, or
- (3) products for personal consumption incidental to camping and picnicking which is limited to the amount:
  - (a) needed for the duration of the picnic or campout; and
  - (b) used at the campsite. 1987

**78-38-4.9. Violation as misdemeanor.**

Violation of Sections 78-38-4.5 through 78-38-4.7 is a class B misdemeanor. 1992

**78-38-5. Manufacturing facility in operation over three years — Limited application of nuisance provisions.**

(1) Notwithstanding Sections 78-38-1 and 76-10-803, no manufacturing facility or the operation thereof shall be or become a nuisance, private or public, by virtue of any changed conditions in and about the locality thereof after the same has been in operation for more than three years when such manufacturing facility or the operation thereof was not a nuisance at the time the operation thereof began, provided, the manufacturing facility does not increase the condition asserted to be a nuisance and that the provisions of this subsection shall not apply whenever a nuisance results from the negligent or improper operation of any such manufacturing facility.

(2) The provisions of Subsection (1) of this section shall not affect or defeat the right of any person to recover damages for any injuries or damage sustained on account of any pollution of, or change in the condition of, the waters of any stream or on account of any overflow of the lands of any person.

(3) Any and all ordinances now or hereafter adopted by any county or municipal corporation in which such manufacturing facility is located, which makes the operation thereof a nuisance or providing for an abatement thereof as a nuisance in the circumstances set forth in this section are null and void; provided, however, that the provisions of this subsection shall not apply whenever a nuisance results from the negligent or improper operation of any such manufacturing facility. 1981

**78-38-6. "Manufacturing facility" defined.**

As used in this act, "manufacturing facility" means any factory, plant, or other facility including its appurtenances, where the form of raw materials, processed materials, commodities, or other physical objects is converted or otherwise changed into other materials, commodities, or physical objects or where such materials, commodities, or physical objects are combined to form a new material, commodity, or physical object. 1981

**78-38-7. Agricultural operations — Nuisance liability.**

(1) Agricultural operations that are consistent with sound agricultural practices are presumed to be reasonable and do not constitute a nuisance unless the agricultural operation has a substantial adverse effect on the public health and safety.

(2) Agricultural operations undertaken in conformity with federal, state, and local laws and regulations, including zoning ordinances, are presumed to be operating within sound agricultural practices. 1995

**78-38-8. "Agricultural operation" defined.**

As used in this act, "agricultural operation" means any facility for the production for commercial purposes of crops, livestock, poultry, livestock products, or poultry products. 1981

**78-38-9. Nuisance — Right of action to abate nuisances — Drug houses and drug dealing — Gambling — Group criminal activity — Prostitution — Weapons.**

(1) Every building or place is a nuisance where:

(a) the unlawful sale, manufacture, service, storage, distribution, dispensing, or acquisition occurs of any controlled substance, precursor, or analog specified in Title 58, Chapter 37, Controlled Substances;

(b) gambling is permitted to be played, conducted, or dealt upon as prohibited in Title 76, Chapter 10, Part 11; Gambling, which creates the conditions of a nuisance as defined in Subsection 78-38-1(1);

(c) criminal activity is committed in concert with two or more persons as provided in Section 76-3-203.1;

(d) parties occur frequently which create the conditions of a nuisance as defined in Subsection 78-38-1(1);

(e) prostitution or promotion of prostitution is regularly carried on by one or more persons as provided in Title 76, Chapter 10, Part 13, Prostitution; and

(f) a violation of Title 76, Chapter 10, Part 5, Weapons, occurs on the premises.

(2) It is a defense to nuisance under Subsection (1)(a) if the defendant can prove that the defendant is lawfully entitled to possession of a controlled substance.

(3) Sections 78-38-10 through 78-38-16 govern only and abatement by eviction of the nuisance as defined in Subsections (1). 1999§

**78-38-10. Nuisance — Abatement by eviction.**

(1) Whenever there is reason to believe that a nuisance under Sections 78-38-9 through 78-38-16 is kept, maintained, or exists in any county, the county attorney of the county, the city attorney of any incorporated city, any citizen or citizens of the state residing in the county, or any corporation, partnership or business doing business in the county, in his or their own names, may maintain an action in a court of competent jurisdiction to abate the nuisance and obtain an order for the automatic eviction of the tenant.

(2) The court may designate a spokesperson of any group of citizens who would otherwise have the right to maintain an action in their individual names against the defendant under this section. 1992

**78-38-11. Abatement by eviction order — Grounds.**

An order of abatement by eviction may issue only upon a showing by the applicant by a preponderance of the evidence that:

(1) the applicant will suffer irreparable harm unless the order of abatement by eviction issues;

(2) the threatened injury to the applicant outweighs whatever damage the proposed order of abatement by eviction may cause the party so ordered;

(3) the order of abatement by eviction, if issued, would not be adverse to the public interest; and

(4) there is a substantial likelihood that the applicant will prevail on the merits of the underlying claim, or the case presents serious issues on the merits which should be the subject of further litigation. 1992

**78-38-12. Prior acts of threats of violence — Protection of witnesses.**

At the time of application for abatement of the nuisance by eviction pursuant to Sections 78-38-10 and 78-38-11, if proof of the existence of the nuisance depends, in whole or in part,



**5-117. Filing and docketing of abstract.**

(1) The judge, on the demand of a party in whose favor judgment is rendered, shall provide the party with an abstract of the judgment in substantially the form approved by the Judicial Council.

(2) The abstract may be filed in the office of the clerk of the district court of any county in the state but shall be docketed on the judgment docket of that district court.

(3) The clerk shall note the time of receipt of the abstract on the abstract and on the docket. 1989

**5-118. Execution on judgment.**

From the time of the docketing in the office of the clerk of the district court execution may then be issued within the same time, in the same manner, and with the same effect as if issued on a judgment of the district court. 1989

**5-119. Judgment not a lien unless so recorded.**

(1) Except as provided under Subsection (3), a judgment rendered in a justice court does not create a lien upon any real property of the judgment debtor unless the judgment or abstract of the judgment:

(a) is recorded in the office of the county recorder of the county in which the real property of the judgment debtor is located; and

(b) contains the information identifying the judgment debtor as referred to in Subsection 78-22-1.5(4) either:

- (i) in the judgment or abstract of judgment; or
- (ii) as a separate information statement of the judgment creditor as referred to in Subsection 78-22-1.5(5).

(2) The lien runs for eight years from the date the judgment is entered in the district court under Section 78-22-1 unless the judgment is earlier satisfied.

(3) State agencies are exempt from the recording requirement of Subsection (1). 2001

**5-120. Appeals from justice court — Trial or hearing de novo in district court.**

(1) In a criminal case, a defendant is entitled to a trial de novo in the district court only if the defendant files a notice of appeal within 30 days of:

(a) sentencing after a bench or jury trial, or a plea of guilty in the justice court resulting in a finding or verdict of guilt; or

(b) a plea of guilty in the justice court that is held in abeyance.

(2) If an appeal under Subsection (1) is of a plea entered pursuant to negotiation with the prosecutor, and the defendant did not reserve the right to appeal as part of the plea negotiation, the negotiation is voided by the appeal.

(3) A defendant convicted and sentenced in justice court is entitled to a hearing de novo in the district court on the following matters, if he files a notice of appeal within 30 days of:

(a) an order revoking probation;

(b) an order entering a judgment of guilt pursuant to the person's failure to fulfil the terms of a plea in abeyance agreement;

(c) a sentence entered pursuant to Subsection (3)(b); or

(d) an order denying a motion to withdraw a plea.

(4) The prosecutor is entitled to a hearing de novo in the district court on:

(a) a final judgment of dismissal;

(b) an order arresting judgment;

(c) an order terminating the prosecution because of a finding of double jeopardy or denial of a speedy trial;

(d) a judgment holding invalid any part of a statute or ordinance;

(e) a pretrial order excluding evidence, when the prosecutor certifies that exclusion of that evidence prevents continued prosecution; or

(f) an order granting a motion to withdraw a plea of guilty or no contest.

(5) Upon entering a decision in a hearing de novo, the district court shall remand the case to the justice court unless:

(a) the decision results in immediate dismissal of the case;

(b) with agreement of the parties, the district court consents to retain jurisdiction; or

(c) the defendant enters a plea of guilty in the district court.

(6) The district court shall retain jurisdiction over the case on trial de novo.

(7) The decision of the district court is final and may not be appealed unless the district court rules on the constitutionality of a statute or ordinance. 2001 (1st S.S.)

**78-5-121. Docket to be kept — Enumeration of entries required.**

Every justice court judge shall keep or cause to be kept a docket. The following information shall be entered in the docket under the title of the action to which it relates:

(1) the title to every action or proceeding;

(2) the object of the action or proceeding, and the amount of any money claimed;

(3) the date of the service of the summons and the time of its return;

(4) a statement of the fact if an order to arrest the defendant is made or a writ of attachment is issued;

(5) the time when the parties or any party appears, or a party's nonappearance, if default is made;

(6) minutes of the pleadings and motions in writing by referring to them, and if not in writing, by a concise statement of the material parts of the pleadings;

(7) every adjournment, stating on whose application and to what time;

(8) a demand for a trial by jury, when made, by whom, and the order for the jury;

(9) the time appointed for the return of the jury and for the trial;

(10) the names of the jurors who appear and are sworn;

(11) the names of all witnesses sworn and at whose request;

(12) the verdict of the jury and when received, or if the jury disagree and are discharged, the disagreement and discharge;

(13) the judgment of the court including the costs included and when entered;

(14) an itemized statement of the costs;

(15) the time of issuing an execution and to whom, and the time of any renewals;

(16) a statement of any money paid to the court, when, and by whom; and

(17) the receipt of any notice of appeal, and of any appeal bond filed. 1989

**78-5-122. Docket entries — Prima facie evidence.**

Entries in a justice court judge's docket under Section 78-5-121, certified by the judge or his successor in office, are prima facie evidence of the facts stated. 1989

**78-5-123. Docket index.**

A judge shall keep or cause to be kept an alphabetical index to the names of the parties to each judgment in his docket with a reference to the page of entry. The names of the parties shall be entered in the index by the first letter of the family surname. 1989