

# Title #

## ADMINISTRATIVE CODE ENFORCEMENT

### Chapter 1 ADMINISTRATIVE CODE ENFORCEMENT

#### #-1-1. DECLARATION OF PURPOSE.

The City Council of Sandy City finds that the enforcement of the Revised Ordinances of Sandy City and applicable state codes throughout the City is an important public service. Code enforcement is vital to the protection of the public's health, safety, and quality of life. The City Council recognizes that enforcement starts with the drafting of precise regulations that can be effectively applied in administrative hearings and judicial proceedings. The City Council further finds that comprehensive code enforcement system that uses a combination of judicial and administrative remedies is critical to gain compliance with these regulations. Failure to comply with an administrative code enforcement action may require the City Attorney to file a judicial action to gain compliance.

#### #-1-2. SCOPE.

The provisions of this Title may be applied to all violations of the Revised Ordinances of Sandy City. It has been designed as an additional remedy for the City to use in achieving compliance with its ordinances.

#### #-1-3. DEFINITIONS.

"Abatement" Any action the city may take to remove or alleviate a violation, including, but not limited to, demolition, removal, repair, boarding up, securing or replacement of property.

"Administrative citation" means a citation issued to a responsible person that gives notice of a violation and the civil fine for such violation.

"Administrative order" means an order issued by an administrative hearing officer.

"Administrative hearing officer" means a person appointed by the mayor or his designee to preside over administrative hearings and issue administrative orders.

"Code enforcement tax lien" A lien recorded with the county recorder and the county treasurer to facilitate collection of outstanding civil fines, actual and administrative costs.

"Cost, actual" means the cost of professional consultants, contractors, subcontractors and equipment incurred by the city to perform an abatement.

"Cost, administrative" means costs incurred by the city, including without limitation wages, professional hearing officer services, supplies and overhead, to enforce compliance with the Revised Ordinances of Sandy City.

"Director" means the Director of Community Development or the Director of Animal Services.

"Enforcement Official" A person authorized by the mayor to issue and pursue an administrative citation or other municipal action under this title.

"Itemized statement of costs" means a written notice to a responsible person, itemizing the city's actual costs and administrative costs of abating a code violation.

"Municipal action" means any action taken by the city pursuant to this title, including without limitation, providing notices, issuing administrative citations, performing abatements, providing itemized statements of costs, and seeking administrative orders.

"Notice of emergency abatement" means a written notice that informs a responsible person of emergency abatement actions taken by the city and provides and itemized statement of costs for those actions.

"Responsible Person" or "Responsible Party" means the person(s) who is responsible for causing or maintaining a violation of the Revised Ordinances of Sandy City or applicable state codes. For violations related to property, the property owner, tenant, person with a legal interest in the real property, or person in possession of the real property shall be liable for any violation maintained on the property. In all cases, the property owner shall be considered a responsible person.

#### **#-1-4. CRIMINAL PROSECUTION RIGHT.**

The City has sole discretion in deciding whether to file a civil or criminal case for the violation of any of its ordinances. The City may choose to file both, or one or the other. The enactment of this administrative remedy shall in no way interfere with the City's right to prosecute City ordinance violations as criminal offenses. The City may use any of the remedies available under the law in both civil and criminal prosecution. If the City chooses to file both civil and criminal charges for the same day of violation, no civil fines may be assessed, but all other remedies are available.

#### **#-1-5. SERVICE REQUIREMENTS.**

- (a) Whenever a notice, administrative order, administrative citation or itemized statement of costs is required to be given under this title it shall be served upon the responsible person by one of the following methods:
  - i. Personal service upon the responsible person;
  - ii. Regular mail, postage prepaid, to the last known address of a responsible person;
  - iii. Posting the notice conspicuously on or in front of the property that is the subject of the municipal action;
  - iv. Publication in a newspaper of general circulation if service has not been accomplished after reasonable efforts to comply with (a) i-iii above; or
  - v. As directed by the administrative hearing officer.
- (b) Failure of a responsible person to actually receive notice shall not affect the validity of any action taken hereunder if notice has been served in the manner set forth above.
- (c) Service by regular mail in the manner set forth above shall be deemed served on the fourth day after the date of mailing.
- (d) No person other than a responsible person is required to be served notice.

#### **#-1-6. ADMINISTRATIVE CITATIONS.**

- (a) An administrative citation may be issued to a responsible person by any enforcement official.

- (b) An administrative citation may be issued upon discovery of any violation of city ordinances or applicable state law, unless otherwise prohibited by law.
- (c) All administrative citations shall contain, at a minimum, the following information:
  - i. Name of the responsible person;
  - ii. Street address of the violation(s);
  - iii. Date and time that the violation is observed;
  - iv. Identification of the ordinance(s) being violated;
  - v. Brief description of the circumstances, facts or conditions related to the violation(s);
  - vi. Name of the enforcement official issuing the administrative citation;
  - vii. Applicable fine amount(s); and
  - viii. Statement that the responsible may request a hearing by filing a written request within thirty calendar days from the date the administrative citation is issued, and the procedure for filing.
- (d) If the violation is one for which correction is required, the administrative citation shall contain the following additional information:
  - i. Action required to correct the violation;
  - ii. The date by which correction and reinspection must be completed, not less than fourteen calendar days from the date the administrative citation is issued;
  - iii. Contact information to request reinspection; and
  - iv. Daily fine amount for each violation, which shall begin to accrue on the date the administrative citation is issued and cease to accrue upon correction and reinspection. Failure of the responsible person to request reinspection may result in accrual of additional fines. It shall be presumed that compliance occurs on the date that compliance is confirmed by reinspection.
- (e) If the violation has occurred and cannot be corrected, the administrative citation shall contain the following additional information:
  - i. The fine amount;
  - ii. The date by which payment shall be made, not to exceed thirty days from the date the administrative citation is issued;
  - iii. The procedure for paying the fine.
- (f) The administrative citation shall be served in accordance with the service requirements of this title.

#### **#-1-7. ADMINISTRATIVE HEARING.**

- (a) A person has the right to request an administrative hearing if the person is a responsible person who has received an administrative citation, itemized statement of costs, notice of emergency abatement, or if the responsible person received an administrative order and is requesting a determination of compliance.
- (b) A person may request an administrative hearing for the following purposes:
  - i. To dispute the merits or fine amount of an administrative citation;
  - ii. To dispute the amount of an itemized statement of costs;
  - iii. To dispute the merits of a notice of abatement, but not a notice of emergency abatement; or
  - iv. To request that the administrative hearing officer make a determination of compliance under a previously issued administrative order.
- (c) The request for a hearing shall be in writing to the Director and delivered to the Director's office or as otherwise directed in the administrative citation, itemized statement of costs, notice of abatement or administrative order.

- (d) The method of delivery of the request for a hearing shall be by hand delivery or as otherwise directed in the administrative citation, itemized statement of costs, notice of abatement or administrative order.
- (e) A person must request the administrative hearing within the following time or waive all rights to a hearing, including the right to appeal:
  - i. For an administrative citation, ten business days after the administrative citation is issued; or
  - ii. For an itemized statement of costs, notice of emergency abatement or other notice, ten business days after service.
- (f) The city may request a hearing at any time for the purpose of obtaining an administrative order or emergency administrative order, enforcing compliance with a previously issued administrative order, requesting assessment of fines and costs or for any other purpose consistent with this title.
- (g) Upon receipt of a request for an administrative hearing, the administrative hearing officer shall:
  - i. Schedule a hearing to be held within 21 calendar days; and
  - ii. Provide written notice to the responsible person and the city of the date, time and location of the hearing at least five business days before the scheduled hearing date.
- (h) The administrative hearing procedures shall be as follows:
  - i. The request for administrative hearing shall include a written statement in support of the request.
  - ii. Administrative hearings are intended to be informal in nature. Formal rules of evidence and discovery do not apply; however, an informal exchange of discovery may be required. The request must be in writing. Failure to request discovery shall not be a basis for a continuance. Complainant information is protected and shall not be released unless the complainant is a witness at the hearing. The procedure and format of the administrative hearing shall follow the procedures promulgated by the administrative hearing officer.
  - iii. At the hearing, the responsible person and city shall have the opportunity to be represented by counsel, present evidence and witnesses, and cross-examine witnesses. If the responsible party will be represented by an attorney at the hearing, notice of the attorney's name, address, and the telephone number must be given to the city at least one day prior to the hearing. If notice is not given, the hearing will be continued if the city so requests, and all costs of the continuance will be assessed to the responsible person.
  - iv. The administrative hearing officer shall issue a written opinion within ten working days after the hearing and shall send the written opinion to the city and responsible party.
  - v. The opinion shall be supported by substantial evidence on the record.

#### **#-1-8. APPOINTMENT AND QUALIFICATIONS OF THE ADMINISTRATIVE HEARING OFFICER.**

- (a) The mayor, with the consent of the city council, shall appoint an administrative hearing officer to preside at administrative hearings and issue administrative orders.
- (b) A person appointed to serve as an administrative hearing officer shall either be law trained or have significant experience with the requirements and operation of administrative hearing processes. The person shall be free from any bias or conflict of interest that might affect impartiality of decisions.

#### **#-1-9. POWERS OF ADMINISTRATIVE HEARING OFFICER.**

(a) Hearing

- i. An administrative hearing officer may develop policies and procedures relating to the hearing procedures, scope of hearings, subpoena powers and other matters related to administrative hearings, not inconsistent with the Revised Ordinances of Sandy City or applicable state law.
- ii. An administrative hearing officer shall have authority to hold administrative hearings related to violations of the Revised Ordinances of Sandy City.
- iii. An administrative hearing officer may continue a hearing for good cause shown by one of the parties or if the administrative hearing officer independently determines that due process has not been adequately afforded to a party.
- iv. An administrative hearing officer may schedule subsequent review hearings as may be necessary or as requested by the city to ensure compliance with an administrative order.
- v. At the request of any party to an administrative hearing, an administrative hearing officer may sign subpoenas for witnesses, documents, and other evidence where the attendance of the witness or the admission of evidence is deemed helpful by the administrative hearing officer to decide issues at the hearing. All costs related to the subpoena, including witness and mileage fines, shall be borne by the party requesting the subpoena.
- vi. An administrative hearing officer may assess civil fines and costs of abatement and administrative costs to a responsible person. An administrative hearing officer may reduce civil fines or costs upon a finding of good cause. The administrative hearing officer may reduce the fines to what is just and equitable under the circumstances. However, the administrative hearing officer shall not reduce and shall order the responsible person to pay: (1) all actual costs incurred by the city; and (2) all administrative costs as established in the city's fee schedule.
- vii. An administrative hearing officer has continuing jurisdiction over the subject matter of an administrative hearing for the purposes of: granting a continuance; ordering compliance by issuing an administrative order; ensuring compliance of an administrative order; authorizing the city to enter upon private property to inspect or abate a violation; modifying an administrative order, assessing costs; assessing civil fines; or, where extraordinary circumstances exist, granting a new hearing.

(b) Administrative Orders

- i. An administrative hearing officer may only issue an administrative order following a hearing or pursuant to the administrative hearing officer's continuing jurisdiction, except in the following circumstances:
  - (1) If a responsible person fails to appear at a hearing, the hearing officer may issue an administrative order without a hearing; and
  - (2) The administrative hearing officer may issue an emergency abatement order in accordance with the emergency abatement provisions of this title.
- ii. An administrative hearing officer may require a responsible person to post a performance bond to ensure compliance with an administrative order, but only if agreed to by the enforcement official handling the matter for the city.
- iii. An administrative hearing officer shall not make any order that would require or allow a person to violate state law or city ordinance.

- iv. An administrative hearing officer may issue an administrative order that requires a person to cease from violating the Revised Ordinances of Sandy City or state law and to take corrective action.
- v. An administrative hearing officer may issue an administrative order authorizing the city to enter the property and abate violations, including without limitation the removal of animals. Whenever an order of abatement is entered, the administrative hearing officer shall order the responsible person to pay to the city actual costs and administrative costs.
- vi. An administrative hearing officer may issue an administrative order revoking a hobby license, an animal license, and the right to possess animals.
- vii. An administrative hearing officer may issue an administrative order revoking or suspending a business license, a building permit, or permits for any alteration, repair, or construction pertaining to any existing or new structures or signs on the property, or any permits pertaining to the use and development of real property or a structure where a violation is located as provided in the Revised Ordinances of Sandy City.
- viii. An administrative hearing officer may order any action reasonably necessary to obtain compliance with the applicable city ordinances.

#### **#-1-10. FAILURE TO ATTEND ADMINISTRATIVE HEARING.**

Provided that proper notice of the hearing has been given as provided in this title, a person who fails to appear at an administrative hearing shall be deemed to have waived all rights in connection with the hearing, including the right to appeal and an administrative order may be entered against a person based upon the failure to appear.

#### **#-1-11. ADMINISTRATIVE ORDER.**

- (a) A person and the city may enter into a stipulated agreement, which shall be signed by both parties. Such agreement may be entered as an administrative order. Entry of such agreement shall constitute a waiver of the right to an administrative hearing and the right to appeal.
- (b) Within ten days after an administrative hearing, the administrative hearing officer shall issue a written administrative order.
- (c) The administrative order shall specify the evidence supporting the administrative hearing officer's decision and the action required to satisfy the order.
- (d) The administrative hearing officer may assign the party who prevails at the administrative hearing to prepare findings of fact and conclusions of law.
- (e) As part of an administrative order, an administrative hearing officer may establish specific deadlines for the payment of fines and costs and condition the total or partial assessment of fines on the responsible person's ability to take necessary corrective actions by specified deadlines. Such fines shall continue to accrue until the responsible person complies with the administrative order and requests reinspection. Failure of the responsible person to request reinspection may result in accrual of additional fines. It shall be presumed that compliance occurs on the date that compliance is confirmed by reinspection.
- (f) Fines shall not exceed the fine limit set by Utah State Code.

- (g) An administrative order shall become final on the date of signing by an administrative hearing officer.
- (h) An administrative order shall be served on all parties.

#### **#-1-12. FAILURE TO COMPLY.**

- (a) It shall be unlawful for any person to fail to comply with the terms and deadlines set forth in an administrative order.
- (b) A violation of this section shall be a class B misdemeanor.
- (c) Upon failure of a person to comply with the terms and deadline set forth in the administrative order, the city may use all appropriate legal means to recover the civil fines and administrative costs and to obtain compliance.

#### **#-1-13. COMPLIANCE INSPECTION REQUIRED.**

It shall be the duty of the responsible person to request an inspection when the responsible person believes that the violation has been corrected. It is prima facie evidence that the violation has not been corrected if no inspection is requested. Civil fines accumulate daily until the inspection has occurred and compliance has been verified by the city. Reinspection fees may be assessed if more than one inspection is necessary.

#### **#-1-14. APPEAL OF ADMINISTRATIVE ORDER.**

- (a) Any person adversely affected by an administrative order made in the exercise of the provisions of this title may file a petition for review in the district court.
- (b) The petition shall be barred unless it is filed within thirty (30) days after the administrative order is final.
- (c) In the petition, the person may only allege that the administrative order was arbitrary, capricious or illegal.
- (d) The court shall:
  - i. Presume that the administrative order is valid;
  - ii. Review the record to determine whether the order was arbitrary, capricious, or illegal; and
  - iii. Affirm the administrative order if it is supported by substantial evidence in the record.
- (e) Within one hundred twenty (120) days after submitting the petition, the party petitioning for appeal shall request a copy of the record from the proceedings.
  - i. The city shall not submit copies of files to the reviewing court until the party petitioning for appeal has paid all required costs.
  - ii. The petitioning party's failure to request copies of the record within 120 days, or to pay the full costs for the record within one hundred eighty (180) days after the petition for review was filed shall be grounds for dismissal of the petition.
- (f) The court review shall be limited to the record. The court may not accept or consider any evidence outside such record unless that evidence was offered to the administrative hearing officer and the court determines that the administrative hearing officer improperly excluded it. The court may call witnesses and take evidence if there is no record.



- (g) The filing of a petition for review with the district court does not stay execution of an administrative order. Before filing a petition, a person may request the administrative hearing officer to stay an administrative order. Upon receipt of a request to stay, the administrative hearing officer may order the administrative order to be stayed pending district court review if the administrative hearing officer finds such stay to be in the best interest of the city.

#### **#-1-15. ABATEMENT.**

- (a) Any condition caused, maintained, or permitted to exist in violation of any provisions of the Revised Ordinances of Sandy City may be abated by the city pursuant to the procedures set forth in this title.
- (b) An enforcement official is authorized to enter upon any property or premises to abate any violation of the Revised Ordinances of Sandy City pursuant to an administrative order or as authorized by the Director with the approval of the Chief Administrative Officer. The administrative hearing officer may assess all actual and administrative costs incurred by the city for the abatement to the responsible person(s), and the city may pursue any and all remedies available under the law to collect such costs. If additional abatements for the same or substantially similar violations are necessary within one year of a final administrative order, the administrative hearing officer may assess additional costs against the responsible person(s) for the subsequent abatement(s).
- (c) The responsible person shall be liable for all actual and administrative costs associated with the abatement. Costs may be recovered pursuant to this title through procedures set forth herein or through a court of competent jurisdiction.
- (d) If the city undertakes preparatory or other steps to perform an abatement pursuant to an administrative order, but the responsible person abates the violation before the city completes the abatement, the administrative hearing officer may still order the responsible person to pay all actual and administrative costs incurred by the city in undertaking preparatory or other steps to abate the violation.
- (e) When the abatement is complete, a report describing the work performed and an itemized account of the total abatement costs shall be prepared by the city. The report shall contain the names and addresses of the responsible person, and the tax parcel numbers.
- (f) The enforcement official shall notify the responsible person(s) of the abatement action taken by the city. The notice shall be served within ten (10) business days after completion of the abatement and shall include a description of the work performed and an itemized statement of costs. Full payment of actual and administrative costs shall be made by the responsible person to the city within twenty (20) days after the date of the notice.

#### **#-1-16. EMERGENCY ABATEMENT**

- (a) Requirements for Emergency Abatement:
- i. Whenever the administrative hearing officer determines that a hazard exists that presents a clear and immediate danger, the administrative hearing officer may issue an emergency administrative order directing one or more of the following actions be taken:
    - (1) Immediate evacuation of any and all owners, tenants and occupants, and prohibiting occupancy until all imminent hazards have been corrected;
    - (2) Posting of the premises as unsafe, substandard, or dangerous;
    - (3) Boarding, fencing, or securing any building or site;



- (4) Razing and grading the premises to the extent necessary to remove any imminent hazard to the general public;
  - (5) Making emergency repairs;
  - (6) Confiscating endangered domesticated animals; or
  - (7) Taking any other action appropriate to eliminate or protect the public against an imminent hazard.
- ii. This emergency administrative order shall identify the violation and be served on the responsible person(s) at or before the time the ordered actions are to take place.
  - iii. The enforcement official shall pursue, and the administrative hearing officer shall order only the minimum level of correction or abatement as necessary to eliminate the immediacy of the hazard.
  - iv. The city may also pursue any other administrative or judicial remedy to abate violations.
- (b) Prior notice to the responsible person shall not be required for an emergency abatement. After an emergency abatement, the city shall provide the responsible person with the itemized statement of costs and notify the responsible person of the abatement action taken and the location of any seized and removed personal property. This notice and itemized statement of costs shall be served within ten (10) business days after completion of the emergency abatement.
  - (c) The responsible person shall be liable for all costs associated with an emergency abatement.

#### **#-1-17. NON-PROPERTY RELATED EMERGENCY:**

- (a) Authority: The administrative hearing officer may issue an administrative order suspending or revoking a license or permit and/or an emergency cease and desist order if:
  - i. Credible facts known by, or presented to, the administrative hearing officer show an imminent hazard; and
  - ii. The imminent hazard requires immediate action.
- (b) Requirements: In issuing an emergency order, the administrative hearing officer shall:
  - i. Limit the emergency order to require only the action necessary to prevent or avoid the danger to the public health, safety, or welfare;
  - ii. Issue a written order, effective immediately, that includes a brief statement of findings of fact, conclusions of law, and reasons for the order; and
  - iii. Serve the emergency order on the persons who are required to comply with the order.

#### **#-1-18. CIVIL FINES:**

- (a) Assessment:
  - i. Any person violating any provision of the Revised Ordinances of Sandy City may be subject to the assessment of civil fines for each violation, except civil fines shall not be assessed when a criminal case has been filed for the same violation.
  - ii. Interest at the default rate provided in the Utah Code shall be assessed on all unpaid civil fines and costs, compounded monthly, until the fines and costs have been paid in full.
  - iii. Civil fines for violations of any provision of the Revised Ordinances of Sandy City or Utah Code shall be assessed pursuant to the city's fee schedule.

- iv. Civil fines shall begin to accrue on the date set forth in an administrative citation or final administrative order and shall continue to accrue and be owed to the city for each and every subsequent day of violation whether or not additional administrative citations or administrative orders are issued.
- (b) The failure of any person to pay civil fines assessed within the specified time may result in the city pursuing any and all legal remedies to collect the civil fines.
- (c) Payment of fines shall not excuse the failure to correct the violation, nor shall it bar further enforcement action by the city.

#### **#-1-19. RECOVERY OF FINES AND COSTS:**

- (a) Purpose:
  - i. The city council finds that there is a need to recover actual and administrative costs incurred by the city to enforce compliance with the Revised Ordinances of Sandy City.
  - ii. The city council further finds that the assessment of costs in addition to fines is an appropriate method to recover actual and administrative costs of abating violations, performing re-inspections, retaining a hearing officer, retaining attorneys, preparing for and conducting hearings, title searches, and any additional costs incurred by the city for each individual case. The assessment and collection of costs shall not preclude the imposition of any administrative or judicial civil fines.
- (b) Notification of re-inspection costs shall be described on the administrative citation.
- (c) A request for hearing for any of the permitted purposes under this title shall be accompanied by a filing fee as prescribed in the city's fee schedule.
- (d) The failure of any person to pay filing fees will result in no hearing being scheduled.
- (e) The city council finds that recordation of code enforcement tax liens will assist in the collection of fines and costs and otherwise achieve compliance with the Revised Ordinances of Sandy City. The city council further finds that collection of civil fines and costs is important in deterring future violations and maintaining the integrity of the Revised Ordinances of Sandy City. The procedures established in this title shall be used to complement existing administrative or judicial remedies that may be pursued to address violations of the Revised Ordinances of Sandy City.
- (f) Procedures for Tax Liens without a Judgment:
  - i. The city treasurer is authorized to record with the county treasurer a code enforcement tax lien against real property for the accrued fines and costs incurred during a city performed abatement.
  - ii. The failure of any person with a legal or financial interest in the property to actually receive the notice of code enforcement tax lien shall not affect the validity of the lien or any proceedings taken to collect the outstanding fines and costs associated with an abatement.
- (g) Once payment in full is received for the outstanding fines costs, or the amount is deemed satisfied pursuant to a subsequent administrative or judicial order, the city treasurer shall either record a notice of satisfaction against the same property, or provide the property owner with the notice of satisfaction to be recorded. The notice of satisfaction shall include the same information as provided for in the original code enforcement tax lien. Such notice of satisfaction shall cancel the code enforcement tax lien.

- (h) Once a civil judgment has been obtained from the appropriate court approving fines and costs against the responsible person(s), the city treasurer may record that judgment as a code enforcement tax lien against any real property owned by the responsible person(s).
- (i) After obtaining a civil judgment awarding fines and/or costs, the city treasurer may enforce the judgment by use of all appropriate legal means, including, but not limited to, garnishment of wages and accounts and foreclosure on real and personal property.

**#-1-20. CODE ENFORCEMENT FUND:**

There is hereby established a revolving fund to be known as the code enforcement fund to defray costs of administrative code enforcement. The fund shall be reimbursed by collection of fines, assessed costs and filing fees collected pursuant to this title, together with accruing interest, if any. The city treasurer shall establish accounting procedures to ensure proper account identification, credit, and collection. This fund may be operated and used and expended to pay for the city's costs of administrative code enforcement including, without limitation, abatements where the city must act and advance the costs, use of an administrative hearing officer and other professional services and other administrative costs. All monies recovered from the sale or transfer of seized or forfeited property shall be paid to the city treasurer, who shall credit the amount to the code enforcement fund.