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Staff Report Memorandum September 7, 2023

To: City Council via Planning Commission
From: Community Development Department
Subject: Amendments to Title 21 of the Land Development Code related to Violations, Enforcement and Penalties in the Sensitive Area Overlay Zone CA08252023-0006593

Public Hearing Notice: This item has been noticed on public websites, sent to affected entities and posted in three public locations at least 10 days prior to the Public Hearing.

Request

On behalf of Sandy City, the Community Development Department is proposing to amend Title 21, *Land Development Code*, Chapter 15, *Sensitive Area Overlay Zone*, by adding Section 7, *Violations, Enforcement and Penalties*. The purpose of the code amendments is to establish an administrative procedure and penalties for enforcement on violations within the Sensitive Area Overlay (SAO) zone. The effect of the code amendment is the creation of an efficient administrative enforcement mechanism to deter violations from occurring and establishing incentives to promptly cure the violation.

These amendments have been reviewed by an interdepartmental team consisting of the Community Development, Public Works, and City Attorney Departments. The specific amendments to the Land Development Code are included as Exhibit "A" (red-lined version) and Exhibit "B" (clean version).

Background

It has come to the attention of the Planning Commission and City staff that a more effective code enforcement mechanism and efficient administrative procedure with penalty schedule is needed to deter violations from occurring in the SAO zone of Sandy. Currently, code enforcement penalties are applied through civil or criminal courts; and violations of the Land Development Code are punishable as a Class C misdemeanor ([Chapter 21-2](#)). This process can be costly and time consuming for the City, with uncertain and sometimes ineffective outcomes. Sandy City does have an alternative to the courts under the "Administrative Code Enforcement" section of the Municipal Code ([Chapter 1-4](#)); however, a clear enforcement procedure and penalty fee schedule for SAO violations has not been adopted by the City to date. The proposed code amendment is intended to ameliorate the current situation by establishing an administrative enforcement process and penalty fee schedule for violations that occur within the SAO zone.

Case History	
Case Number	Case Summary
Ord. No. 18-32	An ordinance amending Title 1 by adding a new Section Titled: “Administrative Code Enforcement” to the Sandy Municipal Code. (10-26-2018)
Ord. No. 14-29	Amendment to Title 15A of the Revised Ordinances of Sandy City (the Land Development Code), 2008 by amending Chapter 15, ““Sensitive Area Overlay Zone,” (and other sections of the Code) relating to regulations to private roads and associated development improvements for new subdivisions. (9-28-2014)
Ord. No. 15-04	Amendment to Title 15A of the Revised Ordinances of Sandy City (the Land Development Code), 2008 by amending Chapter 15, ““Sensitive Area Overlay Zone,” to add the Public Works Department policy for determining an anomaly relative to 30 percent or greater slopes of terrain. (3-23-2015)
Ord. No. 15-22	Amendment to Title 15A of the Revised Ordinances of Sandy City (the Land Development Code), 2008 by amending Chapter 15, ““Sensitive Area Overlay Zone,” (and other sections of the Code) to add language regarding Sandy City Utah Pollution Discharge Elimination System (UPDES). These changes relate to requirements for Storm Water Pollution Prevention Plan (SWPP) and encourage a Low Impact Development (LID) approach to new development in the City. (7-15-2015)
Ord. No. 19-23	Amendment to Title 21 of the Sandy City Municipal Code (formerly Title ISA of the Revised Ordinances of Sandy City) , Chapter 15, "Sensitive Area Overlay Zone," (and other sections of the Code) to align with regulations of the Fire Code Appendix. (10-8-2019)
Ord. No. 21-08	Amendment to Title 21 of the Sandy City Municipal Code, Chapter 15, “Sensitive Area Overlay Zone,” (and other sections of the Code) to amend certain code requirements related to Storm Water and Flood Plains. (3-23-2021)
Ord. No. 21-23	Amendment to Title 21 of the Sandy City Municipal Code, Chapter 15, “Sensitive Area Overlay Zone,” (and other sections of the Code) to address concerns with development in sensitive lands areas of the city and to address any deficiencies in the City’s regulatory controls and protections over those areas. (8-17-2021)

Public Notice

The city issued notice of the public hearing for the proposed code amendments on public websites, mailed notice to affected entities and posted in three public locations at least 10 days prior to the Planning Commission public hearing in accordance with the Land Development Code Sec. 21-36-1 and the Utah State Code § 10-9a-205.

Analysis

The purpose of the SAO is to provide standards, guidelines, and criteria having the effect of minimizing flooding, erosion, and other environmental hazards and protecting the natural scenic character of the sensitive areas and ensuring the efficient

expenditure of public funds ([Sec. 21-15-1](#)). Violations that occur within the Sensitive Area Overlay are a serious matter that can have negative impacts on the public health, safety and welfare, the environment and property values. Consequently, it is in the interest of the City and its residents to ensure the standards of the SAO are applied consistently and violations of those standards are avoided.

As discussed earlier in this report, enforcement through civil or criminal court is time consuming with uncertain outcomes or effectiveness. Alternatively, the proposed code amendment would establish fair procedures and a penalty structure that is efficient and effective in terms of time and expense. The specific amendments to the Land Development Code are included as Exhibit “A” (red-lined version) and Exhibit “B” (clean version).

The following is a summary of the proposed changes to Title 21:

1. A new Section to [Chapter 21-15](#) of the *Sensitive Area Overlay Zone* is added as Section 7 and titled: “*Violations, Enforcement and Penalties.*”
2. A violation is defined as construction, grading, filling, clearing or land disturbance in the SAO without first obtaining appropriate (permit) approval from the City.
3. A procedure for issuing citations, enforcement, and remediation of violations in the SAO is established.
4. A penalty fine schedule for minor and major violations, as well as a base fine and daily fine amount is established, as shown below:

	Base Fine	Daily Fine (additional to base fine)
Minor Violation – Encroachment up to 250 square feet or less of affected area	\$1,000	\$10
Major Violation – Encroachment greater than 250 square feet of affected area	\$5,000	\$25

5. Incentives for curing a violation in a timely manner is established. The base fine amount may not be reduced, but the daily fine amount may be reduced, as shown below:

	Length of Time to Cure	Reduction to Total Daily Fine Amount
Minor Violation	30 Days	100%
	60 Days	75%
	120 Days	50%
	180 Days	25%
	Over 180 days	0%
Major Violation	90 Days	75%
	180 Days	50%
	365 Days	25%
	Over 365 Days	0%

6. Where appropriate, references to the existing “Administrative Code Enforcement” section of the Code ([Chapter 1-4](#)); are incorporated into the proposal for consistency and to avoid redundancy.

Non-Conforming Uses

This code amendment would not create any non-conforming situations.

Land Development Code Purpose Compliance

The Sandy City Land Development Code in 21-1-3 lists the criteria explaining the intent and purpose of the Ordinance. The purpose is:

21-1-3 Purpose

This Code is adopted to implement Sandy City's General Plan and to promote public health, safety, convenience, aesthetics, welfare; efficient use of land; sustainable land use and building practices; transportation options and accessibility; crime prevention; timely citizen involvement in land use decision making; and efficiency in development review and land use administration. Specifically, this Code is established to promote the following purposes:

1. General

- a. To facilitate the orderly growth and development of Sandy City.*
- b. To facilitate adequate provision for transportation, water, sewage, schools, parks, and other public requirements.*
- c. To stabilize property values.*
- d. To enhance the economic well-being of Sandy City and its inhabitants.*

2. Implementation of General Plan

To coordinate and ensure the implementation of the City's General Plan through effective execution of development review requirements, adequate facility and services review and other goals, policies, or programs contained in the General Plan.

3. Comprehensive, Consistent and Equitable Regulations

To establish a system of fair, comprehensive, consistent and equitable regulations, standards and procedures for review and approval of all proposed land development within the City.

4. Efficiently and Effectively Managed Procedures

- a. To promote fair procedures that are efficient and effective in terms of time and expense.*
- b. To be effective and responsive in terms of the allocation of authority and delegation of powers and duties among ministerial, appointed, and elected officials.*
- c. To foster a positive customer service attitude and to respect the rights of all applicants and affected citizens.*

The proposed code amendment is consistent with the purpose of the Land Development Code because the proposal promotes the public health, safety and welfare; ensures consistency and equitable standards; establishes fair procedures that are efficient and effective in terms of time and expense; facilitates the orderly growth and development of Sandy City; and is consistent with the Sandy City General Plan.

General Plan Compliance

The Sandy City General Plan encourages appropriate development standards for all uses and zoning categories within the city. The proposed code amendment furthers that goal and objective by establishing appropriate land development standards for all uses and zoning categories within Sandy City.

Recommendation

Staff recommends that the Planning Commission forward a positive recommendation to the City Council to amend Title 21, of the Sandy Municipal Code, relating to Violations, Enforcement and Penalties in the Sensitive Area Overlay zone as shown in Exhibit "A", based on the following findings:

Findings:

1. The City Council may amend land use ordinances consistent with the purposes of the Sandy Land Development Code, the Sandy City General Plan, and the Utah Code, Municipal Land Use, Development, and Management Act

per Title 21 Chapter 5 of the Sandy Municipal Code.

2. The proposal is reviewed by the Planning Commission and City Council in accordance with the requirements of Title 21 Chapter 5 of the Sandy Municipal Code.
3. The proposal complies with the purpose of the Land Development Code under Section 21-1-03 by promoting the public health, safety and welfare; ensuring consistent and equitable standards; establishing fair procedures that are efficient and effective in terms of time and expense; and by facilitating the orderly growth and development of Sandy City.
4. The proposal complies with the Goals and Policies of the General Plan by establishing appropriate development standards for all uses and zoning categories within Sandy City.

Planner:



Melissa Anderson
Zoning Administrator

Exhibits:

- A. Proposed code amendments (red-lined version)
- B. Proposed code amendments (clean version)

File Name: S:\USERS\PLN\STAFFRPT\2023\CA08252023-0006593 - ENFORCEMENT PENALTIES\STAFF REPORT\STAFF REPORT - ENFORCEMENT PENALTY IN SAO.FINAL.DOCX

Title 21 Chapter 15 Sensitive Area Overlay Zone is amended by adding Section 7 "Violations, Enforcement and Penalties" as follows:

CHAPTER 21-15. SENSITIVE AREA OVERLAY ZONE

...

Sec. 21-15-7. Violations, Enforcement and Penalties.

(a) Violations. It shall be a violation for any person to:

- (1) Perform any construction, grading, filling, clearing or land disturbance in the Sensitive Area Overlay without first obtaining required City approvals, or
- (2) Fail to comply with the provisions of this Chapter.

(b) Stop-Work Order and Citation. Upon a determination that a violation exists, the Director, or designee shall issue a citation and stop-work order, such that no further work shall be performed or approved, until otherwise authorized by the Community Development Department. Stop-work orders take effect immediately upon issuance.

(c) Unlawful Continuance. Any person who continues any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be subject to enforcement including additional fines and penalties as prescribed by local or state law.

(d) Enforcement.

- (1) Enforcement may be done criminally, civilly, or administratively pursuant to Title 1 Chapter 4 of this Code.
- (2) Upon a determination that a violation exists, the Director, or designee, shall contact the property owner in writing to issue an administrative citation pursuant to Title 1 Chapter 4 of this Code. Within the time stated in the citation, the responsible party shall submit an application to the Community Development Department in accordance with this Chapter to remove, mitigate, restore, or otherwise cure the violation.
- (3) Remediation that requires alteration of hillsides containing 30 percent or greater slope may only be authorized by the Planning Commission upon recommendation of the Director and City Engineer.

(e) Fines. Violations of this Chapter shall result in administrative fines pursuant to Table 1 shown below. Base fines shall be assessed for the initial violation and daily fines shall accrue in accordance with Title 1 Chapter 4 of this Code. The following periods of time shall not be assessed a daily fine:

- (1) The number of days under City review and processing of a complete permit application.
- (2) Seasonal conditions such as snow, excessive moisture, or environmental factors that would prevent the physical remediation of the violation, as determined by the Director, or designee.

<u>Table 1</u>		
	<u>Base Fine</u>	<u>Daily Fine</u> <u>(additional to base fine)</u>
<u>Minor Violation – Encroachment up to 250 square feet or less of affected area</u>	<u>\$1,000</u>	<u>\$10</u>
<u>Major Violation – Encroachment greater than 250 square feet of affected area</u>	<u>\$5,000</u>	<u>\$25</u>

(f) Abatement of Daily Fines for Correction and Payment. The base fine shall not be forgiven or abated. The total daily fine amount may be partially abated after the violation is cured and inspected and approved by the City.

(1) The Director, or designee, may reduce the total daily fine amount for promptly curing the violation pursuant to the following schedule:

Table 2		
	<u>Length of Time to Cure</u>	<u>Reduction to Total Daily Fine Amount</u>
<u>Minor Violation</u>	<u>30 Days</u>	<u>100%</u>
	<u>60 Days</u>	<u>75%</u>
	<u>120 Days</u>	<u>50%</u>
	<u>180 Days</u>	<u>25%</u>
	<u>Over 180 days</u>	<u>0%</u>
<u>Major Violation</u>	<u>90 Days</u>	<u>75%</u>
	<u>180 Days</u>	<u>50%</u>
	<u>365 Days</u>	<u>25%</u>
	<u>Over 365 Days</u>	<u>0%</u>

(g) Final Assessment. The final assessment of the daily fine will be determined by the Director, or designee, and issued to the responsible party upon the earlier of the following to occur:

- (1) final approval of the corrective work by the City; or
- (2) expiration of the time for correction as set forth in the citation.

(h) Payment and Collection. The City will give written notice to the responsible party of each assessed fine. Payment must be made within 30 days. Thereafter the City will take all lawful action to collect the assessed amount.

(i) Appeal. A person may request an administrative hearing pursuant to Title 1 Chapter 4 of this Code.

Title 21 Chapter 15 Sensitive Area Overlay Zone is amended by adding Section 7 "Violations, Enforcement and Penalties" as follows:

CHAPTER 21-15. SENSITIVE AREA OVERLAY ZONE

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Sec. 21-15-7. Violations, Enforcement and Penalties.

- (a) *Violations.* It shall be a violation for any person to:
 - (1) Perform any construction, grading, filling, clearing or land disturbance in the Sensitive Area Overlay without first obtaining required City approvals, or
 - (2) Fail to comply with the provisions of this Chapter.
- (b) *Stop-Work Order and Citation.* Upon a determination that a violation exists, the Director, or designee shall issue a citation and stop-work order, such that no further work shall be performed or approved, until otherwise authorized by the Community Development Department. Stop-work orders take effect immediately upon issuance.
- (c) *Unlawful Continuance.* Any person who continues any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be subject to enforcement including additional fines and penalties as prescribed by local or state law.
- (d) *Enforcement.*
 - (1) Enforcement may be done criminally, civilly, or administratively pursuant to Title 1 Chapter 4 of this Code.
 - (2) Upon a determination that a violation exists, the Director, or designee, shall contact the property owner in writing to issue an administrative citation pursuant to Title 1 Chapter 4 of this Code. Within the time stated in the citation, the responsible party shall submit an application to the Community Development Department in accordance with this Chapter to remove, mitigate, restore, or otherwise cure the violation.
 - (3) Remediation that requires alteration of hillsides containing 30 percent or greater slope may only be authorized by the Planning Commission upon recommendation of the Director and City Engineer.
- (e) *Fines.* Violations of this Chapter shall result in administrative fines pursuant to Table 1 shown below. Base fines shall be assessed for the initial violation and daily fines shall accrue in accordance with Title 1 Chapter 4 of this Code. The following periods of time shall not be assessed a daily fine:
 - (1) The number of days under City review and processing of a complete permit application.
 - (2) Seasonal conditions such as snow, excessive moisture, or environmental factors that would prevent the physical remediation of the violation, as determined by the Director, or designee.

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Minor Violation – Encroachment up to 250 square feet or less of affected area	\$1,000	\$10
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- (1) final approval of the corrective work by the City; or
 - (2) expiration of the time for correction as set forth in the citation.
- (h) *Payment and Collection.* The City will give written notice to the responsible party of each assessed fine. Payment must be made within 30 days. Thereafter the City will take all lawful action to collect the assessed amount.
- (i) *Appeal.* A person may request an administrative hearing pursuant to Title 1 Chapter 4 of this Code.