

ORDINANCE 2005-05

AN ORDINANCE ADOPTING TITLE 5 OF TOOELE COUNTY CODE ESTABLISHING AN ADMINISTRATIVE CODE ENFORCEMENT HEARING PROGRAM

THE COUNTY LEGISLATIVE BODY OF THE COUNTY OF TOOELE ORDAINS

AS FOLLOWS:

SECTION I - ADOPTING. The Tooele County Code, Title 5 is adopted to read as attached hereto.

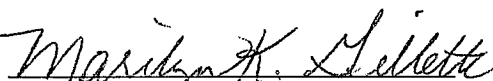
SECTION II - REPEALER. Ordinances in conflict herewith are hereby repealed to the extent of such conflict.

SECTION III - EFFECTIVE DATE. This ordinance shall take effect fifteen (15) days after its passage, provided the same has been published, with the name of the members voting for and against the same, for at least one publication in one issue of a newspaper published in and having general circulation in Tooele County.

IN WITNESS WHEREOF, the legislative body of Tooele County passed, approved and enacted this ordinance this 15th day of February 2005.

ATTEST:

TOOELE COUNTY COMMISSION:



DENNIS D. EWING, Clerk
~~Marilyn K. Gillette~~
Chief Deputy Clerk


DENNIS ROCKWELL, Chairman



APPROVED AS TO FORM:

Commissioner Rockwell voted *aye*
Commissioner Lawrence voted *aye*
Commissioner Johnson voted *aye*


DOUGLAS J. AHLSTROM
Tooele County Attorney

TITLE 5

ADMINISTRATIVE CODE ENFORCEMENT HEARING PROGRAM

Chapter

1. General.
2. Notice and Service of Process.
3. Abatement.
4. Administrative Citation Program.
5. Administrative Code Enforcement Hearings.
6. Appeal of Administrative Code Enforcement Hearing Decision.
7. Recordation of Notices.
8. Civil Penalties.
9. Administrative Fees and Costs.
10. Civil Violations.
11. Tax Liens and Recovery Cost Methods.
12. Abatement Funding and Collection of Funds.

CHAPTER 1

GENERAL

Section

- 5-1-1. Short title.
- 5-1-2. Purpose.
- 5-1-3. Scope.
- 5-1-4. Existing law continued.
- 5-1-5. Criminal prosecution right.
- 5-1-6. No mandatory duty -- Civil liability.
- 5-1-7. General rules of interpretation.
- 5-1-8. Definitions.
- 5-1-9. Acts include causing, aiding, and abetting.
- 5-1-10. General enforcement authority.
- 5-1-11. Adoption of policy and procedures.
- 5-1-12. Authority to inspect.
- 5-1-13. Citations.
- 5-1-14. False information or refusal prohibited.
- 5-1-15. Failure to obey a subpoena.

5-1-1. Short title.

This title shall be known as the "Administrative Code Enforcement Hearing Program" or "A.C.E. Hearing Program." This title shall also be known as Title 5, Tooele County Code. It may be cited and pleaded under either designation. (Ord. 2005-05, 2/15/05)

5-1-2. Purpose.

The county commission finds that the enforcement of the Tooele County Code, the Uniform Zoning Ordinance of Tooele County, and applicable state

statutes throughout the County is an important public service. Code enforcement is vital to the protection of the public's health, safety, and quality of life. The county commission recognizes that enforcement starts with the drafting of precise regulations that can be effectively applied in administrative code enforcement hearings and judicial proceedings. The county commission further finds that a 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 county attorney to file a judicial action to gain compliance. (Ord. 2005-05, 2/15/05)

5-1-3. Scope.

The provisions of this title may be applied to all violations of the Tooele County Code and zoning ordinance. It has been designed as an additional remedy for the County to use in achieving compliance of its ordinances. (Ord. 2005-05, 2/15/05)

5-1-4. Existing law continued.

The provisions of this title do not invalidate any other title or ordinance but shall be read in conjunction with those titles and ordinances as an additional remedy available for enforcement of those ordinances. (Ord. 2005-05, 2/15/05)

5-1-5. Criminal prosecution right.

The County has sole discretion in deciding whether to file a civil or criminal case for the violation of any of its codes, ordinances, or state statutes. The County may choose to file both or one or the other. The enactment of this administrative remedy shall in no way interfere with the County's right to prosecute violations as criminal offenses. The County may use any of the remedies available under the law in both civil and criminal prosecution. If the County chooses to file both civil and criminal charges for the same day of violation, no civil penalties may be assessed, but all other remedies are available. (Ord. 2005-05, 2/15/05)

5-1-6. No mandatory duty -- Civil liability.

It is the intent of the county commission that in establishing performance standards or establishing an obligation to act by a County officer or employee, these standards shall not be construed as creating a mandatory duty for purposes of tort liability if the officer or employee fails to perform his or her directed duty or duties. (Ord. 2005-05, 2/15/05)

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5-1-7. General rules of interpretation.

For purposes of this title:

- (1) Any gender includes the other gender.
- (2) "Shall" is mandatory; "may" is permissive.
- (3) The singular number includes the plural and the plural the singular.
- (4) Words used in the present tense include the past and future tense and vice versa.
- (5) Words and phrases used in this title and not specifically defined shall be construed according to the context and approved usage of the language.
(Ord. 2005-05, 2/15/05)

5-1-8. Definitions.

As used in this title:

- (1) "Abatement" means any action the County may take on public or private property and any adjacent property as may be necessary to remove or alleviate a violation; including, but not limited to, demolition, removal, repair, boarding, and securing or replacement of property.
- (2) "Administrative code enforcement order" means an order issued by a hearing officer. The order may include an order to abate the violation, pay civil penalties and administrative costs, or take any other action as authorized or required by this title and applicable state statutes.
- (3) "Administrative code enforcement hearing officer" means the administrative code enforcement hearing officer presiding established pursuant to this title.
- (4) "County" means the area within the unincorporated areas of Tooele County.
- (5) "County commission" means the Board of County Commissioners of Tooele County.
- (6) "Code enforcement lien" means a lien recorded to collect outstanding civil penalties, administrative fees, and costs.
- (7) "Code enforcement performance bond" means a bond posted by a responsible person to ensure compliance with the Tooele County Code and zoning ordinance, applicable state titles, a judicial action, or an administrative code enforcement order.
- (8) "Enforcement official" means any person authorized to enforce violations of the Tooele County Code, the zoning ordinance, or applicable state statutes.
- (9) "Financial institution" means any person that holds a recorded mortgage or deed of trust on a property.
- (10) "Good cause" means an incapacitating illness; death; lack of proper notice; unavailability due to unavoidable, unpreventable, or extenuating emergency or circumstance; a required act that causes an imminent

and irreparable injury; or acts of nature adverse to performing required acts.

- (11) "Hearing officer" means the administrative code enforcement hearing officer.
- (12) "Imminent life safety hazard" means any condition that creates a present, extreme, and immediate danger to life, property, health, or public safety.
- (13) "Legal interest" means any interest that is represented by a document; such as a deed of trust, quitclaim deed, mortgage, judgment lien, tax or assessment lien, mechanic's lien, or other similar instrument that is recorded with the county recorder.
- (14) "Notice of compliance" means a document issued by the enforcement official representing that a property complies with the requirements outlined in the notice of violation.
- (15) "Notice of satisfaction" means a document or form approved by the administrative code enforcement hearing officer or designee, which indicates that all outstanding civil penalties and costs have been either paid in full or that an agreed amount has been negotiated or that a subsequent administrative or judicial decision has resolved the outstanding debt. In addition to the satisfaction of the financial debt, the property must also be in compliance with the requirements outlined in the notice of violation.
- (16) "Notice of violation" means a written notice prepared by the enforcement official that informs a responsible person of code violations and orders them to take certain steps to correct the violations.
- (17) "Oath" includes affirmations and oaths.
- (18) "Ordinance enforcement administrator" means the zoning administrator.
- (19) "Person" means any natural person; firm; joint venture; joint stock company; partnership; association; club; company; corporation; business trust; organization; or the manager, lessee, agent, sergeant, officer, or employee of any of them; or any other entity that is recognized by law as the subject of rights or duties.
- (20) "Property owner" means the record owner of real property based on the county recorder's records.
- (21) "Public nuisance" means any condition caused, maintained, or permitted to exist that constitutes a threat to the public's health, safety, and welfare; or that significantly obstructs, injures, or interferes with the reasonable or free use of property in a neighborhood or community or by any considerable number of persons. A public nuisance also has the same meaning as set forth in the Utah Code Annotated.
- (22) "Responsible person" means a person who is responsible for causing or maintaining a violation of the Tooele County Code, zoning ordinance, or applicable

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state statutes. 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.

(23) "Written" includes handwritten, typewritten, photocopied, computer printed, or facsimile.

(24) "Zoning ordinance" means the Uniform Zoning Ordinance of Tooele County. (Ord. 2005-05, 2/15/05)

5-1-9. Acts include causing, aiding, and abetting.

Whenever any act or omission is made unlawful in this title, it shall include causing, permitting, aiding, or abetting such act or omission. (Ord. 2005-05, 2/15/05)

5-1-10. General enforcement authority.

Whenever the ordinance enforcement administrator or enforcement official finds that a violation of the Tooele County Code, zoning ordinance, or applicable state statutes has occurred or continues to exist, the appropriate administrative enforcement procedure may be used as outlined in this title. The ordinance enforcement administrator or designated enforcement official has the authority and power necessary to gain compliance with the provisions of the Tooele County Code, zoning ordinance, and applicable state statutes. These powers include the power to issue notices of violation and administrative citations, inspect public and private property, abate public and private property, and use whatever judicial and administrative remedies are available under the Tooele County Code, zoning ordinance, or applicable state statutes. (Ord. 2005-05, 2/15/05)

5-1-11. Adoption of policy and procedures.

The hearing officer is authorized to develop policies and procedures relating to the hearing procedures, scope of hearings, subpoena powers, and other matters relating to the Administrative Code Enforcement Hearing Program. (Ord. 2005-05, 2/15/05)

5-1-12. Authority to inspect.

The ordinance enforcement administrator or designated enforcement official is authorized to enter upon any property or premises to ascertain whether the provisions of the Tooele County Code, zoning ordinance, or applicable state statutes are being obeyed and to make any examinations and surveys as may be necessary in the performance of the enforcement duties. This may include the taking of photographs, samples, or other physical evidence. All inspections, entries, examinations, and surveys shall be done in a reasonable manner based upon cause. If the responsible person

refuses to allow the enforcement official to enter the property, the enforcement official shall obtain a search warrant. (Ord. 2005-05, 2/15/05)

5-1-13. Citations.

The ordinance enforcement administrator or designated enforcement official is authorized to issue a misdemeanor citation or administrative citation to any person whenever there is reasonable cause to believe that the person has committed a violation of the Tooele County Code, zoning ordinance, or applicable state statutes in the enforcement official's presence. (Ord. 2005-05, 2/15/05)

5-1-14. False information or refusal prohibited.

It shall be unlawful for any person to willfully make a false statement or refuse to give his or her name or address with intent to deceive or interfere with the ordinance enforcement administrator or an enforcement official when in the performance of official duties under the provisions of this title. A violation of this is a class C misdemeanor. (Ord. 2005-05, 2/15/05)

5-1-15. Failure to obey a subpoena.

It is unlawful for any person to refuse or fail to obey a subpoena issued for an administrative code enforcement hearing. Failure to obey a subpoena constitutes contempt and may be prosecuted as a class B misdemeanor. (Ord. 2005-05, 2/15/05)

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CHAPTER 2

NOTICE AND SERVICE OF PROCESS

Section

5-2-1. Service of process.

5-2-2. Constructive notice of recorded documents.

5-2-3. Notice of violation.

5-2-4. Failure to bring property into compliance.

5-2-5. Inspections.

5-2-1. Service of process.

(1) Whenever service is required to be given under this title for enforcement purposes, the document shall be served by:

(a) regular mail, postage prepaid, to the last known address of the owner or other responsible person;

(b) posting the notice conspicuously on or in front of the property. If not inhabited, the notice must also be mailed as in Subsection (1)(a). The form of the posted notice shall be approved by the ordinance enforcement administrator or designee;

(c) personal service pursuant to Utah Rules of Civil Procedure Rule 4(e)(1) or Rule 4(e)(5); or

(d) publishing in a newspaper of general circulation where the identity or whereabouts of the person to be served are unknown and cannot be ascertained through reasonable diligence, where service is impracticable under the circumstances, or where there exists good cause to believe that the person to be served is avoiding service of process.

(2) Service by regular mail shall be deemed served on the third day after the date of mailing.

(3) If service complies with the requirements of this section, it shall be deemed a valid service even if a party claims not to have received the service and it shall not affect the validity of any proceedings taken under this title.

(4) The failure to serve all responsible persons shall not affect the validity of any proceedings. (Ord. 2005-05, 2/15/05)

5-2-2. Constructive notice of recorded documents.

Whenever a document is recorded with the county recorder as authorized or required by this title or applicable state statutes, recordation shall provide constructive notice of the information contained in the recorded documents. (Ord. 2005-05, 2/15/05)

5-2-3. Notice of violation.

(1) Whenever the ordinance enforcement administrator or designated enforcement official

determines that a violation of the Tooele County Code, zoning ordinance, or applicable state statutes has occurred or continues to exist, the Administrator or enforcement official may choose to proceed under the administrative abatement procedure. If this procedure is used, a notice of violation shall be issued to a responsible person. The notice of violation shall include the following information:

(a) name of property owner;

(b) street address of violation;

(c) the date when the violation was observed;

(d) all codes violated and a description of condition of the property that violates the applicable codes;

(e) a statement explaining the type of remedial action required to permanently correct outstanding violations, which may include corrections, repairs, demolition, removal, or other appropriate action;

(f) a specific date to correct the violations listed in the notice of violation, which date shall be at least ten days from the date of service;

(g) an explanation of the consequences should the responsible person fail to comply with the terms and deadlines as prescribed in the notice of violation, which may include, but is not limited to, criminal prosecution, civil penalties, revocation of permits, recordation of the notice of violation, withholding of future county permits, abatement of the violation, costs, administrative fees, and any other legal remedies;

(h) a statement that civil penalties will begin to accrue immediately on expiration of the date to correct violations;

(i) the amount of the civil penalty on each violation and a statement that the penalty will accrue daily until the property is brought into compliance;

(j) a statement that only one notice of violation is required for any 12-month period and that civil penalties begin immediately upon any subsequent violations of the notice. The responsible person may request a hearing on the renewed violations by following the same procedure as provided for the original notice; and

(k) procedures to request a hearing as provided in Section 5-5-3 and consequences for failure to request a hearing.

(2) The notice of violation shall be served by one of the methods of service listed in Section 5-2-1.

(3) More than one notice of violation may be issued against the same responsible person if it encompasses different dates or different violations. (Ord. 2005-05, 2/15/05)

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5-2-4. Failure to bring property into compliance.

(1) If a responsible person fails to bring a violation into compliance within ten days of service of the notice of violation, civil penalties shall be owed to the County for each and every subsequent day of violation.

(2) Failure to comply with the notice of violation is a class B misdemeanor. (Ord. 2005-05, 2/15/05)

5-2-5. Inspections.

It shall be the duty of the responsible person served with a notice of violation to request an inspection when the property has been brought into compliance. It is prima facie evidence that the violation remains on the property if no inspection is requested. Civil penalties accumulate daily until the property has been inspected and a notice of compliance is issued. Reinspection fees shall be assessed if more than one inspection is necessary. (Ord. 2005-05, 2/15/05)

CHAPTER 3

ABATEMENT

Section

5-3-1. Purpose.

5-3-2. Procedures on emergency abatement.

5-3-3. Notice of emergency abatement.

5-3-4. Authority.

5-3-5. Procedures.

5-3-6. Authority to abate.

5-3-7. Procedures for abatement.

5-3-1. Purpose.

(1) Whenever the ordinance enforcement administrator determines that an imminent life safety hazard exists that requires immediate correction or elimination, the administrator may exercise the following powers without prior notice to the responsible person:

(a) order the immediate evacuation of any tenants and prohibit occupancy until all repairs are completed;

(b) post the premises as unsafe, substandard, or dangerous;

(c) board, fence, or secure the building or site;

(d) raze and grade that portion of the building or site to prevent further collapse and remove any hazard to the general public;

(e) make any minimal emergency repairs as necessary to eliminate any imminent life safety hazard; or

(f) take any other action appropriate to eliminate the emergency.

(2) The ordinance enforcement administrator has the authority, based on cause, to enter the property without a search warrant or court order to accomplish the above listed acts to abate the imminent life safety hazard.

(3) The responsible person shall be liable for all costs associated with the abatement of the life safety hazard. Costs may be recovered pursuant to this title. (Ord. 2005-05, 2/15/05)

5-3-2. Procedures on emergency abatement.

(1) The ordinance enforcement administrator shall pursue only the minimum level of correction or abatement as necessary to eliminate the immediacy of an imminent life safety hazard. Costs incurred by the County during the emergency abatement process shall be assessed and recovered against the responsible person through invoicing and the procedures in Chapter 11.

(2) The ordinance enforcement administrator may also pursue any other administrative or judicial remedy to abate any remaining violations. (Ord. 2005-05, 2/15/05)

5-3-3. Notice of emergency abatement.

After an emergency abatement, the enforcement official shall notify the owner or responsible person of the abatement action taken. This notice shall be served within ten days of completion of the abatement. (Ord. 2005-05, 2/15/05)

5-3-4. Authority.

Whenever the ordinance enforcement administrator, chief building officer, or fire marshal determines that a property or building requires demolition, any one of them may demolish or remove the offending structure or exercise any or all of the powers listed in Section 5-3-1 once appropriate notice has been given to a responsible person pursuant to the Uniform Abatement of Dangerous Buildings Code or Uniform Fire Code as required under state law. The ordinance enforcement administrator is authorized to assess all costs for the abatement to the responsible person and use any remedy available under the law to collect the costs. If additional abatements are necessary within two years, treble costs may be assessed against the responsible person for the actual abatement. (Ord. 2005-05, 2/15/05)

5-3-5. Procedures.

Once the ordinance enforcement administrator has determined that the chief building officer or the fire marshal has complied with all of the notice

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requirements of the applicable laws, the property will be abated pursuant to the abatement remedy. Other applicable remedies may also be pursued. (Ord. 2005-05, 2/15/05)

5-3-6. Authority to abate.

The ordinance enforcement administrator is authorized to enter upon any property or premises to abate the violation of the Tooele County Code, zoning ordinance, and applicable state statutes. The removal or abatement of signs on public property require no notice but do invoke the civil penalty associated with their placement and costs of removal. (Ord. 2005-05, 2/15/05)

5-3-7. Procedures for abatement.

(1) Once the procedures set forth in this title have been completed, the violation may be abated by County personnel or by a private contractor acting under the direction of the County.

(2) County personnel or a private contractor may enter upon private property in a reasonable manner to abate the ordinance violation as specified in the notice of violation or administrative code enforcement order.

(3) If the responsible person abates the violation before the County performs the actual abatement pursuant to a notice of violation or administrative code enforcement order, the ordinance enforcement administrator may still assess all costs incurred by the County against the responsible person.

(4) When the abatement is completed, a report describing the work performed and an itemized account of the total abatement costs shall be prepared by the ordinance enforcement administrator. The report shall contain the names and addresses of the responsible persons of each parcel and the tax parcel number.

(5) The ordinance enforcement administrator shall serve the notice of costs and the itemized bill of costs by certified mail to the last known address of the responsible person. The notice shall demand full payment within 20 days to the county treasurer.

(6) The ordinance enforcement administrator shall schedule a hearing to review the itemized bill for costs if requested in writing by any or all responsible persons. (Ord. 2005-05, 2/15/05)

CHAPTER 4

ADMINISTRATIVE CITATION PROGRAM

Section

5-4-1. Authority.

5-4-2. Procedures.

5-4-3. Contents of administrative citation.

5-4-4. Civil penalties assessed.

5-4-1. Authority.

(1) Any person violating any provision of the Tooele County Code, zoning ordinance, or applicable state statutes may be issued an administrative citation by an enforcement official as provided in this chapter.

(2) A civil penalty shall be assessed by means of an administrative citation issued by the enforcement official and shall be payable directly to the county treasurer.

(3) Penalties assessed by means of an administrative citation shall be collected in accordance with Chapter 11. (Ord. 2005-05, 2/15/05)

5-4-2. Procedures.

(1) Upon discovering any violation of the Tooele County Code, zoning ordinance, or applicable state statutes, an enforcement official may issue an administrative citation to a responsible person in the manner prescribed in this chapter or as prescribed in Section 5-2-1.

(2) If the responsible person is a business, the enforcement official shall attempt to locate the business owner and issue an administrative citation to the business owner. If the enforcement official can only locate the manager of the business, the administrative citation may be given to the manager of the business. A copy of the administrative citation may also be served upon the business owner or any other responsible person.

(3) Once the responsible person has been located, the enforcement official shall attempt to obtain the signature of that person on the administrative citation. If the responsible person refuses or fails to sign the administrative citation, the failure or refusal to sign shall not affect the validity of the citation and subsequent proceedings.

(4) If the enforcement official is unable to locate the responsible person for the violation, then the administrative citation shall be served upon the responsible person.

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(5) If no one can be located at the property, the administrative citation shall be posted in a conspicuous place on or near the property and a copy subsequently served upon the responsible person.

(6) The failure of any person with an interest in the property to receive notice shall not affect the validity of any proceedings taken under this title. (Ord. 2005-05, 2/15/05)

5-4-3. Contents of administrative citation.

Administrative citation shall:

(1) provide the date and location of the violations and the approximate time the violations were observed;

(2) refer to the codes violated and the titles of those sections;

(3) state the amount of penalty imposed for the violations;

(4) explain how the penalty shall be paid, the time period by which the penalty shall be paid, and the consequences of failure to pay the penalty;

(5) identify the right and the procedures to request a hearing; and

(6) contain the signature of the enforcement official and the signature of the responsible person, if he or she can be located. (Ord. 2005-05, 2/15/05)

5-4-4. Civil penalties assessed.

(1) Civil penalties shall be assessed immediately for each violation listed on the administrative citation. The penalties shall be those established by resolution of the county commission.

(2) Payment of the penalty shall not excuse the failure to correct the violations, nor shall it bar further enforcement action by the enforcement official. (Ord. 2005-05, 2/15/05)

CHAPTER 5

ADMINISTRATIVE CODE ENFORCEMENT HEARINGS

Section

5-5-1. Declaration of purpose.

5-5-2. Authority and scope of hearings.

5-5-3. Request for administrative code enforcement hearing.

5-5-4. Default hearings and orders.

5-5-5. Notification of administrative code enforcement hearing.

5-5-6. Disqualification of code enforcement hearing officer.

5-5-7. Powers of the administrative code enforcement hearing officer.

5-5-8. Procedures at administrative code enforcement hearing.

5-5-9. Failure to attend administrative code enforcement hearing.

5-5-10. Administrative code enforcement order.

5-5-11. Failure to comply with order.

5-5-1. Declaration of purpose.

The county commission finds that there is a need to establish uniform procedures for administrative code enforcement hearings conducted pursuant to the Tooele County Code. It is the purpose and intent of the county commission to afford due process of law to any person who is directly affected by an administrative action. Due process of law includes notice, an opportunity to participate in the administrative hearing, and an explanation of the reasons justifying the administrative action. These procedures are also intended to establish a forum to efficiently, expeditiously, and fairly resolve issues raised in any administrative code enforcement action. (Ord. 2005-05, 2/15/05)

5-5-2. Authority and scope of hearings.

Enforcement of Tooele County Code, zoning ordinance violations, and applicable state statutes may be presided over by an administrative code enforcement hearing officer. The hearing officer shall develop policies and procedures to regulate the hearing process for any violation of the Tooele County Code, zoning ordinance, and applicable state statutes that are handled pursuant to the administrative abatement procedures, the emergency abatement procedures, the demolition procedures, or the administrative citation procedures. (Ord. 2005-05, 2/15/05)

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5-5-3. Request for administrative code enforcement hearing.

(1) A person served with one of the following documents or notices has the right to request an administrative code enforcement hearing if the request is filed within ten calendar days from the date of service of one of the following notices:

- (a) notice of violation;
- (b) notice of itemized bill for costs;
- (c) administrative citation; or
- (d) notice of emergency abatement.

(2) The request for hearing shall be made in writing and filed with the Department of Engineering, office of the hearing officer. The request shall contain the case number, the address of the violation, and the signature of the responsible party.

(3) As soon as practicable after receiving the written notice of the request for hearing, the hearing officer shall schedule a date, time, and place for the hearing.

(4) The failure of any person to file a request for an administrative code enforcement hearing when served with a notice of violation shall:

- (a) constitute a waiver of the right to an administrative hearing;
- (b) constitute a waiver of the right to challenge the action; and
- (c) shall not affect the validity of the recorded notice of violation. (Ord. 2005-05, 2/15/05)

5-5-4. Default hearings and orders.

(1) If the responsible person fails to request a hearing before the expiration of the ten day deadline, the case shall be set for a default hearing. The hearing officer shall schedule a default hearing. The responsible person shall be notified of the date, time, and place of the hearing by one of the methods listed in Section 5-2-1.

(2) A default hearing shall be scheduled for all cases that have outstanding or unpaid civil penalties, fines, fees or costs due to the County before collection if a hearing on that case has not already been held.

(3) At the default hearing, the responsible person shall have the opportunity to present evidence to show that good cause exists to do one or more of the following:

- (a) waive or reduce the fines which have accumulated;
- (b) postpone an abatement action by the County; or
- (c) excuse the responsible person's failure to request a hearing within the ten day period.

(4) (a) If the responsible person fails to establish good cause to take one or more of the actions set forth in Subsection (3), the hearing officer shall review the notice of violation and any other relevant information included in the case file. The hearing officer shall not accept any other evidence.

(b) If the evidence shows that the violations existed, the hearing officer shall enter an order requiring abatement of the violations and the payment of all fines and fees. Fines shall run until the enforcement officer issues a notice of compliance stating when the violations were actually abated. (Ord. 2005-05, 2/15/05)

5-5-5. Notification of administrative code enforcement hearing.

(1) Written notice of the day, time, and place of the hearing shall be served to a responsible person as soon as practicable prior to the date of the hearing.

(2) The format and contents of the hearing notice shall be in accordance with rules and policies promulgated by the hearing officer. (Ord. 2005-05, 2/15/05)

5-5-6. Disqualification of administrative code enforcement hearing officer.

The hearing officer is subject to disqualification for bias, prejudice, interest, or any other reason for which a judge may be disqualified in a court of law. Rules and procedures for disqualification and replacement shall be promulgated by the hearing officer. (Ord. 2005-05, 2/15/05)

5-5-7. Powers of the administrative code enforcement hearing officer.

(1) The hearing officer has the authority to hold hearings, determine if violations of the Tooele County Code, zoning ordinance, or applicable state statutes exist, order compliance with such laws, and enforce compliance as provided in this title on any matter subject to the provisions of the title.

(2) The hearing officer may continue a hearing based on good cause shown by one of the parties to the hearing. The hearing officer must enter on the record the good cause on which a continuance is granted.

(3) The hearing officer, at the request of any party to the hearing, may sign subpoenas for witnesses, documents, and other evidence where the attendance of the witness for the admission of evidence is deemed necessary to decide the issues at the hearing. All costs related to the subpoena, including witness and mileage fees, shall be borne by the party requesting the subpoena. The hearing officer shall develop policies

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and procedures relating to the issuance of subpoenas in administrative code enforcement hearings, including the form of the subpoena and related costs.

(4) The hearing officer has continuing jurisdiction over the subject matter of an administrative code enforcement hearing for the purposes of granting a continuance; ordering compliance by issuing an administrative code enforcement order using any remedies available under the law; ensuring compliance of that order, which includes the right to authorize County employees or contracted parties to enter and abate a violation; modifying an administrative code enforcement order; or, where extraordinary circumstances exist, granting a new hearing.

(5) The hearing officer has the authority to require a responsible person to post a code enforcement performance bond to ensure compliance with an administrative code enforcement order. (Ord. 2005-05, 2/15/05)

5-5-8. Procedures at administrative code enforcement hearing.

(1) Administrative code enforcement 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. The complainant's 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 hearing officer.

(2) The enforcement officer bears the burden of proof at an administrative code enforcement hearing to establish the existence of a violation of the Tooele County Code, zoning ordinance, or applicable state statutes.

(3) The standard of proof to be used by the hearing officer in deciding the issues at an administrative hearing is whether the preponderance of the evidence shows that the violations exist.

(4) Each party shall have the opportunity to cross-examine witnesses and present evidence in support of his or her case. A written declaration signed under penalty of perjury may be accepted in lieu of a personal appearance. Testimony may be given by telephone or other electronic means.

(5) All hearings are open to the public. They shall be recorded by audio tape. Hearings may be held at the location of the violation.

(6) The responsible person has a right to be represented by an attorney. If an attorney will be

representing the responsible person at the hearing, notice of the attorney's name, address, and telephone number must be given to the County at least one day prior to the hearing. If notice is not given, the hearing may be continued at the County's request and all costs of the continuance assessed to the responsible person.

(7) No new hearing shall be granted unless the hearing officer determines that extraordinary circumstances exist which justify a new hearing. (Ord. 2005-05, 2/15/05)

5-5-9. Failure to attend administrative code enforcement hearing.

Any party whose property or actions are the subject of any administrative code enforcement hearing and who fails to appear at the hearing is deemed to waive the right to a hearing and will result in a default judgment for the County provided that proper notice of the hearing has been provided. (Ord. 2005-05, 2/15/05)

5-5-10. Administrative code enforcement order.

(1) The parties may enter into a stipulated agreement which must be signed by both parties. This agreement shall be entered as the administrative code enforcement order. Entry of this agreement shall constitute a waiver of the right to a hearing and the right to appeal.

(2) Once all evidence and testimony are completed, the hearing officer shall issue an administrative code enforcement order that affirms, modifies, or rejects the notice or citation. The hearing officer may increase or decrease the total amount of civil penalties and costs that are due pursuant to the County's fee schedule and the procedures in this title.

(3) The hearing officer may order the County to enter the property and abate all violations which may include removing animals kept in violation of the Tooele County Code, zoning ordinance, or applicable state statutes.

(4) The hearing officer may revoke a kennel permit, an animal license, or the right to possess animals.

(5) As part of the administrative code enforcement order, the hearing officer may condition the total or partial assessment of civil penalties on the responsible person's ability to complete compliance by specified deadlines.

(6) The hearing officer may schedule subsequent review hearings as may be necessary or as requested by a party to the hearing to ensure compliance with the administrative code enforcement order.

(7) The hearing officer may order the responsible person to post a performance bond to ensure compliance with the order.

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(8) The administrative code enforcement order shall become final on the date of the signing of the order.

(9) The administrative code enforcement order shall be served on all parties. (Ord. 2005-05, 2/15/05)

5-5-11. Failure to comply with order.

(1) Upon the failure of the responsible person to comply with the terms and deadlines set forth in the administrative code enforcement order, the County may use all appropriate legal means to recover the civil penalties and administrative costs to obtain compliance.

(2) After the hearing officer issues an administrative code enforcement order, the hearing officer shall monitor the violations and determine compliance. (Ord. 2005-05, 2/15/05)

supplemental proceeding to complete the record. The district court may limit the scope of the supplemental proceeding to issues that, in the court's opinion, need to be clarified.

(5) The district court's review is limited to the record of the administrative decision that is being appealed. The court shall not accept nor consider any evidence that is not part of the record of that decision.

(6) The court shall:

(a) presume that the hearing officer's decision and orders are valid; and

(b) review the record to determine whether the decision was arbitrary, capricious, or illegal. (Ord. 2005-05, 2/15/05)

CHAPTER 6

APPEAL OF ADMINISTRATIVE CODE ENFORCEMENT HEARING DECISION

Section

5-6-1. Appeal of administrative code enforcement hearing decision.

5-6-1. Appeal of administrative code enforcement hearing decision.

(1) Any person adversely affected by any decision made in the exercise of the provisions of this title may file a petition for review of the decision or order by the district court within 30 days after the decision is rendered.

(2) No person may challenge in district court a hearing officer's decision until that person has exhausted all administrative remedies.

(3) Within 120 days after submitting the petition, the party petitioning for appeal shall request a copy of the record of the proceedings, including transcripts of hearings when necessary. The office of the administrative hearing officer shall not submit copies of files or transcripts to the reviewing court until the party petitioning for appeal has paid all required costs. The petitioning party's failure to properly arrange for copies of the record or to pay the full costs for the record within 180 days after the petition for review was filed shall be grounds for dismissal of the petition.

(4) If a transcript of a hearing cannot be prepared because the tape recording is incomplete or unintelligible, the district court may, in its discretion, remand the matter to the hearing officer for a

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CHAPTER 7

RECORDATION OF NOTICES

Section

5-7-1. Authority.

5-7-2. Procedures for recordation.

5-7-3. Service of notice of recordation.

5-7-4. Notice of compliance -- Procedures.

5-7-5. Prohibition against issuance of permits and licenses.

5-7-6. Cancellation of recorded notice of violation.

5-7-1. Authority.

Whenever the ordinance enforcement administrator determines that a property or violation has not been brought into compliance as required in this title, the ordinance enforcement administrator has the authority to record the notice of violation or administrative code enforcement order with the recorder's office. (Ord. 2005-05, 2/15/05)

5-7-2. Procedures for recordation.

(1) Once the ordinance enforcement administrator has issued a notice of violation to a responsible person and the property remains in violation after the deadline established in the notice of violation and no request for an administrative hearing has been filed, the ordinance enforcement administrator shall record a notice of violation with the Recorder's Office of Tooele County.

(2) If an administrative hearing is held and an order is issued, the ordinance enforcement administrator shall record the administrative code enforcement order with the recorder's office.

(3) The recordation shall include the name of the property owner, the parcel number, the legal description of the parcel, and a copy of the notice of violation or order.

(4) The recordation does not encumber the property but merely places future interested parties on notice of any continuing violation found upon the property. (Ord. 2005-05, 2/15/05)

5-7-3. Service of notice of recordation.

A notice of any recordation of an administrative code enforcement order shall be served on the responsible person and the property owner. (Ord. 2005-05, 2/15/05)

5-7-4. Notice of compliance -- Procedures.

(1) When the violations have been corrected, the responsible person or property owner may request an inspection of the property from the ordinance enforcement administrator.

(2) Upon receipt of a request for inspection, the ordinance enforcement administrator shall reinspect the property as soon as practicable to determine whether the violations listed in the notice of violation or the order have been corrected and whether all necessary permits have been issued and final inspections have been performed.

(3) The ordinance enforcement administrator shall serve a notice of satisfaction to the responsible person or property owner if the ordinance enforcement administrator determines that:

(a) all violations listed in the recorded notice of violation or order have been corrected;

(b) all necessary processes, approvals, and permits have been issued and finalized;

(c) all civil penalties assessed against the property have been paid or satisfied; and

(d) the party requesting the notice of satisfaction has paid all administrative fees and costs.

(4) If the ordinance enforcement administrator denies a request to issue a notice of satisfaction, upon request the ordinance enforcement administrator shall serve the responsible person with a written explanation setting forth the reasons for the denial. (Ord. 2005 05, 2/15/05)

5-7-5. Prohibition against issuance of permits and licenses.

The County may withhold business licenses, permits for land uses, 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 the real property or the structure. The County may withhold permits until a notice of satisfaction has been issued by the ordinance enforcement administrator. The County may not withhold permits that are necessary to obtain a notice of satisfaction or that are necessary to correct serious health and safety violations. (Ord. 2005-05, 2/15/05)

5-7-6. Cancellation of recorded notice of violation.

The ordinance enforcement administrator or responsible person shall record the notice of satisfaction with the county recorder. Recordation of the notice of satisfaction shall have the affect of canceling the recorded notice of violation. (Ord. 2005-05, 2/15/05)

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CHAPTER 8

CIVIL PENALTIES

Section

5-8-1. Authority.

5-8-2. Procedures for assessing civil penalties.

5-8-3. Determination of civil penalties.

5-8-4. Modification of civil penalties.

5-8-5. Failure to pay penalties.

5-8-1. Authority.

(1) Any person violating any provision of the Tooele County Code, zoning ordinance, or applicable state statutes may be subject to the assessment of civil penalties for each violation.

(2) Each and every day a violation of any provision of the Tooele County Code, zoning ordinance, or applicable state statutes exists is a separate violation subject to the assessment of civil penalties.

(3) Six percent interest shall be assessed on all outstanding civil penalties balances until the penalty, fine, and interest have been paid in full.

(4) Civil penalties for violations of any provision of the Tooele County Code, zoning ordinance, or applicable state statutes shall be assessed pursuant to the fee schedule adopted by resolution of the county commission. (Ord. 2005-05, 2/15/05)

5-8-2. Procedures for assessing civil penalties.

(1) If a responsible person fails to bring a violation into compliance within ten days of service of the notice of violation, civil penalties shall be owed to the County for each and every subsequent day of violation.

(2) Civil penalties are assessed and owing immediately for any violation of the Tooele County Code, zoning ordinance, or applicable state statutes for an administrative citation. (Ord. 2005-05, 2/15/05)

5-8-3. Determination of civil penalties.

(1) Civil penalties shall be assessed per violation per day pursuant to the County fee schedule for a notice of violation.

(2) Civil penalties shall continue to accrue until the violations have been brought into compliance with the Tooele County Code, zoning ordinance, or applicable state statutes. (Ord. 2005-05, 2/15/05)

5-8-4. Modification of civil penalties.

(1) Upon completion of the notice of violation or administrative enforcement order, the hearing officer may modify the civil penalties on a finding of good cause.

(2) Civil penalties may be waived or modified by the hearing officer if there is a finding of good cause based on the responsible person's claim of nonconforming use or conditional use and:

(a) the County's need to verify the claim; or

(b) the responsible person's filing of an application for either use before expiration of the date to correct. (Ord. 2005-05, 2/15/05)

5-8-5. Failure to pay penalties.

The failure of any person to pay civil penalties assessed within the specified time may result in the ordinance enforcement administrator's pursuing any legal remedy to collect the civil penalties as provided in the law. (Ord. 2005-05, 2/15/05)

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CHAPTER 9

ADMINISTRATIVE FEES AND COSTS

Section

5-9-1. Purpose.

5-9-2. Authority.

5-9-3. Notification of assessment of reinspection fees.

5-9-4. Failure to timely pay costs.

5-9-5. Administrative fees.

5-9-1. Purpose.

(1) The county commission finds that there is a need to recover costs incurred by enforcement officials and other County personnel who spend time inspecting and reinspecting properties throughout the County in an effort to ensure compliance with the Tooele County Code, zoning ordinance, or applicable state statutes.

(2) The county commission further finds that the assessment of costs is an appropriate method to recover expenses incurred for actual costs of abating violations, reinspection fees, filing fees, attorney fees, hearing officer fees, title searches, and any additional actual costs incurred by the County for each individual case. The assessment and collection of costs shall not preclude the imposition of any administrative or judicial civil penalties or fines for violations of the Tooele County Code, zoning ordinance, or applicable state statutes. (Ord. 2005-05, 2/15/05)

5-9-2. Authority.

(1) Whenever actual costs are incurred by the County on a property to obtain compliance with provisions of the Tooele County Code, zoning ordinance, and applicable state statutes, the ordinance enforcement administrator may assess costs against the responsible person.

(2) Once a notice of violation has been issued, the property will be inspected one time. Any additional inspections shall be subject to reinspection fees pursuant to the County fee schedule. (Ord. 2005-05, 2/15/05)

5-9-3. Notification of assessment of reinspection fees.

(1) Notification of reinspection fees shall be provided on the notice of violation served to the responsible person.

(2) Reinspection fees assessed or collected shall not be included in any other costs assessed.

(3) The failure of any responsible person to receive notice of the reinspection fees shall not affect the validity of any other fees imposed under this part. (Ord. 2005-05, 2/15/05)

5-9-4. Failure to timely pay costs.

The failure of any person to pay assessed costs by the deadline specified in the invoice shall result in a late fee pursuant to County policy. (Ord. 2005-05, 2/15/05)

5-9-5. Administrative fees.

The ordinance enforcement administrator or code enforcement hearing officer is authorized to assess administrative fees for costs incurred in the administration of this program, such as investigation of violations, preparation for hearings, hearings, and the collection process. The fee assessed shall be the amount set in the County fee schedule. (Ord. 2005-05, 2/15/05)

CHAPTER 10

CIVIL VIOLATIONS

Section

5-10-1. Civil violations -- Injunctions.

5-10-2. Performance bond.

5-10-1. Civil violations -- Injunctions.

In addition to any other remedy provided under the Tooele County Code, zoning ordinance, or state statutes, including criminal prosecution or administrative remedies, any provision of the Tooele County Code, zoning ordinance, or state statutes may be enforced by injunction issued in the district court upon a suit brought by the County. (Ord. 2005-05, 2/15/05)

5-10-2. Performance bond.

(1) As part of any notice, order, or action, the hearing officer has the authority to require responsible persons to post a performance bond to ensure compliance with the Tooele County Code, zoning ordinance, applicable state statutes, or any judicial action.

(2) If the responsible person fails to comply with the notice, order, or action, the bond will be forfeited to the County. The bond will not be used to offset the other outstanding costs and fees associated with the case. (Ord. 2005-05, 2/15/05)

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CHAPTER 11

TAX LIENS AND RECOVERY COST METHODS

Section

5-11-1. Purpose.

5-11-2. Procedures for tax liens without a judgment.

5-11-3. Procedures for tax liens with a judgment.

5-11-4. Cancellation of code enforcement tax lien.

5-11-5. Recovery of costs by writ of execution.

5-11-6. Recovery of costs by writ of garnishment.

5-11-1. Purpose.

The county commission finds that recordation of code enforcement tax liens will assist in the collection of civil penalties, administrative costs, and administrative fees assessed by the administrative code enforcement hearing program or judicial orders. The county commission further finds that collection of civil penalties, costs, and fees assessed for code enforcement violations is important in deterring future violations and maintaining the integrity of the County's code enforcement system. The procedures established in this chapter shall be used to complement existing administrative or judicial remedies that may be pursued to address violations of the Tooele County Code, zoning ordinance, or applicable state statutes. (Ord. 2005-05, 2/15/05)

5-11-2. Procedures for tax liens without a judgment.

(1) Once the County has taken an enforcement action with penalties or abated a property for garbage, unlicensed/inoperative vehicles, refuse, or unsightly or deleterious objects or structures, the ordinance enforcement administrator shall prepare three copies of the itemized statement of costs incurred in the removal and destruction of the violations and deliver them to the county treasurer within ten days after completion of the work of removing the violations.

(2) The ordinance enforcement administrator shall send, by certified mail to the property owner's last known address, a copy of the itemized statement of costs informing him or her that a code enforcement tax lien is being recorded for the amount of actual costs of abatement. Payment shall be due within 20 calendar days from the date of mailing.

(3) Upon receipt of the itemized statement of costs, the county treasurer shall record a code enforcement tax lien against the property.

(4) The failure of any person with a financial interest in the property to actually receive the notice of the lien shall not affect the validity of the lien or any proceedings taken to collect the outstanding costs of abatement. (Ord. 2005-05, 2/15/05)

5-11-3. Procedures for tax liens with a judgment.

Once a judgment has been obtained from the appropriate court assessing costs against the responsible person, the ordinance enforcement administrator may record a code enforcement tax lien against any real property owned by the responsible person. (Ord. 2005-05, 2/15/05)

5-11-4. Cancellation of code enforcement tax lien.

Once payment in full is received for the outstanding civil penalties and costs, or the amount is deemed satisfied pursuant to a subsequent administrative or judicial order, the ordinance enforcement administrator shall either record a notice of satisfaction of judgment or provide the property owner or financial institution with the notice of satisfaction of judgment so that it can record this notice with the county recorder. The notice of satisfaction of judgment shall include the same information as provided for in the original code enforcement tax lien. Such notice of satisfaction of judgment shall cancel the code enforcement tax lien. (Ord. 2005-05, 2/15/05)

5-11-5. Recovery of costs by writ of execution.

After obtaining a judgment, the ordinance enforcement administrator may collect the obligation by use of all appropriate legal means. This may include execution on personal property owned by the responsible person by filing a writ with the applicable court. (Ord. 2005-05, 2/15/05)

5-11-6. Recovery of costs by writ of garnishment.

After obtaining a judgment, the ordinance enforcement administrator may collect the obligation by use of all appropriate legal means. This may include garnishment of paychecks, financial accounts, and other income or financial assets by filing a writ with the applicable court. (Ord. 2005-05, 2/15/05)

ADMINISTRATIVE CODE ENFORCEMENT HEARING PROGRAM

CHAPTER 12

ABATEMENT FUNDING AND COLLECTION OF FUNDS

Section

5-12-1. Abatement superfund.

5-12-2. Repayment to abatement superfund.

5-12-3. Code enforcement administrative fees and cost fund.

5-12-4. Allocation of civil penalties.

5-12-4. Allocation of civil penalties.

Civil penalties shall be deposited in the General Fund of the County. Civil penalties deposited in this fund shall be appropriated and allocated in a manner determined by the county commission. The county auditor shall establish accounting procedures to ensure proper account identification, credit, and collection. (Ord. 2005-05, 2/15/05)

5-12-1. Abatement superfund.

There is hereby established a revolving fund to be known as the "Abatement Superfund" to defray costs of administrative and judicial abatements. The fund shall be reimbursed by collection from the property or property owner as specified in this title and by the courts. The county auditor shall establish accounting procedures to ensure proper account identification, credit, and collection. This fund may be operated and used in conjunction with procedures ordered or authorized under the abatement provision of this title. (Ord. 2005-05, 2/15/05)

5-12-2. Repayment to abatement superfund.

All monies recovered from the sale or transfer of property or by payment for the actual abatement costs shall be paid to the county treasurer, who shall credit the appropriate amount to the Abatement Superfund. (Ord. 2005-05, 2/15/05)

5-12-3. Code enforcement administrative fees and cost fund.

Administrative fees and administrative costs, except for actual abatement costs, shall be deposited in a Code Enforcement Administrative Fees and Costs Fund for the enhancement of the County's code enforcement efforts and to reimburse County departments for investigative costs and costs associated with the hearing process. Fees and costs deposited in this fund shall be appropriated and allocated in a manner determined by the ordinance enforcement administrator. The county auditor shall establish accounting procedures to ensure proper account identification, credit, and collection. (Ord. 2005-05, 2/15/05)