

ORDINANCE NO. 2023-20-O

AN ORDINANCE AMENDING SUBSECTION 8.20.090(2), SECTION 15.04.050, SECTION 17.04.410, AND SECTION 17.62.170 OF THE LINDON CITY CODE, SO AS TO BRING THE PENALTIES IMPOSED BY THE CITY FOR NUISANCE, BUILDING AND ZONING VIOLATIONS INTO HARMONY WITH THE STATE STANDARDS FOR THE IMPOSITION OF FINES AND FEES AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 10-3-703 of the Utah Code imposed limits and conditions on the fines and penalties that a municipality can impose for violations of city ordinances; and

WHEREAS, this Section limits the number of penalties that can be imposed for ongoing violations to only one violation within a 14-day time; and

WHEREAS, nuisance and zoning offenses often involve ongoing violations, and currently Subsection 8.20.090, Section 15.04.050, Section 17.04.410, and Section 17.62.170 allow for the imposition of a penalty for each day the violation occurs; and

WHEREAS, the Lindon City Council finds it proper and just to bring the City Code into conformance with the State standards,

WHEREAS, on September 26, 2023, the Planning Commission held a properly noticed public hearing to hear testimony regarding the ordinance amendment; and

WHEREAS, after the public hearing, the Planning Commission further considered the proposed ordinance amendment and recommended that the City Council adopt the attached ordinance;

WHEREAS, the Council held a public hearing on 10-16-23, to consider the recommendation and the Council received and considered all public comments that were made therein.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Lindon, Utah County, State of Utah, as follows:

PART ONE: AMENDMENT OF SUBSECTION 8.20.090(2) OF THE LINDON CITY CODE

Subsection 8.0.090.(2) of the Lindon City Code is amended as follows:

2. *Administrative Citation.* When the city is unable to secure a voluntary correction agreement, or if a responsible party fails to successfully complete a voluntary correction agreement, the health and safety officer may issue an administrative citation to the owner and/or responsible party as follow:
 - a. *Order of Abatement.* If abatement cannot be achieved through a voluntary correction agreement, or as otherwise authorized in this chapter, the health and safety officer shall issue an administrative citation, with an order that the nuisance be abated, setting forth the terms and condition which must be followed to bring the subject property back into compliance with this chapter, including a specific time frame for complying with the order.
 - b. *Content of Citation.* The administrative citation shall contain the following information:
 - i. the name and address of the owner and/or responsible party;
 - ii. The street address of the nuisance or a description sufficient for identifying the building, structure, property or land upon or within which the nuisance is occurring;

- iii. A description of the nuisance;
 - iv. The required corrective action;
 - v. The completion date for correcting the nuisance;
 - 1. Except in the case of an emergency, the health and safety officer shall allow a reasonable time to abate a nuisance, which shall be a minimum of at least ten (10) days;
 - vi. Notice that administrative fees may be assessed if the conditions of the administrative citation are not met, including a statement of the maximum daily fee which may be imposed;
 - vii. The citation shall include a statement that monetary penalty or fee will be waived if the required corrective actions are completed in a timely manner.
 - 1. The statement on the waiver of penalties and fees shall not be included in an administrative citation that is being issued after an owner or responsible party has failed to comply with the terms of a voluntary correction agreement;
 - viii. Notice that, in addition to the administrative citation fee, the city may bring criminal charges of maintaining a nuisance, an infraction, if the nuisance continues beyond the completion date, and that ~~each day the nuisance continues beyond the completion date may be charged as a separate offense~~ a separate criminal offense may be charged once for every fourteen (14) day period the that the violation continues;
 - ix. Notice that the city may abate the nuisance and charge the responsible party for all abatement costs if the responsible party does not correct the nuisance by the completion date; and
 - x. Notice of the right to appeal, including the procedure for filing an appeal.
- c. *Imposition of Administrative Fees.* The city may impose an administrative citation fee ~~in the amount of two hundred dollars (\$200.00) a day~~ of up to five hundred dollars (\$500) for each fourteen (14) day period the violation continues in a residential zone, ~~and four hundred dollars (\$400.00) a day~~ and up to one thousand dollars (\$1000) for each fourteen (14) day period the violation continues in a nonresidential zone.
- i. A fee may not be imposed if the nuisance is abated by the completion date required in the citation.
 - ii. If the administrative citation is issued after an owner or responsible party fails to comply with a voluntary correction agreement, fees may be imposed beginning on the date the citation is issued.
 - iii. The administrative citation fee may be imposed once for every fourteen (14) day period for each day the nuisance continues beyond the completion date required and set forth in the citation or in the voluntary correction agreement.
- d. *Administrative Citation After Failure to Complete a Voluntary Correction Agreement.* If an owner or responsible party has entered into a voluntary correction agreement with the city, but has failed to abate the nuisance pursuant to the terms of that agreement, the health and safety officer

may issue an administrative citation and immediately impose fees in the amounts provided for in this subsection. The health and safety officer shall not be required to grant any additional time to abate the nuisance than was previously provided in the voluntary correction agreement.

e. *Administrative Citation Without Seeking a Voluntary Correction Agreement.* The health and safety officer may issue an administrative citation without first seeking to secure a voluntary correction agreement in the following circumstances:

- i. When the health and safety officer determines that there is an emergency which presents a clear and present threat to the health, safety or welfare of the public; or
- ii. When a responsible party has a history of two (2) or more events in which they have allowed a nuisance to occur. This shall include owners who have allowed multiple tenants to create or maintain a nuisance on property they own or control.

f. *Notice of Administrative Citation.* The health and safety officer shall serve the administrative citation on the responsible party and the owner pursuant to the requirements of Section 8.20.080.

PART TWO: AMENDMENT OF SECTION 15.04.050 OF THE LINDON CITY CODE.

1. Any person, firm, entity, or corporation, whether as principal, agent or employee, who violates or causes the violation of any of the provisions of this Title shall be guilty of a Class C misdemeanor. For purposes of enforcement under this Section, the provisions of this Title shall include the provisions, requirements and restrictions of all of the codes and regulations referenced and adopted in Title 15. ~~Each day a violation of this Title continues shall constitute a separate offense. A separate criminal offense may be charged once for every fourteen (14) day period the that the violation continues.~~
2. In addition, Lindon City by action of the City Council, may institute an injunction, mandamus, abatement, or any other appropriate action or proceeding to prevent, enjoin, abate or remove such unlawful erection, construction, reconstruction, alteration, or maintenance:
3. *Notice.*
 - a. Upon inspection and discovery that any provision of this Title is being violated, the Building Official, or his agent, shall provide a written notice of violation and order to the property owner and to any other party who may be responsible for the violation.
 - b. Each written notice and order shall: (1) indicate the nature of the violation; (2) order the action necessary to correct the violation; (3) give information regarding the established warning period for the violation; and (4) state the action the Building Official intends to take if the violation is not corrected within the warning period.
 - c. The written notice shall be delivered personally or mailed to the property owner, as shown on the records of the county recorder, and to any other person who may be responsible for the violation. Receipt of notice shall be deemed to occur upon the earlier of the date written notice is delivered or three days after the notice is mailed as provided herein.
 - d. The written notice shall serve to start any warning periods provided in this Section commencing upon receipt of notice. If the violation remains uncured

within five days after the expiration of the warning period, a second notice shall serve to start the civil penalties after the expiration of the warning period established in this Section.

4. *Warning Period.* There shall be a 28-day Warning period for all violations of this Title, except as provided in Subsection 3e of this Section.
5. *Civil Penalties.* Violations of the provisions of this Title shall result in the following civil penalties, after expiration of the warning period established herein:
 - a. For violations in residential zones, or residential use, ~~a civil penalty of \$200 per day, up to five hundred dollars (\$500) for each fourteen (14) day period the violation continues.~~
 - b. For violations in all non-residential zones, or non-residential use, ~~a civil penalty of \$400 per day, up to one thousand dollars (\$1,000) for each fourteen (14) day period the violation continues.~~
 - c. Each ~~day~~ fourteen (14) day period a violation is continued or maintained after receipt of notice shall give rise to a separate civil penalty for each ~~day of~~ violation.
6. *Violation Appeal Procedures.*
 - a. An appeal of a violation determination and/or suggested action by the City shall follow the appeal procedures outlined in LCC 17.09, except that:
 - i. The Appeal Authority for violation determinations shall be the City Council, and
 - ii. the appeal period (time to appeal) shall be valid for no longer that 10 days after expiration of the Warning Period. No appeals will be accepted after expiration of the appeal period.
7. *Collection of Civil Penalties.* Collection of civil penalties imposed under this Section may be collected by Lindon City as provided for in Title 1, Chapter 18 of this Code. Forbearance by the Building Official to collect civil penalties shall not relieve the responsibility to pay any penalty, to cure the violation, nor shall it require the City to reissue any of the notices required by this Section.
8. *Nonexclusive Remedies.* Any one, all or any combination of the penalties and remedies set forth in this Section, or any other Sections of Title 15 or the code and regulations adopted thereby, may be used to enforce the provisions of this Title.

PART THREE: AMENDMENT OF SECTION 17.04.410 OF THE LINDON CITY CODE.

17.04.410 Violation—Notice—Penalties.

1. Any person, firm, entity, or corporation, whether as principal, agent or employee, who violates or causes the violation of any of the provisions of this Title shall be guilty of ~~a Class C misdemeanor an Infraction~~ and upon conviction thereof shall be punished as provided by law. ~~Each day a violation of this Title continues shall constitute a separate offense. For ongoing violations, a separate offense may be charged once for every fourteen (14) day period the violation continues.~~
2. In addition, the following may institute injunction, mandamus, abatement, or any other appropriate action or proceeding to prevent, enjoin, abate or remove such unlawful erection, construction, reconstruction, alteration, or maintenance or use:
 - a. Lindon City by action of the City Council;

- b. Any owner of real estate within the zoning district in which an alleged violation of this division has occurred.
3. Notice.
 - a. Upon inspection and discovery that any provision of this Title is being violated, the Zoning Administrator, or his agent, shall provide a written notice of violation and order to the property owner and to any other party who may be responsible for the violation.
 - b. Each written notice and order shall: (1) indicate the nature of the violation; (2) order the action necessary to correct the violation; (3) give information regarding the established warning period for the violation; and (4) state the action the Zoning Administrator intends to take if the violation is not corrected within the warning period.
 - c. The written notice shall be delivered personally or mailed to the property owner, as shown on the records of the county recorder, and to any other person who may be responsible for the violation. Receipt of notice shall be deemed to occur upon the earlier of the date written notice is delivered or three days after the notice is mailed as provided herein.
 - d. The written notice shall serve to start any warning periods provided in this Section commencing upon receipt of notice. If the violation remains uncured within five days after the expiration of the warning period, a second notice shall serve to start the civil penalties after the expiration of the warning period established in this Section.
 - e. In cases where the Zoning Administrator determines that a delay of enforcement would pose a danger to the public health, safety or welfare, or would otherwise compromise the effective enforcement of this Title, the Zoning Administrator may seek immediate enforcement without prior written notice by instituting any of the remedies, other than civil penalties, authorized by this Section.
4. *Warning Period.* There shall be a 28-day warning period for all violations of this Title, except as provided in Subsection (3)(e) of this Section.
5. *Civil Penalties.* Violations of the provisions of this Title ~~shall~~ may result in the imposition of the following civil penalties, after expiration of the warning period established herein.
 - a. For violations in residential zones, or residential use, a civil penalty of ~~\$200 per day up to five hundred dollars (\$500) for each fourteen (14) day period the violation continues.~~
 - b. For violations in all non-residential zones, or non-residential use, a civil penalty of ~~\$400 per day up to one thousand dollars (\$1,000) for each fourteen (14) day period the violation continues.~~
 - c. Each ~~day~~ fourteen (14) day a violation is continued or maintained after receipt of notice shall give rise to a separate civil penalty for each ~~day of~~ violation.
6. *Violation Appeal Procedures.*
 - a. An appeal of a violation determination and/or suggested action by the City shall follow the appeal procedures outlined in LCC 17.09, except that:
 - i. the Appeal Authority for violation determinations shall be the City Council, and

- ii. the appeal period (time to appeal) shall be valid for no longer than 10 days after expiration of the warning period. No appeals will be accepted after expiration of the appeal period.

7. *Collection of Civil Penalties.* Collection of civil penalties imposed under this Section may be collected by Lindon City as provided for in Title 1, Chapter 18 of this Code. Forbearance by the Zoning Administrator to collect civil penalties shall not relieve the responsibility to pay any penalty, to cure the violation, nor shall it require the City to reissue any of the notices required by this Section

8. *Nonexclusive Remedies.* Any one, all or any combination of the penalties and remedies set forth in this Section, or any other Sections of Title 15 or the code and regulations adopted thereby, may be used to enforce the provisions of this Title.

PART FOUR: AMENDMENT OF SECTION 17.62.170 OF THE LINDON CITY CODE.

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this chapter and other applicable regulations. Violation of the provisions of this chapter by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute ~~a Class C misdemeanor~~ an infraction. Any person who violates this chapter or fails to comply with any of its requirements shall upon conviction thereof be fined ~~not more than two hundred dollars (\$200.00)~~ up to five hundred dollars (\$500) for each fourteen (14) day period the violation continues in a residential zone, ~~and four hundred dollars (\$400.00)~~ up to one thousand dollars (\$1,000) for each fourteen (14) day period the violation continues in a commercial or industrial zone, ~~for each violation assessed daily~~, and in addition shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent Lindon City from taking such other lawful action as is necessary to prevent or remedy any violation.

PART FIVE: Severability.

Severability is intended throughout and within the provisions of this ordinance. If any section, subsection, sentence, clause, phrase or portion of this ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, then that decision shall not affect the validity of the remaining portions of this Ordinance.

PART SIX: Effective Date.

Ordinance No. 2023-20-0 shall take effect immediately upon its passage and posting as provided by law.

PASSED AND APPROVED AND MADE EFFECTIVE by the City Council of Lindon City,

Utah, this 16 day of October 2023.


CAROLYN LUNDBERG
Lindon City Mayor

ATTEST:

Kathryn Moosman
Kathryn Moosman
City Recorder



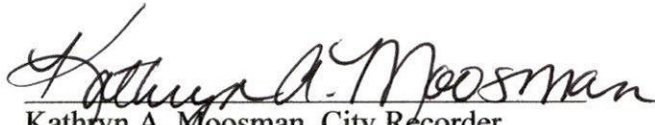
CERTIFICATE OF PASSAGE

STATE OF UTAH }
 } ss.
COUNTY OF UTAH }

I, Kathryn A. Moosman, City Recorder of Lindon City, Utah do hereby certify and declare that the above and foregoing is a true, full, and correct copy of an ordinance passed and adopted by the City Council of Lindon City, Utah on the 16th day of October 2023 entitled:

AN ORDINANCE AMEMDING SUBSECTION 8.20.090(2), SECTION 15.04.050, SECTION 17.04.410, AND SECTION 17.62.170 OF THE LINDON CITY CODE, SO AS TO BRING THE PENALTIES IMPOSED BY THE CITY FOR NUISANCE, BUILDING AND ZONING VIOLATIONS INTO HARMONY WITH THE STATE STANDARDS FOR THE IMPOSITION OF FINES AND FEES AND PROVIDING FOR AN EFFECTIVE DATE.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Corporate Seal of Lindon City, Utah, this 16th day of October, 2023.


Kathryn A. Moosman, City Recorder



AFFIDAVIT OF POSTING

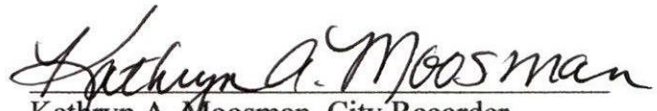
STATE OF UTAH }
 } ss.
COUNTY OF UTAH }

I, Kathryn A. Moosman, City Recorder of Lindon City, Utah do hereby certify and declare that I posted the attached ordinance in three public places on the 16th day of October 2023.

The three public places are as follows:

1. Lindon City Police Department
2. Lindon City Community Development Office
3. Lindon City Center

I further certify that the agenda of the meeting of the City Council containing notice of public hearing was published and posted according to law, and that copies of the ordinance so posted were true and correct copies of the original.


Kathryn A. Moosman, City Recorder

The foregoing instrument was acknowledged before me this 16 day of October, 2023 by Kathryn A. Moosman.

My Commission expires: January 7, 2025


Notary Public

Residing at: Utah County

