

## **CHAPTER 3-6. FIRE CODE: ENFORCEMENT AND ABATEMENT**

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### **3-6-1. Purpose.**

The purposes of this Chapter include the protection of the public life, health, safety, and general welfare, and the implementation of City administrative procedures for the protection of the public life, health, safety, and general welfare through the enforcement of this Title 3 (Fire) and of the International Fire Code and through the abatement of violations of this Title 3 and of the International Fire Code.

(Ord. 2017-24, 10-18-2017)

### **3-6-2. Declaration regarding violations of the Fire Code.**

It is hereby declared that violations of the Fire Code operate contrary to the purposes of this Chapter and constitute a threat to the public life, health, safety, and general welfare.

(Ord. 2017-24, 10-18-2017)

### **3-6-3. Definitions.**

(1) The definitions of the Fire Code are incorporated herein.

(2) In the event of a conflict between the definitions of the Fire Code and the definitions in this Section, the Fire Code definitions shall govern.

(3) Subject to subsection (2), the following terms shall have the following definitions.

“Abatement” means any action or proceeding commenced or pursued by the City to remove, alleviate,

enforce, or correct a violation of Title 3 or the Fire Code.

“Abatement costs” means actual costs incurred by the City to accomplish an abatement, but not including monetary penalties.

“Abatement period” means the 14-day period, beginning upon service of a notice of violation, within which the violation described in a notice of violation is required to be corrected.

“Administrative hearing officer” means an administrative hearing officer appointed under Chapter 1-28.

“Association” means any business entity, including, without limitation, a corporation, partnership, limited liability company, or business, but not an individual.

“Compliance inspection” means an inspection conducted by a Fire Department inspector to determine compliance with Title 3 or the Fire Code through the correction of the violation described in a notice of violation.

“Department” means the Tooele City Fire Department.

“Fire Chief” means the chief of the Tooele City Fire Department.

“Fire Code” means the International Fire Code as adopted by Tooele City pursuant to Section 3-3-1.

“Fire Code order” means an order issued by an administrative hearing officer pursuant to this Chapter.

“Fire Code performance bond” means a cash bond required by an administrative hearing officer and posted by a responsible person to gain compliance with Title 3, the Fire Code, or a Fire Code order.

“Fire Code tax lien” means a lien recorded with the Tooele County Recorder and County Treasurer, as applicable, to facilitate the collection of all monetary penalties and abatement costs, including administrative fees, filing fees, and other reasonable and related costs.

“Fire Department inspector” means those persons authorized by the Fire Code, the Fire Chief, and Title 3 to perform compliance inspections.

“Good cause” means incapacitating illness or accident, death of a parent, sibling, or child, lack of proper notice, or unavailability due to unavoidable and non-preventable emergency or circumstance.

“Imminent fire hazard” means any condition that creates a present and immediate fire danger to the public life, health, safety, or welfare.

“Inspection” means a compliance inspection.

“Monetary penalties” means the civil fines accrued for failure to complete an abatement. Monetary penalties do not include appeal filing fees, compliance reinspection fees, or abatement costs.

“Notice of compliance” means a document issued

by the City confirming that a responsible person has corrected the violations described in a notice of violation, has paid all fees, penalties, and costs associated with the notice of violation, and otherwise has fully complied with the requirements of Title 3 and the Fire Code, all as determined by an officer or inspector.

“Notice of violation” means a document prepared and issued by an officer that informs a responsible person of a violation of Title 3 or the Fire Code, and that contains an order to correct the violation.

“Officer” means a fire code officer as defined in the Fire Code, to include the Fire Chief, authorized delegates, and fire department inspectors.

“Penalty” means monetary penalties, abatement costs, and other costs related to an abatement.

“Responsible person” means any property owner, occupant, or other person or association with control over property who allows, permits, causes, or maintains a violation of Title 3 or the Fire Code to exist upon the property owned, occupied, or controlled. “Responsible person” includes the Fire Code definition of “owner.” Use of the singular “person” in this Chapter includes the plural “persons.”

“Violation” means any violation of Title 3 or the Fire Code.

(Ord. 2017-24, 10-18-2017)

#### **3-6-4. Notice of violation: content, extension.**

(1) An abatement is commenced by the service of a notice of violation.

(2) Content. A notice of violation shall indicate the following:

- (a) the nature of the violation;
- (b) the street address and parcel number for the property upon which the violation exists;
- (c) the name of the property owner of record according to the records of the Tooele County Recorder;
- (d) the date of the violation;
- (e) the monetary penalties associated with the violation;
- (f) the corrective action required;
- (g) the abatement period;
- (h) the contact information for the officer with whom the notice of violation may be discussed;
- (i) the procedure for obtaining a notice of compliance; and,
- (j) the procedure for filing an appeal.

(3) Extension. A responsible person may request an extension of the abatement period by submitting a written request to the Department during the abatement period. An officer may approve an extension of up to

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30 days if doing so does not appear to create an imminent fire hazard. An approved extension shall result in an amended notice of violation which establishes a new abatement period. An extension request shall state and affirm the following:

(a) the responsible person understands that the extension is conditioned upon the responsible person’s waiver of the right to appeal the notice of violation;

(b) the responsible person is actively engaged in the corrective action required by the notice of violation; and,

(c) the responsible person is unable to complete the corrective action during the abatement period due to circumstances that are unusual, extraordinary, or outside the responsible person’s control.

(Ord. 2017-24, 10-18-2017)

#### **3-6-5. Notice of violation: service.**

(1) A notice of violation shall be served by one or more of the following methods:

(a) regular U.S. mail, first-class postage prepaid, to both

(i) the last known address of a responsible person as found in the records of the Tooele County Recorder; and,

(ii) the address of the property subject to the notice of violation; or,

(b) certified U.S. mail, return receipt requested, to the last known address of a responsible person as found in the records of the Tooele County Recorder; or,

(c) personal delivery to a responsible person;

or,

(d) posting of the notice of violation upon the property or premises which is the subject of the notice of violation.

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

(Ord. 2017-24, 10-18-2017)

#### **3-6-6. Notice of violation: monetary penalties.**

(1) The monetary penalties associated with an abatement shall be established by resolution of the Tooele City Council.

(2) The monetary penalties associated with a notice of violation shall accrue daily until the earlier of the following occurs:

- (a) the abatement period ends;
- (b) a notice of compliance is issued by an officer;
- (c) a Fire Code order halting, modifying, or

suspending the monetary penalties is issued.

(3) Accrued monetary penalties (but not abatement costs) associated with a notice of violation shall be suspended upon:

(a) the responsible person causing the violation described in the notice of violation to be corrected during the abatement period;

(b) the responsible person requesting a compliance inspection from the City during the abatement period; and,

(c) a notice of compliance being issued in response to the request for inspection.

(4) The suspension of monetary penalties associated with a notice of violation shall continue and become permanent if during the 12 months immediately following the date of the notice of compliance there is no recurrence of substantially the same violation at the same property.

(5) If a responsible person fails to correct the violation described in a notice of violation during the abatement period, or if the responsible person commits or allows substantially the same violation to occur during the 12 months immediately following the date of a notice of compliance, all monetary penalties that began to accrue daily on the date of the original notice of violation shall be owed in full to the City and shall continue to accrue for each and every subsequent day of continuing violation for a new abatement period.

(6) In the event of multiple responsible persons associated with a notice of violation, default judgment, or Fire Code order, all responsible persons shall be jointly and severally liable for correction of violations, for compliance with any Fire Code orders, and for payment of any monetary penalties, abatement costs, and other associated costs.

(Ord. 2017-24, 10-18-2017)

### **3-6-7. Notice of violation: appeal.**

(1) A responsible person served with a notice of violation may appeal to the administrating hearing officer.

(2) An appeal resulting in a Fire Code order that upholds some but not all of the violations described in a notice of violation shall have the effect of amending the notice of violation and resetting the date of the notice of violation and the abatement period.

(3) A Fire Code order that amends a notice of violations pursuant to this Section is not appealable to the administrative hearing officer.

(Ord. 2017-24, 10-18-2017)

### **3-6-8. Notice of violation: default judgment.**

(1) A responsible person who fails to request a

compliance inspection during the abatement period and who does not timely appeal the notice of violation is deemed to have waived any administrative appeal rights associated with a notice of violation and shall be subject to the entry of default judgment upholding the notice of violation. The default judgment shall direct the abatement and impose the monetary penalties, fees, and costs associated therewith.

(2) A default judgment shall be issued by the administrative hearing officer upon officer affidavit that a responsible person both failed to request a timely compliance inspection and failed to make a timely appeal.

(3) A copy of a signed default judgment shall be served on all affected responsible persons by any method of service allowed for a notice of violation.

(4) A responsible person adversely affected by a default judgment may appeal the default judgment to the administrative hearing officer. The administrative hearing officer may set aside a default judgment only upon a written finding of good cause shown by the appealing responsible person.

(5) Following the issuance of a default judgment and the failure to timely appeal the default judgment, or following the issuance of a Fire Code order upholding the default judgment, the City may forthwith proceed to abate the violation described in the default judgment, and may forthwith proceed to collect all accrued monetary penalties and costs associated with the abatement.

(Ord. 2017-24, 10-18-2017)

### **3-6-9. Notice of compliance.**

(1) It shall be the duty of a responsible person served with a notice of violation to request a City compliance inspection when the described violation has been abated, weather during or after the abatement period.

(2) It is prima facie evidence that the violation is continuing if no compliance inspection is requested.

(3) An officer shall perform the requested compliance inspection. If an officer finds that the violation for which the notice of violation was issued has been abated fully, an officer shall issue a notice of compliance to the responsible person requesting the compliance inspection.

(4) A notice of compliance shall be deemed effective upon the day of the inspection that determined full compliance. No further monetary penalties shall accrue after this date unless the same or a similar violation occurs within the 12 months immediately following the notice of compliance.

(5) If, following a request for compliance

inspection, the City declines to issue a notice of compliance due to a continuing violation, it remains the duty of the responsible person to request a compliance reinspection once abatement is completed.

(6) The first compliance inspection shall not require the payment of a fee. All compliance reinspections shall require the payment of a fee established by the City Council.

(7) If the City declines to issue a notice of compliance, an officer shall provide a written explanation to the responsible party requesting the compliance inspection.

(8) A responsible person may appeal the denial of a notice of compliance to the administrative hearing officer.

(9) A request for compliance inspection or reinspection shall toll the accrual of monetary penalties until the issuance of written reasons for the denial of a notice of compliance or until the occurrence of substantially the same or violation within the 12 months immediately following the notice of violation. (Ord. 2017-24, 10-18-2017)

### **3-6-10. Fire Code order: authority.**

In addition to the authority granted under Chapter 1-28 of this Code, the administrative hearing officer shall have authority to do the following:

(1) upon appeal, to uphold, modify, or reject a notice of violation, and to issue a Fire Code order to that effect;

(2) upon appeal, to uphold, modify, or reject a notice of compliance, and to issue a Fire Code order to that effect;

(3) upon officer affidavit, to issue a default judgment;

(4) upon appeal, to uphold, modify, or reject a default judgment, and to issue a Fire Code order to that effect;

(5) upon appeal, to uphold, modify, suspend, dismiss, or order the payment of monetary penalties associated with a notice of violation, and to issue a Fire Code order to that effect;

(6) upon appeal, to establish a payment plan for payment of monetary penalties and abatement costs associated with a notice of violation, and to issue a Fire Code order to that effect;

(7) to make written findings of fact and conclusions of law associated with a Fire Code order;

(8) to issue a Fire Code order requiring a responsible person to post a cash Fire Code performance bond and to sign an associated bond agreement;

(9) to issue a Fire Code order for the return of all

or a portion of the cash Fire Code performance bond to the posting responsible person;

(10) to incorporate a stipulation agreement into a Fire Code order;

(11) to declare a Fire Code tax lien fully satisfied, and to issue a Fire Code order to that effect; and,

(12) to issue any other lawful Fire Code order regarding any aspect of abatement.

(Ord. 2017-24, 10-18-2017)

### **3-6-11. Fire Code order: enforcement.**

The City may use all lawful means to enforce a Fire Code order and to recover all abatement costs associated with such enforcement.

(Ord. 2017-24, 10-18-2017)

### **3-6-12. Fire Code order: appeal.**

A responsible person subject to a Fire Code order may appeal to the administrative hearing officer.

(Ord. 2017-24, 10-18-2017)

### **3-6-13. Stipulation agreement.**

The City may enter into a stipulation agreement with a responsible person to resolve a notice of violation. A signed stipulation agreement shall be delivered to the administrative hearing officer, who shall issue a Fire Code order incorporating the stipulation agreement. By entering into a stipulation agreement, a responsible person waives all administrative and judicial appeals associated with the notice of violation. The form of the stipulation agreement shall be approved by the City Attorney.

(Ord. 2017-24, 10-18-2017)

### **3-6-14. Recordation.**

(1) If a violation continues to exist after the abatement period, and the notice of violation has not been appealed, an officer may record the notice of violation, together with any default judgment and Fire Code order, with the office of the Tooele County Recorder. This recordation is not a lien against property, but a notice concerning any continuing violation found upon the property.

(2) If a notice of compliance or Fire Code order finding compliance is issued after a notice of violation, default judgment, or Fire Code order has been recorded, the officer shall cause the notice of compliance or Fire Code order finding compliance to be recorded with the office of the Tooele County Recorder. This recordation shall have the effect of updating and nullifying a previously recorded notice of violation, default judgment, or Fire Code order to which it relates.

(3) Notice of any recordation shall be mailed to the owners of the real property against which a recordation has been made in the same manner as provided for the mailing of a notice of violation. The failure to serve such notice shall not be grounds to void the recordation or the documents recorded.  
(Ord. 2017-24, 10-18-2017)

**3-6-15. Withholding permits; appeal.**

(1) During the pendency of any unresolved notice of violation or Fire Code order, the City may withhold from a responsible person subject to the notice or order any permit, license, or land use approval associated with the property upon which the violation continues. The withholding shall continue until the issuance of a notice of compliance or Fire Code order finding compliance.

(2) The withholding of a permit, license, or land use approval pursuant to authority of this Section may be appealed to the administrative hearing officer.  
(Ord. 2017-24, 10-18-2017)

**3-6-16. Abatement: emergency.**

(1) The City is authorized to summarily abate an imminent fire hazard.

(2) Whenever the Fire Chief determines that an imminent fire hazard exists, the Fire Chief or delegate may issue a written emergency order directing one or more of the following actions:

(a) order the immediate vacation of any owners, tenants, and occupants, and prohibit occupancy until all imminent fire hazards have been abated;

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

(c) board, fence, and otherwise secure any property or premises;

(d) raze, grade, and otherwise remove structures and objects on the property to the extent necessary to remove any imminent fire hazard;

(e) make emergency repairs; and,

(f) take any other reasonable action to eliminate an imminent fire hazard or to protect the public from an imminent fire hazard.

(3) A notice of violation shall be served upon a responsible person associated with an imminent fire hazard. The notice shall describe the nature of the imminent fire hazard. Service is not required prior to taking steps to abate an imminent fire hazard.

(4) City personnel and agents may enter property or premises without a warrant to the extent necessary to abate an imminent fire hazard.

(5) The City shall pursue only the minimum level of abatement necessary to abate an imminent fire hazard

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under this Section. Once an imminent fire hazard is abated sufficiently to constitute a violation that is not an imminent fire hazard, the City shall follow the procedures of this Chapter for non-emergency abatement.

(6) A responsible person shall be liable for all abatement costs and other costs associated with the abatement of an imminent fire hazard.

(7) Promptly after an emergency abatement, an officer shall notify a responsible person of the abatement actions taken, the itemized costs for those actions, and the location of any seized and removed personal property.

(8) A responsible person may appeal the costs of an emergency abatement to the administrative hearing officer.  
(Ord. 2017-24, 10-18-2017)

**3-6-17. Abatement: non-emergency.**

(1) If a responsible person fails to abate a violation within the abatement period or within the deadline established in a Fire Code order, the Department is authorized to abate the violation.

(2) The Department and its officers and agents have authority to enter upon any property or premises as may be necessary to abate a violation. Such entry onto a private property or premises shall be accompanied by a warrant, be done in a reasonable manner, and be based upon probable cause. However, no warrant shall be required where a responsible person's consent is voluntarily given.

(3) A responsible person shall be liable for all abatement costs associated with the abatement. If the Department undertakes preparatory or other steps to perform an abatement, but the responsible person completes the abatement before the Department begins or completes the abatement, the responsible person shall remain responsible for the City's preparatory and other costs.

(4) Promptly after an abatement, an officer shall notify a responsible person of the abatement actions taken, the itemized costs for those actions, the deadlines for paying those costs, and the location of any seized and removed personal property.

(5) A responsible person may appeal the costs of an abatement to the administrative hearing officer.  
(Ord. 2017-24, 10-18-2017)

**3-6-18. Recovery of Monetary Penalties and Costs.**

(1) As provided in U.C.A. Sections 10-11-3 and -4, as amended, and after established deadlines for the payment of monetary penalties and abatement costs have passed, an officer may file and record with the

Tooele County Recorder and Treasurer a Fire Code tax lien and an itemized statement of all such penalties and costs.

(2) Upon full payment of all amounts owing under a Fire Code tax lien, or upon the entry of a Fire Code order or judicial order declaring the lien amount satisfied, the City shall file and record an appropriate notice of satisfaction and/or lien release.

(3) The City may pursue all lawful means to recover all penalties, fees, and costs imposed or incurred pursuant to this Chapter.

(Ord. 2017-24, 10-18-2017)