

**HARRISVILLE CITY
ORDINANCE NO. 414**

LAND USE AMENDMENTS AND ENFORCEMENT

AN ORDINANCE OF HARRISVILLE CITY, UTAH, AMENDING THE SCOPE OF THE APPEAL AUTHORITY; AMENDING SECTION 1.85.010 REGARDING REIMBURSEMENT FOR DEVELOPMENT FEE OVERAGES; AMENDING CHAPTER 11.26 RELATING TO ENFORCEMENT AND PENALTIES IN THE LAND USE ORDINANCES, BUILDING CODE, AND NUISANCE ORDINANCES; MAKING TECHNICAL CHANGES; SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Harrisville City (hereafter referred to as the "City") is a municipal corporation, duly organized and existing under the laws of the State of Utah;

WHEREAS, *Utah Code Annotated* §§ 10-8-84 and 10-8-60 allow municipalities in the State of Utah to exercise certain police powers and nuisance abatement powers, including but not limited to providing for safety and preservation of health, promotion of prosperity, improve community well-being, peace and good order for the inhabitants of the City;

WHEREAS, Title 10, Chapter 9a, of the *Utah Code Annotated*, 1953, as amended, enables the City to regulate land use and development;

WHEREAS, the City finds it necessary to update its land use ordinances in order to meet the challenges presented by development and to protect public health, safety, and welfare; and,

WHEREAS, the City finds it necessary to update its land use ordinances in order to meet the challenges presented by development and to protect public health, safety, and welfare; and,

WHEREAS, after publication of the required notice the Planning Commission held its public hearing on October 14, 2009, to take public comment on the proposed Ordinance, and subsequently gave its recommendation to approve this Ordinance;

WHEREAS, the City Council received the recommendation from the Planning Commission and held its public meeting on October 27, 2009, and desires to act upon this Ordinance;

NOW, THEREFORE, be it ordained by the City Council of Harrisville City as follows:

Section 1: Repealer. Ordinance No. 378 is hereby repealed in its entirety. Any chapter, section, word, sentence, paragraph, or phrase inconsistent with this Ordinance is hereby repealed and any reference thereto is hereby vacated.

Section 2: Amendment. The *Harrisville Municipal Code* is hereby amended to read as follows:

Section 3: Appeal Authority. All references to appeals in the municipal code for land use decisions is hereby amended to read that such appeal is to be made to the City's Appeal Authority in accordance with the procedure established by ordinance, or state law as the case may be.

01.85.010. Community development and land use fees.

5. In the event that an applicant fails to fully pay any development fees prescribed in this part, fails to complete a development where the city has incurred costs in excess of the fees actually paid by applicant, or the costs incurred by the city relating to applicant exceed the fees collected in this part, developer shall reimburse the city the actual costs incurred by the city within 30 day from the date of invoice by the city. In addition to other remedies, failure to pay development fees may result in a certificate of non-compliance being issues and recorded by the city on the applicable development.

Chapter 11.26
ENFORCEMENT AND PENALTIES

Sections:

- 11.26.010. Applicability.**
- 11.26.020. Enforcement generally.**
- 11.26.030. Building permits.**
- 11.26.040. General procedures for violations and corrective measures.**
- 11.26.050. Penalties.**
- 11.26.060. Recovery of abatement expenses.**
- 11.26.070. Exhaustion of administrative remedies and appeals.**

11.26.010. Applicability.

This chapter applies to all land use regulations, building codes, nuisance ordinances and laws, and other regulations as may be specified in the municipal code.

11.26.020. Enforcement generally.

The City or any adversely affected owner of real estate within the City where an alleged violation of a land use ordinance occur, or are about to occur, may, in addition to other remedies provided by law, institute one or more of the remedies set forth in *Utah Code Annotated* §10-9a-802, 1953, as amended, and the remedies as provided in this chapter.

11.26.030. Building permits.

In accordance with *Utah Code Annotated* §10-9a-802(2), 1953, as amended, the City may withhold building permits where a violation of the municipal code exists. It is unlawful to erect, construct, reconstruct, alter, or change the use of any building or other structure within a

municipality without approval of a building permit. The City's building official may not issue a building permit unless the plans of and for the proposed erection, construction, reconstruction, alteration, or use fully conforms to all regulations then in effect.

11.26.040. General procedures for violations and corrective measures.

When a compliance office, inspector, or any law enforcement officer determines that a violation exists, the City may:

1. Identification of violator. Ascertain the owner or occupant of the property where the violation exists.
2. Notice of violation. Serve by mail or otherwise a written notice upon the owner or occupant of the property upon which a violation exists describing the violations and allowing a reasonable warning period (such as 10 days) to bring the property in compliance. Includes any statement relating to a nuisance that is required by law or the nuisance ordinances in the municipal code. No warning period applies to matters that affect public health or safety and the city may seek immediate remedial action.
3. Certificate of Non-compliance. A Certificate of Non-compliance may be recorded, as appropriate, in the event that a violation continues after the notice of violation is issued.
4. Sufficiency. Such written notice issued by the City is deemed sufficient and complete when mailed or served upon the owner or occupant to the last known post office address appearing on the records of the County Assessor.
5. Corrective action plan. The enforcement officer may require the violator to prepare and submit to the same for approval a written corrective action plan that outlines the proposed corrections violator will make to bring the violation into compliance along with an acceptable time-line for completion. Any penalty is tolled pending the violator successfully completing their corrective action plan.

11.26.050. Penalties.

In accordance with Utah Code Annotated §10-3-703, 1953, as amended, the municipality may impose the following penalties for each violation of this chapter:

1. Criminal penalty. Any owner(s), agent(s), occupant(s), corporation, entity, or lessee found in violation under this chapter shall be guilty of class B misdemeanor and a fine not to exceed \$1,000.00. Each and every day that a violation continues shall constitute a separate offense.
2. Civil Penalty. In addition to criminal penalties and other remedies provided by law, any owner(s), agent(s), occupant(s), corporation, entity, or lessee found in violation under this chapter is subject to a civil penalty not to exceed \$1,000.00, per violation, per day, in addition to administrative enforcement costs, reasonable attorney's fees, and court costs as authorized by this part or other governing law. After a notice of violation, penalties shall be applied as follows:
 - a. Upon Recording of a Certificate of Non-compliance, \$125, plus an additional \$125.00, per day, thereafter that the violation continues.
 - b. After 30 days of filing the Certificate of Non-compliance where the violations(s) continue, \$250.00, per day thereafter.

- c. After 60 days of filing the Certificate of Non-compliance where the violations(s) continue, \$500.00, per day thereafter.
 - d. After 90 days of filing the Certificate of Non-compliance where the violations(s) continue, \$1,000.00, per day thereafter.
3. Other penalties or actions. In addition to other penalties provided by law:
- a. If the violation is located at a commercial operation within the City, it is deemed that such violation is cause for warning, suspension, or revocation of a business license issued by the City in accordance with the procedure for the same as provided in the municipal code.
 - b. The City may record with the County Recorder a Certificate of Non-compliance identifying the property where the violations exists, state the violation(s), indicate that civil fines are accruing each day the violation continues, and state that the City may take abatement action at any time without further notice. A copy of a Certificate of Non-compliance is to be mailed to the address for the property in violation as such address is indicated on the records of the County Recorder Office.
 - c. When a violation is removed, the City shall record a Certificate of Compliance, as appropriate and the case may be, on the property where the violation had been located.
 - d. For continuing violations:
 - i. The City may institute foreclosure proceedings where penalties have significantly accrued.
 - ii. The City Attorney may reach a settlement agreement with the violators independently or in conjunction with the Appeal Authority.
 - iii. The City Attorney may abate a portion of the accrued penalties for good cause, but cannot abate the penalties below the actual costs incurred by the City for enforcement on a given violation, including staff time, administrative costs, attorney's fees and costs, notices, clean-up costs incurred, and other costs related to the violations and its remediation.

11.26.060. Recovery of abatement expenses.

In the event that the City abates a violation under this chapter or a nuisance as otherwise provided by law or court order, the City is to prepare an itemized statement of all expenses incurred by the City in bringing the violation on the property into compliance. This itemized statement is to be mailed to the owner(s) of record demanding full payment in the itemized statement to be made to the City within twenty-five (25) days from the date of mailing. In the event the owner(s) fail(s) to make payment of the full amount set forth in the itemized statement within the twenty-five day period, the City may record a lien on the property for the amount owed including any administrative costs, and/or provide a copy of the itemized statement to the appropriate county office and seek reimbursement as part of the collection of annual property taxes as provided by law. Nothing in this section shall be construed to limit the City from seeking other collection or enforcement remedies, including utilizing a collection agency hired by the City or pursuing foreclosure.

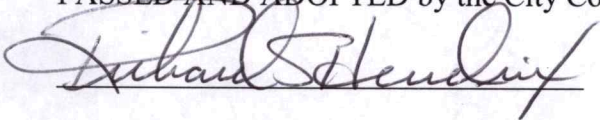
11.26.070. Exhaustion of administrative remedies and appeals.

No person may challenge in district court a municipal land use decision relating to a violation of the municipal code until that person has exhausted his/her administrative remedies. The City or any adversely affected owner of real estate within the City where an alleged violation of a land use ordinance occur, or are about to occur may appeal a decision of the City regarding the enforcement of a violation and any penalty to the City's Appeal Authority as provided in the municipal code. The City's Appeal Authority may approve or ratify any settlement agreement reached between the violator(s) and the City Attorney.

Section 4: Severability. If any section, paragraph, sentence, clause or phrase of this Ordinance is declared invalid by a court of competent jurisdiction, the remainder shall not be affected thereby and shall remain in full force and effect.

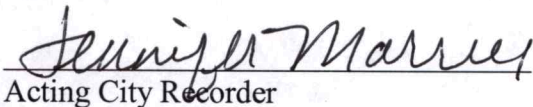
Section 5: Effective Date. This Ordinance shall be effective immediately after posting or publication.

PASSED AND ADOPTED by the City Council on this 27th day of October, 2009.



RICHARD HENDRIX, Mayor

ATTEST:


Acting City Recorder

Roll call vote is as follows:		
Mr. Crowther	<input checked="" type="radio"/> Yes	No
Ms. Tait	<input checked="" type="radio"/> Yes	No
Mr. Wilhelmsen	<input checked="" type="radio"/> Yes	No
Mr. Richins	<input checked="" type="radio"/> Yes	No
Ms. Fowers	<input checked="" type="radio"/> Yes	No

RECORDED this 27 day of October, 2009.
PUBLISHED OR POSTED this 2 day of November, 2009

CERTIFICATE OF PASSAGE AND PUBLICATION OR POSTING

According to the provision of U.C.A. §10-3-713, 1953 as amended, I, the municipal recorder of Harrisville City, hereby certify that foregoing ordinance was duly passed and published, or posted at 1) City Hall 2) 2150 North and 3) The Cabin on the above referenced dates.

 DATE: 11/2/09
Acting City Recorder,
Harrisville City

