

ORDINANCE NO. 20-15

AN ORDINANCE AMENDING THE CITY'S ADMINISTRATIVE REMEDIES ORDINANCE

WHEREAS, the City Council of the City of North Logan, Utah, adopted and passed the Code of Revised Ordinance of the City of North Logan on March 16, 1989, which Code was published and effective on March 20, 1989; and

WHEREAS, said Code includes Title 3, Municipal Government; and

WHEREAS, the City Council has deemed it necessary to make certain changes to the administrative remedies ordinance for the city.

NOW, THEREFORE, the City Council of the City of North Logan, Utah hereby adopts, passes and publishes the following:

AN ORDINANCE AMENDING THE CITY'S ADMINISTRATIVE REMEDIES ORDINANCE

BE IT ORDAINED by the City Council of the City of North Logan, Utah as follows:

SECTION I: Title 3 Section 600 Administrative Remedies is amended to read as follows (highlighted portions are added and the words struck through are deleted):

3-600 Administrative Enforcement And Remedies

Administrative remedies are intended as actions that may be applied to help ensure compliance with city ordinances, resolutions, regulations or any other city, state or federal requirements at a lower or administrative level to avoid costly or perhaps unneeded legal action. Unless otherwise specifically provided for in any ordinance, resolution or other regulation of the municipality or any code adopted by reference, the city council, mayor, or an enforcement official of the municipality may seek administrative remedies, in accordance with this chapter, to ensure compliance with any ordinance, resolution, or regulation of the municipality, or any other city, state or federal requirement, by any person, business, or other legal entity.

3-601 Administrative Enforcement And Remedies

- A. Short Title. This title shall be known as the "Administrative Enforcement Code." This Title shall also be known as Title 3 Chapter 600 of the North Logan City Code. It may be cited and pleaded under either designation.
- B. Purpose. The City Council finds that the enforcement of the North Logan City Code and applicable state codes is an important public activity. Code enforcement is vital to the protection of the public's health, safety, welfare, and quality of life. The City Council recognizes that code enforcement is effective only when done quickly and fairly. The City Council further finds that an enforcement system that allows a combination of judicial and administrative remedies is effective in correcting violations.
- C. Scope. The provisions of this Title may be applied to all violations of the North Logan Municipal Code or applicable state codes which occur within North Logan City limits and such territory outside North Logan City limits over which the City has jurisdiction or control by virtue of any constitutional provision or law. This Title establishes an additional remedy that may be used by the City to achieve compliance with applicable codes.
- D. Existing Law Continued. The provisions of this Title shall not invalidate any other title, chapter, or ordinance of the North Logan Municipal Code, but shall be read in conjunction with those titles, chapters, and ordinances and shall be used as additional remedy for enforcement of violations thereof.
- E. Criminal Prosecution Right. The City shall have sole discretion in deciding whether to file a civil or criminal judicial case or pursue an administrative enforcement action for the violation of any of its ordinances or applicable code requirements. The enactment of this Title shall not be construed

ORDINANCE NO. 20-15

AN ORDINANCE AMENDING THE CITY'S ADMINISTRATIVE REMEDIES ORDINANCE

to limit the City's right to prosecute any violation as a criminal offense. If the City chooses to file both an administrative action and criminal charges for the same violation on the same day, no civil fees shall be assessed in the administrative action, but all other remedies contained herein shall be available.

- F. **Effect of Headings.** Title, chapter and section headings contained herein shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of this Title.
- G. **Severability.** If any section, subsection, sentence, clause, phrase, portion, or provision of this Title is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Title. The City Council hereby declares that it would have adopted this Title and each section, subsection, sentence, clause, phrase, portion, or provision thereof, irrespective of the fact that any one or more sections, subsections, clauses, phrases, portions, or provisions be declared invalid or unconstitutional. This section shall apply to all amendments made to this Title.
- H. **Civil Liability.** By establishing performance standards or by establishing obligations to act, it is the intent of the City Council that North Logan City employees and officers are exercising discretionary authority in pursuit of an essential governmental function and that any such standards or obligations shall not be construed as creating a ministerial duty for purposes of tort liability.

I. Criminal Liability and Prosecution

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 Administrative Remedies Code shall be guilty of an infraction and subject to the following penalties:
 - a. Each day of violation shall be a separate infraction and offense.
 - b. The first violation shall have a fine not to exceed \$150.00;
 - c. The second violation shall have a fine not to exceed \$250.00;
 - d. The third violation shall have a fine not to exceed \$350.00;
 - e. All violations thereafter shall have a fine not to exceed \$750.00 and all other penalties allowed by the Utah Code for infractions.
2. The officers, partners, directors, managers and members of an entity shall be responsible for the acts committed by that entity. Entities and individuals shall be responsible for the acts of their agents committed in violation of this Code if they had knowledge of the act committed, and the owner of the property is presumed to have knowledge of the uses of that property and improvements made to it.

III. General Rules of Interpretation. For purposes of this Title:

1. Any gender includes the other gender.
2. Days shall mean calendar days unless otherwise specifically defined.
3. "Shall" is mandatory; "may" is permissive.
4. The singular number includes the plural, and the plural the singular.
5. Words used in the present tense include the past and future tense, and vice versa.

ORDINANCE NO. 20-15

AN ORDINANCE AMENDING THE CITY'S ADMINISTRATIVE REMEDIES ORDINANCE

6. Words and phrases used in this Title and not specifically defined shall be construed according to the context and ordinary usage of the language.
7. Unless otherwise specified, the terms "hereof", "herein", and similar terms refer to this Title as a whole.

J K. Definitions Applicable to Title Generally. In the construction of this Title, the following words and phrases shall be as defined as set forth in this section unless a different meaning is specifically defined elsewhere in this Title and specifically stated to apply:

1. "Administrative Citation" means a citation issued to a responsible person which gives notice of a violation and the civil fee for such violation.
2. "Administrative Enforcement Order" means an order issued by a hearing examiner. The order may include an order to abate the violation, pay civil fees and administrative costs, or take any other action as authorized or required by this Title and applicable state codes.
3. "Administrative Enforcement Hearing" means a hearing, presided over by a panel of three hearing examiners and held pursuant to the procedures established by this Title and at the request of a responsible person.
4. "Enforcement Official" means any city official authorized by the Mayor and City Council to enforce violations of the North Logan Municipal Code or applicable state codes.
5. "Hearing Examiner(s)" means persons appointed by the Mayor or his designee to conduct the administrative enforcement hearings, one of which is designated to preside over the hearings.
6. "Imminent Life Safety Hazard" means any condition that creates a serious and immediate danger to life, property, health, or public safety.
7. "Notice of Compliance" means a signed document or form approved by the Nuisance Abatement Officer which indicates that a property complies with the requirements outlined in an administrative citation.
8. "Notice of Emergency Abatement" means a written and signed notice that informs a responsible person of emergency abatement actions taken by the City and the costs of those actions, and orders payment for those costs.

K L. 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.

L M. Service of Notice Requirements. Whenever a notice is required to be given under this Title, the notice shall be served by one of the following methods, unless different provisions are otherwise specifically stated to apply:

1. Personal service;
2. Regular or registered mail, postage prepaid, to the last known address of a responsible person;
3. Posting the notice conspicuously on or in front of the property. The form of the posted notice shall be approved by the City Administrator; or published in a newspaper of general circulation.
4. Failure of a responsible person to actually receive notice shall not affect the validity of any action taken hereunder if notice has been served in the manner set forth above.
5. Service by regular mail in the manner set forth above shall be deemed served on the fourth day after the date of mailing.

ORDINANCE NO. 20-15

AN ORDINANCE AMENDING THE CITY'S ADMINISTRATIVE REMEDIES ORDINANCE

M N. General Enforcement Authority. Whenever an enforcement official finds that a violation of the North Logan Municipal Code or applicable state codes has occurred or continues to exist, he may undertake any of the procedures herein. The City Administrator or any designated enforcement official shall have the authority to gain compliance with the provisions of the North Logan Municipal Code and applicable state codes subject to the provisions of this Title. Such authority shall include the power to issue administrative citations, inspect public and private property, abate nuisances on public and private property, and to use any remedy available under this Title or law.

N O. Adoption of Policy and Procedures. The Mayor shall establish policies and procedures for the holding of administrative enforcement hearings, the appointment of hearing examiners, and the use of the administrative procedures herein by enforcement officials.

O P. Authority to Inspect. Enforcement officials are hereby authorized, in accordance with applicable law, to enter upon any property or premises to ascertain whether the provisions of the North Logan Municipal Code or applicable state codes are being obeyed and to make any reasonable examination or survey necessary to determine compliance with the North Logan Municipal Code or applicable state codes. 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. If a property owner or responsible person refuses to allow an enforcement official to enter the property, the enforcement official shall obtain a search warrant before entering the property.

P Q. False Information or Refusal Prohibited. It shall be unlawful for any person to willfully make a false statement or refuse to give his name or address with intent to deceive or interfere with an enforcement officer when in the performance of his official duties under the provisions of this Title. A violation of this section shall be a class B misdemeanor.

Q R. Failure to Obey a Subpoena. It shall be unlawful for any person to willfully refuse or fail to obey a subpoena issued for an administrative enforcement hearing. A violation of this section shall be a class B misdemeanor.

3-602 Administrative Abatement

A. Purpose. The North Logan City Council finds that an appropriate method of enforcement for violation of the North Logan Municipal Code and applicable state codes is by administrative abatement and through the use of an administrative citation. The procedures established in this chapter shall be an alternative and in addition to those procedures set forth in other chapters of the North Logan Municipal Code or state law. Any condition caused, maintained, or permitted to exist in violation of any provision of the North Logan Municipal Code or applicable state codes may be abated by the City pursuant to the procedures set forth in this chapter.

B. Administrative Citations. Upon discovering a violation of the North Logan Municipal Code or applicable state codes an enforcement official ~~may~~ **shall** serve an administrative citation on the responsible person. The administrative citation shall be served in the manner prescribed in §3-601(~~E~~ **M**) of this Title. The enforcement official shall attempt to obtain the signature of the responsible person on the administrative citation. If the responsible person refuses or fails to sign the administrative citation, such failure or refusal shall not affect the validity of the citation and subsequent proceedings.

C. Contents of Citation. Each administrative citation shall contain the following information:

1. The date, name of the responsible person if possible, and location of all violations;
2. Code sections violated and a description of the condition that violates the applicable code;

ORDINANCE NO. 20-15

AN ORDINANCE AMENDING THE CITY'S ADMINISTRATIVE REMEDIES ORDINANCE

3. All remedial action required to permanently correct any violation, which may include corrections, repairs, demolition, removal or other appropriate action;
 4. Identify the right to and the procedures for requesting an administrative enforcement hearing;
 5. The signature of the enforcement official and, if possible, the signature of the responsible person. In addition to the above, the administrative citation may contain the following information as appropriate to the specific violation:
 6. Specific date to correct the violation set forth in the citation, which date shall be at least ten (10) days from the date of service;
 7. Explanation of the consequences should the responsible person fail to comply with the terms and deadlines as prescribed in the administrative citation, which may include, but is not limited to criminal prosecution; civil fees; revocation of permits; recordation of the administrative citation; withholding of municipal permits; abatement of the violation; costs; administrative fees; and any other legal remedies;
 8. The amount of civil fee imposed for each violation;
 9. An explanation of how the civil fee shall be paid, the time period in which the civil fee shall be paid, and the consequences of failure to pay the civil fee; and
 10. A statement describing compliance-inspection requirements and procedures.
 11. Demand that the responsible person cease and desist from further action causing the violation and commence and complete all action to correct violations as directed by the City
- D. Requesting Hearings. A responsible person shall have the right to an administrative enforcement hearing as prescribed in § 3-605 of this Title. A request for such hearing shall be in writing and shall be filed within ten (10) ~~thirty (30)~~ days from the date of service of the administrative citation. Failure to request an administrative enforcement hearing as provided shall constitute a waiver to an administrative enforcement hearing and a waiver of the right to appeal.
- E. Failure to Correct. It shall be unlawful for any responsible person to fail to comply with the terms and deadlines set forth in an administrative citation. A violation of this section shall be ~~a class-B misdemeanor~~ an infraction.
- F. Inspections. It shall be the duty of the responsible person to request an inspection when a violation has been corrected and an inspection is required by the administrative citation. If no inspection is requested, it shall be deemed prima facie evidence that the violation remains uncorrected. If more than one inspection is necessary, an inspection fee of thirty dollars (\$30) shall be assessed for each subsequent inspection.
- G. Authority to Abate. The City is hereby authorized to enter upon any property or premises to abate a violation of the North Logan Municipal Code and applicable state codes. The City shall assess all costs for abatement to the responsible person and may use any remedy available under the law to collect such costs. If additional abatement is necessary within two (2) years, triple costs shall be assessed against the responsible person for the actual abatement.
- H. Procedures for Abatement. Non-emergency violations may be abated after thirty (30) days from the date the administrative citation is served unless a request for an administrative enforcement hearing is filed. The violation may be abated by City personnel or by a private contractor acting under the direction of the City. City personnel or a private contractor may enter upon private property in a reasonable manner to abate a violation as specified in the administrative citation or administrative enforcement order.

ORDINANCE NO. 20-15

AN ORDINANCE AMENDING THE CITY'S ADMINISTRATIVE REMEDIES ORDINANCE

1. If a responsible person abates the violation before the City abates the violation pursuant to an administrative citation or administrative enforcement order, the City may nevertheless assess all costs actually incurred by the City against the responsible person.
 2. When abatement is completed, the City shall prepare a notice of itemized bill for costs.
 3. The City shall serve the notice of itemized bill for costs by registered mail to the last known address of the responsible person. The notice shall demand full payment within thirty (30) days to North Logan City
 4. The responsible person shall have the right to an administrative enforcement hearing to contest the notice of itemized bill for costs. A request for such hearing shall be in writing and shall be filed within ten (10) ~~thirty (30)~~ days from the date of service of the notice of itemized bill for costs. Failure to request an administrative enforcement hearing as provided shall constitute a waiver to such hearing and a waiver of the right to appeal.
- I. Procedures for Recordation. For violations of the Nuisance Ordinances (Chapter 10-400) of the North Logan Municipal Code and any other applicable code, when an administrative citation has been served on a responsible person, and the violation remains uncorrected after the date to correct set forth in the administrative citation, and a request for an administrative enforcement hearing has not been timely requested, the City shall record the administrative citation with the Cache County Recorder's Office. If an administrative enforcement hearing is held, and an administrative enforcement order is issued, the City shall record the administrative enforcement order with the Cache County Recorder's Office. The recordation of an administrative enforcement order shall not be deemed an encumbrance of the property, but shall merely place interested parties on notice of any continuing violation found upon the property. Notice of the recordation shall be served on the responsible person and the property owner pursuant to any of the methods of service set forth in §3-601(~~L M~~) of this Title.
- J. Notice of Compliance. When a violation is corrected, a responsible person shall request an inspection from the city. When the city receives such request, the responsible city official as determined by the Mayor or his designee shall re-inspect the property as soon as practicable to determine whether the violation has been corrected, and whether all necessary permits have been issued and final inspections have been performed as required by applicable codes. The City shall serve a notice of compliance to the responsible person and property owner in the manner provided in §3-601(~~L M~~) herein if the city determines that:
1. All violations listed in the recorded administrative citation or administrative enforcement order have been corrected;
 2. All necessary permits have been issued and finalized;
 3. All assessed civil fees have been paid; and
 4. All assessed administrative fees and costs have been paid.
- K. Prohibition Against Issuance of Municipal Permits. The City shall withhold business licenses; permits for kennels; 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 where a violation is located. The City shall withhold such permits until a notice of compliance has been issued. The City shall not withhold permits necessary to obtain a notice of compliance or to correct serious health and safety violations.
- ~~L. Civil Fees. Civil fees shall be due and payable immediately upon expiration of the date to correct the violation. The civil fee for each violation listed on the administrative citation shall be twenty five dollars (\$25) if paid within ten (10) days of service. Civil fees shall be double if paid after ten~~

ORDINANCE NO. 20-15

AN ORDINANCE AMENDING THE CITY'S ADMINISTRATIVE REMEDIES ORDINANCE

~~(10) days but within thirty (30) days of service. Civil fees shall be triple if paid after after thirty (30) days of service. Payment of any civil fee shall not excuse a failure to correct a violation or any reoccurrence of the violation, nor shall it bar further enforcement action by the City. Civil fees shall be paid to North Logan City.~~

3-603 Emergency Abatement

A. Emergency Abatement. Whenever the city determines that an imminent life safety hazard exists that requires immediate correction or elimination, the city shall exercise the following powers without prior notice to the responsible person:

1. Order the immediate evacuation of any tenants, and prohibit occupancy until all repairs are completed;
2. Post the premises as unsafe, substandard, or dangerous;
3. Board, fence, or secure the building or site;
4. Raze and grade that portion of the building or site to prevent further collapse, and remove any hazard to the general public;
5. Make any minimal emergency repairs as necessary to eliminate any imminent life safety hazard; or
6. Take any other action appropriate to eliminate the emergency.
7. The City may, based on probable cause, enter property without a search warrant or court order to accomplish the above listed acts.

B. Procedures. The City shall document the life or safety hazard prior to emergency abatement. The City shall pursue only the minimum level of correction or abatement as necessary to eliminate the immediacy of a hazard. Costs incurred by the City during the emergency abatement process shall be assessed and recovered against the responsible person. The City may also pursue any other administrative or judicial remedy to abate any remaining violations. After an emergency abatement, the City shall, within ten (10) days serve notice of itemized bill for costs to the responsible person for the abatement action taken. Such notice shall include a description of the imminent life safety hazard. A responsible person has the right to an administrative enforcement hearing. A request for such hearing shall be in writing and shall be filed within ten (10) ~~thirty (30)~~ days from the date of service of the notice of itemized bill for costs. Failure to request an administrative enforcement hearing as provided herein shall constitute a waiver to an administrative enforcement hearing and a waiver to the right to appeal.

3-604 Costs And Fees

A. If a responsible person fails to correct a violation by the correction date listed in a Notice of Violation or in an Administrative Enforcement Order, the responsible person shall pay the following civil fees to the City within 15 days:

1. The civil fee for each violation shall be one hundred dollars (\$100).
2. Thereafter, there shall be an additional civil fee of one hundred dollars (\$100) for each subsequent day of violation until the violation is corrected.

ORDINANCE NO. 20-15

AN ORDINANCE AMENDING THE CITY'S ADMINISTRATIVE REMEDIES ORDINANCE

3. Payment of any civil fee shall not excuse any failure to correct a violation or the reoccurrence of the violation, nor shall it bar further enforcement action by the City.
- B. When a Notice of Violation has been served on a responsible person, and the violation remains uncorrected after the date to correct set forth in the Notice of Violation, and a request for an Administrative Hearing has not been timely requested, the Zoning Administrator, or any other person designated by the City under this Chapter, may record the Notice of Violation with the Cache County Recorder's Office.
 1. If an Administrative Hearing is held, and an Administrative Enforcement Order is issued, the Zoning Administrator, or any other person designated by the City under this Chapter, shall record the Administrative Enforcement Order with the Cache County Recorder's Office.
 2. The recordation of an Administrative Enforcement Order shall not be deemed an encumbrance of or lien against the property, but shall merely provide public notice of any continuing violation found upon the property.
 3. Notice of the recordation shall be served on the responsible person and the property owner pursuant to any of the methods of service provided in this Chapter.
- A. ~~Purpose. The City Council finds that the costs incurred by enforcement officials and other City personnel to correct violations should be recovered from the responsible person. The City Council further finds that the assessment of costs is an appropriate method to recover expenses incurred for actual costs of abating violations, re-inspection fees, filing fees, attorney fees, hearing examiner fees, title search, and any additional actual costs incurred by the City for each individual case. The assessment and collection of costs shall not preclude the imposition of any judicial fees or fines for violations of the North Logan Municipal Code or applicable state codes.~~
- B. ~~Assessment of Costs. Whenever actual costs are incurred by the City to enforce the North Logan Municipal Code and applicable state codes, such costs shall be assessed against the responsible person. The City shall serve the responsible person with an administrative citation and/or itemized bill for costs. The responsible person shall have a right to an administrative enforcement hearing. A request for such hearing shall be in writing and shall be filed within thirty (30) days from the date of service of the notice of itemized bill for costs. Failure to request an administrative enforcement hearing as provided shall constitute a waiver to an administrative enforcement hearing and a waiver of the right to appeal.~~
- C. ~~Failure to Timely Pay Costs. The failure of any person to pay assessed costs by the deadline specified, in an invoice or judgment issued by an enforcement hearing, the city may place a lien in the several amounts assessed against each property, open area, ditch or right of way until paid and shall have priority over all other liens, except general taxes and prior special assessment liens. If any such assessment is not paid within thirty (30) days after it has been certified to the City Treasurer by the City Recorder and billed by the City Treasurer to the owner by deposit in the United States Mail addressed to the owner of record at the address as shown on the tax rolls or such other, more recent address as may be available to the City, and any agents, representatives or occupants as may be known; the City Treasurer is hereby authorized to certify to the County Treasurer the list of delinquent assessments, giving the name of the owner as it appears of record, the number of the lot and block and the amount of the assessment plus a ten percent penalty. The~~

ORDINANCE NO. 20-15

AN ORDINANCE AMENDING THE CITY'S ADMINISTRATIVE REMEDIES ORDINANCE

certification is to be the same in substance and in form as required for the certification of other taxes. The County Treasurer, upon receipt of such certified list, is hereby authorized to place it upon the tax list for the current year and to collect, together with any charges as may by law be made by the County Treasurer and all laws of the State for the assessment and collection of general taxes, including the laws for the sale of property for taxes, and the redemption thereof shall apply to and have full force and effect for the collection of all such assessments. Notwithstanding the foregoing, if the offending property, open area, ditch or right of way is not subject to taxation, the City Treasurer may elect alternative means to collect the amounts due pursuant to the Article, including the commencement of an action at law or in equity and, after judgment, pursue such remedies as are provided by law.

- D. Administrative Cost Fund. Administrative costs and fees and Civil Fees, collected pursuant to this Title shall be deposited in the General Fund or other more appropriate fund as determined by the City Administrator, to reimburse City departments for costs associated with the administration of this Title. Fees and costs deposited in this fund shall be allocated pursuant to the City's budget process and as authorized by applicable law.

3-605 Administrative Enforcement Hearing Procedures

- A. Administrative Enforcement Hearings. It is the purpose and the intent of the City Council that any responsible person shall be afforded due process of law during the enforcement process. Due process of law shall require adequate notice, an opportunity to request and to participate in any hearing, and an adequate explanation of the reason justifying any resulting action. The following procedures are intended to establish a forum to resolve and correct violations of the North Logan Municipal Code and applicable state codes fairly, quickly, and efficiently while providing due process.
- B. Request for Administrative Enforcement Hearing. A responsible person served with one of the following documents or notices shall have the right to request an administrative enforcement hearing, if the request is filed within ~~ten (10)~~ ~~thirty (30)~~ calendar days from the date of service of one of the following notices:
1. Administrative citation
 2. Notice of emergency abatement or
 3. Notice of itemized bill for costs
- C. The request for an administrative enforcement hearing shall be made in writing and submitted to the City Recorder. As soon as practicable after receiving the written notice of the request for an administrative enforcement hearing, the appointed hearing examiners shall schedule a date, time and place for the administrative enforcement hearing. Failure to request an administrative enforcement hearing within ~~ten (10)~~ ~~thirty (30)~~ calendar days from the date of service of any of the notices listed above shall constitute a waiver of the right to an administrative enforcement hearing and the right to an appeal.
- D. Notification of Administrative Enforcement Hearing. Written notice of the date, time, and place of the administrative enforcement hearing shall be served to the responsible person as soon as practicable prior to its date. The notice shall be served by any of the methods of service set forth in §3-601(L M) of this Title.
- E. Appointment and Qualifications of Hearing Examiner. The Mayor or his designee shall appoint three (3) hearing examiners. One of the three Hearing Examiners shall be appointed by the Mayor to preside at administrative enforcement hearings. A Hearing Examiner shall have no personal or financial interest in the matter for which a hearing is being conducted;

ORDINANCE NO. 20-15

AN ORDINANCE AMENDING THE CITY'S ADMINISTRATIVE REMEDIES ORDINANCE

F. Powers of Hearing Examiners. A hearing panel shall be composed of three hearing examiners and shall have authority to hold an administrative enforcement hearing for violations of the North Logan Municipal Code and applicable state codes.

1. The hearing examiners may continue a hearing for good cause shown by one of the parties or if the hearing examiners independently determine that due process has not been adequately afforded to such party.
2. At the request of any party to an administrative enforcement hearing, the presiding hearing examiner may sign subpoenas for witnesses, documents, and other evidence where the attendance of the witness or the admission of evidence is deemed necessary by the presiding hearing examiner to decide issues at the hearing. All costs related to the subpoena including witness and mileage fees, shall be borne by the party requesting the subpoena.
3. The presiding hearing examiner has continuing jurisdiction over the subject matter of an administrative enforcement hearing for the purposes of granting a continuance; ordering compliance by issuing an administrative enforcement order; ensuring compliance of that order, which includes authorizing the City to enter and abate a violation; modifying an administrative enforcement order; or, where extraordinary circumstances exist, granting a new hearing.
4. Hearing examiners may require a responsible person to post a performance bond to ensure compliance with an administrative enforcement order.
5. Hearing examiners shall not make determinations as to the existence of nonconforming rights. If a responsible person claims a nonconforming right as a defense, the presiding hearing examiner shall continue the administrative enforcement hearing and shall refer the matter to the North Logan Administrative Appeals Hearing Officer for a determination as to the existence of the nonconforming right. North Logan Administrative Appeals Hearing Officer's decision shall be binding on the hearing examiners. The responsible person shall bear the costs of the appeal to the North Logan Administrative Appeals Hearing Officer if the appeal is denied.

G. Procedures at Administrative Enforcement Hearing. Administrative enforcement hearings are intended to be informal in nature. Formal rules of evidence and discovery shall not apply; however, an informal exchange of discovery may be required. Any such request shall be in writing. Failure to request discovery shall not be a basis for a continuance. Complainant information shall not be disclosed or released unless the complainant is a witness at the hearing. The procedure and format of the administrative enforcement hearing shall follow duly adopted policies and procedures.

1. The City shall bear the burden of proof to establish the existence of a violation of the North Logan Municipal Code or applicable state codes.
2. Such proof shall be established by a preponderance of the evidence.
3. Each party shall have the opportunity to cross examine witnesses and present evidence in support of his 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.
4. All administrative enforcement hearings shall be open to the public and shall be recorded by audiotape. Administrative enforcement hearings shall normally be held at the North Logan City office. In the discretion of the presiding hearing examiner, administrative enforcement hearings may be held at the location of the violation.

ORDINANCE NO. 20-15

AN ORDINANCE AMENDING THE CITY'S ADMINISTRATIVE REMEDIES ORDINANCE

5. The responsible person shall have the right to be represented by an attorney. If an attorney will be representing a responsible person at a hearing, notice of the attorney's name, address, and telephone number shall be given to the City at least one (2) days prior to the hearing. If such notice is not given, the hearing may be continued at the City's request, and all costs of the continuance shall be assessed to the responsible person.

6. The burden to prove any raised defenses shall be upon the party raising any such defense.

H. Failure to Attend Administrative Enforcement Hearing. A responsible person who fails to appear at an administrative enforcement hearing shall be deemed to have waived the right to such hearing, the adjudication of issues related to the hearing, and the right to appeal, provided that prior notice of the hearing has been given as provided in §3-601(E M) of this Title.

I. Administrative Enforcement Order. At any point prior to an enforcement hearing, a responsible person and the City may enter into a stipulated agreement, which shall be signed by both parties. Such agreement shall be entered as an administrative enforcement order. Entry of such agreement shall constitute a waiver of the right to an administrative enforcement hearing and the right to appeal. At the conclusion of an enforcement hearing, after all evidence and testimony are presented, the presiding hearing examiner shall issue a written administrative enforcement order that affirms, modifies, or rejects the notice or citation.

1. A hearing panel may issue an administrative enforcement order that requires a responsible person to cease from violating the North Logan Municipal Code or applicable state codes and to take any necessary corrective action.

2. A hearing panel may order the City to enter the property and abate all violations, including the removal of animals in violation of an applicable code requirement.

3. A hearing panel may revoke the right as provided in the North Logan Municipal Code to possess animals, a kennel permit, or an animal license.

4. As part of an administrative enforcement order, the hearing panel may establish specific deadlines for the payment of fees and costs, and condition the total or partial assessment of civil fees on the responsible person's ability to take necessary corrective actions by specified deadlines.

5. A hearing panel may issue an administrative enforcement order imposing civil fees. Such fees shall continue to accrue until the responsible person complies with the hearing panel's decision and corrects the violation.

6. A hearing panel may schedule subsequent review hearings as may be necessary or as requested by the City to ensure compliance with an administrative enforcement order.

7. The hearing panel may order a responsible person to post a performance bond to ensure compliance with an administrative enforcement order.

8. An administrative enforcement order shall become final on the date of signing by the presiding hearing examiner.

9. An administrative enforcement order shall be served on all parties by any one of the methods listed in §3-601(E M) of this Title. When required by this Title, the City Recorder shall record the administrative enforcement order with the Cache County Recorder's Office.

10. After a hearing examiner has issued an administrative enforcement order, the City Administrator or a designated enforcement official appointed by the City Administrator shall monitor the matter for compliance with the administrative enforcement order.

ORDINANCE NO. 20-15

AN ORDINANCE AMENDING THE CITY'S ADMINISTRATIVE REMEDIES ORDINANCE

J. Failure to Comply. It shall be unlawful for any responsible person to fail to comply with the terms and deadlines set forth in a final administrative enforcement order. A violation of this section shall be ~~a class B misdemeanor~~, an infraction

K. Appeal. Any responsible person adversely affected by a final administrative enforcement order made in the exercise of the provisions of this Title may file a petition for review in the district court.

1. The petition shall be barred unless it is filed within 30 days after the administrative enforcement order is final.
2. In the petition, the plaintiff may only allege that the administrative enforcement order was arbitrary, capricious or illegal.
3. The court shall:
 - a. Presume that the administrative enforcement order is valid;
 - b. Review the record to determine whether the order was arbitrary, capricious, or illegal; and
 - c. Affirm the administrative enforcement order if it is supported by substantial evidence in the record. The record of the proceedings including minutes, findings, orders and, if available, a true and correct audio recording of the proceeding shall be transmitted to the reviewing court.
4. If the proceeding was tape recorded, a transcript of such tape recording shall be deemed a true and correct transcript for purposes of this subsection. If there is a record, court review shall be limited to the record of the proceeding. The court may not accept or consider any evidence outside such record unless that evidence was offered to the hearing examiner and the court determines that it was improperly excluded by the hearing examiner. The court may call witnesses and take evidence if there is no record.
5. The filing of a petition does not stay execution of an administrative enforcement order. Before filing a petition, a responsible person may request the hearing examiner to stay an administrative enforcement order. Upon receipt of a request to stay, the presiding hearing examiner may order the administrative enforcement order to be stayed pending district court review if the presiding hearing examiner finds such stay to be in the best interest of the City.

L. Collection of Civil Fines and Costs

If a responsible person fails to make payment to the City of any amount owed under this Chapter within the timeframe set forth in the Notice of Violation, Notice of Itemized Bill of Costs, or the Administrative Enforcement Order, the City may collect the amount owed in any one or more of the following ways:

1. Referring the matter to a collection agency;
2. Instituting a civil action to collect the amount owed;
3. Recording a lien on the property that is the subject of the Code violations or fines imposed pursuant to the notice and recording procedures outlined in the Utah Code Ann. § 38-12-101, *et seq.*; and

ORDINANCE NO. 20-15

AN ORDINANCE AMENDING THE CITY'S ADMINISTRATIVE REMEDIES ORDINANCE

4. Any other manner provided by law for the collection of debts.

All costs and reasonable attorney fees incurred by the City in collecting any amounts due and owing under this Chapter shall be paid by the responsible person.

SECTION II: CONFLICT. To the extent of any conflict between this ordinance and any other North Logan City ordinance(s) or regulation(s), the provisions of this Ordinance shall be controlling.

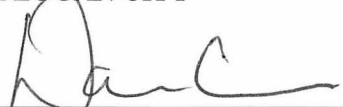
SECTION III: SEVERABILITY. The sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable. If any such section, paragraph, sentence, clause, or phrase shall be declared invalid or unconstitutional by the valid judgment or decree of a Court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any of the remaining sections, paragraphs, sentences, clauses, or phrases of this Ordinance.

SECTION IV: EFFECTIVE DATE. In the opinion of the City Council of North Logan, it is necessary that this ordinance take effect immediately; therefore, this Ordinance shall take effect immediately upon its passage and first posting as provided by law.

ADOPTED AND PASSED by the City Council of the City of North Logan, Utah, this 4th day of November, 2020.

NORTH LOGAN CITY

By:


Damon Cann, Mayor

ATTEST:


Scott Bennett, City Recorder

ORDINANCE NO. 20-15

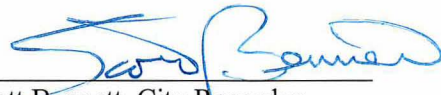
AN ORDINANCE AMENDING THE CITY'S ADMINISTRATIVE REMEDIES ORDINANCE

CERTIFICATE OF DUE POSTING

I, Scott Bennett, City Recorder of North Logan, Utah, hereby certify that I caused to be posted the foregoing Ordinance No. 20-15 on the 5th day of November, 2020, in the City of North Logan, Cache County, State of Utah, a copy of which is hereto attached, in each of three public places in the said City of North Logan, to-wit:

1. North Logan City Offices, 2076 North 1200 East
2. North Logan City Library, 475 East 2500 North
3. North Park Police Department, 575 East 2500 North

WITNESS my hand this 5th day of November, 2020.



Scott Bennett, City Recorder