

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE REPEALING CHAPTER 6, ZONING ADMINISTRATION and ENFORCEMENT OF AMALGA TOWN CODE AND ADDING CHAPTER 6, ENFORCEMENT and PENALTIES.**

WHEREAS, the Amalga Town Council has adopted and passed the Ordinances of the Town of Amalga, which continue in force and effect and include The Amalga Town Land Management and Development Code (the “Code”);

WHEREAS, Amalga Town desires to make more specific regulations related to violations of the Code; and

WHEREAS, Amalga Town has determined that it would be in the best interest and promote the welfare of its residents if Chapter 6 of the Code were repealed in their entirety and replaced with an entire chapter in the code dedicated to civil enforcement and penalties which will be known as Chapter 6, Enforcement and Penalties;

NOW, THEREFORE, BE IT ORDAINED, by the Amalga Town Council, Cache County, State of Utah, as follows:

1. Chapter 6, Zoning Administration and Enforcement of the Code is hereby repealed.
2. The provisions of Chapter 6 attached to this Ordinance are hereby adopted as part of the Code and added thereto as Chapter 6, Enforcement and Penalties.
3. This Ordinance shall take effect upon its first posting as required by law.

ADOPTED AND PASSED by the Amalga Town Council, Cache County, State of Utah, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_ TOWN

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Recorder/Recorder

\_\_\_\_\_  
Posting Date

## **6**

# **ENFORCEMENT AND PENALTIES**

### **11.1 Purpose**

The Town council finds that the enforcement of the Town's ordinances 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 Town council recognizes that code enforcement is effective only when done quickly and fairly. The Town council further finds that an enforcement system that allows a combination of judicial and administrative remedies is effective in correcting violations.

### **11.2 Scope**

The provisions of this Chapter may be applied to all violations of the Town Code, and any other Town ordinances or applicable state codes, which occur within Town limits and such territory outside Town limits over which the Town has jurisdiction or control by virtue of any constitutional provision, law, or interlocal agreement. This Chapter establishes an additional remedy that may be used by the Town to achieve compliance with applicable ordinances and codes.

### **11.3 Existing Law Continued**

The provisions of this Chapter shall not invalidate any other title, chapter, or ordinance of the Town or this Code, but shall be read in conjunction with those titles, chapters, and ordinances and may be used as an additional remedy for enforcement of violations thereof.

### **11.4 Criminal Liability and Prosecution**

Any person, firm, entity or corporation, whether as principal, agent, or employee, who violates or causes the violation of any of the provisions of the Code, and any other Town ordinances or applicable state codes, 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.

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.

The Town 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 this Code or any of its ordinances or applicable code requirements. The enactment of this Chapter shall not be construed to limit the Town's right to prosecute any violation as a criminal offense. If the Town chooses to file both an administrative action and criminal charges for the same violation, all other remedies contained herein shall be available.

### **11.5 Severability**

If any section, subsection, sentence, clause, phrase, portion, or provision of this Chapter 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 Chapter. The Town council hereby declares that it would have adopted this Chapter 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 Code or Chapter.

### **11.6 No Tort Liability**

By establishing performance standards or by establishing obligations to act, it is the intent of the Town council that Town 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.

### **11.7 Acts Include Causing, Aiding, and Abetting**

Whenever any act or omission is made unlawful in this Code, it shall include causing, permitting, aiding, or abetting such act or omission.

### **11.8 General Enforcement Authority**

Whenever the Zoning Administrator or other enforcement official authorized by the Town finds that a violation of this Code or other Town ordinances and applicable state codes has occurred or continues to exist, he or she may undertake any of the procedures herein. The Zoning Administrator or any designated enforcement official shall have the authority to gain compliance with the provisions of the Code and other Town ordinances and applicable state codes subject to the provisions of this Chapter. Such authority shall include the power to:

A. Withhold permits and licenses;

- B. Issue Notices of Violation;
- C. Abate nuisances or violations on public and private property; and
- D. Use any other remedy available under this Chapter or as otherwise available in law or equity.

### **11.9 Withholding and Revocation of Permits and Licenses**

The Town may withhold and revoke a building permit, business license, or any other permit or license related to any property on which a condition exists that violates any provision of this Code or any other Town ordinance or state code until such time as the condition is cured and a Notice of Compliance has been issued by the Town.

### **11.10 Notice of Violation**

A. Whenever an enforcement official determines that a violation of the Code, Town ordinances, or applicable state codes has occurred or continues to exist, a Notice of Violation may be issued to the responsible person. The Notice of Violation shall include the following information:

1. Name of the responsible person;
2. Street address of violation;
3. Date of violation;
4. All code sections violated and a description of the condition that violates the applicable code;
5. All remedial action required to permanently correct any violation, which may include corrections, repairs, demolition, removal, or other appropriate action;
6. Specific date to correct the violation set forth in a notice of violation, 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 notice of violation, which may include, but is not limited to, criminal prosecution, withholding or revocation of permits or licenses, civil fees, recordation of the notice of violation, abatement of the violation, recovery of costs and administrative fees, and any other legal remedies;
8. Statement that civil fees will begin to accrue immediately upon failure to comply by expiration of the date to correct violation;
9. The amount of the civil fee for each violation and a statement that the civil fee shall accrue daily until the violation is corrected;
10. 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 Town;
11. Procedures to request an Administrative Hearing and consequences if no request for a hearing is made; and
12. Statement that when the violation is brought into compliance the responsible person must notify the Zoning Administrator and request an inspection.

B. The Notice of Violation shall be served by one of the methods of service listed in this Chapter.

C. It shall be unlawful for any responsible person to fail to comply with the terms and deadlines set forth in a Notice of Violation. A violation of this subsection shall be an infraction.

D. A responsible person who has received a Notice of Violation shall have the right to an Administrative Hearing. A request for such hearing shall be in writing and shall be filed with the Town Recorder within ten (10) days from the date of service of the Notice of Violation. Failure to request an Administrative Hearing as provided herein shall constitute a waiver to an Administrative Hearing and a waiver of the right to appeal.

### **11.11 Civil Citation**

A. Whenever an enforcement official determines that a violation of the Code, Town ordinances, or applicable state code has occurred or continues to exist a Civil Citation may be issued to the responsible person. Civil Citations may not be used for violations of a land use regulation or nuisance ordinance. The Civil Citation shall include the following information:

1. Name of the responsible person;
2. Street address of violation;
3. Date of violation;
4. All code sections violated and a description of the condition that violates the applicable code;
5. The amount of the civil fee for each violation;
6. Explanation that the civil fee must be paid within fifteen (15) days of the date of the Civil Citation;
7. Explanation of the consequences should the responsible person fail to timely pay the civil fee, which may include, but is not limited to, incurring interest and late penalties, recovery of costs and administrative fees, and any other legal remedies; and
8. Procedures to request an Administrative Hearing and consequences if no request for a hearing is made.

B. The Civil Citation shall be served by one of the methods of service listed in this Chapter.

C. It shall be unlawful for any responsible person to fail to timely pay the civil fee imposed by a Civil Citation. A violation of this subsection shall be an infraction.

D. A responsible person who has received a Civil Citation shall have the right to an Administrative Hearing. A request for such hearing shall be in writing and shall be

filed with the Town Recorder within ten (10) days from the date of service of the Civil Citation. Failure to request an Administrative Hearing as provided herein shall constitute a waiver to an Administrative Hearing and a waiver of the right to appeal.

#### **11.12 Civil Fees**

- A. If a responsible person fails to correct a violation by the correction date listed in a Notice of Violation, the responsible person shall pay the following civil fees to the Town within fifteen (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.
  - 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 Town.
  - 4. If the civil fees imposed pursuant to a Notice of Violation are not paid within fifteen (15) days of the correction date listed in the Notice of Violation, then a late penalty of \$25 shall be assessed and any unpaid fee amounts shall incur interest at 10% per annum until paid.
- B. Civil Citations must impose the civil fees as set forth in the fee schedule set by the Town Council by resolution, and if for any reason the violation is not included on the fee schedule, then the amount shall be \$50. A responsible person who receives a Civil Citation shall pay the amount of the civil fees imposed by the Civil Citation within fifteen (15) days of the date of the Civil Citation. If the civil fees imposed in a Civil Citation are not paid within fifteen (15) days of the date of the Civil Citation, then a late penalty of \$25 shall be assessed and the fee amounts shall incur interest at 10% per annum until paid.

#### **11.13 Recording**

- A. 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 Town under this Chapter, may record the Notice of Violation with the Cache County Recorder's Office.
- B. If an Administrative Hearing is held, and an Administrative Enforcement Order is issued, the Zoning Administrator, or any other person designated by the Town under this Chapter, shall record the Administrative Enforcement Order with the Cache County Recorder's Office.

C. 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.

D. 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.

#### **11.14 Inspections**

It shall be the duty of the responsible person to request an inspection by the Zoning Administrator when a violation noted on a Notice of Violation has been corrected. 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.

#### **11.15 Notice of Compliance**

A. When a violation noted on a Notice of Violation is corrected, a responsible person shall request an inspection from the Zoning Administrator.

B. When the Zoning Administrator receives such request, the Zoning Administrator shall reinspect 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.

C. The Zoning Administrator shall serve a Notice of Compliance to the responsible person and property owner if the Zoning Administrator determines that:

1. All violations listed in the Notice of Violation 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.

#### **11.16 Abatement**

##### **11.16.1 Authority to Abate**

The Zoning Administrator, or any other person designated by the Town under this Chapter, is authorized to enter upon any property or premises to abate a violation of this Code, Town ordinances, and applicable state codes. The Zoning Administrator shall assess all costs for abatement to the responsible person and may use any remedy available under this Code or by law to collect such costs. If additional abatement is necessary within two (2) years, treble costs shall be assessed against the responsible person for the actual abatement.



### **11.16.2 Procedure for Abatement**

- A. Violations may be abated after service of a Notice of Violation under this Chapter.
- B. The violation may be abated by Town personnel or by a private contractor acting under the direction of the Town. Town personnel or a private contractor may enter upon private property in a reasonable manner to abate a violation as specified in the Notice of Violation.
- C. If a responsible person abates the violation before the Town abates the violation pursuant to a Notice of Violation, the Zoning Administrator may nevertheless assess all costs actually incurred by the Town against the responsible person.
- D. When abatement is completed, the Zoning Administrator shall prepare a Notice of Itemized Bill for Costs.
- E. The Zoning Administrator shall serve the Notice of Itemized Bill for Costs by certified mail or personal delivery to the last known address of the responsible person or to the owner of record of the property on which the abatement took place. The notice shall demand full payment within thirty (30) days to the Town Recorder.
- F. The responsible person shall have the right to an Administrative Hearing to contest the Notice of Itemized Bill for Costs. A request for such hearing shall be in writing and shall be filed with the Town Recorder within ten (10) days from the date of service of the Notice of Itemized Bill for Costs. Failure to request a hearing as provided shall constitute a waiver to such hearing and a waiver of the right to appeal.

### **11.17 Service Requirements**

A. Whenever a notice is required to be given under this Chapter, 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 mail, postage prepaid, to the last known address of a responsible person or record owner of the property on which a violation exists;
3. Posting the notice conspicuously on or in front of the property; or
4. Published in a newspaper of general circulation.

B. Failure of a responsible person or record owner of the property 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.

C. Service by regular mail in the manner set forth above shall be deemed served on the fourth day after the date of mailing.

#### **11.18 Request for an Administrative Hearing**

A. A responsible person or record owner shall have the right to request an Administrative Hearing if the request is filed within ten (10) calendar days from the date of service of a Notice of Violation, Civil Citation, or a Notice of Itemized Bill for Costs.

B. The request for an Administrative Hearing shall be made in writing and submitted to the Town Recorder. The written request shall contain an explanation of all theories for relief the responsible person will put before the hearing examiner.

C. As soon as practicable after receiving the written notice of the request for an Administrative Hearing, the appointed hearing examiner shall schedule a date, time and place for the Administrative Hearing and shall provide notice of the same to the responsible person who made the request for an Administrative Hearing. The Town may submit a written response to the hearing examiner that provides the Town's position on each theory for relief asserted by the responsible person.

D. Failure to request an Administrative Hearing within ten (10) calendar days from the date of service of any of the notices in subsection (A) above shall constitute a waiver of the right to an Administrative Hearing and the right to an appeal.

#### **11.19 Appointment of Hearing Examiner**

The Mayor or his designee shall appoint hearing examiners to preside at Administrative Hearings. The hearing examiner shall have no personal or financial interest in the matter and may be an employee of the Town.

#### **11.20 Procedures at Administrative Hearings**

A. Administrative enforcement hearings are intended to be informal in nature. Formal rules of evidence and discovery shall not apply.

B. The Town shall bear the burden of proof to establish the existence of a violation of the Code, Town ordinance, or applicable state codes.

C. Such proof shall be established by a preponderance of the evidence.

D. Each party shall have the opportunity to present evidence in support of the party's case.

E. All Administrative Hearings shall be held in accordance with the Utah Open and Public Meetings Act. In the discretion of the hearing examiner, Administrative Hearings may be held at the location of the violation.

F. 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 Town at least seven (7) days prior to the hearing. If such notice is not given, the hearing may be continued at the Town's request, and all costs of the continuance shall be assessed to the responsible person.

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

H. A responsible person who fails to appear at an Administrative 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.

#### **11.21 Administrative Enforcement Order**

A. A responsible person and the Town 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 Hearing and the right to appeal.

B. After all evidence is presented, the hearing examiner shall issue a written Administrative Enforcement Order that affirms or rejects the Notice of Violation, Civil Citation, or Notice of Itemized Bill for Costs. As part of an Administrative Enforcement Order, a hearing examiner 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

C. For hearings held on a Notice of Violation or a Notice of Itemized Bill for Costs:

1. A hearing examiner may issue an Administrative Enforcement Order that requires a responsible person to cease from violating the Code, Town ordinances, or applicable state codes and to take any necessary corrective action noted in the Notice of Violation.
2. A hearing examiner may enter an order confirming the Town's right to enter the property and abate all violations, including the removal of animals in violation of an applicable code requirement.

3. A hearing examiner may issue an Administrative Enforcement Order imposing civil fees, and the Order may provide that such fees shall continue to accrue until the responsible person complies with the hearing examiner's decision and corrects the violation.
4. A hearing examiner may schedule subsequent review hearings as may be necessary or as requested by the Town to ensure compliance with an Administrative Enforcement Order.

J. An Administrative Enforcement Order shall become final on the date of signing by a hearing examiner.

K. An Administrative Enforcement Order shall be served on all parties by any one of the methods listed in this Chapter. When required by this Chapter, the Zoning Administrator, or any other person designed by the Town under this Chapter, shall record the Administrative Enforcement Order with the Cache County Recorder's Office.

L. It shall be unlawful for any responsible person to fail to comply with the terms and deadlines set forth in an Administrative Enforcement Order. A violation of this subsection shall be an infraction.

## **11.22 Appeal to District Court**

A. Any responsible person adversely affected by an Administrative Enforcement Order made in the exercise of the provisions of this Chapter may file a petition for review in the district court.

B. The petition shall be barred unless it is filed within 30 days after the Administrative Enforcement Order is final.

C. In the petition, the plaintiff may only allege that the Administrative Enforcement order was arbitrary, capricious or illegal.

D. The court shall:

1. Presume that the Administrative Enforcement Order is valid;
2. Review the record to determine whether the Order was arbitrary, capricious, or illegal; and
3. Affirm the Administrative Enforcement Order if it is supported by substantial evidence in the record.

E. The record of the proceedings including minutes, findings, orders and, if available, a true and correct transcript of the proceeding shall be transmitted to the

reviewing court. 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.

F. 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. The court may call witnesses and take evidence if there is no record.

G. 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 hearing examiner may order the Administrative Enforcement Order to be stayed pending district court review if the hearing examiner finds such stay to be in the best interest of the Town.

### **11.23 Collection of Civil Fines and Costs**

If a responsible person fails to make payment to the Town of any amount owed under this Chapter within the timeframe set forth in the Notice of Violation, Civil Citation, 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:

- A. Referring the matter to a collection agency;
- B. Instituting a civil action to collect the amount owed;
- C. 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
- D. Any other manner provided by law for the collection of debts.

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

