

KEARNS METRO TOWNSHIP

Ordinance No. 2023-12-02

Date: December 6, 2023

AN ORDINANCE OF KEARNS METRO TOWNSHIP COUNCIL AMENDING TITLE 12 OF MUNICIPAL CODE, PROVISIONS ON CODE ENFORCEMENT AND COMMUNITY PRESERVATION

RECITALS

WHEREAS, Kearns Metro Township adopted each county ordinance in effect at the time of its incorporation pursuant to Utah Code Ann. Subsection 10-2a-414(3) and has authority to amend or repeal the county ordinance when it determines it is necessary; and

WHEREAS, Kearns Metro Township is a municipality and has authority to regulate and enforce its code pursuant to Utah Code Ann. Sections 10-3-702- 703.7; 10-3-716; 10-8-60; 10-11-1, *et seq.*; 76-10-801, *et seq.*; and

WHEREAS, Kearns Metro Township has authority to adopt ordinances and land use controls necessary for the use and development of land within its municipal boundaries in accordance with the Municipal Land Use, Development, and Management Act, (“MLUDMA”), Title 10, Section 9a, Utah Code, to protect public health, safety, and welfare; and

WHEREAS, the Council deems it necessary to amend its ordinances in order to ensure compliance with State Statute, encourage conformity with the Kearns General Plan, promote ease of use for residents and staff, and preserve the unique character of the Kearns community; and for the protection and preservation of the public health, safety and general welfare.

BE IT ORDAINED BY KEARNS METRO TOWNSHIP COUNCIL as follows:

1. Title 12 is repealed and replaced in its entirety with the revised Title 12 attached hereto as **Attachment 1**.
2. Severability. If a court of competent jurisdiction determines that any part of these Ordinances is unconstitutional or invalid, then such portion(s) of these Ordinances, or specific application of these Ordinances, shall be severed from the remainder, which shall continue in full force and effect.
3. Implementation. Kearns staff are instructed to take any administrative steps needed to prepare and finalize Attachment 1 for publication to Municode, including but not limited

to making any formatting, grammatical, or other non-substantive changes to the Ordinances that may be needed.

4. Posting and Effective Date. After Kearns staff have prepared Attachment 1 for publication to Municode, the staff shall post the attached summary pursuant to Utah Code § 10-3-711(1)(b); and publish Attachment 1 to Municode. This ordinance will become effective as of the date the summary is posted and Attachment 1 is published to Municode.

PASSED AND ADOPTED this 6th day of December 2023.

[execution on following page]

KEARNS METRO TOWNSHIP COUNCIL

Kelly S. Bush, Mayor
By: Kelly Bush, Mayor

APPROVED AS TO FORM:

Matthew S. Bove
METRO TOWNSHIP ATTORNEY

ATTEST

Lannie Chapman
Lannie K. Chapman, Clerk/Recorder

Voting:

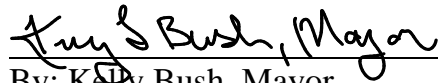
Council Member Bush voting	Yea
Council Member Butterfield voting	Yea
Council Member Peterson voting	Yea
Council Member Schaeffer voting	Yea
Council Member Snow voting	Yea

Date ordinance summary was posted on the Utah Public Notice Website: <u>December 7, 2023</u>
Effective date of ordinance: <u>December 7, 2023</u>


SUMMARY OF
KEARNS METRO TOWNSHIP
ORDINANCE NO. 2023-12-02

On December 6, 2023, the Kearns Metro Township Council enacted Ordinance No. 2023-12-02 that adopts a new and updated version of Titles 12 (Code Enforcement and Community Preservation) of the Kearns Municipal Code (“KMC”) and repeals and replaces in its entirety the prior version of Title 12.

KEARNS METRO TOWNSHIP COUNCIL


By: Kelly Bush, Mayor

ATTEST


Lannie Chapman, Clerk/Recorder

APPROVED AS TO FORM:


METRO TOWNSHIP ATTORNEY

Voting:

Council Member Bush voting	Yea
Council Member Butterfield voting	Yea
Council Member Peterson voting	Yea
Council Member Schaeffer voting	Yea
Council Member Snow voting	Yea

A complete copy of Ordinance No. 2023-12-02 is available in the office of the Kearns Metro Township Clerk, 2001 South State Street, N2-700, Salt Lake City, Utah.

Title 12 CODE ENFORCEMENT AND COMMUNITY PRESERVATION*

Chapter 12.02 General*

Chapter 12.04 Administrative Code Enforcement Procedures*

Chapter 12.06 Administrative And Judicial Remedies*

Chapter 12.08 Recover Of Code Enforcement Penalties And Costs*

Chapter 12.02 General*

12.02.010 Short Title*

12.02.020 Authority*

12.02.030 Declaration Of Purpose*

12.02.040 Scope*

12.02.050 Existing Ordinances And Laws Continued*

12.02.060 Criminal Prosecution Right*

12.02.070 Effect Of Headings*

12.02.080 Validity Of Title - Severability*

12.02.090 No Mandatory Duty - Civil Liability*

12.02.100 General Rules Of Interpretation Of Ordinances*

12.02.110 Definitions Applicable To Title Generally*

12.02.111 Acts Include Causing, Aiding And Abetting*

12.02.200 Part 2 - Service Requirements*

12.02.210 Service Of Process*

12.02.220 Construction Notice Of Recorded Documents*

12.02.300 Part 3 - General Authority And Offenses*

12.02.310 General Enforcement Authority*

12.02.320 Adoption Of Policy And Procedures*

12.02.330 Authority To Inspect*

12.02.340 Warrant Procedure

12.02.350 Power To Issue Citations *

12.02.360 False Information Or Refusal Prohibited*

12.02.370 Failure To Obey A Subpoena*

12.02.010 Short Title*

Title 12 shall be known as the "Code Enforcement and Community Preservation Program."

12.02.020 Authority*

Kearns promulgates this Code pursuant to Utah Code Ann. §§ 10-3-702- 703.7; 10-3-716; 10-8-60; 10-11-1, *et seq.*; and 76-10-801, *et seq.*.

12.02.030 Declaration Of Purpose*

Kearns finds enforcement of its Code and applicable state codes throughout the municipality to be an important public service. Code enforcement and abatement are vital to the protection of the public's health, safety, and quality of life. The Council recognizes that comprehensive code enforcement starts with the drafting of precise regulations that can be effectively applied in administrative code enforcement hearings and judicial proceedings that use a combination of judicial and administrative remedies to achieve fair and equitable compliance, and which address the failure to comply through judicial action.

12.02.040 Scope*

The provisions of this Title may be applied to any violation of Kearns Code as an additional remedy to achieve compliance.

12.02.050 Existing Ordinances And Laws Continued*

The provisions of this Title do not invalidate any other title or ordinance but shall be read in conjunction with the title or ordinance as an additional enforcement remedy and with any other applicable laws. If there is a conflict between this Title and another provision of Kearns Code, this Title shall control.

12.02.060 Criminal Prosecution Right*

Kearns has sole discretion in deciding whether to file a civil or criminal case or both for the violation of any of its ordinances. The enactment of the administrative remedies in this Title shall not interfere with Kearns's right to prosecute ordinance violations as criminal offenses in a court of law. Kearns may use any of the remedies available under the law in both civil and criminal prosecution. If Kearns decides to file both civil and criminal charges for the same day of violation, no civil penalties may be assessed, but all other remedies will be available. Kearns may at its discretion proceed with a civil enforcement action under this Title in district court without first holding an administrative hearing or exhausting other administrative remedies.

12.02.070 Effect Of Headings*

Title, chapter, part 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 any title, chapter, part, or section hereof.

12.02.080 Validity Of Title - Severability*

If any provision of this Title is held to be invalid or unconstitutional by a court of competent jurisdiction, the decision of invalidity or unconstitutionality shall not affect the other provisions of this Title which can be given effect without the invalid or unconstitutional provision.

12.02.090 No Mandatory Duty - Civil Liability*

It is the intent of the Council that in establishing performance standards or an obligation to act by a Kearns officer, employee, or designee, the standards or obligation shall not be construed to create a mandatory duty for purposes of tort liability if the officer, employee, or designee fails to perform his or her directed performance standards or obligation to act.

12.02.100 General Rules Of Interpretation Of Ordinances*

For purposes of this Title:

- (1) Any gender includes the other gender(s).
- (2) "Shall" is mandatory; "may" is permissive.
- (3) The singular number includes the plural.
- (4) Any word or phrase used in this Title, and not specifically defined, shall be construed according to the context and approved usage of the language.

12.02.110 Definitions Applicable To Title Generally*

The following words and phrases, as used in this Title, shall be construed as defined in this section, unless the context or subject matter requires a different meaning as specifically defined elsewhere in this Title and specifically stated to apply:

- (1) "Abate" or "Abatement" means any action Kearns may take on public or private property and any adjacent property as may be necessary to remove or alleviate a violation, including demolition, removal, eviction of persons, repair, boarding, securing, or replacement of property.
- (2) "Administrative Code Enforcement Order" means an order issued by an Administrative Law Judge. The order may include an order to abate the violation, pay civil penalties and administrative costs, or take any other action as authorized or required by this Title and applicable state codes.
- (3) "Administrative Law Judge" or "hearing officer" means the position established by the Code § 1.16.
- (4) "Animal Control Administrator" means the supervisor of the Animal Control Division, established in the Code § 8.1.
- (5) "Chief Building Official" means the official authorized and responsible for planning, directing, and managing the building inspection activities within Kearns.
- (6) "Council" means the Kearns Council.
- (7) "Code Enforcement Lien" means a lien recorded to collect outstanding civil penalties, administrative fees, or costs.
- (8) "Code Enforcement Performance Bond" means a bond posted by a responsible person to ensure compliance with Kearns Code, applicable state titles, a judicial action, or an administrative code enforcement order.
- (9) "County" means Salt Lake County, Utah.
- (10) "Courtesy Notice" means a written notice prepared by an enforcement official that informs a responsible person of a minor violation and notifies the responsible person of the necessary actions that are required to correct the minor violation.
- (11) "Department" means Kearns's Planning and Development Services Department, or its designee.
- (12) "Director" means the director of Kearns's Planning and Development Services Department or the director's authorized agent or any other person or entity and authorized agent directed to provide code enforcement services.
- (13) "Enforcement Official" means any person authorized to enforce violations of Kearns Code or applicable state codes.
- (14) "Financial Institution" means any person or entity that holds a recorded mortgage or deed of trust on a property.
- (15) "Fire Department" means the applicable entity that is authorized and responsible for providing fire and emergency services to Kearns.
- (16) "Good Cause" means incapacitating illness; death; lack of proper notice; unavailability due to unavoidable, unpreventable, or extenuating emergency or circumstance; if a required act causes an imminent and irreparable injury; or acts of nature adverse to performing required acts.
- (17) "Hazardous Materials" means the same as that term is defined in Utah Code Section 10-11-1.
- (18) "Imminent Life Safety Hazard" means any condition that creates a present, extreme, or immediate danger to life, property, health, or public safety.
- (19) "Kearns" means Kearns Metro Township, a municipal corporation or city under state law' pursuant to Utah Code Subsection 68-3-12.5(6).
- (20) "Legal Interest" means any interest that is represented by a document, including a deed of trust, quitclaim deed, mortgage, judgment lien, tax or assessment lien, mechanic's lien, or other similar instrument that is recorded with the County Recorder.
- (21) "Major Violation" means any nuisance or other violation as defined in Kearns Code, state code or Utah state courts, to include, without limitations, any:
 - a. land use that does not conform to existing zoning of the property;
 - b. unauthorized collection of motor vehicles that are unlicensed, unregistered, or inoperable;
 - c. accumulations of trash, litter, illegal dumping, which occupy a combined area more than 50 square feet;
 - d. weeds that occupy a combined area that exceeds 100 square feet or increase the risk of fire spreading to a neighboring property;
 - e. unauthorized use of any public street or sidewalk, including news racks, merchandise displays, mobile food vending, or other illegal uses.
 - f. illegal advertising;

- g. illegal residing in a Recreational Vehicle
 - h. open storage of items; or
 - i. any other violation of Kearns Municipal Code that is not specifically defined as a minor violation.
- (22) "Metro Township" or "Municipality" means the area within the territorial municipal limits of Kearns, and such territory outside the area over which Kearns has jurisdiction or control.
- (23) "Minor violation" means the following violations of Kearns Municipal Code:
- a. accumulations of trash, litter, or illegal dumping, which occupy a combined area less than 50 square feet; or
 - b. weeds which occupy a combined area less than 100 square feet and do not increase the risk of fire spreading to a neighboring property.
- (24) "Notice of Compliance" means a document issued by Kearns, representing that the violations outlined in the notice of violation have been remedied and the property is in compliance with applicable codes.
- (25) "Notice of Satisfaction" means a document or form approved by the Director or designee, which states that all outstanding civil penalties and costs have been paid in full, negotiated to an agreed amount, or resolved by a subsequent administrative or judicial decision. The property shall also be in compliance with the requirements of the notice of violation.
- (26) "Notice of Violation" means a written notice prepared by an enforcement official that informs a responsible person of any code violation and orders the person to take certain actions to correct the violation.
- (27) "Oath" includes any affirmation or oath.
- (28) "Person" means any natural person, firm, joint venture, joint stock company, partnership, association, club, company, corporation, business trust, organization, or the manager, lessee, agent, sergeant, officer, or employee of any of them, or any other entity that is recognized by law as the subject of rights or duties.
- (29) "Program" means the Code Enforcement and Community Enhancement Program authorized under this Title.
- (30) "Property Owner" means the record owner of real property based on the county assessor's records.
- (31) "Public Nuisance" means any condition caused, maintained, or permitted to exist that constitutes a threat to the public's health, safety, and welfare or that significantly obstructs, injures, or interferes with the reasonable or quiet use of property in a neighborhood, community, or by a considerable number of persons. A public nuisance also has the same meaning as set forth in the Utah statute.
- (32) "Recreational Vehicle" means a vehicular unit other than a mobile home, primarily designed as a temporary dwelling for travel, recreational, or vacation use, that is either self-propelled or pulled by or on another vehicle, including truck campers, camper trailers, motorhomes, vehicles converted to have living facilities, or other vehicles used as sleeping or living accommodations.
- (33) "Residing" as it relates to a Recreational Vehicle means a rebuttable presumption that a Recreational Vehicle is being used as a residential unit if the Recreational Vehicle is occupied at any time between the hours of 1:00 a.m. and 5:00 a.m. for more than 14-consecutive days within a 6-month period. This presumption may be rebutted upon a showing of substantial evidence that the Recreational Vehicle is not used for sleeping, toilet facilities, food preparation, or showering.
- (34) "Responsible Person" means a person who has charge, care, or control of any premises, dwelling, or dwelling unit as the legal or equitable owner, agent of the owner, lessee, or as an executor, administrator, trustee, or guardian of the estate of the owner. In all cases, the person with legal title to any premises, dwelling, or dwelling unit shall be considered a responsible person, with or without accompanying actual possession thereof.
- (35) "Treasurer" means the Kearns Treasurer as designated pursuant to Utah Code Ann. § 10-3c-203.
- (36) "Written" includes handwritten, typewritten, photocopied, computer printed, or facsimile, whether in physical or electronic form.

12.02.111 Acts Include Causing, Aiding And Abetting*

If any act or omission is made unlawful in this Title, it shall include causing, permitting, aiding, or abetting the act or omission.

12.02.200 Part 2 - Service Requirements*

12.02.210 Service Of Process*

(1) If service in person or by mail is required to be given under this Title, service shall be made in accordance with Utah Code Ann. § 10-11-2 unless another form of service is required by law.

(2) If service complies with the requirements of this Part, it shall be considered to be a valid service even if a party claims not to have received the service and it shall not affect the validity of any proceedings taken under this Title.

(3) The failure to serve all responsible persons shall not affect the validity of any proceedings.

12.02.220 Construction Notice Of Recorded Documents*

If a document is recorded with the County Recorder as authorized or required by this Title or applicable state statute, recordation shall provide constructive notice of the information contained in the recorded documents.

12.02.300 Part 3 - General Authority and Offenses*

12.02.310 General Enforcement Authority*

If the Director or enforcement official finds that a violation of Kearns Code or applicable state code has occurred or continues to exist, the administrative enforcement procedure may be used as provided in this Title. The Director or any designated enforcement official has the authority and power necessary to enforce compliance with the provisions of Kearns Code and applicable state code provisions, including issuing notices of violation or administrative citations, inspecting public or private property, abating public and private property, or using other judicial and administrative remedies available pursuant to Kearns Code or state statute. Kearns may elect to proceed with an action in District Court without first exhausting administrative remedies.

12.02.320 Adoption of Policy and Procedures*

In compliance with the Utah Administrative Code, the Administrative Law Judge is authorized to develop policies and procedures relating to the hearing procedures, scope of hearings, subpoena powers, and other matters relating to the Program. The policies and procedures may vary based on the circumstances of each matter before the Administrative Law Judge.

12.02.330 Authority to Inspect*

The Director or any designated enforcement official is authorized to enter upon any property or premises to inspect and ascertain if the person is complying with Kearns Code or applicable state code provisions and to make any necessary examination or survey in the performance of the enforcement duties with either the permission of the responsible person, land owner, or upon obtaining a search warrant. If the responsible person refuses to allow the enforcement official to enter the property, the enforcement official shall obtain a search warrant. The Director or any designated enforcement official may not enter a property, except to access the front door, without permission or a warrant. Any inspection entry, examination, or survey shall be done in a reasonable manner based upon probable cause. The Director or any designated enforcement official may obtain evidence viewable from any public street, sidewalk, adjacent property or location where the responsible person has given authorization for entry without a warrant.

12.340. Administrative Search Warrant Procedure

(1) The Director or any designated enforcement official may apply for an administrative search warrant with the Administrative Law Judge upon a showing of probable cause to believe that a violation of the Kearns Code or an applicable state code has occurred, is occurring, or is about to occur. The showing of probable cause shall be based on specific and articulable facts or circumstances and shall be supported by a sworn affidavit or a verified complaint.

(2) A search warrant shall be issued by the Administrative Law Judge upon a finding of probable cause to believe that a violation of the Kearns Code or an applicable state code has occurred, and that a search of private property is necessary to investigate and enforce such ordinance.

(3) A search warrant shall specify the property to be searched and, if applicable, the items to be seized.

(4) The search warrant shall be executed by a designated enforcement official in accordance with the Fourth Amendment to the United States Constitution and Utah law.

(5) The search warrant shall be executed in a reasonable manner, taking into account the nature of the ordinance being enforced, the nature of the property being searched, and the presence of any individual(s) on the property.

(6) A report of the execution of the search warrant shall be made in writing and filed with the Administrative Law Judge that issued the warrant. The report shall include a description of the property searched, the items seized, and any other information required by law or court order.

(7) No person shall refuse entry or access to any authorized representative of the department who requests entry for purposes of inspection, and who presents appropriate credentials and warrant, nor shall any person obstruct, hamper or interfere with any such inspection.

(8) Nothing in this section shall be construed to prevent prompt inspection without consent or appropriate warrant in emergency situations.

12.02.350 Power to Issue Citations*

The Director or any designated enforcement official is authorized to issue a misdemeanor citation or administrative citation if there is reasonable cause to believe that the person is committing or has committed a violation of the Kearns Code or state code in the enforcement official's presence.

12.02.360 False Information or Refusal Prohibited*

It shall be unlawful for any person to make a false statement or refuse to give his or her name or address with intent to deceive or interfere with a duly authorized Kearns official or agent, including to the Director or any authorized enforcement officials, when in the performance of official duties under the provisions of this Title. A violation of this Section is a class B misdemeanor.

12.02.370 Failure to Obey a Subpoena*

It is unlawful for any person to refuse or fail to obey a subpoena issued for an administrative code enforcement hearing. Failure to obey a subpoena constitutes contempt and is a class B misdemeanor.

Chapter 12.04 Administrative Code Enforcement Procedures*

[12.04.010 Authority*](#)

[12.04.020 Courtesy Notice*](#)

[12.04.030 Notice of Violation*](#)

[12.04.040 Failure to Bring Property Into Compliance*](#)

[12.04.050 Inspections*](#)

[12.04.200 Part 2 - Emergency Abatement*](#)

[12.04.210 Authority to Abate*](#)

[12.04.220 Procedures for Abatement*](#)

[12.04.300 Part 3 – Emergency Abatement*](#)

[12.04.310 Authority*](#)

[12.04.320 Procedures*](#)

[12.04.230 Notice of Emergency Abatement*](#)

[12.04.400 Part 4 - Abatement of Hazardous Materials](#)

[12.04.420 Notice Of Hazardous Material Abatement*](#)

[12.04.430 Certified Decontamination Specialist*](#)

[12.04.500 Part 5 - Hearing Procedures*](#)

[12.04.510 Declaration of Purpose*](#)

[12.04.520 Authority and Scope of Hearings*](#)

[12.04.530 Request for Administrative Code Enforcement Hearing*](#)

[12.04.540 Hearings and Orders*](#)

[12.04.550 Notification of Administrative Code Enforcement Hearing*](#)

[12.04.560 Disqualification of Administrative Law Judge*](#)

[12.04.570 Powers of The Administrative Law Judge*](#)

[12.04.580 Procedures at Administrative Code Enforcement Hearing*](#)

[12.04.590 Failure to Attend Administrative Code Enforcement Hearing*](#)

[12.04.591 Administrative Code Enforcement Order*](#)

[12.04.595 Failure to Comply With Order*](#)

[12.04.600 Part 6 - Administrative Enforcement Appeals*](#)

[12.04.610 Appeal of Administrative Code Enforcement Hearing Decision*](#)

12.04.010 Authority*

Any condition caused, maintained, or permitted to exist in violation of any provisions of the Kearns Code or applicable state codes that constitutes a violation may be abated by Kearns pursuant to the procedures set forth in this Title.

12.04.020 Courtesy Notice*

(1) If the Director or any designated enforcement official determines that a minor violation has occurred, the Director or enforcement official may issue a courtesy notice to a responsible person by leaving a courtesy notice with the responsible person or affixing the notice to the door or gate of the property. The courtesy notice shall include the following information:

- a. Name of the property owner of record according to the records of the County Recorder;
- b. Street address of violation;
- c. Nature and results of the examination and investigation conducted;
- d. Date and approximate time the violation was observed
- e. All code sections violated and descriptions of the condition of the property that violates the applicable codes;

- f. A statement explaining the type of remedial action required to permanently correct outstanding violations, which may include corrections, repairs, demolition, removal, eradication, destruction, or other appropriate action;
 - g. A statement that if the violation has not been remedied within 7 days, the designated enforcement official will issue a notice of violation consistent with the requirements of this chapter.
 - h. The name and contact information of the code enforcement official who may be contacted regarding the courtesy notice.
- (2) The issuance of a courtesy notice is discretionary, and an enforcement official may proceed with the issuance of a notice of violation without first issuing a courtesy notice.

12.04.030 Notice of Violation*

- (1) If the Director or any designated enforcement official determines that a major violation of the Kearns Code or applicable state codes has occurred or continues to exist or a minor violation continues to exist, the Director or enforcement official may issue a notice of violation to a responsible person. The notice of violation shall include the following information and shall comply with Utah Code § 10-11-2 or the applicable successor statute(s):
- a. Name of the property owner of record according to the records of the County Recorder;
 - b. Street address of violation;
 - c. Nature and results of the examination and investigation conducted;
 - d. Date and approximate time the violation was observed;
 - e. All code sections violated and descriptions of the condition of the property that violates the applicable codes;
 - f. A statement explaining the type of remedial action required to permanently correct outstanding violations, which may include corrections, repairs, demolition, removal, eradication, destruction, or other appropriate action;
 - g. A specific date for the responsible party to correct the violations listed in the notice of violation or appeal the notice of violation, which date shall be at least fifteen days from the date of service unless the Director determines that the violation requires emergency abatement under Section 12.2.200;
 - h. Explanation of the consequences if the responsible person fails to comply with the terms and deadlines as prescribed in the notice of violation, which may include criminal prosecution; civil penalties; revocation of permits; recordation of the notice of violation; withholding of future municipal permits; abatement of the violation by Kearns and re-payment to Kearns for the costs of the abatement; other costs incurred by Kearns; administrative fees; and any other legal remedies;
 - i. Civil penalties shall begin to accrue immediately on expiration of the date to correct violations;
 - j. The amount of the civil penalty on each violation and that the penalty shall accrue daily until the property is brought into compliance;
 - k. Only one notice of violation is required for any 12-month period, and civil penalties begin immediately upon any subsequent violation of the notice. The responsible person may request a hearing on the renewed violation by following the same procedure as provided for the original notice;
 - l. Procedures to appeal the notice and request a hearing, including the amount of the appeal fee, as provided in the adopted fee schedule and consequences for failure to request one, including that failure to appeal waives all defenses to the notice of violation and the Director, or designee, may order the abatement of the property without a subsequent hearing or order; and
 - m. Procedures to request an inspection after the violation has been abated.

(2) The notice of violation shall be served by one of the methods of service listed in Section 12.2.210 of this Title.

(3) More than one notice of violation may be issued against the same responsible person if it encompasses different dates, or different violations.

12.04.040 Failure To Bring Property Into Compliance*

(1) If a responsible person fails to bring a violation into compliance within the compliance period specified in the notice of violation:

- a. civil penalties shall be owed to Kearns for each and every subsequent day of violation;
- b. If the responsible party does not request a hearing on the notice of violation within the required period specified in the notice of violation, the Director may
 - i. schedule the abatement of violations on the property specified in the notice of violation;
 - ii. schedule a default hearing with the Administrative Law Judge; or
 - iii. bring an enforcement and abatement action in the district court.

(2) Failure to comply with the notice of violation is a Class C misdemeanor.

12.04.050 Inspections*

It shall be the duty of the responsible person served with a notice of violation to request in writing an inspection when the responsible person's property has been brought into compliance. It is prima facie evidence that the violation remains on the property if no inspection is requested. Civil penalties accumulate daily until the property has been inspected and a notice of compliance is issued. Re-inspection fees shall be assessed if more than one inspection is necessary.

12.04.200 Part 2 - Abatement

12.04.210 Authority To Abate*

The Director is authorized to enter upon any property or premises to abate the violation of Kearns Code and applicable state codes pursuant to this Part. The Director is authorized to assess all costs for the abatement to the responsible person and use any remedy available under the law to collect the costs, including assessment of the costs on the County tax rolls.

12.04.220 Procedures For Abatement*

(1) The Director may abate a violation pursuant to this Part after providing notice under this Title and by following the process set forth in Utah Code § 10-11-3 or any applicable successor statute if the Responsible Party:

- a. Does not abate a violation within the time period prescribed in a notice; and
- b. Did not file a request for an administrative code enforcement hearing under this Title.

(2) The Director may request a default hearing but is not required to do so to abate the violation under this Part and may abate the violation without a default hearing pursuant to Utah Code § 10-11-3 or any applicable successor statute.

(3) The Director may use Kearns personnel or a private contractor acting under the Director's or Kearns' direction to abate the violation.

(4) Kearns personnel or a private contractor may enter upon private property in a reasonable manner to abate the ordinance violation as specified in the notice of violation or administrative code enforcement order.

(5) If the responsible person abates the violation before Kearns performs the actual abatement pursuant to a notice of violation or administrative code enforcement order, the Director may still assess the costs incurred by Kearns against the responsible person.

(6) In compliance with Utah Code § 10-11-3 or any applicable statute, the Director shall prepare an itemized statement of the work performed when the abatement is completed on the responsible person.

(7) The Administrative Law Judge shall hear any appeals filed by a responsible person in response to an itemized statement issued under this Part and shall conduct such appeals and any related hearings in accordance with Utah Code § 10-11-3 or any applicable successor statute.

12.04.300 Part 3 - Emergency Abatement*

12.04.310 Authority*

(1) Whenever the Director determines that an imminent life safety hazard exists that requires immediate correction or elimination, the Director may exercise the following powers without prior notice to the responsible person:

- a. Order the immediate vacation of any tenants, and prohibit occupancy or entry until all repairs are completed, provided that an order prohibiting entry shall specify how entry is to be made to mitigate damage, complete repairs, retrieve personal property, or for any other purpose, if any, during the abatement process;
- b. Post the premises as unsafe, substandard, or dangerous;
- c. Board, fence, or secure the building or site;
- d. Raze, grade, and remove that portion of the building or site to prevent further collapse or any hazard to the general public;
- e. Make any minimal emergency repairs as necessary to eliminate any imminent life safety hazard; or
- f. Take any other action appropriate to eliminate the emergency.

(2) The Director and his or her agents have the authority for good cause to enter the property without a search warrant or court order to accomplish the above listed acts to abate the safety hazard.

(3) The responsible person shall be liable for all costs associated with the abatement of the life safety hazard. Costs may be recovered pursuant to this Title.

12.04.320 Procedures*

(1) The Director shall pursue only the minimum level of correction or abatement as necessary to eliminate the immediacy of the hazard. Costs incurred by Kearns during the emergency abatement process shall be assessed and recovered against the responsible person through the procedures provided in this Title.

(2) The Director may also pursue any other valid and legal administrative or judicial remedy to abate any remaining violations.

12.04.330 Notice Of Emergency Abatement*

After an emergency abatement, Kearns shall notify the owner or responsible person of the abatement action taken in writing. This notice shall be served within ten days of completion of the abatement and will describe in reasonable detail the abatement actions taken.

12.04.400 Part 4 – Abatement of Hazardous Materials*

12.04.410 Authority*

If the Director determines that a structure has been closed to occupancy or entry by a local health department due to contamination from hazardous materials, the Director may appoint a municipal inspector for the purpose of implementing and complying with the provisions of Utah Code 10-11-1. The

Director may authorize abatement of the interior of the structure to eliminate or remove hazardous materials within a structure that has been closed to occupancy or entry by a local health department or fire department.

12.04.420 Notice of Hazardous Material Abatement*

(1) If the Director or any designated enforcement official determines that a structure has been closed by the local health department or fire department for hazardous materials, the Director or enforcement official will issue a notice of hazardous material abatement to a responsible person.

(2) The notice of hazardous material abatement shall include the following information and shall comply with Utah Code § 10-11-2 or the applicable successor statute:

- a. Name of the property owner of record according to the records of the County Recorder;
- b. Street address of violation;
- c. Nature and results of the examination and investigation conducted;
- d. Date and approximate time the violation was observed;
- e. All code sections violated and descriptions of the condition of the property that violates the applicable codes;
- f. A statement explaining the type of remedial action required to permanently correct outstanding violations, which may include corrections, repairs, demolition, removal, eradication, destruction, or other appropriate action;
- g. A specific date for the responsible party to correct the violations listed in the notice of hazardous material abatement or appeal the notice of hazardous material abatement, which date shall be at least 180 days from the date of service;
- h. Explanation of the consequences if the responsible person fails to comply with the terms and deadlines as prescribed in the notice of violation, which may include criminal prosecution; civil penalties; revocation of permits; recordation of the notice of violation; withholding of future municipal permits; abatement of the violation by Kearns and re-payment to Kearns for the costs of the abatement; other costs incurred by Kearns; administrative fees; and any other legal remedies;
- i. Civil penalties shall begin to accrue immediately on expiration of the date to correct violations or the appeal and administrative proceeding process is completed;
- j. The amount of the civil penalty on each violation and that the penalty shall accrue daily until the property is brought into compliance;
- k. Procedures to appeal the notice and request a hearing, including the amount of the appeal fee, as provided in the adopted fee schedule, and consequences for failure to request one, including that failure to appeal waives all defenses to the notice of hazardous material abatement and the Director, or designee, may order the abatement of the property without a subsequent hearing or order; and
- l. Procedures to request an inspection after the violation has been abated.

(3) The notice of hazardous material abatement shall be served by one of the methods of service listed in Section 12.02.210 of this Title.

12.04.430 Certified Decontamination Specialist*

A responsible party, owner, or occupant must use a certified decontamination specialist to abate hazardous materials as described in Utah Code § 19-6-906.

12.04.430 Restricting Access*

The Director may issue an order limiting or restricting access to a structure and the real property appurtenant to the structure while the municipal inspector or a certified decontamination specialist destroys, removes, or abates hazardous materials within the structure.

12.04.500 Part 5 - Demolitions*

12.04.510 Authority*

If the Director determines that a property or building requires demolition, the Director may demolish or remove the offending structure, or exercise any or all of the powers listed in this Title once appropriate notice has been given to a responsible person pursuant to the Uniform Abatement of Dangerous Buildings Code or Uniform Fire Codes as required under state law, provided that the notice shall include a written description of the Director's findings, explaining the need for the demolition and citations to the applicable ordinances or laws authorizing the demolition. The responsible person shall be liable for all costs associated with the demolition. Costs may be recovered pursuant to this Title.

12.04.420 Procedures*

Once the Director has determined that the Kearns Chief Building Official or the Fire Department has complied with all of the notice requirements of the applicable laws, the property will be demolished. Other applicable remedies may also be pursued.

12.042.400 Part 4 – Administrative Citations*

12.042.410 Declaration Of Purpose*

The Council finds that there is a need for an alternative method of enforcement for violations of the Metro Township Kearns Code and applicable state codes which do not relate to land use violations. The Council further finds that an appropriate method of enforcement is an administrative citation program.

The procedures established in this Part shall be in addition to criminal, civil, or any other legal remedy established by law that may be pursued to address violations of the Metro Township Kearns Code or applicable state codes.

12.042.420 Authority*

Any person violating a provision of the Metro Township Kearns Code or applicable state codes may be issued an administrative citation by an enforcement official as provided in this Part.

A civil penalty shall be assessed by means of an administrative citation issued by the enforcement official and shall be payable directly to the Metro Township Kearns Treasurer's Office, or other offices designated to receive payment on behalf of the Metro Township Kearns.

Penalties assessed by means of an administrative citation shall be collected in accordance with the procedures specified in the remedies section of this Title.

12.042.430 Procedures*

(1) Upon discovering any violation of the Metro Township Kearns Code, or applicable state codes, an enforcement official may issue an administrative citation to a responsible person in the manner prescribed in this Part or as prescribed in Section 12.1.210. The administrative citation shall be issued on a form approved by the Director.

(2) If the responsible person is a business, the enforcement official shall attempt to locate the business owner and issue an administrative citation to the business owner. If the enforcement official can only locate the manager of the business, the administrative citation may be given to the manager of the business. A

copy of the administrative citation may also be mailed to the business owner or any other responsible person in the manner prescribed in Section 12.1.210 of this Title.

(3) Once the responsible person has been located, the enforcement official shall attempt to obtain the signature of that person on the administrative citation. If the responsible person refuses or fails to sign the administrative citation, the failure or refusal to sign shall not affect the validity of the citation and subsequent proceedings.

(4) If the enforcement official is unable to locate the responsible person for the violation, then the administrative citation shall be mailed to the responsible person in the manner prescribed in Section 12.1.210 of this Title.

(5) If no one can be located at the property, then the administrative citation may be posted in a conspicuous place on or near the property and a copy subsequently mailed to the responsible person in the manner prescribed by Section 12.1.210 of this Title.

(6) The administrative citation shall also contain the signature of the enforcement official.

(7) The failure of any person with an interest in the property to receive notice shall not affect the validity of any proceedings taken under this Part.

HISTORY

Adopted by Ord. [19-07-01](#) on 7/22/2019

12.042.440 Contents Of Administrative Citation*

Administrative citations shall include the information required in Section 12.2.020 and shall:

(1) State the amount of penalty imposed for the minor violations; and

(2) Explain how the penalty shall be paid, the time period by which the penalty shall be paid, and the consequences of failure to pay the penalty.

12.042.450 Civil Penalties Assessed*

(1) The Metro Township Council shall establish policies to assist in the assessment of civil penalties for administrative citations.

(2) Civil penalties shall be assessed immediately for each violation listed on the administrative citation. The penalties shall be those established in the Consolidated Fee Schedule.

(3) Payment of the penalty shall not excuse the failure to correct the violations, nor shall it bar further enforcement action by the Metro Township.

12.04.500 Part 5 – Appeal and Hearing Procedures*

12.04.510 Declaration Of Purpose*

The Council finds that there is a need to establish uniform procedures for administrative code enforcement hearings conducted pursuant to Kearns Code. It is the purpose and intent of the Council to afford due process of law to any person who is directly affected by an administrative action. Due process of law includes notice, an opportunity to participate in the administrative hearing, and an explanation of the reasons justifying the administrative action. These procedures are also intended to establish a forum to efficiently, expeditiously, and fairly resolve issues raised in any administrative code enforcement action.

12.04.520 Authority and Scope of Hearings*

The Administrative Law Judge shall preside over hearings of Kearns Code violations. The Administrative Law Judge shall develop policies and procedures to regulate the hearing process for any violation of

Kearns Code and applicable state codes that are handled pursuant to the administrative abatement procedures, emergency abatement procedures, demolition procedures, or administrative citation procedures. If there is a conflict between the appeal procedures in this Title and the appeal procedures in another code incorporated by Kearns, this Title shall control.

12.04.530 Appeal and Request For Administrative Code Enforcement Hearing*

- (1) A person served with one of the following documents or notices has the right to appeal by requesting an administrative code enforcement hearing, if the request is filed within 15 calendar days from the date of service of one of the following notices:
 - a. Notice of violation;
 - b. Notice of itemized bill for costs; or
 - c. Notice of emergency abatement;
- (2) A person served with a notice of hazardous material abatement shall have the right to appeal by requesting an administrative code enforcement hearing, if the request is filed within 180 calendar days from the date of service.
- (3) The request for hearing shall be made in writing and filed with the Director or as otherwise indicated in the notice of violation. The request shall contain the following:
 - a. the case number,
 - b. the address of the violation,
 - c. a statement of the legal and factual basis supporting the overturning the notice of violation; and
 - d. the signature of the responsible party.
- (4) The request for hearing shall be accompanied by payment of the appeal fee the amount of which shall be provided forth in the Kearns Fee Schedule.
- (5) Failure to provide all the information required in Subsection 12.02.530(2) and payment of the appeal fee required in Subsection 12.02.530 (3), may result in the dismissal of the appeal without a hearing.
- (6) As soon as practicable after receiving the written notice of the request for hearing, the Director shall schedule a date, time, and place for the hearing with the Administrative Law Judge and serve a Notice of Hearing on the responsible party.
- (7) Failure to request a hearing as provided shall constitute a waiver of the right to a hearing and a waiver of the right to appeal the action.

12.04.540 Hearings And Orders*

- (1) If the responsible person fails to request a hearing before the expiration of the 15 calendar day required deadline, the Director may:
 - a. Schedule the abatement of the property and serve a notice of abatement on the responsible party.
 - b. Request a default hearing, with the Administrative Law Judge and notify the responsible person of the date, time, and place of the hearing by one of the methods listed in Section 12.2.210.
- (2) A default hearing may be scheduled for all cases that have outstanding or unpaid civil penalties, fines, fees and/or costs due to Kearns before collection.
- (3) At any hearing, the responsible person shall have the opportunity to present evidence to show that good cause exists, as defined in the Title, to do one or more of the following in addition to any other rights afforded under other provisions of Kearns Code or applicable law:
 - a. Waive or reduce the fines which have accumulated;
 - b. Postpone an abatement action by Kearns; or
 - c. Excuse the responsible person's failure to request a hearing within the 15-day period.
- (4) If the responsible person fails to establish good cause to take one or more of the actions set forth in paragraph (3), the Administrative Law Judge shall review the notice of violation and any other relevant information included in the case file. The Administrative Law Judge shall not accept any other evidence.

- a. If the evidence shows that the violations existed, the Administrative Law Judge shall enter an order requiring abatement of the violations, and the payment of all fines and fees. Fines shall run until the Director or other duly authorized representative of Kearns issues a Notice of Compliance stating when the violations were actually abated.

12.04.550 Notification Of Administrative Code Enforcement Hearing*

- (1) The Administrative Law Judge or Kearns shall provide written notice of the day, time, and place of the hearing to a responsible person as soon as practicable prior to the date of the hearing with the format and contents of the hearing provided in accordance with rules and policies promulgated by the Administrative Law Judge.
- (2) The notice of hearing shall be served by any of the methods of service listed in Section 12.1.210 of this Title.

12.04.560 Disqualification Of Administrative Law Judge*

- (1) A responsible person may file a written motion to disqualify an Administrative Law Judge for bias, prejudice, a conflict of interest, or any other reason for which a judge may be disqualified in a court of law. The motion to disqualify shall be accompanied by an affidavit or unsworn declaration as described in Title 78B of the Utah Code or applicable successor statute signed by the responsible person, which shall:
 - a. State that the motion is filed in good faith;
 - b. Allege facts sufficient to show bias, prejudice, a conflict of interest, or any other reason that would disqualify a judge in a court of law in Utah; and
 - c. State when and how the Responsible Party came to know of the reason for disqualification.
- (2) The responsible person shall file the motion within 21 days of the assignment of the action to an Administrative Law Judge or the date on which the responsible person knew or should have known of the grounds on which the motion is based, whichever is later.
- (3) A responsible person may only file one motion to disqualify an Administrative Law Judge, unless a second or subsequent motion is based on grounds that the responsible person did not know of and could not have known of at the time of the earlier motion.
- (4) The Administrative Law Judge who is the subject of a motion to disqualify must, without taking any further action, provide the Director with a copy of the motion and refer the motion to the Kearns Council.
- (5) Upon receipt of a motion to disqualify, the Kearns Council will schedule and notice the matter for review at its next regular scheduled meeting. The Kearns Council may, in its sole discretion, elect to hold a special meeting to hear the motion before its next regularly scheduled meeting. The Kearns Council shall first review the motion to disqualify to determine if it satisfies the requirements of paragraphs (1) and (2) of this Section. If the motion to disqualify does not satisfy the requirements of this Section, the Council will deny the motion and remand it to the Administrative Law Judge for further proceedings. If the motion to disqualify satisfies the requirements of paragraphs (1) and (2) of this Section, the Kearns Council shall determine whether the motion is legally sufficient to warrant disqualification. If the Kearns Council determines that disqualification is warranted, it will assign the matter to another Administrative Law Judge. If the Kearns Council determines that the motion to disqualify is not legally sufficient, it will remand the matter back to the Administrative Law Judge.

12.04.570 Powers of the Administrative Law Judge*

- (1) The Administrative Law Judge has the authority to conduct an adjudicative proceeding, determine if any violation of Kearns Code exists, order compliance with Kearns Code, and enforce compliance as provided in this Title on any matter subject to the provisions of the Title.
- (2) The Administrative Law Judge may complete the attendance of a witness and production of a document or other evidence, administer an oath, take testimony, and receive evidence as necessary.

(3) The Administrative Law Judge may continue a hearing based on good cause shown by one of the parties to the hearing. The Administrative Law Judge must enter on the record the good cause on which a continuance is granted.

(4) The Administrative Law Judge, at the request of any party to the hearing, may sign subpoenas for witnesses, documents, and other evidence. All costs related to the subpoena, including witness and mileage fees, shall be borne by the party requesting the subpoena. The Administrative Law Judge shall develop policies and procedures relating to the issuance of subpoenas in administrative code enforcement hearings, including the form of the subpoena and related costs.

(5) The Administrative Law Judge has continuing jurisdiction over the subject matter of an administrative code enforcement hearing for the purposes of granting a continuance; ordering compliance by issuing an administrative code enforcement order using any remedies available under the law; ensuring compliance with that order, which includes the right to authorize Kearns to enter and abate a violation; modifying an administrative code enforcement order; or, where extraordinary circumstances exist, granting a new hearing.

(6) The Administrative Law Judge has the authority to require a responsible person to post a code enforcement performance bond to ensure compliance with an administrative code enforcement order.

12.04.580 Procedures at Administrative Code Enforcement Hearing*

(1) Administrative code enforcement hearings are intended to be informal. Formal rules of evidence and discovery do not apply; however, an informal exchange of discovery may be required. The request shall be in writing. Failure to request discovery may not be a basis for a continuance. Complainant information is protected and shall not be released unless the complainant is a witness at the hearing. The procedure and format of the administrative hearing shall follow the procedures promulgated by the Administrative Law Judge.

(2) Kearns bears the burden of proof at an administrative code enforcement hearing to establish the existence of a violation of Kearns or applicable state codes.

(3) The standard of proof to be used by the Administrative Law Judge in deciding the issues at an administrative hearing is whether the preponderance of the evidence shows that the violations exist.

(4) Each party shall have the opportunity to cross-examine witnesses and present evidence in support of his or her 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. The Administrative Law Judge may accept testimony offered by proffer.

(5) All hearings are open to the public, but public notice is not required. All hearings shall be recorded. The recording may be audio or video. Hearings may be held at the location of the violation.

(6) The responsible person has a right to be represented by an attorney. If an attorney is representing the responsible person at the hearing, notice of the attorney's name, address, and telephone number shall be provided to Kearns at least one day prior to the hearing. If notice is not given, the hearing may be continued at Kearns's request, and all costs of the continuance assessed to the responsible person.

(7) No new hearing shall be granted, unless the Administrative Law Judge determines that extraordinary circumstances exist which justify a new hearing.

12.04.590 Failure to Attend Administrative Code Enforcement Hearing*

Any party whose property or actions are the subject of any administrative code enforcement hearing and who fails to appear at the hearing is considered to have waived the right to a hearing, and will result in a default judgment, provided that proper notice of the hearing has been provided.

12.04.591 Administrative Code Enforcement Order*

- (1) Once all evidence and testimony are completed, the Administrative Law Judge shall issue, or cause the prevailing party to circulate, an administrative code enforcement order that affirms, modifies, or rejects the notice or citation. The Administrative Law Judge may increase or decrease the total amount of civil penalties and costs that are due pursuant to Kearns's fee schedule and the procedures in this Title.
- (2) The parties may enter into a stipulated agreement, which must be signed by both parties. This agreement shall be entered as a stipulated administrative code enforcement order. Entry of this agreement shall constitute a waiver of the right to a hearing and the right to appeal.
- (3) The Administrative Law Judge may order Kearns to enter the property and abate all violations, including demolitions and the removal of vehicles, garbage, animals, and other property kept in violation of Kearns Code.
- (4) The Administrative Law Judge may revoke a kennel permit, an animal license, or the right to possess animals as provided in Kearns Code.
- (5) As part of the administrative code enforcement order, the Administrative Law Judge may condition the total or partial assessment of civil penalties on the responsible person's ability to complete compliance by specified deadlines.
- (6) The Administrative Law Judge may schedule subsequent review hearings as may be necessary or as requested by a party to the hearing to ensure compliance with the administrative code enforcement order.
- (7) The Administrative Law Judge may order the responsible person to post a performance bond to ensure compliance with the order.
- (8) The administrative code enforcement order shall become final on the date of the signing of the order.
- (9) The administrative code enforcement order shall be served on all parties by any one of the methods listed in Section 12.1.210 of this Title.

12.04.595 Failure To Comply With Order*

Upon the failure of the responsible person to comply with the terms and deadlines set forth in the administrative code enforcement order, Kearns may abate the violation as provided in this Title and use all appropriate legal means to recover the civil penalties and administrative costs to obtain compliance.

12.04.600 Part 6 - Administrative Enforcement Appeals*

12.04.610 Appeal of Administrative Code Enforcement Hearing Decision*

- (1) Any person adversely affected by any administrative decision made pursuant to this Chapter may file a petition for review of the decision or order by the district court within 30 days after the decision is rendered.
- (2) No person may challenge in district court an administrative code enforcement hearing officer's decision until that person has exhausted his or her administrative remedies.
- (3) Within 120 days after submitting the petition, the party petitioning for appeal shall request a copy of the record of the proceedings, including transcripts of hearings when necessary. The Administrative Law Judge shall not submit copies of files or transcripts to the reviewing court until the party petitioning for appeal has paid all required costs, including the cost of a licensed court reporter transcribing all relevant recorded hearings. The petitioning party's failure to properly arrange for copies of the record, or to pay the full costs for the record, within 180 days after the petition for review was filed shall be grounds for dismissal of the petition.
 - a. If a transcript of a hearing cannot be prepared because the tape recording is incomplete or unintelligible, the district court may remand the matter to the Administrative Law Judge for a

supplemental proceeding to complete the record. The district court may limit the scope of the supplemental proceeding to issues that, in the court's opinion, need to be clarified.

(4) The district court's review is limited to the record of the administrative decision that is being appealed. The court shall not accept nor consider any evidence that is not part of the record of that decision.

(5) The courts shall:

- a. Presume that the administrative code enforcement hearing officer's decision and orders are valid; and
- b. Review the record to determine whether or not the decision was arbitrary, capricious, or illegal.

12.04.700 Part 7 – Administrative Citations*

12.04.710 Declaration of Purpose*

The Council finds there is a need for an enforcement of administrative violations that are not land use or nuisance violations of the Kearns Code and applicable state code. The Council further finds that an appropriate method of enforcement is an administrative citation program.

The procedures established in this part shall be in addition to criminal, civil, or any other legal remedy established by law that may be pursued to address violations of Kearns Code or applicable State Code.

12.04.720 Authority*

(1) Any person violating any minor provision of the Kearns Code or applicable state statutes may be issued an administrative citation by an enforcement official as provided in this Part.

(2) A civil penalty shall be assessed by means of an administrative citation issued by the enforcement official, and shall be payable directly to Kearns Treasurer's Office, or other offices designated to receive payment on behalf of Kearns.

(3) Penalties assessed by means of an administrative citation shall be collected in accordance with the procedures specified in the remedies section of this Title.

12.04.730 Procedures*

(1) Upon discovering a violation of the Kearns Code, or applicable state codes, an enforcement official may issue an administrative citation to a responsible person in the manner prescribed in this Part or as prescribed in Section 12.1.210. The administrative citation shall be issued on a form approved by the Director.

(2) If the responsible person is a business, the enforcement official shall attempt to locate the business owner and issue an administrative citation to the business owner. If the enforcement official can only locate the manager of the business, the administrative citation may be given to the manager of the business. A copy of the administrative citation may also be mailed to the business owner or any other responsible person in the manner prescribed in Section 12.1.210 of this Title.

(3) Once the responsible person has been located, the enforcement official shall attempt to obtain the signature of that person on the administrative citation. If the responsible person refuses or fails to sign the administrative citation, the failure or refusal to sign shall not affect the validity of the citation and subsequent proceedings.

(4) If the enforcement official is unable to locate the responsible person for the violation, then the administrative citation shall be mailed to the responsible person in the manner prescribed in Section 12.1.210 of this Title.

(5) If no one can be located at the property, then the administrative citation may be posted in a conspicuous place on or near the property and a copy subsequently mailed to the responsible person in the manner prescribed by Section 12.1.210 of this Title.

(6) The administrative citation shall also contain the signature of the enforcement official.

(7) The failure of any person with an interest in the property to receive notice shall not affect the validity of any proceedings taken under this Part.

12.04.740 Contents Of Administrative Citation*

Administrative citations shall include the information required in Section 12.2.020 and shall:

(1) State the amount of penalty imposed for the minor violations; and

(2) Explain how the penalty shall be paid, the time period by which the penalty shall be paid, and the consequences of failure to pay the penalty.

12.04.750 Civil Penalties Assessed*

(1) The Council shall establish policies to assist in the assessment of civil penalties for administrative citations.

(2) Civil penalties shall be assessed immediately for each violation listed on the administrative citation. The penalties shall be those established in the Consolidated Fee Schedule.

(3) Payment of the penalty shall not excuse the failure to correct the violations, nor shall it bar further enforcement action by Kearns.

Chapter 12.06 Administrative and Judicial Remedies*

12.06.100 Part 1 - Recordation of Notices Of Violation*

12.06.110 Declaration of Purpose*

12.06.120 Authority*

12.06.130 Procedures for Recordation*

12.06.140 Service of Notice of Recordation*

12.06.150 Failure To Request*

12.06.160 Notice of Compliance - Procedures*

12.06.170 Prohibition Against Issuance of Municipal Permits*

12.06.180 Cancellation of Recorded Notice of Violation*

12.06.200 Part 2 - Administrative Civil Penalties*

12.06.210 Authority*

12.06.220 Procedures for Assessing Civil Penalties*

12.06.230 Determination of Civil Penalties*

12.06.240 Modification of Civil Penalties*

12.06.250 Failure To Pay Penalties*

12.06.300 Part 3 – Costs*

12.06.310 Declaration of Purpose*

12.06.320 Authority*

12.06.330 Notification of Assessment Of Reinspection Fees

12.06.340 Failure To Timely Pay Costs*

12.06.400 Part 4 - Administrative Fees*

12.06.410 Administrative Fees*

12.06.500 Part 5 - Injunctions*

12.06.510 CML Violations - Injunctions*

12.06.600 Part 6 - Performance Bonds*

12.06.610 Performance Bond*

12.06.100 Part 1 - Recordation of Notices of Violation*

12.06.110 Declaration Of Purpose*

The Council finds that there is a need for alternative methods of enforcement for violations of Kearns Code and applicable state codes that are found to exist on real property. The Council further finds that an appropriate method of enforcement for these types of violations is the issuance and recordation of notices of violation.

The procedures established in this Part shall be in addition to criminal, civil, or any other remedy established by law that may be pursued to address the violation of Kearns Code or applicable state codes.

12.06.120 Authority*

Whenever the Director determines that a property or violation has not been brought into compliance as required in this Title, the Director has the authority, in his or her discretion, to record the notice of violation or administrative code enforcement order with the County Recorder's Office.

12.06.130 Procedures For Recordation*

- (1) Once the Director has issued a notice of violation to a responsible person, and the property remains in violation after the deadline established in the notice of violation, and no request for an administrative hearing has been filed, the Director shall record a notice of violation with the County Recorder's Office.
- (2) If an administrative hearing is held, and an order is issued in Kearns's favor, the Director shall record the administrative code enforcement order with the County Recorder's Office.
- (3) The recordation shall include the name of the property owner, the parcel number, the legal description of the parcel, and a copy of the notice of violation or order.
- (4) The recordation does not encumber the property, but merely places future interested parties on notice of any continuing violation found upon the property.

12.06.140 Service Of Notice Of Recordation*

A 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 Section 12.1.210 of this Title.

12.06.150 Failure To Request*

The failure of any person to file a request for an administrative code enforcement hearing when served with a notice of violation shall constitute a waiver of the right to an administrative hearing and shall not affect the validity of the recorded notice of violation.

12.06.160 Notice of Compliance - Procedures*

- (1) When the violation has been corrected, the responsible person or property owner may request an inspection of the property from the Director.
- (2) Upon receipt of a request for inspection, the Director shall re-inspect the property as soon as practicable to determine whether the violations listed in the notice of violation or the order have been corrected, and whether all necessary permits have been issued and final inspections have been performed.
- (3) The Director shall serve a notice of satisfaction to the responsible person or property owner as provided in Section 12.2.210 of this Title, if the Director determines that the violation listed in the recorded notice of violation or order has been corrected;
- (4) All necessary permits have been issued and finalized;
- (5) All civil penalties assessed against the property have been paid or satisfied; and
- (6) The party requesting the notice of satisfaction has paid all administrative fees and costs.
- (7) If the Director denies a request to issue a notice of satisfaction, upon request, the Director shall serve the responsible person with a written explanation setting forth the reasons for the denial. The written explanation shall be served by any of the methods of service listed in Section 12.1.210 of this Title.

12.06.170 Authority to Withhold Issuance of Municipal Permits

If a property is in violation, Kearns may 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. Kearns may withhold permits until a notice of satisfaction has been issued by the Director. Kearns may not withhold permits that are necessary to obtain a notice of satisfaction or that are necessary to correct serious health and safety violations if violator has otherwise satisfied the compliance standards. Nothing in this section shall be construed as prohibiting Kearns from denying a permit if the application is insufficient or denial is otherwise warranted.

12.06.180 Cancellation Of Recorded Notice Of Violation*

The Director or Responsible Person shall record the notice of satisfaction with the County Recorder's Office. Recordation of the notice of satisfaction shall cancel the recorded notice of violation.

12.06.200 Part 2 - Administrative Civil Penalties*

12.06.210 Authority*

- (1) Any person violating any provision of Kearns Code, or applicable state codes, may be subject to the assessment of civil penalties for each violation.
- (2) Each and every day a violation of any provision of Kearns Code or applicable state codes exists is a separate violation subject to the assessment of civil penalties.
- (3) Civil penalties cannot be assessed when a criminal case has been filed for the same date and violation, because fines will be assessed with the criminal case.
- (4) Interest shall be assessed pursuant to Kearns policy, or at the judgment rate provided in Utah Code § 15-1-4 in the absence of Kearns policy, on all outstanding civil penalties balances until the case has been paid in full.
- (5) Civil penalties for violations of any provision of Kearns Code or applicable state codes shall be assessed pursuant to the Kearns's applicable fee schedule.

12.06.220 Procedures For Assessing Civil Penalties*

If a responsible person fails to bring a violation into compliance by the required deadline and fails to request an administrative hearing appealing the notice, civil penalties shall be owed to Kearns for each and every subsequent day of violation.

12.06.230 Determination Of Civil Penalties*

- (1) Civil penalties shall be assessed per violation per day pursuant to the applicable Kearns fee schedule.
- (2) Civil penalties shall continue to accrue until the violation has been brought into compliance with Kearns Code or applicable state codes.

12.06.240 Modification Of Civil Penalties*

- (1) After the property is determined by the Chief Building Official to be in compliance with Kearns Municipal Code, the responsible person may request a modification of the civil penalties on a finding of good cause.
- (2) Civil penalties may be waived or modified by the Administrative Law Judge if there is a finding of good cause based on the responsible person's claim of nonconforming use or conditional use and:
 - (3) Kearns's need to verify the claim; or
 - (4) The responsible person's filing of an application for either use before expiration of the date to correct.

12.06.250 Failure To Pay Penalties*

The failure of any person to pay civil penalties assessed within the specified time may result in the Director pursuing any legal remedy to collect the civil penalties as provided in the law.

12.06.300 Part 3 - Costs*

12.06.310 Declaration of Purpose*

(1) The Council finds that there is a need to recover costs incurred by enforcement officials and other Kearns personnel who spend considerable time inspecting and re-inspecting properties throughout Kearns in an effort to ensure compliance with Kearns Code or applicable state codes.

(2) The 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 officer fees, title search, and any additional actual costs incurred by Kearns for each individual case. The assessment and collection of costs shall not preclude the imposition of any administrative or judicial civil penalties or fines for violations of Kearns Code or applicable state codes.

12.06.320 Authority*

(1) If actual costs are incurred by Kearns on a property to obtain compliance with provisions of Kearns Code and applicable state codes, the Director may assess costs against the responsible person.

(2) Once a notice of violation has been issued, the property will be inspected one time. Any additional inspections shall be subject to re-inspection fees pursuant to the applicable Kearns fee schedule as adopted in Kearns's annual budget.

12.06.330 Notification of Assessment of Reinspection Fees

(1) Notification of any applicable re-inspection fees adopted by Kearns shall be provided on the notice of violation served to the responsible person.

(2) Any re-inspection fees assessed or collected pursuant to this Part shall not be included in any other costs assessed.

(3) The failure of any responsible person to receive notice of the re-inspection fees shall not affect the validity of any other fees imposed under this Part.

12.06.340 Failure To Timely Pay Costs*

The failure of any person to pay assessed costs by the deadline specified in the invoice shall result in a late fee pursuant to Kearns policy.

12.06.400 Part 4 - Administrative Fees*

12.06.410 Administrative Fees*

The Director or the Administrative Law Judge is authorized to assess administrative fees for costs incurred in the administration of this program, such as investigation of violations, preparation for hearings, hearings, and the collection process. The fee assessed shall be the amount set in the applicable Kearns fee schedule.

12.06.600 Part 5 - Injunctions*

12.06.510 Violations - Injunctions*

In addition to any other remedy provided under Kearns Code or state codes, including criminal prosecution or administrative remedies, any provision of Kearns Code may be enforced by injunction issued in the Third District Court upon a suit brought by Kearns.

12.06.700 Part 6 - Performance Bonds*

12.06.610 Performance Bond*

(1) As part of any notice, order, or action, the Director or Administrative Law Judge has the authority to require responsible persons to post a performance bond to ensure compliance with Kearns Code, applicable state codes, or any judicial action.

(2) If the responsible person fails to comply with the notice, order, or action, the bond will be forfeited to Kearns. The bond shall not be used to offset the other outstanding costs and fees associated with the case.

Chapter 12.08 Recovery of Code Enforcement Penalties and Costs*

12.08.100 Part 1 - Code Enforcement Tax Liens*

12.08.110 Declaration of Purpose*

12.08.120 Procedures for Tax Liens Without A Judgement*

12.08.130 Procedures for Tax Liens With A Judgement*

12.08.140 Cancellation of Code Enforcement Tax Lien*

12.08.200 Part 2 - Writ of Execution*

12.08.201 Recovery of Costs By Writ Of Execution*

12.08.300 Part 3 - Writ of Garnishment*

12.08.310 Recovery of Costs By Writ Of Garnishment*

12.08.400 Part 4 - Allocation of Funds Collected Under Administrative Code Enforcement Hearing Program*

12.08.410 Abatement Fund*

12.08.420 Repayment of Abatement Fund*

12.08.430 Code Enforcement Administrative Fees And Cost Fund*

12.08.440 Allocation of Civil Penalties*

12.08.100 Part 1 - Code Enforcement Tax Liens*

12.08.110 Declaration Of Purpose*

The Council finds that recordation of code enforcement tax liens will assist in the collection of civil penalties, administrative costs, actual costs, and administrative fees assessed by the administrative code enforcement hearing program or judicial orders. The Council further finds that collection of civil penalties, costs, and fees assessed for code enforcement violations is important in deterring future violations and maintaining the integrity of Kearns's code enforcement system. The procedures established in this Part shall be used to complement existing administrative or judicial remedies that may be pursued to address violations of Kearns Code or applicable state codes.

12.08.120 Procedures For Tax Liens Without a Judgement*

- (1) Once Kearns has abated a property, the Director shall prepare an Itemized Statement of Costs incurred in the removal and destruction of the violations and deliver them to the Director after completion of the work of removing the violations.
- (2) The Director shall send, by registered mail to the property owner's last known address, a copy of the Itemized Statement of Costs informing the property owner that a code enforcement tax lien is being recorded for the amount of actual costs of abatement. Payment shall be due within 30 calendar days from the date of mailing.
- (3) Upon receipt of the Itemized Statement of Costs, the Director, shall record a Code Enforcement Tax Lien against the property with the County Treasurer's office.
- (4) The failure of any person with a financial interest in the property to actually receive the notice of the lien shall not affect the validity of the lien or any proceedings taken to collect the outstanding costs of abatement.

12.08.130 Procedures For Tax Liens With A Judgement*

Once a judgment has been obtained from the appropriate court assessing costs against the responsible person, the Director may record a code enforcement tax lien against any real property owned by the responsible person.

12.08.140 Cancellation Of Code Enforcement Tax Lien*

Once payment in full is received for the outstanding civil penalties and costs, or the amount is deemed satisfied pursuant to a subsequent administrative or judicial order, the Director shall either record a Notice of Satisfaction of Judgment, or provide the Responsible Person, property owner, or financial institution with the Notice of Satisfaction of Judgment so that it can record this notice with the county recorder's office. The notice of satisfaction of judgment shall include the same information as provided for in the original Code Enforcement Tax Lien. Such notice of satisfaction of judgment shall cancel the code enforcement tax lien.

12.08.200 Part 2 - Writ of Execution*

12.08.201 Recovery of Costs By Writ of Execution*

After obtaining a judgment, the Director may collect the obligation by use of all appropriate legal means. This may include the execution on personal property owned by the responsible person by filing a writ with the applicable court.

12.08.300 Part 3 - Writ of Garnishment*

12.08.310 Recovery of Costs By Writ of Garnishment*

After obtaining a judgment, the Director may collect the obligation by use of all appropriate legal means. This may include the garnishment of paychecks, financial accounts, and other income or financial assets by filing a writ with the applicable court.

12.08.400 Part 4 - Allocation of Funds Collected Under Administrative Code Enforcement Hearing Program*

12.08.410 Abatement Fund*

There is established a revolving fund to be known as the "Abatement Fund" to defray costs of administrative and judicial abatements as provided in Section 12.08.430. The fund shall be reimbursed by collection from the property or property owner as specified in this Title. The Kearns Council shall establish accounting procedures to ensure proper account identification, credit, and collection. This fund may be operated and used in conjunction with procedures ordered or authorized under the abatement provision of this Title.

12.08.420 Repayment Of Abatement Fund*

All monies recovered from the sale or transfer of property or by payment for the actual abatement costs shall be paid to the Kearns Treasurer, who shall credit the appropriate amount to the Abatement Fund.

12.08.430 Code Enforcement Administrative Fees And Cost Fund*

Administrative fees and administrative costs, except for actual abatement costs, collected pursuant to this Part shall be deposited in a fund established by the Kearns Council for the enhancement of Kearns's code enforcement efforts and to reimburse Kearns for investigative costs and costs associated with the hearing process. Fees and costs deposited in this fund shall be appropriated and allocated in a manner determined by the Kearns Council. Kearns Council shall establish accounting procedures in consultation with the Kearns Auditor to ensure proper account identification, credit, and collection.

12.08.440 Allocation Of Civil Penalties*

Civil penalties collected pursuant to this Part shall be deposited in the General Fund of Kearns. Civil penalties deposited in this fund shall be appropriated and allocated in a manner determined by the Kearns Manager and the Kearns Council. The Kearns Council shall establish accounting procedures to ensure proper account identification, credit, and collection.