Ordinance No. 2024-xx, An Ordinance Of Fairfield Town, Utah, Amending Fairfield Town Code § 5.3 Relating To The Town's Soil Ordinance.

Dated _____, 2024

Whereas, the Town is aware that a portion of the Town is burdened with a high concentration of arsenic. *See* Town Code § 5.3.10(A).

Whereas, on _____ [date], the Town passed Resolution No. 2024-xx, which enacted a notice of pending ordinance to amend, among other things, the Town's soil ordinance found in Town Code § 5.3 because "the current code is inadequate … in process procedure, and reporting for remediation of soil contaminants."

Whereas, the Planning Commission received public input and reviewed the subject text amendment on _____, and forwarded a positive recommendation to the Town Council.

Whereas, the Town Council reviewed the subject text amendment and finds that the soil ordinance should be amended to better serve the public interest, address current needs, and promote the public health, safety, and welfare of the community.

Now, Therefore, Be It Ordained By The Town Council Of The Town Of Fairfield, Utah:

Section 1. Text Enactment. The Town Council hereby enacts Fairfield Town Code § 5.3, as shown in **Exhibit A**.

Section 2. Severability. If any section, part or provision of this Ordinance is held invalid or unenforceable, such invalidity or unenforceability shall not affect any other portion of this Ordinance and all sections, parts, provisions and words of this Ordinance shall be severable.

Section 3. Effective Date. This Ordinance shall become effective immediately upon passage or posting as required by law.

Approved By The Town Council Of The Town Of Fairfield, Utah, On This _____ Day Of _____, 2024 By The Following Vote:

Mayor: _____
Hollie McKinney

RL Panek	yes_____no_____
Tyler Thomas	yes_____no_____
Michael Weber	yes_____no_____
Richard Cameron	yes_____no_____

ATTEST: _____
Stephanie Shelley, Town Recorder/Clerk

EXHIBIT A

(Soil Ordinance Text Amendment)

CHAPTER 3
SOIL ORDINANCE

Section 5.3.10. Fairfield Soil Ordinance and Maintenance of Soil Cap

Section 5.3.20. Applicability

Section 5.3.30. Soil Testing Requirements

Section 5.3.40. Action Levels

Section 5.3.50. Soil Report and Remediation Plan

Section 5.3.60. Top Soil Capping

Section 5.3.70. Hard Surface Capping

Section 5.3.80. Soil Cap Disturbance and Disposal

Section 5.3.90. Dust Control

Section 5.3.100. Failure to Comply with Ordinance

Section 5.3.10. Fairfield Soil Ordinance and Maintenance of Soil Cap.

A. Purpose. The purpose of this Soil Ordinance is to identify areas of arsenic contamination within the boundaries of Fairfield Town, define hazardous levels, and to set standards and procedures to mitigate potential health risks from exposure by disturbance, movement of soil, or the habitation of these areas.

B. Hold Harmless. The Town is aware that contaminated soils exist and have been deposited throughout the Town due to runoff from mines, relocation of tailings, as well as other means of movement. The Town, however, does not know where all contaminated properties may be located. Each property owner is responsible for the condition of his or her own property and is also responsible for any remediation or actions required by this Soils Ordinance regarding his or her property.

C. The Town, under no circumstances, takes any responsibility for the testing, cleanup, removal, or capping of contaminated soil within the Town boundaries. The Town is not liable nor responsible for any detrimental effects or happenings due to contaminated soils within the Town boundaries.

Section 5.3.20. Definitions.

See Title 12. Definitions.

Section 5.3.30. Soil Testing Requirements.

This chapter shall be in full force and effect within the Town limits of Fairfield, Utah.

A. Soil Ordinance Boundary.

    a. Soil samples must be collected at multiple locations across the property and spaced at regular intervals.

    b. The property must be divided into a grid with sampling sites located within each grid segment.

B. The minimum of 1-acre of the inhabited area of a parcel shall be tested and subject to this Soils Ordinance. A minimum of 5 composite samples shall be taken from the 1-acre area at a minimum depth of 12".

C. Structures Requiring Testing. Any structure over four hundred (400 square) feet requiring a permanent foundation will be subject to this Soils Chapter. and will require a minimum of .25 acres to be tested.

D. Soil Testing Facilities an Accredited Company. All sampling, collection, and testing shall be conducted by a certified NELAP (National Environmental Laboratory Accreditation Program) accredited company as provided by the owner of the property.

Section 5.3.40. Minimum Capping with Topsoil or Other Acceptable Materials.

A. Soil Contaminant and Coverage Levels. All real property within the Soil Ordinance Boundary tested by an approved/certified soil testing laboratory and with arsenic levels found to be above the 200 ppm action level, must be capped and maintained with a minimum cap of six (6) inches of approved topsoil and acceptable cap as described in Section 5.3.50 of this title: Exception, where such real property is capped by asphalt, concrete, permanent structures or paving materials.

B. Vehicle Parking. Parking of vehicles or recreational equipment shall be parked on impervious surfaces and not areas that have been capped with non-impervious material.

Section 5.3.50. Acceptable Soil Caps.

A. Vegetated Areas. All areas within the Soil Ordinance Boundary where real property is capped with six (6) inches or more of “Approved Topsoil” defined in Chapter 12, must be vegetated with grass or other suitable vegetation to prevent soil erosion of the six (6) inch topsoil layer.

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B. Xeriscaped Areas. Owners that practice xeriscape are allowed to employ a weed barrier fabric if the property is capped with six (6) inches of rock or bark and maintained to prevent soil breakthrough.

Section 5.3.60. Additional Landscaping Requirements.

A. Landscaping. In addition to the minimum capping of topsoil requirements set forth in Section 5.3.40 and the vegetation requirements set forth in Section 5.3.50, the following additional requirements shall apply:

1. Flower or Vegetable Planting Bed at Grade. All flower or vegetable planting beds at grade shall be clearly defined with edging material to prevent edge drift and shall have a minimum depth of twenty-four (24) inches of approved topsoil so that contaminated soil is not mixed with the cap through normal tilling procedures. Such topsoil shall extend twelve (12) inches beyond the edge of the flower or vegetable planting bed.

2. Flower or Vegetable Planting Bed Above Grade. All flower or vegetable planting beds above grade shall extend a minimum of eighteen (18) inches above the grade of six (6) inches of approved topsoil cap and shall contain only approved topsoil.

3. Shrubs and Trees. All shrubs planted after the passage of this ordinance shall be surrounded by approved topsoil for an area, which is three (3) times bigger than the rootball and extends six (6) inches below the lowest root of the shrub at planting. All trees planted after the passage of this ordinance shall have a minimum of eighteen (18) inches of approved topsoil around the root ball with a minimum of eighteen (18) inches of approved topsoil around the root ball within a minimum of twelve (12) inches of approved topsoil below the lowest root of the tree.

Section 5.3.70. Soil Cap Disturbance.

A. Causing a Disturbance to the Soil. All work related to the disturbance of a cap prohibited unless the person complies with will be Title 5, Chapter 3. Following any work causing the disturbance to a cap within the Soil Ordinance/Code boundary, such as digging, landscaping, and tilling soils, will require all disturbed soils to be collected and reintroduced onsite by either onsite soil capping or off-site disposal as required by this ordinance and State and Federal law.

B. Off-Site Disposal. All soil generated from the Soil Ordinance/Code boundary that cannot be reintroduced within the Soils Ordinance/Code boundary and are destined for off-site disposal must be sampled and characterized with representative sampling and tested by a certified NELAP (National Environmental Laboratory Accreditation Program) company and be disposed of accordingly.

C. Hazardous Characteristics. Soils exhibiting hazardous characteristics exceeding the following Toxic Characteristic Leaching Procedure (TCLP) standards must be managed as a hazardous waste and disposed of within a Utah Department of Environmental Quality permitted facility:

   1. Arsenic - 5.0 mg/L (TCLP) Method 6010 B.

   2. Lead - 5.0 mg/L (TCLP) Method 6010 B.

D. Export of Contaminated Soil. No contaminated soil generated within the Soil Ordinance/Code Boundary is allowed to be exported for use as fill outside of the Soils Ordinance/Code boundary.

E. Reuse of Generated Soil. Reuse of generated soils within the Soils Ordinance/Code boundary is acceptable provided the receiving property is capped with six (6) inches of clean topsoil or capped with an acceptable material, i.e., vegetation, bark, or rock, as required by this ordinance.

F. Relocating Contaminated Soil. Contaminated soil that is relocated within the Soil Ordinance/Code boundary must be pre-approved by the Planning Commission before being relocated and reused.

Section 5.3.80. Dust Control.

Contractor/Owner Responsibility. Contractor or owner is responsible for controlling dust during the time between the beginning of construction activity and the establishment of plant growth in accordance with the Fairfield Town Nuisance Ordinance/Code. Due care shall be taken by the contractor or owner, to protect workmen while working within the site from any exposure to dust emissions during construction activity by providing suitable breathing apparatus or other appropriate control.

Section 5.3.90. Certificate of Compliance and Restrictive Covenants.

A. Restrictive Covenants. A restrictive covenant must be written and recorded with the Utah County Recorder detailing the stipulations involved in mitigating the contaminated soil. All covenants must be approved by the Town attorney. Covenants will not be enforced by the Town.

B. Compliance Inspection. Prior to obtaining an occupancy permit, a notarized Certification of Compliance form provided by the Town, copies of all supporting documents, and a copy of the restrictive covenants as recorded by Utah County shall be submitted to the Town.

Section 5.3.100. Transit Center Disturbance.

Permit Required. A permit shall be required for all construction activity, utility modification, and landscaping that results in the breach of the installed protective cap or the generation of soil and must be conducted in accordance to the implemented site management plan that is provided with the Excavation Application and shall be kept on file at the Town Office.

Section 5.3.110. Failure to Comply with Ordinance.

Legal Action. Any person failing to landscape, maintain landscaping, control dust, or dispose of contaminated soil as required by this Chapter and/or comply with the provisions of this Chapter shall be guilty of a Class B misdemeanor. Any person failing to comply with the provisions of this Chapter may be found to have caused a public nuisance, and appropriate legal action may be taken against that person.

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