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Ogden City v. James Weston Decker : Brief of Appellee

Utah Court of Appeals

Mark H. Stratford; Assistant City Attorney; Attorney for Appellee.
Stephen G. Homer; Attorney for Appellant.

IN THE UTAH COURT OF APPEALS

OGDEN CITY,	:	
Plaintiff and Appellee	:	
v.	:	
	:	
JAMES WESTON DECKER,	:	Docket No. 20110051 CA
Defendant and Appellant	:	

Brief of Appellee

Appeal from a Judgment of the Second Judicial District Court of Weber County,
The Honorable Judge Michael D. DiReda

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STATEMENT OF JURISDICTION

This is an appeal from a small claims action originating in the Ogden City Justice Court and heard de novo in the Second Judicial District Court of Weber County. Appellate jurisdiction is, therefore, limited to reviewing rulings on the constitutionality of a statute or ordinance. Utah Code Ann. §78A-8-106(2) (West 2009). This Court has jurisdiction over this case by virtue of the fact that the case has been transferred to it by the Utah Supreme Court. Utah Code Ann. § 78A-4-103(2)(j) (West 2009).

STATEMENT OF THE ISSUES

Issue #1: Whether a requirement that a fee be paid in order to obtain a hearing challenging a notice that a person has violated municipal property maintenance standards and is subject to a potential civil penalty violates the constitutional rights of an accused person to not be compelled to advance a fee prior to final judgment under Article I, Section 12 of the Utah Constitution.

Standard of Review: This is a constitutional issue that is reviewed for correctness. *Chen v. Stewart*, 2004 UT 82, ¶25, 100 P.3d 1177, 1185.

Preservation of the Issue: This issue was raised by oral motion and ruled on by the trial court during the trial. Trial Transcript, pp. 64-66; 71-72.

Issue #2: Whether the assessment of civil fines by a municipality for the violation of municipal property maintenance standards is in direct conflict with Title 10, Chapter 11 of the Utah Code, which outlines the procedure by which cities may recover costs they incur in the abatement of weeds, garbage, refuse and deleterious objects or structures on private property.

Standard of Review: This is a constitutional issue that is reviewed for correctness. Chen v. Stewart, 2004 UT 82, ¶25, 100 P.3d 1177, 1185, s*ee also Salt*

Lake City v. Newman, 2006 UT 69, ¶ 10, 148 P.3d 931 (ordinance which impliedly conflicts with state statute not unconstitutional).

Preservation of the Issue: This issue was raised by oral motion and ruled on by the trial court during the trial. Trial Transcript, pp. 44-46; 49-51; 67-69.

DETERMINATIVE CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES AND RULES

Utah Constitution Article I, Section 12:

> In criminal prosecutions the accused shall have the right to appear and defend in person and by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to be confronted by the witnesses against him, to have compulsory process to compel the attendance of witnesses in his own behalf, to have a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, and the right to appeal in all cases. In no instance shall any accused person, before final judgment, be compelled to advance money or fees to secure the rights herein guaranteed. The accused shall not be compelled to give evidence against himself; a wife shall not be compelled to testify against her husband, nor a husband against his wife, nor shall any person be twice put in jeopardy for the same offense.
>
> Where the defendant is otherwise entitled to a preliminary examination, the function of that examination is limited to determining whether probable cause exists unless otherwise provided by statute. Nothing in this constitution shall preclude the use of reliable hearsay evidence as defined by statute or rule in whole or in part at any preliminary examination to determine probable cause or at any pretrial proceeding with respect to release of the defendant if appropriate discovery is allowed as defined by statute or rule.

Utah Code, Title 10, Chapter 3, Section 703:

> (1) The governing body of each municipality may impose a minimum criminal penalty for the violation of any municipal ordinance by a fine not to exceed the maximum class B misdemeanor fine under Section 76-3-301 or by a term of imprisonment up to six months, or by both the fine and term of imprisonment.
>
> (2) (a) Except as provided in Subsection (2)(b), the governing body may prescribe a minimum civil penalty for the violation of any municipal ordinance by a fine not to exceed the maximum class B misdemeanor fine under Section 76-3-301.
>
> (b) A municipality may not impose a civil penalty and adjudication for the violation of a municipal moving traffic ordinance.

Utah Code, Title 10, Chapter 8, Section 60:

> They may declare what shall be a nuisance, and abate the same, and impose fines upon persons who may create, continue or suffer nuisances to exist.

Utah Code, Title 10, Chapter 8, Section 84:

> (1) The municipal legislative body may pass all ordinances and rules, and make all regulations, not repugnant to law, necessary for carrying into effect or discharging all powers and duties conferred by this chapter, and as are necessary and proper to provide for the safety and preserve the health, and promote the prosperity, improve the morals, peace and good order, comfort, and convenience of the city and its inhabitants, and for the protection of property in the city.
>
> (2) The municipal legislative body may enforce obedience to the ordinances with fines or penalties in accordance with Section 10-3-703.

Utah Code, Title 10, Chapter 11: Reproduced in the addendum to Decker's brief.

Ogden City Municipal Code Title 1, Chapter 4A: Reproduced in the addendum.

Ogden City Municipal Code Title 1, Chapter 4B: Reproduced in the addendum.

Ogden City Municipal Code Title 12, Chapter 4: Reproduced in the addendum.

STATEMENT OF THE CASE

Ogden City accepts the statement of the case as contained in Decker's brief.

RELEVANT FACTS

The following facts are relevant to the issues raised on appeal:

1. At all times relevant to this appeal, Weston Decker was the owner, agent or occupant (responsible person) of real property located at 2026 Madison Avenue, in Ogden City. Trial Transcript, pp. 3-6. [1]
2. At all times relevant to this appeal, Ogden City had in effect an ordinance governing property maintenance for all property within the city. Trial Transcript, p. 3; *see also* Ogden City Municipal Code § 12-4-1, et. seq., contained in Addendum.
3. The ordinance enables the city to require a responsible person to correct conditions violating the property maintenance regulations on property that was in violation of the ordinance and to assess penalties against or seek remedies from the responsible person. Trial Transcript, p. 43; Ogden City Municipal Code §12-4-8, contained in Addendum.
4. Although the property maintenance standards allow for civil penalties to accrue daily, it is the practice of Ogden City to re-inspect each property

[1] The trial transcript is found in the record on appeal as item number 62.

about every 15 days and assess additional penalties only when the property is still in violation of the standards. Trial Transcript, p. 19.

5. On October 31, 2006, Mr. Decker was issued a warning letter from Ogden City that the Madison Avenue property was in violation of the property maintenance regulations and directing him to comply with the city ordinance. Trial Transcript, pp. 3-4; Plaintiff's Exhibit 11.[2]
6. The notice of violation informed Mr. Decker of the need to cure the violation, the potential penalties for failure to correct the violations, and of his right to request a hearing if he disagreed with the finding of a violation. Plaintiff's Exhibit 11.
7. The required filing fee for a hearing is $25.00. Trial Transcript p. 33; Plaintiff's Exhibit 11.
8. An inspection of the Madison property on November 16, 2006, showed that the property had not been cleaned up and a civil citation and a fine of $125 was assessed against Mr. Decker. Trial Transcript pp. 8-9; Plaintiff's Exhibit 1.

[2] The trial exhibits are found in the record on appeal as item number 63.

9. The Madison property was inspected on December 4, 2006, and due to the continuing violation a civil fine was assessed in the amount of $250.00. Trial Transcript pp. 12-13; Plaintiff's Exhibit 2.

10. The Madison property was inspected on December 21, 2006, and due to the continuing violation a civil fine was assessed in the amount of $500.00. Trial Transcript pp. 13-14; Plaintiff's Exhibit 3.

11. Additional inspections of the Madison property from January 2007, through September 2007 disclosed continuing violations and six additional citations were issued, each with a fine in the amount of $500.00. Plaintiff's Exhibit 4, 5, 6, 7, 8 and 9.

12. The total amount of all civil fines for the Madison Avenue property was $3,875.00. Trial Transcript, p. 39.

13. Each citation included, on the reverse side, a notice that an administrative hearing was available upon request and payment of a $25 non-refundable filing fee. Trial Transcript, pp. 17-18, 26; Plaintiff's Exhibit 14.

14. At some point in the process of receiving the notice of violation and the assessment of civil fines, Mr. Decker inquired about a possible hearing, but refused to pay the filing fee. As a result no hearing was held. Trial Transcript, p. 33.

15. At no time did Ogden City choose to use city funds to abate the property maintenance violations at the Madison Avenue property. Trial Transcript, p. 40.

SUMMARY OF THE ARGUMENT

The rights contained in Article I, Section 12 of the Utah Constitution include a number of procedures which serve to protect the due process rights of a person in a criminal prosecution who is accused of violating the law. Among these rights is the guarantee that no accused person need advance fees to secure any of those due process procedures prior to a final judgment. There is no basis in the Utah Constitution to extend the right to not pay a fee to a civil proceeding where a person has not been criminally charged. If the Court addresses the broader issue of due process under Article I, Section 7 of the Utah Constitution, an argument that was not directly ruled on at trial, then it will see that Ogden City's requirement that a small fee be paid prior to holding a hearing on a property maintenance violation does not violate any constitutional right and adequately meets the flexible nature of due process as applied to that type of proceeding. This is particularly the case here, where Mr. Decker did not provide any evidence that he was unable to pay the required fee and has chosen to mount a facial attack against the fee.

Utah municipalities are given broad power to address nuisances within their boundaries. They are specifically authorized to impose civil fines against persons who do not comply with ordinances describing property maintenance procedures. In addition, the legislature has recognized that there are times when a city may elect to expend public funds to abate a nuisance condition on private property when the responsible person has failed to take necessary steps to address the problem. The legislature has created a process that a city may follow to collect those costs through the county tax and assessment rolls. In order to take advantage of this method of collection, a city must follow specific procedures outlined in Title 10, Chapter 11 of the Utah Code. This statutory method of collecting costs does not, however, limit the ability of a city to elect not to abate a nuisance and choose, instead, to assess civil penalties against the person responsible for the property. To hold otherwise would severely handicap cities ability to adequately address the issue of neglected property. Due to the absence of any direct conflict between the assessment of a civil fine and the choice not to expend city funds to perform abatement on private property, the use by Ogden City of civil fines to encourage compliance with its property maintenance standards does not violate the Utah Constitution.

ARGUMENT

Owners and occupants of real property in Ogden City are expected to maintain the exterior areas of their property free of junk and debris in compliance with local ordinances. Ogden Municipal Code § 12-4-1. When an inspection officer observes conditions that violate the standards adopted by ordinance, a notice of violation is prepared and the responsible party is given time to bring the property into compliance with the ordinance. Ogden Municipal Code § 1-4B-3. If the responsible party fails to act, the inspector may send additional notices and assess civil penalties or fines. These fines may be assessed on a daily basis and increase in amount up to a maximum of $500 per day. Ogden Municipal Code §§ 1-4B-4, 1-4B-5, 12-4-8.

Responsible parties who receive an initial or subsequent notice have several options. They may clean up the property and avoid future penalties, they may negotiate with the inspector for additional time, they may file an administrative appeal which requires payment of a $25 fee, or they may sit back and do nothing. Regardless of which option they choose, there is no self executing action through which the city may collect any penalty or fine. The failure to act might result in criminal charges being brought through the filing and service of an information; it might result in a collection action being filed to collect the assessed but unpaid

penalties; and it might result in the city taking action to abate the violations and collect the costs incurred as provided by statute.

I. The Provision in the Ogden City Municipal Code Requiring Payment of an Appeal Fee by Persons Who Have Been Given a Warning or Civil Citation for Failure to Maintain the Exterior of their Property Does Not Violate Due Process.

While it is true that Ogden City requires payment of a fee by persons given a warning or citation and who are responsible for the care of property to appeal the issue of whether the property is in violation of the city's property maintenance laws, there is no evidence in this case that any of Decker's constitutional rights were violated by this requirement. First, because this is not a criminal case, Decker was not deprived of rights otherwise available to accused persons in a criminal prosecution. Second, general due process considerations do not require a free hearing in every case. Finally, the total amount of civil penalties recognized by the trial court was not excessive.

A. Decker Has Not Been Subject to Criminal Prosecution in this Case.

Decker argues that Article I, Section 7 and Article I, Section 12 of the Utah Constitution, when read together, entitle him to an administrative hearing without having to pay a hearing fee. The use of Article I, Section 12 to make this argument

is an inappropriate expansion of that section. Although it is true that Article I, Section 12, includes a long list of rights that provide due process of law to an accused person in a criminal prosecution, it does not stand for the proposition put forth by Decker, that it "prevents the government from requiring the payment of any fee as a pre-condition to secure any of the rights guaranteed by the Utah Constitution." Decker Brief, pp 8-9. Instead, when Article I, Section 12 guarantees that " [i]n no instance shall any accused person, before final judgment, be compelled to advance fees to secure the rights herein guaranteed," the rights it is referring to are the rights specifically described in that section. Decker has provided no case law or historic evidence that the restriction on payment of fees was ever intended to be applied outside of the criminal context. Although the city can, and sometimes does, file criminal charges when a person refuses to comply with property maintenance ordinances, the judgment awarded in this case was not the result of a criminal prosecution.

There is no doubt that if an information is filed, the accused is entitled to all of the protections of the constitutions of Utah and the United States. Had the city chosen to file criminal charges against Decker for violating the city's property maintenance code, he would have received a hearing on the charges without cost prior to final judgment. But there were no criminal charges in this case, no information, and no possibility that Decker would face jail time for ignoring the

requirements of the law over a long period of time. Decker attributes the city's choice of action to "a governmental practice [that] has arisen to 'accuse' citizens of wrongdoing, but in a manner carefully crafted to avoid the 'constitutional rights' guaranteed to the citizens by the Utah Constitution." Decker Brief, p. 19 (quotation marks in original). The fact that a city utilizes a civil process to assess fines for violations of its ordinances does not mean that it has denied anyone's constitutional rights – it simply means that the city finds the use of civil penalties to be a better option than enforcing every violation through the filing of misdemeanor charges. *See* Utah Code Ann. § 10-3-703 (West 2004) (cities may impose either civil fines or criminal penalties for violations of local ordinance).[3]

B. The Evidence Does Not Support A Claim That Decker Was Denied Due Process

Perhaps in recognition of the fact that the Utah Constitution does not directly apply to his case, Decker argues that "the interplay between Section 7 ["due process"] and Section 12 ["the rights herein guaranteed"] is clear, by reference to

[3] In footnote 1 at page 20 of his brief, Decker raises a question about why he was expected to pay a civil fine when there had been no conviction or sentencing. This allegation is based on the provisions of title 1, chapter 4A of the Ogden Municipal Code. While chapter 4 article A does allow for a judge to impose these penalties upon conviction in a criminal prosecution, it is chapter 4 article B of that title which describes the process for imposing civil penalties when there is no criminal proceeding. It is somewhat curious the Decker does not recognize the distinction since he quotes directly from article 4B on page 19 of his brief.

the unambiguous text." Decker Brief, p. 16. Although it is clear that Article I, Section 12 describes certain due process protections for persons charged in criminal cases; there is no clear or unambiguous text that the general due process protections in Article I, Section 7, require incorporation of these criminal due process guarantees in non-criminal proceedings. Decker uses this supposed "interplay" to raise a facial due process argument against the city's appeal fee. The court should reject this argument because Decker did not raise it before the trial court and because hearing fee does not, on its face, rise to the level of a constitutional violation.

i. Decker did not raise an Article I, Section 7, Due Process claim at trial.

Decker waived the right to challenge the City's appeal fee based on the due process clause of the Utah Constitution by failing to raise the argument before the trial court.

> It is axiomatic that, before a party may advance an issue on appeal, the record must clearly show that it was timely presented to the trial court *in a manner sufficient to obtain a ruling thereon.* Moreover, the party must specifically raise the issue, such that it is brought "to a 'level of consciousness' before the trial court. This requirement serves the interests of judicial economy and orderly procedure by not only giving the trial court a chance to correct error, but by making the parties crystallize issues prior to appeal. When issues are not brought to the trial court's attention in a timely manner, they are deemed waived, precluding this court from considering their merits on appeal.

Holmstrom v. C.R. England, Inc., 2000 UT App 239, 8 P.3d 281, 288 (citations, quotations and alterations omitted). At trial, Decker's counsel argued that charging a fee for an administrative hearing violated article I section 12 of the Utah Constitution. At no time did counsel directly refer to article I section 7, nor did he specifically address due process outside of the context of the article I section 12 discussion. In order to fully present this concern, the relevant portions of the trial where due process may have been raised will be discussed. After the city presented its evidence, Decker's counsel made a motion to dismiss, and stated:

> MR. HOMER: … You don't have to read very far in the Constitution to see that there are in the Constitution certain due process ideas. The bottom line is, I think the city's ordinance requiring Mr. Decker to pay that $25 fee and without paying the fee he has no rights to adjudicate that, that $25 fee violates that portion of the constitution where it says in all cases – let me see if I can find this. It's in the state constitution, Your Honor. In all cases or in no case – let's see, let me just read it here. "In no instance shall any accused person"–
> THE COURT: Where are you reading?
> MR. HOMER: Section 12, halfway between 10 and 14.
> THE COURT: Okay.
> MR. HOMER: In no[] instance – I'm about six lines down into the middle – "In no instance shall any accused person before final judgment be compelled to advance money or fees to secure the rights herein guaranteed." I submit that that applied to the Ogden City hearing request and when they deny him the right to have that hearing, they have then infringed upon a very valuable due process right and so if that hearing wasn't held because, even though he had asked for it, they didn't have it because he didn't pay the fee, I submit that totally undermines the city's claim for the $3900 because he asked for

> the hearing and the city didn't give it to him. So I raise that constitutional issue.
>
> There are some interrelationships between that idea under the Utah Constitution and maybe a more generalized due process right under the United States Constitution.

Transcript, p. 65, line 5, through p. 66 line 7. The trial judge then asked the city if it "want[ed] to respond to the Article I, Section 12" issue. *Id.* at p. 66, lines 21-22.

As the judge considered the issue, he addressed the context of Article I, section 12 in light of language appearing earlier in that section. *Id.* p. 70 lines 11-25 and p. 71, lines 1-15. The trial judge then found "for the purpose of the Motion to Dismiss, that Article I, Section 12 is inapplicable in this setting because Mr. Decker has not been charged criminally in this setting ... I don't think that Article I, Section 12 is written with the civil setting in mind." *Id.* p. 71, lines 18-24. Decker's counsel subsequently discussed with the trial court the nature of the head note, or title, to Article I, Section 12, when he said:

> MR. HOMER: ... I understand your ruling your Honor. You're aware that these little head notes in the code section w[h]ere it says Section12 and then brackets, rights of accused persons, that rights of accused persons is not phrasing in the Utah Constitution? You're aware of that?
> THE COURT: Well, I don't know whether I was or not. I'm interested in what come[s] after the bracketed language.

Trial Transcript, p. 72, lines 18-25. The only additional argument from Decker's counsel that may have pertained to a due process concern was a statement that: "I have a little trouble with the somewhat cavalier style that the city is saying, Well,

you have these Constitutional rights but only if it's a criminal case." *Id.*, p. 73, lines 11-14. Even if this comment was meant to broaden Decker's due process argument, it did not focus the trial court such an expanded claim and so, when the trial court summarized its ruling, it found as follows:

> Mr. Homer then advanced his Constitutional argument that under Article I, Section 12 that Mr. Decker was denied his constitutional right, his constitutional rights under Article I, Section 12 by being required to pay a non-refundable fee to appeal the decision of the city. Specifically Mr. Homer relies upon the language that says in no instance shall any accused person before final judgment be compelled to advance any money or fee to secure the rights herein guaranteed and as I previously indicated, I find that Article I, Section 12, deals with criminal prosecutions as it says it does, in criminal prosecutions the accused shall[,] and then it outlines all of the rights that pertain to the individual … And so I do not find that Article I. Section 12 has application in this case where this is a civil case.

Id., p. 80, lines 15-20 and p. 81, lines 1-6. At no point was the trial court ever put on notice that Decker was making a due process claim under Article I, section 7 of the Utah Constitution or under any line of case law dealing with due process other than in the context of Article I, Section12. As a result, this Court should not allow Decker to broaden his constitutional claim on appeal to ask whether "collecting a fee in advance as a pre-condition for the exercise of those 'due process' rights" violates a property owner's right to due process of law. Decker Brief, p. 2. The issue addressed by the trial court, and which this Court could consider on appeal, is whether Article I, Section 12 of the Utah Constitution prohibits Ogden City from requiring a property owner, or other responsible person, to pay a fee prior to

obtaining an administrative hearing which would address claims that the property is not in violation of the city's nuisance ordinance. Or, in other words, does the right guaranteed to an accused person as part of a criminal proceeding to not pay a fee prior to final judgment extend to individuals who are served with a notice of a potential civil penalty for failure to maintain property for which they are responsible. The reasons why this question should be answered in the negative have already been presented.

ii. Decker does not have standing to challenge the fee.

Decker did not provide any evidence at trial that he was incapable of paying the hearing fee. As a result, even if a due process claim was properly raised, Decker can only attack the hearing fee on its face, and not as applied in his specific case. Decker does not deny that he was provided with notice of the alleged violation. Nor does he claim that an administrative hearing was not made available to him where he could address the nature of the violation. His only claim is that the requirement to pay a fee in order to obtain the hearing is, in all circumstances, unconstitutional.

Although the issue of whether due process concerns are implicated by a fee requirement is not frequently reported, the only time such a concern has been recognized is when a person has shown that the fee directly affected the ability to

obtain a hearing or receive proper treatment. In this context, the United States Supreme Court has said:

> Just as a generally valid notice procedure may fail to satisfy due process because of the circumstances of the defendant, so too a cost requirement, valid on its face, *may* offend due process because it operates to foreclose a particular party's opportunity to be heard.

Boddie v. Connecticut, 401 U.S. 371, 380, 91 S. Ct. 780, 787, 28 L. Ed. 2d 113 (1971) (emphasis added). In *Boddie*, a group of welfare recipients challenged a Connecticut requirement that court fees and costs of service be paid in order to obtain a divorce. *Id.* at 372. After they had requested a waiver of the fees and were denied, they claimed that the fee requirement was unconstitutional as it applied to their circumstances. *Id.* Although the Supreme Court agreed with their position, what is significant for this case is that it clarified its holding to make clear that the requirement of payment of a fee does not always rise to the level of a constitutional violation. "In concluding that the Due Process Clause of the Fourteenth Amendment requires that these appellants be afforded an opportunity to go into court to obtain a divorce, we wish to re-emphasize that we go no further than necessary to dispose of the case before us, a case where the bona fides of both appellants' indigency and desire for divorce are here beyond dispute." *Id.* at 382. If due process always required a free hearing, the Supreme Court would not have

made specific reference to the circumstances of particular parties and the undisputed nature of their indigence.

When *Boddie* has been applied in other circumstances, it has always been with a focus on the person specifically affected, and how the individual's inability to pay deprived the person of a meaningful opportunity to be heard. *See, e.g., Little v. Streater*, 452 U.S. 1, 101 S.Ct 2202, 68 L.Ed.2d 627 (1981) (indigent defendant required to pay for blood test to challenge paternity denied due process). In this case, Decker provided no evidence that he was unable to pay the fee in order to obtain a hearing. The only evidence provided to the trial court was that he either failed or refused to make the payment. On cross examination of the city's code enforcement officer, Decker's attorney engaged in the following dialogue:

> Q. Going back to [exhibit] 14 then, Mr. Porter, paragraph 7, appeal process is available and then it says "In the event you believe" and that would be I guess the person to whom this is issued, "you have been issued this citation in error, you may appeal the imposition of the civil penalty by filing an application for hearing along with a $25 non-refundable filing fee." That's what that paragraph says, right?
> A. Yes, sir.
> Q. Did Mr. Decker attempt to file an application for hearing, do you know?
> A. Yes, sir.
> Q. Did he pay the $25 filing fee?
> A. No, sir.
> Q. He didn't. Did the city act on his application for hearing?
> A. By act, did we have the hearing?
> Q. Or decide not to have a hearing? I realize that's a dual question.
> A. No, the hearing was not scheduled because he did not pay the application fee.

Q. Okay. So the city's process is that it costs $25 if you want to challenge these accusations against Mr. Decker?
A. Yes, sir.
Q. And all other similarly situated persons, right? Everybody who gets a citation, civil citation they have to pay the fee?
A. Yes, sir.
Q. Is there any process in the city's ordinance for waiving that $25 fee?
A. Not to my knowledge.

Trial Transcript, p. 33, line 3 through p. 34, line 8. There was no follow up with the officer as to what Decker's reasons may have been or whether Decker's failure to pay the fee had anything to do with an inability to pay. Furthermore, Decker did not put on any evidence of his own that would explain why he did not pay the fee. Instead, after the city presented its evidence and after Decker's motion to dismiss was denied, Decker chose not to present evidence. *See* Trial Transcript, p. 72, lines 8-13. As a result, Decker's due process claim should be denied for lack of standing.

This case bears a strong similarity to *Hoyle v. Monson*, 606 P.2d 240 (Utah 1980). In that case, two individuals challenged the constitutionality of a requirement that a fee be paid to appear on a ballot in an election. *Id.* at 241. The allegations of impecuniosity were not proven to the satisfaction of the trial court and were not presented to the appellate court. *Id.* at 242. In that case, the Utah Supreme Court observed:

> A constitutional question does not arise merely because it is raised and a decision sought thereon; rather, the constitutionality of a statue ought to be considered in the light of the standing of the one who seeks to raise the

> question and of its particular application. An attack on the validity of a statue cannot be made by parties whose interests have not been, and are not about to be, prejudiced by the operation of the statute.

Id. In this case, although it is undisputed that Decker did not pay the appeal fee and that he did not receive an administrative hearing, his failure to produce evidence that he was incapable of paying the fee does not establish that Decker was personally prejudiced by the requirement. Therefore, he is not in a position to challenge the constitutionality of the fee. *See, e.g. State v. Vincent*, 883 P.2d 278, 283 (Utah 1994) (defendant bears initial burden of establishing indigence). As the *Hoyle* court reasoned, "[t]he far-reaching effect of a constitutional determination upon the rights of the general public negatives any consideration of a constitutional question presented by a friendly or fictitious suit or on admitted or agreed facts. Such questions area only to be reached after a full disclosure of all material facts." *Hoyle, 606 P.2d* at 242-243.

iii. Even if Decker has standing, the fee does not violate his Due Process rights.

In this case, Decker was assessed civil fines and, when he failed to pay the fines, the city obtained a small claims judgment against him. He appealed to the district court where the judgment was affirmed following a trial de novo. Utah Constitution Article I, Section 7, provides: "No person shall be deprived of life, liberty or property, without due process of law." The guarantee of due process

does not contain an internal standard for determining when it has been violated. Furthermore, "[d]ue process … is not a technical conception with a fixed content unrelated to time, place, and circumstances. The requirements of due process depend upon the specific context in which they are applied." *Chen v. Stewart*, 2004 UT 82, ¶25, 100 P.3d 1177, 1185 (internal citations and quotations omitted).

Because Decker has not provided the Court with a method of analyzing his due process claim under the state constitution, Ogden City will apply the three elements adopted by the United States Supreme Court for the federal due process clause as discussed in *Streater*. These elements are: "the private interests at stake, the risk the procedures used will lead to erroneous results and the probable value of the suggested procedural safeguard; and the governmental interests affected." 452 U.S. at 13. *See also, V-1 Oil Co. v. Dep't of Envtl. Quality, Div. of Solid & Hazardous Waste*, 939 P.2d 1192, 1196 (Utah 1997)(applying similar test as described in *Mathews v. Eldridge,* 424 U.S. 319, 335, 96 S.Ct. 893, 903, 47 L.Ed.2d 18 (1976)).

The private interest at stake in the context of the determination of a property maintenance violation and the assessment of a civil fine does not rise to the same level of significance as fundamental issues of freedom of movement or the ability to determine one's familial relations. A monetary, or economic, interest does not require the heightened types of protection that were at play in *Boddie* (the ability to

obtain a divorce) or *Streater* (the creation of a parent-child relationship). In the case of civil fines, the assessment of the fine itself does not deprive a responsible person of any property. Although the failure to address the violation may ultimately lead to a money judgment and subsequent collection, this type of private interest is not entitled to any heightened protection.

The risk that the procedures used will lead to erroneous results is limited in this case. The responsible party is first given an opportunity to clean up the property before a civil fine is assessed, and the inspector is required to assess the fine against a person who is connected with the management of the property. As a result, it is unlikely that a fine would ever be assessed against a person who did not bear responsibility under the ordinance. The procedural safeguard, not requiring payment of a fee, may help an impecunious party, but given the fact that the fee is only $25.00, there are very few people to whom the fee would serve as a bar to the full exercise of their rights. And, as addressed above, there is no evidence in this case that Decker was unable to pay the fee.

Finally, the governmental interest in collecting the fee is important. The fee helps offset a small portion of the costs associated with processing, scheduling and holding the hearing. By not charging a fee, the city would face the prospect of increased costs due to many more hearings being scheduled, while responsible parties are not required to make even a minimal commitment to the process. On

balance, the fee serves to make the hearing process widely available while imposing a minor cost on the responsible party.

Decker does not argue that the notice of the violation was defective, that the potential penalties were not disclosed, that a hearing process was not available, or that the hearing process would be conducted before someone who was not impartial. His only complaint is that the need to pay a fee in order to receive the hearing deprived him of his property without due process of law. Based on the facts and circumstances associated with the city's property maintenance standards, the fee does not violate his due process rights.

C. Decker's Claim that the Civil Penalty is an Excessive Fine Was Not Raised Before the District Court and Should Be Dismissed

On pages 22 and 23 of his brief, Decker challenges the amount of the civil citations, both individually and cumulatively, as being unconstitutionally excessive. In so doing, Decker cites a line of cases discussing the difference between taxes and fees. In those cases where fees are collected, Utah courts have routinely held that the fee cannot be excessive when compared to the service provided. There are two primary reasons why this argument is unavailing to Decker's claims.

First, the constitutional claim which Decker is attempting to make is not really a due process claim, but is more properly classified under the excessive fine

portion of the constitution. *See* Utah Constitution Article 1, Section 9. Nowhere in the transcript from the district court does it show that Decker raised the issue of the amount of the fine as a specific constitutional violation. In addition, there is no indication in the transcript that the trial court entered any findings or order addressing the constitutionality of the civil penalties. The only point at which Decker raised the issue of fines was in the context of his argument that title 10, chapter 11 of the Utah Code limits the ability of cities to do anything other than abate the violations when a responsible party refuses to do so. See Trial Transcript, p. 73, line 14 through p. 74, line 9. Whether the total amount of the fines was excessive cannot, therefore, be raised for the first time on appeal. *Holmstrom v. C.R. England, Inc.*, 2000 UT App 239, 8 P.3d 281, 288.

Second, the dollar amount of a civil fine is expressly authorized by state law and need not correlate with any service rendered. Utah Code Ann. § 10-3-703 (West 2004) (civil fines allowed in amount not to exceed maximum class B misdemeanor fine). The whole point behind a civil fine is to deter individuals from violating municipal ordinances and to encourage them to come into compliance as soon as possible without having to resort to the more harsh penalties associated with the criminal law. They are not a regulatory fee or a fee for a service and do not, therefore, need to have any relation to whether a specific city service was provided or to the cost or lack of cost of such a service.

II. The Ability of Utah Cities to Collect Costs They Incur to Abate Nuisance Properties Does Not Bar Their Ability to Collect Civil Fines from Responsible Parties.

Ogden City is entitled to assess civil penalties against Decker for his failure to maintain property within the city limits even though a state statute controls the conditions under which municipalities are allowed to recover abatement costs they incur on private property. Title 10, Chapter 11 of the Utah Code describes a detailed process by which cities are able to perform abatement work and then recover those costs either through litigation or through an assessment on the county tax rolls. Decker argues that this state law trumps the ability of Ogden City to assess civil penalties against those who are responsible for property where junk and debris has accumulated and that the city's "process in clear contradiction to the statute ought to be 'unconstitutional....'" Decker Brief, p. 24. The trial court ruled that the city could assess civil fines against a responsible person without conflicting with the state statute. [4]

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[4] MR. HOMER: ... I believe [t]here's some case law out there that talks about these types of situation[s] where ... municipal ordinances conflict with state law and I'd like to just kind of share those with the Court because I think that this whole idea, it can't conflict with state law and that's kind of my thing. So I'd like to –

THE COURT: But, my ruling is I don't read it to conflict. So I guess my concern is that you're going to cite me cases that tells the Court what to do in the event of a conflict and I respect that –

The Utah Supreme Court has said that "where a city ordinance is in conflict with a state statute, the ordinance is invalid at its inception." *Hansen v. Eyre*, 2005 UT 29, ¶15, 116 P.3d 290; *see also* Utah Code Ann. § 10-8-84 (West 2004) (municipal legislative body may pass ordinances not repugnant to law for carrying into effect or discharging municipal powers and duties). "In determining whether an ordinance is in 'conflict' with general laws, the test is whether the ordinance permits or licenses that which the statute forbids and prohibits, and vice versa. *Id.* (citation and quotations omitted). The Utah Supreme Court subsequently stated, however, that it "explicitly reject[s] the doctrine of implied conflict and hold[s] that an ordinance is not unconstitutional merely because it implicitly conflicts with a state statute." *Salt Lake City v. Newman*, 2006 UT 69, ¶ 10, 148 P.3d 931. The *Newman* court then explained its holding as follows:

> Therefore, in the absence of express conflict, we will uphold a challenged ordinance unless there is some indication of incompatibility with the state statutory scheme. Implied conflict alone does not render an ordinance unconstitutional; impermissible conflict instead arises when provisions are contradictory in the sense that they cannot coexist.

MR. HOMER: And you're not seeing the conflict.

THE COURT: - but I don't see the conflict. I read the two statutes to work together.

Trial Transcript, p. 75, lines 6-19.

Id. (citation and quotations omitted). In this case, Decker is essentially asking the Court to find that, when an owner of property refuses to take care of that property, Title 10, Chapter 11 of the Utah Code limits the ability of municipalities to address weeds, garbage and nuisance objects or structures through any method other than the expenditure of municipal funds to perform the clean-up of such property. Although that chapter provides certain protections to landowners whose property is cleaned up at the expense of a municipality, it does not prohibit cities from imposing other sanctions when the owner fails to comply with property maintenance regulations. In addition, the scope of the finding which Decker proposes would not only frustrate municipal powers granted by the state legislature, but would seriously inhibit the operation of municipal government throughout the state.

A. Ogden City's Civil Penalty Provisions Do Not Conflict With State Law.

Title 10, Chapter 11 of the Utah Code provides a detailed process with multiple forms of notice and opportunity to object when a municipality uses its own funds for the abatement of weeds, garbage, refuse, or any unsightly or deleterious objects or structures, and then seeks to collect the costs of such abatement from the owner of the land. *See* Utah Code Ann. § 10-11-1, et. seq. (West 2004). In order to recover these costs, a city must appoint an inspector and

the inspector's duties shall include such things as: examining property for violations; sending specific notices of observed violations to the owner or occupant of the property; employing assistance to abate the violations if the owner or occupant has not done so within a reasonable time; preparing an itemized statement of the costs incurred and mail it to the property owner; and, if costs are to be collected through the county treasurer, providing certain notice of the costs to the county treasurer. *Id.* [5]

Decker fixates on the use of the word shall as it applies to the duties of a municipal inspector in the statutory collection process and then claims that because Ogden City did not clean up the property itself, it cannot hold him responsible for civil penalties when he did not comply with repeated notices that the property violated the city's property maintenance ordinance. In his argument, Decker does not explain how Ogden City's civil penalty provisions directly conflict with the state statute, nor does he acknowledge the context in which the inspector's mandatory duties are performed.

i. Civil penalties complement the statutory method of collecting public abatement costs incurred on private property.

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[5] The Utah legislature changed portions of the statutory scheme in the 2011 legislative session. Although those changes moved the process for an owner to obtain review of the actual costs incurred from the county to the city, the actions that the inspector is required to undertake as part of the abatement process did not substantially change.

The use of civil penalties does nothing to interfere with the provisions of Title 10, Chapter 11 of the Utah Code. By placing the burden primarily on an owner or occupant to be responsible for the condition of property, the city saves both it and the responsible party both time and money. Those who are in charge of a piece of property are almost always in a better position to clean up junk, debris and address other maintenance violations than is a municipality. By placing the burden of maintenance on the owner or occupant, the city also better respects the property rights of those individuals. Civil penalties provide an incentive for the owner or occupant to respond to a situation where junk and debris needs to be removed from the property. None of these considerations conflict with the statutory process which a city uses to collect its costs when it decides to undertake the abatement process at its own cost. If a city ordinance authorized an inspector to proceed with abatement without notice of a violation or to recover costs incurred for abatement without providing a statement of the costs for the owner's review, there would be direct conflict with the statutory provisions. There is no conflict, however, when a city chooses not to spend its own dollars on abatement and assess civil, or even criminal, penalties on the responsible party when that person fails to act. The trial court agreed with this position. It said:

> I think Mr. Stratford, you indicated that the city chose to proceed by way of imposition of fines rather that abating the nuisance. I think Mr. Homer's

> argument is well taken and well made that if the city had chosen to abate the nuisance, then it would have had to have complied with the provisions contained in 10-11-2, 10-11-3 where I focused on the "shall" language and I think it's clear what the city is required to do in the event it decides to abate. But I think that [section] 10-8-60 provides the city with the option of doing one or both. It simply says the city may. It doesn't say shall. It doesn't say shall obey and shall impose fines. It says may abate and may impose fines, in this case based on the statutory reading, I'm going to find that the city's decision to proceed under this imposition of fines provision in 10-8-60 is not inconsistent with the abatement provisions contained in 10-11-1 and 11-2 and 10-11-3 specifically. So on that limited basis, I'm going to deny the Motion to Dismiss.

Trial Transcript, p. 68, line 12 through p. 69, line 4.

Decker's claim is essentially one of implied conflict. The reasoning goes as follows: If the legislature established a detailed appointment, notice and hearing process for a city to collect the costs incurred by it as part of an abatement, then any other process adopted to address the issue of property maintenance must automatically be disallowed. This is like telling a carpenter that because he is given a new screwdriver, he can no longer use a hammer and nail. "When reviewing local government action, we give local government great latitude in creating solutions to the many challenges it faces, unless the action is arbitrary or is directly prohibited by, or is inconsistent with the policy of, the state or federal laws or the constitution of Utah or of the United States." *Price Development Co., L.P. v. Orem City*, 2000 UT 26, ¶ 10, 995 P.2d 1237. The provisions of Title 10, Chapter 11,

contain no preemptive language nor does it contain language denying preemption of alternative schemes for addressing property maintenance.

ii. The context of the statutory collection method is consistent with the imposition and collection of civil penalties

Tellingly, Decker does not identify for this Court how the imposition of civil penalties in the form of fines creates a direct conflict with the statutory scheme for collecting costs incurred for abatement. In his brief, Decker basically argues that because the legislature has enacted a statute providing how cities can recoup expenses incurred in abating nuisances on private property, it must therefore be a direct conflict – and a violation of his due process rights – for a city to "attempt to impose and collect 'civil penalties' in excess of the amounts prescribed by controlling statute (which says [sic], essentially, $0)..." Decker Brief, pp. 26-27.[6] It is apparently Decker's belief, or at least the logical extension of his argument, that property owners and those responsible for maintaining property essentially get a free pass to ignore property maintenance standards unless the city takes affirmative action, at the public expense, to clean up junk, debris and other nuisance conditions on the property.

[6] This due process argument was not made to the trial court and cannot, therefore, be raised for the first time on appeal. *Holmstrom v. C.R. England, Inc.*, 2000 UT App 239, 8 P.3d 281, 288. Ogden City is not here responding to the due process allegation raised in the brief, but to the separate issue of whether its assessment of civil penalties is a valid exercise of its municipal power.

In this context, it may be helpful to look at the structure of the cost recovery statute. The inspector is given a number of duties which appear to be mandatory. The duty with the most significance to Decker's argument is that "the inspector shall … at the expense of the municipality, employ necessary assistance and cause the weeds, garbage, refuse, objects, or structures to be removed or destroyed …." Utah Code Ann. § 10-11-3 (West Supp. 2010). Decker seizes on this mandatory language and criticizes Ogden City for not complying with the statute and "'crank[ing] out' the citation letters." Decker Brief, p. 24. Although the word "shall is generally presumed to indicate a mandatory requirement, … on occasion, it has also been interpreted as merely directory. Factors to be considered in this determination include whether the provision affects substantial rights and whether the provision is necessary to effectuate the intent of the statute." *Southwick v. Southwick*, 2011 UT App 222, ¶ 13 (quotations and citations omitted).

The intent of the statute, in this case, is to guarantee that an owner does not have to pay for abatement costs incurred by a city without having first been given an opportunity to make the correction or to review the costs incurred for errors and file a challenge requiring review of such costs. Thus, in order to collect its costs, the city must incur costs and the inspector's duties are mandatory. These mandatory duties protect the property owner from having to pay costs that were incurred without prior notice. But in carrying out the overall objective of

remediating junk and debris throughout the city, it makes no sense for the inspector to be required to incur costs to clean up every property on which junk and debris is observed. *Compare, Price Development*, 2000 UT 26, at ¶15 (city's plan to sustain sales tax base did not conflict with objectives of state development act).

In the final analysis, the fundamental question that must be answered in determining if the imposition of civil penalties for failing to maintain one's property is unconstitutional is whether the civil penalties cannot coexist with the process established by the legislature allowing municipalities to collect costs incurred for abatement. Regardless of Decker's efforts to contrast the "non-existent expenses (of clean-up) the CITY did not incur" with "[t]he CITY's attempt to collect the '$500 per letter' fee," the answer to this question, as explained above, is that the two processes can easily coexist. Decker Brief, p. 26. What is non-existent, however, is any evidence of legislative intent to supplant municipal powers to assess civil penalties merely because it created a method by which cities could recover expenses incurred in abating nuisance properties.

B. Decker's Interpretation of Title 10 Chapter 11 of the Utah Code Would Negate Powers Exclusively Recognized Elsewhere in the Utah Code

Decker's argument that municipalities cannot collect civil penalties in the way of fines from responsible persons is further eroded when other parts of the

municipal code are taken into consideration. The power to address nuisances is not given to municipalities by title 10, chapter 11 of the Utah Code. This power is actually recognized in section 10-8-60, where it is recognized that cities "may declare what shall be a nuisance, and abate the same, and impose fines upon persons who may create, continue or suffer nuisances to exist. Utah Code Ann. § 10-8-60 (West 2004). If, as Decker asserts, Title 10, Chapter 11 of the Utah Code limits cities' powers to only using municipal funds for abatement of garbage, refuse, or unsightly or deleterious objects or structures and then seeking reimbursement of those costs, what happens to cities express power to impose fines on those persons who suffer nuisances to exist? Whatever support Decker's argument may have is further eroded when the statute allowing cities to regulate nuisances is compared with the other enumerated powers of cities.

Most of the areas in which the legislature has specifically authorized cities to act do not include specific language dealing with penalties. For these recognized powers, section 10-8-84 provides blanket authority to "enforce obedience to the ordinances with fines or penalties in accordance with Section 10-3-703." But in the case of nuisances, the grant of power specifically authorizes the assessment of fines as one method of dealing with the problem. As a result, Decker cannot simply argue that the ability of Ogden City to collect a fine is trumped by the provisions of Title 10, Chapter 11. Such a reading would require this Court to expressly

determine that the result of one statute is to directly cause a separate statute to become inoperable. The Utah Supreme Court has stated:

> It is our duty to construe each act of the legislature so as to give it full force and effect. When a construction of an act will bring it into serious conflict with another act, our duty is to construe the acts to be in harmony and avoid conflicts.

Jerz v. Salt Lake County, 822 P.2d 770, 773 (Utah 1991). The trial judge correctly applied this rule when he heard arguments in this case and concluded:

> My reading of 10-8-60 is not inconsistent with what's contained in 10-11-1 and 10-11-2 and 10-11-3.... My understanding is that we're to read statutes in a way that makes sense when we're trying to take two different statutory provisions and work them together. The reading should be a reading that gives effect to both statutes and in this case, the way I read it is exactly as I tried to articulate the first time, and that is, that under 10-8-60 the municipality may declare what shall be a nuisance and may abate the same and may impose fines upon person who may create, continue or suffer nuisances to exist.

Trial Transcript, p. 67, line 25 through p. 68, line 11.

Decker has not provided a satisfactory explanation of how these two statutes can be harmonized under his theory of the case. During argument before the trial court, Decker offered an opinion that perhaps nuisances should be classified into two groups: those that are subject to recovery of costs under title 10, chapter 11, and those that are not. See Trial Transcript, p. 62, line 9 through p. 64, line 9. The fundamental problem with Decker's tiered approach, i.e., that some nuisances are worthy of fines and others just have to be suffered until the city finds the time and

money to remove them, is that there is no evidence that the legislature intended for the statutes to be read in this way.

When title 10, chapter 11 was adopted, the legislature could have clarified the general municipal power specifically allowing assessing fines for nuisances and exempted specifically identified types of nuisances from the assessment of a fine. It did not do so. As a result, the courts should not create a tiered nuisance system when the legislature did not provide any indication that such a system was intended. Instead, the more straightforward and acceptable interpretation is that the legislature allows cities to abate nuisances and to impose fines for all nuisances – but when a municipality uses its own funds to complete the abatement, it has additional avenues to recover its reasonably incurred costs, but only by complying with the terms of title 10, chapter 11.

C. Significant Public Policy Values Would Be Compromised if Decker's Suggestion is Adopted That Title 10 Chapter 11 Prohibits Cities From Assessing Civil Penalties for Nuisance Properties

There are a number of other significant problems with Decker's analysis that a city can only choose to deal with certain property maintenance violations through publicly funded abatement rather than by civil penalties. A few of the most obvious will be briefly identified.

First, the cost to local government would be unbearable. Cities have a finite amount of resources that can be devoted to abating weeds, garbage, refuse and unsightly and deleterious objects and structures. Even though a city is entitled to recover costs incurred for abatement, it is simply unrealistic to believe that a city can bear the time and expense associated with every property on which one of these conditions may be found.

Second, cities would be stripped of their ability to encourage appropriate action through the use of criminal penalties. In addition to civil penalties, cities can enforce obedience to municipal ordinances through the criminal law. Utah Code Ann. § 10-3-703 (West 2004). If Decker is correct, that Title 10, Chapter 11, is the exclusive method by which a city may address property maintenance violations, then it would follow that criminal penalties are also inapplicable. On the other hand, if civil fines are not allowed, but criminal penalties are allowed, the legislature would have created an awkward incentive for cities to file criminal charges against responsible parties who do not respond to warnings that property needs to be cleaned up.

Third, Decker's reading would lead to decreased compliance with local ordinances. If a potentially responsible person knows that civil penalties may be assessed, they are more likely to respond to a notice of violation voluntarily. If the city's civil recourse is capped at the cost of abatement, the person can choose to

simply wait the city out and know that eventually, if the city ever comes in and cleans the property up, they will only have to pay the actual costs of the cleanup. Such an approach would lead to less orderly rather than more orderly communities.

Finally, Decker's argument could easily lead to significant risk to public health and welfare. Much of the reason that weeds, garbage and refuse need to be controlled has nothing to do with aesthetics. Instead, it is directly related to controlling the spread of noxious weeds and limiting the ability of rodents to multiply and spread disease. Where a city does not have the resources to abate all violations, and where responsible parties would be given an incentive to delay or completely ignore the process of removing the offending items, the risk to public health would be increased. For all of these reasons, it would be unjustified to assume that the legislature intended to limit the powers of cities to control nuisances through civil penalties when it adopted Title 10, Chapter 11 of the Utah Code as a method of allowing the collection of the actual cost of an abatement where city funds are expended.

CONCLUSION

Decker is a responsible party against whom civil fines were assessed as allowed by state law and implemented under local ordinance. The process utilized by the city did not deprive Decker of due process of law and is consistent with legislative enactments encouraging the proper maintenance of lands located within cities. For the foregoing reasons, this Court should find that Ogden City's civil enforcement process does not result in constitutional violations and the judgment of the trial court should be affirmed.

RESPECTFULLY SUBMITTED this 4th day of August, 2011.

MARK H. STRATFORD
Attorney for Ogden City

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of August, 2011, I served two copies of the foregoing Appellee's Brief, via first class mail, postage prepaid, to the following:

STEPHEN G. HOMER
2877 West 9150 South
West Jordan, Utah 84088

ADDENDUM

Ogden City Municipal Code, Title 1, Chapter 4A (General Penalties)

Ogden City Municipal Code, Title 1, Chapter 4B (Code Violations and Penalties)

Ogden City Municipal Code, Title 12, Chapter 4 (Property Maintenance Regulations)

1-4A-1

CHAPTER 4

CODE VIOLATIONS AND PENALTIES

ARTICLE A. GENERAL PENALTIES[1]

SECTION:

1-4A-1: PENALTIES:

A. General Penalty: Any person convicted of violating any provision of the ordinances codified in this code, or ordinances hereafter enacted, shall be guilty of a class B misdemeanor unless otherwise specified in such ordinance or interpreted by the court as a class C misdemeanor or infraction, and such violations shall be punished as follows:

1. For any person, other than a corporation, association, partnership, or governmental instrumentality, convicted of an offense:

a. In the case of a class B misdemeanor, by a fine in any sum not exceeding one thousand dollars ($1,000.00) or by imprisonment for a term not longer than six (6) months, or by both such fine and imprisonment;

b. In the case of a class C misdemeanor, by a fine in any sum not exceeding five hundred dollars ($500.00) or by imprisonment for a term not exceeding ninety (90) days, or by both such fine and imprisonment; and

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1. Prior ordinance history: 1999 Code; Ord. 2005-27, 5-24-2005.

c. In the case of an infraction, by a fine in any sum not exceeding five hundred dollars ($500.00).

2. For a corporation, association, partnership, or governmental instrumentality convicted of an offense:

a. For a class B misdemeanor shall be in an amount not exceeding five thousand dollars ($5,000.00); and

b. For a class C misdemeanor or an infraction shall be an amount not exceeding one thousand dollars ($1,000.00).

B. Civil Penalties:

1. In addition to the penalties provided above, a court upon conviction may sentence a person convicted of an offense, other than a violation of title 10 of this code, to a civil penalty in the following amounts:

a. For any violation where the city provided prior notice of such violation and the person failed to comply with such notice, a civil penalty in the amount of five hundred dollars ($500.00).

b. For any violation of title 11, "Police Regulations", of this code where the person was convicted of the same offense within the last two (2) years, or where the person was convicted of a felony within the last four (4) years, a civil penalty in the following amounts:

Class B misdemeanor	$200.00
Class C misdemeanor/infraction	100.00

c. For a violation of title 13, "Animals", of this code where the person was convicted of the same offense within the last two (2) years, a civil penalty in the following amounts for the following violations:

(1) Roaming dog violation or otherwise failing to keep a dog from running at large in violation of section 13-2-6 of this code, a civil penalty in the amount of one hundred dollars ($100.00); or

(2) Barking dog violation or otherwise maintaining a public nuisance in violation of subsection 13-2-7A4 of this code, a civil penalty in the amount of one hundred dollars ($100.00).

(3) Maintaining a public nuisance determined to be a dangerous dog or vicious animal in violation of subsection 13-2-7A6 or A7 of this code, a civil penalty in the amount of five hundred dollars ($500.00).

d. For a violation of title 12, chapter 14, "Noise", of this code where the person was convicted of the same offense within the last two (2) years, a civil penalty in the amount of one hundred fifty dollars ($150.00).

2. In no event shall a civil penalty when combined with any fine imposed by the court exceed the maximum fine that may be imposed for such offense, and such civil penalty shall be reduced accordingly.

3. No more than one civil penalty shall be imposed under this code for any single criminal episode, and the highest applicable civil penalty shall apply.

4. Civil penalties imposed under this section may be satisfied through the performance of community service with the city at a rate equal to the minimum wage.

5. The city, at its own option, may pursue independent collection of such civil penalties in the civil courts if not collected by the court having jurisdiction over the criminal offense.

C. Costs: The court may also require a convicted defendant to pay costs as provided in sections 77-32a-1 through 77-32a-14, Utah Code Annotated or its successor provisions.

D. Restitution: The court may also require a convicted defendant to make restitution as provided in the crime victims restitution act, chapter 38a, title 77, Utah Code Annotated, or its successor provisions, which order may include costs incurred by the city in abating a public nuisance related to the offense for which the defendant is responsible.

E. Prosecution Of Individual Not Precluded: A prosecution of, or civil action against, a corporation, association or partnership, as an entity, shall not preclude prosecutions of, or civil actions against, individuals responsible for the action of such entities and shall not preclude a separate fine, civil penalty or imprisonment or combination thereof for those individuals, as well as a separate fine or civil penalty for the business entity.

(Ord. 2005-29, 5-24-2005)

1-4A-2: LIABILITY:

A. Employers And Agents: When the provisions of this code prohibit the commission or omission of an act, not only the person actually doing the prohibited thing or omitting the directed act, but also the employer and all other persons concerned or aiding or abetting therein shall be guilty of the offense or violation described and liable for the penalties prescribed for the offense or violation.

B. City Officers And Employees: No provision of this code designating the duties of any officer or employee shall be so construed as to make such officer or employee liable for any fine or penalty provided for a failure to perform such duty, unless the intention of the city council to impose such fine or penalty on such officer or employee is specifically and clearly expressed in the section creating the duty.

(Ord. 2005-29, 5-24-2005)

1-4A-3: APPLICATION OF CHAPTER:

A. No Specific Penalty Declared: Whenever the doing of any act or the omission to do any act constitutes a breach of any section or provision of this code and there shall be no fine or penalty specifically declared for such breach, the provisions of this article shall apply.

B. Continued Violation: In all instances where the violation of this code is a continuing violation, a separate offense shall be deemed committed upon each day during or on which the offense occurs or continues.

C. Offense Under Different Sections: In all cases where the same offense is made punishable or is created by different clauses or sections of this code, the prosecuting attorney may elect under which to proceed; but not more than one recovery shall be had against the same person for the same offense; provided, that the revocation of a license or permit shall not be considered a recovery or penalty so as to bar any other penalty being enforced.

(Ord. 2005-29, 5-24-2005)

1-4A-4: **APPLICABILITY OF STATE LAW:**

A. Utah Code Of Criminal Procedure: Except as otherwise provided in this article, the procedure in all criminal cases arising under this article shall be as prescribed in Utah Code Annotated title 77, Utah code of criminal procedure, which is hereby incorporated and adopted herein by reference. Any other applicable rules adopted by the Utah supreme court also are hereby incorporated and adopted herein by reference.

B. Utah Criminal Code: Utah Code Annotated title 76, the Utah criminal code, chapters 1, 2, 3 and 4, relating to principles of construction, jurisdiction, venue, limitations of actions, multiple prosecutions, double jeopardy, burdens of proof, definitions, principles of criminal responsibility, punishments, and inchoate offenses apply to any criminal offense defined in this code, except as otherwise impractical or inappropriate in view of the context of purposes or penalties provided.

C. Arrest And Summons: Except as otherwise provided in this article, all arrests of persons for any violation of this code shall be made in accordance with Utah Code Annotated title 77, chapter 7, Utah code of criminal procedures, and rules 6 and 7, Utah rules of criminal procedures. All summons in lieu of warrants of arrest shall be in accordance with rule 6, Utah rules of criminal procedures.

(Ord. 2005-29, 5-24-2005)

1-4A-5: **PROSECUTIONS:**

A. All prosecutions for violations of this code shall be in the name of Ogden City.

B. Prosecutions for violations of this code shall be commenced by the filing of an information with any court having jurisdiction.

(Ord. 2005-29, 5-24-2005)

1-4A-6: **PROSECUTORIAL DISCRETION TO REDUCE PENALTY:** The prosecutor shall have the authority to reduce the penalty of an offense under the provisions of this code if the reduction in the penalty will serve the interests of justice. In making such a determination,

1-4A-6

the prosecutor may consider the nature of the alleged offense, the circumstances under which the allegations arose and the resources being brought to bear in the prosecution of the offense.

(Ord. 2005-29, 5-24-2005)

CHAPTER 4

CODE VIOLATIONS AND PENALTIES

ARTICLE B. ADMINISTRATIVE IMPOSITION OF CIVIL PENALTIES

SECTION:

1-4B-1: **PURPOSE; APPLICABILITY OF ARTICLE:** The purpose of this article is to provide a standardized procedure for the administrative imposition of certain civil penalties authorized under various sections, articles, chapters or titles of this code and to encourage the correction of code violation without resort to the criminal courts.

(Ord. 2005-29, 5-24-2005)

1-4B-2: **DEFINITIONS:** The following terms shall be defined as indicated for the purposes of this article:

CIVIL CITATION (Also Known As A CITATION): A written notice, issued by an enforcement officer to a responsible party, that a violation of this code has occurred and that a civil penalty has been assessed.

1-4B-2

DATE OF NOTICE:	A. The date of personal delivery of any notice or civil citation to the responsible party; or B. Five (5) days after any notice or civil citation is mailed via first class mail, postage prepaid, to the: 1. Owner of the real property that is the subject of the notice or citation at the last known address as shown on the records of the Weber County assessor, as evidenced in the records maintained in the Weber County recorder's office, 2. Occupant of the real property that is the subject of the notice or citation at the address of the property in violation, unless another address for such occupant is shown on the records of the Weber County assessor's office, as evidenced in the records maintained in the Weber County recorder's office; or C. The date that a notice or civil citation is affixed to a vehicle found in violation or mailed via first class mail, postage prepaid, to the registered owner of such vehicle at the address as shown in the registration records of the state of Utah.
ENFORCEMENT OFFICER:	An officer, employee or other person authorized to issue any notice of violation or civil citation.
HEARING OFFICER:	The mayor, or any hearing officer designated by the mayor.
NOTICE OF VIOLATION (Also Known As A NOTICE, NOTICE OF CODE VIOLATION, NOTICE AND ORDER OR WARNING NOTICE):	A written notice, issued by an enforcement officer to a responsible party, that a violation of this code has occurred.
PERSONAL DELIVERY:	Hand delivery to the responsible party, or leaving it at the responsible party's dwelling

house or usual place of abode with some person of suitable age and discretion then residing therein.

RESPONSIBLE PARTY: Any person liable for a violation or civil penalty under the applicable provisions of this code.

WARNING PERIOD: Ten (10) days after the date of notice, unless a greater period of time is given by the enforcement officer. If the notice of violation is delivered by first class mail, the time for correction listed in such notice shall include the additional five (5) days required for delivery.

(Ord. 2005-29, 5-24-2005)

1-4B-3: **NOTICE OF VIOLATION:** If an enforcement officer finds that a violation exists within the city, the enforcement officer may provide a notice of violation to the responsible party. The notice of violation shall indicate the nature of the violation, the action necessary to correct it, the warning period established before imposition of civil penalties, and the civil penalty amount for failure to correct the violation within the established warning period. The date of notice applicable to such notice shall serve to start the warning period.

(Ord. 2005-29, 5-24-2005)

1-4B-4: **FAILURE TO COMPLY:** If a violation within the city remains uncorrected after expiration of the warning period, the responsible party shall be liable for the civil penalties imposed under such title, chapter, article or section of this code. Such penalty shall be assessed by issuance of a citation by the enforcement officer. Any penalty assessed herein shall be in addition to such other penalties as may be provided in this code.

(Ord. 2005-29, 5-24-2005)

1-4B-5: **DAILY VIOLATIONS:** Each day a violation remains uncorrected after expiration of the warning period and upon any subsequent issuance of a civil citation shall give rise to a separate civil penalty. The city may combine any action to recover daily penalties with

any other civil penalty regarding the same property or person. No civil citation shall issue for a daily violation that occurs in conjunction with another criminal violation as part of a single criminal episode that will be prosecuted in a criminal proceeding.

(Ord. 2005-29, 5-24-2005)

1-4B-6: **REOCCURRING VIOLATIONS:** If a violation is corrected but reoccurs on or related to the same property within two (2) years following the imposition of any civil penalty and the violation is committed by the same person, any subsequent violation after expiration of a new warning period shall subject that person to the applicable maximum penalty.

(Ord. 2005-29, 5-24-2005)

1-4B-7: **MULTIPLE VIOLATIONS:** If a notice of violation describes more than one violation on or related to the same property, only the highest civil penalty shall be applicable for the daily violations.

(Ord. 2005-29, 5-24-2005)

1-4B-8: **PAYMENT:** Any person issued a civil citation shall within twenty (20) days of the date of notice pay the civil penalty, unless a written request for a hearing is filed pursuant to section 1-4B-10 of this article.

(Ord. 2005-29, 5-24-2005)

1-4B-9: **EXTENSIONS OF TIME:**

A. Upon receipt of a written application from any person who may be subject to future civil penalties under the provisions of this article and by agreement of such person to comply with the notice if allowed additional time, the enforcement officer may grant an extended warning period, if the officer determines that good cause exists for such extended warning period and the extension will not seriously threaten the effective enforcement of the applicable title, chapter, article or section of this code, nor pose an imminent danger

to the public health, safety or welfare. The mayor may adopt written guidelines for the granting of extensions under this section.

B. The granting of an extension shall not restrict the power of the building official to require vacation of premises, nor restrict the enforcement of other code violations.

(Ord. 2005-29, 5-24-2005)

1-4B-10: **APPEALS:**

A. Request; Application: Any person having received a notice of violation or a civil citation may request a hearing before a hearing officer by filing a written application for a hearing in the city recorder's office within ten (10) days of the date of notice. Hearings shall be conducted as provided in title 4, chapter 4, article A of this code. All applications for hearing shall be accompanied by a copy of the notice of violation and the fee established in section 4-6-1 of this code.

B. Notification Of Enforcement Officer: Upon receipt of an application for hearing, the city recorder shall immediately notify the enforcement officer.

C. Burden Of Proof: The burden to prove any defense shall be upon the person raising such defense.

D. Applicable Defenses: The hearing officer may dismiss the notice and release the person from liability, if any of the following defenses are applicable:

1. Notice was not served in compliance with the provisions of this article;

2. The violation was corrected within the warning period;

3. It is determined that no violation of the ordinance existed under the notice or civil citation; or

4. At the time of the notice or civil citation, compliance would have violated the criminal laws of the state.

E. Mitigating Circumstances: If the hearing officer finds that a violation did occur but that mitigating circumstances exist, the penalty may be

reduced after the violation is corrected. Mitigating circumstances may include:

1. If a change in the actual ownership of the subject property was recorded with the county recorder's office after the notice of violation was issued and the new owner is not related by blood, marriage or common ownership to the prior owner;

2. If the violation or inability to cure were caused by a force majeure event such as war, act of nature, strike or civil disturbance;

3. Compliance with the notice would have presented an imminent and irreparable injury to persons or property; or

4. Such other mitigating circumstances as may be approved by the city attorney or the responsible official.

F. Correction After Expiration Of Warning Period Not Defense: It shall not be a defense that the responsible party corrected the violation after expiration of the warning period.

G. Agreement For Delayed Or Periodic Payments: If the hearing officer finds that the violation occurred and no applicable defense applies, the hearing officer may, in the interest of justice and on behalf of the city, enter into an agreement for the delayed or periodic payment of the applicable penalties. In the absence of an agreement for delayed or periodic payments, any civil penalty upheld or reduced by the hearing officer shall be paid within twenty (20) days of the date of the hearing officer's written decision.

H. Appeal To Board Of Building And Fire Code Appeals Or Board Of Zoning Adjustment: Any administrative determination by the hearing officer regarding an interpretation of the provisions of this code within the jurisdiction of either the board of building and fire code appeals or the board of zoning adjustment may be appealed to the applicable board.

I. Appeal To District Court: Any person adversely affected by the decision of the hearing officer may petition the district court for review of the administrative determination pursuant to section 10-3-703.7(5), Utah Code Annotated, or its successor provision.

(Ord. 2005-29, 5-24-2005)

1-4B-11: **COLLECTION:** If a civil penalty imposed pursuant to this article remains unpaid, the city may use such lawful means as are available to collect such penalty, including costs and attorney fees.

(Ord. 2005-29, 5-24-2005)

1-4B-12: **COLLECTION ACTION NOT RELIEF OF CORRECTION RESPONSIBILITY:** Commencement of any collection action shall not relieve the responsibility of any person to cure any violation, if still uncorrected.

(Ord. 2005-29, 5-24-2005)

12-4-1

CHAPTER 4

PROPERTY MAINTENANCE REGULATIONS

SECTION:

12-4-1: PROPERTY MAINTENANCE RESPONSIBILITIES; SIDEWALKS, PARK STRIPS AND ABUTTER'S ALLEYS:

A. It shall be the duty of the owner, agent, occupant or lessee of real property to keep their exterior property free of conditions which violate the provisions of this chapter.

B. It shall be the duty of the owner, agent, occupant or lessee of real property abutting and bordering on any public street in the city to keep the area between their property line and the curb or edge of the roadway free of conditions which violate the provisions of this chapter. Such area shall include sidewalks, park strips between streets and sidewalks, or other adjacent landscaped or open areas within a dedicated public right of way.

C. It shall be the duty of the owner, agent, occupant or lessee of real property which faces on an abutter's alley to keep that portion of the alley which is adjacent to such property, free of conditions which violate the provisions of this chapter. If the alley was dedicated for the benefit of real property on both sides of the alley, the duty shall extend to the centerline of the alley. If the alley was dedicated only

for the benefit of real property along one side of the alley, the duty shall extend for the entire width.

(1979 Code § 8.26.010; Ord. 97-91, 12-16-1997)

12-4-2: WASTE MATERIALS OR JUNK; PROHIBITED ON PREMISES:

A. Prohibition: It is unlawful for any owner, occupant, agent or lessee of real property within the city, to allow, cause or permit the following material or objects to be in or upon any yard, garden, lawn, or outdoor premises of such property:

1. Junk or salvage material;

2. Litter;

3. Any abandoned vehicle or inoperable vehicle.

B. Exceptions: The prohibition in subsection A of this section shall not apply to:

1. Materials or objects used, kept or maintained in connection with a business enterprise lawfully situated and licensed for the same and operating in conformance with the zoning title or other provisions of this code; or

2. The outdoor storage of no more than one vehicle at a residence, as described in subsection G in the definition of "junk or salvage yard", section 15-2-11 of this code.

C. Prohibition On Park Strips, Sidewalks, Etc.: It is unlawful for any owner, occupant, agent or lessee of real property abutting and bordering on any public street in the city, for the distance such real property abuts and borders such street, to allow, cause or permit litter, or junk or salvage material, to be in or upon the area from the property line to the curb line of the street or edge of the roadway.

D. Abutter's Alleys: It is unlawful for any owner, occupant, agent or lessee of real property facing on any abutter's alley, to allow, cause or permit litter or junk or salvage material to be in or upon that portion of the abutter's alley for which the owner, occupant, agent or

lessee is responsible as provided under subsection 12-4-1C of this chapter.

(1979 Code § 8.26.020; Ord. 97-91, 12-16-1997; amd. 1999 Code)

12-4-3: **WEED CONTROL:**

A. Premises: It is unlawful for any owner, occupant, agent or lessee of real property in the city to fail to maintain the height of weeds and grasses, in the manner provided herein, on such property, or to fail to remove from the property any cuttings from such weeds or grasses.

B. Park Strips: It is unlawful for any owner, occupant, agent or lessee of real property in the city abutting and bordering on any public street, for the distance such property abuts and borders the street, to fail to maintain the height of weeds and grasses, in the manner provided herein, in the area from the property line to the curb line of the street, or to fail to remove from such area any cuttings from such weeds or grasses.

C. Abutter's Alleys: It is unlawful for any owner, occupant, agent or lessee of real property in the city which faces on an abutter's alley for the distance such property abuts and borders, to fail to maintain the height of weeds and grasses, in the manner provided herein, in that portion of the abutter's alley for which the owner, occupant, agent or lessee is responsible as provided under section 12-4-1 of this chapter.

D. Weed Control Specifications:

1. Except as otherwise provided in subsection D2 of this section, weeds and grasses shall be maintained at a height of not more than six inches (6") at all times, and the cuttings shall be promptly cleared and removed from the premises; provided, however, that this subsection shall not be applicable to any ornamental grass so long as it is used and maintained solely, or in combination with any other ornamental grass or grasses, as a supplement to an overall landscaping plan and does not constitute in square footage more than twenty percent (20%) of the property's overall landscaped area.

2. Weeds and grasses shall be maintained at a height of not more than twelve inches (12") at all times on any of the following properties, and the cuttings shall be promptly cleared and removed from the premises:

a. Areas zoned as open space zone (O-1) pursuant to title 15 of this code;

b. Ditches, ditch rights of way or railroad rights of way; and

c. Undeveloped property or vacant lots (no buildings or structures).

3. Weeds which are eradicated by chemicals must be done so before their height exceeds the height limits provided herein, or they must be cut at a level not exceeding such height limits.

4. Weeds which are rototilled or removed by the root must be buried under the soil or removed from the property.

5. When, in the opinion of the fire marshal, or any assistant fire marshal, the large size or terrain of property makes the cutting of all weeds or grasses impractical, the fire marshal, or any assistant fire marshal, may, by written order, allow and limit the required cutting of weeds and grasses to a firebreak of not less than fifteen feet (15') in width cut around the complete perimeter of the property and around any structures existing upon the property, unless the fire marshal, or assistant fire marshal, determines that a firebreak of a lesser width will provide adequate protection against fire spread at the particular location.

6. The fire marshal may from time to time exempt from, or limit, in whole or in part, the required cutting of weeds and grasses for property established and maintained as a nature park or wetland mitigation area, if the fire marshal, or assistant fire marshal, determines that such limitation or exemption will not present a potential fire hazard to adjacent properties.

(1979 Code § 8.26.030; Ord. 97-91, 12-16-1997; amd. Ord. 2002-73, 12-17-2002)

12-4-4: **NOXIOUS WEEDS:** It shall be unlawful for the owner or occupant of any real property to allow to grow on such property any noxious weeds or other noxious vegetable growth determined by the county health department to be especially injurious to public health, crops, livestock, land, or other property.

(1979 Code § 8.26.040; Ord. 97-91, 12-16-1997)

12-4-5: **VEGETATION INTERFERING WITH PUBLIC WAYS OR PROPERTY:** It shall be unlawful for the owner or occupant of any real property to allow vegetation on the owner's or occupant's real property to grow to such an extent or in such a manner that, because of its proximity to public property or a public right of way, it interferes with the safe or lawful use of public property or the public right of way, or obstructs the vision of any posted uniform traffic control device.

(1979 Code § 8.26.050; Ord. 97-91, 12-16-1997)

12-4-6: **EMPTY BUILDINGS TO BE KEPT SECURED:** It shall be unlawful for the owners or agents or persons in charge of unoccupied buildings or structures within the city to fail to keep such buildings and structures closed and securely locked or otherwise secured against entry.

(1979 Code § 8.26.060; Ord. 97-91, 12-16-1997)

12-4-7: **INSPECTORS AUTHORIZED TO ENFORCE CHAPTER:**

A. Appointment By Mayor: The mayor shall appoint inspectors who are authorized to enforce the provisions of this chapter.

B. Powers And Duties:

1. An inspector is authorized and directed to inspect and examine real property situated within the city for the purpose of determining whether or not a property maintenance violation exists.

2. All matters involving health shall be pursued in coordination with the county health department. All matters involving weeds or other fire hazards shall be pursued in coordination with the fire department. All matters involving the boarding of dangerous buildings shall be pursued in coordination with the building official. All matters involving the lawful use of land under the zoning title shall be pursued in coordination with the community and economic development director, or the director's designee.

3. The mayor may assign primary responsibility in those areas of overlapping jurisdiction.

(1979 Code § 8.26.080; Ord. 97-91, 12-16-1997; amd. Ord. 2001-32, 6-5-2001; Ord. 2004-39, 6-15-2004, eff. 7-1-2004)

12-4-8: PENALTIES AND REMEDIES FOR VIOLATIONS:

A. Misdemeanor: Owners, agents, occupants or lessees who violate the provisions of this chapter shall be guilty of a class B misdemeanor and upon conviction shall be punishable as set forth in title 1, chapter 4, article A of this code.

B. City Abatement And Associated Civil Penalties: Litter or other unlawful accumulations or conditions not removed from private property, or adjacent sidewalks, park strips, alleys, or other adjacent areas for which the person is responsible under the provisions of this chapter, may be removed by the city pursuant to the provisions of chapter 8 of this title, or its successor, with costs and expenses for such cleaning or removal and civil penalties to be assessed in accordance with the provisions of such chapter.

C. Civil Penalties: Owners, agents, occupants or lessees who fail to correct a violation of the provisions of this chapter after notice of violation and expiration of the warning period shall be subject to the following civil penalties pursuant to title 1, chapter 4, article B of this code:

1. The first civil citation issued after expiration of the warning period shall subject the responsible party to the initial penalty of one hundred twenty five dollars ($125.00).

2. The second civil citation issued after expiration of the warning period and the prior imposition of the initial penalty shall subject the responsible party to the intermediate penalty of two hundred fifty dollars ($250.00).

3. Any subsequent civil citation issued after expiration of the warning period and the prior imposition of the intermediate penalty, or any reoccurring violation under section 1-4B-6 of this code, shall subject the responsible party to the maximum penalty of five hundred dollars ($500.00).

D. Other Remedies: This chapter may also be enforced by injunction, mandamus, judicial abatement or any other appropriate action in law or equity.

E. Daily Violations: Each day that any violation of this chapter continues shall be considered a separate offense for purposes of the penalties and remedies available to the city.

F. Compliance: Accumulation of penalties for violations, but not the obligation for payment of penalties already accrued, shall stop on correction of the violation.

G. Cumulative: Any one, all, or any combination of the foregoing penalties and remedies may be used to enforce the provisions of this title.

(1979 Code § 8.26.070; Ord. 97-91, 12-16-1997; amd. Ord. 2002-73, 12-17-2002; Ord. 2005-29, 5-24-2005)