

ORDINANCE NO. _____

ENTITLED: "AN ORDINANCE AMENDING SECTION 1.3 OF THE UNIFIED DEVELOPMENT CODE (UDC), AMENDING THE ENFORCEMENT REGULATIONS OF THE UDC AND MAKING OTHER CONFORMING AMENDMENTS."

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF CHEYENNE, WYOMING:

Section 1. That the Governing Body of the City of Cheyenne finds that the text amendment that is the subject of this ordinance meets the criteria specified in Section 2.4.1.d of the Unified Development Code.

Section 2. That on February 6, 2023, the Planning Commission conducted a public hearing, reviewed the proposed text amendment, and recommended approval of said text amendment.

Section 3. That Section 1.3, Administration and Enforcement, of Article 1, General Provisions, of the Unified Development Code of the City of Cheyenne, Wyoming, is hereby amended as set out in this section.

1.3 ADMINISTRATION AND ENFORCEMENT

- 1.3.1 Purpose
- 1.3.2 Compliance Required
- 1.3.3 Responsible Persons
- 1.3.4 Violations
- 1.3.5 Violation Notice
- 1.3.6 Investigatory Powers
- 1.3.7 Penalties
- 1.3.8 Revocation or Suspension of Permit or License
- 1.3.9 Abatement of Violations
- 1.3.10 Appeals
- 1.3.11 Nonconformances
- 1.3.12 Fees

1.3.1 Purpose

This Section establishes procedures through which the City seeks to ensure compliance with the provisions of this code and obtain corrections for violations of this code. This Section also sets forth the remedies and penalties that apply to violations of this code. The provisions of this Section are intended to encourage the voluntary correction of violations, where possible.

1.3.2 Compliance Required

Compliance with all provisions of this code is required by all persons owning, developing, dividing, managing, using, or occupying land or structures. Failure to comply with a standard, requirement, prohibition or limitation imposed by this code, or the terms or conditions of any permit, approval or authorization granted in accordance with this code, shall constitute a violation of this code punishable as provided in this Section.

1.3.3 Responsible Persons

The owner, tenant or occupant of any land or structure, and an architect, engineer, builder, contractor, agent or any other person who participates in, assists, directs, creates or maintains a situation that constitutes a violation of these regulations, may be held responsible for the violation and be subject to the remedies and penalties set forth in this Section.

1.3.4 Violations

It shall be unlawful for any building, structure, site element or use of land to be constructed, altered, maintained or otherwise initiated in violation of these regulations, or in violation of any amendment, order or decision authorized under these regulations. In addition to any other remedy provided in these regulations, the City may institute proper actions or proceedings to prevent the unlawful activity or situation. Activities that constitute a violation include, but are not limited to, the following:

- a. Creating, expanding, replacing or changing any nonconformity except in compliance with this code;
- b. Reducing or diminishing the requirements for development, design or dimensional standards below the minimum required by this code;
- c. Increasing the intensity or density of development, except in accordance with the standards of this Code;
- d. Through any act or omission, failing to comply with any other provisions, procedures or standards as required by this code;
- e. Disturbing any landscaped area or vegetation required to be protected or maintained by this code;
- f. Installing, creating, erecting, altering or maintaining any sign without first obtaining the appropriate permits or required development approvals and complying with their terms and conditions;
- g. Failing to remove any sign installed, created, erected or maintained in violation of this code, or for which a previously approved permit has expired.

1.3.5 Violation Notice

The following procedures shall be used in citing violations of these regulations:

- a. The first notice shall be by certified mail or by other provable means of service, which notice shall state that the violation must cease within fourteen (14) calendar days from the date of receipt of the notice. In cases where a health hazard or emergency may exist, or where removal of the violation is deemed imperative by the Director or his or her designated representative, the fourteen (14) day limit may be decreased. The notice may indicate potential penalties for violation.
- b. A final notice shall be by certified mail or by other provable means of service if the violation has not been corrected within the time period set forth in the first notice. The final notice shall indicate the dates and time frames previously provided and shall state that the violation must cease within seven (7) calendar days from the date of receipt of the final notice. Should the violation not cease within seven (7) days of receipt, the matter will be referred to the City Attorney who will act as expeditiously as possible and who may also follow the processes under Section 1.3.8 or 1.3.9.
- c. Violations may be cited by the City.
- d. Notification under this section may also be made by placing a violation notice directly on the property if the provisions of this sub-section cannot be accomplished.
- e. The Director may grant one (1) extension of up to thirty (30) days should an extension be requested. Requests must be in writing and signed by the responsible persons. Should the Director approve the extension, a written approval will be sent to the responsible persons and added to the case file.

1.3.6 Investigatory Powers

- a. The Director is authorized to enter upon any property, excluding dwelling units, and at any reasonable time for the purpose of inspecting properties or performing other duties under these regulations.
- b. The City may investigate, and to the extent necessary administer an oath or affirmation, and upon request of any party, may subpoena witnesses, compel own motion, or upon request of any party, may subpoena witnesses, compel their attendance, adduce evidence, and require the production of any matter which is relevant of the investigation, including the existence, description, nature, custody, condition and location of any books, documents or other relevant facts or any other matter reasonably calculated to lead to discovery of admissible evidence.
- c. Upon failure without lawful excuse to obey a subpoena or to give testimony and upon reasonable notice to all persons affected thereby, the City may apply to any district court for an Order compelling compliance.

1.3.7 Penalties

Any responsible persons who fail to comply with or violates any of these regulations shall be subject to any penalties permitted by the Wyoming Statutes authorizing these regulations, or any other remedy available to the City including:

- a. ***Injunction.*** If any building or structure is erected, constructed, reconstructed, repaired, converted, or any building, structure, or land is used in violation of these regulations, the Director or any adjacent or other property owner who would be damaged by such violation, in addition to other remedies, may institute an injunction, mandamus, or other appropriate action or proceeding to stop the violation.
- b. ***Fine Generally.*** Any person, violating any provision of these regulations is guilty of a separate offense for each and every day during any portion of which any violation of any provision of these is committed, continued, or permitted by any such person and shall be punished by a fine of the maximum allowed by the State Statute for each offense. Daily fines may be calculated from the date of first notice to the date of the hearing being scheduled or until date of remedy if remedied prior to a hearing date being established.
- c. ***Fine for Misrepresentation of Subdivisions.*** Any person who knowingly authorizes, directs or aids in the publication, advertisement, distribution or circulation of any false statement or misrepresentation concerning any subdivision/development for sale, in this or any other state, and every person with knowledge that any such advertisement, prospectus, pamphlet or letter concerning land of any subdivision/development thereto contains any written statement that is false or fraudulent in any material part or who issues, circulates, publishes or distributes the same or who causes the same to be circulated, published or distributed, shall upon conviction be imprisoned for a period not to exceed thirty (30) days or be fined the maximum amount authorized by the Wyoming Statute. Each day of violation constitutes a new offense.
- d. ***Suspension of Permit or License.*** Violations of these regulations may result in suspending a permit, license, or approval where the terms of the approval are not being met as provided in subsection 1.3.8, below.
- e. ***Abatement of Violation.*** Violations of these regulations may be abated at the election of the Director. This procedure shall not be the sole remedy available, and the City may enforce these regulations in any manner provided by law as provided in section 1.3.9, below.
- f. ***Stay of Fines.*** Should a remedy be initiated by the responsible persons or during a public hearing process, a stay of fines may be permitted.

1.3.8 Suspension of Permit or License

Suspension of any City issued permit, license or approval issued in accordance with these regulations or the Municipal Code may be made under the procedures and standards of this Section.

- a. A license, permit or approval shall be suspended if any of the following findings are made:
 - 1. A use or development action upon the parent property has not obtained approvals required by this code;
 - 2. The physical development, use, development option, or subdivision, violates the terms or conditions of the permit or any approval of this code; or
 - 3. The permit, approval, or license was issued on the basis of erroneous or misleading information or misrepresentation.
- b. Rules of Procedure
 - 1. A suspension proceeding shall be governed by the contested case rules adopted by the City.
- c. Process
 - 1. The process shall follow the proceedings of Section 2.92.020 of the Municipal Code of the City of Cheyenne.

1.3.9 Abatement of Violations

Abatement of violations of these regulations shall be made under the procedures and standards of this Section.

- a. An Order to Abate shall be issued if there is:
 - 1. Substantial evidence that a violation of this Code does exist; and
 - 2. Sufficient cause to evict or relocate an illegal use or rehabilitate, demolish, remove or repair an illegal development.
- b. Effect
 - 1. If an Order to Abate is issued it shall mean that the land or development is in violation of this Code and the illegal activity shall be discontinued and rehabilitated, repaired, removed, or demolished in the manner and means specifically set forth in the Order to Abate.
- c. Rules of Procedure
 - 1. An abatement proceeding shall be governed by the Wyoming Administrative Procedures Act, W.S. 16-3-107 through -115.

d. Process

1. *Notice to Abate.* If a Final Notice has been issued as specified in Section 1.3.5.b and the responsible persons is found to not be in compliance after the timeline specified in the final notice, a notice to abate may be mailed to the landowner stating the date and time the abatement will take place. Notice shall be sent at least fourteen (14) days prior to the abatement.
2. *Notice of Hearing to Abate.* Should the responsible persons request to appeal the notice to abate after receiving the notice, a notice of a hearing to abate shall be mailed to the landowner stating the date, time, and location of the public hearing by certified mail, return receipt requested and stating the provisions of these regulations being violated. Notice shall be sent at least fourteen (14) days prior to the hearing.
3. *Hearing officer conclusion.* If, after the conclusion of the hearing, the Officer finds that an Order to Abate shall be issued, the Hearing Officer shall prepare an Order to Abate outlining findings and specifying the nature of the violation, the method of abatement, and the time within which the abatement shall be commenced and completed. The Hearing Officer shall provide the landowner a copy of the Order to Abate, by mail, on the day the order is made.
4. *Abatement.* The City's right to abate a violation of this Code, as provided in this Section, shall be cumulative to any other remedy provide by law.

e. Costs of abatement; notice of assessment

1. Upon completion of abatement by the city, the city shall complete a statement of costs. The statement shall include the costs of abatement and any other expenses incurred by the city, plus an administrative fee in the amount of fifty (50) percent of the abatement costs.
2. The city shall send written notice of the city's costs of the abatement to the owner of the property by certified mail, return receipt requested.
3. The city will engage an independent contractor for abatement of a violation, the city is authorized to bill the costs of the abatement plus the administrative fee provided by UDC 1.3.9.e.1, above, to the owner of the property that is the subject of the abatement.

f. Collection of costs of abatement; filing of lien

1. If an owner or occupant of property to which a statement of costs has been sent fails to pay the costs of abatement within thirty (30) days after notification, the city attorney may file an appropriate lien with the county clerk and ex officio registrar of deeds for Laramie County. The lien shall contain the legal description of the

property involved, the amount of the unpaid bill, and a notice that the city claims a lien for its costs of abatement. A lien for abatement costs may be foreclosed in accordance with the laws of the state of Wyoming. In addition, the city may pursue any remedies provided by law including assignment of the claim for costs of abatement to a collection agency.

1.3.10 Appeals

Appeals to the application and enforcement of these regulations shall be allowed by the procedures and criteria in Article 2. In general these regulations provide for the following distinct appeals.

- a. ***Administrative Use Approval.*** A process to administer the provisions of these regulations in a manner that best achieves the Purposes, Intent and Design Objectives of these regulations, and which may offer relief or alternative compliance to standards. Administrative Use Approvals are administrative decisions and only allowed where specifically identified in the provisions of these regulations, and subject to the procedures and criteria in Article 2.
- b. ***Waiver.*** A process to decide whether or not to apply a specific standard of the Subdivision Standards in Article 4, or decision to apply an alternative standard in a specific circumstance. Waivers are an administrative decision and only allowed subject to the procedures and criteria identified in Article 2.
- c. ***Variance.*** A process to decide whether to vary or adjust the strict application of a standard in Articles 5, 6 and 7. Variances are quasi-judicial decisions and allowed subject to the procedures and criteria identified in Article 2.
- d. ***Appeal of an Administrative Decision.*** A process to decide if any final administrative decision made by an administrative official in the interpretation or enforcement of the standards of this code are correct.

Section 4. Unified Development Code Subsection 1.3.6, Nonconformances, is renumbered as Subsection 1.3.11 and Unified Development Code Subsection 1.3.7, Fees, is renumbered 1.3.12.

Section 5. Sections, paragraphs, sentences, clauses, and phrases of this ordinance are severable. If any section, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or otherwise unlawful, such declaration shall not affect any of the remaining sections, paragraphs, sentences, clauses, and phrases.

Section 6. This ordinance shall be in full force and effect upon approval and publication.

FIRST READING: _____

SECOND READING: _____

THIRD AND FINAL READING: _____

PATRICK COLLINS, MAYOR

(SEAL)

ATTEST:

KRISTINA F. JONES, CITY CLERK

Published: _____
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