

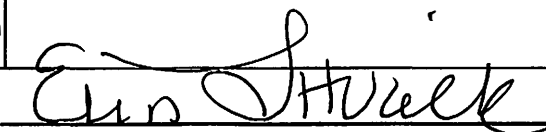
Mayor's Office: Council Agenda Item Request Form

This form and supporting documents (if applicable) are due the Wednesday before the COW meeting by noon.

Date Received
(office use)

Date of Request	May 14, 2018
Requesting Staff Member	Alison Weyher
Requested Council Date	Next available
Topic/Discussion Title	Approval of Resolution authorizing the amendment of Title 17, Chapter 22 of the Salt Lake County Code of Ordinances, 2001, Amending the Flood Control Violation and Enforcement and Appeals Process.
Description	This request is to amend the Civil Penalty Fee Schedule to adopt an Administrative Hearing Fee, commence penalties upon notice of violation, and clarify when and how violations may be abated.
Requested Action ¹	Approve Resolution authorizing the amendment of Title 17, Chapter 22 of the Salt Lake County Code of Ordinances 20011, amending the Flood Control Violation and Enforcement and Appeals Process.
Presenter(s)	Kade Moncur, director Flood control and Engineering Angela Lane, Ryan Lambert District Attorney's office
Time Needed ²	Five minutes
Time Sensitive ³	No
Specific Time(s) ⁴	No
Will You Be Providing a PowerPoint	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Will You Be Providing Back-Up Documentation or Handouts? <small>Please attach the supporting documentation you plan to provide for the packets to this form. While not ideal, if supporting documents are not yet ready, you can still submit them by 10 am the Friday morning prior to the COW agenda. Items without documentation may be taken off for consideration at that COW meeting.</small>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No see attached

Mayor or Designee approval:



RESOLUTION NO. _____, 2018

**A RESOLUTION OF THE SALT LAKE COUNTY COUNCIL AMENDING
THE CIVIL PENALTY SCHEDULE FOR FLOOD CONTROL VIOLATIONS.**

W I T N E S S E T H

WHEREAS, Utah Code § 17-8-5 designates certain flood control responsibilities to the County for its flood control facilities, and provides that the County Council may “promulgate regulations to prevent the destruction or obstruction of these [flood control facilities] . . . and may provide for the enforcement of those regulations”; and

WHEREAS, County Council has adopted Title 17 of the Salt Lake County Code, which identifies the County’s flood control facilities and provides regulations against the obstruction and destruction of these facilities, and provides for the enforcement of these regulations; and

WHEREAS, County Council has adopted Salt Lake County Code 17.32.020(A), which provides that “any responsible person found in violation of the provisions of this title may be fined according to the Flood Control Violation Civil Penalty Schedule, adopted by the County’s governing body”; and

WHEREAS, County Council has adopted Salt Lake County Code 17.32.060(D) which provides that “The division may charge a reasonable administrative hearing fee for this appeal”; and

WHEREAS, on November 1, 2016, the County Council adopted the Flood Control Violation Civil Penalty Schedule; and

WHEREAS, Salt Lake County Flood Control desires for the County Council to adopt the administrative hearing fee and other changes as set forth in the attached Flood Control Violation Civil Penalty Schedule; and

WHEREAS, pursuant to Section 3.42.040 of the Salt Lake County Code of Ordinances, new fees imposed by Salt Lake County agencies may be adopted at any time by resolution of the County Council; and

WHEREAS, it has been determined that the best interests of Salt Lake County and the general public will be served by the attached Flood Control Civil Penalty Schedule, as this measure will aid Salt Lake County Flood Control in efficiently enforcing violations of Title 17 and prevent unnecessary harm to the County’s flood control facilities and public and private property.

R E S O L U T I O N

NOW, THEREFORE, IT IS HEREBY RESOLVED by the County Council of Salt Lake County that the fees imposed in the attached Flood Control Violation Civil Penalty Schedule are approved and adopted. It shall become effective upon its adoption.

APPROVED AND ADOPTED in Salt Lake City, Salt Lake County, Utah, this _____ day of _____, 2018.

Aimee Winder-Newton, Chairperson

ATTEST:

Sherrie Swensen
Salt Lake County Clerk

Voting:

Council Member Bradley	_____
Council Member Bradshaw	_____
Council Member Burdick	_____
Council Member DeBry	_____
Council Member Granato	_____
Council Member Jensen	_____
Council Member Newton	_____
Council Member Snelgrove	_____
Council Member Wilson	_____

APPROVED AS TO FORM:

By: Angela D. Lane
Angela D. Lane,
Deputy District Attorney
Date: 05-10-18

EXHIBIT 1

FLOOD CONTROL VIOLATION CIVIL PENALTY SCHEDULE

Warning Period:	no fee
Between One and Thirty Days after NOV Issued:	\$25/per day
Between Thirty and Sixty Days after NOV Issued:	\$50/per day
More than Sixty Days after NOV Issued:	\$100/per day
Administrative Hearing Fee*:	\$1,000.00

- * In the case of an administrative hearing, if the Administrative Law Judge finds in favor of the appellant, then the \$1,000.00 shall be refunded less a \$100.00 administration fee. (To be clear \$900.00 shall be refunded.)**

SALT LAKE COUNTY ORDINANCE

ORDINANCE NO. _____, 2018

AN ORDINANCE OF THE LEGISLATIVE BODY OF SALT LAKE COUNTY, UTAH, AMENDING TITLE 17 CHAPTER 22 OF THE SALT LAKE COUNTY CODE OF ORDINANCES, 2001, AMENDING THE FLOOD CONTROL VIOLATION ENFORCEMENT AND APPEALS PROCESS.

The Legislative Body of Salt Lake County ordains as follows:

SECTION I. The amendments made herein are designated by underlining the new substituted words. Words being deleted are designated by brackets and interlineations.

SECTION II. Chapter 17.32.035 of Title 17 of the Salt Lake County Code of Ordinances, 2001, is amended to read as follows:

17.32.035 - Enforcement procedure.

The following procedures govern the enforcement of the provisions of this title.

A. Stop Work Order. Whenever the division finds that there is or has been a violation of this title, the division may serve upon a responsible person a written stop work order, directing no further work shall be performed or approved until otherwise authorized by the division. A stop work order may be personally served, may be mailed to responsible person by certified mail, or may be posted in a prominent location upon the property where the violation exists.

1. A stop work order must include:

- i. The activity or action that must be stopped immediately;
- ii. Name of responsible person;

- iii. The location of violation;
- iv. Date violation was observed;
- v. Explanation of the violation specifying ordinance sections in violation;
- vi. Obligation of the responsible person to bring violation into compliance, including the date by which to bring violation into compliance; and
- vii. Notice of the appeals process found in Section 17.32.060 of this chapter.

2. If responsible person has not remediated the violation within the timeframe allotted in stop work order, the division may proceed with a notice of violation or abatement procedures.

B. Notice of Violation. The division may serve upon a responsible person a written notice of the violation whenever the division finds that there has been a violation of this title. A notice of violation may be personally served, may be mailed to responsible person by certified mail, or may be posted in a prominent location upon the property where the violation exists.

- 1. A notice of violation under this title must include:
 - i. Name of responsible person;
 - ii. The location of violation;
 - iii. Date violation was observed;
 - iv. Explanation of the violation specifying ordinance sections in violation;
 - v. Obligations of the responsible person to bring violation into compliance, including the date, of not less than thirty days, by which to bring violation into compliance;

- vi. Date and rate which civil penalties will begin to accrue;
- vii. A reminder of the county's ability to abate the violation pursuant to Section 17.32.040 of this title; and
- viii. Notice of the appeals process found in Section 17.32.060 of this chapter.

2. ~~[This first notice of violation may be issued after discovery of a violation of this title, and may serve to start a warning period commencing upon receipt of the notice.]~~

~~[3. If the responsible person has not remediated the violation with the timeframe allotted in the first notice, the division may serve a second notice of violation upon the responsible person. The second notice of violation ends any warning period provided by the first notice of violation.]~~ The penalties described in Section 17.32.020 will be imposed and begin to accrue upon service of the ~~[second]~~ notice of violation.

3[4]. The division may issue further notices of the violation as needed. All subsequent notices ~~[of violation]~~ will include the total accrual of all civil penalties as of the date of the notice. After penalties begin accruing, remediation of the violation will not relieve the responsible person from payment of any accrued penalty, nor will payment of a civil penalty relieve the responsible person from the obligation to correct the violation. The division director, in his or her discretion, may waive all or a portion of the civil penalty for good cause.

~~[5. The division may bring an action for abatement of the nuisance caused by violation of this title as set forth in Section 17.32.040 if:~~

~~1. After thirty days from the date of the second notice of violation or the stop work order, the responsible person has not remediated the violation;~~

~~2. After issuance of the stop work order, the responsible person continues to violate the provisions of this title; or~~

~~3. At any time upon the determination that the encroachment violation is immediately hazardous to public health, safety, or welfare.~~

~~D. The division's right to abate a violation does not extinguish through passage of time and may be exercised at any time after the initial requirements set forth in Subsection 17.32.035(C)(1) through (3) have been met.]~~

SECTION III. Chapter 17.32.040 of Title 17 of the Salt Lake County Code of Ordinances, 2001, is amended to read as follows:

17.32.040 - Removal of obstruction—Abatement.

In addition to any penalties which may be imposed pursuant to this chapter, the division may bring an action to abate any violation of this chapter or of any permit issued by the division and to remove any obstruction or other [encroachment] violation described in Section 17.08.020 or otherwise is in violation of this title.

A. Abatement Procedure. To abate a violation under this title, the division must [first] follow the [enforcement procedure as set forth in Section 17.32.035 of this title] following procedure, unless the violation falls under Subsection 17.32.040(B)-(C)[17.32.035(C)(3)].

1. To conduct an abatement, the division must have either the written permission of the property owner to conduct the abatement, or a court order or other legal document authorizing access and the violation's abatement. The division may direct the Salt Lake County District Attorney's office to bring an action for abatement of the violation.

2. After receiving permission or a court order as provided above, and before abating a violation under Subsection 17.32.035(C)(1) and (2), the division may give written final notice to responsible persons of the impending abatement. This notice will include the date and time of the abatement, as well as notice that the division can recover abatement costs from the responsible person. Notices may be personally served or may be mailed to violators by certified mail provided that a copy is also posted on offending installations.

3. If such installations are not removed after notice is given, or at any time after permission or a court order is granted, the division, acting with permission or by order of the court, may effect removal at the expense of the person in violation and may recover its costs and expenses in conducting the abatement according to Subsection 17.32.040(D) of this chapter.

B. Emergency Entry. The division has the authority, based on cause and exigent circumstance, to enter any property, without a search warrant or court order to conduct emergency flood control work or emergency abatement to mitigate a threat to public health, safety, and welfare, but only in a situation of extreme, imperative, or overwhelming necessity when immediate action is necessary to save human life or avert destruction or damage of property.

1. Before conducting an emergency entry or emergency abatement under Subsection 17.32.035(C)(3), the division must give whatever notice is practicable and reasonable under the circumstances and based upon the severity of the threat to public health, safety, and welfare. The division may not authorize such emergency entry or emergency abatement if the threat is not so imminent as to allow time to obtain permission, a court order, injunction, preliminary injunction, temporary restraining order or other court order before action is taken.

2. After an emergency entry, the division shall notify the owner or responsible person of the action taken, which notice shall be served immediately after completion of the entry and

work. A person wishing to appeal this entry, work, or abatement may do so as authorized in Subsection 17.32.060(B)(1).

3. The responsible person shall be liable for all costs associated with an emergency abatement. The county may recover costs pursuant to Subsection 17.32.040(D) of this chapter.

C. Reimbursement. After the violation is abated pursuant to Subsections 17.32.040(C), 17.32.040(D) or 17.32.040(F) of this title, the division may recover its abatement costs and expenses.

1. Division will create an inventory of all costs and expenses expended by the division in abating the violation and will serve notice of the inventory of costs upon the responsible person within thirty business days of the abatement.

2. If the responsible person fails to pay such costs within thirty days after receipt, the division may bring an action for the recovery of the divisions' costs and expenses incurred in removing the offending installation pursuant to the above subsections.

D. Nothing set forth in this title shall prevent the division from abating any violation, removing any obstruction, or exercising any powers granted by Utah Code Section 17-8-5, on county property or within a county easement without following the enforcement procedures in this chapter, so long as the division does not trespass upon another's property.

E. The division's right to abate a violation does not extinguish through passage of time and may be exercised at any time.

SECTION IV. Chapter 17.32.040 of Title 17 of the Salt Lake County Code of Ordinances, 2001, is amended to read as follows:

17.32.060 - Appeals.

A. Any person aggrieved by the issuance of any enforcement or abatement proceeding authorized by this chapter may appeal to the county.

B. First Appeal. The notice of appeal shall be in writing and filed with the flood control engineering division director. Upon receipt of an appeal, the flood control engineering division director or his designee will conduct an informal meeting with the appellant. The flood control engineering division director or designee will provide reasonable notice to appellant of this meeting. The flood control engineering division director or designee will make a final determination within two business days of the meeting, and will send by certified mail a copy of the determination to appellant.

1. Time. Appeals must be appealed no later than ten calendar days after notice was received.

2. Staying an Abatement. Any abatement or emergency abatement may be appealed, however, any notice to appeal an abatement or emergency abatement will not stay abatement or emergency abatement proceedings, or prevent the division from carrying out an abatement.

C. Second Appeal. The appellant may appeal the flood control engineering director or designee's determination to the public works director or designee. The appeal shall be in writing and filed with the public works director no later than ten business days after the flood control engineering director's determination.

1. Upon receipt of an appeal, the public works director or his designee will conduct an appeal. The public works director or designee will provide reasonable notice to appellant of this meeting. The public works director or designee will make a determination within two business days of the meeting, and will send by certified mail a copy of the determination to appellant.

D. Third Appeal. The appellant may appeal the public works director or designee's determination by requesting an administrative hearing as provided in Chapter 1.16 of this code. The appellant may appeal the final administrative order as provided by state law. The division may charge a reasonable administrative hearing fee for this appeal.

SECTION V. This ordinance shall become effective fifteen (15) days after its passage and upon at least one publication of the ordinance or a summary thereof in a newspaper published and having general circulation in Salt Lake County.

APPROVED AND ADOPTED in Salt Lake City, Salt Lake County, Utah, this ____ day of _____, 2018.

Aimee Winder-Newton, Chairperson

ATTEST:

Sherrie Swensen
Salt Lake County Clerk

APPROVED AS TO FORM:

By: Angela Lane

Angela D. Lane,
Deputy District Attorney

Date: 5-10-18

Voting:

Council Member Bradley	_____
Council Member Bradshaw	_____
Council Member Burdick	_____
Council Member DeBry	_____
Council Member Granato	_____
Council Member Jensen	_____
Council Member Newton	_____

Council Member Snelgrove
Council Member Wilson

Vetoed and dated this ____ day of _____, 20____.

By _____
Mayor Ben McAdams or Designee

(Complete as Applicable)

Veto override: Yes ____ No ____ Date _____

Ordinance Published in newspaper: Date _____

Effective date of ordinance: _____

SUMMARY OF

SALT LAKE COUNTY ORDINANCE NO. _____

On the _____ day of _____, 2018, the County Council of Salt Lake County adopted Ordinance No. _____, which amends Titles 17 of the Salt Lake County Code of Ordinances, 2001. This ordinance amends the flood control violation enforcement and appeals process.

SALT LAKE COUNTY COUNCIL

Aimee Winder-Newton, Chairperson

ATTEST:

Sherrie Swensen
Salt Lake County Clerk

APPROVED AS TO FORM:

By: Angela D. Lane
Angela D. Lane,
Deputy District Attorney
Date: 05-10-2018

Voting:

Council Member Bradley	_____
Council Member Bradshaw	_____
Council Member Burdick	_____
Council Member DeBry	_____
Council Member Granato	_____
Council Member Jensen	_____
Council Member Newton	_____
Council Member Snelgrove	_____
Council Member Wilson	_____

A complete copy of Ordinance No. _____ is available in the office of the Salt Lake County Clerk, 2001 South State St., N2100A, Salt Lake City, Utah.