

CITY OF BLUFFDALE, UTAH

ORDINANCE NO. 2018-26

**AN ORDINANCE AMENDING CHAPTER 8-6 OF THE BLUFFDALE CITY CODE RELATED TO STORM WATER ENFORCEMENT AND PENALTIES.**

**WHEREAS** the City of Bluffdale desires to amend the Bluffdale City Code relative to enforcement and penalties for storm water violations; and

**WHEREAS**, following due consideration of relevant information, the Bluffdale City Council has determined that the proposed ordinance amendment will promote the public health, safety, and general welfare;

**NOW, THEREFORE, THE BLUFFDALE CITY COUNCIL HEREBY ORDAINS AS FOLLOWS:**

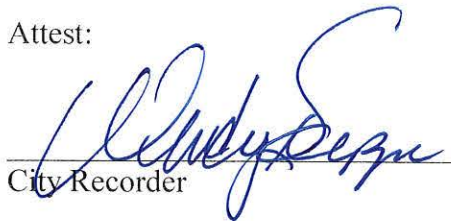
**Section 1. Amendment of Bluffdale City Code.** Chapter 8-6 of the Bluffdale City Code is hereby amended as set forth in Exhibit A.

**Section 2. Effective Date.** This Ordinance shall take effect upon publication or posting, or thirty (30) days after passage, whichever occurs first.

PASSED AND ADOPTED: October 24, 2018.

  
Mayor

Attest:

  
City Recorder



Voting by the City Council:

	Yes	No
Councilmember Aston	<u>X</u>	_____
Councilmember Higby	<u>X</u>	_____
Councilmember Kallas	<u>X</u>	_____
Councilmember Nielsen	<u>X</u>	_____
Councilmember Preece	<u>X</u>	_____

...

#### 8-6-10: ENFORCEMENT:

A. Enforcement Authority: Upon recommendation of the City Engineer, police, ~~or~~ City Code Enforcement Officers, or MS4 Compliance Officers, the City shall have the authority to issue notices of violation, stop work orders, and citations, and to pursue the civil ~~penalties-remedies~~ provided in this section.

1. With the issuance of a City land disturbance permit, building permit, conditional use permit or other permits issued by the City, the City Engineer shall be permitted to enter and inspect facilities subject to this chapter at all reasonable times and as often as necessary to determine compliance. Failure to comply with the terms of this chapter may result in punitive actions by the City of Bluffdale ordinance enforcement, by the Salt Lake County Health Department, Utah State Division of Water Quality or by other means identified in permits or terms set forth in land use applications.

#### B. Notification ~~Of~~ Violation (NOV):

1. Written Notice: Whenever the City Engineer or designee finds that any permittee or any other person ~~discharging stormwater~~ has violated or is violating this chapter or a permit or order issued hereunder, the City may serve upon such person written notice of the violation. Within ~~seven (7)~~ five (5) days of this notice or the time frame specified in NOV, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted to the City Engineer. Submission of this plan in no way relieves the discharger of liability for any violations occurring before or after receipt of the notice of violation.

a. Consent Orders: The City is empowered to enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with the person responsible for the noncompliance. Such orders will include specific action to be taken by the person to correct the noncompliance within a time period also specified by the order. ~~Consent orders shall have the same force and effect as administrative orders issued pursuant to this section.~~

b. Show Cause Hearing: ~~The city court may order any person who violates this chapter or permit or order issued hereunder to show cause why a proposed enforcement action should not be taken. Notice shall be served on the person specifying the time and place for the meeting, the proposed enforcement action and the reasons for such action, and a request that the violator show cause why this proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) at least ten (10) days prior to the hearing.~~

c. Compliance Order: When the ~~city~~ City finds that any person has violated or continues to violate this chapter or a permit or order issued hereunder, it may issue an order to the violator directing that, following a specific time period, adequate structures or devices be installed or procedures implemented and properly operated. Orders may also contain such other requirements as might be reasonably necessary and appropriate to address the noncompliance, including the construction of appropriate structures, installation of devices, self-monitoring, and management practices.

d. Cease And Desist Orders: When the city-City finds that any person has violated or continues to violate this chapter or any permit or order issued hereunder, the city-City may issue an order to cease and desist, through a Stop Work Order, all such violations and direct those persons in noncompliance to:

(1) Comply forthwith; or

(2) Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and terminating the discharge into the city storm drain system actions violating the UPDES permit, eCity ordinances, or state law. In the event the owner refuses to or is unable to provide measures to bring the site into compliance, the city-City will, at the owner's expense, take necessary remedial or preventative actions.

C. Conflicting Standards: Whenever there is a conflict between any standard contained in this chapter and in the BMP manual adopted by the city under this chapter eCity standards, details, and specifications, the strictest standard shall prevail.

D. Violations: Any person who shall commits any act declared unlawful under this chapter, who violates any provision of this chapter, who violates the provisions of any permit issued pursuant to this chapter, who violates any provision of a SWPPP permit, or who fails or refuses to comply with any lawful communication or notice to abate or take corrective action by the city engineer any written notice to violator, Notice of Violation, or first Stop Work Order, shall be guilty of a class B misdemeanor civil infraction. City does not need to exhaust administrative remedies or civil penalties prior to pressing criminal charges. (Ord. 2013-04, 5-28-2013)

### 8-6-11: PENALTIES:

A. Violation; Penalty: Consistent with the provisions of the Utah codeCode, the city-City declares that any person, or the officers or employees of any person, who violates this chapter or any lawful notice or order issued pursuant to this chapter is guilty of an class B misdemeanor civil infraction.

B. Escalating Enforcement Actions: The City does not need to exhaust administrative remedies or pursue civil penalties prior to pressing criminal charges. City does not need to exhaust administrative remedies prior to pressing civil or criminal charges. The eCity will may notify persons suspected of violating the terms of this Chapter violators and assess penalties in the following order using any method set forth below. The City need not follow these steps in sequence, but may undertake any step at any time. No step is a prerequisite to issuance of a citation. :

- (1) Written notice to violator by means of City of Bluffdale MS4 Compliance Officer Inspection Report
- (2) Notice of Violation in accordance with 8-6-10(B)
- (3) Stop Work Order

a. First Stop Work Order: Minimum 3 business day duration

Second Stop Work Order: Minimum 7 business day duration

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Commented [VP1]: Stop work orders should last only as long as the violation persists. They should not be a means of penalizing conduct without due process.

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~~All Subsequent Stop Work Orders: Minimum 10 business day duration.~~

~~(4) Civil Infraction~~

~~(54) Criminal Citation~~

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~~B. Responsibility For Abatement: Any person, or the officers or employees of any person, shall be liable for any expenses incurred by the city in abating any violation of this chapter.~~

C. Multiple Violations: A penalty assessment or criminal conviction under this chapter shall not relieve the person assessed or convicted from civil liability for claims arising out of any act which was also a violation.

~~D. Responsibility Forfor Abatement: Any person, or the officers or employees of any person, shall be liable for any expenses incurred by the eCity in abating any violation of this chapter.~~

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~~DE.~~ Penalty Considerations: In assessing either a civil or a criminal penalty, the ~~city-judgecourt~~ may consider:

1. The harm done to the public health or the environment;
2. Whether the civil penalty imposed will be a substantial economic deterrent to the illegal activity;
3. The economic benefit gained by the violator;
4. The amount of effort put forth by the violator to remedy this violation;
5. Any unusual or extraordinary enforcement costs incurred by the ~~cityCity~~;
6. The amount of penalty established by ordinance or resolution for specific categories of violations; and
7. Any equities of the situation which outweigh the benefit of imposing any penalty or damage assessment.

~~E. Recovery Ofof Damages Andand Costs: In addition to the a civil penalty in-subsection A of this section imposed for or damages caused by a violation of this chapter, the city-City may recover:~~

1. All damages proximately caused by the violator to the ~~cityCity~~, which may include any reasonable expenses incurred in investigating violations of, and enforcing compliance with, this chapter, or any other actual damages caused by the violation.
2. The costs of the ~~city's City's~~ maintenance of storm water facilities when the user of such facilities fails to maintain them as required by this chapter.

F. Other Remedies: The city may bring ~~legal-a~~ civil action to enjoin the continuing violation of this chapter, and the existence of any other remedy, at law or equity, shall be no defense to any such actions.

G. Remedies Cumulative: The remedies set forth in this section shall be cumulative, not exclusive, and it shall not be a defense to any action, civil or criminal, that one or more of the remedies set forth herein has been sought or granted. (Ord. 2013-04, 5-28-2013)

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