

**GRAND COUNTY, UTAH
ORDINANCE NO. 617 (2020)**

**AN ORDINANCE AMENDING SECTION 1.04.010 AND REPEALING AND
REPLACING CHAPTER 1.16 OF THE GENERAL GRAND COUNTY ORDINANCES
TO UPDATE DEFINITIONS AND ESTABLISH AN ADMINISTRATIVE HEARING
PROCESS**

WHEREAS, Utah Statute § 17-53-228 formulates the process for counties to establish an administrative hearings and procedures process to review and decide matters relating to the violation, enforcement, or administration of the county’s civil ordinances, including its: building code; planning and zoning; animal control; licensing; health and safety; County employment; and sanitation;

WHEREAS, adopting an Administrative Hearing Process aids in enforcement of the Grand County General Ordinances, creates a process in which civil penalties for code violations can be reviewed, and establishes appropriate due process protections for the parties participating in an administrative hearing; and

WHEREAS, the Grand County Commission (the “Commission”) has determined that administrative enforcement of the duly adopted rules and regulations as well as the provisions of this Ordinance is in the best interests of the citizens of the County;

NOW, THEREFORE, BE IT ORDAINED that the Grand County Commission hereby:

1. Amends Section 1.04.010 (Definitions) to add the following Definitions:

1.040.010 Definitions

“Administrative Hearing” means a hearing held pursuant to the procedures established by this Title and at the request of a Person charged with a violation.

“Civil Fine” means any monetary amount as a result of direct violation of the Grand County Fee Schedule or other amount set forth in County Ordinance.

“County Ordinances” means any ordinance adopted by the legislative body of Grand County, including the Land Use Code and the General Ordinances (Titles 1-17, as amended and expanded).

“Cure Period” means the period of time a responsible Party has to cure an alleged violation which shall be established by the County in its written warning required in Chapter 1.16, which period shall take into account the cost of curing the violation and shall be no sooner than 21 days from the date of service of the written warning.

“Final Decision” means a notice of violation, an administrative citation, an assessment, fee, an itemized statement of costs, a notice of emergency abatement or other notice of any other adverse county decision for which the right to an administrative hearing is specifically provided by this Title or Ordinance.

“Hearing Officer” means the administrative law judge hired by the County.

“Lien” means a failure to pay Civil Fines that becomes a charge against or interest in real or personal property under the Utah Political Subdivision Lien Authority.

“Notice of Violation” means the written determination that a violation of the County Ordinances has occurred, which shall constitute a Final Decision of the County.

“Person” means any natural person, firm, joint venture, joint stock company, partnership, association, club, company, corporation, business trust, lessee, agent, officer, constituent, resident or employee of any of the above or any other entity as recognized by law as the subject of rights or duties. For the purposes of this chapter, “Person” also indicates a person whose interest is adverse to the county at an administrative hearing.

“Responsible Person” shall mean the Person(s) alleged to be in violation of the County Ordinances and/or subject to Civil Fines under Chapter 1.16.

2. Repeals and replaces Chapter 1.16 of the General Grand County Ordinances as follows: *see Exhibit A.*

ADOPTED by the Commission in a public meeting on November 17, 2020 as follows:

Those voting aye: McGann, Woytek, Clapper, Wells, Hawks, Halliday

Those voting nay:

Those absent: Paxman

Grand County Commission:

Mary McGann

Mary McGann, Chair

ATTEST:

Quinn Hall

Quinn Hall, Clerk/Auditor

EXHIBIT A

Chapter 1.16

ADMINISTRATIVE HEARING PROCESS (CODE ENFORCEMENT)

Sections:

1.16.010 Scope

1.16.020 Violation – Penalties

1.16.030 Complaint; Investigation

1.16.040 Written Warning

1.16.050 Notice of Violation

1.16.060 Request for Administrative Hearing

1.16.070 Administrative Hearing

1.16.080 Civil Fines Constitute a Direct Charge; Political Subdivision Lien

1.16.010 Scope

The provisions of this Chapter may be applied to all violations of the County Ordinances; provided, however, that appeal of a land use decision under the Grand County Land Use Code shall be governed by Article 9.13. This Chapter does not repeal, abrogate, annul, or in any way impair or interfere with existing provisions of other resolutions, ordinances, or law except as expressly stated herein.

1.16.020 Violation--Penalties

It shall be unlawful for any Person to violate or otherwise fail to comply with the County Ordinances.

A. **Criminal Penalties.** Any Person who violates or fails to comply with any part or provision of the County Ordinances within the County shall be guilty of a Class C misdemeanor and, upon conviction, shall be subject to fines and imprisonment set forth in Utah Statute § 76-3-204. Each day that such violation continues shall be considered a separate offense.

B. **Civil Penalties.** Any Person who violates or fails to comply with any part or provision of the County Ordinances within the County shall be subject to Civil Fines, as defined in Chapter 1.04 above, in the amounts set forth in the Fee Schedule or the County Ordinances or \$100 per violation, whichever is greater. Each day that such violation continues shall be considered a separate offense.

C. The civil and criminal penalties provided herein shall be cumulative of other remedies provided by state law.

1.16.030 Complaint; Investigation

Upon complaint of a violation or failure to comply with the County Ordinances, the County shall investigate the complaint within a reasonable amount of time and subject to County resources and staff availability, which investigation may include collection of evidence and written or oral communication with the complainant, witnesses, and the Responsible Person, as defined in Chapter 1.04 above.

1.16.040 Written Warning

A. At the conclusion of the initial investigation, the County shall provide to the Responsible Person a written warning that identifies:

- i. the relevant County regulation or ordinance at issue;
- ii. the violation of the relevant regulation or ordinance;
- iii. the length of the Cure Period, as defined in Chapter 1.04 above; and
- iv. the amount of the Civil Fines assessed to the responsible Person, which shall begin to accrue on the date the County serves a Notice of Violation on the Responsible Person.

B. The written warning shall be deemed properly served by the County if a copy thereof is delivered to, posted on, or sent by registered or certified mail to the Responsible Person to the mailing address on file in the Grand County Assessor's Office or, if none, the last known address of the Responsible Person.

1.16.050 Notice of Violation

A. Upon the County's determination that there has been a violation of any part or provision of the County Ordinances which has not been cured during the Cure Period, the County shall provide to the Responsible Person a written Notice of Violation that identifies:

- i. the relevant County regulation or ordinance at issue;
- ii. the violation of the relevant regulation or ordinance;
- iii. the amount of the Civil Fines, which shall begin to accrue on the date the Notice of Violation is served;
- iv. that the Notice of Violation is a Final Decision of the County; and
- v. the right to appeal within thirty (30) days of service of the Notice of Violation.

- B. The Notice of Violation shall be deemed properly served by the County if a copy thereof is delivered to, posted on, or sent by registered or certified mail to the Responsible Person to the mailing address on file in the Grand County Assessor's Office or, if none, the last known address of the Responsible Person.

1.16.060 Request for Administrative Hearing

- A. A Person aggrieved by a Notice of Violation may appeal the same within thirty (30) days of service of the Notice by written Request for Administrative Hearing made to the County Officer who rendered the Final Decision, which request shall state with specificity the reasons for the appeal and provide an answer to the alleged violations. The Request for Administrative Hearing is incomplete until the appellant pays the Appeal of Code Violation fee established by the Grand County Fee Schedule.
- B. Upon receipt of a Request for Administrative Hearing, the County Officer from whom the appeal is taken shall refer the matter to the Hearing Officer within ten (10) business days. Said County Officer shall forthwith transmit to the Hearing Officer all the documents constituting the record upon which the action appealed from was taken.
- C. Failure to request an Administrative Hearing as required in this Section shall constitute a waiver of the right to an Administrative Hearing and the right to an appeal.

1.16.070 Administrative Hearing

A. Authority of Hearing Officer

- i. The Hearing Officer shall have authority to hold an Administrative Hearing for violations of the County Ordinances and such other matters as specifically designated by ordinance or resolution.
- ii. At the request of any party to an Administrative Hearing, a Hearing Officer may sign subpoenas for witnesses, documents, and other evidence.
- iii. A Hearing Officer has continuing jurisdiction over the subject matter for the purposes of: granting a continuance; ordering compliance by issuing an administrative order; ensuring compliance of that order; authorizing the County to enter upon private property to abate a violation; or where extraordinary circumstances exist, grant a new hearing.
- iv. A Hearing Officer may require a responsible Person to post a performance bond to ensure compliance with an order if requested by the County Officer from whom the appeal is taken.

v. A Hearing Officer shall not make any order that would require or allow a person to violate state law or County ordinance.

B. Stay of Proceedings. A Request for Administrative Hearing shall stay the action directed by the County in the Notice of Violation (but not the accrual of Civil Fines) unless the County Officer from whom the appeal is taken certifies to the Hearing Officer that a stay would cause imminent peril to life or property. In such event, the Hearing Officer shall timely consider the County's certification and issue a preliminary order approving or denying the stay, with or without a hearing as determined in the Hearing Officer's sole discretion. This Section shall not affect the right of the County to seek a temporary injunction in the Moab District Court.

C. Hearing Date; Notice. The Hearing Officer shall fix a reasonable time for the hearing of an appeal, and give the appellant notice. The Person shall have the right to be represented by an attorney or other advocate. If an attorney will be representing a responsible Person at a hearing, notice of the attorney's name, address, and telephone number shall be given to the County Attorney at least one day prior to the hearing. If such notice is not given, the hearing may be continued at the County's request.

D. Hearing and Decision

i. Hearing:

1. Administrative Hearings are intended to be informal in nature. Formal rules of evidence and discovery shall not apply; however, ex parte communication with the Hearing Officer is prohibited. In addition, each party shall file with the Hearing Officer with a copy to the adverse party copies of all documents, photographs or other tangible evidence they expect to present, and their list of witnesses they intend to call, at the Hearing at least three (3) business days prior to the Hearing.
2. The County shall bear the burden of proof to establish the existence of a violation of published County ordinance or policies.
3. Such proof shall be established by preponderance of the evidence.
4. Each party shall have the opportunity to present evidence and cross-examine any witnesses that testify at the hearing in support of the case. Testimony may be given by telephone or other electronic means.
5. Administrative Hearings shall be held at the County administrative offices or virtually via video conferencing.

ii. Decision:

1. The Hearing Officer shall issue a written order within thirty (30) days of the Administrative Hearing.

E. Appeal to District Court. A party may appeal the order of the Hearing Officer by filing a petition for judicial review in the Moab District Court within thirty (30) days after the date that the order is issued.

1.16.080 Civil Fines Constitute a Direct Charge; Political Subdivision Lien

Upon the expiration of the right to appeal as provided in this Chapter and under the Political Subdivision Lien Authority as set forth in Utah Statute §11-60-101 *et seq.*, as amended, each Civil Fine assessed under this Chapter shall constitute a Direct Charge, as defined in Utah Statute § 11-60-102(1), for Code Violations. The County may collect the Civil Fines by filing a lien on real or personal property owned by the Person assessed hereunder pursuant to Utah Statute § 11-60-103.