

STAFF REPORT

To: Town of Alta Town Council
From: Cameron Platt, Polly McLean
Date: September 7, 2023
Re: Civil Code Enforcement

This staff report is a summary of the Town's current enforcement options with criminal, civil, or administrative enforcement, and civil code enforcement authorized by Utah statute with a brief description of the process and advantages.

When the Council previously discussed the topic of civil code enforcement for the winter parking permit system, several Council Members expressed concerns with broad implementation of civil code enforcement for other ordinance violations. Due to the questions and concerns expressed by the Council, the topic of civil code enforcement is now being brought back to the Council for discussion and direction to staff on next steps, if any, regarding implementing civil code enforcement.

Town of Alta's Current Enforcement Options

The current Alta Town Code authorizes officials of the Town to enforce ordinances through criminal, civil, or administrative actions.¹ Following is a summary of the three different types of enforcement classifications with penalties and burden of proof:

- Criminal – The Town may impose criminal penalties as Class B or C misdemeanors, or infractions:
 - Class B misdemeanor – Fine up to \$1,000.00 or imprisonment of up to 6 months.
 - Class C misdemeanor - Fine up to \$750.00 or imprisonment of up to 90 days.
 - Infraction - Fine up to \$750 but no imprisonment allowed.²
 - Burden of proof is “beyond a reasonable doubt.”³
- Civil – The Town may impose civil penalties:
 - Fines up to the maximum amount allowed for Class B misdemeanors under state statute for violations of municipal ordinances (currently \$1,000.00).⁴
 - Burden of proof is “preponderance of the evidence.”⁵

¹ [Alta Town Code § 1-4-1](#).

² [Utah Code Ann. § 76-3-301\(A\)](#); [Utah Code Ann. § 76-3-204](#)

³ [Model Utah Jury Instruction Cr103](#), (“Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant’s guilt.”)

⁴ [Utah Code Ann. § 10-3-703.7](#); [Utah Code Ann. § 10-3-703\(2\)](#); see also generally [Utah Code Ann. § 10-7-11 et seq.](#)

⁵ [Model Utah Jury Instruction CV117](#), (The evidence must show “that the fact is more likely to be true than not true” or “proof by the greater weight of the evidence, however slight.”).

- Administrative – The Town may suspend, revoke, or issue administrative fines for permit and licensing violations.⁶
 - Burden of proof is “preponderance of the evidence.”

Summary of Civil Ordinance Enforcement

A civil enforcement procedure is very similar to criminal enforcement and requires all of the following:

- Passage of an ordinance enacting civil ordinance enforcement that classifies ordinance violations as civil violations.⁷
- Publishing fine schedules in an ordinance or the municipal fee schedule.
- Issuance of a notice of violation or citation for the violation.
- Provision of due process rights with dispute and appeal procedures.
- Hearing and appeal before a neutral decisionmaker (i.e. and administrative law judge).

The Town currently has all these same functions for its criminal violation process with the Marshal’s Office issuing the citation and the Justice Court administering the due process procedures. A civil ordinance enforcement program would merely shift the enforcement process from the Justice court to an administrative law judge process. The criminal violation process would continue as an option for more serious violations.

Municipal use of civil ordinance enforcement results in reduced cost and time for enforcement, adjudication, and appeals. The reduced costs and time are mainly a result of the lower burden of proof required in civil actions. Rather than spending investigative resources to meet the high standard of “beyond a reasonable doubt,” civil enforcement only requires “preponderance of the evidence” (more than 50% proof that the violation occurred). The due process requirements are similar in that a hearing and appeal is required, but there is no obligation to provide public defenders to indigent defendants, and the procedures are more flexible because the penalty may not include any imprisonment, but can include higher monetary fines than the state bail schedule.

Finally, the vast majority of municipalities use civil ordinance enforcement. Historically, this type of enforcement was only used in land-use or zoning violations, or nuisance violations. But in 2019, Utah’s legislature expanded municipal authority to any municipal ordinance violation.

Conclusion

Based on the lower costs and greater flexibility in enforcement, Town staff is requesting that the Council consider enacting a civil code enforcement ordinance, beyond just parking violations, to allow other/all ordinance violations through a civil process.

⁶ [Utah Code Ann. § 10-8-1 et seq.](#) (listing regulatory powers of municipalities).

⁷ The Town completed this step in November 2022 as part of the implementation of the winter parking plan.