

# COTTONWOOD HEIGHTS

## ORDINANCE NO. 416

### AN ORDINANCE ENACTING AND CODIFYING CHAPTER 15.15, “DEMOLITION,” OF THE COTTONWOOD HEIGHTS CODE OF ORDINANCES

**WHEREAS**, the city council (the “*Council*”) of the city of Cottonwood Heights (the “*City*”) desires to assure that the demolition of buildings and structures in the city are conducted safely and only after issuance by the city of all applicable permits; and

**WHEREAS**, the Council met in regular session on 21 May 2024 to consider, among other things, enacting and codifying new Chapter 15.15 (“*Chapter 15.15*”) of the City’s code of ordinances (“*Code*”) concerning the demolition of buildings and structures in the city; and

**WHEREAS**, after careful consideration, the Council has determined that it is in the best interest of the health, safety and welfare of the City’s residents to amend the Code by adopting and codifying new Chapter 15.15 as proposed;

**NOW, THEREFORE, BE IT ORDAINED** by the city council of the city of Cottonwood Heights as follows:

Section 1. **Adoption and Codification of Chapter 15.15.** The Council hereby approves and adopts Chapter 15.15 in the form attached hereto, which shows the revisions to current Title 15 of the code effected by this ordinance in red print, and hereby codifies the same as Chapter 15.15 of the Code.

Section 2. **Action of Officers.** All actions of the officers, agents and employees of the City that are in conformity with the purpose and intent of this ordinance (this “*Ordinance*”), whether taken before or after the adoption hereof, are hereby ratified, confirmed and approved.

Section 3. **Severability.** It is hereby declared that all parts of this Ordinance are severable, and if any section, paragraph, clause or provision of this Ordinance shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of any such section, paragraph, clause or provision shall not affect the remaining sections, paragraphs, clauses or provisions of this Ordinance.

Section 4. **Repealer.** All ordinances or parts thereof in conflict with this Ordinance are, to the extent of such conflict, hereby repealed.

Section 5. **Effective Date.** This Ordinance, assigned no. 416, shall take effect as soon as it shall be published or posted as required by law and deposited and recorded in the office of the City’s Recorder, or such later date as may be required by Utah statute.


PASSED AND APPROVED this 21<sup>st</sup> day of May 2024.

ATTEST:

COTTONWOOD HEIGHTS CITY COUNCIL

By:   
Paula Melgar, Recorder



By:   
Michael T. Weichers, Mayor

VOTING:

Michael T. Weichers	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Matt Holton	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Suzanne Hyland	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Shawn E. Newell	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Ellen Birrell	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>

DEPOSITED in the Recorder's office this 21<sup>st</sup> day of May 2024.

POSTED this 22 day of May 2024.

## Title 15

### BUILDINGS AND CONSTRUCTION

#### Chapters:

- 15.08 Building Codes
- 15.15 Demolition**
- 15.24 Mobile Home Parks
- 15.28 Highway Dedication
- 15.32 Fit Premises
- 15.36 Apartment House Tenant Application Fees

## Chapter 15.15

### DEMOLITION

#### Sections:

- 15.15.010 Definitions.**
- 15.15.020 Demolition of non-historic structure.**
- 15.15.030 Demolition of historic structure.**
- 15.15.040 Required certificate of appropriateness.**
- 15.15.050 Violations prohibited.**
- 15.15.060 Enforcement authority; Powers and duties.**
- 15.15.070 Penalty for illegal demolition of non-historic structure.**
- 15.15.080 Penalties for illegal demolition of historic structure.**
- 15.15.090 Violation—Persons liable.**
- 15.15.100 Violation—Notice and order.**
- 15.15.110 Civil penalties.**
- 15.15.120 Reconstruction of historic structure.**
- 15.15.130 Certificate of noncompliance.**

#### **15.15.010 Definitions.** In this chapter:

- A. “*Building*” has the meaning specified in chapter 19.04 of this code.
- B. “*Certificate of appropriateness*” means a certificate issued by the city authorizing demolition of a historic structure as described in section 15.15.040 of this chapter.
- C. “*Code*” means the city’s code of ordinances, as amended.
- D. “*Conditional use*” means a use of or impact on land for which a conditional use permit is required pursuant to title 19 of this code.
- E. “*CUP*” means a conditional use permit issued by the city under chapter 19.86 of this code.
- F. “*Department*” means the city’s community and economic development department.
- G. “*Demolish*,” “*Demolition*” and related words and tenses mean the act of razing, knocking down, pulling down or otherwise intentionally destroying all or any material portion of a building or structure.
- H. “*Director*” means the director of the Department, their designee or any other designee of the city manager.
- I. “*Fee schedule*” means the city’s consolidated fee schedule.
- J. “*Historic structure*” means a building or structure located on a city historic site identified in chapter 19.86 of this code.
- K. “*Non-historic structure*” means any building or structure containing over 200 square feet of floor area that is not a historic structure under subsection (J) of this section.
- L. “*Person*” means any individual, firm, trust, partnership, public or private association, or corporation.
- M. “*Reconstruction application*” means an application for reconstruction of a historic structure under section 15.15.120 of this chapter.
- N. “*Structure*” has the meaning specified in chapter 19.04 of this code.

#### **15.15.020 Demolition of non-historic structure.**

It is unlawful for any person to demolish a non-historic structure unless such person first



obtains a city-issued permit for such demolition after paying the applicable fee specified in the fee schedule.

**15.15.030 Demolition of historic structure.**

It is unlawful for any person to demolish a historic structure unless such person first obtains:

A. A certificate of appropriateness for such demolition as provided in section 15.15.040 of this chapter; and

B. A CUP for such demolition as provided in section 19.86.030 of this code.

**15.15.040 Required certificate of appropriateness.**

A. Notwithstanding the issuance of a CUP to an applicant desiring to demolish a historic structure as provided in section 19.86.030 of this code, such demolition shall not proceed unless and until:

1. The applicant submits an application for certificate of appropriateness to the city council based on claimed hardship to the applicant; and

2. The city council issues a certificate of appropriateness of such demolition as provided in this section 15.15.040.

B. The city council may issue a certificate of appropriateness of demolition of a historic structure only after finding that all the following conditions are met based on clear and convincing evidence presented by the applicant that is not reasonably refuted by one or more qualified experts engaged by the director:

1. The historic structure cannot be economically used or rented at a reasonable rate of return in its present condition or if rehabilitated;

2. The historic structure cannot be put to any reasonable beneficial use in its present condition or if rehabilitated;

3. Bona fide efforts during the previous year to sell or lease the historic structure at a reasonable price have been unsuccessful;

4. The claimed hardship is not a mere reduction in the economic value of the historic structure and its host property, is not caused by the owner's financial ability to rehabilitate the historic structure, is not caused by the owner's lack of due diligence to rehabilitate the historic structure, and is not caused by any other self-imposed condition of the owner such as failure to maintain the historic structure under section 19.86.045 of this code, neglect, or negligent or intentional destabilization of the historic structure.

C. The city council shall issue a requested certificate of appropriateness, if at all, within four months after the applicant's filing of its application accompanied by all evidence which the applicant desires to submit in support of its application.

**15.15.050 Violations prohibited.**

Violation of any of the provisions of this chapter is prohibited and shall subject the violator to the criminal and civil penalties set forth in this chapter. If the penalties in this chapter conflict with the penalties specified in chapter 19.94 of this code for violation of chapter 19.86 of this code, the provisions of this chapter shall be controlling.

**15.15.060 Enforcement authority; Powers and duties.**

A. The director shall enforce all the provisions of this chapter, employing all legal means



available to do so.

B. In the enforcement of this chapter, the director shall have the right to enter any property for the purpose of determining compliance with the provisions of this chapter, provided that such right of entry shall be exercised only at reasonable hours and that in no case shall entry be made to any occupied building in the absence of the owner or occupant thereof without the written order of a court of competent jurisdiction.

**15.15.070 Penalty for illegal demolition of non-historic structure.**

Violation of section 15.15.020 of this chapter concerning demolition of a non-historic structure is punishable as a Class “C” misdemeanor upon conviction.

**15.15.080 Penalties for illegal demolition of historic structure.**

A. Violation of section 15.15.030 of this chapter concerning demolition of a historic structure without a CUP and/or a certificate of appropriateness is punishable:

1. As a Class “C” misdemeanor upon conviction;
2. Pursuant to the processes, penalties and remedies provided in sections 15.15.080 through 15.15.130 of this chapter; and
3. Pursuant to any other remedies provided by law.

B. Any one, all, or any combination of the penalties and remedies set forth in subsection (A) of this section may be used concerning demolition of a historic structure without both a CUP and a certificate of appropriateness.

C. Each day that any violation under said subsection (A) continues after notification by the director that such violation exists shall be considered a separate offense for purposes of penalties and remedies set forth in this chapter.

**15.15.090 Violation—Persons liable.**

Any person, corporation, limited liability company, partnership or other entity, whether as owner, occupant, agent or employee, who causes, permits or otherwise participates in any violation of the provisions of this chapter may be held responsible for the violation, suffer the penalties, and be subject to the remedies provided by law.

**15.15.100 Violation—Notice and order.**

A. Upon inspection and discovery that any provision of this chapter is being violated, the director shall provide a written notice of violation and order to the property owner and to any other party who may be responsible for the violation.

- B. The written notice and order shall:
1. Indicate the nature of the violation;
  2. Order the action necessary to correct the violation;
  3. Give information regarding the established warning period for the violation; and
  4. State the action the director intends to take if the violation is not corrected within the warning period.

C. The written notice shall be delivered personally or mailed to the property owner, as shown on the records of the county recorder, and to any other person who may be responsible for the violation. Receipt of notice shall mean three days after the date written notice is hand-delivered or mailed by certified U.S. mail, postage prepaid, return receipt requested.



D. The written notice shall serve to start any warning periods provided in this chapter, commencing upon receipt of notice. If the violation remains uncured for five or more days after the expiration of the warning period, a second notice of violation and order shall be delivered in the same manner as the first notice. The second notice shall serve to start the civil penalties.

E. In cases where the director determines that a delay of enforcement would pose a danger to the public health, safety or welfare, or would otherwise compromise the effective enforcement of this chapter, the director may seek immediate enforcement without prior written notice by instituting any appropriate remedies, other than civil penalties, authorized by sections 15.15.070 or 15.15.080, as applicable.

**15.15.110 Civil penalties for illegal demolition of a historic structure.**

A. Full or partial demolition of a historic structure in violation of section 15.15.030 of this chapter shall result in civil penalties of \$500 per day.

B. Each day a violation of section 15.15.030 of this chapter is continued or maintained after receipt of notice shall give rise to a separate civil penalty for each day of violation.

C.

1. The city council shall appoint such hearing officer(s) as it deems appropriate to consider matters relating to the violation of section 15.15.030 of this chapter.

2. Any person having received notice of such violation, or the owner of any affected property, may appear before the hearing officer and present and contest such alleged violation of section 15.15.030 of this chapter.

3. The burden to prove any defense specified in Subsection (C)(4) of this section shall be upon the person raising such defense.

4. If the hearing officer finds that no violation occurred and/or a violation occurred but one or more of the defenses set forth in this section is applicable, the hearing officer may dismiss the written notice of violation. Such defenses are limited to the following:

(a) At the time of the receipt of the written notice of violation, compliance would have violated the criminal laws of the state.

(b) Compliance with the subject ordinances would have presented an imminent and irreparable injury to persons or property.

5. If the hearing officer finds that a violation of section 15.15.030 of this chapter occurred and no applicable defense exists, the hearing officer may, in the interest of justice and on behalf of the city, enter into an agreement for the timely or periodic payment of the applicable penalty by the violator.

6. No action by a hearing officer shall relieve the violator from complying with any of the provisions of this chapter.

D. Accumulation of civil penalties for a violation of section 15.15.030 of this chapter, but not the obligation for payment of penalties already accrued, shall stop upon either:

1. Issuance of a building permit for reconstruction of the historic structure and completion of such reconstruction within a reasonable time not to exceed one year, as provided in section 15.15.120 of this chapter; or

2. Recording of a certificate of noncompliance following failure to timely undertake reconstruction of the historic structure, as provided in section 15.15.130 of this chapter.

E.

1. If the penalty imposed pursuant to this chapter remains unsatisfied after 30 days or when the



penalty amounts to at least \$5,000 from the receipt of notice, or ten days from such date as may have been agreed to by the hearing officer, the city may use such lawful means as are available to collect such penalty, including costs and attorney fees.

2. Commencement of any action to remove penalties shall not relieve the responsibility of any penalty to cure the violation or make payment of subsequently-accrued civil penalties, nor shall it require the city to reissue any of the notices required by this chapter.

**15.15.120 Reconstruction of historic structure.**

A. If a historic structure is demolished in violation of section 15.15.030 of this chapter, a reconstruction application filed by the property's owner will be considered by the city council as provided in this section.

B. The city council shall approve a reconstruction application if it finds that the project complies with the following standards:

1. The reconstruction depicts only vanished or non-surviving portions of the original, illegally-demolished, historic structure and includes measures to preserve any remaining historic materials, features, and spatial relationships.

2. The reconstruction is an accurate depiction of historic features and elements substantiated by documentary or physical evidence. When evidence is not available, conjectural designs may be allowed if supported by research of similar structures of the same era as the original structure.

3. Designs that were never executed historically will not be allowed.

4. The proposed structure replicates the size, shape, location, orientation, material and design of the original structure.

5. The proposed structure replicates character-defining features and details of the original structure.

6. The reconstruction will comply with all applicable codes, regulations and engineering standards adopted by the city or the state of Utah.

C. The following modifications may be authorized for a reconstruction under this section:

1. The qualifying provisions of the current zoning district concerning structure setbacks, structure heights and lot size may be modified as appropriate to allow accurate reconstruction of the original structure.

2. If reconstruction results in multiple structures on a single parcel, the structures may be allowed without each structure having street frontage as appropriate to allow accurate reconstruction of the original structure.

D. In the case of reconstruction of a historic structure following demolition of the original structure violation of section 15.15.030 of this chapter, the city's approval of a reconstruction application shall be conditioned on the property owner first entering into a legally-binding restrictive covenant approved by the city attorney and recorded against title to the subject real property in the office of the Salt Lake County Recorder. The restrictive covenant shall, without limitation:

1. Encumber the host real property and run as a title encumbrance affecting it;

2. Acknowledge the required reconstruction;

3. Prohibit demolition and material alterations to the reconstructed structure for 25 years from the date of the issuance of the certificate of occupancy for the reconstructed structure;

4. Identify the nature of the approval and any conditions thereof;

5. Require compliance with all applicable regulations; and

6. Identify the city's remedies for any violation of the covenant, which shall include, without



limitation, prohibiting any redevelopment thereon for the remainder of the 25-year anti-demolition/alteration period under subsection (D)(3) of this section.

**15.15.130 Certificate of noncompliance.**

If a historic structure is demolished in violation of section 15.15.030 of this chapter and a reconstruction application is not submitted within six months thereafter, then the city, through the director, promptly shall issue and record a certificate of noncompliance against the parcel of real property upon which the historic structure was located prohibiting any redevelopment thereon for 25 years unless the proposed redevelopment is for reconstruction of the historic structure as permitted by section 15.15.120 of this chapter.