

Salt Lake Valley Health Department

Health Regulation

#4

**PUBLIC LODGING FACILITIES
REGULATION**

**Adopted by the Salt Lake Valley Board of Health
January 4, 2007**

**Under Authority of Section 26A-1-114
Utah Code Annotated, 1953, as amended**

1. PURPOSE & APPLICABILITY OF REGULATION

- 1.1. The purpose of this regulation is to minimize exposure of the public to any communicable, infectious disease, illness, or unsanitary condition that may be imposed upon them as guests of a public lodging facility. The purpose of this regulation is also to minimize guests' exposure to unsafe conditions or circumstances that may cause physical injury.
- 1.2. This regulation applies uniformly to the repair, maintenance, use, operation, and occupancy of all new and existing public lodging facilities designed, intended for use, or used for human habitation, irrespective of when or under what laws such public lodging facilities were originally constructed or rehabilitated.

2. DEFINITIONS

For the purposes of this regulation, the following terms, phrases, and words shall have the meanings herein expressed:

- 2.1. "Basement" shall mean the portion of a building or structure that is wholly or partially below grade.
- 2.2. "Board of Health" shall mean the Salt Lake Valley Board of Health.
- 2.3. "Clean" shall mean the condition of being free from readily noticeable dirt, soil, stain, left over food particles, or other materials not intended to be a part of the object in question.
- 2.4. "Department" shall mean the Salt Lake Valley Health Department ("SLVHD").
- 2.5. "Dilapidated" shall mean a building or structure or part thereof that by reason of inadequate maintenance, structural deterioration, or abandonment is unsafe, unsanitary, or constitutes a hazard and is no longer fit for use as originally intended.
- 2.6. "Director" shall mean the Director of the Salt Lake Valley Health Department or his or her designated representative.
- 2.7. "Garbage" shall mean solid and semisolid, putrescible animal and vegetable wastes resulting from the handling, preparing, cooking, storing, serving, and consuming food or material intended as food and all ofal (excluding useful industrial by-products, from all public and private establishments and from all residences.
- 2.8. "Habitable space" shall mean a space within a building or structure intended to be used for living, sleeping, cooking, or eating. Bathrooms, laundry rooms, toilet rooms, closets, halls, storage or utility spaces, accessory buildings, and similar areas are not considered habitable spaces.

- 2.9. “Hot water” shall mean water heated to a temperature of not less than 110° F (43.3° C) at the outlet.
- 2.10. “Nuisance” shall mean a condition created by a person who unlawfully commits or omits to perform any duty, which either:
- 2.10.1. Seriously injures or endangers the health or safety of any person; or
 - 2.10.2. Seriously renders a person insecure in life.
- 2.11. “Operator” shall mean any person who leases or manages a public lodging facility; or any employee of a public lodging facility.
- 2.12. “Permit” shall mean a written form of authorization in accordance with this regulation.
- 2.13. “Plumbing fixture” shall mean a receptacle or device that is either permanently or temporarily connected to the water distribution system of the premises and demands a supply of water therefrom; discharges wastewater, liquid-borne waste materials or sewage either directly or indirectly to the drainage system of the premises; or requires a water supply connection and a discharge to the drainage system of the premises.
- 2.14. “Premises” shall mean any lot, parcel, or plot of land, including any buildings or structure.
- 2.15. “Public lodging facility” shall mean a place that is maintained, advertised, offered, used, or kept to provide temporary lodging for the general public. Public lodging facility includes hotels, motels, bed and breakfasts, hostels, guest ranches, resorts, cabins, or any other structure that provides temporary lodging for guests. Included in the public lodging facility are the grounds upon which the facility is located, parking lots, recreational facilities on the grounds, and other appurtenances. A public lodging facility does not include a dormitory, boarding house, or employee living quarters. A private residence or domicile is not a place of public lodging unless it is advertised, offered, used, or kept as a place of public lodging.
- 2.16. “Public lodging unit” shall mean a room, suite, or space occupied by the general public located in and operated by a public lodging facility.
- 2.17. “Red tag” shall mean to affix a notice to an appliance which has been found to contain an eminent safety hazard by a qualified servicing utility.
- 2.18. “Rodent” shall mean a non-domestic commensal species of rat or mouse, including but not limited to the Norway Rat and House Mouse.

- 2.19. “Rodentproofing” shall mean a form of construction or action that will prevent rodents from entering a building or structure and from gaining access to food, water, or harborage.
- 2.20. “Sanitary” shall mean the condition of being free from infective, physically hurtful diseased, poisonous, unwholesome, or otherwise unhealthful substances and being completely free from vermin, from the traces of either, and from an environment conducive to the growth of either.
- 2.21. “Vermin” shall mean rats, mice, cockroaches, bedbugs, flies, or any other pest as determined by the Director to be harmful to the life, health, or welfare of the public.
- 2.22. “Wastewater” shall mean sewage, industrial waste, or other liquid or waterborne substances causing or capable of causing pollution of waters of the state. Intercepted groundwater which is uncontaminated by wastes is not included.

3. GENERAL PROVISIONS

3.1. Jurisdiction of the Department.

- 3.1.1. This regulation is promulgated by the Salt Lake Valley Board of Health as authorized by Section 26A-1-121(1), Utah Code Ann., 1953 as amended and Chapter 9.04, Salt Lake County Code of Ordinances.
- 3.1.2. The Department is empowered to enforce this regulation in all incorporated and unincorporated areas served by the Department as authorized by Section 26A-1-114(1)(a), Utah Code Ann., 1953 as amended and Chapter 9.04, Salt Lake County Code of Ordinances.
- 3.2. It shall be unlawful for any person not to comply with any regulation promulgated by the Department unless granted an express variance by the Salt Lake Valley Board of Health.
- 3.3. Compliance with this regulation does not constitute a defense if charged with any environmental crime or violation of any local, state, or federal law.
- 3.4. Legal action taken by the Department under this Regulation does not preclude prosecution for any environmental crime that may have been committed or violation of any other local, state, or federal law.
- 3.5. Nothing in this regulation affects or modifies in any way the obligations or liability of any person under any other regulation or provision thereof issued by the Department, any ordinance issued by Salt Lake County or any municipality located within Salt Lake County, or any state or federally issued law, including common law. However, Departmental regulations supersede other existing local and county standards, regulations and ordinances pertaining to similar subject matter that are inconsistent.

- 3.6. Verbal or contractual obligations shall not diminish or remove the owner's or other responsible person's obligation to comply with this regulation.
- 3.7. **Severance.** If any section, subsection, sentence, clause, or phrase of this regulation is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this regulation.

4. PUBLIC LODGING PROVISIONS

4.1. Facility Permits.

4.1.1. **Public Lodging Facility Permits.** No person shall operate a public lodging facility without written approval and a corresponding valid Public Lodging Facility permit from the Department.

4.1.2. Permit Application, Duration, and Renewal.

(i) Application for a Public Lodging Facility Permit shall be made upon a form provided by the Director.

(ii) **Permit Duration and Renewal.** The Public Lodging Facility Permit shall be issued annually and shall expire one year from date of issuance. It is the responsibility of the owner or operator of the public lodging facility to pursue permit renewal through appropriate channels. The permit shall be renewable within 60 calendar days prior to the expiration date.

4.1.3. **Public Lodging Facility Plan Review.** A Public Lodging Facility permit applicant or a Public Lodging Facility permit holder may be required to submit to the Department properly prepared plans and specifications for review and approval before:

(i) The construction of a public lodging facility;

(ii) The conversion of an existing structure for use as a public lodging facility;
or

(iii) The remodeling of a public lodging facility if the Department determines that plans and specifications are necessary to ensure compliance with this regulation.

4.2. **Public Lodging Locations.** A public lodging facility operator or agent shall select or construct a location for the facility that will provide adequate surface drainage. The facility shall be located away from any existing or potential health hazard or nuisance.

4.3. Water Supplies.

4.3.1. Drinking water shall be obtained from a water system as defined approved under Utah Administrative Code section R309, Environmental Quality, Drinking Water; incorporated herein by reference and installed in accordance with the legally adopted plumbing code.

4.3.2. **Design of Water System Facilities.** The design of water system facilities shall be based on the supplier's engineer's estimate of water demands, but shall in no case be less than the following:

- (i) Source Capacity – 150 gallons per day per public lodging unit, not including water demands for fire protection.
- (ii) Storage Volume – 74 gallons per public lodging unit, not including water demands for fire protection.
- (iii) Any potable system or portion thereof that is drained seasonally must be cleaned, flushed, and disinfected prior to use. Furthermore, a water sample of satisfactory bacteriological quality, i.e., a sample showing not more than one coliform bacteria per 100 ml. sample must be obtained before being placed into service.
- (iv) Systems operated on a seasonal basis may be required to sample for bacteriologic analysis at an accelerated frequency as determined by the Director.

4.4. **Waste Water Disposal.** All wastewater shall be discharged to a public sewer system where accessible or an approved wastewater system in accordance with Utah Administrative Code section R317 incorporated herein by reference.

4.5. **Requirements for Ventilation, Heating, Electrical, Lighting, and Plumbing.**

4.5.1. **Ventilation.** Every bathroom shall have at least one window facing directly outdoors that can be opened easily or have a mechanical device that ventilates the room to the outside.

4.5.2. **Heating Equipment.** Every public lodging unit shall have heating equipment and appurtenances, or be serviced by a common system that are properly installed and are maintained in a safe and working condition. The equipment and appurtenances shall be capable of safely heating all habitable spaces and the bathroom of every public lodging unit to a temperature of at least 68° F at a distance of 3 feet above floor level. If the temperature is controlled by a person other than the occupant, a temperature of at least 68° F at a distance of 3 feet above floor level in the rooms shall be maintained without overheating any of the rooms.

- 4.5.3. **Heating Equipment Installation and Maintenance.** No operator, agent, or other person shall install, operate, or use a heating device, or hot water heating unit producing heat by combustion that is not vented to the outside of the structure in an approved way, and is not supplied with sufficient air to continuously and adequately support fuel combustion, or has been deemed unsafe and/or red tagged by the servicing utility. All heating devices shall be constructed, installed, and operated in accordance with applicable building, boiler, and utility codes.
- 4.5.4. **Electrical Service and Maintenance.** Every public lodging unit and all common areas shall be supplied with electrical service. All outlets, wirings, circuit panels, and fixtures shall be properly installed and maintained in good and safe working condition in accordance with the applicable electrical code.
- 4.5.5. **Lighting of Common Entryways, Halls, and Stairways.** Every common entryway, hall, and stairway in every public lodging facility shall be lighted at all times to provide in all parts at least ten foot-candles of light at floor or tread level. This requirement does not preclude the use of on-demand lighting.
- 4.5.6. **Installation and Maintenance of Plumbing Fixtures, Water Pipes, and Waste Pipes.** Every plumbing fixture, waste pipe, water pipe, and appurtenance shall be properly constructed, installed, and maintained in accordance with the plumbing code adopted by Utah Administrative Code section R156-56-701 incorporated herein by reference.
- 4.5.7. **Water Heating Facilities.** Every public lodging unit shall have water heating facilities that are properly installed, maintained, and capable of providing hot water at every sink, bathtub, and shower.

4.6. Bathroom and Restroom Facilities.

- 4.6.1. If plumbing fixtures are not included in each guest unit, the operator shall make common-use facilities available to public lodging occupants as required in the following TABLE 1.

TABLE 1: Plumbing Fixtures for Common Facilities

Ratio Plumbing Fixtures For Public Lodging Occupants:	
Toilets	1:10
Sinks	1:12
Shower/Bath	1:8

- 4.6.2. The operator of a public lodging facility shall keep public restrooms supplied with individual use personal hygiene products including soap, hand drying materials or

equipment, and toilet tissue. Each restroom shall have at least one covered waste receptacle.

- 4.6.3. The operator or agent of a public lodging facility shall supply each guest bathroom or shower room with soap, toilet paper, and clean individual use towels daily upon request and between occupant use.
- 4.6.4. The operator of a public lodging facility shall ensure that bathroom and restroom plumbing fixtures are maintained in a clean and sanitary condition.

4.7. **Structural and Safety Requirements.**

- 4.7.1. **Building Structural Requirements.** Every foundation, chimney, floor, exterior and interior wall, ceiling, and roof of all public lodging units shall be weather and water-tight, rodentproof, and in good repair. All stairs and railings shall be properly installed and maintained in good repair.
- 4.7.2. **Interior Finishes.** Interior surfaces shall be clean and in good repair. Every public lodging unit bathroom and kitchen wall, and ceiling surface shall be constructed and maintained reasonably impervious to water. Floor surfaces within two feet of the toilet shall be smooth and easily cleanable.
- 4.7.3. **Windows and Doors.** Every window, skylight, outer door, basement hatchway, and other exterior openings shall have operating locks and shall be weathertight, rodentproof, and kept in good repair. At least one entry door to the dwelling unit shall have a lock that is operable from the exterior. All openable windows shall have screens which are properly installed and maintained.
- 4.7.4. **Exits.** Every public lodging unit shall have unobstructed means of exit leading to safe and open space at ground level.
- 4.7.5. **Smoke Detectors and Fire Extinguishers.** Smoke detectors shall be properly installed and maintained; and where fire extinguishers are required by the applicable fire code, they shall be properly installed and maintained.
- 4.7.6. **Carbon Monoxide Detectors.** Beginning January 1, 2008, all owners of public lodging units shall install and maintain according to the manufacturers specifications at least one U.L. approved carbon monoxide detector in each unit containing a fuel burning appliance such as a furnace, water heater, or stove.

4.8. **Operation and Maintenance.**

- 4.8.1. In open bay type sleeping areas, the operator shall separate beds by a horizontal distance of at least 5 feet, reducible to 3 feet, if beds are alternated head to foot, except in case of double deck bunks, which shall have a minimum horizontal separation of 6 feet under all circumstances. If permanent partitions are installed

that preclude face to face exposure between beds, spacing requirements may be modified to a minimum separation distance of three feet between adjacent beds separated by a permanent partition upon approval of the Director.

- 4.8.2. Each bed, bunk, cot, or sleeping facility for use by occupants shall be maintained in a sanitary condition. Mattresses, mattress covers, quilts, blankets, pillows, pillowcases, sheets, comforters, and other bedding shall be kept clean and in good repair. Pillows shall have pillowcases and sheets shall be large enough to cover the top and all four sides of mattresses. Bedding shall be replaced with clean linen at least weekly and in between occupant use.
- 4.8.3. All eating and drinking utensils for use by guests in rooms shall be either single service or washed, rinsed, and sanitized in a manner prescribed in Salt Lake Valley Health Department's Regulation #5 and protected from subsequent contamination. All appliances including but not limited to coffee makers, microwaves, and refrigerators shall be clean and sanitized between occupant use.
- 4.8.4. All food services including the dispensing of ice shall comply with the requirements of Salt Lake Valley Health Department's Regulation #5. The operator shall ensure that all ice machines intended for guest use are designed for automatic dispensing.
- 4.8.5. The operator shall maintain all buildings, rooms, equipment, and surrounding grounds in a clean and safe condition.
- 4.8.6. The operator shall employ all necessary means to safely eliminate and control the presence of insects and rodents on the premises of any public lodging facility.
- 4.8.7. Except as provided below, no pets other than animals assisting with the functional needs of the handicapped are permitted in public lodging rooms or common areas.
 - (i) The Director may grant an exception to part 5.7.8 if a public lodging facility operator wishes to make specific accommodations for guests with pets. The operator shall prevent allergens, odors, noise, and other nuisances from disturbing other guests.
 - (ii) A public lodging facility operator may provide a kennel facility for the use of guests who travel with pets. The Director may inspect a kennel facility for the purposes of ensuring that the kennel is maintained in a clean, safe, and sanitary condition, and free of odors. The operator shall ensure that accumulations of hair, fur, feathers, feces, and soiled bedding is removed at least once per day or as often as necessary to prevent unsanitary conditions or odors. A kennel facility may not share heating, ventilation, or air-conditioning with guest units or common areas.

- 4.8.8. **Utah Indoor Clean Air Act.** All public lodging facilities shall comply with the Utah Indoor Clean Air Act and Utah Administrative Code section R392-510 incorporated herein by reference.
- 4.8.9. **Laundry Facilities.** The public lodging facility operator shall be responsible for the clean and sanitary maintenance and storage of all supplied linen and bedding.
- 4.8.10. **Swimming Pools.** Pools available to occupants of public lodging facilities shall comply with Salt Lake Valley Health Department's Regulation #2, Design, Construction, and Operation of Public Pools.
- 4.8.11. **Solid Waste.** Solid waste generated at public lodging facilities shall be stored in sanitary watertight containers with lids. The containers shall be conveniently located, and the contents shall be disposed in a manner permitted by state or local law.

4.9. Closing Substandard Public Lodging Units.

- 4.9.1. A public lodging facility or unit which is so damaged, decayed, dilapidated, unsanitary, unsafe, or vermin infested that it creates or may create a hazard to the health or safety of the occupants or of the public may be deemed unfit for human occupation, closed, and its permitted use may be suspended until all violations have been abated. Lack of electricity, illumination, ventilation, sanitation facilities adequate to protect the health or safety of the occupants, potable water, heating facilities during cold weather, or sewer service may be considered prima facie evidence of a health or safety hazard sufficient to require closure.
- 4.9.2. **Vacating Required Upon Permit Suspension.** Any public lodging facility or unit deemed unfit for human habitation and resulting in a permit suspension shall be vacated within a reasonable time as ordered by the Director.
- 4.9.3. **Approval Required Prior to Permit Reinstatement.** It shall be unlawful for any person to occupy any public lodging facility or unit that has been deemed unfit for human habitation until written approval of the Director is given.

5. LICENSES, PERMITS, & REGULATORY FEES

- 5.1. The Department may establish and collect appropriate fees for licenses and permits as set out in this regulation. The Department may collect appropriate fees as set out in this regulation for the performance of services, including plan reviews. If information on a license or permit application changes, the applicant shall notify the Department in writing within 20 calendar days.
- 5.2. **Public Lodging Facility Permit Fees.** The fees for a Public Lodging Facility Permit required in part 4.1.1 of this regulation shall be paid to the Department at the time of application. It shall be based upon the reasonable expenses incurred by the Department

to review plans and specifications, conduct inspections, and act upon the permit application. The annual fee for a Public Lodging Facility Permit shall be:

0-49 Public lodging Units	\$125.00
50-99 Public lodging Units	\$150.00
100+ Public lodging Units	\$200.00

5.3. **Follow-Up Inspection Fee.** The Department will charge a follow-up fee to the owner, permit holder or other person in charge of a public lodging facility when conditions found during an inspection require a follow-up inspection to ensure compliance. The fee for a public lodging facility follow-up inspection is \$100.

5.4. **Late Fees.**

5.4.1. The Department may impose upon any party subject to this regulation penalties and charges for failure to timely pay service and license or permit fees as set out in this regulation. Attorney’s fees and collection fees may also be applied.

5.4.2. Fees unpaid to the Health Department after 30 calendar days of the due date will be assessed a penalty of 10% of the outstanding balance. Failure to pay the fees and additional charges after 60 days of the due date will be assessed an additional penalty of 15% of the outstanding balance including previous penalties. Failure to pay the fees and additional charges after 100 days of the due date will result in suspension of the permit and the right to operate. A \$40.00 charge will be assessed for each returned check.

5.5. Unless otherwise provided for in this regulation or approved by the Director in the Department’s Fee Standard, all fees collected by the Department are non-refundable. All licenses and permits issued by the Department are non-transferable.

5.6. **Suspension or Revocation of License or Permit.** Any permit applied for or issued pursuant to this regulation may be denied, suspended, or revoked by the Director for any of the following reasons:

5.6.1. Failure of the application, plans, or specifications to show that the public lodging facility will be operated or maintained in accordance with the requirements and standards of this regulation;

5.6.2. Submission of incorrect or false information in the application, plans, or specifications;

5.6.3. Failure to operate or maintain the public lodging facility in accordance with the application, report, plans, and specifications approved by the Director;

5.6.4. Failure of the owner or operator to permit or allow the Department to conduct inspections necessary to determine compliance with this regulation;

- 5.6.5. Operation of the public lodging facility in a way that causes or creates a nuisance or hazard to the public health, safety, or welfare;
- 5.6.6. Violation of this regulation or any other restrictions or requirements adopted by the Board of Health;
- 5.6.7. Violation of any condition upon which the permit was issued;
- 5.6.8. Failure to pay the permit fee or any late fees within 100 days of the permit fee's due date; or
- 5.6.9. Failure to supply updated information.

6. INSPECTIONS & INVESTIGATIONS

6.1. To ensure compliance, the Department has the authority to perform inspections, investigations, reviews, and other actions as necessary.

6.2. Authority for Department to Enter Premises.

6.2.1. **Regulated Commercial Premises.** Upon presenting proper identification, authorized representatives of the Department may enter upon the premises of properties regulated by the Department to perform routine inspections to ensure compliance with rules, standards, regulations, and ordinances adopted by the Department, the Departments of Health & Environmental Quality, county or municipal governing bodies, or the division of Occupational and Professional Licensing.

6.2.2. **Consent by License or Permit.** The Department may require licensees or permittees to consent to access for inspections as part of their license or permit. Failure to allow access for inspections as set out in the license or permit may result in the suspension or revocation of the license or permit.

6.3. The owner or other responsible person may request information gathered by the Department during an investigation, inspection or review as authorized by the Government Records Access and Management Act, §§ 63-2-101 to 63-2-1001 Utah Code Ann., 1953 as amended.

7. **ENFORCEMENT MECHANISMS.** If the Department has investigated or inspected any property or facility and believes the property owner or other responsible party is in violation of this regulation or the Department has other reasonable grounds to believe that there has been a violation of any part of this regulation or that the property owner or otherwise responsible party is not in compliance with this regulation, the Department may take civil enforcement action as authorized by statute, rule, ordinance, and regulation and may also refer the matter for criminal prosecution. Civil enforcement may involve court or

administrative actions, injunctive actions, and closures and may involve cost recovery, penalties, and other remedies. Civil and criminal actions may be brought simultaneously. A person does not need to be first adjudged liable in a civil matter before facing criminal charges.

7.1. Criminal Enforcement Actions. The Department may recommend criminal prosecution for environmental violations either alone or in conjunction with civil enforcement. Criminal prosecutions for environmental violations of state or federal law may be filed by the District Attorney, Utah Attorney General, United States Department of Justice, or other enforcement entity. Factors that the Department may consider in recommending criminal enforcement include the following factors and any other relevant factors.

- 7.1.1. The nature and seriousness of the offense including the immediacy of the threat of danger to the life or safety of another or the harm or threatened harm to human health or environment;
- 7.1.2. The degree to which the violation was designed to provide economic gain or cost avoidance or it involved a pattern of conduct or a common attitude of illegal conduct;
- 7.1.3. The degree to which the offender is a known violator and has avoided prior actions by the department;
- 7.1.4. The degree to which prosecution might deter future violations;
- 7.1.5. The person's actual culpability in connection with the offense including the presence in connection with the offense including the presence of criminal intent;
- 7.1.6. The person's willingness to cooperate in the investigation including whether the violator has attempted to conceal evidence or prosecution of others;
- 7.1.7. The appropriateness of referring the case to other agencies having prosecutorial interest; and
- 7.1.8. Possibilities of civil remedies which would be more appropriate than initiating the criminal justice process.

7.2. Civil Enforcement Actions. The Department may request that the District Attorney bring an action to restrain or enjoin actions in violation of public health, environmental laws, and other laws or abate conditions in violation of such laws.

7.3. Administrative Actions – Notice of Violation (NOV).

- 7.3.1. If the Director has inspected any dwelling or dwelling unit and has found and determined that it is in violation of this regulation or has reasonable grounds to

believe that there has been a violation of any part of this regulation, he shall give notice of the violations to the owner or other responsible person thereof.

7.3.2. **Service of NOV.** The Department may provide notice to the owner of the property or otherwise responsible person by sending the NOV via first class mail to the last known address of the owner of the property or other responsible person. If notice is returned undeliverable, the owner of the property or other responsible person may be personally served or be given notice by other methods reasonably calculated to give actual notice to the owner or other responsible party.

7.3.3. **Contents of NOV.** The NOV shall:

- (i) Describe the property and the persons believed to be in violation;
- (ii) Describe the violation;
- (iii) Describe remedial action that will comply with the provisions of this regulation;
- (iv) Set a reasonable time for the performance of any required remedial action(s);
- (v) Describe the procedure to contest the NOV and the time limits for such a contest; and
- (vi) Notify the owner or other responsible person that if no written contest is filed within the time required, the NOV will become final and unappealable to any administrative entity or court.

7.3.4. **Challenging an NOV.** As detailed in the Department's Adjudicative Hearing Procedures, a party aggrieved by an NOV may request a departmental conference, departmental hearing, or departmental appeal in writing within ten (10) days of the date of the NOV.

7.3.5. **Departmental Conference, Settlement Agreements, and Stipulations & Orders.**

- (i) After issuance of the NOV, the alleged violator has the option to request and attend a Departmental Conference to discuss the NOV and settlement with the Department. No hearing officer will be present. The process of requesting a Departmental Conference are more fully described in the Department Adjudicative Hearing Procedures.
- (ii) If the parties agree to a settlement, the Department will prepare, in conjunction with the District Attorney's Office, a binding Settlement Agreement or Stipulation & Consent Order which may require the

payment of penalties and the costs of investigation. Parties may also agree to a settlement at any time subsequent to the Departmental Conference. After signing a Settlement Agreement or Stipulation & Consent Decree, the parties waive all rights to further Department and court hearings or appeals. Settlement Agreements or Stipulation & Consent orders may be enforced in state courts.

7.3.6. **Hearings & Appeals.** Parties Aggrieved by an NOV may also request a Departmental Hearing or a Departmental Appeal. A hearing officer is present at these proceedings and makes a written determination. The methods of challenging an NOV are more fully described in the Department's Adjudicative Hearing Procedures. Departmental Hearing Orders and Departmental Appeal Orders may be appealed to the entities and within the time limits set out in the SLVHD's Adjudicatory Hearing Procedures.

7.3.7. **Failing to respond to an NOV.** If a party fails to respond to an NOV within the required time, the NOV becomes a final order unappealable to any administrative entity or court. The Department may then enforce the order in state court.

7.4. **Additional Administrative Enforcement Authority.**

7.4.1. The Department may declare unsanitary conditions a nuisance and cause every nuisance affecting the public health to be abated.

7.4.2. Any variances allowed by the Department to the requirements of this regulation shall be only by written approval of the Board.

7.4.3. **Exercise of Physical Control.** The Department may establish, maintain, and exercise physical control over property and over individuals as the Department finds necessary for the protection of the public health including but not limited to closing theaters, schools, and other public or private places and prohibit public gatherings. The order shall be effective immediately. Any person to whom the order is directed shall comply immediately but may petition the Director for a hearing in accordance with the Salt Lake Valley Health Department's Adjudicative Hearing Procedures. After the hearing and depending upon the findings as to whether the person has complied with the provisions of this regulation, the Director shall continue the order in effect or modify or revoke it.

7.4.4. **Emergency Enforcement.** If the Director finds that an emergency exists that requires immediate action to protect the public health, he or she may without notice or hearing issue an order declaring the existence of an emergency and requiring that action be taken as he deems necessary to meet the emergency. The order shall be effective immediately. Any person to whom the order is directed shall comply and abate the nuisance immediately; but may petition the Director for a hearing in accordance with the Salt Lake Valley Health Department's Adjudicative Hearing Procedures. After the hearing and depending upon the

findings as to whether the person has complied with the provisions of this regulation, the Director shall continue the order in effect or modify or revoke it. If circumstances warrant because of the seriousness of the hazard, the Department may act to correct or abate the emergency without issuance of an order or directive or without waiting for the expiration of compliance time previously given in an order.

8. CRIMINAL, CIVIL & ADMINISTRATIVE PENALTIES

8.1. Criminal Penalties.

- 8.1.1. Any person who is found guilty by a court of violating any of the provisions of this regulation, either by failing to do the acts required herein or by doing a prohibited act, is guilty of a class B misdemeanor, pursuant to Section 26A-1-123, Utah Code Annotated, 1953, as amended.
- 8.1.2. Each similar subsequent violation occurring within two years of the initial violation may constitute a class A misdemeanor.
- 8.1.3. Each day such violation is committed or permitted to continue shall constitute a separate violation.

8.2. Civil & Administrative Penalties.

- 8.2.1. Penalties may be included in a Settlement Agreement or Stipulation & Consent Order. Penalties may be assessed according to the following factors:
 - (i) The violator's history of compliance or non-compliance;
 - (ii) The violator's economic benefit of non-compliance;
 - (iii) The documented costs associated with environmental or health damage;
 - (iv) The violator's degree of willfulness or negligence; and
 - (v) The violator's good faith efforts to comply and cooperate.
- 8.2.2. The Director may multiply the penalty by the number of days the violation occurred.

8.3. Recovery of Investigation & Abatement Costs

- 8.3.1. The Department may recover its inspection, investigative and abatement expenses and costs from owners or other responsible person.

8.3.2. The Department may record a judgment lien on a violator's property to recover its expenses and costs.

9. EFFECTIVE DATE

9.1. These rules and regulations shall be come effective upon its enactment by the Salt Lake Valley Board of Health.

APPROVED AND ADOPTED this _____ day of _____, 2007.

SALT LAKE VALLEY BOARD OF HEALTH

By: _____
William S. Kidder, D.D.S.

ATTEST:

By: _____
GARY L. EDWARDS, M.S.
Executive Director
Salt Lake Valley Health Department