

CHAPTER 12. ENFORCEMENT AND PENALTIES

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CHAPTER 12. ENFORCEMENT AND PENALTIES

§ 12.1 APPEALS

See also Chapter 2, "Code Administration And Review Roles," §2.1.B.

- A. **Appeals from Final Decisions by the Boards.** A party-in-interest may appeal a final decision made by either the Board of County Commissioners or Board of Trustees pursuant to this Code. All such appeals shall be taken to a Colorado court of competent jurisdiction.
- B. **Appeals from Final Decisions by the Estes Valley Planning Commission.** A party-in-interest may appeal a final decision made by the Estes Valley Planning Commission pursuant to this Code. All such appeals shall be taken to either the Board of County Commissioners or Board of Trustees, as applicable.
- C. **Appeals from Final Decisions by Staff.** A party-in-interest may appeal a final decision made by Staff in administering or interpreting this Code. All such appeals shall be taken to the Board of Adjustment, except that appeals from Staff decisions on use classifications and separate lot determinations shall be taken to either the Board of County Commissioners or Board of Trustees, as applicable. (Ord. 8-05 #1, Ord. 13-08 #1)
- D. **Appeals from Final Decisions by the Estes Valley Board of Adjustment.** A party-in-interest may appeal a final decision made by the Estes Valley Board of Adjustment. All such appeals shall be taken to a Colorado court of competent jurisdiction.
- E. **Appeals from Enforcement Actions.** Appeals from issuance of a notice of violation or stop work order shall be taken to a Colorado court of competent jurisdiction.
- F. **Timing of Appeals.** Unless a different time frame is set forth in a specific provision of this Code or in applicable provisions of the Colorado Revised Statutes, all appeals shall be in writing and filed within thirty (30) days after the final action or decision being appealed. There shall be no right to appeal any action or decision if a written notice of appeal has not been filed within said thirty-day period. (Ord. 13-08 #1)
- G. **Filing of Appeals.** Written notice of appeals shall be filed as follows:
 - 1. Appeals to the Town Board of Trustees shall be filed with the Town Clerk. (Ord. 13-08 #1)
 - 2. Appeals to the Board of County Commissioners shall be filed with the Estes Park Community Development Department. (Ord. 13-08 #1)
 - 3. Appeals to the Estes Valley Planning Commission shall be filed with the Estes Park Community Development Department. (Ord. 13-08 #1)
- H. **Hearing of Appeals.** The hearing before the Estes Valley Planning Commission, Board of County Commissioners or Board of Trustees shall be held within sixty (60) days of filing the written notice of appeal. (Ord. 13-08 #1)

- I. **Form of Appeal.** Each written notice of appeal shall state specific grounds for the appeal and cite all relevant Sections of the Estes Valley Development Code. The Board hearing the appeal shall only consider those matters specified in the written notice of appeal. (Ord. 13-08 #1)

(Ord. 18-02 #1, 12/10/02; Ord. 8-05 #1, 6/14/05; Ord. 13-08 #1, 8/26/08)

§ 12.2 RESPONSIBILITY FOR ENFORCEMENT

- A. **Responsible Enforcement Entity.** The Town of Estes Park Community Development Department shall be responsible for enforcing the provisions of this Code.
- B. **Authorization for Inspections.** Upon presentation of proper credentials, the Estes Park Community Development Director or his or her designee(s) may enter any building, structure, real property or premises to ensure compliance with the provisions of this Code. Such inspections shall be carried out during normal business hours unless the Community Development Director determines there is an emergency.

§ 12.3 VIOLATIONS

It shall be a violation of this Land Development Code to undertake any of the following activities:

- A. **Activities Inconsistent with Code.** Erect, construct, reconstruct, remodel, alter, maintain, expand, move or use any building, structure or sign, or engage in development or subdivision of any land in contravention of any zoning, subdivision, sign or other regulation of this Code, including all required approvals;
- B. **Land Disturbing Activities Inconsistent with Code.** Excavate, grade, cut, clear or undertake any other land disturbance activity contrary to the provisions of this Code or without first obtaining all requisite land use approvals required by this Code or other applicable regulations;
- C. **Nonconforming Uses Inconsistent with Code.** Create, expand, replace or change a nonconforming use, structure, lot or sign except in compliance with this Code;
- D. **Making Lots or Setbacks Nonconforming.** Reduce or diminish the lot area, setbacks or open space below the minimum required by this Code;
- E. **Increasing Intensity of Use.** Increase the intensity of use of any land or structure, except in accordance with the procedural and substantive standards of this Code;
- F. **Activities Inconsistent with Permit.** Engage in any development, use, construction, remodeling or other activity of any nature in any way inconsistent with the terms and conditions of any permit, approval or other form of authorization required to engage in such activity; or
- G. **Activities Inconsistent with Conditions of Approval.** Failure to comply with any terms, conditions or limitations placed by the Decision-Making Body upon any final development plan, subdivision plat, permit or other form of authorization.

§ 12.4 REMEDIES AND ENFORCEMENT POWERS

The Community Development Director and relevant Decision-Making Bodies shall have the following remedies and powers to enforce this Code:

A. **Civil Remedies and Enforcement Powers.**

1. *Deny/Withhold Permits.* Deny and withhold all permits, certificates or other forms of authorization to use or develop any land, structure or improvements thereon until the alleged violation related to such property, use or development is corrected. This provision shall apply whether or not the current owner or Applicant for the permit is responsible for the violation.

Where the Community Development Director determines that an Applicant or Property Owner has an outstanding violation or violations of this Code, the Community Development Director shall be authorized to deny or withhold all permits, certificates or other forms of authorization for any use or development activity undertaken by such person until the outstanding violation is corrected. The provision shall apply whether or not the property for which the permit, application or other approval is sought is the property in violation. The Property Owner or Applicant shall have the right to appeal the Community Development Director's determination that a violation of this Code exists to the Board of Trustees or the Board of County Commissioners, whichever is applicable. The Board shall hold a hearing on the appeal as soon as practical and either uphold, reverse or modify the determination of the Community Development Director as the Board deems appropriate.

2. *Revoke Permits.* Revoke any development permit or other authorization, after notice and a public hearing by the Decision-Making Body that originally granted final authorization or approval of the permit, when it is determined that either:
 - a. There is a departure from the approved plans, specifications or conditions of approval;
 - b. There is a violation of any provision of this Code;
 - c. The development permit was obtained by false representation; or
 - d. The development permit was issued in error.

Written notice of revocation shall be served upon the owner, the owner's agent, Applicant or other person to whom the permit was issued, or such notice may be posted in a prominent location at the place of the violation. No work or construction shall proceed after service of the revocation notice.

3. *Stop Work Order.*
 - a. Issuance of Stop Work Order. With or without revoking permits, the Community Development Director may issue an order to stop work on any property on which there is an uncorrected violation of either a provision of this Code or a provision of a permit or other form of authorization issued hereunder. The stop work order shall specify the Code provisions allegedly in violation. After any such order has been served, no work shall proceed on any building, other structure or tract of land covered by such order, except to correct such violation or comply with the order.
 - b. Timing/Notice. The stop work order may be issued at the same time as the notice of the initial violation (see §12.7 below), or subsequent to such notice. The stop work order may also specify a shorter time for correction of the violation than the fifteen-day period specified in §12.7.A below. The stop work order shall also indicate that failure to comply with the order may subject the violator to civil and/or criminal liability as penalty for the violation(s).
4. *Injunctive Relief.* Initiate injunction or abatement proceedings or other appropriate legal action in the District Court or other court of competent jurisdiction against any person who fails to comply with any provision of this Code or any requirement or condition imposed pursuant to this Code. In any court proceeding in which the Town or the County seeks a preliminary injunction, it shall be presumed that a violation of this Code is a real, immediate and irreparable injury to the public; that the public will be irreparably injured by the continuation of the Code violation unless the violation is enjoined; and that there is no plain and adequate remedy at law for the subject Code violation.
5. *Abatement.* Seek a court order in the nature of mandamus, abatement, injunction or other action to abate or remove a violation or to otherwise restore the premises to the condition which existed before the violation.
6. *Guilty of Municipal Code Violation.* A person shall be guilty of an Estes Park Municipal Code violation upon conviction in any case where a violation of this Code exists within the Town of Estes Park, where notice of violation, including any stop work order, has been properly served, and where such person fails to comply with such notice or stop work order. (Ord. 18-02 #6)
7. *Penalty.* Persons found guilty of a violation pursuant to this Section, within the Town of Estes Park, shall be subject to the fines and penalties established in the Estes Park Municipal Code. (Ord. 18-02 #6)

B. Criminal Remedies and Enforcement Powers in the Unincorporated Larimer County.

1. *Guilty of Misdemeanor.* A person shall be guilty of a misdemeanor upon conviction in any case where a violation of this Code exists, where notice of violation, including any stop work order, has been properly served, and where such person fails to comply with such notice or stop work order.
2. *Penalty.* Persons found guilty of a misdemeanor pursuant to this Section shall be punishable by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment for not more than ten (10) days, or by both such fine or imprisonment for each such violation.
3. It shall be the responsibility of the County Attorney to bring any criminal enforcement action. At the discretion of the Board of County Commissioners, it may appoint the District Attorney to perform such enforcement duties in lieu of the County Attorney. (Ord. 18-02 #6)

(Ord. 13-99 §F, 11/3/99; Ord. 18-02 #6, 12/10/02)

§ 12.5 CONTINUING VIOLATIONS

Each day that a violation occurs or remains uncorrected after receipt of notice shall constitute a separate violation of this Code.

§ 12.6 REMEDIES CUMULATIVE

The remedies provided for violations of this Code, whether civil or criminal, shall be cumulative and in addition to any other remedy provided by law, and may be exercised in any order.

§ 12.7 ENFORCEMENT PROCEDURES

- A. **Nonemergency Matters.** In the case of a violation of this Code that does not constitute an emergency or require immediate attention, written notice of the nature of the violation shall be given to the property owner, agent, occupant or the Applicant for any relevant permit. Notice shall be given in person, or by certified U.S. Mail, or by posting notice on the premises. The notice shall specify the Code provisions allegedly in violation, and—unless a shorter time frame is allowed by this Chapter—shall state that the individual has a period of fifteen (15) days from the date of the receipt of the notice in which to correct the alleged violations before further enforcement action shall be taken. The notice shall also state any appeal and/or variance procedures available pursuant to this Code.

The Board of Trustees or Board of County Commissioners, as applicable, may grant an extension of the time to cure an alleged violation, up to a total of ninety (90) days, if the Board finds that due to the nature of the alleged violation, it reasonably appears that it cannot be corrected within fifteen (15) days. (Ord 2-02 #3)

- B. **Emergency Matters.** In the case of violations of this Code that constitute an emergency as a result of safety or public concerns, or violations that will create increased problems or costs if not remedied immediately, the Community Development Director may use the enforcement powers available under this Chapter without prior notice, but he or she shall attempt to give notice simultaneously with beginning enforcement action or as soon thereafter as practicable. Notice may be provided to the property owner, agent, occupant or the Applicant for any relevant permit.

- C. **Options Upon Noncompliance.** In the event a person fails to comply with a notice of violation or stop work order, or to remedy the violation to the satisfaction of the Community Development Director within the required time period, then the Community Development Director, in consultation with the Town Attorney or County Attorney (as applicable), shall determine whether to subject the violator to the civil remedies listed in §12.4.A, to criminal liability pursuant to §12.4.B above, or to any other equitable or other remedy available.

(Ord. 2-02, #3, 2/12/02)

§ 12.8 NONLIABILITY OF THE COUNTY OR TOWN

This Code shall not be construed to hold Larimer County or the Town of Estes Park, or any of their employees or officials acting within the scope of their employment, in any manner responsible or liable for any damages to persons or property resulting from:

- A. Any inspection, enforcement or review as authorized by this Code; or
- B. Any failure to inspect or enforce; or
- C. The issuance or denial of any permit or other form of authorization under this Code; or
- D. The institution or failure to institute any civil or criminal enforcement remedy as herein authorized or required.

In enacting this Code, the Board of County Commissioners and Board of Trustees intend to preserve all their rights, the rights of their agencies and departments, and the rights of their elected and appointed officials and employees to immunity from liability as set forth in the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.

§ 12.9 CONTINUATION OF PRIOR ENFORCEMENT ACTIONS

Nothing in this Code shall prohibit the continuation of previous enforcement actions undertaken by the County or Town pursuant to previous regulations.

