

Chapter Eleven

ENFORCEMENT

11.1. GENERAL PROVISIONS

11.1.1. Purpose

The purpose of this Chapter is to require compliance with this Code, to state which activities violate this Code, and to establish general County remedies when a violation exists.

11.1.2. Authority to Enforce

The BoCC and its duly appointed representatives shall have:

- the authority to enforce the provisions of the Zoning Resolution and this Code, including companion documents, in accordance with this Chapter and the governing statutes (C.R.S. § 30-28-124 and C.R.S. § 30-28-124.5, as amended);
- the authority to enforce the provisions of the Subdivision Regulations and this Code, including companion documents, in accordance with this Chapter and the governing statutes (C.R.S. § 30-28-110(3)-(4), C.R.S. § 30-28-133(1), and C.R.S. § 30-28-137(3)-(4), as amended);
- the authority to enforce the applicable provisions of Chapter 7 concerning Waste Disposal and Recycling Facilities and this Code in accordance with this Chapter and the governing statutes and regulations (The Solid Wastes Disposal Sites & Facilities Act, C.R.S. §§ 30-20-100.5 et seq.; Infectious Waste C.R.S. §§ 25-15-401 et seq. "Infectious Waste"; and CDPHE "Regulations Pertaining to Solid Waste Disposal Sites & Facilities", 6 C.C.R. 1007-2 hereinafter referred to as "State Solid Waste Regulations"); and
- the authority to enforce the provisions of Appendix B Guidelines and Regulations for Areas and Activities of State Interest of El Paso County authorized by, inter alia, Section 24-65.1-101, et seq., C.R.S.; Section 30-28-101, et seq., C.R.S.; Section 30-28-201, et seq., C.R.S.; and Section 29-20-101, et seq., C.R.S.

Nothing in this Chapter or any other provision of this Code shall be construed to restrict the ability of the BoCC to pursue any available means of enforcement available to it under state law.

11.1.3. Duty to Enforce

(A) PCD Director

It shall be the duty of the PCD Director to interpret and enforce all regulations, requirements, and conditions contained in this Code, companion documents, and in any approved development applications, financial assurances, development agreements, subdivision improvement agreements, or any other plan or permit required by this Code or an agreement approved pursuant to this Code unless that duty has been expressly delegated to another office.

(B) ECM Administrator

It shall be the duty of the ECM Administrator to interpret and enforce all regulations and requirements contained in the ECM, companion documents, and

any related plan requirements required by this Code pertaining to subdivision construction, road construction, access, grading, and drainage unless that duty has been expressly delegated to another office.

(C) Coordination Between Departments

Any enforcement action may be coordinated with any other department or division of the County or with the Building Department.

(D) Inaction

Inaction or lack of enforcement on the part of the County shall not constitute a waiver of the right of enforcement.

(E) Relationship Between Development Application and Violation

A development application shall not be initiated or accepted for submittal by the PCD if the property subject to the application is in violation of this Code unless the purpose of the development application is to correct the violation, or unless specific authorization for submittal is granted by the PCD Director. The PCD Director may suspend any enforcement action prior to such action being heard by the BoCC while an application to correct or resolve the violation has been submitted.

11.1.4. Right to Inspect

(A) General Provisions

The PCD Director is hereby empowered to inspect any building, structure, real property, proposed right of way, or tract of land within or upon which there is reasonable cause to believe a use exists or construction or alteration work is being performed, or has been performed, in violation of the applicable provisions of this Code. Such inspections may include the following:

- Observations of the property from those portions of the property which are open or accessible to the public, from public property, or from other private property for which permission to enter has been obtained from the owner or occupant.
- Entry onto the property pursuant to a court order obtained after submitting an application for an administrative search warrant which includes a sworn affidavit detailing facts to support a reasonable belief that a violation is likely to exist and that further investigation of the premises is warranted.
- Entry onto the property in emergency situations in which the PCD Director has reason to believe that the public health or safety is in imminent danger and could be jeopardized by any delay in securing entry.
- Entry onto the property after receiving express permission from the alleged violator.

(B) Application Signature Constitutes Consent

(1) Permission to Enter Property until Action Completed

Signing any application for a development permit, except those specifically listed in paragraph (2) below, shall constitute permission for

the PCD Director to enter and inspect a property until the use, activity, development, subdivision or construction that is the subject of the development application or permit has concluded.

(2) Permission to Enter Property Until Final Approval

Signing an application for a rezoning, variance, site plan, vacation or preliminary plan shall constitute permission for the PCD Director to enter and inspect a property only until the application has received final approval by the approval authority.

(3) Hours of Inspection

The inspections provided for in this subsection (B) shall be carried out during normal business hours except in emergency situations or when the violation typically occurs or can only be observed outside normal business hours.

11.1.5. Previous Violations

Nothing in this Code shall prohibit the continuation of pending enforcement actions undertaken by the County pursuant to previous regulations provided that the violation also exists under the current Land Development Code.

11.1.6. Non-Liability of the County

No provision of this Code shall be construed to hold El Paso County or any of its 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 any inspection, enforcement or review as required or permitted by this Code, from any failure to enforce or inspect, from the issuance or denial of any building permit, or from the institution or failure to institute any court action as authorized or required by these standards and regulations.

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

11.1.7. No Permission to Violate Codes

(A) Oversight or Error

No oversight or error on the part of the PCD Director or any official or employee of the County shall legalize, authorize, or excuse the violation of any of the provisions of this Code.

(B) Issuance of Permit or Approval

The issuance or granting of any development permit or construction permit or any permit, plan, specifications, computations, or inspection approval does not constitute a permit for, or an approval of, any violation of any of the provisions of this Code. Development permits, construction permits, or inspections presuming to give authority to violate or cancel the provisions of this Code or other County regulations or ordinances are invalid.

(C) Errors in Approved Plans

The issuance of a development permit or construction permit based on plans, specifications, and other data does not prevent the PCD Director from subsequently requiring the correction of errors in the plans, specifications, and other data or from stopping building operations that are in violation of this Code or any other applicable law.

(D) Falsified or Misrepresented Information

The issuance of a development permit or construction permit based on falsified or intentionally misrepresented information does not prevent the PCD Director from subsequently requiring the correction of errors in the plans, specifications, and other data or from stopping building operations that are in violation of this Code or any other applicable law.

11.1.8. Restoration and Mitigation as a Remedy

(A) PCD Director Authorized to Order Restoration

In addition to other enforcement remedies provided for in this Code, the PCD Director may order the reasonable restoration of a structure, premises, and any adjacent and affected site to its lawful condition or may require reasonable mitigation. These requirements may be attached as conditions to development permits or enforcement actions and orders as appropriate.

(B) Alleged Violator Bears Sole Cost of Restoration

Any restoration or mitigation imposed by the PCD Director shall be at the sole cost of the alleged violator.

(C) Mitigation as Alternative to Restoration

Mitigation may be appropriate where the PCD Director determines that restoration of the premises or adjacent site to its pre-existing condition is not feasible or that irreparable damage has been done to the premises, an environmentally sensitive land, or a historical structure.

The PCD Director may require a combination of restoration and mitigation of the structure or premises if warranted by the circumstances.

11.1.9. Authority to Prepare Administrative Guidelines and Procedures

The PCD Director may promulgate additional administrative guidelines and procedures to implement and clarify the authority, responsibilities and procedures to enforce under this Code.

11.2. RELATIONSHIP TO OTHER REGULATIONS

11.2.1. Relationship to Enforcement of Ordinances and ECM

The enforcement requirements and procedures which pertain to each ordinance and to the ECM adopted by El Paso County are included within each ordinance and the ECM. Where a violation exists of an ordinance and this Code, the ECM and this Code, or ordinance, ECM and this Code nothing shall prohibit the utilization of the enforcement and penalty remedies of each regulation.

11.2.2. Relationship to Agreements and Contractual Arrangements

Where specific enforcement requirements or procedures are included within an agreement or contract approved or adopted by the BoCC, the requirements and procedures of the agreement or contract shall control.

11.3. ZONING VIOLATIONS

11.3.1. Unlawful Acts

It is unlawful to use real property or improvements thereon; to develop real property, to erect, construct, reconstruct, remodel, restore or improve a building or structure, or to alter the use of any real property or improvements thereon in any way not in accordance with this Code or with the terms and conditions of any development application approval or development permit, or without first obtaining all development approvals and permits required by this Code.

11.3.2. Enforcement Procedures

This section sets forth the enforcement options available and the presumed progression of enforcement actions that may be taken by the BoCC, or the PCD Director through an executive determination, to address violations. Nothing in this Section shall prevent the BoCC, or the PCD Director through an executive determination, from exercising discretion to pursue the remedies or any combination thereof, as set forth below or as provided by Colorado law.

(A) Notice of Violation and Executive Determination

If probable cause exists to believe that a violation has occurred, a notice of violation shall be sent via first class mail to the alleged violator's mailing address as listed in the records of the El Paso County Assessor's Office and to the mailing address of the property in question, if one exists.

The notice of violation shall specifically describe the nature of the violation and shall require that the violation be corrected within fourteen (14) days after the date of the notice. The notice of violation may require that the violation be corrected within a period of time less than fourteen (14) days if the PCD Director determines, in his or her sole discretion, that the violation presents an immediate risk to the public health, safety, or welfare. The notice of violation shall provide that the alleged violator may request additional time to correct the violation.

If the violation is not corrected within the time period established in the notice of violation or approved extension of time, the PCD Director may issue an executive determination to the alleged violator authorizing the OCA to pursue remedies under Parts (D)(2) or (3) of this Section, subject to appeal as set forth below.

The PCD Director shall mail the executive determination to the alleged violator in the same manner as the notice of violation. The executive determination shall specify the nature of the violation, and provide ten (10) days after the date of the executive determination for the alleged violator to request an appeal, at no cost

to the alleged violator, to the BoCC prior to the OCA pursuing remedies under Parts (D)(2) or (3).

The executive determination shall state that the alleged violator may appeal the PCD Director's decision to the BoCC. The alleged violator must submit an appeal in writing to the PCD Director. Any written appeal must be received by the PCD Director within ten (10) days after the date of the executive determination. Any such appeals received beyond ten (10) days shall be deemed untimely.

If no appeal is received within ten (10) days after the date of the PCD Director's executive determination, then the PCD Director's executive determination shall be final and the OCA may proceed with litigation to seek remedies pursuant to Parts (D)(2) or (3) of this Section.

(B) Revocation of Approvals and Permits

If an alleged violator is in violation of the terms and conditions of a development application approval or development permit that was issued by the PCD without review by the Planning Commission or the BoCC, the PCD Director may revoke the development permit or development application approval. Notice of the revocation may be sent via first class mail to the property owners mailing address as listed in the records of the Assessor's Office and to the mailing address of the property if one exists. Appeals of revocations may be taken to the BoCC pursuant to the procedures set forth in the Procedures Manual.

(C) Appeal Hearing

If the PCD Director receives a timely appeal from his or her executive determination as set forth in Part (A), then the PCD Director shall place the matter on the BoCC's next available land use hearing agenda.

The alleged violator shall be notified of the date, time, and place of the hearing via first class mail to the alleged violator's mailing address as listed in the records of the El Paso County Assessor's Office no less than five (5) days prior to the hearing.

At the hearing, the alleged violator shall have the opportunity to present evidence and testimony to show cause why further enforcement action should not be taken. The BoCC shall consider all such evidence and testimony, along with any presentation, evidence, or testimony offered by the Planning and Community Development Department or other County staff, in reaching its decision to affirm or overturn the decision to issue the executive determination.

At the conclusion of the appeal hearing, the BoCC may decide to overturn the decision to issue the executive determination or may affirm the decision and instruct the PCD Director to proceed with one or more of the enforcement mechanisms provided in Part (D) below.

The appeal hearing shall not be considered a quasi-judicial or legislative action or matter under any circumstances.

(D) Remedies

The following remedies for enforcement of the Code shall be cumulative and shall in no way limit the BoCC's authority to seek any other remedy available at law for violations of the Code

(1) Criminal Prosecution

Only the BoCC may authorize the initiation of criminal prosecution for violations of the Code.

(2) Injunction

The BoCC, or the PCD Director through an executive determination, may refer the matter to the OCA for the institution of an injunction, mandamus, abatement, or other appropriate action to prevent, enjoin, abate, or remove a violation or to otherwise restore the premises to the condition that existed before the violation, pursuant to state statute.

(3) County Court Action for Civil Remedies

The BoCC, or the PCD Director through an executive determination, may refer the matter to the OCA for filing of a County Court action seeking the imposition of civil penalties pursuant to state statute.

11.4. SUBDIVISION VIOLATIONS

11.4.1. False or Inaccurate Information Provided and Plat Not Filed

The BoCC may take appropriate action to deny or to suspend or withdraw any approval of a preliminary plan or final plat, or to require that certain corrective measures be taken, following a determination that the information provided by the subdivider upon which such approval was based is materially false or inaccurate or that new significant information has been brought to the BoCC's attention. The action may occur at any step in the platting process prior to the recording of the final plat, and shall take place at a regular public hearing. The BoCC shall determine at the hearing the nature and extent of the alleged false or inaccurate information, shall consider any new significant information that has been brought to its attention, and shall have the authority, upon good cause being shown, to deny the preliminary plan or final plat or suspend or withdraw any approval or require corrective measures to be taken. No final action authorized by this Section shall be taken unless the applicant is notified of and, if present at the public hearing, has an opportunity to respond to the proposed denial, suspension, withdrawal, or corrective action.

11.4.2. False or Inaccurate Information Provided and Plat Filed

If it is determined after a final plat approved by the BoCC is filed for recording that the final plat approval was based on materially false or inaccurate information, the BoCC may take appropriate action to withdraw or reconsider the approval, to require corrective measures, or to void the plat, after a public hearing where adequate notice and opportunity to be heard are given to the subdivider, any successor property owners, and any affected adjacent property owners, referral agencies, or service providers. The

BoCC may also withhold building permits. Building permits may also be withheld pursuant to Section 11.4.6.

11.4.3. Enforcement of Plat Restriction as Financial Assurance

Pursuant to C.R.S. §§ 30-28-110 (4) (a) and 30-28-137(3), the BoCC or any purchaser of any lot or tract subject to a plat restriction which is the financial assurance for a subdivision improvements agreement shall have the authority to bring an action in any district court to compel the enforcement of any subdivision improvements agreement on the sale, conveyance, or transfer of any such lot or tract, or of any other provision of C.R.S. §§ 30-28-101, et seq., as amended. Such authority shall include the right to compel rescission of any sale, conveyance, or transfer of title of any lot or tract contrary to the provisions of any such restriction set forth on the plat or in any separate recorded instrument, but any such action shall be commenced prior to the issuance of a building permit by the County where so required or otherwise prior to commencement of construction on any such lot or tracts of land or other subdivided land.

11.4.4. Enforcement of Plat Restrictions

Pursuant to C.R.S. § 30-28-137 (4), the BoCC or any purchaser of any lot or tract shall have the authority to bring an action for injunctive relief to enforce any plat restriction (including all obligations contained in documents required to be executed and recorded as part of the final plat approval and all commitments of record of the subdivider related to the County's approval of the final plat), plat note, plat map, or provision of a subdivision improvements agreement, and for damages arising out of failure to adhere to any such plat restriction, plat note, plat map, or provision of a subdivision improvements agreement.

11.4.5. Sale of Lots Before Plat Recording

Pursuant to C.R.S., § 30-280-110(4), it is unlawful to transfer legal or equitable title or sell any subdivided land as defined by this Code before a final plat for the land has been approved by the BoCC and recorded with the Clerk and Recorder. Any subdivider or agent thereof who violates this provision is guilty of a misdemeanor. The County may also seek to enjoin any violations of this provision. The County shall not be liable for any direct or apparent fiscal losses suffered by any party as a result of denial of any subdivision where the applicant has agreed to transfer or sell or offered to transfer or sell any subdivided land in advance of plat approval by the BoCC.

11.4.6. Authority to Withhold Development and Building Permits

In addition to any other enforcement action specified in this Code, pursuant to C.R.S. § 30-28-110(4)(a), the Building Official or the PCD Director is authorized to withhold or demand the withholding of the issuance of any building permit or related permit under this Code sought or requested for property for which a final plat (or equivalent) has not been approved or recorded or which is in violation of the approved final plat (or equivalent), including any plat note or restriction or any commitment of record in the County's final plat (or equivalent) approval file.

11.5. SOLID WASTE VIOLATION ENFORCEMENT ACTIONS AND REMEDIES**11.5.1. Clean-up and Cease and Desist Order**

Any person who violates the State Solid Waste Regulations and this Code shall be subject to a clean-up and cease and desist order issued by the CDPHE or by the BoCC. Any person who fails to comply with such orders shall be subject to a civil penalty. The violation and civil penalty shall be determined and enforced by a court of competent jurisdiction upon action instituted by the board or governing body that issued the orders. Any penalty collected shall be distributed to the County.

11.5.2. Abandoned or Inactive Facilities

Any solid wastes disposal site and facility found to be abandoned or inactive or that is operated, maintained, or closed in a manner so as to violate any of the provisions of this Code or the State Solid Waste Regulations shall be deemed a public nuisance, and such violation may be enjoined by the CDPHE or the BoCC.

11.6. VIOLATIONS OF HABITAT CONSERVATION PLANS (RESERVED)