

Box Elder County Land Use Development & Management Code

Article 2: Administration and Enforcement

Chapter 2-4 – Enforcement

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2-4-010. Purpose.

The purpose of this Chapter is to establish the remedies, penalties, and procedures for enforcement of this Code.

2-4-020. Scope.

The remedies, penalties, procedures, and other matters set forth in this Chapter shall apply to any violation of the provisions of this Code. The remedies, penalties and procedures set forth herein are not intended to limit or waive any remedies or rights provided under the law.

2-4-030. Definitions.

Certain words and phrases in this Chapter are defined in Chapter 1-3 of this Code.

2-4-040. Enforcement Authority.

This Code shall be administered and enforced by the Zoning Administrator.

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2-4-050. Issuance of Permits.

Every official and employee of the County who is vested with the duty or authority to issue permits shall conform to the provisions of this Code and shall issue no permit, certificate, or license for a use, building, or purpose in conflict with the provisions of this Code. Any permit, certificate, or license issued in conflict with the provisions of this Code, intentionally or otherwise, or which is issued upon a false statement of fact material to the issuance of the permit shall be void.

2-4-060. Types of Violations.

- A. Unlawful Acts.** It shall be unlawful for any person to violate any provision of this Code, cause the violation of any provision of this Code, or fail or refuse to do some act required under this Code, including, but not limited to, any of the following acts:
1. To engage in any development, use, construction, remodeling, or other activity of any nature upon the land and improvements thereon subject to the jurisdiction of the County without all of the required permits, approvals, certificates, and other forms of authorization required by this Code or other County ordinance in order to conduct or engage in such activity;
 2. To engage in any development, use, construction, remodeling, or other activity which is contrary to the terms and conditions of any permit, approval, certificate, or other form of authorization required to engage in such activity;
 3. To violate, by act or omission, any lawful term, condition, or qualification placed by the County Commission, Planning Commission, Hearing Officer, or officer of the County, as applicable, upon a required permit, certificate, or other form of authorization or approval granted by the County Commission, Planning Commission, Hearing Officer, or other County officer allowing the use, development, or other activity upon land or improvements thereon;
 4. To erect, construct, reconstruct, remodel, alter, maintain, move, or use any building or structure, or to use any land in violation of this Code;
 5. To reduce or diminish any lot area so that setbacks or open spaces shall be smaller than prescribed by this Code and any applicable site plan or subdivision plat;
 6. To remove, deface, obscure, or otherwise interfere with any notice required by this Code.
- B. Persons Liable.** The owner, owner's agent, tenant and/or occupant of any building or land or part thereof and any builder, contractor, agent and/or other person who participates in, assists, directs, or creates any situation that is contrary to the requirements

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of this Code may be held responsible for the violation and be subject to the penalties and remedies provided herein.

2-4-070. Remedies and Enforcement Powers.

Any violation of the provisions of this Code shall be subject to the enforcement remedies and penalties provided by this Chapter and by Utah law, including, but not limited to, any of the following:

- A. **Withhold Permit.** The County may deny or withhold all permits, certificates, or other forms of authorization pertaining to any land or improvements when an uncorrected violation exists with regard to such land or improvement pursuant to this Code or to a condition or qualification of a permit, certificate, approval or other authorization previously granted by the County Commission, Planning Commission, Hearing Officer, or other County officer. The County may, instead of withholding or denying an authorization, grant such authorization subject to the condition that the violation be corrected. The provisions of this section shall apply regardless of whether the original applicant or owner or current applicant or owner is responsible for the violation in question.
- B. **Revoke Permit.** Any permit may be revoked by the Zoning Administrator when the Zoning Administrator determines the permit was procured by false representation or was issued by mistake.
 - 1. When a permit is revoked hereunder for false representation or mistake, a notice of a revocation shall be in writing and may be served upon the owner, the owner's agent or contractor, or upon any person employed at the site of the building or structure for which such permit was issued. A notice of revocation shall be posted in a prominent location; and, thereafter, no such construction shall proceed under such permit.
 - 2. When plans conflict with applicable requirements, in lieu of revoking a permit, such plans may be modified to conform with applicable requirements as determined appropriate by the Zoning Administrator.
 - 3. When a mistake has been made calculating the fee for any permit, the proper fee shall be assessed and paid by the permit holder within ten (10) days of notification.
- C. **Stop Work.** In accordance with its power to stop work under the building code, the County may stop work, with or without revoking permits, on any building or structure on land where there exists an uncorrected violation of a provision of this Code, a permit, or other form of authorization issued hereunder.

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- D. Revoke Plan or Other Approval.** Where a violation of this Code involves failure to comply with approved plans or a condition upon which plan approval was subject, the original authorizing or approving body or officer may, after ten (10) days' notice to the applicant and other known parties in interest (including any holders of building permits affected) and after a hearing:
1. Revoke the plan or other approval; or
 2. Condition its continuance on strict compliance, the provision of security, or such other conditions as the original authorizing or approving body or officer may reasonably impose.
- E. Injunctive Relief.** The County may seek an injunction or other equitable relief in the district court to stop, prevent or enjoin any violation of this Code, or a permit, certificate, or other form of authorization granted hereunder.
- F. Abatement.** The County may seek a court order from the district court in the nature of mandamus, abatement, or other action or proceeding to abate or remove a violation or to otherwise restore the premises in question to the condition which existed prior to the violation.
- G. Penalty.** A violation of any provision of this Code shall be punishable either:
1. As a class C misdemeanor upon conviction, or
 2. By imposing a civil penalty as provided in Section 2-4-092 of this Code.
- H. Separate and Continuing Violation.** Each day that any violation of this Code is committed, maintained, continued or permitted shall be considered a separate offense for purposes of the penalties and remedies available to the County. Accumulation of the penalties for violations, but not the obligation for payment of penalties already accrued, shall stop on correction of the violation.
- I. File a notice of noncompliance.** File a notice of noncompliance with the County Recorder's Office.
- J. Other Remedies.** The County shall have such other remedies as are and as may be from time to time provided by Utah law or County ordinance for the violation of any provision of this Code.
- K. Remedies Cumulative.** These remedies shall be cumulative.

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2-4-080. Nonconforming Use as Affirmative Defense.

It shall be an affirmative defense to the enforcement of the provisions of this Code that the action complained of is a legally nonconforming lot, nonconforming use, Noncomplying structure, or other nonconformity as governed by the provisions of Chapter 2-3 of this Code.

2-4-090. Enforcement Procedures.

- A. **Complaints.** The Zoning Administrator may investigate any purported violation of this Code and take action as is warranted in accordance with the provisions and procedures set forth in this Chapter.
- B. **Notice of Violation.** If the Zoning Administrator determines that any provision of this Code is being violated and immediate enforcement action is not necessary under the circumstances, the Zoning Administrator shall provide a written notice of violation to the property owner or any other person determined to be responsible for the violation. Such written notice of violation shall indicate the nature of the violation, the action necessary to correct the violation, the warning period established before further enforcement action or penalties, and the potential enforcement action and/or penalties to be imposed for failure to cure the violation within the established warning period. Such notice of violation shall serve to start the warning period.
- C. **Warning Period.** Unless otherwise determined by the Zoning Administrator, the warning period for correction of violations set forth in the notice of violation shall be ten (10) days from the receipt of the notice of violation. If the violation remains uncured after expiration of the warning period, the Zoning Administrator may pursue further enforcement action in accordance with the provisions of this Chapter to achieve compliance with this Code.
- D. **Immediate Enforcement.** In the case of a violation involving either continuing construction or development, or an emergency situation, as reasonably determined by the Zoning Administrator, the County may use the enforcement powers and remedies available to it under this Chapter without prior notice or notice of violation, in such case, the Zoning Administrator shall send the notice to the same parties set forth in the subsection (B) simultaneously with the beginning of enforcement action.
- E. **Enforcement and Abatement.** Any building or structure set up, erected, constructed, altered, enlarged, converted, moved, or maintained; or any land, building, or premises used contrary to the provisions of this Code is hereby declared to be unlawful and a public nuisance. The County Attorney, Prosecutor or other authorized legal counsel may

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commence action or proceedings for the abatement, removal, and enjoinder thereof in the manner provided by law. The County Attorney, Prosecutor or other authorized legal counsel may also take such other steps and may apply to such court as may have jurisdiction to grant such relief as will abate and remove such building or structure, and restrain and enjoin any person, firm, or corporation from setting up, erecting, building, maintaining, or using any building, structure, or property contrary to the provisions of this Code.

2-4-092. Civil Penalty Procedures.

- A. Citation of Civil Penalties.** If any violation of this Code remains uncured after issuance of a notice of violation and expiration of the warning period, a citation of civil penalties may be issued to the property owner or other person determined to be responsible for the violation in accordance with the notice of violation.
- B. Civil Penalties Imposed.** The civil penalty to be imposed for any given violation may be imposed in accordance with the civil penalties fee schedule adopted by the County. Penalties shall be imposed on a graduated scale providing for the first and recurring violations. If a violation is corrected but reoccurs on the same property within one year from the imposition of any civil penalty, any subsequent violation within such one year period shall subject the person to the recurring violation penalty. Civil penalties may not be imposed for a civil violation that occurs in conjunction with another criminal violation as part of a single criminal episode that will be prosecuted in a criminal proceeding.
- C. Request for Hearing.** Any person having received a citation of civil penalties may request a hearing before a hearing officer by filing a written application for hearing. Such request for hearing shall be filed prior to the due date for the civil penalties. The hearing shall be held in accordance with the hearing procedures set forth in Subsection (D) below.
- D. Hearing Procedures.** Any civil penalty hearing shall be held as a public meeting with business transacted during County regularly scheduled hours. A civil penalty hearing shall provide for due process for the parties and shall be recorded or otherwise documented so that a true and correct transcript may be made of the proceedings.
- E. Appeal.** Any person aggrieved of the hearing officer's determination regarding the imposition of civil penalties for a Code violation may appeal such final administrative determination to the Hearing Officer in accordance with the appeal procedures set forth in Section 2-2-180 of this Code.

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- F. Collection.** The County may use any lawful means available to collect any unpaid penalty and fees imposed under this Chapter, including costs and reasonable attorney's fees.

2-4-094. Criminal Penalty Procedures.

- A. Criminal Citation.** If any violation of this Code remains uncured after issuance of a notice of violation and expiration of the warning period, a criminal citation may be issued to the property owner or other person determined to be responsible for the violation in accordance with the notice of violation. All criminal citations for Code violations shall be issued by the County Sheriff's Department in accordance with applicable criminal procedures for issuance of a criminal citation.
- B. Criminal Penalties.** The criminal penalty for Code violations is a class C misdemeanor subject to such fines and incarceration as set forth by Utah law.

2-4-100. Other Enforcement Matters.

- A. Inspection of Buildings, Structures, and Land Uses.** The Zoning Administrator is authorized to inspect buildings and structures in the course of construction, modification, or repair and to inspect land uses to determine compliance with the provisions of this Code.
- B. Right of Entry.** The Zoning Administrator shall have the right to enter any building or property for the purpose of determining compliance with the provisions of this Code. Such right of entry shall be exercised only at a reasonable hour. In no case shall entry be made to any building in the absence of the owner or tenant thereof without consent of the owner or tenant, or a written order of a court of competent jurisdiction.
- C. Interference with Enforcement Personnel.** It shall be unlawful for any person to interfere with lawful enforcement activities of authorized County personnel.
- D. Other Powers.** In addition to the enforcement powers specified in this Chapter, the County may exercise any and all enforcement powers granted to it by Utah law, as may be amended from time to time.
- E. Continuation.** Nothing in this Code shall prohibit the continuation of previous enforcement actions, undertaken by the County pursuant to previous and valid resolutions, ordinances, and laws.

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2-4-110. Appeal.

Any person adversely affected by a final decision of the Zoning Administrator regarding the provisions of this Chapter may appeal that decision to the Hearing Officer as provided in Section 2-2-180 of this Code.