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TITLE 9

LAND USE CODE

Chapter 15 Enforcement

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Chapter 15 Enforcement¹

9-15-1 General Provisions.

- (a) No person shall occupy, use, or change the use of any structure or land except in conformity with all of the provisions of this title and the conditions of any approval granted under this title.
- (b) No person shall erect, move, or alter any building or structure unless a building permit has been issued therefor by the city manager in conformity with all of the requirements of this title. As part of the application for a building permit, an applicant shall submit building plans, landscape plans, site plans, and other evidence to demonstrate compliance with the provisions of this title.
- (c) No person shall occupy, use, or change the use of any building or land for which activity a building permit is required until the city manager has issued a certificate of occupancy. Such certificate shall verify that the entire building and proposed use thereof, as applicable, complies with the building permit and the provisions of this title. Such certificate may be combined with any other certificate of occupancy required by any other provision of this code or any ordinance of the city.
- (d) No person shall occupy, use, or change the use of a building or land for which a certificate of completion is required under subsection 9-2-11(a), B.R.C. 1981, until the city manager has issued a certificate of completion. Such certificate shall verify that the proposed use complies with all conditions of any approval and the provisions of this title.
- (e) In accordance with the provisions of section 5-2-11, "Prosecution of Multiple Counts for Same Act," B.R.C. 1981, each day during which illegal construction, alteration, maintenance, occupancy, or use continues, constitutes a separate offense remediable through the enforcement provisions of this chapter.
- (f) The owner, tenant, and occupant of a structure or land and the agents of each of them are jointly and severally liable for any violation of this title with respect to such structure or land.
- (g) For any violation of any provision of this title or any approval granted under this title, the city manager may pursue, singly or in combination, any remedies provided by this chapter.
- (h) No person shall intentionally or negligently misrepresent the provisions of this title with respect to the nature or use of land, including, without limitation, permitted uses, zoning district designations, occupancy limitations, and status of development thereon.

Ordinance No. 4928 (1985)

9-15-2 Inspections Authorized.

In order to ensure compliance with the provisions of this title, any approval granted under this title, or action taken to remedy any violation of such title or approval, the city manager shall, subject to the provisions of subsection 2-6-3(e), B.R.C. 1981, inspect any structure or land.

9-15-3 Administrative Procedures and Remedies.

(a) If the city manager finds that a violation of any provision of this title or any approval granted under this title exists, the manager, after notice and an opportunity for hearing under the procedures prescribed by chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, may take any one or more of the following actions to remedy the violation:

- (1) Impose a civil penalty according to the following schedule:
 - (A) For the first violation of the provision or approval, \$100.00;
 - (B) For the second violation of the same provision or approval, \$300.00; and
 - (C) For the third violation of the same provision or approval, \$1,000.00;
- (2) For a violation concerning the use of a residential building under a rental license, revoke such license;
- (3) Require the filing of a declaration of use as provided in section 9-15-6, "Declaration of Use," B.R.C. 1981;

or

(4) Issue an order reasonably calculated to ensure compliance with the provisions of this title or any approval granted under this title.

(b) Prior to the hearing, the city manager may issue an order that no person shall perform any work on any structure or land, except to correct any violation found by the manager to exist with respect to such structure or land.

(c) If notice is given to the city manager at least forty-eight hours before the time and date set forth in the notice of hearing on any violation that the violation has been corrected, the manager will reinspect the structure or land. If the manager finds that the violation has been corrected, the manager may cancel the hearing.

(d) No person shall fail to comply with any action taken by the manager under this section.

Ordinance Nos. 5391 (1991); 5639 (1994)

9-15-4 Criminal Sanctions.

(a) The city attorney, acting on behalf of the people of the city, may prosecute any violation of this title or any approval granted under this title in municipal court in the same manner that other municipal offenses are prosecuted.

(b) The penalty for violation of any provision of this title is a fine of not more than \$2,000.00 per violation. In addition, upon conviction of any person for violation of this title, the court may issue a cease and desist order and any other orders reasonably calculated to remedy the violation. Violation of any order of the court issued under this section is a violation of this section and is punishable by a fine of not more than \$4,000.00 per violation, or incarceration for not more than ninety days in jail, or both such fine and incarceration.

(c) Notwithstanding the provisions of subsection (b) of this section, the following specific sentencing considerations shall apply to fines imposed for violations of section 9-8-5, "Occupancy of Dwelling Units," B.R.C. 1981:

(1) The court shall consider any evidence presented by the defendant that a potential fine would be confiscatory. A confiscatory fine is a fine that would deprive a normally capitalized owner of the ability to continue operating a rental housing business of the sort involved in the case before the court. No fine that is confiscatory shall be enforced by the court.

(2) In imposing a fine in any single case or in any consolidated cases, the court may weigh all factors normally and properly considered in connection with the imposition of fines, including the seriousness of the violation, the past record of the defendant, the economic circumstances of the defendant and all mitigating or aggravating factors relevant to the violation or to the defendant. In addition, in determining the amount of any fine, the court may consider:

(A) The imposition of a fine that would deprive the defendant of any illegal profit collected because of the occurrence of the over-occupancy violation or violations on the rental housing property;

(B) The imposition of a reasonable penalty in addition to any level of fine that is attributable to illegally obtained profit; and

(C) The imposition of such additional fine as is determined by the court to constitute a reasonable amount to be suspended in order to ensure compliance with any terms of probation imposed by the court.

(3) No fine imposed in a single case alleging multiple dates of violation, nor any fine in consolidated cases alleging multiple days of violation, shall exceed the maximum fine that might be imposed for fifteen separate violations unless the court finds special aggravating circumstances. Where special aggravating factors are at issue, the following procedures shall apply:

(A) The defendant shall be entitled to ten days' notice of any special aggravating factors upon which the prosecution intends to rely at the sentencing hearing or about which, based upon evidence previously presented, the court is concerned. If necessary in order to provide such notice, a defendant shall be entitled to a continuance of the sentencing hearing.

(B) A judicial finding of the existence of special aggravating factors shall not mandate that the court impose any particular level of fine but will, rather, provide the sentencing court with discretion to determine a fine based upon all the criteria set forth in this subsection.

(C) Special aggravating factors, for the purpose of this subsection, shall require a judicial finding of one or more of the following:

- (i) The occupancy violations at issue were flagrant and intentional on the part of the defendant;
- (ii) The defendant, after learning of the over-occupancy condition, failed to attempt corrective action over a sustained period of time; or
- (iii) A fine equivalent to the maximum fine permitted for fifteen separate violations would be inadequate to disgorge the defendant of illegal profits obtained as a consequence of the violations or would be inadequate to ensure that the violation is neither profitable nor revenue neutral for the offender.

Ordinance Nos. 4928 (1985); 5639 (1994); 7288 (2003)

9-15-5 Other Remedies.

The city attorney may maintain an action for damages, declaratory relief, specific performance, injunction, or any other appropriate relief in the District Court in and for the County of Boulder for any violation of any provision of this title or any approval granted under this title.

9-15-6 Declaration of Use.

If the city manager determines that a person is using a structure or land in a way that might mislead a reasonable person to believe that such use is a use by right or otherwise authorized by this title, the manager may require such person to sign under oath a declaration of use that defines the limited nature of the use and to record such declaration in the office of the Boulder County Clerk and Recorder against the title to the land. In addition to all other remedies and actions that the city manager is authorized to use under the Boulder Revised Code or other applicable federal, state or local laws to enforce the provisions of this title, the city manager is authorized to withhold any approval affecting such structure or land, including, without limitation, a building permit, use review, site review, subdivision, floodplain development permit, or wetland permit until such time as the person submits a declaration of use that is in a form acceptable to the city manager.

Ordinance No. 7117 (2001)

9-15-7 Private Right of Action.

Any person injured by a violation of any provision of this title or approval granted under this title may maintain an action for damages, declaratory relief, specific performance, injunction, or any other appropriate relief in the District Court in and for the County of Boulder against the person causing the violation. If plaintiff prevails, plaintiff shall be entitled to an award of attorney's fees. Upon filing such an action, plaintiff shall send notice thereof to the city, but nothing in this title authorizes the city or its employees or agents to be named as a defendant in such litigation.

9-15-8 Unauthorized Buildings and Uses Arising Before December 31, 1962.

(a) It is a specific defense to a charge of violating any provision of chapter 9-5, "Modular Zone System," 9-6, "Use Standards," 9-7, "Form and Bulk Standards," 9-8, "Intensity Standards," or 9-9, "Development Standards," B.R.C. 1981, that the building, the use of the building, or the alteration of the building which is in violation was in existence on or before December 31, 1962, has remained continuously in existence since then, and met all applicable zoning and building requirements in effect at the time the use was changed or the work was done. If evidence of such building, use, or alteration appears on the Maps of the City of Boulder published by Marden Maps, copyright 1952, as maintained for inspection in the planning department, it is presumed to have been in existence before December 31, 1962.

(b) Upon notification in any manner by the city that a current use or structure is unauthorized, a person desiring to use the specific defense set forth in subsection (a) of this section shall apply to the city manager within thirty days for a building permit and a certificate of occupancy, indicating the date on which the use was changed or the work was done or that the work was done before the applicant purchased the property. In every case, the applicant shall indicate that the use was changed or the work was done before December 31, 1962.

(c) The city manager will provide to an applicant under this section a list of measures that must be taken to bring the building, use, or alteration into compliance with this title and title 10, "Structures," B.R.C. 1981. In the event that a measure required to bring the property into compliance cannot be accomplished due to lot size, location of structure, or setback requirements, the city manager may waive any such requirements as needed to permit compliance based on

the manager's reasonable opinion of how the values served by the various requirements of the zoning code will be best served.

(d) The city manager will examine the use or inspect the work and issue a certificate of occupancy if:

(1) The use or work met the applicable zoning and building code standards in effect at the time that the use was changed or the work was done; and

(2) The applicant has taken the measures required under subsection (c) of this section.

In the case of rental housing, the property also shall meet all current requirements of chapter 10-2, "Housing Code," B.R.C. 1981.

(e) The applicant shall pay the current water and wastewater plant investment fees if such would otherwise be due on an ordinary permit application, any development excise tax or transportation excise tax, or other excise tax similarly due, any park or other special district fees similarly due, and any water, wastewater, and other charges or increases therein that would have been charged had the city been properly notified of the change in use or status when it occurred. These continuing fees shall be immediately due from the current owner for any period during which such owner has or had any interest, direct or indirect, in the property and from any previous owner for any such period if and when such owner reacquires any such interest.

(f) Failure to comply with subsections (b) and (e) of this section renders the specific defense of subsection (a) of this section unavailable.

Ordinance Nos. 5391 (1991); 5562 (1993); 7117 (2001)

9-15-9 Multiple Dwelling Units and Occupancy - Specific Defenses.

(a) Specific Defenses to Alleged Violations Related to Multiple Dwelling Units: If a charge of violation of any provision of chapter 9-5, "Modular Zone System," 9-6, "Use Standards," 9-7, "Form and Bulk Standards," 9-8, "Intensity Standards," or 9-9, "Development Standards," B.R.C. 1981, is premised solely upon the multiple dwelling units provisions of subsection 9-16-1(c), B.R.C. 1981, it is a specific defense to such charge that, on a continuing basis, the residents of the dwelling unit share utilities and keys to all entrances to the property and that they function as a single housekeeping unit. For purposes of this section, to "function as a single housekeeping unit" means to share major functions associated with residential occupancy and to share a single common kitchen as the primary kitchen.

(b) Specific Defenses to Alleged Violations Related to Occupancy of Units for Guest Occupancy: If a charge of violation of any provision of chapters 9-6, "Use Standards," and 9-7, "Form and Bulk Standards," or section 9-8-5, "Occupancy of Dwelling Units," B.R.C. 1981, is premised upon exceeding allowable occupancy limits based upon the number of persons residing in or occupying a dwelling unit, it is a specific defense as to any alleged occupant that such person spent the night in the unit without remuneration as a social guest for periods of time which never exceeded a cumulative total of fourteen nights in any ninety day period. "Spending the night" for the purposes of this subsection means to be on the premises during the hours of 12:00 midnight through 5:00 a.m., or to sleep on the premises for more than five hours at any time in any twenty-four hour period. If the defense is established as to an alleged occupant, that person shall be considered a social guest and not an occupant for the purposes of proof of the charge of violation. Conversely, any person who spends more than a cumulative total of fourteen nights in any ninety day period in any dwelling unit is an occupant of that unit for those nights for the purposes of the occupancy limits established in this title.

(c) Specific Defenses to Alleged Violations Related to Occupancy of A Unit Which Is a Rental Property: The following shall constitute specific defenses to any alleged violation of subsection 9-8-5(a), B.R.C. 1981, relating to the occupancy of units:

(1) It shall be a specific defense to an alleged violation of subsection 9-8-5(a), B.R.C. 1981, that a defendant is a nonresident landlord or nonresident property manager and:

(A) Prior to the initiation of the prosecution process, the defendant undertook and pursued means to avoid over-occupancy violations by engaging in active and diligent property management practices that were reasonable under the circumstances; or

(B) The defendant had no actual knowledge of the over-occupancy of the relevant rental housing property prior to the initiation of the prosecution process. However, this specific defense shall not apply when a

defendant reasonably should have been aware of the occupancy violation through the use of active and diligent property management practices.

(C) For the purposes of this subsection, the initiation of a prosecution process occurs when any of the following events occurs:

- (i) A potential defendant is first contacted by a city investigator in connection with the investigation of an occupancy violation;
- (ii) A summons and complaint alleging an occupancy violation is served upon a defendant; or
- (iii) A criminal complaint is filed against a defendant alleging an occupancy violation.

(D) For purposes of this subsection, a "nonresident landlord" or "nonresident property manager" means a person who is neither a full-time nor part-time resident of the property that he or she owns or manages.

(2) For the purpose of this subsection, "active and diligent management practices" means those practices that, under the circumstances, are reasonably likely to prevent or correct any over-occupancy violations. The following factors will be considered in determining whether or not a nonresident landlord or nonresident property manager utilized diligent and active management practices. However, the existence or nonexistence of any single one of these factors shall not, of itself, be determinative:

(A) Written leases or other writings that document the maximum permitted number of occupants in each rental housing unit, the names of such occupants, the procedures required to add additional occupants, and a description of the potential consequences that may apply in any case of over-occupancy;

(B) Annual inspections of rental premises and more frequent inspections when tenants change or when there is any indication of problems at a rental housing site;

(C) The use of periodic written communications to remind tenants of applicable occupancy rules;

(D) Investigation and prompt action, where appropriate, when there are indications that occupancy violations may be occurring. Such indications may include, but are not limited to, the following:

- (i) Receipt of a rent or lease payment from any person not listed on the lease or approved as an agent of the resident;
- (ii) Receipt of a complaint or information from any source regarding alleged occupancy violations;
- (iii) Receipt of a complaint or information from any source related to excess parking, excess trash, excess noise or of any other condition or impact associated with a rental housing site that would put a reasonable property manager on notice that additional investigation related to occupancy is appropriate;
- (iv) Receipt of a complaint or information from any source suggesting that conditions at the rental housing site are less than safe or habitable; or

(E) Any other reasonable steps taken to ensure compliance with applicable code provisions with regard to levels of occupancy.

Ordinance Nos. 5562 (1993); 5660 (1994); 7484 (2006); 7535 (2007)

¹ Adopted by Ordinance No. 7476.