

## **CHAPTER 16**

### **Land Use Code**

#### **Article VI**

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## ARTICLE VI

### Enforcement

#### **Sec. 16-6-10. Responsible enforcement entity.**

The Town Clerk shall be responsible for enforcing the provisions of this Code. The Town Clerk may designate other Town employees to assist him or her. The Town Clerk is also referred to as the *enforcement official*. Any criminal enforcement shall be by the issuance of a complaint and summons to Municipal Court by a peace officer. (Ord. 480 §6.1, 2003)

#### **Sec. 16-6-20. Inspection authority.**

(a) Upon presentation of proper credentials, the Town Clerk 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 Town Clerk determines there is an emergency.

(b) The enforcement official shall have authority to notify owners or occupiers of land in the Town of violations of this Code, and to issue orders requiring compliance within specified times, not longer than six (6) months, unless a longer time is specified by the Zoning Board of Appeals.

(c) The enforcement official may initiate proceedings in the Municipal Court for the punishment of persons who violate this Code. The issuance of a notice or order pursuant to Subsection (b) above shall not be a prerequisite to the initiation of any such proceeding in the Municipal Court. (Ord. 480 §6.1, 2003)

#### **Sec. 16-6-30. Violations.**

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

(1) **Activities Inconsistent with Code.** Erecting, constructing, reconstructing, remodeling, altering, maintaining, expanding, moving or using any building, structure or sign, or engaging in development or subdivision of any land in contravention of any zoning, subdivision, sign or other regulation of this Code, including all required approvals.

(2) **Land-Disturbing Activities Inconsistent with Code.** Excavating, grading, cutting, clearing or undertaking 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.

(3) **Nonconforming Uses Inconsistent with Code.** Creating, expanding, replacing or changing a nonconforming use, structure, lot or sign except in compliance with this Code.

(4) **Making Lots or Setbacks Nonconforming.** Reducing or diminishing the lot area, setbacks or open space below the minimum required by this Code.

(5) **Increasing Intensity of Use.** Increasing the intensity of use of any land or structure, except in accordance with the procedural and substantive standards of this Code.

(6) Activities Inconsistent with Permit. Engaging 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.

(7) Activities Inconsistent with Conditions of Approval. Failure to comply with any terms, conditions or limitations placed by the Board of Trustees upon any final development plan, subdivision plat, permit or other form of authorization. (Ord. 480 §6.1, 2003)

**Sec. 16-6-40. Penalty for violations.**

Any person, including but not limited to the officers and agents of a corporation responsible for its actions or inaction, and the partners or members of a partnership, firm or joint venture, either as owner, lessee, occupant or otherwise, who violates or causes the violation of any of the provisions of this Code, shall be guilty of a separate offense for each and every day or portion thereof during which a violation is committed, permitted or continues. An architect, builder, contractor, agent or other person who commits, participates in or assists in any such unlawful use of a building or land shall be guilty to the same extent as the owner or occupier of the land, and the owner shall be guilty whether or not he or she participates. Any person convicted of a violation shall be punished as set forth in Section 1-4-20 of this Code. No fine sentence shall be suspended except on the condition that the offender complies with this Code within a reasonable time. (Ord. 480 §6.1, 2003)

**Sec. 16-6-50. Civil remedies and enforcement powers.**

In addition to criminal prosecution for violations, the Code Enforcement Officer, Town Clerk or the Board of Trustees shall have the following civil remedies and powers to enforce this Code:

(1) Notice of Violation and Corrective Action Order.

a. Nonemergency Violations. In the case of violations of this Code that do not constitute an emergency or require immediate attention, written notice of the nature of the violation and required corrective action to be taken shall be given to the property owner, agent, occupant or to the applicant for any relevant permit. Notice shall be given in person, by certified U.S. mail (return receipt requested) or by posting notice on the premises. The notice shall specify the Code provisions allegedly in violation, and shall state that the individual has a period of thirty (30) days from the date of the receipt of the notice or posting 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.

b. Emergency Violations. In the case of violations of this Code that constitute an emergency as a result of safety or public concern, or violations that will create increased problems or costs if not remedied immediately, the Code Enforcement Officer, Town Clerk, Building Official or Board of Trustees may use the enforcement powers available under this Article without prior notice, but 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. Extension of Time for Correction. The Board of Trustees may grant an extension of the time to cure an alleged violation, up to a total of ninety (90) days, if the Board of Trustees finds that, due

to the nature of the alleged violation, it reasonably appears that it cannot be corrected within thirty (30) days.

(2) Deny/Withhold Permits.

a. The Town Clerk or Building Official may 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.

b. Where a property owner, agent or other person has a record of an outstanding serious violation or violations of this Code, the Town Clerk, Building Official and/or Board of Trustees shall be authorized to deny or withhold all permits, certificates of occupancy or other forms of authorization for any use or development activity undertaken by such person until the outstanding violation is corrected. This provision shall apply whether or not the property for which the permit or other approval is sought is the property in violation.

c. The denial or withholding of a permit by the Town Clerk or Building Official may be appealed to the Board of Adjustment as provided in Section 16-3-540 of this Chapter.

(3) Revocation of Permits.

a. Public Hearing Required. The Board of Trustees may revoke any development permit, building permit or other authorization, after notice and a public hearing.

b. Notice of Public Hearing. The public hearing on the revocation of a development permit, building permit or other authorization shall be conducted during a regular or special meeting of the Board of Trustees not less than seven (7) days nor more than fourteen (14) days from the date the notice of the hearing is given. Notice of hearing shall be deemed given to the owner, the owner's agent or other person to whom the development permit was issued, upon deposit of said notice in the U.S. mail by certified mail, return receipt requested, addressed to the last known address of said person. Additional methods of service may also be utilized to give notice of the public hearing.

c. Findings. Following the public hearing, the Board of Trustees, upon a finding of the following, may revoke any development permit, building permit or other authorization:

1. There is a departure from the approved plans, specifications or conditions of approval;
2. There is a violation of any provision of the Land Use Code;
3. The development permit was obtained by false representation; or
4. The development permit was issued in error.

d. Notice of Revocation. Written notice of revocation shall be served upon the owner, owner's agent, applicant or other person to whom the permit was issued, by certified mail, return receipt requested, or such notice may be posted in a prominent location at the place of the violation. No work or construction or use of the property shall proceed after service of the revocation notice.

(4) Stop Work Order.

a. Issuance of Stop Work Order. The Town Clerk, Building Official, Code Enforcement Officer or Board of Trustees may issue a written 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 development permit, building permit or other form of authorization. The stop work order shall specify the Code provisions allegedly in violation. Service of the order shall be given in person, by certified U.S. mail (return receipt requested) or by posting notice on the premises. 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. The notice shall also state any appeal and/or variance procedures available pursuant to this Code.

b. Timing/Notice. The stop work order may be issued in conjunction with a notice of violation or subsequent to such notice. The stop work order may also specify a shorter time for correction of the violation than the thirty-day period specified in Subsection (1)a. above. The stop work order shall also indicate that failure to comply with the order may subject the violator to criminal liability as penalty for the violation.

(5) Abatement or Injunctive Relief. The Board of Trustees, through the Town Attorney, may initiate injunction or abatement proceedings or other appropriate legal action in the District Court or other court of competent jurisdiction to abate, remove or enjoin such violation and to recover damages, costs and reasonable attorney's fees incurred in the abatement and removal of such violation. (Ord. 480 §6.1, 2003)

**Sec. 16-6-60. 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. (Ord. 480 §6.1, 2003)

**Sec. 16-6-70. Continuation of prior enforcement actions.**

Nothing in this Code shall prohibit the continuation of previous enforcement actions undertaken by the Town pursuant to previous regulations. (Ord. 480 §6.1, 2003)

**Sec. 16-6-80. Appeals of enforcement actions.**

Appeals of any order, requirement, decision or determination made by an administrative official in the enforcement of this Article shall be made to the Board of Adjustments in accordance with the provisions of Section 16-3-520 of this Chapter. (Ord. 480 §6.1, 2003)

**Sec. 16-6-90. Liability of Town.**

This Code shall not be construed to hold the Town responsible for any damages to persons or property by reason of the inspection or reinspection or failure to inspect or reinspect, or by reason of issuing a building permit or pursuing or failing to pursue an action for injunctive relief. (Ord. 480 §6.1, 2003)