

**LUDC  
2013**

GARFIELD COUNTY, COLORADO

# **Article 12: Enforcement, Violations, Penalties and Appeals**



# ARTICLE 12

## ENFORCEMENT, VIOLATIONS, PENALTIES AND APPEALS

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# ARTICLE 12: ENFORCEMENT, VIOLATIONS, PENALTIES, AND APPEALS

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## 12.101. ENFORCEMENT AUTHORITY.

Provisions of this Code shall be enforced by the BOCC and their authorized staff utilizing all authority granted under Colorado law.

## 12-102. VIOLATIONS.

### A. Land Use Approvals.

It shall be unlawful to use real property or the improvements on real property to undertake the development of real property; to erect, construct, reconstruct, remodel, restore, or improve a building or structure; to excavate land; or to alter or change the use of any real property or improvements on real property, within unincorporated Garfield County in a way inconsistent with, not in accordance with, or not specifically allowed by this Code and without first obtaining all land use approvals or permits required by this Code.

### B. Building Permits.

It shall be unlawful to use real property or the improvements on real property to undertake the development of real property; to erect, construct, reconstruct, remodel, restore, or improve a building or structure; to excavate land; or to alter or change the use of any real property or improvements on real property, within unincorporated Garfield County in a way inconsistent with, not in accordance with, or not specifically allowed by the Building Code and without first obtaining a Building Permit in accordance with the provisions of this Code and the Building Code of the County.

### C. Conditions of Approval.

It shall be unlawful to use real property or the improvements on real property to undertake the development of real property; to erect, construct, reconstruct, remodel, restore, or improve a building or structure; to excavate land; or to alter or change the use of any real property or improvements on real property, within unincorporated Garfield County in a way inconsistent with, or not in accordance with the terms and conditions of any land use approval or Building Permit granted by the BOCC, its staff or authorized agents pursuant to the terms of this Code.

### D. Subdivisions.

1. In addition to the violations set forth above, any owner, subdivider, or agent of a subdivider who transfers or sells any property within a Subdivision before a Final Plat has been approved by the BOCC and filed and recorded by the Clerk and Recorder shall have violated the terms of this Code.
2. Any owner, subdivider, or agent of a subdivider who improves, sells, or develops real property within a Subdivision in a manner that is inconsistent with and not permitted by the Subdivision improvements agreement authorizing the development of such Subdivision, shall be deemed to have violated the provisions of this Code.

### E. Sign Permits.

It shall be unlawful to display, construct, alter, use, maintain or locate a sign within unincorporated Garfield County in a way inconsistent with, not in accordance with, or not

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specifically allowed by this Code and without first obtaining all land use approvals or permits required by this Code.

**F. Developments in Areas and Activities of State Interest.**

Per C.R.S. § 24-65.1-101 *et seq.*, it shall be unlawful to use any real property or the improvements on real property to undertake the development of real property; to erect, construct, reconstruct, remodel, restore, or improve a building or structure; to excavate land; or to alter or change the use of any real property or improvements on real property within unincorporated Garfield County in a way inconsistent with, not in accordance with, or not permitted by those regulations of this Code specifically directed to controlling development in areas or activities of State interest.

**G. Continuing Violations.**

Each day during which any violation of this Code or any part hereof continues shall be deemed a separate offense and violation.

**12-103. ENFORCEMENT PROCEDURES.**

**A. Authority.**

The County Enforcement Officials and the Garfield County Attorney are hereby delegated the power to enforce all provisions of this Code, the Building Code, and the regulations of areas and activities of State interest including, without limitation, any condition imposed on an approval, and may utilize any remedies authorized under Colorado law or the provisions of this Article.

**B. Notice of Violation.**

Whenever the Enforcement Officials have personal knowledge of any violation of this Code, such person shall give written notice of violation to the purported violator to correct or cease and desist from continuing the violation. An immediate order to cease the violation shall be tendered in the case of a severe risk to health, safety, and welfare of other citizens, but in no event shall a correction period longer than 10 days be granted by the Enforcement Officials for correcting the violation.

**C. Required Removal of Improvements.**

The Enforcement Officials, in the notice of violation set forth above, are hereby authorized to require the immediate removal of all fixtures, utilities, appliances, structures, or other improvements or to require the removal or restoration of any other development, or cessation of use when such use or development is not permitted by the provisions of this Code, or when such development violates the terms and conditions of an existing approval, including the terms of an improvements agreement. If compliance with requested removal or cessation of activities is not achieved, an Enforcement Official may proceed with criminal or civil enforcement or both as set forth below. Such action may be taken with the assistance and concurrence of the County Attorney.

**D. Revoking and Withholding Building Permits.**

1. In the event that an Enforcement Official has personal knowledge of any violation of this Code or the Building Code, or other regulations set forth herein, the Official may revoke any Building Permit that has been issued for improvements of the subject property where the violation is known to exist.
2. In the event that an Enforcement Official has knowledge of any violation of this Code, the Building Code, or other provisions of this regulation, no land use approvals or Building or other Development Permits shall be issued with respect to the property where the violation is believed to exist during the period of such violation. The BOCC may suspend or revoke any existing land use approvals for the property where the known

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violation exists, subject to conducting a properly noticed hearing where such hearing would be required for the land use approval that is the subject of the revocation, following the same process and notification required to obtain such original approval.

**E. Withdrawal of Development Permit.**

If an activity or development permitted by a Development Permit is not operated in strict compliance with the terms and conditions attached to that permit, that Development Permit may be withdrawn utilizing the same procedures and same period of notification required to obtain the original approval for such Development Permit.

**F. Forfeiture of Vested Property Right.**

1. If a Site Specific Development Plan is approved with conditions, the failure to abide by the terms and conditions of approval may result in a forfeiture of vested property right, and may result in revocation or suspension of the approval.
2. Forfeiture of a vested property right and revocation or suspension of a development approval shall be by resolution of the BOCC after Public Hearing in accordance with this section, as well as the provisions of section 12-106.A., Takings Determinations. Notice of the hearing shall be published and mailed to the owner of applicable real property in accordance with that section.
3. Any hearing conducted for forfeiture of a vested property rights shall also be considered a hearing for final determination of any allegations or claims concerning a taking of property without just compensation and such claim shall be resolved under this section, as well as the provisions of section 12-106.A., Takings Determinations.

**G. Criminal Enforcement.**

Should the noticed violator fail to correct the noticed violation within the required time period, an Enforcement Official may request that the Garfield County Sheriff issue a summons and complaint to the violator stating the nature of the violation with sufficient particularity to give notice of said charge to the violator. In all respects, the Enforcement Official, together with the Garfield County Sheriff, shall comply with the provisions of C.R.S. § 30-28-124.

**H. County Court Civil Penalty.**

The Garfield County Attorney may elect to pursue remedies under either C.R.S. § 30-28-124, , or C.R.S. § 30-28-124.5, seeking imposition of criminal penalties, civil penalties, or both. In the event that the County follows the provisions of C.R.S. § 30-28-124.5, County officials shall comply with the provisions of that section.

**I. Civil Enforcement.**

Notwithstanding the listing of enforcement powers in this Article, and in addition to those powers, in the event any building or structure is or is proposed to be erected, constructed, reconstructed, altered, or used, or any land is proposed to be used in violation of this Code or in a manner not specifically permitted by this Code or the Building Code, the County Attorney, in addition to other remedies provided by law, may institute a request for injunction, mandamus, abatement, or other appropriate action or proceeding to prevent, enjoin, abate, or remove such unlawful erection, construction, reconstruction, alteration, or use. The County Attorney may proceed with such civil enforcement after authorization by the BOCC. Such action by the County Attorney may include any request for declaration and relief under an improvements agreement.

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**J. Subdivision Enforcement.**

In addition to any other enforcement powers set forth in this Article, the BOCC shall have the authority to bring an action to enjoin any owner, subdivider, or agent of a subdivider from selling land before a Final Plat for such subdivided land has been approved by the BOCC and recorded with the County Clerk and Recorder. Additionally, the BOCC or any purchaser of any lot or parcel of land subject to a Plat restriction that is part of an approved Subdivision subject to a Subdivision improvements agreement, upon on the sale, conveyance, or transfer of title, shall have the authority to bring an action against a subdivider or agent of a subdivider to compel enforcement of the improvements agreement. Such authority shall include the right to compel rescission of the sale, conveyance, or transfer of title of any lot(s) or tract(s) of land contrary to the provisions of any Plat restriction or any separate recorded instrument and shall include the power to vacate any approved Plat as such Plat concerns any property that has not been conveyed to ownership separate from the subdivider or subdivider's agent.

**K. Areas and Activities of State Interest.**

For any area designated as an area of State interest or for any activity designated as a matter of State interest for which a permit is required by this Code, the BOCC may seek to enjoin any development in such designated area or designated activity by any person who has not obtained the required permit.

**12-104. PENALTIES.**

**A. Criminal Penalties.**

Any person convicted of violating any provision of this Code shall be guilty of an offense as set forth in C.R.S. § 30-28-124, and shall be subject to all fines and penalties as set forth therein.

**B. Civil Penalties.**

Any person found to have violated any provision of this Code shall be subject to the imposition of a penalty as set forth in C.R.S. § 30-28-124.5, and the property that is the subject of the penalty shall be subject to the lien set forth therein.

**C. Civil Cause.**

Any person found to have violated any provision of this Code, any conditions imposed pursuant to this Code, or any agreement required by this Code, shall be subject to the payment of all costs, fees, and expenses incurred by the County in abating such violation.

**12-105. INSPECTION.**

The Enforcement Officials and their designated agents are hereby authorized to inspect any lands, buildings, or improvements to determine if such are in compliance with this Code or any Building Code. Any official performing such inspection shall abide by all laws of search and seizure as set forth by Federal and State statutory and constitutional provisions.

**12-106. DECISION REVIEW.**

**A. Takings Determinations.**

1. General. As a prerequisite to any appeal, defense of, or judicial review of a decision, a property owner who is an Applicant for a Development Permit, who believes he is adversely affected or aggrieved by a determination by the Planning Commission, BOCC, or Director and who believes or contends that the determination constitutes a taking of all economically beneficial use of private property without just compensation, in violation of the United States or Colorado Constitutions, or a taking of a

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vested property right, shall request a hearing before the BOCC pursuant to this section.

2. Process for Appeal. An appeal shall be submitted to the Community Development Department no later than 15 days from the date of the decision that the Applicant believes constitutes a taking. The BOCC shall conduct a hearing within 45 days of the receipt of a written appeal request. Within 15 days after such hearing, the BOCC shall render its decision. The hearing shall be conducted as an open Public Meeting. The BOCC shall provide written notification to the Applicant of such hearing at least 3 calendar days but not more than 10 calendar days prior to the date of the hearing. Such notification shall be tendered by either personal service of notice or mailing by certified United States mail.
3. Applicability. In the event an Applicant appeals under this section, the determination on the underlying application shall not be considered final for purpose of judicial review until the takings appeal has been decided by the BOCC.
4. Standards. The BOCC shall determine whether the property owner will be denied all reasonable use and economic return or will be denied all use of a vested property right as a result of the questioned determination. In making its decision, the BOCC shall consider the value of the property as a whole or the existence of a demonstrated vested property right. The BOCC shall also consider the beneficial uses that remain in the property, notwithstanding the challenged determination, and shall give due consideration to the reasonable investment expectations of the landowner, unless such claim involves a taking of a vested property right.
5. Relief. If the BOCC determines that a taking has or may occur, it shall take such action as it deems appropriate to remedy the situation which may include awarding the relief that would be available pursuant to the Code. If such relief requires consideration at a Public Hearing, the BOCC shall establish such hearing with appropriate required notifications. The BOCC shall determine who shall bear the cost of such notification for any required Public Hearing based upon equitable considerations.
6. Qualified Experts. The BOCC may, in its discretion, seek the assistance of qualified experts in evaluating the information submitted and the opinions of the property owner regarding the alleged taking.

**B. Regulatory Impairment of Property Rights.**

If a property owner elects to file a notice of regulatory impairment of property rights pursuant to C.R.S. § 29-20-203, the following shall apply:

1. The BOCC shall consider such notice rendering a decision as required by C.R.S. § 29-20-204 at a Public Meeting within the time frame required by that section.
2. Consideration of that notice shall be a final determination under the provisions of this Article with no further or additional right to appeal the determination to the BOCC.
3. Any decision rendered by the BOCC under C.R.S. § 29-20-204 shall be considered final for purposes of subsequent judicial review, which review shall be limited as provided by that statute.

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**C. Appeals.**

1. Board of Adjustment.
  - a. The Board of Adjustment will consider appeals of administrative interpretations entered by Enforcement Officials consistent with the provisions of Section 1-203.
  - b. The Board of Adjustment shall hear appeals concerning requests for variance to the Code consistent with the provisions of Section 1-203.
2. BOCC and Planning Commission. Appeals from final decisions of the BOCC and the Planning Commission shall be conducted pursuant to appropriate provisions of the Colorado Revised Statutes and the Colorado Rules of Civil Procedure.

**12-107. PARTIES OF INTEREST.**

For the purpose of determining the ability to seek judicial review of a decision resulting from a quasi-judicial hearing, the parties in interest who may seek such review shall be limited to those individuals or entities entitled to receive written, mailed notification of the hearing that led to the contested decision. Although all individuals or entities may participate in a quasi-judicial Public Hearing, only those individuals and entities shown by the record of that proceeding as those with a right to receive such written, mailed notification shall be recognized as parties in interest for the purpose of any subsequent judicial review of the action emanating from such hearing.