

CHAPTER 16 – TIMNATH LAND USE CODE

ARTICLE 6 – ENFORCEMENT

16.6.1 Enforcement.....2

16.6.1 Enforcement

- A. Responsible Enforcement Entity.** The Board, or its designee, shall be responsible for enforcing the provisions of this Chapter. Any criminal enforcement shall be by the issuance of a complaint and summons to Municipal Court by a peace officer.
- B. Authorization for Inspections.** The Town may enter any building, structure, real property, or premises to ensure compliance with the provisions of this Code as provided in Chapter 1 of this Code.
- C. Violations and Enforcement Procedures.** Violations. It shall be unlawful to violate any provision of this Chapter.
- 2. Specific Activities Violating this Chapter.** It shall be unlawful to undertake any of the following activities:
- a. Activities Inconsistent with Code.** Erecting, constructing, reconstructing, remodeling, altering, maintaining, expanding, demolishing, moving, or using any building, structure, or sign, or to engage in development or subdivision of any land in contravention of any zoning, subdivision, sign, or other regulation of this Code, including terms and conditions of all required approvals;
 - b. 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;
 - c. Nonconforming Uses or Structures Inconsistent with Code.** Creating, expanding, replacing; or changing a nonconforming use, structure, lot, or sign except in compliance with this Code;
 - d. Making Lots or Setbacks Nonconforming.** Reducing or diminishing the lot area, setbacks, or open space below the minimum required by this Code;
 - e. 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;
 - f. 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; or

- g. *Activities Inconsistent with Conditions of Approval.* Failure to comply with any terms, conditions, or limitations placed by the Town upon any final development plan, subdivision plat, permit, or other form of approval by the Town.
 - h. Any agreement to convey, or conveyance of any lot or unsubdivided parcel of land contrary to the provisions of this Chapter or prior to approval of a final plat by the Town. It shall be a separate violation for each lot or parcel of land sold or agreed to be sold.
 - i. *Activities Inconsistent with an Order of the Town.* Failure to comply with any stop work order, abatement order, or any other order issued by the Town pursuant to this Code.
3. Separate Violations. Any person 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.
4. Remedies and Enforcement Powers. Violations of this Chapter may be enforced in the Timnath Municipal Court or any other court with jurisdiction, by any appropriate equitable action, by abatement, by issuance of stop work orders, by injunction and restraining order, by revoking any permits or approvals issued, and by assessing any amounts due or delinquent fines as taxes. Any one (1), all or any combination of the foregoing penalties and remedies may be used to enforce this Chapter. In addition, the Town shall have the following civil remedies and powers to enforce this Code:
- a. *Notice of Violation and Corrective Action Order.*
 - i. *Non-emergency 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 by the Town to the owner, occupant, applicant for any relevant permit, person in charge of construction or other work on the property, or any other person in possession of or involved in the illegal activity on the property. 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 days from the date of the receipt of the notice in which to correct the alleged violations before further enforcement action shall be taken.
 - ii. *Emergency Violations.* In the case of violations of this Code that constitute an emergency as a result of safety or public concerns, or violations that will create increased problems or costs if not remedied immediately, the Town may use the enforcement powers available under this Code 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 to the applicant for any relevant permit. In addition, the Town may proceed to abate the danger and assess the costs therefor as a lien on the property and certified to the County Treasurer to be collected with the taxes on the property.

iii. *Extension of Time for Correction.* The Board may grant an extension of the time to cure an alleged violation, up to a total of ninety days, if the Board finds that due to the nature of the alleged violation, it reasonably appears that it cannot be corrected within thirty days.

b. *Deny/Withhold Approvals or Permits.* The Town may deny and withhold all approvals, permits, certificates, or other 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.

Where a property owner, agent, or other person has a record of an outstanding violation of this Code, the Town 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 all outstanding violations are corrected. This provision shall apply whether or not the property for which the permit or other approval is sought is the property in violation.

The denial or withholding of a permit by the Town may be appealed to the Board of Adjustment as provided in Section 3.11 of this Code.

c. *Revocation of Permits.*

i. *Revocation by Board.* The Town may revoke any development permit, certificate or other authorization, for violation of this Code.

ii. *Reconsideration of Revocation.* The applicant may request a public hearing for reconsideration of the Town's revocation.

iii. *Notice of Public Hearing.* The public hearing on the reconsideration of revocation shall be conducted during a regular or special meeting of the Board not less than seven days, nor more than fourteen 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.

iv. *Findings.* Following the public hearing, the Board shall reinstate the permit revoked unless it finds any of the following:

There is a departure from the approved plans, specifications, or conditions of approval; or

There is a violation of any provision of this Code; or

The development permit was obtained by false representation; or

The development permit was issued in error.

v. *Notice of Revocation.* Written notice of the findings shall be served upon the owner, the 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 findings.

d. *Stop Work Order.*

i. *Issuance of Stop Work Order.* The Town 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 land use approval or 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.

ii. *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 if the Town determines a shorter time is necessary to protect the health, welfare or safety of people or property in Timnath. It shall be unlawful to violate the terms of a stop work order.

e. *Abatement or Injunctive Relief.* In addition to any other remedy, the Board may initiate injunction or abatement proceedings or other appropriate legal action in the Timnath Municipal 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.

- 5.** Persons Responsible. The owner, tenant or occupant of any building or land or part thereof, as well as any architect, builder, contractor, agent or other person who participates in, assists, directs, creates or maintains any situation that is contrary to the requirements of this Chapter, may be held responsible for the violation and suffer the penalties and be subject to the remedies herein provided.
- 6.** 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 or equity, and may be exercised in any order. Each twenty-four (24) hour period or portion thereof is considered a separate violation under this Chapter.
- 7.** 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.
- 8.** Appeals of Enforcement Actions. Appeals of any order, requirement, decision, or determination made by an administrative official in the enforcement of this Chapter shall be made to the Board of Adjustment in accordance with this Code.
- 9.** Liability of Town of Timnath. 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 by reason of pursuing or failing to pursue an action for injunctive relief.

10. Violations. Violations of this Chapter may be enforced in the Timnath Municipal Court or any other court with jurisdiction, by any appropriate equitable action, by abatement, by issuance of stop work orders, by injunction and restraining order, by revoking any permits or approvals issued, and by assessing any amounts due or delinquent fines as taxes. Any one (1) or any combination of the foregoing penalties and remedies may be used to enforce this Chapter.
11. Costs of Enforcement for Abatement to be Paid to the Town. Costs associated with said abatement shall be charged to the owner of the property on which said violation has occurred and any other person responsible for the violation as defined in this Chapter. The cost of abating a violation of this Chapter shall include all direct and indirect costs of such abatement, plus the costs of collection and interest at the rate of one percent (1%) per month. Notice of the bill for abatement of the violation shall be mailed to the last known address of said property owner by certified mail, and shall be payable within thirty (30) calendar days from the receipt thereof. If all of such costs are not paid within thirty (30) days of the notice, such costs may be made a lien on the property and certified to the County Treasurer and collected with the taxes on the property. (Ord. 10-2002)

6.2 – XX Reserved.