BUSINESS MEETING ITEM COVER SHEET

DEPARTMENT County Attorney

DIVISION

TITLE Resolution 2007-41 (Amend LU Code - Enforcement)

DOCUMENT TYPE Resolution

SUBTYPE DC-05-002G Part 1

BUSINESS MEETING DATE 04/10/07

COMMISSIONERS' ACTION ☒ Approved ☐ Denied ☐ Other

ORIGINAL(S) RETURNED TO Vault

AGENDA ITEM NUMBER 2b

COMMENTS ORIGINAL WILL BE RECORDED. cc Barbara Andrews + Becki Beckham + Graham Billingsley + Dale Case.

RESOLUTION 2007-41

A RESOLUTION APPROVING BOULDER COUNTY LAND USE DOCKET #DC-05-002G (part 1): PROPOSED TEXT AMENDMENTS TO ARTICLES 2, 4, AND 17 OF THE BOULDER COUNTY LAND USE CODE REGARDING LAND USE CODE ENFORCEMENT

WHEREAS, pursuant to C.R.S. Sections 30-28-112 and -116, as amended, the Board of County Commissioners of Boulder County ("the Board") is authorized to amend the text of County's Zoning Regulations in accordance with the procedures set forth in those provisions and the applicable County regulations; and

WHEREAS, pursuant to C.R.S. Section 30-28-133, as amended, the Board is authorized to amend the text of the County's Subdivision Regulations in accordance with the procedures set forth in those provisions and the applicable County regulations; and

WHEREAS, pursuant to other statutory authority, the Board is empowered to adopt additional regulations which are related to the control of land use, including but not limited to Article 65.1 of Title 24 (Areas and Activities of State Interest); Articles 67 and 68 of Title 24 (Planned Unit Developments and Vested Rights, respectively); Article 20 of Title 29 (Local Land Use Enabling Act); Articles 11 and 15 of Title 30 (County Powers and Police Power, respectively); Article 1 of Title 32 (Special District Control); and Article 2 of Title 43 (County Highways), C.R.S.; and

WHEREAS, pursuant to the above-referenced authority, by Resolution 94-185 adopted October 18, 1994, effective October 19, 1994, the Board approved a unified Boulder County Land Use Code ("the Land Use Code"), which the Board first amended by Resolution 95-27 effective March 9, 1995, and has amended on subsequent occasions thereafter; and

WHEREAS, in Docket #DC-05-002G (part 1) ("the Docket"), the Boulder County Land Use Department proposed certain additional text amendments, this time to amend Articles 2, 4 and 17 of the Land Use Code, to update the Land Use Code's procedures and provisions regarding Code enforcement ("the Proposed Amendments"), all as set forth in the memorandum and recommendation of the County Land Use Department to the Board dated April 3, 2007, with its attachments ("the Staff Recommendation"); and

WHEREAS, the Boulder County Planning Commission ("the Planning Commission") held a duly-noticed public hearing on the Proposed Amendments on January 17, 2007, and recommended approval of the Proposed Amendments and certified the Docket for action to the Board; and

WHEREAS, although the amendments reviewed by the Planning Commission in the Docket included the proposed deletion of Section 17-400.D., and addition of new Section 17-500, dealing with County land use moratoria powers, the Land Use Department has not included these particular amendments in the Proposed Amendments to be heard by the Board, since County moratoria powers are the subject of a lawsuit pending before the Colorado Supreme Court on which the Supreme Court heard oral argument on March 6, 2007, and the Board has determined that it is not prudent to proceed with formal consideration of these particular amendments until the Supreme Court renders a decision in that case; and

WHEREAS, on April 3, 2007, the Board held a duly noticed public hearing on the Docket as certified to it by the Planning Commission (excluding the above-specified amendments dealing with the County's moratoria powers) ("the Public Hearing"), at which time the Board considered the documents and testimony presented by the County Land Use Department Director, and one member of the public; and

WHEREAS, based on the Public Hearing, the Board finds that the Proposed Amendments, specifically in the form set forth in Exhibit A hereto, meet the criteria for text amendments contained in Article 16 of the Land Use Code, in that the existing text is in need of amendment; the Proposed Amendments are not contrary to the intent and purpose of the Land Use Code; and the Proposed Amendments are in accordance with the Boulder County Comprehensive Plan, all as set forth in and supported by the record of the Public Hearing; and

WHEREAS, the Board thus determines that the Proposed Amendments, as set forth in Exhibit A hereto, should be approved for incorporation into the Land Use Code.

NOW, THEREFORE, BE IT RESOLVED that **the Proposed Amendments, specifically in the form of Exhibit A attached hereto** and incorporated herein by this reference, **are hereby approved** for incorporation into the Land Use Code, **to be effective beginning on the date of adoption of this Resolution, as set forth below.**

BE IT FURTHER RESOLVED that, pursuant to C.R.S. Section 30-28-125, the Board authorizes the Clerk to the Board to arrange for the immediate transmittal of this Resolution, with its Exhibit A, to the County Clerk and Recorder, for filing and appropriate indexing with that official, so that the Clerk and Recorder may make this Resolution, with its Exhibit A, accessible to the public. This transmittal should state recording Reference **No. 2735571**, the recording of the Boulder County Land Use Code on November 4, 2005, which this transmittal supplements and amends.

A motion to approve the Proposed Amendments, as set forth above, was made at the Public Hearing by Commissioner Toor, seconded by Commissioner Mayer, and passed by a 3-0 vote.

ADOPTED on this 10th day of April, 2007.

BOARD OF COUNTY COMMISSIONERS OF BOULDER COUNTY:

Ben Pearlman, Chair

Thomas A. Mayer, Vice Chair

Will Toor, Commissioner

ATTEST:

Clerk to the Board

ARTICLE 2

ADMINISTRATIVE AND DECISION MAKING BODIES

2-100 Relationship to State Statutes and Adopted By-laws

The purpose of this Article is to provide an illustrative summary of the functions, responsibilities, and authority of various elected, appointed, and administrative officials and boards. In cases where regulations contained in this Article 2 conflict with regulations approved as part of a state statute, the state statute shall govern. In cases where regulations contained in this Article 2 conflict with the body's bylaws, these regulations shall govern.

2-200 Boulder County Board of County Commissioners *[no changes proposed]*

2-300 Land Use Department Director

A. Short Title

1. The Land Use Department Director may also be referred to as the 'Director.'

B. Duties and Responsibilities

1. The Director is responsible for the administration of the Land Use Department, including, but not limited to, the processing of applications for comprehensive plan amendments, amendments to the land use regulations, and zoning and Subdivision Regulations approvals. **The Director is authorized to enforce the County's zoning regulations under all applicable provisions of the County Planning Act such as C.R.S. §30-28-114, §30-28-124, and §30-28-124.5, to administer and enforce all provisions of the Land Use Code as provided therein, and to oversee the Boulder County Building Official in the administration of the County Building Code.** In order to carry out these responsibilities, the Director also fulfills the roles of the Zoning Administrator and the Secretary to the Planning Commission and Board of Adjustment.

EXHIBIT
A
(Res. 2007-41)

ARTICLE 14

RUBBISH, WEEDS AND BRUSH, AND UNSAFE STRUCTURE

14-100 Purpose

A. To protect the health, safety, and welfare of the citizens of Boulder County through the

removal of rubbish (including trash, junk, and garbage); weeds and brush; and unsafe or abandoned buildings and structures from land in the unincorporated areas of the County. This includes removal by the County upon notice to and failure of the property owner to remove such rubbish, weeds, or unsafe structures, and the provision for criminal penalties in the event of failure to comply.

14-200 Authority

A. Section 30-15-401, C.R.S., as amended, authorizes the Board of County Commissioners to adopt ordinances for the control of matters of local concern, including providing for and compelling the removal of the following:

1. 'Rubbish': rubbish, including trash, junk, and garbage, from land within the unincorporated County and from alleys behind and sidewalk areas in front of such land, with the exception of:

   a. industrial ~~lots or~~ parcels of ten acres or greater; and

   b. agricultural land, as defined by 39-1-102(1.6), C.R.S., as amended, currently in agricultural use.

2. 'Weeds and Brush': weeds and brush from residential lots of ~~one~~ acre **two and one-half acres** ~~one acre~~ or less and from alleys behind and sidewalk areas in front of such lots; and

3. 'Unsafe Structures:' any building or structure, as further defined below, with the exception of any building or structure on

   a. affected land subject to the 'Colorado Mined Land Reclamation Act' as defined in 34-32-103(1.5), C.R.S., as amended, or (b) lands subject to the 'Colorado Surface Coal Mining Reclamation Act' pursuant to Article 33 of Title 34, C.R.S., as amended.

14-300 Applicability

A. This Article shall apply throughout the unincorporated area of the County, with the exception of (see 30-15-401(8) & (9), C.R.S., as amended):

1. Any municipal service, function, facility, or property whether owned by or leased to the incorporated municipality, unless the municipality consents pursuant to 30-15-401(8), C.R.S., as amended.

B. This Article shall not duplicate or interfere with any service or facility authorized and provided by a special district, or contravene any power authorized and exercised by a special district, unless the County is specifically empowered by law to exercise authority with respect thereto, or the County and the special district agree pursuant to Part 2 of Article 1 of Title 29, C.R.S., as amended.

14-400 Definitions

A. Abatement: To remove the rubbish, weeds and brush, or unsafe structure as prescribed in the notice of violation.

B. Agricultural land **is land which, regardless of the uses for which such land is zoned, the County Assessor has determined meets the definition of "agricultural land" in** ~~as defined by~~ 39-1-102(1.6), C.R.S., as amended. *[NOTE: all of the other related definitions, below, are suggested for deletion, since they are simply part of how "agricultural land" is defined under the property tax statutes.]* ~~, means either:~~

~~1. Land, regardless of the uses for which it is zoned, which is~~

~~a. currently and has for the previous two years been used as a farm or ranch, and the gross income resulting from this use must equal or exceed one-third of the total gross income from all uses of the property during any given tax year, or~~

~~b. in the process of being restored for this use through conservation practices (see 39-1-102(1.6)(a)(I), C.R.S., as amended); or~~

~~2. A parcel of land of at least 40 acres which is forest land used to produce tangible wood products that originate from the productivity of such land, for the primary purpose of obtaining a monetary profit; which is subject to a forest management plan; and which is not a farm or ranch. (See 39-1-102(1.6)(a)(II), C.R.S., as amended.) In making the determination concerning whether agricultural land exists for purposes of administering this Article, the Director shall rely on the applicable land assessment classification as established by the County Assessor or otherwise determined to apply through the property taxation valuation process.~~

~~C. Farm: A parcel of land which is used to produce agricultural products that originate from the land's productivity for the primary purpose of obtaining a monetary profit. (See 39-1-102(3.5), C.R.S., as amended.)~~

~~D. Forest Land: Land of which at least ten percent is stocked by forest trees of any size and includes land that formerly had such tree cover and that will be naturally or artificially regenerated. Forest land also includes roadside, streamside, and shelterbelt strips of timber which have a crown width of at least 120 feet, and includes unimproved roads and trails, streams, and clearings which are less than 120 feet wide. (See 39-1-102(4.3), C.R.S., as amended.)~~

~~E. Forest Management Plan: An agreement which includes a plan to aid the owner of forest land in increasing the health, vigor, and beauty of forest land through use of forest management practices; which has either been executed between the owner of forest land and the Colorado State Forest Service, or executed between the owner of forest land and a professional forester and has been reviewed and has received a favorable recommendation from the Colorado State Forest Service; and which has been determined to be complied with through the required annual reports from the State Forest Service to the County Assessor pursuant to 39-1-102(4.4), C.R.S., as amended.~~

~~F. Livestock: Domestic animals which are used for food for human or animal consumption, breeding, draft, or profit. (See 39-1-102(13.5), C.R.S., as amended.)~~

~~G. Ranch: A parcel of land which is used for grazing livestock for the primary purpose of obtaining a monetary profit. (See 39-1-102(13.5), C.R.S., as amended.)~~

C. ~~H.~~ Rubbish: Garbage, trash, and junk including, but not limited to, unwanted or discarded household items; waste from building construction, remodeling, and repair; tree branches, grass and shrub clippings, leaves, or other general yard and garden waste; motor vehicle parts or tires, or abandoned, unlicensed, or inoperable motor vehicles including without limitation mobile or manufactured homes; newspapers, magazines, packaging materials, waste paper or cardboard; dead animal carcasses; and any other unsightly or discarded material which causes or is likely to cause a public hazard or nuisance, or is unacceptably offensive in light of community standards of *cleanliness or generally accepted neighborhood aesthetics.*

D. ~~I.~~ Special District: Any special district established pursuant to Article 1 of Title 32,C.R.S., as amended; the Three Lakes Water and Sanitation District established pursuant to Article 10 of Title 32, C.R.S., as amended; the urban drainage and flood control district established pursuant to Article 11 of Title 32, C.R.S., as amended; any metropolitan sewage disposal district established pursuant to Part 4 of Article 4 of Title 32, C.R.S., as amended; any drainage district established pursuant to Article 20 of Title 37, C.R.S., as amended; the Cherry Creek basin water quality authority established pursuant to Article 8.5 of Title 25, C.R.S., as amended; any regional service authority established pursuant to Article 7 of Title 32, C.R.S., as amended; and the Regional

Transportation District established pursuant to Article 9 of Title 32, C.R.S., as amended. (See 30-15-401(9)(b), C.R.S., as amended.)

E. ~~J.~~ Unsafe Structure: A structure or building which, in the determination of the Chief Building Official: (1) is in a condition presenting a substantial danger or hazard to public health, safety, or welfare; or (2) is a dilapidated building which is unused by the owner or uninhabited because of deterioration or decay, and constitutes a fire hazard or subjects adjoining properties to a danger of damage by storm, soil erosion, or rodent infestation, or is a place frequented by trespassers and transients seeking a temporary hideout.

F. ~~K.~~ Violation: The presence of rubbish, weeds and brush, or an unsafe structure, contrary to the provisions of this Article.

G. ~~L.~~ Weeds and Brush: Any underbrush, bush, shrub, or plant material greater than nine inches in height which:

1. ordinarily grows without cultivation; not in planting beds or otherwise in a controlled manner; or not for the purpose of food production; and

2. is allowed to grow in such a manner or extent that it causes or is likely to cause a public hazard or nuisance, or is unacceptably offensive in light of community standards of cleanliness or generally accepted neighborhood aesthetics; and

3. is not ~~**an undesirable plant**~~ **a noxious weed** ~~an undesirable plant~~ designated under the County's ~~Undesirable Plant~~ **Noxious Weed** ~~Undesirable Plant~~ Management Plan, the removal of which shall be governed by that Plan and not this Article.

14-500 Process for Removal of Rubbish, Weeds and Brush, or Unsafe Structures

A. Complaint and Verification of Violation

1. Upon complaint made or filed by a member of the public or by a County official or employee, the Director will take reasonable steps to verify the complaint as a violation.

2. The Director's authority to enter and inspect land, a building or structure for a violation, shall be governed by the same procedures for obtaining consent or an administrative search warrant as are set forth under Article 17-300(E)(1)-(2).

B. Notification of Violation and Provision for Appeal

1. If the Director verifies a complaint as a violation, the Director will, as soon as practicable, provide written notice of the violation and the requirements for abatement to the property owner of record as identified

on the Boulder County tax records (both to the address in the tax records and the property address, if different), and to any other responsible party whose identity and whereabouts are known to the Director.

2. The notification will include a description of the violation; the requirements for abatement including the time period in which abatement must occur; a proposed reinspection date to verify abatement; a statement of the right to appeal the determination of violation; and the time within which a written appeal must be filed. Ordinarily the Director will provide 30 days for abatement, unless the Director determines that a shorter or longer time is justified.

3. The property owner or other noticed person may appeal the Director's determination that a violation exists to the Board of County Commissioners.

    a. Unless the notice of violation specifies a reasonable shorter time, the request for an appeal must be made to the Land Use Department in writing no later than 30 days after the date of the violation notice (with an additional three days allowed if the notice is mailed). The Director may specify a reasonable shorter time for filing an appeal in the notice, if the Director determines that an abatement time of less than 30 days is necessary.

    b. If a timely appeal is filed, the Director will schedule a hearing before the Board to consider the appeal at the earliest available time for which adequate notice of the appeal may be given.

    c. The Director will notify the party requesting the appeal of the hearing date and time as soon as possible after the hearing is scheduled. The Director also will notify adjacent property owners and any other known interested members of the public in advance of the hearing.

    d. At the appeal hearing the Board will take testimony from the Director, the alleged violator, and any members of the public present. Based on the hearing the Board may affirm, reverse, or modify the determination of the Director as set forth in the notice of violation.

C. Board of County Commissioners' Authorization for Abatement by County

1. If the alleged violator fails to comply with the County's requirements for abatement, the Director may request that the Board of County Commissioners, at a public meeting, authorize the County to arrange for abatement of the violation. The Director shall provide reasonable prior notice of the meeting to the alleged violator in the same manner as required for the initial notice of violation under Subsection (B)(1), above.

D. Administrative Entry and Seizure Warrant for County Abatement

1. Upon authorization by the Board for County abatement of the violation, the Director shall seek an administrative entry and seizure warrant from the county or district court having jurisdiction over the property.

2. Such warrant shall be issued upon presentation of these regulations; an affidavit stating the factual basis for the warrant; evidence that the property owner has received notice of the violation and has failed to abate the violation within the prescribed time; a general description of the location of the subject property; a general description of the violation; and the proposed method and extent of abatement by the County (including a general list or description of the rubbish, weeds or brush, or unsafe structure to be removed).

E. County Abatement

1. Within 10 days following the date of issuance of an administrative warrant, the County shall abate the violation in accordance with the direction of the issuing court; a copy of the issued warrant shall be provided to the property owner; and proof of the execution of the warrant, including a written inventory of any property impounded by the County, shall be submitted to the court.

2. The proposed method of abatement by the County may be accomplished through the use of County staff or by contract with a private party, and may include the impoundment of rubbish or other property removed as part of the abatement.

3. A bill for the reasonable costs of abatement ~~plus an inspection fee of five percent of that cost~~ ~~plus an inspection fee of five percent of that cost~~ shall be mailed to the property owner of record at the addresses specified in Section (B)(1), above. **The bill may include a separate charge for the reasonable costs of inspection and other incidental costs incurred by the County in abating the violation, which charge may not exceed five percent of the total abatement costs for rubbish and unsafe structure violations, and may not exceed ten percent of the total abatement costs for weeds and brush violations.** Payment of the bill shall be due within 60 days of the date of the bill.

4. If the bill is unpaid after 60 days, the Director through the County Clerk shall certify the bill to the County Treasurer, who shall collect the assessment together with a ten percent penalty for the cost of collection, in the same manner as other taxes are collected. (See 30-15-401(1)(a)(I)(A) and -(I.5)(B), C.R.S., as amended.)

14-600 Rescinded January 15, 2004

14-700 Preservation of Remedies

A. Unless otherwise specified in this article (see Section 14-400(K)(3), above), the remedies as provided in this Article, and as may be available under other applicable regulations of the County or pursuant to state or federal law, are not exclusive in any way, and may be pursued by the County singly or in combination to achieve the most expeditious abatement of violations involving the presence of rubbish, weeds and brush, and unsafe structures.

ARTICLE 17

ENFORCEMENT

17-100 Enforcement Remedies Generally

A. All provisions of the Code have been adopted in accordance with the procedures required by C.R.S. 30-28-112 and -116, as amended, and may be enforced as a violation of the County's zoning regulations (see Section 17-300, below, and C.R.S. 30-28-124, and C.R.S. 30-28-124.5), with the following additions or exceptions:

1. Article 3 (Processes), Article 7 (Development Standards), and Article 16 (Text Amendments) shall be enforced in accordance with the remedies applicable to the type of process or application at issue (zoning, application for approval under the Subdivision Regulations, planned unit development, etc.)

2. Article 5 (Subdivision Regulations) and Article 9 (Exemptions) shall be enforced in accordance with the remedies specified for county subdivision regulations (see Section 17-400, below, and C.R.S. 30-28-110(3)-(4) and 30-28-137, as amended).

3. Article 6 (Planned Unit Development) shall be enforced in accordance with Article 67 of Title 24, C.R.S., as amended (Planned Unit Development Act of 1972), in addition to and applicable zoning or Subdivision Regulations remedies.

4. Article 8 (Location and Extent Review) and Article 10 (Vacation of Public Roads) shall be enforced through any appropriate legal or equitable remedies allowed under the Colorado State Statutes or Colorado Court Rules, as amended. (See, e.g., 30-28-110(1), and Part 3 of Article 2 of Title 43, C.R.S., as amended, respectively.)

5. Article 11 (Special District Review) shall be enforced in accordance with Part 2 of Article 1 of Title 32, C.R.S., as amended (Special District Control Act).

6. Article 14 (Rubbish) shall be enforced in accordance with the provisions specified in that Article.

B. In addition to the remedies specified above, all provisions of the Code may be enforced by any legal or equitable means recognized by the Colorado State Statutes and Colorado Court Rules, as amended.

17-200 Non-liability of County

A. This Code shall not be construed to hold Boulder County or any of its employees or officials acting within the scope of their employment in any manner responsible or liable for any damages to persons or property resulting

from any inspection or enforcement as herein authorized or resulting from any failure to so inspect or enforce, or resulting from the issuance or denial of any building permit or the institution of or failure to institute any court action as herein required or authorized. In enacting this Code the Commissioners intend to preserve all rights of the County, its agencies and departments, and its elected and appointed officials and employees, to immunity from liability as set forth in the Colorado Governmental Immunity Act, C.R.S. 24-10,101, et seq.

17-300 Zoning Regulation Enforcement

A. Building Permit Requirement

1. No person shall erect, construct, reconstruct, alter, or change the use of any building or other structure within the unincorporated territory covered by this code without the obtaining a building permit from the Building Official or his authorized representative. A building permit shall not be required for the following:

   a. One-story detached accessory buildings used as tool and storage sheds, playhouses and similar uses, provided the floor area does not exceed 120 square feet;

   b. Fences not over six feet high;

   c. Movable cases, counters, and partitions not over five feet high;

   d. Retaining walls which are not over four feet in height measured from the bottom of the footing to the top of the wall, unless supporting a surcharge or impounding flammable liquids;

   e. Water tanks supported directly upon grade if the capacity does not exceed 5,000 gallons and the ratio of height to diameter or width does not exceed two to one;

   f. Platforms, walks, and driveways not more than 30 inches above grade and not over any basement or story below;

   g. Painting, papering, and similar finish work;

   h. Temporary motion picture, television, and theater stage sets and scenery;

   i. Prefabricated swimming pools in which the pool walls are entirely above the adjacent grade and if the capacity does not exceed 5,000 gallons;

j. Antennas and/or their supporting structures other than buildings, accessory to residential use less than ten feet in height and lower than the structure height limit in the zoning district in which located, or which were constructed or erected prior to July 1, 1988;

k. Temporary emergency noncommercial telecommunication sites operated by a governmental agency, or by a volunteer public safety agency officially sanctioned by a governmental agency for that purpose, for public safety communication uses, for a period not to exceed six months.

2. The Building Official shall not issue any building **or grading** permit unless the **following requirements are met:**

   a. The plans for the proposed erection, construction, reconstruction, alteration, or use fully conform to all applicable provisions of this Ceode**, including but not limited to any existing approval granted under this Code;**

   b. ~~. Approval of the aforesaid plans by the~~ The County Health Department **has issued a permit for or has otherwise approved the sanitation system to serve the proposed structure or use, if applicable;**

   c. The County Engineer has approved the access for the proposed structure or use pursuant to this Code and the Boulder County Road Standards and Specifications; and

   d. The proposed plans comply~~, in addition to compliance~~ with all applicable provisions of the Building Code~~, shall be obtained prior to the issuance of said building permit.~~

3. A building permit shall be valid for the period specified on the permit, and as provided in the Building Code.

4. The Building Official shall not issue any occupancy permit or issue any final inspection approval until the County Health Department has completed a final inspection and approval of any required sanitation system to serve the proposed structure or use. *[This addition codifies C.R.S. §25-10-112(2).]*

5. ~~4.~~ In addition to any other enforcement remedy **specified** in this Code, the Building Official, the Director, or the County Engineer may withhold **or demand the withholding of the issuance of** any building permit or other permit under this Code**, or may refuse to accept or process any application or authorization for a structure, activity, or use, involving** ~~for~~ any property on which a violation of **this Code has been** ~~the County's~~

~~zoning regulations is~~ determined to exist. *[These changes make this language parallel with section 17-300.E.4., below.]*

B. Temporary Cessation on Issuance of Building Permits when Zoning Amendments Pending

1. Provided that the Commissioners have specifically determined that conditions require such action and have so authorized in a public meeting, the Building Official shall not issue any building permit for the proposed erection, construction, reconstruction, alteration, or use which would be in violation of the proposed amendments to this code Planning Commission or Commissioners, from time of first public notice of such consideration until final disposition by the Commissioners, but in no event longer than six (6) months from the time of first public notice.

2. In accordance with the County's authority to propose and consider meaningful zoning regulation amendments without risking the establishment of contrary structures or uses through the issuance of building permits during the limited period when regulations are considered, no public hearing or prior notice shall be required for the Commissioners to authorize a temporary building permit cessation pursuant to the preceding paragraph.

3. Upon any incorporated land becoming unincorporated due to disconnection from a municipality, discontinuance or abandonment of a city or town, or other means, the temporary cessation of building permits in Section 17-300.B.1. shall be in effect. Unless the law governing the disincorporation dictates a different date, the cessation will become effective when the final document effectuating the disincorporation is recorded with the Boulder County Clerk and Recorder. The cessation period shall last for six months, unless a shorter time period is specified by the Board. The purpose of this cessation period is to allow time for the Board to enact amendments to this Code to zone the disincorporated land. This Section 17-300.B.3. shall be considered to be an ongoing resolution of the Board authorizing the cessation of building permits upon the disincorporation of any land within the County in accordance with C.R.S. Section 30-28-121.

C. Vested Rights

1. The issuance of any building permit for particular property under this code shall in no way prevent the application of subsequently enacted zoning amendments (text or map) to that property except where rights have fully vested under the law and such subsequent enactment conflicts with such vested rights.

2. For property where rights have vested solely pursuant to the provisions of Article 68 of Title 24, C.R.S., as amended, subsequently enacted zoning amendments (text or map) shall not preclude the issuance of a building permit for which an application conforming to all approvals and

regulations applicable at the time of vesting of such right has been properly filed, except for the following:

a. Regulatory enactments and actions to which the affected landowner consents; or

b. Regulatory enactments and actions designed to remedy or mitigate the impacts of natural or man-made hazards on or in the immediate vicinity of the subject property, which hazards could not reasonably have been discovered at the time of site specific development plan approval, and which hazards, if uncorrected, would pose a serious threat to the public health, safety, and welfare; or

c. Regulatory enactments and actions for which appropriate compensation has been paid the landowner; or

d. Regulatory enactments and actions which are general in nature and are applicable to all property subject to land use regulation by Boulder County including, but not limited to building, fire, plumbing, electrical, and mechanical codes.

D. Building Lot Determination

1. No person shall use any parcel for a use which is required by this code to comply with the minimum lot area requirements of the zoning district in which it is located, nor shall any building permit for such parcel be issued, unless the parcel is determined to be a building lot by the Director.

2. The Director shall not determine a parcel to be a building lot for a principal use if that parcel has been occupied as or designated as a building lot for any other principal use, unless such parcel has been expressly approved for multiple principal uses as part of a use permitted by Special Review (Article 4-600) or Planned Unit Development (Article 6).

3. The Director shall not designate a portion of a parcel as a building lot unless the Director determines that the remainder of the parcel also meets all requirements necessary for designation as a building lot.

E. Inspection and Administrative Action against Violations

1. The Director, Building Official, County Engineer or their authorized representatives are empowered, in conformity with the requirements of this subsection (E), to inspect and examine any building, other structure, or parcel or other area of land (collectively, 'premises'), concerning which they have reasonable cause to believe that a use exists or construction or alteration work is being performed, or has been performed, in violation of the applicable provisions of this code. When the Director, Building

Official, or authorized representative (collectively, 'the enforcing official') has reasonable cause to believe that a violation of this code is likely to exist on a premises, and that entry onto the premises is necessary to verify the violation, the enforcing official shall first make a reasonable effort to locate the owner or other person having charge or control of the premises, or portion thereof desired to be inspected, and request consent to enter and inspect the premises. If the owner or other person in charge or control of the premises cannot be located or if entry is refused, the enforcing official may seek entry by submitting a sworn affidavit to the proper court of jurisdiction, setting forth facts sufficient to support a reasonable belief that the violation is likely to exist, and that further investigation of the premises is warranted. Any subsequent entry and inspection shall be conducted in accordance with an administrative search warrant issued by the court.

2. Consent to enter or an administrative search warrant shall not be required in the following circumstances:

   a. To conduct inspections during regular county business hours under an applied for or issued building permit, for work authorized under that permit prior to the issuance of a final Certificate of Occupancy;

   b. To conduct inspections within the scope of another official document, such as a duly executed zoning compliance affidavit, which grants express or clearly implied consent to enter and inspect;

   c. To make observations of the premises in plain view from public property or from portions of the premises which are open or accessible to the public, or in which the owner or occupant otherwise lacks a reasonable expectation of privacy;

   d. To make observations of the premises from private property when the owner of the private property gives consent to do so; or

   e. In emergency situations in which the enforcing official has reason to believe that the public health or safety is in imminent danger and could be jeopardized by any delay in

3. If a violation is found to exist, the enforcing official shall by written order direct that such remedial action be taken forthwith as will result in full compliance with the applicable provisions of this code; provided, however, that the issuance of such order shall in no way or manner be deemed a prerequisite to the institution of such enforcement proceedings as are set forth in this Article 17; and provided further that compliance with such order shall not necessarily be deemed to be a defense to any alleged violation of this code in any court action instituted seeking full compliance therewith.

4. In addition to any other enforcement **remedy** ~~action~~ specified in this Code, the Building Official, ~~or~~ the Director**, or the County Engineer may** ~~is authorized to~~ withhold or demand the withholding of the issuance of any building permit or **other** ~~related~~ permit under this Code**, or may refuse to accept or process any application or authorization for a structure, activity, or use, involving any** ~~sought or requested for~~ property on which a violation of this **C**~~c~~ode has been determined to exist. *[These changes make this language parallel with that in Section 17-300.A.5., above.]*

F. Judicial Action against Violations

1. Upon a finding of a violation by the Director, the Building Official, the County Engineer, or a County Commissioner the County Attorney is authorized to file lawsuits in county or district court to enforce the provisions of this code.

2. Criminal violations of this code shall be punished by a fine in an amount not to exceed one hundred dollars ($100.00) for each violation, such fine to inure to the County of Boulder, or by imprisonment in the County jail for not more than ten (10) days, or by both such fine and imprisonment, or by such other remedy as may be specified by amendment to C.R.S. 30-28-124. Each day during which such illegal erection, construction, reconstruction, alteration, maintenance, or use continues shall be deemed a separate offense.

3. Civil remedies against violations of this code may include civil penalties, injunction, mandamus, abatement or any other appropriate action to prevent, enjoin, abate, or remove the violation. Civil fines may be recovered in the same civil action where injunction, mandamus and/or abatement is sought, or separate proceedings may be instituted seeking varying forms of relief, as C.R.S. 30-28-124, 30-28-124.5 or any other applicable provision of law may allow. *[Note that SB 06-74 increased the civil fines available under 30-28-124.5; however, as no statutory fines amounts are currently specified in these enforcement provisions, the increased fines have not been inserted in this section.]*

4. Unless the Director, Building Official, County Engineer, or the Board determines that immediate legal action is necessary to prevent imminent harm to the health safety, or welfare of the public or to prevent a violation from occurring, the enforcing official shall provide written notice of the alleged violation to the alleged violator at least **ten** ~~30~~ days prior to requesting that the County Attorney proceed with judicial enforcement action.

G. Stay of Judicial Enforcement

1. Appeals to the Board of Adjustment

a. A determination by the Director that a zoning violation exists may be appealed to the Board of Adjustment as set forth in Article 4-1200 of this Code.

b. Unless the Director, Building Official, or County Engineer determines that immediate legal action is necessary to prevent imminent harm to the health, safety, or welfare of the public or to prevent a violation from occurring, judicial enforcement action against the violator will be stayed in the event of a timely appeal to the Board of Adjustment until a final decision is rendered by the Board of Adjustment, and, if applicable, any reviewing court.

2. Permit Applications. Unless the Director, Building Official, or County Engineer determines that immediate legal action is necessary to prevent imminent harm to the health, safety, or welfare of the public or to prevent a violation from occurring, the County Attorney shall stay, or request that the court stay, any judicial enforcement action if:

a. a complete application for a permit or other approval is submitted to the Land Use Department that, if approved, would fully resolve all violations; and

b. the application is for a use or activity that may be approved under the current provisions of the Code; and

c. the application is for a use or activity that is not the same or similar to an application or permit that was previously denied; and

d. in the opinion of the Director, Building Official, County Engineer, or the Board, the application is being pursued diligently and in good faith; and

e. in the opinion of the County Attorney, the application was filed in good faith and not for the purpose of causing unreasonable delay or confusion in an ongoing enforcement action.

Unless otherwise ordered by the court, the stay shall remain in effect until a final decision is reached on the application or permit.

17-400 Subdivision Regulation Enforcement

A. Authority for Enforcement

1. The Commissioners and their duly appointed representatives shall have the authority to enforce the provisions of Article 5, Subdivision Regulations in accordance with this Section and the governing statutes (C.R.S 30-28-110(3)-(4), 30-28-133(1), and 30-28-137(3)-(4), as amended.)

B. Requirement for County Subdivision Approval

1. No division of land constituting a subdivision under applicable state law shall occur unless it is exempt by terms of C.R.S. 30-28-101(10), has been approved under the Subdivision Regulations, or has received approval from the Board of County Commissioners for a subdivision exemption or exemption plat.

2. Any person or person's agent who creates a subdivision and transfers legal or equitable title or sells any land thereby divided before a final plat, as required, for such land has been approved and recorded pursuant to this Code or applicable state law, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars ($1000.00) nor less than five hundred dollars ($500.00) for each parcel of or interest in such land which is sold or where the legal or equitable title to the land is transferred. All fines collected under this provision shall be credited to the General Fund of the County. No person shall be prosecuted, tried, or punished under this provision unless the indictment, information, complaint, or action for the same is instituted prior to the expiration of eighteen months after the recordation or filing in the Office of the County Clerk and Recorder of the instrument transferring or selling such illegally divided land. (C.R.S. 30-28-110(4)(a))

3. The Commissioners shall have the power to bring an action to enjoin any person creating an illegal subdivision as stated in Subsection 2., immediately above, from selling been approved and recorded pursuant to this Code or applicable state law. (C.R.S. 30-28-110(4)(b))

4. In addition to any other enforcement **remedy** ~~action~~ specified in this Code, the Building Official, ~~or~~ the Director**, or the County Engineer may** ~~is authorized to~~ withhold or demand the withholding of the issuance of any building permit or **other** ~~related~~ permit under this Code**, or may refuse to accept or process any application or authorization for a structure, activity, or use, involving any** ~~sought or requested for~~ property which is determined to have been divided without the required County approval. (C.R.S. 30-28-110(4)(a))

5. Properties that were divided in violation of regulations or resolutions in effect at the time of such division shall be further subdivided only if the proposal includes provisions which bring the entire original parcel, including the area previously divided in violation of the Regulations or Resolution into compliance with current zoning or subdivision requirements.

C. Enforcement of Subdivision Regulations Process and Platting Requirements

1. No sketch plan, preliminary plan or final plat for proposed subdivided land shall be recommended for approval or conditional approval by the Planning Commission and approved or conditionally approved by the Commissioners, unless it conforms to the provisions of Article 5, Subdivision Regulations, or, as applicable, the exemption plat provisions of Article 9.

2. The Commissioners or the Planning Commission may take appropriate action to deny or to suspend or withdraw any approval of a plan or plat, or to require certain corrective measures to be taken, following a determination that the information provided by the applicant or developer upon which such approval was based is materially false or inaccurate or that new significant information has been brought to the Planning Commission's or Commissioners' attention. Such action may occur at any step in the platting or exemption plat process up to the approval of the final plat by the Commissioners, and shall take place at a regular public hearing. The Planning Commission or Commissioners shall determine at the hearing the nature and extent of the alleged false or inaccurate information, shall consider any new significant information that has been brought to its attention, and shall have power, upon good cause being shown, to deny the plat or plan or suspend or withdraw any approval or require corrective measures to be taken. No action to deny or to suspend or withdraw an approval or require corrective measures shall be taken unless the applicant or developer is present at the hearing at which action is taken and has a fair opportunity to respond to the proposed denial, suspension, withdrawal, or corrective action.

3. If it is determined after any final plat is approved or filed for recording that the plat approval was based on inaccurate, false, or misleading information of a material nature, the Commissioners may take appropriate action to withdraw or reconsider the approval, to require corrective measures, or to void the plat, after a public hearing where adequate notice and opportunity to be heard are given to the applicant or developer, any successor property owners, and any affected adjacent property owners, referral agencies, or service providers.

4. The Commissioners or any purchaser of any subdivided lot, outlot, or other subdivided land subject to a plat restriction which is the security portion of a subdivision improvements agreement shall have the authority to bring an action in any district court to compel the enforcement of any subdivision improvements agreement on the sale, conveyance, or transfer of any such lot, outlot, or other subdivided land or of any other provision of Part 1, Article 28, Title 30, C.R.S., as amended. Such authority shall include the right to compel rescission of any sale, conveyance, or transfer of title of any subdivided lot, outlot, or other subdivided land contrary to the provisions of any such restriction set forth on the plat or in any separate recorded instrument, but any such action shall be commenced

prior to the issuance of a building permit by any county where so required or otherwise prior to commencement of construction on any such lot, outlot, or other subdivided land. (C.R.S. 30-28-137(3), as amended.)

5. In addition to any other remedy set forth in Part 1, Article 28, Title 30, C.R.S., as amended, the Commissioners or any purchaser of any **subdivided** ~~subdived~~ lot, outlot, or other subdivided land shall have the authority to bring an action for injunctive relief to enforce any plat restriction (including all obligations contained in documents required to be executed and recorded as part of the final plat approval and all commitments of record of the applicant or developer related to the County's approval of the final plat), plat note, plat map, or provision of a subdivision improvements agreement, and for damages arising out of failure to adhere to any such plat restriction, plat note, plat map, or provision of a subdivision improvements agreement. Nothing in Part 1, Article 28, Title 30, C.R.S., as amended, shall require the Commissioners to bring any action authorized in this provision. (C.R.S. 30-28-137(4), as amended.)

6. In addition to any other enforcement **remedy** ~~action~~ specified in this Code, the Building Official**,** ~~or~~ the Director**, or the County Engineer may** ~~is authorized to~~ withhold or demand the withholding of the issuance of any building permit or **other** ~~related~~ permit under this Code**, or may refuse to accept or process any application or authorization for a structure, activity, or use, involving any** ~~sought or requested for~~ property for which a final plat has not been approved or recorded, or which is the subject of a violation of the final plat approval, including any plat note or restriction or any commitment of record in the County's final plat approval file.