





premise;

**NOW, BE IT THEREFORE RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS FOR THE COUNTY OF ELBERT** as follows:

- a. That the Board of County Commissioners hereby approves and adopts the following amendments and additions to the Elbert County Zoning Regulations, as specifically set forth herein, as recommended for approval by the Elbert County Planning Commission and as amended by the Board of County Commissioners during the March 28, 2018 public hearing.
- b. That Part I, Section 7: Enforcement of the Zoning Regulations shall be repealed in its entirety and amended as attached hereto as Exhibit A.
- c. That Part I of the Elbert County Zoning Regulations shall be amended to include the addition of Section 7.1: Enforcement of Rubbish, Trash, or Junk, as attached hereto as Exhibit B.
- d. The implementation of the newly adopted Part I, Section 7 and Part I, Section 7.1 of the Elbert County Zoning Regulations is effective as of March 28, 2018.

Upon a motion duly made and seconded, the foregoing resolution was adopted by the following vote:

  
\_\_\_\_\_  
DANNY WILLCOX, CHAIR

  
\_\_\_\_\_  
CHRISTOPHER RICHARDSON, VICE CHAIR

  
\_\_\_\_\_  
GRANT THAYER, COMMISSIONER

ATTEST: DALLAS SCHROEDER  
COUNTY CLERK

BY:   
Clerk to the Board





# EXHIBIT A



## PART I, SECTION 7: ENFORCEMENT OF THE ZONING REGULATIONS

### A. PURPOSE and INTENT

Pursuant to State of Colorado authority, these Elbert County Zoning Regulations are adopted with the following purposes and intent:

1. To promote the public health, safety and welfare of the citizens of Elbert County.
2. To support the vision, goals, and recommendations of the Elbert County Comprehensive Plan.
3. To protect and enhance the natural environment including the conservation of natural features, land and energy.
4. To provide for a range and orderly development of agricultural, housing, economic and commercial uses and buildings to meet the current and future needs of the citizens of Elbert County.
5. To promote safe, efficient, and effective transportation corridors within the County.

### B. AUTHORITY

The Elbert County Zoning Regulations shall be enforced by the Elbert County Community and Development Services Director and his authorized representative(s) on all matters involving these Regulations. The Community and Development Services Director shall consult with the County Attorney, the County Building Official and other affected County offices concerned with, but not limited to, the unlawful erection, construction, altering, occupancy or use of any building, structure, or land, in the unincorporated areas of the County.

CRS 30-28-113 authorizes the Board of County Commissioners to regulate buildings and structures as to size, scale, location, height, open space, use, solar access, etc., and to establish zones or districts to aid in that regulation. They may also require and provide for the issuance of building permits as condition of construction or alteration.

CRS 30-28-114 authorizes the Board of County Commissioners to enforce their zoning regulations through the establishment of a County building inspector and the withholding of required building permits. They may require reasonable fees for such permits. It shall be unlawful to construct or alter buildings without such a permit. A permit shall not issue unless plans fully conform to existing zoning regulations.



CRS 30-28-124 establishes criminal penalties for constructing, altering, or using a building or land in violation of zoning standards. Violators are guilty of a misdemeanor and may be subject to fines, imprisonment, or both. Every day of violation is considered a separate offense. The County shall provide notice of violation. If the offense is not remedied within 30 days, the County sheriff shall issue a summons and complaint, including notice to appear in County Court.

The County Attorney, in addition to other remedies provided by law, may institute an injunction, mandamus, abatement, or other appropriate action or proceeding to prevent, enjoin, abate, or remove the violation.

CRS 30-28-209 allows for the enforcement of building code violations. It is identical to 30-28-124 in terms of required process and potential penalties. CRS 30-28-124.5, adopted in 1998 allows the County to impose civil penalties for zoning regulations, and some counties find this has expedited their enforcement actions. Actions require a summons and complaint in County Court (rather than District Court), and do not carry with them a procedure to obtain an entry warrant or a procedure for collecting fines through liens on the property. If the County Court determines a violation has occurred, based upon a preponderance of the evidence, the violator may be subject to civil penalties. The County may, but is not obligated to pursue civil penalties. Each day after the issuance of the court order that the violation continues is considered a separate violation and is subject to a continuing penalty for every day on noncompliance.

CRS 30-29-210 provides for the use of civil penalties through the County Courts for building code violations. It is identical to 30-28-124.5 in terms of required process and potential penalties.

CRS 30-28-110(4) describes the County powers to enforce subdivision regulations. The County may bring an action against a property owner who files a plat that has not been approved by the County. Upon conviction, the illegal subdivider may be fined. The County may also enforce subdivision regulations by withholding building permits, or through an injunction to prevent the sale of lots in the illegal subdivision.

## C. VIOLATION AND PENALTY

1. Any person, persons, firm, association or corporation violating any provision of the Elbert County Zoning Regulations or any employee, assistant, agent, or any other person participating or taking part in, joining or aiding in a violation of any provision of the Zoning Regulations may be prosecuted pursuant to the Elbert County Regulations and/or Code, as well as Colorado Revised Statute. Such authority is contained within Colorado Revised Statute, to include the authority granted within 30-28-113; 30-28-124; 30-28-124.5 C.R.S. 30-28-120(1); 30-28-

209; 30-29-210; 30-28-110(4) 30-15-401. Each day a violation continues after service of written notice to abate such violation shall constitute a separate violation.

2. Violators shall be fined a penalty per day for each such violation; such fine to inure to the County of Elbert, State of Colorado. Each day of the documented existence of any situation held to be a violation shall be deemed an equal and separate offense.

#### D. INSPECTIONS

The Community and Development Services Director and/or Building Official and their authorized representative(s) upon the securing of legal authority, are hereby empowered to enter and inspect any building, structure or tract of land in the unincorporated area of the county. When a violation is alleged and/or found, the Community and Development Services Director and/or Building Official shall compile, or cause to be compiled, relevant evidence of the alleged violation. Whenever the Community and Development Services Director or Building Official has personal knowledge of any violation hereof, one shall give written notice to the violator to correct such violation(s).

After appropriate notice(s) has (have) been served by the Community and Development Services Director and/or Building Official, the Community and Development Services Director shall then forward the file, or copy thereof, to the County Attorney for further action. The Community and Development Services Director shall be advised of any actions taken.

Any action brought to remedy or prosecute a violation shall be brought in the name of the Board of County Commissioners of Elbert County, Colorado or the People of the State of Colorado. The Board of County Commissioners may authorize the Building Department to withhold issuance of building permits where a violation is found to exist pursuant to CRS, 1973, 30-28-114, as amended.

#### E. BUILDING PERMITS

It shall be unlawful to erect, construct, reconstruct, alter or change the use of any building or other structure, including surface and subsurface structures, or to move a structure from one property to another within the unincorporated areas of Elbert County without first obtaining a building permit from the County Building Official or his authorized representative.



The County Building Department shall not issue any building permit unless the plans for the proposed erection, construction, reconstruction, alteration or use fully conforms to all applicable provisions of these regulations and the Uniform Building Code.

All building permits shall be issued in conformance with the provisions of the Elbert County Zoning Regulations and the Uniform Building Code and shall be valid for a period of time not exceeding one (1) year from the date issued.

F. ZONING INSPECTION

The Community and Development Services Director shall assign the responsibilities for zoning inspections to one or more members of his staff who shall be able to respond to zoning complaints and make regular inspections of properties in Elbert County. The procedure for responding to zoning complaints and processing by the Community and Development Services Director shall be developed by Community and Development Services and then reviewed and approved by the County Attorney.

G. LIABILITY

The Community and Development Services Director and/or Building Official or their authorized representative(s) charged with the enforcement of this code, acting in good faith and without malice in the discharge of his duties, shall not thereby render himself personally liable for any damage that may occur to persons or property as a result of any act or by reason of an act or omission in the discharge of his duties. Any suit brought against the Community and Development Services Director and/or Building Official or employee because of such act or omission performed by him in the enforcement of any provision of this code shall be defended by legal counsel provided by this jurisdiction until final termination of such proceedings.

This code shall not be construed to relieve or lessen the responsibility of any person owning operating or controlling any building or structure for any damages to persons or property caused by defects, nor shall the regulation enforcement agency or its parent jurisdiction be held as assuming any such liability by reason of the inspections authorized by this regulation or any certificates of inspection issued under this regulation.

The County and its employees are not liable for damages resulting from any failure to inspect or enforce, or resulting from the issuance or denial of any building permit or the institution or failure to institute any court action as herein authorized or mentioned. In enacting these enforcement regulations, the Board of County Commissioners intends to preserve all rights of the County, its agencies and departments, its elected and appointed officials and employees to immunity from liability as described in the Colorado Governmental Immunity Act, C.R.S. 24-10-101 through 24-10-119, as amended.

H. PROCESS

1. The Community and Development Services Director and/or Building Official or their authorized representative(s) shall give notice in writing to request voluntary compliance within a specific timeframe as deemed fair and appropriate by the author of the notice.
2. A one-time extension may be requested from the person or entity in violation of the regulation(s) if such violation is not removed within the required timeframe and is requested in advance of the date of expected compliance.
3. If compliance is not attained, then the Community and Development Services Director and/or Building Official or their authorized representative(s) shall notify the County Attorney of the infraction. The County Attorney or Elbert County Sheriff shall then notify the person or entity in violation that a Civil Court or District Court process is eminent to process and prosecute the case for the violation.
4. The process of utilizing the District Court will require an affirmative approval from the Board of County Commissioners to authorize the County Attorney to prosecute. Otherwise, the process to commence Civil Court action is done completely at the County Manager's and Attorney's directive.



# EXHIBIT B



PART I, SECTION 7.1: ENFORCEMENT OF RUBBISH, TRASH, OR JUNK

A. PURPOSE and INTENT

Pursuant to State of Colorado authority, these Elbert County Zoning Regulations are adopted with the following purposes and intent:

1. To promote the public health, safety and welfare of the citizens of Elbert County.
2. To support the vision, goals, and recommendations of the Elbert County Comprehensive Plan.
3. To protect and enhance the natural environment including the conservation of natural features, land and energy.
4. To provide for a range and orderly development of agricultural, housing, economic and commercial uses and buildings to meet the current and future needs of the citizens of Elbert County.
5. To promote safe, efficient, and effective transportation corridors within the County.

B. AUTHORITY

The County also has the authority to Remove Rubbish and Dangerous Structures via Colorado Revised Statute.

Elbert County Zoning Regulations shall be enforced by the Elbert County Community and Development Services Director and his authorized representative(s) on all matters involving these Regulations. The Community and Development Services Director shall consult with the County Attorney, the County Building Official and other affected County offices concerned with, but not limited to, the unlawful erection, construction, altering, occupancy or use of any building, structure, or land, in the unincorporated areas of the County.

CRS 30-15-401(1)(a)(I)(A) authorizes the County to provide for and compel the removal of rubbish, including trash, junk and garbage, from lots and tracts within the County (except from industrial tracts of ten or more acres and agricultural lands currently in agricultural use) and from alleys behind and sidewalk areas in front of the property “at such time, and upon such notice, and in such manner as the Board of County Commissioners may prescribe by ordinance”. Upon failure of the owner to remove the rubbish, the County may perform the removal and assess the reasonable costs, plus five percent for administration, against the property. Actual entry to remove rubbish requires application for and receipt of an administrative entry and seizure warrant from County or District Court.



CRS 30-15-401(1)(q) authorizes the County to provide for, and allows the County to compel the removal of any building or structure (except for those on land subject to the Mined Lands Reclamation Act or Surface Mining Reclamation Act) if the building or structure presents a substantial danger to public health, safety, or welfare, or any dilapidated building that is unused by the owner or uninhabited because of deterioration or decay, which causes a fire hazard, storm hazard, rodent infestation hazard, or that is used by transients, “at such time, and upon such notice, and in such manner as the Board of County Commissioners may prescribe by ordinance”.

Upon failure of the owner to remove the structure or building, the County may perform the removal and assess the reasonable costs, plus five percent for administration, against the property. This power does not extend to buildings or structures that are not “neat and orderly” – it must be dangerous, dilapidated, or meet one of the other standards listed above.

CRS 30-15-402.5(1) provides that personnel designated by a County in an ordinance to enforce the rubbish and dangerous building removal ordinance may issue citations and summons to violators without having been first certified as meeting the state Peace Officer Standards and Training requirements set forth in CRS 24-31-30.

#### C. VIOLATION AND PENALTY

Any person, persons, firm, association or corporation violating any provision of the Rubbish/Trash/Junk regulations CRS 30-15-402(1) criminal enforcement provides that a person who violates the rubbish removal or building removal provisions in CRS 30-15-401 shall, upon conviction, be punished by a fine of not more than \$1,000 for each violation. The County can decide to use the “penalty assessment” procedure in CRS 16-2-201 – i.e. the procedures generally used by peace officers in issuing minor traffic tickets. The “arresting officer” (who need not be a certified Peace Officer, pursuant to CRS 30-15-402.5) delivers the alleged violator a summons and complaint containing identification of the alleged offender, specification of the offense and applicable fine, a requirement that the alleged offender pay the fine or appear to answer the charge at a specified time and place, and “any other matter reasonably adapted to effectuating the purposes of this section”. The person receiving the notice must either acknowledge his guilt and pay the fine or appear in County Court for trial. If the Court finds guilt, the violator may also be charged court costs.

#### D. INSPECTIONS

The Community and Development Services Director, Building Official, and their authorized representative(s), are hereby empowered to enter and inspect any building, structure or tract of land in the unincorporated area of the county. When a violation is alleged and/or found, the Community and Development Services Director and/or Building Official shall compile, or cause to be compiled, relevant evidence of the alleged



violation. Whenever the Community and Development Services Director or Building Official has personal knowledge of any violation hereof, one shall give written notice to the violator to correct such violation(s).

After appropriate notice(s) has (have) been served by the Community and Development Services Director and/or Building Official, the Community and Development Services Director shall then forward the file, or copy thereof, to the County Attorney for further action. The Community and Development Services Director shall be advised of any actions taken.

Any action brought to remedy or prosecute a civil violation shall be brought in the name of the Board of County Commissioners of Elbert County, Colorado or the People of the State of Colorado.

Actions may also be prosecuted as a criminal violation, or via a process other than civil, in accordance with Elbert County's Ordinance Regarding the Accumulation and Removal of Junk and Rubbish or via applicable criminal statute, in Elbert County by the Elbert County Sheriff's Department, and the District Attorney's office for the 8<sup>th</sup> Judicial District.

E. ZONING INSPECTION

The Community and Development Services Director shall assign the responsibilities for inspections of rubbish, trash, and junk regulation violations to one or more members of his staff who shall be able to respond to zoning complaints and make regular inspections of properties in Elbert County. The procedure for responding to zoning complaints and processing by the Community and Development Services Director shall be developed by Community and Development Services and then reviewed and approved by the County Attorney.

F. LIABILITY

The Community and Development Services Director and/or Building Official or their authorized representative(s) charged with the enforcement of this code, acting in good faith and without malice in the discharge of his duties, shall not thereby render himself personally liable for any damage that may occur to persons or property as a result of any act or by reason of an act or omission in the discharge of his duties. Any suit brought against the Community and Development Services Director and/or Building Official or employee because of such act or omission performed by him in the enforcement of any provision of this code shall be defended by legal counsel provided by this jurisdiction until final termination of such proceedings.



This code shall not be construed to relieve or lessen the responsibility of any person owning operating or controlling any building or structure for any damages to persons or property caused by defects, nor shall the regulation enforcement agency or its parent jurisdiction be held as assuming any such liability by reason of the inspections authorized by this regulation or any certificates of inspection issued under this regulation.

The County and its employees are not liable for damages resulting from any failure to inspect or enforce, or resulting from the issuance or denial of any building permit or the institution or failure to institute any court action as herein authorized or mentioned. In enacting these enforcement regulations, the Board of County Commissioners intends to preserve all rights of the County, its agencies and departments, its elected and appointed officials and employees to immunity from liability as described in the Colorado Governmental Immunity Act, C.R.S. 24-10-101 through 24-10-119, as amended.

#### G. PROCESS FOR CIVIL VIOLATIONS

1. The Community and Development Services Director and/or Building Official or their authorized representative(s) shall give notice in writing to request voluntary compliance within a specific timeframe as deemed fair and appropriate by the author of the notice.
2. A one-time extension may be requested from the person or entity in violation of the regulation(s) if such violation is not removed within the required timeframe and is requested in advance of the date of expected compliance.
3. If compliance is not attained, then the Community and Development Services Director and/or Building Official or their authorized representative(s) shall notify the County Attorney of the infraction. The County Attorney or Elbert County Sheriff shall then notify the person or entity in violation that a Civil Court or District Court process is eminent to process and prosecute the case for the violation.
4. The process of utilizing the District Court will require an affirmative approval from the Board of County Commissioners to authorize the County Attorney to prosecute. Otherwise, the process to commence Civil Court action is done completely at the County Manager's and Attorney's directive.

#### H. PROCESS FOR CRIMINAL VIOLATIONS

The process for criminal violations involving rubbish, trash, or junk will comply with state criminal statute and Colorado Rules of Criminal Procedure.