

PENALTY PROVISIONS

7.1.106 Conformity with Regulations Required

It shall be unlawful to use any building, structure, or land or to erect, move, structurally alter, convert, extend, or enlarge any building or other structure except in conformity with the requirements established in the zone district in which said structure, building, or land is located and in compliance with all applicable provisions of this UDC..

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7.3.301 Residential Uses

C. Short Term Rental

2. Permit Required

- b. It shall be unlawful for any person to operate any Short Term Rental without a valid Short Term Rental, as approved by the Manager.

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7.3.303 Commercial and Industrial Uses

F. Marijuana-Related Services

3. Marijuana Consumption Club Facility

- b. Existing uses of this type are allowed only if prior to September 22, 2015, an existing use was lawfully operating pursuant to the "similar use determination" of the Manager, dated May 28, 2014. Those MCC Facilities operating pursuant to the similar use determination shall be considered nonconforming uses under this UDC, shall be licensed by the City, and shall cease operations no later than March 22, 2024. Any MCC Facility operating after March 22, 2024, shall be considered an unlawful use under this UDC.

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7.5.412 Vested Rights

A. Establishment of Vested Rights

1. A “vested property right,” as used in this Section, means the right to undertake and complete development and use of property under the terms and conditions of approval at the time of vesting.

2. A vested property right shall accrue following approval of a Development Plan and shall be subject to any terms and conditions imposed at the time of approval.

B. Additional Provisions

1. The vesting period for a Development Plan shall be six (6) years unless a Building Permit is issued prior to that date, or the vesting period is extended in the FBZ district pursuant to Subsection 7.2.306G (Regulatory Incentives).

2. Vested property rights may be changed through a Development Agreement between the City and affected landowner. City Council, in its legislative capacity, may change vested property rights for public health, safety, and welfare reasons.

3. Vested property rights are subject to applicable ordinances, resolutions, and regulations that are general in nature and applicable to a broad class of properties.

4. Only approval of Development Plans may result in the creation of a vested right under this Section. Any modification of an approved Development Plan does not change the effective or expiration date of a vested right.

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7.5.503 Building Permits and Certificates of Occupancy

B. Applicability

1. It shall be unlawful to perform any work for which a building permit is required under Section RBC105.1 of the Regional Building Code without first obtaining a building permit.

4. It is unlawful to commence occupancy of a structure unless a Certificate of Occupancy has been issued.

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7.5.528 Historic Resource Alteration or Demolition

C. Construction, Alteration, Demolition, or Relocation Approval Process

5. Remedying of Dangerous Conditions

a. If the Building Official, Fire Department, or any other public authority having the power to do so orders or directs the construction, reconstruction, alteration, repair, relocation, or demolition of any structure in the HP-O district for the purpose of remedying conditions determined by that official, department, or authority to be imminently dangerous to life, health, or property, nothing contained in this UDC shall be construed as making it unlawful for any person to comply with such order.

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7.5.601 Conditional Use Permit

C. Conditional Use Permit Process

3. Post-Decision Actions or Limitations

The Planning Commission's decision on a Conditional Use Permit application is subject to the following:

a. The approved conditional use, along with stipulations submitted as part of the conditional use application and all conditions imposed by the Planning Commission, shall be binding on the property and shall run with the land and shall not be affected by changes in tenancy, ownership, or management of the property.

b. An approved Conditional Use Permit shall expire if any of the following apply:

The applicant fails to begin operation or fails to apply for a Building Permit and begin construction for a building related to the conditional use, within four (4) years of approval. The Manager may approve one (1) one-year extension of the Conditional Use Permit if no major changes to the site design are required. A legally established conditional use is abandoned or discontinued for a period of at least one (1) consecutive year. Prior to expiration of the conditional use due to abandonment or discontinuation, the Manager may approve one (1) one-year extension of the

Conditional Use Permit if no major changes to the site design are required. A change to a use with higher intensity or fewer restrictions than were originally approved in the Conditional Use Permit occurs on the property.

c. Upon the expiration of a Conditional Use Permit, no Building Permit or Certificate of Occupancy may be issued for that use until a new Conditional Use Permit application has been reviewed and approved in accord with this Section 7.5.601.

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7.5.9 GENERAL ENFORCEMENT

7.5.901 Purpose

The purpose of the comprehensive enforcement program established in this Section is to protect the public health, safety, and welfare by requiring compliance with the regulations in this UDC and to:

- A. Reduce the number of zoning violations;
- B. Abate all zoning violations in a timely and efficient manner;
- C. Establish a fair process to abate violations;
- D. Provide consistent and fair enforcement, recognizing the inherent differences in many types of zoning violations; and
- E. Develop a set of standard procedures for abating each type of violation based upon their risk of harm to the public health, safety, and welfare.

7.5.902 Applicability

- A. The provisions of this Part 7.5.9 apply to all actions to enforce the provisions of this UDC.
- B. Grading or vegetation removal occurring on an individual lot or tract that does not comply with a City- approved Hillside Site and Grading Plan as required by Section 7.2.510E shall be deemed a violation of the UDC subject to the enforcement of this Section.
- C. Land disturbance activities that impact grading and erosion control, include compliance with GEC Permits or Associate GEC permits, are additionally

subject to the enforcement provisions in Part 7.5.10 (Grading and Land Disturbance Enforcement).

D. Compliance with stormwater regulations is additionally subject to the enforcement provisions in Part 7.5.11 (Stormwater Enforcement).

E. Compliance with regulations relating to historic preservation is additionally subject to the enforcement provisions in Part 7.5.13 (Historic Preservation Enforcement).

F. Compliance with the Building Code is subject to the enforcement provisions in Part 7.5.14 (Building Code Enforcement) as well as the regulations in the Building Code.

7.5.903 Violations

A. A violation of any term of this UDC shall be subject to enforcement pursuant to this Part 7.5.9.

B. A violation of a condition attached to an approved application is a violation of this UDC.

C. Obtaining an application based on the submission of false or misleading application materials is a violation of this UDC.

D. Each day that any violation continues shall be considered a separate violation for purposes of the penalties and remedies available pursuant to this Part 7.5.9.

7.5.904 Enforcement

A. Right of Entry

1. The Manager shall have the right to enter upon any premises at any reasonable time for the purpose of enforcing this UDC, including abatement of violations.

2. If the owner or occupant of any premises located within the City refuses to permit entry to the Manager sought pursuant to this Subsection, or should permission to enter the premises otherwise not be obtainable from the owner or occupant, the Manager may make application to any Judge of the Municipal Court for the issuance of a warrant to inspect the premises or a warrant to search for and/or seize property located upon the premises.

The sworn application shall identify the premises upon which entry is sought and the purpose for which entry is desired.

The application shall state the facts giving rise to the belief that a condition that is in violation of the requirements of this UDC exists on the premises, or that a violation in fact exists and must be abated. Any warrant issued shall command the owner or occupant to permit entry to the Manager for the purposes stated.

B. Emergency Abatement Order

1. If the Manager deems that an emergency exists that requires immediate action to protect the public health, safety, and welfare, the Manager may, without prior notice or hearing, issue an order stating that an emergency exists and requiring that such action be taken as deemed necessary to meet the emergency. Notwithstanding any provision of this Part 7.5.9 to the contrary, the order shall be effective immediately.

2. It shall be unlawful for any person to whom an emergency order is issued to fail to comply with the emergency order immediately. In the event that the person to whom the emergency order was issued fails or refuses to immediately comply, the Manager may request, without prior notice to the owner, occupant, or agent of the owner, that the dangerous condition be removed, corrected or otherwise abated to an extent that it is no longer an imminent hazard to the public health, safety and welfare. Except as otherwise provided, the provisions of Part 7.5.9 and Chapter 9, Article 6 of this Code, shall apply to any removal, correction, or other abatement action taken pursuant to an emergency order.

C. Stop Work Order for Hillside Site and Grading Plan

1. The Manager may issue a stop work order upon a determination that work is being performed without a Hillside Site and Grading Plan required by this UDC or in violation of an existing Hillside

Site and Grading Plan if:

- a. The nature of the disturbance or work being performed would cause irreparable harm;
- b. Less harm would result to the property owner, if the stop work order is issued, than to the public if not issued; and
- c. Public interest weighs in favor of preserving the status quo.

- d. Stop Work Order decisions may be appealed pursuant to Section 7.5.416 (Appeals).

7.5.905 Remedies

The Manager may use any or all of the powers listed below to enforce the provisions of this UDC. Remedies provided in this Section shall be cumulative and in addition to any other remedies. Nothing contained in this Part 7.5.9 shall be construed to preclude the Manager from seeking any other remedies in addition to or in lieu of the remedies granted in this Section.

A. No Action

After careful consideration of the facts and circumstances, the Manager may take no action on a complaint of an alleged zoning violation.

B. Informal Contact

The Manager shall have the authority to effectuate the abatement of zoning violations through informal meetings or conversations.

C. Agreement to Abate

The Manager may enter into an agreement with a violator whereby the violator agrees to abate the violation within a certain time based upon certain conditions within the agreement. Should the violator not abide by the terms and conditions of the agreement to abate, the Manager may proceed with abatement as authorized in this Section.

D. Notice and Order

The Manager may issue a notice and order ordering the cessation of an illegal condition within a specified period of time based upon the nature of the violation. Should the violator not comply with the notice and order within the period of time specified, or fail to appeal the notice and order within the applicable time period, the Manager may proceed with abatement as authorized in Section 7.5.907 (Penalties).

E. Suspension or Revocation of Permit

1. The Manager may issue a notice to show cause as described in Subsection 7.5.906B (Service of Notice) stating the alleged grounds for suspension or revocation and the date, time, and place of a hearing

before the Planning Commission, which shall hold a public hearing on the allegations contained in the notice to show cause.

2. The Planning Commission may suspend or revoke a permit if it finds, by a preponderance of the evidence, that the activity or structure described in the notice to show cause is in violation of this UDC or a condition attached to a permit or approval related to the activity, structure, or property. Upon such a finding, the Planning Commission shall revoke the permit authorizing the activity or structure or shall suspend the permit authorizing the activity or structure until activity or structure is in compliance with this UDC and all conditions attached to any permit or approval related to the activity listed in the notice to show cause.

3. A suspended permit may be suspended for up to thirty (30) days and for so long thereafter until reinstated by the Manager upon proof that the cause of the suspension has been remedied.

4. A decision by the Planning Commission to suspend or revoke a permit may be appealed in accordance with Section 7.5.416 (Appeals).

5. A suspension or revocation shall be effective immediately upon the decision of the Planning Commission or, if appealed, of the City Council.

6. Suspension or revocation on non-renewal of a permit may be in addition to any remedy provided for in this UDC including the remedies available in this Part 7.5.9

F. Direct Abatement

The Manager may pursue direct abatement for removal of any UDC violation in conjunction with a search and seizure warrant issued by Municipal Court in accord with Subsection 7.5.904A (Right of Entry).

G. Civil Action

The Manager, with the concurrence of the Mayor, may request the City Attorney to initiate a civil action in the District Court for injunctive relief to abate violations of this UDC.

H. Reinspection Fees

The Manager may charge reinspection fees for UDC violations in accord with Subsection 7.5.907B (Reinspection Fees).

I. Criminal Prosecution

The Manager may pursue the issuance of a summons and complaint in accord with Subsection 7.5.907C (Summons and Complaint).

J. Summary Abatement

After consultation with the City Attorney, the Manager shall have the power to authorize the removal of an item from private property that may create an imminent hazard to the public health, safety, and welfare.

7.5.906 Procedures

A. Notice

Any notice required as part of enforcement of this UDC in accordance with Part 7.5.9 shall be in writing and shall:

1. Describe with particularity the asserted violation existing on the premises or property that gives rise to the enforcement action.
2. Specify the period within which the violation must be abated or otherwise corrected.
3. Note the availability of appeal to the Planning Commission, provided that a written notice of appeal and an appeal application is made within ten (10) days from the date of mailing, posting, or personal service of the notice and order.

B. Service of Notice

The notice shall be personally served whenever feasible on the owner, the owner's agent, other persons with an interest in the property, and/or the occupant of the premises, as applicable. If personal service is not feasible, the notice and order shall either be posted conspicuously at the premises or mailed to the last known address of the person by certified mail, return receipt requested.

7.5.907 Penalties

A. Direct Abatement

If any order issued in accordance with this Part 7.5.9 is not complied with in the specified time, the Manager may correct the violation or abate the nuisance or hazard itself, or through private contract, and may recover the costs of such

correction or abatement from the owner of the property in accordance with this Section 7.5.907.

B. Reinspection Fee

1. Imposition of Fee

The owner of the property who has been issued a notice and order for violation(s) of this UDC, and who fails to comply with an order to abate, may be assessed a reinspection fee for every reinspection necessitated by the owner's continued noncompliance with the notice and order to abate. Reinspection fees shall be assessed for all site visits until the violation is abated. The violation(s) shall be regularly reinspected until the owner successfully complies with the notice and order to abate.

2. Fee Schedule

a. First-Time Offender

A first-time offender related to a primary residential use shall be assessed a first-time offender reinspection fee of \$100 for the first reinspection, \$250 for a second reinspection, and \$500 for a third and each subsequent reinspection required until compliance is achieved.

A first-time offender for a property containing a primary mixed-use or nonresidential property shall be assessed a first-time offender reinspection fee of \$500 for the first reinspection, \$750 for the second reinspection, and \$1,000 for the third and each subsequent reinspection required until compliance is achieved.

b. Repeat Offender

A repeat offender previously cited for a failure to comply with a notice and order to abate during any successive six- (6) month period for a violation(s) that has occurred at the property shall be assessed a reinspection fee of \$250 for each reinspection conducted until compliance is achieved. The Manager may remove the repeat offender designation if, after abatement, the owner has no further violation(s) for a period of six (6) months. If a repeat offender designation is removed and the owner has a subsequent violation on the same property, that owner shall be reclassified as a repeat offender.

A repeat offender who reengages in prohibited zoning activities at any time within a twelve- (12) month period following the prior violation shall be assessed a reinspection fee of \$250 for each reinspection conducted until compliance is achieved. If after a period of one (1) year no UDC violations or enforcement activity relating to any UDC violation occur, the repeat offender shall be reclassified as a firsttime offender.

c. Chronic Repeat Offender

A chronic repeat offender previously cited for a failure to comply with a notice and order to abate for a violation(s) that has occurred at the property in violation for a period of twelve (12) or more successive months shall be assessed a reinspection fee of \$500 for each reinspection completed until compliance is achieved. The Manager may remove the chronic repeat offender designation if the owner has no further violation(s) on the property for a period of twelve (12) months. If a chronic repeat offender designation is removed and the owner has a subsequent violation, that owner shall be immediately reclassified as a chronic repeat offender. A chronic repeat offender who reengages in prohibited zoning activities at any time within a twelve- (12) month period following the prior abatement shall be assessed a reinspection fee of \$500 for each reinspection conducted until compliance is achieved. If after a period of three (3) years no UDC violations or enforcement activity relating to any UDC violation occur, the chronic repeat offender shall be reclassified as a first-time offender.

d. Failure to Comply with Agreement to Abate

Any owner who fails to comply with an agreement to abate prohibited zoning activity shall be classified as a chronic repeat offender and shall be assessed a reinspection fee of \$500 for each reinspection conducted until compliance with the agreement to abate is achieved.

3. Billing and Payment

a. The owner shall be billed via certified mail. Payment shall be required to be made within twenty (20) days of the date of mailing.

b. If the owner fails to make payment within twenty (20) days of the date of mailing, the Manager is authorized to file a lien against the property for fees in accordance with Subsection D below. The

lien shall include any costs incurred in the perfecting of the lien, and may include all costs incurred by the City associated with the removal, correction or other abatement necessitated by the offender's continued violation and failure to abate following issuance of a notice and order to abate.

C. Summons and Complaint

The Manager is authorized to request the issuance of a summons and complaint for any violation of this UDC in accord with Section 1.1.201 of the City Code.

D. Lien Assessment

1. Authority

When a person fails or refuses to comply with an order to abate and the Manager has reinspected and removed, corrected, or abated the violation, the Manager is hereby authorized to commence lien assessment proceedings against the property in accord with the provisions of this Subsection D. The lien may include an administrative surcharge of twenty-five (25) percent of the cost of abatement proceedings. The lien created hereby shall be superior and prior to all other liens excepting liens for general and special taxes.

2. Notice

a. Content of Notice

Prior to the imposition of a lien, the Manager shall send the property owner written notice of lien assessment that shall include the following information:

The address of the property to be assessed and the name and address of the property owner;

The dates of the notice and order, any reinspections, and the issuance of the order to abate;

The name of the contractor that abated the condition giving rise to the issuance of the notice and order;

The total amount of the assessment, including reinspection fees, the cost of abatement, and the amount of the administrative surcharge;

A due date for payment of the assessment that is at least twenty (20) days after the date of the notice of lien assessment;

A statement that failure to pay the assessment within the time period set forth in the notice of lien assessment will result in the imposition of a lien against the property; and

A statement explaining the appeal procedure for the notice of lien assessment.

b. Service of Notice

The notice of assessment shall be mailed to the property owner via certified first class U.S. mail, return receipt requested. A return receipt signed by the property owner or an agent of the property owner shall be prima facie evidence of service on the date indicated by the owner, agent, or U.S. Postal Service.

If the property owner or an agent of the property owner fails to receive service of the notice of lien assessment via certified first class U.S. mail, return receipt requested, the Manager is authorized to post the notice in a conspicuous place on the property to be assessed.

3. Appeal and Hearing

a. A property owner must appeal a notice of lien assessment in writing within ten (10) days of its date of mailing, posting, or personal service by the property owner or the owner's agent, or within ten (10) days from its date of mailing, posting, or personal service to be assessed. The notice of appeal shall state the name and address of the property owner, the address of the property assessed, and the grounds for appeal.

b. The appeal shall be heard by the Planning Commission in accord with Section 7.5.416 (Appeals).

c. The Planning Commission may, after hearing the property owner's objections, make any modification or change to the assessment as may seem equitable and just, or may confirm the assessment. The Planning Commission shall not modify or change the amount of the reinspection fee or the administrative surcharge.

4. Effect and Effective Date of Assessment

- a. The assessment shall become a perpetual lien against the property, superior and prior to all other liens and encumbrances excepting liens for general and special taxes. The Manager shall notify the Chief Financial Officer who shall certify any lien assessment to the El Paso County Treasurer. The El Paso County Treasurer shall collect the lien assessment in the same manner as ad valorem taxes are collected.

- b. If not appealed, the total assessment shall be levied, assessed, and charged against the property upon which abatement action was taken not less than ten (10) days from its date of mailing, posting, or personal service after the property owner's or agent's mailed receipt of the notice of lien assessment or posting on the property to be assessed.

- c. If appealed, the Planning Commission's determination of the total assessment shall then be levied, assessed, and charged against the property upon which abatement action was taken not less than ten (10) days after the date of the Planning Commission's determination.

7.5.908 Appeals

All appeals of zoning enforcement decisions made by the Manager in accordance with this Section 7.5.908 shall be heard by the Planning Commission in accord with Section 7.5.416 (Appeals).

7.5.909 Additional Provisions

- A. The Manager is authorized to establish procedures and guidelines to accomplish the purposes of this Section 7.5.908. Copies of any procedures and guidelines shall be available for inspection at the offices of the Manager during regular business hours.

- B. No systematic or programmatic UDC enforcement program shall be initiated for a neighborhood or area within the City without the prior approval of the Manager.

- C. Land use inspectors may be granted special investigative authority under Section 8.1.204 of the City Code. These powers shall be limited to the authority to issue summons and complaints for violations of this Section 7.5.908.

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7.5.10 GRADING AND LAND DISTURBANCE ENFORCEMENT

7.5.1001 Purpose

The purpose of this Section is to protect the public health, safety, and welfare by requiring compliance with the standards relating to grading and erosion control in this UDC.

7.5.1002 Applicability

The policies in this Section apply to enforcement at all permitted sites covered by Grading and Erosion Control (GEC) Permits and Associate GEC Permits in the City pursuant to Part 7.4.6. The City Engineer retains all options concerning chosen enforcement approaches and compliance is required at all times. Enforcement policies and procedures are set forth in the Engineering Criteria Manuals.

7.5.1003 Enforcement Remedies

If the City Engineer determines that an activity governed by this Part 7.5.10 is creating a nuisance to the public health, safety, and welfare or is not compliant with the requirements of this UDC, the City Engineer may use any or all of the powers listed below:

A. Informal Contact

The City Engineer shall have the authority to effectuate the abatement of the nuisance or compliance through informal meetings or conversations resulting in a verbal agreement.

B. Letter of Noncompliance

The City Engineer may issue a letter of noncompliance to the property owner, developer, and/or contractor that contains a description of the measures required to eliminate the nuisance or noncompliance and a date by which these measures must be implemented.

C. Stop Work Order

1. If an imminent and substantial hazard exists that jeopardizes public safety, property, and/or water resources, including water quality, the City Engineer may issue an immediate stop work order and/or take emergency actions to abate or minimize the hazard at the full expense of the record owner of the property. A stop work order shall be in effect from the time issued.

2. The City Engineer may issue a stop work order for the entire site or a specified portion of the site for the purpose of preventing any adverse impacts or minimizing additional adverse impacts. The City Engineer may specify allowable work in order to eliminate the nuisance or bring the site into compliance.

D. Revocation of Permit

The City Engineer may temporarily or permanently revoke the GEC Permit or Associate GEC Permit.

E. Notice and Order

The City Engineer may issue a notice and order ordering the elimination of the nuisance and/or noncompliance by a specified date based on the nature of the violation. If compliance with the notice and order is not achieved by the deadline, the City Engineer may proceed with abatement as authorized in this Part 7.5.10.

F. Civil Action

The City Engineer may ask the City Attorney to initiate a civil action in the District Court for injunctive relief to abate the violations.

G. Issuance of Summons

The City Engineer may request issuance of a Municipal Court summons for violations of this Part 7.5.10.

H. Additional Actions

Nothing in this Part 7.5.10 shall be construed to preclude the City Engineer from seeking other enforcement actions or remedies in addition to or in lieu of the remedies granted in this Section 7.5.10. Enforcement actions or remedies provided in this Part 7.5.10 shall be cumulative and in addition to any other remedies that may be available to the City Engineer.

7.5.1004 Procedures

A. Notice

Any notice required as part of enforcement of this UDC in accord with this Part 7.5.10 shall be in writing and include:

1. The street address and a description sufficient for identification of the property upon which the violation, nuisance, or noncompliance is located.
2. A statement of the asserted violation, nuisance, or noncompliance.
3. A statement of the action required to be taken and/or the date or time period by which the violation must be abated or otherwise corrected.
4. A statement advising that if any required corrective measures are not commenced within the time specified, the City Engineer may proceed to cause the corrective measures to be undertaken and charge the corrective measures against the property or its owner.
5. A statement advising that any person having any record title or legal interest in the property may appeal from the notice and order directly to the Drainage Board provided the appeal is made in writing and filed with the City Engineer within ten (10) days from the date of service of the notice and order, that failure to appeal will constitute a waiver of all right to a hearing and determination of the matter.

B. Service of Notice

1. General

The notice and order, and any amended or supplemental order, shall be served upon the record owner or the owner's agent and posted on the property. Failure to serve any person required to be served shall not invalidate any proceedings as to any other person duly served or relieve any person from any duty or obligation imposed by the provisions of this Part 7.5.10.

2. Method of Service

- a. Service of the notice and order shall be made either in person or by mailing a copy of the notice and order by certified mail, postage prepaid, return receipt requested, to each owner or agent of the owner at the address that appears on the assessment roll of the County or is known to the City Engineer. If no address of any person so appears or is not known to the City Engineer, then a copy of the notice and order shall be mailed, addressed to the person, at the address of the real property involved in the proceedings. Failure of any person to receive notice shall not affect the validity of any proceedings pursuant to this Part 7.5.10.

b. Service by certified mail in the manner provided shall be effective on the date of mailing. Service in person shall be effective on the date service is effectuated.

3. Proof of Service

Proof of service of the notice and order shall be certified to at the time of service by a written declaration under penalty of perjury executed by the person effecting service, declaring the time, date, and manner in which service was made. The declaration, together with any receipt card returned in acknowledgment of receipt by certified mail, shall be affixed to the copy of the notice and order retained by the City Engineer.

7.5.1005 Penalties

A. Any failure, neglect, or refusal to obey or comply with a notice and order or a stop work order shall be a violation of the City Code punishable by up to ninety (90) days in jail, a fine of not less than \$250 or more than \$500, or a combination thereof. Each day in violation of a stop work order or notice and order shall be deemed a separate offense.

B. Ongoing construction activities that take place takes place in the following circumstances shall be a violation of the City Code punishable by up to ninety (90) days in jail, a fine of not less than \$250 or more than \$500, or a combination thereof. Each day in violation of the following shall be deemed a separate offense:

1. If a stop work order or notice and order has been issued by the City Engineer, except for specific construction activities allowed as a part of the stop work order or notice and order; or

2. Without an active GEC Permit or Associate GEC Permit, if required by this UDC.

7.5.1006 Appeals

A. General

All appeals of zoning enforcement decisions made by the City Engineer in accordance with this Part

7.5.10 shall be heard by the Drainage Board pursuant to this Section 7.5.1006. In hearing appeals, the Drainage Board may make reasonable interpretations of the provisions Section 7.5.1006.

B. Eligibility, Initiation, and Effect of Appeal

1. Any person served may appeal from any notice and order any action of the City Engineer in accord with this Part 7.5.10 by filing a written appeal with the City Engineer.

2. The written appeal shall be filed within ten (10) days after the date of service of the notice and order, and if the end of such period falls on a weekend or holiday, then the appeal shall be filed on the next business day. The appeal shall include:

a. The names, official mailing addresses, and signatures of all parties named as appellants.

b. A brief statement setting forth the legal interest of each of the appellants in the land involved in the notice and order.

c. A brief statement, in ordinary and concise language, of the specific order or action protested, together with any material facts claimed to support the contentions of the appellant. The appellant must substantiate the following:

Identify the specific City Code provisions that are in dispute.

Show that the City Engineer's decision is incorrect because of one (1) or more of the following:

- (a) It was against the express language of this UDC;
- (b) It is erroneous; or
- (c) It is clearly contrary to law.

d. A brief statement, in ordinary and concise language, of the relief sought and the reasons why it is claimed the protested order should be reversed, modified, or otherwise set aside. The appellant shall identify the benefits and adverse impacts created by the decision, describe the distribution of the benefits and impacts between the community and the appellant, and show that the burdens placed on the appellant outweigh the benefits to the community, including the general health, safety, and welfare.

3. If any required appeal information is not provided, the City Engineer shall notify the appellant that the appeal will not be scheduled until all required information is received.

4. Any stop work order or notice and order issued by the City Engineer shall be in effect from the time issued. The notice and order or stop work order shall be in effect and remain in effect during the pendency of any appeal. Failure to comply with a stop work order or notice and order shall be a violation of the City Code regardless of whether an appeal has been filed or is pending before the Drainage Board or the courts of Colorado.

5. The failure of any person to file an appeal in accord with this Section 7.5.1006 shall constitute a waiver of the right to a hearing and adjudication of all or a portion of the notice and order, or any portion thereof

C. Notice

1. The hearing shall be set to take place between ten (10) and thirty (30) days from the date the appeal was received at the office of the City Engineer. The City Engineer shall provide written notice to the appellant of the time, date, and place of the hearing .

2. A hearing notice shall be posted on or adjacent to the affected property by the appellant or a designated representative at least ten (10) days prior to the date of the hearing. The appellant or designated representative shall also sign an affidavit stating the property was properly posted in accord with the posting requirements of the City Engineer. The completed affidavit must be received by the City Engineer at least three (3) days prior to the day of the hearing, or the hearing will be canceled.

D. Meeting and Decision

1. The hearing on the appeal shall only consider those matters or issues specifically raised by the appellant in the written appeal.

2. An audio or audio/video recording of the entire proceeding shall be made by the City Engineer. A transcript of the proceedings shall be made available to all parties upon request and upon payment of a transcript fee established by the City Council.

3. The Drainage Board shall have the authority to make and adopt rules and regulations governing procedures before the Drainage Board. However, Colorado Rules of Evidence shall not apply at the hearing. The City Engineer and appellants shall have the following rights:

- a. To call and examine witnesses on any relevant matter or issue;
- b. To introduce documents or other physical evidence;

- c. To cross examine opposing witnesses on any relevant matter or issue;
- d. To impeach any witness regardless of which party first called them to testify;
- e. To rebut the evidence against them; and
- f. To represent themselves or to be represented by a licensed Colorado attorney. The City Engineer shall be represented by the Office of the City Attorney.

4. At the conclusion of the hearing on appeal, the Drainage Board may modify, affirm, or reverse the decision or requirements of the notice and order.

5. Any appellant who is aggrieved by the decision of the Drainage Board may appeal that decision to the courts of Colorado in accord with the Colorado Rules of Civil Procedure, rule 106(a)(4), as amended.

7.5.1007 Billing of Property Owner

A. Imposition of Expenses

1. The City Engineer shall keep an itemized account of the expenses incurred by Stormwater Enterprise in correction of any nuisance to the public health, safety, and welfare pursuant to this Part 7.5.10. The City Engineer shall then bill the property owner for all costs incurred by Stormwater Enterprise.

2. Service of the bill shall be made either personally or by mailing a copy of the bill by certified mail, postage prepaid, return receipt requested, to each property owner at their address as it appears on the tax records of the County or as known to the City Engineer.

3. If full payment is not received within thirty (30) days of receipt of bill (or thirty (30) days from mailing if no return receipt received), the City Engineer shall ask the City Clerk to schedule a hearing before City Council on charges to be made against the property owner or the property.

B. Setting of Hearing

The Stormwater Enterprise Manager shall fix the time, date, and place for hearing the charges as billed by the City Engineer, and any protests or objections to the charges. The City Clerk shall cause notice of the hearing to be served by certified mail, postage prepaid, return receipt requested, addressed to the property owner as their name appears on the tax records of the County Assessor, if such so appears, or as known to the Clerk. Notice shall be given at least ten (10) days prior to the date set for the hearing, and shall specify the day, hour, and place when City Council will hear and pass upon the charges billed by the City Engineer, together with any objections or protests that may be filed in accord with Subsection C below.

C. Protests and Objections

Any property owner affected by the proposed charge may file written protests or objections with the City Clerk. The protest or objection must be received by the City Clerk at least the day before the hearing. Each protest or objection must contain a description of the property and the grounds of the protest or objection. The City Clerk shall endorse on every protest or objection the date it was received and shall present the protest or objections to the City Council at the time set for the hearing. No other protests or objections shall be considered.

D. Hearing and Decision

1. Upon the day and hour fixed for the hearing, the City Council shall hear and pass upon the charges as billed by the City Engineer together with any objections or protests. The Council may make revisions, corrections, and modifications to the charges it may deem just. The decision of the City Council on the charges, and on all protests or objections shall be final and conclusive.

2. The City Council may order that a charge be made a personal obligation of the property owner or assess the charge against the property involved:

a. If the City Council orders that the charge be a personal obligation of the property owner, it shall direct the City Attorney to collect the same on behalf of the City by use of all appropriate legal remedies.

b. If the City Council orders that the charge be assessed against the property, it shall confirm the assessment roll, and the assessment shall then constitute a special assessment against the property and shall be collected in the same manner as any other special assessment of the City.

E. Post-Decision Actions and Limitations

1. The validity of any assessment made pursuant to this Part 7.5.10 shall not be contested in any action or proceeding unless the contest is commenced within thirty (30) days after the assessment is placed upon the assessment roll. Any appeal from a final judgment in such action or proceeding must be perfected within thirty (30) days after entry of the judgment.

2. Immediately upon being placed on the assessment roll, the assessment shall be deemed to be complete, the several amounts assessed shall be payable, and the assessments shall be liens against the lots or parcels of land assessed, respectively. The liens shall be subordinate to all existing special assessment liens previously imposed upon the same property, and shall be paramount to all other liens except for State, County and municipal liens with which it shall be at parity. The liens shall continue until the assessment and all interest due and payable are paid.

3. All assessments remaining unpaid after thirty (30) days from the date of recording on the assessment roll shall become delinquent and shall bear interest at the rate of one (1) percent per month from and after the date.

4. After confirmation of the report, certified copies of the assessment shall be given to the County Treasurer on or before October 15.

5. The amount of the assessment shall be collected at the same time and in the same manner as general taxes are collected; and shall be subject to the same penalties and procedure and sale in case of delinquency as provided for general municipal taxes. All laws applicable to the levy, collection, and enforcement of general municipal taxes shall be applicable to the assessment.

6. All money received by payment of the charge or assessment or from the sale of property at foreclosure sale shall be paid to the Chief Financial Officer who shall credit the same to the grading correction fund.

7.5.1008 Liability and Limitations

A. Liability of Others

Any person who engages in grading, erosion control, and/or stormwater quality control activities is declared to be totally responsible to those persons who may have been endangered or, in fact, is endangered, as a result of not having or not

following a grading plan and/or an erosion and stormwater quality control plan or following an incorrect grading plan and/or an erosion and stormwater quality control plan.

B. Liability of Drainage Board Members

Members of the Drainage Board acting for the City in good faith and without malice for the City in the discharge of their duties, shall not hereby render themselves personally liable, and they are hereby relieved from all personal liability for any damage that may accrue to persons or property as a result of any act required, or by reason of any act or omission related to the discharge of their duties. Any suit brought against a member or members of the Board, due to an act or omission performed by them in the discharge of their duties, shall be defended by the City to the final termination of the proceedings.

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7.5.11 STORMWATER ENFORCEMENT

7.5.1101 Purpose

The purpose of this Section is to protect the public health, safety, and welfare by requiring compliance with the standards relating to maintenance of permanent stormwater control measures required by this UDC.

7.5.1102 Enforcement

A. Maintenance and Repair by City

If maintenance activities are not completed in a timely manner or as specified in the approved plan or if there exists an immediate danger to public health or safety as a result of the permanent control measure, the City Engineer, other City staff under the direction of the City Engineer, or a contractor engaged by the City Engineer may enter upon the subject private or public property and complete the necessary maintenance and/or repair at the owner's expense.

B. Notice of Deficiency

If deficiencies with maintenance of permanent stormwater measures are noted during City inspections, the City shall notify the owner by U.S. mail, first class, postage prepaid with a certificate of mailing, at the property's legal address listed in the records of the County Assessor's Office. The responsible party shall have twenty (20) business days or other time frame mutually agreed to between the Stormwater Enterprise Manager and the responsible party to correct the

deficiencies. The Stormwater Enterprise Manager shall then conduct a follow up inspection to verify the repairs. If repairs are not undertaken or are not found to be done properly, the Stormwater Enterprise Manager may complete the necessary maintenance at the responsible party's expense.

C. Notice of Violation

If the annual report mandated as part of the Inspection and Maintenance (IM) Plan required by Section 7.4.703B is not received by the City, the Stormwater Enterprise Manager shall notify the owner of the missed inspection report by U.S. mail, first class, postage prepaid with a certificate of mailing, at the property's legal address listed in the records of the El Paso County Assessor's Office. The responsible party will have twenty (20) business days to complete the inspection and deliver it to the Stormwater Enterprise Manager. A notice of violation may be issued by the Stormwater Enterprise Manager if an inspection is not submitted after the twentieth (20th) business day. The notice will include a date that will be identified as the "date of notice of violation" for purposes of appeal rights.

D. Appeals

Any person receiving a notice of violation under this Section may appeal the determination of the Stormwater Enterprise Manager to the Drainage Board, as follows:

1. The notice of appeal must be received by the Stormwater Enterprise Manager within ten (10) days from the date of the notice of violation. A hearing on the appeal before the Drainage Board shall take place within fifteen (15) days from the date the City received the timely notice of appeal.
2. An appeal of the Drainage Board's determination can be made to the Public Works Director. The notice of appeal must be received by the Public Works Director within ten (10) days from the date of the Drainage Board's determination. A de novo hearing on the appeal before the Public Works Director shall take place within fifteen (15) days from the date the Public Works Director received a timely notice of appeal of the Board's determination. The decision of the Public Works Director shall be final.

7.5.1103 Charging Cost of Abatement

A. Within thirty (30) days after maintenance and/or repair of the permanent control measure by Stormwater Engineering, the Stormwater Enterprise Manager shall notify in writing the property owner of the cost of repair, including

administrative costs. The Stormwater Enterprise Manager notice shall include an "official notice date."

B. The property owner may file a written protest objecting to the amount of the assessment with the City Clerk within fifteen (15) days of the "official notice date." The City Clerk shall set the matter for public hearing by the City Council and shall notify the appellant of the date of the hearing. The decision of the City Council shall be set forth by resolution and shall be final.

7.5.1104 Liens

A. In addition to any lien placed upon real property, the cost of abatement, including administrative costs, shall be deemed a joint and severable personal debt of the property owner.

B. If the amount due is not paid within ten (10) days of the decision of the City Council or the expiration of the time in which to file an appeal to City Council under this Part 7.5.11, the charges shall become a special assessment against the property and shall constitute a priority lien on the property for the amount of the assessment. This lien shall be deemed in priority of, and superior to, any and all liens then existing on the property or later levied upon the property.

C. A copy of the resolution shall be filed with the County Assessor and the County Treasurer so that the Assessor may enter the amounts of the assessment against the parcel as it appears on the current assessment roll, and the tax collector shall include the amount of the full amount of the assessment on the bill for taxes levied against the parcel of land.

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7.5.12 SUBDIVISION SIGN AND ACCESS MARKING ENFORCEMENT

7.5.1201 Enforcement

A. Failure to erect any sign required by Subsection 7.4.304G.4 (Street Name Signs) or any road marking required by Subsection 7.4.304G.5 (Fire Apparatus Access Road Markings) shall result in disapproval of final inspection, refusal to issue a Certificate of Occupancy, revocation of Certificate of Occupancy or other action authorized in Part 7.5.9 (General Enforcement) or Section 1.1.201 (General Penalty).

B. The property owner(s) or an authorized agent, upon notification of noncompliance and subsequently failing to meet or cause to be met all applicable requirements of Subsections 7.4.304G.4 (Street Name Signs) or

7.4.304G.5 (Fire Apparatus Access Road Markings) shall be responsible for any and all expenses incurred on the part of the City or any authorized agent in the enforcement of and compliance with either of those Sections.

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7.5.13 HISTORIC PRESERVATION ENFORCEMENT

7.5.1301 Enforcement

A. Regulations in this UDC relating to historic preservation shall enforced in accordance with Part 7.5.9 (General Enforcement) Appeals from notices and orders alleging violations of the regulations relating to historic preservation shall be in accord with Section 7.5.908 (Appeals).

B. On appeal, the Planning Commission or City Council shall have the power after hearing to order restoration of the building, structure, site, or object to its appearance or setting prior to the violation. In addition, if any violation of provisions of this UDC subject to enforcement by this Part 7.5.13 are by persons licensed or registered under Chapter 2 of the Building Code, suspension or revocation proceedings may be commenced under the provisions of Chapter 2 of the Building Code.

7.5.1302 Failure to Comply with Order to Restore

A. It shall be unlawful for any person to fail or refuse to comply with any order issued to that person pursuant to this Part 7.5.13.

B. In the event that any order issued in accordance with this Part 7.5.13 or Part 7.5.9 (General Enforcement) is not complied with in such reasonable time as is specified in the order, the Manager, after notice to the owner, or agent of the owner or occupant, may direct restoration through private contract. The procedures outlined in the City Code for the collection of the cost and expenses thereof shall apply independently and in addition to the penalty provided by this UDC for violation of any provisions of this UDC.

7.5.1303 Lien Assessment

A. If the owner or agent of the owner fails to pay the cost and expenses for restoration within thirty (30) days after billing, a lien may be assessed against the property for such cost in accord with this UDC.

B. If the application of any provision of this Part 7.5.13 to any lot, building, or other structure or a tract of land is declared to be invalid by a decision of any

court of competent jurisdiction, it is hereby declared to be the legislative intent that the effect of such decision shall be limited to that lot, building, or other structure or tract of land immediately involved in the controversy, action, or proceeding in which the judgment or decree of invalidity was rendered, and such decision shall not affect, impair, or nullify all or any other part of the UDC regulations concerning historic preservation or the application of any historic preservation regulation in this UDC to any other lot, building, or other structure or tract of land.

C. Section RBC311 of the Regional Building Code provides means for the preservation of historic buildings relating to their repair, alteration, relocation, and change of occupancy.

D. Section RBC112 (Dangerous Buildings) of the Regional Building Code provides for a just, equitable, and practical method for dealing with dangerous buildings.

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7.4.1309 Prohibited Signs

E. Signs that advertise activities that are unlawful and not recognized as permitted or conditional uses per Article 7.3 (Use Regulations).