

RESOLUTION NO. 24-10

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BRIGHTON, COLORADO, RECOMMENDING AMENDMENTS TO ARTICLES 1 AND 2 OF THE LAND USE AND DEVELOPMENT CODE TO ADD ENFORCEMENT MECHANISMS FOR VIOLATIONS OF THE LAND USE AND DEVELOPMENT CODE AND OTHER RELATED MATTERS

WHEREAS, the City of Brighton (the "City") has the power and authority to make and publish ordinances which are necessary and proper to preserve the health, safety, and welfare of the residents of the City not inconsistent with the laws of the State of Colorado; and

WHEREAS, the City Council of the City of Brighton Colorado directed staff to prepare an ordinance holding developers in the City accountable for compliance with the requirements of the *Land Use and Development Code*, the *Brighton Municipal Code*, and agreements with the City; and

WHEREAS, pursuant to Section 2.10 and Table 2-1 of the *Land Use and Development Code*, the Planning Commission serves as the recommending review body of code amendments for the City Council; and

WHEREAS, as the City continues to grow, it is imperative that development complies with all applicable laws, regulations, and obligations; and

WHEREAS, the Planning Commission finds and determines that the proposed amendments to the *Land Use and Development Code* shall enhance, protect, and otherwise further the public health, safety, and welfare of the residents of the City, and, therefore, recommend the proposed amendments to the City Council for approval.

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF BRIGHTON, COLORADO, AS FOLLOWS:

Section 1. The Planning Commission hereby recommends that Section 1.04 of the *Land Use and Development Code* be amended in its entirety as follows:

1.04 – Violations

Each of the following actions, or inaction when action is required, is a violation of this development code, and is subject to enforcement and the imposition of penalties as shown in Article 1-24 of the Brighton Municipal Code, and/or Sections 1.06 (Enforcement) or 1.07 (Penalties).

- A. Failure to comply with any standard, regulation, or requirement of this development code or any regulation adopted by a City department or agency under authority granted by this development code, any agreement, including, but not limited to, any development agreement, annexation agreement, or approved plat.
- B. Failure to comply with any condition attached to a permit or approval by the City Manager or designee under this development code.
- C. Engaging in the division of land for sale or development in any way that does not comply with the standards, criteria, and procedures for approval of a plat under this development code.
- D. Transferring title to any lot, tract, or parcel of land before any plat required by this development code has been approved and the approved plat has been filed with the County Clerk and Recorder for the county or counties in which the property is located.
- E. Submitting for recording with any County Clerk and Recorder any subdivision plan, plat, or other land use document that has not been approved under this development code.
- F. Obstructing or removing any notice required to be posted or otherwise given under this development code.
- G. Interfering in any manner with persons in performance of a right or duty granted or imposed by this development code, maintained, or otherwise initiated in violation of this development code.
- H. To continue any violation as defined in Subsections A through G above, with each day of continued violation to be considered a separate violation for purposes of charging of any ordinance violations and computing cumulative penalties.

Section 2. The Planning Commission hereby recommends that Section 1.06 of the *Land Use and Development Code* be enacted as follows:

1.06. – Enforcement

- A. *Responsibility.* The Director of Community Development shall be responsible for enforcement of this development code and for inspections of property to determine violations of this development code through the employment of inspectors who are vested with the powers of enforcement.

B. *Inspections.* Upon presentation of proper credentials, including a warrant, an authorized employee or agent of the City may enter at reasonable times any building, structure, or premises in the City to perform inspections of potential violations of this development code.

C. *Remedies are Cumulative.* The City may use any or all of the powers listed in this Section in any order, to enforce the provisions of this development code. The selection of any methods of enforcement does not restrict the power of the City to choose an additional or different form of enforcement in the future.

1. *Withholding of a Building Permit or Certificate of Occupancy.* No building permit or final certificate of occupancy shall be issued for any building or structure that does not fully comply with the provisions of this development code. Nothing in this development code shall be waived or superseded by the wrongful or erroneous issuance of a building permit, business license, or certificate of occupancy.

2. *Withholding of Other Permits and Approvals.*

a. If the City has issued some permits or approvals for a development or subdivision, but additional permits or approvals are needed for completion of the project, and the City determines that there have been violations of this development code related to those permits or approvals already granted, the City may withhold later permits or approvals for the development until the violations have been corrected.

b. As an alternative to withholding of permits or approvals, the City may issue later permits or approvals subject to conditions that the existing violations be cured within a stated period of time.

3. *Withholding of Water Taps or Water Service.* The City may refuse to issue water taps for the development where the violation exists, and/or may withhold water service to that development, until the violation is cured.

4. *Revocation of Permits or Approvals.* The Community Development Director may revoke any permit or approval under this development code if the Director determines that the permit or approval has been issued in error, or that the site development, land uses, or structures authorized by that permit or approval have been established or constructed or are being maintained in violation of this development code.

5. *Suspension of Licenses.* The City may suspend the license of the builder, contractor, or subdivider responsible for the violation.

6. *Stop Work Order.* With or without revoking permits, the City may issue a stop

work order or a notice of violation requiring the property owner and its agents and contractors to stop work on any building or structure on any land on which there is an uncorrected violation of a provision of this development code or of a permit or approval issued under this development code.

7. *Abatement.* The City may seek a court order in the nature of mandamus, abatement, injunction or other action or proceeding to abate or remove a violation or to otherwise restore the premises in question to the condition in which they existed prior to the violation.

8. *Injunctive Relief.* If the Director of Community Development determines that irreparable harm or injury may result to person or property by the continued violation of this development code, the Director of Community Development may request the City Attorney to seek injunctive relief in a court of proper jurisdiction.

9. *Article 1-24 Powers.* The City may use any powers and procedures listed in Article 1-24 of the Brighton Municipal Code to enforce this development code.

10. *City Abatement and Recovery Costs.* When a violation of this development code or a failure to complete construction or improvements required by this development code creates a nuisance or a hazard to public health or safety, the City may correct the violation or abate the nuisance or hazard itself and recover the costs of such abatement from the owner of the property in any manner permitted by law.

11. *Others Permitted by Law.* The City may use any other powers permitted by Colorado law to enforce this development code, the terms and conditions of any permit or approval issued pursuant to this development code, or the violation of any regulation issued based on authority granted in this development code.

D. *Enforcement Procedures.*

1. *Non-emergency Matters.*

a. *Notice of Violation.*

(1) In the case of violations of this development code that do not constitute an emergency or an immediate threat to public health or safety, the City may give written notice of the nature of the violation to the occupant (other than the resident of an apartment in a multifamily residential or mixed-use structure), property owner, or any applicant for any relevant permit. Notice may be provided by:

- (a) Delivering a copy of the notice to the occupant (other than the resident of a dwelling unit in a multifamily residential or mixed-use structure), property owner, or the holder of the permit or approval, mail return receipt requested, to the last-known post office address of the property owner or holder of the permit; or
- (b) Leaving a copy of the notice with any agent of the premises and mailing a copy to the property owner as shown in the real estate records; or
- (c) If no person can be found on the premises, affixing a copy of the notice in a conspicuous place at or near the entrance to the property or primary structure on the property.

(2) Violation notices shall state the nature of the violation, and the time period for compliance, and may also state the corrective steps necessary to ensure compliance with the development code and the types of additional enforcement steps and/or penalties that the City may use if the violation is not corrected within the stated time.

b. *Correction of Violations.*

(1) Unless otherwise stated in this development code, the notice of violation shall generally allow the occupant, property owner, or permit holder 10 calendar days from the date of the notice to correct the violation before further enforcement action may be taken. However, the Director of Community Development may provide a longer period for compliance if the Director determines that the nature of the violation or other unique circumstances make it unlikely that the violation can be corrected within 10 calendar days. Similarly, the Director may allow a shorter time period if the Director determines that the violation can be corrected in less than 10 calendar days, or if the violation involves a temporary use or structure that will be used or will occur in less than 10 calendar days from the date on which the notice of violation is provided, or if the violation is associated with a property deemed to be a chronic violator by the Department of Community Development.

(2) The Director of Community Development may extend the time permitted to correct a violation of this development code upon receipt of written evidence that the required correction has been started and is being diligently pursued, and that it is impossible or impracticable to complete the correction within the time period stated in the notice of violation.

c. *Summons to Municipal Court.* Violations not corrected within the required timeframe may be subject to summons to appear in municipal

court and subject to additional penalties.

2. *Emergency Matters.* In the case of violations of this development code that constitute an immediate threat to public health and safety, or an emergency with the potential to create substantially increased problems, costs, or liabilities for the City if not remedied immediately, the City may use the enforcement powers available under this development code without prior notice. In such cases, the City shall give notice simultaneously with the beginning of its enforcement action or as soon as possible after beginning enforcement action. Notice may be provided to the property owner or to the holder of any approval or permit under which the violation has occurred.

Section 3. The Planning Commission hereby recommends that Section 1.07 of the *Land Use and Development Code* be enacted as follows:

1.07. – Penalties

A. Unless a violation of this development code is by its nature uncorrectable or irreversible, each day of continued violation shall constitute a separate violation.

B. Any violation of this development code shall be punishable in accordance with the penalty as set forth in Section 1-24 of the Brighton Municipal Code.

Section 4. Section 2.02(D)(2) is hereby amended as follows:

2. *Review Procedure.* In addition to the general requirements in Table 2-1 and Section 2.01, the requirements in this sub-section apply to subdivision plan applications.

a. The applicant shall coordinate review and submit comments from all required referral agencies per Section 2.01.E.2.

b. Once the applicant has addressed all staff comments and resubmitted the subdivision plan to the Community Development Department, the Director shall formally schedule the application for review by the Planning Commission.

c. The Planning Commission shall hold a public hearing and make a recommendation on the subdivision plan. Once a recommendation has been made by the Planning Commission, the subdivision plan shall be scheduled for a public hearing at the City Council for approval of the subdivision plan and acceptance of all public lands or proposed facilities. Provided no substantive changes are made between approval by the City Council and final engineering in association with a final plat, a final plat

may be administratively approved by staff according to subsection 2.02.E.

d. All public streets shall be included in the subdivision plan. At final plat, streets shall not be accepted unless included in an approved subdivision plan.

Section 5. The Planning Commission hereby recommends that Section 2.01(G)(7) of the *Land Use and Development Code* be enacted as follows:

7. The applicant, or a representative of the applicant, shall be present for the application hearing before the applicable reviewing body. If the applicant or a representative of the applicant is not present for the application hearing before the applicable reviewing body, the application hearing shall be rescheduled by the reviewing body.

Section 6. Findings. The Planning Commission finds determines that the amendments set forth herein: (i) further the purpose of the LUDC; (ii) are in accordance with the Comprehensive Plan and have been considered for both their long-range effects and immediate impacts; (iii) promote the public safety, health, and general welfare of the community of the City of Brighton; and (iv) improve the effectiveness and efficiency of administering the LUDC.

Section 7. This Resolution is effective as of the date of its adoption.

RESOLVED this 26th day of September 2024.

PLANNING COMMISSION OF THE CITY OF
BRIGHTON, COLORADO

Signed by:

Mark Rawlings

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MARK RAWLINGS, Chair

ATTEST:

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Amanda Besch

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AMANDA BESCH, Secretary

APPROVED AS TO FORM:

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Yasmina Gibbons

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Yasmina Gibbons, Deputy City Attorney