

TOWN OF KERSEY LAND USE CODE

TABLE OF CONTENTS

ARTICLE 6- ENFORCEMENT

6.1	Enforcement.....	6-1
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6.1 Enforcement

- A. Responsible Enforcement Entity.** The Town Board of Trustees, or its designee, shall be responsible for enforcing the provisions of this Code. Any criminal enforcement shall be by the issuance of a complaint and summons to Municipal Court by a peace officer.
- B. Authorization for Inspections.** Upon presentation of proper credentials, the Town Clerk, the code enforcement officer, or his or her designee(s) may enter any building, structure, real property, or premises to ensure compliance with the provisions of this Code. Such inspections shall be carried out during normal business hours unless the Town Clerk or code enforcement officer determines there is an emergency.
- C. Violations and Enforcement Procedures.**
1. Violations. It shall be a violation of this Code to undertake any of the following activities:
 - a. *Activities Inconsistent with Code.* Erecting, constructing, reconstructing, remodeling, altering, maintaining, expanding, moving, or using any building, structure, or sign, or to engage in development or subdivision of any land in contravention of any zoning, subdivision, sign, or other regulation of this Code, including all required approvals;
 - b. *Land Disturbing Activities Inconsistent with Code.* Excavating, grading, cutting, clearing, or undertaking any other land disturbance activity contrary to the provisions of this Code or without first obtaining all requisite land use approvals required by this Code or other applicable regulations;
 - c. *Nonconforming Uses Inconsistent with Code.* Creating, expanding, replacing; or changing a nonconforming use, structure, lot, or sign except in compliance with this Code;
 - d. *Making Lots or Setbacks Nonconforming.* Reducing or diminishing the lot area, setbacks, or open space below the minimum required by this Code;
 - e. *Increasing Intensity of Use.* Increasing the intensity of use of any land or structure, except in accordance with the procedural and substantive standards of this Code;
 - f. *Activities Inconsistent with Permit.* Engaging in any development, use, construction, remodeling, or other activity of any nature in any way inconsistent with the terms and conditions of any permit, approval, or other form of authorization required to engage in such activity; or
 - g. *Activities Inconsistent with Conditions of Approval.* Failure to comply with any terms, conditions, or limitations placed by the Board of Trustees upon any final development plan, subdivision plat, permit, or other form of authorization.

2. Penalty for Violations. Any person, including but not limited to the officers and agents of a corporation responsible for its actions or inaction, and the partners or members of a partnership, Limited Liability Company, firm or joint venture, either as owner, lessee, occupant, or otherwise, who violates or causes the violation of any of the provisions of this Code, shall be guilty of a separate offense for each and every day or portion thereof during which a violation is committed, permitted, or continues. Any person convicted of a violation shall be subject only to the fines provided for in the *Kersey Municipal Code*.
3. Civil Remedies and Enforcement Powers. In addition to criminal prosecution for violations, the Code Enforcement Officer, Town Clerk or the Board of Trustees shall have the following civil remedies and powers to enforce this Code:
 - a. *Notice of Violation and Corrective Action Order.*
 - i. *Non-emergency Violations.* In the case of violations of this Code that do not constitute an emergency or require immediate attention, written notice of the nature of the violation and required corrective action to be taken shall be given to the property owner, agent, occupant, or to the applicant for any relevant permit. Notice shall be given in person, by certified U.S. Mail (return receipt requested) or by posting notice on the premises. The notice shall specify the Code provisions allegedly in violation, and shall state that the individual has a period of thirty (30) days from the date of the receipt of the notice in which to correct the alleged violations before further enforcement action shall be taken. The notice shall also state any appeal and/or variance procedures available pursuant to this Code.
 - ii. *Emergency Violations.* In the case of violations of this Code that constitute an emergency as a result of safety or public concern, or violations that will create increased problems or costs if not remedied immediately, the Code Enforcement Officer, Town Clerk or Board of Trustees may use the enforcement powers available under this Article without prior notice, but shall attempt to give notice simultaneously with beginning enforcement action or as soon thereafter as practicable. Notice may be provided to the property owner, agent, occupant, or to the applicant for any relevant permit.
 - iii. *Extension of Time for Correction.* The Board of Trustees may grant an extension of the time to cure an alleged violation, up to a total of ninety (90) days, if the Board finds that due to the nature of the alleged violation, it reasonably appears that it cannot be corrected within thirty (30) days.
 - b. *Deny/Withhold Permits.* The Town Clerk or Building Official may deny and withhold all permits, certificates, or other forms of authorization to use or develop any land, structure, or improvements thereon until the alleged violation related to such property, use, or development is corrected. This provision shall apply

whether or not the current owner or applicant for the permit is responsible for the violation.

Where a property owner, agent, or other person has a record of an outstanding serious violation or violations of this Code, the Town Clerk, Building Official and/or Board of Trustees shall be authorized to deny or withhold all permits, certificates of occupancy, or other forms of authorization for any use or development activity undertaken by such person until the outstanding violation is corrected. This provision shall apply whether or not the property for which the permit or other approval is sought is the property in violation.

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

c. *Revocation of Permits.*

- i. *Public Hearing Required.* The Board of Trustees may revoke any development permit, building permit or other authorization, after notice and a public hearing.
- ii. *Notice of Public Hearing.* The public hearing on the revocation of a development permit, building permit or other authorization shall be conducted during a regular or special meeting of the Board of Trustees not less than seven (7) days, nor more than fourteen (14) days from the date the notice of the hearing is given. Notice of hearing shall be deemed given to the owner, the owner's agent or other person to whom the development permit was issued, upon deposit of said notice in the U.S. Mail, by certified mail, return receipt requested, addressed to the last known address of said person. Additional methods of service may also be utilized to give notice of the public hearing.
- iii. *Findings.* Following the public hearing, the Board of Trustees upon a finding of the following, may revoke any development permit, building permit or other authorization:
 - a) There is a departure from the approved plans, specifications, or conditions of approval; or
 - b) There is a violation of any provision of the *Kersey Land Use Code*; or
 - c) The development permit was obtained by false representation; or
 - d) The development permit was issued in error.
- iv. *Notice of Revocation.* Written notice of revocation shall be served upon the owner, the owner's agent, applicant, or other person to whom the

permit was issued by certified mail, return receipt requested, or such notice may be posted in a prominent location at the place of the violation. No work or construction or use of the property shall proceed after service of the revocation notice.

d. *Stop Work Order.*

i. *Issuance of Stop Work Order.* The Town Clerk, Building Official, Code Enforcement Officer or Board of Trustees may issue a written order to stop work on any property on which there is an uncorrected violation of either a provision of this Code or a provision of a development permit, building permit or other form of authorization. The stop work order shall specify the Code provisions allegedly in violation. Service of the order shall be given in person, by certified U.S. Mail (return receipt requested) or by posting notice on the premises. After any such order has been served, no work shall proceed on any building, other structure, or tract of land covered by such order, except to correct such violation or comply with the order. The notice shall also state any appeal and/or variance procedures available pursuant to this Code.

ii. *Timing/Notice.* The stop work order may be issued in conjunction with a notice of violation or subsequent to such notice. The stop work order may also specify a shorter time for correction of the violation than the thirty (30) day period specified in Section 6.1.C.3.a.i above. The stop work order shall also indicate that failure to comply with the order may subject the violator to criminal liability as penalty for the violation(s).

e. *Abatement or Injunctive Relief.* The Board of Trustees, through the Town Attorney, may initiate injunction or abatement proceedings or other appropriate legal action in the Municipal Court, District Court or other court of competent jurisdiction to abate, remove, or enjoin such violation and to recover damages, costs, and reasonable attorney's fees incurred in the abatement and removal of such violation.

4. Removal and Assessment. If any person, corporation, it's officers or agents, partnership, Limited Liability Company, firm, joint venture, or other entity fails to comply with an Order issued pursuant to this Code, the Town may abate any violation as set forth herein.

a. Notice. A written notice may be served upon the owner or agent in charge of such property, either in person, by mail, or certified mail requiring compliance with any requirement of this Code. Such notice shall require action within a number of days, as set forth in the Order or Notice. If the proper action to bring the property into compliance is not taken within the time stated in the Order or Notice, the Town may cause abatement of the violation and assess the whole cost thereof, including fifteen percent (15%) of the cost for inspection and other incidental costs in connection therewith. The costs and any charges assessed by the Town pursuant

to this chapter associated with the abatement shall be paid by the owner of the property, or agent for such owner, within thirty (30) days after mailing of the bill or assessment of such costs by the Town to the owner or agent. The Town shall have the right to proceed for the collection of any unpaid charges for abatement in the manner provided by law for the collection of debts and claims on behalf of the Town, including without limitation, collection and lien procedures provided in this Section and as provided by law.

- b. Collection. In addition to any other means provided by law for collection, if any such assessment is not paid within thirty (30) days after it is made and notice thereof is mailed, the same may be certified by the Town Clerk to the proper county authority and placed upon the tax list for the current year, and thereby collected in the same manner as other taxes are collected, with fifteen percent (15%) penalty there to defray the cost of collection, as provided by the laws of the state.
- c. Lien. Failure to pay within ten (10) days after mailing or delivery to the owner of the property, the amount assessed for abatement shall cause such assessment to become a lien against such lot, block or parcel of land associated with or benefiting from the services or abatement procedure, and such liens shall have priority over all other liens except general taxes and prior special assessments, the same may be affected at any time after such failure to pay by recordation in the County Land Records of a certification by the Town setting forth the costs to be charged against the property, the date of service and description of services giving rise to the charge. This lien and collection procedure is supplementary and additional to any collection procedures described elsewhere in this Chapter.
- d. Appeal of Assessment. Any owner or occupant who disputes the amount of such assessment made against the property may, within thirty (30) days of receipt of the notice of assessment, appeal the assessment and request a revision or modification of the assessment.
- e. Appeal Process. The appeal shall be made in writing and delivered to the Town Clerk and shall set forth such information as the applicant believes appropriate. Such appeal shall be heard by the Board of Adjustment of the Town within thirty (30) days after the appeal is filed with the Town Clerk. Notice of such hearing and proceedings shall be given to the applicant at least ten (10) days prior to the hearing date. The petitioner shall have the burden of proof that revision or modification is necessary to preserve substantial justice.
- f. Decision. Within ten (10) days after the hearing the Board of Adjustment shall make findings of fact based upon information presented and shall make a decision based upon such findings and may revise or modify such assessment, confirm the assessment or reject the assessment to promote substantial justice. The decision of the Board of Adjustment shall be in writing and shall be final, and shall be served upon the applicant within ten (10) days after the date of such decision, personally or by certified mail, return receipt requested.

5. Remedies Cumulative. The remedies provided for violations of this Code, whether civil or criminal, shall be cumulative and in addition to any other remedy provided by law, and may be exercised in any order.
6. Continuation of Prior Enforcement Actions. Nothing in this Code shall prohibit the continuation of previous enforcement actions undertaken by the Town pursuant to previous regulations.
7. Appeals of Enforcement Actions. Appeals of any order, requirement, decision, or determination made by an administrative official in the enforcement of this Article shall be made to the Board of Adjustments in accordance with the provisions of Section 3.9 of this Code.
8. Liability of Town. This Code shall not be construed to hold the Town responsible for any damages to persons or property by reason of the inspection or reinspection, or failure to inspect or reinspect, or by reason of issuing a building permit, or by reason of pursuing or failing to pursue an action for injunctive relief.

6.2 – XX Reserved.