

ORDINANCE 3-1, 2023

AN ORDINANCE ELIMINATING IMPRISONMENT AS A PENALTY FOR MUNICIPAL OFFENSES, AND PROVIDING FOR A PROCESS FOR IMPLEMENTING PENALTIES AND PROVIDING FOR DUE PROCESS IN THE TOWN OF JAMESTOWN, COLORADO

WHEREAS, CRS §31-2-201 et seq. provides authorization for the implementation of penalties for Ordinance violations, and

WHEREAS, the Board of Trustees finds it is in the Town's best interest to eliminate imprisonment in connection with all Town of Jamestown ordinance violations, and

WHEREAS, the Town Board adopted Ordinance 3-1-2021 on March 1, 2021 eliminating imprisonment language in Town ordinances, and

WHEREAS, the Town Board also wishes to provide for a fair process of determining penalties, allowing cures and providing due process for violations of Town Ordinances, and

WHEREAS, the Town Board further finds that a procedure for issuing administrative citations will assist the Town in gaining timely compliance by residents, and that providing the combination of judicial and administrative remedies set forth herein will promote and protect the public's health, safety and welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN BOARD OF THE TOWN OF JAMESTOWN, COLORADO:

Article I; Eliminating Reference to Imprisonment

Section 1. The following sections of the Jamestown ordinances are hereby amended by eliminating imprisonment as a penalty for a municipal ordinance violation:

Ordinance No.3, Series 1966 – Creation, Composition and Jurisdiction of Municipal Court –
Section 12 – Violation of this Article – Imprisonment

Ordinance No.3, Series 1994 – Road Permits and Standards and Requirements – Section 9 –
Penalties – Imprisonment

Ordinance No. 5, Series 1994 – Explosives – Section 5 – Penalties – Imprisonment

Ordinance No. 4, Series 1995 – Use of Mobile Homes – Section 4 – Penalty – Imprisonment

Ordinance No. 1, Series 1997 – Control of Nuisance Garbage Weeds – Section 7 – Violation –
Imprisonment

Ordinance No. 5, Series 1997 – Display of Advertising and Signs – Section 5 – Violation –
Imprisonment

Ordinance No. 6, Series 1997 – Animal Control – Section 4 – Violation – Imprisonment

Ordinance No. 7, Series 2004 – Driveway Construction & Emergency Access – Section 4 –
Penalty – Imprisonment

Ordinance No. 2, Series 2009 -- Subdivision -- Section 5 -- Violation -- Imprisonment

Ordinance No. 7, Series 2010 – Prohibiting Medical Marijuana Establishments – Section 6 –
Enforcement – Imprisonment

Ordinance No. 4, Series 2011 --Waterworks and Watershed -- Violation -- Imprisonment

Ordinance No. 8, Series 2012 -- FEMA Floodplain -- Art. VI Section A -- Violation --
Imprisonment

Ordinance No. 1, Series 2013 – Recreational Marijuana – Section 2 – Imprisonment

Ordinance No. 12, Series 2014 – Speed Limit – 15 mph – Section 2 – Imprisonment
Ordinance No. 9-05, Series 2016 – Prohibiting Discharge of Firearms – Amended – Section 6 –
Violation – Imprisonment
Ordinance No. 09-03, Series 2017 -- Regulating Vehicles on Public Property -- Section 1 --
Violation -- Imprisonment

Any other section of any Town of Jamestown ordinance providing for imprisonment as a penalty for a municipal ordinance violation.

Article II; Process for Penalties and Enforcement - Administrative Citations

Section 1. Intent; Scope

- (a) It is the policy of the Town to encourage voluntary compliance with Town ordinances. It is not the policy of the Town of Jamestown to threaten or intimidate persons suspected of violating enforceable provisions of any ordinance with excessive or multiple fines.
- (b) This Article authorizes administrative penalties be imposed for violation of any Town of Jamestown ordinance.
- (c) Enforcement actions are intended to be alternative in nature. At any one time, the Town may pursue one or more civil, criminal, or administrative actions against a responsible party. The Town may choose to pursue an alternative action upon staying the original action. However, nothing in this Article shall preclude the Town from immediately issuing a summons to court and/or stop work order or cease and desist order, for any alleged violation.

Section 2. Definitions

The following words, terms and phrases, when used in this Article, shall have the following meanings, unless the context clearly indicates otherwise:

Administrative hearing officer means the person appointed by the Town Board to hear and determine administrative citation appeals. The Town Board may appoint an employee of the Town or another person possessing acceptable qualifications as the hearing officer. The hearing officer may not have personally determined, in the first instance, the factual issues in controversy and may have no personal or financial interest in the outcome of the hearing.

Ordinance official means the Town Board, Town Clerk, or a Town representative appointed by the Town Board to enforce the ordinances of the Town.

Responsible party means a person or entity who has violated a Town ordinance or, in the case of property violations, the responsible party may also be the property owner, the occupant, or an individual or an entity who, acting as an agent for or in any other legal capacity on behalf of the owner, has authority over property subject to an administrative citation under this Article.

Town Board means the Board of Trustees of the Town of Jamestown.

Section 3. Complaints and Notice of Violation

(a) The violation process is complaint-driven. A formal complaint may be written or verbal, but may not be anonymous. Complaints may be directed to the attention of the Mayor, Trustees, or the Town Clerk. The Town Clerk shall keep a public record of all complaints. If the complaint is verbal, the Mayor, Trustee, or Town Clerk may ask the complainant to clarify the complaint in writing.

As a first step in obtaining voluntary compliance, Elected Officials and Town employees should attempt to educate residents and resolve differences prior to implementing the procedures in this ordinance. If this is not satisfactory, the complaint is then forwarded to the Ordinance Official.

(b) The Ordinance Official may issue a **Notice of Violation** upon determining that a violation of any Town ordinance has occurred.

The Ordinance Official shall keep the BOT, Mayor, Town Clerk and any interested parties apprised of the status of all open complaints in writing. Nothing in this section is intended to prevent the resolution of any issue prior to implementing the terms of this ordinance.

(c) The Notice of Violation shall be in writing and shall provide the following information:

- a. The location of the violation and the date and approximate time the violation was observed;
- b. Where applicable, the property in violation by address or legal description;
- c. The applicable Town ordinance (including section number) violated with a description of the violation;
- d. A description of the action required to correct the violation;
- e. A requirement that the violation be corrected or abated within a specified date and time. The Notice of Violation shall provide a reasonable time for correction given the circumstances, but in no case more than ninety (90) days.
- f. A statement that if the violation is not corrected or abated on or before the time stated in the Notice of Violation, the Town may pursue enforcement alternatives including issuance of an Administrative Citation.

(d) The Notice of Violation shall be served on the responsible party by any of the following means:

- a. By personally delivering a copy of the Notice of Violation to the responsible party;
- b. A copy of the Notice of Violation may be mailed by first class mail to the last known address of the responsible party as reflected in Town or County records;
or
- c. A copy of the Notice of Violation may be posted in a conspicuous place on the premises. The ordinance official shall photograph the posting with a camera showing the date and time of the posting. The photograph showing the posting shall be maintained by the ordinance official during the proceeding. In addition, a copy of the Notice of Violation must be mailed to the to the last known address of the responsible party as the same is reflected in the Boulder County Assessor records.

- d. The Notice of Violation shall be deemed served on the date of receipt by the responsible party, if personally served, or upon the third (3rd) business day after mailing or posting of the Notice of Violation.

Section 4. Administrative Citation

- (a) If the responsible party fails to correct the violation noted in the Notice of Violation within the time provided in such notice, the ordinance official may issue an **Administrative Citation** to the responsible party.
- (b) Service of an Administrative Citation on a responsible party shall be made in the same manner as the Notice of Violation as described in Section 2, except that the ordinance official should attempt to obtain the signature of the person receiving the Administrative Citation on the citation. If that person refuses or fails to sign the Administrative Citation, or the ordinance official otherwise does not obtain the responsible party's signature, such absence of the responsible party's signature shall not affect the validity of the Administrative Citation and subsequent proceedings.
- (c) The Administrative Citation shall be in writing and shall provide the following information:
 - a. The location of the violation and the date and approximate time the violation was observed;
 - b. Where applicable, the property in violation by address or legal description;
 - c. The applicable Town ordinance (including section number) violated with a description of the violation;
 - d. A description of the action required to correct the violation;
 - e. A requirement that the violation be corrected or abated within a reasonable time given the circumstances, but in no case more than ten (10) days, and an explanation the consequences of failure to correct said violation;
 - f. The amount of fine imposed for the violation;
 - g. Explain how the fine shall be paid, the time period by which it shall be paid and the consequences of failure to pay the fine; and
 - h. Briefly state the process for appealing the Administrative Citation.
 - i. The signature of the ordinance official.

Section 5. Appeal of Administrative Citation

- (a) A person served with an Administrative Citation may file a notice of appeal within ten (10) calendar days from the service of the Administrative Citation. Compliance with this time limit shall be a jurisdictional prerequisite to any appeal brought under this Article, and failure to comply shall bar any such appeal.
- (b) The notice of appeal shall be made in writing and filed with the Town Clerk in person, by mail, by facsimile transmission or by electronic mail. Regardless of the manner of filing, the notice of appeal must be filed with the Town Clerk within ten (10) calendar days from the date the Administrative Citation was served.
- (c) The notice of appeal shall contain the following information:

- a. The reasons the appellant believes the administrative citation is objectionable, incorrect or illegal;
 - b. The amount and type of claim or dispute involved, and the time during which it accrued or occurred;
 - c. The name, address and telephone number of the appellant;
 - d. If the appellant is to be represented by another person, the name, address and telephone number of the representative; and
 - e. The signature of the appellant, legal representative, or corporate agent.
- (d) If, in the opinion of the Town Clerk, the appeal meets all of the requirements of subsections (a) through (c) of this Section, the Town Clerk shall forward the notice of appeal to an Administrative Hearing Officer or will immediately notify the Mayor if there is a need to appoint a an Administrative Hearing Officer.
- (e) If, in the opinion of the Town Clerk, the appeal does not meet all of the requirements of subsections (a) through (c) of this Section, the Town Clerk shall promptly return the appeal and notify the appellant of what requirements the appeal fails to meet. The appellant may correct and resubmit the appeal, provided the timeframe for filing an appeal set forth in subsection (a) of this Section has not expired.
- (f) As soon as practicable after receiving the written notice of appeal, the Administrative Hearing Officer appointed for the appeal shall schedule a date, time and location for the hearing.
- (g) Written notice of the date, time and location of the hearing shall be personally served upon or sent by first class mail to the responsible party at least ten (10) calendar days prior to the date of the hearing.
- (h) Notwithstanding any other Town ordinance, responsible parties cited under the provisions of this Article shall have only the appeal rights granted herein.

Section 6. Procedures and Standards at Administrative Citation Appeal Hearings

- (a) Administrative appeals are intended to be informal in nature. Formal rules of evidence and discovery do not apply. The procedure and format of the administrative hearing shall follow the procedures provided in this Section.
- (b) The parties to an administrative citation appeal hearing shall be the responsible party and the Town.
- (c) The Administrative Hearing Officer, at the request of any party to the hearing, may subpoena witnesses, documents and other evidence where the attendance of the witness or the admission of evidence is deemed necessary to decide the issues at the hearing. All costs related to the subpoena, including witness fees in the amount of five dollars (\$5.00) per witness, and mileage fees at the rate provided for witnesses by

statute, shall be borne by the party requesting the subpoena. The party requesting a subpoena shall also be responsible for service of the subpoena.

- (d) The Town bears the burden of proof at an administrative citation appeal hearing to establish the existence of a violation of the ordinance.
- (e) The standard of proof to be used by the Administrative Hearing Officer in deciding the issues at an administrative citation appeal hearing is by a preponderance of the evidence.
- (f) Hearings shall be recorded by electronic means and transcripts of such recordings shall be made available to any person upon request and payment in advance of the estimated cost of the production of the transcript.
- (g) The decision of the Administrative Hearing Officer shall be known as an **Administrative Ordinance Order**. The Administrative Hearing Officer may uphold the administrative citation and all penalties or dismiss the administrative citation and all penalties or may waive or conditionally reduce the penalties assessed by the Administrative Citation. The Administrative Hearing Officer may also impose conditions and deadlines to correct the violations or require payment of any outstanding penalties.
- (h) In the event that the Administrative Hearing Officer does not dismiss the Administrative Citation, the Administrative Hearing Officer shall assess reasonable administrative costs of the hearing in an amount not to exceed \$250.00.
- (i) Any responsible party who fails to appear at the hearing is deemed to waive the right to a hearing and the adjudication of the issues related to the hearing, provided that proper notice of the hearing has been provided. The Administrative Hearing Officer may take testimony, evidence and argument from the Town and issue an Administrative Enforcement Order.

Section 7. Penalties Assessed

- (a) The Town Board shall develop a schedule of penalties. (see Addendum A to this ordinance) The schedule of penalties shall be graduated in amount, with the smallest fine being assessed for the first Administrative Citation and increasingly larger fines for second, third and subsequent Administrative Citations. No single fine assessed for an Administrative Citation shall exceed \$1,000.
- (b) Payment of the penalty shall not excuse the failure to correct the violations nor shall it bar further enforcement action by the Town. If the responsible party fails to correct the violation, subsequent Administrative Citations may be issued for violations of the same applicable ordinance.
- (c) All penalties assessed shall be payable to the Town of Jamestown. Payment of the full amount of the penalty must be paid within fourteen (14) calendar days, or postmarked within fourteen (14) calendar days, of the date of issuance of the Administrative Citation or Administrative Enforcement Order, or within the time specified on the Administrative Enforcement Order.

Section 8. Failure to Pay Fines

- (a) The failure of any responsible party to pay the fines assessed by an Administrative Citation within the time specified on the citation or Administrative Enforcement Order, if an administrative hearing was held, may result in the imposition of a late fee of fifty dollars (\$50.00).
- (b) In the event of failure to pay all fines assessed, the Town Clerk may refer the matter for collection by whatever means are available to the Town.
- (c) In the case of violations associated with specific real property, the Town shall have as security for the collection of such penalties, late fees, and administrative costs a lien upon such real property. The assessment shall be a lien against the property until paid and shall have priority over all other liens except general taxes and special assessments. If such assessment is not paid within thirty (30) days, the Town Clerk may certify the same to the County Treasurer for collection of the unpaid amount, together with a ten percent (10%) penalty for cost of collection, in the same manner as other taxes are collected.
- (d) An action or other process provided by law may be maintained by the Town to recover or collect any amounts, including late fees, interests, and administrative costs, owing under this Article.

Section 9. Stop Work or Cease and Desist Order

In some cases it may be necessary to ensure that an activity be stopped immediately. In addition to or in concert with the **Notice of Violation**, a **Stop Work Order** and/or **Cease and Desist Order** may be issued.

A Stop Work Order may be issued by the Town for work being done without a proper permit, work that is in violation of state or local building codes or laws or any Town ordinance, or work that is being performed in a manner that is unsafe or dangerous.

A Cease and Desist Order may be issued to any person whose actions are in apparent violation of a Town ordinance.

In some cases a Stop Work Order or a Cease and Desist Order may be issued while a violation is being investigated. The investigation may result in a Notice of Violation. No fine may be assessed until after a Notice of Violation has been issued.

Any Stop Work Order or Cease and Desist Order shall be in writing, be signed by the Mayor or the Mayor's designee, shall indicate the violations which exist or are reasonably believed to exist, and shall be given to the responsible party.

Article IV - Administrative

Section 1. Severability: If any portion of this ordinance is held to be invalid for any reason, such decision shall not affect the validity of the remaining portions of this ordinance. The Town Board hereby declares that it would have passed this ordinance and each part hereof irrespective of the fact that any one part be declared invalid.

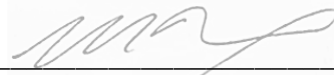
Section 2. Procedure for Amending, Revising or Replacing Addendum A to this Ordinance:

if at any time the Town Board desires to change, replace or otherwise revise any part of the Penalty Schedule, Addendum A, they may do so by adopting a resolution providing for the amendment, revision or replacement of the schedule. Any revised fine schedule shall be marked "Revision" and its effective date.

Section 3. Repeal: Ordinance 3-1-2021 is repealed. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof, are hereby repealed to the extent of such inconsistency or conflict.

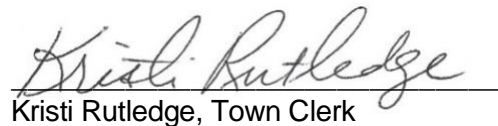
INTRODUCED, READ, ADOPTED, APPROVED, AND ORDERED PUBLISHED BY TITLE ONLY
THIS 3rd DAY OF March, 2023.

TOWN OF JAMESTOWN, COLORADO



Michael Box, Mayor

ATTEST:



Kristi Rutledge, Town Clerk