

## **Article 13 Violations, Penalties, and Enforcement**

### **Sec. 13.1 Responsibility for Enforcement**

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The Planning Director, or his or her designee, shall be responsible for enforcing this Land Development Code, except as otherwise expressly stated.

### **Sec. 13.2 Violations (TA 18-01)**

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Unless otherwise expressly allowed by this Land Development Code or state law, any violation of this Land Development Code, including but not limited to the following, shall be subject to the remedies and penalties provided for in this Land Development Code.

- 13.2.1 To use land or buildings in any way not consistent with the requirements of this Land Development Code;
- 13.2.2 To erect a building or other structure in any way not consistent with the requirements of this Land Development Code;
- 13.2.3 To engage in the development or subdivision of land in any way not consistent with the requirements of this Land Development Code;
- 13.2.4 To transfer title to any lots or parts of a development unless the land development plan or subdivision has received all approvals required and an approved plan or plat, if required, has been filed in the appropriate office;
- 13.2.5 To submit for recording, any subdivision plat, land division or other land development plan that has not been approved in accordance with the requirements of Article 8 or that does not qualify for an exemption under this Land Development Code;
- 13.2.6 To install or use a sign in any way not consistent with the requirements of Article 10;
- 13.2.7 To engage in the use of a building or land, the use or installation of a sign, the subdivision or development of land or any other activity requiring one or more permits or approvals under this Land Development Code without obtaining all such required permits or approvals;
- 13.2.8 To violate the terms of any permit or approval granted under this Land Development Code or any condition imposed on such permit or approval;
- 13.2.9 To obscure, obstruct or destroy any notice required to be posted or otherwise given under this Land Development Code;
- 13.2.10 To violate any lawful order issued by any person or entity under this Land Development Code; or
- 13.2.11 To continue any violation as defined above, with each day of continued violation to be considered a separate violation for purposes of computing cumulative civil or criminal penalties.

### **Sec. 13.3 Continuing Violations**

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Each day that a violation remains uncorrected after receiving notice of the violation from the city shall constitute a separate violation of this Land Development Code.

### **Sec. 13.4 Liability**

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The owner, tenant or occupant of any land or structure, or part thereof, or any architect, builder, contractor, agent or other person who participates in, assists, directs, creates or maintains any situation

that is contrary to the requirements of this Land Development Code shall be held jointly and severally responsible for the violation and be subject to the penalties and remedies provided herein.

## **Sec. 13.5 Remedies and Enforcement Powers**

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The city shall have the following remedies and enforcement powers:

### 13.5.1 Withhold Permit

- A. The Planning Director or Director of Planning and Development may deny or withhold all permits, certificates or other forms of authorization on any land or structure or improvements thereon upon which there is an uncorrected violation of a provision of this Land Development Code or of a condition or qualification of a permit, certificate, approval or other authorization previously granted by the city. This enforcement provision shall apply regardless of whether the current owner or applicant is responsible for the violation in question.
- B. The Planning Director may deny or withhold all permits, certificates or other forms of authorization on any land or structure or improvements owned or being developed by a person who owns, developed or otherwise caused an uncorrected violation of a provision of this Land Development Code or of a condition or qualification of a permit, certificate, approval or other authorization previously granted by the city. This provision shall apply regardless of whether the property for which the permit or other approval is sought is the property in violation. For purposes of this section a person shall be defined as any individual or business entity with more than a 10% interest in the subject property.
- C. Notwithstanding the foregoing and pursuant to G.S. § 160A-375, permits and certificates of occupancy shall not be withheld for violations of the portions of this Land Development Code adopted pursuant to G.S. Chapter 160A, Article 19, Part 2, "Subdivision Regulation," except that building permits shall be denied for lots that have been illegally subdivided.

### 13.5.2 Permits Approved with Conditions

Instead of withholding or denying a permit or other authorization, the Planning Director may grant such authorization subject to the condition that the violation be corrected within a reasonable time as determined by the Planning Director.

### 13.5.3 Revoke Permits

Any permit or other form of authorization required under this Land Development Code may be revoked by the Planning Director when the Planning Director determines: (1) that there is departure from the plans, specifications, or conditions as required under terms of the permit, (2) that the development permit was procured by false representation or was issued by mistake, or (3) that any of the provisions of this Land Development Code are being violated. Where permits are mistakenly issued an applicant shall be entitled to appeal the revocation of the permit to the Board of Adjustment as a variance request in accordance with Sec. 2.8. In such cases no fee shall be charged to process the request. Written notice of such revocation shall be served upon the owner, the owner's agent or contractor, or upon any person employed on the building or structure for which such permit was issued, or shall be posted in a prominent location; and, thereafter, no such construction shall proceed.

### 13.5.4 Stop Work

- A. Whenever a building or part thereof is being constructed, reconstructed, altered or repaired in violation of this Land Development Code, the Planning Director may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing the work and the owner of the property, if different from the person doing the work. The stop-work order shall state the specific work to be stopped, the specific reasons for the stoppage, and the conditions under which the work may be resumed. Violation of a stop-work order shall constitute a misdemeanor.

- B. Any person aggrieved by the issuance of a stop work order may appeal the issuance of the order to the Board of Adjustment pursuant to Sec. 2.10 of this Land Development Code. An appeal shall not stay the operation of the stop work order.
- C. The notice of hearing requirements set forth in this Land Development Code shall not apply to appeals of stop work orders. However, the staff shall orally notify the appellant of the date, time, and place of the hearing as soon as it has been scheduled and shall send to the appellant a written confirmation of this notice as soon as possible.
- D. Neither the person whom a stop work order is served nor an owner or developer served with a copy under subsection (A) may thereafter cause, suffer, or permit a violation of the order while it remains in effect.

#### 13.5.5 Revoke Plan or Other Approval

Where a violation of this Land Development Code involves a failure to comply with approved plans or conditions to which the approval of such plans was made subject, the Planning Director may, upon notice to the applicant and other known parties in interest (including any holders of building permits affected,) revoke the plan or other approval or condition its continuance on strict compliance with this Land Development Code, the provision of security to ensure that construction is completed in compliance with approved plans, or such other conditions as the Planning Director may reasonably impose.

#### 13.5.6 Injunctive Relief

The city may seek an injunction or order of abatement and any other appropriate relief in court to stop any violation of this Land Development Code or of a permit, certificate or other form of authorization granted hereunder. Such relief may include a mandatory or prohibitory injunction and order of abatement commanding the defendant to correct the unlawful condition or cease the unlawful use of the property.

#### 13.5.7 Forfeiture and Confiscation of Signs

Any sign installed or placed on public property, including a public right of way, except in compliance with the regulations of Article 10, shall be subject to forfeiture to the public and subject to confiscation. In addition to other remedies and penalties of this section, the city shall have the right to recover from the sign owner or person who placed the sign, the full costs of sign removal and disposal.

#### 13.5.8 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.

#### 13.5.9 Civil Penalties

Any act constituting a violation of the provisions of this Land Development Code or a failure to comply with any of its requirements, including violations of any conditions and safeguards established in connection with the issuance of variances or special use permits shall also subject the offender to a civil penalty of One Hundred 00/100 Dollars (\$100.00) per day that the offense continues. If the offender does not pay the civil penalty within 10 days after he or she has been cited for a violation of this Land Development Code, the civil penalty may be recovered in an action in the nature of debt.

#### 13.5.10 Other Remedies and Powers

The city shall have such other remedies and enforcement powers as are and as may be from time to time provided by North Carolina law for the violation of zoning, subdivision, sign or related provisions.

## **Sec. 13.6 Continuation of Previous Enforcement Actions**

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Nothing in this Land Development Code shall prohibit the continuation of previous enforcement actions, undertaken by the city pursuant to previous and valid ordinances and laws.

## **Sec. 13.7 Remedies Cumulative**

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The remedies and enforcement powers established in this Land Development Code shall be cumulative, and the city may exercise them in any order.

## **Sec. 13.8 Persons Subject to Penalties**

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The owner or tenant of any building, structure, premises, or part thereof, and any architect, builder, contractor, or agent, or other person who commits, participates in, assists in, or maintains such violations may each be found guilty of a separate offense and be subject to the above penalties.

## **Sec. 13.9 Enforcement Procedures**

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### 13.9.1 Non-Emergency Matters

In the case of violations of this Land Development Code that do not constitute an emergency or require immediate attention, the Planning Director shall give notice of the nature of the violation to the property owner or to any other person who is party to the agreement or to any applicant for any relevant permit in the manner hereafter stated, after which the persons receiving notice shall have 10 days to correct the violation before further enforcement action shall be taken. Notice shall be given in-person, by United States Mail, or by posting notice on the premises. Notices of violation shall state the nature of the violation and the time period for compliance and may state the corrective steps necessary and the nature of subsequent penalties and enforcement actions should the situation not be corrected.

### 13.9.2 Emergency Matters

In the case of violations of this Land Development Code that constitute an emergency situation as a result of safety or public concerns or violations that will create increased problems or costs if not remedied immediately, the city may use the enforcement powers available under this Land Development Code and pursuant to G.S. § 160A-193 without prior notice, but the Planning Director shall attempt to give notice to the owner and any occupants of the property simultaneously with beginning enforcement action. Notice may be provided to the property owner, to any other person who is party to the agreement and to applicants for any relevant permit.

### 13.9.3 Appeals

Enforcement actions taken by the Planning Director may be appealed by the affected party to the Board of Adjustment, except in the case of a violation of Article 8 or a permit or approval issued under the Subdivision Plat approval procedures of Sec. 2.3, in which case appeal shall be directly to the courts. An appeal to the Board of Adjustment does not stay a decision to revoke a certificate or permit.

### 13.9.4 Curative Provisions

A. Notwithstanding any other provision of this Land Development Code, in the case where construction has been completed and either the setback requirements, minimum lot size, or lot width at the building line have been violated, and where a period of fifteen years has passed since:

- (1) A building permit has been issued, or
- (2) Construction of the structure has been completed, and

(3) The City has sufficient evidence to conclude that the violation was not the result of fraudulent or deceptive behavior.

(4) No legal action has been commenced in any court of competent jurisdiction to enjoin such construction or to cause removal of any such structure

B. In such case the City of Hickory shall not bring any proceeding or take any action to require the removal of any such structure. Provided the property owner shall have the burden of proving the applicability of this section.