13 Violations, Penalties, and Enforcement

13.1 Responsibility for Enforcement

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

13.2 Violations *(TA 18-01)*

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 Chapter 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 Chapter 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.

13.3 Continuing Violations

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.

13.4 Liability *(TA 26-01)*

Violators may include any person who owns, leases, occupies, manages, or builds any structure or engages in any land development activity in violation of this Land Development Code and any person who owns, leases, or occupies a use in violation of this Land Development Code. A violation may be charged against more than one violator.

13.5 Remedies and Enforcement Powers

The city shall have the following remedies and enforcement powers:

13.5.1 Withhold Permit

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.

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.

Notwithstanding the foregoing and pursuant to G.S. § 160D-807, 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 160D, Article 8, "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 Development Approval *(TA 21-01)*

In addition to other remedies set forth in this chapter, development approvals may be revoked by the City by notifying the holder in writing stating the reason for the revocation. The City shall follow the same development review and approval process required for issuance of the development approval, including any required notice or hearing, in the review and approval of any revocation of that approval. Development approvals shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of any applicable local development regulation or any State law delegated to the City for enforcement purposes in lieu of the State; or for false statements or misrepresentations made in securing the approval. Any development approval mistakenly issued in violation of an applicable State or local law may also be revoked. The revocation of a development approval by a staff member may be appealed to the Board of Adjustment as provided in Sec. 2.10. If an appeal is filed regarding a development regulation within the Hickory Land Development Code, the provisions of Sec. 2.10.3 regarding stays shall be applicable.

13.5.4 Stop Work *(TA 21-01)*

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. A copy of the order shall be delivered to the holder of the development approval and to the owner of the property involved (if that person is not

the holder of the development approval) by personal delivery, electronic delivery, or first class mail. The person or persons delivering the stop work order shall certify to the City that the order was delivered, and that certificate shall be deemed conclusive in the absence of fraud. Violation of a stop work order shall constitute a Class 1 misdemeanor.

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.

The notice of hearing requirements set forth in this Land Development Code shall apply to appeals of stop work orders, except in the case of an expedited hearing of an appeal pursuant to Sec. 2.10.3. In such cases, 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.

No further work or activity shall take place in violation of a stop work order pending a ruling on the appeal.

13.5.5 In order to revoke an approval, the city shall follow the same approval procedures for review and approval, including any required notice or hearing.

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 Additional Remedies for Sign Violations *(TA 26-01)*

In addition to the other remedies provided in this Section, violations of Section 10, Signs may be remedied through the following:

(1) The Planning Director or designee may revoke the sign permit for a sign or sign structure in violation, including violations of restrictions on sign copy or the content of a sign face, and may require that the sign copy or sign face be removed, or that the structure on which such copy or face appears be removed.

(2) The Planning Director or designee may remove unpermitted signs, faces, and structures that are located in the public right of way, or on utility poles or structures within the public right of way, or signs, faces, and structures for which no owner can be located, or which present a danger to the public health or safety, or signs in violation of this Ordinance.

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 *(TA 21-01)*

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 30 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 Inspections; Other Remedies and Powers

Inspections. Administrative staff may inspect work undertaken pursuant to a development approval to assure that the work is being done in accordance with applicable State and local laws and of the terms of the approval. In exercising this power, staff are authorized to enter any premises within the jurisdiction of the City at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials; provided, however, that the appropriate consent has been given for inspection of areas not open to the public or that an appropriate inspection warrant has been secured.

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.

13.6 Continuation of Previous Enforcement Actions

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.

13.7 Remedies Cumulative

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

13.8 Persons Subject to Penalties

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.

13.9 Enforcement Procedures

13.9.1 Non-Emergency Matters *(TA 21-01) (TA 26-01*)

When a violation of this Land Development Code is discovered that does not constitute an emergency or require immediate attention, and is not remedied through informal means, the Planning Director shall give a written notice of violation to the violator. The notice of violation may be delivered by personal delivery, electronic delivery, or first-class mail and may be provided by similar means to the occupant of the property or the person undertaking the work activity. The notice of violation may also be posted on the property. The person providing the notice of violation shall certify to the City that the notice was provided, and the certificate shall be deemed conclusive in the absence of fraud. Upon receipt of the notice of violation the violator shall have 10 days to correct the violation before further enforcement action is taken.

Notice shall include a description of the violation and its location, the measures necessary to correct it, the possibility of civil penalties and judicial enforcement action, and notice of the right to appeal. The notice shall also state the time period allowed, if any, to correct the violation, which time period may vary depending on the nature of the violation and knowledge of the violator.

This notice shall be an administrative determination subject to appeal as provided below.

A notice of violation shall not be required where a notice of the same violation has been issued to the same violator at the same property within the previous two years. In such cases, the violator may be charged with a continuing violation without further notice.

13.9.2 Emergency Matters *(TA 26-01)*

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 NCGS 160A-193 to abate a public nuisance without prior notice, but the Planning Director shall attempt to give notice to the violator, the owner, and any occupants of the property simultaneously with beginning enforcement action.

13.9.3 Appeals *(TA 21-01)*

Enforcement actions taken by the Planning Director may be appealed by the affected party to the Board of Adjustment pursuant to Sec. 2.10.

13.9.4 Statutes of Limitations *(TA 21-01)*

Five-Year Limitation. The City shall not maintain an enforcement action against the owner of an interest in real property for a violation of this ordinance or permit or any other official action concerning land use carrying the effect of law if the violation meets the following criteria:

(1) The facts constituting the violation are known to the governing body, an agent, or an employee of the unit of local government; or
(2) The violation can be determined from the public record of the unit of local government.

This statute of limitation begins to run from the occurrence of the earlier of these two events. This subdivision does not limit the remedy of injunction for conditions that are actually injurious or dangerous to the public health or safety.

Seven-year Limitation. The City shall not maintain an enforcement action against the owner of an interest in real property for a violation of this ordinance or permit or any other official action concerning land use carrying the effect of law if the violation meets the following criteria:

(1) The violation is apparent from a public right-of-way; or
(2) The violation is in plain view from a place to which the public is invited.

This statute of limitation begins to run from the occurrence of the earlier of these two events. This subdivision does not limit the remedy of injunction for conditions that are actually injurious or dangerous to the public health or safety.

Ten-year Statute of Limitation. When a use constituting a violation of this ordinance is in existence prior to adoption of the specific ordinance section creating the violation, and that use is grandfathered and subsequently terminated for any reason, the City shall bring an enforcement action within 10 years of the date of the termination of the grandfathered status, if at all, unless the violation poses an imminent hazard to health or public safety.