

## **8. ENFORCEMENT**

<b>SECTION 8.1. PURPOSE</b>	<b>8-1</b>
<b>SECTION 8.2. COMPLIANCE REQUIRED</b>	<b>8-1</b>
<b>SECTION 8.3. VIOLATIONS</b>	<b>8-1</b>
A. Generally	8-1
B. Types of Violations	8-1
C. Continuing Violations	8-2
<b>SECTION 8.4. RESPONSIBLE PERSONS</b>	<b>8-2</b>
<b>SECTION 8.5. ENFORCEMENT GENERALLY</b>	<b>8-2</b>
A. Responsibility for Enforcement	8-2
B. Inspections	8-3
C. Complaints Regarding Violations	8-3
D. Enforcement Procedure	8-3
<b>SECTION 8.6. REMEDIES AND PENALTIES</b>	<b>8-5</b>
A. Remedies Available to City	8-5
B. Penalties for Violation	8-6
C. Other Powers	8-7
D. Remedies Cumulative	8-7





# ARTICLE 8. ENFORCEMENT

## SECTION 8.1. PURPOSE

The purpose of this article is to establish procedures to ensure compliance with this Ordinance and to obtain corrections for Ordinance violations. It also sets forth the remedies and penalties that apply to violations. This article encourages the voluntary correction of violations, where possible.

## SECTION 8.2. COMPLIANCE REQUIRED

- A.** Compliance with all the procedures, standards, and other provisions of this Ordinance is required by any person owning, developing, managing, using, or occupying land or structures in the City.
- B.** All persons shall obtain all development approvals and permits required by this Ordinance prior to development. Development approvals and permits issued by a decision-making body or person authorize only the use, arrangement, location, design, density or intensity, and development set forth in those development approvals and permits.

## SECTION 8.3. VIOLATIONS

### A. GENERALLY

Any failure to comply with this Ordinance, or the terms or conditions of any development approval, permit, or other authorization granted in accordance with this Ordinance, is a violation of this Ordinance as provided in this article.

### B. TYPES OF VIOLATIONS

Any of the following shall be a violation of this Ordinance and shall be subject to the remedies and penalties provided for in this Ordinance:

- (1)** To place any use, structure, or sign upon land that is subject to this Ordinance without all of the approvals required by this Ordinance.
- (2)** To subdivide land in violation of this Ordinance, or transfer or sell land by reference to, exhibition of, or any other use of an unapproved plat, which shall be a Class I misdemeanor. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land does not exempt the transaction from this penalty. The City may bring an action for injunction of:
  - a.** Any illegal subdivision;
  - b.** Transfer of land;
  - c.** Conveyance of land; or
  - d.** Sale of land.
- (3)** To erect, construct, reconstruct, remodel, alter, maintain, move, or use any building, structure or sign, or to engage in development of any land in contravention of any provisions of this Ordinance. (This section is not intended to address legal nonconforming uses or structures.)

- (4) To engage 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, certificate or other form of authorization required in order to engage in such activity.
- (5) To reduce or diminish any lot area so that the setbacks or open spaces shall be smaller than prescribed by this Ordinance.
- (6) To increase the intensity of use of any land or structure, except in accordance with the procedural requirements and substantive standards of this Ordinance.
- (7) To remove, deface, obscure or otherwise interfere with any notice required by this Ordinance.
- (8) To fail to remove any sign or other improvement installed, created, erected, or maintained in violation of this Ordinance, or for which the permit, approval, permission, or other authorization has lapsed. (This section is not intended to address legal nonconforming uses or structures.)
- (9) To otherwise undertake any development or to establish any use in a manner which does not comply with this Ordinance.

### **C. CONTINUING VIOLATIONS**

- (1) Each day that a violation remains uncorrected after receiving proper notice shall constitute a separate violation of this Ordinance.
- (2) Any violation of the previous Unified Development Ordinance and other regulations replaced by this Ordinance shall continue to be a violation under this Ordinance, in accordance with Section 1.8.A, Violations.
- (3) Nothing in this Ordinance shall prohibit the continuation of previous enforcement actions, undertaken by the City pursuant to previous and valid ordinances and laws.

## **SECTION 8.4. RESPONSIBLE PERSONS**

Any person who violates this Ordinance is subject to the remedies and penalties set forth in this Article. For purposes of this section, a "person" subject to the remedies and penalties established in this Article may include the owner, tenant, or occupant of the land or structure that is in violation of this Ordinance, and any architect, engineer, builder, contractor, agent, or other person who participates in, assists, directs, creates, or maintains a situation that constitutes a violation.

## **SECTION 8.5. ENFORCEMENT GENERALLY**

### **A. RESPONSIBILITY FOR ENFORCEMENT**

- (1) The Planning Director shall be responsible for enforcing the provisions of this Ordinance in accordance with state law, except the Director of Engineering shall have the sole responsibility of enforcing Section 5.10, Stormwater Management Standards. Whenever this Ordinance refers to the Planning Director or Director of Engineering, it includes a designee of such.
- (2) The Planning Director and Director of Engineering shall establish policies, rules, and procedures to implement this Article.

- (3) The Planning Department shall conduct a Code Enforcement Program to assure continuing compliance with this Ordinance.

## **B. INSPECTIONS**

On presenting proper credentials, the Planning Director or Director of Engineering, as applicable, may enter upon land or inspect any structure to ensure compliance with the provisions of this Ordinance. These inspections shall be carried out during normal business hours unless the Planning Director or Director of Engineering, as applicable, determines there is an emergency necessitating inspections at another time. Areas not open to the public may be inspected if appropriate consent is given or if an inspection warrant is secured.

## **C. COMPLAINTS REGARDING VIOLATIONS**

Whenever a violation of this Ordinance occurs, or is alleged to have occurred, any person may file a written (electronic or hardcopy) complaint. The complaint, stating fully the cause and basis therefore shall be filed with the Planning Director, or in the case of complaints pertaining Section 5.10, Stormwater Management Standards, to the Director of Engineering. The Planning Director or Director of Engineering, as applicable, shall properly record such complaint, investigate, and take appropriate action in accordance with subsection D below.

## **D. ENFORCEMENT PROCEDURE**

### **(1) INVESTIGATION OF COMPLAINT**

On receiving a written complaint, the Planning Director or Director of Engineering, as applicable, shall investigate the complaint and determine whether a violation of this Ordinance exists.

### **(2) NOTICE OF VIOLATION**

**a.** On finding that a violation of this Ordinance exists, whether from an investigation of a written complaint or otherwise, the Planning Director or Director of Engineering, as applicable, shall provide written notification of the violation, by personal service, certified or registered mail, or other means authorized by state law, to the owner of the property on which the violation exists and the person causing or maintaining the violation and any applicant for any relevant permit or holder of any relevant permit. The person providing the notice shall certify to the City that the notice was provided, and the certification shall be deemed conclusive in the absence of fraud. Such notification shall:

1. Describe the location of the violation, including the address or other description of the site;
2. Describe the nature of the violation;
3. State the actions necessary to abate the violation;
4. Specify that a second citation shall incur a civil penalty, together with costs and attorney fees; and
5. Order that the violation be corrected within a specified reasonable time period stated in the notice of violation.

- b.** The notice of violation shall state what course of action is intended if the violation is not corrected with the specified time limit. The notice of violation shall also advise the violators of their rights to appeal the notice of violation to the Board of Adjustment in accordance with Section 2.5.D(4), Appeal of Administrative Decision.
- c.** On receiving a written request for extension of the time limit for correction specified in the notice of violation, and upon determining the request includes enough information to show that the violation cannot be corrected within the specified time limit for reasons beyond the control of the person requesting the extension, the Planning Director or Director of Engineering, as applicable, may, for good cause shown, grant a single extension of the time limit.
- d.** If the owner of the property cannot be located or determined, the Planning Director shall post a copy of the notice on the building, structure, sign, or site that is the subject of the violation. In such a case, the time limit for correction of the violation shall be deemed to begin five days after the notice is posted.
- e.** The Planning Director or Director of Engineering, as applicable, may issue a stop work order to the person(s) violating this Ordinance. The stop work order shall be in writing, directed to the person doing the work, and shall state the specific work to be stopped, the specific reasons for the stop work order, and the conditions under which the work may be resumed. A copy of the stop order shall be delivered via personal delivery, electronic mail, or First Class Mail to the holder of the permit and the owner of the property (if the owner is not the holder of the permit). The person providing the notice shall certify to the City that the notice was provided, and the certification shall be deemed conclusive in the absence of fraud. The stop work order shall remain in effect until the person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violation or violations described therein. The stop work order may be withdrawn or modified to enable the person to take the necessary remedial measures to cure such violation or violations.

### **(3) APPLICATION OF REMEDIES AND PENALTIES**

On determining that the violator has failed to correct the violation by the time limit set forth in the notice of violation, or any granted extension thereof, or has failed to timely appeal the notice of violation in accordance with Section 2.5.D(4), the Planning Director shall take appropriate action, as provided in Section 8.6, Remedies and Penalties, to correct and abate the violation and to ensure compliance with this Ordinance.

### **(4) EMERGENCY ENFORCEMENT**

Where violations of this Ordinance constitute an emergency situation resulting in an immediate threat to the health, or safety of the public, or will create increased problems or costs to the public for the provision of City services if not remedied immediately, the Planning Director or Director of Engineering, as applicable, may use the enforcement powers available under this Article without prior notice, but the Planning Director or Director of Engineering, as applicable, shall attempt to give notice simultaneously with beginning enforcement action. Notice may be provided to the property owner, to any other person who can be contacted and has an identifiable relationship to the violation and/or owner.

## SECTION 8.6. REMEDIES AND PENALTIES

### A. REMEDIES AVAILABLE TO CITY

The Planning Director or Director of Engineering, as applicable, may take any one or more of the following actions to remedy a violation of this Ordinance.

#### (1) DENY OR WITHHOLD PERMITS

a. The Planning Director or Director of Engineering, as applicable, may withhold development approvals or permits if there is:

1. A repeat violation of this Ordinance as set forth in Section 8.6.B(1)b; or
2. There is a condition or qualification of approval that has not been met.

b. The Planning Director or Director of Engineering, as applicable, may deny or withhold development approvals or permits for land or structure or improvements owned or being developed by a person who owns, developed or otherwise caused an uncorrected repeat violation of this Ordinance. This provision shall apply whether or not the property for which the permit or other approval is sought is the property in violation.

#### (2) REVOKE PLAN, PERMIT, OR OTHER APPROVAL

Any development approval or permit approved under this Ordinance may be revoked in accordance with N.C.G.S. Section 160D-403(f).

#### (3) INJUNCTION AND ABATEMENT

This Ordinance may be enforced by any means or any remedy provided for in state law. An action for injunction of any illegal subdivision, transfer, conveyance, or sale of land may be prosecuted by the Planning Director in accordance with state law.

#### (4) CORRECTION AS PUBLIC HEALTH NUISANCE, COSTS AS LIEN, ETC.

If the violation is deemed dangerous or prejudicial to the public health or public safety and is within the appropriate geographic limits as prescribed by state law, the Planning Director or Director of Engineering, as applicable, with the written authorization of the City Manager, may cause the violation to be corrected and the costs to be assessed as a lien against the property.

#### (5) DISCONTINUANCE OF WATER SERVICE

In accordance with state law, water service may be temporarily discontinued for willful disregard of Section 5.10, Stormwater Management Standards. All applicable penalty fees may be applied in the event of service suspensions. In the event of continued gross noncompliance with Section 5.10, Stormwater Management Standards, removal of the meter and service will be deemed proper and service will be discontinued. Connection fees and deposits will be forfeited.

#### (6) REMOVAL OF SIGNS

Any sign installed or placed on public property or within a public right-of-way, except as permitted by Section 5.9, Sign Standards, shall be forfeited to the public and is subject to confiscation. The Planning Director shall have the right to recover from the owner or person placing such a sign, the full costs of removal and disposal of the sign.

**(7) OTHER REMEDIES**

The City shall have such other remedies provided by state law for the violation of zoning, subdivision, sign, or related Ordinance provisions.

**B. PENALTIES FOR VIOLATION**

**(1) CIVIL PENALTIES**

Civil penalties for violations other than a violation of Section 5.10, Stormwater Management Standards, shall comply with subsections a and b below.

**a. FIRST OFFENSE**

1. Any violation occurring once within a 36-month period shall be considered a first offense.
2. Upon the expiration of the deadline stated in the notice of violation, the violator shall be subject to a civil penalty of \$100.00 for each day that the violation remains on the property without further notice.
3. If a violation continues to exist or the violator fails to pay the penalties, the City shall seek to recover the penalty together with all costs by filing a civil action in the General Court of Justice in the nature of a suit to collect a debt. The collection of a penalty shall not foreclose further proceedings for penalties coming due subsequent to the date of the filing of a prior proceeding. The provisions of this section may also be enforced through any other appropriate remedies.

**b. REPEAT OFFENSE**

1. Any violation of reoccurring on the same property by the same violator within a 36-month period of the previous violation shall be considered a repeat offense, if the reoccurrence is a violation of the same Article of this Ordinance.
2. A notice of violation shall be issued by the Planning Director, which shall have an immediate civil penalty of \$300.00. No warning period shall be granted, provided that proper notice was given for the previous violation. For each day the repeat violation remains, the violator shall be subject to a civil penalty of \$300.00.
3. If a violation continues to exist or the violator fails to pay the penalties, the City shall seek to recover the penalty together with all costs by filing a civil action in the General Court of Justice in the nature of a suit to collect a debt. Procedures for issuance, service, and collection of non-paid penalties shall be as set forth in Section 1-14 of the City of Kannapolis Code of Ordinances. The collection of a penalty pursuant this section shall not foreclose further proceedings for penalties coming due subsequent to the date of the filing of a prior proceeding. The provisions of this section may also be enforced through any other appropriate remedies as prescribed in this section.

**(2) CIVIL PENALTIES FOR VIOLATION OF STORMWATER REGULATIONS**

Any person, firm, or corporation violating the mandatory provisions of Section 5.10, Stormwater Management Standards, shall be issued a civil citation pursuant to Section 1-14 of the Kannapolis City Code. The penalty shall be \$100.00 for residential customer violations and \$300.00 for commercial or industrial customer violations. The penalty assessed against a



stormwater customer shall be added to the water bill and shall be paid in the same manner as the water bill. The inability to pay the penalty fees is not relevant to a customers' liability for violating this section. Partial payments for City enterprise services shall be first applied in accordance with City policy. The provisions of Section 5.10, Stormwater Management Standards, may also be enforced by actions for abatement or injunction.

**C. OTHER POWERS**

In addition to the enforcement powers specified in this Section, the City Council may exercise any and all enforcement powers granted by state law.

**D. REMEDIES CUMULATIVE**

The remedies and enforcement powers established in this Article shall be cumulative, and the City may exercise them in any order.

