

**ARTICLE 11
ENFORCEMENT AND JUDICIAL REVIEW**

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ARTICLE 11
ENFORCEMENT AND JUDICIAL REVIEW

11-1 Violations

Any of the following shall be a violation of this Ordinance and shall be subject to the enforcement remedies and penalties provided by this Ordinance and by state law.

A. Development without Permit

A 'development without a permit' violation means to engage in any development, use, construction, remodeling or other activities of any nature upon the land or improvements thereon subject to the jurisdiction of this Ordinance without required permits, certificates or other forms of authorization as set forth in this Ordinance.

B. Development Inconsistent With Permit

A 'development inconsistent with a permit' violation means to engage in any development, use, construction, remodeling, or other activity of any nature in any way inconsistent with any approved plan, permit, certificate, or other form of authorization granted for such activity.

C. Violation by Act or Omission

A 'violation by act or omission' means to violate, by act or omission, any term, variance or waiver, condition, or qualification placed by the City Council or its authorized boards upon any required permit, certificate or other form of authorization for the use, development or other activity upon land or improvements thereon.

D. Use in Violation

A 'use in violation' means to erect, construct, reconstruct, alter, repair, convert, maintain or use any building or structure or to use any land in violation or contravention of this Ordinance, or any other regulation made under the authority conferred thereby.

E. Continue a Violation

Each day's violation of any provision of this Ordinance is a separate and distinct offense.

11-2 Enforcement Intent

It is the intention of this Ordinance, unless otherwise provided, that all questions arising in connection with the enforcement of this Ordinance shall be presented first to the Zoning Administrator and that such questions shall be presented to the Board of Adjustment only on appeal from the Zoning Administrator's final decision. An appeal from the decision of the Board of Adjustment shall be by proceedings in the nature of certiorari to the Superior Court as provided by law and must be filed with the Alamance or Orange County Clerk of Court within the 30-day appeal period described in Section 11-7. It is further the intention of this Ordinance that the duties of the City Council in connection with this Ordinance shall not include the hearing and passing upon disputed questions that may arise in connection with the enforcement thereof.

11-3 Enforcement Procedures

When the Zoning Administrator or designee discovers a violation of this Ordinance or receives a complaint alleging a violation of this Ordinance, it shall be his or her duty to attempt to immediately notify the owner and occupant of the land, building, structure, sign, or use of the violation.

A. Initial Notification

Upon discovery of the existence of a violation of this Ordinance, the Zoning Administrator shall by first-class mail, telephone, fax, email, or personal service attempt to notify the owner or occupant of the property of the nature of the violation, provide a citation of the Section(s) of the Ordinance violated, and describe the measures necessary to remedy the violation. The Zoning Administrator may also request that the owner or occupant of the property arrange a meeting with the Planning and Zoning Department staff to further discuss the violation and options for remedying the violation. Any recipient of notifications under this subsection shall not be considered a 'person aggrieved' for appeal purposes.

B. Order of Compliance

If the owner or occupant of the land, building, sign, structure, or use in violation fails to take prompt corrective action, the Zoning Administrator shall give the owner or occupant written notice, by certified or registered mail, to his last known address, or by personal service, or by personal service or by posting notice of the violation and order of compliance conspicuously on the property:

1. That the land, building, sign, structure, or use is in violation of this Ordinance;
2. The nature of the violation, and citation of the Section of this Ordinance violated; and
3. The measures necessary to remedy the violation.

C. Appeal

Any owner or occupant who has received a Notice of Violation and Order of Compliance may appeal, in writing as a person aggrieved, the final decision of the Zoning Administrator to the Board of Adjustment, in accordance with the provisions of Section 8-1 within ten days following the date of receipt or posting of the Notice of Violation and Order of Compliance. The Board of Adjustment shall hear an appeal within a reasonable time, and it may affirm, modify, or revoke the Notice of Violation and Order of Compliance. In the absence of an appeal, the remedies and penalties sought by the Zoning Administrator in the Notice of Violation and Order of Compliance shall be final.

D. Order of Corrective Action by the Board of Adjustment

If upon a hearing held pursuant to an appeal as prescribed above, the Board of Adjustment shall find that the owner or occupant is in violation of this Ordinance, the Board of Adjustment shall issue an order in writing to the owner or occupant affirming the violation and ordering compliance.

E. Failure to Comply with an Order

If the owner or occupant of a property fails to comply with a Notice of Violation and Order of Compliance from which no appeal has been taken, or an Order of Corrective Action following an appeal, the owner or occupant shall be subject to such remedies and penalties as may be provided for by the NC General Statutes and Section 11-4. If the owner or occupant fails to comply with the remedies and penalties prescribed, enforcement shall be sought through an order of a court of competent jurisdiction.

F. Emergency, Dangerous, or Hazardous Situations

In the event that the Zoning Administrator determines that a violation creates an immediate hazard to the public safety, health, or welfare, the standard notice requirements delineated in subsection A above may be waived. The Zoning Administrator is authorized to make a reasonable attempt to notify the person responsible for the violation, property owner, or other person that has an identifiable relationship to the violation and/or property owner and to order the immediate remedying of the violation. In the case of a safety hazard created by a sign or sign structure, the Zoning Administrator is authorized to immediately remove such sign or sign structure, at the expense of the property owner. In the case of a safety hazard created by the use or occupancy of a building or land, the Zoning Administrator shall consult with the city attorney for guidance concerning immediate enforcement actions.

11-4 Penalties and Remedies

As authorized by NCGS 160D-404, NCGS 160D-807, NCGS 160A-175, and NCGS 14-4, any one or all of the following procedures may be used to enforce the provisions of this Ordinance.

Amended June 7, 2021

A. Injunction

Any violation of this Ordinance or of any condition, order, or requirement, or remedy adopted pursuant hereto may be restrained, corrected, abated, mandated, or enjoined by other appropriate proceeding pursuant to state law.

B. Civil Penalties

Any person who violates any provisions of this Ordinance shall be subject to the assessment of a civil penalty under the procedures provided in Section 11-5.

C. Denial of Permit or Certificate

The Zoning Administrator may withhold or deny any permit, certificate, occupancy or other form of authorization on any land, building, sign, structure or use in which there is an uncorrected violation of a provision of this Ordinance or of a condition or qualification of a permit, certificate or other authorization previously granted.

D. Conditional Approval

The Zoning Administrator may condition the authorization of any permit or certificate upon the correction of the deficiency, payment of civil penalties

within a specified time, or the posting of a compliance security approved by the city attorney.

E. Revocation of Permits

In accordance with Section 11-6, permits shall be revoked for any substantial departure from the approved applications, plans, or specifications; refusal or failure to comply with the requirements of state or local laws; or for false statements or misrepresentations made in securing the permit. Any permit mistakenly issued in violation of an applicable state or local law may also be revoked.

F. Criminal Penalties

Any violation of this Ordinance shall be a misdemeanor or infraction as provided by NCGS 14-4.

G. State and Common Law Remedies

In addition to other enforcement provisions contained in this Ordinance, the City Council may exercise any and all enforcement powers granted to it by state law or common law.

H. Penalties for Transferring Lots in Unapproved Subdivisions

In accordance with the provisions of NCGS 160D-807, any person who, being the owner or agent of the owner of any land located within the planning and zoning jurisdiction of the City of Mebane, subdivides his land in violation of the requirements of this Ordinance or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under the provisions of this Ordinance and recorded in the office of the appropriate register of deeds, shall be guilty of a Class 1 misdemeanor. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land shall not exempt the transaction from this penalty. The City of Mebane may bring an action for injunction of any illegal subdivision, transfer, conveyance, or sale of land, and the court shall, upon appropriate findings, issue an injunction and order requiring the offending party to comply with the provisions of this Ordinance. Building permits required pursuant to NCGS 160D-1110 may be denied for lots that have been illegally subdivided. In addition to other remedies, the City of Mebane may institute any appropriate action or proceedings to prevent the unlawful subdivision of land, to restrain, correct, or abate the violation, or to prevent any illegal act or conduct.

Amended June 7, 2021

The provisions of this subsection shall not, however, prohibit any owner or its agent from entering into contracts to sell or lease by reference to an approved preliminary plat for which a final plat has not yet been properly approved or recorded with the register of deeds provided that the contract does all of the following:

1. Incorporates as an attachment a copy of the preliminary plat referenced in the contract and obligates the owner to deliver to the buyer a copy of the recorded plat prior to closing and conveyance.

2. Plainly and conspicuously notifies the prospective buyer or lessee that a final subdivision plat has not been approved or recorded at the time of the contract, that no governmental body will incur any obligation to the prospective buyer or lessee with respect to the approval of the final subdivision plat, that changes between the preliminary and final plats are possible, and that the contract or lease may be terminated without breach by the buyer or lessee if the final recorded plat differs in any material respect from the preliminary plat.
3. Provides that if the approved and recorded final plat does not differ in any material respect from the plat referred to in the contract, the buyer or lessee may not be required by the seller or lessor to close any earlier than five days after the delivery of a copy of the final recorded plat.
4. Provides that if the approved and recorded final plat differs in any material respect from the preliminary plat referred to in the contract, the buyer or lessee may not be required by the seller or lessor to close any earlier than 15 days after the delivery of the final recorded plat, during which 15-day period the buyer or lessee may terminate the contract without breach or any further obligation and may receive a refund of all earnest money or prepaid purchase price.

The provisions of this subsection also shall not prohibit any owner or its agent from entering into contracts to sell or lease land by reference to an approved preliminary plat for which a final plat has not been properly approved under these regulations or recorded with the register of deeds where the buyer or lessee is any person who has contracted to acquire or lease the land for the purpose of engaging in the business of construction of residential, commercial, or industrial buildings on the land, or for the purpose of resale or lease of the land to persons engaged in that kind of business, provided that no conveyance of that land may occur and no contract to lease it may become effective until after the final plat has been properly approved under this Ordinance and recorded with the register of deeds.

11-5 Civil Penalties-Assessment and Procedures

A. Penalties

Any person who violates any provisions of this Ordinance shall be subject to assessment of the maximum civil penalty allowed by law.

B. Notice

No civil penalty shall be assessed until the person alleged to be in violation has been notified of the violation in accordance with Section 11-3 A. If after receiving a notice of violation under Section 11-3 A, the owner or other violator fails to take corrective action, a civil penalty may be imposed under this Section in the form of a citation. The citation shall be served in the manner of a Notice of Violation. The citation shall state the nature of the violation, the civil penalty to be imposed upon the violator and shall direct the violator to pay the civil penalty within fifteen days of the date of the notice.

C. Responsible Parties

The owner or occupant of any land, building, structure, sign, or use of land or part thereof and any architect, builder, contractor, agent or any other person who participates or acts in concert, assists, directs, creates, or maintains any condition that is in violation of the requirements of this Ordinance may be held responsible for the violation and subject to the civil penalties and remedies herein provided.

D. Continuing Violation

For each day the violation is not corrected, the violator will be guilty of an additional and separate offense and subject to additional civil penalty.

E. Demand for Payment

The Zoning Administrator shall make written demand for payment upon the property owner or the person in violation, and shall set forth in detail a description of the violation for which the civil penalty has been imposed.

F. Nonpayment

If payment is not received or equitable settlement reached within thirty days, after demand for payment is made, the matter shall be referred to legal counsel for institution of a civil action in the appropriate division of the General Courts of Justice for recovery of the civil penalty. Provided however, if the civil penalty is not paid within the time prescribed, the Zoning Administrator may have a criminal summons or warrant issued against the violator. Nothing herein shall preclude the Zoning Administrator from exercising other enforcement rights simultaneously.

11-6 Permit Revocation

A. General

A zoning, sign, or special use permit may be revoked by the permit-issuing authority (in accordance with the provisions of this Section) if the permit recipient fails to develop or maintain the property in accordance with the approved plans, the requirements of the Ordinance, or any additional requirements lawfully imposed by the permit-issuing authority.

No person may continue to make use of land or buildings in the manner authorized by any zoning, sign, or special use permit after such permit has been revoked in accordance with this Section.

B. Special Use Permit Revocation

Before a special use permit may be revoked, all of the notice and hearing requirements of Section 2-18 shall be complied with. The notice shall inform the permit recipient of the alleged grounds for the revocation.

C. Zoning or Sign Permit Revocation

Before a zoning or sign permit may be revoked, the Zoning Administrator shall give the permit recipient ten days notice of intent to revoke the permit and shall inform the recipient of the alleged reasons for the revocation and of his right to obtain an informal hearing on the allegations. If the permit is revoked, the Zoning Administrator shall provide to the permittee a written statement of the decision and the reasons therefor.

11-7 Judicial Review

A. Appeal to Superior Court

Every decision of the City Council granting or denying a special use permit and every final decision of the Board of Adjustment shall be subject to review by the Superior Court of Alamance or Orange County by proceedings in the nature of certiorari pursuant to G.S. 160D-1402.

Amended June 7, 2021

B. Timing of Appeal

The petition for the writ of certiorari must be filed with the applicable County Clerk of Superior Court within 30 days after the later of the following occurrences:

1. A written copy of the City Council's or Board of Adjustment's decision has been filed in the office of the Zoning Administrator.
2. A written copy of the City Council's or Board of Adjustment's decision has been delivered, by personal service or certified mail, return receipt requested, to the applicant or appellant and every other aggrieved party who has filed a written request for such copy at the hearing of the case given in accordance with G.S. 160D-405 & 160D-406. When first class mail is used to deliver notice, three days shall be added to the time to file the petition.

A copy of the writ of certiorari shall be served upon the City of Mebane.

Amended June 7, 2021