

Sec. 32-47. Enforcement of chapter.

- (a) ~~Reserved.~~ **Violations.** It is unlawful and a violation to establish, create, expand, alter, occupy, or maintain any use, land development activity or structure, including, but not limited to, signs and buildings, that violates or is inconsistent with any provision of this chapter or any order, approval or authorization issued pursuant to this chapter. Approvals and authorizations include, but are not limited to, special use permits, building permits, zoning permits, certificates of occupancy, variances, development plans, planting plans, site plans, sign plans and conditions of such permits, certificates, variances, and plans. It is also a violation to engage in any construction, land development activity or use without all approvals and authorizations required by this chapter.
- (b) Each day. Each day of a violation is a separate and distinct violation.
- (c) **Violators.** Violators include any person who owns, leases, occupies, manages, designs, or builds any structure or land development activity in violation of this chapter and any person who owns, leases, or occupies a use in violation of this chapter. A violation may be charged against more than one violator.
- (d) **Complaints.** When a violation of this chapter occurs, or is alleged to have occurred, any person may submit a written or verbal complaint. Such complaint shall state fully the cause and basis thereof and shall be filed with the Zoning Administrator, or his or her authorized agent. An investigation shall be made within ten days. Actions as provided in these regulations shall be taken. Pursuant to G.S. § 160D-403, City staff are authorized to enter any premises within the City's jurisdiction, including the extra territorial jurisdiction, at all reasonable hours for the purposes of enforcement action, upon presentation of proper credentials, provided the appropriate consent has been given for inspection of areas not opened to the public or that any appropriate inspection warrant has been secured.
- (e) **Notice.** When a violation is discovered and is not remedied through informal means, written notice of the violation shall be given. Pursuant to G.S. § 160D-404, the notice of violation shall be delivered to the holder of the development approval and to the landowner of the property involved, if the landowner is not the holder of the development approval, 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 or activity. The notice of violation may be posted on the property. The zoning enforcement officer, the Zoning Administrator, or his or her designated Code Enforcement Officer 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.
- (1) The notice shall include the following:
- (a) A description of the violation and its location;
 - (b) The measures necessary to correct it;
 - (c) The possibility of civil penalties and judicial enforcement action;
 - (d) Notice of right to appeal; and
 - (e) 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.
- (2) The notice may assess a civil penalty of \$50.00 per day that the violation continues past the time period allowed, if any, to correct the violation.
- (3) This notice is an administrative determination subject to appeal as provided below.
- (f) **Appeal to the Board of Adjustment.** A violator who has received a notice of violation may appeal the determination that a violation has occurred to the Board of Adjustment by making a written request and

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paying the appropriate fee within 30 days of receipt of the notice of violation in accordance with Ch. 32-125. Citations for the same violative use or activity that follow the original notice of violation may not be appealed to the Board of Adjustment. The Board of Adjustment shall hear the appeal and may affirm, or reverse, wholly or partly, or may modify the determination of the violation. If there is no appeal, the determination of the Zoning Administrator is final.

(g) Failure to comply with notice or decision. If the violator does not comply with a notice of violation, which has not been appealed, or with a final decision of the Board of Adjustment, the violator shall be subject to civil enforcement action as prescribed by G.S. § 160A-175 and this chapter.

(b) Civil penalty procedure.

(1) **Offender.** An offender is any person or entity whom the zoning enforcement officer reasonably believes has violated any zoning ordinance. An offender may be the occupant, owner, lessee, or lessor, or any person or entity having beneficial use of the affected property, or any or all of the above.

(2) **Warning citation.** Prior to issuing a civil citation for violation of these zoning ordinances, except for violations of article VIII of these zoning ordinances relating to signs, the zoning enforcement officer shall issue and serve upon the offender a warning citation which shall provide the following information:

a. Nature of the violation(s);

b. The ordinance(s) violated;

c. A reasonable period of time within which the violation(s) shall be cured, which reasonable time shall be deemed to be 30 days from the date of service of the warning citation unless

1. There is risk to public safety or health, in which case the warning citation may require the violations to be cured immediately or,

2. A warning citation has been previously issued to the offender for the same offense within the previous three years, in which case the warning citation may require the violations to be cured within ten days;

d. If the violations are not cured within the prescribed time, that subsequent citation(s) shall be issued causing the offender to incur penalties in the amount of \$50.00 per day until the violations are cured; and

e. A time, place and date for a hearing to be held before the zoning enforcement officer, which is no more than 30 days from the date of the warning citation.

(3) **Warning citation hearing.** At the hearing noticed in the warning citation, the offender and any party in interest shall have the right to appear before the zoning enforcement officer and give evidence concerning the alleged violations. Rules of evidence applicable in courts of law and equity shall not apply. At the hearing, the zoning enforcement officer can rescind, modify, or take no action with respect to the warning citation. If no action is taken, or if the offender fails to attend the hearing, the warning citation shall remain in full force and effect and the violations cited therein must be cured within the time prescribed by the original warning citation.

(4) **Civil citation.** If the violations are not cured within the time prescribed by the warning citation, the zoning enforcement officer may issue a civil citation, which shall be served upon the offender requiring the offender to pay the sum of \$50.00 on or before the date that is 15 days after the date of service of the civil citation.

(5) **Subsequent civil citations.** Once a warning citation has been issued for an offender concerning a violation, there is no need to issue additional warning citations or to hold additional warning citation

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hearings with respect to that violation by the offender. Each day's continuing violation shall be a separate and distinct offense irrespective of whether an additional citation is issued to the offender. The citation shall state that each day of the continuing violation shall be a separate and distinct offense, and shall subject the offender to an additional civil penalty of \$50.00 per day.

(h6) ~~Failure to comply~~ **pay civil penalties.** If the offender-violator fails to pay the fine-civil penalty, if any, assessed in the civil citation by the notice of violation within 15 days from the date of service after it arises, the city may institute-initiate a civil action in the nature of debt to collect such civil penalty, and shall be entitled to collect the fine or fines upon which the suit is brought, interest at the legal rate, costs, and attorneys' fees.

(7) ~~Service.~~ Warning citations and civil citations shall be served upon the offenders by any manner allowed under Rule 4 of the North Carolina Rules of Civil Procedure. Additionally, if the identities or whereabouts of any offenders are unknown and cannot be ascertained by the zoning enforcement officer after due diligence or if the offenders refuse service, and the zoning enforcement officer makes an affidavit to that effect, then service of the warning citation or civil citation may be made by posting the citation in a conspicuous place on the affected property. With respect to the issuance of a warning citation, service must be perfected ten days prior to the hearing scheduled therein, unless:

a. The code enforcement officer deems that public health and safety are at risk, in which case service must be perfected 24 hours prior to the time of the hearing, or

b. The offender has within the previous three years been issued a warning citation for the same offense, in which case service must be perfected at least five days prior to the hearing scheduled therein.

(c) ~~Civil penalties for violation of article VIII.~~

(1) No warning citation shall be required for a violation of article VIII of the zoning ordinance. Upon a violation of article VIII, the zoning enforcement officer shall issue a civil citation to the offender.

(2) All violations of section 3 of article VIII shall subject the offender to a \$10.00 civil penalty. All other violations of article VIII shall subject the offender to a \$50.00 civil penalty.

(3) Each day's continuing violation shall be a separate and distinct offense.

(di) ~~Injunction and abatement~~ **Additional or Alternative Enforcement Remedies.**

(1) Any provision of this chapter may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction. In such case, the general-court-of-justice **General Court of Justice** shall have jurisdiction to issue such orders as may be appropriate, and it shall not be a defense to the application of the city for equitable relief that there is an adequate remedy at law.

(2) Any provision of this chapter or any other city ordinance that makes unlawful a condition existing upon or use made of real property may be enforced by injunction or order of abatement, by a general-court-of-justice. When a violation of such a provision occurs the city may apply to the appropriate division of the general-court-of-justice **General Court of Justice** for a mandatory or prohibitory injunction and order of abatement commanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property. The action shall be governed in all respects by the laws and rules governing civil proceedings, including the Rules of Civil Procedure in general and Rule 65 in particular.

(3) In addition to an injunction, the city may seek and the court may enter an order of abatement as a part of the judgment in the cause. An order of abatement may direct that buildings or other structures on the property be closed, demolished or removed; that fixtures, furniture or other movable property be removed from buildings on the property; that grass and weeds be cut; that improvements or repairs be made; or that any other action be taken that is necessary to bring the property into compliance with this article.

Commented [BF1]: Interest and costs are imposed by statute. Unfortunately, attorneys' fees are assessable only when authorized by statute, and they are not authorized for civil penalty collection.

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(4) If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, he may be cited for contempt, and the city may execute the order of abatement. The city shall have a lien on the property for the cost of executing an order of abatement in the nature of a mechanic's and materialman's lien. The defendant may secure cancellation of an order of abatement by paying all costs of the proceedings and posting a bond for compliance with the order. The bond shall be given with sureties approved by the clerk of superior court in an amount approved by the judge before whom the matter is heard and shall be conditioned on the defendant's full compliance with the terms of the order of abatement within a time fixed by the judge. Cancellation of an order of abatement shall not suspend or cancel an injunction.

~~(e) *Revocation of permit.* The city may at any time review any conditional zoning or special use permit for compliance with agreed upon terms and conditions of the original approved permit. If the term(s) and/or condition(s) are not being continuously met the city shall notify the owner(s) of said violation(s) and ask that the term(s) and/or condition(s) be brought into compliance per the permit issued. Failure to do so with in a set time shall cause the city to revoke the permit. If the permit is revoked it must be done after a hearing before the specific board that granted the original permit. A permit may be re-instated by the approving board when proof is shown that the term(s) and/or condition(s) are being met again. G.S. 160D-403(f).~~

(i) *Method of enforcement.* These zoning ordinances may be enforced by any one, all, or a combination of the remedies authorized and prescribed herein.

(Ord. No. 8-85, art. XVII, § 7, 9-23-85; Ord. No. 8-17-85, §§ 7.1, 7.4, 7.5, 12-5-94; Ord. of 6-13-00 §§ 7.1-7.5; Amend. of 5-7-01; Ord. No. 2024-01, 1-2-24)

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