

Section 20 Enforcement

20.1 Violations; Violators

20.1.1 Violation

It is unlawful and a violation of this code 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 zoning code or any order, approval, or authorization issued pursuant to this code. Approvals and authorizations include, but are not limited to, special use permits, sign permits, building permits, certificates of compliance, variances, development plans, site plans, planting plans, and conditions of such permits, 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 code.

Each day of a violation is a separate and distinct violation.

20.1.2 Violator

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

20.1.3 Responsibility

The Director shall enforce this ordinance and the remedies authorized under this section. The Director shall have the authority to settle any violations that involve the payment of money to the governing entity in exchange for a written release from actual or potential claims.

20.1.4

For the purposes of this Section "Director" shall mean the Director of the Durham City/County Planning Department and/or a sworn Zoning Enforcement Officer, except for Section 20.4.5.

20.2 Determination of Violation

20.2.1 Notice of Violation

When a violation is discovered, and is not remedied through informal means, written notice of the violation shall be given. This notice shall be delivered by hand delivery or certified mail to the violator's last known address, or by certified mail or hand delivery to or posting the notice at the property in violation. When service is made by certified mail, a copy of the notice may also be sent by regular mail. Service shall be deemed sufficient if the certified mail is unclaimed or refused, but the regular mail is not returned by the post office within 10 days after mailing, provided that a notice of violation is posted in a conspicuous place on the premises affected.

The notice will 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 will 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 is an administrative determination subject to appeal as provided below.

A notice of violation is not 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, as provided in 20.4.6 below. A notice is also not required where action is taken under 20.3.5 or 20.3.6.

20.2.2 Appeal to Board of Adjustment

A violator who has received a notice of violation may appeal the Director's determination that a violation has occurred to the Board of Adjustment by making a written request and paying the appropriate fee within 30 days of receipt of the notice of violation. Citations that follow the original notice of violation may not be appealed to the Board. The Board shall hear the appeal and may affirm, modify, or revoke the determination of a violation. If there is no appeal, the Director's determination of the nature and degree of violation are final.

20.2.3 Failure to Comply with Notice or BOA 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 enforcement action as prescribed in State law or by this ordinance.

20.3 Remedies; Enforcement Action

20.3.1 General

Enforcement may be by any one, all, or a combination of the remedies described below or in Section 20.4 or otherwise authorized by common law or statute. Such statutes include but are not limited to N.C.G.S. Chapter 153A, Sections 123, 324, 334, and 361 et. seq. and Chapter 160A Sections 175, 365, 375, 389, and 421 et. seq.

20.3.2 Injunctive Relief in Superior Court

A violation may be corrected by any appropriate equitable remedy, a mandatory or prohibitory injunction, or an order of abatement as authorized by G.S. 160A-175 and G.S. 153A-123. The governing entity shall have the authority to execute an order of abatement if the violator does not comply with such order, and the costs of execution shall be a lien on the property in the nature of a mechanic's or materialman's lien.

20.3.3 Criminal Penalties

A violation shall constitute a misdemeanor or infraction, as provided by G.S. 14-4, subject to a maximum fine of \$500 and imprisonment of up to 30 days for each violation.

20.3.4 Judicial Action to Collect Civil Penalty

A civil action in the nature of debt may be filed in any court of competent jurisdiction to collect an unpaid civil penalty imposed under 20.4 below.

20.3.5 Permit Denial, Conditions, or Revocation

Any permit, certificate, or other authorization that has been issued for property on which there is an uncorrected violation may be withheld, or may be conditioned on the correction of the violation and/or payment of a civil penalty, and/or posting of a compliance security. Such permit, certificate or other authorization may also be revoked upon a written determination by the Director of the Inspections Department, or his/her designee, that the violation is substantial. Any permit or certificate mistakenly issued in violation of State law or local ordinance, or issued on the basis of misrepresentations by the applicant, owner, or owner's agent may be revoked without such written determination.

20.3.6 Stop Work Order

When the violation pertains to construction or alteration of a structure, a stop work order may be issued in accordance with G.S. 160A-421 or the N.C. Building Code. All zoning requirements pertaining to the location and siting of structures are considered local building laws for application of G.S. 160A-421. Appeal of an order relating to a local building law shall initially be to the Director of the Inspections Department or his/her designee who shall conduct a hearing within 10 working days of the issuance of the order. Further appeal may be made to the Board of Adjustment.

20.3.7 Additional Remedies for Sign Violations

Violations of the sign section of this ordinance may be remedied through all of the remedies available in this section. In addition, the Director 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. Removal of a sign structure shall not be required where the sign structure could legally be constructed in accordance with the provisions of the sign code in effect at the time the violation occurs and where the owner or operator of such sign structure can demonstrate to the Director's satisfaction that he/she had no knowledge concerning the requirements of the sign code. The Director may also 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 and which present a danger to the public health or safety.

Any repeated violation of the same provision of Chapter 12 "Signs" by the same individual or corporation at an identical or different location may result in immediate action against the individual or corporation, and may be considered a subsequent citation for the same offense, and each day a separate violation.

20.4 Civil Penalty

20.4.1 General

The Director may issue one or more citations and impose one or more civil penalties for a violation, as provided below. If the violator does not pay the penalty, the governing entity may collect it in court through a civil action in the nature of debt.

20.4.2 Citation

The Director may issue a citation and civil penalty for a violation.

20.4.3 Notice

Notice of the citation and penalty will be given in the same manner as provided in 20.2.2 above. The notice shall include a copy of the notice of violation, the amount of the penalty, information about where to pay the penalty, the deadline for payment, which shall be 15 days from the date of the notice, and the possibility of civil and/or criminal enforcement.

20.4.4 Amount

The Director or his designee may impose a penalty of up to \$300 per violation. If a violator has remedied the violation prior to imposition of the penalty, but not within the deadlines given in the notice of violation, and if the violator is not guilty of previous violations then the penalty shall not exceed \$50.

The Director shall formulate written guidelines for enforcement personnel to use in assessing penalties. Criteria for assessing penalties shall include, but not be limited to, the violator's knowledge of legal requirements, whether the violator has been guilty of past violations, the possible profit to the violator in continuing the violation, the impact of the violation on the community, the degree of noncompliance, and the cost and time required to remedy the violation.

20.4.5 Settlement of Claims

The Director is authorized to determine the amount of payment that will be accepted in full and final settlement of some or all of the claims the governing body may have in connection with the violation. The Director shall indicate in writing the claims from which the violator is released. If the violation has not been remedied payment shall not release a violator from potential criminal prosecution or a claim for injunctive relief and/or an order of abatement.

20.4.6 Continuing Violations

The Director may issue a citation for a violation which continues without being corrected. The violator(s) in such cases may be assessed a penalty for each day of the continuing violation. An initial citation for a single violation must be issued before a citation for a continuing violation is issued. If the violator has failed to pay the penalty and correct the violation after the initial citation the violator is subject to a citation for a continuing violation with a daily penalty. An initial citation is not required if the Department has previously issued a citation to the violator for the same violation at the same location within the previous two years, or if the violator has been specifically warned concerning the violation.

The Director may give a single notice of a citation for a continuing violation. The notice must contain a copy of the notice of violation and must state the violation is continuing, that a daily penalty of a specified amount is being imposed, and that the penalty is cumulative.

20.5 Inspections and Investigations

20.5.1 Authoration of Inspection Program

A program of inspection and investigations to determine compliance with the zoning code and orders, plans, permits, and authorizations issued under the code is hereby authorized. This program shall be conducted under the general authority of the Director, and shall be carried out by zoning enforcement officers designated by the Director.

20.5.2 Inspections of Private Property

Inspections on private property to determine compliance may be made at any reasonable time with the consent of the occupant of the property. Inspections may also be made when an administrative search and inspection warrant has been issued pursuant to G.S. 15-27.2 by a proper judicial official. To obtain a warrant, the enforcement officer must show through facts supplied in a sworn affidavit that either: 1) the inspection is being conducted as part of an administrative plan to inspect all properties of a certain type, and the determination of the properties to inspect was made in accordance with neutral criteria; or 2) that there is probable cause for believing that a violation may exist.