Chapter 18. Violations and Penalties

18.1 Enforcement Procedures

The following procedure is a typical procedure for the most common violations of this Ordinance. Any or all of the remedies and powers available to the Administrator in Section 18.4 may be utilized if a violation of the Knightdale Unified Development Ordinance is identified.

A. Initiation/Complaint

Whenever a violation of this ordinance occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint shall state fully the alleged violation and the basis thereof, and shall be filed with the Administrator, who shall record the complaint. The complaint shall be investigated promptly by the Administrator.

B. Inspection

The Administrator shall have the authority, upon presentation of proper credentials, to enter and inspect any land, building, structure, or premises to ensure compliance with this Ordinance.

C. Notice of Violation and Order to Correct

1. Whenever the Administrator finds that a person has violated a prohibition or failed to meet a requirement of this Ordinance, the authorized enforcement agency may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:

a. The performance of monitoring, analyses, and reporting;

b. The elimination of illicit connections or discharges;

c. That violating discharges, practices, or operations shall cease and desist;

d. The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property;

e. Payment of a fine to cover administrative and remediation costs; and

f. The implementation of source control or treatment BMPs.

2. If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.

3. The Administrator may deliver the notice of violation and correction order personally, by certified or registered mail, return receipt requested, or by any means authorized for the service of documents by Rule 4 of the North Carolina Rules of Civil Procedure.

4. If a violation is not corrected within a reasonable period of time, as provided in the notification, the Administrator may take appropriate action, as provided in Section 18.4, to correct and abate the violation and to ensure compliance with this ordinance.

D. Extension of Time

A person who receives a notice of violation and correction order, or the owner of the land on which the violation occurs, may submit to the Administrator a written request for an extension of time for correction of the violation. On determining that 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 Administrator may extend the time limit as is reasonably necessary to allow timely correction of the violation, up to, but not exceeding 60 days. The Administrator may grant 30-day extensions in addition to the foregoing extension if the violation cannot be corrected within the permitted time due to circumstances beyond the control of the person violating this ordinance. The Administrator may grant an extension only by written notice of extension. The notice of extension shall state the date prior to which correction must be made, after which the violator will be subject to the penalties described in the notice of violation and correction order.

E. Enforcement After Time to Correct

After the time has expired to correct a violation, including any extension(s) if authorized by the Administrator, the Administrator shall determine if the violation is corrected. If the violation is not corrected, the Administrator may act to impose one or more of the remedies and penalties authorized by Section 18.4.

F. Emergency Enforcement

If delay in correcting a violation would seriously threaten the effective enforcement of this Ordinance or pose an immediate danger to the public health, safety, or welfare, then the Administrator may order the immediate cessation of a violation. Any person so ordered shall cease any violation immediately. The Administrator may seek immediate enforcement, without prior written notice, through any remedy or penalty authorized by this article.

G. Enforcement Measures After Appeal

If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, within 30 days of the decision of the municipal authority upholding the decision of the authorized enforcement agency, then representatives of the authorized enforcement agency shall enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the government recommended agency or designated contractor to enter upon the premises for the purposes set forth above.

18.2 Responsible Persons/Entities

Any person who erects, constructs, reconstructs, alters (whether actively or passively); or fails to erect, construct, reconstruct, alter, repair or maintain any structure, BMP, practice or condition in violation of this ordinance shall be subject to the remedies, penalties and/or enforcement actions in accordance with the Chapter. Persons subject to the remedies and penalties set forth herein may include any architect, engineer, builder, contractor, developer, agency or any other person who participates in, assists, directs, creates, causes or maintains a condition that results in or constitutes a violation of this ordinance, or fails to take appropriate action, so that a violation of this ordinance results or persists; or an owner, any tenant or occupant or any other person who has control over, or responsibility for the use or development of the property on which the violation occurs.

For the purposes of this article, responsible persons(s) shall include but not be limited to:

A. Person Maintaining Condition Resulting In or Constituting Violation

An architect, engineer, builder, contractor, developer, agency or any other person who participates in, assists, directs, creates, causes or maintains a condition that constitutes a violation of this ordinance, or fails to take appropriate action, so that a violation of this ordinance results or persists.

B. Responsibility for Land or Use of Land

The owner of the land on which the violation occurs, any tenant or occupant of the property, any person who is responsible for stormwater controls or practices pursuant to a private agreement or public document, or any person who has control over, or responsibility for, the use, development or redevelopment of the property.

18.3 Penalties for Transferring Lots in Unapproved Subdivisions

Any property owner or owner's agent of any land located within the planning and zoning jurisdiction of the Town of Knightdale, subdivides land in violation of this Code 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 this Code and recorded in the Wake County Register of Deeds, shall be guilty of a 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 Town of Knightdale 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 this Code. In addition, the Town may refuse to issue any permits.

18.4 Penalties for Violation

Failure to comply with any provision of this Code is hereby declared unlawful. The following remedies and enforcement powers may be used to administer and enforce this Code:

A. **Criminal:** Pursuant to North Carolina General Statute 14-4, any person, firm, or corporation convicted of violating the provisions of this Code shall, upon conviction, be guilty of a misdemeanor and shall be fined in accordance with the general statute.

B. **Equitable Remedy:** The Administrator may apply to a judicial court of law for any appropriate equitable remedy to enforce the provisions of this Code. It is not a defense to the Administrator's application for equitable relief that there are other remedies provided under general law or this Code.

C. **Injunction:** Enforcement of the provisions of this Code may also be achieved by injunction. When a violation occurs, the Administrator may, either before or after the initiation of other authorized action, apply to the appropriate division of the court for a mandatory or prohibitory injunction commanding the defendant to correct the unlawful condition or cease the unlawful use of the property.

D. **Order of Abatement:** In addition to an injunction, the Administrator may apply for and the court may enter into an order of abatement as part of the judgment in the case. An order of abatement may direct any of the following actions:

1. Buildings or other structures on the property be closed, demolished, or removed;

2. Fixtures, furniture or other moveable property be moved or removed entirely; or

3. Improvements alterations, modifications or repairs be made; or

4. The elimination of illicit connections, discharges, practices or operations; or

5. The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property; or

6. Any other action be taken that is necessary to bring the property into compliance with this Code.

E. **Execution of Court Decisions:** If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, the defendant may be cited for contempt. The Administrator may execute the order of abatement and will have a lien on the property in the nature of a mechanic's and materialman's lien for the cost of executing the order. The defendant may secure cancellation of an order of abatement by paying all costs of the proceedings and by posting a bond for compliance with the order. The bond must be given with sureties approved by the Clerk of Superior Court in an amount approved by the judge before whom the matter was heard and shall be conditioned for the defendant's full compliance with the terms of the order of abatement within the time fixed by the judge. Cancellation of an order of abatement does not suspend or cancel an injunction issued in conjunction with the order.

F. Stop Work Order Issuance: Whenever a building, structure or part thereof is being constructed, demolished, renovated, altered, or repaired in material violation of any applicable provision of this Code, the Administrator may order the specific part of the work that is in violation, or would be when the work is completed, to be immediately stopped. 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 cessation and the action(s) necessary to lawfully resume work.

G. Revocation of Permits: The Administrator may withhold or revoke any permit (e.g. Building Certificate of Occupancy) by written notification to the permit holder when violations of this Code have occurred. Permits may be revoked when false statements or misrepresentations were made in securing the permit, work is being or has been done in substantial departure from the approved application or plan, there has been a failure to comply with the requirements of this Code, or a permit has been mistakenly issued in violation of this Code.

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

Certificates of Occupancy or other permits may be continue to be withheld until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein.

As long as a violation of this ordinance continues and remains uncorrected, the Administrator may withhold, and the LURB or Town Council may disapprove any request for permit or development approval or authorization provided by this ordinance for the land on which the violation occurs.

1. **Special Use Permits**
   Before a Special Use Permit may be revoked, all of the notice and public hearing requirements in Article 6 of this chapter shall be complied with. The notice shall inform the permit recipient of the alleged grounds for the revocation.

   The burden of presenting evidence sufficient for the permit-issuing authority to conclude that a permit should be revoked for any of the reasons set forth in Section 18.3 (G) shall be upon the party advocating that position. The burden of persuasion shall also be upon that party.

   A motion to revoke a permit shall include, insofar as practicable, a statement of the specific reasons or findings of fact that support the motion.

2. **Zoning Compliance and Sign Permits**
   Before a Zoning Compliance Permit or Sign Permit may be revoked, the Administrator shall give the permit recipient thirty (30) 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 Land Use Administrator shall provide to the permittee a written statement of the decision and the reasons therefore.

H. Civil Penalty: In addition to the other remedies cited in this Code for the enforcement of its provisions, and pursuant to North Carolina General Statute 160A-175, the regulations and standards in this Code may be enforced through the issuance of civil penalties by the Administrator.

1. **Each Day a Separate Offense:** Each day that a violation continues shall constitute a separate and distinct violation or offense.

   Subsequent citations for the same violation may be issued by the Administrator if the offender does not pay the citation (except as otherwise provided in a Warning Citation) after it has been issued unless the offender has sought an appeal to the actions of the Administrator through the Board of Adjustment. Once the fifteen (15) day warning period has expired, each day which the violation continues shall subject the violator to additional citations to be issued by the Administrator. Note that willful violation of this ordinance in a manner similar to the first violation is regarded as a subsequent violation regardless of whether the violation. (For example, a illegal sign erected and properly cited as a violation and issued a citation can not be removed for a day and the re-erected simply to restart the enforcement and compliance actions of the Administrator.)

2. **Lighting Violations:** Property owners that install lighting fixtures after the effective date of this ordinance and are found to be in non-compliance shall receive written notification and will be given 90 calendar days from the date of written notification to bring the lighting system into compliance.

3. **Penalties:** The following penalties are hereby established:

   a. **Warning Citation/Notice of Violation:** Correct Violation Within 15 Days

   b. **First Citation**

      (1) **UDO Violation:** $250 per violation or offense

      (2) **Signs**: $100 per violation or per offense; $250 if violation occurs within 6 months of a previous offense

      (3) **Landscaping:** $50 per violation or per offense (May be applied per tree or shrub for landscaping installation violations) and $2 for every square foot area of vegetation damaged or destroyed

      (4) **Lighting:** $50 per violation per day

      (5) **OtherEnvironmental Protection Violations:** $250 per violation or offense

      (6) **Occupancy of Building without CO or Expiration of Temporary CO:** $500 per violation or offense

   c. **Subsequent Citations for Same Offense**

      (1) **UDO Violation:** $50 per violation per day

      (2) **Signs:** $25 per violation per day

      (3) **Landscaping:** $50 per violation or per offense (May be applied per tree or shrub for landscaping installation violations) and $2 for every

square foot area of vegetation damaged or destroyed (not to exceed $30,000).

(4) **Lighting:** $50 per violation per day

(5) **Environmental Protection Violations:** $250 per violation per day

(6) **Occupancy of Building without CO or Expiration of Temporary CO:** $100 per violation per day

If the offender fails to pay the civil penalties within ten (10) days after having been cited, the Town may recover the penalties in a civil action in the nature of debt.

I. **Replacement of Disturbed and Damaged Vegetation:** The disturbance of any landscaped area or vegetation required by this Code shall constitute a violation of the site or master plan. All disturbed landscaped areas and vegetation shall be replanted to meet the standards of this section as well as the approved site or master plan.

Where the vegetation that has been disturbed or damaged existed on the site at the time the development was approved, all replacement vegetation shall meet the standards set forth in this section taking into account any unique site conditions and significant vegetation remaining within the landscaped area. Required trees, vegetation, or other landscaping that die shall be removed and replaced with new vegetation of equal or greater in size.

Existing vegetation required to be preserved that has been damaged or destroyed during the course of development activity shall be subject to civil penalty and replaced in accordance with the requirements of this section.

A revegetation plan shall be submitted that takes into consideration the development condition of the site, significant vegetation remaining within landscaped areas, and the replacement plant materials. The Town of Knightdale may require equal amounts of new vegetation to be installed equal to the size of the vegetation removed.

Replacement consists of one or a combination of any of the following measures:

1. Replant according to the requirements of this Chapter 8. A replanting plan denoting the proposed installation shall be submitted to the Town of Knightdale for approval. The Administrator may elect to present the replanting plan to the Technical Review Committee for final approval.

2. Replace damaged or destroyed significant vegetation in both perimeter and or interior landscaped areas with an equal amount of new vegetation according to the size of vegetation removed. Any tree with a caliper of at least 15 inches that is damaged or removed shall be replaced with one or more trees that have a caliper of at least two and one half inches and a cumulative caliper equal to or greater than the original tree. Trees damaged or destroyed less than 15 inches in diameter shall be replaced to satisfy the performance criteria of this section. Understory plantings may also be required to restore the buffer performance criteria for the disturbed area. A revegetation plan denoting the proposed installation shall be submitted to the Town of Knightdale for approval. The Administrator may elect to present the revegetation plan to the Land Use Review Board or TRC for final approval. This requirement may be modified by the Administrator based upon site conditions.

3. For all other cases where existing vegetation is damaged or removed, the type and amount of replacement vegetation required shall be of the type and amount that is necessary to provide the type of landscaping required under this Section 18.3 or interior preservation area identified on the landscape plan.

Replanting should be located within the vicinity of the violation. If the area is too small for sufficient growth, a more suitable location on the site may be selected as permitted by the Administrator.