

Chapter 18. VIOLATIONS AND PENALTIES

18.1 Purpose and Intent

This Chapter outlines the 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 UDO is identified.

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 building, structure, BMP, practice or condition in violation of this Ordinance shall be subject to the remedies, penalties and/or enforcement actions in accordance with this Chapter. For the purposes of this Chapter, responsible persons(s) shall include but not be limited to:

A. Person(s) 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. Person(s) Responsible 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 General Procedure

A. Initiation/Complaint/Investigation

Whenever a violation of this Ordinance occurs, or is alleged to have occurred, any person may file a written or verbal complaint. Any written or verbal complaint made to the Administrator stating fully the cause and basis of the complaint shall be documented by the Administrator, investigated in a timely manner with appropriate actions taken as provided herein.

B. Notice of Violation and Order to Correct (NOV)

- 1. Issuance:** Whenever the Administrator finds that a person has violated a provision or failed to meet a requirement of this Ordinance, the Administrator may order compliance by written notice of violation to the responsible person. If abatement or correction of a violation is required, the NOV shall set forth a 15-day compliance period during which such abatement or correction must be completed. Said notice shall further advise that, should the violator fail to abate or correct the violation within the established compliance period or any extension of time that may be granted (*Section 18.3D*), the Administrator may take appropriate actions, as provided in Section 18.4, to correct and abate the violation and ensure UDO compliance, with any expenses thereof charged to the violator.

2. **Service:** The Administrator may serve the NOV by any one of the following methods:
 - a. By delivery in person or by leaving the notice at the usual place of abode of the owner or responsible party with a person who is over the age of 16 years of age and a member of the family of the owner or responsible party;
 - b. By the deposit of first class mail, postage prepaid, to the owner or responsible party at his or her last known mailing address, as listed by the Wake County Revenue Department; or
 - c. By the posting of a placard in a conspicuous place on the premises on which the violation exists in conjunction with first class mail notice to the owner or responsible party.

Service shall be deemed sufficient if the first class mail is not returned by the post office within 10 days of deposit. Service by posting shall be deemed sufficient if the first class mail is returned and notice of the pending proceedings was posted in a conspicuous place on the property affected on the day the first class mail notice was deposited.

3. **Extension of Time**
 - a. **Written Request Required:** A person who receives a NOV, 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.
 - b. **Initial Extension:** On determining that the request includes enough information to show that the violation cannot be corrected within the original 15-day compliance period 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.
 - c. **Subsequent Extensions:** 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.
 - d. **Administrator Responsibilities:** The Administrator may grant an extension as provided in subsections (2) and (3) above 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 original notice of violation and correction order (*Section 18.3C*).
4. **Specific Corrective Measures for Landscaping Violations:** Corrective orders issued as part of any landscaping NOV shall state that any disturbed landscaped areas and vegetation shall be replanted to meet the standards of Section 8.12 as well as the specifications of the approved site or master plan.

C. Emergency Enforcement

If a violation or the delay in correcting or abating said violation poses an immediate danger to the public health, safety or welfare, the Administrator may seek immediate enforcement, without prior written notice, through any remedy or penalty authorized by this Ordinance. Any person so ordered shall cause the violation to cease immediately.

D. Appeals

Any appeal of the Administrator’s actions to the LURB in its capacity as the Board of Adjustment shall be filed within 10 days of the NOV being served upon the violator in accordance with Section 15.5C.

E. Enforcement Measures After Appeal

If the violation has not been corrected pursuant to the requirements set forth in the NOV, or in the event of an appeal, within 30 days of the appellate decision, then the Administrator may take any and all measures necessary as provided by law to abate the violation and/or restore the property.

F. Specific Procedural Modifications

- **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 a NOV providing them with 90-day initial compliance period for bringing the lighting system into compliance.

18.4 Penalties for Violation

Failure to comply with any provision of this Ordinance is hereby declared unlawful. The following remedies and enforcement powers may be used to administer and enforce this Ordinance immediately upon the expiration of the compliance period identified in the NOV and as may be extended by the Administrator (*Section 18.3C*):

A. Judicial Penalties

1. **Criminal:** Pursuant to N.C.G.S. §14-4, any person, firm, or corporation convicted of violating the provisions of this Ordinance shall, upon conviction, be guilty of a misdemeanor and shall be fined in accordance with the general statute.
2. **Equitable Remedy:** The Administrator may apply to a judicial court of law for any appropriate equitable remedy to enforce the provisions of this Ordinance. It is not a defense to the Administrator’s application for equitable relief that there are other remedies provided under general law or this Ordinance.
3. **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. If the defendant fails or refuses to comply with an injunction within the time allowed by the court, the defendant may be cited for contempt.
4. **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:
 - Buildings or other structures on the property be closed, demolished, or removed;

- Fixtures, furniture or other moveable property be moved or removed entirely; or
- Improvements alterations, modifications or repairs be made; or
- The elimination of illicit connections, discharges, practices or operations; or
- The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property; or
- Any other action be taken that is necessary to bring the property into compliance with this Ordinance.

If the defendant fails or refuses to comply 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 (*Section 18.4A(3)*) issued in conjunction with the order.

B. Administrative Penalties

1. **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 Ordinance, 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.
2. **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 Ordinance 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 Ordinance, or a permit has been mistakenly issued in violation of this Ordinance.
 - a. **Use Discontinued:** 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.
 - b. **Permits Revoked Until Violation Cured:** Certificates of Occupancy or other permits may 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.

- c. **Special Use Permits:** Before a SUP may be revoked, all of the notice and public hearing requirements of Section 15.5E(6) of this Ordinance 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 18.4B(2) 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.
 - d. **Zoning Compliance and Sign Permits:** Before a ZCP or Sign Permit may be revoked, the Administrator shall give the permit recipient 30 day notice of intent to revoke the permit and shall inform the recipient of the alleged reasons for the revocation and of his right to submit a written request for an administrative hearing on the allegations. If the permit is revoked, the Administrator shall provide to the permittee a written statement of the decision and the reasons therefore. Any appeal of the Administrator's decision to the LURB in its capacity as the Board of Adjustment shall be filed within 10 days of the date of the administrative hearing in accordance with Section 15.5C.
3. **New Permit Requests and Approvals Withheld:** 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.
4. **Civil Citations:** In addition to the other remedies cited in this Ordinance for the enforcement of its provisions, and pursuant to N.C.G.S. 160A-175, the regulations and standards in this Ordinance may be enforced through the issuance of civil penalties by the Administrator. If the offender fails to pay the civil penalties within 10 days after having been cited, the Town may recover the penalties in a civil action in the nature of debt.
- a. **Initial Citation:** The initial citation for civil penalties shall be issued upon the expiration of the compliance period identified in the Notice of Violation and Order to Correct. Fines for the specific citation are as follows:
 - i. **Signs:** \$100 per violation or per offense; \$250 if violation occurs within 6 months of a previous offense; and \$25 per violation per day thereafter.
 - ii. **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; and \$50 per violation per day thereafter.
 - iii. **Lighting:** \$50 per violation or offense; and \$50 per violation per day thereafter.
 - iv. **Environmental Protection Violations:** \$250 per violation or offense; and \$250 per violation per day thereafter.

- v. **Occupancy of Building without CO or Expiration of Temporary CO:** \$500 per violation or offense; and \$100 per violation per day thereafter.
 - vi. **All Other UDO Violations:** \$250 per violation or offense; and \$50 per violation per day thereafter.
- b. **Subsequent Citations:** Each day that a violation continues shall constitute a separate and distinct violation or offense for which additional citations may be issued. Subsequent citations for the same violation may be issued by the Administrator if the offender does not pay the initial citation after it has been issued unless the offender has sought an appeal to the actions of the Administrator through the Board of Adjustment.

Note that willful violation of this ordinance in a manner similar to the original violation within a six (6) month period following the initial citation is regarded as a continuation of the original violation or offense regardless of whether the original violation or offense was abated or corrected. (*e.g., An illegal sign erected and properly cited as a violation and issued a citation can not be removed for a day and then re-erected simply to restart the enforcement and compliance actions of the Administrator.*)

18.5 Specific Penalties for Transferring Lots in Unapproved Subdivisions

A. Judicial

1. **Criminal:** 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 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 this Ordinance 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.
2. **Injunction:** 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 Ordinance.

- B. **Administrative:** The Town may refuse to issue any permits.