

ARTICLE 10. ENFORCEMENT

- 10.1. Violations.
- 10.2. Enforcement by Planning Director.
- 10.3. Penalties for violation.
- 10.4. Special enforcement of landscaping requirements.
- 10.5. Judicial review.

10.1. Violations.

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

- A. **Development without permit.** To engage in any development, use, construction, remodeling, or other activity of any nature upon land or improvements thereon subject to the jurisdiction of this UDO without all required permits, certificates, or other forms of authorization as set forth in this UDO.
- B. **Development inconsistent with permit.** 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.** To violate, by act or omission, any term, variance, modification, condition, or qualification placed by the city council or its agent 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.** 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 UDO or any other regulation made under the authority conferred thereby.
- E. **Subdivide in violation.** To subdivide land in violation of this UDO or transfer or sell land by reference to, exhibition of, or any other use of a plat or map showing a subdivision of the land before the plat or map has been properly approved under this UDO and recorded in the office of the county register of deeds. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land does not exempt the transaction from violation of this UDO.
- F. **Continue a violation.** To continue any of the above violations is a separate and distinct offense.

10.2. Enforcement by Planning Director.

- A. **Complaints regarding violations.**
 1. Whenever the Planning Director receives a written, signed complaint alleging a violation of this UDO, he shall investigate the complaint, take such action as is warranted, and inform the complainant in writing what actions have been or will be taken.
 2. The Planning Director may investigate violations of this UDO on his own initiative or upon receipt of oral complaints.

B. Procedures upon discovery of violations.

1. A written notice indicating the nature of the violation and ordering the action necessary to correct it shall be sent to the person responsible for such violation, if the Planning Director finds that any provision of this UDO is being violated. Additional written notices may be sent at the Planning Director's discretion.
2. The final written notice (and the initial written notice may be the final notice) shall state what action is intended if the violation is not corrected and shall advise that the Planning Director's decision or order may be appealed to the Board of Adjustment as provided in Section 3.16, Administrative appeals. A civil penalty may not be appealed to the Board of Adjustment if the offender was sent a final notice and did not take an appeal to the Board of Adjustment within the prescribed time.
3. If the owner or occupant of a property fails to comply with a notice of violation from which no appeal has been taken, or a final decision by the Board of Adjustment following an appeal, the owner or occupant shall be subject to such remedies and penalties as may be authorized in Section 10.3 below.
4. Notwithstanding the foregoing, in cases where delay would seriously threaten the effective enforcement of this UDO or pose a danger to the public health, safety or welfare, the Planning Director may seek enforcement without prior written notice by invoking any of the penalties or remedies authorized in Section 10.3 below.

10.3. Penalties for violation.

- A. **Persons liable.** The owner, tenant or occupant of any building, land or part thereof and any architect, builder, contractor, agent or other person who participates in, assists, directs, creates or maintains any situation contrary to the requirements of this UDO may be held responsible for the violation, suffer the penalties and be subject to the remedies herein provided.
- B. **Penalties and remedies for violations.**
 1. A violation or failure to comply with any of the provisions or requirements of the UDO, including a violation of any of the conditions and safeguards established in connection with grants of variances or special use permits, shall constitute a misdemeanor punishable as provided in North Carolina General Statutes 14-4.
 2. Violation or failure to comply with any of the provisions or requirements of this UDO, including a violation of any conditions and safeguards established in connection with the grants of variances or special use or conditional use permits, shall also subject the offender to a civil penalty of \$50.00 for the first violation. If the offender fails to pay this penalty within ten days after being cited for a violation, the penalty may be recovered by the Town in a civil action in the nature of debt.
 3. Each day a violation continues after notification by the Planning Director

that such violation exists shall be considered a separate offense for purposes of the penalties and remedies specified in this article.

4. If a civil penalty is assessed after January 1, 2003, for an offense or series of related offenses as described above, and the property is brought into compliance with this UDO, but the same person, firm, or corporation repeats the offending activity, the civil penalty shall be increased to \$100.00 for the second violation, \$200.00 for the third violation, and \$500.00 for the fourth and each succeeding violation.
5. This UDO may also be enforced by any appropriate equitable action. Any one, all, or any combination of the foregoing penalties and remedies may be used to enforce this UDO. To the extent that North Carolina law may limit the availability of a particular remedy set forth herein for a certain violation or a part thereof, such remedy shall remain available for other violations or other parts of the same violation.

C. Permit revocation.

1. A permit issued under this UDO shall be revoked if the permit recipient fails to develop or maintain the property in accordance with the plans submitted, the requirements of this UDO, or any additional requirements lawfully imposed by the permit-issuing authority.
2. Before a permit may be revoked, all of the notice, hearing and other requirements of Section 3.16, Administrative appeals, shall be met. The notice shall inform the permit recipient of the alleged grounds for the revocation.
 - a. The burden of presenting evidence sufficient to allow the permit-issuing authority to conclude that a permit should be revoked shall be upon the party advocating that position. The burden of persuasion shall also be upon that party.
 - b. A motion to revoke a permit shall cite, insofar as practical, the specific reasons or findings of fact that support the motion. Such motion is adopted if passed by a majority vote, a quorum being present. (A 4/5 vote of the Board of Adjustment is not required since this motion is not in favor of the permit recipient.)
3. No person may continue to make use of land or buildings in the manner authorized by any permit authorized by this UDO after such permit has been revoked.

D. Stop work order. Whenever there is a land disturbing activity and/or a building, structure, sign, or part thereof is being constructed, reconstructed, altered, or repaired in violation of this UDO, the Planning Director may order the specific part of the work in violation of this UDO to be immediately stopped.

1. A stop work order issued under this section shall be in writing, directed to the person doing the work and shall state the specific work to be stopped, the specific reasons therefore, and the conditions under which the work

may be resumed. A copy of the stop work order shall also be sent forthwith to the owner of the property where the work is taking place and the developer, if different from the owner.

2. Any person aggrieved by the issuance of a stop work order may appeal the issuance of the order to the Board of Adjustment pursuant to Section 3.16, Administrative appeals. However, an appeal shall not stay the operation of the stop work order except as provided in the following paragraph of this section.
3. The Board of Adjustment shall meet and act upon the appeal within 15 working days after the receipt of the appeal notice. If the Board fails to comply with this requirement, the stop work order shall be stayed automatically beginning on the day following the expiration of the 15-working-day period, and the stay shall remain in effect until the Board of Adjustment meets and acts on the appeal.
4. The notice of hearing requirements set forth in Section 3.1.Q. shall not apply to appeals of stop work orders. However, the staff shall orally notify the applicant of the date, time and place of the hearing as soon as it has been scheduled and shall send to the appellant a written confirmation of this notice as soon as possible.
5. Neither the person whom a stop work order is served nor an owner or developer served with a copy under paragraph 1. above, may thereafter cause, suffer, or permit a violation of the order while it remains in effect, except during a period in which the operation of the order is stayed under paragraph 3., above.

10.4. Special enforcement of landscaping requirements.

- A. **Completion of work prior to certificate of occupancy required.** Prior to issuance of a certificate of occupancy, all required landscape plantings must be installed and related work completed as indicated on the final landscape plan. In periods of adverse weather conditions, an irrevocable letter of credit or bond for 150 percent of the cost of landscaping, determined by the executed contract, will be accepted to allow the certificate of occupancy to be issued. Completion of the work must be completed by a prescribed time or the letter of credit or bond shall be called and the work completed by the Town of Garner or by a designated contractor. The Planning Director shall have the opportunity to raise the amount of the bond if, in his opinion, the 150 percent bond will not cover the remaining work.
- B. **Procedures and penalties regarding replacing dead plant material.**
 1. Upon notice by certified mail from the Planning Department regarding replacement of dead plant material, an offender shall have ten business days to respond with a plan of action that includes a replacement planting plan designating the numbers, types, sizes and locations of replacement plants; an estimated date of completion of plant installation; and an agreed-upon date for a site inspection of the completed work.

Town of Garner Unified Development Ordinance (UDO)

2. Failure by the offender to respond to the written notice from the Town within the aforementioned ten-day period may result in a \$100.00 per tree and \$50.00 per shrub per day of violation commencing on the eleventh day.
3. Replacement plantings shall be inch for inch replacement with the smallest tree being two and one-half-inch DBH. If there is not enough land area available without destroying or endangering existing healthy and savable plants or if there is not a suitable location on site which can be agreed upon by the Town and the offender, then a payment in lieu may be made by the offender. This payment will be based upon current market price for materials installed and warranted as determined by the Town of Garner.
4. Replacement vegetation as required by this UDO shall be installed by the offender within 30 days after the date the replacement planting plan is approved by the Planning Department. Failure to comply with this requirement subjects the offender to these penalty provisions. If the 30-day period falls between May 15th and September 15th, the offender may be allowed to delay replanting to the next acceptable planting season. Such an arrangement must have prior written approval by the Planning Department. Failure to comply with this alternative planting time arrangement subjects the offender to these penalty provisions retroactively back to the original violation date.
5. A fine of \$250.00 per caliper inch for each tree removed in violation of an approved tree protection zone or buffer protection zone.
6. The violator shall be required to install replacement trees at a rate of one caliper inch for every three DBH inches of tree removed. For trees removed that are greater than 30 DBH inches, the replacement rate shall be at one caliper inch per every five DBH inches.

10.5. Judicial review.

- A. Every decision of the Town Council granting or denying a conditional use permit and every final decision of the Board of Adjustment shall be subject to review by the Superior Court of Wake County by proceedings in the nature of certiorari.
- B. The petition for the writ of certiorari must be filed with the Wake County Clerk of Court within 30 days after both of the following have been accomplished:
 1. A written copy of the Board's decision, subject to the requirements of Section 3.1.Q.7.c(3), has been filed in Town Hall.
 2. A written copy of the Board's decision, subject to the requirements of Section 3.1.Q.7.c(3), has been delivered to the applicant or appellant by personal service or certified mail.

(Ord. No. 3558, § 2, 7-7-09)