

ARTICLE V
ENFORCEMENT

5-1 VIOLATIONS

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

5-1.1 Development Without Permit

A 'development without a permit' violation means to engage in any development, use, construction, remodeling or other activities of any nature upon the land or improvements thereon subject to the jurisdiction of this Ordinance without required permits, certificates or other forms of authorization as set forth in this Ordinance. A 'development without a permit violation' shall result in the assessment of a fee that is double the normal permit fee.

5-1.2 Development Inconsistent With Permit

A 'development inconsistent with a permit' violation means 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.

5-1.3 Violation by Act or Omission

A 'violation by act or omission' means to violate, by act or omission, any term, variance or waiver, condition, or qualification placed by the City Council or its authorized boards upon any required permit, certificate or other form of authorization for the use, development or other activity upon land or improvements thereon.

5-1.4 Use in Violation

A 'use in violation' means 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 Ordinance, or any other regulation made under the authority conferred thereby.

5-1.5 Subdivide in Violation

A 'subdivide in violation' means to subdivide land in violation of this Ordinance 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 Ordinance and recorded in the Cleveland County Office of the 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 Ordinance.

5-1.6 Continue a Violation

Each day's violation of any provision of this Ordinance is a separate and distinct offense.

5-2 ENFORCEMENT INTENT

It is the intention of this Ordinance, unless otherwise provided, that all questions arising in connection with the enforcement of this Ordinance shall be presented first to the Planning Director and that such questions shall be presented to the Board of Adjustment only on appeal from the Planning Director's decision. An appeal from the decision of the Board of Adjustment shall be by proceedings in the nature of certiorari to the Superior Court as provided by law and must be filed with the City Clerk within the 30-day appeal period described in Section 5-7.2. It is further the intention of this Ordinance that the duties of the City Council in connection with this Ordinance shall not include the hearing and passing upon disputed questions that may arise in connection with the enforcement thereof.

5-3 ENFORCEMENT PROCEDURES

When the Planning Director or his agent finds a violation of this Ordinance or receives a complaint alleging a violation of this Ordinance, it shall be his duty to notify the owner or occupant of the land, building, structure, sign, or use of the violation. The owner or occupant shall immediately remedy the violation.

5-3.1 Notice of Violation

If the owner or occupant of the land, building, sign, structure, or use in violation fails to take prompt corrective action, the Planning Director shall give the owner or occupant written notice, by certified or registered mail, to his last known address or by personal service or by posting notice of the violation conspicuously on the property:

- (A) That the land, building, sign, structure, or use is in violation of this Ordinance;
- (B) The nature of the violation, and citation of the Section of this Ordinance violated;
and
- (C) The measures necessary to remedy the violation.

5-3.2 Appeal

Any owner or occupant who has received a Notice of Violation may appeal in writing the decision of the Planning Director to the Board of Adjustment, in accordance with the provisions of Section 7-1, within thirty days following the date of the Notice of Violation. The Board of Adjustment shall hear an appeal within a reasonable time, and it may affirm, modify, or revoke the Notice of Violation. In the absence of an appeal, the remedies and penalties sought by the Planning Director in the Notice of Violation shall be final.

5-3.3 Order of Corrective Action

If upon a hearing held pursuant to an appeal as prescribed above, the Board of Adjustment shall find that the owner or occupant is in violation of this Ordinance, the Board of Adjustment shall make an order in writing to the owner or occupant affirming the violation and ordering compliance.

5-3.4 Failure to Comply with an Order

If the owner or occupant of a property fails to comply with a Notice of Violation from which no appeal has been taken, or an Order of Corrective Action following an appeal, the owner or occupant shall be subject to such remedies and penalties as may be provided for by state law and Section 5-4. If the owner or occupant fails to comply with the remedies and penalties prescribed, enforcement shall be sought through an order of a court of competent jurisdiction.

5-4 PENALTIES AND REMEDIES

Any one or all of the following procedures may be used to enforce the provisions of this Ordinance.

5-4.1 Injunction

Any violation of this Ordinance or of any condition, order, or requirement, or remedy adopted pursuant hereto may be restrained, corrected, abated, mandated, or enjoined by other appropriate proceeding pursuant to state law.

5-4.2 Civil Penalties

Any person who violates any provisions of this Ordinance shall be subject to the assessment of a civil penalty under the procedures provided in Section 5-5.

5-4.3 Denial of Permit or Certificate

The Planning Director may withhold or deny any permit, certificate, occupancy or other form of authorization on any land, building, sign, structure or use in which there is an uncorrected violation of a provision of this Ordinance or of a condition or qualification of a permit, certificate or other authorization previously granted.

5-4.4 Conditional Permit

The Planning Director may condition the authorization of any permit or certificate upon the correction of the deficiency, payment of civil penalties within a specified time, or the posting of a compliance security approved by the city attorney.

5-4.5 Revocation of Permits

In accordance with Section 5-6, permits shall be revoked for any substantial departure from the approved applications, plans, or specifications; refusal or failure to comply with the requirements of state or local laws, or for false statements or misrepresentations

made in securing the permit. Any permit mistakenly issued in violation of an applicable state or local law may also be revoked.

5-4.6 Criminal Penalties

Any violation of this Ordinance shall be a misdemeanor or infraction as provided by NCGS 14-4.

5-4.7 State and Common Law Remedies

In addition to other enforcement provisions contained in this Article, the City Council may exercise any and all enforcement powers granted to it by state law or common law.

5-5 CIVIL PENALTIES - ASSESSMENT AND PROCEDURES

5-5.1 Penalties

Any person who violates any provisions of this Ordinance shall be subject to assessment of the maximum civil penalty allowed by law.

5-5.2 Notice

No civil penalty shall be assessed until the person alleged to be in violation has been notified of the violation in accordance with Section 5-3.1. If after receiving a notice of violation under Section 5-3.1, the owner or other violator fails to take corrective action, a civil penalty may be imposed under this Section in the form of a citation. The citation shall be served in the manner of a Notice of Violation. The citation shall state the nature of the violation, the civil penalty to be imposed upon the violator and shall direct the violator to pay the civil penalty within fifteen days of the date of the notice.

5-5.3 Responsible Parties

The owner or occupant of any land, building, structure, sign, or use of land or part thereof and any architect, builder, contractor, agent or any other person who participates or acts in concert, assists, directs, creates, or maintains any condition that is in violation of the requirements of this Ordinance may be held responsible for the violation and subject to the civil penalties and remedies herein provided.

5-5.4 Continuing Violation

For each day the violation is not corrected, the violator will be guilty of an additional and separate offense and subject to additional civil penalty.

5-5.5 Demand for Payment

The Planning Director shall make written demand for payment upon the property owner or the person in violation, and shall set forth in detail a description of the violation for which the civil penalty has been imposed.

5-5.6 Nonpayment

If payment is not received or equitable settlement reached within thirty days; after demand for payment is made, the matter shall be referred to legal counsel for institution of a civil action in the appropriate division of the General Courts of Justice for recovery of the civil penalty. Provided however, if the civil penalty is not paid within the time prescribed, the Planning Director may have a criminal summons or warrant issued against the violator. Upon conviction, the violator shall be subject to any criminal penalty the court may impose pursuant to NCGS 14-4.

5-6 PERMIT REVOCATION

5-6.1 General

A zoning, sign, special use, or conditional use permit may be revoked by the permit-issuing authority (in accordance with the provisions of this Section) if the permit recipient fails to develop or maintain the property in accordance with the approved plans, the requirements of the Ordinance, or any additional requirements lawfully imposed by the permit-issuing board.

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

5-6.2 Special Use or Conditional Use Permit Revocation

Before a special use or conditional use permit may be revoked, all of the notice and hearing requirements of Section 4-7.5 shall be complied with. The notice shall inform the permit recipient of the alleged grounds for the revocation.

5-6.3 Zoning or Sign Permit Revocation

Before a zoning or sign permit may be revoked, the Planning Director shall give the permit recipient ten 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 Planning Director shall provide to the permittee a written statement of the decision and the reasons therefor.

5-7 JUDICIAL REVIEW

5-7.1 Appeal to Superior Court

Every decision of the City Council granting or denying a special use permit and every final decision of the Board of Adjustment shall be subject to review by the Superior Court of Cleveland County by proceedings in the nature of certiorari.

5-7.2 Timing of Appeal

The petition for the writ of certiorari must be filed with the Cleveland County Clerk of Court within 30 days after the later of the following occurrences:

- (A) A written copy of the City Council's or Board of Adjustment's decision has been filed in the office of the Planning Director.
- (B) A written copy of the City Council's or Board of Adjustment's decision has been delivered, by personal service or certified mail, return receipt requested, to the applicant or appellant and every other aggrieved party who has filed a written request for such copy at the hearing of the case.

A copy of the writ of certiorari shall be served upon the City of Shelby.