

16 VIOLATIONS AND PENALTIES

16.1 NOTICE OF VIOLATIONS

16.1.1 ADMINISTRATOR AUTHORITY

- A. Unless specifically set forth otherwise in this ordinance, the Administrator is hereby authorized to enforce the provisions of this ordinance.
- B. The Administrator shall have the power to conduct such investigation as he/she may reasonably deem necessary to carry out his/her duties as prescribed in this ordinance, and for this purpose to enter at reasonable times upon any property or premises, public or private, to perform any duty imposed upon them by this ordinance.
- C. The Administrator shall also have the power to require written statements, or filing of reports under oath, with respect to pertinent questions relating to violations of this ordinance.

16.1.2 COMPLAINTS REGARDING VIOLATIONS

Whenever a violation of this ordinance occurs, or is alleged to have occurred, any person may file a complaint. Any complaint stating fully the cause and basis of the complaint shall be filed with the Administrator who shall properly record such complaint, investigate in a timely manner, and take appropriate action as provided by this ordinance.

16.1.3 NOTICE OF VIOLATION; OPPORTUNITY TO CURE

- A. Except as described in in Section 16.1.5, below, in any case where the Administrator finds that any provision of this ordinance is being violated, he/she shall deliver a written notice to the person responsible for such violation(s) and to the owner of record of the property on which the violation occurs. This notice shall:
 - 1. Indicate the nature of the violation(s),
 - 2. Order the action necessary to correct the violation(s), and
 - 3. State the opportunity for an administrative hearing and subsequent appeal as described in Section 16.1.4, below, and
 - 4. State what action the Administrator intends to take if the violation is not corrected.
- B. Such notice of violation shall be served by personal delivery or certified or registered mail, return receipt requested. The notice shall be mailed to the property address indicated on the city's official tax notice address of record.
- C. The notice of violation shall include an opportunity to cure or correct the violation within a period of time, not less than 5 days or more than 30 days, as determined by the Administrator, without penalty.
- D. Additional written notices may be sent at the Administrator's discretion.
- E. The violator may request a hearing with the Administrator within the term prescribed for correction of the violation, during which the violator may propose a schedule for correction of the violation(s).

16.1.4 NOTICE OF VIOLATION; OPPORTUNITY TO APPEAL

- A. The Administrator's order to correct a violation may be appealed to the Board of Adjustment, provided that the violator must have requested a hearing with the Administrator prior to filing an appeal in accordance with Section 16.1.3.E.
- B. A Level 1 and 2 public notification shall be provided by the appellant in accordance with Section 15.3.

16.1.5 SUMMARY REMOVAL OF VIOLATIONS

- A. Pursuant to NCGS 160A-193, the Administrator shall have the authority to summarily remove, abate, or remedy a sign or sign structure which the building inspector has determined to be dangerous or prejudicial to the public health or safety, or any signs or sign structures prohibited under Section 11.8.
- B. In cases where a temporary use or sign was established without the proper permit(s), and in any cases where delay would pose a danger to the public health safety or welfare, the violation(s) can be ordered removed/ceased immediately. The Administrator may seek enforcement without prior written notice by invoking any of the penalties or remedies outlined in Section 16.2 and 16.3, below.
- C. The expense of these actions shall be paid by the violator, or if the violator cannot be ascertained, by the property owner, and if not paid, there shall be a lien placed upon the land or premises where the violation arose, and it shall be collected as unpaid taxes.

16.2 SPECIFIC TYPES OF VIOLATIONS**16.2.1 EROSION CONTROL VIOLATIONS**

- A. **Notice of Violation:** Any person who violates any of the provisions of Section 12.3, or rule or order adopted or issued pursuant to that section, or who initiates or continues a land-disturbing activity for which a plan is required except in accordance with the terms, conditions, and provisions of an approved plan, is subject to a civil penalty and shall be served a notice of violation in accordance with Section 16.1, above.
- B. **Civil Penalties**
 - 1. The maximum civil penalty amount that the city may assess per violation is \$5,000. A civil penalty may be assessed from the date of the violation. Each day of a continuing violation shall constitute a separate violation.
 - 2. Any person who fails to submit an erosion control plan for approval in accordance with Chapter 15 of this ordinance shall be subject to a single, noncontinuing civil penalty of not more than \$1,000.
 - 3. Anyone who violates a stop work order regarding grading and filling control shall be subject to a civil penalty of not more than \$1,500.
 - 4. The Administrator shall determine the amount of the civil penalty for other erosion control violations based upon the following factors:
 - a. The degree and extent of harm caused by the violation,
 - b. The cost of rectifying the damage,
 - c. The amount of money the violator saved by noncompliance,
 - d. Whether the violation was committed willfully, and

- e. The prior record of the violator in complying or failing to comply with this section.
- 5. The Administrator shall provide notice of the civil penalty amount and basis for assessment to the person assessed. The notice of assessment shall be served by any means authorized under NCGS 1A-1, Rule 4, and shall direct the violator to either pay the assessment or contest the assessment, within 30 business days after receipt of the notice of assessment, by filing a petition for contested case in the Office of Administrative Hearing in accordance with NCGS. Ch. 150 B, Art. 3.
- 6. The decision of the Administrative Law Judge may be appealed to the Superior Court of the county where the violation occurred.
- 7. If payment is not received within 30 days after it is due, the city may institute a civil action to recover the amount of the assessment. The civil action may be brought in the Superior Court of the county where the violation occurred, or the violator's residence or principal place of business is located. Such civil actions must be filed within 3 years of the date the assessment was due. An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative and judicial review, if any, of the assessment.
- 8. Civil penalties collected pursuant to this section shall be credited to the Civil Penalty and Forfeiture Fund.

C. Criminal Penalties

Any person who knowingly or willfully violates any provision of this section, or rule or order adopted or issued pursuant to this section, or who knowingly or willfully initiates or continues a land-disturbing activity for which a plan is required except in accordance with the terms, conditions, and provisions of an approved plan, shall be guilty of a Class 2 misdemeanor which may include a fine not to exceed \$5,000 as provided in NCGS 113A-64.

D. Injunctive Relief

- 1. Whenever the governing body has reasonable cause to believe that any person is violating or threatening to violate any ordinance, rule, regulation or order adopted or issued by the city or any term, condition, or provision of an approved plan, it may, either before or after the institution of any other action or proceeding authorized by this section, institute a civil action in the name of the city, for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the superior court of the county in which the violation is occurring or is threatened.
- 2. Upon determination by a court that an alleged violation is occurring or is threatened, the court shall enter any order or judgment that is necessary to abate the violation, to ensure that restoration is performed, or to prevent the threatened violation. The institution of an action for injunctive relief under this section shall not relieve any party to the proceedings from any civil or criminal penalty prescribed for violations of this section.

E. Restoration After Non-compliance

The city may require a person who engaged in a land-disturbing activity and failed to retain sediment generated by the activity, as required by NCGS 113A-57(3), to restore the waters and land affected by the failure so as to minimize the detrimental

effects of the resulting pollution by sedimentation. This authority is in addition to any other civil or criminal penalty or injunctive relief authorized under this section.

16.2.2 FLOODPLAIN VIOLATIONS

- A. Violations to be Corrected:** When the Floodplain Administrator finds violations of Section 12.4 of this ordinance or any other applicable state and local laws it shall be his or her duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law pertaining to their property.
- B. Actions in the Event of Failure to Take Corrective Action:** If the owner of a building or property shall fail to take prompt corrective action, the Floodplain Administrator shall give the owner written notice, by certified or registered mail to the owner's last known address or by personal service, stating:
1. That the building or property is in violation of the flood damage prevention provisions of this ordinance;
 2. That a hearing will be held before the Floodplain Administrator at a designated place and time, not later than 10 days after the date of the notice, at which time the owner shall be entitled to be heard, in person or by counsel, and to present arguments and evidence pertaining to the matter; and
 3. That following the hearing, the Floodplain Administrator may issue such order to alter, vacate, or demolish the building; or to remove fill as appears appropriate.
- C. Order to Take Corrective Action:** If, upon a hearing held pursuant to the notice prescribed above, the Floodplain Administrator shall find that the building or development is in violation of the flood damage prevention ordinance, he or she shall make an order in writing to the owner, requiring the owner to remedy the violation within a specified time, said period to be not less than 60 days nor more than 1 year. Where the Floodplain Administrator finds that there is imminent danger to life or other property, he may order that corrective action be taken in such lesser period as may be feasible.
- D. Appeal:** Any owner who has received an order to take corrective action may appeal the order to the Board of Adjustment by giving notice of appeal in writing to the Floodplain Administrator and the clerk within 10 days following issuance of the final order. In the absence of an appeal, the order of the Floodplain Administrator shall be final. The Board of Adjustment shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.
- E. Failure to Comply with Order:** If the owner of a building or property fails to comply with an order to take corrective action from which no appeal has been taken, or fails to comply with an order of the Board of Adjustment following an appeal, he shall be guilty of a misdemeanor and shall be punished in the discretion of the court.
- F. Continuing Violations:** Each day a violation continues shall be considered a separate offense.
- G. Other Remedies:** Nothing herein contained shall prevent the City of Wilson from taking such other lawful action as is necessary to prevent or remedy any violation.

16.2.3 CERTIFICATE OF APPROPRIATENESS VIOLATIONS:

A. Violations To Be Corrected: Changes to landmark and district properties shall be made in accordance with commission standards. Random modification of design or materials, removal of architectural elements, or demolition of buildings, without an approved COA or in conflict with an approved COA shall constitute a zoning violation. The administrator may institute any appropriate action or proceedings, such as restoration or reconstruction of unauthorized changes, to prevent such unlawful activity in addition to other remedies authorized by this ordinance.

1. Building permits and other required permits in local historic districts and on landmark structures may not be released without an approved COA.
2. A COA is required even when other permits are not.
3. The “Historic Property Owners Handbook with Design Standards for Local Historic Districts and Local Landmarks: identifies work classified as Major Works, Minor Works and Maintenance.
 - a. Major Works and Minor Works not approved by the Administrator require Commission approval.
 - b. Minor Works in accordance with Commission Standards and temporary repairs pertaining to disaster-related matters may be approved by the Administrator.
 - c. Ordinary Maintenance, with no change in design or materials, does not require a COA.
4. Failure to secure a COA, and/or failure to comply with conditions of an approved COA shall be a violation of the UDO.

B. Actions in the Event of Failure to Take Corrective Action: If the owner of a building or property shall fail to take prompt corrective action, the Administrator shall proceed as follows:

1. A stop work order will be issued.
2. Work shall cease immediately.
3. Owner will be notified in writing the nature of the violation.
4. The owner has 7 calendar days to file a complete COA application.
5. Failure to submit a completed COA application shall constitute a zoning violation and be subject to the penalties (Section 16.3.2).
6. COA Applications will be reviewed in accordance with Section 15.11.3 and 15.11.4 of this ordinance.
7. Denied COA applications shall require restoration.
8. Failure to comply with an approved COA or conditions thereof shall constitute a zoning violation (16.3.2).

16.2.4 DEMOLITION BY NEGLECT OF HISTORIC PROPERTIES

Demolition by neglect of any designated historic landmark or property located within a historic district shall constitute a violation of this ordinance. Owners of historic properties and structures shall have the responsibility to preserve those properties and

structures against decay, deterioration, and structural defects and to correct conditions that would compromise those properties' and structures' long-term integrity.

A. Violations to be Corrected: For the purposes of this ordinance “demolition by neglect” shall generally mean the failure to properly maintain any designated historic property or structure, whether intentionally or not, such that it falls into such disrepair that it is no longer habitable. This includes, but is not limited to:

1. Deterioration of exterior walls, foundations, or other vertical support that causes leaning, sagging, splitting, listing, or buckling.
2. Deterioration of flooring or floor supports, roofs, or other horizontal members that causes leaning, sagging, splitting, listing, or buckling.
3. Deterioration of external chimneys that causes leaning, sagging, splitting, listing, or buckling.
4. Deterioration or crumbling of exterior plasters or mortars.
5. Ineffective waterproofing of exterior walls, roofs, and foundations, including broken windows or doors.
6. Defective protection or lack of weather protection for exterior wall and roof coverings, including lack of paint, or weathering due to lack of paint or other protective covering.
7. Rotting, holes, and other forms of decay.
8. Deterioration of exterior stairs, porches, handrails, window and door frames, cornices, entablatures, wall facings, and architectural details that causes delamination, instability, loss of shape and form, or crumbling.
9. Heaving, subsidence, or cracking of sidewalks, steps, or pathways.
10. Deterioration of fences, gates, and accessory structures.
11. Deterioration that has a detrimental effect upon the special character of the district as a whole or the unique attributes and character of the Historic Landmark.
12. Deterioration of any exterior feature so as to create or permit the creation of any hazardous or unsafe conditions to life, health, or other property.

B. Penalties and Remedies: The local governing body may take appropriate actions to prevent demolition by neglect, including the imposition of civil and criminal fines, the request for a court entered order of abatement, and other penalties as outlined in Chapter 16 of this ordinance, provided such actions include appropriate safeguards to protect the property owner from undue economic hardship. Notice of a violation of this section shall be delivered, and an opportunity to cure the violation granted, in accordance with the provisions of Chapter 16.

C. Undue Economic Hardship: When a notice of violation related to the demolition by neglect of a historic landmark or property is served, the property owner shall have the right to seek recognition of undue economic hardship in complying with the applicable provisions of this ordinance from the Historic Preservation Commission. When a claim of undue economic hardship is made owing to the effects of this section, the Historic Preservation Commission shall schedule a hearing on the claim at its next regular meeting, in accordance with the procedure outlined below.

1. **Hearing:** The hearing shall follow the general requirements for quasi-judicial proceedings as outlined in Section 15.5. The petitioner shall present evidence

during the hearing upon the claim, describing the circumstances of hardship, and, at the guidance of the HPC, any other information necessary to determine if an undue economic hardship exists. The HPC may direct its staff to furnish additional information as the HPC believes is relevant. The HPC shall also state which form of financial proof it deems relevant and necessary to a particular case.

2. **Findings of Fact:** The action on an application must be supported by specific findings of fact indicating whether an undue economic hardship is found to be imposed by the requirements of this ordinance.
3. **Historic Preservation Commission Decision:** Following the public hearing, the HPC shall make a finding on the hearing within 60 days of the hearing on the claim, and shall enter the reasons for such finding into the record. Any cost associated with repairing, maintaining, or otherwise correcting any structural deficiency of a historic structure or property which results from the willful neglect of the owner shall not constitute an undue economic hardship.
4. **Finding of Undue Economic Hardship:** In the event of a finding of undue economic hardship, the finding shall be accompanied by a recommended plan to relieve the economic hardship. This plan may include, but is not limited to, property tax relief as may be allowed under North Carolina law, loans or grants from the city, the county, or other public, private, or nonprofit sources, acquisition by purchase or eminent domain, building code modifications, changes in applicable zoning regulations, or relaxation of the provisions of this section sufficient to mitigate the undue economic hardship.
5. **Finding of No Undue Economic Hardship** In the event of a finding of no undue economic hardship, the Administrator shall cause to be issued an order for such property to be repaired within the time specified.
6. **Appeals:** An appeal from the decision of the HPC regarding a claim of undue economic hardship may be made to the Board of Adjustment in accordance with Section 15.12. Any such appeal must be made no later than 10 days after the applicant receives the written copy of the decision of the HPC.

16.3 PENALTIES FOR VIOLATIONS AND ENFORCEMENT MECHANISMS

Unless otherwise specified for specific types of violations in Section 16.2 above, the following procedures, penalties and enforcement mechanisms for violations of this ordinance shall apply.

16.3.1 LIABILITIES FOR VIOLATIONS

Pursuant to NCGS 160A-175, any person who erects, constructs, reconstructs, alters, repairs, converts, or maintains any building, structure, sign or sign structure or develops, grades or otherwise alters property in violation of this ordinance, and any person who uses any building, structure, sign or sign structure or land in violation of this ordinance shall be subject to civil and/or criminal penalties.

16.3.2 CIVIL PENALTIES

A. Civil Citations Following a Notice of Violation

1. Following the delivery of a notice of violation according to the provisions of Section 16.1.2, if the alleged violator or property owner does not correct the violation within the time period determined by the Administrator, a citation subject to the following schedule of civil penalties shall be issued.

Notice/Citation	Penalty
Notice of Violation	No penalty if the violation is corrected within the time period determined by the Administrator as identified in the written notice.
First Citation (for each uncorrected offense)	\$50.00; Violation must be corrected within 10 calendar days of citation delivery or Second Citation will be issued and delivered to the violator and property owner.
Second Citation (for each same uncorrected offense)	\$100.00; Violation must be corrected within 10 days (as defined as the 24-hour period after which the notice has been delivered) of Second Citation delivery or Third Citation will be issued.
Third and Subsequent Citations (for each same uncorrected offense)	\$200.00 per day (as defined as the 24-hour period after which the notice has been delivered) that the violation continues to exist.

2. **Repeat Violations:** If the Administrator notifies a party of a violation, and that violation is remedied but subsequently reestablished (committed by the same violator at the same location and being of the same nature as the original violation) within a period of 12 months, the violator shall incur the fines prescribed above without the need of a notice of violation.

- B. Violation Assumed to be Continued until a Request for Compliance Inspection Is Made:** It is the responsibility of the party in violation to submit a request for an inspection for compliance to the Administrator upon correction of the violation. The violation will assume to be continued, and penalties assessed according to the schedule above, until an inspection is requested and the property is found to be in compliance.
- C. Recovery of Civil Penalties:** The city may recover penalties in a civil action in the nature of a debt if the offender does not pay the penalty within 3 regular business days (excluding weekends and holidays) after being cited for a violation.
- D. Limitation on Appeal of Civil Penalties:** These civil penalties may not be appealed to the Board of Adjustment if the violator received a notice of violation and did not attend the hearing with the Administrator described in Section 16.1.3.E.

16.3.3 CRIMINAL PENALTIES

Pursuant to NCGS 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 an amount consistent with the General Statutes.

16.3.4 INJUNCTIVE OR OTHER RELIEF

- A.** In addition to, or in lieu of, the other remedies set forth in this chapter, the Administrator, in the event of a violation of this ordinance, may request that the City Attorney institute, in a court of competent jurisdiction, an injunctive action, mandamus action, or other appropriate proceeding to prevent the completion or occupation of such building or structure, or use of land.
- B.** Upon determining that an alleged violation is occurring or is threatened, a court hearing an appeal for relief shall enter such orders and/or judgments as are necessary to abate or prevent the violation.
- C.** The institution of an action for injunctive or other relief under this sub-section shall not relieve any party to such proceeding from any civil or criminal penalty prescribed by this chapter for violations of this ordinance.

16.3.5 EQUITABLE REMEDY

In addition to the civil penalties set out above, any provision of this ordinance may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction. 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.

16.3.6 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 or all of the following actions:

- A.** Buildings, foundations, or other structures on the property be closed, demolished, or removed;
- B.** Fixtures, furniture, or other moveable personal property be moved or removed entirely;
- C.** Improvements alterations, modifications or repairs be made; or
- D.** Any other action be taken that is necessary to bring the property into compliance with this ordinance.

16.3.7 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, any attorney’s fees and court costs incurred by the city, any unpaid fines due to the city, and any other reasonable administrative costs as necessary. 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.

16.3.8 REVOCATION OF PERMITS

In the event of a violation of any provision of this UDO, the Administrator may stop any development of, use of, or activity on property by revoking the applicable permit.

- A. Grounds for Revocation:** Permits may be revoked when:
 - 1.** False statements or misrepresentations were made in securing the permit;
 - 2.** Work is being or has been done in substantial departure from the approved application or plan;
 - 3.** There has been a failure to comply with the requirements of this ordinance or any additional requirements lawfully imposed by the permit issuing authority, including but not limited to specific conditions of approval; or
 - 4.** The permit was been mistakenly issued in violation of this ordinance.

- B. Written Notice and Hearing Required:** Before a development-related permit (e.g. Building Certificate of Occupancy) may be revoked, the Administrator shall give the permit recipient notice of intent to revoke the permit, inform the recipient of the reasons for the revocation and hold a hearing at a specified time and place as set forth in the notice of intent to revoke, at which time the recipient, if present, shall be given opportunity to be heard. If, after the hearing, the permit is revoked by the office of the Administrator for reasonable cause, the Administrator shall provide to the recipient a written statement of the decision to revoke the permit and the reasons therefore.
- C. Appeals of Revocation:** The recipient may appeal the decision of the Administrator to the Board of Adjustment.
- D. Continuation of Use Not Allowed Following Revocation:** No person may continue to make use of land or buildings in the manner authorized by any development-related permit on or after the date such permit has been revoked in accordance with this section. Such use shall constitute a violation and subject the responsible party to the penalties outlined in 16.3.2.
- E. Resubmittal:** Any resubmittal of a request for permit upon the same property shall meet all the provisions of the ordinance as adopted at the time of the submittal, and shall go through the full submittal process for the appropriate permit type as described in Section 15.2.

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