

## ARTICLE 23

### ADMINISTRATION AND ENFORCEMENT

*(amended June 30, 2021 to comply with NCGS 160D)*

#### 23.1. Applicability

This Ordinance and the provisions set forth herein shall apply to all property within the Town of Midland and its area of jurisdiction. The *Planning, Zoning & Subdivision Administrator* shall have the authority to administer and enforce the provisions of the Ordinance within this area.

#### 23.2. Administrator as Enforcement Officer

23.2-1 Establishment and Authority. Unless specifically set forth otherwise in this ordinance, the Town of Midland *Planning, Zoning & Subdivision Administrator* shall be the Enforcement Officer with the duty of administering and enforcing the provisions of this Ordinance. The *Planning, Zoning & Subdivision Administrator* may designate one or more persons to assist in the administration and enforcement this Ordinance. Orders issued by the *Planning, Zoning & Subdivision Administrator's* designee shall have the effect as if issued by the *Planning, Zoning & Subdivision Administrator*. The *Planning, Zoning & Subdivision Administrator*, or designee, may enter any building, structure, or premises as provided by law, to perform any duty imposed upon him/her by this Ordinance.

#### 23.2-2 General Duties

The *Planning, Zoning & Subdivision Administrator* shall:

- (A) establish and publish application procedures for permits, appeals, and actions pursuant to this Ordinance and forms implementing the same;
- (B) issue permits and certificates pursuant to this Ordinance;
- (C) review and approve all development plans and permits to assure that the permit requirements of this Ordinance have been satisfied;
- (D) interpret the applicability of the provisions of this Ordinance in matters where the text does not clearly provide guidance;
- (E) maintain all records pertaining to the provisions of this Ordinance in his/her office(s) and make said records open for public inspection;
- (F) periodically inspect properties and activities for which permits have been issued to determine whether the use(s) is being conducted in accordance with the provisions of this

- Ordinance;
- (G) cause to be investigated violations of this Ordinance;
- (H) enforce the provisions of this Ordinance;
- (I) issue notice of corrective action(s) when required;
- (J) use the remedies provided in this Ordinance to gain compliance;
- (K) be authorized to gather evidence in support of said activities;
- (L) receive appeals and forward cases to the appropriate body; and
- (M) perform other duties as may be assigned by the Town Council and/or the *Planning & Zoning Commission*.

### **23.3 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.

- 23.3-1 Development Without Permit. To engage in any development, use, construction, remodeling, or other activity of any nature upon the land or improvements thereon subject to the jurisdiction of this Ordinance without all required permits, certificates, or other forms of authorization as set forth in this Ordinance.
- 23.3-2 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.
- 23.3-3 Violation by Act or Omission. To violate, by act or omission, any term, variance or waiver, condition, or qualification placed by the Town 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.
- 23.3-4 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 Ordinance, or any other regulation made under the authority conferred thereby.
- 23.3-5 Subdivide in Violation. 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 Office of the Register of Deeds of Cabarrus County. 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.

23.3-6 Continuing Violations. Each day's violation of any provision of this Ordinance is a separate and distinct offense.

#### **23.4 Enforcement Intent** (*amended May 13, 2014*)

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, Zoning & Subdivision Administrator* and that such questions shall be presented to the Board of Adjustment only on appeal from a written decision made by the *Planning, Zoning and Subdivision Administrator*. An appeal from the decision of the Board of Adjustment shall be by proceedings in the nature of certiorari to the Superior Court of Cabarrus County as provided by law.

#### **23.5 Enforcement Procedure**

When the *Planning, Zoning & Subdivision Administrator* or his/her agent finds a violation of this Ordinance, it shall be his/her 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.

23.5-1 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, Zoning & Subdivision Administrator* shall give the owner or occupant written notice, by first class mail, general delivery mail, certified or registered mail to his last known address, or by personal service, by posting notice of the violation conspicuously on the property, or in accordance with Rule 4 of the North Carolina Rules of Civil Procedure. The notice of violation shall include, but not be limited to:

- 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;
- c. the measures necessary to remedy the violation;
- d. the opportunity to cure the violation within a prescribed period of time.

Where the person violating a provision of this article is not the owner of the property, the Town shall send a notice of violation to both the occupant and the owner of the property.

23.5-2 Extension of Time to Remedy. Upon receipt of a written request from the alleged violator or the property owner for an extension of time to remedy or correct the violation, the *Planning, Zoning & Subdivision Administrator* or other Town official charged with the duty of enforcing the

regulations(s) being violated may grant a single extension of time, not to exceed a period of 30 calendar days, in which the alleged violator may cure or correct the violation before the Town pursues enforcement action as provided for in this section.

- 23.5-3 Appeal. Any owner or occupant who has received a Notice of Violation may appeal in writing the written decision of the *Planning, Zoning & Subdivision Administrator* to the Board of Adjustment (unless this Ordinance has specified that another board shall hear the appeal of the violation) within thirty (30) days following receipt of the Administrator's written decision. (*amended May 13, 2014*)
- 23.5-4 The Board of Adjustment, or other designated board, shall hear an appeal within thirty-six (36) days of the date of submittal of a written application. Following the close of a public hearing at which the case is heard, it may affirm, modify, or revoke the Notice of Violation. In the absence of an appeal, the remedies and penalties sought by the *Planning, Zoning & Subdivision Administrator* in the Notice of Violation shall be final. Notice of such hearing shall be provided as required by this Ordinance and state statutes. (*amended May 13, 2014*)
- 23.5-5 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.
- 23.5-6 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 23.6 (Remedies). 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.

## **23.6 Remedies**

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

- 23.6-1 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.

23.6-2 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 23.7 (Civil Penalties - Assessments and Procedures).

23.6-3 Denial of Permit or Certificate. The *Planning, Zoning & Subdivision Administrator* may withhold or deny any permit, certificate, occupancy permit 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.

23.6-4 Conditional Permit or Temporary Certificate. The *Planning, Zoning & Subdivision Administrator* 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 appropriate governmental authority.

23.6-5 Stop Work Orders. Whenever a building, sign, or structure, or part thereof is being constructed, reconstructed, altered, or repaired in violation of this Ordinance, the *Planning, Zoning & Subdivision Administrator* may order the work to be immediately stopped. The stop work order shall be in writing and directed to the owner, occupant, or person doing the work. The stop work order shall state the specific work to be stopped, the specific reasons for the stoppage, and the conditions under which the work may be resumed. Such action shall be in accordance with NCGS 160D-404(b), as applicable, or the NC Building Code.

23.6-6 Revocation of Permits. The *Planning, Zoning & Subdivision Administrator* may revoke and require the return of a permit by notifying the permit holder in writing stating the reason for the revocation. Permits shall be revoked for any substantial departure from the approved application, 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.

23.6-7 Criminal Penalties. Any violation of this Ordinance shall be a misdemeanor or infraction as provided by NCGS 14-4.

## **23.7 Civil Penalties – Assessment and Procedures**

23.7-1 Penalties. Any person who violates any provisions of this Ordinance shall be subject to assessment of a civil penalty in the amount prescribed for the first and each successive violation of the same provision. The following penalties are hereby established:

Warning Citation	Correct Violation Within Prescribed Period of Time
First Citation	\$100.00
Second Citation for Same Offense	\$300.00
Third and Subsequent Citations for Same Offense	\$500.00

If the offender fails to pay the civil penalties within fifteen (15) days after having been cited, the Town may recover the penalties in a civil action in the nature of debt.

- 23.7-2 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 23.5-1 (Notice of Violation). If after receiving a notice of violation under Section 23.5-1, the owner or other violator fails to take corrective action within the prescribed period of time, 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 (15) days of the date of the notice.
- 23.7-3 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.
- 23.7-4 Continuing Violation. For each day thereafter (ten day notice and 15 days to pay penalty after notice), if the violation is not corrected, the violator will be guilty of an additional and separate offense and subject to additional civil penalty.
- 23.7-5 Demand for Payment. The *Planning, Zoning & Subdivision Administrator*, or designee, 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.
- 23.7-6 Nonpayment. If payment is not received or equitable settlement reached within thirty (30) 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, Zoning & Subdivision Administrator* 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.

### **23.8 Other Powers and Actions**

23.8-1 State and Common Law Remedies. In addition to other enforcement provisions contained in this Article, the Town Council may exercise any and all enforcement powers granted to it by state law or common law.

23.8-2 Previous Enforcement. Nothing in this Ordinance shall prohibit the continuation of previous enforcement actions.

### **23.9 Remedies Cumulative and Continuous**

23.9-1 Cumulative Violations. All such remedies provided herein shall be cumulative. 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.

23.9-2 Repeat Violations. If an owner or occupant repeats the same violation, on the same parcel, within a five year period from the date of the initial violation, it shall be considered to be a continuation of the initial violation and shall be subject to additional penalties and remedies.

### **23.10 Action by Others**

23.10-1 Adjacent or Neighboring Property. In addition to the remedies available to the Town of Midland hereunder, if any building or structure is erected, constructed, reconstructed, repaired, converted or maintained, or any building, structure, or land is used in violation of this Ordinance, any other appropriate authority or any adjacent, nearby, or neighboring property owner who would be affected by such violation may institute injunction, mandamus, or other appropriate action or proceeding to prevent the occupancy of such building, structure, or land, or the continuance of any construction whatsoever in violation of this Ordinance.

23.10-2 Land Purchaser. In the event that a purchaser buys land for which there is a surety to secure performance of improvements, after a period of two (2) years has passed since the date of Final Plat recordation, the purchaser may bring action to enforce completion of the improvements. In such a case, the purchaser may seek specific performance.

**23.11 Summary Removal of Signs/Sign Structure; Remove Orders for Signs/Sign Structure**

- 23.11-1 Summary Removal. Pursuant to NCGS, the Town shall have the authority to summarily remove, abate, or remedy a sign or sign structure which the Town determines to be dangerous or prejudicial to the public health or safety. The expense of the action shall be paid by the sign owner, or if the sign owner cannot be ascertained, by the property owner, and if not paid, there shall be a lien placed upon the land or premises where the nuisance arose, and it shall be collected as unpaid taxes.
- 23.11-2 Prohibited Signs a Public Health Nuisance. Pursuant to NCGS, any signs or sign structures prohibited by Article 17 of this Ordinance are hereby declared to be a public health nuisance in that they are dangerous or prejudicial to the public health or public safety and the *Planning, Zoning & Subdivision Administrator* shall have the authority to remove summarily the sign and/or sign structure.
- 23.11-3 Remove Order. The *Planning, Zoning & Subdivision Administrator* shall have the authority to issue a remove order for any sign not repaired or brought into compliance within the time prescribed by a notice of violation. Remove orders shall be issued to and served upon the sign/sign structure owner, or if the sign/sign structure owner cannot be ascertained, to and upon the property owner by the means set forth in section 23.5-1. The sign or sign structure shall be removed 30 days after the service of the remove order at the expense of the offender. The remove order shall describe with particularity the location of the sign or sign structure to be removed and the reason(s) for issuance of the remove order, including specific reference to the provisions of Article 17 of this ordinance that have been violated.
- 23.11-4 Failure to Comply. In the event of failure to comply with the requirements of a remove order, the *Planning, Zoning & Subdivision Administrator* may cause such sign or sign structure to be removed. The sign owner and property owner may be jointly and separately liable for the expense of removal. Notice of the cost of removal shall be served as set forth in section 23.5-1. If said sum is not paid within 30 days thereafter, said sum may be collected by the Town in a civil action in the nature of debt, which shall not subject the offender to the penalty provisions of N.C. Gen. Stat. § 14-4.