

ARTICLE 23

ADMINISTRATION AND ENFORCEMENT

23.1 **Applicability and Establishment of *Planning, Zoning & Subdivision Administrator***

This Ordinance and the provisions set forth herein shall apply to all property within the City of Lowell. The *City Council* shall appoint a duly qualified *Planning, Zoning & Subdivision Administrator* to be responsible for the impartial administration of this Ordinance. The *Planning, Zoning & Subdivision Administrator* shall have the authority to administer and enforce the provisions of the Ordinance within this area of jurisdiction. The individual appointed to fulfill this responsibility shall be a certified member in good standing with either the American Institute of Certified Planners or the North Carolina Association of Zoning Officials having first met examination requirements, and subsequently meeting certification maintenance requirements.

23.2 **Administrator as Enforcement Officer**

23.2-1 Establishment and Authority. Unless specifically set forth otherwise in this Ordinance, the City of Lowell *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 of 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 Conflict of Interest. Administrative staff, including the *Planning, Zoning & Subdivision Administrator*, shall not make a final decision on an administrative decision required by this Ordinance if the outcome of that decision would have a direct, substantial, and readily identifiable impact on the staff member or if the applicant or other person subject to that decision is a person with whom the member has a close familial, business, or other associational relationship per G.S. 160D-109(c).

23.2-3 Oath of Office. The person designated as the *Planning, Zoning & Subdivision Administrator* shall take and subscribe the oath of office prescribed in Article VI, § 7 of the Constitution as stipulated in G.S.160A-61.

23.2-4 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 permit applications to assure the requirements of this Ordinance have been satisfied;
- (D.) make determinations and 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 their 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 per G.S.160D-403(e);
- (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 *City Council* and/or the *Planning Board*.

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 G.S.160D-404.

- 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 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.
- 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 Gaston 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

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 determination made by the *Planning, Zoning & Subdivision Administrator* and in accordance with Article 6 of this Ordinance. An appeal from the decision of the Board of Adjustment shall be by proceedings in the nature of certiorari to the Superior Court of Gaston County as provided by law and in accordance with Article 6 of this Ordinance.

23.5 Enforcement Procedure

When the *Planning, Zoning & Subdivision Administrator* and/or a duly authorized agent finds a violation of this Ordinance, it shall be their 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 holder of the development approval, landowner, person undertaking the work activity, or occupant written notice, by first class mail, email, general delivery mail, certified or registered mail to their 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.

- 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 City 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 City 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 determination 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 determination in accordance with Section 6.2-6 of this Ordinance. The Board of Adjustment, or other designated board, shall hear an appeal within thirty-six (36) days of the date of submittal of a complete application, 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, Zoning & Subdivision Administrator* in the Notice of Violation shall be final. Notice of such hearing shall be provided as required by Sections 6.1-4(B) and 6.1-4(C) of this Ordinance.
- 23.5-4 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.
- 23.5-5 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 G.S.160D-404 and Section 23.6 (Remedies) of this Article. 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) of this Ordinance.

- 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 G.S.160D-404(b). Violation of a stop work order shall constitute a Class 1 misdemeanor.
- 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; for refusal or failure to comply with the requirements of any applicable 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. (See G.S.160D-403(f) for statutory authorization by law.)
- 23.6-7 Penalties. Any violation of this Ordinance shall be subject to remedies as provided by G.S.160D-404(c).

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 City may recover the penalties and cost of collection, including attorney fees and court costs, as permitted by law in a civil action in the nature of debt. Penalties collected shall be distributed in accordance with applicable law.

- 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, 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, reasonable attorney fees and court costs. 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 G.S.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 City 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 Summary Removal of Signs/Sign Structure; Remove Orders for Signs/Sign Structure

23.10-1 Summary Removal. Pursuant to G.S.160A-193, the City shall have the authority to summarily remove, abate, or remedy a sign or sign structure which the City 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.

23.10-2 Prohibited Signs a Public Health Nuisance. Pursuant to G.S.160A-193 and G.S.160A-296, 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.

23.10-3 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 within 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.

23.10-4 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, together with reasonable attorney fees and court costs, may be collected by the City in a civil action in the nature of debt, which shall not subject the offender to the penalty provisions of G.S.14-4.