

## **ARTICLE 4.**

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**Section 4.1 AMENDMENT/REZONING PROCEDURES**

The Board of Commissioners may amend, repeal, supplement or change the text regulations and zoning district lines according to the following procedures:

***4.1.1 Application by the Applicant***

- (A) *Initiation of Amendment.* Proposed changes or amendments may be initiated by the Board of Commissioners, Planning Board, Board of Adjustment, or city officials without submittal of a formal application or fees. A formal application available from the City is required for proposed changes or amendments to this ordinance requested by members of the general public.
- (B) *Fee.* The fee established in the City's fee schedule shall be paid to the City for each application for an amendment to cover the cost of advertising and other administrative expenses involved.

***4.1.2 Application Procedures***

Any application for an amendment to the text of this Ordinance or the zoning map shall be filed with the UDO Administrator or other employee designated by the City Manager at least forty-five (45) days prior to the date on which it is to be introduced to the Planning Board. The UDO Administrator shall be responsible for presenting the recommendations of the Planning Board to the Board of Commissioners.

- (A) Each application for a text amendment shall be signed by the applicant and shall contain at least the following information:
  - (1) The full name and address of all applicants.
  - (2) The section(s) of the ordinance for which changes are proposed and the text of the proposed changes.
  - (3) An explanation of the rationale for the proposed changes.
- (B) Each application for a rezoning shall be signed by the property owner(s) or the agent of the property owner(s) or by the third-party applicant(s) and shall contain at least the following information:
  - (1) The full name and address of all applicants and property owners, and a description of the property proposed for rezoning, including all tax parcel numbers.

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- (2) The applicant's interest in the property and the existing and proposed zoning district classification.
- (3) A diagram or detailed description of the property proposed for rezoning describing in reasonable detail:
  - (a) The location of all existing structures on the property.
  - (b) The existing land uses associated with the property.
  - (c) The zoning classification of all abutting zoning districts.
- (4) A list of all adjacent property owners within one hundred fifty (150) feet of all properties proposed to be rezoned, including properties separated from the subject property by street, railroad, or other transportation corridor. Such list shall include name, address and tax parcel numbers in hard copy and an electronic format chosen by the City, and addressed and stamped letter size envelopes to all such owners.
- (5) A statement of justification regarding the changing conditions in the area or in the City, generally that makes the proposed amendment necessary to the promotion of the public health, safety, and general welfare, or that identifies an obvious error in the zoning map based upon the zoning classification or current land use of surrounding properties.
- (6) A statement of justification that substantiates that the proposed amendment would support one (1) or more of the stated objectives of the Land Use Plan and any other officially adopted plan.
- (7) A metes and bounds description and map of the proposed zoning district boundary, prepared by a surveyor registered in North Carolina, if the area of the proposed rezoning does not follow existing parcel lines.

#### ***4.1.3 Written Recommendations***

All proposed amendments to the text of this Ordinance, including amendments to the zoning map, shall be reviewed by the Planning Board and a written recommendation shall be prepared in accordance with NCGS 160D, Article 6. If no written report is received from the Planning Board within thirty (30) days of referral of the amendment to that board, the Board of Commissioners may act on the amendment without the Planning Board report. The Planning Board shall advise and comment on whether the proposed amendment is consistent with any comprehensive plan that has been adopted and any other officially adopted plan that is applicable. The Planning Board shall provide a written recommendation to the Board of Commissioners that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent

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with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the Board of Commissioners. If a zoning map amendment qualifies as large-scale rezoning, under G.S. 160D-6-2(b), the Planning Board statement describing plan consistency may address the overall rezoning and describe how the analysis and policies in the relevant adopted plans were considered in the recommendation made. Prior to adopting or rejecting any zoning amendment, the Board of Commissioners shall adopt a brief statement in accordance with NCGS 160D-605, describing whether its action is consistent, or inconsistent with an adopted comprehensive plan and explaining why the board considers the action taken to be reasonable and in the public interest. If the amendment is adopted and the action was deemed inconsistent with the adopted plan, the zoning amendment shall have the effect of also amending any future land use map in the approved plan and no additional request or application for a plan amendment shall be required. The plan consistency statement is not subject to judicial review. If a zoning map amendment qualifies as a large-scale rezoning, under G.S. 160D-6-2(b), the Board of Commissioners' statement describing plan consistency may address the overall rezoning and describing how the analysis and policies in the relevant adopted plans were considered in the action.

A member of the Board of Commissioners shall not vote on any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. Commissioners shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition, or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship. Members of appointed boards providing advice to the Board of Commissioners shall not vote on recommendations regarding any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial and readily identifiable impact on the member. Members of appointed boards providing advice to the Board of Commissioners shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition, or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.

#### ***4.1.4 Required Legislative Hearing***

A legislative hearing shall be held by the Board of Commissioners before adoption, amendment, or repeal of any amendment to the text of this Ordinance or the zoning map. Notice of such hearing shall be provided as required or as authorized under NCGS 160D-601, or as may be from time to time amended. The property will also be posted with a sign indicating a zoning map amendment is pending in accordance with NCGS 160D-602(c). Where multiple parcels are included with a proposed zoning map amendment, a posting of each parcel is not required but the City shall post

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sufficient notices to provide reasonable notice to interested persons. The posting of signs shall be done initially no more than twenty-five (25) days and no less than ten (10) days prior to the date of the legislative hearing.

Except where an alternative to mail notice is used as provided for under NCGS 160D-602(b), the owner of a property proposed for a zoning change and all property owners located within one hundred fifty (150) feet of a property, including those properties separated from the subject property by street, railroad, or other transportation corridor, shall be mailed a notice by first class mail specifying the time, place and subject of the legislative hearing to be conducted by the Board of Commissioners at least ten (10) and not more than twenty-five (25) days prior to such hearing. Following such hearing, the Board of Commissioners may change the existing zoning classification covered by the application, or any part or parts thereof, to the classification requested, or to a different classification or classifications of the same fundamental character as contained in the notice after considering the debate and discussion occurring at the hearing without the necessity of withdrawal or modification.

Except for a City-initiated zoning map amendment, when an application is filed to request a zoning map amendment and that application is not made by the owner of the parcel of land to which the amendment would apply, the applicant shall certify to the Board of Commissioners that the owner of the parcel of land as shown on the county tax listing has received actual notice of the proposed amendment and a copy of the notice of legislative hearing. The person or persons required to provide notice shall certify to the Board of Commissioners that proper notice has been provided in fact, and such certificate shall be deemed conclusive in the absence of fraud.

#### ***4.1.5 Resubmittal***

Once a zoning amendment or modification has been presented to the Planning Board and the Board of Commissioners for consideration and a legislative hearing has been held, if the proposed modification has failed to pass, the issue may not be submitted for reconsideration until six (6) months has passed from the date the proposal was denied by the Board of Commissioners. Provided, however, if there has been a zoning change on contiguous or adjacent property, or the expansion of infrastructure that will serve the property within the immediate future, the board may consider a zoning amendment within the six-month period. A change in ownership of the affected land shall not be considered a cause for reapplication.

### **Section 4.2 Vested Rights Provisions**

#### ***4.2.1 Purpose***

The purpose of this section is to implement the provisions of NCGS 160D-108 pursuant to which a statutory zoning vested right is established upon the approval of a site-specific vesting plan.

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#### ***4.2.2 Establishment of a Zoning Vested Right***

- (A) A hearing to establish a zoning vested right may be requested by any landowner, and such right shall be deemed established upon the valid approval or conditional approval of a site-specific vesting plan by the Board of Commissioners after normal approval procedures for the specific type of approval have concluded and following notice and legislative hearing.
- (B) The Board of Commissioners may approve a site-specific vesting plan upon such terms and conditions as may reasonably be necessary to protect the public health, safety and welfare and that follow the requirements set forth in the zoning and subdivision ordinances of the City.
- (C) Notwithstanding subsections (A) and (B), approval of a site-specific vesting plan with the condition that a variance be obtained shall not confer a zoning vested right unless and until the necessary variance is obtained.
- (D) The establishment of a zoning vested right shall not preclude the application of overlay zoning that imposes additional requirements but does not affect the allowable type or intensity of use, or ordinances or regulations that are general in nature and are applicable to all property subject to land-use regulations by the City, including but not limited to, building, fire, plumbing, electrical and mechanical codes. Construction shall comply with the building code in effect on the date of the first inspection, and not the code in effect on the date the vested right is secured. Otherwise applicable new or amended regulations shall become effective with respect to property that is subject to a site-specific vesting plan upon the expiration or termination of the vested right in accordance with this article.
- (E) A zoning vested right is not a personal right, but shall attach to and run with the applicable property. After approval of a site-specific vesting plan, all successors to the original landowner shall be entitled to exercise such right while applicable.

#### ***4.2.3 Approval Procedures and Approval Authority***

- (A) Except as otherwise provided in this section, an application for site-specific vesting plan approval shall be processed in accordance with the procedures established by this Ordinance and shall be considered by the designated approval authority for the specific type of zoning or land use permit or approval for which application is made.
- (B) In order to obtain a zoning vested right hereunder, the applicant must set forth in writing at the time of the application, on a form to be provided by the City, that the applicant seeks a zoning vested right. All applications for zoning vested rights shall be considered by the Board of Commissioners after normal approval procedures for the

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specific type of approval have concluded and following notice and a evidentiary hearing irrespective of whether prior approval procedures required such notice and hearing.

- (C) Each map, plat, site plan or other document evidencing a site-specific vesting plan shall contain the following notation: "Approval of this plan pursuant to Section 4.2 of the City of Boiling Spring Lakes Unified Development Ordinance established a zoning vested right under G.S. 160D-108. Unless terminated at an earlier date, the zoning vested right shall be valid until (date)."
- (D) Following proper approval or conditional approval of a site-specific vesting plan, nothing in this article shall exempt such a plan from subsequent reviews and approvals to ensure compliance with the terms and conditions of the original approval, provided that such reviews and approvals are not inconsistent with the original approval.
- (E) Nothing in this article shall prohibit the revocation of the original approval or other remedies for failure to comply with applicable terms and conditions of the approval or the zoning ordinance.

#### ***4.2.4 Duration***

- (A) A zoning right that has been vested as provided in this article shall remain vested for a period of two (2) years unless specifically and unambiguously provided otherwise pursuant to subsection (B) or (C). This vesting shall not be extended by any amendments or modification to a site-specific vesting plan except as provided in this Section.
- (B) Notwithstanding the provisions of subsection (A), the Board of Commissioners may provide that rights shall be vested for a period exceeding two (2) years but not exceeding five (5) years where warranted in light of all relevant circumstances, including but not limited to, the size and phasing of the development, the level of investment, the need for the development, economic cycles and market conditions or other considerations. These determinations shall be in the sound discretion of the approval authority at the time the site-specific vesting plan is approved.
- (C) Notwithstanding the provisions of subsections (A) and (B), a zoning right that has been vested pursuant to this Section for a multi-phased development shall be vested for the entire development with the regulations herein in place at the time a development plan approval is granted for the initial phase of the multi-phased development. A right which has been vested as provided for in this subsection shall remain vested for a period of seven years from the time a development plan approval is granted for the initial phase of the multi-phased development.

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- (D) Upon issuance of a building permit, the expiration provisions of NCGS 160D-1111 and the revocation provisions of NCGS 160D-1115 shall apply, except that a permit does not expire and shall not be revoked because of the running of time while a vested right under this section is outstanding.

#### ***4.2.5 Termination***

A zoning right that has been vested as provided in this article shall terminate:

- (A) At the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed;
- (B) With the written consent of the affected landowner;
- (C) Upon findings by the UDO Administrator, by ordinance after notice and evidentiary hearing, that natural or man-made hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety and welfare if the project were to proceed as contemplated in the site-specific vesting plan;
- (D) Upon payment to the affected landowner of compensation for all costs, expenses and other losses incurred by the landowner, including but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal and other consultant's fees incurred after approval by the city, together with interest as provided under G.S. 160D-106. Compensation shall not include any diminution in the value of the property which is caused by such action;
- (E) Upon finding by the UDO Administrator, by ordinance after notice and evidentiary hearing, that the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the approval authority of the site-specific vesting plan; or
- (F) Upon the enactment or promulgation of a State or federal law or regulation that precludes development as contemplated in the site-specific vesting plan, in which case the approval authority may modify the affected provisions, upon a finding that the change in State or federal law has fundamental effect on the plan, by ordinance after notice and evidentiary hearing.



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#### ***4.2.6 Voluntary Annexation***

A petition for annexation filed with the City shall contain a signed statement declaring whether or not any zoning vested right with respect to the properties subject to the petition has been established under NCGS 160D-108. A statement that declares that no zoning vested right has been established under 160D-108, or the failure to sign a statement declaring whether or not a zoning vested right has been established, shall be binding on the landowner and any such zoning vested right shall be terminated.

#### ***4.2.7 Limitations***

Nothing in this article is intended or shall be deemed to create any vested right other than those established pursuant to GS 160D-108.

#### ***4.2.8 Repealer***

In the event that GS 160D-108 is repealed, this article shall be deemed repealed and the provisions hereof no longer effective.

### **Section 4.3 Temporary Moratoria Procedures**

North Carolina General Statute 160D-107 explicitly recognizes the authority of cities/towns to adopt temporary moratoria, except for the purpose of developing and adopting new or amended plans or ordinances as to residential uses. The duration of any moratorium shall be reasonable in light of the specific conditions that warrant imposition of the moratorium and may not exceed the period of time necessary to correct, modify, or resolve such conditions. Except in cases of imminent and substantial threat to public health or safety, before adopting an ordinance imposing a development moratorium with a duration of 60 days or any shorter period, the Board of Commissioners shall hold a legislative hearing and shall publish a notice of the hearing in a newspaper having general circulation in the area not less than seven days before the date set for the hearing. A development moratorium with a duration of 61 days or longer, and any extension of a moratorium so that the total duration is 61 days or longer, is subject to the notice and hearing requirements of G.S. 160D-601. Absent an imminent threat to public health or safety, a development moratorium adopted pursuant to this section shall not apply to any project for which a valid building permit issued pursuant to G.S. 160D-1108 is outstanding, to any project for which a special use permit application has been accepted as complete, to development set forth in a site-specific vesting plan approved pursuant to G.S. 160D-108.1, to development for which substantial expenditures have already been made in good faith reliance on a prior valid development approval, or to preliminary or final subdivision plats that have been accepted for review by the City prior to the call for public hearing to adopt the moratorium. Any preliminary subdivision plat

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accepted for review by the City prior to the call for public hearing, if subsequently approved, shall be allowed to proceed to final plat approval without being subject to the moratorium. Notwithstanding the foregoing, if a complete application for development approval has been submitted prior to the effective date of the moratorium, 160D-108(b) applies when permit processing resumes.

Any ordinance establishing a development moratorium must expressly include at the time of adoption each of the following:

- (A) A clear statement of the problems or conditions necessitating the moratorium and what courses of action, alternative to a moratorium, were considered by the City and why those alternative courses of action were not deemed adequate.
- (B) A clear statement of the development approvals subject to the moratorium and how a moratorium on those approvals will address the problems or conditions leading to imposition of the moratorium.
- (C) An express date for termination of the moratorium and a statement setting forth why that duration is reasonably necessary to address the problems or conditions leading to imposition of the moratorium.
- (D) A clear statement of the actions, and the schedule for those actions, proposed to be taken by the City during the duration of the moratorium to address the problems or conditions leading to imposition of the moratorium.

No moratorium may be subsequently renewed or extended for any additional period unless the City shall have taken all reasonable and feasible steps proposed to be taken by the City in its ordinance establishing the moratorium to address the problems or conditions leading to imposition of the moratorium and unless new facts and conditions warrant an extension. Any ordinance renewing or extending a development moratorium must expressly include, at the time of adoption, the findings set forth in subdivisions (A) through (D) of this subsection, including what new facts or conditions warrant the extension.

Any person aggrieved by the imposition of a moratorium on development approvals required by law may apply to the appropriate division of the General Court of Justice for an order enjoining the enforcement of the moratorium, and the court shall have jurisdiction to issue that order. Actions brought pursuant to this section shall be set down for immediate hearing, and subsequent proceedings in those actions shall be accorded priority by the trial and appellate courts. In any such action, the City shall have the burden of showing compliance with the procedural requirements of this subsection.

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#### **Section 4.4 Appeals, Variances, and Interpretations**

##### ***4.4.1 Appeals***

- (A) An appeal from any final order or decision of the UDO Administrator may be taken to the Board of Adjustment by the City, or by any person who has standing under NCGS 160D-1402. An appeal is taken by filing with the City Clerk a written notice of appeal specifying the grounds therefor. A notice of appeal shall be considered filed with the Board of Adjustment when delivered to the City Clerk, who shall enter on it the date and time of filing.
- (B) The owner or other party shall have 30 days from receipt of the written notice of the final order or decision of the UDO Administrator within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the decision within which to file an appeal. It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words "Zoning Decision" or "Subdivision Decision" in letters at least six inches high and identifying the means to contact an official for information about the decision is prominently posted on the property that is the subject of the decision, provided the sign remains on the property for at least 10 days. Posting of signs is not the only form of constructive notice. Any such posting shall be the responsibility of the landowner or applicant. Verification of the posting shall be provided to the official who made the decision. Absent an ordinance provision to the contrary, posting of signs shall not be required.
- (C) The UDO Administrator shall transmit to the Board of Adjustment all documents and exhibits constituting the record upon which the action appealed from is taken, and shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.
- (D) An appeal stays all actions by the UDO Administrator seeking enforcement of or compliance with the order or decision appealed from, and accrual of any fines assessed, unless the UDO Administrator certifies to the Board of Adjustment, after notice of appeal has been filed that, in an affidavit that (because of facts stated in the certificate) a stay would, in his opinion, cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of the ordinance. In that case, proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the UDO Administrator a request for an expedited hearing of the appeal, and the Board of Adjustment shall meet to hear the appeal within 15 days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the ordinance shall not stay the further review of an application for permits or permissions to use such property; in these situations the

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appellant may request and the Board may grant a stay of a final decision of permit applications or building permits affected by the issue being appealed.

- (E) The Board of Adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and shall make any order, requirement, decision, or determination that in its opinion ought to be made in the case before it. To this end, the Board shall have all the powers of the officer from whom the appeal is taken.
- (F) The UDO Administrator shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the City would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the Board shall continue the hearing.

#### **4.4.2 Variances**

- (A) An application for a variance shall be submitted to the Board of Adjustment by filing a copy of the application with the UDO Administrator or City Clerk, who shall enter on it the date and time of filing.
- (B) When unnecessary hardships would result from carrying out the strict letter of this Ordinance, the Board of Adjustment shall vary any of the provisions of this Ordinance upon a showing of all of the following:
  - (1) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
  - (2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.
  - (3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
  - (4) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

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- (C) In granting variances, the Board of Adjustment may impose such reasonable conditions as will ensure that the use of the property to which the variance applies will be as compatible as practicable with the surrounding properties, provided that the conditions are reasonably related to the variance..
- (D) A variance may be issued for an indefinite duration or for a specified duration only.
- (E) The nature of the variance and any conditions attached to it shall be entered on the face of the zoning permit, or the zoning permit may simply note the issuance of the variance and refer to the written record of the variance for further information. All such conditions are enforceable in the same manner as any other applicable requirement of this Ordinance.
- (F) No change in permitted uses may be authorized by variance.

#### ***4.4.3 Requests to be Heard Expediently***

The Board of Adjustment shall hear and decide all matters before it as expeditiously as possible, consistent with the need to follow regularly established agenda procedures, provide notice in accordance with Article 3, and obtain the necessary information to make sound decisions.

#### ***4.4.4 Burden of Proof in Appeals and Variances***

- (A) When an appeal is taken to the Board of Adjustment in accordance with Section 4.4.1, the UDO Administrator shall have the initial burden of presenting to the Board sufficient evidence and argument to justify the order or decision appealed from, and shall transmit to the Board all applications, reports, and written materials relevant to the matter being considered . The burden of presenting evidence and argument to the contrary then shifts to the appellant, who shall also have the burden of persuasion.
- (B) The burden of presenting evidence sufficient to allow the Board of Adjustment to reach the conclusions set forth in Section 4.4.2(B), as well as the burden of persuasion on those issues, remains with the applicant seeking the variance.
- (C) Objections to inclusion, or exclusion of administrative materials, may be made before or during the hearing. Rulings on unresolved objections shall be made by the Board of Adjustment at the hearing.

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#### ***4.4.5 Board Action on Appeals and Variances***

- (A) With respect to appeals, a motion to reverse, affirm, or modify the order, requirement, decision, or determination appealed from shall include, insofar as practicable, a statement of the specific reasons or findings of facts that support the motion.
- (B) Before granting a variance, the board must take a separate vote and vote affirmatively (by a four-fifths majority) on each of the four required findings stated in Section 4.4.2(B). Insofar as practicable, a motion to make an affirmative finding on each of the requirements set forth in Section 4.4.2(B) shall include a statement of the specific reasons or findings of fact supporting such motion.
- (C) A motion to deny a variance may be made on the basis that any one or more of the four criteria set forth in Section 4.4.2(B) are not satisfied or that the application is incomplete. Insofar as practicable, such a motion shall include a statement of the specific reasons or findings of fact that support it.

#### **Section 4.5 Enforcement and Penalties**

##### ***4.5.1 Complaints Regarding Violations***

Whenever the UDO administrator receives a written, signed complaint alleging a violation of the Ordinance, he/she shall investigate the complaint, take whatever action is warranted, and inform the complainant in writing what actions will be taken.

##### ***4.5.2 Persons Liable***

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

##### ***4.5.3 Procedures upon Discovery of Violations***

(A) If the UDO Administrator finds that any provision of this Ordinance is being violated, he/she, shall send an initial written notice of violation in accordance with Section 1-15 of the City's Code of Ordinances to the person responsible for the violation, the holder of the development approval and to the landowner of the property involved, if the landowner is not the holder of the development approval. Notice of violation shall indicate the nature of the violation and order the action necessary to correct it. The initial notice must state that the violation shall be abated within 30 days of receipt of such notice. If mailed, the receipt of notice shall be computed beginning three (3) days after postmark. Such time may be extended by the UDO

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Administrator if evidence of pursuit of compliance is provided by the persons liable. Such reasons may include scheduling of contractors to abate the violation or similar conflicts in which 30 days does not allow for compliance. In no case shall the person liable be granted an extension of more than 90 days. Additional written notices may be sent at the UDO Administrator's discretion. The UDO Administrator shall certify that notice was provided.

- (B) The final written notice (and the initial written notice may be the final notice) shall state what action the UDO Administrator intends to take if the violation is not corrected and shall advise that the administrator's decision or order may be appealed to the Board of Adjustment in accordance with Section 4.4.1. All final notices must require a violation be corrected within 15 days of receipt of such notice or a civil penalty may be incurred in accordance with Section 1-15 of the City's Code of Ordinances to the person responsible for such violation. If mailed, the receipt of notice shall be computed beginning three (3) days after postmark. Each day's continuing violation of any provision of this ordinance shall be a separate and distinct offense.
- (C) Notwithstanding the foregoing, in cases when delay would seriously threaten the effective enforcement of the Ordinance or pose a danger to the public health, safety, or welfare, the administrator may seek enforcement without prior written notice by invoking any of the penalties or remedies authorized in Section 4.5.4.

#### ***4.5.4 Penalties and Remedies for Violations***

- (A) Violations of the provisions of this Ordinance or failure to comply with any of its requirements, including violations of any conditions and safeguards established in connection with grants of variances or special use permits, shall be punishable by a civil penalty in accordance with the fee schedule as established by the Board of Commissioners and amended from time to time. The minimum fee for any violation not otherwise stated is \$50. Civil penalties are due and payable within three (3) business days after service of a civil citation is complete. Each day's penalty for a

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continuing offense shall be due and payable within three (3) business days of the day of the offense without further notice or services. The penalties are payable at the City Hall during regular business hours.

- (B) Any act constituting a violation of the provisions of this Ordinance or a failure to comply with any of its requirements, including violations of any conditions and safeguards established in connection with the grants of variances or special use permits, shall also subject the offender to a civil penalty in accordance with the fee schedule as established by the Board of Commissioners. .
- (C) This Ordinance may also be enforced by any appropriate equitable action.
- (D) Each day that any violation continues after notification by the UDO Administrator that such violation exists shall be considered a separate offense for purposes of the penalties and remedies specified in this section.
- (E) Any one, all, or a combination of the foregoing penalties and remedies may be used to enforce this Ordinance.

#### ***4.5.5 Permit Revocation***

- (A) Any 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 plans submitted, the requirements of this Ordinance, or any additional requirements lawfully imposed by the permit-issuing authority. Revocation of a development approval shall follow the same process as was used for the approval.
- (B) Before a special use permit may be revoked, all of the notice and hearing and other requirements of Sections 3.18 through 3.24 shall be complied with. The notice shall inform the permit recipient of the alleged grounds for the revocation. Revocation of special use permits shall follow the same process as was used for issuance.
- (C) Before a zoning or sign permit may be revoked, the UDO Administrator shall give the permit recipient 10 day notice of intent to revoke the permit and shall inform the recipient of the alleged reasons for the revocation and of his/her right to obtain an informal hearing on the allegations. If the permit is revoked, the administrator shall provide to the permittee a written statement of the decision and the reasons therefor.
- (D) No person may continue to make use of land or building in the manner authorized by any zoning, sign, or use permit after such permit has been revoked in accordance with this Ordinance.



**ARTICLE 4.**

**ADMINISTRATIVE REVIEW PROCESS**