City Council – Action Request Form

Date: March 22, 2022

To: Mayor, Mayor Pro Tempore, and Members of the City Council

From: Aaron King, Assistant City Manager
       Chris Murphy, Acting Director of Planning and Development Services

Council Action Requested:
An ordinance amendment proposed by Planning and Development Services Staff, in consultation with the City and County Attorneys, to eliminate criminal penalties as an enforcement action for various sections of the Unified Development Ordinances (UDO), as required by NC Senate Bill 300 (UDO-CC16).

Strategic Focus Area: Livable Neighborhoods
Strategic Objective: No
Strategic Plan Action Item: No
Key Work Item: No

Summary of Information:
In September 2021, the North Carolina General Assembly passed Senate Bill 300 (SB300), a wide-ranging criminal justice reform bill. Part XIII, Decriminalization of Certain Ordinances, lists specific instances where City and County development ordinances may not impose criminal penalties. The Planning and Attorney’s Office staff reviewed the UDO to determine areas where criminal penalties would need to be removed and identified four sections that would need modification to comply with SB300 (Sections 6.2.B.8.b; 8.6.12.C; 10.2.1; and 10.2.2). Language that references criminal penalties was modified or removed in these instances. Staff believes this text amendment will have minimal impact on staff’s ability to enforce the UDO, as it has been over 20 years since any criminal penalties have been used here.

Committee Action:

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Remarks:
UDO-CC16

AN ORDINANCE AMENDING CHAPTERS 6, 8, AND 10 OF THE UNIFIED DEVELOPMENT ORDINANCES (UDO) IN RESPONSE TO THE NC GENERAL ASSEMBLY’S PASSAGE OF SB300 PART XIII, DECRIMINALIZATION OF CERTAIN ORDINANCES

Be it ordained by the __________________________________, that the Unified Development Ordinances are amended as follows:

Section 1. Chapter 6, Section 6.2.B.8.b of the UDO are amended as follows:

b. **RESERVED PENALTIES**

Penalties in accordance with Section 10.2.1, Violations and Penalties (W) of this Ordinance may be undertaken by the Director of Inspections in order to enforce provisions of this Ordinance.

Section 2. Chapter 8, Section 8.6.12.C of the UDO are amended as follows:

C. **RESERVED CRIMINAL PENALTIES**

Any person who negligently, knowingly, or willfully violates any provision of these standards or rule or order adopted pursuant to these standards, shall be guilty of a class 2 misdemeanor which may include a fine not to exceed five thousand dollars ($5,000.00)

Section 3. Chapter 10, Sections 10.2.1 and 10.2.2 of the UDO are amended as follows:

10.2.1 VIOLATIONS AND PENALTIES (W)

The following enforcement procedures may be undertaken by the Director of Inspections to enforce provisions of this Ordinance.

A. **RESERVED CRIMINAL PENALTIES (W)**

1. Any person, firm, or corporation violating any provisions of this Ordinance shall be guilty of a class 3 misdemeanor.
2. Upon conviction thereof, such violator shall be subjected to a fine not to exceed five hundred dollars ($500.00) or imprisoned not more than thirty (30) days except that no such violation shall be punishable until the expiration of five (5) days after notice shall have been issued by the Director of Inspections and served upon such violator.
3. Each and every day beyond the initial five (5) day notice period during which such violation continues shall be deemed a separate offense.

B. **CIVIL PENALTIES (W)**

1. **ASSESSMENT OF CIVIL PENALTIES**

NOTE: Items to be removed are indicated with a strikethrough; items to be added are shown as highlighted. Items with a single underscore are applicable to Forsyth County only, and italicized items are applicable to Winston-Salem only.
a. In addition to criminal penalties, any person, firm, or corporation violating any provisions of this Ordinance shall be subject to a civil penalty of one hundred dollars ($100.00) to be recovered by the jurisdiction in a civil action in the nature of a debt.

10.2.2 VIOLATIONS AND PENALTIES (F)

The following enforcement procedures may be undertaken by the Director of Inspections to enforce provisions of this Ordinance.

A. RESERVED CRIMINAL PENALTIES (F)

1. Any person, firm, or corporation violating any provisions of this Ordinance shall be guilty of a class 3 misdemeanor.
2. Upon conviction thereof, such violator shall be subjected to a fine not to exceed five hundred dollars ($500.00) or imprisoned not more than thirty (30) days except that no such violation shall be punishable until the expiration of five (5) days after notice shall have been issued by the Director of Inspections and served upon such violator.
3. Each and every day beyond the initial five (5) day notice period during which such violation continues shall be deemed a separate offense.

B. CIVIL PENALTIES (W)

1. ASSESSMENT OF CIVIL PENALTIES

   a. In addition to criminal penalties, any person, firm, or corporation violating any provisions of this Ordinance shall be subject to a civil penalty of one hundred dollars ($100.00) to be recovered by the jurisdiction in a civil action in the nature of a debt.

Section 4. This Ordinance shall be effective upon adoption.
REQUEST

This text amendment is proposed by Planning and Development Services staff, in consultation with the City and County Attorney’s offices, to eliminate criminal penalties as an enforcement action for various sections of the Unified Development Ordinances (UDO), as required by NC Senate Bill 300 (UDO-CC16).

BACKGROUND

In September 2021, the North Carolina General Assembly passed Senate Bill 300 (SB300), a wide-ranging criminal justice reform bill. While most parts of SB300 address areas outside of land use regulation, Part XIII, Decriminalization of Certain Ordinances, enumerates specific instances where City and County development ordinances may not impose criminal penalties. Most significantly, the Bill states that ordinances adopted under NCGS 160D, the state enabling legislation for most land use regulations, may not impose criminal penalties. Planning and Attorney’s Office staff reviewed the UDO to determine areas where criminal penalties would need to be removed in order to comply with SB300.

ANALYSIS

After reviewing the UDO, staff identified four sections that would need modification to comply with SB300 (Sections 6.2.B.8.b; 8.6.12.C; 10.2.1; and 10.2.2). Language that references criminal penalties was modified or removed in these instances. Staff believes this text amendment will have minimal impact on the ability of Inspections staff to enforce the UDO, as it has been over 20 years since any criminal penalties have been utilized here. The ultimate goal of enforcement staff has always been correction of any violation and compliance with the ordinance, which the UDO’s civil penalties have been able to facilitate.

RECOMMENDATION: Approval
CITY-COUNTY PLANNING BOARD
PUBLIC HEARING
MINUTES FOR UDO-CC16
FEBRUARY 10, 2022

Tiffany White presented the staff report.

PUBLIC HEARING

FOR:  None
AGAINST:  None

WORK SESSION

MOTION:  Clarence Lambe recommended approval of the ordinance amendment.
SECOND:  Jason Grubbs
VOTE:
   FOR:  George Bryan, Melynda Dunigan, Jason Grubbs, Walter Farabee, Clarence Lambe,
         Chris Leak, Mo McRae, Brenda Smith, Jack Steelman
   AGAINST:  None
   EXCUSED:  None

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Chris Murphy, AICP
Acting Director of Planning and Development Services