

STAFF REPORT

DOCKET # UDO-247

STAFF: [Gary Roberts, Jr. AICP](#)

REQUEST

Zoning text amendment proposed by the City Attorney's Office to amend Chapter B of the *Unified Development Ordinances* entitled Violations and Penalties (UDO-247).

BACKGROUND

The attached ordinance amendment incorporates two local acts into the zoning ordinance to reflect powers granted by the General Assembly to the City with respect to abatements, lis pendens and chronic violators.

ANALYSIS

The attached ordinance amendment reflects the City Attorney's Office effort to incorporate two local acts into the *Unified Development Ordinances (UDO)*. This amendment is essentially a verbatim inclusion of the language of said acts into the *UDO*.

Specifically, Session Law 2010-62 authorizes the City to summarily abate violations of the zoning ordinance (without a court order) and to charge the expense of the action to the person in violation. If the expense to abate said violation goes unpaid, it becomes a lien on the land where the abatement action occurred and is collected as unpaid taxes. The expense of the action is also a lien on any other real property owned by the person in default within the City limits or within one mile of the City limits, except for the person's primary residence. Session Law 2010-62 also authorizes the City, upon the issuance of a notice of violation, to file a notice of lis pendens in Superior Court. Lis pendens is Latin for suit pending and in this case it refers to a pending lawsuit concerning real estate. Recording a lis pendens against a piece of property alerts a potential purchaser or lender that the property's title is in question. After the notice is filed, anyone who nevertheless purchases the land or property described in the notice is subject to the ultimate decision of the lawsuit.

Session Law 2011-142 authorizes the City to take action to remedy a violation by a "chronic violator" without having to issue a Notice of Violation in the calendar year in which the chronic violator notice is given. A chronic violator is a person who owns property whereupon, during the 18-month period prior to the issuance of the chronic violator notice, the City took remedial action at least three (3) times under the City's zoning ordinance.

The following is a general overview of how the enforcement process currently works and would continue to work with the proposed text amendment:

- A complaint is received by Inspections staff. The zoning inspector visits the site to determine if a violation exists.

- If a violation is found to exist, Inspections staff sends a Notice of Violation (NOV) letter to the violator explaining what violation has occurred and that the violator has five (5) days to correct the violation.
- After the five (5) day period has expired, Inspections staff revisits the property to determine what progress has been made to correct the violation. If no progress has been made and no contact with the Inspections Department has occurred, civil penalties at a rate of \$100/day (with a policy of a maximum cap of 30 days/\$3,000) will begin to be issued. If Inspections staff visits the site and sees progress has been made, a plan is usually worked out with the violator regarding how long it will take to remedy the violation and civil penalties will not be issued- provided that progress continues to be made in a timely manner.
- If the violation has not been corrected after thirty (30) days' worth of civil penalties (\$3,000), Inspections staff turns the case over to the City Attorney's Office to pursue an injunction, order of abatement, and collection of civil penalties.
- If Inspections staff has reason to believe there is a high probability of the property being conveyed to another party prior to the case being turned over to the City Attorney's Office and the institution of legal action, Inspections staff will work with the City Attorney's Office to prepare and file a lis pendens in the interim.
- Currently, if the property owner is cited for a zoning violation occurring on the same property for a fourth time or greater (provided the City has remediated the site three times) during an 18-month period, the City has to once again go back through the entire enforcement process costing time and money. Under the proposed amendment the property owner is issued a chronic violator notice and the City can then remedy the violation without any further notification (provided the fourth violation occurs during the same calendar year in which the chronic violator notice is given).

The proposed text amendment would codify an additional tool which can be used in achieving compliance with the *UDO*.

RECOMMENDATION

APPROVAL

**AN ORDINANCE PROPOSED BY THE CITY ATTORNEY'S OFFICE AMENDING
CHAPTER B, ARTICLE IX, SECTION 9-1 – VIOLATIONS AND PENALTIES (W)
OF THE *UNIFIED DEVELOPMENT ORDINANCES***

Be it ordained by the City Council of the City of Winston-Salem, North Carolina, that the *Unified Development Ordinances* is hereby amended as follows:

Section 1. Chapter B, Article IX, Section 9-1 – Violations and Penalties (W) is hereby amended as follows:

9-1.3 - INJUNCTIVE OR OTHER RELIEF (W)

(A) Referral to Attorney

In addition to other remedies provided by law, whenever the Director of Inspections has reasonable cause to believe that any person is violating or threatening to violate this Ordinance, the Director of Inspections may refer the matter to the jurisdiction's Attorney.

(B) Other Appropriate Action

The jurisdiction's Attorney, on behalf of the jurisdiction, may in addition to other remedies provided by law, institute injunction, mandamus, abatement, or any other appropriate action or actions, proceeding or proceedings to prevent, enjoin, abate, or remove such unlawful erection, construction, reconstruction, alteration, maintenance, or use.

(C) Abatement

The Director of Inspections or his designee is authorized to summarily abate any violation that continues to exist after the expiration of the correction period provided in Section 9-1.2(A). The expense of the action shall be paid by the person in default. If the expense is not paid, it is a lien on the land or premises where the abatement action occurred. A lien established pursuant to this section shall have the same priority and be collected as unpaid ad valorem taxes. The expense of the action is also a lien on any other real property owned by the person in default within the City limits or within one mile of the City limits, except for the person's primary residence. This secondary lien established pursuant to this section is inferior to all prior liens and shall be collected as a money judgment. This section does not apply if the person in default can show that the violation was created solely by the actions of another.

9-1.4 - NOTICE (W)

A notice of violation shall be served by personal service or by registered or certified mail in conjunction with regular mail and posting of the property. If the regular mail is not returned within ten (10) days of its mailing, and the registered or certified mail is returned or refused or unclaimed, service by regular mail shall be deemed sufficient. If regular mail is used, a notice of violation shall be posted in a conspicuous place on the premises in violation.

The Director of Inspections or his designee is authorized to provide, upon the issuance of a notice of violation, for the filing of a notice of lis pendens in the office of the Clerk of Superior Court of Forsyth County. When a notice of lis pendens and a copy of the notice of violation are filed with the Clerk of Superior Court, it shall be indexed and cross-indexed in accordance with the indexing procedures of G.S. 1-117. From the date and time of the indexing, the notice of violation shall be binding upon the successors and assigns of the owner or owners of the premises in violation. A copy of the notice of lis pendens shall be served upon the owner or owners of the premises in violation at the time of the filing in accordance with the procedure for serving the notice of violation set forth herein. The notice of lis pendens shall remain in full force and effect until cancelled. The Director of Inspections or his designee may authorize the cancellation of the notice of lis pendens upon compliance with the notice of violation, and upon receipt of such cancellation, the Clerk of Superior Court shall cancel the notice of lis pendens.

9-1.5 – CHRONIC VIOLATOR (W)

The Director of Inspections or his designee may notify a chronic violator of the City’s zoning ordinance that, if the violator’s property is found to be in violation of the zoning ordinance, the City shall, without further notice in the calendar year in which notice (hereinafter “chronic violator notice”) is given, take action to remedy the violation, and the expense of the action shall become a lien upon the property and shall be collected as unpaid taxes. The chronic violator notice shall be served by registered or certified mail in conjunction with regular mail and posting. If regular mail is not returned within ten (10) days of its mailing, and the registered or certified mail is returned refused or unclaimed, service by regular mail shall be deemed sufficient. A “chronic violator” is a person who owns property whereupon, during the 18-month period prior to the issuance of the chronic violator notice, the City took remedial action at least three (3) times under the City’s zoning ordinance.

Section 2. This ordinance shall be effective upon adoption.