

**ACTION REQUEST FORM**

**DATE:** October 24, 2012  
**TO:** The Honorable Mayor and City Council  
**FROM:** A. Paul Norby, FAICP, Director of Planning

**COUNCIL ACTION REQUEST:**

Request for Public Hearing on Zoning Text Amendment proposed by the City Attorney's Office

**SUMMARY OF INFORMATION:**

A Zoning Text Amendment proposed by the City Attorney's Office to amend Chapter B, Article IX of the *Unified Development Ordinances* to give the City Manager authority to settle any zoning enforcement civil penalty collection action (UDO-235).

**PLANNING BOARD ACTION:**

**MOTION ON PETITION:** APPROVAL  
**FOR:** UNANIMOUS  
**AGAINST:** NONE  
**SITE PLAN ACTION:** NOT REQUIRED

## STAFF REPORT

**DOCKET #** UDO-235  
**STAFF:** Aaron King

### REQUEST

A UDO Text Amendment proposed by the City Attorney's Office to amend Chapter B, Article IX of the *Unified Development Ordinances* to give the City Manager authority to settle any zoning enforcement civil penalty collection action (UDO-235).

### CONTINUANCE HISTORY

This request was continued from the September 13, 2012 Planning Board meeting.

### BACKGROUND

The UDO provides the ability for the City to issue civil penalties to property owners who do not correct zoning violations once they have been cited by Inspections staff. The civil penalties are used as a measure of gaining compliance from individuals who have otherwise not responded to communication from the Inspections staff. The following is a general overview of how the enforcement process currently works:

- 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 property owner explaining what violation has occurred and that the owner 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 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 property owner 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.

Circumstances do arise where a property owner does correct the zoning violation; however, it occurs after civil penalties have already been issued. In such a case, the violation has been corrected but the civil penalties still exists and must be paid.

## **ANALYSIS**

Civil penalties serve an important role in the zoning enforcement process. In some cases, they function as the impetus that gets the attention of a property owner who otherwise might not be willing to correct a zoning violation. Over the last several years, the City has become more diligent in its enforcement/processing of zoning violations and as such has seen a higher rate of compliance.

Staff also understands that there are circumstances where practical difficulties or unnecessary hardships would result from carrying out the strict letter of the ordinance. For example, an individual may have to exhaust a significant amount of money to correct a zoning violation. Consequently when the thousands of dollars in civil penalties are issued to them (if applicable), they might not be in a position financially to pay the penalties after exhausting their resources in correcting the zoning violation. Staff believes that unique circumstances like this may warrant a hardship on the owner if required to pay the thousands of dollars in civil penalties.

This text amendment is aimed at providing the City Manager (or his/her designee) with the authority to settle any zoning enforcement civil penalty collection action. UDO-235 allows the City Manager to perform this function provided that three (3) criteria have been met:

- (1) All zoning violations included in the Notice of Violation have been corrected;
- (2) The City Manager finds that settlement of the zoning enforcement civil penalty collection action is warranted due to the practical difficulties or unnecessary hardships that would result from carrying out the strict letter of Article IX, or due to any other considerations deemed in the best interest of the city; and
- (3) The spirit of Chapter B shall be preserved, the health, safety, and general welfare of the community shall be promoted, and substantial justice shall be done.

Staff believes that UDO-235 grants the City Manager a needed authority to deal with unique circumstances relating to settling civil penalties generated from zoning enforcement. Staff recommends that this authority be used only when legitimate hardships exist so as not to undermine the effectiveness of the civil penalties.

## **RECOMMENDATION**

## **APPROVAL**

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**CITY-COUNTY PLANNING BOARD  
PUBLIC HEARING  
MINUTES FOR UDO-235  
OCTOBER 11, 2012**

**PUBLIC HEARING**

FOR: None

AGAINST: None

**WORK SESSION**

MOTION: Paul Mullican moved approval of the zoning text amendment.

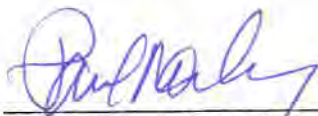
SECOND: Lynne Mitchell

VOTE:

FOR: Wesley Curtis, Arnold King, Darryl Little, Barry Lyons, Lynne Mitchell, Paul Mullican, Allan Younger

AGAINST: None

EXCUSED: None



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A. Paul Norby, FAICP  
Director of Planning

**UDO-235**  
**A UDO TEXT AMENDMENT PROPOSED BY THE CITY ATTORNEY'S  
OFFICE TO AMEND CHAPTER B, ARTICLE IX OF THE *UNIFIED  
DEVELOPMENT ORDINANCES* TO GIVE THE CITY MANAGER AUTHORITY  
TO SETTLE ANY ZONING ENFORCEMENT CIVIL PENALTY  
COLLECTION ACTION (UDO-235).**

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 of the UDO is amended as follows:

**Chapter B - Zoning Ordinance**  
**Article IX – Enforcement**

**9-1 VIOLATIONS AND PENALTIES**

**9-1.2 CIVIL PENALTIES**

**(A) Assessment of Civil Penalties**

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. No civil penalty shall be assessed until the person alleged to be in violation has been notified of the violation by the Director of Inspections. Failure to correct the violation within five (5) days of the date of service of the notice, or the end of the period of any extension, will result in the assessment of a civil penalty or other enforcement action. For good cause determined by the Director of Inspections, the correction period may be extended by him. Each day of continuing violation shall constitute a separate violation.

**(B) Referral to Attorneys**

If payment is not received within thirty (30) days after written demand for payment is made, the Director of Inspections may refer the matter to the jurisdiction's Attorney who is authorized to institute a civil action in the name of the jurisdiction in the appropriate division of the General Court of Justice for recovery of the penalty.

**(C) Settlement Authority**

The City Manager or his/her designee shall have the authority to settle any zoning enforcement civil penalty collection action, provided: (1) all zoning violations

for the property subject to the civil penalty collection action have first been abated; (2) the City Manager or his/her designee makes a finding that settlement of the zoning enforcement civil penalty collection action is warranted due to the practical difficulties or unnecessary hardships that would result from carrying out the strict letter of Article IX, or due to any other considerations deemed in the best interest of the city; and (3) the spirit of Chapter B shall be preserved, the health, safety, and general welfare of the community shall be promoted, and substantial justice shall be done.

**Section 2.** This ordinance shall be effective upon adoption.