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## Article 15 | Enforcement

Sections:

- Sec. 15.1**    **General**
- Sec. 15.2**    **Violations**
- Sec. 15.3**    **Penalties and Remedies**

### **Sec. 15.1 - General**

Paragraphs:

- 15.1.1**        **Purpose**
- 15.1.2**        **Authority**

#### **15.1.1 Purpose**

This Article establishes the responsibilities of the City, its departments and employees to enforce the requirements of this Code and sets forth the procedures and requirements the City will use to identify, abate, remove, and enjoin any uses, structures, or buildings that violate the Code.

#### **15.1.2 Authority**

The Director, in his/her role as Zoning Administrator, is responsible for enforcement of the Code as provided by Arizona law. The Director is assisted by PZD and its employees in enforcing the Code, through the general enforcement authority granted by the Code and through the following processes.

- A. Compliance Review, Proposed Development – An Applicant shall request a zoning certification or approval (such as a Site Plan or other required zoning review process), upon which the Director or designee may issue the zoning certification or approval pursuant to this Code’s zoning review process prior to any of the following occurring:
  - a. The use, improvement, modification, construction or other development activity on a Site;
  - b. The change in use, redevelopment, modification, alteration or expansion of an existing structure;
  - c. The division of land into multiple parcels; or
  - d. The excavation, grubbing, grading, paving, demolition, or construction of any sort.
  - e. In the event a zoning regulation requires interpretation, such interpretation shall be issued by the Zoning Administrator in accordance with Section 3.1, Interpretations of this Ordinance.
- B. Compliance Review, Construction – PZD shall monitor construction for compliance with zoning certifications or approvals, as required by Sec. 15.1.2.A. PZD shall monitor the implementation of the proposed development to ensure compliance with the approved plans. The Director or designee has the authority to suspend construction when construction does not conform with the approved plans.

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- C. Continued Compliance for Approved Site Plans - Once a Site Plan is completed, the approved Site Plan remains as part of the public record and runs continuously with the land, regardless of ownership.

## **Sec. 15.2 - Violations**

Paragraphs:

- 15.2.1      Violations in General**
- 15.2.2      Responsible Party**
- 15.2.3      Types of Violations**

### **15.2.1      Violations in General**

The Director is responsible for ensuring that violations of the Code are mitigated or prosecuted, with the assistance of PZD, the City Attorney, and other City departments as provided by the City Manager and the Mayor and Council.

### **15.2.2 Responsible Party**

- A. The Responsible Party is any person, firm, entity or corporation who owns and/or is in possession of any Property or Site that is the subject of a violation under this Article. The Responsible Party shall be responsible for any violation of this Article, whether or not that person or entity has committed the prohibited act or acts, or has neglected to prevent the performance of the prohibited act or acts by another person or entity.
- B. Number of Violations – Every Responsible Person shall be deemed to have committed a separate violation of this Code for each and every day during which any violation is committed or continues.

### **15.2.3 Types of Violations**

- A. Violations Declared Civil Infractions - It is a civil infraction for any Responsible Party to violate, disobey, omit, neglect, refuse to comply with, or to resist the enforcement of any of the provisions of the Code.
- B. Unauthorized Land Use or Structure – Any land used or occupied; any site improvement, modification, or construction started; any existing use or structure expanded, reconstructed, changed, or otherwise altered; and any land divided into multiple parcels that is done without certification or approval in compliance with the provisions of the Code through a zoning review process shall constitute a violation of the Code.
- C. Violations of a Board of Adjustment Decision – Failure to comply with the requirements or conditions of approval from the Board shall constitute a violation of the Code.

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- D. Violation of Rezoning Conditions - Failure to comply with the requirements or conditions of approval on a rezoning ordinance adopted by the Mayor and Council shall constitute a violation of the Code.
  - E. Violations of Conditions of Approval - Failure to comply with the requirements or conditions of approval on any of the various zoning compliance procedures and approvals as provided by the Code, such as, but not limited to, Special Use Permit, Development Standard Modification Option, Temporary Use, or Home Occupation procedures, shall constitute a violation of the Code.
  - F. Violation of a Site Plan - Change of use, removal or modification of improvements (including landscaping, screening, and parking) shown on the Site Plan, additions made to a Site without seeking a Site Plan amendment through the Site Plan Review process, Section 3.8, and/or failure to comply with the Site Plan conditions shall constitute a violation of the Code.
  - G. Violation of a Plat Condition - Failure to comply with the conditions and requirements of a Tentative or Tinal Plat, as approved, shall constitute a violation of the Code.

**Sec. 15.3 – Penalties and Remedies**

Paragraphs:

- 15.3.1      Action by the Director**
- 15.3.2      Action by the City Attorney**
- 15.3.3      Penalties**

**15.3.1              Action by the Director**

The Director, in its role as the Zoning Administrator and with assistance from PZD staff, may take any of the following actions to ensure enforcement of the Code and any condition placed on development of a property due to an administrative or legislative decision or action by a City Review Authority described in Article 2 of the Code:

- A. Conduct an investigation of any Site or Property with the express permission of the owner or tenant. If the owner or tenant refuses permission to conduct the investigation, the Zoning Administrator shall issue a citation pursuant to the City of Nogales Code, based on the testimony of the complainant;
- B. Serve a written notice of violation upon the owner, agent, or tenant of the Property, who is the subject of the violation, requiring cessation or correction of the violation;
- C. Issue a citation pursuant to the City of Nogales Code;
- D. Report violations to the City Attorney as appropriate; and/or

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F. Take such further action as deemed appropriate to assure compliance.

**15.3.2 Action by the City Attorney**

If any Site, Property or improvement thereon is used in violation of the provisions of the Code, the City Attorney, in addition to other remedies described herein, may institute any appropriate action or proceeding to:

- A. Restrain, correct, or abate such violation;
- B. Prevent the occupancy of such building, structure, or land; or,
- C. Prevent any additional violation arising from further conduct, business, or use, in or about such premises

**15.3.3 Penalties**

- A. Penalties: Any Responsible Party that has violated this Code and any amendments thereto shall be subject to civil sanctions of not less than one-hundred dollars (\$100.00) and not more than one-thousand dollars (\$1000.00) per violation as defined in Section 15.2.2.B.
- B. Habitual Offender – A Responsible Party who commits a violation of this Code after previously being found responsible for committing three or more civil violations of this Code within the prior 24 months, shall be guilty of a Class 1 Misdemeanor, punishable by:
  - a. A fine not exceeding two thousand five hundred dollars (\$2,500.00), or
  - b. By a term of probation not exceeding three (3) years, or
  - c. Imprisonment for a term not exceeding six (6) months, or
  - d. Punishable by a combination of fine, probation, and imprisonment.
  - e. The City Attorney is authorized to file a criminal misdemeanor complaint for habitual violations of this Code, as described above.