

## ARTICLE 12 ENFORCEMENT

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### **12.01 Violations**

**12.01.01** Any of the following shall constitute a violation of this Ordinance and shall be subject to the remedies and penalties provided for in this Ordinance and under State law:

- A. Development without a permit; or
- B. Development inconsistent with a permit; or
- C. Violation by act or omission; or
- D. Use violation; or
- E. Subdivision violation; or
- F. Continuance of a violation; or
- G. Violation of incorporated codes and manuals; or
- H. Violation of conditions of approval; or
- I. Occupancy violation

### **12.02 Complaints Regarding Violations**

**12.02.01** Complaints alleging a violation of this Ordinance may be received from citizens, Staff or other concerned parties by filing a written, signed complaint form as provided by the Department. A Staff member may file a written complaint based upon personal observation, a verbal complaint and even an anonymous complaint (as deemed appropriate).

### **12.03 Persons Liable**

**12.03.01** The owner, tenant, or occupant of any land or structure, or part thereof, or other person who possesses a cognizable interest in the real or personal property in question, who participates in, assists, directs, causes, allows, maintains, or is otherwise responsible for any situation that is contrary to the requirements of this Ordinance shall be liable for violations of this Ordinance.

- 12.03.02** A builder, contractor, architect, engineer or other construction, trade or design professional who participates in, assists, directs, or creates a situation that constitutes a violation of this ordinance or is otherwise responsible for a situation that is contrary to the requirements of this Ordinance shall be liable for violations of this Ordinance.
- 12.03.03** No landlord may escape liability for an occupancy violation based upon a claimed lack of knowledge of the violation unless:
- A.** The lease of the property includes a provision which authorizes the landlord to terminate the lease early if the tenant violates the occupancy or zoning rules of the Town; and
  - B.** The landlord takes prompt action to terminate the lease and/or tenancy of the tenants of the property when an occupancy violation has been confirmed by the Administrator.
- 12.03.04** The liability imposed upon persons pursuant to this section 12.03 is joint and several. Each responsible person is subject to enforcement and such fines and/or remedies as are as set forth in this Article.

(Ord. PL05269-110121, 12-08-2021)

**12.04 Investigations**

- 12.04.01** The Administrator may conduct investigations deemed necessary to carry out the duties prescribed in this Ordinance and, for this purpose, and enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any complaints or alleged violations of this Ordinance.
- 12.04.02** The Administrator may require written statements, certificates, certifications, or the filing of reports relating to complaints or alleged violations of this Ordinance from the complainant or a person potentially liable.
- A.** The failure of a complainant to provide requested information may be interpreted as an indication that the complaint is without merit.
  - B.** The failure of a person potentially liable to provide requested information may be interpreted as an admission of the violation.

**12.05 Enforcement**

- 12.05.01 Initial Contact:** When the Administrator concludes that a violation of this Ordinance has occurred, he shall:
- A.** In the case of a repeat violator issue a Notice of Violation in accordance with Subsection 12.05.02; or
  - B.** In the case of a sign violation involving a first-time offender, serve a warning ticket on a responsible party, advising the person liable to take immediate corrective action, with the following limitations:
    - 1. The Administrator may allow up to twenty-four (24) hours to take corrective action, or

2. Due to practicalities of sign removal or other circumstances beyond the control of the violator, the Administrator may afford the violator additional time, not to exceed five (5) days.

or

- C. For all other violators and violations, attempt to contact the person liable, by telephone or in person, to discuss possible remedies to correct the violation.
  1. In the sole judgment of the Administrator if the violation can be corrected within five (5) business days of this discussion and the person liable expresses his intent to correct the violation within that time period, the Administrator may suspend enforcement action to allow the person liable to correct the violation.

**12.05.02 Notice of Violation:** Following the attempted initial contact, where required, and any mandated cure period, if the violation is unresolved, the Administrator shall issue a written Notice of Violation to the landowner, the permittee, and any other persons who may be liable, including but not limited to the occupant of the property and the person engaged in the unlawful activity. The Notice of Violation shall:

- A. Include the nature of the violation and the articles and sections of the Ordinance which have been violated; and
- B. Include the measures necessary to remedy the violation and the time period in which the violation must be corrected, if applicable;
  1. The Administrator may afford the person liable a period of up to thirty (30) days from the date of the Notice of Violation to correct the violation before penalties are imposed.
  2. The decision by the Administrator as to whether such periods should be allowed and the length of any cure period shall be solely within the discretion of the Administrator, but shall be based upon the Administrator's application of the following relevant considerations which are not exclusive, based on a determination of what action is in the best interests of the Town:
    - a. The seriousness of the violation; and
    - b. The damage which may occur by any delay in enforcement; and
    - c. The effect of the violation, if any, on neighboring landowners or occupants of neighboring property, or other citizens of the Town; and
    - d. Whether or not the person liable is a repeat violator; and
    - e. Whether the violation can be corrected within a period of thirty (30) days or less; and
    - f. Whether the violation is of such nature that the person liable may circumvent enforcement of the Ordinance by means of a temporary correction; and

- g. Whether the violator is proceeding in good faith to address the violation; and
- h. Such other factors as the Administrator determines reasonably require immediate enforcement, or conversely, allow some minimal delay in enforcement.

and

- C. Include the penalties or remedies that may be assessed, the date penalties will begin to accrue, and the amount of such penalties; and
- D. Include the action which the Administrator intends to take if the violation is not corrected; and
- E. Include an explanation or the right of the person liable to appeal the decision of the Administrator to the Board of Adjustment.
- F. Be served by personal delivery, email, or first-class mail. The Staff member providing such notice shall provide a certification for the file reciting the date and manner in which the notice of violation was provided. Notice of the violation also may be posted on the property.

**12.05.03** Notwithstanding Subsections 12.05.01 and 12.05.02, when the Administrator determines that a delay in enforcement would pose a danger to the public health, safety, or welfare, the Administrator shall send a Notice of Violation as soon as practicable.

**12.05.04 Appeal of a Notice of Violation**

- A. An appeal of a notice of violation under Subsection 12.01.01 stays enforcement of the decision unless the Administrator who made the decision certifies to the Board after notice of appeal has been filed:
  - 1. That because of the facts stated in an affidavit, a stay would cause imminent peril to life or property, or
  - 2. Because the violation is transitory in nature, a stay would seriously interfere with enforcement of the Ordinance.
- B. The appellant shall be notified of the Administrator's certification.
- C. Following certification, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court.
- D. If enforcement proceedings are not stayed, the appellant may file with the Administrator a request for an expedited hearing of the appeal.
  - A. The Board shall meet to hear the appeal within fifteen (15) days after such a request is filed.
- E. Notwithstanding the foregoing, appeals of decisions granting a development approval or otherwise affirming that a proposed use of property is consistent with the Ordinance shall not stay the further review of an application for development approvals; in these

situations, the appellant may request and the board may grant a stay of a final decision of development approval affected by the issue being appealed.

- F. The certification and stay procedures of this Section shall not apply with regard to the pursuit of criminal charges where appropriate.

(Ord. PL04727-050721, 07-01-2021)

## **12.06 Remedies**

**12.06.01 Available Remedies:** Any or all of the following may be used to enforce the provisions of this Ordinance.

- A. **Civil Penalties:** Any person who violates any provision of this ordinance may be subject to the assessment of a civil penalty in accordance with Section 12.07. In addition, where the violation consists of or includes working without required permit(s), the violator shall be required to pay double the normal fee for any required permit(s).
- B. **Criminal Penalties:** Criminal penalties may be assessed only for violations of this ordinance that create or maintain an unsafe building circumstance. In any such case, unless a more stringent criminal penalty is prescribed pursuant to State law for the conduct at issue, a person who knowingly or willfully violates this ordinance shall be guilty of a Class 3 misdemeanor and a fine up to \$500.00 for each such violation.
  - 1. The Administrator shall institute criminal charges only with the authorization of the Town Manager.
- C. **Injunction:** Any violation of this Ordinance or of any condition, order, requirement, or remedy adopted pursuant to this Ordinance may be restrained, corrected, abated, mandated, or enjoined by other appropriate proceeding pursuant to State law. The institution of an action for injunctive relief under this Section does not relieve any party to such proceedings from any civil or criminal penalty prescribed for violations of this Ordinance.
- D. **Revocation of Approvals or Certificates:** The Administrator may revoke and require the return of a development approval, a Certificate of Compliance, a Certificate of Occupancy, or a Certificate of Zoning Completion pursuant to Section 12.09.
- E. **Stop Work Orders:** Whenever the Administrator determines that a person is engaged in doing work without a required development approval; or any building or structure or part thereof is being demolished, constructed, reconstructed, altered, or repaired in a hazardous manner, or in substantial violation of any State or local building law, or in a manner that endangers life or property, the Administrator may order the specific part of the work that is in violation or presents such a hazard to be immediately stopped pursuant to Section 12.08.

**F. State and Common Law Remedies:** In addition to other enforcement provisions contained in this Article, the Council may exercise any and all enforcement powers granted to it by State law or common law.

(Ord. PL04727-050721, 07-01-2021; Ord. PL05269-110121, 12-08-21)

**12.07 Civil Penalties**

**12.07.01** Any act constituting a violation of this Ordinance shall subject the person liable to a civil penalty per day in the amount specified below. For each day the violation is not corrected, the violator will be guilty of an additional and separate offense. Where a per day per violation and a one-time assessment are described, both apply.

Violation	Civil Penalty (per day per violation)	Civil Penalty (one-time assessment)
Sign Violation	\$100.00	
Occupancy Violation	\$200.00	
Grading in Designated Floodway	\$500.00	
Improperly pruning, removing or killing a protected tree or shrub.	\$100.00	\$100.00 per inch in diameter for each tree and \$50.00 for each shrub
Removal of Required Buffer	\$100.00	\$500.00
Soil Erosion and Sediment Control Violation	\$100.00	\$1,000.00
Illegal Subdivision	\$100.00	\$1,000.00
All other Violations	\$100.00	
Repeat Violator 1 <sup>st</sup> Time	250% of the Civil Penalty	\$1,000.00
Repeat Violator 2 <sup>nd</sup> or More	500% of the Civil Penalty	\$1,000.00

**12.07.02** A penalty accrues from the date imposed until the date the violation is corrected, except as the accumulation of penalties is stayed during appeal as provided in this section.

**12.07.03** The penalty may be recovered by the Town in a civil action in the nature of an action to collect a debt and may recover its court costs and attorney’s fees.

**12.07.04** The appeal of a civil penalty must be in accordance with the requirements of Article 6. The time period for appeal begins to run upon receipt of the Notice of Violation imposing the penalty. A properly filed appeal stays action by the Town to collect any civil penalty assessed and stays accrual of the penalty.

**12.07.05** When authorized by the Town Council, this Ordinance may also be enforced by any available equitable action or proceeding(s) instituted by the Administrator or Town to prevent, restrain, correct or abate a violation of this Ordinance.

**12.07.06 Repeat Violator:** A repeat violator is a person liable who has been determined to have violated any provision of this Ordinance within the previous thirty-six (36) months.

(Ord. PL04196-090820, 07-01-2021; Ord. PL04727-050721, 07-01-2021)

**12.08 Stop Work Orders**

**12.08.01** Whenever the Administrator determines that a person is engaged in doing work without a required approval; or any building or structure or part thereof is being demolished, constructed, reconstructed, altered, or repaired in a hazardous manner, or in substantial violation of any State or local building law, or in a manner that endangers life or property, the Administrator may order the specific part of the work that is in violation or presents such a hazard to be immediately stopped.

**12.08.02** The Stop Work Order shall:

- A. be in writing, and
- B. directed to the person doing the work and
- C. directed to the owner of the property and
- D. posted on the property upon which the work has been undertaken, and
- E. The Stop Work Order shall state:
  - 1. the work to be stopped, and
  - 2. the reasons for work stoppage, and
  - 3. the conditions under which the work may be resumed.

**12.08.03 Appeals to Stop Work Order:** Appeals of a Stop Work Order shall be made as follows:

- A. An Appeal of Administrative Decision must be filed with in accordance with Article 6.

(Ord. PL04727-050721, 07-01-2021)

**12.09 Revocation of Development Approvals**

**12.09.01** In addition to initiating enforcement actions, the Administrator may revoke any development approval by notifying the holder in writing stating the reason for the revocation.

**12.09.02** The Town shall follow the same development review and approval process required for issuance of the development approval, including any required notice or hearing, in the review and approval of any revocation of that approval.

**12.09.03 Reason for Revocation.** A development approval shall be revoked:

- A. For any substantial departure from the approved application, plans, or specifications.
- B. For the developer's refusal or failure to comply with the requirements of state or local laws, or for false statements or misrepresentations made in securing the approval or certificate; or
- C. In the event an approval is mistakenly issued in violation of an applicable state or local law.

**12.09.04 Notice of Revocation:** Before a development approval or any certificate issued by the Administrator may be revoked, the Administrator shall give the holder five (5) days' notice of intent to revoke the permit and shall inform the recipient of the alleged reasons for the revocation and of his right to obtain an informal hearing on the allegations.

**A. Hearing Before Administrator:** The holder must request a hearing in writing within five (5) days. The Administrator or other disinterested person, as designated by the Administrator, will conduct a hearing on the request within five (5) business days of the Administrator's receipt of the request. The hearing will be held in person but at request of the permit holder may be held by telephone. At the hearing, the permit holder will be given an opportunity to present the facts and other matters which he maintains should prevent the revocation of the development approval or certificate. The permit holder may be represented by an attorney, shall have the opportunity to examine any documents relied upon by the Administrator, and shall be given the opportunity to cross-examine any witnesses who testify against the permit holder. Within two (2) business days following the hearing, the Administrator or other disinterested person conducting the hearing will issue a decision. If the development approval or certificate is revoked, the Administrator shall provide to the holder a written statement of the decision and the reasons therefore.

**B.** A decision under Subsection 12.09.03(A) may be appealed to the Board of Adjustment within the prescribed time period.

**12.09.05** No person may continue to make use of land or buildings in the manner authorized by any development approval after such development approval has been revoked in accordance with this Section.

(Ord. PL04727-050721, 07-01-2021)

**12.10 Enforcement by Others**

**12.10.01** In addition to the remedies provided to the Town hereunder, other persons who have qualified as parties pursuant to the duly enacted Rules of Procedure of the Board of Adjustment may, after the exhaustion of their available administrative remedies, seek to enforce this Ordinance by injunction, mandamus or other appropriate legal action. This provision, however, is not intended to limit the rights of others which are created by North Carolina law to take action to protect their own property interests and rights.

