

ARTICLE 12 ENFORCEMENT

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|-------|---|------|
| 12.01 | Violations | 12-1 |
| 12.02 | Complaints Regarding Violations | 12-1 |
| 12.03 | Persons Liable | 12-1 |
| 12.04 | Investigations | 12-2 |
| 12.05 | Enforcement | 12-2 |
| 12.06 | Remedies | 12-4 |
| 12.07 | Civil Penalties | 12-6 |
| 12.08 | Stop Work Orders | 12-7 |
| 12.09 | Permit and Certificate Revocation | 12-8 |
| 12.10 | Enforcement by Others | 12-9 |

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** 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.

12.04 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 the Notice of Violation. 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 property owners 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.

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.
 - 1. 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 permit or otherwise affirming that a proposed use of property is consistent with the Ordinance shall not stay the further review of an application for permits or permissions to use such property; in these situations the appellant may request and the board may grant a stay of a final decision of permit applications or building permits 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.

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.

B. Criminal Penalties:

1. Assessment:
 - a. Unless a more stringent criminal penalty is prescribed pursuant to State law for a particular violation of this Ordinance or are otherwise provided, any person who violates the UDO shall be guilty of a Class 3 misdemeanor, pursuant to N.C. Gen. Stat. § 14-4 (a), with a fine up to \$500.00.
 - b. Any person who knowingly or willfully violates any provision of Article 20 shall be guilty of a Class 2 misdemeanor with a fine up to \$5,000.00.
 - c. Any person who, being the owner or agent of the owner of any land located within the planning jurisdiction of the Town, subdivides his or her land in violation of this Ordinance, or transfers or sells land by reference to, exhibition of, or by any other use of a plat showing a subdivision of the land before the plat has been properly approved and recorded in the office of the Watauga County Register of Deeds, shall be guilty of a Class 1 misdemeanor with a fine of \$1,000.00. The Town may bring an action for injunction of any illegal subdivision, transfer, conveyance, or sale of land. Building permits required pursuant to G.S. 160A-417 shall be denied for lots that have been illegally subdivided. In addition to other remedies, the Town may institute any appropriate action or proceedings to prevent the unlawful subdivision of land, to restrain, correct, or abate the violation, or to prevent any illegal act or conduct. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land does not exempt the transaction from violation of this Ordinance.
 - d. The Administrator shall institute criminal charges only with the authorization of the Town Manager.
2. **Determination:** In determining whether criminal charges should be recommended with respect to a particular violation, the Administrator shall consider the following factors, which shall not be exclusive, and the applicability of any individual factor shall not determine the decision, which should be based on the best interests of the Town:
 - a. Whether the violator is a repeat violator;
 - b. Whether the violator has acted in intentional disregard of the Ordinance;
 - c. Whether there are factors outside control of the violator which have prevented the person from expeditiously correcting the violation;
 - d. Whether the violator has stated an intention to undertake prompt correction action;
 - e. What damage has occurred as a result of the violation;

- f. Whether the violation is capable of repetition but escaping review, or civil penalties are ineffective in ensuring enforcement of the Ordinance; and
- g. Whether some other reason is identified which will enhance the enforcement of the Ordinance by the pursuit of criminal charges in a particular case.

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 Permits or Certificates: The Administrator may revoke and require the return of a permit, a Certificate of Compliance, a Certificate of Occupancy, a Certificate of Completion, or a Certificate of Zoning Compliance pursuant to Section 12.09.

E. Stop Work Orders: Whenever the Administrator determines that a person is engaged in doing work without a required permit; 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.

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 st Time | 250% of the Civil Penalty | \$1,000.00 |
| Repeat Violator 2 nd 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 or the date of a court’s judgment, whichever is earlier.
- 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.** Although a properly filed appeal stays action by the Town to collect any civil penalty assessed, the penalty continues to accrue during the pendency of the appeal, and if the decision by the Board on appeal affirms the action, order, decision or determination by the Administrator, unless the penalty is modified by the Board of Adjustment in compliance with Subsection 6.04.08(B), the amount of a penalty shall be calculated as though no appeal was filed.
- 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.
- 12.08** **Stop Work Orders**
- 12.08.01** Whenever the Administrator determines that a person is engaged in doing work without a required permit; 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:
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- A. An Appeal of Administrative Decision must be filed with in accordance with Article 6.

12.09 Permit and Certificate Revocation

12.09.01 A permit or certificate may be revoked by the permit issuing authority for:

- A. Any substantial departure from the approved application, plans, or specifications; or
- B. Refusal or failure to comply with the requirements of state or local laws, or for false statements or misrepresentations made in securing the permit or certificate; or
- C. Any permit or certificate mistakenly issued in violation of an applicable state or local law may also be revoked.

12.09.02 Special Use Permit Revocation: Before a special use permit may be revoked, all of the notice and hearing requirements of Article 6 shall be complied with. The notice shall inform the permit recipient of the alleged grounds for revocation. The revocation of a special use permit shall operate as a revocation of the zoning permit and any certificate issued by the Administrator.

- A. The burden of presenting evidence sufficient to authorize the permit issuing authority to conclude that a permit should be revoked for any of the reasons set forth in Subsection 12.09.01 shall be upon the party advocating that position. The burden of persuasion shall also be upon the advocating party.
- B. A motion to revoke a permit shall include, insofar as practicable, a statement of the specific reasons or findings of fact that support the motion.

12.09.03 Zoning Permit and Certificate Revocation: Before a zoning permit or any certificate issued by the Administrator may be revoked, the Administrator shall give the permit recipient 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 permit 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 permit. 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 permit is revoked, the Administrator shall provide to the permit 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.

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

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.

