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# Article 12: Violations and Enforcement

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## Section 12.1. General Provisions

### 12.1.1. PURPOSE

This article establishes procedures through which the County seeks to ensure compliance with the provisions of this Ordinance and obtain corrections for Ordinance violations. It also sets forth the remedies and penalties that apply to violations of this Ordinance. The provisions of this article are intended to encourage the voluntary correction of violations, where possible.

### 12.1.2. COMPLIANCE REQUIRED

Compliance with all the procedures, standards, and other provisions of this Ordinance is required by all persons owning, developing, managing, using, or occupying land or structures in the unincorporated County.

## Section 12.2. Violations and Responsible Persons

### 12.2.1. VIOLATIONS GENERALLY

- A. Any failure to comply with a standard, requirement, prohibition, or limitation imposed by this Ordinance, or the terms or conditions of any permit or other approval or authorization granted in accordance with this Ordinance shall constitute a violation of this Ordinance punishable as provided in this article. *[05-03-2021]*
- B. Permits or approvals issued by a decision-making body authorize only the use, arrangement, location, design, density or intensity, and development set forth in such permits or approvals. *[05-03-2021]*

### 12.2.2. SPECIFIC VIOLATIONS

*[05-03-2021]*

It shall be a violation of this Ordinance to undertake any activity contrary to the provisions of this Ordinance, including but not limited to any of the following:

- A. Develop property or a structure without first obtaining all appropriate permits or approvals, and complying with their terms and conditions.
- B. Occupy or use land or a structure without first obtaining all appropriate permits or approvals, and complying with their terms and conditions.
- C. Subdivide land without first obtaining all appropriate permits or approvals required to engage in subdivision, and complying with their terms and conditions.
- D. Excavate, grade, cut, clear, mine, extract earth resources, or undertake any land disturbing activity without first obtaining all appropriate permits and approvals, and complying with their terms and conditions.
- E. Disturb any landscaped area or vegetation required by this Ordinance.

- F. Fail to comply with the flood damage prevention standards, and any terms and conditions of approval.
- G. Fail to comply with the stormwater management requirements and any terms and conditions of approval.
- H. Install, create, erect, alter, or maintain any sign without first obtaining the appropriate permits or approvals, and complying with their terms and conditions.
- I. Remove a protected tree without a permit.
- J. Fail to remove any sign installed, created, erected, or maintained in violation of this Ordinance, or for which the permit has expired.
- K. Create, expand, replace, or change any nonconformity except in compliance with this Ordinance.
- L. Reduce or diminish the requirements for development, design, or dimensional standards below the minimum required by this Ordinance.
- M. Increase the intensity or density of development, except in accordance with the standards of this Ordinance.
- N. Through any act or omission, fail to comply with any other provisions, procedures, or standards as required by this Ordinance.

### **12.2.3. RESPONSIBLE PERSONS**

One or more of the following responsible persons may be held responsible for a violation of this Ordinance and be subject to the remedies and penalties provided in this article:

- A. A contractor, engineer, architect, planner, agent, or any other person who participates in, assists, directs, creates, or maintains a situation that constitutes a violation, and
- B. An owner of the property on which a violation occurs, and any tenant or occupant of that property who has control over, or responsibility for its use or development, except tenants shall subject the owner only to civil penalties and/or civil action as set forth in this Ordinance, N.C.G.S. 160D-404, and N.C.G.S. §§ 153A-123(a), (c), (d), (e), (f), and (g), and an owner shall not incur criminal penalties for violations by any tenants. The owner's responsibilities in relation to a tenant in no way relieves any tenant from liability for any violations. *[05-03-2021]*

## **Section 12.3. Enforcement Responsibility and Procedures**

### **12.3.1. RESPONSIBILITY FOR ENFORCEMENT**

- A. The Planning Director is primarily responsible for enforcing this Ordinance, except for the Stormwater and Erosion and Sedimentation Control provisions (which the Engineer shall enforce). The Planning Director may delegate enforcement authority to enforce to other Zoning Compliance Officials involved with reviewing or inspecting development, who shall be responsible for assisting them in enforcing this Ordinance.

- B. All other officers and employees of the County shall have the duty to assist in enforcing this Ordinance by reporting apparent violations of this Ordinance to these officials.

### **12.3.2. COMPLAINTS REGARDING VIOLATIONS**

Whenever a violation of this Ordinance occurs, or is alleged to have occurred, any person may file a written or verbal complaint with the Planning Director, stating fully the causes and basis for the complaint. The Planning Director shall record properly the complaint, immediately investigate it, and take action as provided by this Ordinance.

### **12.3.3. INSPECTIONS**

After receipt of an administrative warrant, the Planning Director may enter upon land or inspect any structure to ensure compliance with the provisions of this Ordinance. These inspections shall be carried out during normal business hours unless the Planning Director determines there is an emergency necessitating inspections at another time.

### **12.3.4. ENFORCEMENT PROCEDURE**

- A. Upon observation or reporting of an alleged violation, the Planning Director shall investigate the case and make a determination as to whether a violation has occurred in accordance with this article. If the Planning Director determines that there is a violation, a Notice of Violation shall be issued to the owner and occupant and any other person in violation, by certified or registered mail, as well as first class mail, to the last known address, or by personal service or by posting notice of the violation conspicuously on the property:
  - 1. That the land, building, sign, structure, or use is in violation of this Ordinance;
  - 2. The nature of the violation, and citation of the section of this Ordinance violated;
  - 3. The measures necessary to remedy the violation; and
  - 4. Require the violation be discontinued and corrected.
- B. If a land use is commenced without proper zoning authorization, the Planning Director shall instruct the owner or occupant, in writing, to immediately cease the unauthorized use and apply for appropriate permits or authorizations prior to resumption of the use.
- C. Any owner and occupant who has received a Notice of Violation may appeal in writing the decision of the Planning Director to the Board of Adjustment in accordance with Section 10.3.14, Appeal of Administrative Decision. If the Board of Adjustment affirms that the owner and occupant is in violation of this Ordinance, the Board of Adjustment shall issue an order, in writing, to the owner and occupant affirming the violation and ordering compliance. In the absence of an appeal, the remedies and penalties sought by the Planning Director shall be final.
- D. Except in the case of an order to cease a land use, if a violation is corrected within three days of the date of Notice of Violation, no penalty shall be levied. However, if the same violation recurs within the same year, it shall be considered the second offense and penalties shall be levied each day.

- E. If there is no approved plan in place for corrective action within three days of the date of the Notice of Violation, penalties shall accrue as outlined in Section 12.4, Remedies and Penalties, and the first day of violation will be the date on the Notice of Violation. The Planning Director may approve a plan for corrective action with specific benchmarks and continuous progress when the nature of the violation merits such a plan. The plan shall be binding on the violator and shall be in writing and included in the case file.
- F. If after the violation is remedied, the penalties have accrued to a sum over \$5,000, the owner and occupant may request consideration of an alternative equitable settlement of penalties through the office of the County Manager. A letter of justification and approval shall be included in the case file when penalties are reduced.
- G. The Planning Director may withhold or deny any permit, certificate, occupancy, or other form of authorization on any land, building, sign, structure, or use in which there is an uncorrected violation.

#### **12.3.5. APPLICATION OF REMEDIES AND PENALTIES**

On determining that the violator has failed to correct the violation by the time limit set forth in the Notice of Violation (or any granted extension), or the time limit set by the Board of Adjustment if the matter is appealed, the Planning Director shall take appropriate action, as provided in Section 12.4, Remedies and Penalties, to correct the violation and to ensure compliance with this Ordinance.

#### **12.3.6. EMERGENCY ENFORCEMENT WITHOUT NOTICE**

On determining that delay in correcting the violation would pose a danger to the public health, safety, or welfare, the Planning Director may seek immediate enforcement without prior written notice by invoking any of the remedies authorized in Section 12.4, Remedies and Penalties.

### **Section 12.4. Remedies and Penalties**

**12.4.1.** This Ordinance may be enforced by any one or more of the remedies authorized by Section 153A-123, N.C.G.S., and in accordance with the provisions of Section 160D-404, N.C.G.S., including but not limited to the following: *[05-03-2021]*

#### **A. Issuance of Stop Work Order**

Whenever a building or structure is being constructed, demolished, renovated, altered, or repaired in violation of any applicable provision of this Ordinance, the Planning Director or Building Official may issue a Stop Work Order. The Stop Work Order shall be in writing, directed to the person doing the work, and shall state the specific work to be stopped, the specific reasons for cessation, and the action(s) necessary to lawfully resume work.

#### **B. Revocation of Permit or Approval**

The County may revoke any development permit or approval granted under this Ordinance, by written notice to the permit or approval holder stating the reason(s) for the revocation, when false statements or misrepresentations were made in securing the permit or approval, work is being or has been done in substantial

departure from the approved application or plan, there has been a failure to comply with the requirements of this Ordinance, or a permit or approval has been mistakenly granted in violation of this Ordinance. The County shall follow the same development review and approval process required for issuance of a development approval, including any required notice or hearing, in the review and approval of any revocation of that approval. [05-03-2021]

**C. Denial or Withholding of Related Permits**

The County may deny or withhold a certificate of occupancy in accordance with the building code—or deny or withhold any permit, approval, or other authorization under this Ordinance to use or develop any land, structure, or improvements—until an alleged violation related to such land, use, or development is corrected and any associated civil penalty is paid.

**D. Removal of Illegal Signs from County-Maintained Streets**

The County may remove any sign placed within the right-of-way of a publicly-maintained street in violation of the standards in this Ordinance.

**E. Civil Remedies and Penalties**

1. Violation of this Ordinance subjects the offender to a civil penalty of \$100.00 for a first offense, \$200.00 for a second offense, and \$300.00 for a third and subsequent offense, to be recovered by the County in a civil action in the nature of debt if the offender does not pay the penalty to the County Finance Office within 15 calendar days after the offender has been cited for a violation. Violation of this Ordinance shall result only in civil penalties and/or civil action set forth herein and shall not entail criminal sanctions.
2. Each day's continuing violation of this Ordinance is a separate and distinct offense.

**F. Equitable Remedies**

This Ordinance may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction.

**G. Other Remedies**

This Ordinance may be enforced by injunction, order of abatement, or both, as provided in Section 153A-123(e), N.C.G.S.

- 12.4.2.** A violation of any provision of Section 5.10, Airport Height Restriction, shall constitute a misdemeanor and shall be punishable by a fine and/or imprisonment as authorized under Section 63-35, N.C.G.S., and each day a violation continues to exist shall constitute a separate offense. Whenever a tree that previously complied with Section 5.10, Airport Height Restriction, grows to a point that is in violation of any height specified in Section 5.10, Airport Height Restriction, the owner of such tree shall allow the County to remove such tree to a point that will make the tree comply with the height specified. Such removal of trees shall be done at the expense of the New Hanover County Board of Commissioners.
- 12.4.3.** The remedies and penalties provided for violations of this Ordinance, whether civil or criminal, shall be cumulative and in addition to any other remedy or penalty provided by law, and may be exercised in any order.