

Chapter

10

Enforcement

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10.1 PROCEDURES

A. Complaints

Failure to comply with any provision of this Ordinance is hereby declared unlawful. Whenever a violation of this Ordinance occurs, or is alleged to have occurred, any person may file a complaint. Verbal and anonymous complaints are accepted, however written complaints will take priority. Any complaint stating fully the cause and basis of the complaint shall be filed with the Zoning Administrator who shall properly record such complaint, investigate in a timely manner and take appropriate action as provided by this Ordinance.

B. Inspections

The Zoning Administrator or his/her designee is authorized to enter any premises within the jurisdiction of the Town at all reasonable hours for the purposes of inspection or other enforcement action upon presentation of proper credentials, provided the appropriate consent has been given for inspection of areas not open to the public or that an appropriate inspection warrant has been secured.

C. Notice of Violation

When staff determines work or activity has been undertaken in violation of a development regulation adopted pursuant to this Ordinance, or other local development regulation or any state law delegated to the Town for enforcement, a written notice of violation will be issued. The notice of violation shall be delivered to the holder of the development permit and/or to the landowner of the property. The notice of violation shall be delivered by personal delivery, electronic delivery, or first-class mail and may be provided by similar means to the occupant of the property or the person undertaking the work or activity. The notice of violation may be posted on the property. The notice shall include a description of the violation and its location, the measures necessary to correct it, the possibility of civil penalties and judicial enforcement action and

notice of right to appeal. The notice shall also state the time allowed, if any, to correct the violation, which time may vary depending on the nature of the violation and knowledge of the violator. The person providing the notice of violation shall certify to the local government that the notice was provided, and the certificate shall be deemed conclusive in the absence of fraud. Except as provided by G.S. 160D-1123 or G.S. 160D-1206 or otherwise provided by law, a notice of violation may be appealed to the Board of Adjustment pursuant to G.S. 160D-405.

10.2 VIOLATIONS AND PENALTIES

A. Civil Penalty

The Zoning Administrator may, in addition to other remedies found in this Chapter, issue civil penalties.

1. Penalties for Violation

- a.** Any person determined to be in violation of any of the provisions of this Ordinance shall receive a warning citation. Such citation shall set out the nature of the violation, the section violated, the date of the violation, and shall contain an order to immediately cease the violation. The warning citation shall specify that a second citation shall incur a civil penalty, together with costs, and attorney fees.
- b.** If the violation is an infraction for which an order of abatement would be appropriate in a civil proceeding, a reasonable period of time must be stated in which the violation must be abated.
- c.** Where the Zoning Administrator determines that the period of time stated in the original warning citation or consent agreement is not sufficient for abatement based upon the work required, the Zoning Administrator may amend the warning citation to provide for additional time.
- d.** Upon failure of the violator to obey the warning citation, a civil citation shall be issued by the Zoning Administrator and either served directly on the violator, his duly designated agent, or registered agent if a corporation, either in person, posted on the property, or posted in the United States Postal Service by first class mail addressed to the last known address of the violator as contained in the records of the Town or County property tax records or obtained from the violator at the time of issuance of the warning citation. The violator shall be deemed to have been served upon the mailing of said citation. The citation shall direct the violator to appear before the Zoning Administrator of the Town of Elkin, or his/her designee within fifteen (15) days of the date of the citation, or alternatively to pay the citation by mail. While the Town has the ability to consider each day any single violation continues to be a separate violation, the Town shall issue additional citations and associated fines every fifteen (15) days with incremental increases for as long as the violation continues or further action is taken by the Town. The following civil penalties shall be enforced unless otherwise provided for by this Chapter:

- (1) Notice of Violation / warning citation: Correct violation within fifteen (15) days and/or formally address with Town's Zoning Administrator to arrange for abatement;
 - (2) First citation: \$100.00;
 - (3) Second citation for same offense: \$250.00; and
 - (4) Third and sequential citations for same offense: \$500.00.
- e. The owner, tenant, or occupant of any building or land or part thereof or any person who participates in or acts in concert, assists, directs, creates, or maintains any condition found to be a violation shall be subject to the penalties and remedies herein provided.

2. Failure to Pay

If the civil penalty is not paid within fifteen (15) calendar days of the issuance of a citation, the Town may initiate a civil action in the nature of a debt collection to recover the penalty, costs, attorney fees, and such other relief as permitted by law.

3. Civil Citations not Exclusive

Civil penalties are an additional remedy for code enforcement. In addition, all remedies allowed in North Carolina General Statutes and this Ordinance may also be pursued by the Town at the same time without waiving the civil penalties authorized in this Chapter.

4. Appeal of Determination of Violation

- a. A person notified of a violation may appeal such determination to the Board of Adjustment. Such appeal shall be filed in writing with the Town not later than thirty (30) days after the receipt of the first notice issued. Failure to file a timely appeal shall constitute acceptance of the determination that a violation exists. If an appeal is filed, further action by the Zoning Administrator shall be suspended until a ruling is issued by the Board of Adjustment through quasi-judicial procedures.
- b. The Board shall only have power in the manner of administrative review and interpretation where it is alleged that the Zoning Administrator has made an error in the application of the Ordinance, in the factual situation as it relates to the application of the Ordinance, or both.
- c. If the Board finds that a violation exists, enforcement under this Chapter shall continue despite any further appeals by the violator. The fact that an appeal has been filed or ruled upon by the Board of Adjustment shall not prevent the Town from pursuing other enforcement remedies allowed by law on the same violation.

B. Criminal Penalty

Pursuant to G.S. 14-4, any person, firm, or corporation convicted of violating the provisions of this Ordinance shall, upon conviction, be guilty of a misdemeanor and shall be fined an amount consistent with the General Statutes.

C. Equitable Remedy

In addition to the civil penalties set out above, any provision of this Ordinance may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction. The Zoning Administrator may apply to a judicial court of law for any appropriate equitable remedy to enforce the provisions of this Ordinance. It is not a defense to the Zoning Administrator's application for equitable relief that there are other remedies provided under general law or this Ordinance.

D. Injunction

In addition to the civil penalties set out above, enforcement of the provisions of this Ordinance may also be achieved by injunction. When a violation occurs, the Zoning Administrator may, either before or after the initiation of other authorized action, apply to the appropriate division of the court for a mandatory or prohibitory injunction commanding the defendant to correct the unlawful condition or cease the unlawful use of the property. The action shall be governed in all respect by the laws and rules governing civil proceedings, including the Rules of Civil Procedure in general and Rule 65 in particular.

E. Order of Abatement

In addition to an injunction, the Zoning Administrator may apply for, and the court may enter into an order of abatement as part of the judgment in the case. An order of abatement may direct any of the following actions:

1. Buildings or other structures on the property be closed, demolished, or removed;
2. Fixtures, furniture, or other moveable property be moved or removed entirely;
3. Improvements, alterations, modifications, or repairs be made; or
4. Any other action be taken that is necessary to bring the property into compliance with this Ordinance.

F. Execution of Court Decisions

If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, the defendant may be cited for contempt. The Zoning Administrator may execute the order of abatement and will have a lien on the property in the nature of a mechanic's and materialman's lien for the cost of executing the order. The defendant may secure cancellation of an order of abatement by paying all costs of the proceedings and by posting a bond for compliance with the order. The bond must be given with sureties approved by the Clerk of Superior Court in an amount approved by

the judge before whom the matter was heard and shall be conditioned for the defendant's full compliance with the terms of the order of abatement within the time fixed by the judge. Cancellation of an order of abatement does not suspend or cancel an injunction issued in conjunction with the order.

G. Stop Work Order

Whenever a building, structure or part thereof is being constructed, demolished, renovated, altered, or repaired in material violation of any applicable provision of this Ordinance, the Zoning Administrator may order the specific part of the work that is in violation, or would be when the work is completed, to be immediately stopped. 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.

H. Revocation of Permit

The Zoning Administrator may revoke a zoning permit by written notification to the permit holder when violations of this Ordinance have occurred. Permits may be revoked when false statements or misrepresentations were made in securing the permit, 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 has been mistakenly issued in violation of this Ordinance.

10.3 LANDSCAPING VIOLATIONS

A. Replacement

1. Applicability

All landscaped areas, trees, and vegetation required by this Ordinance which are disturbed or damaged shall be replanted to meet the standards of this Ordinance as well as the approved site/master plan or permit. This includes any tree designated for preservation or installation as part of the approved landscape plan or permit that is removed or dies as a result of negligence or natural forces.

2. Replanting

- a.** New trees or vegetation required as part of an approved plan that are damaged or die shall be removed and replaced with new vegetation of equal or greater size according to the standards of this Ordinance.
- b.** Where the trees or vegetation that have been disturbed or damaged existed on the site at the time the development application was filed, all replacement trees and vegetation shall meet the standards set forth in this Ordinance and take into account any unique site conditions as well as significant vegetation remaining within the landscaped area.

- (1) Replantings shall be located within the vicinity of the violation. If the area is too small for sufficient growth, a more suitable location on the site may be selected as permitted by the Zoning Administrator in consultation with the Arborist.
- (2) Damaged or destroyed vegetation in both perimeter and/or interior landscaped/vegetated areas shall be replaced with an equal amount of new vegetation according to the size of vegetation removed. For buffer areas, understory plantings may also be required to restore the disturbed area to meet Ordinance requirements.
- (3) Any tree with a caliper of at least twelve inches that is damaged or removed shall be replaced with one or more trees, as determined by the Arborist, that have a caliper of at least two and one-half (2.5) inches and a cumulative caliper equal to or greater than the original tree. Trees less than twelve (12) inches in diameter in developments subject to an approved plan and damaged or destroyed shall be replaced to meet ordinance requirements.
- (4) Any Specimen Tree removed or damaged such that removal is required, as determined by the Arborist, shall be replaced by one (1) five (5) inch caliper tree or three (3) two and one-half (2.5) inch caliper trees of the same type of specimen tree, at the discretion of the Arborist.

3. Approval

- a. All new trees and vegetation must be approved by the Zoning Administrator, in consultation with the Arborist. A replanting plan denoting the proposed installation(s) shall be submitted to the Zoning Administrator for approval in consultation with the Arborist. The plan shall take into consideration the development condition of the site, significant vegetation remaining within landscaped areas, and the required replacement of plant materials.
- b. The Zoning Administrator may elect to present the replanting plan to the Board of Adjustment via a quasi-judicial procedure for final approval, as necessary.

4. Remediation

The responsible party shall replace the required vegetation within the current planting season, next planting season, or as approved by the Arborist. All replacement shall occur within one (1) calendar year of notice of violation.

B. Penalties

1. General

- a. Any person or entity who violates any of the sections of this Ordinance, or rules or orders adopted or issued pursuant to these Sections, shall be subject to civil penalties as prescribed by this Section. The person performing the work, the property owner and the person contracting for the performance shall be jointly and severally liable for any penalty or other enforcement action imposed pursuant to

this Chapter or other provisions of law on account of work performed in violation of this Ordinance.

- b.** Penalties assessed under this Chapter are in addition to and not in lieu of compliance with the requirements of this Ordinance.

2. Fees

- a.** Failure to plant original or replacement trees and vegetation in accordance with this chapter shall be one hundred dollars (\$100.00) for each tree and fifty dollars (\$50.00) for each shrub/other vegetation not planted. If the site is not brought into compliance within the time specified in the notice of violation, a civil penalty may be assessed from the date the notice of violation is received until it is adequately corrected, as confirmed by inspection. In the event of a failure to comply with the replacement provisions, the failure to plant each individual tree and/or shrub/vegetation shall constitute a separate and continuing violation from the day the notice of violation is received.
- b.** The intentional or grossly negligent injury or damage to, or destruction of, trees and shrubs/vegetation protected by this Ordinance shall be assessed according to the following:
 - (1)** Penalties for losses in areas regulated by approved plans (Master Plans, Individual Building plans, or other site plans); outside of site areas approved for pre-application clearing; or, within the public right-of-way:
 - (a)** Tree: \$500.00 per caliper inch
 - (b)** Shrub: \$100.00 per shrub
 - (c)** Vegetated Cover: \$10.00 per square feet of disturbed area
 - (d)** Specimen Tree: \$500.00 caliper inch up to twenty-four (24) inches; \$800.00 per caliper inch over twenty-four (24) inches.
 - (2)** The maximum civil penalty for each tree injured, damaged or destroyed shall not exceed \$25,000.00. No notice of violation is needed prior to the assessment of a civil penalty issued pursuant to this Subsection.
 - (3)** Penalties for losses in areas not regulated by an approved plan, including permits (i.e., permits filed after cutting or permits incorrectly executed):
 - (a)** Tree: First citation: Warning + \$50.00. Subsequent citations for same offense: \$500.00 per tree.
 - (b)** Specimen Tree: First citation: Warning + \$100.00. Subsequent citations for same offense: \$1,000.00 per tree.
- c.** If the tree violation occurred in an area in which it is determined that the required replacement tree(s) cannot be adequately replanted due to insufficient area, a

replacement fee equal to \$100.00 per caliper inch of each replacement tree shall be paid.

- d. Failure to install or maintain required tree protection measures in accordance with Chapter 6 shall be punishable up to \$1,000.00 per violation. No civil penalty shall be assessed until the person has been notified of the violation. If the site is not brought into compliance within the time specified in the notice of violation, a civil penalty may be assessed from the date the notice of violation is received until it is adequately corrected, as confirmed by inspection. The failure to install the required tree protection measures shall constitute a separate, daily and continuing violation. Injury or damage to, or destruction of, trees in the tree protection zone and tree save area resulting from the failure to install or maintain required tree protection measures in accordance with Chapter 6 constitutes a separate violation which may subject the violator to any other applicable penalty set forth in this Section.
- e. The civil penalties may be assessed cumulatively. By way of example only, if a Specimen Tree and the vegetated cover surrounding it are damaged due to inadequate tree protection measures, a total of at least three separate penalties may be assessed: (i) one for partial loss of the Specimen Tree; (ii) one for partial loss of the vegetative cover; and (iii) one for the failure to install or maintain required tree protection measures.

10.4 SIGN VIOLATIONS

- A.** Any sign that has been installed without a permit or is otherwise in violation of this Ordinance must be removed by the owner or property manager after notice has been given by the Zoning Administrator. Provided the time to remove the sign is not less than twenty-four (24) hours, notice shall be considered sufficient. Notice shall only be provided once for the violation. Repeat violations, occurring within twelve (12) months, using the same or a similar sign at the same location (e.g., use of a plastic A-frame sign after being given notice of violation or continued use of an off-site sign to advertise a business) will not be provided another notice of violation but, instead, will be issued a civil citation.
 - 1. For the second violation: \$100.00 per offense.
 - 2. For the third violation: \$250.00 per offense.
 - 3. For all subsequent violations: \$500.00 per offense.
- B.** Each day the illegal sign is in use is considered a separate offense. If the responsible person fails to pay the civil penalty or appeal the assessment within thirty (30) days of being notified of the amount due, the Town may recover the penalties in a civil action in the nature of a debt. An appeal of a civil penalty assessment may be made to the Board of Adjustment.

10.5 STORMWATER VIOLATIONS

- A.** Any failure to properly install or maintain stormwater facilities that have been designed, approved by the Town will result in a Notice of Violation and issuance of fines as outlined in this Section 10.2.B of this Chapter.
- B.** Stormwater violations include but are not limited to failure to comply with the Flood Damage Prevention Ordinance, Chapters 5 of this Ordinance, or an approved Stormwater Management Plan. Stormwater facilities and measures that are not installed, maintained, implemented, or repaired, and result in clogged outlet pipes, overflow of retention or detention basins, flooding, etc. will also constitute a violation.

10.6 TRANSFERRING LOTS PRIOR TO PLAT RECORDATION

- A.** Any person who subdivides the land in violation of the regulations contained in this Ordinance or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved and recorded with the register of deeds, is guilty of a Class 1 misdemeanor. 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 this penalty. Building permits required pursuant to G.S. 160D-1110 may be denied for lots that have been illegally subdivided.
- B.** The provisions of subsection A., do not prohibit any owner or its agent from entering into contracts to sell or lease by reference to an approved preliminary plat for which a final plat has not yet been properly approved under the subdivision regulation or recorded with the register of deeds, provided the contract does all of the following:
 - 1.** Incorporates as an attachment a copy of the preliminary plat referenced in the contract and obligates the owner to deliver to the buyer a copy of the recorded plat prior to closing and conveyance.
 - 2.** Plainly notifies the prospective buyer or lessee that a final subdivision plat has not been approved or recorded at the time of the contract, that no governmental body will incur any obligation to the prospective buyer or lessee with respect to the approval of the final subdivision plat, that changes between the preliminary and final plats are possible, and that the contract or lease may be terminated without breach by the buyer or lessee if the final recorded plat differs in any material respect from the preliminary plat.
 - 3.** Provides that if the approved and recorded final plat does not differ in any material respect from the plat referred to in the contract, the buyer or lessee may not be required to close any earlier than five days after the delivery of a copy of the final recorded plat.
 - 4.** Provides that if the approved and recorded final plat differs in any material respect from the preliminary plat referred to in the contract, the buyer or lessee and seller or lessor may not close on a contract for the plat.