

ARTICLE V. - ENFORCEMENT

Sec. 30-253. - Violations.

Any of the following shall be a violation of this chapter and shall be subject to the enforcement remedies provided by this article and by state law:

- (1) *Development without permit.* To engage in any development, use, construction, remodeling or other activity of any nature upon the land or improvements thereon subject to the jurisdiction of this chapter without all required permits, certificates or other forms of authorization as set forth in this chapter.
- (2) *Development inconsistent with permit.* To engage in any development, use, construction, remodeling, or other activity of any nature in any way inconsistent with any approved plan, permit, certificate, or other form of authorization granted for such activity.
- (3) *Violation by act or omission.* To violate, by act or omission, any term, variance or waiver, condition, or qualification placed by the town council or its agent boards upon any required permit, certificate or other form of authorization for the use, development or other activity upon land or improvements thereon.
- (4) *Use in violation.* To erect, construct, reconstruct, alter, repair, convert, maintain or use any building or structure or to use any land in violation or contravention of this chapter, or any other regulation made under the authority conferred thereby.
- (5) *Subdivide in violation.* To subdivide land in violation of this chapter or transfer or sell land by reference to, exhibition of, or any other use of a plat or map showing a subdivision of the land before the plat or map has been properly approved under this chapter and recorded in the office of the register of deeds, except as permitted by G.S. 160A-375(b) regarding pre-sale contracts. 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 chapter.
- (6) *Continuing violation.* Each day's violation of any provision of this chapter is a separate and distinct offense.
- (7) *Repeat violations.* If an owner or occupant repeats the same violation within a five year period from the date of the initial violation, it shall be considered

to be a continuation of the initial violation and shall be subject to additional penalties and remedies.

- (8) *Responsible parties.* The owner or occupant of any land, building, structure, sign, or use of land or part thereof and any architect, builder, contractor, agent or any other person who participates or acts in concert, assists, directs, creates, or maintains any condition that is in violation of the requirements of this chapter may be held responsible for the violation and subject to the civil penalties and remedies herein provided.

Sec. 30-254. - Remedies for Violations

Any one or all of the following remedies may be used to enforce the provisions of this chapter:

- (1) *Injunction.* Any violation of this chapter or of any condition, order, or requirement adopted pursuant hereto may be restrained, corrected, abated, mandated, or enjoined by application to the appropriate division of the General Court of Justice for a mandatory or prohibitory injunction and order of abatement commanding the violator to correct the unlawful condition upon or cease the unlawful use of the property.
- (2) *Civil penalties.* Unless otherwise specifically provided, any person who violates any provision of this chapter shall be subject to the assessment of a civil penalty under the procedures provided in this article.
- (3) *Denial of permit or certificate.* The enforcement officer may withhold or deny any permit, certificate, occupancy authorization, or other form of authorization regarding any land, building, sign, structure or use in or on which there is an uncorrected violation of a provision of this chapter or of a condition or qualification of a permit, certificate, or other authorization previously granted.
- (4) *Conditional permit or temporary certificate.* The enforcement officer may condition the authorization of any permit or certificate upon the correction of a noticed deficiency, payment of assessed civil penalties, or the posting of a compliance security approved by appropriate governmental authority.

- (5) *Stop work orders.* Whenever a building, sign, or structure, or part thereof is being constructed, reconstructed, altered, or repaired in violation of this chapter, the enforcement officer may order the work to be immediately stopped. The stop order shall be in writing and directed to the owner, occupant, or person doing the work. The stop order shall state the specific work to be stopped, the specific reasons for the stoppage, and the conditions under which the work may be resumed. Such action shall be in accordance with G.S. 160A-421, as applicable, or the state building code.
- (6) *Revocation of permits.* The enforcement officer may revoke and require the return of a permit or by notifying the permit holder in writing stating the reason for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, or specifications upon which the same was granted, refusal or failure to comply with the requirements of state or local laws applicable thereto, or for false statements or misrepresentations made in securing such permit. Any permit mistakenly issued in violation of an applicable state or local law, ordinance, or certificate may also be revoked.
- (7) *Criminal penalties.* Any violation of this chapter shall be a misdemeanor or infraction as provided by G.S. 14-4, subject to a maximum fine of \$500.00, and may be prosecuted in the the appropriate division of the General Court of Justice.
- (8) *Cumulative violations.* All such remedies provided herein shall be cumulative, and this chapter may be enforced by any one, all, or a combination of the remedies authorized and prescribed by this section, including simultaneous enforcement by two or more of such remedies. To the extent that state law may limit the availability of a particular remedy set forth herein for a certain violation or a part thereof, such remedy shall remain available for other violations or other parts of the same violation.
- (9) *State and common law remedies.* In addition to other enforcement provisions contained in this article, the town council may exercise any and all enforcement powers granted to it by state law or common law.
- (10) *Previous enforcement.* Nothing in this chapter shall prohibit the continuation of previous enforcement actions.

Sec. 30-255. - Enforcement procedures.

Court action or administrative action, determined in accordance with this section, shall be used by the code enforcement officer to enforce this chapter.

(a) *Court action.* In any instance of a violation of this chapter which reasonably would cause imminent peril to life or property if not enjoined, or which is transitory in nature, the code enforcement officer shall immediately seek enforcement against such violation by applying for an injunction in the General Court of Justice, with or without service of prior written notice of the violation on the violator. The code enforcement officer in such instance may also and simultaneously issue administratively a notice of violation subject to N.C. Gen. Stat. § 160A-388 and make the certification to the Board of Adjustment required thereunder to prevent the automatic stay of the enforcement action before the board.

(b) *Administrative action.* In any instance of a violation of this chapter which reasonably would not cause imminent peril to life or property if not enjoined, or which is not transitory in nature, the code enforcement officer shall enforce this chapter administratively by issuance of a notice of violation subject to N.C. Gen. Stat. § 160A-388, in accordance with the following procedure:

(1) *Notice of Violation.* When the enforcement officer or his agent finds a violation of this chapter subject to administrative action, the code enforcement officer shall give the owner or occupant written notice, by any method of service prescribed under Rule 4 of the North Carolina Rules of Civil Procedure, by confirmed facsimile transmission, by confirmed electronic (email) transmission, or by posting notice of the violation conspicuously on the property, stating:

- a. The nature of the violation, and citation to the section of this chapter violated;
- b. The measures necessary to correct and fully abate the violation; and
- c. The amount of the civil penalty that will be assessed, what day the assessment will begin, and how long the assessment will continue and accrue, in the event the violation is not corrected and fully abated.

(2) *Assessment of Civil Penalty.* Any person or entity served with a notice of violation under this section who fails to correct and abate fully the violation cited in the notice of violation within thirty (30) days of receipt of the notice of violation shall be assessed a civil penalty beginning on the thirty-first (31st) day after receipt of the notice of violation, for that day and each day thereafter until the violation cited in the notice of violation has been corrected and fully abated, in the amount of \$500.00 for each day the violation continues to exist.

(3) *Certification of Correction and Demand for Payment of Penalty.* The code enforcement officer upon the correction and full abatement of a violation noticed under this section shall serve upon the violator, in the same manner prescribed in this section for service of notices of violation, a certification of correction and abatement setting forth the total number of days the violation existed, a calculation of the total amount of civil penalties that accrued during such period, and a demand for payment of the total amount of accrued civil penalties within thirty (30) days from service of the certification. If payment is not received or equitable settlement reached within 30 days after the demand contained in the certification is made by service of the certification on the violation, the total amount of the civil penalties shall be collected from the violation by a civil action in the nature of debt in the appropriate division of the General Courts of Justice.

(4) *Appeal.* Any owner or occupant who has received a notice of violation under this section or a certification of correction and demand for payment of a civil penalty may appeal the code enforcement officer's decision in writing to the board of adjustment in accordance with Article IV, Division 3 of this chapter. In the absence of an appeal, the decision of the enforcement officer contained in the notice of violation or in the certification of correction and demand shall be final.

(5) *Order.* If, upon a hearing held pursuant to an appeal as prescribed in this section, the board of adjustment shall find that a violation of this chapter

exists with respect to the land, building, sign, structure, or use, the board of adjustment shall make an order in writing to the owner and to the occupant if different, affirming the notice of violation and ordering compliance therewith. The order shall be served on the owner and on the occupant if different in accordance with the standards of subsection 30-392(b) and by a method prescribed in subsection 30-197(a)(5).

(6) *Failure to comply with an order.* If the owner or occupant of a property fails to comply with a notice of violation from which no appeal has been taken, or with an order of the board of adjustment affirming a notice of violation, the owner or occupant shall be subject to such remedies and penalties as may be provided for by state law and by this chapter.

Sec. 30-257. - Civil penalties, soil erosion and sedimentation control.

- (a) *General.* Any person who violates any provisions of article XI, or the act, or rules or orders adopted or issued pursuant to this chapter, or who initiates or continues a land disturbing activity for which an erosion and sedimentation control plan is required, or not in accordance with the terms, conditions, and provisions of an approved erosion and sedimentation control plan, shall be subject to a civil penalty. No civil penalty shall accrue in excess of \$500.00 per day, in addition to the penalty for failure to submit an erosion and sedimentation control plan as provided in subsection (e) of this section.
- (b) *Notice of violation.* No penalty shall be assessed until the person alleged to be in violation has been notified of the violation by registered or certified mail, return receipt requested, or other means reasonably calculated to give actual notice. The notice shall describe the violation with reasonable particularity, set forth the measures necessary to achieve compliance with the plan, specify a reasonable time period within which the violation must be corrected, and warn that failure to correct the violation within the time period will result in the assessment of a civil penalty or other enforcement action. If, after the allotted time period has expired, the violator has not completed corrective action, a civil penalty may be assessed from the date of receipt of the notice of violation. However, no time period for compliance need be given for

failure to submit a soil erosion and sedimentation control plan for approval or for obstructing, hampering or interfering with an authorized representative while in the process of carrying out his official duties. Each day of continuing violation shall constitute a separate violation.

(c) *Notice of assessment.* The enforcement officer shall determine the amount of the civil penalty to be assessed under this subsection, shall make written demand for payment upon the person in violation, and shall set forth in detail a description of the violation for which the penalty has been imposed. In determining the amount of the penalty the enforcement officer shall consider the degree and extent of harm caused by the violation and the cost of rectifying the damage. Notice of the assessment shall be by registered or certified mail or other means reasonably calculated to give actual notice. If payment is not received or equitable settlement reached within 30 days after demand for payment is made, the matter shall be referred to the town attorney for institution of a civil action in the appropriate division of the general counts of justice for recovery of the penalty. Such civil actions must be filed within three years of the date the final decision was served on the violator.

(d) *Specific civil penalties.* Civil penalties for specific violations of article XI shall be assessed as follows:

- (1) *Grading without permit:* \$500.00 per day for failure to secure a valid grading permit prior to conducting a land disturbing activity for which a soil erosion and sedimentation control plan is required.
- (2) *Failure to protect:* \$500.00 per day for failure to take all reasonable measures to protect public property, or private property, including lakes and/or natural watercourses, from damage caused by land disturbing activities.
- (3) *Failure to follow plan:* \$300.00 per day for failure to conduct a land disturbing activity in accordance with the provisions of an approved erosion and sedimentation control plan.
- (4) *Failure to install devices:* \$500.00 per day for failure, when more than one acre is disturbed (\$250.00 per day when one acre or less is disturbed). to

install erosion and sedimentation control devices sufficient to retain the sediment generated by the land disturbing activity within the boundaries of the tract and prevent off-site sedimentation.

- (5) *Failure to maintain measures*: \$300.00 per day for failure to maintain satisfactory erosion and sedimentation control measures, structures and/or devices on the site that are designed to provide protection from the calculated maximum peak rate of runoff from the ten-year storm or the 25-year storm in a high quality storm (HQP) zone.
- (6) *Failure to maintain temporary measures*: \$250.00 per day for failure to maintain temporary erosion and sedimentation control measures and facilities during the development of the site.
- (7) *Failure to maintain slopes*: \$250.00 per day for failure on graded slopes and fills to maintain an angle sufficient to retain vegetative cover or other adequate erosion and sedimentation control devices or structures.
- (8) *Failure to cover slopes*: \$250.00 per day for failure within 30 days of completion of any phase of grading to plant or otherwise provide exposed, graded slopes or fills with ground cover, devices, or structures sufficient to restrain erosion.
- (9) *Failure to plant cover*: \$250.00 per day for failure on a tract when more than one acre is disturbed, to plant or otherwise provide ground cover sufficient to restrain erosion within 30 working days or 120 calendar days, 15 working days or 60 calendar days in high quality water zones, whichever is the shorter, following completion of construction or development.
- (10) *Failure to revise plan*: \$250.00 per day for failure to file an acceptable, revised erosion and sedimentation control plan after being notified of the need to do so.
- (11) *Failure to maintain buffer*: \$250.00 per day for failure to retain a buffer zone of sufficient width along a lake or natural watercourse to confine visible siltation within the 25 percent of the buffer zone nearest the land disturbing activity.
- (12) *Interference with official duties*: \$500.00 per day for obstructing, hampering, or interfering with any authorized agent of the jurisdiction or the sedimentation control commission while in the process of carrying out his official duties.

(13) *Failure to provide control*: \$250.00 per day for failure to install or maintain erosion control devices, or prevent off-site sedimentation on sites of land disturbing activity not requiring a grading permit and with disturbed area of less than one acre.

(e) *Erosion and sedimentation control plan*. Any person who fails to submit an erosion and sedimentation control plan as required by this chapter shall be subject to a single, noncontinuing civil penalty of not more than \$1,000.00. Any person may be subject to additional civil penalties for violation of any other provision of this chapter or rules or orders adopted or issued pursuant to this chapter.

(f) *Civil penalty use*. Civil penalties collected for erosion and sedimentation control violations shall be used or disbursed as directed by G.S. 113A-64(a).

Sec. 30-258. - Criminal penalty, soil erosion and sedimentation control.

Any person who knowingly or willfully violates any soil erosion and sedimentation control provisions of this chapter, or rule or order adopted or issued pursuant to the soil erosion and sedimentation control provisions, or who knowingly or willfully initiates or continues a land disturbing activity for which an erosion and sedimentation control plan is required, except in accordance with the terms, conditions, and provisions of an approved plan, shall be guilty of a misdemeanor punishable by imprisonment not to exceed 90 days, or by a fine not to exceed \$5,000, or both.

Sec. 30-259. - Injunctive relief, soil erosion, and sedimentation control.

Whenever the enforcement officer has reasonable cause to believe that any person is violating or threatening to violate this chapter or any rule or order adopted or issued pursuant to this chapter, or any term, condition, or provision of an approved soil erosion and sedimentation control plan the enforcement officer may, either before or after the institution of any other action or proceeding authorized by this chapter, institute a civil action in the name of the jurisdiction, for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the superior court of the county. Upon determination by a court that an alleged violation

is occurring or is threatened, it shall enter such orders or judgments as are necessary to abate the violation or to prevent the threatened violation. The institution of an action for injunctive relief under this section shall not relieve any party to such proceedings from any civil or criminal penalty prescribed for violations of this chapter.

Sec. 30-260. - Action by others.

- (a) *Adjacent or neighboring property.* In addition to the remedies of the local government hereunder, if any building or structure is erected, constructed, reconstructed, repaired, converted or maintained, or any building, structure or land is used in violation of this chapter, any other appropriate authority or any adjacent property owner or landowner who would for any reason suffer special damages as a result of such violation may institute injunction, mandamus, or other appropriate action or proceeding to prevent the occupancy of such building, structure, or land, or the continuance of any construction whatsoever, in violation of this chapter.
- (b) *Land purchaser.* In the event that a purchaser buys land for which there is a surety to secure performance of improvements, after a period of two years has passed since the date of final plat recordation, the purchaser may bring action to enforce completion of the improvements. In such a case, the purchaser may seek specific performance.

Secs. 30-261-30-289. - Reserved.