

Article IV.
Enforcement and Penalties

4.1 Purpose and Intent.

This section provides for the methods of notification and penalties involved in enforcement of this Ordinance. Whenever possible, it is desirable to gain voluntary compliance with the provisions of this Ordinance without the necessity of pursuing formal enforcement measures.

(A) Violation.

It is unlawful and a violation of this ordinance to establish, create, expand, occupy, or maintain any use, land development activity, or structure, including, but not limited to, signs and buildings, that violates or is inconsistent with any provision of this Ordinance. Approvals and authorizations include, but are not limited to Conditional Use Permits, Special Use Permits, Sign Permits, Building Permits, Certificates of Zoning Compliance, Certificates of Occupancy, Variances, development plans, site plans, landscaping plans, and conditions of such permits and plans. It is also a violation to engage in any construction, land development activity, or use without all approvals and authorizations required by this Ordinance.

(B) Violators.

Violators include but are not limited to, any person (s) who owns, leases, occupies, manages, or builds any structure or land development activity in violation of this Ordinance, and any person(s) who owns, leases, or occupies a use in violation of this Ordinance. A violation may be charged against more than one violator. For the purpose of Article IV of this Ordinance, the term "person" is defined to include but not be limited to any individual, group of individuals, or any corporation, partnership, association, company, or business, trust, joint venture, or other legal entity. In addition, one or more of the following persons may be held responsible for a violation of this Ordinance, and be subject to the remedies and penalties provided in this Section:

- (1) An owner of the property on which the violation of this Ordinance occurs, any tenant or occupant of that property who has control over, or responsibility for, its use or development, or any other person who participates in, assists, directs, creates, or maintains a situation that constitutes a violation of this Ordinance.

(C) Responsibility.

The Zoning Administrator shall enforce this Ordinance and the remedies authorized under this Section. The Zoning Administrator shall have the authority to settle any violations that involve the payment of money to the governing body.

4.2 Enforcement Procedures.

(A) Inspections and Investigations.

A program of inspections and investigations to determine compliance with the Zoning Ordinance and orders, plans, permits, certificates, and authorizations issued under the Zoning Ordinance, is hereby authorized. This program shall be conducted under the general authority of the Zoning Administrator. On receiving complaints or other information suggesting a violation of this Ordinance, the Zoning Administrator shall investigate the situation and determine whether a violation exists.

(B) Initial Notice of Violation.

On determining that a violation exists, the Zoning Administrator shall, whenever possible, make contact with the violator either in person or via telephone to discuss the violation. The Zoning Administrator shall then give the responsible person(s) written notice of the violation, either in person, or by certified or registered mail, return receipt requested. When service is made by certified mail, a copy of the notice may also be sent by regular mail. Service shall be deemed sufficient if the notice by certified mail is unclaimed or refused, but the notice by regular mail is not returned by the post office within ten (10) days after mailing, provided that a notice of violation is posted in a conspicuous place on the premises affected.

The notice shall describe the nature of the violation and its location, state the actions necessary to correct the violation, and invite the alleged violator to meet with the Zoning Administrator to discuss the violation and how it may be corrected. The Zoning Administrator may provide the alleged violator additional notices of violation. This notice is an administrative determination subject to appeal as provided in Section (D) below.

(C) Final Notice of Violation; Correction Order.

The Zoning Administrator's final written notice of violation (which may be the initial notice) shall also order correction of the violation, specify a reasonable time period in which the violation must be corrected, state the remedies and penalties authorized in Section 4.3 the Zoning Administrator may pursue if the violation is not corrected within the specified time limit, and state that the correction order may be appealed to the Board of Adjustment if the correction order is the initial notice. The final written notice of violation shall be served upon the responsible person(s), either in person, posting the notice at the property in violation, or by certified or registered mail, return receipt requested. When service is made by certified mail, a copy of the notice may also be sent by regular mail. Service shall be deemed sufficient if the notice by certified mail is unclaimed or refused, but the notice by regular mail is not returned by the post office within ten (10) days after mailing, provided that a final notice of violation is posted in a conspicuous place on the premises affected.

A notice of a new violation is not required where a notice of a violation of the same kind has been issued to the same violator at the same property within the previous two (2) years. In such cases, the violator may be charged with a continuing violation without further notice, as provided in Section 4.4 E. below. A notice is also not required where action is taken under Sections 4.3 A. 1., 2., or 6.

(D) Appeal to the Board of Adjustment.

Any person aggrieved by the Zoning Administrator's determination of a violation or a correction order may appeal that determination or order to the Board of Adjustment in accord with the provisions of Section 3.5 (C) of this Ordinance, including payment of the appropriate fee. Except as provided in Section 3.5(C), an appeal generally stays all further actions to enforce a notice of violation, correction order, or Stop Work Order, until the Board of Adjustment has made a decision concerning the appeal. Civil Penalty citations that follow the initial notice of violation may not be appealed to the Board of Adjustment. The Board shall hear the appeal and may affirm, modify, or revoke the Zoning Administrator's determination of a violation. If there is no appeal, the Zoning Administrator's determination of the nature and degree of the violation are final.

(E) Failure to Comply with Notice or Board of Adjustment Decision.

If the violator does not comply with a notice of violation, correction order, Stop Work Order, which has not been appealed, or with a final decision of the Board of Adjustment, the violator shall be subject to enforcement action as prescribed by State law or by this Ordinance.

(F) Extension of Time Limit to Correct Violation.

The recipient of an initial notice of violation, correction order, or Stop Work Order, or the owner of the property on which the violation occurs, may, within thirty (30) days of the receipt or posting of the initial notice of violation or correction order, whichever is earlier, submit to the Zoning Board of Adjustment, a written request, to be filed with the Zoning Administrator, for extension of the specified time limit for correction of the violation. In cases where an appeal of the notice of violation has been properly file with the Board of Adjustment, the thirty (30) day period shall commence upon receipt of the notice of the Board of Adjustment decision concerning the violation or correction order. The Zoning Administrator shall assist individuals in the preparation of said statement in cases where an individual(s) is/are unable to prepare a written statement. The Zoning Administrator will recommend whether the time limit should be extended. On determining that the request includes enough information to show that the violation cannot be corrected within the specified time limit, for reasons beyond the control of the person requesting the extension, the Zoning Board of Adjustment may extend the time limit as reasonably necessary to allow timely correction of the violation.

(G) Enforcement Action After Time Limit to Correct Violation.

Following the time limit for correction of the violation, including any stay or extension thereof, the Zoning Administrator shall determine whether the violation has been corrected. If the violation has been corrected, the Zoning Administrator shall take no further action against the alleged violator. If the violation has not been corrected, the Zoning Administrator may act to impose one or more of the remedies and penalties specified in the notice of violation, correction order, or Stop Work Order.

(H) Emergency Enforcement Without Notice.

If delay in correcting a violation would seriously threaten the effective enforcement of this Ordinance or pose a danger to the public health, safety, or welfare, the Zoning Administrator may seek immediate enforcement without prior written notice through any of the remedies or penalties authorized in Section 4.3.

4.3 Remedies, Penalties, Enforcement Action.

(A) General.

The Zoning Administrator may pursue one (1) or more of the following remedies and penalties described below or in Section 4.4, or otherwise authorized by common law or statute, to prevent, correct, or abate a violation of this Ordinance. Use of one (1) of the authorized remedies and penalties does not preclude the Zoning Administrator from using any other authorized remedies or penalties, nor does it relieve any party to the imposition of one (1) remedy or penalty from imposition of any other authorized remedies or penalties.

(1) Permit Revocation:

In accord with the provisions of this Ordinance, the Zoning Administrator, upon a written determination by the Zoning Administrator, may revoke any permit, certificate, or other

authorization granted under this Ordinance for failure to comply with the provisions of this Ordinance or the terms and conditions of a permit or authorization granted under this Ordinance. Any permit, certificate, or authorization mistakenly issued in violation of State law or local ordinance, or issued on the basis of misrepresentations by the applicant, owner, or owner's agent may be revoked without such written determination.

(2) Permit Denial or Conditioning:

As long as a violation of this Ordinance remains uncorrected, the Zoning Administrator may deny or withhold approval of any permit, certificate, or other authorization provided for in this Ordinance that is sought for the property on which the violation occurs. The Zoning Administrator may also condition a permit, certificate, or authorization on the correction of the violation and/or payment of a civil penalty, and/or posting of a compliance security.

(3) Injunctive and Abatement Relief in Superior Court:

A violation may be corrected by any appropriate equitable remedy, a mandatory or prohibitory injunction, or an order of abatement as authorized by NC General Statute 160A-175. The Zoning Administrator shall have the authority to execute an order of abatement if the violator does not comply with such order, and the costs of the execution shall be a lien on the property in the nature of a mechanic's or material man's lien.

(4) Criminal Penalties:

Any person, firm or corporation who violates the provisions of this Ordinance or fails to comply with any of its requirements shall, upon conviction, be guilty of a Class 3 misdemeanor and shall be fined not more than a maximum of five hundred dollars (\$500.00), imprisonment of up to thirty (30) days, or both, for each violation, as provided in North Carolina General Statute Section 14-4. The Zoning Administrator may refer a violation to the District Attorney for institution of criminal prosecution of the alleged violator.

(5) Judicial Action to Collect Civil Penalty:

A civil action in the nature of a debt may be filed in any court of competent jurisdiction to collect an unpaid civil penalty imposed under Section 4.4 below.

(6) Stop Work Order:

If a building or structure is erected, constructed, reconstructed, altered, repaired, converted, moved or maintained, or any building, structure or land is used in violation of a Stop Work Order, the Zoning Administrator, in addition to other remedies, may institute any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, moving, maintenance or use, to restrain, correct or abate the violation, to prevent occupancy of the building, structure or lands, or to prevent any illegal act, conduct, business or use in or about the premises. Notice of a Stop Work Order shall be in writing, directed to the person(s) conducting the violating activity and/or the property owner, and shall state the reasons for the issuance of the Order, and the conditions under which activity may be resumed. Notice shall be given by registered or certified mail. Upon issuance of such Order, and posting of same on the

site of the violation, all work on the site of the violation shall cease, except those activities necessary to bring the site into compliance with this Ordinance.

The person(s) conducting the violating activity and/or the property owner may appeal the Stop Work Order to the Board of Adjustment pursuant to Section 4.2 (C) of this ordinance.

4.4 Civil Penalty.

(A) General.

The Zoning Administrator, after consultation with the Town Manager, may impose one or more civil penalties and issue one or more Civil Penalty citations for a violation as provided below. If the violator does not pay the penalty, the Zoning Administrator may collect it in a court through a civil action in the nature of a debt.

(B) Notice.

The Zoning Administrator shall give the responsible person(s) written notice of the civil penalty citation, either in person, or by certified or registered mail, return receipt requested. When service is made by certified mail, a copy of the notice may also be sent by regular mail. Service shall be deemed sufficient if the notice by certified mail is unclaimed or refused, but the notice by regular mail is not returned by the post office within ten (10) days after mailing, provided that a notice of Civil Penalty citation is posted in a conspicuous place on the premises affected. The notice shall include a copy of the notice of violation, the amount of the penalty, information about where to pay the penalty, the deadline for payment, which shall be ten (10) days from the date of the notice, and the possibility of civil and/or criminal enforcement.

(C) Amount.

The following Civil Penalty amounts are hereby established:

Notice of Violation	Correct Violation within (Typical timeframe) 10 to 30 Days
First Civil Penalty citation	\$50.00
Second Civil Penalty citation for same offense	\$100.00
Third Civil Penalty citation for same offense	\$250.00
Fourth Civil Penalty citation for same offense	\$500.00

Subsequent citations for the same violation may be issued by the Zoning Administrator once the "grace period" has expired in association with the initial notice of violation. Each day the violation remains uncorrected shall constitute a separate violation that subjects the violator to additional civil penalties. In addition to civil penalties rendered, the violator may be required to pay any and/or all attorney's fees in the collection of monetary penalties or fees.

(D) Settlement of Claims.

The Zoning Administrator is authorized to determine the amount of payment that will be accepted in full and final settlement of some or all of the claims the governing body may have in connection with the violation. The Zoning Administrator shall indicate in writing the claims from which the violator is released. If the violation has not been remedied, payment shall not release a violator from potential criminal prosecution or a claim for injunctive relief and/or an order of abatement.

(E) Continuing Violations.

The Zoning Administrator may issue a Civil Penalty citation for a violation that continues without being corrected. The violator in such cases may be assessed a penalty for each day of the continuing violation. An initial Civil Penalty citation for a single violation must be issued before a Civil Penalty citation for a continuing violation is issued. If the violator has failed to pay the penalty and correct the violation after the initial Civil Penalty citation, the violator is subject to a Civil Penalty citation for a continuing violation with a daily penalty. An initial Civil Penalty citation is not required if the Town has previously issued a Civil Penalty citation to the violator for the same violation at the same location within the previous two (2) years.

The Zoning Administrator may give a single notice of a Civil Penalty citation for a continuing violation. The notice must contain a copy of the notice of violation and must state that the violation is continuing, that a daily penalty of a specified amount is being imposed, and that the penalty is cumulative.