
CHAPTER 16 - VIOLATIONS AND PENALTIES

16.1 Complaints Regarding Violations.

16.1.1 Complaints Regarding Violations.

Whenever a violation of this ordinance occurs, or is alleged to have occurred, any person may file a written complaint. Any written complaint stating fully the cause and basis of the complaint shall be filed with the Administrator who shall properly record such complaint, investigate in a timely manner, and take appropriate action as provided by this ordinance.

- A. Unless specifically set forth otherwise in this ordinance, the Administrator is hereby authorized to enforce the provisions of this ordinance.
- B. The Administrator may enter any building, structure or premises as provided by law, to perform any duty imposed upon them by this ordinance.

16.1.2 Notice of Violation; Opportunity to Cure.

- A. Whenever the Administrator has reasonable cause to believe that a person is violating any of the provisions of this ordinance or any plan, order, or condition issued pursuant to this chapter, that official shall immediately notify each of the following, as applicable:
 - 1. the holder of any development approval for the property;
 - 2. the landowner; and
 - 3. the person undertaking the work or activity that is the cause of the violation.
- B. The notice of violation shall be delivered by personal delivery, electronic delivery, or first-class mail. The notice of violation may also be posted on the property.
- C. If the violator cannot be ascertained, then the notice of violation shall be sent to the record owner of the land on which the violation occurs.
- D. The notice of violation shall include an opportunity to cure the violation within a prescribed period of time.
- E. Upon receipt of a written request from the alleged violator or the property owner for an extension of time to cure or correct the violation, the town official charged with the duty of enforcing the regulations being violated may grant a single extension of time, not to exceed a period of thirty (30) days, in which the alleged violator may cure or correct the violation before the town pursues penalties or other relief.

16.1.3 Summary Removal of Signs.

- A. Pursuant to GS § 160A-193, the Administrator shall have the authority to summarily remove, abate, or remedy a sign or sign structure which the building inspector has determined to be dangerous or prejudicial to the public health or safety.
- B. The expense of the action shall be paid by the sign owner or if the sign owner cannot be ascertained, by the property owner, and if not paid, there shall be a lien placed upon the land or premises where the nuisance arose, and it shall be collected as unpaid taxes.
- C. The Administrator shall have the authority to remove summarily any signs or sign structures prohibited under Section 11.8.

16.2 Penalties for Violation and Enforcement Mechanisms.

16.2.1 Liabilities for Violations.

Pursuant to GS § 160A-175, any person who erects, constructs, reconstructs, alters, repairs, converts, or maintains any building, structure, sign or sign structure or develops, grades or otherwise alters property in violation of this ordinance, and any person who uses any building, structure, sign or sign structure or land in violation of this ordinance shall be subject to civil and/or criminal penalties.

16.2.2 Civil Penalties.

- A. General: Violations of this ordinance, except violations of Chapter 12 as noted below, shall subject the offender to a civil penalty in the amount of \$200.00 per day for each day the violation continues, to be recovered by the town in a civil action in the nature of debt if the offender does not pay the penalty within the prescribed period of time after he or she has been cited for the violation.
- B. Grading and Filling Activities.
 1. Any person who violates any of the provisions of Chapter 12 of this ordinance and/or who initiates land-disturbing activity for which an erosion control plan is required except in accordance with the terms, conditions and provisions of an approved plan, shall be subject to a civil penalty of not more than \$500.00 except as otherwise set forth below.
 2. Each day of a continuing violation shall constitute a separate violation.
 3. The amount of penalty shall be determined by the Town Council. In determining the amount of the penalty, the board shall consider the degree and extent of harm caused by the violation and the cost of rectifying the damage, the amount of money the violator saved by noncompliance, whether the violation was committed willfully and the prior record of the violator in compliance or failing to comply with grading and filling control standards.
 4. Any person who fails to submit an erosion control plan for approval in accordance with Chapter 12 of this ordinance shall be subject to a single, noncontinuing civil penalty of not more than \$1,000.00.
 5. Anyone who violates a stop work order regarding grading and filling control shall be subject to a civil penalty of not more than \$5,000.00.
 6. Any civil penalty assessed against a person who violates any of the provisions of Chapter 12 of this ordinance shall be recovered by the town in a civil action in the nature of debt, to be brought in Haywood County Superior Court, if the offender does not pay the penalty within the prescribed period of time after he or she has been cited for the violation.
- C. Enforcement and Violations of the Stormwater Ordinance.

The following remedies and penalties provided for violations of the Chapter 12.5- Stormwater Ordinance, shall be cumulative and in addition to any other remedy provided by law, Town Ordinance, and may be exercised in any order.

1. **Authority to enforce.** The provisions of the Stormwater Ordinance shall be enforced by the Stormwater Administrator, his or her designee, or any authorized agent of the Town. Whenever this section refers to the Stormwater Administrator, it includes his or her designee as well as any authorized agent of the Town.
2. **Violation unlawful.** Any failure to comply with applicable requirements, prohibitions, standards, or limitations imposed by the Stormwater Ordinance, or the terms or conditions of any permit,

maintenance agreement, or other development or redevelopment approval or authorization granted pursuant to this ordinance, is unlawful and shall constitute a violation of this ordinance and is subject to a civil penalty of not more than \$500 per day. Each day that a violation continues shall constitute a separate and distinct violation or offense.

- 3. Responsible persons/entities.** Any person who erects, constructs, reconstructs, alters (whether actively or passively), or fails to erect, construct, reconstruct, alter, repair, or maintain any structure, BMP, practice, or condition in violation of the ordinance shall be subject to the remedies, penalties, and/or enforcement actions in accordance with this section. Persons subject to the remedies and penalties set forth herein may include any architect, engineer, builder, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that results in or constitutes a violation of this ordinance, or fails to take an appropriate action, so that a violation of this ordinance results or persists; or an owner, any tenant or occupant, or any other person, who has control over, or responsibility for, the use or development of the property on which the violation occurs.

For the purposes of this article, responsible person(s) shall include but not be limited to: Person maintaining condition resulting in or constituting a violation. An architect, engineer, builder, contractor, developer, agency, the owner of the land on which a violation occurs, any tenant or occupant of the property, any person responsible for stormwater controls pursuant to a private or public document, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that constitutes a violation of this ordinance, or fails to take an appropriate action, so that a violation of this ordinance results or persists.

- 4. Notice of Violation and Order to Correct.** When the Stormwater Administrator finds that any building, structure, or land is in violation of the ordinance, the Stormwater Administrator shall notify, in writing, the property owner or other person violating the ordinance. The notification shall indicate the nature of the violation, contain the address or other description of the site upon which the violation is occurring, order the necessary action to abate the violation, and give a deadline for correcting the violation.

The Stormwater Administrator may deliver the notice of violation and correction order personally, by the law enforcement, or by certified or registered mail, return receipt requested.

A person who receives a notice of violation and correction order, or the owner of the land on which the violation occurs, may submit to the Stormwater Administrator a written request for an extension of time for correction of the violation.

- 5. Withholding of Certificate of Occupancy.** The Stormwater Administrator or other authorized agent may refuse to issue a certificate of occupancy for the building or other improvements constructed or being constructed on the site and served by the stormwater practices in question until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein.
- 6. Disapproval of subsequent permits and development approval.** As long as a violation of the ordinance continues and remains uncorrected, the Stormwater Administrator or other authorized agent may withhold, and the approving body may disapprove, any request for permit or development approval or authorization provided for by this ordinance or the zoning, and/or subdivision regulations, as appropriate for the land on which the violation occurs.
- 7. Injunction, abatements, etc.** The stormwater administrator may institute an action in a court of competent jurisdiction for a mandatory or prohibitory injunction and order of abatement to correct a violation of the ordinance. Any person violating the ordinance shall be subject to the full range of equitable remedies provided in the General Statutes or at common law.

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8. **Correction as public health nuisance, costs as lien, etc.:** If the violation is deemed dangerous to the public health or public safety and is within the geographic limits prescribed by G.S. 160D, the Stormwater Administrator may cause the action to be corrected and the costs to be assessed as a lien against the property.

16.2.3 Injunctive or Other Relief.

- A. In addition to, or in lieu of, the other remedies set forth in this chapter, the Administrator, in the event of a violation of this ordinance, may request that the town attorney institute in a court of competent jurisdiction, an injunctive action, mandamus action, or other appropriate proceeding to prevent the completion or occupation of such building or structure, or use of land.
- B. Upon determining that an alleged violation is occurring or is threatened, a court hearing an appeal for relief, shall enter such orders and/or judgments as are necessary to abate or prevent the violation.
- C. The institution of an action for injunctive or other relief under this sub-section shall not relieve any party to such proceeding from any civil or criminal penalty prescribed by this chapter for violations of this ordinance.

16.2.4 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 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 Administrator's application for equitable relief that there are other remedies provided under general law or this ordinance.

16.2.5 Order of Abatement.

In addition to an injunction, the 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:

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

16.2.6 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 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.

16.2.7 Revocation of Permits.

In the event of a violation of any regulation of this ordinance, the Administrator may stop any development of, use of or activity on property by the revocation of applicable permits. The Administrator may revoke any

permit (e.g. Building Certificate of Occupancy) 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.

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