



# ENFORCEMENT

# Chapter 9. Enforcement

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# CHAPTER 9.

## ENFORCEMENT

### 9.1. PURPOSE

This chapter 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 chapter are intended to encourage the voluntary correction of violations, where possible.

### 9.2. 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 county.

### 9.3. VIOLATIONS

#### 9.3.1. Violations Generally

##### **A. Failure to Comply with Ordinance or Term or Condition of Approval Constitutes Ordinance Violation**

Failure to comply with a standard, requirement, prohibition, or limitation imposed by this Ordinance, or the terms or conditions of any permit or other development approval or authorization granted in accordance with this Ordinance shall constitute a violation of this Ordinance punishable as provided in this chapter.

##### **B. Permits or Permit Approvals only Authorize Development Approved**

Permits or development approvals issued by a decision-making body or county staff authorize only the use, arrangement, location, design, density or intensity, and development set forth in such permits or development approvals.

#### 9.3.2. Specific Violations

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 land or a structure without first obtaining all appropriate permits or development approvals, and complying with their terms and conditions.
- B.** Occupy or use land or a structure without first obtaining all appropriate permits or development approvals, and complying with their terms and conditions.
- C.** Subdivide land without first obtaining all appropriate permits or development approvals required to engage in subdivision, and complying with their terms and conditions.
- D.** Excavate, grade, cut, clear, or undertake any land disturbing activity without first obtaining all appropriate permits and development approvals, and complying with their terms and conditions.

## SECTION 9.4: RESPONSIBLE PERSONS

### Subsection 9.5.1: Responsibility For Enforcement

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

## 9.4. RESPONSIBLE PERSONS

The owner, tenant, or occupant of any land or structure, and an architect, engineer, builder, contractor, agent, or any other person who participates in, assists, directs, creates, or maintains a situation that constitutes a violation of this Ordinance may be held responsible for the violation and subject to the remedies and penalties set forth in this chapter.

## 9.5. ENFORCEMENT GENERALLY

### 9.5.1. Responsibility For Enforcement

The Director shall be responsible for enforcing the provisions of this Ordinance in accordance with the North Carolina General Statutes.

### 9.5.2. Complaints Regarding Violations

Whenever a violation of this Ordinance occurs, or is alleged to have occurred, any person may file a written (electronic or hardcopy) complaint. The complaint, stating fully the cause and basis therefore shall be filed with the Director, who shall properly record such complaint, investigate, and take appropriate action as provided by this Ordinance.

### 9.5.3. Inspections

On presenting proper credentials, the 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 Director determines there is an emergency necessitating inspection at another time.

**9.5.4. Enforcement Procedure****A. Investigation of Complaint**

On receiving a written complaint, the Director shall investigate the complaint and determine whether a violation of this Ordinance exists.

**B. Notice of Violations**

- (1)** On finding that a violation of this Ordinance exists, whether from an investigation of a written complaint or otherwise, the Director shall provide written notification of the violation, by personal service, electronic delivery, or first class mail, to the owner of the property on which the violation exists, the permittee (if different than owner), and may notify the person causing or maintaining the violation. Such notification shall:
  - (a)** Describe the location and nature of the violation;
  - (b)** State the actions necessary to abate the violation; and
  - (c)** Order that the violation be corrected within a specified reasonable time period stated in the notice of violation.
  - (d)** For purposes of floodplain management, order that the violation be corrected within a specified reasonable time period stated in the notice of violation but in no case shall that exceed 180 days.
- (2)** The notice of violation shall state what course of action is intended if the violation is not corrected with the specified time limit. The notice of violation shall also advise the violators of their rights to appeal the notice of violation to the Board of Adjustment in accordance with Section 2.4.17, Appeal.
- (3)** The Director shall prepare an affidavit affirming that notice meeting these standards was provided. The affidavit shall be conclusive that notice has been given in compliance with the terms of this section.
- (4)** On receiving a written request for extension of the time limit for correction specified in the notice of violation, the Director may, for good cause shown, grant a single extension of the time limit.
- (5)** If the owner of the property cannot be located or determined, the Director shall post a copy of the notice on the building, structure, sign, or site that is the subject of the violation. In such a case, the time limit for correction of the violation shall be deemed to begin five days after the notice is posted.

**C. 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 thereof, or has failed to timely appeal the notice of violation in accordance with Section 2.4.17, Appeal, the Director shall take appropriate action, as provided in Section 9.6, Remedies and Penalties, to correct and abate the violation and to ensure compliance with this Ordinance.

**D. Emergency Enforcement without Notice**

On determining that delay in abating the violation would pose a danger to the public health, safety, or welfare, the Director may seek immediate enforcement without prior written notice by invoking any of the remedies authorized in Section 9.6, Remedies and Penalties.

**SECTION 9.6: REMEDIES AND PENALTIES****Subsection 9.6.1: Remedies****E. Notice of Appeal**

Filing of a notice of appeal regarding an alleged violation of this Ordinance shall stay further action by the county until the appeal has been reviewed and decided by the Board of Adjustment (see Section 2.4.17, Appeal).

**F. Repeat Violations**

In addressing repeat violations by the same offender over any two-year period, the county may commence the application of remedies or penalties at the stage in the process where the previous violation was resolved.

**9.6. REMEDIES AND PENALTIES**

The county may use any combination of the following remedies and enforcement powers to administer and enforce this Ordinance.

**9.6.1. Remedies****A. Stop Work Order Issuance**

- (1)** Whenever a building or structure is being constructed, demolished, renovated, altered, or repaired in violation of any applicable provision of this Ordinance, the Director may issue a Stop Work Order. The Stop Work Order shall be in writing, directed to the person doing the work or activity to be stopped, the owner and the permittee. The Stop Work Order shall state the specific work or activity to be stopped, the specific reasons for cessation, and the action(s) necessary to lawfully resume work. The Stop Work Order may be delivered by personal service, electronic delivery or first class mail.
- (2)** The Director shall prepare an affidavit affirming that the Stop Work Order was provided. The affidavit shall be conclusive that notice has been given in compliance with the terms of this section.

**B. Injunction**

When a violation occurs, the Director may, either before or after the initiation of other authorized actions, apply to the appropriate court for a mandatory or prohibitory injunction ordering the offender to correct the unlawful condition or cease the unlawful use of the land in question.

**C. Order of Abatement**

In addition to an injunction, the county may apply for and the court may enter into Order of Abatement as part of the judgment in the case. An Order of Abatement may direct any of the following actions:

- (1)** That buildings or other structures on the property be closed, demolished, or removed;
- (2)** That fixtures, furniture, or other moveable property be moved or removed entirely;
- (3)** That improvements, alterations, modifications, or repairs be made; or
- (4)** That any other action be taken as necessary to bring the property into compliance with this Ordinance.

**D. Equitable Remedy**

The county may apply to a court of law for any appropriate equitable remedy to enforce the provisions of this Ordinance. The fact that other remedies are provided under general law or this Ordinance shall not be used by a violator as a defense to the county's application for equitable relief.

**E. Execution of Court Decisions**

The Director 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.

**F. Revocation of Permit or Approval**

No person may continue to make use of land or buildings in the manner authorized by a zoning permit, special use permit, floodplain development permit, or sign permit approved prior to January 1, 2013, after such permit has been revoked in accordance with this section, or a special use permit, zoning compliance permit, floodplain development permit, or sign permit approved after January 1, 2013. The Director may revoke any such permit or approval in accordance with the development review and approval process required for issuance of the approval, including any required notice or hearing, and the following.

**(1) Special Use Permit**

- (a)** Notice must be provided by the Director to a permit recipient prior to revocation of a special use permit.
- (b)** The notice shall inform the permit recipient of the alleged grounds for the revocation.
- (c)** The burden of presenting evidence sufficient to authorize the permit-issuing authority to revoke the permit shall be upon the party advocating that position.
- (d)** A motion to revoke a permit by the decision-making body shall include, insofar as practicable, a statement of the specific reasons or finding of facts that support the motion.

**(2) Zoning Compliance Permit and Zoning Permit**

- (a)** Notice of the intent to revoke a zoning compliance permit or zoning permit shall be provided by the Director ten days prior to the revocation.
- (b)** The notice shall inform the recipient of the alleged reasons for the revocation and of the right to obtain an informal hearing on the allegations.
- (c)** If the permit is revoked, the Director shall provide a written statement of the reasons for revocation.

**(3) Sign Permit or Zoning Permit for Signage**

- (a)** The Director may revoke a sign permit or zoning permit issued for signage for any of the following reasons:
  - (i)** Issuance of the permit under a mistake of material fact when, had the correct fact(s) been known, the permit would not have been issued;

**SECTION 9.6: REMEDIES AND PENALTIES****Subsection 9.6.1: Remedies**

- (ii) Misrepresentation of a material fact by the applicant for a sign permit; or
    - (iii) Failure to comply with any of the provisions of this chapter, except that a permit for a nonconforming sign may not be revoked so long as the nonconforming situation is allowed to continue pursuant to Chapter 9: Nonconformities.
  - (b) Before revoking a sign permit, the Director shall give the sign owner 20 days' notice by first class mail of the intent to revoke the permit and shall inform such person of the reasons for the proposed revocation and of the sign owner's right to obtain an informal hearing on the allegations. If the permit is revoked, the Director shall provide a written statement of reasons to the owner. The Director shall also inform the owner of the right to appeal the decision to the Board of Adjustment.
  - (c) No person may continue to operate, maintain, or leave standing any sign or part or component thereof for more than ten days after the permit authorizing the sign has been revoked or expired.
- (4) Floodplain Development Permit**
- (a) The Director may revoke a floodplain development permit by notifying the permit holder in writing for any of the following reasons:
    - (i) Substantial departure from the approved application, plans, and specifications;
    - (ii) Refusal or failure to comply with the requirements of State or local laws;
    - (iii) False statements or misrepresentations made in securing the permit; or
    - (iv) Floodplain development permit mistakenly issued in violation of an applicable State or local law.

**G. Denial or Withholding of Permits**

The Director may deny or withhold authorization to use or develop any land, structure, or improvements until an alleged violation and associated civil penalty related to such land, use, or development is corrected.

**H. Removal of Signs from Street Right-of-Way**

- (1) Where signs are placed in a public street right-of-way in violation of this Ordinance, the Director may remove such signs without Notice of Violation.
- (2) Each sign so removed will be held for 10 days and retrieval of each sign will incur a fee as prescribed in the adopted fee schedule. Removal and disposal of illegally placed signs shall not preclude the prosecution of any person for illegally placing the signs.

**I. Alter, Vacate, or Demolish Building**

Violations of the standards applicable within the county's special flood hazard area may result in an order by the Director to alter, vacate, or demolish a building, or remove deposited fill not in compliance with the requirements of this Ordinance.



### **9.6.2. Civil Penalties**

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#### **A. General**

In addition to the other remedies cited in this Ordinance for the enforcement of its provisions, the standards in this Ordinance may be enforced through the issuance of civil penalties.

#### **B. Citation**

Violation of this Ordinance subjects the violator to a civil penalty. To impose a civil penalty, the Director shall first provide the violator a written citation, either by mail or personal service. The citation shall describe the violation, specify the amount of the civil penalty being imposed, and direct the violator to correct the violation and pay the civil penalty to the county within a stated time period. Unless otherwise specified, each day's continuing violation of any provision of this Ordinance shall be separate and distinct offense.

#### **C. Amount of Civil Penalty**

The amount of civil penalties for violations of this Ordinance shall not exceed a maximum amount of \$500 per day for each day the violation continues.

#### **D. Recovery of Civil Penalty**

- (1)** If the violator fails to pay the civil penalty within ten days of the citation, the county may recover the penalties in a civil action in the nature of debt.
- (2)** A civil penalty may not be appealed to the Board of Adjustment.

### **9.6.3. Cumulative Remedies and Penalties**

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The remedies and penalties provided for violations of this Ordinance shall be cumulative and in addition to any other remedy or penalty provided by law, and may be exercised in any order.

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