

Article 12 Administration and Enforcement:⁴⁵¹

Sec. 12-1 Intent:

- A. This Article 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.
- B. Unless otherwise provided herein, all questions arising in connection with the enforcement of this Ordinance shall be presented to Staff and that such questions shall be presented to the Board of Adjustment only on appeal from a written determination made by Staff in accordance with Section 3.6.2 of this Ordinance.

Sec. 12-2 Violations Specifically

Any of the following shall be a violation of this Ordinance and shall be subject to the enforcement remedies and penalties provided by this Section and NCGS 160D-404.

- A. 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 Ordinance without all required permits, certificates, or other forms of authorization as set forth herein.
- B. 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.
- C. 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.
- D. 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 Ordinance, or any other regulation made under the authority conferred thereby.
- E. Subdivide in Violation. To subdivide land in violation of this Ordinance 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 Ordinance and recorded in the Office of the Union County Register of Deeds. 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 Ordinance.
- F. Continuing Violations. Each day's violation of any provision of this Ordinance is a separate and distinct offense.

⁴⁵¹ Existing enforcement regulations have been completely revised to address violations of land use (i.e. zoning and subdivision) regulations consistent with the authority granted under NCGS 160D-404.

Sec. 12-3 Violators Specifically

The following shall be considered violators of the Ordinance and subject to enforcement:

- A. Any person(s) who owns, leases, occupies, manages, or builds any structure or land development activity in violation of this Ordinance.
- B. Any person(s) who owns, leases, or occupies a use in violation of this Ordinance.
- C. An owner of property on which the violation of this Ordinance occurs.
- D. Any tenant or occupant of a property who has control over, or responsibility for, the use or development of the property.
- E. Any other person who participates in, assists, directs, creates, or maintains a situation that constitutes a violation of this Ordinance.
- F. For the purpose of this Article, the term "person" includes but is not limited to any individual, group of individuals, or any corporation, partnership, association, company, or business, trust, joint venture, or other legal entity.

Sec. 12-4 Administration of Performance Standards:

Determinations necessary for administration and enforcement of performance standards set forth herein range from those which can be made with satisfactory accuracy by a reasonable person using normal senses and no sophisticated equipment to those requiring great technical competence and complete equipment for precise measurement. It is the intent of this Ordinance that:

- A. Where determinations can be made by Staff, using equipment normally available or obtainable without extraordinary expense. Such determinations shall be so made before notice of violation is issued.
- B. Where technical complexity or extraordinary expense makes it unreasonable for the County to maintain the personnel or equipment necessary for making difficult or unusual determinations, procedures shall be available for causing corrections of apparent violations of performance standards, for protecting individuals from arbitrary, capricious, and unreasonable administration and enforcement of performance standard regulations, and for protecting the general public from unnecessary costs for administration and enforcement.

Sec. 12-5 Enforcement Procedure:

- A. Responsibility for Enforcement: Staff shall enforce this Ordinance and the remedies authorized herein and shall have the authority to settle any violations that involve the payment of money to the governing body.
- B. Inspections and Investigations:
 - i. A program of inspections and investigations to determine compliance with this Ordinance and orders, plans, permits, certificates, and authorizations issued under this Ordinance, is hereby authorized.

- ii. Upon receipt of a complaint or other information suggesting a violation of this Ordinance, Staff shall investigate the situation and determine whether a violation exists in accordance with the provisions of this Ordinance.
- C. Enforcement Procedure: When Staff find a violation, it shall be their duty to notify the owner or occupant of the land, building, structure, sign, or use of the violation. The owner or occupant shall immediately remedy the violation.
- i. Notice of Violation. If the owner or occupant of the land, building, sign, structure, or use in violation fails to take prompt corrective action, Staff shall give the holder of the development approval, landowner, person undertaking the work activity, or occupant written notice, by first class mail, email, general delivery mail, certified or registered mail to their last known address, or by personal service, by posting notice of the violation conspicuously on the property, or in accordance with Rule 4 of the North Carolina Rules of Civil Procedure.

The notice of violation shall include, but not be limited to:

- 1. That the land, building, sign, structure, or use is in violation of this Ordinance;
 - 2. The nature of the violation, and citation of the section(s) of the Ordinance violated;
 - 3. The measures necessary to remedy the violation;
 - 4. The opportunity to cure the violation within a prescribed period of time.
- ii. Extension of Time to Remedy. Upon receipt of a written request from the alleged violator or the property owner for an extension of time to remedy or correct the violation, Staff may grant a single extension of time, not to exceed a period of 30 calendar days, in which the alleged violator may cure or correct the violation before the County pursues enforcement action as provided for in this section.
 - iii. Appeal. Any owner or occupant who has received a Notice of Violation may appeal in writing the written determination of Staff to the Board of Adjustment within thirty (30) days following receipt of the written determination in accordance with Section 3.6.2 of this Ordinance.
 - iv. Order of Corrective Action. If, upon a hearing held pursuant to an appeal as prescribed above, the Board of Adjustment shall find that the owner or occupant is in violation of this Ordinance, the Board of Adjustment shall make an order in writing to the owner or occupant affirming the violation and ordering compliance.
 - v. 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 an Order of Corrective Action following an appeal, the owner or occupant shall be subject to such remedies and penalties as may be provided for by G.S.160D-404 and this section. If the owner or occupant fails to comply with the remedies and penalties prescribed, enforcement shall be sought through an order of a court of competent jurisdiction.

D. Remedies Any one or all of the following procedures may be used to enforce the provisions of this Ordinance.

- i. Injunction. Any violation of this Ordinance or of any condition, order, or requirement, or remedy adopted pursuant hereto may be restrained, corrected, abated, mandated, or enjoined by other appropriate proceeding pursuant to state law.
- ii. Civil Penalties. Any person who violates any provisions of this Ordinance shall be subject to the assessment of a civil penalty under the procedures provided herein.
- iii. Denial of Permit or Certificate. Staff may withhold or deny any permit, certificate, occupancy permit or other form of authorization on any land, building, sign, structure, or use in which there is an uncorrected violation of a provision of this Ordinance or of a condition or qualification of a permit, certificate, or other authorization previously granted.
- iv. Conditional Permit or Temporary Certificate. Staff may condition the authorization of any permit or certificate upon the correction of the deficiency, payment of civil penalties within a specified time, or the posting of a compliance security approved by appropriate governmental authority.
- v. Stop Work Orders. Whenever a building, sign, or structure, or part thereof is being constructed, reconstructed, altered, or repaired in violation of this Ordinance, Staff may order the work to be immediately stopped.
 1. The stop work order shall be in writing and directed to the owner, occupant, or person doing the work. The stop work 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.
 2. Such action shall be in accordance with G.S.160D-404(b). Violation of a stop work order regarding any building deemed unsafe shall constitute a Class 1 misdemeanor.
- vi. Revocation of Permits. Staff may revoke and require the return of a permit 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; for refusal or failure to comply with the requirements of any applicable State or local laws, or for false statements or misrepresentations made in securing the permit. Any permit mistakenly issued in violation of an applicable State or local law may also be revoked. (See G.S.160D-403(f) for statutory authorization by law.)
- vii. Penalties. Any violation of this Ordinance shall be subject to remedies as provided by G.S.160D-404(c).

E. Civil Penalties – Assessment and Procedures:⁴⁵²

- i. Penalties. Any person who violates any provisions of this Ordinance shall be subject to assessment of a civil penalty in the amount prescribed as follows:

1. Warning Citation	No Penalty
2. Civil Penalty offense. ⁴⁵³	\$500.00 a day per individual

If the offender fails to pay the civil penalties within fifteen (15) days after having been cited, the County may recover the penalties and cost of collection, including attorney fees and court costs, as permitted by law in a civil action in the nature of debt. Penalties collected shall be distributed in accordance with applicable law.

- ii. Notice. No civil penalty shall be assessed until the person alleged to be in violation has been notified of the violation in accordance with the provisions of this Section. If after receiving a notice of violation, the owner or other violator fails to take corrective action within the prescribed period of time, a civil penalty may be imposed under this Section in the form of a citation. The citation shall be served in the same manner of a Notice of Violation. The citation shall state the nature of the violation, the civil penalty to be imposed upon the violator, and shall direct the violator to pay the civil penalty within fifteen (15) days of the date of the notice.
- iii. 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 the Ordinance may be held responsible for the violation and subject to the civil penalties and remedies herein provided.
- iv. Continuing Violation. For each day thereafter, if the violation is not corrected, the violator will be guilty of an additional and separate offense and subject to additional civil penalty.
- v. Demand for Payment. Staff shall make written demand for payment upon the property owner or the person in violation and shall set forth in detail a description of the violation for which the civil penalty has been imposed.
- vi. Nonpayment. If payment is not received or equitable settlement reached within thirty (30) days after demand for payment is made, the matter shall be referred to legal counsel for institution of a civil action in Union County Superior Court for recovery of the civil penalty, reasonable attorney fees and court costs. Provided, however, if the civil penalty is not paid within the time prescribed, Staff may have a lien for all cost incurred placed upon the property that is the subject of the violation.

⁴⁵² Staff recommends the Town study the possible need to modify civil penalties, specifically to increase penalties as issues are ignored by violators.

⁴⁵³ NFOCUS Staff would recommend this be increased to \$500 a day.

F. Other Powers and Actions

- i. 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.
- ii. Previous Enforcement. Nothing in this Section shall prohibit the continuation of previous enforcement actions.

G. Remedies Cumulative and Continuous

- i. Cumulative Violations. All such remedies provided herein shall be cumulative. To the extent that North Carolina 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.
- ii. Repeat Violations. If an owner or occupant repeats the same violation, on the same parcel, within a five-year period from the date of the initial violation, it shall be a continuation of the initial violation and shall be subject to additional penalties and remedies.

Sec. 12-6 Additional Requirements – Special Flood Hazard Areas.⁴⁵⁴

A. Actions in Event of Violation:

- i. Identified violations of the Special Flood Hazard Area shall be sent a Notice of Violation. The Notice shall detail the nature of the violation and schedule a hearing with the Floodplain Administrator to review the situation.
- ii. This hearing shall be held before the Floodplain Administrator at a designated place and time, not later than ten business days after the date of the Notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter.
- iii. Following the hearing, the Floodplain Administrator may issue such order to alter, vacate, or demolish the structure; or to remove fill as appears appropriate.

B. Order to Take Corrective Action

- i. If, upon a hearing held pursuant to the notice prescribed above, the Floodplain Administrator shall find that the structure or development is in violation of this Ordinance, he or she shall make an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than 60 days.
- ii. Where the Floodplain Administrator finds that there is imminent danger to life or other property, he or she may order that corrective action be taken in such lesser period as may be feasible.
- iii. In the absence of an appeal (see Section), the order of the Floodplain Administrator shall be final.

⁴⁵⁴ Language taken from the new FEMA model Ordinance.

C. Failure to Comply with Order

If the owner of a building or property fails to comply with an order to take corrective action for which no appeal has been made or fails to comply with an order of the governing body following an appeal, the owner shall be guilty of a Class 1 misdemeanor pursuant to NC G.S. § 143-215.58 and shall be punished at the discretion of the court.

Sec. 12-7 Additional Requirements – Watershed Protection Overlay Districts:⁴⁵⁵

- A. Violations of Watershed Protection Overlay district standards shall abide by the procedures articulated in Section 12-6 of this Article and the provisions of this subsection.
- B. In addition to any penalties and remedies available, the state environmental management commission may assess civil penalties in accordance with G.S. 143-215.6(a). Each day that the violation continues shall constitute a separate offense.
- C. If Staff finds that any of the provisions of this Ordinance related to application of watershed protection standards are being violated, they shall notify, in writing, the person responsible for such violation, indicating the nature of the violation, and ordering the action necessary to correct it consistent with Section 12-6 of this Article. Staff shall order discontinuance of the illegal use of land, buildings or structures; removal of illegal buildings or structures, or of additions, alterations or structural changes thereto; discontinuance of any illegal work being done; or shall take any action authorized by this Ordinance to ensure compliance with or to prevent violation of its provisions. If a ruling of Staff is questioned, the aggrieved party may appeal such ruling to the Board of Adjustment in accordance with Section 3.6.2 of the Ordinance.

Sec. 12-8 Soil Erosion, Sedimentation Control and Stormwater Management:

- A. The enforcement of soil erosion, sedimentation control, and stormwater management regulations and permit requirements is the responsibility and purview of the State of North Carolina Department of Environmental Quality (DEQ) and Department of Water Quality (DWQ) respectively.
- B. Violations of applicable soil erosion, sedimentation control, and stormwater management regulations and permit requirements may subject the developer to revocation of their Vance County Zoning Compliance Permit requiring all development activity to cease until applicable violations are addressed.

⁴⁵⁵ This section includes language from the current ordinance. As with the flood development ordinance, NFOCUS Staff will be soliciting feedback from staff on the need to have watershed regulations in their own dedicated chapter of the UDO or spread out and grouped together with similar regulations.