

CHAPTER 9. ENFORCEMENT

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Chapter 9 – Enforcement

9.1 PURPOSE

This article establishes procedures through which the Town seeks to ensure compliance with the provisions of this Ordinance. It also sets forth the remedies and penalties for violations of this Ordinance. The provisions of this article are intended to encourage the voluntary correction of violations, where possible.

9.2 APPLICABILITY

This Ordinance shall apply to all property within the Town of Wallace and its area of jurisdiction. Unless otherwise specified, the Planning Director shall have the authority to administer and enforce the provisions of the Ordinance within this area.

9.3 ENFORCEMENT OFFICER

A. ESTABLISHMENT OF DELEGATED AUTHORITY

The Planning Director may designate one or more persons to assist in the administration and enforcement this ordinance. Orders issued by the Planning Director's designee shall have the effect as if issued by the Planning Director. The Planning Director, or designee, is authorized to enter any premises within the jurisdiction of the Town at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials; provided, however, that the appropriate consent has been given for inspection of areas not open to the public or that an appropriate inspection warrant has been secured.

B. GENERAL DUTIES

In addition to the duties of the Planning Director as identified in *Section 2.7(A)*, the Planning Director shall:

1. Establish and publish application procedures for permits, appeals, and actions pursuant to this ordinance and forms implementing the same;
2. Issue permits and certificates pursuant to this ordinance;
3. Review and approve all development plans and permits to assure that the permit requirements of this ordinance have been satisfied;
4. Interpret the applicability of the provisions of this ordinance in matters where the text does not clearly provide guidance;
5. Maintain all records pertaining to the provisions of this ordinance in his/her office(s) and make said records open for public inspection;
6. Periodically inspect properties and activities for which permits have been issued to determine whether the use(s) is being conducted in accordance with the provisions of this ordinance;
7. Cause to be investigated violations of this ordinance;
8. Enforce the provisions of this ordinance;
9. Issue notice of corrective action(s) when required;
10. Use the remedies provided in this ordinance to gain compliance;
11. Be authorized to gather evidence in support of said activities;
12. Receive appeals and forward cases to the appropriate body; and
13. Perform other duties as may be assigned by the Town Manager and/or Town Council.

9.4 VIOLATIONS

Any of the following shall be a violation of this ordinance and shall be subject to the enforcement remedies and penalties provided by this article and by state law.

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 in this ordinance.

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 Duplin County Register of Deeds Office. 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.

9.5 RESPONSIBLE PERSONS

The owner, tenant, or occupant of any land or structure, or part thereof, and any architect, engineer, builder, contractor, agent, or other person who participates in, assists, directs, creates, or maintains any situation that is contrary to the requirements of this Ordinance may be held responsible for the violation and be subject to the penalties provided herein.

9.6 ENFORCEMENT GENERALLY

A. NOTICE OF VIOLATIONS

Upon the Planning Director's determination that any provision of this Ordinance has been violated, a written notice shall be issued indicating the nature of the violation and ordering the action necessary to correct it. The notice of violation shall be delivered to the holder of the development approval and to the landowner of the property involved, if the landowner is not the holder of the development approval, by personal delivery, electronic delivery, or first-class mail and may be provided by similar means to the occupant of the property or the person undertaking the work or activity. The notice of violation may be posted on the property. The person providing the notice of violation shall certify to the Town Clerk that the notice was provided, and the certificate shall be deemed conclusive in the absence of fraud. Except as provided by G.S. 160D-1123 or G.S. 160D-1206 or otherwise provided by law, a notice of violation may be appealed to the Board of Adjustment pursuant to G.S. 160D-405. Additional written notices may be sent at the Planning Director's discretion.

The final written notice, delivered by certified mail, which may also be the initial notice, shall state the action the Planning Director intends to take if the violation is not corrected, and shall advise that the Planning Director's order may be appealed to the Board of Adjustment within thirty (30) days of final written notice.

Once the final written notice is delivered, the penalties covered in *Section 9.5, REMEDIES AND PENALTIES*, shall apply.

Suspected violations and complaints can be reported to the Planning Director by phone or in writing. Complainants who provide contact information will be apprised of the outcome of the investigation whereas anonymous complainants will not.

9.7 REMEDIES AND PENALTIES

A. STOP WORK ORDER

Whenever a building, sign, or structure, or part thereof is being constructed, reconstructed, altered, or repaired in violation of this ordinance, the Planning Director may order the work to be immediately stopped. 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. Such action shall be in accordance with N.C.G.S. 160D-404(b), as applicable, or the NC Building Code.

B. DENIAL OF PERMIT OR CERTIFICATE

The Planning Director 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.

C. CONDITIONAL PERMIT OR TEMPORARY CERTIFICATE

The Planning Director 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.

D. REVOCATION OF PERMITS.

The Planning Director, or appropriate issuing authority, 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; refusal or failure to comply with the requirements of 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. Permit revocation shall follow the same development review and approval process required for issuance of the initial approval, including any required notice or hearing, in the review and approval of any revocation of that approval.

E. CRIMINAL PENALTIES

Pursuant to N. C. Gen. Stat., Section 14-4, any person, firm, or corporation convicted of violating the provisions of this Ordinance shall, upon conviction, be guilty of a misdemeanor and shall be fined an amount not to exceed five hundred dollars (\$500).

F. CIVIL PENALTIES

1. Unless otherwise stated in a chapter or section, any act constituting a violation of this Ordinance shall also subject the offender to a civil penalty of One Hundred Dollars (\$100.00), if the offender fails promptly to correct such violation after
 - (a) receiving a final written notice of violation which he does not appeal to the Board of Adjustment within the specified period, or
 - (b) denial of his appeal from a final written notice of violation by the Board of Adjustment.
2. Each day that any violation continues beyond
 - (a) thirty (30) days after receiving final written notice of a violation when no appeal is taken, or

(b) ten (10) days after the Board of Adjustment has denied an appeal shall constitute a separate violation and a separate offense for purposes of the penalties and remedies specified herein.

3. It shall be presumed that all notices of violation are received five (5) days after the date such notices are mailed to the responsible person (*Section 9.3, Responsible Persons*).
4. If the offender fails to pay the penalty within thirty (30) days of receiving final written notice of a violation when no appeal was taken, or within ten (10) days after the Board of Adjustment has denied an appeal, the penalty may be recovered by the Town in a civil action in the nature of the debt. Provided, however, if the civil penalty is not paid within the time prescribed, the Planning Director may have a criminal summons or warrant issued against the violator. Upon conviction, the violator shall be subject to any criminal penalty the court may impose pursuant to N.C.G.S. 14-4.

G. ADDITIONAL PENALTIES

In addition to the penalties and remedies above, the Planning Director shall pursuant to authorization by the Town Council, institute any appropriate action or proceedings to prevent, restrain, correct, or abate a violation of the Ordinance or to prevent use or occupancy of the building, structure or land so long as said violation continues.

H. 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.

I. INJUNCTION

Any violation of this article or of any condition, order, requirement or remedy adopted pursuant hereto may be restrained, corrected, abated, mandated or enjoined by other appropriate proceeding pursuant to state law.

J. JUDICIAL ENFORCEMENT

When any person is in violation of the provisions of this ordinance, the town through the Town Attorney, may petition the Superior Court of Justice for the issuance of a restraining order or a preliminary and permanent injunction which restrains or compels the activities in question.

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