

ARTICLE IV

ENFORCEMENT AND PENALTIES

4.1 Complaints Regarding Violations

Whenever the zoning administrator or code enforcement officer receives a complaint alleging a violation of this ordinance, the zoning administrator or code enforcement officer shall investigate the complaint, take whatever action is warranted and inform the complainant in writing (if requested) what actions have been or will be taken.

4.2 Persons Liable

The owner, tenant, or occupant of any building or land or part thereof and any architect, 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 suffer the penalties and be subject to the remedies herein provided.

4.3 Procedures Upon Discovery of Violations

(a) Inspections. The Zoning Administrator or Code Officer may inspect work undertaken pursuant to a development approval to assure that the work is being done in accordance with applicable State and local laws and of the terms of the approval. In exercising this power, staff are 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 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) If the zoning administrator or code enforcement officer finds that any provision of this ordinance is being violated, he shall send a written notice to the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it. Additional written notices may be sent at the zoning administrator's or code enforcement officer's discretion.

(c) The final written notice (and the initial written notice may be the final notice) shall state what action the zoning administrator or code enforcement officer intends to take if the violation is not corrected and shall advise that the zoning administrator's or code enforcement officer's decision or order may be appealed to the board of adjustment.

(d) Notwithstanding the foregoing, in cases when delay would seriously threaten the effective enforcement of this ordinance or pose a danger to the public health, safety, or welfare, the zoning administrator or code enforcement officer may seek enforcement without prior written notice by invoking any of the penalties or remedies authorized by this Article.

(e) The person providing the notice of violation shall certify to the Town file that the notice was provided, and the certificate shall be deemed conclusive in the absence of fraud.

4.4 Penalties and Remedies for Violations

(a) Violations of the provisions of any development regulation or failure to comply with any of its requirements, including violations of any conditions and safeguards established in connection with any development approval, shall

be enforced by the following remedies provided in G.S. 160A-175:

(1) Provide that violation shall subject the offender to an one hundred dollar (\$100.00) civil penalty to be recovered by the Town in a civil action in the nature of debt if the offender does not pay the penalty within ten (10) days from the date of the notice of violation letter, (date the offender was cited for violation of the ordinance).

(2) Provide that development regulation be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction. In such case, the General Court of Justice shall have jurisdiction to issue such orders as may be appropriate, and it shall not be a defense to the application of the Town for equitable relief that there is an adequate remedy at law.

(3) That makes unlawful a condition existing upon or use made of real property may be enforced by injunction and order of abatement, and the General Court of Justice shall have jurisdiction to issue such orders. When a violation of such an ordinance occurs, the Town may apply to the appropriate division of the General Court of Justice for a mandatory or prohibitory injunction and/or order of abatement commanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property. The action shall be governed in all respects by the laws and rules governing civil proceedings, including the Rules of Civil Procedure in general and Rule 65 in particular (when seeking an injunction).

(4) In addition to an injunction, the court may enter an order of abatement as a part of the judgment in the cause. An order of abatement may direct that buildings or other structures on the property be closed, demolished, or removed; that fixtures, furniture, or other movable property be removed from buildings on the property; that grass and weeds be cut; that improvements or repairs be made; or that any other action be taken that is necessary to bring the property into compliance with the ordinance. If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, he may be cited for contempt, and the Town may execute the order of abatement. The Town shall have a lien on the property for the cost of executing an order of abatement in the nature of a mechanic's and materialman's lien. The defendant may secure cancellation of an order of abatement by paying all costs of the proceedings and posting a bond for compliance with the order. The bond shall be given with sureties approved by the clerk of superior court in an amount approved by the judge before whom the matter is heard and shall be conditioned on the defendant's full compliance with the terms of the order of abatement within a time fixed by the judge. Cancellation of an order of abatement shall not suspend or cancel an injunction issued in conjunction therewith.

(5) The Town's ordinance may be enforced by any one, all, or a combination of the remedies authorized and prescribed by this Article.

(6) Each day's continuing violation shall be a separate and distinct offense.

(b) First Offense.

(1) Any act constituting a violation of the provisions of this ordinance or a failure to comply with any of its requirements, including violations of any conditions and safeguards established in connection with the grants of variances or special use permits, within a twelve (12) month period, shall also subject the offender to a civil penalty.

(2) The notice of violation letter:

(a) 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);

(b) may be delivered to any person liable including the occupant of the property and/or the person undertaking the work or activity;

(c) shall be delivered by personal delivery, electronic delivery, or first-class mail;

(d) shall be posted in a conspicuous place on the property;

(e) shall indicate that the violation exists, and the violation must be remedied within ten (10) days of the date of the letter; and

(f) shall also state that upon expiration of the ten (10) day warning period, the offender shall be subject to a civil penalty of one hundred dollar (\$100.00) for each day that the violation remains on the property.

(3) At any time beyond the expiration of the ten (10) day period, a civil penalty letter:

(a) 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);

(b) may be delivered to any person liable including the occupant of the property and/or the person undertaking the work or activity;

(c) shall be delivered by personal delivery, electronic delivery, or first-class mail;

(d) shall be posted in a conspicuous place on the property; and

(e) shall notify the offender that a one hundred dollar (\$100) daily civil penalty is in effect beginning on the date of the letter and running up to and including the date of the violation has been remedied.

(4) Civil Action: Should a violation continue to exist by the thirtieth (30th) day after the original notification, the Town may seek to recover the penalty together with all costs (including but not limited to administrative, postage, contractors, and abatement) by filing a civil action in the general court of justice in the nature of a suit to collect a debt and seeking appropriate injunctive relief to remedy the violation.

(c) Repeat Offense.

(1) Any violation reoccurring on the same property by the same offender more than once within a twelve (12)-month period shall be considered a repeat offense provided the reoccurrence is a violation of the same section(s) of this Ordinance as previous offense(s)

(2) The notice of violation letter:

(a) 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);

(b) may be delivered to any person liable including the occupant of the property and/or the person undertaking the work or activity;

(c) shall be delivered by personal delivery, electronic delivery, or first-class mail;

(d) shall be posted in a conspicuous place on the property;

(e) shall indicate that the violation exists, and the violation must be remedied within five (5) days of the date of the letter; and

(f) shall also indicate that upon the expiration of the five (5) day warning period, the offender shall be subject to a civil penalty of one hundred dollar (\$100.00) for each day that the violation remains on the property.

(3) At any time beyond the expiration of the five (5) day period, a civil penalty letter:

(a) 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);

(b) may be delivered to any person liable including the occupant of the property and/or the person undertaking the work or activity;

(c) shall be delivered by personal delivery, electronic delivery, or first-class mail;

(d) shall be posted in a conspicuous place on the property; and

(e) shall notify the offender that a one hundred dollar (\$100) daily civil penalty is in effect beginning on the date of the letter and running up to and including the date of the violation has been remedied.

(4) Civil Action: Should a violation continue to exist by the thirtieth (30th) day of the original notification, the Town shall seek to recover the penalty together with all costs (including but not limited to administrative, postage, contractors, and abatement) by filing a civil action in the general court of justice in the nature of a suit to collect a debt, and seeking appropriate injunctive relief to remedy the violation.

(d) This ordinance may also be enforced by any appropriate equitable action.

(e) Each day that any violation continues after notification by the zoning administrator or code enforcement officer that such violation exists shall be considered a separate and distinct offense for purposes of the penalties and remedies specified in this section.

(f) Any one, all, or any combination of the foregoing penalties and remedies may be used to enforce this Ordinance.

(g) If a building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure or land is used or developed in violation of Chapter 160D or of any development regulation or other regulation made under authority of Chapter 160D, the Town, in addition to other remedies, may institute any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, use, or development; to restrain, correct or abate the violation; to prevent occupancy of the building, structure or land; or to prevent any illegal act, conduct, business or use in or about the premises.

4.5 Permit Revocation

(a) In addition to initiation of enforcement actions under G.S. 160D-404, development approvals may be revoked by the Town issuing the development approval by notifying the holder in writing stating the reason for the revocation.

(b) The Town shall follow the same development review and approval process required for issuance of the development approval, including any required notice or hearing, in the review and approval of any revocation of that approval.

(c) Development approvals shall be revoked for:

(1) any substantial departure from the approved application, plans, or specifications;

(2) refusal or failure to comply with the requirements of any applicable local development regulation or any State law delegated to the Town for enforcement purposes in lieu of the State; or

(3) false statements or misrepresentations made in securing the approval. Any development approval mistakenly issued in violation of an applicable State or local law may also be revoked.

(d) Quasi-Judicial Approvals

(1) The burden of presenting evidence sufficient to authorize the permit-issuing authority to conclude that a permit should be revoked for any of the reasons set forth above shall be upon the party advocating that position. The burden of persuasion shall also be upon that party.

(2) A motion by a board to revoke a permit shall include, insofar as practicable, a statement of the specific reasons or finding of fact that support the motion.

(e) Administrative Approvals

(1) Before a development approval may be revoked, the administrator shall give the permit recipient ten (10) days' notice of intent to revoke the permit and of his right to obtain an informal hearing on the allegations.

(2) If the permit is revoked, the administrator shall provide to the permittee a written statement of the decision and the reasons, therefore.

(f) The revocation of a development approval by a staff member may be appealed pursuant to G.S. 160D-405. If an appeal is filed regarding a development regulation adopted by the Town pursuant to Chapter 160D, the provisions of G.S. 160D-405(e) regarding stays apply.

(g) No person may continue to make use of land or buildings in the manner authorized by any development approval after such permit has been revoked in accordance with this section.

4.6 Limitations

(a) Enforcement Defense. Nothing in 160D-1405 or in G.S. 1-54(10) or G.S. 1-54.1 bars a party in an action involving the enforcement of a development regulation or in an action under G.S. 160D-1403.1 from raising as a claim or defense in the proceedings the enforceability or the invalidity of the ordinance. Nothing in 160D-1405 or in G.S. 1-54(10) or G.S. 1-54.1 bars a party who files a timely appeal from an order, requirement, decision, or determination made by an administrative official contending that the party is in violation of a development regulation from raising in the judicial appeal the invalidity of the ordinance as a defense to the order, requirement, decision, or determination. A party in an enforcement action or appeal may not assert the invalidity of the ordinance on the basis of an alleged defect in the adoption process unless the defense is formally raised within three (3) years of the adoption of the challenged ordinance.

(b) Seven years (per G.S. 1-49). Within seven years an action against the owner of an interest in real property by the Town for a violation of a land-use statute, ordinance, or permit or any other official action concerning land use carrying the effect of law. This subdivision does not limit the remedy of injunction for conditions that are actually injurious or dangerous to the public health or safety but does prescribe an outside limitation of seven years from the earlier of the occurrence of any of the following:

(1) The violation is apparent from a public right-of-way.

(2) The violation is in plain view from a place to which the public is invited.

(c) Five Years (per G.S. 1-51). Within five years against the owner of an interest in real property by the Town for a violation of a land-use statute, ordinance, or permit or any other official action concerning land use carrying the effect of law. This subdivision does not limit the remedy of injunction for conditions that are actually injurious or dangerous to the public health or safety. The claim for relief accrues upon the occurrence of the earlier of any of the following:

(1) The facts constituting the violation are known to the Town Board, an agent, or an employee of the Town.

(2) The violation can be determined from the public record of the Town.

(d) Termination of Grandfathered Status. When a use constituting a violation of a zoning or unified development ordinance is in existence prior to adoption of the zoning or unified development ordinance creating the violation, and that use is grandfathered and subsequently terminated for any reason, the Town shall bring an enforcement action within ten (10) years of the date of the termination of the grandfathered status, unless the violation poses an imminent hazard to health or public safety.

4.7 Stop Work Orders

(a) Whenever any work or activity subject to regulation pursuant to this Chapter 160D or other applicable Town development regulation or any State law delegated to the Town for enforcement purposes in lieu of the State is undertaken in substantial violation of any State or local law, or in a manner that endangers life or property, staff may order the specific part of the work or activity that is in violation or presents such a hazard to be immediately stopped.

(b) The order shall be in writing, directed to the person doing the work or activity, and shall state the specific work or activity to be stopped, the reasons therefore, and the conditions under which the work or activity may be resumed.

(c) A copy of the order shall be delivered to the holder of the development approval and to the owner of the property involved (if that person is not the holder of the development approval) by personal delivery, electronic delivery, or first-class mail.

(d) The person or persons delivering the stop work order shall certify to town that the order was delivered, and that certificate shall be deemed conclusive in the absence of fraud.

(e) Except as provided by G.S. 160D-1112 and 160D-1208, a stop work order may be appealed pursuant to G.S. 160D-405. No further work or activity shall take place in violation of a stop work order pending a ruling on the appeal. Violation of a stop work order shall constitute a Class 1 misdemeanor.