

Chapter 9: - ENFORCEMENT

9.1 - VIOLATIONS

Any of the following shall be a violation of this Unified Development Ordinance and shall be subject to the enforcement remedies and penalties provided by this Chapter 9 and North Carolina State Law.

9.1.1 - Development Without a Permit

To engage in any development, use, construction, remodeling, or other activity of any nature upon land or improvements thereto subject to the jurisdiction of this Ordinance without all the required permits, certificate, or other forms of authorization as set forth in this Development Ordinance.

9.1.2 - Development Inconsistent with a Permit

To engage in any development, use, construction, remodeling, or other activity of any nature upon land or improvements thereto inconsistent with any approved plan, permit, certificate, or other forms of authorization as set forth in this Ordinance.

9.1.3 - Violation of Conditions Imposed

To violate by act or omission any term, variance, modification, condition, or qualification placed by the Board of Commissioners, the Planning Director, or the building official, in accordance with this Development Ordinance, upon any required permit, certificate, or other form of authorization for the use, development, or other activity upon land or improvements thereto.

9.1.4 - Use in Violation

To use any building, structure, or land in violation or contravention of this Development Ordinance or any other regulation made under the authority of this Development Ordinance.

9.1.5 - Subdivide in Violation

To subdivide land in violation or to transfer land, sell land by reference to, exhibition of, or any other use of a plat or map showing a subdivision of land before the plat or map has been properly approved under this Ordinance and recorded in the Office of the Carteret County Register of Deeds. The description by metes and bounds in the instrument of transfer or other documents used in the process of selling or transferring land does not exempt the transaction from violation of this Ordinance.

9.1.6 - Violation of Mobile Home Park/Recreational Vehicle Park Standards

Violations of any provisions of this Development Ordinance regarding the creation, construction, operation, or maintenance of a mobile home park or recreational vehicle park (including violations of conditions and safeguards established in connection with grants of variances) shall constitute a misdemeanor. Any person who violates the mobile home park or recreational vehicle park regulations in this Development Ordinance or fails to comply with any of their requirements shall, upon conviction thereof, be punished in accordance with section 1-6 of the Town Code and section 9.4 of this Development Ordinance.

9.1.7 - Violations of Sign Regulations

Any person violating any of the sign regulations in section 6.6 shall be subject to enforcement, penalties, and remedies pursuant to sections 9.4 and 9.5.4 of this Development Ordinance.

9.1.8 - Continued Violations

To continue any of the above violations is a separate and distinctive offense.

9.1.9 - Recurring Violations

A violation that has been corrected but recurs within three hundred sixty-five (365) days is a continued violation subject to any one (1) or combination of the penalties for violation pursuant to sections 9.3, 9.4, or 9.5 or otherwise available at law.

9.2 - RESPONSIBLE PERSONS

The owner of each property located within the Town is responsible for ensuring that development, redevelopment, use of the land and improvements to land on that property occur and are maintained in compliance with this Ordinance. In addition, each tenant of property located within the Town is responsible for ensuring that the use of the land and improvements to land on that property occur and are maintained in compliance with this Ordinance.

9.3 - ENFORCEMENT GENERALLY

9.3.1 - 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 Planning Director, or designee, who shall properly record such complaint, investigate in a timely manner, and take appropriate action as provided by this Ordinance.

9.3.2 - Enforcement Procedure Generally

- (1) A Notice of Violation indicating the nature of the violation, the section of this Ordinance that has been violated, the order giving the necessary action needed to correct the violation, and the time frame for which the violation is to be corrected shall be sent to the person or property owner responsible for the violation. The Planning Director may, but is not obligated to, issue an initial Notice of Violation allowing the person or property owner a period of time to correct the violation and providing that a final Notice of Violation will not be issued if the violation is corrected within that time.
- (2) The final Notice of Violation (and the initial Notice of Violation may be the final Notice of Violation) shall state what the course of action is intended if the violation is not corrected within the specified time frame as ordered. The Notice of Violation shall also advise the violator of their rights to appeal the Notice of Violation to the Board of Adjustment within thirty (30) days of the date the Notice of Violation was issued. A civil penalty can not be appealed.
- (3) If the owner, occupant, or person responsible for the violation fails to comply with the Notice of Violation from which no appeal has been taken, or from a final decision by the Board of Adjustment following an appeal, the owner, occupant, or person responsible for the violation shall be subject to any one (1) or combination of the remedies and penalties authorized in sections 9.4 and 9.5.

9.3.3 - Enforcement of Flood Damage Prevention Regulations

In the case of any violation or alleged violation of flood damage prevention regulations or floodplain regulations in this Ordinance, or any applicable law, the floodplain administrator shall notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law pertaining to their property. If the owner fails within thirty (30) days from the date of notice to commence corrective action, and thereafter to proceed with due diligence to

make all necessary corrections, and fails to appeal the matter to the Board of Adjustment, the Town may take necessary corrective action pursuant to section 9.5.1 and any other applicable provision of sections 9.4 or 9.5 permitted by law.

9.3.4 - Enforcement of Stormwater Management Regulations

In the case of any violation or alleged violation of stormwater management regulations, the Town shall give the owner written notice of the nature of the existing defects. If the owner fails within thirty (30) days from the date of notice to commence corrective action, and thereafter to proceed with due diligence to make all necessary corrections, and fails to appeal the matter to the Board of Adjustment, the Town may take necessary corrective action pursuant to section 9.5.2, and any other applicable provision of sections 9.4 or 9.5 permitted by law. If the Town takes necessary corrective action, the cost shall become a lien on the real property until paid, or if the property is under common ownership, such as an owners' association, the cost shall be assessed equitably among all property owners in the subdivision, multi-family residential development, and/or commercial structure.

9.3.5 - Enforcement of Sign Regulations

Any person violating provisions of section 6.6 shall be notified of the nature of the violation, via certified mail, posted to the mailing address of record at the Town's tax office, and shall be subject to those penalties and remedies described in section 9.5.4 and any other applicable provisions of sections 9.4 or 9.5 permitted by law.

9.4 - GENERAL REMEDIES AND PENALTIES

Failure to comply with any provision of this Development Ordinance is declared unlawful. The remedies and enforcement powers in this section 9.4 may be used to administer and enforce this Ordinance, provided, that when the provisions of section 9.5 apply they shall supersede any inconsistent provisions in section 9.4.

9.4.1 - Equitable Remedies Through the Courts

The Town may apply to a court of law for any appropriate equitable remedy to enforce the provisions of this Ordinance. It is not a defense to the Town's application for equitable relief that there are other remedies provided under general law or this Ordinance.

(1) **Injunction**

Enforcement of the provisions of this Ordinance may also be achieved by injunction. When a violation occurs, the Town may, either before or after the initiation of other authorized action, apply to the appropriate division of the court for a mandatory or prohibitory injunction commanding the defendant to correct the unlawful condition or cease the unlawful use of the property.

(2) **Order of Abatement**

In addition to an injunction, the Town 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.

(3) 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. If so authorized to do so by the Court, the Town may execute the order of abatement and will have a lien on the property in the nature of a mechanic's and material man'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.

9.4.2 - Equitable Remedies Through the Town

The Town may enforce this Ordinance through the use of any of the equitable remedies in this section 9.4.2, provided, that if the provisions of section 9.5 apply they shall supersede any inconsistent provisions in this section 9.4.2.

(1) Stop Work Order Issuance and Revocation of All Permits

- (A) Whenever a building or structure is being constructed, demolished, renovated, altered, or repaired in substantial violation of any applicable provision of this Ordinance, the building official may order the revocation of the zoning permit for such work and request a Stop Work Order be issued by the Town. The stop work order shall be in writing, directed to the person doing the work, and shall state the specific work to be stopped, the specific reasons for cessation and the action(s) necessary to lawfully resume work.
- (B) The Town may revoke any zoning permit by written notification to the permit holder when violations of this Development 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 Development Ordinance.

9.4.3 - Criminal Penalties

Pursuant to North Carolina General Statute 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 (\$500.00). No fine shall exceed fifty dollars (\$50.00) unless the Ordinance expressly states that the fine is greater than fifty dollars (\$50.00).

9.4.4 - Civil Penalties

In addition to the other remedies cited in this Ordinance for the enforcement of its provisions, and pursuant to North Carolina General Statute 160A-175, the regulations and standards in this Ordinance may be enforced through the issuance of civil penalties by the building official. Subsequent citations for the same violation may be issued by the Town if the offender does not pay the citation after it has been issued unless the offender has sought an appeal to the actions of the Building Inspector or through the Board of Adjustment. The penalties listed in Table 9.4 are hereby established. If the offender fails to pay the civil penalties within seven (7) days after having been cited, the Town may recover the penalties in a civil action in the nature of debt.

TABLE 9.4: CIVIL PENALTIES

Notice of Violation	Correct Violation Within 15 Days
First Citation	\$50.00
Second Citation for Same Offense	\$100.00
Third and Subsequent Citations for Same Offense	\$200.00

9.4.5 - Cumulative Penalties

More than one (1) of the listed remedies and enforcement powers may be used in connection with a specific violation, and use of one (1) listed remedy or enforcement power shall not preclude the Town from concurrently or later using a different remedy or enforcement power.

9.5 - SPECIAL REMEDIES, AND PENALTIES

9.5.1 - Flood Damage Prevention Regulations

(1) Violations to be Corrected

When the Floodplain Administrator finds violations of applicable state and local laws; it shall be his or her duty to notify the owner or occupant of the building of the violation. The owner of occupant shall immediately remedy each of the violations of law cited in such notifications.

(2) Actions in Event of Failure to Take Corrective Action

If the owner of a building or property fails to take prompt corrective action in response to a notification from the floodplain administrator, the floodplain administrator shall give the owner written notice, by certified or registered mail to the owner's last known address or by personal service, stating:

- (A) That the building or property is in violation of the flood damage prevention regulations;
- (B) That a hearing will be held before the floodplain administrator at a designated place and time, not later than ten (10) 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; and
- (C) That following the hearing, the floodplain administrator may issue such order to alter, vacate, or demolish the building; or to remove fill as appears appropriate.

(3) Order to Take Corrective Action

If, upon a hearing held pursuant to the notice prescribed above, the floodplain administrator shall find that the building or development is in violation of the flood damage prevention regulations, 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 sixty (60) days. Where the floodplain administrator finds that there is imminent danger to life or other property, he may order that corrective action be taken in such lesser period as may be feasible.

(4) Appeal

Any owner who has received an order to take corrective action may appeal the order to the Board of Adjustment by giving notice of appeal in writing to the floodplain administrator within ten (10) days following issuance of the final order. In the absence of an appeal, the order of the floodplain administrator shall be final. The Board of Adjustment shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.

(5) Failure to Comply with Order

If the owner of a building or property fails to comply with an order to take corrective action from which no appeal has been taken, or fails to comply with an order of the governing body following an appeal, he shall be guilty of a misdemeanor and shall be punished in the discretion of the court.

9.5.2 - Stormwater Management Regulations

(1) Public Health Nuisance

Any development activity that is commenced without prior approval of a stormwater management plan or is conducted contrary to an approved stormwater management plan as required by this Ordinance may be deemed a public health nuisance and may be restrained by injunction or otherwise abated in a manner provided by law. (G.S. 160A-175, 160A-193)

(2) Civil Penalties

In addition to or as an alternative to any penalty provided herein or by law, any person who violates the stormwater management regulations is subject to a civil penalty. The civil penalty shall be not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00). Such person shall be guilty of a separate offense for each day during which the violation occurs or continues. If the violator does not pay a civil penalty assessed by the Town within thirty (30) days after it is due, the Town may institute a civil action to recover the amount of the penalty assessed in the superior court of Carteret County. An assessed penalty that is not contested is due when the violator is served with a notice of violation. An assessment that is contested is due at the conclusion of the administrative and/or judicial review of the assessment (NCGS 160A-175).

(3) Abatement and Restoration of Land

Any violator may be required to restore the land disturbed by the violator to its undisturbed condition. In such cases, the Town shall bring an action for mandatory and/or prohibitory injunction and order of abatement. Should the violator fail to restore the land in accordance with the court's order of abatement, the Town may execute the order of abatement and levy a lien upon the property restored (G.S. 160A-175).

(4) Notice of Violation

(A) Stop Work Order

When the Stormwater Administrator determines that development activity is not being carried out in accordance with the requirements of this Ordinance, the building official shall issue a stop work order and a written notice of violation to the owner of the property. The notice of violation shall contain:

- (i) The name and address of the owner or developer;
- (ii) The street address when available or a description of the building structure, or land upon which the violation is occurring;
- (iii) A statement specifying the nature of the violation;

- (iv) A description of the remedial actions necessary to bring the development activity into compliance with this Ordinance and a time schedule for completion of such remedial action;
- (v) A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed;
- (vi) A statement that the Town's determination of violation may be appealed to the Board of Adjustment by filing a written notice of appeal with the Town's building official within fifteen (15) days of service of notice of violation.

(B) Method of Serving Notice

The notice of violation shall be served upon the person to whom it is directed in any of, or any combination of, the following methods:

- (i) By personal service upon the violator;
- (ii) By mailing a copy of the notice of violation by certified mail, postage prepaid, return receipt requested to such person at his/her last known address. Notice shall be deemed to be received if no return is received within ten (10) days of the date of such mailing.
- (iii) By posting a notice in a visible location upon the property where a violation is or was occurring. Notice of the violation shall be deemed to be received by the violator immediately upon such posting.

(C) Appeal

A notice of violation issued pursuant to this section constitutes a determination from which an administrative appeal may be taken to the Board of Adjustment.

(D) Right to Enforcement

No action, inaction, or election of remedy shall be construed as a waiver of the Town's right to enforce any part of this Ordinance by any and all remedies provided herein.

9.5.3 - Dunes and Vegetation Protection Regulations

Construction or land disturbance without a required dunes and vegetation permit, or failure to comply with the requirements of an approved dunes and vegetation permit shall be considered a violation of this Ordinance and shall be subject to the immediate issuance of a stop work order by the Town and to the other procedures and remedies below as applicable.

(1) Rebuilding of Damaged Dunes

Any dune in the required natural area that is damaged during construction, or damage occurring as a result of such construction, or excavated in violation of this Ordinance shall be restored to its original state using similar materials and stabilizing vegetation. It shall be the responsibility of the property owner to guarantee the protection of all identified dune systems and not allow the natural topography of the lot altered beyond that which has been authorized in the permit. The rebuilding of a dune shall be the ultimate responsibility of the property owner. Any dune in the required natural area that has been damaged or excavated in violation of this Ordinance shall be restored within sixty (60) days of notice.

(2) Replacement of Damaged Trees

Any trees in the required natural area that have been killed, damaged, destroyed or removed in violation of this Ordinance shall be restored or replaced within sixty (60) days of notice. All replacement trees shall be at least ten (10) feet in height and have a caliper of not less than three (3) inches.

(3) **Conformance with Authorized Permit**

Prior to the issuance of a certificate of occupancy for the development site, the site shall be inspected for the purpose of certifying compliance with the requirements of the authorized permit. Posting surety in lieu of actual compliance with an authorized permit may be permitted, providing that compliance with the authorized permit shall be obtained within sixty (60) days.

(4) **Daily Violation Charge**

Each day after the 60-day period that the violator fails to perform such restoration or replacement shall constitute a new and separate civil violation.

(5) **Individual Tree Violations**

For purposes of the dunes and vegetation regulations, the removal of each tree and the failure to replace each tree on a given parcel of land shall be viewed as individual violations of these regulations.

(6) **Civil Penalty for Violation**

Each violation of Section 9.5.3 of this Development Ordinance shall incur a civil penalty in the amount of one thousand dollars (\$1,000.00).

9.5.4 - Violation of Sign Regulations

If, within ten (10) days of the date of the mailing of the notice described in section 9.3.5 the party fails to bring the sign into compliance with this Ordinance, fails to remove the sign or fails to provide to the Town any evidence of the party's good faith effort to do either, then the party shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of one hundred dollars (\$100.00) per day, per violation, retroactive to the date of mailing of the violation notice and any or all of the following:

(1) **Abatement**

In case any sign is erected, constructed, reconstructed, altered, repaired, converted or continued in violation of this Ordinance, the Town, or any person who would be damaged by such violation, in addition to other remedies, may institute an action for injunction or mandamus, or other appropriate action or proceeding to prevent or abate such violations.

(2) **Impoundment of Signs**

(A) The Town shall have the authority to remove and impound any sign, without further notice, where such sign is not in compliance with this Ordinance, and:

- (i) After ten (10) days of the mailing of notification of a violation in accordance with section 9.3.5, the owner has failed to remove the sign or bring it into compliance with this Ordinance, or has failed to provide the Town with the evidence of a good faith effort to make such removal or compliance, or
- (ii) The sign is placed within any street, state road or highway right-of-way or other right-of-way, or attached to trees, fence posts, telephone and/or utility poles, and other than natural features. (See section 6.6.2(6)(L) of this Development Ordinance).

(B) The Town shall impound such signs for a period of then (10) days. The owner of a sign impounded may recover it upon payment of fifty dollars (\$50.00) for each sign, prior to the expiration of the ten-day impoundment period. In the event a sign is not claimed within ten (10) days of its impoundment, the Town shall have the authority to dispose of such sign.

(C) In the event a violating sign requires special resources for its removal and impoundment, the Town, or independent contractor secured by the Town, shall remove the sign and the resulting charges shall be assessed to the owner and/or lessee.