

## Article 5. Enforcement

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### 30-5-1 Violations

Any of the following are violations of this ordinance and are subject to the remedies and penalties provided by this Article and by state law.

#### 30-5-1.1 Development without Permit

To engage in any development, use, construction, remodeling, or other activity of any nature under the jurisdiction of this ordinance without first obtaining all permits, certificates, or other forms of authorization required by this ordinance.

#### 30-5-1.2 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.

#### 30-5-1.3 Violation by Act or Omission

To violate, by act or omission, any term, variance, modification, condition, or qualification placed by the City 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.

#### 30-5-1.4 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 by this ordinance.

#### 30-5-1.5 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 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.

#### 30-5-1.6 Continue a Violation

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

#### 30-5-1.7 Violations of Referenced Manuals

To violate manuals or other documents for which this ordinance requires compliance.

#### 30-5-1.8 Violations of Conditions of Approval

To violate any conditions attached to a development approval.

## **30-5-2 Inspections and Investigations**

### **30-5-2.1 Inspections**

Any city employee charged with enforcement of the provisions of this ordinance is authorized, upon presentation of proper credentials or inspection warrant, if necessary, to enter on any premises within the city at any reasonable hour for the purposes of inspection, determination of plan compliance, or other enforcement action. No person may obstruct, hamper, or interfere with any such representative while in the process of carrying out his official duties.

### **30-5-2.2 Investigations**

Any city employee charged with enforcement of the provisions of this ordinance is authorized to conduct investigations deemed necessary to carry out the duties prescribed in this ordinance and, for this purpose, to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any complaints or alleged violations of this ordinance.

### **30-5-2.3 Supporting Documentation**

Any city employee charged with enforcement of the provisions of this ordinance is authorized to require written statements, certificates, certifications, or the filing of reports with respect to pertinent questions relating to complaints or alleged violations of this ordinance.

### **30-5-2.4 Failure to Comply**

Failure of any city employee charged with enforcement of the provisions of this ordinance to observe or recognize conditions that violate this ordinance, or to deny the issuance of a permit, does not relieve the property owner from responsibility for the resulting conditions or damages and does not result in the city, its officers, or agents being responsible for resulting conditions or damages.

## **30-5-3 Enforcement Procedure**

When any city employee charged with enforcement of the provisions of this ordinance investigates an alleged violation and determines that a violation of this ordinance has occurred, that employee must notify the owner and/or occupant of the land, building, structure, sign, or use of the violation. Where applicable, the owner and occupant must remedy the violation at the earliest reasonable date.

### **30-5-3.1 Notice of Violation**

If the owner or occupant of the land, building, structure, sign, or use in violation fails to take prompt corrective action, any city employee charged with enforcement of the provisions of this ordinance must give the owner or occupant written notice (by certified or registered mail to the violator's last known address, by personal service, or by posting notice conspicuously on the property) of the following:

- (A) that the land, building, structure, sign, or use is in violation of this ordinance;
- (B) the nature of the violation, and citation of the section of this ordinance violated;
- (C) the measures necessary to remedy the violation and the time period in which the violation must be corrected, if applicable;
- (D) that penalties or remedies may be assessed; and
- (E) that the party cited has the right to appeal the Notice within 15 days (see Sec. 30-5-3.2).

### **30-5-3.2 Appeal**

Any owner or occupant who has received a Notice of Violation may appeal in writing the decision of any city employee charged with enforcement of the provisions of this ordinance to the Board of Adjustment (unless this ordinance expressly states that another board is responsible for hearing the appeal) within 15 days following the date of the Notice of Violation. The Board of Adjustment, or other designated board, must hear an appeal within a reasonable time, and it may affirm, modify, or revoke the Notice of Violation. In the absence of an appeal, the decision of any city employee charged with enforcement of the provisions of this ordinance shall be final.

### **30-5-3.3 Notice of Appeal Decision**

The decision of the Board of Adjustment on a filed appeal may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested. Otherwise, notice is presumed to be given at the day and time of the hearing, if such party is present.

### **30-5-3.4 Failure to Comply with Notice**

If the owner or occupant of a property fails to comply with a Notice of Violation from which no appeal has been taken, or a final decision by the Board of Adjustment following an upheld appeal, the owner or occupant is subject to such remedies and penalties as may be provided for by state law or by Sec. 30-5-4.3.

### **30-5-3.5 Additional Enforcement Procedures**

Departments may publish and amend from time to time enforcement manuals that provide more detailed guidance on enforcement matters, such as in Sec. 30-5-5.9.

## **30-5-4 Remedies**

### **30-5-4.1 Cumulative**

All available remedies for violations of this ordinance are cumulative. To the extent that North Carolina law may limit the availability of a particular remedy authorized by this ordinance for a certain violation, such remedy remains available for other violations or other parts of the same violation.

### **30-5-4.2 Repeat Violations**

If an owner or occupant repeats the same violation within a 5-year period from the date of the initial violation, that repeat violation will be considered to be a continuation of the initial violation and is subject to additional penalties and remedies.

### **30-5-4.3 Available Remedies**

Any or all of the following may be used to enforce the provisions of this ordinance.

**(A) Injunction**

Any violation of this ordinance or of any condition, order, requirement, or remedy adopted pursuant to this ordinance may be restrained, corrected, abated, mandated, or enjoined by other appropriate proceeding pursuant to state law. The institution of an action for injunctive relief under this section does not relieve any party to such proceedings from any civil or criminal penalty prescribed for violations of this ordinance.

**(B) Civil Penalties**

Any person who violates any provision of this ordinance may be subject to the assessment of a civil penalty in accordance with Sec. 30-5-5.

**(C) Conditional Permit or Temporary Certificate**

Any city employee charged with enforcement of the provisions of this ordinance 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) Stop Work Orders**

Whenever a building, structure, sign, or part thereof is being constructed, reconstructed, altered, or repaired in violation of this ordinance, the Engineering and Inspections Director may order the work to be immediately stopped. The stop work order must 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 must be in accordance with Section 160A-421 of the North Carolina General Statutes or the North Carolina Building Code.

**(E) Revocation of Permits or Certificates**

Any city employee charged with enforcement of the provisions of this ordinance, in consultation with the appropriate department director, may revoke and require the return of a permit by notifying the permit holder in writing, stating the reason for the revocation. Permits or certificates may 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 or certificate. Any permit or certificate mistakenly issued in violation of an applicable state or local law may also be revoked.

**(F) Criminal Penalties**

- 1) Any violation of this ordinance may be enforced as a misdemeanor as provided for by Sections 14-4, subject to a maximum fine of \$500, and 113A-64 of the North Carolina General Statutes, subject to a maximum fine of \$5,000.
- 2) Any person who knowingly or willfully violates any soil erosion and sedimentation control provision of this ordinance, or rule or order adopted or issued pursuant to the soil erosion and sedimentation control provisions, or who knowingly or willfully initiates or continues a land-disturbing activity for which a soil erosion and sedimentation control plan is required, except in accordance with the terms, conditions, and provisions of an approved plan, is guilty of a misdemeanor punishable by imprisonment not to exceed 90 days, or by a fine not to exceed \$5,000, or both.

**(G) State and Common Law Remedies**

In addition to other enforcement provisions contained in this article, the City Council may exercise any and all enforcement powers granted to it by state law or common law.

**(H) Previous Enforcement**

Nothing in this ordinance prohibits continuation of previous enforcement actions.

**30-5-5 Assessment of Civil Penalties****30-5-5.1 Responsible Parties**

Any person who violates any provision of this ordinance, including the owner and/or occupant (when permissible) of any land, building, structure, sign, use of land, or part thereof, and any architect, builder, contractor, agent, or other person who participates or acts in concert, assists, directs, creates, or maintains any condition that is in violation of this ordinance may be held responsible for the violation and subject to the penalties and remedies provided in this ordinance.

**30-5-5.2 Notice**

Civil penalties may not be assessed until the person alleged to be in violation has been notified in accordance with Sec. 30-5-3.1. If after receiving a notice of violation under Sec. 30-5-3.1, the owner or other violator fails to take corrective action or file an appeal, a civil penalty may be imposed under this section in the form of a citation. The citation shall be served in the same manner as 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 15 days of the date of the citation.

**30-5-5.3 Continuing Violation**

For each day the violation is not corrected, the violator will be guilty of an additional and separate offense and subject to additional civil penalty.

**30-5-5.4 Penalties****(A) General**

- 1) The assessment of civil penalties in accordance with this ordinance is not intended to be an exercise of powers delegated to other agencies or entities created by the General Assembly to regulate the proscribed conduct.
- 2) Any person who violates any provision of this ordinance will be subject to assessment of a civil penalty in the amount of \$50.00 for the first violation, \$100.00 for the second violation, \$200.00 for the third violation, and \$500.00 for the fourth and each succeeding violation. These amounts may be modified in accordance with Sec. 30-5-5.9. See Sec. 30-5-5.5 for penalties for tree disturbance violations and Sec. 30-5-5.4(D) for penalties for Temporary Off-Site Real Estate Directional Signs.

**(B) Soil Erosion and Sedimentation Control**

Civil penalties for specific violations of the Soil Erosion and Sedimentation Control regulations of Sec. 30-12-6 are assessed as follows:

**1) Grading Without Permit**

\$500 per day for failure to secure a valid grading permit prior to conducting a land-disturbing activity for which a soil erosion and sedimentation control plan is required.

**2) Failure to Protect**

\$500-\$1,000 per day for failure to take all reasonable measures to protect public property or private property, including lakes and/or natural water-courses, from damage caused by land-disturbing activities.

- 3) Failure to Follow Plan**  
\$300–\$500 per day for failure to conduct a land-disturbing activity in accordance with the provisions of an approved soil erosion and sedimentation control plan.
- 4) Failure to Install Devices**  
\$500–\$1,000 per day for failure, when more than one acre is disturbed (\$250 per day when one acre or less is disturbed), to install erosion and sedimentation control devices sufficient to retain the sediment generated by the land-disturbing activity within the boundaries of the tract and prevent off-site sedimentation.
- 5) Failure to Maintain Measures**  
\$300–\$500 per day for failure to maintain satisfactory erosion and sedimentation control measures, structures and/or devices on the site that are designed to provide protection from the calculated maximum peak rate of runoff from the 10-year storm.
- 6) Failure to Maintain Temporary Measures**  
\$250–\$500 per day for failure to maintain temporary erosion and sedimentation control measures and facilities during the development of the site.
- 7) Failure to Maintain Slopes**  
\$250–\$500 per day for failure on graded slopes and fills to maintain an angle sufficient to retain vegetative cover or other adequate erosion and sedimentation control devices or structures.
- 8) Failure to Cover Slopes**  
\$250–\$500 per day for failure, within 15 days of completion of any phase of grading, to plant or otherwise provide exposed, graded slopes or fills with ground cover, devices, or structures sufficient to restrain erosion.
- 9) Failure to Plant Cover**  
\$250–\$500 per day for failure on a tract when more than one contiguous acre is disturbed, to plant or otherwise provide ground cover sufficient to restrain erosion within 15 business days or 30 days, whichever is the shorter, following completion of construction or development.
- 10) Failure to Revise Plan**  
\$250 per day for failure to file an acceptable, revised soil erosion and sedimentation control plan after being notified of the need to do so.
- 11) Failure to Maintain Buffer**  
\$500–\$1,000 per day for failure to retain a buffer zone of sufficient width along a lake or natural watercourse to confine visible siltation within the 25% of the buffer zone nearest the land-disturbing activity.
- 12) Interference with Official Duties**  
\$500 per day for obstructing, hampering, or interfering with any authorized agent of the city or the North Carolina Sedimentation Control Commission while in the process of carrying out his or her official duties.

**13) Soil Erosion and Sedimentation Control Plan**

Any person who fails to submit a soil erosion and sedimentation control plan as required by this ordinance will be subject to a single, noncontinuing civil penalty of not more than \$1,000. Any person may be subject to additional civil penalties for violation of any other provision of this ordinance or rules or orders adopted or issued pursuant to this ordinance.

**14) One Time Civil Penalty**

Any person who violates any provision of the Soil Erosion and Sedimentation Control regulations of Sec. 30-12-6, the Act, or rule or order adopted or issued pursuant to this ordinance, or who initiates or continues a land-disturbing activity (for which a sedimentation and erosion control plan is required) not in accordance with the approved soil erosion and sedimentation control plan, may be subject to a single, non-continuing civil penalty of up to \$5,000. Any person may be subject to additional civil penalties for violation of any other provision of this ordinance or rules or orders adopted or issued pursuant to this ordinance. Civil penalties assessed under this section are considered restorative; intended to provide compensation to the city for costs associated with the city's program to monitor, control, prosecute, cure and/or correct the violation. As such, the penalty amount is presumed to provide sufficient restoration to the city for its costs.

**(C) Prevention of Demolition by Neglect Penalties**

**1) Notice**

The Engineering and Inspections Director must provide written notice in accordance with Sec. 30-5-5.2.

**2) Penalty**

\$100 per day of continuing violation for failure to perform corrective action.

**3) Effect Repairs**

a) If the owner fails to comply with an order to repair, the city may cause the building to be repaired. The city may not cause the repair of the property in question until the Historic Preservation Commission has, by resolution or other decree, ordered the city to proceed to make the necessary repairs to property which have been found to be in need of correction of deterioration to prevent demolition by neglect as set forth in this section.

b) If an owner refuses to pay this cost, the amount of the cost of such repairs, alterations and improvements will be a lien against the real property upon which such cost was incurred; said lien must be filed, have the same priority and be collected or foreclosed upon in the same manner as is provided for assessments for local improvements.

c) The property owner has the option of paying for the cost of such repairs, alterations and improvements either in cash or in 5 equal annual installments with such installments bearing interest at the rate of 6% per year from the date of the filing of the lien. If any cost is not paid in cash, the first installment, with interest, is due 30 days after the date of the filing of the lien, and one subsequent installment and interest will

be due on the same day of the month in each successive year until the cost is paid in full.

- d) If any installment with interest is not paid when due, it will be subject to the same penalties as are now prescribed by law for unpaid assessments, in addition to the interest herein provided for, and, in addition, all of the installments remaining unpaid will at once become due and payable and the property may be sold in the same manner as now prescribed by law for the sale of land for unpaid taxes. The whole cost of such repairs, alterations and improvements may be paid at the time of paying any installment by payment of the principal and all interest accrued to that date.

**(D) Temporary Off-Site Real Estate Directional Signs**

Following issuance of a Notice of Violation, civil penalties for violations of the regulations of Sec. 30-14-6.2 (Table 14-1: Standards for Signs Allowed Without a Permit), temporary off-site real estate directional signs, shall be assessed as follows:

- 1) \$50 for each violation.
- 2) Civil penalties for violations of these regulations will be issued or assigned to individual real estate agents if readily identifiable to enforcement officials. Otherwise penalties will be assigned to the appropriate developer/builder/company.
- 3) Penalties issued under this section may first be referred to an enforcement supervisor for an administrative review. In addition, Notices of Violation under this section may be appealed to the Board of Adjustment as outlined in Sec. 30-5-3.2.

**30-5-5.5 Tree Disturbance Penalties**

**(A) Violations Not Involving Tree Removal or Damage**

- 1) The Planning and Community Development Director is authorized to issue a Notice of Violation for all violations that have not resulted in the removal or damage to trees or encroachment into the tree conservation area. The Notice of Violation must be administered in accordance with the provisions of Sec. 30-5-3.
- 2) Civil Penalties issued pursuant to a Notice of Violation may not exceed \$5,000.00.
- 3) Failure to comply with the Notice of Violation may result in further legal actions, remedies and penalties as provided by Article 5 or state law.

**(B) Violations Involving Tree Removal or Damage**

- 1) The Planning and Community Development Director is authorized to issue a Civil Penalty for all violations that have resulted in the removal or damage to trees or encroachment into the tree conservation area. The Civil Penalty must be administered in accordance with the provisions of Sec. 30-5-5, except that issuance of a Notice of Violation prior to issuing the Civil Penalty shall not be required, and except as noted below.



- 2) Civil Penalties issued under this provision may not be less than \$500.00 nor exceed \$50,000.00 per violation.
- 3) In addition to any civil penalties issued under this provision, the Planning and Community Development Director is authorized to require reforestation of the damaged trees or the tree conservation area as specified in Table 5-1 or Table 5-2 below, whichever is most applicable.
- 4) The penalty for the removal or damage to trees or the encroachment into the tree conservation area shall be assessed as described in Table 5-1 or Table 5-2 below, whichever is most applicable:

**Table 5-1**

DBH of Tree Removed or Damaged	Civil Penalty	Reforestation Rate One 2" Caliper Minimum (Water Wise Species) or 3" Caliper Minimum (Non-Water Wise Species) per 400 sq. ft.
4 – 11.9 Inches	\$800.00	4 Caliper Inches
12 – 20.9 Inches	\$1,600.00	8 Caliper Inches
21 – 28.9 Inches	\$2,400.00	12 Caliper Inches
29 – 35.9 Inches	\$3,200.00	16 Caliper Inches
36+ Inches	\$4,000.00	20 Caliper Inches

**Table 5-2**

<b>Civil Penalty</b> \$10,000.00 per acre or portion thereof of removal or damage to trees or encroachment into the tree conservation area
<b>Reforestation Rate</b> One 2" caliper minimum (water-wise species) or 3" caliper minimum (nonwater-wise species) per 400 sq. Ft.

Notes to Table 5-1 and 5-2: all reforestation requirements shall be approved by the Planning and Community Development Director. The species of trees selected for reforestation shall be appropriate to the site conditions and be selected from the approved plant list located in the [Landscaping and Tree Conservation Manual](#). All reforestation plans must comply with water-wise planting techniques.

**(C) Other Violations**

The Planning and Community Development Director is authorized to issue a Civil Penalty for the following violations under the provisions of Sec. 30-5-5, except that a Notice of Violation is not required prior to issuing the Civil Penalty.

- 1) The civil penalty for failure to obtain a tree disturbance permit or Technical Review Committee approval prior to tree disturbing activities is \$500.00.
- 2) The civil penalty for failure to install and maintain tree conservation devices is \$500.00 per incident.
- 3) The civil penalty for failing to obtain a scheduled inspection is \$500.00 per incident.

**30-5-5.6 Demand for Payment**

**(A) Notice**

Any city employee charged with enforcement of the provisions of this ordinance will determine the amount of civil penalty to be assessed and make written demand for payment of penalties upon the owner or person in violation. This written demand must include a description of the violation for which the civil penalties have been imposed. Separate notices must be provided for the first, second,

third and fourth violations. After notice and demand for payment for the fourth violation, penalties may be assessed and accrue on a daily basis without any further notice to the property owner.

**(B) Adjustment**

Any city employee charged with enforcement of the provisions of this ordinance may, in consultation with the appropriate director, reduce the penalties assessed in this ordinance, based on criteria set forth in departmental guidelines. Modification of penalties is at the sole discretion of the subject department.

**30-5-5.7 Nonpayment**

If payment is not received or equitable settlement reached within 30 days after demand for payment is made, the matter shall be referred to legal counsel to institute a civil action for recovery of the civil penalty. Moreover, if the civil penalty is not paid within the time prescribed, any city employee charged with enforcement of the provisions of this ordinance may have a criminal summons or warrant issued against the violator. Upon conviction, the violator is subject to any criminal penalty the court may impose pursuant to Section 14-4 of the North Carolina General Statutes.

**30-5-5.8 Civil Penalty Use**

Civil penalties collected for erosion and sedimentation control violations must be used or disbursed as directed by Section 113A-64(a) of the North Carolina General Statutes.

**30-5-5.9 Factors to Consider in Assessing Penalties**

The City Manager shall formulate and publish written guidelines for zoning enforcement officers to use in assessing the civil penalties authorized by Sec. 30-5-5.4(A)2). This provision does not apply to the tree disturbance penalties of Sec. 30-5-5.5.