

## ARTICLE 5 ENFORCEMENT AND PENALTIES

### SECTION 5.1 ENFORCEMENT OF PENALTIES

#### 5.1.1 Enforcement Authority

This Ordinance shall be enforceable in accordance with provisions available in the General Statutes of North Carolina Article 18, Chapter 153A. (NCGS [153A-324](#)) (NCGS [153A-123](#))

#### 5.1.2 Enforcement of Provisions

- 5.1.201 The Zoning Administrator shall be charged with the enforcement of the provisions of this UDO.
- 5.1.202 If the Zoning Administrator finds that any of the provisions of this UDO are being violated, he shall notify in writing the persons responsible for such violations, indicating the nature of violation and ordering the actions necessary to correct it.
- 5.1.203 The Zoning Administrator shall also take any other action authorized by this UDO to ensure compliance with or to prevent violation of its provisions.
- 5.1.204 The Zoning Administrator shall have the discretion to stay the accrual of civil penalties pending reasonable efforts by the violator to correct the violation.
- 5.1.205 The owner of the property on which the violation occurs may submit to the Zoning Administrator a written request for extension of the order's specified time limit for correction of the violation.
- 5.1.206 On determining that the request includes enough information to show that the violation cannot be corrected within the specified time limit for reasons beyond the control of the person requesting the extension, the Zoning Administrator may extend the time limit as reasonably necessary to allow timely correction of the violation.

### SECTION 5.2 VIOLATIONS AND VIOLATORS

#### 5.2.1 Violation

- 5.2.101 It is unlawful and a violation of this Ordinance to establish, create, expand, alter, occupy or maintain any use, land development activity, or structure, including but not limited to signs and buildings, that violates or is inconsistent with any

provision of this Ordinance or any order, approval, or authorization issued pursuant to this Ordinance.

- 5.2.102 Approvals and authorizations include, but are not limited to, conditional use permits, building permits, zoning permits, certificates of occupancy, variances, development plans, planting plans, site plans, sign plans, and conditions of such permits, certificates, variances and plans.
- 5.1.103 It is also a violation to engage in any construction, land development activity, or use without all approvals and authorizations required by this Ordinance.
- 5.2.104 Each day of a violation is a separate and distinct violation.
- 5.2.105 When a use constituting a violation of this Ordinance is in existence prior to adoption of the Unified Development Ordinance creating the violation, and that the use is grandfathered and subsequently terminated for any reason, a County shall bring an enforcement action within 10 years of the date of the termination of the grandfathered status, unless the violation poses an imminent hazard to health or public safety. NCGS [153A-348](#)

## **5.2.2 Violators**

- 5.2.201 Violators include any person who owns, leases, occupies, manages, designs or builds any structure or land development activity in violation of this Ordinance and any person who owns, leases, or occupies a use in violation of this Ordinance.
- 5.2.202 A violation may be charged against more than one violator.

## **5.2.3 Complaints Regarding Violations**

- 5.2.301 When a violation of this Ordinance occurs, or is alleged to have occurred, any person may file a written or verbal complaint. Such complaint shall state fully the cause and basis thereof and shall be filed with the Zoning Administrator, or his authorized agent. An investigation shall be made within ten (10) days. Actions as provided in these regulations shall be taken.
- 5.2.302 When a violation is discovered, and is not remedied through informal means, a written notice of violation shall be given. This notice shall be delivered by hand delivery or certified mail to the violator's last known address, or hand delivery to or posting the notice at the property in violation.
- 5.2.303 The notice shall include a description of the violation and its location, the measures necessary to correct it, the possibility of civil penalties and judicial enforcement action and notice of right to appeal. The notice shall also state the time period allowed, if any, to correct the violation, which time period may vary depending on the nature of the violation and knowledge of the violator. This notice is an administrative determination subject to appeal as provided below.

#### **5.2.4 Appeals**

- 5.2.401 A violator who has received a notice of violation may appeal the determination that a violation has occurred to the Board of Adjustment by making a written request for an Administrative Appeal as described in **§3.14** (Administrative Appeal). (NCGS [153A-345e](#))
- 5.2.402 Citations that follow the original notice of violation may not be appealed to the Board of Adjustment.
- 5.2.403 The Board of Adjustment shall hear the appeal and may affirm, or reverse, wholly or partly, or may modify the determination of the violation.
- 5.2.404 If there is no appeal, the determination of the Zoning Administrator is final.

#### **5.2.5 Failure to Comply with Notice or Board of Adjustment Decision**

If the violator does not comply with a notice of violation, which has not been appealed, or with a final decision of the Board of Adjustment, the violator shall be subject to enforcement action as prescribed by State law or by this Ordinance.

### **SECTION 5.3 ENFORCEMENT ACTION AND REMEDIES**

#### **5.3.1 Injunctive Relief**

- 5.3.101 A violation may be corrected by any appropriate equitable remedy, a mandatory or prohibitory injunction, or an order of abatement as authorized by NCGS [153A-123](#).
- 5.3.102 The County may commence a civil action in the appropriate division of the General Court of Justice for enforcement in accordance with NCGS [153A-123](#).
- 5.3.103 It shall not be a defense to the County's application for equitable relief that there is an adequate remedy at law.

#### **5.3.2 Criminal Penalties**

- 5.3.201 Any person, firm, or corporation violating any Section or provision of this Ordinance shall, upon conviction, be guilty of a misdemeanor and shall be fined not more than \$500.00 and/or imprisoned not more than twenty (20) days for each violation. NCGS [153A-123](#) (NCGS [14-4](#))
- 5.3.202 Each day such violation continues, however, shall be a separate and distinct offense, punishable as herein before provided.
- 5.3.203 The Zoning Administrator may refer a violation to the proper authority for possible criminal prosecution.

### 5.3.3 Civil Penalties

- 5.3.301 Violation of this Ordinance subjects the violator to a civil penalty in the amount of one hundred dollars (\$100). (NCGS [153A-123c](#))
- 5.3.302 The Zoning Administrator may impose a civil penalty by giving the violator a written citation, either in person or by certified or registered mail, return receipt requested.
- 5.3.303 The citation shall describe the nature of the violation, specify the amount of the civil penalty being imposed, and direct the violator to pay the civil penalty to the County Finance office within ten (10) days of the date the citation is received. If the violator fails to either pay the civil penalty or correct the violation within this time limit, the Zoning Administrator may institute a civil action in the nature of a debt in a court of competent jurisdiction to recover the civil penalty.
- 5.3.304 For purposes of assessing the amount of a civil penalty, each day the violation remains uncorrected after receipt of the written citation shall constitute a separate violation that subjects the violator to additional civil penalty.

## SECTION 5.4 WATERSHED REGULATION ENFORCEMENT

### 5.4.1 Criminal Penalties

Any person, firm, or corporation violating any provision of **Article 11** (Watershed Overlay Districts) shall be guilty of a misdemeanor and, upon conviction, shall be punished in accordance with NCGS [14-4](#). The maximum fine for each offense shall not exceed \$500.00. Each day the violation continues shall constitute a separate and distinct offense.

### 5.4.2 Civil Penalties

- 5.4.201 If any subdivision, development and/or land use is found to be in violation of any provision in **Article 11** (Watershed Overlay Districts), the Zoning Administrator shall, in addition to all other remedies available either in law or in equity, institute a civil penalty in the amount of \$500.00.
- 5.4.202 In addition, the N.C. Environmental Management Commission may assess civil penalties in accordance with NCGS [143-215.6\(a\)](#). Each day that the violation continues shall constitute a separate and distinct offense.
- 5.4.203 If the Zoning Administrator finds that any of the provisions of **Article 11** (Watershed Overlay Districts) are being violated, they shall notify in writing the person responsible for such violation, indicating the nature of the violation, and that orders the action necessary to correct it.
- 5.4.204 The Zoning Administrator 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.

- 5.4.205 If a ruling of the Zoning Administrator is questioned, the aggrieved party or parties may appeal such ruling to the Moore County Board of Adjustment in accordance with [§3.14](#) (Administrative Appeals).

## SECTION 5.5 WIRELESS COMMUNICATION FACILITIES ENFORCEMENT

### 5.5.1 Violations

- 5.5.101 Any violation of [Article 14](#) (Wireless Communication Facilities) or the terms of any wireless communication facility permit issued under this Ordinance shall be subject to the enforcement remedies and penalties set forth in this Article and as provided by law. (NCGS [153A-123](#))
- 5.5.102 Each day's violation of any provision of this Article or the terms of any wireless communication facility permit shall constitute a separate and distinct offense.

### 5.5.2 Radio Frequency Interference with Public Safety Equipment

Whenever the County has encountered radio frequency interference with its public safety communications equipment, and it believes that such interference has been or is being caused by one or more WCFs, the following steps shall be taken:

- 5.5.201 The County shall provide notification to all WCF service providers operating in the jurisdiction of possible interference with the public safety communications equipment. Upon such notification, the owners shall use their best efforts to cooperate and coordinate with the County and among themselves to investigate and mitigate the interference, if any, utilizing the procedures set forth in the joint wireless industry-public safety "Best Practices Guide," released by the FCC in February 2001, including the "Good Engineering Practices," as may be amended or revised by the FCC from time to time.
- 5.5.202 If any WCF owner fails to cooperate with the County in complying with the owner's obligations under this section or if the FCC makes a determination of radio frequency interference with the County public safety communications equipment, the owner who fails to cooperate and/or the owner of the WCF which caused the interference shall be responsible, upon FCC determination of radio frequency interference, for reimbursing the County for all costs associated with ascertaining and resolving the interference, including but not limited to any engineering studies obtained by the jurisdiction to determine the source of the interference. For the purposes of this subsection, failure to cooperate shall include failure to initiate any response or action as described in the "Best Practices Guide" within twenty-four (24) hours of the County's notification.

### 5.5.3 Enforcement Procedure

Upon finding a violation of this Article or of the terms of any wireless communication facility permit, the enforcement officer or his/her agent(s) shall notify the owner and service provider(s) of the nature of the violation and measures necessary to remedy the violation(s).

### 5.5.4 Failure to Comply

Upon the failure of the owner(s) and/or the service provider(s) to comply with a notice of corrective action and/or notice of default, the owner(s) and service provider(s) shall be subject to such remedies and penalties as may be provided herein.

### 5.5.5 Remedies

Any one or all of the following procedures shall be used to enforce the provisions of this Article or the terms of any wireless telecommunication permit and zoning permit:

- 5.5.501 **Injunction:** Violations may be enjoined, restrained, abated or mandated by injunction.
- 5.5.502 **Civil Penalties:** Any person who violates **Article 14** (Wireless Communications Facilities) or the terms of any wireless telecommunication permit and zoning permit shall be subject to assessment of a civil penalty in the amount of \$250 for each violation. Each day's violation is a separate and distinct offense.