

## ARTICLE VII

### ENFORCEMENT AND REVIEW

#### **Section 15-111 Complaints Regarding Violations.**

Whenever the administrator receives a written, signed complaint alleging a violation of this chapter, the administrator shall investigate the complaint, take whatever action is warranted, and inform the complainant in writing what actions have been or will be taken.

#### **Section 15-112 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 chapter may be held responsible for the violation and suffer the penalties and be subject to the remedies herein provided.

#### **Section 15-113 Procedures Upon Discovery of Violations.**

(a) If the administrator finds that any provision of this chapter is being violated, the administrator 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 administrator's discretion.

(b) The final written notice (and the initial written notice may be the final notice) shall state what action the administrator intends to take if the violation is not corrected and shall advise that the administrator's decision or order may be appealed to the board of adjustment as provided in Section 15-91.

(c) 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 administrator may seek enforcement without prior written notice by invoking any of the penalties or remedies authorized in Section 15-114.

#### **Section 15-114 Penalties and Remedies for Violations.**

(a) Violations of the provisions of this chapter or failure to comply with any of its requirements, including violations of any conditions and safeguards established in connection with grants of variances, special use permits-B or special use permits-A, or violations of stop work orders, shall constitute a misdemeanor, punishable as provided in G.S. 14-4. **(AMENDED 10/24/89; 6/22/21)**

(b) Any act constituting a violation of the provisions of this chapter or a failure to comply with any of its requirements, including violations of any conditions and safeguards established in connection with the issuance of variances or special use permits-B or special use

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permits-A, shall also subject the offender to a civil penalty of up to five thousand dollars (\$5,000.00).

- (1) In determining the amount of the civil penalty assessment, the administrator shall consider the following factors, and the decision levying a civil penalty shall cite those factors deemed applicable:
  - a The degree and extent of harm to the natural resources of the town and its planning jurisdiction, to the public health, or to private property resulting from the violation;
  - b The extent to which the violation undermines the regulatory objectives of the land use ordinance;
  - c The duration and gravity of the violation;
  - d The cost of rectifying the damage;
  - e The amount of money saved by noncompliance;
  - f Whether the violation was committed willfully or intentionally; negligently; or as the result of an unforeseeable or unavoidable accident;
  - g Whether the violator promptly ceased the violation upon notice by the town and took whatever steps were reasonably possible to limit or correct any damage caused by the violation;
  - h The prior record of the violator in complying or failing to comply with the provisions of this chapter or any of its requirements, including violations of any conditions and safeguards established in connection with the issuance of variances or special use permits-B or special use permits-A;
  - i The cost to the town of the enforcement procedures;
  - j The scope and the scale of the project where the violation occurs;
  - k Whether the civil penalty is levied for a single day's violation or a single event or whether it is levied on a daily basis for a continuing violation, as authorized under subsection (d) below. Civil penalties levied on a daily basis may cumulatively exceed the \$5,000.00 cap set forth in this subsection.
  - l Without limiting the authority of the board of adjustment under subsection (e), the board of adjustment may affirm a penalty as

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imposed, decrease the amount of the penalty, or increase the amount of the penalty.

- (2) The notice of civil penalty shall inform the violator that the penalty is due upon receipt of the notification and, if applicable, that successive civil penalties of a specified amount shall accrue each day that the violation continues. The notice shall also inform the violator that if the civil penalty is not paid within ten days of receipt of the notice, the penalty may be recovered by the town in a civil action in the nature of debt.
- (3) A civil penalty may be appealed to the Board of Adjustment in accordance with Section 15-91 of this chapter, except that such appeal must be filed within 10 days after receipt by the violator of the notice of civil penalty.
  - a. An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from and accrual of any fines assessed during the pendency of the appeal to the Board of Adjustment and any subsequent appeal in accordance with G.S. 160D-1402 or during the pendency of any civil proceeding authorized by law or appeals therefrom, unless the official who made the decision certifies to the board after notice of appeal has been filed that, because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or, because the violation is transitory in nature, a stay would seriously interfere with enforcement of the development regulation. In that case, enforcement proceedings are not stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the board shall meet to hear the appeal within 15 days after such a request is filed. **(AMENDED 6/22/21)**
  - b. If a civil penalty is levied for a violation about which the violator was previously sent a final notice of violation in accordance with Section 15-113, and the violator did not appeal to the Board of Adjustment within the prescribed time the administrator's determination as to the existence of the violation, an appeal of the civil penalty under this subsection presents only the issue of whether the administrator erred in setting the amount of the civil penalty, not the issue of whether the violation occurred or the violator's responsibility for the violation. **(AMENDED 6/07/88; 4/23/96)**
  - (c) This chapter may also be enforced by any appropriate equitable action.
  - (d) Each day's continuing violation shall be a separate and distinct offense. **(AMENDED 6/07/88; 4/23/96)**

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

**Section 15-115 Permit Revocation and Building Permit Denial. (AMENDED 10/24/06)**

(a) A zoning, sign, special use permit-A, or special use permit-B may be revoked by the permit-issuing authority (in accordance with the provisions of this section) if the permit recipient fails to develop or maintain the property in accordance with the plans submitted, the requirements of this chapter, or any additional requirements lawfully imposed by the permit issuing board.

(b) Before a special use permit-A or special use permit-B may be revoked, all of the notice and hearing and other requirements of Article VI shall be complied with. The notice shall inform the permit recipient of the alleged grounds for the revocation.

(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 in subsection (a) shall be upon the party advocating that position. The burden of persuasion shall also be upon that party. **(AMENDED 11/10/81)**

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

(c) Before a zoning or sign permit may be revoked, the administrator shall give the permit recipient ten days notice of intent to revoke the permit and shall inform the recipient of the alleged reasons for the revocation and of his right to obtain an informal hearing on the allegations. If the permit is revoked, the administrator shall provide to the permittee a written statement of the decision and the reasons therefor.

(d) No person may continue to make use of land or buildings in the manner authorized by any zoning, sign, special use permit-B or special use permit-A after such permit has been revoked in accordance with this section.

(e) Building permits required pursuant to G.S. 160A-417 may be denied for lots that have been illegally subdivided. No building permit may be denied, however, if the permit applicant can show that he purchased the lot in good faith (i.e. he did not know and had no reasonable way of knowing that the lot was illegally subdivided) and for value. **(AMENDED 10/24/06)**

**Section 15-116 Judicial Review. (AMENDED 4/27/82; 10/21/14)**

(a) Every quasi-judicial decision of the board shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160D-1402. Appeals shall be filed within the times specified in G.S. 160D-1405(d). Appeals in any such case shall be heard by the superior court of Orange County. **(AMENDED 6/22/21)**

(b) A copy of the writ of certiorari shall be served upon the Town of Carrboro.

**Section 15-117 Stop Work Orders. (AMENDED 10/24/89)**

(a) Whenever the land use administrator determines that a person is engaged in doing work that constitutes, creates, or results in a violation of this chapter and that irreparable injury will occur if the violation is not terminated immediately, the administrator may order the specific part of the work that constitutes, creates, or results in a violation of this chapter to be immediately stopped.

(b) A stop work order issued under this section shall be in writing, directed to the person doing the work and shall state the specific work to be stopped, the specific reasons therefor, and the conditions under which the work may be resumed. A copy of the stop work order shall also be sent forthwith to the owner of the property where the work is taking place and the developer, if different from the owner.

(c) Any person aggrieved by the issuance of a stop work order may appeal the issuance of the order to the Carrboro Board of Adjustment pursuant to Section 15-91 of this chapter. However, notwithstanding subsection 15-91(d), an appeal shall not stay the operation of the stop work order except as provided in subsection (d) of this section.

(d) The board of adjustment shall meet and act upon the appeal within 15 working days after receipt of the appeal notice. If the board fails to comply with this requirement, the stop work order shall be stayed automatically beginning on the day following the expiration of this 15-working-day period, and the stay shall remain in effect until the board of adjustment meets and acts on the appeal.

(e) The notice of hearing requirements set forth in Section 15-102 shall not apply to appeals of stop work orders. However, the staff shall orally notify the appellant of the date, time, and place of the hearing as soon as it has been scheduled and shall send to the appellant a written confirmation of this notice as soon as possible.

(f) Neither the person whom a stop work order is served nor an owner or developer served with a copy under subsection (b) may thereafter cause, suffer, or permit a violation of the order while it remains in effect, except during a period in which the operation of the order is stayed under subsection (d).

**Section 15-118 Statutes of Limitations. (AMENDED 6/22/21)**

(a) Zoning Map Adoption or Amendments. A cause of action as to the validity of any regulation adopting or amending a zoning map adopted under Article XX of this chapter or G.S. 160D-1405 or other applicable law or a development agreement adopted under Article 10 of Chapter 160D of the General Statutes accrues upon adoption of the ordinance and shall be brought within 60 days as provided in G.S. 1-54.1.

(b) Text Adoption or Amendment. Except as otherwise provided in G.S. 160D-1405(a), an action challenging the validity of a development regulation adopted under this chapter or other applicable law shall be brought within one year of the accrual of such action. Such an

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action accrues when the party bringing such action first has standing to challenge the ordinance. A challenge to an ordinance on the basis of an alleged defect in the adoption process shall be brought within three years after the adoption of the ordinance.

(c) **Enforcement Defense.** Nothing in G.S. sections 160D-1405, 1-54(10) or 1-54.1 bars a party in an action involving the enforcement of a development regulation or an action under G.S. 160D-1403.1 from raising as a claim or defense in the proceedings or enforceability or the invalidity of the ordinance. Nothing in G.S. sections 160D-1405, 1-54(10) or 1-54.1 bars a party who files a timely appeal from an order, requirement, decision, or determination made by the administrator 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 years of the adoption of the challenged ordinance.

(d) **Termination of Grandfathered Status.** When a use constituting a violation of this chapter is in existence prior to adoption of the Carrboro Land Use Ordinance creating the violation, and that use is grandfathered and subsequently terminated for any reason, the town 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.

(e) **Quasi-Judicial Decisions.** Unless specifically provided otherwise, a petition for review of a quasi-judicial decision shall be filed with the clerk of superior court by the later of 30 days after the decision is effective or after a written copy thereof is given in accordance with G.S. section 160D-406(j). When first-class mail is used to deliver notice, three days shall be added to the time to file the petition.

(f) **Others.** Except as provided by this section, the statutes of limitations shall be as provided in Subchapter II of Chapter 1 of the General Statutes.

**Section 15-119 through 15-120 Reserved.**