

# **CHAPTER 17: ADMINISTRATION & ENFORCEMENT**

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### **Section 17.1 Purpose**

This chapter details the various responsibilities of the Administrator of this ordinance, including enforcement. The enforcement process is detailed and specifically outlined to ensure that the public and that implementation have a rational and equitable process to ensure compliance.

### **Section 17.2 Administration**

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#### **Section 17.2.1 Administrator**

- A. Primary responsibility for administering and enforcing this ordinance may be assigned to one or more individuals by the County Manager. The person or persons to whom these functions are assigned shall be referred to in this ordinance as the “Administrator”. The terms “Planning Staff”, “Zoning Administrator”, “Subdivision Administrator”, and “Watershed Administrator” are sometimes used interchangeably with the term “Administrator”. Any function or responsibility assigned by this ordinance to the administrator may be delegated by such person to another employee or agent acting under the administrator’s control or at his direction, unless such delegation is prohibited by the County Manager.
- B. It shall be the duty of the administrator to carry out and enforce this ordinance, remedy violations of this ordinance, and issue permits in compliance with this ordinance.
- C. The administrator shall also maintain a record of all permits, text amendments, map amendments, subdivisions, erosion control plans, approvals, and violations on file at his office, and copies shall be made available upon request to interested parties.

#### **Section 17.2.2 Authority to Inspect and Investigate**

- A. The Administrator shall have the right upon presentation of proper credentials, or inspection warrant if necessary, to enter on any premises within the jurisdiction at any reasonable hour for the purposes of inspection, determination of plan or plat compliance, determination of the effectiveness of required erosion and sedimentation control measures, or other enforcement action. **No notice is required.**
- B. The Administrator shall have the power to conduct such investigations as he may reasonably deem necessary to carry out his duties as 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.

- C. No person shall willfully resist, delay, or obstruct an authorized representative, employee, or agent of the County while that person is inspecting or attempting to inspect land disturbing activity under this section.
- D. The Administrator shall have the power 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.

### **Section 17.2.3 Technical Review Committee**

The Technical Review Committee shall assist the Subdivision Administrator in reviewing Concept Plans for Major Subdivisions. Committee members shall submit comments on the design of the subdivision. It shall be the responsibility of the Subdivision Administrator to address those comments wherever possible. The committee shall consist of the following:

1. Fire Marshal
2. Iredell County Soil and Erosion Control representative
3. NCDOT representative
4. ECOM representative
5. Iredell-Statesville Schools representative
6. Mooresville Graded School District representative
7. Health Department representative
8. Mapping Department representative
9. Two (2) Planning Board members

### **Section 17.3 Violations of this Ordinance**

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Any of the following shall be a violation of this Ordinance and shall be subject to the enforcement remedies and penalties provided by this Article and by State law.

#### **A. Development Without a Permit**

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

#### **B. Development Inconsistent With Permit**

To engage in any development, subdivision of land, land disturbing activity, use, construction, remodeling, or other activity of any nature in any way inconsistent with any approved plan, permit, certificate, or other form or authorization granted for such activity.

C. Violation by Act or Omission

To violate (**willfully or by negligence**), by act or omission, any term, variance, modification, condition, or qualification placed by the Board of Commissioners 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.

D. 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 **breach** of this Ordinance or any other regulation made under the authority conferred thereby.

E. Illegal Subdivision or Transfer of Property

To subdivide his land in violation of this Ordinance or transfer or sell land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under the terms of this Ordinance and recorded in the Register of Deeds.

F. Continue a Violation

Each day's continuation of any of the above violations is a separate and distinct offense.

## **Section 17.4 Penalties**

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The following penalties may be used in the enforcement of this ordinance:

A. Civil Penalties

If the owner or occupant of a property fails to comply with a Notice of Violation as described below, they shall be subject to a citation in the form of a fine.

B. Final Certificate of Occupancy

With regard to a land disturbing activity that is associated with the development of any tract that is subject to this Ordinance, the Code Enforcement Department shall not issue a Certificate of Occupancy where any of the following conditions exist:

1. There is a violation with respect to the tract.
2. If there remains due and payable civil penalties **to Iredell County** that have been levied against the person conducting the land-disturbing activity for violation(s) of this Ordinance. If a penalty is under appeal, the Board of Adjustment may require the amount of the fine, and any other amount that the person would be required to pay **to comply with** this Ordinance if the person loses the appeal, to be placed in a refundable account or surety prior to issuing the Certificate of Occupancy.

3. The requirements of the approved erosion and sedimentation control plan have not been completed and the building for which a Certificate of Occupancy is requested is the only building then under construction on the tract.
4. On the tract which includes multiple buildings on a single parcel, the requirements of the plan have not been completed and the building for which a Certificate of Occupancy is requested is the last building then under construction on the tract.
5. On a tract which includes multiple parcels created pursuant to the applicable subdivision regulations, the requirements of the plan have not been completed with respect to the parcel for which the Certificate of Occupancy is requested.

C. Stop Work Orders and Building Permit Abeyance

In the event of an illegal land disturbing activity the Administrator may order work on a project to be immediately stopped. This may be done in the form of a stop work order or by withholding building permits associated with the project in abeyance. The stop work order shall be in writing and directed to the owner, occupant, or person doing the work. The stop 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 shall be in accordance with N.C.G.S. 160A-421 or 153-361, as applicable, or the NC Building Code.

D. Criminal Penalties – Has been submitted to Bill Pope

Any person who knowingly or willfully violates any provision of this ordinance, or rule or order adopted or issued pursuant to this ordinance, or who knowingly or willfully initiates or continues a land-disturbing activity for which a Plan is required except in accordance with the terms, conditions, and provisions of an approved Plan, shall be guilty of a Class 2 misdemeanor which may include a fine not to exceed \$5,000 as provided in G.S. § 113A-64.

E. Restoration After Non-Compliance

The County may require a person who engaged in a land-disturbing activity and failed to retain sediment generated by the activity, as required by G.S. 113A-57 (3), to restore the waters and land affected by the failure so as to minimize the detrimental effects of the resulting pollution by sedimentation. This authority is in addition to any other civil or criminal penalty or injunctive relief authorized under this ordinance.

## **Section 17.5 Enforcement Procedure**

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### **Section 17.5.1 Notice of Violation**

When the Administrator or his agent finds a violation of any part of this Ordinance, it shall be his duty to notify the owner or occupant of the land, building, structure, sign, or use of the violation. This notification shall be in the

form of a Notice of Violation. The owner or occupant shall immediately remedy the violation.

- A. **The Notice of Violation shall include the following:**
  - 1. That the land, building, structure, sign, or use is in violation of this Ordinance;
  - 2. The nature of the violation, and citation of the Section(s) of this Ordinance violated; and
  - 3. The measures necessary to remedy the violation within thirty (30) days following the date of the Notice of Violation.
- B. **The notice shall specify a date, by which the person must comply with this ordinance, or rules or orders adopted pursuant to this ordinance, and inform the person of the actions that need to be taken to comply with this ordinance, or rules or orders adopted pursuant to this ordinance.**
- C. **The notice may be served by any means authorized under GS 1A-1, Rule 4.**

### **Section 17.5.2 Appeals**

- A. Any owner or occupant who has received a Notice of Violation may appeal in writing the decision of the Administrator to the Board of Adjustment within thirty (30) days following the date of the Notice of Violation. The Board of Adjustment, or other designated board, shall 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 the Administrator shall be final.
- B. If the violation is a land-disturbing activity the violator may contest the assessment of any fine within fifteen (15) days after the receipt of the notice by filing a petition for contested case in the office of Administrative Hearing in accordance with Article 3 of Chapter 150B of the General Statutes.
  - 1. The final agency decision shall be made by the Secretary of the Department of Environment and Natural Resources in accordance with Articles 3 and 4 of Chapter 150B of the General Statutes.
  - 2. Appeal from the final decision of the Secretary of the Department shall be to the Superior Court of Iredell County where the violation occurred. Such appeals must be made within 30 days of the final decision of the Secretary of the Department.
  - 3. The decision of the Board of Adjustment or the Secretary of the Department of Environment and Natural Resources may be delivered to

the aggrieved party either by personal service or by registered mail or certified mail return receipt requested.

## **Section 17.6 Civil Penalties and Citation Process**

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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 following an appeal, the owner shall be subject to such remedies as may be provided for by State law or by Section 1.7 of the Code of Iredell County through the procedure detailed below:

### **Section 17.6.1 Land Disturbing Activity Violations**

A. Any person who violates any of the provisions of this ordinance, or rule or order adopted or issued pursuant to this ordinance, or who initiates or continues a land-disturbing activity for which a Plan is required except in accordance with the terms, conditions, and provisions of an approved Plan, is subject to a civil penalty. The minimum civil penalty that the County shall assess per violation is two hundred fifty dollars (\$250) for the first **disturbed** acre and one hundred dollars (\$100) for each subsequent **disturbed** acre rounded up to the next whole acre.

For water supply watershed sites under one (1) acre, the minimum civil penalty is one hundred dollars (\$100). A civil penalty may be assessed from the date of the violation. Each day of a continuing violation shall constitute a separate violation.

B. In the event of a land-disturbing activity violation the Administrator shall **assess** the amount of the civil penalty based upon the following factors:

1. The degree and extent of harm caused by the violation,
2. The cost of rectifying the damage,
3. The amount of money the violator saved by noncompliance,
4. Whether the violation was committed willfully, and
5. The prior record of the violator in complying or failing to comply with this ordinance.

C. In the event of a land-disturbing activity, the notice of a civil penalty shall direct the violator to either pay the assessment or contest the assessment, within fifteen (15) days after receipt of the notice of **civil penalty**, by filing a petition for contested case in the Office of Administrative Hearing in accordance with Article 3 of Chapter 150B of the General Statutes.

### **Section 17.6.2 Floodplain Management Violations**

- A. When the Floodplain Administrator finds violations of applicable State and local laws, it shall be his duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law cited in such notification.
- B. If the owner of a building or property fails to take prompt corrective action, 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:
1. That the building or property is in violation of the floodplain management regulations;
  2. 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
  3. That following the hearing, the Floodplain Administrator may issue an order to alter, vacate, or demolish the building; or to remove fill as applicable.
- C. If, upon a hearing held pursuant to the notice prescribed above, the Floodplain Administrator finds that the building or development is in violation of the Floodplain Management provisions of this ordinance, he shall issue an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than sixty (60) calendar days, nor more than (180) calendar days. (One-hundred-eighty (180) calendar days or less is recommended) 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.
- D. 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 and the clerk 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 shall hear an appeal at their next scheduled meeting and may affirm, modify and affirm, or revoke the order.

- E. 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 appeal, the owner or occupant shall be subject to such remedies and penalties as may be provided for by State law or by Section 1.7 of the Code of Iredell County through the procedure detailed in Section 16.6.3.A.

### **Section 17.6.3 All Other Violations**

- A. The Administrator shall issue a Citation (by certified or registered mail to his last known address, by personal service, or by posting notice conspicuously on the property) giving seven (7) days to bring the violation into compliance and notifying that the penalty for the violation is \$100. If the owner or occupant comes into compliance within the seven (7) days, a \$100 penalty will be collected. If the owner or occupant fails to come into compliance, a second Citation will be issued extending the deadline by another seven (7) days and assessing a penalty of \$100 for the previous seven (7) days. There will be a continued accrual of \$100 per day for each day the violation continues thereafter. Further failure to come into compliance will result in the case being submitted to the County Attorney for enforcement and potential legal action.
- B. In any case where the same owner and same parcel are involved in the same violation (repeat offender), the Citation Process above will be utilized. A \$100 minimum penalty will be collected.

### **Section 17.7 Other Enforcement Mechanisms**

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- A. Notwithstanding Section 16.4 this Ordinance may be enforced by appropriate equitable remedies issuing from a court of competent jurisdiction.
- B. The illegal subdivision or transfer of land, as describe above may result in a misdemeanor. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land shall not exempt the transaction from this penalty. The County through its attorney or other official designated by the Board of Commissioners may enjoin illegal subdivision, transfer or sale of land by action for injunction. Further, violators of this Ordinance shall be subject, upon conviction, to fine and/or imprisonment as provided by G.S. 14-4.
- C. Nothing in this section shall be construed to limit the use of remedies available to the County. The County may seek to enforce this Ordinance by using any one, all, or a combination of remedies.
- D. In addition to these penalties, in the case of violations of the water supply watershed sections of this ordinance, the NC Environmental Management

Commission may assess civil penalties in accordance with NCGS 143-215.6 (a).

### **Section 17.8 Appeals**

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Appeals from decisions of the Administrator or the Technical Review Committee shall be filed with the Board of Adjustment. Appeals must be filed within 30 days from the date of the respective order or decision is issued. Appeals from the decisions of the Board of Adjustment shall be taken to the Court of Record as provided by Law.

### **Section 17.9 Miscellaneous Provisions**

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- A. This ordinance is not intended to and does not create any private right of action in favor of any person or entity for negligence, inadvertence, or oversight by Iredell County, its agents or employees, in the interpretation, construction or enforcement of any of the terms or provisions hereof. No action or inaction by Iredell County or its agents or employees shall give rise to any cause of action against either Iredell County or its agents or employees.
- B. Iredell County has determined that it is not in its best interest to waive its immunity with regard to the adoption, interpretation, construction and enforcement of the terms of this ordinance. Iredell County therefore does not by the enactment hereof, waive any defense it might have including the defense of governmental immunity for damages to person or injury to property as a result of its activities in the adoption, construction, interpretation and enforcement of this ordinance except to the extent Iredell County is fully insured.