

ARTICLE 10 – ENFORCEMENT

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10.01 PURPOSE (NEW)

- A. This Article sets forth the procedures by which the County seeks to ensure compliance with the provisions of this Ordinance and to obtain correction for Ordinance violations. It also sets forth the remedies and penalties the County may apply where necessary to ensure correction of violations. The provisions in this Article are intended to encourage the voluntary correction of violations, where possible.
- B. Compliance with all the procedures, standards, and other provisions of this Ordinance is required by all persons owning, developing, managing, using, or occupying land or structures in the county.

10.02 APPLICABILITY (NEW)

- A. This Ordinance shall be enforceable in accordance with the provisions of North Carolina General Statute (NCGS) 153A-123. The Enforcement Officer may revoke any permit or other authorization granted under this Ordinance for failure to comply with the provisions of this Ordinance or the terms and conditions of the permit or authorization, or for false statements or misrepresentations made in securing the permit or authorization, or if the permit or authorization was mistakenly granted in violation of applicable State or local law.

10.03 VIOLATIONS (MODIFIED 8-1)

A. GENERAL VIOLATIONS

1. Failure to Comply with Ordinance, Term, or Condition of Approval

Any failure to comply with a requirement, prohibition, or limitation imposed by the provisions of this Ordinance, or the terms and conditions of any permit or other authorization granted pursuant to this Ordinance, shall constitute a violation of this Ordinance.

2. Permits or Approvals only Authorize Development Approved

Permits or development approvals issued by a decision-making body or county staff authorize only the use, arrangement, location, design, density, and development set forth in such permits or development approvals.

B. SPECIFIC VIOLATIONS

It shall be a violation of this Ordinance to undertake any activity contrary to the provisions of this Ordinance, including but not limited to any of the following:

- 1. Occupy, develop, or use any land or structure without first obtaining all appropriate permits or development approvals and complying with their terms and conditions.
- 2. Subdivide land without first obtaining all appropriate permits or development approvals required to engage in subdivision and complying with their terms and conditions.

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3. Excavate, grade, cut, clear, or undertake any land disturbing activity without first obtaining all appropriate permits and development approvals, and complying with their terms and conditions.
4. Install, create, erect, alter, or maintain any sign without first obtaining the appropriate permits or development approvals, and complying with their terms and conditions.
5. Fail to remove any sign installed, created, erected, or maintained in violation of this Ordinance, or for which the permit has expired.
6. Create, expand, replace, or alter any nonconformity except in compliance with this Ordinance.
7. Reduce or diminish the requirements for development, use, design, or dimensional standards below the standards required by this Ordinance.
8. Increase the intensity or density of development, except in accordance with the standards of this Ordinance.
9. Through any act or omission, fail to comply with any other provisions, procedures, or standards as required by this Ordinance.

C. CONTINUED VIOLATIONS

Every calendar day an offense is not remedied after being served a notice of violation shall be considered a separate offense.

D. RESPONSIBLE PERSONS FOR VIOLATIONS

The owner, tenant or occupant of any land or structure, and an architect, engineer, builder, contractor, agent or any other person who participates in, assists, directs, creates or maintains a situation that constitutes a violation of this Ordinance may be held responsible for the violation and subject to the remedies and penalties set forth in this ordinance.

10.04 ENFORCEMENT PROCEDURES (MODIFIED 8-2 & 8-3)

A. INVESTIGATION AND INSPECTION

1. Whenever a violation of this Ordinance occurs, or is alleged to have occurred, any person may file a written complaint. The complaint, stating fully the cause and basis of the alleged violation shall be filed with the Enforcement Officer who shall properly record such complaint.
2. On receiving a complaint suggesting a violation of this Ordinance, the Enforcement Officer or their designated agent shall investigate the situation and determine whether a violation exists.
3. The Enforcement Officer or their designated agent shall have the right to enter upon private property at any reasonable time necessary to carry out their duties. All questions arising in connection with enforcement and interpretation shall be presented first to the Enforcement Officer. Appeal from their decision may be made to the Board of Adjustment.



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B. INITIAL NOTICE OF VIOLATION

1. On determining that a violation exists, the Enforcement Officer shall give the responsible person(s) written notice of the violation by personal delivery, first class mail, or certified or registered mail, return receipt requested. The notice shall describe the nature of the violation, state the actions necessary to correct the violation, and invite the alleged violator to contact or meet with the Enforcement Officer to discuss the violation and how it may be corrected. The Enforcement Officer may provide the alleged violator additional written notices of violation.
2. If reasonable attempts have been made to effect service of the written notice upon the responsible person(s) by the methods described in this Section have been unsuccessful, then notice may be provided by posting the written notice upon the property in a conspicuous place for a period of at least fifteen (15) working days.
3. Before revoking a permit or other authorization, the Enforcement Officer shall give the holder of the permit or authorization fifteen working days notice of intent to revoke the permit or authorization. The notice shall state the reasons for the intended revocation and state that the holder may have an informal hearing on the intended revocation before the Enforcement Officer. On revoking a permit or authorization, the Enforcement Officer shall give the holder of the permit or authorization a written notice of the revocation and the reasons for it.

C. APPEALS

Any owner or occupant who has received a Notice of Violation may appeal in writing the decision of the Enforcement Officer to the Board of Adjustment per Article 3 – Permits & Procedures of this Ordinance. In the absence of an appeal, the remedies and penalties sought by the Enforcement Officer in the Notice of Violation shall be final.

D. ORDER OF CORRECTIVE ACTION

If upon a hearing held pursuant to an appeal as prescribed above, the Board of Adjustment shall find that the owner or occupant is in violation of this Ordinance, the Board of Adjustment shall make an order in writing to the owner or occupant affirming the violation and ordering compliance.

E. FAILURE TO COMPLY WITH ORDER

When failure to comply with a Notice of Violation from which no appeal has been taken, or an Order of Corrective Action following an appeal, the responsible person(s) shall be subject to such remedies and penalties as may be provided for by the NCGS and this Ordinance. If the responsible person(s) fails to comply with the remedies and penalties prescribed, enforcement shall be sought through an order of a court of competent jurisdiction.

F. REPEAT VIOLATIONS

In addressing repeat violations by the same offender over any two (2)-year period, the County may commence the application of remedies or penalties at the stage in the process where the previous violation was resolved.

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10.05 REMEDIES AND PENALTIES (MODIFIED 8-4 & 8-5)

The Enforcement Officer may pursue one or more of the following remedies and penalties to prevent, correct, or abate a violation of this Ordinance. Use of one of the authorized remedies and penalties does not preclude the Enforcement Officer from using any other authorized remedies or penalties, nor does it relieve any party to the imposition of one (remedy or penalty) from imposition of any other authorized remedies or penalties.

A. INJUNCTION

Any violation of this Ordinance or of any condition, order, or requirement, or remedy adopted pursuant hereto may be restrained, corrected, abated, mandated, or enjoined by other appropriate proceeding pursuant to state law.

B. CIVIL PENALTIES

Any person who violates any provisions of this Ordinance shall be subject to the assessment of a civil penalty under the procedures provided in this Section.

C. PERMIT DENIAL

As long as a violation of this Ordinance remains uncorrected, the Enforcement Officer may deny or withhold approval of any permit or other authorization provided for in this Ordinance that is sought for the property on which the violation occurs.

D. CONDITIONAL PERMIT

The Enforcement Officer 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.

E. STOP WORK ORDERS

Whenever a building, sign, structure or site is being constructed, demolished, renovated, altered, or repaired in violation of any applicable provision of this Ordinance, the Enforcement Officer may issue a Stop Work Order. The Stop Work Order shall be in writing, directed to the responsible person(s) or the property owner, and shall state the specific work to be stopped, the specific reasons for cessation, and the action(s) necessary to lawfully resume work.

F. PERMIT REVOCATION

The Enforcement Officer may revoke and require the return of a permit by notifying the permit holder in writing stating the reason for the revocation. Permits shall 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. Any permit mistakenly issued in violation of an applicable state or local law may also be revoked.

G. CRIMINAL PENALTIES

As provided in Section 14-4 of the NCGS, violation of this Ordinance constitutes a misdemeanor, punishable by a fine up to five hundred dollars (\$500.00) or imprisoned not more than thirty (30) days.

H. OTHER EQUITABLE RELIEF



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In addition to the above remedies and penalties, the Enforcement Officer may institute any other appropriate equitable action or proceeding in a court of competent jurisdiction to prevent, correct, or abate a violation of this Ordinance.

10.06 CIVIL PENALTIES – ASSESSMENT AND PROCEDURES (MODIFIED 8-5)

- A. Violation of this Ordinance subjects the violator to civil penalties for each offense. If the offender fails to remedy the violation and pay any civil penalty within fifteen (15) working days after being cited for said violation (or within the time prescribed by a citation if it provides for a longer period of time than fifteen days), the civil penalty may be recovered in a civil action in the nature of a debt, as provided in NCGS 153A-123(c).
- B. The Enforcement Officer shall make written or in-person demand for payment, delivered by certified mail, return receipt requested, upon the person or persons responsible or their agents and assigns, and shall set forth in detail the violation for which the penalty has been invoked.
- C. If payment is not received or equitable settlement reached within thirty (30) days after demand for payment is received, the County may refer the matter to the County Attorney for the institution of a civil action in the nature of debt in the name of Guilford County in the appropriate division of the General Court of Justice in Guilford County, for recovery of the penalty, and any equitable remedy available to the County.
- D. The violator shall be responsible for any and all related legal or administrative fees associated with an offense.

10.07 CIVIL PENALTIES – SOIL EROSION AND SEDIMENT CONTROL (8-6)

A. GENERAL

- 1. Any person who violates any provisions of Section 9.2 (Soil Erosion and Sedimentation Control), or the Act, or rules or orders adopted or issued pursuant to this Ordinance, or who initiates or continues a land-disturbing activity for which an erosion and sedimentation control plan is required, or not in accordance with the terms, conditions, and provisions of an approved erosion and sedimentation control plan, shall be subject to a civil penalty.
- 2. The maximum civil penalty amount that Guilford County may assess per violation is five thousand dollars (\$5,000.00). A civil penalty may be assessed from the date of the violation. Each day of continuing violation shall constitute a separate violation.
- 3. When the person has not been assessed by any civil penalty under this subsection for any previous violation, and that person abated continuing environmental damage resulting from the violation within one hundred and eighty (180) days from the date of the notice of violation, the maximum cumulative total civil penalty assessed under this subsection for all violations associated with the land-disturbing activity for which the erosion and sedimentation control plan is required is twenty-five thousand dollars (\$25,000).

B. NOTICE OF VIOLATION

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1. No penalty shall be assessed until the person alleged to be in violation has been notified of the violation by registered or certified mail, return receipt requested, or other means reasonably calculated to give actual notice.
2. The notice shall describe the violation with reasonable particularity, set forth the measures necessary to achieve compliance with the plan, specify a reasonable time period within which the violation must be corrected, and warn that failure to correct the violation within the time period will result in the instigation of a civil penalty or other enforcement action.
3. If, after the allotted time period has expired, the violator has not completed corrective action, a civil penalty may be assessed from the date of receipt of the notice of violation. However, no time period for compliance need be given for obstructing, hampering or interfering with an authorized representative while in the process of carrying out his official duties.

C. NOTICE OF ASSESSMENT

1. The Enforcement Officer shall provide notice of the civil penalty amount and basis for assessment to the person assessed. The notice of assessment shall be served by any means authorized under NCGS 1A-1, Rule 4.
2. A notice of assessment by the Guilford County shall direct the violator to either pay the assessment, contest the assessment within thirty (30) days by filing a petition for hearing with Guilford County (as directed by procedures within the local Ordinances or regulations adopted to establish and enforce the erosion and sedimentation control program), or file a request with the Sedimentation Control Commission for remission of the assessment within sixty (60) days of receipt of the notice.
3. A remission request must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B of the NCGS and a stipulation of the facts on which the assessment was based.
4. The final decision on contested assessments shall be made by the governing body of the Jurisdiction in accordance with (the local Ordinances or regulations adopted to establish and enforce the erosion and sedimentation control program.) Appeal from the final decision of the governing body of Guilford County shall be to the Superior Court of the county where the violation occurred. Such appeals must be made within thirty (30) days of the final decision of the governing body of the Jurisdiction.

D. SPECIFIC CIVIL PENALTIES

1. Civil penalties for specific violations of Section 9.2 (Soil Erosion and Sedimentation Control) shall be assessed as follows:
 - a. The degree and extent of harm caused by the violation.
 - b. The cost of rectifying the damage.
 - c. The amount of money the violator saved by noncompliance.
 - d. Whether the violation was committed willfully.



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- e. The prior record of the violator in complying of failing to comply with the Ordinance.
2. If payment is not received within sixty (60) days after it is due, Guilford County may institute a civil action to recover the amount of the assessment. The civil action may be brought in the Superior Court of the county where the violation occurred, or the violator's residence or principal place of business is located. Such civil actions must be filed within three (3) years of the date the assessment was due. An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment.
3. Penalties collected by the Enforcement Officer for soil erosion and sediment control violations may be diminished only by the actual costs of collection. The collection cost percentage to be used shall be established and approved by the North Carolina Office of State Budget and Management on an annual basis, based upon the computation of actual collection costs by each county for the prior fiscal year. [In any event, the cost percentage shall not exceed twenty percent (20%) of penalties collected.]

E. CIVIL PENALTY USE (8-6.6)

Penalties collected by the Enforcement Officer may be diminished only by the actual costs of collection. The collection cost percentage to be used shall be established and approved by the North Carolina Office of State Budget and Management on an annual basis, based upon the computation of actual collection costs by each county for the prior fiscal year. [In any event, the cost percentage shall not exceed twenty percent (20%) of penalties collected.]

F. CRIMINAL PENALTY (8-7)

Any person who knowingly or willfully violates any soil erosion and sedimentation control provisions 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 an erosion and sedimentation control plan is required, except in accordance with the terms, conditions, and provisions of an approved plan, shall be guilty of a Class 2 misdemeanor punishable by imprisonment not to exceed ninety (90) days, or by a fine not to exceed five thousand dollars (\$5,000.00), or both.

G. INJUNCTIVE RELIEF—SOIL EROSION AND SEDIMENTATION CONTROL (8-8)

1. Whenever the governing body has reasonable cause to believe that any person is violating or threatening to violate any Ordinance, rule, regulation or order adopted or issued by Guilford County, or any term, condition, or provision of an approved soil erosion and sedimentation control plan, it may, either before or after the institution of any other action or proceeding authorized by this Ordinance, institute a civil action in

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the name of Guilford County, for injunctive relief to restrain the violation or threatened violation.

2. The action shall be brought in the Superior Court of Guilford County in which the violation is occurring or is threatened. Upon determination by a court that an alleged violation is occurring or is threatened, the court shall enter any order or judgement that is necessary to abate the violation, to ensure restoration is performed, or to prevent the threatened violation. The institution of an action for injunctive relief under this section shall not relieve any party to the proceedings from any civil or criminal penalty prescribed for violations of this Ordinance.

H. STOP WORK ORDER (8-9)

1. Guilford County may issue a stop-work order upon a site inspection which determines that a land-disturbing activity is being conducted in violation of the Act, rules, or orders adopted or issued pursuant to this Ordinance, that the violation is knowing and willful, and that either:
 - a. Off-site sedimentation has eliminated or severely degraded a use in a lake or natural watercourse or that such degradation is imminent.
 - b. Off-site sedimentation has caused severe damage to adjacent land or that such damage is imminent.
 - c. The land-disturbing activity is being conducted without an approved plan.
 - d. Guilford County shall apply stop work orders in accordance to NCGS 113A-65.1.

I. RESTORATION AFTER NON-COMPLIANCE (8-10)

Guilford County, may require a person who engaged in a land-disturbing activity and failed to retain sediment generated by the activity, as required by NCGS 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. If any section or section or sections of this Ordinance is/are held to be invalid or unenforceable, all other sections shall nevertheless continue in full force and effect.

10.08 ACTIONS BY OTHERS (8-11)

A. ADJACENT OR NEIGHBORING PROPERTY

In addition to the remedies of this Section, if any building or structure is erected, constructed, reconstructed, repaired, converted or maintained, or any building, structure or land is used in violation of this Ordinance, any other appropriate authority or any adjacent, nearby or neighboring property owner who would be affected by such violation may institute injunction, mandamus or other appropriate action or proceeding to prevent the occupancy of such building, structure or land, or the continuance of any construction whatsoever in violation of this Ordinance.

B. LAND PURCHASER



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In the event that a purchaser buys land for which there is a surety to secure performance of improvements, after a period of two (2) years has passed since the date of Final Plat recordation, the purchaser may bring action to enforce completion of the improvements. In such a case, the purchaser may seek specific performance.

10.09 RESERVED

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