

ENFORCEMENT



Key Changes in Article 151.9:

- This article provides a more in-depth set of provisions than those in the current ordinance for use by the County in enforcing this Ordinance, including sections on purpose and intent for the standards and a general list of the types of violations.
- The standards recognize recent changes in state law regarding the statute of limitations for enforcement of a violation.
- The article clarifies the right of County employees to enter property to enforce this Ordinance, as necessary.
- The article provides additional clarity regarding the notice of violation process, including the contents of the notice and how it may be delivered.
- The article clarifies that initial written notice of a violation is also the final written notice (though additional notice may be provided).
- The article includes several additional remedies, including conditioned approvals, stop work orders, injunctions, and orders of abatement.
- The article clarifies criminal penalties versus violations subject to civil penalties.
- There are new standards specifying the process for assessment of civil penalties to ensure clarity for those in violation of the Ordinance.

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ARTICLE 151.9 ENFORCEMENT²³⁸

9.1 PURPOSE

This section establishes procedures to ensure compliance with the provisions of this Ordinance and obtain corrections for Ordinance violations. It also sets forth the remedies and penalties that apply to violations of this Ordinance. The provisions of this section are intended to encourage the voluntary correction of violations, where possible.

9.2 COMPLIANCE REQUIRED

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.

9.3 STATUTE OF LIMITATIONS²³⁹

Enforcement of violations of this Ordinance shall be in accordance with Section 1-49(3) and Section 1-51(5) of the North Carolina General Statutes.

9.4 VIOLATIONS IDENTIFIED

Any violation of this Ordinance shall be subject to the remedies and penalties provided by this Ordinance and by State law. Violations of this Ordinance shall include, but not be limited to, any of the following:

9.4.1 DEVELOPMENT WITHOUT AUTHORIZATION

Engaging in any development, use, construction, land disturbance, or other activity of any nature upon land or improvements thereon subject to the jurisdiction of this Ordinance without all required plans, permits, certificates, or other forms of authorization as set forth in this Ordinance;

9.4.2 DEVELOPMENT INCONSISTENT WITH AUTHORIZATION

Engaging in any development, use, construction, land disturbance, 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;

9.4.3 VIOLATION BY ACT OR OMISSION

Violating, by act or omission, any term, variance, modification, adjustment, condition, or qualification placed upon any required plan, permit, certificate, or other form of authorization for the development, use, construction, land disturbance, or other activity upon land or improvements thereon;

9.4.4 USE IN VIOLATION

Erecting, constructing, altering, repairing, maintaining, or using any building or structure, or use of any land in violation of this Ordinance or any regulation made under the authority conferred thereby;

9.4.5 SUBDIVIDE IN VIOLATION

Subdividing land in violation of this Ordinance, or transferring land by reference to a plat or map showing a subdivision of land before the plat or map has been properly approved under this Ordinance and recorded in the office of the Camden County Register of Deeds; and

9.4.6 CONTINUE OPERATION FOLLOWING PERMIT REVOCATION

²³⁸ This section replaces the standards in Sections 151.565, Complaints Regarding Violations, through Section 151.569, Permit Revocation. Generally speaking, these standards go into greater detail than the current provisions on the kinds of violations, the procedure for correction, and the remedies available to the County.

²³⁹ NOTE: This is a new provision added in response to Session Law 2017-10 passed by the General Assembly in 2017. The session law establishes two maximum time periods within which the County can enforce violations: 5 years and 7 years. According to the law, the County must bring an action for the violation of a "land-use statute, ordinance or permit or any other official action affecting land use carrying the effect of law." within five years of the date "The facts constituting the violation are known to the governing body, an agent, or an employee of the unit of local government" or when, "The violation can be determined from the public record of the unit of local government." The seven-year limitation on the County's ability to enforce the Ordinance applies when "The violation is apparent from a public right-of-way" or if "The violation is in plain view from a place to which the public is invited." The time limits do not apply in cases where a violation is a danger to public health or safety.

9.7. Enforcement Procedures^{241F}

9.7.2. Violation Discovered

Continuing with construction or operation of a use, building, structure, or activity following permit revocation conducted in accordance with the standards of this section.

9.4.7 VIOLATION OF ENVIRONMENTAL REGULATIONS

Failing to follow or violating the rules or regulations of Section <>, Stormwater, Section <>, Flood Damage Prevention, or Section <>, Soil Erosion and Sedimentation Control.

9.5 RESPONSIBLE PERSONS²⁴⁰

9.5.1 GENERAL

The landowner, tenant, or other 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 is subject to the remedies and penalties set forth in this Ordinance.

9.5.2 FAILURE BY COUNTY DOES NOT RELIEVE INDIVIDUAL

Failure of a County official charged with enforcement responsibility to observe or recognize conditions which violate the intent and purpose of this section of the Ordinance, or to deny the issuance of a development permit, shall not relieve the landowner from responsibility for the condition or damages that may result and shall not result in the County, its officers, or agents being responsible for conditions or damages.

9.6 ENFORCEMENT RESPONSIBILITIES²⁴¹

The UDO Administrator, the Building Inspector, or other designated County employees shall have responsibility for enforcement of this Ordinance, in accordance with the following:

9.6.1 INVESTIGATIONS

As appropriate, any of the review authorities listed in this section have the power to conduct such investigation as may be deemed necessary to carry out their duties as prescribed in this Ordinance.

9.6.2 INSPECTIONS

- A. As appropriate, any of the review authorities listed in this section have the right, upon receipt of permission from a responsible person, to enter on any premises within the jurisdiction at any reasonable hour for the purpose of inspecting locations subject to any complaints or alleged violations, or determination of compliance or other enforcement action of this Ordinance.
- B. If any person charged with enforcing this Ordinance cannot obtain permission to enter from a responsible person, the County shall obtain an administrative search warrant prior to entering the property.

9.6.3 SUPPORTING DOCUMENTATION

As appropriate, any of the review authorities listed in this section have the power to compel a person responsible for an alleged violation to provide written statements, certificates, certifications, or reports relating to complaints or alleged violations of this Ordinance.

9.7 ENFORCEMENT PROCEDURES²⁴²

9.7.1 COMPLAINTS

- A. Whenever the UDO Administrator receives a written and signed complaint alleging a violation of this Ordinance, the UDO Administrator, or the Building Inspector, as appropriate, shall investigate the violation allegation in accordance with the standards in this section.

²⁴⁰ This section replaces Section 151.566, Persons Liable, in the current ordinance.

²⁴¹ This is a new section clarifying the rights and responsibilities of County officials to enforce this Ordinance.

²⁴² This section consolidates the provisions in Section 151.565, Complaints Regarding Violations, and Section 151.567, Procedure Upon Discovery of Violations, from the current ordinance.

9.7.3. Failure to Take COrrective Action For Violations in the SFO

- B. The UDO Administrator or Building Inspector, as appropriate, shall inform the complainant as to whether or not a violation of this Ordinance was discovered upon investigation, and if a violation is found to exist, the actions that will be taken by the County to address the violation.
- C. Nothing shall limit the UDO Administrator or Building Inspector from investigating possible violations of this Ordinance without receipt of a written complaint.

9.7.2 VIOLATION DISCOVERED

When the UDO Administrator or Building Inspector finds a violation of this Ordinance, they shall take following actions:

A. Preparation of Written Notice of Violation

A written notice of violation shall be prepared, in writing, and delivered to the person(s) responsible for the violation. The notice shall include all of following:

- 1. **Violation Exists**
That the land, building, structure, sign, use, or activity is in violation of this Ordinance;
- 2. **Nature of the Violation**
The nature of the violation, and citation of the section(s) of this Ordinance violated;
- 3. **Remedy**
The measures necessary to remedy the violation;
- 4. **Allowable Time Period**
The time period in which the violation must be corrected;
- 5. **Penalties that May be Assessed**
That penalties or remedies may be assessed; and
- 6. **Appeal**
That the party cited has the right to appeal the notice in accordance with **Section <>, Appeal.**

B. Delivery of Written Notice

Written notice of violation shall be provided to the landowner, occupant, or any other responsible person by any of the following means:

- 1. Certified mail;
- 2. Registered mail to their last known address;
- 3. Personal service; or
- 4. Posting notice conspicuously on the property.

C. Initial Notice Shall Constitute Final Notice

The initial written notice of a violation shall constitute final notice regarding a violation though additional written notice may be provided, in the sole discretion of the UDO Administrator.

D. Remedy Required upon Notice

Upon delivery of a written notice of a violation, the landowner or any other responsible person shall remedy the violation within the allowable time period.

E. Emergency Situations

In cases where the delay resulting from the notification process would pose a danger to the public health, safety, or welfare, the UDO Administrator may seek enforcement of this Ordinance without prior written notification, and may invoke any of the remedies available in **Section <>, Remedies.**

F. Failure to Comply with Order

If the landowner, occupant, or any other responsible person fails to comply with a notice of violation from which no appeal has been taken, or a final decision by the BOA following an appeal, the landowner, occupant, or other responsible party shall be subject to such remedies and penalties as may be provided for by State law or **Section <>, Remedies.**

G. Each Day a Separate Violation

Each day a violation continues following notice or failure to comply is considered a separate and distinct offense.

9.7.3 FAILURE TO TAKE CORRECTIVE ACTION FOR VIOLATIONS IN THE SFO

- A. In cases where a responsible party has received a notice of violation for development or activity in violation of the standards in the SFO, and failed to take the required corrective action in the time limit provided, the Floodplain Administrator shall provide written notice of the failure via certified or registered mail to the responsible person's last known address indicating that the property in question is in violation of this Ordinance and that a hearing on the

matter will be conducted by the Floodplain Administrator not less than ten days after the date of the notice of failure to take corrective action.

- B. At the hearing, the responsible person shall be entitled to present arguments and evidence pertaining to the matter. If, after completion of the hearing, the Floodplain Administrator finds that the property remains in violation of the SFO standards, the Floodplain Administrator shall issue an order for correction within a specified time period of not less than 60 days from the close of the hearing. The order of the Floodplain Administrator may be appealed to the BOA within ten days in accordance with the standards in Section <>, Appeal.
- C. If no appeal is filed and the responsible party fails to take the corrective action identified in the Floodplain Administrator's order, the responsible party shall be guilty of a misdemeanor, and shall be punished in a manner under the discretion of the Circuit Court for Camden County.

9.8 REMEDIES²⁴³

Any of the following remedies may be applied by the County, whether individually or cumulatively, in response to a violation of this Ordinance.

9.8.1 CIVIL PENALTIES

Any responsible person who violates any provision of this Ordinance shall be subject to the assessment of a civil penalty of \$100.00 per day under the procedures provided in [Section <>, Assessment of Civil Penalties](#).

9.8.2 DENIAL OF PERMIT OR CERTIFICATE

The UDO Administrator or Building Inspector, as appropriate, may withhold or deny a permit, certificate, or other authorization for the same land, subdivision, building, structure, sign, use, or development activity in which there is an uncorrected violation of this Ordinance.

9.8.3 CONDITIONAL APPROVAL

- A. The UDO Administrator or Building Inspector, as appropriate, may condition a permit, certificate, or other authorization for land, subdivision, building, structure, sign, use, or development activity with a violation in order to compel:
 1. Correction of the violation;
 2. Payment of civil penalties; and
 3. Posting of a compliance security, as approved by the appropriate governmental authority.
- B. In no instance shall a permit, certificate, or approval for one property be conditioned in order to address a violation on a different property.

9.8.4 STOP WORK ORDERS

- A. **General**

Whenever the UDO Administrator or Building Inspector determines that a person is engaged in doing work that constitutes, creates, or results in a violation of this Ordinance and that irreparable injury will occur if the violation is not terminated immediately, the UDO Administrator or Building Inspector, as appropriate, may order the specific part of the work that constitutes, creates, or results in a violation of this Ordinance to be immediately stopped.
- B. **Order in Writing**

The stop work order shall be in writing and directed to the landowner, and the 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.
- C. **Appeal**

Any person aggrieved by the issuance of a stop work order may appeal the issuance of the order to the Board of Adjustment in accordance with [Section <>, Appeals](#). An appeal shall not stay the stop work order unless the BOA fails to hear the appeal within 60 days of receipt of the notice of appeal. If the BOA fails to hear the appeal within 60 days, the stop work order shall be stayed until the BOA acts on the appeal.
- D. **Compliance Required**

Neither the responsible person nor a landowner upon whom a stop work order is served shall continue with work in violation of the stop work order while it remains in effect, unless the order is stayed in accordance with subsection (C) above.

²⁴³ This section consolidates the standards in Section 151.568, Penalties and Remedies for Violations, and Section 151.569, Permit Revocation, and adds several other remedies available to the County, including stop work, injunctive relief, and others.

9.8.5 REVOCATION OF PERMITS²⁴⁴

- A. The UDO Administrator or the Building Inspector, as appropriate, may revoke and require the return of a permit by notifying the permit holder in writing, at least ten days prior to the effective date of the revocation, stating the reason for the revocation. The notice shall indicate the permit holder's right to a hearing with the UDO Administrator to consider the pending revocation.
- B. Permits or certificates may be revoked, in accordance with Section 160A-422 and Section 153A-362 of the North Carolina General Statutes, for any of the following:
 - 1. Any substantial departure from the approved application, plans, or specifications;
 - 2. Refusal or failure to comply with the requirements of State or local laws; or
 - 3. For making false statements or misrepresentations in securing the permit, certificate, or approval.
- C. Any permit or certificate mistakenly issued in violation of an applicable State or County law may also be revoked.

9.8.6 CRIMINAL PENALTIES

- A. **Violation of Erosion and Sedimentation Control**

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, shall be guilty of a Class 2 misdemeanor that may include a fine not to exceed five thousand dollars (\$5,000).
- B. **All Other Violations**

Any violation of this Ordinance may be enforced as a Class 3 misdemeanor as provided for by Sections 14-4 and 160A-175, and 153A-324 of the North Carolina General Statutes, subject to a maximum fine of \$500 or a maximum of 30 days imprisonment.

9.8.7 INJUNCTIVE RELIEF

- A. **Action by County Board of Commissioners**

Whenever the Board of Commissioners has reasonable cause to believe that any person is violating or threatening to violate this Ordinance, or any rule or order adopted or issued pursuant to this Ordinance, or any term, condition, or provision of an approved development plan, or 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 the name of the County, for injunctive relief to restrain, correct, abate, mandate, or enjoin the violation or threatened violation.
- B. **Superior Court**

The action shall be brought in the Superior Court of Camden County. Upon determination by the court that an alleged violation is occurring or is threatened, it shall enter such orders or judgments as are necessary to abate the violation or to prevent the threatened violation.
- C. **No Relief from Criminal Penalties**

The institution of an action for injunctive relief under this section shall not relieve a party in violation of this Ordinance from any applicable civil or criminal penalty.

9.8.8 ORDER OF ABATEMENT

In addition to an injunction, the County may apply for and the court may enter an Order of Abatement as part of the judgment in the case. An Order of Abatement may direct any of the following actions:

- A. That buildings or other structures on the property be closed, demolished, or removed;
- B. That fixtures, furniture, or other moveable property be moved or removed entirely;
- C. That improvements, alterations, modifications, or repairs be made; or
- D. That any other action be taken as necessary to bring the property into compliance with this Ordinance.

9.8.9 EQUITABLE REMEDY

The County may apply to a court of law for any appropriate equitable remedy to enforce the provisions of this Ordinance. The fact that other remedies are provided under general law or this Ordinance shall not be used by a violator as a defense to the County's application for equitable relief.

²⁴⁴ NOTE TO STAFF: Section 151.569, Permit Revocation, calls for the provision of public notice and a public hearing prior to the revocation of a special use permit. Additional discussion of this procedure is needed. Not sure this is required by law, but may be a matter of policy.

9.10. Enforcement of Specific Environmental Regulations

9.9.4. Nonpayment

9.8.10 STATE AND COMMON LAW REMEDIES

In addition to other enforcement provisions contained in this section, the County Board of Commissioners may exercise any and all enforcement powers granted to it by State or common law.

9.9 ASSESSMENT OF CIVIL PENALTIES

In cases where a violation of this Ordinance is determined to exist, a notice of violation is issued, and the violator is subject to civil penalties as a result of the violation, the assessment of civil penalties shall be in accordance with the following:

9.9.1 PROCEDURE, GENERALLY

A. Written Notification Required

Civil penalties may not be assessed until the responsible person in violation has been notified in accordance with Section <>, Enforcement Procedures. Nothing shall prevent the notice of violation from serving as the written notice of penalty assessment of civil penalties

B. Notice of Penalty Assessment

Notice of the civil penalty assessment shall be served in the same manner as a notice of violation.

C. Assessment Contents

The assessment notice 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 10 days of the date of the notice of penalty assessment.

D. Assessment Until Compliance

Civil penalties may be assessed until compliance is achieved.

9.9.2 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.

9.9.3 DEMAND FOR PAYMENT

If compliance is not achieved, then the UDO Administrator shall make written demand for payment of penalties that have accrued while the property has been in violation. The demand for payment shall be sent to the responsible person in violation and must include a description of the violation for which the civil penalties have been imposed.

9.9.4 NONPAYMENT

If payment is not received or equitable settlement reached within 10 days after demand for payment is made, the County may recover any unpaid civil penalty by filing a civil action in the nature of debt.

9.10 ENFORCEMENT OF SPECIFIC ENVIRONMENTAL REGULATIONS

In the event of conflict between the enforcement provisions of this article and Article 151.7: Environmental Provisions, as they pertain to stormwater management, sedimentation and erosion control, or flood damage prevention, the standards in Article 151.7:Environmentnal Provisions, shall control.