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# ARTICLE 10: ENFORCEMENT

## A. APPLICABILITY

This Ordinance shall apply to all property within the Town of Summerfield and its area of jurisdiction. Unless otherwise specified, the Administrator shall have the authority to administer and enforce the provisions of the Ordinance within this area.

## B. ENFORCEMENT OFFICER

### 1. ESTABLISHMENT OF DELEGATED AUTHORITY

The Administrator may designate one or more persons to assist in the administration and enforcement this ordinance. Orders issued by the Administrator's designee shall have the same effect as if issued by the Administrator. The Administrator, or designee, may enter any building, structure, or premises as provided by law, to perform any duty imposed upon him/her by this ordinance. If inspecting, staff must enter the premises during reasonable hours and upon presenting credentials. Staff must have consent of premises owner or an administrative search warrant to inspect areas not open to the public.

### 2. GENERAL DUTIES

In addition to the duties of the Administrator identified in Article 2.A.2 the Administrator shall:

- (a) periodically inspect properties and activities for which permits have been issued to determine whether the use(s) is being conducted in accordance with the provisions of a permit issued pursuant to this ordinance, or of this ordinance;
- (b) cause to be investigated violations of this ordinance;
- (c) enforce the provisions of this ordinance;
- (d) issue notice of corrective action(s) when required;
- (e) use the remedies provided in this ordinance to gain compliance;
- (f) be authorized to gather evidence in support of said activities;
- (g) receive appeals and forward cases to the appropriate body; and,
- (h) perform other duties as may be assigned by the Board of Adjustment and/or the planning board.

## C. VIOLATIONS

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.

### 1. DEVELOPMENT WITHOUT PERMIT

To engage in any development, use, construction, remodeling, or other activity of any nature upon the 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.

### 2. DEVELOPMENT INCONSISTENT WITH PERMIT

To engage in any development, use, construction, remodeling, 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.

### 3. VIOLATION BY ACT OR OMISSION

To violate, by act or omission, any provision of this ordinance, or any term, variance or waiver, condition, or qualification placed by the permit-issuing board upon any required permit, certificate, or other form of authorization for the use, development, or other activity upon land or improvements thereon.

**4. 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 contravention of this ordinance, or any other regulation made under the authority conferred thereby.

**5. SUBDIVIDE IN VIOLATION**

To subdivide land in violation of this ordinance or transfer or sell land by reference to, exhibition of, or any other use of a plat or map showing a subdivision of the land before the plat or map has been properly approved under this ordinance and recorded in the office of the register of deeds of Guilford County. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land does not exempt the transaction from violation of this ordinance.

**6. CONTINUING VIOLATIONS**

Each day's violation of any provision of this ordinance is a separate and distinct offense.

**D. ENFORCEMENT INTENT**

It is the intention of this ordinance, unless otherwise provided, that all questions arising in connection with the enforcement of this ordinance shall be presented first to the Administrator or designee, and that such questions shall be presented to the Board of Adjustment only on appeal from the Administrator or designee's decision. An appeal from the decision of the Board of Adjustment shall be by proceedings in the nature of certiorari to the Superior Court of Guilford County as provided by law.

**E. ENFORCEMENT PROCEDURE**

When the Administrator or his/her agent finds a violation of this ordinance, it shall be his/her duty to notify the owner or occupant of the land, building, structure, sign, or use of the violation within the time period prescribed by state law. The owner or occupant shall immediately remedy the violation.

**1. NOTICE OF VIOLATION**

If the owner or occupant of the land, building, sign, structure, or use in violation fails to take prompt corrective action, the Administrator shall give the holder of the development approval and to the landowner of the property involved, if the landowner is not the holder of the development approval, written notice, by first class mail, general delivery mail, certified or registered mail to his last known address, or by personal service, by posting notice of the violation conspicuously on the property, or in accordance with Rule 4 of the North Carolina Rules of Civil Procedure. The notice of violation shall include, but not be limited to:

- (a) that the land, building, sign, structure, or use is in violation of this ordinance;
- (b) the nature of the violation, and citation of the section of this ordinance violated;
- (c) the measures necessary to remedy the violation;
- (d) the opportunity to cure the violation within a prescribed period of time; and,
- (e) where the person violating a provision of this article is not the owner of the property, the Town shall send a notice of violation to both the occupant and the owner of the property.

**2. EXTENSION OF TIME TO REMEDY**

Upon receipt of a written request from the alleged violator or the property owner for an extension of time to remedy or correct the violation, the Administrator or other Town official charged with the duty of enforcing the regulations(s) being violated may grant a single extension of time, not to exceed a period of thirty (30) calendar days, in which the alleged violator may cure or correct the violation before the Town pursues enforcement action as provided for in this section.

### 3. APPEAL

Any owner or occupant who has received a notice of violation may appeal in writing the decision of the Zoning Administrator to the Board of Adjustment (unless this ordinance has specified that another board shall hear the appeal of the violation) in accordance with procedures outlined in Article 3. The Board of Adjustment, or other designated board, may affirm, modify, or revoke the notice of violation. In the absence of an appeal, the remedies and penalties sought by the Zoning Administrator in the notice of violation shall be final. Notice of such hearing shall be provided as required by this ordinance and state statutes.

### 4. 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.

### 5. FAILURE TO COMPLY WITH AN ORDER

If the owner or occupant of a property fails to comply with a notice of violation from which no appeal has been taken, or an order of corrective action following an appeal, the owner or occupant shall be subject to such remedies and penalties as may be provided for by state law and Article 10.F *Remedies*. If the owner or occupant fails to comply with the remedies and penalties prescribed, enforcement shall be sought through an order of a court of competent jurisdiction.

## F. REMEDIES

Any one or all of the following procedures may be used to enforce the provisions of this ordinance.

### 1. 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.

### 2. 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 Article 10.G *Civil Penalties - Assessments and Procedures*.

### 3. DENIAL OF PERMIT OR CERTIFICATE

The Administrator may withhold or deny any permit, certificate, occupancy permit or other form of authorization on any land, building, sign, structure, or use in which there is an uncorrected violation of a provision of this ordinance or of a condition or qualification of a permit, certificate, or other authorization previously granted.

### 4. CONDITIONAL PERMIT OR TEMPORARY CERTIFICATE

The Administrator 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.

### 5. STOP WORK ORDERS

Whenever a building, sign, or structure, or part thereof is being constructed, reconstructed, altered, or repaired in violation of this ordinance, the Administrator may order the work to be immediately stopped. The stop work order shall be in writing and directed to the owner, 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. A copy of the order shall be delivered to the holder of the development approval and to the owner of the property involved (if that person is not the holder of the development approval) by personal delivery, electronic delivery, or first-class mail. The person or persons delivering the stop work order shall certify to the local government that the order was delivered, and that certificate shall be deemed conclusive in the

absence of fraud. Except as provided by NCGS 160D-1112 and NCGS 160D-1208, a stop work order may be appealed pursuant to NCGS 160D-405. No further work or activity shall take place in violation of a stop work order pending a ruling on the appeal. Violation of a stop work order shall constitute a Class 1 misdemeanor.

**6. REVOCATION OF PERMITS**

The Administrator 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. Pursuant to NCGS 160D-403(f), the staff shall follow the same development review and approval process required for issuance of the development approval, including any required notice or hearing, in the review and approval of any revocation of that approval.

**7. CRIMINAL PENALTIES**

Any violation of this ordinance shall be a misdemeanor or infraction as provided by N.C.G.S. 14-4.

**G. CIVIL PENALTIES – ASSESSMENT AND PROCEDURES**

**1. PENALTIES**

Any person who violates any provisions of this ordinance shall be subject to assessment of a civil penalty in the amount prescribed for the first and each successive violation of the same provision. The following penalties are hereby established:

|   |  |
|---|--|
| Warning citation                                | Correct violation within prescribed period of time |
| First citation                                  | \$100.00   |
| Second citation for same offense                | \$300.00   |
| Third and subsequent citations for same offense | \$500.00   |

\*See G4 below for continuing fines.

If the offender fails to pay the civil penalties within fifteen (15) days after having been cited, the Town may recover the penalties in a civil action in the nature of debt.

**2. NOTICE**

No civil penalty shall be assessed until the person alleged to be in violation has been notified of the violation in accordance with Article 10.E.1 *Notice of Violation*. If after receiving a Notice of Violation under Article 10.E.1, the owner or other violator fails to take corrective action within the prescribed period of time, a civil penalty may be imposed under this section in the form of a citation. The citation shall be served in the manner of a Notice of Violation. The citation 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 fifteen (15) days of the date of the notice.

**3. RESPONSIBLE PARTIES**

The owner or occupant of any land, building, structure, sign, or use of land or part thereof and any architect, builder, contractor, agent, or any other person who participates or acts in concert, assists, directs, creates, or maintains any condition that is in violation of the requirements of this ordinance may be held responsible for the violation and subject to the civil penalties and remedies herein provided.

**4. CONTINUING VIOLATION**

If the violation is not corrected and/or the civil penalty is not paid within 15 days of the date of the civil penalty assessment, then each day thereafter (i.e., after the expiration of the 15 day "grace" period) shall be considered a new and separate violation.

**5. DEMAND FOR PAYMENT**

The Administrator, or designee, shall make written demand for payment upon the property owner or the person in violation, and shall set forth in detail a description of the violation for which the civil penalty has been imposed. If the violation has not been corrected, payment shall not release a violator from potential civil enforcement, criminal prosecution, injunctive relief, or an order of abatement.

**6. NONPAYMENT**

If payment is not received or equitable settlement reached within thirty (30) days after demand for payment is made, the matter shall be referred to legal counsel for institution of a civil action in the appropriate division of the general courts of justice for recovery of the civil penalty. Provided, however, if the civil penalty is not paid within the time prescribed, the Administrator may have a criminal summons or warrant issued against the violator. Upon conviction, the violator shall be subject to any criminal penalty the court may impose pursuant to N.C.G.S. 14-4.

**H. OTHER POWERS AND ACTIONS****1. STATE AND COMMON LAW REMEDIES**

In addition to other enforcement provisions contained in this article, the Board of Adjustment may exercise any and all enforcement powers granted to it by state law or common law.

**2. PREVIOUS ENFORCEMENT**

Nothing in this ordinance shall prohibit the continuation of previous enforcement actions.

**I. REMEDIES CUMULATIVE AND CONTINUOUS****1. CUMULATIVE VIOLATION.**

All such remedies provided herein shall be cumulative. To the extent that North Carolina law may limit the availability of a particular remedy set forth herein for a certain violation or a part thereof, such remedy shall remain available for other violations or other parts of the same violation.

**2. REPEAT VIOLATIONS**

If an owner or occupant repeats the same violation, on the same parcel, within a five-year period from the date of the initial violation, it shall be considered to be a continuation of the initial violation and shall be subject to additional penalties and remedies.