

Article 17. Violations and Penalties

17.1 Complaints Regarding Violations

Whenever a violation of this Code occurs, or is alleged to have occurred, any person may file a written complaint. Any written complaint stating fully the cause and basis of the complaint shall be filed with the Administrator who shall properly record such complaint, investigate in a timely manner, and take appropriate action as provided by this Code.

When inspecting to determine the validity of potential violations, the Administrator shall follow applicable provisions of G.S. 160D-403(e). Staff must enter the premises during reasonable hours and upon presenting credentials. If the premises owner does not consent to such inspection, an administrative search warrant must be obtained.

In addition, all of the remedies and powers available to the Administrator may be utilized if a violation of the Fletcher Land Development Code is identified.

17.2 Penalties for Violation

Failure to comply with any provision of this Code is hereby declared unlawful. The following remedies and enforcement powers may be used to administer and enforce this Code:

- A. Criminal:** Pursuant to North Carolina General Statute 14-4, any person, firm, or corporation convicted of violating the provisions of this Code shall, upon conviction, be guilty of a misdemeanor and shall be fined in accordance with the general statute.
- B. Equitable Remedy:** The Administrator may apply to a judicial court of law for any appropriate equitable remedy to enforce the provisions of this Code. It is not a defense to the Administrator's application for equitable relief that there are other remedies provided under general law or this Code.
- C. Injunction:** Enforcement of the provisions of this Code may also be achieved by injunction. When a violation occurs, the Administrator may, either before or after the initiation of other authorized action, apply to the appropriate division of the court for a mandatory or prohibitory injunction commanding the defendant to correct the unlawful condition or cease the unlawful use of the property.
- D. Order of Abatement:** In addition to an injunction, the Administrator may apply for and the court may enter into an order of abatement as part of the judgment in the case. An order of abatement may direct any of the following actions:
 - 1. Buildings or other structures on the property be closed, demolished, or removed;
 - 2. Fixtures, furniture or other moveable property be moved or removed entirely;
 - 3. Improvements alterations, modifications or repairs be made; or
 - 4. Any other action be taken that is necessary to bring the property into compliance with this Code.

- E. Execution of Court Decisions:** If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, the defendant may be cited for contempt. The Administrator may execute the order of abatement and will have a lien on the property in the nature of a mechanic's and materialman's lien for the cost of executing the order. The defendant may secure cancellation of an order of abatement by paying all costs of the proceedings and by posting a bond for compliance with the order. The bond must be given with sureties approved by the Clerk of Superior Court in an amount approved by the judge before whom the matter was heard and shall be conditioned for the defendant's full compliance with the terms of the order of abatement within the time fixed by the judge. Cancellation of an order of abatement does not suspend or cancel an injunction issued in conjunction with the order.
- F. Stop Work Order Issuance:** Whenever a building, structure or part thereof is being constructed, demolished, renovated, altered, or repaired in material violation of any applicable provision of this Code, the Administrator may order the specific part of the work that is in violation, or would be when the work is completed, to be immediately stopped. The stop work order shall be in writing, directed to the person doing the work, and shall state the specific work to be stopped, the specific reasons for cessation and the action(s) necessary to lawfully resume work.
- G. Revocation of Permits:** The Administrator may revoke any permit (e.g. Building, Certificate of Occupancy) by written notification to the permit holder when violations of this Code have occurred. Permits may be revoked when false statements or misrepresentations were made in securing the permit, work is being or has been done in substantial departure from the approved application or plan, there has been a failure to comply with the requirements of this Code, or a permit has been mistakenly issued in violation of this Code. Revocation of any permit or development approval must follow the same process as was used for the approval (G.S. 160D-403(f)).
1. Before a Special Use Permit may be revoked, all of the notice and public hearing requirements in Section 15.11 shall be complied with. The notice shall inform the permit recipient of the alleged grounds for the revocation.
 2. The burden of presenting evidence sufficient for the permit-issuing authority to conclude that a permit should be revoked for any of the reasons set forth in Section 15.11.B shall be upon the party advocating that position. The burden of persuasion shall also be upon that party.
 3. 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.
 4. Before a Zoning Permit or Sign Permit may be revoked, the Administrator shall give the permit recipient thirty (30) 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 therefore.

5. No person may continue to make use of land or buildings in the manner authorized by any zoning compliance, sign, special use or conditional zoning after such permit has been revoked in accordance with this section.

H. Civil Penalty: In addition to the other remedies cited in this Code for the enforcement of its provisions, and pursuant to North Carolina General Statute 160A-175, as well as applicable provisions of G.S. 160D-404, the regulations and standards in this Code may be enforced through the issuance of civil penalties by the Administrator.

1. Subsequent citations for the same violation may be issued by the Administrator if the offender does not pay the citation (except as otherwise provided in a Warning Citation) after it has been issued unless the offender has sought an appeal to the actions of the Administrator through the Board of Adjustment. Once the fifteen (15) day warning period has expired, each day which the violation continues shall subject the violator to additional citations to be issued by the Administrator.
2. Note that willful violation of this code in a manner similar to the first violation is regarded as a subsequent violation regardless of whether the violation. (For example, an illegal sign erected and properly cited as a violation and issued a citation can not be removed for a day and the re-erected simply to restart the enforcement and compliance actions of the Administrator.)
3. Upon written request, a single 30-day extension may be granted for violations of the provisions of the Code.
4. The following penalties are hereby established:
 - a. **Warning Citation/Notice of Violation (as authorized under G.S. 160D-404(a).):**
 - (1) Correct Violation within 30 days.
 - (2) A single 30- day extension may be granted.
 - (3) Notices of Violation (NOV) shall be delivered to both the permittee AND landowner if different, or to the person or occupant undertaking the activity, and must be delivered by hand, email, or first-class mail, or may be posted onsite. The Administrator shall certify the NOV for the file.
 - b. **First Citation:**
 - (1) Fines not to exceed \$50.00 and/or imprisonment for a period of time not to exceed 30 days.
 - (2) **Signs:** \$50.00
 - (3) **Landscaping:** \$50.00 per violation or per offense (May be applied per tree or shrub for landscaping installation violations) and \$2.00

for every square foot area of vegetation damaged or destroyed.
Fines not to exceed \$30,000.

c. Subsequent Citations for Same Offense:

(1) \$50.00 per violation or offense per day.

(2) Landscaping: \$50.00 per violation or per offense (May be applied per tree or shrub for landscaping installation violations) and \$2.00 for every square foot area of vegetation damaged or destroyed.
Fines not to exceed \$30,000.

5. If the offender fails to pay the civil penalties within ten (10) days after having been cited, the Town may recover the penalties in a civil action in the nature of debt.

I. Removal and Recovery Expense

If a sign or property owner fails to comply with the requirements of a remove order, the Administrator may cause the sign to be removed. The sign owner and the property owner shall be jointly and severally liable for the expense of removal. If the sum is not paid within thirty (30) days thereafter, the sum shall be collected by the Town in a civil action in the nature of debt.

17.3 Penalties for Transferring Lots in Unapproved Subdivisions

- A.** No lot referenced to or exhibited on any subdivision plat required herein shall be sold or transferred until the final plat for such subdividing has been recorded by the Henderson County Register of Deeds. The owner or agent of the owner shall be guilty of a misdemeanor if lots are sold or transferred in an unapproved subdivision.
- B.** 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 Town may bring an action for injunction of any illegal subdivision, transfer, conveyance or sale of land, and the court shall, upon appropriate findings, issue an injunction and order requiring the offending party to comply with the Code.