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Chapter 11: ENFORCEMENT**11.1 GENERAL PROVISIONS****11.1.1 Purpose**

This chapter establishes procedures through which the Town seeks to ensure compliance with the provisions of this Ordinance and obtain corrections for Ordinance violations. The provisions of this chapter are intended to encourage, to the greatest degree possible, the voluntary correction of violations.

11.1.2 Compliance Required

It shall be unlawful for any person to develop or use any land, building, or structure within the Town or its ETJ in violation of this Ordinance.

11.1.3 Liability for Violations

Any person who erects, constructs, reconstructs, alters, repairs, converts, or maintains any building, structure, or sign or part thereof in violation of this Ordinance, and any person who uses any building, structure, or land in violation of the Ordinance, shall be subject to civil penalties and enforcement action in accordance with this chapter.

11.1.4 Each Day a Separate Violation

Each day that a violation continues shall constitute a separate and distinct violation or offense. (Ord. No. 06-009, 4-27-06)

11.2 RESPONSIBILITY FOR ENFORCEMENT AND APPEALS**11.2.1 Primary Responsibility**

Except as otherwise provided, the Planning Director shall have primary responsibility for enforcing the provisions of this Ordinance.

11.2.2 General Appeals of Enforcement Decisions

Appeal from or review of any enforcement decision made pursuant to this Ordinance shall be made to the Zoning Board of Adjustment within thirty (30) calendar days from the date of the decision or postmark if such decision is mailed. The appeal shall state with particularity the matter or question appealed and the grounds for the appeal. From the decision of the Zoning Board of Adjustment, recourse may be had to the courts as provided by law.

(A) Appeals of Building Permit Issues

Any appeals of the North Carolina State Building Code issues (including revocation of building permits) must be made to the North Carolina Building Code Council.

(B) Appeals of Civil Penalties

Appeal of a civil penalty amount (with the exception of penalties assessed for violations of Section 7.4, Soil Erosion and Sedimentation Control) may be made to the Town Manager or designee within thirty (30) calendar days from the date of issuance of the first citation issued for the violation by filing an appeal stating with specificity the grounds for the appeal and the reasons the penalty should be reduced or abated. Appeals of a decision of the Town Manager regarding the amount of a civil penalty are made to the Zoning Board of Adjustment.

- (1) In considering the appeal, the penalty or fine, the Town Manager may consider the following:
- (a) the gravity of the violation;
 - (b) any action taken by the violator to correct the violation;
 - (c) the cost of the action to correct the violation, and
 - (d) any previous violations committed by the violator, on the same or different site.

(C) Appeal of Stop Work Orders

Unless issued pursuant to the authority contained in G.S. 113A-65.1, appeals of stop work orders shall be in accordance with the provisions of G.S. 160A-421(b).

(D) Appeal of Soil Erosion and Sedimentation Control Decisions

Decisions rendered pursuant to Section 7.4 of this Ordinance (with the exception of associated civil penalties) may be appealed to the North Carolina Sedimentation Control Commission in accordance with G.S. 113A-61. Civil penalties assessments related to soil erosion and sedimentation control may be contested within thirty (30) calendar days of the assessment by filing a petition for a contested case under G.S. Chapter 150B, Article 3, as provided in G.S. 113A-64.

11.2.3 Inspections

The Directors of Planning, Engineering, and/or Inspections and Permits or his or her designees shall have the authority, upon presentation of proper credentials, to enter and inspect any land, building, structure, or premises to ensure compliance with this Ordinance at any time.

(Ord. No. 04-001, 1-8-04; Ord. No. 04-007, 7-15-04; Ord. No. 05-001, 1-13-05; Ord. No. 2007-21, 12-13-07; Ord. No. 2010-LDO-01, 1-14-10)

11.3 VIOLATIONS**11.3.1 Activities Inconsistent with Ordinance**

It shall be a violation of this Ordinance to erect, construct, reconstruct, remodel, alter, maintain, expand, move, or use any land, building, structure, or sign, or engage in development or subdivision of land contrary to the zoning, subdivision, erosion control, sign, and other land use regulations contained in this Ordinance;

11.3.2 Land Disturbing Activities Inconsistent with Ordinance

It shall be a violation of this Ordinance to excavate, grade, cut, clear, or undertake any other land-disturbing activity contrary to the provisions of this Ordinance, including, but not limited to:

- (A) Failure to install or maintain protection measures;
- (B) Disturbance of existing grade beyond the proposed limits of grading as indicated on the approved landscaping and appearance plans so as to disturb the root zone within the drip line of any significant vegetation indicated for preservation;
- (C) Exposure of plants to severe hydrologic changes, damaging fumes or chemicals, or excessive temperatures, such as from fire;
- (D) Cutting or wounding of plants, including severe pruning;
- (E) Damaging and/or destroying the interior significant vegetation, interior specimen significant vegetation, buffers or tree save areas that are required to be protected based upon an approved site/subdivision plan; or
- (F) Initiating or continuing a land-disturbing activity (for which an erosion control plan is required) either in violation of the erosion control plan or by failing to obtain a valid erosion control plan.

11.3.3 Nonconformities Inconsistent with Ordinance

It shall be a violation of this Ordinance to create, expand, replace, or change any nonconformity except in compliance with this Ordinance;

11.3.4 Increasing Intensity or Density of Use

It shall be a violation of this Ordinance to increase the intensity or density of use of any land or structure except in accordance with the procedural and substantive requirements of this Ordinance;

11.3.5 Making Lots, Setbacks, Buffers, or Open Space Nonconforming

It shall be a violation of this Ordinance to reduce or diminish the lot area, setbacks, buffers, or required open space to a size, proportion or amount which is smaller than required under this Ordinance;

11.3.6 Activities Inconsistent with Conditions of Plan Approval or Permit

It shall be a violation of this Ordinance to engage in any development, use of land, construction, remodeling, or other activity contrary to the terms and conditions of any plan approval, permit, or other form of authorization required to engage in such an activity; or

11.3.7 Failure to Remove Signs

It shall be a violation for any failure to remove any sign installed, created, erected, or maintained in violation of this Ordinance, or for which the sign permit has lapsed.

(Ord. No. 04-001, 1-8-04; Ord. No. 2007-21, 12-13-07)

11.4 REMEDIES AND PENALTIES

The Town shall have the following remedies and enforcement powers to prevent, correct, stop, abate, or penalize a violation of this Ordinance.

11.4.1 Deny or Withhold Permits

The Director may deny or withhold all permits, certificates, or other forms of authorization to use or develop any land, structure, or improvements until an alleged violation and associated civil penalty related to such property, use, or development is corrected. This provision shall apply whether or not the current owner or applicant for the permit or other approval is responsible for the violation.

11.4.2 Revoke Permits

Any development permit, certificate, or other form of authorization required under this Ordinance may be revoked when the Director determines that:

- (A) There is a departure from the approved plans, specifications, or conditions as required under the permit;
- (B) The development permit was procured by false representation;
- (C) The development permit was issued in error; or
- (D) There is a violation of any provision of this Ordinance.

Written notice of revocation shall be served upon the property owner, agent, applicant, or other person to whom the permit was issued, or such notice may be posted in a prominent location at the place of violation. No work or construction shall proceed after service of the revocation notice.

11.4.3 Civil Penalties

Except as provided herein, there are three (3) options for civil penalties for violations of this Ordinance based upon the type of violation.

- (A) General violations of this Ordinance shall subject the offender to a civil penalty in the amount of one hundred dollars (\$100.00) for the first day, two hundred dollars (\$200.00) for the second day, three hundred (\$300.00) for the third day, four hundred dollars (\$400.00) for the fourth day, and four hundred dollars (\$400.00) for each day thereafter that the violation continues, to be recovered by the Town in a civil action in the nature of debt if the offender does not pay the penalty within the prescribed period of time after he or she has been cited for violation.
- (B) Any person who knowingly or willfully violates the soil erosion and sedimentation control provisions in Section 7.4 of this Ordinance, or who initiates or continues a land-disturbing activity for which an erosion control plan is required other than in accordance with the terms, conditions and provisions of an approved erosion control plan, is subject to a civil penalty as provided in G.S. 113A-64, as amended, the provisions of which are incorporated herein by reference. If the Director determines that a person engaged in a land-disturbing activity has

failed to comply with Section 7.4, the Director shall serve a notice of violation upon that person. The notice may be served by any means authorized under G.S. 1A-1, Rule 4, and shall specify a date by which the person must come into compliance and shall inform the violator of the actions that need to be taken to comply. Any person who fails to comply within the time specified is subject to additional civil and criminal penalties of a continuing violation. The maximum civil penalty for the violation of Section 7.4 other than for a violation of a stop-work order issued under G.S. 113A-65.1 and Section 11.4.3(C) below is five thousand dollars (\$5,000.00) per day, which may be assessed from the date the notice of violation is served. Each day of a continuing violation shall constitute a separate violation. In determining the amount of the penalty, the Director shall use the following fine schedule, and consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, the amount of money the violator saved by noncompliance, whether the violation was committed willfully and the prior record of the violator in complying or failing to comply with Section 7.4. The Director shall notify the person who is assessed the civil penalty of the amount of the penalty and the reason for assessing the penalty. The notice of assessment shall be served by any means authorized under G.S. 1A-1, Rule 4 and shall direct the violator to either pay the assessment or contest the assessment within thirty (30) days by filing a petition for a contested case under G.S. Chapter 150B, Article 3. An assessment that is not contested is due when the violator is served with a notice of assessment. If a violator does not pay the penalty assessed within thirty (30) days after it is due the town may institute a civil action to recover the amount of the assessment.

- (C) In addition to the fine schedule listed below, the Stormwater Services Manager may assess a one (1)-time civil penalty of up to five thousand dollars (\$5,000.00) for the day the violation is detected based upon whether the violation has resulted in off-site sedimentation.

- (1) Fine schedule for willful violation of the requirements in Section 7.4:

(a) ***Grading Without a Plan***

Five thousand dollars (\$5,000.00) per day for failure to secure a valid required grading permit prior to conducting a land disturbing activity.

(b) ***Failure to Protect***

Five thousand dollars (\$5,000.00) per day for failure to take all reasonable measures to protect public property or private property from damage caused by failure to retain sediment on site.

(c) ***Failure to Follow Plan***

Two thousand five hundred dollars (\$2,500.00) per day for failure to conduct a land disturbing activity in accordance with the provisions of an approved erosion and sedimentation control plan.

(d) ***Failure to Install Devices***

Five thousand dollars (\$5,000.00) per day for failure, when twelve thousand (12,000) sq. ft. or more is disturbed, to install erosion and sedimentation control devices sufficient to retain the sediment generated by the land disturbing activity within the boundaries of the tract(s) and prevent off-site sedimentation.

(e) Failure to Maintain Permanent and/or Temporary Measures

Two thousand five hundred dollars (\$2,500.00) per day for failure to maintain adequate erosion control measures.

(f) Failure to Protect Exposed Slopes

Two thousand five hundred dollars (\$2,500.00) per day for failure, within fifteen (15) working days or thirty (30) calendar days of completion of any phase of grading, whichever period is shorter, to plant or otherwise provide exposed, graded slopes or fills with ground cover, devices, or structures sufficient to restrain erosion.

(g) Failures to Provide Adequate Cover

Two thousand five hundred dollars (\$2,500.00) per day for failure on a tract where more than twelve thousand (12,000) sq. ft. is disturbed, to plant or otherwise provide ground cover sufficient to restrain erosion within fifteen (15) working days or sixty (60) calendar days, whichever period is shorter, following completion of construction of development.

(h) Failure to Revise Plan

Two thousand five hundred dollars (\$2,500.00) per day for failure to file an acceptable, revised erosion and sedimentation control plan within the established deadline after being notified of the need to do so.

(i) Any Other Action or Failure to Act That Constitutes a Violation of This Chapter

Two thousand five hundred dollars (\$2,500.00) per day for any other action or failure to act that constitutes a violation of this chapter.

(j) Failure to Keep Dirt and Mud Off Public Streets

One thousand dollars (\$1,000.00) per day for failure to prevent the accumulation of more than an inch of dirt or mud on public streets, plus one dollar (\$1.00) per every six (6) linear feet of street cleaned by the city, its employees, or its contractor.

(k) Failure to Maintain Slopes

Two thousand five hundred dollars (\$2,500.00) per day for failure on cut, graded, or fill slopes to maintain an angle sufficient to prevent slump, creep or other slope failures.

- (D)** The maximum civil penalty for the violation of a stop-work order issued pursuant to the authority contained in G.S. 113A-65.1 is five thousand dollars (\$5,000.00). Civil penalties collected under the authority of G.S. 113A-64(a) shall be accredited to the general fund of the Town as non-tax revenue as provided in G.S. 113A-64.

- (E) Pursuant to G.S. 160A-175(b) and G.S. 14-4, violation of this Ordinance, with the exception of stormwater related enforcement, shall not constitute a misdemeanor or infraction. Proceeds from civil penalties collected under this Ordinance shall go to the State of North Carolina's school system.

11.4.4 Criminal Penalties

Unless otherwise specifically provided, in addition to, or in lieu of, such civil penalties or other remedies, violations of the sedimentation requirements set forth in this Ordinance shall constitute a misdemeanor, pursuant to G.S. 160A-175 and G.S. 14-4, as amended, punishable for each day the violation continues by a fine the maximum amount of which exceeds fifty dollars (\$50.00) and/or incarceration for up to thirty (30) days. Furthermore, any person who knowingly or willfully violates the soil erosion and sedimentation control provisions in Section 7.4 of this Ordinance, or who initiates or continues a land-disturbing activity for which an erosion control plan is required other than in accordance with the terms, conditions and provisions of an approved erosion control plan, shall be guilty of a misdemeanor, pursuant to G.S. 113A-64(b), as amended, punishable for each day the violation continues by a fine of up to five thousand dollars (\$5,000.00) and/or by incarceration for up to ninety (90) days.

11.4.5 Restoration of Disturbed Areas

The Engineering Director may require a person who engaged in a land-disturbing activity regulated under Section 7.4 and failed to retain sediment generated by the activity as required by G.S. 113A-57(3) to restore the waters and lands 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 chapter or the General Statutes.

11.4.6 Stop Work Orders for Ordinance Violations and Related Procedures

Whenever any building or structure or part thereof is being demolished, constructed, reconstructed, altered or repaired in a hazardous manner; in substantial violation of any state building law or this Ordinance (including violations of approved site and/or subdivision plans or permits or failures to secure necessary approvals or permits); or in a manner that endangers life or property, the Director, or the appropriate inspector, has the authority to issue a stop work order for the specific part of the work that is in violation or presents the hazard. Violation of a stop work order shall constitute a Class I misdemeanor. Examples of instances in which stop work orders may be issued include, but are not limited to, the items listed in Section 11.3.2. The following is the procedure for issuing a stop work order.

- (A) A stop work order may be issued by the Director or appropriate staff member (e.g., erosion control officer, site inspector, building inspector, code enforcement officer) for the site on which the violation has occurred.
- (B) 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 therefore, and the conditions under which the work may be resumed.
- (C) Notice shall be served on the person doing the work or conducting the violation activity by personal delivery or by certified or registered mail or any of the methods for service of process set forth in G.S. 1A-1, Rule 4 and shall be posted on the site. Notice may also be served by registered or certified mail to the financially responsible person for the project or upon the property owner, if they are to be held responsible for stopping work.

- (D) Upon receipt of such an order on site, the person shall immediately stop that work described in the stop work order.
- (E) The Director shall monitor compliance with the stop work order and shall determine if the conditions for resumption of the work have been met.
- (F) Once conditions for resumption of the work have been met, the Director shall rescind the stop work order.
- (G) The Director may also issue a stop work order pursuant to the authority contained in G.S. 113A-65.1, by following the procedures specified in G.S. 113A-65.1. Violation of a stop work order issued pursuant to G.S. 113A-65.1 shall subject the violator to a penalty of up to five thousand dollars (\$5,000.00) per day.

11.4.7 Remedies Cumulative

The remedies provided for violations of this Ordinance, whether civil or criminal, shall be cumulative and in addition to any other remedy provided by law, and may be exercised in any order.

11.4.8 Clear Cutting of Trees

Failure to comply with the provisions of Section 3.22 shall constitute a violation of this Ordinance, and shall subject an offending party to a series of actions, including the payment of fines, delay in site and/or subdivision plan approval or building permit issuance, and the requirement to double the amount of required vegetation as would typically be required during the site and/or subdivision plan review and approval process. Table 11.3-1 below describes the penalties for non-compliance with this section. An "X" in a particular cell indicates that the associated penalty which applies:

TABLE 11.3-1: PENALTIES FOR NON-COMPLIANCE				
Type of Violation	Payment of Fines	Review of All Subsequent Site and/or Subdivision Plans by Town Council	Five Year Delay in Approval of a Building Permit or Site and/or Subdivision Plan	Landscaping Requirements Doubled During Site and/or Subdivision Plan Review
Property is exempt from Tree Clearing Certificate requirements, but all or substantially all* vegetation within required buffers and/or vegetation protection areas is removed		X	X	X
Property owner obtains a Tree Clearing Certificate, but removes some of the vegetation within a required buffer and/or tree protection area	X			X
Property is not exempt from Tree Clearing Certificate requirements; but property owner obtains no Certificate, and removes some of the vegetation within a required buffer and/or tree protection area	X	X		X
Property is not exempt from Tree Clearing Certificate requirements; but property owner obtains no Certificate, and removes all or substantially all* of the vegetation within a required buffer and/or tree protection area	X	X	X	X

* "All or substantially all" shall mean 75 percent or more of the existing trees with a caliper of four inches or greater.

PRINCIPLES OF INTERPRETATION

In determining penalties for noncompliance of tree removal, the Planning Director may consider the degrees of leniency when applying the five year delay in permit/plan approval. Consideration should be given to how much vegetation was illegally removed, was the vegetation specimen size or greater, what was the proximity of the disturbed area to existing residential dwellings, was the buffer willfully disturbed etc. The Planning Director may uphold the entire 5 year delay, reduce, or remove this enforcement measure based on the criteria mentioned above.

(Ord. No. 04-001, 1-8-04; Ord. No. 06-009, 4-27-06; Ord. No. 2007-04, 3-22-07; Ord. No. 2008-LDO-01, 9-25-08)

11.5 ENFORCEMENT PROCEDURES**11.5.1 Notice of Violation Procedure**

Except as otherwise provided, the following notice procedure shall be used to enforce the provisions of this Ordinance. The notice of violation and assessment procedure for violations of the soil erosion and sedimentation control provisions in Section 7.4 of this Ordinance are set forth in Section 11.4.3 (B).

(A) Notice Required Before Penalty

No penalty shall be assessed pursuant to this chapter unless and until the person alleged to be in violation has been notified of the violation in accordance with this section, with the exception of a violation of a stop work order, illegal placement of a temporary sign or violation of the soil erosion and sedimentation control provisions in Section 7.4. In the case of stop work orders, violations shall subject the violator to immediate imposition of a penalty. In the case of an illegal temporary sign, the Director shall be authorized to remove such sign immediately without notice. In the case of violations of Section 7.4, violations are subject to the notice provision of Section 11.4.3(B).

(B) Notice of Violation and Opportunity to Cure

Whenever the Director has reasonable cause to believe that a person is violating any of the provisions of this Ordinance or any plan, order, or condition which has been approved, issued, or imposed pursuant to this Ordinance, the Director shall notify that person of the violation.

(C) Written Notice

Such notice of violation shall be in writing and shall be served by personal delivery or by certified or registered mail, return receipt requested.

(D) Content of Written Notice

The notice of violation shall describe the violation, shall identify the provision or provisions of this Ordinance that are being violated, shall specify what actions must be taken to correct the violation (including an order to stop any and all work which violates this Ordinance), shall direct the person to correct the violation within a specified reasonable time period (beginning on the date such notice is received), and shall warn that more severe measures (such as a civil penalty or criminal prosecution) may be assessed or brought against the person if he or she fails to take appropriate action to cure or correct the violation. If the violator cannot be ascertained, then the notice of violation shall be sent to the record owner of the land on which the violation occurs.

(E) Extension of Time to Cure

Upon receipt of a written request from the alleged violator or the property owner for an extension of time to cure or correct the violation, the Director may grant a single extension of time, not to exceed a period of thirty (30) days, in which the alleged violator may cure or correct the violation before the Director issues a citation pursuant to Section 11.5.2. Such extension of time shall not be granted unless the alleged violator or the property owner can demonstrate to the Director that the violation cannot be cured or corrected within the time period specified in the notice of violation because the labor or materials needed to take appropriate action are unavailable due to circumstances beyond the control of the alleged violator or the property owner.

(F) Corrective Action Taken

If the violation is cured or corrected within the time period specified in the notice of violation, or extension of time granted in Section 11.5.1(E), then the Town shall take no further action against the person.

11.5.2 Citation Procedure

Any person who, after being given a notice of violation pursuant to Section 11.5.1, does not comply with this Ordinance within the time period set forth in the notice of violation, and who continues such violation, or who violates a stop work order, shall be subject to the penalties and remedies set forth in Section 11.4. The following citation procedure shall be used to enforce the provisions of this Ordinance except that the assessment procedure for violations of Section 7.4 are set forth in Section 11.4.3(B).

(A) Citation for Violation

The Director shall serve a written citation on the alleged violator by any of the methods specified in Section 11.5.1. If the violator cannot be ascertained, then the notice of violation shall be sent to the record owner of the land on which the violation occurs.

(B) Content of Citation

The citation shall again describe the nature of the violation and any actions that the alleged violator must take to cure or correct the violation, and shall specify the amount of any civil penalty that shall be levied against the alleged violator.

(C) Corrective Action Required

The civil penalty shall be paid and the violation shall be cured or corrected, within seventy-two (72) hours of receipt of the citation by the alleged violator, or such other time period, not to exceed thirty (30) days, as the citation may specify.

(D) Action for Recovery of Penalty

If payment is not made, or the violation is not cured or corrected, within that time, then the matter shall be referred to the Town Attorney for institution of a civil action in the name of the Town, in a court of competent jurisdiction, for recovery of the penalty. Any sums recovered in such actions shall be used to carry out the purposes and requirements of this Ordinance. Additionally, if any person against whom a civil penalty has been finally assessed under this Ordinance, or pursuant to Section 17-64 of the Cary Code of Ordinances ("clean streets"), seeks a Certificate of Occupancy; an environmental, grading or building permit; a special use permit; or final approval of any plat, subdivision plan, site plan or erosion control plan, such Certificate of Occupancy, permit or final approval may not be granted until such time as the civil penalty has been paid or arrangements satisfactory to the Town have been made providing for its payment.

11.5.3 Summary Removal of Dangerous Signs or Structures

In the case of a sign or sign structure that the Director reasonably deems to be in danger of falling or otherwise creating an immediate safety hazard, the Director is hereby authorized to immediately remove such sign or sign structure, at the expense of the property owner.

11.5.4 Injunctive Relief and Other Remedies

- (A) This Ordinance also may be enforced by revocation of permits or by any appropriate equitable remedy issuing from a court of competent jurisdiction. In any event where a building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure, or land is used in violation of the Ordinance, any appropriate agency of the Town, or any adjacent or nearby property owner who would be affected by such violation, in addition to other remedies, may institute an injunction action, mandamus action, or other appropriate proceeding to prevent the completion or occupation of such building, structure, or land and/or to stop any development or other activity that violates this Ordinance. Such actions shall be brought in a court of competent jurisdiction.
- (B) Upon determining that an alleged violation is occurring or is threatened, the court shall enter such orders and/or judgments as are necessary to abate or prevent the violation.
- (C) The institution of an action for injunctive or other relief under this section shall not relieve any party to such proceeding from any civil or criminal penalty prescribed by this chapter for violations of this Ordinance.

11.5.5 Private Civil Relief for Violation of Sedimentation and Erosion Control Standards

- (A) Any person who is injured by a violation of the soil erosion and sedimentation control provisions in Section 7.4 of this Ordinance, or who is injured by the initiation or continuation of a land-disturbing activity for which an erosion control plan is required other than in accordance with the terms, conditions and provisions of an approved erosion control plan, may bring a civil action against the person alleged to be in violation. The action may seek:
 - (1) Injunctive relief;
 - (2) An order enforcing the regulation, order or erosion control plan which is being violated;
 - (3) Compensation for damages caused by the violation;
 - (4) Both damages and injunctive relief;
 - (5) Both damages and an enforcement order.
- (B) If the amount of actual damages, as found by the court or jury in suits brought under this section, is \$500.00 or less, then the plaintiff shall be awarded double the amount of actual damages. If the amount of actual damages, as found by the court or jury, is greater than \$500.00, then the plaintiff shall receive damages in the amount so found.
- (C) Civil actions brought under this section shall be brought in the Superior Court of Wake County. In issuing a final order in such an action, the court may award litigation costs to any party, including reasonable attorney fees and expert witness fees, whenever it determines that such an award is appropriate. Where the plaintiff seeks a temporary restraining order or preliminary injunction, the court may require the filing of a bond or other security as determined by the court in its discretion.
- (D) Nothing in this section shall restrict any right which any person or class of persons may have under any statute or common law to seek injunctive or other relief.

(Ord. No. 06-009, 4-27-06; Ord. No. 2007-04, 3-22-07; Ord. No. 2007-21, 12-13-07)

11.6 ENFORCEMENT OF SIGN REGULATIONS

11.6.1 Informal Remedial Procedures

(A) For Temporary Signs

(1) *Process*

For temporary, portable or window signs erected in violation of Chapter 9, including "open house" and real estate signs, the enforcement official may proceed directly to formal enforcement and remedies or may give up to three days' written notice of violation, in accordance with the procedures outlined below, before beginning formal enforcement.

(2) *Removal*

Where it is practicable to do so without disturbing the peace, the enforcement official may physically remove any temporary or portable sign placed in violation of this chapter outside a building. Physical removal of the sign shall relieve the property owner or other person placing the sign of liability for fines or other remedies after the removal but not before. Removal of a sign located within the right-of-way allows the Department to charge the owner with a violation, and charge a fine at the discretion of the Planning Director.

(B) For Other Signs

- (1) Procedures set forth in this paragraph shall apply to violations of Chapter 9 involving any sign other than a temporary, portable or window sign, erected or placed in violation of Chapter 9.
- (2) The enforcement official shall, where practicable, upon finding a violation of Chapter 9 on an occupied site, inform the owner, manager or other responsible person on the site of the existence and nature of the violation. The enforcement official shall note in his or her logbook or other record book the time and place of such contact or, where such contact was not practicable, the reason that it was not.
- (3) When the enforcement official has not been successful in making contact with a responsible individual on the premises at the time of discovery or inspection of the violation, or where the enforcement official has made such contact and the violation has not been cured within three business days, the enforcement official shall give formal notice of violation to: the holder of any business license on the premises; and, to the record owner of the property. The enforcement official may also give such notice to the individual or company that placed such sign on the property, such as the sign contractor or the real estate agent. Such notice shall give the property owner or occupant at least seven but not more than 30 days to cure the violation before formal enforcement action begins; the length of time shall be based on the enforcement official's best judgment regarding the physical difficulty of eliminating the violation.
- (4) If, at the expiration of the period given for cure, the property owner or occupant has eliminated the violation, there shall be no formal enforcement action regarding that violation.

- (5) If, at the expiration of the period given for cure, the property owner or occupant has not eliminated the violation but has begun diligent and good faith efforts to do so, the enforcement official may, but shall not be required to, give one additional period of not more than 30 days to complete the elimination of the violation.
- (6) If, at the expiration of the last available period for cure, the violation has not been eliminated, the enforcement official shall begin formal enforcement proceedings. The period allowed for cure shall be computed in the period of violation for purposes of determining the applicable fine.

(C) For Signs on Sites with Continuing Construction

Where the violation is on a site with continuing construction, the enforcement official may issue a stop-work order, in accordance with Section 11.4.6 of this section, without following the informal remedial procedures set forth in this subsection.

(D) For Signs on Sites with Recent Violations

Where the violation is on a site on which there have been one or more formal notices of violation or formal enforcement actions for violations of this chapter within the previous year, the enforcement official may proceed with all formal enforcement procedures without following the informal remedial procedures set forth in this subsection, or, in her or his sole discretion, the enforcement official may follow these informal remedial procedures, provided that the period of cure shall be not more than seven days.

11.6.2 Formal Enforcement and Remedies

Any violation or attempted violation of Chapter 9 or of any conditions or requirement adopted pursuant hereto may be restrained, corrected, or abated, as the case may be, by injunction or other appropriate proceedings pursuant to state law. A violation of this chapter shall be considered a violation of the Town code. The remedies of the Town shall include the following:

- (A) Issuing a stop work order for any and all work on any signs on the same site;
- (B) Seeking an injunction or other order of restraint or abatement that requires the removal of the sign or the correction of the nonconformity;
- (C) Imposing civil penalties in accordance with the following schedule:
 - (1) \$100 for each offense for the first day of violation; and
 - (2) \$250 for each offense for the second day of violation; and
 - (3) \$500 for each offense for each day thereafter that the violation continues.
- (D) Civil penalties may be enforced and appealed in accordance with the civil penalty provisions of the LDO or other sections of the Town code; on appeal, the appellate body may sustain, reverse or modify penalties imposed under this section;
- (E) Seeking in court the imposition of any penalties that can be imposed by such court under this chapter; and

- (F)** In the case of a sign that poses an immediate danger to the public health or safety, taking such measures as are available to the Town under applicable provisions of the building and zoning portions of this chapter for such circumstances.

(Ord. No. 06-009, 4-27-06)

CARY LAND DEVELOPMENT ORDINANCE
