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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

Within the Town or its ETJ, it shall be a violation of this Ordinance to erect, construct, reconstruct, remodel, alter, demolish (in part or whole), maintain, expand, move, or use any land, building, structure, or sign, or engage in development or subdivision of land in violation of the zoning, subdivision, historic preservation, erosion control, sign, and other land use regulations contained in 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. 2015-LDO-003, 7-23-15)

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

Except as specified elsewhere in this Ordinance, the Planning Director shall have primary responsibility for enforcing the provisions of this Ordinance.

11.2.2 Appeals**(A) Appeals of Building Permit Issues**

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

(B) Appeals of Soil Erosion and Sedimentation Control Decisions Pursuant to Section 7.4**(1) Civil Penalties**

Civil penalty assessments related to soil erosion and sedimentation control may be contested within thirty (30) calendar days of the assessment by filing an appeal with the Zoning Board of Adjustment in accordance with Section 3.21.

(2) Other Decisions

Other decisions rendered pursuant to Section 7.4 of this Ordinance may be appealed to the North Carolina Sedimentation Control Commission in accordance with G.S. 113A-61.

(C) Appeal of Stop Work Orders

Appeals of stop work orders involving violation of the North Carolina State Building code shall be made to the Commissioner of Insurance pursuant to G.S. 160A-421. Appeals of all other stop work orders except those issued pursuant to Section 7.4 of this Ordinance shall be made to the Zoning Board of Adjustment in accordance with Section 3.21.

(D) Appeal of Notice of Violation Civil Penalties and Fines (Except Pursuant to Section 7.4)

Appeal of a Notice of Violation issued pursuant to Section 11.6 of this Ordinance, or appeal of a civil penalty or fine (except those issued pursuant to Section 7.4), shall be made to the Zoning Board of Adjustment pursuant to Section 3.21 of this Ordinance. Appeals of civil penalties must be made within thirty (30) days of receipt of the first citation issued for the violation.

11.2.3 Inspections

The Directors of Planning, Transportation and Facilities, Water Resources, and/or Inspections and Permits or their 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. (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; Ord. No. 2011-LDO-04, 11-17-11; Ord. No. 2014-LDO-03, 8-14-14; Ord. No. 2015-LDO-001, 4-21-15; Ord. No. 2015-LDO-003, 7-23-15)

11.3 SPECIFIC VIOLATIONS**11.3.1 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; or
- (B)** 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.

11.3.2 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.

11.3.3 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 compliance with this Ordinance.

11.3.4 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.

11.3.5 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.

11.3.6 Failure to Remove Signs

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

11.3.7 Removal of, Damage to, Disturbance of and Pruning of Vegetation Inconsistent with Ordinance

It shall be a violation of this Ordinance to remove, damage, disturb or prune vegetation contrary to the provisions of this Ordinance, including, but not limited to the following. For the purposes of this Section 11.3.7, "disturbance" shall be defined as any action that results in injury or harm to required trees, shrubbery or other vegetation.

- (A) Disturbance of existing grade beyond the proposed limits of grading as indicated on the approved landscaping plan so as to disturb the root zone within the drip line of any significant vegetation indicated for preservation;
- (B) Exposure of plants to severe hydrologic changes, damaging fumes or chemicals, or excessive temperatures, such as from fire;
- (C) Cutting or wounding of plants, including severe pruning;
- (D) 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.

(Ord. No. 2015-LDO-003, 7-23-15)

11.4 REMEDIES AND PENALTIES FOR EROSION AND SEDIMENTATION CONTROL VIOLATIONS PURSUANT TO SECTION 7.4

The Town shall have the following remedies and enforcement powers to prevent, correct, stop, abate, or penalize a violation of Section 7.4 of this Ordinance. 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.

11.4.1 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:

- (1) There is a departure from the approved plans, specifications, or conditions as required under the permit;
- (2) The development permit was procured by false representation;
- (3) The development permit was issued in error; or
- (4) 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 Issue Stop Work Order

A stop work order may be issued in accordance with Section 11.5.1(D) of this Ordinance.

11.4.4 Notice of Violation Civil Penalties

Any person who knowingly or willfully violates 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.

(A) Process

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 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 an appeal with the Zoning Board of Adjustment. 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. 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.

(B) Amount

The Stormwater Services Manager may assess civil penalties as provided in Table 11.4-1. Each day of a continuing violation shall constitute a separate violation which may be assessed from the date the notice of violation is served, except where specified as a one-time-only penalty. In determining the amount of the penalty, the Director shall consider the maximum penalty allowed per Table 11.4-1, as well as the following: 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.

TABLE 11.4-1 CIVIL PENALTIES FOR VIOLATION OF SEDIMENTATION AND EROSION CONTROL REQUIREMENTS OF SECTION 7.4		
ACTION	DESCRIPTION	MAXIMUM PENALTY
Penalty for Willful Violation	One-time-only civil penalty for the day a willful violation of the requirements of Section 7.4 is detected, based upon whether the violation has resulted in off-site sedimentation.	\$5,000
Penalty for Violation of Stop Work Order	One-time civil penalty for violation of a stop-work order issued pursuant to the authority contained in G.S. 113A-65.1	\$5,000
Grading Without a Plan	Failure to secure a valid required grading permit prior to conducting a land disturbing activity	\$5,000 per day
Failure to Protect	Failure to take all reasonable measures to protect public property or private property from damage caused by failure to retain sediment on site.	\$5,000 per day
Failure to Follow Plan	Failure to conduct a land disturbing activity in accordance with the provisions of an approved erosion and sedimentation control plan.	\$2,500 per day
Failure to Install Devices	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.	\$5,000 per day
Failure to Maintain Permanent and/or Temporary Measures	Failure to maintain adequate erosion control measures.	\$2,500 per day
Failure to Protect Exposed Slopes	Failure, within fifteen (15) 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.	\$2,500 per day
Failures to Provide Adequate Cover	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.	\$2,500 per day
Failure to Revise Plan	Failure to file an acceptable, revised erosion and sedimentation control plan within the established deadline after being notified of the need to do so	\$2,500 per day
Failure to Keep Dirt and Mud Off Public Streets	Failure to prevent the accumulation of more than an inch of dirt or mud on public streets, plus	\$1,000 per day plus \$1.00 per every six linear feet of street cleaned by the city, its employees, or its contractor.
Failure to Maintain Slopes	Failure on cut, graded, or fill slopes to maintain an angle sufficient to prevent slump, creep or other slope failures.	\$2,500 per day
Any Other Action or Failure to Act That Constitutes a Violation of This Chapter		\$2,500 per day

11.4.5 Assess 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.

11.4.6 Require Restoration of Disturbed Areas

The Water Resources 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.

11.4.7 Private Civil Relief

- (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 five hundred dollars (\$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 five hundred dollars (\$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. 2015-LDO-003, 7-23-15)

11.5 REMEDIES AND PENALTIES APPLICABLE TO OTHER SECTIONS OF THE LDO

The Town shall have the following remedies and enforcement powers to prevent, correct, stop, abate, or penalize a violation of a Section of this Ordinance other than Section 7.4. 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.

11.5.1 General Remedies and Penalties

(A) 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.

(B) Revoke Permits

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

- (1) There is a departure from the approved plans, specifications, or conditions as required under the permit;
- (2) The development permit was procured by false representation;
- (3) The development permit was issued in error; or
- (4) 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.

(C) Assess Civil Penalties

Except where otherwise specified, violations of this Ordinance shall subject the offender to the following civil penalties:

1st day of violation	\$100
2nd day of violation	\$200
3rd day of violation	\$300
Each day thereafter that violation continues	\$400

Such penalties may 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. 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 Section 11.5 shall go to the State of North Carolina's school system.

(D) Issue Stop Work Orders

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. The following is the procedure for issuing a stop work order.

- (1) A stop work order may be issued by the Director or appropriate staff member (e.g., erosion control officer, site inspector, zoning compliance officer, building inspector, code enforcement officer) for the site on which the violation has occurred.
- (2) 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 therefor, and the conditions under which the work may be resumed.
- (3) 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.
- (4) Upon receipt of such an order on site, the person shall immediately stop that work described in the stop work order.
- (5) The Director shall monitor compliance with the stop work order and shall determine if the conditions for resumption of the work have been met.
- (6) Once conditions for resumption of the work have been met, the Director shall rescind the stop work order.

11.5.2 Additional Remedies and Penalties For Certain Violations

(A) 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 11.5-1 below describes the penalties for non-compliance with this section. An "X" in a particular cell indicates the associated penalty which applies:

TABLE 11.5-1: 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
* In determining penalties for noncompliance of tree removal, the Town Council may consider, after conducting a quasi-judicial hearing, reducing the five (5) 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 Town Council may uphold the entire five (5) year delay, reduce, or remove this enforcement measure based on the criteria mentioned above.				
** "All or substantially all" shall mean 75 percent or more of the existing trees with a caliper of four inches or greater.				

(B) Removal or Disturbance of or Damage to Existing Vegetation

The property owner and/or any person, including the developer, responsible for the removal or disturbance of or damage to vegetation in any required landscape areas as prohibited in Section 7.2.13(B) shall also be responsible for replacement of vegetation and payment of fines as provided below.

(1) Replacement of Vegetation

(a) The disturbed area shall be revegetated as provided below. For purposes of this Section 11.5.2(B), "disturbed area" shall be defined as land that has been subjected to:

1. the removal of trees, shrubs, or vegetative cover;
2. any action that results in injury or harm to required trees, shrubbery, or other vegetation;
3. any action that reduces the size of a required buffer or degrades or reduces the required level of screening; and/or
4. earthmoving activities, including the addition of fill or installation of impervious surface.

(b) Replacement Planting Plan Required

Prior to replacement of damaged or removed vegetation, a replacement planting plan shall be submitted for review and approval by the Planning Director. The site shall be revegetated in conformance with the approved replacement planting plan.

(c) Maintenance Plan Required

Where existing vegetation is in poor health or has died as a result of neglect or of poor maintenance practices, a landscape maintenance plan shall be submitted and approved in accordance with this Section 11.5.2(B)(1) in order to remedy the violation. In cases where there is an existing landscape maintenance plan, such plan shall be reviewed and modified as necessary to address specific issues that may have created the violation. In addition, the responsible party shall provide such documentation as is available (e.g. invoices, contracts, etc.) to provide proof that the landscape maintenance plan will be implemented as approved.

(d) Baseline Replacement Standards

Where vegetation has been damaged or removed in violation of this Ordinance, replacement vegetation shall be installed in an amount that meets or exceeds the requirements of subsection 1) and/or 2) below. Where both individual trees and area of disturbance can be documented for all or part of the affected area, the calculation of required plant material may include a combination of the two (2) calculation methods, provided that the combination used results in the maximum amount of required plan material.

1) *Individual Trees Documented*

Where the caliper and quantity of damaged, removed or disturbed vegetation can be documented, an equal amount of new vegetation ("inch for inch") shall be installed to replace the damaged vegetation.

2) *Area of Disturbance Documented*

The following plantings shall be installed for each two thousand (2,000) square feet of disturbed area:

TABLE 11.5-2 BASELINE REPLANTING REQUIREMENTS PER 2,000 SQ. FT. OF DISTURBED AREA					
Plant Type		Number	Minimum Caliper	Container Size	Minimum Height
Trees	Upperstory	2	2"	--	8'
	Understory	2	2"	--	8'
	Evergreen ¹	6	2"	--	8'
Shrubs	Evergreen	7	2"	--	18"
	Deciduous	8	--	--	18"
Groundcover Plants (applicable only where slope is 2.5:1 or greater)		22	--	1 gal.	--
<p>1 Where an opaque performance standard is required, evergreen trees shall provide foliage from ground level up, and shall be planted in staggered double rows.</p>					

(e) **Adjustments to Baseline Replacement Standards**

1) *Intent*

Natural forested areas, or certain planted areas that have reached maturity, form a balanced system where screening may be achieved through a variety of tree and shrub types and sizes. Trees and shrubs within such systems naturally compete for sunlight and nutrients. While individual plants do not typically achieve an ideal symmetrical canopy or form, the overall performance standard of the buffer is achieved as available gaps are filled in with plant material suitable for the specific site conditions.

In recognition of challenges encountered in recreating a buffer, streetscape, or other landscape area that has been totally or partially removed or damaged, the intent of this Section 11.5.2(B)(1)(d) is to allow modification, by the Planning Director, of baseline replacement standards and other related standards of this Ordinance where appropriate, taking into account site-specific conditions and other factors affecting plant growth and health, so as to achieve and maintain to the extent possible the greater of the required performance standard of the LDO or the actual performance standard of the buffer area prior to its unauthorized disturbance.

2) Factors for Consideration

The following factors shall be taken into account in making adjustments to baseline replacement standards and related landscape planting requirements to maximize the potential for the re-vegetated buffer, streetscape or other landscape area to achieve the required performance standard and meet the intent expressed in Section 11.5.2(B)(1)(d)(1) above:

- (a) type and conditions of significant vegetation remaining within the landscape area or buffer,
- (b) availability of sunlight;
- (c) dimension of required planting area;
- (d) separation between plants;
- (e) impact of installation of new plant material on root zones of any remaining material;
- (f) topography;
- (g) proximity of man-made features such as utilities, buildings, sidewalks and retaining walls; and
- (h) other unique site factors or conditions affecting plant growth and long-term health of the buffer, streetscape or landscape area.

Such adjustment may include either reduction or increase in the minimum number or caliper of trees or shrubs and/or the total number of caliper inches of tree replacement otherwise required by this Ordinance.

In the case of a reduction in the number of replacement tree or shrubs, and/or the number of caliper inches of replacement trees, fines and/or off-site installation of plant material shall be required in accordance with Section 11.5.2(B)(2)(d). The applicant or owner must coordinate with Town staff to design and implement a plan to plant the balance of the required vegetation on town properties, town-maintained properties, and/or other public property within the Town's jurisdiction.

Features such as fences and berms may be approved where appropriate to achieve the required performance standard.

(f) Standard Replanting Requirement for Perimeter Buffers on Individual Residential Lots

Perimeter buffers within the boundaries of individual residential lots shall be planted and/or installed to a Type "B" buffer standard.

(2) Fines

Fines shall be imposed concurrently, and in addition to revegetation requirements of Section 11.5.2(B)(1), as provided below:

(a) Applicability

Fines imposed by this Section shall not apply to disturbance of required landscape areas, buffers, and/or streetscapes located on individual residential lots.

(b) Base Fine for Unauthorized Disturbance

A fine of two thousand dollars (\$2,000) shall be imposed for any unauthorized disturbance, excluding excessive pruning, within the boundaries of a tree protection area.

(c) Calculated Fine Based on Area Disturbed

A fine of four dollars (\$4.00) shall be imposed for every square foot of area disturbed or from which vegetation was removed or damaged within a required landscape area.

(d) Fine for Caliper Inches Not Replaced

Where it is determined in accordance with Section 11.5.2(B)(1)(d) that the required number of caliper inches cannot be accommodated on the site with replacement vegetation, then a fine shall be imposed in the amount of one hundred dollars (\$100) per caliper inch that is not replaced. The applicant or owner may coordinate with Town staff to design and implement a plan to plant the balance of the required vegetation on town properties, town-maintained properties, and/or other public property within the Town's jurisdiction in lieu of the fine. If the Town determines that replanting on Town or public properties is not feasible or desirable, then the fine shall not be abated.

(3) Civil Penalties

Civil penalties shall be imposed for failure to comply with requirements of this Section 11.5.2(B).

(C) Severe Pruning

- (1)** If the planning staff determines that plants have been pruned in violation of Section 7.2.13(B), then the property owner shall be required to replace the damaged plant material in accordance with Section 11.5.2(B)(1).
- (2)** If the planning staff determines that the severe pruning has not compromised the lifespan or structural integrity of the plants, then the severely pruned material shall remain in place and supplemental plant material may be required by the planning staff to compensate for the reduced screening.

(3) In addition, fines shall be assessed as follows:

Violation	Amount of Fines
1st violation	\$50 per shrub; and \$50 per caliper inch for trees
Subsequent violations	\$1,000 base fine plus: \$100 per shrub; and \$100 per caliper inch for trees

(D) Violation of Historic Preservation Ordinance

Failure to comply with the provisions of Section 3.27 shall constitute a violation of this Ordinance, and shall subject an offending party to the following:

- (a) In addition to any other authorized remedies, in case any building, structure, site, area or object designated as a historic landmark or located within a historic district is about to be demolished, materially altered, remodeled, removed or destroyed, except in compliance with this Ordinance, the Town or county, the Historic Preservation Commission, or other party aggrieved by such action may institute any appropriate action or proceedings to prevent such unlawful demolition, destruction, material alteration, remodeling or removal, to restrain, correct or abate such violation, or to prevent any illegal act or conduct with respect to such building, structure, site, area or object.
- (b) In addition to any other authorized remedies, in case any building, structure, site, area or object designated as a historic landmark or located within a historic district is demolished, materially altered, remodeled, removed or destroyed, except in compliance with this Ordinance, no redevelopment plans may be submitted for the property for forty-eight (48) months from the date of notice of the violation. The waiting period required by this section may be waived in an individual case, for good cause shown, by the affirmative vote of three-fourths (3/4) of the Town Council. The decision of the Historic Preservation Commission may be appealed by following the procedure set forth in Section 3.21, but the appeal shall be to the Town Council, not the Zoning Board of Adjustment.
- (c) The Town Council may consider amending or repealing an ordinance designating a historic landmark.

(Ord. No. 2015-LDO-003, 7-23-15; Ord. No. 2016-LDO-01, 7-25-16)

11.6 ENFORCEMENT PROCEDURES

11.6.1 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 11.4.4.

(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.

(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. A copy of the notice may also be sent by regular mail. Service shall be deemed sufficient if the registered or certified mail is unclaimed or refused, and the regular mail is not returned by the post office within ten (10) days after the mailing.

(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 11.6.2. 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 11.6.1(E), then the Town shall take no further action against the person.

11.6.2 Citation Procedure

Any person who, after being given a notice of violation pursuant to Section 11.6.1, 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 11.6. 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.

(A) Citation for Violation

The Director shall serve a written citation on the alleged violator by any of the methods specified in Section 11.6.1. 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 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.

11.6.3 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.

11.6.4 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.

11.6.5 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 five hundred dollars (\$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 five hundred dollars (\$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; Ord. No. 2013-LDO-02, passed 6-13-13; Ord. No. 2015-LDO-003, 7-23-15)

11.7 ENFORCEMENT OF SIGN REGULATIONS

11.7.1 Informal Remedial Procedures

(A) For Temporary Signs

(1) *Process*

For temporary or portable signs erected in violation of Chapter 9, the enforcement official may proceed directly to formal enforcement and remedies or may give up to three (3) 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 or portable 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 (3) business days, the enforcement official shall give formal notice of violation 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 (7) but not more than thirty (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 (1) additional period of not more than thirty (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 (1) 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 (7) days.

11.7.2 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; Ord. No. 2011-LDO-02, 4-14-11; Ord. No. 2015-LDO-003, 7-23-15; Ord. No. 2015-LDO-006, 12-10-15; Ord. No. 2016-LDO-02, 12-8-16)

CARY LAND DEVELOPMENT ORDINANCE
