

Article VII Enforcement and Review

Section 128. Violations

[a] Whenever by the provisions of this ordinance, as duly interpreted and/or applied by the staff of the Town's Planning and Inspections Department, or the Boone Board of Adjustment, or the Boone Town Council, as the case may be, the performance, avoidance or cessation of any act is required, the performance of any act is prohibited, or whenever any regulation, condition, or limitation is imposed on the use of any land, or on the erection, alteration, or the use of a structure, a failure to comply with such provision, regulation, condition or limitation shall constitute a violation of this Ordinance.

Section 129. Complaints Regarding Violations

[a] Whenever the administrator receives a written, signed complaint from one or more persons alleging a violation of this ordinance, he shall investigate the complaint, take whatever action is warranted, and inform the complainant in writing what actions have been or will be taken.

[b] Investigations of possible occupancy violation may be initiated by the submission of a "Neighborhood Occupancy Concern" form, to be furnished by the administrator and signed by the person submitting the form. The person submitting the form may do so for him or herself, or may submit it as representative of a neighborhood organization or group from the neighborhood in question.

Section 130. Persons Liable

[a] The owner, tenant, or occupant of any land or structure, or part thereof, or other person who possesses a cognizable interest in the real or personal property in question, who participates in, assists, directs, causes, allows, maintains, or is otherwise responsible for any situation that is contrary to the requirements of this ordinance shall be liable for violations of this Ordinance.

[b] In order to avoid being charged with one of more penalties for an occupancy violation, the owner of rental property which is leased for a period of certain duration must:

- [1]** include a provision in the lease of the property which authorizes the owner to terminate the lease early if the tenants violate the occupancy or zoning rules of the Town; and

- [2] take prompt action to terminate the lease and/or tenancy of the tenants of the property when an occupancy violation has been confirmed by the administrator.

Section 131. Procedures Upon Discovery of Violations

[a] If the administrator finds that any provision, regulation, condition or limitation of this ordinance is being or has been violated, unless the person to be charged the violation is a repeat violator of Article XVIII, Signs, he or she shall first attempt to contact the person(s) liable, by telephone or in person, to advise the person(s) liable of the violation, and to discuss what steps the person(s) liable will take to correct the violation. Other than in case of violation of the provisions, regulations, conditions or limitations created under Article XVIII, "Signs", when, in the sole judgment of the administrator, the violation can be corrected within five business days of this discussion, and the person liable expresses his or her intent to correct the violation within that time period, the administrator may suspend any further enforcement action, to allow the person(s) liable to correct the violation. In the case of violations of Article XVIII, except in the case of a repeat violator, when, in the sole judgment of the administrator, the violation can be corrected within twenty-four (24) hours of this discussion, and the person liable expresses his or her intent to correct the violation within that time period, the administrator may suspend any further enforcement action, to allow the person(s) liable to correct the violation. In circumstances where the violator is proceeding in good faith to remove the offending signs, but is unable to meet the aforementioned twenty-four (24) deadline due to practicalities of sign removal or other circumstances beyond the control of the violator, the administrator may afford the violator additional time.

[b] If the administrator finds that any provision of this ordinance is being or has been violated, and he or she is unable to contact the person(s) liable by telephone or in person because the person's telephone number is not listed in the local telephone directory reasonably accessible to staff and it cannot be obtained through directory assistance for Boone, and/or the person(s) whereabouts are unknown to the administrator, he shall deliver a written notice of by certified mail, return receipt requested, to the person(s) liable for such violation, addressed to the address on file at the office of the Watauga County Tax Administrator, in the case of the owner of real property in question, or to such other address as the person(s) liable has provided to the administrator, if any, or to the address of the real property in question, or to such other address as the administrator may reasonably believe will provide actual notice of the violation to the person(s) liable. The failure of the person liable to claim or accept a notice sent by certified mail, return receipt requested, from the administrator, shall not prevent further action under this article, but will be presumed to have been received three days after the notice is deposited in the United States Mail, with proper postage affixed, addressed in compliance with this paragraph.

[c] Other than in the case of provisions, regulations or limitations created under Article XVIII, "Signs", if the administrator finds that any provision, regulation, condition or limitation of this ordinance is being or has been violated, and he or she believes that the violation can not be corrected within five business days, or when the administrator, pursuant to subparagraph [a], above, has afforded the person(s) liable a five business day period to correct the violation, but the violation has not been fully corrected within that time period, he or she shall deliver a written notice of violation by hand delivery, or by certified mail, return receipt requested, to the person(s) liable for such violation, addressed to the address on file at the office of the Watauga County Tax Administrator, in the case of the owner of real property in question, or to such other address as the person(s) liable has provided to the administrator, if any, or to the address of the real property in question, or to such other address as the administrator may reasonably believe will provide actual notice of the violation to the person(s) liable. In the case of violations of Article XVIII, when the person(s) in question is (are) a repeat violator(s), or when, in the sole judgment of the administrator, the violation can not be corrected within twenty-four (24) hours of the discussion referred to in subparagraph [a] above, or when the administrator is unable to contact the person(s) liable, or when the administrator, pursuant to subparagraph [a], above, has afforded the person(s) liable a twenty-four (24) hour period to correct the violation, but the violation has not been fully corrected within that time period, he or she shall deliver a written notice of violation by hand delivery or by certified mail, return receipt requested, to the person(s) liable for such violation, addressed to the address on file at the office of the Watauga County Tax Administrator, in the case of owner of real property in question, or to such other address as the person(s) liable has provided to the administrator, if any, or to the address of the real property in question, or to such other address as the administrator may reasonably believe will provide actual notice of the violation to the person(s) liable. The failure of the person liable to claim or accept a notice sent by certified mail, return receipt requested, from the administrator, shall not prevent further action under this article, but will be presumed to have been received three days after the notice is deposited in the United States Mail, with proper postage affixed, addressed in compliance with this paragraph.

[d] Other than in the case of violations of provisions, regulations, conditions or limitations created under Article XVIII, "Signs," which shall impose penalties upon the person(s) liable, which begin accruing on the date of the notice of violation, in the notice of violation, the administrator may afford the person(s) liable a period of up to ten additional days from the date of the notice to discontinue the violation and up to thirty days from the date of the notice to correct the violation before penalties are imposed. The decision by the administrator as to whether such periods should be allowed and the length of the aforesaid periods which shall be allowed the person(s) liable shall be solely within the discretion of the administrator, but shall be based upon the

administrator's application of the relevant considerations, including the following:

- [1] The seriousness of the violation;
- [2] The damage which may occur by any delay in enforcement;
- [3] The effect of the violation, if any, on neighboring property owners or occupiers of neighboring property, or other citizens of the Town;
- [4] Whether or not the person(s) liable is a repeat violator;
- [5] Whether the violation can be discontinued within a period of ten days or less and corrected within a period of thirty days or less;
- [6] Whether the violation is of such nature that the person liable may circumvent enforcement of the ordinance by temporary correction of a violation followed by re-institution of the violation; and
- [7] Such other factors as the administrator determines reasonably require immediate enforcement, or conversely, allow some minimal delay in enforcement.

The foregoing factors are not exclusive, and the applicability of, or response to any one individual factor shall not bind the decision of the administrator, which should base his or her decision on a determination of what action is in the best interests of the Town.

[e] The notice of violation shall state the following:

- [1] The nature of the violation and paragraphs, sections or chapters of the ordinance which have been violated;
- [2] The amount of time, if any, within which the person(s) liable may correct the violation and avoid further enforcement action and penalty;
- [3] The steps the person(s) liable must take to correct the violation;
- [4] The date civil penalties, pursuant to Section 132 or Section 133 of this Article, as applicable, will begin to accrue and the amount of such penalties;
- [5] The action which the administrator intends to take if the violation is not corrected, including the initiation of criminal charges, if the initiation of criminal charges is anticipated or the administrator intends to seek the authority of the Boone Town Council to initiate criminal charges; and
- [6] The right of the person(s) liable to appeal the decision of the administrator to the Board of Adjustment.

[f] Notwithstanding the requirement of this section for a written notice of violation, when the administrator determines that a delay in enforcement would seriously threaten the effective enforcement of the Ordinance or that such delay may pose a danger to the public health, safety, or welfare, the administrator may undertake enforcement pursuant to Section 132 without prior written notice. In such cases the administrator shall send a notice of violation as soon as practicable.

Section 132. Penalties and Remedies for Violations

[a] Except in the case of a Repeat Violator, in which case civil penalties are enhanced in accordance with Section 133, any act constituting a violation of this ordinance shall subject each person liable to a civil penalty per day in the amount specified in Section 132(a)(1), from the date the penalty is imposed until the date the violation is corrected or the date of a court's judgment, whichever is earlier, plus the court costs and attorney's fees incurred by the Town. If the person(s) liable fails to pay the penalty within ten days of the date upon which penalties are first imposed, as specified in the written notice of violation, upon action by the Town Council, the penalty may be recovered by the Town in a civil action in the nature of an action to collect a debt. A civil penalty may not be appealed to the Board of Adjustment if the person(s) liable does not appeal to the Board of Adjustment in compliance with the requirements of Section 106.

[1] Schedule of Civil Penalties:

Civil penalties for a violation of this Ordinance, other than for repeat violators, shall be as follows:

- a. Illegal Signs - \$100 per sign per day.
- b. Violation of Occupancy rules - \$200.00 per violation per day.
- c. Grading in a designated floodway - \$500.00 per day.
- d. Improperly pruning, removing or killing a protected tree or shrub - \$100.00 per inch in diameter for each tree and \$50.00 for each shrub, plus \$100.00 per day for each day from the deadline for corrective action for replacement plantings (ordered pursuant to Section 370(c)(5)) until corrective action is taken.
- e. Removal of a required buffer - \$500.00, plus \$100.00 per day until corrected.
- f. Violation of Part II, Soil Erosion and Sediment Control of Article XVI Grading, Soil Erosion and Sediment Control - \$1,000.00, plus \$100 per day until corrected.
- g. Illegal subdivision - \$1,000.00, plus \$100.00 per day until corrected.
- h. All other violations - \$100.00 per day.

[b] Although a properly filed appeal shall stay action by the Town to collect any civil penalty assessed, the penalty in question shall continue to accrue during the pendency of the appeal, and if the decision by the Board of Adjustment on appeal affirms the action, order, decision or determination by the administrator, unless the penalty is modified by the Board of Adjustment in compliance with Section 106(e), the amount of a penalty shall be calculated as though no appeal was filed.

[c] When authorized by the Town Council, this ordinance may also be enforced by any available equitable action or proceeding(s) instituted by the administrator or Town to prevent, restrain, correct or abate a violation of this ordinance.

[d] (Current Section 294(b)) Any person who knowingly or willfully violates any provision of Part II, Soil Erosion and Sediment Control of Article XVI Grading, Soil Erosion and Sediment Control of this Ordinance, or rule or order adopted or issued pursuant to this Ordinance or who knowingly or willfully initiates or continues a land disturbing activity for which an erosion control plan is required except in accordance with the terms, conditions, and provisions of an approved plan, shall be guilty of a Class 2 misdemeanor which may include a fine not to exceed five thousand dollars (\$5,000.00).

[e] Any person who, being the owner or agent of the owner of any land located within the planning jurisdiction of the Town, subdivides his or her land in violation of this Ordinance, or transfers or sells land by reference to, exhibition of, or by any other use of a plat showing a subdivision of the land before the plat has been properly approved and recorded in the office of the Watauga County Register of Deeds, shall be guilty of a Class 1 misdemeanor. When authorized by the Town Council, the Town may bring an action for injunction against any person other than an innocent bona fide purchaser for value who has no actual or constructive knowledge of the violation, to void any subdivision, transfer, conveyance or sale of land which is undertaken in violation of this Ordinance. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land does not exempt the transaction from violation of this Ordinance.

[f] Unless a more stringent criminal penalty is prescribed for a particular violation of this ordinance, any person who violates the UDO shall be guilty of a Class 3 misdemeanor, pursuant to N.C. Gen. Stat. § 14-4 (a), punishable by a fine of up to \$500.00. The administrator shall institute criminal charges against such person with the authorization of the Town Council. However, whenever the administrator determines that there is an imminent threat of serious environmental damage that may be prevented by the institution of criminal charges, or that the immediate initiation of criminal charges may prevent the creation or continuation of a serious danger to the public health, safety, or welfare, in consultation with the Town Manager, the administrator

may initiate criminal charges without the prior authorization of the Town Council. Should such action be undertaken, the administrator shall inform the Town Council of such action as soon as practicable.

[g] In determining whether criminal charges should be undertaken with respect to a particular violation, the Town Council shall consider the following factors:

- [1] Whether the person who has committed the violation is a repeat violator;
- [2] Whether the person who has committed the violation has acted in intentional disregard of the Ordinance;
- [3] Whether there are factors outside the control of the person who has committed the violation which have prevented the person from expeditiously correcting the violation;
- [4] Whether the person who has committed the violation has stated an intention to undertake prompt correction action;
- [5] What damage to the interests sought to be protected by the Ordinance, if any, has occurred as a result of the violation;
- [6] Whether the violation is transitional in nature, making civil penalties ineffective in ensuring enforcement of the Ordinance, or for such other reason that makes civil penalties ineffective in ensuring enforcement of the ordinance; and
- [7] Whether some other reason is identified which will enhance the enforcement of the Ordinance by the pursuit of criminal charges in a particular case.

The foregoing factors are not exclusive, and the applicability of, or response to any individual factor(s) shall not bind the decision of the Town Council, which should base its decision on its determination of what action is in the best interests of the Town.

Section 133. Repeat Violators

[a] When a person(s) liable is a Repeat Violator, as defined in Article II, the administrator shall state that fact in the notice of violation in addition to the other matters listed in Section 131.

[b] For any violation of this ordinance, a Repeat Violator shall be subject to a civil penalty of one thousand dollars (\$1,000.00), plus court costs and attorney's fees incurred by the Town. In addition, for the first repeat violation a Repeat Violator shall be subjected to a civil penalty per day of two hundred fifty percent of the amount designated in Section 132(a)(1) for the type of violation for each day from the day the penalty is imposed until the date the violation is corrected or the date of a court's judgment, whichever is earlier. For the second repeat violation and all additional repeat violations, a Repeat Violator shall be subjected to a civil penalty per day of five hundred percent of the

amount designated in Section 132(a)(1) for the type of violation for each day from the day the penalty is imposed until the date the violation is corrected or the date of a court's judgment, whichever is earlier. If the Repeat Violator fails to pay the penalty within ten days of the date upon which penalties are first imposed, as specified in the written notice of violation, upon action by the Town Council, the penalty may be recovered by the Town in a civil action in the nature of an action to collect a debt. A civil penalty may not be appealed to the Board of Adjustment if the Repeat Violator does not appeal to the Board of Adjustment in the form and within the time limit prescribed in Section 106.

Section 134. Permit Revocation

[a] A zoning, sign, or special use permit may be revoked by the permit issuing authority (in accordance with the provisions of this section) if the permit recipient fails to develop or maintain the property in accordance with the plans submitted, the requirements of the ordinance, or any additional requirements lawfully imposed by the permit issuing board.

[b] Before a special use permit may be revoked, all of the notice and hearing and other requirements of Article VI shall be complied with. The notice shall inform the permit recipient of the alleged grounds for revocation.

[1] The burden of presenting evidence sufficient to authorize the permit issuing authority to conclude that a permit should be revoked for any of the reasons set forth in Subsection [a] shall be upon the party advocating that position. The burden of persuasion shall also be upon that party.

[2] 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.

[c] Before a zoning or sign permit may be revoked, the administrator shall give the permit recipient ten (10) 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.

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

Section 135. Judicial Review

[a] Every decision of the Board of Adjustment shall be subject to review by the Superior Court of Watauga County by proceedings in the nature of certiorari.

[b] The petition for the writ of certiorari must be filed with the Watauga County Clerk of Superior Court within thirty (30) days after the later of the following occurrences:

- [1] A written copy of the board's decision (see Section 123) has been filed in the Planning and Inspections Department, or
- [2] A written copy of the board's decision (see Section 123) has been delivered by hand delivery or certified mail, return receipt requested, to the applicant or appellant and every other aggrieved party who has filed a written request for such copy at the hearing of the case.

[c] A copy of the writ of certiorari shall be served upon the manager for the Town of Boone.

Section 136. Enforcement Concerning Violations in Floodway Overlay Zones

[a] Whenever land disturbing activity is undertaken in violation of Article XVII Flood Damage Prevention, the administrator may order the work that is in violation to be immediately stopped. The stop order shall be in writing and directed to the person responsible for the violation(s). The order shall state the work to be stopped, the reasons for stoppage, and the conditions under which the work may be resumed. Pending the ruling on the appeal, no further work may take place in violation of a stop work order. Appeals of a stop work order shall be made as follows:

- [1] A written demand for a hearing must be delivered to Planning and Inspections Department within ten (10) days after receipt of a stop order notice.
- [2] Hearings held pursuant to this section shall be conducted by the Board of Adjustment at their next regularly scheduled meeting.
- [3] The Board of Adjustment shall render its final decision on any appeal no later than the second regularly scheduled board meeting.
- [4] The decision of the Board of Adjustment may be appealed in accordance with Section 114.

Section 137. Stop Work Orders

[a] In addition to situations described in Section 136 as authorizing stop work orders, whenever the administrator determines that a person is engaged in doing work without a permit required by Section 61, or is doing work which constitutes, creates, or results in other violation of this Ordinance and that

irreparable injury will occur if the violation is not terminated immediately, the administrator may order the specific part of the work that constitutes, creates or results in a violation to be immediately stopped. Such stop work order shall be in writing, directed to the person doing the work and the owner of the property and a copy shall be posted on the property upon which the work has been undertaken.

Section 137A. Enforcement by Others

[a] In addition to the remedies provided to the Town hereunder, other persons who have qualified as parties pursuant to the duly enacted Rules of Procedure of the Board of Adjustment may, after the exhaustion of their available administrative remedies, seek to enforce this Ordinance by injunction, mandamus or other appropriate legal action. This provision, however, is not intended to limit the rights of others which are created by North Carolina law to take action to protect their own property interests and rights.

