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# MILLS RIVER

## UNIFIED DEVELOPMENT ORDINANCE

**Revised Draft (no Ch 2/6)**

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# CHAPTER 7.

# VIOLATIONS

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## CHAPTER 7. VIOLATIONS – KEY CHANGES IN THE NEW UDO

Chapter 7, Violations sets out the enforcement provisions for the Mills River UDO, and consolidates / replaces the enforcement provisions found in Section 151.999 Penalty in the Manufactured Home Parks Chapter, Section 153.999 from the Subdivision Chapter, Section 154.999 from the Zoning Chapter, Sections 156.028 and 156.029 from the Watersupply Watershed Chapter, and Article 4 Section D of the Town's new Hazard Prevention ordinance (becomes the Special Flood Hazard Area ).

Other key changes in this Chapter 7 include:

- Consolidation of the various enforcement provisions from four chapters of the Town Code + the new Hazard area provisions.
- Add clarity that the objective is to reach compliance not punish.
- A comprehensive list of generic violations.
- A comprehensive list of entities who may be held responsible for a violation.
- A detailed description of the enforcement procedure, including receipt of complaints and investigation.
- Details related to the filing of a written notice of violation.
- Enumeration of the range of remedies available to the Town for correcting violations.
- Increased clarity on the process for assessment and collection of civil penalties.
- Inclusion of the statute of limitations on enforcement under State law.
- Clarification that criminal penalties may only be assessed for certain violations of NCGS Chapter 160D, watersupply watershed protection, or the special hazard area overlay provisions.



## § 7.1 CHAPTER INTRODUCTION

This Chapter identifies the range of activities commonly considered as violations of this Ordinance and sets out the process used by the Town to investigate and remedy identified violations. These provisions are intended to encourage the voluntary correction of violations where possible, rather than to simply punish violators.

## § 7.2 COMPLIANCE REQUIRED

Compliance with all the procedures, standards, and provisions of this Ordinance, as well as with conditions of approval applied under this Ordinance, is required by all persons owning, developing, managing, using, or occupying land or structures in the Town.

## § 7.3 DESCRIPTION OF VIOLATIONS

Any of the following shall be a violation of this Ordinance and shall be subject to the remedies and penalties provided by this Ordinance and by State law:

### 7.3.1. CONTINUING OR REPEATING A VIOLATION

Where a violation of the same nature has been issued to the same violator at the same property within two years and the violation continues or is repeated, the violation shall be treated as an on-going violation.

### 7.3.2. DEVELOPMENT WITHOUT AUTHORIZATION

Engaging in the development, use, construction, land disturbance, or other activity of any nature upon land or improvements thereon subject to the jurisdiction of this Ordinance without all required plan approvals, permits, certificates, or other forms of authorization as set forth in this Ordinance.

### 7.3.3. DEVELOPMENT INCONSISTENT WITH AUTHORIZATION

Engaging in any development, use, construction, land disturbance, or related activity of any nature in any way inconsistent with any approved plan, plat, permit, certificate, or other form of authorization granted for such activity.

### 7.3.4. SUBDIVISION OF LAND IN VIOLATION

Subdividing land in violation of this Ordinance, or transferring land by reference to a plat or map showing a subdivision of land before the plat or map has been properly approved under this Ordinance and recorded in the office of the Register of Deeds of Henderson County.

### 7.3.5. USE IN VIOLATION

Erecting, constructing, altering, repairing, maintaining, or using any building or structure, or use of any land in violation of this Ordinance or any regulation made under the authority conferred thereby.

### 7.3.6. VIOLATION BY ACT OR OMISSION

Violating, by act or omission, any term, variance, modification, adjustment, condition, requirement, or qualification placed upon any required plan, plat, permit, certificate, or other form of authorization for the development, use, construction, land disturbance, or other activity upon land or improvements thereon.

### 7.3.7. VIOLATION OF ENVIRONMENTAL REGULATIONS

Failing to follow or violating the rules or regulations of Section <>, Stormwater; Section <>, Special Flood Hazard Area; and Section <>, Soil Erosion & Sedimentation Control.



## **§ 7.4 ENTITY RESPONSIBLE FOR VIOLATION**

### **7.4.1. RESPONSIBLE FOR VIOLATION**

Any of the following parties associated with or participating in a situation that is contrary to the requirements of this Ordinance may be jointly or separately held responsible for a violation and subject to the penalties and remedies provided in this Ordinance:

- A.** A property owner(s);
- B.** A tenant or occupant of any land, building, structure, sign, use of land, or part thereof;
- C.** A permit or approval holder;
- D.** A contractor or designated agent;
- E.** An architect, engineer, or builder; or
- F.** Any person conducting the violating activity.

### **7.4.2. FAILURE BY TOWN DOES NOT RELIEVE ENTITY**

Except as authorized under Section <>, Statute of Limitations, failure of a Town official charged with enforcement responsibility to observe or recognize conditions which violate this Ordinance, or to deny the issuance of a development permit, shall not relieve the applicant or landowner from responsibility for the condition or damages that may result and shall not result in the Town, its officers, or agents being responsible for conditions or damages.

## **§ 7.5 GENERAL ENFORCEMENT PROCEDURES**

When a Town official identifies or is made aware of a potential violation of this Ordinance, the enforcement procedure shall proceed in accordance with this section.

### **7.5.1. COMPLAINTS**

- A.** Whenever the Planning Director or other designated Town official receives a complaint in a manner consistent with Town policy that alleges a violation of this Ordinance, the Planning Director or other designated Town official shall investigate the violation allegation in accordance with the standards in this section.
- B.** The Planning Director, or other designated Town official, shall inform the complainant, if complainant has identified themselves, as to whether a violation of this Ordinance was discovered upon investigation, and if a violation is found to exist, the actions that will be taken by the Town to address the violation.
- C.** Nothing shall limit the Planning Director or other designated Town official from investigating possible violations of this Ordinance without receipt of a written complaint.

### **7.5.2. INSPECTIONS AND INVESTIGATION**

- A.** The Planning Director or other designated Town official, as appropriate, shall have the power to conduct any lawful inspection and investigation as may be deemed necessary to carry out their duties as prescribed in this Ordinance.
- B.** In exercising these powers, the Planning Director or other designated Town official may enter any premises open to the general public and located within the Town's planning jurisdiction at all reasonable hours for the purposes of inspection or other enforcement action.
- C.** The Planning Director or other designated Town official shall, upon presentation of proper credentials, and receipt of permission from a responsible entity, have the right to enter any premises within the Town's planning jurisdiction not open to the general public at any reasonable hour for the purpose of inspecting locations subject to any complaints or alleged violations, or determination of compliance or other enforcement action of this Ordinance.
- D.** If the Planning Director or other designated Town official charged with enforcing this Ordinance seeks to enter a premises not open to the general public but cannot obtain permission to enter from a responsible entity, the Town shall obtain an administrative search or inspection warrant prior to entering the property.



- E. The Planning Director or other designated Town official shall have the power to compel a person responsible for an alleged violation to provide written statements, certificates, certifications, evidence, reports, remediations, or attempts to comply with this Ordinance, as related to complaints or alleged violations of this Ordinance.

### **7.5.3. WRITTEN NOTICE OF VIOLATION OR CITATION**

#### **A. CONTENTS OF WRITTEN NOTICE OF VIOLATION**

When the Planning Director or other designated Town official finds that a violation of this Ordinance exists, a written notice of violation shall be delivered to the responsible entity(ies). The notice of violation shall include all of following:

**01. VIOLATION EXISTS**

That the land, building, structure, sign, use, or activity is in violation of this Ordinance;

**02. NATURE OF THE VIOLATION**

The nature of the violation, and citation of the section(s) of this Ordinance or conditions of approval violated;

**03. REMEDY**

The measures necessary to remedy the violation;

**04. TIME PERIOD FOR CORRECTION**

The time period in which the violation must be corrected;

**05. PENALTIES THAT MAY BE ASSESSED**

That penalties or remedies may be assessed if the violation is not addressed within the time period for correction; and

**06. APPEAL**

That the responsible entity has the right to appeal the notice in accordance with Section <>, Appeal.

#### **B. DELIVERY OF WRITTEN NOTICE**

- 01.** The notice of violation shall be delivered to the responsible entity and the landowner if the landowner is not the responsible entity, by personal delivery, electronic delivery, or first class mail and may be provided by similar means to the occupant of the property or the person undertaking the work or activity.
- 02.** The notice of violation may be posted on the property.
- 03.** The Town official providing the notice of violation shall certify that the notice was provided, and the certificate shall be deemed conclusive in the absence of fraud.
- 04.** In the case of notice for a potential soil erosion and sedimentation violation, notice shall be issued by any means authorized under NCGS§ 1A-1, Rule 4, pursuant to NCGS§ 113A61.1(c).

#### **C. INITIAL NOTICE MAY CONSTITUTE FINAL NOTICE**

The initial written notice of a violation may also constitute final notice regarding a violation, though additional written notice may be provided, in the sole discretion of the Planning Director or other designated Town official.

### **7.5.4. REMEDY UPON NOTICE**

Upon delivery of a written notice of a violation, the landowner or any other responsible person shall remedy the violation within the time period for correction stated in the notice of violation or Town-granted extension, as appropriate.

### **7.5.5. FAILURE TO COMPLY**

If the landowner or responsible entity fails to comply with a notice of violation from which no appeal has been taken, or fails to comply following a final decision by the Board of Adjustment on an appeal, the landowner or responsible entity shall be subject to such remedies and penalties as may be provided for by State law or Section <>, Remedies.

### **7.5.6. EACH DAY A SEPARATE VIOLATION**

Each day a violation continues following notice for failure to comply is considered a separate and finable offense.



## § 7.6 REMEDIES

Upon failure to address a notice of violation in accordance with this Ordinance, the Town may pursue any of the following remedies to correct the violation. Each of these remedies is cumulative and continuous to the maximum extent provided by State law. Nothing in this Ordinance shall prohibit the continuation of previous enforcement actions.

### 7.6.1. ASSESSMENT OF CIVIL PENALTIES

#### A. GENERALLY

Any responsible person who violates any provision of this Ordinance shall be subject to the assessment of a civil penalty of the minimum amount per day specified in the Town's adopted schedule of fees and any other applicable enforcement provisions in this Ordinance and the Town Code of Ordinances.

#### B. NOTICE

##### 01. NOTIFICATION REQUIRED

Civil penalties may not be assessed until the responsible entity in violation has been notified in accordance with Section <>, Enforcement Procedure.

##### 02. CIVIL PENALTY IMPOSED

If, after receiving a written notice of violation under Section <>, Enforcement Procedure, the responsible party fails to take corrective action or file an appeal, a civil penalty may be imposed in accordance with this Chapter.

##### 03. NOTICE OF PENALTY ASSESSMENT

Notice of the civil penalty assessment shall be served in the same manner as a notice of violation.

##### 04. ASSESSMENT CONTENTS

The assessment notice shall state the nature of the violation, the civil penalty to be imposed upon the responsible party, and shall direct the responsible party to pay the civil penalty within 30 days of the date of the notice.

##### 05. SEPARATE NOTICES

Separate notices must be provided for the first or second violations. The Town may, in its discretion, treat the first notice for a violation as the final notice for chronic violators.

##### 06. ASSESSMENT UNTIL COMPLIANCE

- a. Civil penalties may be assessed until compliance is achieved.
- b. Civil penalties may be suspended or placed on hold until further notice when the accrued fines exceed the severity of the cited violation(s), in the sole opinion of the Planning Director.

#### C. CONTINUING VIOLATION

For each day the violation is not corrected, the responsible party shall be subject to an additional and separate offense and subject to additional civil penalty.

#### D. DEMAND FOR PAYMENT

01. If compliance is not achieved, then the Town shall make a written demand for payment of penalties that have accrued while the property has been in violation.
02. The demand for payment shall be sent to the responsible party in violation and must include a description of the violation for which the civil penalties have been imposed.
03. Payment of the penalty shall not constitute a remedy for the violation.

#### E. NONPAYMENT

If payment is not received or an equitable settlement reached within 30 days after demand for payment is made, the Town may recover any unpaid civil penalty by filing a civil action in the nature of debt.

#### F. PENALTIES



Any person who violates any provision of this Ordinance shall be subject to assessment of a civil penalty for each succeeding violation over the course of a calendar year.

### **7.6.2. CONDITIONED PERMIT OR CERTIFICATE**

- A.** The Planning Director or other designated Town official may condition a permit, authorization, or other approval for land, subdivision, building, structure, sign, use, or development activity on the correction of the violation, payment of civil penalties, and/or the posting of a compliance guarantee approved by the appropriate governmental authority.
- B.** In no instance shall the authorization of any permit, certificate, or approval for one property with a violation or outstanding enforcement action be conditioned with the correction of a violation, payment of civil penalties within a specified time, or the posting of a compliance guarantee for a different property.
- C.** In no instance shall the Town withhold a permit or Certificate of Occupancy on one lot or site for an applicant's failure to comply with the provisions of this Ordinance on a different lot or site.

### **7.6.3. CRIMINAL PENALTIES STILL AUTHORIZED IN SOME CASES**

#### **A. GENERALLY**

Criminal penalties may be assessed for any of the following violations, which shall be treated as misdemeanors under State law:

- 01.** Transfer of lot ownership in an unapproved subdivision in accordance with NCGS§160D-402;
- 02.** Certain violations of the State Building Code pertaining to unsafe structures in accordance with NCGS§160D-1125;
- 03.** Violation of the SFHA standards in accordance with Section <>, Violation of SFHA Controls; and
- 04.** Violation of the WSPO standards in accordance with Section <>, Violation of WSPO District Controls.

#### **B. UNLAWFUL TRANSFER OF LOTS OR BUILDING CODE VIOLATIONS**

- 01.** Any person who unlawfully transfers lots in an unapproved subdivision or who fails to comply with NCGS§160D-1125 pertaining to the State Building code shall, upon conviction thereof, be guilty of a Class 1 misdemeanor and fined not more than \$100.00.
- 02.** Remedy of such violations shall be at the discretion of the Town and the Henderson County Inspections Department;
- 03.** Each day such violation continues shall be considered a separate finable offense.
- 04.** Nothing herein contained shall prevent the Town of Mills River from taking such other lawful action as is necessary to prevent or remedy any violation.

#### **C. VIOLATION OF OVERLAY DISTRICT STANDARDS**

- 01.** Violation of the Special Flood Hazard Area Standards shall be a violation of this Ordinance subject to the remedies in Section <>, Violation of SFHA Controls.
- 02.** Violation of the Water Supply Watershed Protection standards shall be a violation of this Ordinance subject to the remedies in Section <>, Violation of WSPO District Controls.

### **7.6.4. DENIAL OF PERMIT OR AUTHORIZATION**

- A.** The Planning Director or other designated County official may withhold or deny a permit or other authorization for the same land, subdivision, building, structure, sign, use, or development activity in which there is an uncorrected violation of a provision of this Ordinance, or of a condition or qualification of a permit, certificate, or other authorization previously granted.
- B.** In no instance shall the County withhold issuance of a Building Permit or a Certificate of Occupancy for an applicant's failure to complete installation of required improvements or site features on a separate property subject to a different development approval.



### **7.6.5. EQUITABLE REMEDY**

The Town may apply to a court of law for any appropriate equitable remedy to enforce the provisions of this Ordinance. The fact that other remedies are provided under general law or this Ordinance shall not be used by the responsible party as a defense to the Town's application for equitable relief.

### **7.6.6. INJUNCTIVE RELIEF**

#### **A. ACTION BY TOWN COUNCIL**

Whenever the Town Council has reasonable cause to believe that any person is violating or threatening to violate this Ordinance, or any rule or order adopted or issued pursuant to this Ordinance, or any term, condition, or provision of an approved development plan, or soil erosion and sedimentation control plan, it may, either before or after the institution of any other action or proceeding authorized by this Ordinance, institute a civil action in the name of the Town, for injunctive relief to restrain, correct, abate, mandate, or enjoin the violation or threatened violation.

#### **B. SUPERIOR COURT**

The action shall be brought in the Superior Court for Henderson County. Upon determination by a court that an alleged violation is occurring or is threatened, it shall enter such orders or judgments as are necessary to abate the violation or to prevent the threatened violation.

#### **C. NO RELIEF FROM CRIMINAL PENALTIES**

The institution of an action for injunctive relief under this section shall not relieve any party to such proceedings from any civil or criminal penalty prescribed for violations of this Ordinance.

### **7.6.7. ORDER OF ABATEMENT**

In addition to an injunction, the Town may apply for and the court may enter an Order of Abatement as part of the judgment in the case. An Order of Abatement may direct any of the following actions:

- A.** That buildings or other structures on the property be closed, demolished, or removed;
- B.** That fixtures, furniture, or other moveable property be moved or removed entirely;
- C.** That improvements, alterations, modifications, or repairs be made; or
- D.** That any other action be taken as necessary to bring the property into compliance with this Ordinance.

### **7.6.8. REVOCATION OF PERMITS**

- A.** The Planning Director or other designated Town official may revoke and require the return of a permit by notifying the permit holder in writing, stating the reason for the revocation.
- B.** Permit revocation may only be conducted in accordance with the review procedure utilized to issue the permit or approval.
- C.** Building permits may be revoked by the County, in accordance with NCGS§160D-1115, for any of the following:
  - 01.** Any substantial departure from the approved application, plans, or specifications;
  - 02.** Refusal or failure to comply with the requirements of State or local laws; or
  - 03.** For making false statements or misrepresentations in securing the permit, certificate, or approval.
- D.** Any permit or certificate mistakenly issued in violation of an applicable State, Town, or County law may also be revoked.

### **7.6.9. STOP WORK ORDERS**

#### **A. GENERAL**

Whenever the Planning Director or other designated Town or County official determines that a person is engaged in doing work that constitutes, creates, or results in a violation of this Ordinance and that irreparable injury will occur if the violation is not terminated immediately, that Town or County official may order all or the specific part of the work that constitutes, creates, or results in a violation of this Ordinance to be immediately stopped.



**B. ORDER IN WRITING**

- 01. The stop work order shall be in writing and directed to the landowner, and the occupant or person doing the work.
- 02. The stop work order shall state the specific work to be stopped, the specific reasons for the stoppage, and the conditions under which the work may be resumed.
- 03. A copy of the order shall be delivered to the responsible party and to the owner of the property involved (if that person is not the responsible party) by personal delivery, electronic delivery, or first-class mail.
- 04. The Town or County official delivering the notice shall certify that the order was delivered, and that certificate shall be deemed conclusive in the absence of fraud.

**C. APPEAL**

Any person aggrieved by the issuance of a stop work order may appeal the issuance of the order to the Board of Adjustment in accordance with Section <>, Appeal. No further work or activity shall take place in violation of a stop work order until the ruling on the appeal has been made.

**D. COMPLIANCE REQUIRED**

Neither the responsible entity nor a landowner upon whom a stop work order is served shall continue with work in violation of the stop work order while it remains in effect unless the order is stayed in accordance with applicable State law.

**§ 7.7 STATUE OF LIMITATIONS**

Enforcement procedures may only be conducted in accordance with NCGS§1-49(3) and 1-51(5) pertaining to the length of time that an enforcement action may be pursued by the Town.

**§ 7.8 VIOLATION OF SFHA CONTROLS**

Violations of the standards applicable to the Special Flood Hazard Area Overlay shall be addressed in the same manner as indicated in Section <>, General Enforcement Procedures, and Section <>, Remedies, except that criminal penalties may be assessed for violations of the SFHA standards.

**§ 7.9 VIOLATION OF WSPO DISTRICT CONTROLS**

The following standards set out the provisions and remedies for violations of the standards in Section <>, Water Supply Watershed Protection Overlay District (WSPO).

**7.9.1. NOTICES OF VIOLATION**

- A. If any of the provisions of the WSPO are being violated, the Watershed Administrator shall notify in writing the person responsible for such violation, indicating the nature of the violation, and ordering the action necessary to correct it in accordance with Section <>, General Enforcement Procedures, and this section
- B. The Watershed Administrator shall order discontinuance of the illegal use of land, buildings or structures; removal of illegal buildings or structures, or of additions, alterations or structural changes thereto; discontinuance of any illegal work being done; or shall take any action authorized by this Chapter to ensure compliance with or to prevent violation of its provisions.

**7.9.2. CRIMINAL PENALTIES**

- A. Any person violating any provisions of the WSPO shall be guilty of a misdemeanor and, upon conviction, shall be punished in accordance with NCGS§14-4.
- B. The maximum fine for each offense shall not exceed \$500.
- C. Each day that the violation continues shall constitute a separate offense.



### **7.9.3. CIVIL PENALTIES**

- A.** Civil penalties for violations of the WSPO standards may be assessed by the Town in accordance with Section <>, Assessment of Civil Penalties.
- B.** In addition, the N.C. Environmental Management Commission may assess civil penalties in accordance with NCGS§143-215.6(a).
- C.** Each day that the violation continues shall constitute a separate offense.

### **7.9.4. APPEAL**

Any responsible party who has received an order to take corrective action may appeal the order to the Mills River Board of Adjustment in accordance with Section <>, Appeal.

