

# **CHAPTER 15:**

## **VIOLATIONS AND REMEDIES**

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**Section 15.1 Duties of Administrator, Board of Adjustment and Courts to Matters of Appeal**

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The duties of the Board of Adjustment and Village Council in connection with variances and appeals from the enforcement decisions of the Administrator are set forth in Chapter 12.

**Section 15.2 Inspection and Investigation**

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In order to determine violations of this ordinance the Administrator shall have the following rights and powers.

**15.2.1 Inspections**

The Administrator shall have the right upon presentation of proper credentials, or an administrative search warrant if necessary, to enter upon any premises within the zoning jurisdiction of the Village at any reasonable hour for the purposes of inspection, determination of compliance with this Ordinance, or other enforcement action.

**15.2.2 Investigations**

The Administrator shall have the power to conduct such investigations as he may reasonably deem necessary to carry out his duties as prescribed in this Ordinance, and for the purpose of investigating and inspecting the sites of any complaints or alleged violations of this Ordinance.

**15.2.3 Supporting Documentation**

The Administrator shall have the power to require written statements, certificates, certifications or the filing of reports with respect to complaints or alleged violations of this Ordinance.

**Section 15.3 Violations and Remedies**

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- A. Except as otherwise specifically addressed by other Chapters in this Ordinance, violations of the provisions of this ordinance or failure to comply with any of its requirements, including violations of any conditions and safeguards established in connection with grants of variances or special use permits and violations of Stop work Orders shall constitute a class 3 misdemeanor, punishable by a fine of up to \$500.00, as provided in G.S. 14-4.
- B. Any act constituting a violation of the provisions of this ordinance or a failure to comply with any of its requirements, including violations of any conditions and safeguards established in connection with the issuance of variances or special use permits, shall also subject the offender to a civil penalty of up to five thousand dollars (\$5,000.00).
  - 1. In determining the amount of the civil penalty assessment, the administrator shall consider the following factors, and the decision levying a civil penalty shall cite those factors deemed applicable:

- a. The degree and extent of harm to the natural resources of the Village and its planning jurisdiction, to the public health, or to private property resulting from the violation;
  - b. The extent to which the violation undermines the regulatory objectives of this ordinance;
  - c. The duration and gravity of the violation;
  - d. The cost of rectifying the damage;
  - e. The amount of money saved by noncompliance;
  - f. Whether the violation was committed willfully or intentionally; negligently; or as the result of an unforeseeable or unavoidable accident;
  - g. Whether the violator promptly ceased the violation upon notice by the Village and took whatever steps were reasonably possible to limit or correct any damage caused by the violation;
  - h. The prior record of the violator in complying or failing to comply with the provisions of this ordinance or any of its requirements (or those of the ordinances it replaces), including violations of any conditions and safeguards established in connection with the issuance of variances or special use permit.
  - i. The cost to the Village of the enforcement procedures;
  - j. The scope and the scale of the project where the violation occurs;
  - k. Whether the civil penalty is levied for a single day's violation or a single event or whether it is levied on a daily basis for a continuing violation. Civil penalties levied on a daily basis may cumulatively exceed the \$5,000.00 cap set forth in this subsection.
2. The notice of civil penalty shall inform the violator that the penalty is due upon receipt of the notification and, if applicable, that successive civil penalties of a specified amount shall accrue each day that the violation continues. The notice shall also inform the violator that if the civil penalty is not paid within ten days of receipt of the notice, the penalty may be recovered by the Village in a civil action in the nature of debt.
  3. A civil penalty may be appealed to the Board of Adjustment. An appeal stays further efforts to collect a civil penalty but does not stay the accrual of daily civil penalties.
  4. If a civil penalty is levied for a violation about which the violator was previously sent a notice of violation and the violator did not appeal to the

Board of Adjustment within the prescribed time the administrator's determination as to the existence of the violation, an appeal of the civil penalty presents only the issue of whether the administrator erred in setting the amount of the civil penalty, not the issue of whether the violation occurred or the violator's responsibility for the violation.

- C. This ordinance may also be enforced by any appropriate equitable action. In connection with the enforcement of Stop Work Orders, the Administrator may seek immediate injunctive relief from the Superior Court. Such action shall not limit the Administrator from exercising such other remedies as are provided by the Village's Ordinances and State law.
- D. Each day's continuing violation shall be a separate and distinct offense.
- E. Any one, all, or any combination of the foregoing penalties and remedies may be used to enforce this ordinance.

#### **Section 15.4 Enforcement Procedure**

If the Administrator shall find that any of the provisions of this Ordinance are being violated, he shall notify the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it. The Administrator shall order discontinuance of illegal use of land, buildings or structures; removal of illegal buildings or structures or additions; alterations, or structural changes thereto; discontinuance of any illegal work being done; or shall take any other action authorized by this Ordinance to insure compliance with or to prevent violations of its provision. If the owner and/or occupant of the land, building, structure, sign or use in violation fails to take prompt corrective action, the Administrator shall give the owner and/or occupant written notice (by certified mail to their last known address, by personal service or by posting notice conspicuously on the property) of the following:

- A. That the land, building, structure, sign or use is in violation of this Ordinance;
- B. The nature of the violation and citation of the Section (s) of this Ordinance violated;  
and
- C. The measures necessary to remedy the violation.

When the violation has been corrected, the Administrator shall give written notice that the violation has ended, including the date on which such violation was corrected.

**Section 15.4.1 Stop Work Orders**

In those instances where the violation consists of work being done which the Administrator determines will cause irreparable injury if the violation is not terminated immediately, the Administrator may order that specific part of the work to be immediately stopped.

**15.4.2 Notice of Stop Work Order**

A Stop Work Order shall be in writing (by certified mail to his last known address, by personal service or by posting notice conspicuously on the property), directed to the person doing the work and shall state the specific work to be stopped, the specific reasons, and the conditions under which the work may be resumed. A copy of the Stop Work Order shall be sent forthwith to the owner of the property where the work is taking place and the developer, if different from the owner.

**15.4.3. Violation of Stop Work Order**

A. Neither the person upon whom the Stop Work Order is served nor an owner or developer served with a copy of the Stop Work Order may thereafter cause, suffer, or permit a violation of the order while it remains in effect.

B. As provided in G.S. 160A-421(d), violation of a Stop Work Order shall constitute a Class 1 misdemeanor.

**15.5 Appeal**

Any owner or occupant who has received a Notice of Violation or a Stop Work Order may appeal the decision of the Administrator to the Board of Adjustment in accordance with the provisions of Chapter 12 of this Ordinance.

A. The Board of Adjustment shall hear an appeal of a Stop Work Order within 15 days of the date on which the appeal was filed with the Village Clerk, and it may affirm, modify or revoke the Stop Work Order. Pending determination by the Board of Adjustment, the Stop Work Order shall remain in effect. In the absence of an appeal, the decision of the Administrator shall be final.

B. If the Board fails to hear the appeal on a Stop Work Order within the 15 day period, the Stop Work Order shall be stayed automatically beginning on the day following the expiration of this fifteen (15) working day period. The stay shall remain in effect until the Board of Adjustment meets and acts on the appeal

**15.5.1 Notice of Decision**

The decision of the Board of Adjustment may be delivered to the aggrieved party either by personal service or by first class mail.