



**Town of Waxhaw, NC
Criminal Penalties from Ordinances
Compliance with Session Law 2018-69**

Provide by December 1, 2018 to:

- (1) The Joint Legislative Administrative Procedure Oversight Committee; and
- (2) The Joint Legislative Oversight Committee on Justice and Public Safety

*SOG recommends cc to Susan Sitze (legal counsel to one of the committees) via email susan.sitze@ncleg.net (no mailing or email information provided for either committee); Reference: <https://canons.sog.unc.edu/new-ordinance-report-requirement-advice-on-complying/>

NOTE TO READER: Town of Waxhaw Code of Ordinance (recodification approved November 13, 2018) available on-line through town's website www.waxhaw.com > link to Municode and specifically available at: https://library.municode.com/nc/waxhaw/codes/code_of_ordinances?nodeId=COORTOWANOCA

Chapter 1 – General Provisions

[Penalty section which is referenced throughout code; provided here for info/reference]

Sec. 1-14. - General penalty.

- (a) In this section, the term "violation of this Code" means any of the following:
 - (1) Doing an act that is prohibited or made or declared unlawful, an offense, a violation, an infraction, a civil infraction or a misdemeanor by ordinance or by rule or regulation authorized by ordinance.
 - (2) Failure to perform an act that is required to be performed by ordinance or by rule or regulation authorized by ordinance.
 - (3) Failure to perform an act if the failure is prohibited or is made or declared unlawful, an offense, a violation, an infraction, a civil infraction or a misdemeanor by ordinance or by rule or regulation authorized by ordinance.
- (b) In this section, the term "violation of this Code" does not include the failure of a town officer or town employee to perform an official duty unless it is specifically provided that the failure to perform the duty is to be punished as provided in this section.
- (c) Except as otherwise provided by law or ordinance, a person convicted of a violation of this Code shall be guilty of a misdemeanor and punished by a fine of not more than \$500.00, and shall also be subject to a civil penalty not to exceed \$500.00 to be recovered by the town in

a civil action in the nature of debt if the offender does not pay the penalty within a prescribed period of time after he has been cited for violation of the ordinance.

- (d) Any person violating an ordinance regulating the operation or parking of vehicles shall be responsible for an infraction and shall be required to pay a penalty of not more than \$50.00.
- (e) Each day any violation of this Code or of any ordinance or rule or regulation shall continue shall constitute a separate offense, except as may be otherwise specifically provided.
- (f) Any provision of this Code or any other town ordinance that makes unlawful a condition existing upon or use made of real property may be enforced by injunction and order of abatement in accordance with G.S. 160A-175. Certain nuisance violations may be summarily abated in accordance with G.S. 160A-193.

Chapter 2 – Administration

Sec. 2-51 – Smoking in municipal buildings: unlawful for anyone to smoke or vape in any building/facility owned/eased/operated/occupied/managed/controlled by the town.

Chapter 6 – Alcoholic Beverages

Sec. 6-19 –License required (thru Sec. 6-24): must obtain a B/W priv. license to operate a business with any sale of alcoholic beverages. License cannot be issued until applicant obtains state permit; must pay for license before opening and due May 1 each subsequent year; must post license conspicuously in the business. Must obtain a license for every applicable type of sales. No alcoholic beverage sales before 10am on Sundays. (Sec. 6-25 Penalties)

Chapter 10 – Animals

Article I – In General

Sec. 10-2 Chickens: permitted in town after obtaining annual permit; confine to a chicken coop of certain size, to be kept clean/free of accumulation of excrement and objectionable odors and located 30 feet from nearest residence; chickens allowed out of coop during day if fencing is provided to restrict chickens from leaving owners property; max of 6 chickens per property; no male chickens/roosters; pay permit fee; no slaughter or sale of slaughtered chickens unless expressly permitted by zoning code.

Sec. 10-3 Hog pens: unlawful for any person to have/maintain farm animals (as defined, excludes horses) unless they have a bona fide farm of 20 acres or more.

Sec. 10-4 Livestock running at large: prohibits off premises roaming of animals out of the control of the owner (or his agent) by leash (or other tether).

Sec. 10-5 Dogs and Cats as nuisances: Owners prohibited from allowing their dogs/cats disturb rights/threaten safety, cause damage or interfere with ordinary use/enjoyment of others. Cannot keep if they cause public nuisance (damage property, cannot keep in unsanitary conditions, excessive barking/whining/howling in continuous fashion or make noise causing serious annoyance); maintain dog that habitually chases/snaps at/attacks/barks at others off owners property; failing to confine female in heat; failing to remove feces on property except

private property where owner has consented to such; maintaining an animal that is diseased to a point of being dangerous to public health.

Article II – Domestic Animals

Sec. 10-29 Animal licensing: must obtain annual license for dogs (different cost for fixed and unfixed) must show proof of rabies vaccination; must attach tag of license to collar and be visible except under certain circumstances (service animals receive certain exemptions).

Sec. 10-30 Number and restraint of animals: keep animals on own property; outdoor enclosures must be min of 10'x10' for first animal and increase per animal by 5'x5'; provide fresh food/clean water; limit five dogs/cats per acre or portion thereof.

Sec. 10-31 Abuse of animals; leaving animals in vehicles: abuse of prohibited; no fighting animals; no leaving in closed vehicle for more than 20 mins.

Sec. 10-32 Breeders and animal rescue: such must register w/Animal Control Officer (ACO).

Sec. 10-33 Dangerous dogs: incorporates G.S. 67-4.1; if animal decreed "dangerous" and permitted to stay on premises shall be kept secured and restrained on the premises. Under circumstances where allowed to leave premises must be controlled by someone physically able to do so, leash no longer than 4 feet and muzzled.

Sec. 10-37 Rabies vaccination/confinement: must have vaccination

Sec. 10-38 Prohibition of animals at town-sponsored events: not permitted within 100 feet of an event (special exceptions for service dogs or approved vendors/performers and police dogs).

Sec. 10-39 Exotic or wild animals: such are prohibited to be kept, harbored or for breeding or sell or trade (exceptions for lawfully operated pet shops, zoos, veterinarians, wildlife rehabilitators).

Sec. 10-40 Stray animals: shall not keep strays unless within 72 hours of coming into possession of a stray, notified police department. Unlawful to refuse to surrender stray to police or ACO.

Sec. 10-43 Penalty

- (c) In the event that the violator does not appear in response to the described citation or the civil penalty is not paid with the period prescribed, a criminal summons may be issued against the violator for violation of this chapter and, upon conviction, the violator shall be punished as provided by state law and subject to a fine of not more than \$500.00 or imprisonment for not more than 30 days.

Chapter 14 – Buildings and Building Regulations

Article I – In General

Article II – Building Codes

Division 1. Generally

Sec. 14-26 – Compliance with codes required: building construction and alteration must comply with trade codes (i.e. the NC State 5 trades codes adopted in the ordinance by reference).

Sec. 14-58 Permits required (through Sec.14-66) no work which requires a permit may be performed without a permit (regarding trades/State building code); applications must be made; specifications must be provided; limits on issuance of permits; revocation of permits; limitation on permit validity; changes in work/deviations from terms of application/permit must be approved in writing by inspector; permit fees must be paid before permit can be issued.

Article III – Swimming Pools

Division 1. Generally

Division 2. Barriers

Sec. 14-110 requirements for in-ground swimming pools (through Sec. 14-111: details the regulations one must comply with for providing barriers around in-ground and above-ground pools.

Sec. 14-113 Penalty:

Criminal penalties. Violations of sections 14-109 through 14-112 or failure to comply with any of its requirements shall constitute a misdemeanor punishable by a fine of up to \$500.00 or up to 30 days' imprisonment.

- (f) *Continuing violations.* Each day that any violation continues after notification of the violation by, or on behalf of, the inspection department may be considered a separate violation for purposes of the penalties and remedies set forth in this section.
- (g) *Combination of penalties.* Any one, all or any combination of the foregoing penalties and remedies may be used to enforce sections 14-109 through 14-112.

Article IV – Lock Boxes

Sec. 14-140 thru Sec. 14-143: details need to have emergency entry into buildings, facilities and gated communities (have a key system and/or providing key/codes to fire department and/or police department)

Sec. 14-144. - Penalty.

- (a) Violations of this article shall be a misdemeanor as provided under G.S. 160A-175 and section 1-14.
- (b) Each day's continuing violation shall constitute a separate offense as provided by G.S. 160A-175(g).

Chapter 22 – Cemeteries

Sec. 22-1. - Cemeteries, memorial parks or memorial gardens.

- (a) From and after the effective date of the ordinance from which this section is derived, it shall be unlawful for any person, firm, or corporation to erect, install, operate, suffer or permit to

be operated any cemetery, memorial park or memorial gardens, or other place for the burial or interment of human bodies unless state certified.

- (b) This section shall have no effect upon cemeteries, memorial parks, memorial gardens, or other places for the interment of human bodies established, erected, or operated prior to the effective date of the ordinance from which this section is derived.
- (c) Violation of the terms of this section shall constitute a misdemeanor, and each day's operation of such cemetery, memorial park, memorial garden, or other place for the interment or burial of human bodies in violation of this section shall constitute a separate offence.

Chapter 30 - Emergencies

Sec. 30-1 thru 30-6: enumerates the Mayor's power to declare (and end) as state of emergency (SOE) and when and what can acts can be restricted during a SOE.

Sec. 30-7. - Unlawful acts.

During the existence of a declared state of emergency, it shall be unlawful for any person to violate any provision of any restriction imposed by any declaration authorized by this chapter. Violations may be enforced in accordance with section 1-14 and subject the violator to a Class 2 misdemeanor in accordance with G.S. 14-288.20(A).

Chapter 34 – Health and Sanitation

Sec. 34-1 Open burning: no person shall ignite, cause to be ignited, permit to be ignited, allow or maintain, kindle or maintain within the corporate limits of the town any open burning fire unless they meet certain exceptions (which mirror state regs).

Sec. 34-2 Filth, stagnant water and the like: No person, firm or corporation shall allow his, its or their cellars, old wells, pools, drain barrels or any vessel to become offensive from filth, stagnant water or other cause.

Sec. 34-3 Weeds, grass and the like: prohibits grass/weeds of developed property over 12 inches high; accumulation of trash/garbage; accumulation in an open place of hazardous or toxic materials and chemicals; concentration of combustible items (i.e. mattresses/boxes, paper, tires, garbage, brush etc.).

Sec. 34-4 Above-ground storage tanks: generally, fuel/petroleum above ground tanks cannot exceed 600 gallons; exception for fire department and town to have tanks up to 2,000 gal.

Sec. 34-5. - Penalty.

- (a) Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to section 1-14.
- (b) Open burning violations.
 - (1) The town shall have the authority to summarily abate any condition, including with assistance from the local fire department, that is in violation of section 34-1 and that presents an immediate fire hazard to life or property.

- (2) Any open burning in violation of section 34-1 shall be extinguished by the responsible party or the town, which may include assistance from the local fire department. All costs incurred by the town for enforcement of section 34-1 will be the responsibility of the party in violation of said section and will be added to the civil penalty.
- (3) A civil penalty shall be issued to any person or company violating the provisions of section 34-1. The civil penalty for residential violations shall be \$50.00 and \$100.00 for any repeat violation. The civil penalty for commercial violations of section 34-1 shall be \$250.00 per stack or pile and \$500.00 per stack or pile for any repeat violation by the same person or company. Each day's continuing violation shall constitute a separate offense as provided by G.S. 160A-175(g).
- (c) Any person violating section 34-2, and refusing to clean out the same after being notified by the town police officers of its condition, shall pay a civil penalty of \$25.00 for every 24 hours the cellar, old well, pool, drain barrel or vessel shall remain in that condition. Any person having the same rented or in his charge shall be held responsible for the offense and penalty.
- (d) Any property that is in violation of section 34-3(a) shall be subject to the enforcement provisions set forth in section 34-3(c).
- (e) The town may apply for appropriate equitable remedy from the general court of justice, including, but not limited to, mandatory and prohibitory injunctions and orders of abatement as allowed pursuant to G.S. 160A-175 for violations of any provision under this chapter. The civil actions may name as defendants any person creating, allowing the creation of, or assisting in the creation of any unlawful condition, including the owner of the premises from which the condition or noise emanates and the person having actual control of the premises.

Chapter 38 – Housing

Sec. 38-1 thru Sec. 38-37 summarized these sections contain our minimum housing code: to protect the health, safety and welfare of the residents of Waxhaw the code sets minimum standards of fitness for the initial and continued occupancy of all buildings for human habitation. No dangerous or injurious to the health, safety or morals of occupants or neighboring dwellings or others, defects increasing potential for fire, accident, calamity, lack of ventilation, light, sanitary facilities, dilapidation; disrepair, structural defects and uncleanness. Each dwelling must have plumbing systems, potable water supply and approved sewage disposal system, sink, lavatory, tub/shower and water closet with privacy to the user; connections to cold and hot water; connections to the kitchen sink, and aforementioned plumbed devices; approved pipe distribution system connected to potable water supply, hot water heating appliances required; must have windows (at least 1 per room facing directly to the outdoors); bathrooms/water closets must have ventilation. Electrical receptacles required; wired for supply of lights in every room/hallway/stairway. Approved heating system must be provided and maintained in working order. Minimum habitable floor area for every dwelling unit is 150 sq ft for first occupant and 100 sq ft additional for each of the next 3 occupants and at least 75 sq ft for every occupant thereafter. Rooms for sleeping at least 70 sq ft for bedroom and every room occupied for sleeping purposes; add 50 sq ft per additional occupant over 12 and 35 sq ft for each occupant under 12. Ceiling height of at least seven feet. No cellar to be used for living. Basement floors and walls must be watertight, window area and ceiling height equal to those required for habitable rooms, windows must be above grade. Safe and sanitary

maintenance required. Keep free of noxious weeds. Egress in accordance w/applicable building code; yards must have proper drainage. Screens required in case opens to prevent against insects; rodent controls required; infestations prohibited; rubbish storage must be supplied; garbage containers required. Walls and the like (including structures holding up walls) shall not lean or buckle or be rotten/deteriorated/damaged/have holes or cracks. Floors and roofs shall have support and safe; foundations shall not be damaged/deteriorated. Steps/stairs/landings and porches shall be in good condition to not fail or collapse; adequate egress provided. Suitable finishing materials required in interior. Exterior finishes must protect structure form elements. Floors cannot be ground or wood on the ground.

Sec. 38-68. - Penalty.

- (a) *Violations.* Except as otherwise provided herein, each violation of this chapter shall constitute a misdemeanor and violations of the provisions of this chapter shall be punished by a fine not exceeding \$50.00 or by imprisonment for a term not exceeding 30 days, or both.
- (b) *Civil penalty.*
 - (1) Violations of this chapter shall constitute either a misdemeanor or, at the election of the town, shall subject the offender to a civil penalty upon the issuance of a citation for the violation as hereinafter provided.
 - (2) The civil penalty, if not paid to the town clerk within 15 days of the issuance of a citation, may be recovered by the town in a civil action in the nature of debt.
 - (3) The civil penalties shall be in the amount of \$50.00 for each violation.
- (c) *Equitable remedy.*
 - (1) In addition to the penalties set out above, any provision of this chapter may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction.
 - (2) In such case, the general court of justice shall have jurisdiction to issue orders as may be appropriate, and it shall not be a defense to the application of the town for equitable relief that there is an adequate remedy at law.
- (d) *Injunctions.*
 - (1) In addition to the penalties set out above, any provision of this chapter that makes unlawful a condition existing upon or use made of real property may be enforced by injunction by a general court of justice.
 - (2) When a violation of a provision occurs, the town may apply to the appropriate division of the general court of justice for a mandatory or prohibitory injunction and order of abatement commanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property.
 - (3) The action shall be governed in all respects by the laws and rules governing civil proceedings, including the Rules of Civil Procedure in general and Rule 65 in particular.
- (e) *Order of abatement.*
 - (1) In addition to an injunction, the town may seek an order of abatement as a part of the judgment in the cause.

- (2) An order of abatement may direct that buildings or other structures on the property be closed, demolished or removed; that fixtures, furniture or other movable property be removed from buildings on the property; that grass and weeds be cut; that improvements or repairs be made; or that any other action be taken that is necessary to bring the property into compliance with this chapter.
- (3) If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, he may be cited for contempt, and the town may execute the order of abatement.
- (4) The town shall have a lien on the property for the cost of executing an order of abatement in the nature of a mechanic's and materialman's lien.
- (5) The defendant may secure cancellation of an order of abatement by paying all costs of the proceedings and posting a bond for compliance with the order.
- (6) The bond shall be given with sureties approved by the clerk of superior court in an amount approved by the judge before whom the matter is heard and shall be conditioned on the defendant's full compliance with the terms of the order of abatement within a time fixed by the judge.
- (7) Cancellation of an order of abatement shall not suspend or cancel an injunction issued in conjunction therewith.
- (f) *Remedies.* The provision of this chapter may be enforced by one, all or a combination of the remedies authorized and prescribed by this section.
- (g) *Continuing violations.* Each day's continuing violation of any provision of this chapter shall be a separate and distinct offense.
- (h) *Warning citation.*
 - (1) Upon determination of a violation of any section of this chapter, the penalty for which is a civil penalty, the town shall cause a warning citation to be issued to the violator setting out the nature of the violation, the section violated, the date of the violation, an order to immediately cease the violation, or if the violation is in the nature of an infraction for which an order or abatement would be appropriate in a civil proceeding, a reasonable period of time is stated in which the violation must be abated.
 - (2) The warning citation shall specify that a second citation shall incur a civil penalty, together with costs and attorney fees.
- (i) *Civil citation.*
 - (1) Upon failure of the violator to obey the warning citation, a civil citation shall be issued by the code enforcement officer and either served directly on the violator, his duly designated agent, or registered agent if a corporation, either in person or posted in the United States mail service by first class mail addressed to the last-known address of the violator as contained in the records of the town or obtained from the violator at the time of issuance of the warning citation.
 - (2) The violator shall be deemed to have been served upon the mailing of the citation.
 - (3) The citation shall direct the violator to appear before the town clerk, located in the town hall, within 15 days of the date of the citation, or alternatively to pay the citation by mail.

- (4) The violation for which the citation is issued must have been corrected by the time the citation is paid, otherwise further citations shall be issued.
- (5) Citations may be issued for each day the offense continues until the prohibited activity is ceased or abated.
- (j) *Civil action.* If the violator fails to respond to a citation within 15 days of its issuance, and pay the penalty prescribed therefor, the town may institute a civil action of the nature of debt in the appropriate division of the state general court of justice for the collection of the penalty, costs, attorney fees and other relief as permitted by law.

Chapter 42 – Land Use: this chapter adopts Unified Development Ordinance (UDO by reference. Overwhelming, the UDO invokes civil penalties. The following criminal penalty reference was found:

UDO - Section 6 – Overlay Districts Established; Article 4 – Administration; Section C – Duties and Responsibilities of the Floodplain Administrator; (16) – “Issue stop-work orders as required. Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this ordinance, the Floodplain Administrator may order the work to be immediately stopped. The stop-work order shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor.

Chapter 46 – Miscellaneous Offences

Sec. 46-1 Begging: unlawful for anyone to solicit money or other things of value on private property where “No Soliciting” is posted; within 15 ft of any building, public restroom or ATM or pay phone or bus stop or taxistand; in any public transportation vehicle; from motorists; from persons awaiting into any building. Accosting and forcing oneself upon another is prohibited.

Sec. 46-2 Youth protection; curfew: barring a list of exceptions, the following shall be violations of the ordinance: any juvenile remaining/being present in public place within town during restricted hours; parent or guardian of juvenile knowingly permits juvenile to be in a place during restricted hours; any person 16 years or older shall not aid or abet a juvenile in violating the ordinance such is a violation; refusal by parent/guardian to take custody of juvenile during restricted hours if a violation of the parent/guardian.

Sec. 46-3 Consumption, possession of alcohol: consumption and possession of open containers prohibited on public streets and on municipal property (exemptions provided for special events when proper ABC permits have been obtained and areas designated).

Sec. 46-4 Firearms, archery, fireworks; carrying concealed weapons on certain property; signs: no person shall fire any kind of firearm or any description of fireworks within the corporate limits of the town without the consent of the Board of Commissioners. Police Chief must conspicuously post signs at municipal properties indicating that carrying of concealed handgun is prohibited. No person shall hunt by bow and arrow except during lawful hunting season approved by Board of Commissioners.

Sec. 46-5 Loud, disturbing and unnecessary noise: unlawful to create, permit, continue unreasonably loud, disturbing and excessive noises (exceptions provided).

Sec. 46-6 Dead carcasses: no person shall knowingly allow a dead carcass or any portion thereof to remain upon his premises within the incorporated limits of the town longer than 24 hours after death.

Sec. 46-7. - Penalty.

In addition to the other penalties specified in section 1-14, violations of section 46-5 shall subject the offender to the following civil penalties:

First citation: \ \$ 50.00

Second citation for same offense within any 12-month period: \ 250.00

Third and subsequent citations for same offense within any 12-month period:\ 500.00

If the offender fails to pay the civil penalty within ten days after receipt of the citation, the civil penalty may be recovered by the town in a civil action in the nature of a debt. Each occurrence of a noise violation that continues after or occurs separately and anew after issuance of a citation shall be considered a separate offense for purposes of the above civil penalties regardless of whether on the same day or on subsequent days. The other penalties in section 1-14 referenced above include enforcement by injunctions and the right to summarily abate.

Chapter 50 – Nuisances

Sec. 50-3 Abandoned vehicle unlawful; removal authorized: unlawful for register owners to abandoned a vehicle beyond defined term.

Sec. 50-4 Nuisance vehicle unlawful; removal authorized: unlawful for registered owner or possessor to leave or allow vehicle to remain on the property after it has been declared a nuisance vehicle and ordered removed.

Sec. 50-5 Junked motor vehicle regulated; removal authorized: unlawful for registered owner or possessor to leave or allow vehicle to remain on the property after it has been declared a junked motor vehicle and ordered removed. No more than one junked motor vehicle on property. Single permitted, junked motor vehicles must comply with the location and concealment requirements.

Sec. 50-15 Unlawful removal of impounded vehicle: unlawful to remove from any storage facility designated for impound unless and until all towing and impoundment fees which are due or bond in lieu of fees have been paid.

Chapter 54 – Parks and Recreation (Chapter 54 is the codified number but has been replaced with Chapter 93, which has not been codified but will be in 6 months and will become Chapter 54; so 93 is referenced herein as such is the technical, adopted ordinance at this time and also available on website/municode as “Adopted Ordinances Not Yet Codified”)

Sec. 93.02 Hours of Operation of Town Parks: unlawful to enter into or remain within any public park owned/operated by town when the park is closed.

Sec. 93.03 General Park Rules and Regulations; Prohibited conduct through Sec. 93.22: the following is prohibited: willful marking, defacing, disfiguring, damage, tamper, displacement of

signs, structures, equipment, facility or any other real or personal property that is the property of or under the control of the town. With regard to vegetation no person shall willfully cut, damage, carve, transplant or remove any tree, shrub or bush or plant within any part except under the direction of the town during maintenance. No dumping trash, ashes, waste, broken glass or rubbish within any park except in proper receptacles. No camping or overnight stay in any park without written permission of P&R Director. Dogs, cats and other domestic pets and service animals are permitted in accordance with animal control regulations; at all times all pets must be kept 20 feet from perimeter of any play structure, athletic field, court system, skate park, bike track and water features. Except for special events or permits issued, no soliciting, peddling or begging. No carrying of a concealed handgun except as provided in NCGS 14 Article 54B. No alcoholic beverages, illegal drugs, or be under the influence of either in a park (except if ABC permits have been provided for special events). No smoking or vaping in parks. No loud disruptive noise or offensive conduct permitted. No erecting signage or posters without town permission. No hitting golf balls, riding bicycles/rollerblades/skates/skateboards (except as permitted in Sec. 93.04)/scooters/motorized vehicles/golf carts or operating drones/remote flying devices. Open fires prohibited except in town provided grills. No fireworks. Permit required for organized use before use. No climbing fences. No interference with persons using shelters; remove all decorations from shelters; don't damage shelters/leave any permanent marks in decorating shelters. Parking and traffic regulations must be followed. No wading, bathing, swimming in water features. Vendors in park must obtain permit first.

Chapter 58 – Stormwater and Erosion Control

Article II Stormwater Drainage Systems (regulations adopted by reference)

Article III Erosion and Sedimentation Control

Sec. 58-47. - General requirements and objectives.

- (a) *Plan required.* No person shall initiate any land disturbing activity which uncovers more than 12,000 square feet of land for commercial, industrial, or subdivision development without having a plan approved by the erosion control specialist. Land disturbing activities resulting from single-family residential development on an individual lot which disturbs one acre of land or less are excluded from plan submittal and approval, provided that erosion control devices are installed in accordance with the details for residential lot development found in the Town of Waxhaw Engineering, Standards and Procedures Manual. Single-family residential development exceeding one acre of land disturbed will be required to submit for plan approval. Land disturbing activities resulting from single-family residential development on multiple contiguous lots which disturb a total of one acre of land or less may conduct such activity with a single approved plan encompassing all the lots or with separate approved ESC installation and maintenance agreements for each lot.
- (b) *ESC installation and maintenance agreement required.* No person shall initiate any land disturbing activity for the purpose of new single-family residential development on an individual lot to a maximum of one acre, without having an ESC installation and maintenance agreement approved by the erosion control specialist.
- (c) *Protection of property.* Persons conducting land disturbing activity shall take all reasonable measures to protect all public and private property from damage caused by such activity.

- (d) *Basic control objectives.* A plan may be disapproved pursuant to section 58-58 if the plan fails to address the following control objectives:
- (1) *Identify critical areas.* On-site areas which are subject to severe erosion, and off-site areas which are especially vulnerable to damage from erosion and/or sedimentation, are to be identified and receive special attention.
 - (2) *Limit time of exposure.* All land disturbing activity is to be planned and conducted to limit exposure to the shortest feasible time.
 - (3) *Limit exposed areas.* All land disturbing activity is to be planned and conducted to minimize the size of the area to be exposed at any one time.
 - (4) *Control surface water.* Surface water runoff originating upgrade of exposed areas should be controlled to reduce erosion and sediment loss during the period of exposure.
 - (5) *Control sedimentation.* All land disturbing activity is to be planned and conducted so as to prevent off-site sedimentation damage.
 - (6) *Manage stormwater runoff.* When the increase in the velocity of stormwater runoff resulting from a land disturbing activity is sufficient to cause accelerated erosion of the receiving watercourse, plans are to include measures to control the velocity to the point of discharge so as to minimize accelerated erosion of the site and increased sedimentation of the stream.

(Code 2015, § 159.05; [Ord. No. 2016017](#), 10-25-2016)

Sec. 58-48. - Mandatory standards for land disturbing activities.

No land disturbing activity subject to the control of this article shall be undertaken except in accordance with the following mandatory standards:

- (1) *Buffer zone.*
 - a. No land disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a lake or natural watercourse unless a buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within 25 percent of the buffer zone nearest the land disturbing activity.
 - b. Unless otherwise provided, the width of the buffer zone begins and is measured landward from the normal pool elevation of impounded structures (lakes) to the nearest edge of the disturbed area and/or five feet from the edge of the top of the bank of streams or rivers to the nearest edge of the disturbed area. Natural or artificial means of confining visible siltation must be placed, constructed or installed outside the undisturbed buffer zone.
 - c. For any watercourse, where more than one stream buffer width is imposed by this Code or other local, state or federal law, rule, or regulation, the greater buffer width stipulated shall apply.
- (2) *Graded slopes and fills.* The angle for graded slopes and fills shall be no greater than the angle which can be retained by vegetative cover or other adequate erosion control devices or structures. In any event, slopes left exposed will, within 14 calendar days of

completion of any phase of grading, be planted or otherwise be provided with ground cover, devices, or structures sufficient to restrain erosion.

- (3) *Ground cover.* Whenever more than 12,000 square feet of land is uncovered or new residential development on an individual lot is initiated, the person conducting the land disturbing activity shall install such sedimentation and erosion control devices and practices as are sufficient to retain the sediment generated by the land disturbing activity within the boundaries of the tract during construction upon and development of said tract, and shall plant or otherwise provide a permanent ground cover sufficient to restrain erosion after completion of construction or development. Provisions for a ground cover sufficient to restrain erosion must be accomplished within 15 working days or 60 calendar days, whichever is shorter, following completion of construction or development.
- (4) *Prior plan approval.* No person shall initiate any land disturbing activity on a tract if more than 12,000 square feet of land is to be uncovered, excluding single-family residential development in accordance with section 58-47(b), unless, 30 or more days prior to initiating the activity, a plan is filed with and approved by the erosion control specialist. The erosion control specialist shall forward to the state director of the division of water quality a copy of each plan for a land disturbing activity that involves the utilization of ditches for the purpose of dewatering or lowering the water table of the tract.
- (5) *Zoning permits.* Any person requesting a grading permit in association with a land disturbing activity on a tract which involves the uncovering of more than 12,000 square feet of land or new residential development on an individual lot shall be required to have an approved erosion and sedimentation control plan or ESC installation and maintenance agreement in accordance with this article.

(Code 2015, § 159.06; [Ord. No. 2016017](#), 10-25-2016)

Sec. 58-49. - Design and performance standards.

Erosion and sedimentation control measures, structures, and devices shall be so planned, designed, and constructed as to provide protection from the calculated maximum peak rate of stormwater runoff from the ten-year storm. Stormwater runoff rates shall be calculated using the procedures in the USDA, Natural Resources Conservation Service's "National Engineering Field Manual for Conservation Practices," or other acceptable calculation procedures.

(Code 2015, § 159.07; [Ord. No. 2016017](#), 10-25-2016)

Sec. 58-50. - Stormwater outlet protection.

- (a) Persons shall conduct land disturbing activity so that the post-construction velocity of the ten-year storm runoff in the receiving watercourse to the discharge point does not exceed the greater of:
 - (1) The velocity established in table 58-50-1; or
 - (2) The velocity of the ten-year storm runoff in the receiving watercourse prior to the land disturbing activity.

- (b) If the conditions of subsection (a) of this section cannot be met, then the receiving watercourse to and including the discharge point shall be designed and constructed to withstand the expected velocity anywhere the velocity exceeds the "prior to land disturbing activity" velocity by ten percent.
- (c) Acceptable management measures. Measures applied alone or in combination to satisfy the intent of this section are acceptable if there are no objectionable secondary consequences. The town recognizes that the management of stormwater runoff to minimize or control downstream channel and bank erosion is a developing technology. Innovative techniques and ideas will be considered and may be used when shown to have the potential to produce successful results. Some alternatives are to:
 - (1) Avoid increases in surface runoff volume and velocity by including measures to promote infiltration to compensate for increased runoff from areas rendered impervious.
 - (2) Avoid increases in stormwater runoff discharge velocities by using vegetated or roughened swales and waterways in lieu of closed drains and high velocity paved sections.
 - (3) Provide energy dissipaters at outlets of storm drainage facilities to reduce flow velocities to the point of discharge. These may range from simple rip-rapped sections to complex structures.
 - (4) Protect watercourses subject to accelerated erosion by improving cross sections and/or providing erosion-resistant lining.
- (d) Exceptions. This rule shall not apply where it can be demonstrated that stormwater discharge velocities will not create an erosion problem in the receiving watercourse.
- (e) Maximum permissible velocity for stormwater discharges shall be regulated in accordance with table 58-50-1.

Table 58-50-1
Maximum Permissible Velocities

Material	Feet/Second	Meters/Second
Fine sand (noncolloidal)	2.5	0.8
Sandy loam (noncolloidal)	2.5	0.8
Silt loam (noncolloidal)	3.0	0.9
Ordinary firm loam	3.5	1.1
Fine gravel	5.0	1.5
Stiff clay (very colloidal)	5.0	1.5
Graded, loam to cobbles (noncolloidal)	5.0	1.5

Graded, silt to cobbles (colloidal)	5.5	1.7
Alluvial silts (noncolloidal)	3.5	1.1
Alluvial silts (colloidal)	5.0	1.5
Coarse gravel (noncolloidal)	6.0	1.8
Cobbles and shingles	5.5	1.7
Shales and hard pans	6.0	1.8

(Code 2015, § 159.08; [Ord. No. 2016017](#), 10-25-2016)

Sec. 58-51. - Borrow and waste areas.

When the person conducting the land disturbing activity is also the person conducting the borrow or waste disposal activity, areas from which borrow is obtained and which are not regulated by the provisions of the Mining Act of 1971, and waste areas for surplus materials other than landfills regulated by the state department of environment and natural resources' division of solid waste management, shall be considered as part of the land disturbing activity where the borrow material is being used or from which the waste material originated. When the person conducting the land disturbing activity is not the person obtaining the borrow and/or disposing of the waste, these areas shall be considered a separate land disturbing activity.

(Code 2015, § 159.09; [Ord. No. 2016017](#), 10-25-2016)

Sec. 58-52. - Access and haul roads.

Temporary access and haul roads, other than public roads, constructed or used in connection with any land disturbing activity shall be considered a part of such activity.

(Code 2015, § 159.10; [Ord. No. 2016017](#), 10-25-2016)

Sec. 58-53. - Operations in lakes or natural watercourses.

Land disturbing activity in connection with construction in, on, over, or under a lake or natural watercourse shall be planned and conducted in such a manner as to minimize the extent and duration of disturbance of the stream channel. The relocation of a lake, stream or other watercourse where relocation is an essential part of the proposed activity, shall be planned and executed so as to minimize changes in the lake, stream or other watercourse flow characteristics, except when justification acceptable to the town for significant alteration to flow characteristic is provided.

(Code 2015, § 159.11; [Ord. No. 2016017](#), 10-25-2016)

Sec. 58-54. - Responsibility for maintenance.

During the development of a site, the person conducting the land disturbing activity shall install and maintain all temporary and permanent erosion and sedimentation control measures as required by the approved plan or any provision of this article or the Act, or any order adopted pursuant to this article or the Act. After site development, the landowner or person in possession of the land shall install and/or maintain all necessary permanent erosion and sediment control measures, except those measures installed within a road or street right-of-way or easement accepted for maintenance by a governmental agency.

(Code 2015, § 159.12; [Ord. No. 2016017](#), 10-25-2016)

Sec. 58-55. - Additional measures.

Whenever the erosion control specialist determines that significant sedimentation is occurring as a result of land disturbing activity, despite application and maintenance of protective practices, the person conducting the land disturbing activity will be required to and shall take additional protective action.

(Code 2015, § 159.13; [Ord. No. 2016017](#), 10-25-2016)

Sec. 58-56. - Existing uncovered areas.

- (a) All uncovered areas existing on the effective date of the ordinance from which this article is derived which resulted from land disturbing activity which areas exceed one acre of land, that are subject to continued accelerated erosion and are causing off-site damage from sedimentation, shall be provided with a ground cover or other protective measures, structures, or devices sufficient to restrain accelerated erosion and control off-site sedimentation.
- (b) The erosion control specialist will serve upon the landowner, or other person in possession or control of that land, a written notice of violation by registered or certified mail, return receipt requested, or other means reasonably calculated to give actual notice. The notice will set forth the measures needed to comply, and will state the time within which such measures must be completed. In determining the measures required and the time allowed for compliance, the erosion control specialist shall take into consideration the economic feasibility, technology, and quantity of work required, and shall set reasonable and attainable time limits of compliance.
- (c) The erosion control specialist reserves the right to require preparation and approval of a plan in any instance where extensive control measures are required.

(Code 2015, § 159.14; [Ord. No. 2016017](#), 10-25-2016)

Sec. 58-57. - Permits.

- (a) No person shall undertake any land disturbing activity subject to this article without having first obtained a plan certificate and letter of approval or ESC installation and maintenance

agreement approval from the erosion control specialist, except that no plan certificate and letter of approval or ESC installation and maintenance agreement approval shall be required for any land disturbing activity:

- (1) For the purpose of fighting fires;
 - (2) For the stock piling of raw or processed sand, stone, or gravel in material processing plants and storage yards, provided that sediment control measures have been utilized to protect against off-site damage; or
 - (3) That does not disturb more than 12,000 square feet in surface area. In determining the area, lands under one or diverse ownership being developed as a unit will be aggregated.
- (b) Although a plan certificate and letter of approval is not required for land disturbing activity comprising less than 12,000 square feet of land or less than one acre for residential projects, such activity shall be subject to all other requirements of this article and any other applicable standards or ordinances adopted by the town.
- (c) Submittals for erosion and sediment control plan approval and erosion control inspections shall be subject to any and all relevant fees as adopted by the Board of Commissioners and prescribed in this Code. Fees shall accompany plan submittals, otherwise the submittal shall be determined incomplete and shall be returned to the applicant.

(Code 2015, § 159.15; [Ord. No. 2016017](#), 10-25-2016)

Sec. 58-58. - Erosion and sedimentation control plans.

- (a) Persons conducting land disturbing activity shall be responsible for preparing a plan for all land disturbing activities subject to this article whenever the proposed activity is to be undertaken on a tract disturbing more than 12,000 square feet of land, excluding single-family residential development addressed in section 58-47(b).
- (b) Seven complete copies of the plan shall be filed with the control specialist in the office of the development services department at least 30 days prior to the commencement of the proposed activity. A fee, made payable to the town, shall be charged for each plan review. Such fee shall be in accordance with a fee schedule adopted by the Board of Commissioners. No plan shall be considered complete unless accompanied by such fee and a performance bond in the form of a certified check, cash or irrevocable letter of credit, in an amount deemed sufficient by the engineering department to cover all costs of protection or other improvements required to establish protective cover on the site in conformity with this article. The performance bond shall remain effective until work has been completed, inspected and approved by the development services department.
- (c) The erosion control specialist shall transmit a copy of the complete plan to the county soil and water conservation district (SWCD) for their review. The SWCD shall be given up to 20 days to make a comment on the plan. Failure of the SWCD to submit its comments to the erosion control specialist within such time period shall not delay final action on the proposed plan by the erosion control specialist.
- (d) The erosion control specialist shall render a decision on a plan within 30 days of submittal. The erosion control specialist shall condition approval of a draft plan upon the applicant's

compliance with local, state and federal water quality laws, regulations, ordinances and rules. Such decision shall be approval, approval with modifications, approval with performance reservations, or disapproval. Failure to approve, approve with modifications or performance reservations, or disapprove a complete plan within 30 days of receipt shall be deemed approval.

- (e) Any final decision made pertaining to the proposed plan shall be filed in the development services department (or as otherwise designated by the town) and sent to the applicant by first class mail.
- (f) Denial of a plan or a revised plan must specifically state in writing the reasons for disapproval. The erosion control specialist must approve, approve with modifications or performance reservations, or disapprove a revised plan within 15 days of receipt, or it is deemed to be approved.
- (g) Plan approval shall expire three years following the date of approval, if no land disturbing activity has been undertaken, or if no land disturbing activity has occurred within three years. If, following commencement of a land disturbing activity pursuant to an approved plan, the erosion control specialist determines that the plan is inadequate to meet the requirements of this article, the erosion control specialist may require any revision of the plan that is necessary to comply with this article.
- (h) Persons conducting land disturbing activities which are addressed by this section shall have secured a plan certificate and letter of approval (in accordance with procedures described herein) before any land disturbing activities commence. A copy of the approved plan and the certificate of plan approval shall be maintained at the job site by the persons conducting the land disturbing activity. After approving the plan, if the erosion control specialist, either upon review of such plan or on inspection of the job site, determines that a significant risk of accelerated erosion or off-site sedimentation exists, the specialist may require that a revised plan be submitted. Pending the preparation and approval of the revised plan, work shall cease or shall continue under conditions outlined by the erosion control specialist.
- (i) A plan may be disapproved unless accompanied by an authorized statement of financial responsibility and ownership. This statement shall be signed by the person financially responsible for the land disturbing activity or their attorney-in-fact. The statement shall include the mailing and street addresses of the principal place of business of the person financially responsible and of the owner of the land or their registered agents. If the person financially responsible is not a resident of the state, a state agent must be designated in the statement for the purpose of receiving notice of compliance or noncompliance with the plan, the Act, this article, or rules or orders adopted or issued pursuant to this article. If the applicant is not the owner of the land to be disturbed, the draft erosion and sedimentation control plan must include the owner's written consent for the applicant to submit a draft erosion and sedimentation control plan and to conduct the anticipated land disturbing activity.
- (j) The person submitting a plan to the erosion control specialist is, prior to submission of the plan, solely and exclusively responsible for determining whether the proposed land disturbing activities require any form of state or federal environmental certification or documentation. Any plan submitted for a land disturbing activity for which an environmental document is required by the North Carolina Environmental Policy Act (G.S. 113A-1 et seq.) shall be deemed incomplete until a complete environmental document is available for town

review. The erosion control specialist, upon discovery that an environmental certification or documentation is required but was not obtained, shall promptly notify the person submitting the plan that the 30-day time limit for review of the plan pursuant to subsection (d) of this section shall not begin until a complete environmental document or certificate is available for review by the erosion control specialist. However, no term or condition in this article shall be interpreted to place the burden for determining the necessity for an environmental certificate or documentation upon the erosion control specialist, and the person submitting the plan, as well as any other persons specified by law, rule or regulation, shall remain solely and exclusively responsible for such determination.

- (k) The plan required by this section shall contain architectural and engineering drawings, maps, assumptions, calculations, and narrative statements as needed to adequately describe the proposed development of the tract and the measures planned to comply with the requirements of this article. Any erosion and sediment control measures and/or devices must be drawn to scale and contour when deemed applicable by the erosion control specialist. Plan content may vary to meet the needs of specific site requirements. Detailed guidelines for plan preparation shall be found in the Town of Waxhaw Engineering, Standards and Procedures Manual. The erosion control specialist shall automatically disapprove a plan if it is determined that implementation of the plan would result in a violation of rules adopted by the environmental management commission to protect riparian buffers along surface waters.
- (l) A plan may be disapproved upon a finding that an applicant, or a parent, subsidiary, or other affiliate of the applicant:
 - (1) Is conducting or has conducted land disturbing activity without an approved plan, or has received notice of violation of a plan previously approved by the NCSCC or the town pursuant to the Act and has not complied with the notice within the time specified in the notice;
 - (2) Has failed to pay a civil penalty assessed pursuant to the Act or a local ordinance adopted pursuant to the Act by the time the payment is due;
 - (3) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to the Act; or
 - (4) Has failed to substantially comply with applicable local, state or federal laws, regulations, rules or ordinances adopted pursuant to the Act. For purposes of this subsection (l), an applicant's record may be considered for only two years prior to the application date.
- (m) Applications for amendment of a plan in written and/or graphic form may be made at any time under the same format as the original application. Until such time as said amendment is approved by the erosion control specialist, land disturbing activity shall not proceed except in accordance with the plan as originally approved.
- (n) Any person engaged in land disturbing activity who fails to file a plan in accordance with this article, or who conducts a land disturbing activity except in accordance with provisions of an approved plan shall be deemed in violation of this article.

(Code 2015, § 159.16; [Ord. No. 2016017](#), 10-25-2016)

Sec. 58-59. - Transfer of plans.

- (a) The town may transfer a plan if all of the following conditions are met:
 - (1) The successor-owner of the property submits to the local government a written request for the transfer of the plan and an authorized statement of financial responsibility and ownership.
 - (2) The local government finds all of the following:
 - a. The plan holder is one of the following:
 - 1. A natural person who is deceased.
 - 2. A partnership, limited liability corporation, corporation, or any other business association that has been dissolved.
 - 3. A person who has been lawfully and finally divested of title to the property on which the permitted activity is occurring or will occur.
 - 4. A person who has sold the property on which the permitted activity is occurring or will occur.
 - b. The successor-owner holds title to the property on which the permitted activity is occurring or will occur.
 - c. The successor-owner is the sole claimant of the right to engage in the permitted activity.
 - d. There will be no substantial change in the permitted activity.
- (b) The plan holder shall comply with all terms and conditions of the plan until such time as the plan is transferred.
- (c) The successor-owner shall comply with all terms and conditions of the plan once the plan has been transferred.
- (d) Notwithstanding changes to law made after the original issuance of the plan, the local government may not impose new or different terms and conditions in the plan without the prior express consent of the successor-owner. Nothing in this subsection shall prevent the local government from requiring a revised plan pursuant to section 58-58(g).
- (e) Denials of transfer requests may be appealed pursuant to section 58-64(1).

(Code 2015, § 159.17; [Ord. No. 2016017](#), 10-25-2016)

Sec. 58-60. - Inspections and investigations.

- (a) The erosion control specialist will periodically inspect land disturbing activities to ensure compliance with the Act, this article, or rules or orders adopted or issued pursuant to this article, and to determine whether the measures required in the plan are effective in controlling erosion and sediment resulting from land disturbing activity. Notice of the right to inspect shall be included in the certificate of approval of each plan. The landowner, the financially responsible party, or the landowner's or the financially responsible party's agent shall perform an inspection of the area covered by the plan after each phase of the plan has been completed and after establishment of temporary ground cover in accordance with

section 58-48(3). The person who performs the inspection shall maintain and make available a record of the deviation from the approved erosion control plan, identify any measures that may be required to correct the deviation, and document the completion of those measures. The record shall be maintained until permanent ground cover has been established as required by the approved erosion and sedimentation control plan.

- (b) No person shall willfully resist, delay, or obstruct the erosion control specialist, while inspecting or attempting to inspect a land disturbing activity under this section.
- (c) If it is determined that a person engaged in the land disturbing activity has failed to comply with the Act, this article, or rules, or orders adopted or issued pursuant to this article, or has failed to comply with an approved plan, a notice of violation shall be served upon that person. The notice shall be served by registered or certified mail or by any means authorized under G.S. 1A-1, Rule 4. The notice of violation shall specify a date by which, or a cure period within which, the person must comply with this article, and inform the person of the actions that need to be taken to comply with this article. The notice shall set forth the measures necessary to achieve compliance with the plan, specify a reasonable time period within which such measures shall be completed, and warn that failure to correct the violation within the time period stated is subject to a civil penalty and other enforcement actions. However, no time period for compliance need be given for failure to submit a plan for approval, for obstructing, hampering or interfering with an authorized representative while in the process of carrying out his official duties, or for the penalty that may be assessed pursuant to this article for the day the violation is assessed by the erosion control specialist. Any person who fails to comply within the time specified in the notice is subject to additional civil and criminal penalties for a continuing violation as provided in this article. If the person engaged in the land disturbing activity has not received a previous notice of violation under this section, the erosion control specialist shall deliver the notice of violation in person and shall offer assistance in developing corrective measures. Assistance may be provided by referral to a technical assistance program in the department, referral to a cooperative extension program, or by the provision of written materials such as department guidance documents. If the erosion control specialist is unable to deliver the notice of violation in person within 15 days following discovery of the violation, the notice of violation may be served in the manner prescribed for service of process by G.S. 1A-1, Rule 4, and shall include information on how to obtain assistance in developing corrective measures.
- (d) The erosion control specialist shall have the power to conduct such investigation as may be reasonably deemed necessary to carry out duties as prescribed in this article, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any land disturbing activity. No person shall refuse entry or access to the erosion control specialist who requests entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper, or interfere with any such representative while in the process of carrying out their official duties as provided in this article.
- (e) The erosion control specialist shall also have the power to require written statements, or the filing of reports under oath, with respect to pertinent questions relating to land disturbing activity.
- (f) On any tract on which five or more acres are disturbed, the person conducting land disturbing activity will be responsible for self-inspection of erosion and sedimentation control facilities

at least once every seven days or within 24 hours of a storm event of greater than one-half inch of rain per 24-hour period.

(Code 2015, § 159.18; [Ord. No. 2016017](#), 10-25-2016)

Sec. 58-61. - Penalties; stop work orders.

(a) *Civil penalties.*

- (1) Any person who violates any of the provisions of the applicable state, federal or local laws, rules, regulations or ordinances, including this article, or rules or orders adopted or issued pursuant to applicable state, federal or local laws, rules, regulations or ordinances, including this article, or who initiates or continues a land disturbing activity for which an erosion and sedimentation control plan is required except in accordance with the terms, conditions, and provisions of an approved plan, is subject to a civil penalty. The maximum civil penalty for a violation is \$5,000.00. A civil penalty may be assessed from the date of the violation. Each day of a continuing violation shall constitute a separate violation. When the person has not been assessed any civil penalty under this subsection for any previous violation and that person abated continuing environmental damage resulting from the violation within 180 days from the date of the notice of violation, the maximum cumulative total civil penalty assessed under this subsection for all violations associated with the land disturbing activity for which the erosion and sedimentation control plan is required is \$25,000.00.
- (2) The erosion control specialist shall determine the amount of the civil penalty and shall notify the person who is assessed the civil penalty of the amount of the penalty, the reason for assessing the penalty, the option available to that person to request a remission of the civil penalty under G.S. 113A-64.2, the date of the deadline for that person to make the remission request regarding this particular penalty, and, when that person has not been assessed any civil penalty under this section for any previous violation, the date of the deadline for that person to abate continuing environmental damage resulting from the violation in order to be subject to the maximum cumulative total civil penalty under subsection (a)(1) of this section. 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 30 days by filing a petition for a contested case under G.S. ch. 150B, art. 3. If a violator does not pay a civil penalty assessed by the town within 30 days after it is due, the erosion control specialist may institute a civil action to recover the amount of the assessment. The civil action may be brought in the superior court of any county where the violation occurred or the violator's residence or principal place of business is located. A civil action must be filed within three years of the date the assessment was due. An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment.
- (3) In determining the amount of the penalty, items which may be considered are 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 with or failing to comply with this article.

- (4) The clear proceeds of civil penalties collected by the town must be remitted to the civil penalty and forfeiture fund in accordance with G.S. 115C-457.2.
- (b) *Criminal penalties.* Any person who knowingly or willfully violates any provision of this article, or rule, regulation or order adopted or issued pursuant to this article, or who knowingly or willfully initiates or continues a land disturbing activity for which a 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 \$5,000.00.
- (c) *Stop work orders.*
- (1) The erosion control specialist may issue a stop work order if he finds that a land disturbing activity is being conducted in violation of this section or of any rule adopted or order issued pursuant to this section, that the violation is knowing and willful, and that either:
- Off-site sedimentation has eliminated or severely degraded a use in a lake or natural watercourse or that such degradation is imminent.
 - Off-site sedimentation has caused severe damage to adjacent land or that such damage is imminent.
 - The land disturbing activity is being conducted without an approved plan.
- (2) The stop work order shall be in writing and shall state what work is to be stopped and what measures are required to abate the violation. The order shall include a statement of the findings made by the town pursuant to subsection (a) of this section, and shall list the conditions under which work that has been stopped by the order may be resumed. The delivery of equipment and materials which does not contribute to the violation may continue while the stop work order is in effect. A copy of this section shall be attached to the order.
- (3) The stop work order shall be served by the county sheriff or by some other person duly authorized by law to serve process as provided by G.S. 1A-1, Rule 4, and shall be served on the person at the site of the land disturbing activity who is in operational control of the land disturbing activity. The sheriff or other person duly authorized by law to serve process shall post a copy of the stop work order in a conspicuous place at the site of the land disturbing activity. The town shall also deliver a copy of the stop work order to any person that the town has reason to believe may be responsible for the violation.
- (4) The directives of a stop work order become effective upon service of the order. Thereafter, any person notified of the stop work order who violates any of the directives set out in the order may be assessed a civil penalty as provided in subsection (a) of this section. A stop work order issued pursuant to this section may be issued for a period not to exceed five days.
- (5) The erosion control specialist shall designate an employee (which may be the erosion control specialist) to monitor compliance with the stop work order. The name of the employee so designated shall be included in the stop work order. The employee so designated, or the erosion control specialist, shall rescind the stop work order if all the violations for which the stop work order are issued are corrected, no other violations

have occurred, and all measures necessary to abate the violations have been taken. The erosion control specialist shall rescind a stop work order that is issued in error.

- (6) The issuance of a stop work order shall be a final agency decision subject to judicial review in the same manner as an order in a contested case pursuant to G.S. ch. 150B, art. 4. The petition for judicial review shall be filed in the superior court of the county in which the land disturbing activity is being conducted.
- (7) As used in this section, days are computed as provided in G.S. 1A-1, Rule 6.
- (8) The attorney for the town shall file a cause of action to abate the violations which resulted in the issuance of a stop work order within two business days of the service of the stop work order. The cause of action shall include a motion for an ex parte temporary restraining order to abate the violation and to effect necessary remedial measures. The resident superior court judge, or any judge assigned to hear the motion for the temporary restraining order, shall hear and determine the motion within two days of the filing of the complaint. The clerk of superior court shall accept complaints filed pursuant to this section without the payment of filing fees. Filing fees shall be paid to the clerk of superior court within 30 days of the filing of the complaint.

(Code 2015, § 159.19; [Ord. No. 2016017](#), 10-25-2016)

Sec. 58-62. - Injunctive relief.

- (a) Whenever the erosion control specialist has reasonable cause to believe that any person is violating or threatening to violate this article or any term, condition, or provision of an approved plan, he may, either before or after the institution of any other action or proceeding authorized by this article, institute a civil action for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the superior court in the county.
- (b) Upon determination by a court that an alleged violation is occurring or is threatened, the court shall enter any order of judgment that is necessary to abate the violation, to ensure that restoration is performed, or to prevent the threatened violation. The institution of an action for injunctive relief under this section shall not relieve any party to the proceedings from any civil or criminal penalty prescribed for violations of this article.

(Code 2015, § 159.20; [Ord. No. 2016017](#), 10-25-2016)

Sec. 58-63. - Restoration of areas affected by failure to comply.

The erosion control specialist may require a person who engaged in a land disturbing activity and failed to retain sediment generated by the activity as required by section 58-48(3) to restore the waters and land 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 article.

(Code 2015, § 159.21; [Ord. No. 2016017](#), 10-25-2016)

Sec. 58-64. - Appeals.

Procedures which constitute the appeals process are related to the following actions:

- (1) *Plan approval with modifications or plan disapproval.* The appeal of an approval, approval with modifications or disapproval of a plan made by the erosion control specialist with regard to this article shall be governed by the following provisions:
 - a. The order of approval, disapproval, or modification of any proposed plan made by the erosion control specialist shall entitle the person challenging such decision to a public hearing before the board of adjustment if such person submits written demand for a hearing and completes the necessary forms and pays the required appeals fee within 15 days following the date the decision was filed in the development services department office or mailed to the applicant, whichever date is later. Such written request and completed forms shall be submitted to the clerk of the board of adjustment or his designee. Forms shall be available at the town hall, or as directed by the erosion control specialist. A fee for such public hearing shall be in accordance with a fee schedule adopted by the Board of Commissioners. No request shall be considered complete unless accompanied by such fee.
 - b. Notice of the board of adjustment public hearing shall be sent by first class mail to the applicant at least ten days prior to the public hearing and to any person who has submitted written request to receive such notice at least ten days prior to the date of the public hearing. The hearing shall be held no later than 30 days after the date of receipt of said written request.
 - c. A hearing shall be conducted by the board of adjustment. A concurring vote per the board of adjustment's officially adopted bylaws will be necessary to reverse any order, requirement, decision, or determination of any official charged with the enforcement of this article, or to decide in favor of an appellant any matter upon which is required to pass or to grant variance from the provisions of this article. The town shall keep minutes of the proceedings, showing the votes of each member upon each question and the attendance of each member at such hearings. The final disposition of the town shall be based on findings of fact.
 - d. A party dissatisfied with the decision of the board of adjustment following the public hearing shall appeal such decision to the NCSCC as provided by G.S. 113A-61(c).
- (2) *Plan disapproval due to prior violation, unpaid penalties, or noncompliance.* In the event that a plan is disapproved pursuant to section 58-58(l), the town control specialist shall notify the director of the division of land resources of such disapproval, along with the reasons therefor, within ten days after the date of the decision. The erosion control specialist shall advise the applicant and the director of the division of land resources in writing as to the specific reasons that the plan was disapproved. The applicant may appeal the erosion control specialist's disapproval of the plan pursuant to section 58-58(l) directly to the NCSCC.
- (3) *Issuance of notice of violation, penalties, or order of restoration.* The appeal of issuance of notice of violation, assessment of civil penalty, or order of restoration made by the town with regard to this article shall be governed by the following provisions: The

issuance of a notice of violation, assessment of a civil penalty, or an order of restoration by the erosion control specialist shall entitle the person alleged to be in violation of this article (petitioner) to appeal within 30 days by filing a petition for a contested case with the state office of administrative hearings under G.S. ch. 150B, art. 3.

Chapter 62 – Streets and Sidewalks

Sec. 62-20. - Permit required.

It shall be unlawful for any person to organize, conduct or participate in any parade in or upon any street, sidewalk, alley or other public place within the town unless a permit has been issued by the town in accordance with the provisions of this article.

Sec. 62-21. - Unlawful participation.

It shall be unlawful for any person to conduct or participate in any parade for any purpose or in any manner other than those set out in the application and permit.

Sec. 62-27. - Parking restrictions.

- (a) The chief of police, when reasonably necessary, may prohibit or restrict the parking of vehicles along a street or highway constituting a part of the route of a parade or demonstration. The chief of police shall cause signs to be posted to the effect and it shall be unlawful for any person to park or leave unattended any vehicle in violation thereof.
- (b) No person shall be liable for parking on a street if the signs are posted less than 24 hours in advance.

Sec. 62-29. - Sidewalk obstruction.

Police officers observing unreasonable obstructions of sidewalks as a result of a parade, so that pedestrians are unreasonably hindered or forced to step into the street, shall take reasonable steps to make the sidewalk available for pedestrian travel.

Chapter 66 – Traffic

Article II Parking Regulations

Sec. 66-20. - Parking on private property.

It shall be unlawful for any person to park any motor vehicle in or upon any private property, alleyway or parking lot within the town without first receiving the express permission or invitation of the owner thereof, or of the tenant or lessee in possession of the private property, alleyway, driveway or parking lot, or of any person lawfully entitled to the use of the private property, alleyway, driveway or parking lot.

(b) *Unlicensed vehicles, special/commercial vehicles and travel/camping trailers/motorcoaches.*

- (1) An automobile, truck and/or trailer of any size and/or type without a current license plate and a current vehicle safety inspection emblem shall not be parked and/or stored within any residential primary zoning district, as indicated on the zoning map, for a period exceeding 60 days unless contained within a completely enclosed building. Any

vehicle not found in compliance with this requirement will constitute a separate offense.

- (2) A special/commercial vehicle, as defined in subsection (b)(4) of this section, is prohibited from being parked and/or stored in any residential primary zoning district as indicated on the zoning map. Exception is taken to this prohibition in the following instances:
- a. The vehicle is engaged in a permitted construction project in the zoning district or is engaged in routine pickups, deliveries or similar typical activities in the district;
 - b. The vehicle is engaged in bona fide farm operations;
 - c. The vehicle is designed and operated in conjunction with typical residential purposes such as a home garden tractor or a grass mower;
 - d. The vehicle is involved in a governmental purpose and/or performing an emergency function;
 - e. The vehicle is licensed as a school, church or nonprofit organization bus or is a travel/motorcoach vehicle as regulated in subsection (b)(3) of this section; and/or
 - f. The vehicle is associated with and stored/parked at a permitted use or legally existing nonconforming use.

Any vehicle not found in compliance with this requirement will constitute a separate offense.

- (3) Travel/camping trailer/motorcoach compliance requirements.
- a. Not more than one travel and/or camping trailer and/or motorcoach is permitted to be parked and/or stored on a lot within any residential primary zoning district as indicated on the zoning ordinance map for a period exceeding 60 days.
 - b. No travel and/or camping trailer and/or motorcoach shall be occupied either permanently or temporarily while parked and/or stored, except within a conforming manufactured home park.
 - c. Any vehicle and/or trailer not found in compliance with this requirement will constitute a separate offense punishable in accordance with the provisions hereof.
 - d. Exception to this requirement is taken to any unit temporarily occupied for not more than seven days in any 90-day period where occupancy is for the purpose of visitation to persons residing on the premises.
 - e. No vehicle/trailer shall be stored/parked in the front yard, except for temporary purposes as set out above. Any vehicle not found in conformance with this requirement will constitute a separate offense.

Article III Traffic Regulations: All-terrain vehicles restricted, moving vehicles on any public school grounds regulated; no hanging onto motor vehicles from other wheeled or non-wheeled conveyances (whether motorized or unmotorized). One way streets to be authorized by board. Through streets regulated. Golf carts regulated (only permitted for UPS on certain streets and/or subdivisions from November 15 – December 31 annually). Regulation of bicycles on sidewalks. Prohibition for skateboards, roller blades and roller skates on streets and sidewalks.

Speed limits established. Street obstructions and road closures. Access to curb cuts; no alteration/creation without permit. Traffic Impact Analysis required under certain circumstances.

Chapter 74 Vehicles for hire (old taxicab regulations that are not applicable in our town as to staff's knowledge no taxi permits/certificates of convenience and necessity have ever been issued) permit required; application extensive before permit to be considered. Operation without permit or any non-compliance of these regulations (maintenance and identity of vehicles and drivers etc.) initiates penalty of Sec. 1-14.
