



12 NONCOMPLIANCE & ENFORCEMENT

12.1 NOTICE OF NONCOMPLIANCE

12.1.1 AUTHORITY

The Administrator is hereby designated to enforce the terms and provisions of this UDO in accordance with North Carolina General Statutes.

12.1.2 ALLEGED NONCOMPLIANCE

Whenever the Administrator receives a complaint or has reason to suspect alleged noncompliance of the terms and provisions of this UDO are occurring, the Administrator shall investigate the complaint or suspicion and shall take whatever action is warranted in accordance with the provisions of this Chapter.

12.1.3 RESPONSIBILITY FOR NONCOMPLIANCE

The owner, tenant, or occupant of any Building or land or part thereof and any architect, builder, contractor, agent or other person who participates in, assists, directs, creates, or maintains any situation that is not compliant of the terms and provisions of this UDO, may be held responsible for the noncompliance, suffer the penalties, and be subject to the remedies herein provided.

12.1.4 INSPECTION OF PROPERTY - RIGHT OF ENTRY

The Administrator may enter upon any Building, Structure, or land or part thereof at any reasonable time for the purpose of inspecting all Buildings, Structures, or lands located within the corporate limits of the Town and its Extraterritorial Jurisdiction for the purpose of carrying out their duties in the enforcement of this UDO. Prior to entering upon any premises, the Administrator shall furnish sufficient identification and information to enable the owner, tenant or occupant to determine the purpose of the inspection and that the person conducting the inspection is an authorized representative of the Town.

In the event that entry is denied by the owner, tenant or occupant of a premises, the Administrator may make application to any court of competent jurisdiction for the issuance of a search warrant. Such application shall identify the premises upon which entry is sought and

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the purpose for which entry is desired. The application shall state the facts giving rise to the belief that a condition which is not in compliance with this UDO exists on the premises, or that such noncompliance in fact exists and must be abated, and that the condition or noncompliance is not a lawful nonconforming Use to the best of the affiant's belief. Any warrant issued pursuant to such application shall order such owner, tenant or occupant to permit entry to the Administrator for the purposes stated therein.

12.2 PENALTIES FOR NONCOMPLIANCE & ENFORCEMENT MECHANISMS

12.2.1 STOP WORK ORDER

- A. The Administrator is empowered to issue a Stop-Work Order requiring the suspension of land improvement of any kind when any of the following circumstances exist:
 - 1. A site improvement is occurring without a UDO Permit or any other permit required by this UDO having first been obtained; or,
 - 2. A site improvement is not in compliance with:
 - a. The terms, conditions or provisions of this UDO;
 - b. The terms and conditions of a UDO Permit;
 - c. The terms and conditions of any other permit required as a pre-requisite to the issuance of a UDO Permit;
 - d. The terms, provisions, conditions or commitments of a Variance or Special Use Permit;
 - e. The terms of commitments made or conditions imposed in connection with the approval of a Development Plan; or,
 - f. Other approval grant authorized by this UDO.
- B. The Stop-Work Order shall be posted on the property in a conspicuous place, or personally delivered to the owner, tenant or occupant, or person in charge and state the conditions under which construction or other activity may be

resumed. The Administrator shall meet with the recipient of a Stop-Work Order upon request to explain the conditions under which construction or other activity may be resumed.

- C. In addition to any other remedies available pursuant to any other applicable law and this UDO, the Town Council may institute a lawsuit in a court of competent jurisdiction to enforce the provisions of a Stop Work Order, including but not limited to injunctive relief.

12.2.2 REMEDIES OR PENALTIES FOR NONCOMPLIANCE

Any person who is not in compliance with this UDO as defined in Section 12.3 below, may be issued a citation by the Administrator.

Subject to the provisions of Section 12.2.2.A., and Section 12.2.2.B., upon expiration of the applicable notice period each day a notice of noncompliance remains uncorrected is a distinct and separate notice of noncompliance subject to an additional citation and fine in the amount prescribed in this UDO.

A. Procedures.

- 1. Prior to issuance of a citation for alleged noncompliance of Sections 12.3.1 (B), (G), (H), (I), (K), or (L), the Administrator shall issue a Notice of Noncompliance to a person who allows creates or allows a noncompliance to continue on real estate in which the person has a possessory interest. The notice shall state the nature of the alleged noncompliance, list any applicable section of this UDO, and give general instruction to the alleged violator on how to comply with this UDO or any other applicable town code. The Notice of Noncompliance may be served by: personal service; certified mail, return receipt requested; registered mail; or, by posting such notice in a conspicuous place on the property where the noncompliance occurs, and shall serve as notice that noncompliance has been committed.
- 2. The Administrator may issue a citation and fine in an amount prescribed in part B below immediately for alleged offense of Section 12.3.1 (A), (C),(D),(E), or (F) or within 14 days of a Notice of Noncompliance if the noncompliance remains uncorrected during

the notice period. The citation may, in the discretion of the Administrator, indicate that each day of an uncorrected noncompliance is a separate offense, subject to a distinct fine for each day without further notice, commencing on the date of the issuance of the citation. The Administrator shall use their discretion with respect issuing citations or allowing additional time for compliance in a manner that fairly and equitably effectuates the purpose of this UDO.

3. A person who is served with a citation or a Notice of Noncompliance shall have 14 days from service of the notice to take one of the following actions:
 - a. File a petition for zoning map change, Variance, Special Use Permit, or Development Plan approval to correct the noncompliance. The person must indicate the intent to file such a petition on the served notice or citation and return a copy to the Town Council or the Administrator. While the petition is pending, the issuance of additional notices or citations and additional monetary fines as prescribed in Section 12.2.2.B., shall be stayed. A person who files the petition within said time period shall pursue the petition in an expeditious and diligent manner. If the petition is denied, withdrawn or dismissed and the noncompliance continues, then the imposition of the applicable fine shall be reinstated and collected by the Town pursuant to applicable law.
 - b. Appeal the decision of the Administrator as to the existence of a noncompliance pursuant to the procedures for Administrative Appeals as set forth in Chapter 11 of this UDO.
 - c. Request in writing for an extension of the notice period prior to expiration of the notice period. Extension may be granted at the discretion of the Administrator.
- d. File a civil action to enjoin the enforcement of the noncompliance and applicable fine.
4. The Administrator may enforce the terms and conditions of this UDO, including, but not limited to: enforcement of a Stop-Work Order as provided in Section 12.2.1; assessment and collection of fines as provided in 12.2.2.B.; or, the pursuit of injunctive and other legal or equitable relief and remedies available under North Carolina General Statutes.
5. The service of a Notice of Noncompliance and the provision of time to correct the noncompliance is not required before issuing a citation for noncompliance or enforcement of a Stop-Work Order pursuant to Section 12.2.1. A Stop-Work Order is a separate and distinct offense from the underlying offense giving rise to the Stop-Work Order, each of which may carry its own penalty.

B. Fines.

Monetary fines for noncompliance shall be assessed as follows:

1. The monetary fine for the first citation for a noncompliance shall be \$50.00 each day, with every day constituting a separate and distinct offense.
2. All fines prescribed by this Section for noncompliance shall be paid to the Town, who shall provide a receipt stating the amount and purpose for which the fine has been paid, a duplicate of which shall be made a part of the records of the Town. All fines thus received shall be deposited with the General Fund of the Town.
3. Noncompliance in a Planned Unit Development (PUD District). In the event of a citation for noncompliance in a Planned Unit Development district, fines shall be assessed based upon the Use authorized for the property on which the noncompliance has occurred. Any property approved for residential Uses only shall be assessed as if the property was located in a Residential Use District. Any property approved for

non-residential Use shall be assessed as if the property was located in a Commercial & Mixed-Use or Employment / Campus Use district.

C. Additional Remedies.

1. Seeking a penalty as authorized in this Section does not preclude the designated enforcement entity from seeking alternative and additional relief from the Court in the same action, or from seeking injunctive relief or any other remedy in a separate action for the enforcement of this UDO available under applicable North Carolina General Statutes.
2. In the event that noncompliance of this UDO is determined to exist by a court of competent jurisdiction, the Owner shall be liable to the Town for the Town's reasonable attorney fees in accordance with North Carolina General Statutes.

D. Class 3 Misdemeanor.

If a person who is served with a notice of noncompliance or receives a citation fails to either correct the noncompliance or take such actions to come into compliance as set forth in 12.2.2.A.3., then that person may be charged with the commission of a Class 3 misdemeanor punishable by the fines set forth in Section 12.2.2.B., or by imprisonment not to exceed 30 days.

12.3 SPECIFIC TYPES OF NONCOMPLIANCE

12.3.1 NONCOMPLIANCE

Each of the following shall constitute noncompliance which may be enforced by the designated enforcement entity in accordance with the provisions set forth in Section 12.2.2 above:

- A. The location, erection, or maintenance of any Sign not specifically permitted by this UDO;
- B. The failure to obtain an UDO Permit when one is required by the terms and provisions of this UDO;

- C. The outdoor storage of junk, trash or debris in any district the provisions of which do not specifically permit such a Use;
- D. The storage of inoperable motor vehicles or motor vehicle parts in any district the provisions of which do not specifically permit such a Use;
- E. The parking or storage, in any district the provisions of which do not specifically permit such a Use, of any:
 1. Motor vehicle used or designed for use in pulling, towing, hauling, transporting; or,
 2. Motor vehicle or separate trailer as a temporary or permanent base, platform or support for equipment, machinery, materials or other goods (including but not limited to stake body trucks, dump trucks, trucks or tractors having dual real wheels or more than two axles, semi-trailer tractors, semi-trailers and trailers having dual real wheels or more than one axle or having an overall length of more than 12 feet).

This provision does not apply to motor vehicles which do not exceed three-quarter ton load classification in size and which are the primary source of transportation for an individual whose primary place of residence is the particular dwelling at which the commercial motor vehicle is parked on a regular basis;

- F. The outdoor storage or display of merchandise or goods in any district the provisions of which do not specifically permit such a Use or noncompliance of the district Development Standards regulating such a Use;
- G. The conduct of any activity in a Residential Use District that is not specifically enumerated as a permitted primary or Accessory Use in that district, and which activity has not been legally established by a currently valid Variance, Special Use Permit, or other approval grant;
- H. Failure to comply with district Development Standards, including but not limited to landscaping, paving of Parking Areas, minimum Vehicle Parking requirements, trash dumpster enclosure, fencing, landscaping or buffering requirements;

- I. The failure to comply with:
 - 1. The terms, provisions, conditions or commitments of a Variance grant or Special Use Permit;
 - 2. The terms of commitments made in connection with a Zoning Map Change or the approval of a Development Plan;
 - 3. The terms, provisions or conditions of any other permit required as a pre-requisite to the issuance of a UDO Permit; or,
 - 4. Other approval grant authorized by this UDO;
- J. The noncompliance of a Stop-Work Order issued pursuant to this Chapter; and,
- K. Failure to comply with any other provisions of this UDO.
- L. More than 3 distinct notices of noncompliance for the same or similar offense under this UDO within an 18 month period.

12.3.2 NONCOMPLIANCE IN RESIDENTIAL USE DISTRICTS.

- A. The conduct of any activity in a Residential Use District that is not specifically enumerated as a permitted primary Use or Accessory Use in that district, and which activity has not been legally established by a currently valid Variance, Special Use Permit, or other approval grant.
- B. Failure to comply with district Development Standards, including but not limited to landscaping, paving of Parking Areas, minimum Vehicle Parking requirements, trash dumpster enclosure, fencing or screening requirements.
- C. Failure to comply with the terms, provisions or conditions of: a grant of Variance or Special Use Permit; an approval of a Development Plan; an approval of a Conditional Zoning District (CD); or, other approval grant authorized by this UDO.
- D. Dismantling, repairing, restoring, or performing any work on any motor vehicle, machine, motor, or similar device in the RR, SR, NR, NCR, or MXR districts.

Notwithstanding any provision in this UDO to the contrary, no person shall dismantle, repair, restore or otherwise perform any work on any motor vehicle, machine, motor, or similar device

not owned or leased by that person or a member of that person's family, on any real estate zoned to any RR, SR, NR, NCR, or MXR district. In addition, any work performed shall be:

- 1. Incidental to a permitted Use; and,
- 2. Completely within an Accessory Building or Garage; or,
- 3. Completely within an area wholly enclosed from the view of surrounding Lots and Rights-of-Way by a solid structural barrier (either a wall or fence of ornamental stone, brick, wood or a combination thereof), with a maximum height above grade between 6 and 10 feet.

- E. Storing, maintaining or keeping of an inoperable motor vehicle, machine, motor, or similar device in the RR, SR, NR, NCR, or MXR Districts.

Notwithstanding any provision in this UDO to the contrary, no motor vehicle, machine, motor, or similar device from which any part material to the operation of the vehicle has been removed, or which is inoperable for any reason, shall be stored, maintained or kept on any property in any RR, SR, NR, NCR, or MXR district unless such device is owned or leased by the resident of the property on which the device is stored or by a member of that person's family; and,

- 1. Completely within an Accessory Building or Garage; or,
- 2. Covered by a fitted vehicle cover; or,
- 3. Completely within an area wholly enclosed from the view of surrounding Lots and Rights-of-Way by a solid structural barrier (either a wall or fence of ornamental stone, brick, wood or a combination thereof), with a maximum height above grade between 6 and 10 feet; or,
- 4. Displaying a valid current license plate.

- F. Parking, storing, maintaining or keeping a commercial motor vehicle or trailer in the RR, SR, NR, NCR, or MXR Districts.

Notwithstanding any provision in this UDO to the contrary, no commercial motor vehicle or commercial trailer shall be parked, stored,

maintained or kept on any property in any RR, SR, NR, NCR, or MXR district unless the commercial motor vehicle or commercial trailer:

1. Has a maximum load capacity of 3/4 of a ton or less;
2. (this paragraph applies to commercial motor vehicles only) Serves as the sole vehicular transportation of a resident of the property upon which the motor vehicle is parked, stored, maintained or kept; and,
3. Is stored within an Accessory Building or Garage which complies with all the standards and regulations of this UDO.
4. Commercial motor vehicles or commercial trailers that are in the course of making normal and reasonable service calls are exempt from this provision.

G. Parking, storing, maintaining or keeping of any Recreational Vehicle or recreational trailer in the RR, SR, NR, NCR, or MXR Districts.

Notwithstanding any provision in this UDO to the contrary, no Recreational Vehicle or recreational trailer shall be parked, stored, maintained or kept on any property in any RR, SR, NR, NCR, or MXR district unless in compliance with the following:

1. Recreational Vehicles or recreational trailers may be parked or stored:
 - a. Inside an Accessory Building or Garage; or
 - b. Outside in such a manner that no part of any such Recreational Vehicle shall project into any Side or Rear Setback or in the Front Yard of the Lot other than on the hardsurfaced area of the Driveway or interior Access Drive.
2. Not more than a total of 2 Recreational Vehicles / recreational trailers shall be permitted to be parked or stored in the open on the same Lot at any one time.
3. Parked or stored Recreational Vehicles shall not be occupied or used for living, sleeping or housekeeping purposes in any RR, SR, NR, NCR, or MXR district.

12.3.3 NONCOMPLIANCE IN COMMERCIAL & MIXED-USE AND EMPLOYMENT / CAMPUS USE DISTRICTS

The following shall be deemed noncompliant with this UDO and shall be enforceable by the Town as set forth in this Chapter:

- A. The conduct of any activity in a Commercial & Mixed-Use District or Employment / Campus Use District that is not specifically enumerated as a permitted primary Use or Accessory Use in that district, and which activity has not been legally established by a currently valid Variance, Special Use Permit, or other approval grant;
- B. Failure to comply with district Development Standards, including but not limited to landscaping, paving of Parking Areas, minimum Vehicle Parking requirements, trash dumpster enclosure, fencing or buffering requirements; or,
- C. The failure to comply with the terms, provisions or conditions of: a grant of Variance or Special Use Permit; an approval of a Development Plan; an approval of a Conditional Zoning District (CD); or, other approval grant authorized by this UDO.