

### 15.2.6 CIVIL PENALTY

In addition to the other remedies cited in this ordinance for the enforcement of its provisions, and pursuant to NCGS 160A-175, the regulations and standards in this ordinance may be enforced through the issuance of civil penalties by the Planning Director.

- A. **Procedures for Civil Citations:** Subsequent citations for the same violation may be issued by the Planning Director if the offender does not pay the citation (except as otherwise provided in a Warning Situation) after it has been issued, unless the offender has sought an appeal to the actions of the Planning Director through the Board of Adjustment. Once the ten-day warning period has expired, each day which the violation continues shall subject the violator to additional citations to be issued by the Planning Director.
- B. **Schedule of Civil Penalties:** Unless otherwise provided in this ordinance, the following penalties are hereby established:
  - 1. **Warning Citation:** Correct Violation Within 10 Days
  - 2. **First Citation:** \$50.00
  - 3. **Second Citation For Same Offense:** \$100.00
  - 4. **Third And Subsequent Citations For Same Offense:** \$500.00
- C. **Recovery of Penalties:** If the offender fails to pay the civil penalties within fifteen days after having been cited, the Town may recover the penalties in a civil action in the nature of debt.

## 15.3 SPECIFIC TYPES OF VIOLATIONS

### 15.3.1 LANDSCAPING VIOLATIONS & PENALTIES

#### 15.3.1.A APPLICABILITY

- A. **General:** Violations of Section 9 Tree Preservation, Landscaping & Screening shall be subject to penalties, enforcement, and the procedures relating thereto set forth in Section 15.3. Any landscape areas, trees and vegetation preserved or planted as part of an approved landscape plan or permit shall be continually maintained in good condition by the property owner.
- B. **Violations:**
  - 1. **Damage:** Failure to comply with the landscaping and maintenance requirements of Section 9 of this ordinance, or the disturbance, damage or removal of any trees or vegetation prohibited by this ordinance, shall constitute a violation. This includes the intentional material damage to, or the intentional material alteration of, any landscaped area, tree, or vegetation required to be planted and/or maintained as part of an approved plan or permit. All violations shall be reported by the property owner to the Planning Director

**Commented [TA1]:** Section 15 has been reorganized and revised to clarify the replacement process, calibrate penalties, afford non-monetary penalty relief, and link appeals to existing ordinance processes.

immediately, prior to any corrective action.

2. **Failure to Remedy:** It shall likewise constitute a violation of this ordinance for a property owner to fail, within a reasonable period of time or as specified by this ordinance, to remedy any material damage to, or alteration of, any landscaped area, tree, or vegetation required to be planted and/or maintained as part of an approved plan or permit, irrespective of whether such damage or alteration was the result of causes beyond the property owner's control, including but not limited to natural forces.
- C. **Enforceability:** Where a landscaping violation is found to have occurred, the remedies specified in this ordinance shall be enforced and any civil penalties shall be punishable in accordance with the provisions of this ordinance. Note: Violations pursuant to this section are not enforceable under N.C.G.S. 14-4.

#### 15.3.1.B **REPLACEMENT**

- A. **Extent:** All landscaped areas, trees, and vegetation required by this ordinance which are disturbed or damaged shall be replanted to meet the standards of this ordinance as well as the approved site/master plan or permit. This includes any tree designated for preservation or installation as part of the approved landscape plan or permit that is removed or dies as a result of negligence or natural forces.
- B. **Replanting:**
  1. **New Vegetation:** New trees or vegetation required as part of an approved plan that are damaged or die shall be removed and replaced with new vegetation of equal or greater size according to the standards of this ordinance.
  2. **Existing Vegetation:** Where the trees or vegetation that have been disturbed or damaged existed on the site at the time the development application was filed, all replacement trees and vegetation shall meet the standards set forth in this ordinance and take into account any unique site conditions as well as significant vegetation remaining within the landscaped area.
    - i. **Location:** Replantings shall be located within the vicinity of the violation. If the area is too small for sufficient growth, a more suitable location on the site may be selected as permitted by the Planning Director in consultation with the Arborist.
    - ii. **Vegetation:** Damaged or destroyed vegetation in both perimeter and/or interior landscaped/vegetated areas shall be replaced with an equal amount of new vegetation according to the size of vegetation removed. For buffer areas, understory plantings may also be required to restore the disturbed area to meet ordinance requirements.
    - iii. **Trees:** Any tree with a caliper of at least twelve inches that is damaged or removed shall be replaced with one or more trees, as determined by the Arborist, that have a caliper of at least 2.5 inches and a cumulative caliper equal to or greater than the

**Commented [TA2]:** The section clarifies the processes and standards governing replacement of disturbed or damaged plantings. It largely includes text already existing in the DPO that has been reorganized.

original tree. Trees less than twelve inches in diameter in developments subject to an approved plan and damaged or destroyed shall be replaced to meet ordinance requirements.

Specimen Trees: Any Specimen Tree removed or damaged such that removal is required, as determined by the Arborist, shall be replaced by one 5-inch caliper tree or three 2.5-inch caliper trees at the discretion of the Arborist.

**Commented [TA3]:** This standard comes from CLT and has been adapted to require 2.5-inch replantings (rather than 2-inch), consistent with the DPO's minimum caliper requirement.

**C. Approval:**

1. **Plan:** All new trees and vegetation must be approved by the Planning Director, in consultation with the Arborist. A replanting plan denoting the proposed installation(s) shall be submitted to the Planning Director for approval in consultation with the Arborist. The plan shall take into consideration the development condition of the site, significant vegetation remaining within landscaped areas, and the required replacement of plant materials.
2. **Board of Adjustment:** The Planning Director may elect to present the replanting plan to the Board of Adjustment for final approval, as necessary.

- D. **Timeframe:** The responsible party shall replace the required vegetation within the current planting season, next planting season, or as approved by the Arborist. If such replacement does not occur within the specified time period, the Landscape Maintenance Bond may be drawn upon in order to pay for the cost of replacement. In such case, the replacement tree(s) and vegetation shall be installed by or at the direction of the Arborist.

**Commented [TA4]:** This provision affords flexibility in determining what timeframe works best for the site based on planting conditions, availability of plants, etc.

**15.3.1.C PENALTIES**

**A. General:**

1. **Responsible Parties:** Any person or entity who violates any of the sections of this ordinance, or rules or orders adopted or issued pursuant to these sections, shall be subject to civil penalties as prescribed by this section. The person performing the work, the property owner and the person contracting for the performance shall be jointly and severally liable for any penalty or other enforcement action imposed pursuant to this chapter or other provisions of law on account of work performed in violation of this ordinance.
2. **Scope:** Penalties assessed under this chapter are in addition to and not in lieu of compliance with the requirements of this ordinance.

**Commented [TA5]:** This section lays out the monetary and non-monetary options for assessing a landscaping violation(s).

**Commented [TA6]:** This enables the penalty amount to be levied on both the property owner and the party that executes the work order.

- B. **Penalties:** Civil penalties for violations of this chapter shall be assessed pursuant to the following:

1. **Required Installations:** Failure to plant original or replacement trees and vegetation in accordance with this chapter shall be \$100.00 for each tree and \$50.00 for each shrub/other vegetation not planted. If the site is not brought into compliance within the time specified in the notice of violation, a civil penalty may be assessed from the date the notice of violation is received until it is adequately corrected, as confirmed by inspection. In the event of a failure to comply with the Replacement provisions, the failure to plant each individual tree

and/or shrub/vegetation shall constitute a separate, daily and continuing violation from the day the notice of violation is received.

2. **Total Loss:** The intentional or grossly negligent injury or damage to, or destruction of, trees and shrubs/vegetation protected by this ordinance that result in the total loss of the tree or shrub/vegetation shall be assessed according to the following:

Penalties for losses in areas regulated by approved plans (Master Plans, Conditional Master Plans, Individual Building or other site plans); in designated tree save or preservation areas; outside of site areas approved for pre-application clearing; or, within the public right-of-way:

- Tree: \$500 per Caliper Inch
- Shrub: \$100 per Shrub
- Vegetated Cover: \$10 per SF of Disturbed Area
- Specimen Tree: \$500 Caliper Inch up to 24 inches; \$800 per Caliper Inch over 24 inches.

Note: The maximum civil penalty for each tree injured, damaged or destroyed shall not exceed \$25,000. No notice of violation is needed prior to the assessment of a civil penalty issued pursuant to this subsection.

Penalties for losses in areas not regulated by an approved plan, including permits (i.e., permits filed after cutting or permits incorrectly executed):

- Tree:
  - 1st Citation: Warning + \$50
  - 2nd & Subsequent Citation for Same Offense: \$500 per Tree
- Specimen Tree:
  - 1st Citation: Warning + \$100
  - 2nd & Subsequent Citation for Same Offense: \$1,000 per Tree

3. **Partial Damage:** The intentional or grossly negligent injury or damage to, or destruction of, trees and shrubs/vegetation protected by this ordinance that do not result in the total loss of the trees or shrub/vegetation shall be assessed according to the following:

Penalties for partial damage in areas regulated by approved plans (Master Plans, Conditional Master Plans, Individual Building or other site plans); in designated tree save or preservation areas; or, within the public right-of-way:

- Tree: \$500 per Tree
- Shrub: \$50 per Shrub
- Vegetated Cover: \$5 per SF of Disturbed Area
- Specimen Tree: \$1,000 per Tree

No notice of violation is needed prior to the assessment of a civil penalty issued pursuant to this subsection. Note: Partial Damage shall not include general maintenance activities performed in accordance with ANSI A300 Part 1 Pruning, Tree Care Industry Association.

**Commented [TA7]:** This is intended to take effect only if the violator does not go through with the Replacement process.

**Commented [TA8]:** These penalties apply in areas that were required to be preserved as part of an approved plan but were not executed correctly (i.e. work was incorrectly done in these areas resulting in tree/shrub loss). The values are derived from data available in the Davidson Street Tree Inventory completed in 2018.

**Commented [TA9]:** Example: A 36-inch tree is removed; the Arborist determines it was a specimen tree (per the Environmental Inventory). The violator pays \$500 x 24 for the first 24 inches (\$12,000) and \$800 x 12 for the next 12 inches (\$9,600) for a total of \$19,600.

**Commented [TA10]:** Other communities also employ maximum amounts and their values are likewise within this range.

**Commented [TA11]:** These penalties apply in areas that were not subject to an approved plan (i.e. a building permit for which a tree permit was not also filed as required, or when a tree permit's approved scope of work is not executed correctly). The values are derived from data available in the Davidson Street Tree Inventory completed in 2018.

**Commented [TA12]:** These values mirror the preceding values but are calibrated to be based on each tree - not caliper - due to the Partial Damage nature of this penalty; the Vegetated Cover was reduced to \$5.00/SF. The Specimen Tree values were unchanged based on the value of these trees.

4. **Insufficient Replanting Area:** If the tree violation occurred in a preservation area in which it is determined that the required replacement tree(s) cannot be adequately replanted due to insufficient area, a replacement fee equal to \$100 per caliper inch of each replacement tree shall be paid to the Tree Fund.
5. **Tree Protection Measures:** Failure to install or maintain required tree protection measures in accordance with Section 9 shall be punishable up to \$1,000 per violation. No civil penalty shall be assessed until the person has been notified of the violation as provided in Section 15. If the site is not brought into compliance within the time specified in the notice of violation, a civil penalty may be assessed from the date the notice of violation is received until it is adequately corrected, as confirmed by inspection. The failure to install the required tree protection measures shall constitute a separate, daily and continuing violation. Injury or damage to, or destruction of, trees in the tree protection zone and tree save area resulting from the failure to install or maintain required tree protection measures in accordance with Section 9 constitutes a separate violation which may subject the violator to any other applicable penalty set forth in this section.
6. **Miscellaneous Violations:** Any other action that constitutes a violation of this chapter may subject the violator to a civil penalty of \$50, and each day of continuing violation shall constitute a separate violation. However, the maximum amount of the penalty shall not exceed \$1,000. If the site is not brought into compliance within the time specified in the notice of violation, a civil penalty may be assessed from the date the notice of violation is received until it is adequately corrected, as confirmed by inspection.
7. **Non-Monetary Penalties:** At the discretion of the Planning Director in consultation with the Arborist, alternative non-monetary penalties or replanting strategies may be assessed in addition to or in lieu of any monetary penalties prescribed under this section. Plantings shall be approved in accordance with the Replacement provisions of this ordinance.
8. **Penalties Cumulative:** The civil penalties provided for in this Section 9.10 may be assessed cumulatively. By way of example only, if a Specimen Tree and the vegetated cover surrounding it are damaged due to inadequate tree protection measures, a total of at least three separate penalties may be assessed: (i) one for partial loss of the Specimen Tree; (ii) one for partial loss of the vegetative cover; and (iii) one for the failure to install or maintain required tree protection measures.
- C. **Assessment, Notice of Violation, & Payment:** The Planning Director, in consultation with the Arborist, 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 and the reason for assessing the penalty. The notice of violation shall be served as provided in Section 15.1 and shall direct the violator to either pay the assessment or contest the assessment as specified in this ordinance. If payment of assessed penalties is not received within thirty (30) days after it is due, or if no request for a hearing has been made as provided

**Commented [TA13]:** This concept comes from Raleigh. This would be in addition to any other applicable violation penalty.

**Commented [TA14]:** This provision is new and affords flexibility in levying a penalty wherein financial hardship exists or unintentional/not grossly negligent actions result in a violation; it allows alternative approaches to replacement and payment.

**Commented [TA15]:** This section makes clear the process for issuing and resolving a violation.

in this ordinance, the assessment shall be considered a debt due and owing to the Town, and the matter shall be referred to the town attorney for institution of a civil action to recover the amount of the debt. The civil action may be brought in the Mecklenburg County Superior Court or in any other court of competent jurisdiction.

- D. **Civil Action for Unpaid Assessment:** 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 violation. A violation that is contested is due at the conclusion of the administrative and judicial review of the assessment.
- E. **Use of Civil Penalties Collected:** Civil penalties collected pursuant to this section shall be credited to the Tree Fund as a nontax revenue and shall be used to further the purposes, intent and requirements of this ordinance as prescribed by the Board of Commissioners resolution establishing the Tree Fund.

#### 15.3.1.D **APPEALS & VARIANCES**

- A. **General:** Any party dissatisfied with a decision of the Town adversely affecting such party in the application or enforcement of this ordinance, including notices of violations and assessments of civil penalties, may request a public hearing before the Board of Adjustment.
- B. **Request:** The issuance of a decision, including a notice of violation or assessment of a civil penalty by the Town, shall entitle the party subject to the decision or responsible for the violation (petitioner) to a hearing before the Board of Adjustment if such party submits a written request for a hearing to the Planning Director within thirty (30) days of the receipt of a decision, notice of violation or assessment of a civil penalty. The right to a hearing shall be communicated by the Town as part of its decision, notice of violation, or assessment.
- C. **Procedure:** Appeals and variances shall follow the rules and procedures set out in NCGS Section 160 A-388, as amended, and Section 14.18 of the Davidson Planning Ordinance.

**Commented [TA16]:** This section clarifies the process for seeking relief from the assessed violation. It links to existing processes in the DPO, namely Board of Adjustment procedures.