

**ORANGE COUNTY PLANNING DEPARTMENT
131 W. MARGARET LANE, SUITE 201
HILLSBOROUGH, NORTH CAROLINA 27278**



**AGENDA
ORANGE COUNTY PLANNING BOARD**

Wednesday, November 3, 2021

Ordinance Review Committee Meeting – ~8:15 pm
(Immediately following regular meeting)

Due to current public health concerns, the meeting will be virtual. Members of the Planning Board and staff will be participating in the meeting remotely. Interested members of the public can view and participate in the meeting by following the instructions at the end of the agenda. (Please note that pre-registration no later than 3:00 p.m. the day of the meeting is required to speak at the meeting).

Note: ORC sessions are optional for Planning Board members and a quorum is not required to hold the meeting.

<u>No.</u>	<u>Page(s)</u>	<u>Agenda Item</u>
1.		CALL TO ORDER
2.	3 – 12	UNIFIED DEVELOPMENT ORDINANCE (UDO) TEXT AMENDMENTS – DECRIMINALIZATION OF ORDINANCE VIOLATION - To review proposed UDO text amendments in response to Session Law 2021-138 (Senate Bill 300) which decriminalized violations of certain types of ordinances, including ordinances regulating planning and development. Presenter: Michael Harvey, Current Planning Supervisor
3.		ADJOURNMENT

Public Comments / Participation

There are two methods for public comment:

- Written submittals by email or drop-off
- Speaking during the virtual meeting

Written Public Comments

Members of the public are encouraged to provide written public comments by emailing comments to planningboard@orangecountync.gov no later than 3:00 p.m. on the afternoon of the meeting. Please include in the Subject line of the email the title of the agenda item your comment pertains to.

Emails sent to this address are viewable on Google Groups:
<https://groups.google.com/g/ocplanningboard>

Written comments can also be dropped off at the Planning Department's offices at 131 W. Margaret Lane, 2nd floor, Hillsborough, NC during normal business hours (8:00 a.m. to 5:00 p.m. Monday through Friday). If a staff member is not available, please leave your comments in the drop-off box near the front counter. Written comments will be scanned and sent by staff to the email address indicated above.

Verbal Public Comments

Members of the public must contact Planning Department staff via email at ocpbpubliccomment@orangecountync.gov no later than 3:00 p.m. on the afternoon of the meeting and indicate they wish to speak during the meeting.

When submitting the request to speak, please include the following:

- The date of the meeting
- The title of the agenda item you wish to speak on
- Your name, address, email and phone number
 - The phone number must be the number you will call in from if participating by phone

During the meeting, speakers will be called upon in the order in which requests to speak were received. Each speaker may speak once per agenda item and has 3 minutes to address the board. Ceding time to another speaker is not permitted.

In the event a meeting is continued to a future date due to the length of public comments, the date for the continued meeting will be announced before the meeting adjourns. No additional requests to speak will be taken for the continued meeting, only the speakers who signed up to speak at the original meeting and were not called upon will be able to speak at the continued meeting. Written comments continue to be encouraged and can be sent to the email address indicated in the "Written Public Comments" instructions above.

Zoom Meeting Registration

Both members of the public who wish to **speak at the meeting** and those who wish to **only view** the meeting **must register** to receive a link to the meeting. Persons wishing to speak must register with the same name provided in the email that notified staff you wish to speak. The link to sign up for the meeting is:

https://orangecountync.zoom.us/webinar/register/WN_YV2TZZ35Q5eIrVnPJ6hDVw

If you do not have internet access, you may participate in the meeting via phone. Please call (919) 245-2575 during regular business hours to receive information on the number to call-in to, the meeting ID, and a password.

Review Process

The Planning Board is an appointed volunteer advisory board which makes recommendations to the Board of County Commissioners (the elected officials). The Board of County Commissioners holds a formal public hearing and makes decisions. Section 2.8 of the County's [Unified Development Ordinance](#) contains a flowchart depicting the entire review process for rezoning and text amendment applications.

**ORANGE COUNTY
PLANNING BOARD ORDINANCE REVIEW COMMITTEE
ACTION AGENDA ITEM ABSTRACT
Meeting Date: November 3, 2021**

**Action Agenda
Item No. 2**

SUBJECT: Unified Development Ordinance Text Amendment – Modification of Enforcement Provisions Addressing Changes in State Law

DEPARTMENT: Planning and Inspections

ATTACHMENT(S):

1. Excerpt of Session Law 2021-138
2. Proposed UDO Text Amendment

INFORMATION CONTACT: (919)

Michael D. Harvey, Planner III	245-2578
Craig Benedict, Director	245-2575

PURPOSE: To review County-initiated amendments to the Unified Development Ordinance (UDO) eliminating language allowing staff to seek criminal penalties for violations of certain land use regulations. The modification(s) are necessary to address recent changes in State law.

BACKGROUND: On September 2, 2021, Governor Cooper signed Session Law 2021-138. Portions of the legislation, excerpt contained in [Attachment 1](#), decriminalizes certain types of ordinances including planning and development regulations. Put simply, violation(s) of certain provisions of the UDO are no longer potential criminal offences. The full version of the law is viewable here: [Session Law 2021-138](#).

Staff's proposed amendment is contained in [Attachment 2](#).

- **What the Amendment Does:** Eliminates existing language in Section 9.6.5 giving staff the option of seeking criminal penalties for violations of the UDO. The proposal renumbers appropriate sections to address the elimination of Section 9.6.5 of the UDO.
- **What the Amendment Does Not Do:** Eliminate language allowing for potential criminal penalties for violation(s) of floodplain management (Section 9.7), soil erosion and sedimentation control (Section 9.8) and stormwater management (Section 9.9) regulations. The Session Law does not modify enabling authority under which these provisions were adopted.

As previously indicated the amendment(s) are necessary to address the County's compliance with applicable State law. The County Attorney's office has reviewed the proposal and found it to be legally sufficient.

FINANCIAL IMPACT: Existing County staff has and will continue to accomplish the necessary tasks associated with amending the UDO.

RECOMMENDATION(S): The Planning Director recommends the ORC review the proposed amendments and provide any feedback to staff.

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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

SESSION LAW 2021-138
SENATE BILL 300

AN ACT TO INCREASE PROTECTIONS, TRAINING, AND OVERSIGHT FOR STATE AND LOCAL LAW ENFORCEMENT OFFICERS; TO CREATE A DECERTIFICATION DATABASE; TO REQUIRE USE OF THE FEDERAL BUREAU OF INVESTIGATION'S NEXT GENERATION IDENTIFICATION SYSTEM AND RAP BACK SERVICE FOR LAW ENFORCEMENT; TO REQUIRE REPORTING RELATED TO GIGLIO MATERIAL; TO EXPAND TRANSPORTATION OF INVOLUNTARY COMMITMENT RESPONDENTS; TO STANDARDIZE LAW ENFORCEMENT OFFICER ENTRY REQUIREMENTS AND ONGOING REQUIREMENTS; TO REQUIRE PSYCHOLOGICAL SCREENINGS OF LAW ENFORCEMENT OFFICERS PRIOR TO CERTIFICATION OR EMPLOYMENT; TO EDUCATE LAW ENFORCEMENT OFFICERS ON MAINTAINING GOOD MENTAL HEALTH, AND TO PROVIDE INFORMATION TO LAW ENFORCEMENT OFFICERS ON MENTAL HEALTH RESOURCES AVAILABLE; TO CREATE A PHYSICAL FITNESS STUDY; TO DECRIMINALIZE CERTAIN LOCAL ORDINANCES AND PROVIDE COMPLIANCE AS A DEFENSE TO AN ORDINANCE VIOLATION; TO MANDATE MISDEMEANOR FIRST APPEARANCES WHEN A DEFENDANT IS IN CUSTODY; TO REQUIRE USE OF THE NATIONAL DECERTIFICATION INDEX MAINTAINED BY THE INTERNATIONAL ASSOCIATION OF DIRECTORS OF LAW ENFORCEMENT STANDARDS AND TRAINING IN THE CERTIFICATION PROCESS FOR CERTIFIED PERSONNEL; TO ESTABLISH A DUTY FOR LAW ENFORCEMENT OFFICERS TO INTERVENE IN AND REPORT EXCESSIVE USE OF FORCE; TO ADDRESS CONSTITUTIONAL ISSUES WITH SATELLITE-BASED MONITORING RAISED IN STATE VERSUS GRADY AND CREATE A PROCESS TO REVIEW WHETHER OFFENDERS SUBJECT TO THAT CASE WHICH WERE REMOVED FROM SATELLITE-BASED MONITORING ARE OTHERWISE ELIGIBLE; TO REMOVE THE STANDARDS COMMISSIONS FROM A NONEXCLUSIVE LIST OF STATE AGENCY LICENSING BOARDS; TO PROTECT LAW ENFORCEMENT OFFICERS; TO AMEND THE LAW TO PROVIDE IMMEDIATE DISCLOSURE OF BODY-WORN CAMERA RECORDINGS RELATED TO DEATH OR SERIOUS BODILY INJURY; AND TO ESTABLISH THE BIPARTISAN NORTH CAROLINA LEGISLATIVE WORKING GROUP TO MAKE RECOMMENDATIONS FOR THE RECODIFICATION OF NORTH CAROLINA'S CRIMINAL LAWS.

The General Assembly of North Carolina enacts:

PART I. DECERTIFICATION STATEWIDE DATABASE AND PUBLIC LAW ENFORCEMENT DATABASE REGULATIONS

SECTION 1.(a) Article 1 of Chapter 17C of the General Statutes is amended by adding a new section to read:

"§ 17C-14. Database of law enforcement officer certification suspensions and revocations.



detention; (ii) best practices for handling incidents involving juveniles; (iii) adolescent development and psychology; and (iv) promoting relationship building with youth as a key to delinquency prevention.

- c. Ethics.
- d. Mental health for justice officers.
- e. Community policing.
- f. Minority sensitivity.
- g. Use of force.
- h. The duty to intervene and report.

...."

SECTION 11.(c) This section becomes effective January 1, 2022.

PART XII. EXEMPT CHANGES TO LAW ENFORCEMENT IN-SERVICE TRAINING STANDARDS FROM RULEMAKING

SECTION 12.(a) G.S. 150B-1(d) reads as rewritten:

"(d) Exemptions from Rule Making. – Article 2A of this Chapter does not apply to the following:

...

(6a) The Criminal Justice Education and Training Standards Commission with respect to establishing minimum standards for in-service training for criminal justice officers under G.S. 17C-6(a)(14).

(6b) The Sheriffs' Education and Training Standards Commission with respect to establishing minimum standards for in-service training for justice officers under G.S. 17E-4(a)(11).

...."

SECTION 12.(b) This section is effective when it becomes law.

PART XIII. DECRIMINALIZATION OF CERTAIN ORDINANCES

SECTION 13.(a) G.S. 153A-123 reads as rewritten:

"§ 153A-123. Enforcement of ordinances.

...

(b) Unless the board of commissioners has provided otherwise, Except for the types of ordinances listed in subsection (b1) of this section, violation of a county ordinance is may be a misdemeanor or infraction as provided by G.S. 14-4. G.S. 14-4 only if the county specifies such in the ordinance. An ordinance may provide by express statement that the maximum fine, term of imprisonment, or infraction penalty to be imposed for a violation is some amount of money or number of days less than the maximum imposed by G.S. 14-4. Notwithstanding G.S. 153A-45, no ordinance specifying a criminal penalty may be enacted at the meeting in which it is first introduced.

(b1) No ordinance of the following types may impose a criminal penalty:

- (1) Any ordinance adopted under Article 18 of this Chapter, Planning and Regulation of Development or, its successor, Chapter 160D of the General Statutes, except for those ordinances related to unsafe buildings.
- (2) Any ordinance adopted pursuant to G.S. 153A-134, Regulating and licensing businesses, trades, etc.
- (3) Any ordinance adopted pursuant to G.S. 153A-138, Registration of mobile homes, house trailers, etc.
- (4) Any ordinance adopted pursuant to G.S. 153A-140.1, Stream-clearing programs.
- (5) Any ordinance adopted pursuant to G.S. 153A-143, Regulation of outdoor advertising or, its successor, G.S. 160D-912, Outdoor advertising.

- (6) Any ordinance adopted pursuant to G.S. 153A-144, Limitations on regulating solar collectors or, its successor, G.S. 160D-914, Solar collectors.
- (7) Any ordinance adopted pursuant to G.S. 153A-145, Limitations on regulating cisterns and rain barrels.
- (8) Any ordinance regulating trees.

...."

SECTION 13.(b) G.S. 160A-175 reads as rewritten:

"§ 160A-175. Enforcement of ordinances.

...

~~(b) Unless the Council shall otherwise provide, Except for the types of ordinances listed in subsection (b1) of this section, violation of a city ordinance is may be a misdemeanor or infraction as provided by G.S. 14-4. G.S. 14-4 only if the city specifies such in the ordinance. An ordinance may provide by express statement that the maximum fine, term of imprisonment, or infraction penalty to be imposed for a violation is some amount of money or number of days less than the maximum imposed by G.S. 14-4. Notwithstanding G.S. 160A-75, no ordinance specifying a criminal penalty may be enacted at the meeting in which it is first introduced.~~

~~(b1) No ordinance of the following types may impose a criminal penalty:~~

- ~~(1) Any ordinance adopted under Article 19 of this Chapter, Planning and Regulation of Development, or its successor, Chapter 160D of the General Statutes, except for those ordinances related to unsafe buildings.~~
- ~~(2) Any ordinance adopted pursuant to G.S. 160A-193.1, Stream-clearing programs.~~
- ~~(3) Any ordinance adopted pursuant to G.S. 160A-194, Regulating and licensing businesses, trades, etc.~~
- ~~(4) Any ordinance adopted pursuant to G.S. 160A-199, Regulation of outdoor advertising or, its successor, G.S. 160D-912, Outdoor advertising.~~
- ~~(5) Any ordinance adopted pursuant to G.S. 160A-201, Limitations on regulating solar collectors or, its successor, G.S. 160D-914, Solar collectors.~~
- ~~(6) Any ordinance adopted pursuant to G.S. 160A-202, Limitations on regulating cisterns and rain barrels.~~
- ~~(7) Any ordinance adopted pursuant to G.S. 160A-304, Regulation of taxis.~~
- ~~(8) Any ordinance adopted pursuant to G.S. 160A-306, Building setback lines.~~
- ~~(9) Any ordinance adopted pursuant to G.S. 160A-307, Curb cut regulations.~~
- ~~(10) Any ordinance regulating trees.~~

...."

SECTION 13.(c) G.S. 14-4 reads as rewritten:

"§ 14-4. Violation of local ordinances misdemeanor.

~~(a) Except as provided in subsection (b), (b) or (c) of this section, if any person shall violate an ordinance of a county, city, town, or metropolitan sewerage district created under Article 5 of Chapter 162A, he shall be guilty of a Class 3 misdemeanor and shall be fined not more than five hundred dollars (\$500.00). No fine shall exceed fifty dollars (\$50.00) unless the ordinance expressly states that the maximum fine is greater than fifty dollars (\$50.00).~~

~~(b) If any person shall violate an ordinance of a county, city, or town regulating the operation or parking of vehicles, he shall be responsible for an infraction and shall be required to pay a penalty of not more than fifty dollars (\$50.00).~~

~~(c) A person may not be found responsible or guilty of a local ordinance violation punishable pursuant to subsection (a) of this section if, when tried for that violation, the person produces proof of compliance with the local ordinance through any of the following:~~

- ~~(1) No new alleged violations of the local ordinance within 30 days from the date of the initial alleged violation.~~

SECTION 22.(a) If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 22.(b) Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

SECTION 22.(c) Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 25th day of August, 2021.

s/ Phil Berger
President Pro Tempore of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Roy Cooper
Governor

Approved 2:47 p.m. this 2nd day of September, 2021

If the violation has been corrected, the Planning Director shall take no further action against the alleged violator. If the violation has not been corrected, the Planning Director may act to impose one or more of the remedies and penalties specified in the notice of violation, correction order, or Stop Work Order.

- (F) If delay in correcting a violation would seriously threaten the effective enforcement of this Ordinance or pose a danger to the public health, safety, or welfare, the Planning Director may seek immediate enforcement without prior written notice through any of the remedies or penalties detailed herein.

9.5.6 Final Notice of Violation and/or Correction Order

(A) The Planning Director’s final written notice of violation (which may be the initial notice) shall also order correction of the violation. If the identified violation is not corrected within the timeframe stated in the Initial Notice of Violation or the decision is not appealed to the Board of Adjustment within the specified timeframes identified in the Initial Notice, a final written notice of violation shall be issued ordering the correction of the violation. This final notice shall:

- (1) Specify a reasonable time period in which the violation must be corrected, and
- (2) State the remedies and penalties authorized within this Ordinance that the Planning Director may pursue if the violation is not corrected within the specified time limit.

(B) The final written notice of violation shall be served upon the responsible person(s), either in person, posting the notice at the property in violation, or by certified or registered mail, return receipt requested. When service is made by certified mail, a copy of the notice shall also be sent by regular mail. Service shall be deemed sufficient if the notice by certified mail is unclaimed or refused, but the notice by regular mail is not returned by the post office within ten days after mailing, provided that a final notice of violation is posted in a conspicuous place on the premises affected.

(C) A notice is also not required where action is taken under 9.6.2, 9.6.3, and/or 9.6.65.¹

9.5.7 Recurring Violations

A new initial notice of violation is not required where a notice of a violation of the same kind has been issued to the same violator at the same property within the previous two years. In such cases, the violator may be charged with a continuing violation without further notice, as provided in this Section.

9.5.8 Performance Standards

(A) Planning Director Determination

Where the Planning Director determines that there is a violation of performance standards relating to emission of smoke, odor and explosive hazards influence, he/she shall take or cause to be taken lawful action to cause correction to within the limits set by such performance standards. Failure to obey lawful orders concerning such correction shall be punishable as provided herein.

(B) Technical Determinations

If the Planning Director believes there is a violation but is unable to make a final determination due to insufficient evidence, the following procedures shall apply.

¹ The section number referenced is changing. The amendment is intended to reference this change.

- (1) The Planning Director shall give written notice, by certified mail, to the person or persons responsible for the alleged violation. The notice shall describe the particulars of the alleged violation and the reasons why the Planning Director believes there is a violation, and shall require an answer or correction of the alleged violation within a specified time limit. The notice shall state, and it is hereby declared, that failure to reply or to correct the alleged violation within the specified time limit set constitutes admission of violation of the terms of this Ordinance.

The notice shall further state that upon request of those to whom it is directed, technical determinations as described in this Ordinance will be made, and that if violations as alleged are found, costs of such determinations shall be charged against those responsible for the violation, in addition to such other penalties as may be appropriate. If it is determined that no violations exist, the cost of the determination will be paid by the County.
- (2) If there is no reply within the specified time limit, and the alleged violation is corrected, it shall be noted, "violation corrected" on the copy of the notice, and shall be retained among the official records, taking such other action as may be warranted.
- (3) If there is no reply within the specified time limit, thus establishing admission of violation(s) as provided within (1) above and the alleged violation is not corrected within the specified time limit, action shall be taken as is warranted by continuation of a violation after notice to cease.
- (4) If a reply is received within the specified time limit indicating that the alleged violation will be corrected, but additional time is requested, the Planning Director may grant an extension, if it is deemed warranted in the circumstances of the case and if the extension will not cause imminent peril to life, health or property.
- (5) If reply is received within the specified time limit requesting technical determinations, as provided in this Ordinance, and if the alleged violations continue, the Planning Director may call in properly qualified experts to make the determinations. If expert findings indicate violations of the performance standards, the costs of the determinations shall be assessed against the properties or persons responsible for the violation, in addition to such other penalties as may be appropriate under the terms of this Article. If no violation is found, the costs of the determinations shall be paid by the County, without assessment against the properties or persons involved.

9.5.9 Failure to Comply

If a violator does not comply with a notice of violation, correction order, or Stop Work Order, which has not been appealed, or with a final decision of the Board of Adjustment, the violator shall be subject to enforcement action as prescribed by State law or by this Ordinance.

SECTION 9.6: PENALTIES, REMEDIES, AND ENFORCEMENT POWERS

9.6.1 In General

- (A) The Planning Director may pursue one or more of the remedies and penalties described herein or otherwise authorized by common law or statute to prevent, correct, or abate a violation of this Ordinance.
- (B) Use of one of the authorized remedies and penalties does not preclude the use of any other authorized remedies or penalties, nor does it relieve any party to the imposition of one remedy or penalty from imposition of any other authorized remedies or penalties.

9.6.2 Permit Revocation

- (A) In accord with the provisions of this Ordinance, the Planning Director, upon a written determination, may revoke any permit, certificate, or other authorization granted under

this Ordinance for failure to comply with the provisions of this Ordinance or the terms and conditions of a permit or authorization granted under this Ordinance.

- (1) Revocation of any permit or authorization shall follow the same development review and approval process required for issuance of the development approval, including any required notice or hearing.
- (B) Any permit, certificate, or authorization mistakenly issued in violation of State law or local ordinance, or issued on the basis of misrepresentations by the applicant, owner, or owner's agent may be revoked without such written determination.

9.6.3 Permit Denial or Conditioning

- (A) As long as a violation of this Ordinance remains uncorrected, the Planning Director may deny or withhold approval of any permit, certificate, or other authorization provided for in this Ordinance that is sought for the property on which the violation occurs.
- (B) The Planning Director may also condition a permit, certificate, or authorization on the correction of the violation and/or payment of a civil penalty, and/or posting of a compliance security.

9.6.4 Injunctive and Abatement Relief in Superior Court

- (A) A violation may be corrected by any appropriate equitable remedy, a mandatory or prohibitory injunction, or an order of abatement as authorized by NCGS 153A-123.
- (B) The Planning Director shall have the authority to execute an order of abatement if the violator does not comply with such order, and the costs of the execution shall be recovered by a lien on the property in the nature of a mechanic's or materialman's lien.

~~9.6.5 Criminal Penalties~~

- ~~(A) Any person, firm or corporation who violates the provisions of this Ordinance or fails to comply with any of its requirements shall, upon conviction, be guilty of a Class 3 misdemeanor and shall be fined not more than a maximum of \$500.00, imprisonment of up to 30 days, or both, for each violation, as provided in NCGS Section 14-4.~~
- ~~(B) The Planning Director may refer a violation to the District Attorney for institution of criminal prosecution of the alleged violator.²~~

~~9.6.6~~ **9.6.5 Stop Work Order**

- ~~(A) If a building or structure is erected, constructed, reconstructed, altered, repaired, converted, moved or maintained, or any building, structure or land is used in violation of a Stop Work Order, the Planning Director, in addition to other remedies, may institute any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, moving, maintenance or use, to restrain, correct or abate the violation, to prevent occupancy of the building, structure or lands, or to prevent any illegal act, conduct, business or use in or about the premises.~~
- ~~(B) Notice of a Stop Work Order shall be in writing, directed to the person(s) conducting the violating activity and/or the property owner, and shall state the reasons for the issuance of the Order, and the conditions under which activity may be resumed. Notice shall be given by registered or certified mail, return receipt requested. A copy of the notice shall also be sent by regular mail. Service shall be deemed sufficient if the notice by certified mail is unclaimed or refused, but the notice by regular mail is not returned by the post office within ten days after mailing. Upon issuance of such Order, and posting of same on the site of the violation, all work on the site of the violation shall cease, except those activities necessary to bring the site into compliance with this Ordinance.~~

² Recent changes in State law, specifically Session Law 2021-138, decriminalizes certain ordinances including land use regulations. As a result, a violation of County land use regulations is no longer considered to be a criminal offense. Accordingly, staff is required to modify our existing regulations to address the changes in State law.

- ~~(C) The person(s) conducting the violating activity and/or the property owner may appeal the Stop Work Order to the Board of Adjustment pursuant to Section 2.27 of this Ordinance.~~

~~9.6.79.6.6 Civil Penalty~~

- ~~(A) The Planning Director may impose one or more civil penalties and issue one or more Civil Penalty Citations for a violation as provided in this subsection. If the violator does not pay the penalty, the Planning Director may collect it in a court through a civil action in the nature of a debt.~~

(B) Notice

The Planning Director shall give the responsible person(s) and the landowner, if the landowner is not the responsible person(s), written notice of the civil penalty citation, either by personal delivery, electronic delivery, or first class mail. The notice shall include a copy of the notice of violation, the amount of the penalty, information about where to pay the penalty, the deadline for payment, which shall be ten days from the date of the notice, and the possibility of civil ~~and/or criminal~~ enforcement. The Planning Director shall certify that the notice was provided.³

(C) Penalty Amount

The Planning Director may impose a penalty of \$500.00 per day of violation.

- (1) For purposes of assessing the amount of a civil penalty, each day the violation remains uncorrected after receipt of the final notice of violation, correction order, Stop Work Order, or the receipt of the Civil Penalty Citation itself in the case of emergency enforcement, shall constitute a separate violation that subjects the violator to additional civil penalties.

(D) Settlement of Claims

The Planning Director is authorized to determine the amount of payment that will be accepted in full and final settlement of some or all of the claims the governing body may have in connection with the violation. The Planning Director shall indicate in writing the claims from which the violator is released. If the violation has not been remedied, payment shall not release a violator from potential ~~criminal prosecution or a~~ claim for injunctive relief and/or an order of abatement.⁴

(E) Continuing Violations

- (1) The Planning Director may issue a Civil Penalty Citation for a violation that continues without being corrected. The violator in such cases may be assessed a penalty for each day of the continuing violation.
- (2) An initial Civil Penalty Citation for a single violation must be issued before a Civil Penalty Citation for a continuing violation is issued.
- (3) If the violator has failed to pay the penalty and correct the violation after the initial Civil Penalty Citation, the violator is subject to a Civil Penalty Citation for a continuing violation with a daily penalty.
- (4) An initial Civil Penalty Citation is not required if the Department has previously issued a Civil Penalty Citation to the violator for the same violation at the same location within the previous two years.
- (5) The Planning Director may give a single notice of a Civil Penalty Citation for a continuing violation. The notice must contain a copy of the notice of violation and must state that the violation is continuing, that a daily penalty of a specified amount is being imposed, and that the penalty is cumulative.

(F) Judicial Action to Collect Civil Penalty

³ As land use regulations are no longer criminal matters, staff is eliminating language indicating same.

⁴ IBID.