



MEMO

Date: February 22, 2022
 To: Board of Commissioners
 From: Jason Burdette, Planning Director
 Re: **An Ordinance to Amend Various Provisions of the Davidson Planning Ordinance (DPO) to Comply with NC Senate Bill 300 and Correct Cross-References in Section 20, Post-Construction Controls**

1. TEXT AMENDMENTS

TEXT CHANGES – PROPOSED AMENDMENTS

The following is a list of proposed text changes to the Town of Davidson Planning Ordinance (DPO). The listed changes are being undertaken to comply with NC Senate Bill 300, which took effect in October 2021. The changes are specific to certain penalties for ordinances adopted under Article 18 of NCGS 153A (Planning Regulation and Development) or 160D of the General Statutes. Also included are corrected cross-references specific to numbering in Section 20, Post-Construction Stormwater Ordinance.

| PROPOSED TEXT CHANGES | | | | |
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| PAGE | SECTION | TITLE | ISSUE | PROPOSED ACTION |
| SECTION 15 – VIOLATIONS AND PENALTIES | | | | |
| 15-2 | 15.2 | PENALTIES FOR VIOLATION AND ENFORCEMENT MECHANISMS | SB 300 requires removing certain references to criminal penalties specific to land development. | Remove Section 15.2.1 which references criminal penalties. Renumber the following five subsections. |
| TEXT CHANGES | | | Old Text: 15.2.1 Criminal Any person, firm, or corporation convicted of violating the provisions of this ordinance shall, upon conviction, be guilty of a misdemeanor and shall be fined an amount not to exceed five hundred dollars and/or imprisoned for a period not to exceed 30 days. Each day of violation shall be considered a separate offense, provided that the violation of this ordinance is not corrected within thirty days after notice of said violation is given. New Text: N/A | |
| 15-8 | 15.3.1.C.3.8 | PENALTIES CUMULATIVE | Incorrect numerical cross reference. | Delete incorrect cross reference. |

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| TEXT CHANGES | | | <p>Old Text:</p> <p>Penalties Cumulative: The civil penalties provided for in this Section 9.10 may be assessed cumulatively.</p> <p>New Text:</p> <p>Penalties Cumulative: The civil penalties provided for in this section may be assessed cumulatively.</p> |
| SECTION 19 – EROSION CONTROL | | | |
| 19-14 19-15 | 19.13 | PENALTIES | <p>Certain subject subheadings are missing bold font to delineate the title.</p> <p>Correct the bolded font. Correct title capitalization.</p> |
| TEXT CHANGES | | | <p>Old Text:</p> <ol style="list-style-type: none"> 1. Violations involving conducting a Land-Disturbing Activity without an Approved Plan - 2. Violations Resulting in Sediment entering a Wetland, Lake, or Watercourse - 3. Violations resulting in off-site Sedimentation - 4. Violations of this Ordinance not resulting in Off-Site Sedimentation - <p>New Text:</p> <ol style="list-style-type: none"> 1. Violations Involving Conducting a Land-Disturbing Activity Without an Approved Plan: 2. Violations Resulting in Sediment Entering a Wetland, Lake, or Watercourse: 3. Violations Resulting in Off-Site Sedimentation: 4. Violations of this Ordinance Not Resulting in Off-Site Sedimentation: |
| 19-16 | 19.13.c.4.i | PENALTIES | <p>SB 300 requires removing certain references to criminal penalties specific to land development.</p> <p>Eliminate references to any criminal penalty. Replace with updated text below.</p> |
| TEXT CHANGES | | | <p>Old Text:</p> <p>(i) Any person who knowingly or willfully violates any provision of this Ordinance 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 and may be subject to a fine not to exceed Five Thousand Dollars (\$5,000). This is in addition to any civil penalties that may be charged. Each day of continuing violation shall constitute a separate violation.</p> <p>New Text:</p> <p>(i) Any person who knowingly or willfully violates any provision of this Ordinance or who knowingly or willfully initiates or continues a Land-disturbing Activity for which a Plan is required, except in accordance with the terms,</p> |

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| | | | conditions, and provisions of an approved plan, shall be subject to civil penalties as outlined in this section. Each day of continuing violation shall constitute a separate violation. | |
| 19-17 | 19.14 | INJUNCTIVE RELIEF | SB 300 requires removing certain references to criminal penalties specific to land development. | Eliminate references to any criminal penalty. Replace with updated text below. |
| TEXT CHANGES | | | <p>Old Text:</p> <p>b. ...The institution of an action for injunctive relief under this section shall not relieve any party to such proceedings from any civil or criminal penalty described for violations of this Ordinance.</p> <p>New Text:</p> <p>b. ...The institution of an action for injunctive relief under this section shall not relieve any party to such proceedings from any civil penalty described for violations of this Ordinance.</p> | |
| SECTION 20 – POST CONSTRUCTION STORM WATER ORDINANCE | | | | |
| 20-33 | 20.7.2(B) | INSPECTIONS AND INVESTIGATIONS | Incorrect numerical cross references. | Replace two references to “Section 703” with a reference to “Section 20.7.3, Remedies and Penalties.” |
| TEXT CHANGES | | | <p>Old Text:</p> <p>...entity to remedies and/or penalties as described in Section 703 of this ordinance...</p> <p>New Text:</p> <p>...entity to remedies and/or penalties as described in Section 20.7.3, Remedies and Penalties, of this ordinance...</p> <p>Old Text:</p> <p>...Storm Water Administrator may take appropriate action, as provided in Section 703, Remedies and Penalties, to correct...</p> <p>New Text:</p> <p>...Storm Water Administrator may take appropriate action, as provided in Section 20.7.3, Remedies and Penalties, to correct...</p> | |
| 20-34 | 20.7.2 (F)-(G) | INSPECTIONS AND INVESTIGATIONS | Incorrect numerical cross references. | Replace two references to “Section 703” with a reference to “Section 20.7.3, Remedies and Penalties.” |
| TEXT CHANGES | | | <p>Old Text (F):</p> <p>...may act to impose one or more of the remedies and penalties authorized by Section 703.</p> | |

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| | | | <p>New Text (F): ...may act to impose one or more of the remedies and penalties authorized by Section 20.7.3, Remedies and Penalties.</p> <p>Old Text (G): ...through any remedy or penalty specified in Section 703.</p> <p>New Text G): ...through any remedy or penalty specified in Section 20.7.3, Remedies and Penalties.</p> | |
| 20-35 | 20.7.3 | REMEDIES AND PENALTIES | SB 300 requires removing certain references to criminal penalties specific to land development. | Eliminate references to any criminal penalty. Replace with updated text below. |
| TEXT CHANGES | | | <p>Old Text: The remedies and penalties provided for violations of this ordinance, whether civil or criminal, shall be cumulative...</p> <p>New Text: The remedies and penalties provided for violations of this ordinance shall be cumulative...</p> | |
| 20-36 | 20.7.3(B)1 | REMEDIES AND PENALTIES | Incorrect numerical cross reference. | Replace reference to "Section 702(D)" with a reference to "Section 20.7.2(D)3." |
| TEXT CHANGES | | | <p>Old Text: ...notified of the violation except as provided in Section 702(D) of this ordinance...</p> <p>New Text: ...notified of the violation except as provided in Section 20.7.2(D)3 of this ordinance...</p> | |
| 20-37 | 20.7.3(B)5 | REMEDIES AND PENALTIES | Incorrect numerical cross reference. | Replace reference to "205" with a reference to "Section 20.2.5, Appeals and Variances" |
| TEXT CHANGES | | | <p>Old Text: ...shall be conducted as described in Section 205 of this ordinance.</p> <p>New Text: ...shall be conducted as described in Section 20.2.5, Appeals and Variances, of this ordinance.</p> | |
| 20-37 | 20.7.3(C) | REMEDIES AND PENALTIES | SB 300 requires removing certain references to criminal penalties specific to land development. | Remove Section 20.7.3(C) Criminal Penalties which references criminal penalties. |
| TEXT CHANGES | | | | |

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| | Old Text: (C) Criminal Penalties: Violation of this ordinance may be enforced as a misdemeanor subject to the maximum fine permissible under North Carolina law. New Text: N/A [Removed] |
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2. PUBLIC PLANS AND POLICIES

The proposed text changes are consistent with the existing policy and ordinance frameworks adopted by the town. All changes relate to compliance with NC Senate Bill 300 and correcting inaccurate cross-references.

All proposed changes meet the requirements set forth in Davidson Planning Ordinance 1.5.1 Implementation of Adopted Plans & Policies: “Any amendments to, or actions pursuant to, this ordinance should be consistent with these adopted plans and policies, as amended.”

3. PUBLIC HEARING

Per DPO Section 14, a public hearing is required for any amendments to the DPO. The Planning Board is also required to make a formal recommendation prior to action by the Board of Commissioners. The public hearing is set for February 22, 2022 and has been advertised according to DPO and NCGS 160D requirements.

4. STAFF RECOMMENDATION

Staff supports moving the text amendments forward, but will withhold a formal recommendation until after the public hearing.

5. NEXT STEPS

1. Planning Board Recommendation (tentative Feb.28, 2022)
2. Board of Commissioners Action (tentative March 8, 2022)

6. ATTACHMENTS

N/A