

TEXT AMENDMENT 22-04

Ordinance #7875/22-95

Applicant: City of High Point Engineering Services Department

AN ORDINANCE AMENDING THE CITY OF HIGH POINT DEVELOPMENT ORDINANCE

WHEREAS, the City of High Point adopted the "City of High Point Development Ordinance" on May 16, 2016, with an effective date of January 1, 2017, and subsequently amended; and

WHEREAS, public hearings were held before the Planning and Zoning Commission on October 25, 2022 and before the City Council on October 31, 2022 regarding Text Amendment 22-04; and

WHEREAS, notice of the public hearings was published in the High Point Enterprise on October 15, 2022 for the Planning and Zoning Commission public hearing, and on October 19, 2022 and October 26, 2022 for the City Council public hearing pursuant to Chapter 160D-601 of the General Statutes of North Carolina.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HIGH POINT, NORTH CAROLINA:

SECTION 1.

(Regarding enforcement compliance)

That Section 9.2., *Compliance Required*, is hereby amended to *Applicability* as follows:

9.2. ~~Compliance Required~~ Applicability

Compliance with all the procedures, standards, and other provisions of this Ordinance is required by all persons owning, developing, managing, using, or occupying land or structures in the city.

This Chapter applies to the enforcement of all provisions of this Ordinance. Section 9.10, Soil Erosion and Sedimentation Enforcement and Penalties, shall only apply to the enforcement of Section 6.3, Soil Erosion and Sedimentation, Section 9.10.1, Soil Erosion and Sedimentation Violations, and any state statute or regulation governing soil erosion and sedimentation. The provisions of Section 9.10, where applicable, shall supersede conflicting provisions of this Chapter.

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SECTION 2.

(Regarding Responsible Persons)

That Section 9.4.1., *General*, within *Responsible Persons*, is hereby amended as follows:

9.4.1. General

The following persons may be jointly and severally responsible for any violations of this Ordinance and subject to enforcement as provided in this Chapter:

A. Any person who owns the property on which a violation occurs;

B. Any tenant or occupant who has control over, or responsibility for, the property on which a violation occurs;

C. Any person listed as a financially responsible party for the property on a form previously signed and submitted to the City; and

D. Any architect, engineer, builder, developer, contractor, agent, or any other person who participates in, assists, directs, creates, or maintains a situation that constitutes a violation.

~~The landowner, tenant, or occupant of any land or structure, and an architect, engineer, builder, contractor, agent, or any other person who participates in, assists, directs, creates, or maintains a situation that constitutes a violation of this Ordinance may be held responsible for the violation and is subject to the remedies and penalties set forth in this chapter.~~

That Section 9.4.2., *Failure by City Does Not Relieve Individual*, is hereby amended as follows:

9.4.2. Failure by City Does Not Relieve Individual

Failure of a City official charged with enforcement responsibility to observe or recognize conditions which violate the intent and purpose of this Ordinance, or to deny the issuance of a development or land disturbance permit, shall not relieve the ~~landowner~~ **a person** from responsibility for the condition or damages

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resulting therefrom and shall not result in the City, its officers, or agents being responsible for conditions or damages resulting therefrom.

SECTION 3.

(Regarding Enforcement Procedure)

That Section 9.6.1., *Notice of Violation*, is hereby amended as follows:

If the landowner or occupant of the land, building, structure, sign, or use in violation fails to take prompt action, any of the directors listed in Section 9.5.1, as appropriate, shall give the owner or occupant written notice (by **any means authorized under sections 1A-1, Rule 4, or 160D-404 of the North Carolina General Statutes certified or registered mail to their last known address, by personal service,** or by posting notice conspicuously on the property) of the following:

- A. **Violation Exists** That the land, building, structure, sign, or use is in violation of this Ordinance;
- B. **Nature of the Violation** The nature of the violation, and citation of the Section(s) of this Ordinance violated;
- C. **Remedy** The measures necessary to remedy the violation;
- D. **Allowable Time Period** The time period in which the violation must be corrected **by the responsible person**; except that no time period need be given for grading without a permit or interference with official duties;
- E. **Penalties that May be Assessed** That penalties or remedies may be assessed; and
- F. **Appeal** That the party cited has the right to appeal the Notice in accordance with Section 2.4.3, Appeal.

SECTION 4.

(Regarding Remedies)

That Section 9.7.4., *Stop Work Orders*, is hereby amended as follows:

- A. **General** Whenever **there is development or land-disturbing activity a building, structure, sign, or part thereof is being constructed, altered, repaired, moved, or demolished** in violation of this

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Ordinance, any of the directors listed in Section 9.5.1., **Responsibilities**, as appropriate, may order the work to be immediately stopped.

- B. **Order in Writing** The stop work order shall be in writing and directed to the landowner, occupant, or person doing the work. The stop work order shall state the specific work to be stopped, the specific reasons for the stoppage, and the conditions under which the work may be resumed.
- C. **In Accordance with State Statutes or Building Code** Such action shall be in accordance with Section 160D-404(b) of the North Carolina General Statutes or the State Building Code.

That Section 9.7.6., *Criminal Penalties*, is hereby deleted in its entirety, and that the titles of existing Sections 9.7.7. through 9.7.11. are renumbered appropriately:

~~9.7.6. Criminal Penalties~~

~~**Any person who knowingly or willfully violates this Section or any provision of the North Carolina Sedimentation Pollution Control Act or any ordinance, rule, regulation, or order duly adopted or issued by the North Carolina Sedimentation Control Commission or the City, or who knowingly or willfully 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, shall be guilty of a Class 2 misdemeanor that may include a fine not to exceed \$5,000 as provided in G.S. 113A-64.**~~

- 9.7.~~76~~. - Injunctive Relief
- 9.7.~~87~~. - Order of Abatement
- 9.7.~~98~~. - Equitable Remedy
- 9.7.~~109~~. - State and Common Law Remedies
- 9.7.~~1110~~. - Previous Enforcement

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That Section 9.7.6., *Injunctive Relief*, as renumbered above, is hereby amended as follows:

- A. **Civil Action by City Council** Whenever ~~the City Council has~~ there is reasonable cause to believe that any person is violating or threatening to violate this Ordinance, or any rule or order adopted or issued pursuant to this Ordinance, or any term, condition, or provision of an approved development plan, or soil erosion and sedimentation control plan, ~~it the~~ the City Attorney may, either before or after the institution of any other action or proceeding authorized by this Ordinance, institute a civil action in the name of the City, for injunctive relief to restrain, correct, abate, mandate, or enjoin the violation or threatened violation.

That Section 9.7.7., *Order of Abatement*, as renumbered above, is hereby amended as follows:

- A. **General** In addition to an injunction, the City Attorney may apply for and the court may enter an Order of Abatement as part of the judgment in the case. An Order of Abatement may direct any of the following actions:
 - 1. through 4. (*unchanged*)

SECTION 5.

(Regarding Assessment of Civil Penalties)

That Section 9.9.1., *Responsible Parties*, is hereby deleted in its entirety, and that the titles of existing Sections 9.9.2. through 9.9.7. are renumbered appropriately:

~~9.9.1. Responsible Parties~~

~~Any person who violates any provision of this Ordinance, including the owner or occupant of any land, building, structure, sign, use of land, or part thereof, and any architect, builder, contractor, agent, or other person who participates or acts in concert, assists, directs, creates, or~~

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~~maintains any condition that is in violation of this Ordinance may be held responsible for the violation and subject to the penalties and remedies provided in this Ordinance.~~

- 9.9.~~21~~. Notice
- 9.9.~~32~~. Continuing Violation
- 9.9.~~43~~. Demand for Payment

That Section 9.9.5., *Nonpayment*, is hereby renumbered appropriately, and amended as follows:

9.9.54. Nonpayment

If payment is not received or equitable settlement reached within 30 days after demand for payment is made, the matter shall be referred to legal counsel to institute a civil action for recovery of the civil penalty. **A civil action to recover a civil penalty assessed pursuant to Section 9.10, Soil Erosion and Sedimentation Enforcement and Penalties, must be filed within three years of the date the assessment was due.**

That Section 9.9.6., *Penalties*, is hereby renumbered appropriately, and amended as follows:

9.9.65. Penalties

- ~~**A. General**~~ Any person who violates any provision of this Ordinance, except for soil ~~and~~ erosion **and sedimentation** control violations, shall be subject to assessment of a civil penalty in the amount of \$50.00 for the first violation, \$100.00 for the second violation, \$200.00 for the third violation, and \$500.00 for the fourth and each succeeding violation.
- ~~**B. Soil Erosion and Sedimentation Control Civil penalties for specific violations of Section 6.3, Soil Erosion and Sedimentation, are assessed as follows:**~~

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- ~~1. Grading Without Permit \$5000 per day for failure to secure a valid land disturbance permit prior to conducting a land-disturbing activity for which a soil erosion and sedimentation control plan is required.~~
- ~~2. Failure to Protect \$500 per day for failure to take all reasonable measures to protect public property or private property, including lakes and/or natural watercourses, from damage caused by land-disturbing activities.~~
- ~~3. Failure to Follow Plan \$300 per day for failure to conduct a land-disturbing activity in accordance with the provisions of an approved soil erosion and sedimentation control plan.~~
- ~~4. Failure to Install Devices \$500 per day for failure, when more than one acre is disturbed (\$250 per day when one acre or less is disturbed), to install erosion and sedimentation control devices sufficient to retain the sediment generated by the land-disturbing activity within the boundaries of the tract(s) and prevent off-site sedimentation.~~
- ~~5. Failure to Maintain Measures \$300 per day for failure to maintain satisfactory soil erosion and sedimentation control measures, structures and/or devices on the site that are designed to provide protection from the calculated maximum peak rate of runoff from the 10-year storm.~~
- ~~6. Failure to Maintain Temporary Measures \$250 per day for failure to maintain temporary soil erosion and sedimentation control measures and facilities during the development of the site.~~
- ~~7. Failure to Maintain Slopes \$250 per day for failure on graded slopes and fills to maintain an angle sufficient to retain vegetative cover or other adequate soil erosion and sedimentation control devices or structures.~~
- ~~8. Failure to Cover Slopes \$250 per day for failure, within 7 days of completion of any phase of grading, to plant or otherwise provide exposed, graded slopes or fills with ground cover, devices, or structures sufficient to restrain erosion.~~

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- ~~9. Failure to Plant Cover \$250 per day for failure on a tract when more than one contiguous acre is disturbed, to plant or otherwise provide ground cover sufficient to restrain erosion within 14 days of completion of any phase of grading.~~
- ~~10. Failure to Revise Plan \$250 per day for failure to file an acceptable, revised soil erosion and sedimentation control plan after being notified of the need to do so.~~
- ~~11. Failure to Maintain Buffer \$250 per day for failure to retain a buffer zone of sufficient width along a lake or natural watercourse to confine visible siltation within the 25 percent of the buffer zone nearest the land-disturbing activity.~~
- ~~12. Interference with Official Duties \$500 per day for obstructing, hampering, or interfering with any authorized agent of the City or the NC Sedimentation Control Commission while in the process of carrying out their official duties.~~

That Section 9.9.10., *Soil Erosion and Sedimentation Enforcement and Penalties*, is hereby added to the Development Ordinance and numbered appropriately as follows:

9.10 Soil Erosion and Sedimentation Enforcement and Penalties

9.10.1 Soil Erosion and Sedimentation Violations

Any of the following shall be a violation of this Ordinance and shall be subject to the remedies and penalties provided by this Section and by State law.

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- A. Grading Without Permit Failure to secure a valid land disturbance permit prior to conducting a land-disturbing activity for which a soil erosion and sedimentation control plan is required.**
- B. Failure to Protect Failure to take all reasonable measures to protect public property or private property, including lakes and/or natural watercourses, from damage caused by land-disturbing activities.**
- C. Failure to Follow Plan Failure to conduct a land-disturbing activity in accordance with the provisions of an approved soil erosion and sedimentation control plan.**
- D. Failure to Install Devices Failure, when more than one acre is disturbed, to install erosion and sedimentation control devices sufficient to retain the sediment generated by the land-disturbing activity within the boundaries of the tract(s) and prevent off-site sedimentation.**
- E. Failure to Maintain Measures Failure to maintain satisfactory soil erosion and sedimentation control measures, structures and/or devices on the site that are designed to provide protection from the calculated maximum peak rate of runoff from the 10-year storm.**
- F. Failure to Maintain Slopes Failure on graded slopes and fills to maintain an angle sufficient to retain vegetative cover or other adequate soil erosion and sedimentation control devices or structures.**
- G. Failure to Cover Slopes Failure, within 21 days of completion of any phase of grading, to plant or otherwise provide exposed, graded slopes or fills with ground cover, devices, or structures sufficient to restrain erosion.**
- H. Failure to Plant Cover Failure on a tract when more than one contiguous acre is disturbed, to plant or otherwise provide ground cover sufficient to restrain erosion within 14 days of completion of any phase of grading.**
- I. Failure to Revise Plan Failure to file an acceptable, revised soil erosion and sedimentation control plan after being notified of the need to do so.**
- J. Failure to Maintain Buffer Failure to retain a buffer zone of sufficient width along a lake or natural watercourse to confine**

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visible siltation within the 25 percent of the buffer zone nearest the land-disturbing activity.

- K. Interference with Official Duties Obstructing, hampering, or interfering with any authorized agent of the City or the NC Sedimentation Control Commission while in the process of carrying out their official duties.
- L. Failure to Self-Inspect Failure to 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 113A-57(2) of the North Carolina General Statutes.
- M. Insufficient Measures Failure to have erosion and sedimentation control devices and practices that are sufficient to retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of the tract.
- O. Other Violations Violating any other provisions of Section 6.3, Soil Erosion and Sedimentation, the North Carolina Sedimentation Pollution Control Act, or any rules or orders adopted or issued pursuant to Section 6.3, Soil Erosion and Sedimentation, or the North Carolina Sedimentation Pollution Control Act.

9.10.2 Responsible Persons

Any landowner or other responsible person who has financial or operational control over the land-disturbing activity; or who has directly or indirectly allowed the activity, and who has failed to comply with any provision of Section 6.3, Soil Erosion and Sedimentation, Section 9.10.1, Soil Erosion and Sedimentation Violations, or any state statute or regulation governing soil erosion and sedimentation, including the North Carolina Sedimentation Pollution Control Act, may be jointly and severally responsible for such violations and subject to enforcement for the same as provided in this Section.

9.10.3 Notice of Violation

- A. General If it is determined that a person engaged in any land-disturbing activity failed to comply with this Section, a notice of violation shall be served upon the responsible person.
- B. Service The notice may be served by any means authorized under Section 1A-1, Rule 4 of the North Carolina General Statutes.

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- C. Notification Contents** The notice shall inform the responsible person of the violation, describe the actions that need to be taken by the responsible person to come into compliance with this Ordinance, and specify the number of working days the responsible person has to correct the violation.
- D. Failure to Comply** Any responsible person who fails to comply within the time specified in the notice of violation is subject to additional civil and criminal penalties for a continuing violation as provided in this Section.

9.10.4 Civil Penalties

- A. Assessment** Any responsible person who receives a notice of violation for committing any violations of this Section and fails to abate such violation(s) within the time provided in the notice of violation, may be assessed a maximum civil penalty of up to \$5,000.00 per violation. A civil penalty may be assessed each day from the date of the violation. Each day of a continuing violation constitutes a separate violation. Civil penalties may be assessed until compliance is achieved. When the responsible person has not been assessed any civil penalty under Section 6.3, Soil Erosion and Sedimentation, the North Carolina Sedimentation Pollution Control Act, or any rules or orders adopted or issued pursuant to Section 6.3, Soil Erosion and Sedimentation, or the North Carolina Sedimentation Pollution Control Act, 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 for all violations associated with the land-disturbing activity is \$25,000.
- B. Civil Penalty Assessment Factors** The Engineering Services Director or a subordinate shall determine the amount of the civil penalty based upon the following factors:
 - 1. The degree and extent of harm caused by the violation;**
 - 2. The cost of rectifying the damage;**
 - 3. The amount of money the responsible person saved by noncompliance;**
 - 4. Whether the violation was committed willfully; and**

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5. The prior record of the responsible person in complying or failing to comply with this Ordinance.

C. Notice of Civil Penalties Assessment

- 1. Notification Required The Engineering Services Director or a subordinate shall provide notice of the civil penalty amount and the basis for assessment to the responsible person assessed. The notice of the assessment must be served by any means authorized under Section 1A-1, Rule 4 of the North Carolina General Statutes.**
- 2. Notification Contents The notice shall direct the responsible person to either pay the assessment by a certain date, appeal the assessment within 30 days to the Board of Adjustment, or request a remission of the assessment by the North Carolina Sedimentation Control Commission within 30 days after the receipt of the notice of assessment. An assessment that is not appealed or contested or where a remission of the penalty has not been requested is due by the date provided in the notice of assessment. An assessment that is appealed or contested or where a remission of the penalty is requested is due at the conclusion of the appeal or judicial review of the assessment.**
- 3. Separate Notices Separate notices must be provided for the first, second, third, and fourth violations. After notice for the fourth violation, civil penalties may be assessed and accrue on a daily basis without any further notice to the person assessed.**

D. Appeal of Civil Penalties A notice of civil penalty assessment may be appealed in accordance with Section 2.4.3, Appeal, to the Board of Adjustment within 30 days of the date the notice of civil penalty assessment is received. The Board of Adjustment must consider the civil penalty assessment factors listed in this subsection and any extenuating or mitigating circumstances in determining whether to uphold, reduce, or waive the civil penalty. The Board of Adjustment's decision shall be appealable to the Superior Court of Guilford County in the nature of certiorari pursuant to Section 160D-1402 of the North Carolina General Statutes. Such appeals shall be filed with the Clerk of Superior Court by the later of 30 days after the Board of Adjustment's decision is filed with the Clerk to the Board of Adjustment or 30 days after a written copy of the decision is given to the responsible person.

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- E. Remission of Civil Penalties A request for remission of a civil penalty under Section 113A-64 of the North Carolina General Statutes shall be filed with the North Carolina Sedimentation Control Commission within 30 days receipt of the notice of assessment. Any such remission request shall comply in all respects with the requirements set forth in Section 113A-64.2 of the North Carolina General Statutes, including the requirement that any such remission request must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B of the North Carolina General Statutes and a stipulation of the facts on which the assessment was based.**
- F. Payment of Civil Penalties Civil Penalties collected for violations of this Section must be credited to the Civil Penalty and Forfeiture Fund in accordance with Section 115C-457.2. of the North Carolina General Statutes. Civil penalties collected by the City for violations of this Section may be diminished only by the City's actual costs of collection. The collection cost percentage to be used shall be established and approved by the North Carolina Office of State Budget and Management on an annual basis, based upon the computation of actual collection costs by the City for the prior fiscal year.**

9.10.5 Criminal Penalties

Any person who knowingly or willfully violates this Section or any provision of the North Carolina Sedimentation Pollution Control Act or any ordinance, rule, regulation, or order duly adopted or issued by the North Carolina Sedimentation Control Commission or the City, or who knowingly or willfully 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, shall be guilty of a Class 2 misdemeanor that may include a fine not to exceed \$5,000 as provided in Section 113A-64 of the North Carolina General Statutes.

9.10.6 Restoration of Areas Affected by Non-compliance

The Engineering Services Director or a subordinate may require a person who engaged in a land-disturbing activity and failed to retain sediment generated by the activity, as required by Section 113A-57(3) of the North Carolina General Statutes and Section 6.3, Soil Erosion and Sedimentation, to restore the waters and land affected by the failure so as to minimize the detrimental effects of the resulting

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pollution by sedimentation. This authority is in addition to any other civil or criminal penalty or injunctive relief authorized under this Ordinance.

SECTION 6.

(Regarding Definitions)

That Section 10.4., *Definitions*, is hereby amended to modify the definition for the term Land Disturbing Activity:

LAND DISTURBING ACTIVITY	Any <u>use of the land movement of earth or substrate</u> , manually or mechanically, <u>that results in a change in the natural cover or topography and that may cause or contribute to sedimentation.</u> including but not limited to any modification of existing grade by dredging, demolition, excavation or fill, grading, scraping, vegetation removal, landscaping, coring, well drilling, pile driving, undergrounding utility lines, trenching, bulldozing, sheeting, shoring and excavation for laying or removing foundations, pilings or other purposes.
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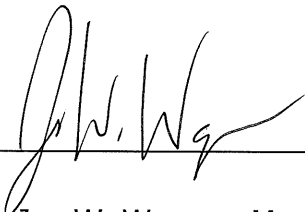
SECTION 7.

All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

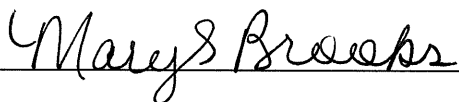
SECTION 8.

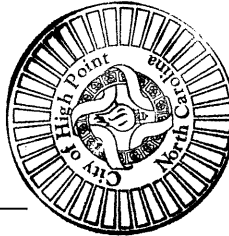
This ordinance shall become effective upon adoption.

Adopted by the City Council
City of High Point, North Carolina
The **31st** day of **OCTOBER 2022**
Mary S. Brooks, Interim City Clerk

By: 
Jay W. Wagner, Mayor

ATTEST:





Mary S. Brooks, Interim City Clerk