



RESOLUTION TITLE: TO AMEND CHAPTER 4 – BUILDINGS, CONSTRUCTION AND RELATED ACTIVITIES ARTICLE III OF THE GASTON COUNTY CODE OF ORDINANCES CONCERNING SOIL EROSION AND SEDIMENTATION CONTROL (SECOND READING)

WHEREAS, Chapter 4 of the Gaston County Code of Ordinances, among other things, enumerates provisions for assessing civil penalties for violations of Gaston County's Soil Erosion and Sedimentation Control Ordinance; and,

WHEREAS, upon mandates by North Carolina Department of Environmental Quality to the Model Local Ordinance, Gaston County Staff is requesting the Board of Commissioners amend the ordinance set forth in Section 4-72 concerning the civil penalty provisions identified by North Carolina Department of Environmental Quality; and,

WHEREAS, the Gaston County Environmental Review Advisory Board approved the recommended amendments to the Soil Erosion and Sedimentation Control Ordinance on January 31, 2019.

NOW, THEREFORE, BE IT RESOLVED that the Gaston County Board of Commissioners hereby amends Chapter 4, Article III, Section 4-72 as follows:

Sec. 4-72. - Penalties.

(a) *Civil Penalties.*

- (1) Any person who violates any of the provisions of the Act, this article, or rules or orders adopted or issued pursuant to this article, or who 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, is subject to a civil penalty. The maximum civil penalty for a violation is five thousand dollars (\$5,000.00). The maximum civil penalty for a violation of a stop-work order is five thousand dollars (\$5,000.00). A civil penalty may be assessed from the date of the violation. Each day of continuing violation shall constitute a separate violation. When the person has not been assessed any civil penalty under this subsection 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 under this subsection for all violations associated with the land-disturbing activity for which the Erosion and Sedimentation Control Plan is required is twenty-five thousand dollars (\$25,000).
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- (2) The Gaston County Natural Resources Department shall determine the amount of the civil penalty to be assessed under this subsection as set forth in the Guidelines for Assessing Civil Penalties for Violations of Gaston County's Soil Erosion and Sedimentation Control Ordinance. The Gaston Natural Resources Department shall notify the person who is assessed the civil penalty of the amount of the penalty and the reason for assessing the penalty. In determining the amount of the penalty the Natural Resources Department shall consider the degree and extent of harm caused by the damage, the cost of rectifying the damage, the amount of money the violator saved by noncompliance, whether the violation was committed willfully, and the prior record of the violator in complying or failing to comply with this article. The notice of assessment shall be served by any means authorized under **North Carolina General Statute G.S. 1A-1, Rule 4**, and shall direct the violator to either pay the assessment, ~~or~~ **contest the assessment within thirty (30) days after receipt of the notice of assessment**, by written demand for a **local** hearing, ~~or~~ **file a request with the Sedimentation Control Commission for remission of the assessment within 60 days of receipt of the notice. A 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.** A **local** hearing on a civil penalty/**contested assessment** shall be conducted by the Gaston County Environmental Review **Advisory** Board within thirty (30) days after the date of the written demand for the hearing. The Environmental Review **Advisory** Board shall render its final decision on the civil penalty/**contested assessment** at the conclusion of the hearing. Appeal from the final decision of the **E**nvironmental **R**eview **Advisory** Board shall be to the Superior Court of Gaston County.
- (3) If payment is not received within ~~thirty (30)~~ **sixty (60)** days after ~~demand for payment is made~~ **it is due**, the **E**nvironmental **R**eview **Advisory** Board may institute a civil action to recover the amount of the assessment. The civil action may be brought in Gaston County Superior Court of the county where the violation occurred, or the violator's residence or principal place of business is located. Such civil actions must be filed within three (3) 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 assessment. An assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment.
- (4) Civil penalties collected pursuant to this article shall be ~~credited~~ **remitted** to the **C**ivil **P**enalty and **F**orfeiture **F**und **in accordance with G.S. 115C-457.2. Penalties collected by the county may be diminished only by the actual cost 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 each (city)(town)(county) for the prior fiscal year. [The collection cost percentage shall not exceed twenty percent (20%) of penalties collected.]**

This Ordinance amendment shall be effective immediately upon its adoption.

Adopted the 26th day of March, 2019.

Certification

I, Donna S. Buff, Clerk to the Gaston County Board of Commissioners, do hereby certify that the above, as filed with the Clerk to the Board, is a true and accurate copy of the ordinance amendment entitled **TO AMEND CHAPTER 4 – BUILDINGS, CONSTRUCTION AND RELATED ACTIVITIES ARTICLE III OF THE GASTON COUNTY CODE OF ORDINANCES CONCERNING SOIL EROSION AND SEDIMENTATION CONTROL (SECOND READING)** as adopted by the Board of Commissioners on March 26, 2019 and is to be set forth in the Gaston County Code of Ordinances upon adoption.

Donna S. Buff, Clerk to the Board

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