

# Article 17 | Enforcement and Penalties

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## Contents of Article

Sec. 17.1 General .....	17-1
17.1.1 Responsibility for Enforcement .....	17-1
17.1.2 Compliance Required.....	17-2
Sec. 17.2 Types of Violations.....	17-2
17.2.1 Criminal Violations and Sanctions.....	17-2
17.2.2 Civil Violations and Penalties .....	17-2
Sec. 17.3 Enforcement Procedures and Remedies .....	17-4
17.3.1 Criminal Violations .....	17-4
17.3.2 Civil Violations.....	17-4
Sec. 17.4 Additional Remedies .....	17-5

## Sec. 17.1 General

### 17.1.1 Responsibility for Enforcement

The Zoning Administrator shall have the authority and the duty to ensure that all buildings and structures and the use of all land complies with the provisions of this Zoning Ordinance. In acting to enforce this Zoning Ordinance, the Zoning Administrator, or authorized agent thereof, shall act in the name of the Town of Leesburg. The Zoning Administrator shall have all necessary authority on behalf of the Town Council to administer and enforce this Zoning Ordinance.

- A.** Issuance of Inspection Warrants. The Zoning Administrator or designee may present sworn testimony to a magistrate or court of competent jurisdiction and if such sworn testimony established probable cause that a Zoning Ordinance violation has occurred, request that the magistrate or court grant the Zoning Administrator or designee an inspection warrant to enable the Zoning Administrator or designee to enter the subject dwelling for the purpose of determining whether violations of the Zoning Ordinance exist. The Zoning Administrator or designee shall make a reasonable effort to obtain consent from the owner or tenant of the subject dwelling prior to seeking the issuance of an inspection warrant under this section.
- B.** Authority to Petition Court. When the Zoning Administrator has reasonable cause to believe that any person has engaged or is engaging in any violation of the Zoning Ordinance that limits occupancy in a residential dwelling unit and the Zoning Administrator or designee, after a good faith effort to obtain the data or information necessary to determine whether a violation has occurred, has been unable to obtain such information, the Zoning Administrator may request that the Town Attorney petition the judge of the General District Court for a subpoena duces tecum against any such person refusing to produce such data or information. The judge of the court, upon good cause shown, may cause the subpoena duces tecum to be issued. Any person failing to comply with such subpoena shall be subject to punishment for contempt by the court issuing the subpoena. Any person so subpoenaed may apply to the judge who issued the subpoena to quash it.

### **17.1.2 Compliance Required**

- A.** Any building or structure erected or any improvements constructed contrary to any of the provisions of this Zoning Ordinance and any use of any building or land which is conducted, operated or maintained contrary to the provisions of this Zoning Ordinance or the provisions of any approval granted by the Town under this Zoning Ordinance shall be a violation of this Zoning Ordinance and the same is hereby declared to be unlawful.
- B.** Any person, firm or corporation, whether owner, lessee, principal, agent, employee or otherwise, who violates any of the provisions of this Zoning Ordinance, or permits any such violation, or who fails to comply with any of the requirements hereof, or who erects any building or structure or uses any building, structure or land in violation of the provisions of this Zoning Ordinance or the provisions of any approval granted by the Town under this Zoning Ordinance shall be subject to the enforcement provisions of this article.
- C.** A written notice of a zoning violation or written order of the Zoning Administrator or designee sent by certified and first class mail to, or posted at, the last known address of the property owner as shown on the current real estate tax assessment records shall be deemed sufficient notice to the property owner and shall satisfy the notice requirements under general law.

## **Sec. 17.2 Types of Violations**

Violations of this Zoning Ordinance are classified into two categories, as set out in this section.

### **17.2.1 Criminal Violations and Sanctions**

- A.** Any violation of the provisions of this Zoning Ordinance, other than those expressly identified as constituting civil violations (See Sec. 17.2.2), shall be deemed Class 2 criminal misdemeanors and, upon conviction thereof, shall be punishable by a fine of not more than \$1,000.00 for each separate offense. Each day during which the violation is found to have existed shall constitute a separate offense. However, any conviction resulting from a violation of provisions regulating the number of unrelated persons in single-family residential dwellings shall be punishable by a fine of up to \$2,000. Failure to abate the violation within the specified time period shall be punishable by a fine of up to \$5,000, and any such failure during any succeeding 10-day period shall constitute a separate misdemeanor offense for each 10-day period punishable by a fine of up to \$7,500. No such fine shall accrue against an owner or managing agent of such dwelling unit during the pendency of any legal action commenced by such owner or managing agent of such dwelling unit against a tenant to eliminate an excessive occupancy condition. A conviction resulting from a violation of provisions regulating the number of unrelated persons in single-family residential dwellings shall not be punishable by a jail term.
- B.** The designation of a particular violation of this Zoning Ordinance as a civil violation pursuant to Sec. 17.2.2 shall preclude criminal prosecution or sanctions, except when such violation results in injury to a person or after the issuance of the third civil fine when the violation is for excessive occupancy of a dwelling unit.

### **17.2.2 Civil Violations and Penalties**

- A.** The violation of any of the following ordinance provisions shall constitute a civil violation:

1. Zoning Permit (Sec. 3.7);
  2. Fences and Walls (Sec. 10.4.5.C.6);
  3. Application for Occupancy Permit (Sec. 3.9);
  4. Certificate of Appropriateness (Sec. 7.5.5);
  5. Certificate of Approval (Sec. 7.6.4);
  6. Sign Permit (Sec. 15.2);
  7. Certificate of Appropriateness Sign Permit: (Sec. 15.11.1)
  8. Prohibited Signs (Sec. 15.5);
  9. Sign Requiring Temporary Sign Permit (Sec. 15.6.1);
  10. Maintenance of Signs (Sec. 15.7.3);
  11. Removal of Obsolete Signs (Sec. 15.6.17.3.D);
  12. Identification of Handicapped Parking (Sec. 11.6.2.B)
  13. Conformance with Certificate of Approval (Sec. 3.11.13)
  14. Use Regulations-Residential (Sec. 5.1.2 thru 5.9.2)
  15. Use Regulations-Commercial (Sec. 6.1.2 thru 6.7.2)
  16. Use Regulations-MC District (Sec. 7.2.2)
  17. Maximum Sound Levels-dBA (Sec. 7.9.3)
  18. Prohibited Home Occupations (Sec. 9.4.3.D)
  19. Use Limitation-HO (Sec. 9.4.3.E)
  20. Minimum Yard Requirements (Sec. 10.4.5.C.1-11)
  21. Use of Parking and Loading Areas (Sec. 11.5.1-3)
  22. Pavement Requirements (Sec. 11.6.1.D)
  23. Outdoor Lighting (Sec. 12.11.A-C)
  24. Dwelling Unit Occupancy (Sec. 9.7)
  25. Establishment of Boarding House/Transient Lodging (Sec. 9.1.5)
- B.** All civil violations shall be punishable by a fine of \$200.00 for the initial violation and \$500.00 for each additional violation of the same ordinance section.
- Each day during which the violation is found to have existed shall constitute a separate offense. However, in no event shall specified violations arising from the same operative set of facts be charged more frequently than once in any ten (10) day period.
- Any such civil penalty shall not be assessed during the pendency of the 30-day appeal period provided in accordance with § 15.2-2311 of the Code of Virginia, 1950, as amended.
- C.** In no event shall a series of specified civil violations arising from the same operative set of facts result in civil penalties that exceed a total of \$5,000.00. When civil penalties for a zoning ordinance violation total \$5,000 or more, or after the issuance of the third civil fine when the violation is for excessive occupancy of a dwelling unit, the violation may be prosecuted as a criminal misdemeanor.

Nothing in this subsection shall be construed as prohibiting the Zoning Administrator from initiating civil injunction procedures in cases of repeat offenses.

## **Sec. 17.3 Enforcement Procedures and Remedies**

Violations of this Zoning Ordinance shall be corrected in accordance with the procedures of this section.

### **17.3.1 Criminal Violations**

- A. Upon becoming aware of a violation of any provision of this Zoning Ordinance, the Zoning Administrator or authorized agent thereof, may serve a Violation Notice and Correction Order on the person committing or permitting such violation, and the landowner.
- B. If the person responsible for the alleged violation denies that a violation exists, the person may appeal the Zoning Administrator's decision in accordance with the procedures of 3.14.
- C. If the person charged with such violation does not elect to correct the violation within such reasonable time as the Zoning Administrator has specified in the Violation Notice and Correction Order, the Zoning Administrator, or authorized agent thereof, may cause the service of a summons for such person in the Circuit Court or other court of competent jurisdiction to stand trial.

### **17.3.2 Civil Violations**

- A. Upon becoming aware of a civil violation of this Zoning Ordinance, the Zoning Administrator or authorized agent thereof, may issue a ticket or civil summons for such civil violation.
- B. If the person summoned or issued a ticket for a civil violation wishes to appeal the summons or ticket to the Board of Zoning Appeals, the appeal shall be taken within 30 days after the issuance of the summons or citation by filing with the Zoning Administrator, and with the Board of Zoning Appeals, a notice of appeal specifying the grounds thereof.
- C. Any person summoned or issued a ticket for a civil violation may make an appearance in person or in writing by mail to the Finance Department prior to the date fixed for trial in court, or, if no date has been fixed for trial, within 30 days from the date of issuance of the summons or ticket. Any person so appearing may enter a waiver of trial, admit liability, and pay the civil penalty established for the offence charged. Such persons shall be informed of their right to stand trial and that a signature to an admission of liability will have the same force and effect as a judgment of court. However, the appeal period for a notice of violation involving maximum occupancy limitations of a residential dwelling unit shall be ten (10) days from the date of the postmark on the certified first class mail and the notice shall so state.
- D. If a person charged with a violation does not elect to enter a waiver of trial and admit liability, the violation shall be tried in the General District Court in the same manner and with the same right of appeal as provided for by law. An admission of liability or a finding of liability shall not be a criminal conviction for any purpose.

## **Sec. 17.4 Additional Remedies**

In addition to the remedies provided in this article, the Town Council, Town Manager or Zoning Administrator may bring legal action to insure compliance with this Zoning Ordinance, including injunction, mandamus, abatement or any other appropriate action or proceeding authorized by law, to prevent, enjoin, abate, or remove any unlawful building, structure or use. Such action may also be instituted by any citizen who may be aggrieved or particularly damaged by any violation of any provisions of this Zoning Ordinance. At any time after the filing of an injunction or other appropriate proceeding to restrain, correct, or abate a Zoning Ordinance violation and where the owner of the real property is a party to such proceeding, the Zoning Administrator or governing body may record a memorandum of lis pendens pursuant to Code of Virginia Section 8.01-268. Any memorandum of lis pendens admitted to record in an action to enforce a zoning ordinance shall expire after 180 days. If the local real property and such owner subsequently transfers the ownership of the real property to an entity in which the owner holds an ownership interest greater than 50 percent, the pending enforcement proceedings shall continue to be enforced against the owner.