

**AN ORDINANCE TO REMOVE CRIMINAL SANCTIONS AND PENALTIES
FROM PROVISIONS OF THE FLOOD DAMAGE PREVENTION ORDINANCE
IN THE TOWN CODE FOR THE TOWN OF DUCK, NORTH CAROLINA**

Ordinance 22-03

WHEREAS, recently adopted N.C. Session Law 2021-138 encourages the decriminalization of certain sections in local ordinances by limiting local government authority for criminal enforcement; and

WHEREAS, under the North Carolina Constitution, where an ordinance violation can be a criminal violation, any criminal penalties collected must be paid to the local school board and cannot be retained by the municipality; and

WHEREAS, since it is rare for criminal penalties to be charged for zoning and other development ordinance violations, many municipalities make all or all but a small subset of zoning and other ordinance violations only subject to civil penalties and civil remedies. By doing so, the municipality can retain any civil penalties collected; and

WHEREAS, civil penalties are often an important part of the process of obtaining compliance with a municipality's code of ordinances; and

WHEREAS, the Town Council and Planning Board have found that the removal of criminal sanctions from the Flood Damage Prevention Ordinance is reasonable and consistent with the recommendations of the Town's adopted Comprehensive & CAMA Land Use Plan; and

NOW, THEREFORE, BE IT ENACTED AND ORDAINED by the Duck Town Council of the Town of Duck, North Carolina, as follows:

PART I. Subsection 150.27(M) of the Duck Code of Ordinances is hereby amended and restated in its entirety as follows (with additions and deletions indicated):

§ 150.27 DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR.

(M) Issue stop-work orders as required. Whenever a building or part thereof is being constructed, reconstructed, altered or repaired in violation of this ordinance, the Floodplain Administrator may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing or in charge of the work. The stop-work order shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed. Any person violating a stop-work order shall be subject to a civil penalty in the amount set forth in § 10.99 per violation. The person cited for the violation must

pay the civil penalty within 5 days of being cited for violating the stop-work order. In the event the person cited for the violation does not pay the penalty within the prescribed time, the town may bring a civil action to recover the penalty and the associated court costs.


PART 2. Subsection 150.28(E) of the Duck Code of Ordinances is hereby amended and restated in its entirety as follows (with additions and deletions indicated):

§ 150.28 CORRECTIVE PROCEDURES.

(E) *Failure to comply with order.* If the owner of a building or property fails to comply with an order to take corrective action for which no appeal has been made or fails to comply with an order of the governing body following an appeal, the owner shall be subject to the civil penalty set forth in § 10.99 per violation. The person cited for the violation must pay the civil penalty within 5 days of being cited for the violation. In the event the person cited for the violation does not pay the penalty within the prescribed time, the town may bring a civil action to recover the penalty and the associated court costs.

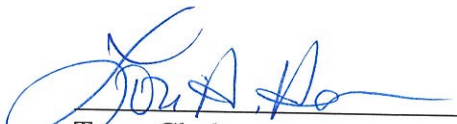
PART 3. This ordinance shall be effective upon its adoption.

Adopted and made effective on this the 6th day of April, 2022.



Mayor

Attest:



Town Clerk

