



TOWN OF MIDLAND

**ORDINANCE 2010-91**

**GENERAL PENALTIES  
THE TOWN OF MIDLAND**

**BE IT ORDAINED** by the Town Council of the Town of Midland, North Carolina:

**Part 1.** That the General Penalties Process for the Town of Midland is hereby established and written to read as follows:

**"GENERAL PENALTIES**

**Section 1. Administration.**

**State law reference—City authority enforcement of ordinances G.S. 14-4 and G.S. 160A-175**

"General Penalties; Enforcement of Ordinances; Continuing Violations. Unless otherwise provided herein, each violation of any Town ordinance shall constitute a misdemeanor, except as otherwise provided by statute, and violations of such provisions of any Town ordinance shall be punished by fine or imprisonment as provided by law. Each day any violation of any Town ordinance shall continue shall constitute a separate offense, except as may be specifically provided.

Violations of any Town ordinance shall constitute either a misdemeanor or, at the election of the Town, shall subject the offender to a civil penalty upon the issuance of a citation for said violation as hereinafter provided. The civil penalty, if not paid to the Town of Midland within fifteen days of the issuance of a citation, may be recovered by the Town in a civil action in the nature of debt. Unless otherwise provided by a specific provision of any Town ordinance, said civil penalties shall be in the amount of \$50.00 for each violation and each day any single violation continues shall be a separate violation.

In addition to the civil penalties set out above, any provision of any Town ordinance may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction. In such case, the General Court of Justice shall have jurisdiction to issue such orders as may be appropriate, and it shall not be a defense to the application of the Town for equitable relief that there is an adequate remedy at law.

In addition to the civil penalties set out above, any provision of any Town ordinance that makes unlawful a condition existing upon or use made of real property may be enforced by injunction and order of abatement by the General Court of Justice. When a violation of such a

provision occurs, the Town may apply to the appropriate division of the General Court of Justice for a mandatory or prohibitory injunction and/or order of abatement commanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property. The action shall be governed in all respects by the laws and rules governing civil proceedings, including the Rules of Civil Procedure in general and Rule 65 in particular.

An order of abatement may direct that buildings or other structures on the property be closed, demolished or removed; that fixtures, furniture or other movable property be removed from buildings on the property; that grass and weeds be cut; that abandoned or junked vehicles be removed; that improvements or repairs be made; or that any other action be taken that is necessary to bring the property into compliance with the applicable Town ordinance. If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, he may be cited for contempt, and the Town may execute the order of abatement. The Town shall have a lien on the property for the cost of executing an order of abatement in the nature of a mechanic's and materialman's lien. The defendant may secure cancellation of an order of abatement by paying all costs of the proceedings and posting a bond for compliance with the order. The bond shall be given with sureties approved by the Clerk of Superior Court in an amount approved by the judge before whom the matter is heard and shall be conditioned on the defendant's full compliance with the terms of the order of abatement within a time fixed by the judicial order. Cancellation of an order of abatement shall not suspend or cancel an injunction issued in conjunction therewith.

The provisions of any Town ordinance may be enforced by one, all, or a combination of the remedies authorized and prescribed by this Section.

Any ordinances hereafter adopted by the Town Council of the Town of Midland, the violation of which shall incur a penalty, shall specify whether the enforcement shall be pursuant to the civil penalty and/or criminal penalty provisions of this Ordinance.

## **Section 2. Process and Notice of Violation.**

Upon determination of a violation of any section of any Town ordinance, the penalty for which is a civil penalty, the enforcement official of the Town of Midland shall cause a warning citation to be issued to the violator. Such warning citation shall set out the nature of the violation, the section violated, the date of the violation, and shall contain an order to immediately cease the violation. If the violation is in the nature of an infraction for which an order of abatement would be appropriate in a civil proceeding, a reasonable period of time must be stated in which the violation must be abated. The warning citation shall specify that a second citation shall incur a civil penalty, together with costs, and attorney fees.

An appeal from a warning citation shall be taken within ten (10) days from the date of said warning citation to the Board of Adjustment. Except in any case where the ordinance violated, which is the subject of the warning citation, specifically grants to the Board of Adjustment other

powers in considering appeals and such appeal is applied for, the Board of Adjustment in considering appeals of warning citations shall have power only in the manner of administrative review and interpretation where it is alleged that the enforcement official has made an error in the application of an ordinance, in the factual situation as it relates to the application of an ordinance or both.

Where the enforcement official of the Town determines that the period of time stated in the original warning citation is not sufficient for abatement based upon the work required or consent agreement, the enforcement official may amend the warning citation to provide for additional time.

Upon failure of the violator to obey the warning citation, a civil citation shall be issued by the enforcement official of the Town of Midland and either served directly on the violator, his duly designated agent, or registered agent if a corporation, either in person or posted in the United States mail service by first class mail addressed to the last known address of the violator as contained in the records of the County or obtained from the violator at the time of issuance of the warning citation. The violator shall be deemed to have been served upon the mailing of said citation. The citation shall direct the violator to appear before the Town Administrator of the Town of Midland, or designee, within fifteen days of the date of the citation, or alternatively to pay the citation by mail. The violation for which the citation is issued must have been corrected by the time the citation is paid, otherwise further citations shall be issued. Citations may be issued for each day the offense continues until the prohibited activity is ceased or abated.

If the violator fails to respond to a citation within fifteen days of its issuance, and pay the penalty prescribed therein, the Town of Midland may institute a civil action in the nature of debt in the appropriate division of the North Carolina General Court of Justice for the collection of the penalty, costs, attorney fees, and such other relief as permitted by law."

**Part 2.** All ordinances in conflict with the provisions of this Ordinance are hereby repealed to the extent of such conflict.

**Part 3.** This Ordinance shall become effective upon its adoption by the Town Council of the Town of Midland, North Carolina.

**ADOPTED** this the 11<sup>th</sup> day of May, 2010.

**ATTEST**

**SEAL**

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Mayor of Midland, Kathy Kitts

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Town Clerk, Nancy E. Boyden CMC