

Pender County Planning and Community Development

Planning Division

805 S. Walker Street
PO Box 1519
Burgaw, NC 28425



Phone: 910-259-1202
Fax: 910-259-1295
www.pendercountync.gov

Decriminalization of UDO Penalties Zoning Text Amendment

Case Number: ZTA 2023-19

Application Type: Zoning Text Amendment

Applicant: Pender County Planning & Community Development

UDO Section to be Amended: 11.12.2(B), Penalties; 13.4.10(D)(1), Remedies and Penalties, Criminal Penalty

Description: Pender County, applicant, is requesting the approval of a Zoning Text Amendment to the Pender County Unified Development Ordinance. Specifically, the request is to amend Section 11.12.2(B) "Penalties;" and Section 13.4.10(D)(1) "Remedies and Penalties, Criminal Penalty." These amendments are requested to comply with state law. The proposal is to strike language referring to instituting criminal penalties for violation of planning and development ordinances.

Board of County Commissioners/Planning Board Meeting

PB: 9/6/2023, BOCC: 10/16/2023

Included: Application Materials, Application Package, Proposed Amended Text

APPLICATION PACKAGE

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Zoning Text Amendment Submission

Applications will be considered for review by Staff only when deemed complete. The application will be regarded as incomplete until the following items are received by the Planning and Community Development Staff.

1. X **Pre-submittal Meeting**
Date of Meeting 7/18/2023
2. X **Signed Application**
3. N/A **Payment**
\$250
4. X **Narrative**
A letter describing, in detail the intent and purpose of the amendment presented, meeting the approval criteria set forth in Section 3.18.5 of the Pender County UDO.
5. X **Digital Submission**
For all documents submitted in paper copy, please a digital copy with paper submission.

I certify that all information presented in this application is accurate to the best of my knowledge.

Signature of Applicant Adam Moran

Date 8/1/2023

Printed Name Adam Moran

Staff Initials:	<u> AM </u>
Date:	<u> 8/1/2023 </u>

Zoning Text Amendment



**Submit Completed Application
and Materials**



Planning Staff Review



**Planning Board Public Hearing for
recommendation**



**Board of County Commissioners Decision
Rendered**

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TEXT AMENDMENT

A request to amend the text of this Ordinance may be initiated by the County Commissioners, Board of Adjustment, Planning Board, Administrator, or a citizen of Pender County.

Approval Criteria (*Section 3.18.5*)

In evaluating any proposed ordinance text amendment, the Planning Board and the County Commissioners shall consider the following:

- a. The extent to which the proposed text amendment is consistent with the remainder of the Ordinance, including, specifically, any purpose and intent statements;
- b. The extent to which the proposed text amendment represents a new idea not considered in the existing Ordinance, or represents a revision necessitated by changing circumstances over time;
- c. Whether or not the proposed text amendment corrects an error in the Ordinance; and
- d. Whether or not the proposed text amendment revises the Ordinance to comply with state or federal statutes or case law.
- e. In deciding whether to adopt a proposed Ordinance text amendment, the central issue before the County Commissioners is whether the proposed amendment advances the public health, safety or welfare and is consistent with any adopted County Land Use Plan documents, the CAMA Land Use Plan, and the specific intent of this Ordinance.

Action by the Planning Board

1. Before making any recommendation on a text amendment, the Planning Board shall consider any recommendations from the Administrator and shall conduct a public hearing where interested parties may be heard.
2. The Planning Board shall make a recommendation based on the approval criteria.
3. The Planning Board shall make its recommendation following the initial public hearing.

Action by County Commissioners

1. Before taking action on a text amendment, the County Commissioners shall consider the recommendations of the Planning Board and Administrator and shall conduct a public hearing.
2. The County Commissioners shall make a decision based on the approval criteria.
3. Following the public hearing, the County Commissioners may approve the text amendment, deny the amendment, or send the amendment back to the Planning Board or a committee of the County Commissioners for additional consideration.

In deciding whether to adopt a proposed Ordinance text amendment, the central issue before the County Commissioners is whether the proposed amendment advances the public health, safety or welfare and is consistent with any adopted County Land Use Plan documents, the CAMA Land Use Plan, and the specific intent of this Ordinance.

APPLICATION FOR TEXT AMENDMENT

THIS SECTION FOR OFFICE USE

Application No.	ZTA 2023-19	Date	8/1/2023
Application Fee	\$ N/A - Staff Submission	Invoice Number:	N/A - Staff Submission
Pre-Application Conference	7/18/2023	Hearing Date	9/6/2023

SECTION 1: APPLICANT INFORMATION

Applicant's Name:	Pender County Attorney & Pender County Planning and Community Development
Applicant's Address:	805 S. Walker Street
City, State, & Zip	Burgaw, NC 28425
Phone Number:	910-259-1202
Email Address:	amoran@pendercountync.gov

SECTION 2: UDO TEXT TO BE AMENDED

Current Text to be Amended (Please site accurate Article number referenced):
11.12.2(B) and 13.4.10(D)(1)
Proposed Text to be added:
Both sections noted above are to be removed from the UDO as they are in violation of
North Carolina Session Law 2021-138 PART XIII. Decriminalization of Certain Ordinances, Section 13.(a-d).

SECTION 3: SIGNATURE

Applicant's Signature	<i>Adam Moran</i>	Date:	8/1/2023
Applicant's Printed Name	Adam Moran	Date:	8/1/2023

NOTICE TO APPLICANT

If the applicant makes significant changes to the application for a text amendment after the Planning Board has made its recommendation, the Administrator may refer the modified request back to the Planning Board for an additional public hearing.

TEXT AMENDMENT CHECKLIST

<input checked="" type="checkbox"/>	Signed application form
<input checked="" type="checkbox"/>	Application fee
<input checked="" type="checkbox"/>	A letter describing, in detail the intent and purpose of the amendment presented, meeting the approval criteria set forth in Section 3.18.5 of the Pender County UDO (shown on page 1 of this application)

Office Use Only

<input type="checkbox"/> ZTA Fees: \$250 N/A - Staff Submission		Total Fee Calculation: N/A - Staff Submission	
Payment Method:	Cash :	Credit Card:	Check:
N/A - Staff Submission	<input type="checkbox"/> \$ _____	<input type="checkbox"/> Master Card <input type="checkbox"/> Visa	<input type="checkbox"/> Check # _____
Application Received By:	Adam Moran	Date:	8/1/2023
Application completeness approved by: Daniel Adams		Date:	8/1/2023
Dates Scheduled for Public Hearings:	<input checked="" type="checkbox"/> Planning Board: 9/6/2023	<input checked="" type="checkbox"/> BOC: 10/16/2023	

**ATTACHMENT 1 – RED-LINED COPY OF
PROPOSED TEXT CHANGES**

Proposed Text Amendments

11.12.2 Penalties

- A. Any person who does not comply with this article will be notified, by certified mail, to meet the requirements within 30 days from the date of notification.
- ~~B. Any person violating provisions in this article shall be guilty of a misdemeanor and shall be subject to a fine of not more than fifty dollars (\$50) dollars or imprisonment of not more than thirty (30) days as provided by North Carolina General Statute 14-4. Each day shall constitute a separate violation and shall be punishable as a separate offense.~~
- B. Any person who does not comply with this article will be notified, by certified mail, and required to come into compliance within 30 days from the date of notification.
- C. Any violation of this article may be subject to civil remedies as set forth in North Carolina General Statute 153A-123C.

13.4.10 Remedies and Penalties

The Administrator may pursue one or more of the following remedies and penalties to prevent, correct, or abate a violation of this Ordinance. Use of one of the authorized remedies and penalties does not preclude the Administrator from using any other authorized remedies or penalties, nor does it relieve any party to the imposition of one (remedy or penalty) from imposition of any other authorized remedies or penalties.

- A. Permit Revocation
 - 1) In accordance with the provisions of Section 12.2 of this Ordinance and the provisions of N.C.G.S. 160D-403(f) and 160D-1115, the Administrator or Building Inspector may revoke any permit or other authorization granted under this Ordinance for failure to comply with the provisions of this Ordinance or the terms and conditions of a permit or authorization granted under this Ordinance.
- B. Permit Denial
 - 1) As long as a violation of this Ordinance remains uncorrected, the Administrator may deny or withhold approval of any permit or other authorization provided for in this Ordinance that is sought for the property on which the violation occurs.
- C. Civil Penalty
 - 1) Violation of this Ordinance subjects the violator to a civil penalty in the amount of One Hundred (\$100.00) Dollars for each offense. If the offender fails to remedy the violation and pay any civil penalty within ten days after being cited for said violation (or within the time prescribed by a citation if it provides for a longer period of time than ten days), the civil penalty may be recovered in a civil action in the nature of a debt, as provided in G.S. 153A-123(c). The Administrator shall make written or in person demand for payment, delivered by certified mail, return receipt requested, upon the person or persons responsible or their agents and assigns, and shall set forth in detail the violation for which the penalty has been invoked. If payment is not received or equitable settlement reached within thirty (30) days after demand for payment is received, the County may refer the matter to the County

Proposed Text Amendments

Attorney for the institution of a civil action in the nature of debt in the name of Pender County in the appropriate division of the General Court of Justice in Pender County, for recovery of the penalty, and any equitable remedy available to the County.

- 2) Each day a violation continues, shall constitute a separate and distinct offense, punishable as set forth herein and described above.
 - a) Violations of Section 9.7.2, Temporary Signs, shall in all cases be deemed a civil penalty in accordance with Section 12.4.9.

~~D. Criminal Penalty~~

- ~~1) As provided in Section 14-4 of the North Carolina General Statutes, violation of this Ordinance constitutes a misdemeanor, punishable by a fine up to \$500.00 or imprisoned not more than thirty (30) days.~~

D. Injunction and Abatement Order

- 1) If a building or structure is erected, constructed, reconstructed, or altered, repaired, converted, or maintained, or any building, structure or land is occupied or used in violation of the General Statutes of North Carolina, this Ordinance, or other regulation made under authority conferred thereby. The Administrator may institute action in the district Court, Civil Division, or any other court of competent jurisdiction for a mandatory or prohibitory injunction and order of abatement commanding the violator to correct or cease a violation of this Ordinance. In addition to an injunction, the court may enter an order of abatement as a part of the judgment in the case. An order of abatement may direct that buildings or other structures on the property be closed, and demolished, or removed; that fixtures, furniture, or other movable property be removed from buildings on the property; that grass and weeds be cut; that improvements or repairs be made; or that any other action be taken that is necessary to bring the property into compliance with this 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 county may execute the order of abatement. The county shall have a lien on the property for the cost of executing an order of abatement.

E. Other Equitable Relief

- 1) In addition to the above remedies and penalties, the Administrator may institute any other appropriate equitable action or proceeding in a court of competent jurisdiction to prevent, correct, or abate a violation of this Ordinance.

ATTACHMENT 2 – SL2021-138 PART XIII
SECTION 13 (a-d)

detention; (ii) best practices for handling incidents involving juveniles; (iii) adolescent development and psychology; and (iv) promoting relationship building with youth as a key to delinquency prevention.

- c. Ethics.
- d. Mental health for justice officers.
- e. Community policing.
- f. Minority sensitivity.
- g. Use of force.
- h. The duty to intervene and report.

...."

SECTION 11.(c) This section becomes effective January 1, 2022.

PART XII. EXEMPT CHANGES TO LAW ENFORCEMENT IN-SERVICE TRAINING STANDARDS FROM RULEMAKING

SECTION 12.(a) G.S. 150B-1(d) reads as rewritten:

"(d) Exemptions from Rule Making. – Article 2A of this Chapter does not apply to the following:

...

- (6a) The Criminal Justice Education and Training Standards Commission with respect to establishing minimum standards for in-service training for criminal justice officers under G.S. 17C-6(a)(14).
- (6b) The Sheriffs' Education and Training Standards Commission with respect to establishing minimum standards for in-service training for justice officers under G.S. 17E-4(a)(11).

...."

SECTION 12.(b) This section is effective when it becomes law.

PART XIII. DECRIMINALIZATION OF CERTAIN ORDINANCES

SECTION 13.(a) G.S. 153A-123 reads as rewritten:

"§ 153A-123. Enforcement of ordinances.

...

(b) ~~Unless the board of commissioners has provided otherwise, Except for the types of ordinances listed in subsection (b1) of this section, violation of a county ordinance is may be a misdemeanor or infraction as provided by G.S. 14-4. G.S. 14-4 only if the county specifies such in the ordinance. An ordinance may provide by express statement that the maximum fine, term of imprisonment, or infraction penalty to be imposed for a violation is some amount of money or number of days less than the maximum imposed by G.S. 14-4. Notwithstanding G.S. 153A-45, no ordinance specifying a criminal penalty may be enacted at the meeting in which it is first introduced.~~

(b1) No ordinance of the following types may impose a criminal penalty:

- (1) Any ordinance adopted under Article 18 of this Chapter, Planning and Regulation of Development or, its successor, Chapter 160D of the General Statutes, except for those ordinances related to unsafe buildings.
- (2) Any ordinance adopted pursuant to G.S. 153A-134, Regulating and licensing businesses, trades, etc.
- (3) Any ordinance adopted pursuant to G.S. 153A-138, Registration of mobile homes, house trailers, etc.
- (4) Any ordinance adopted pursuant to G.S. 153A-140.1, Stream-clearing programs.
- (5) Any ordinance adopted pursuant to G.S. 153A-143, Regulation of outdoor advertising or, its successor, G.S. 160D-912, Outdoor advertising.

- (6) Any ordinance adopted pursuant to G.S. 153A-144, Limitations on regulating solar collectors or, its successor, G.S. 160D-914, Solar collectors.
- (7) Any ordinance adopted pursuant to G.S. 153A-145, Limitations on regulating cisterns and rain barrels.
- (8) Any ordinance regulating trees.

...."

SECTION 13.(b) G.S. 160A-175 reads as rewritten:

"§ 160A-175. Enforcement of ordinances.

...

(b) ~~Unless the Council shall otherwise provide, Except for the types of ordinances listed in subsection (b1) of this section, violation of a city ordinance is~~ may be a misdemeanor or infraction as provided by G.S. 14-4. G.S. 14-4 only if the city specifies such in the ordinance. An ordinance may provide by express statement that the maximum fine, term of imprisonment, or infraction penalty to be imposed for a violation is some amount of money or number of days less than the maximum imposed by G.S. 14-4. Notwithstanding G.S. 160A-75, no ordinance specifying a criminal penalty may be enacted at the meeting in which it is first introduced.

(b1) No ordinance of the following types may impose a criminal penalty:

- (1) Any ordinance adopted under Article 19 of this Chapter, Planning and Regulation of Development, or its successor, Chapter 160D of the General Statutes, except for those ordinances related to unsafe buildings.
- (2) Any ordinance adopted pursuant to G.S. 160A-193.1, Stream-clearing programs.
- (3) Any ordinance adopted pursuant to G.S. 160A-194, Regulating and licensing businesses, trades, etc.
- (4) Any ordinance adopted pursuant to G.S. 160A-199, Regulation of outdoor advertising or, its successor, G.S. 160D-912, Outdoor advertising.
- (5) Any ordinance adopted pursuant to G.S. 160A-201, Limitations on regulating solar collectors or, its successor, G.S. 160D-914, Solar collectors.
- (6) Any ordinance adopted pursuant to G.S. 160A-202, Limitations on regulating cisterns and rain barrels.
- (7) Any ordinance adopted pursuant to G.S. 160A-304, Regulation of taxis.
- (8) Any ordinance adopted pursuant to G.S. 160A-306, Building setback lines.
- (9) Any ordinance adopted pursuant to G.S. 160A-307, Curb cut regulations.
- (10) Any ordinance regulating trees.

...."

SECTION 13.(c) G.S. 14-4 reads as rewritten:

"§ 14-4. Violation of local ordinances misdemeanor.

(a) ~~Except as provided in subsection (b), (b) or (c) of this section,~~ if any person shall violate an ordinance of a county, city, town, or metropolitan sewerage district created under Article 5 of Chapter 162A, he shall be guilty of a Class 3 misdemeanor and shall be fined not more than five hundred dollars (\$500.00). No fine shall exceed fifty dollars (\$50.00) unless the ordinance expressly states that the maximum fine is greater than fifty dollars (\$50.00).

(b) If any person shall violate an ordinance of a county, city, or town regulating the operation or parking of vehicles, he shall be responsible for an infraction and shall be required to pay a penalty of not more than fifty dollars (\$50.00).

(c) A person may not be found responsible or guilty of a local ordinance violation punishable pursuant to subsection (a) of this section if, when tried for that violation, the person produces proof of compliance with the local ordinance through any of the following:

- (1) No new alleged violations of the local ordinance within 30 days from the date of the initial alleged violation.

- (2) The person provides proof of a good-faith effort to seek assistance to address any underlying factors related to unemployment, homelessness, mental health, or substance abuse that might relate to the person's ability to comply with the local ordinance."

SECTION 13.(d) This section becomes effective December 1, 2021, and applies to offenses and violations committed on or after that date.

PART XIV. REQUIRE MANDATORY FIRST APPEARANCE FOR MISDEMEANORS WHEN DEFENDANT IS IN CUSTODY AND REQUIRE FIRST APPEARANCE FOR ALL CHARGES WHEN DEFENDANT IS IN CUSTODY TO BE HELD WITHIN SEVENTY-TWO HOURS

SECTION 14.(a) G.S. 15A-601 reads as rewritten:

"§ 15A-601. First appearance before a district court judge; ~~right in felony and other cases in original jurisdiction of superior court; consolidation of first appearance before magistrate and before district court judge; first appearance before clerk of superior court; use of two-way audio and video transmission.~~

(a) Any defendant charged in a magistrate's order under G.S. 15A-511 or criminal process under Article 17 of this Chapter, Criminal Process, with a crime in the original jurisdiction of the superior court must be brought before a district court judge in the district court district as defined in G.S. 7A-133 in which the crime is charged to have been committed. This first appearance before a district court judge is not a critical stage of the proceedings against the defendant.

Any defendant charged in a magistrate's order under G.S. 15A-511 or criminal process under Article 17 of this Chapter, Criminal Process, with a misdemeanor offense and held in custody must be brought before a district court judge in the district court district as defined in G.S. 7A-133 in which the crime is charged to have been committed. This first appearance before a district court judge is not a critical stage of the proceedings against the defendant.

...

(b) When a district court judge conducts an initial appearance as provided in G.S. 15A-511, ~~he~~ the judge may consolidate those proceedings and the proceedings under this Article.

(c) Unless the defendant is released pursuant to Article 26 of this Chapter, Bail, first appearance before a district court judge must be held within ~~96-72~~ hours after the defendant is taken into custody or at the first regular session of the district court in the county, whichever occurs first. If the defendant is not taken into custody, or is released pursuant to Article 26 of this Chapter, Bail, within ~~96-72~~ hours after being taken into custody, first appearance must be held at the next session of district court held in the county. This subsection does not apply to a defendant whose first appearance before a district court judge has been set in a criminal summons pursuant to G.S. 15A-303(d).

...

(e) The clerk of the superior court in the county in which the defendant is taken into custody may conduct a first appearance as provided in this Article if a district court judge is not available in the county within ~~96-72~~ hours after the defendant is taken into custody. A magistrate may conduct the first appearance if the clerk is not available. The ~~clerk,~~ clerk or magistrate, in conducting a first appearance, shall proceed under this Article as would a district court judge."

SECTION 14.(b) This section becomes effective December 1, 2021, and applies to criminal processes served on or after that date.

PART XV. REQUIRE USE OF THE NATIONAL DECERTIFICATION INDEX MAINTAINED BY THE INTERNATIONAL ASSOCIATION OF DIRECTORS OF LAW