

Sec. 21-124. Penalties.

(a) *Generally.* Any person who violates any of the sections of this chapter, or rules or orders adopted or issued pursuant to this chapter, shall be subject to any one, all or a combination of the civil penalties prescribed by this section. Penalties assessed under this chapter are in addition to and not in lieu of compliance with the requirements of this chapter. The person performing the work, the property owner and the person contracting for the performance shall be jointly and severally liable for any penalty or other enforcement action imposed pursuant to this chapter or other provisions of law on account of work performed in violation of this chapter.

(b) *Civil penalties.* Civil penalties for violations of this chapter shall be assessed pursuant to the following:

(1) Failure to plant original or replacement trees in accordance with this chapter shall be \$50.00 for each tree not planted. No civil penalty shall be assessed until the person alleged to be in violation has been notified of the violation as provided in section 21-122. If the site is not brought into compliance within the time specified in the notice of violation, a civil penalty may be assessed from the date the notice of violation is received. The failure to plant each individual tree shall constitute a separate, daily and continuing violation.

(2) Injury or damage to, or destruction of, trees and shrubs protected by sections 21-61 and 21-62 that result in the total loss of the tree or shrub shall be assessed in accordance with the tree evaluation formula or other generally accepted industry evaluation methods. However, the maximum civil penalty for each tree injured, damaged or destroyed shall not exceed \$20,000.00. No notice of violation is needed prior to the assessment of a civil penalty issued pursuant to this subsection.

(3) Injury or damage to, or destruction of, trees and shrubs protected by sections 21-61 and 21-62 that do not result in the total loss of the trees shall be assessed for each tree or shrub in accordance with the tree evaluation formula or other generally accepted industry evaluation methods. However, the maximum amount of the penalty shall not exceed \$1,000.00. No notice of violation is needed prior to the assessment of a civil penalty issued pursuant to this subsection.

(4) Failure to install or maintain required tree protection measures in accordance with section 21-92 shall be \$1,000.00. No civil penalty shall be assessed until the person has been notified of the violation as provided in section 21-122. If the site is not brought into compliance within the time specified in the notice of violation, a civil penalty may be assessed from the date the notice of violation is received. The failure to install the required tree protection measures shall constitute a separate, daily and continuing violation. Injury or damage to, or destruction of, trees in the tree protection zone and tree save area resulting from inadequate or omitted tree protection measures constitutes a separate violation which may subject the violator to any other applicable penalty set forth in this section.

(5) Any other action that constitutes a violation of this chapter may subject the violator to a civil penalty of \$50.00, and each day of continuing violation shall constitute a separate violation. However, the maximum amount of the penalty shall not exceed \$1,000.00.

(c) *Nonmonetary penalty.* A nonmonetary penalty, in the form of increased or additional planting requirements, may be assessed in addition to or in lieu of any monetary penalties prescribed under this section.

(d) *Notice.* The City shall determine the amount of the civil penalty and shall notify the person who is assessed the civil penalty of the amount of the penalty and the reason for assessing the penalty. The notice of assessment shall be served by any means authorized under G.S. 1A-1, rule 4, and shall direct the violator to either pay the assessment or contest the assessment as specified in section 21-126. If payment of assessed penalties is not received within thirty (30) days after it is due, or if no request for a hearing has been made as provided in section 21-126, the assessment shall be considered a debt due and owing to the City, and the matter shall be referred to the city attorney for institution of a civil action to recover the amount of the debt. The civil action may be brought in the Mecklenburg County Superior Court or in any other court of competent jurisdiction.

(e) *Civil action for unpaid assessment.* A civil action must be filed within three 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.

(f) *Use of civil penalties collected.* Civil penalties collected pursuant to this chapter shall be credited to the general fund as a nontax revenue and shall be used to further the purposes, intent and requirements of this chapter. The Commission shall be consulted with regard to use of collected funds.

(g) *Criminal penalties.* Any person who knowingly or willfully violates any section of this chapter shall be guilty of a class 2 misdemeanor and may, upon conviction thereof, be subject to punishment as provided in section 2-21. This remedy is in addition to any civil penalties that may be assessed.