

# **Chapter Thirteen**

## **Enforcement and Penalties**

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### 13.1 Authority

The Plan Commission, Board of Zoning Appeals, County Commissioners, and/or Zoning Administrator are designated to enforce the provisions, regulations, and intent of this Ordinance. All remedies and enforcement shall comply with the powers set forth in IC 36-7-4-1000 et. al. and all other applicable State law.

### 13.2 Violations

Complaints made pertaining to the Zoning Ordinance shall be investigated by the Zoning Administrator. Also, any suspected violations by the Plan Commission, Board of Zoning Appeals, County Commissioners, or Zoning Administrator shall be investigated. Action may or may not be taken depending on the findings. The degree of action will be to the discretion of the investigating person(s) and should reflect what is warranted by the violation.

### 13.3 Inspection of Property

Investigations of property may be done so by the Zoning Administrator either from a right-of-way without permission of the property owner, or adjacent property (with permission), or from the property suspected of a violation once the inspector has presented sufficient evidence of their authorization and described the purpose of the inspection to the owner, tenant, or occupant at the time of the inspection.

In the event that the investigator(s) is (are) denied entry, the Plan Commission, Board of Zoning Appeals, County Commissioners or Zoning Administrator may apply to the court of jurisdiction to invoke legal, applicable, or special remedy for the enforcement of this Ordinance or any applicable ordinances adopted under State code. The application shall include the purpose, violation(s) suspected, property address, owner's name if available, and all relevant facts. Additional information may be necessary as requested by the court.

Pursuant to applicable regulations the owner, tenant, or occupant shall permit entry by the Zoning Administrator.

### 13.4 Responsibility of Violations

The owner, tenant, or occupant of any property of building, or part thereof, shall be responsible for the violation. Architects, builders, developers, or agents thereof may also be found responsible for the violation if evidence of their involvement or negligence is found. Ultimately, if fault is not clearly found in whole or in part in persons other than the owner, the owner shall be held responsible in whole or in part as warranted by the Plan Commission, Board of Zoning Appeals, County Commissioners, or Zoning Administrator.

### 13.5 Liability

A structure that is raised or converted, or land used in violation of this Ordinance or its subsequent amendments may be deemed a common nuisance and the owner or possessor of the structure, or land is liable for said nuisance.

### 13.6 Violations During the Construction/Building Process

The Plan Commission and/or Zoning Administrator may place a Stop-Work-Order or Violation Notice on any land/property improvement process. Stop-Work-Orders shall be issued by written letter which shall state the violation and that work or illegal activity must stop immediately until the matter is resolved. This letter shall be posted in a conspicuous place or be delivered/mailed to the owner, developer, property manager, tenant, or occupant. The Plan Commission or Zoning Administrator must meet with the person(s) served the Stop-Work-Order notice within seven (7) days of such a request to meet. A Memorandum of Agreement shall be drafted stating the conditions in which construction or action may be resumed. This Memorandum

of Agreement must be signed by the owner, developer, property manager, tenant, or occupant that has caused or is responsible for the violation and the Zoning Administrator or Plan Commission President.

Reasons for a Stop-Work-Order include:

- A. Not complying with Development Standards and/or any regulations of the Zoning or Subdivision Control Ordinance.
- B. Not obtaining an Improvement Location Permit.
- C. Not meeting the conditions or commitments of a Special Exception, Variance, or building permit.
- D. Not meeting the conditions of Development Commitments, Development Plans, Detail Plans, or covenants, which are enforceable by the Plan Commission.
- E. Not obtaining any other permit necessary for site/property improvement as called out in local code, Zoning Ordinance or Subdivision Control Ordinance.
- F. Illegal use or expansion of use of building/structures or building/structures and land in combination.

### **13.7 Types of Violations**

The following items shall be deemed civil zoning violations, enforceable by the Plan Commission, Board of Zoning Appeals, County Commissioners and/or Zoning Administrator. Penalties may be imposed based on the provisions set forth in this Article.

- A. The placement or erection of a primary structure, secondary structure, sign, structures or any other element determined by the Plan Commission or Zoning Administrator to not conform to the provisions or explicit intent of the Zoning Ordinance and that has not specifically been granted.
- B. The maintenance of a primary structure, secondary structure, sign, accessory structure, or any other element determined by the Plan Commission or Zoning Administrator to not conform to the provisions or explicit intent of the Zoning Ordinance and that has not specifically been granted.
- C. Failure to obtain an Improvement Location Permit when required.
- D. Conducting a use or uses that do not comply with the provisions or explicit intent of the Zoning Ordinance, Subdivision Control Ordinance, Sign Ordinance, or Floodplain regulations, and which have not specifically been granted.
- E. Any failure to comply with the Development Standards and/or any regulations of the Zoning Ordinance, Subdivision Control Ordinance, Sign Ordinance, or Floodplain regulations, and Improvement Location Permit, and approved Development Plan.
- F. Proceeding with work under a Stop-Work-Order or a violation of a Memorandum of Agreement.
- G. Any failure to comply with commitments or conditions made in connection with a Rezoning, Special Exception, Development Standards, Variance, Use Variance or other similar or documentable commitment, including verbal agreements during official Plan Commission, Board of Zoning Appeals, and County Commissioners meetings.

### **13.8 Procedure for Violations**

There shall be a three-step procedure for violations of this Ordinance. These steps are as follows:

- A. The Plan Commission, Zoning Administrator or designated representative of the Plan Commission or County Commissioners shall issue a Notice of Fines and Penalties to the person(s) who have committed,

in whole or in part, a violation. The Notice of Fines and Penalties is a warning to the violator(s) that a Violation has been determined and that it must be corrected within ten (10) days of the mailed date of notice or posting of notice.

- B. The Plan Commission, Zoning Administrator or designated representative of the Plan Commission or County Commissioners shall issue a Notice of Violation to the person(s) who have committed, in whole or in part, a violation. The Notice of Violation is a citation that states the fines and penalties for the violation. The person(s) in violation will have fifteen (15) days to pay said fees and/or comply with the penalties. The person(s) in violation must correct the violation within fifteen (15) days or face additional Notices of Violation.
- C. If the person(s) in violation refuse to pay or comply with the penalties, or correct the violation, after Notice, the Plan Commission or County Commissioners may pursue court action through the court of jurisdiction. Fines and liens against the property may also be pursued until the matter is resolved.

**13.9 Fines and Penalties**

The Board of Zoning Appeals by mandatory injunction in the Circuit or Superior Court of the county against the owner or possessor of the real estate, may require the removal of a structure erected in violation of this Ordinance, or the removal of any use or condition in violation of this Ordinance. Monetary fines will be imposed for each civil violation determined upon a single inspection as follows:

First Violation	\$50.00
Additional Violations	\$50.00 each

Additional monetary fines will be imposed for each additional notification for each civil violation. Notices for violations shall be sent no sooner than fifteen days after the previous notice.

Second Notice	\$ 75.00 per civil violation
Third Notice	\$125.00 per civil violation
Fourth Notice	\$200.00 per civil violation
Each Additional Notice	\$250.00 per civil violation

No single civil violation shall exceed two thousand dollars (\$2000.00). Payment of any violation shall be made to the County Clerk who shall deposit the funds in the General Fund or Planning Commission Fund as determined by the County Commissioners. A receipt of payment must be recorded and a receipt issued to the person making payment.

**13.10 Appeals or Trials**

- A. Any person receiving a notice of violation and/or fines may appeal the violation and/or fine to the Board of Zoning Appeals or to the court of jurisdiction. A written statement from the person in violation shall be submitted to the Zoning Administrator via Certified Mail at least three (3) days prior to the date the fine is due.
- B. Fines due will be postponed until the BZA or court of jurisdiction have made a ruling as to the violation and/or fine. The person(s) in violation shall have thirty (30) days to file for a hearing with the BZA or court of jurisdiction. Also the person(s) in violation shall have a maximum of two (2) years to complete the hearing process with the BZA. Failure to meet these deadlines will reinstate all fines due by the person(s) in violation.
- C. No additional notices will be issued by the Plan Commission in the event the person(s) in violation has (have) submitted a written statement of their intention to Appeal or go to trial.

### **13.11 Enforcement, Remedies and Injunctive Relief**

- A. The Plan Commission or any enforcement official designated by this Ordinance may bring an action in the Circuit or Superior Court of the County to evoke any legal, equitable, or special remedy, for the enforcement of any ordinance or regulation created under IC 36-7-4, and its subsequent amendments this includes but is not limited to the Zoning Ordinance, Subdivision Control Ordinance, Sign Ordinance, etc. The Plan Commission or any enforcement official designated by this Ordinance may also bring an action in the Circuit or Superior Court of the County to enforce:
  - 1. All agreements between the Plan Commission or its designees, which have been recorded as covenants in connection with a subdivision plat, a development plan, or a planned development.
  - 2. All commitments made in accordance with IC 36-7-4 et al.
  - 3. All conditions imposed in accordance with IC 36-7-4 et al.
- B. The Board of Zoning Appeals, or any enforcement official designated by this Ordinance may bring action in the Circuit or Superior Court of the County to restrain a person violating IC 36-7-4 et al. or any ordinance adopted under IC 36-7-4 et al. which includes but is not limited to the Zoning Ordinance, Subdivision Control Ordinance, Sign Ordinance, etc.
- C. The Board of Zoning Appeals or any enforcement official designated by this Ordinance may also bring an action in the Circuit or Superior Court of the County for a mandatory injunction, directing the removal of a structure erected in violation of this Ordinance or applicable State code.
- D. If the Board of Zoning Appeals, or its designated enforcement official is successful in its action, the respondent shall bear all costs of the action.
- E. An action to enforce a commitment made in accordance with IC 36-7-4 et al. may be brought in the Circuit or Superior Court of the County by:
  - 1. Any person who is entitled to enforce a commitment made in accordance with 36-7-4 et al. under the rules of the Plan Commission or the Board of Zoning Appeals in force at the time the commitment was made; or
  - 2. Any other specially affected person who was designated in the commitment.