
Zoning Ordinance
Article Fourteen

Enforcement and Penalties

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14.1 Authority

The Plan Commission, Board of Zoning Appeals, Board of County Commissioners, and/or Planning Director (and their designees) 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 laws.

14.2 Violations

Complaints made pertaining to this Ordinance shall be investigated by the Planning Director. Also, any violations suspected by the Plan Commission, Board of Zoning Appeals, County Commissioners, or Planning Director 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 Planning Director and should reflect what is warranted by the violation.

14.3 Inspection of Property

Investigations of property may be done by the Planning Director 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 he/she has presented sufficient evidence of 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 Planning Director is denied entry to the subject property, he/she may apply to the court of jurisdiction to invoke legal, applicable, or special remedy for the inspection of property and 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 and the orders of the court of jurisdiction the owner, tenant, or occupant shall permit entry by the Planning Director.

14.4 Responsibility for Violations

The owner of any property or building, or part thereof, shall be responsible for the violation. Architects, builders, developers, or agents thereof may also be held 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 findings of the Plan Commission, Board of Zoning Appeals, Board of County Commissioners, or Planning Director.

14.5 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 the nuisance.

14.6 Violations During the Construction/Building Process

The Planning Director 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.

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- A. The Planning Director must meet with the person(s) served the Stop-Work-Order notice within 7 days of any such meeting being requested. A memorandum of agreement shall be drafted stating the conditions by 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 Planning Director.
 - B. Reasons for a Stop-Work-Order include, but are not limited to:
 - a. Not complying with development standards and/or any regulations of this Ordinance or the Subdivision Control Ordinance;
 - b. Not obtaining an Improvement Location Permit prior to the start of construction of any improvement for which a permit is required by this Ordinance;
 - c. Not completing structures or other improvements consistent with any approved Improvement Location Permit, variance, special use, or other approval;
 - d. Not meeting the conditions or commitments of a special use, variance, or zoning amendment;
 - e. Not meeting the conditions of site development plans, planned unit development detailed plans, covenants, or written commitments which are enforceable by the Plan Commission; and
 - f. Illegal use or expansion of use of structures, or structures and land in combination.

14.7 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 Planning Director. Penalties may be imposed based on the provisions set forth in this Article.

- A. The placement or erection of a primary structure, accessory structure, sign, or any other element determined by the Planning Director to not conform to the provisions or explicit intent of the Zoning Ordinance;
- B. The maintenance of a primary structure, accessory structure, sign, or any other element determined by the Planning Director to not conform to the provisions or explicit intent of the Zoning Ordinance;
- C. Failure to obtain an Improvement Location Permit when required by this Ordinance;
- D. Conducting a use or uses that do not comply with the provisions or explicit intent of this Ordinance;
- E. Any failure to comply with the development standards and/or any regulations of this Ordinance;
- F. Proceeding with work under a Stop-Work-Order or a violation of a memorandum of agreement; and
- G. Any failure to comply with commitments or conditions made in connection with a rezoning, special use, variance or other similar or documentable commitment, including verbal agreements during official Plan Commission, Board of Zoning Appeals, and/or Board of County Commissioners' meetings.

14.8 Procedure for Violations

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

- A. The Planning Director shall issue a Notice of Violation to the person(s) who has committed, in whole or in part, a violation. The Notice of Violation is a warning to the violator(s) that a violation has been determined and that it must be corrected within 15 days of the mailing date or posting of notice.
- B. If the person(s) in violation refuses to pay or comply with the penalties, or correct the violation, after notice has been given, the Plan Commission or County Commissioners may pursue court action through a court of jurisdiction. Fines and liens against the property may also be pursued until the matter is resolved.

14.9 Immediate Public Risk Violations

Any violation of this Ordinance which presents an immediate risk to the health, safety, or welfare of the public, or to property within Madison County may be corrected by the Planning Director, or a person, firm, or organization selected by the Planning Director, without prior notice to the property owner or other person responsible for the violation.

- A. Immediate public risk violations shall include:
 - a. Signs, structures, landscaping or other materials placed in a public right-of-way, easement, or sight visibility triangle in violation of this Ordinance;
 - b. Any sign, structure, landscaping, or other material located on private property which serves to distract or inhibit operators of motor vehicles on adjacent public streets, pedestrians, or other members of the general public; and
 - c. Any other immediate threat to public welfare as determined by the Board of County Commissioners, Plan Commission, Board of Zoning Appeals, Planning Director, County Surveyor, County Engineer, County Sheriff, or other public official.
- B. Any sign, structure, landscaping or other material which constitutes an immediate public risk violation may be seized by the Planning Director in a manner that results in minimal damage to the material and the property upon which it is located.
- C. The Planning Director shall provide notice to the owner of the property upon which the violation was located, or any discernible appropriate owner of materials placed within the right-of-way in violation of this Ordinance, by either placing a notice in a conspicuous place on the property or by letter.
 - a. The notice shall be sent to the property owner via certified mail within 24 hours of the seizure.
 - b. The notice shall include the following:
 - 1. a description of the materials seized,
 - 2. a citation of the sections of the Ordinance which were violated and the characteristics of the violation which posed an immediate threat to public welfare,
 - 3. the address and phone number of the Planning Commission office and the name of the person to be contacted by the property owner to discuss the violation and request the return of the seized item; and
 - 4. instructions describing how, where, and when the seized items may be claimed.
- D. The Planning Director shall store any sign, structure, landscape materials or other items seized in a secure location for a period of no less than 30 days from the date notice was provided to the property owner. The property owner may claim the seized property at any time following its seizure upon the payment of a \$25 fine and the establishment of a memorandum of agreement between the property owner and Planning Director regarding the future use of the item in a manner consistent with this Ordinance.
- E. Neither the Planning Director, Madison County, or any other official or entity involved in the seizure shall be liable for any damage to the seized item or the property from which it was taken.

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14.10 Fines and Penalties

The Planning Director 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.

- A. Monetary fines may be imposed for each civil violation determined upon a single inspection. Fines shall be assessed for each day that the violation is present following the provision of any Notice of Violation to the property owner or other responsible party.
- B. No fine for any single violation shall exceed \$2000.00 per day. Payment of any violation shall be made to the County Treasurer who shall deposit the funds in the General Fund. A receipt of payment must be recorded and a receipt issued to the person making payment.

14.11 Appeals or Trials

- A. Any person receiving a notice of Violation may appeal the violation and/or fine to the Board of Zoning Appeals or to a court of jurisdiction. A written statement from the person in violation, either filing an administrative appeal consistent with Article 11 of this Ordinance or giving notice of the filing of an action with a court, shall be submitted to the Planning Director via Certified Mail at least 3 days prior to the date any fine is due.
- B. Fines due will be postponed until the BZA or court of jurisdiction has made a ruling as to the violation and/or fine. The person(s) in violation shall have 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 6 months 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 Planning Director if the person(s) in violation has (have) submitted an appeal or notice of court review.

14.12 Enforcement, Remedies and Injunctive Relief

- A. The Planning Director or any enforcement official designated by this Ordinance may bring an action in the Circuit or Superior Court of Madison 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 this Ordinance and the Subdivision Control Ordinance. 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:
 - a. All agreements with the Plan Commission or its designees which have been recorded as covenants or written commitments in connection with a subdivision plat, a site development plan, or a planned unit development;
 - b. All commitments made in accordance with IC 36-7-4 et al; and
 - c. All conditions imposed in accordance with IC 36-7-4 et al.
- B. The Planning Director, 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 this Ordinance and the Subdivision Control Ordinance.
- C. The Planning Director, 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 to remove a

structure erected in violation of this Ordinance or applicable state code.

- D. If the Planning Director, or other enforcement official is successful in its action, the respondent shall bear all costs of the action.
- E. An action to enforce a written commitment made in accordance with IC 36-7-4 et al. may be brought in the Circuit or Superior Court of the County by any specially affected person who was designated in the written commitment.