

Article 09

Enforcement and Penalties

City of Butler
Zoning Ordinance

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Enforcement and Penalties

9.1 Authority

The Plan Commission, Board of Zoning Appeals, City Council, City Attorney, Mayor, Building Inspector, or Community Development Office are designated to enforce the provisions and regulations of the Zoning Ordinance and are hereby referred to as "enforcement officials."

9.2 Violations

Reports made to the Community Development Office about potential violations of the Zoning Ordinance may be investigated by the Community Development Office or its designee. Action may or may not be taken depending on the findings. The degree of action will be at the discretion of the investigating person and should reflect what is warranted by the violation.

9.3 Inspection of Property

- A. Standard Inspections: Inspections of property may be conducted by the Community Development Office either from a right-of-way, property suspected of a violation, or adjacent property. The inspector shall attempt to present sufficient evidence of their authorization and described the purpose of the inspection to the owner, tenant, or occupant at the time of the inspection.
- B. Emergency Remedy: When, in the opinion of the Community Development Office, the condition of the site causes serious danger to the health, safety, or welfare of the public, the city may enter upon the site to remedy the dangerous condition without notice to the landowner
- C. Denial of Access to Property: In the event that the inspector is denied entry, and providing there is evidence of violation of this Zoning Ordinance, a city official may apply to the court of jurisdiction to invoke legal, equitable, or special remedy for the enforcement of the Zoning Ordinance or any applicable ordinances adopted under State Code.

9.4 Responsibility of Violations and Liability

The property owner shall be responsible for any violation on the property. The property owner is liable for any structures that are raised or converted, or any land uses in violation of this Zoning Ordinance.

9.5 Types of Violations

The following situations are deemed violations and are enforceable by the enforcement officials of the city. Penalties may be imposed based on the provisions set forth in this article.

- A. Placement: The placement or erection of a primary structure, accessory structure, sign, fence, structure or any other element which does not conform with the provisions of the Zoning Ordinance as determined by the Community Development Office.
- B. Maintanance: The failure to maintain a primary structure, accessory structure, sign, fence structure or any other element including property maintenance as determined by the Community Development Office.
- C. Permits: Failure to obtain an improvement location permit or any other required permit under the Zoning Ordinance when required prior to initiation of improvements, change of land use, or other modifications regulated under this Zoning Ordinance.
- D. Use: Conducting a use or uses that do not comply with the provisions of the Zoning Ordinance.
- E. Regulations: Any failure to comply with any regulations of the Zoning Ordinance, including, but not limited to the following: development standards, improvement location permit, site plan, or conditions imposed.
- F. Stop Work Order: Proceeding with work under a stop work order or a violation of a memorandum of agreement.
- G. Commitments: Any failure to comply with commitments in connection with a rezoning, approval of a detailed plan, special exception, variance, or other similar or documentable commitment made during official Plan Commission, City Council, or Board of Zoning Appeals meetings.

Enforcement and Penalties

9.6 Procedure for Violations

The following procedure shall be used for violations of the Zoning Ordinance.

- A. **Stop Work Order:** An enforcement official may place a stop-work-order on any violation discovered during the construction/building process. Stop-work-orders shall be issued by written notice which shall state the work activity, illegal activity, or dangerous activity that must stop immediately until the matter is resolved. This notice shall be posted in a conspicuous place and mailed to the property owner.
- B. **Notice of Violation:** An enforcement official shall issue a Notice of Violation letter to the property owner regarding the violation. The Notice of Violation letter will state that a violation has been determined and it must be corrected within 15 days of the postmarked date of notice. If the violation is corrected within 15 days from the postmarked date of the Notice of Violation letter, no fines will be imposed.
- C. **Fines:** If the violation stated in the Notice of Violation letter is not corrected within 15 days, fines may be imposed. The property owner in violation will have 15 days to pay the fines and comply with the penalties. The property owner in violation must correct the violation within 15 days or face further legal action. The Plan Commission may extend the time period needed to correct the violation if the violator is working in good faith to remedy the violation.
- D. **Liens:** If the property owner in violation refuses to pay or comply with the penalties, or correct the violation, after the Notice of Violation letter, an enforcement official may impose liens against the property and/or take legal action through the court system.
- E. **Court Action:** It is not mandatory for a violator to be noticed multiple times before liens or court action are sought. An enforcement official must determine which course of action will best result in the correction of the violation after the Notice of Violation letter is not effective.

9.7 Fines and Penalties

- A. **Fines:** Monetary fines will be imposed with the Notice of Violation letter for each civil violation determined upon a single inspection in any sum not less than \$100 nor more than \$2,500 with each day constituting a separate violation of this Zoning Ordinance. An enforcement official shall decide the fine for each violation within the allotted range.
- B. **Payment:** Payment of any violation shall be delivered to the Community Development Office which shall deposit the funds in an account as determined by the City Council. A receipt of payment must be recorded and issued to the person making payment.
- C. **Removal of Violation:** An enforcement official by mandatory injunction in the circuit court and/or superior court of the county against the owner of the real estate, may require the removal of a structure erected in violation of the Zoning Ordinance, or the removal of any use or condition in violation of the Zoning Ordinance.
- D. **Permit Fees:** Any property owner who has property where site or structural changes, or change of use of structure or property takes place prior to obtaining an Improvement Location Permit or any other required permit shall pay three times the amount of the normal permit fee as a fine and shall be reflected in the Notice of Violation letter. The property owner will be subject to additional fines as stated in 9.7 A if a permit application is not filed within 15 days of the Notice of Violation letter.

9.8 Appeals

- A. **Written Statement:** Any person receiving a Notice of Violation letter and/or fines may appeal the violation and/or fine to the Board of Zoning Appeals. A written statement from the person in violation shall be submitted to the Community Development office via certified mail at least three days prior to the date the fine is due in order to appeal the violation.
- B. **Hearing:** The property owner in violation shall have 30 days to file for a hearing with the Board of Zoning Appeals. The property owner in violation shall have a maximum of six months to complete the hearing process with the Board of Zoning Appeals. Failure to meet these deadlines will reinstate all fines due by the property owner in violation. Fines due will be postponed until the Board of Zoning Appeals has made a ruling on the violation and/or fine.

Enforcement and Penalties

9.9 Enforcement, Remedies, and Injunctive Relief

All remedies and enforcement shall comply with the powers set forth in Indiana Code 36-7-4-1000 *et al.* and all other applicable state law.

- A. **Legal Action:** An enforcement official may bring an action in the Circuit or Superior Court of the County for the following reasons:
1. To evoke any legal, equitable, or special remedy, for the enforcement of any ordinance or regulation created under Indiana Code 36-7-4. This includes but its not limited to the Zoning Ordinance.
 2. To enforce 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.
 3. To enforce commitments made in accordance with Indiana Code 36-7-4 *et al.*
 4. To enforce conditions imposed in accordance with Indiana Code 36-7-4 *et al.*
 5. To restrain a person violating Indiana Code 36-7-4 *et al.* or any ordinance adopted under Indiana Code 36-7-4 *et al.* which includes but its not limited to the Zoning Ordinance.
 6. For a mandatory injunction, directing to remove a structure erected in violation of the Zoning Ordinance or applicable State Code. If the enforcement official is successful in its action, the property owner shall bear all costs of the action.
- B. **Enforcing a Commitment:** An action to enforce a commitment made in accordance with Indiana Code 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 Indiana Code 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.