

Article 13

Enforcement & Penalties



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See Also:

*Indiana Code 36-7-4-1000,
Enforcement*

13.1 General Provisions

- A. **Authority:** The Chief Code Enforcement Officer and/or Planning Director (including their staff and/or designees) shall cause and administer the enforcement of the provisions, regulations, and intent of this Ordinance.
1. **Interpretation:** All instances in which this Ordinance refers to the "enforcing authority" shall be interpreted as permitting any of the entities listed above to engage in enforcement activities.
 2. **Legal Requirements:** 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.
 3. **Degree of Enforcement:** The degree of enforcement action will be to the discretion of the enforcing authority, and should reflect both what is warranted by the violation as well as a consistent approach to the enforcement of this Ordinance.
- B. **Inspections:** Investigations of property may be done from a right-of-way, from adjacent property (with permission of that property owner), or from the property suspected of a violation once the inspector 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.
- C. **Court Ordered Entry:** In the event that entry is denied to the subject property, the enforcing authority may apply to a court of jurisdiction to invoke legal, applicable, or special remedy for the enforcement of this Ordinance or any other applicable ordinances adopted under Indiana State Code.
- D. **Responsibility:** The property owner shall be held responsible for all violations on his/her or their property.
- E. **Types of Violations:** The following items shall be deemed zoning violations:
1. **Illegal Structures:** The placement, erection, and/or maintenance of a primary structure, sign, accessory structure(s), or any other element determined to not conform to the provisions or explicit intent of this Ordinance.
 2. **Illegal Use:** Conducting a use or uses that do not comply with the provisions or explicit intent of this Ordinance.
 3. **Failure to Obtain a Permit:** Failure to obtain an Improvement Location Permit or other permits and approvals required by this Ordinance.
 4. **Violation of Stop-Work-Order:** Proceeding with work under a Stop-Work-Order (as described in Section 13.2(A)).
 5. **Failure to Comply with Development Standards:** Any failure to comply with the development standards and/or any regulations of this Ordinance.
 6. **Failure to Comply with Commitments:** Any failure to comply with written commitments and/or conditions made in connection with a rezoning, conditional use, or variance; or other similar and documented commitment.

13.1 General Provisions (cont.)

7. Immediate Threats to Public Safety: Any obstruction, distraction, or other threat to public health, safety, or general welfare that results from the use of property in violation of the terms of this Ordinance.
- F. **Accumulated Violations & Fines**: The resolution of unresolved violations and any unpaid fines resulting from previous violations may be a consideration during the review of any applications under this Ordinance for the same property. The Planning Director, Chief Code Enforcement Officer, Plan Commission, Board of Zoning Appeals, and/or legislative body may withhold the issuance of any subsequent approvals for the property until any unresolved violations are remedied and/or accumulated fines paid.

13.2 Construction Process Violations

- A. **Stop-Work Orders:** The enforcing authority may place a Stop-Work-Order on any land/property improvement process.
1. **Procedure:** Stop-Work Orders shall be issued by written letter that shall state the violation and that work or other illegal activity must stop immediately until the matter is resolved.
 2. **Reasons:** 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 or any other required permit or approval prior to the construction or installation of any improvement for which an approval or permit is required by this Ordinance,
 - c. not completing structures or other improvements consistent with any approved Improvement Location Permit, variance, conditional use, or other approval,
 - d. not meeting the written commitments and/or conditions of a conditional use, variance, rezoning, or other approval,
 - e. illegal use or expansion of use of structures, or structures and land in combination.
- B. **Appeals:** Any Stop-Work Order issued as a result of the enforcement of this Ordinance, as specified in this Chapter, may be appealed to the Board of Zoning Appeals. This appeal shall follow the provisions established for Administrative Appeals by Chapter 12.5.
- C. **Resumption of Construction Activity:** The Stop-Work Order shall be lifted and construction activity may resume upon the resolution of the violation(s).

13.3 Immediate Public Risk Violations

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

- A. **Immediate Public Risk Violation Defined:** Immediate Public Risk violations shall include signs, structures, landscaping or other materials placed in violation of this Ordinance either (1) in a public right-of-way or (2) in any other manner or location creating an immediate threat to public safety.

- B. **Seizure of Materials:** Any sign, structure, landscaping or other material that constitutes an immediate public risk violation may be seized by the enforcing authority in a manner that results in the most minimal damage to the material and the property on which it is located.

- C. **Notice of Violation:** The enforcing authority shall provide notice to any discernible appropriate owner of seized materials.
 - 1. **Notice Time Requirements:** All notice letters shall be sent to the property owner within 24 hours of the seizure. All notice that is posted on the property shall be posted at the time the material is seized.
 - 2. **Notice Contents:** The letter and posted notice shall include the following:
 - a. a description of the materials seized,
 - b. a citation of the sections of the Ordinance that were violated and the characteristics of the violation that posed an immediate threat to public safety,
 - c. the address and phone number of the enforcing authority 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(s); and
 - d. instructions describing how, where, and when the seized items may be claimed.

- D. **Storage and Retrieval of Seized Materials:** The enforcing authority shall store any 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 and shall agree to use the item only in a manner consistent with this Ordinance.

- E. **Liability:** Neither the enforcing authority, Bartholomew County, the City of Columbus, nor any other official or entity involved in the seizure shall be liable for any damage to the seized materials or the property from which they were taken.

13.4 Violation Procedures

- A. **General Procedures:** The procedure for the enforcement of violations is outlined below. Modifications of this procedure may occur at the discretion of the enforcing authority and may include additional notices, extensions of time limits, or expedited or delayed steps depending on the nature of the violation.
1. **First Notice of Violation:** The enforcing authority shall issue a First Notice of Violation to the person(s) committing, in whole or in part, a violation. The First Notice of Violation is a warning to the violator(s) that a violation has been determined. The First Notice of Violation shall also include a notice that the property owner may be subject to fines for the violation.
 2. **Final Notice of Violation:** The enforcing authority shall issue a Final Notice of Violation to the person(s) committing, in whole or in part, a violation. The Final Notice of Violation shall be mailed via Certified Mail, Return Receipt Requested by the enforcing authority. The Final Notice of Violation shall also include a notice that the property owner is subject to fines as a result of the violation.
- B. **Appeals:** Any person receiving a Notice of Violation may appeal the violation notice to the applicable Board of Zoning Appeals or to a court of jurisdiction.
- C. **Fines:** Fines shall accrue at a rate of no less than \$100 and no more than \$1,000 per day that a violation has been documented. Fines shall accrue separately for each violation present on any single property. The amount of any fine shall be determined by the enforcing authority. However, no fine shall be assessed for violations which are resolved prior to the issuance of a Final Notice of Violation.
- D. **Legal Remedies:** If the person(s) in violation refuses to correct the violation within the time frame specified by the Final Notice of Violation, the enforcing authority may refer the violation to the attorney for the Plan Commission of jurisdiction in order to pursue legal action. The attorney may bring an action in the Circuit or Superior Court of Bartholomew County to invoke any legal, equitable, or special remedy for the enforcement of any ordinance or regulation created under IC 36-7-4, and its subsequent amendments.
1. **Enforcement:** This enforcement includes but is not limited to the following:
 - a. The Zoning Ordinance, Subdivision Control Ordinance, and any other requirements adopted separately by the Board of County Commissioners, the Common Council, or adopted by their reference in the Zoning or Subdivision Control Ordinance,
 - b. All conditions and/or commitments made or imposed in accordance with IC 36-7-4 et al.
 2. **Restraint:** The enforcing authority may bring action in the Circuit or Superior Court of Bartholomew County to restrain a person violating any ordinance adopted under IC 36-7-4 et al.

13.4 Violation Procedures (cont.)

3. Removal of Structures: The enforcing authority may bring an action in the Circuit or Superior Court of the County for a mandatory injunction, directing the property owner to remove a structure erected in violation of this Ordinance.
4. Responsibility for Costs and Fines: The property owner shall bear all costs related to the enforcement of this Ordinance with regard to violation(s) on his/her property including fines, the costs of any required remedy, and the costs of enforcement (including reasonable attorneys fees, hours worked, photocopying charges, mileage, and other costs incurred directly or indirectly during enforcement proceedings).
 - a. *Documentation:* Only those costs of enforcement that are clearly documented by the enforcing authority, and that clearly have a relationship to the enforcement action shall be paid by the property owner.
 - b. *Determination:* In all instances where a legal remedy is sought the dollar amount to be paid by the property owner shall be determined by the court of jurisdiction or through compromise agreement reached by the parties involved.
5. Other Parties Eligible to Seek Enforcement: 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:
 - a. *Rules of Procedure Provisions:* Any person who is entitled to enforce a commitment made in accordance with IC 36-7-4 et al. under the Rules of Procedure of the Plan Commission or the Board of Zoning Appeals in force at the time the commitment was made; or
 - b. *Specified Parties:* Any other specially affected person who was designated in the written commitment.