

## ARTICLE 10 ENFORCEMENT

### SECTION 21-10 ENFORCEMENT REGULATIONS

#### Section 21-10 Enforcement.

(a) **Authority**

The Building Department of the City of South Bend, the Department of Code Enforcement of the City of South Bend, and the *Staff* of both departments are hereby designated to enforce the terms and provisions of this Ordinance in accordance with Indiana law.

(b) **Alleged Violations**

Whenever *Staff* receives a complaint or has reason to suspect that an alleged violation of the terms and provisions of this Ordinance are occurring, *Staff* shall investigate the complaint or suspicion and shall take whatever action is warranted in accordance with the provisions of this Section 21-10.

(c) **Responsibility for Violations**

The owner, tenant, or occupant of any *building* or land or part thereof and any architect, builder, contractor, agent or other person who commits, participates in, assists, directs, creates, or maintains any situation that is in violation of the terms and provisions of this Ordinance, may be held responsible for the violation, suffer the penalties, and be subject to the remedies herein provided.

(d) **Inspection of Property - Right of Entry**

*Staff* may enter upon any *building, structure* or land or part thereof at any reasonable time for the purpose of inspecting all *buildings, structures* or lands located within the corporate limits of the City of South Bend for the purpose of carrying out their duties in the enforcement of this Ordinance. Prior to entering upon any premises, *Staff* shall furnish sufficient identification and information to enable the owner, tenant or occupant to determine the purpose of the inspection and that the person conducting the inspection is an authorized representative of the City of South Bend.

In the event that entry is denied by the owner, tenant or occupant of a premises, *Staff* may make application to any court of competent jurisdiction for the issuance of a search warrant. Such application shall identify the premises upon which entry is sought and the purpose for which entry is desired. The application shall state the facts giving rise to the belief that a condition which is in violation of this Ordinance exists on the premises, or

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that such a violation in fact exists and must be abated, and that the condition or violation is not a lawful *nonconforming use* to the best of the affiant's belief. Any warrant issued pursuant to such application shall order such owner, tenant or occupant to permit entry to *Staff* for the purposes stated therein.

**(e) Cease & Desist Order**

*Staff* is empowered to issue a Cease & Desist Order requiring the suspension of land *improvement* of any kind when any of the following circumstances exist:

- (1) A site *improvement* is occurring without an *improvement location permit* or any other permit required by this Ordinance having first been obtained; or,
- (2) A site *improvement* is occurring in violation of:
  - (A) the terms, conditions or provisions of this Ordinance;
  - (B) the terms and conditions of an *improvement location permit*;
  - (C) the terms and conditions of any other permit required as a pre-requisite to the issuance of an *improvement location permit*;
  - (D) the terms, provisions, conditions or *commitments* of a *variance* or *special exception use*;
  - (E) the terms of *commitments* made or conditions imposed in connection with the approval of a *development plan*;
  - (F) other approval grant authorized by this Ordinance; or,
  - (G) other applicable federal, state or local law or ordinance.
- (3) The Cease & Desist Order shall be posted on the property in a conspicuous place, or personally delivered to the owner, tenant, or occupant of any *building* or land or part thereof and any architect, builder, contractor, agent or other person who commits, participates in, assists, directs, creates, or maintains any situation that is in violation of the terms and provisions of this Ordinance and state the conditions under which construction or other activity may be resumed. *Staff* shall meet with the recipient of a Cease & Desist Order upon request to explain the conditions under which construction or other activity may be resumed.

- (4) In addition to any other remedies available pursuant to any other applicable law and this Ordinance, the South Bend City Attorney, *Zoning Administrator* or appropriate enforcement official may institute a lawsuit in a court of competent jurisdiction to enforce the provisions of a Cease & Desist Order, including but not limited to injunctive relief.

**(f) Violations**

Subject to the provisions of Section 21-01.03 – Nonconforming Lots, Uses, Buildings, Structures of Signs, each of the following shall constitute a zoning violation which may be enforced by the Building Department or the Department of Code Enforcement in accordance with the provisions set forth in Section 21-10 (g) below:

- (1) The location, erection, or maintenance of any *sign* not specifically permitted by this Ordinance;
- (2) The failure to obtain an *improvement location permit* when one is required by the terms and provisions of this Ordinance;
- (3) The *outdoor storage* of junk, trash or debris in any *district* the provisions of which do not specifically permit such a *use*;
- (4) The parking or storage, in any *district* the provisions of which do not specifically permit such a *use*, of any:
  - (A) motor vehicle used or designed for use in pulling, towing, hauling, transporting; or,
  - (B) motor vehicle or separate *trailer* as a temporary or permanent base, platform or support for equipment, machinery, materials or other goods (including but not limited to stake body *trucks*, dump *trucks*, *trucks* or *tractors* having dual real wheels or more than two axles, *semi-trailer tractors*, *semi-trailers* and *trailers* having dual real wheels or more than one axle or having an overall length of more than twelve feet).

However, this provision does not apply to motor vehicles which do not exceed three-quarter ton load classification in size and which are the primary source of transportation for an individual whose primary place of residence is the particular dwelling at which the commercial motor vehicle is parked on a regular basis;

- (5) The *outdoor storage* or display of merchandise or goods in any *district* the provisions of which do not specifically permit such a *use* or in violation of the *district development standards* regulating such a *use*;

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- (6) The conduct of any activity in a residential *district* that is not specifically enumerated as a permitted primary or *accessory use* in that *district*, and which activity has not been legally established by a currently valid *special exception use* or other approval grant;
- (7) Failure to comply with *district development standards*, including but not limited to landscaping, paving of *parking areas*, minimum *parking space* requirements, minimum *loading space* requirements, trash dumpster enclosure, fencing, landscaping or screening requirements;
- (8) The failure to comply with:
  - (A) the terms, provisions, conditions or *commitments* of a *variance* grant or *special exception use* grant;
  - (B) the terms of *commitments* made in connection with a zoning map change or the approval of a *development plan*;
  - (C) the terms, provisions or conditions of any other permit required as a pre-requisite to the issuance of a *improvement location permit*; or,
  - (D) other approval grant authorized by this Ordinance;
- (9) The violation of a Cease & Desist Order issued pursuant to this Section 21-10; and,
- (10) Failure to comply with any other provisions of this Ordinance, or other applicable federal, state or local law or ordinance.

The primary enforcement responsibility for Items (2) and (8) above shall be the vested with the Building Department, provided however, the Department of Code Enforcement may also initiate enforcement of these matters.

The primary enforcement responsibility for Items (3), (4) and (6) shall be vested with the Department of Code Enforcement, provided however, the Building Department may also initiate enforcement of these matters.

The enforcement responsibility for Items (1), (5), (7), (9) and (10) shall be vested in both the Building Department and the Department of Code Enforcement and both or either department may initiate enforcement of these matters.

**(g) Remedies or Penalties for Violation**

Any owner, tenant, or occupant of any *building* or land or part thereof and any architect, builder, contractor, agent or other person who commits, participates in, assists, directs, creates, or maintains any situation that is in violation of the terms and provisions of this Ordinance as defined in Section 21-10 (f) above, may be issued a citation by *Staff*.

Subject to the provisions of Section 21-10 (g) (1), and Section 21-10 (g) (2), below, each day a zoning violation remains uncorrected is a distinct and separate zoning violation subject to an additional citation and fine in the amount prescribed in this Ordinance.

**(1) Procedures for Initial Notice of Zoning Violation or Citation.**

- (A) *Staff* may issue a notice of zoning violation to a person (i.e., any owner, tenant, or occupant of any *building* or land or part thereof and any architect, builder, contractor, agent or other person) who commits a zoning violation or allows a zoning violation to be committed on real estate in which the person has a possessory interest. The notice of zoning violation may be served by: personal service; certified mail, return receipt requested; registered mail; or, by posting such notice in a conspicuous place on the property where the violation occurs, and shall serve as notice that a zoning violation has been committed.
- (B) No citation shall be issued unless notice as required by sub-Section 21-10(g)(1)(A) has been provided at least ten (10) days before the citation is issued, in order to allow the person receiving notice an opportunity to correct the violation and to come into compliance with the terms and provisions of this Ordinance, provided, however, the service of a notice of zoning violation and the provision of time to correct the zoning violation is not required before issuing a citation for: (i) violation of a Cease & Desist Order issued pursuant to Section 21-10 (e); or, (ii) violation of Section 21-08.01 (d) (1) (G) or Section 21-08.01 (d) (1) (I) regarding *signs* or lights located on a *Wireless Telecommunications Facility*. If upon re-inspection, the zoning violation remains unabated, a second notice of zoning violation may be served, or a citation accompanied by the fines as specified in Section 21-10 (h), below, may be issued.

**(2) Action After Second Notice or Citation.**

A person (i.e., any owner, tenant, or occupant of any *building* or land or part thereof and any architect, builder, contractor, agent or other person) who is served with a second notice of zoning violation or receives a citation shall have ten (10) days from service of a second notice of zoning violation or receipt of citation to take one of the following actions:

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- (A) Such person may elect to file a petition for zoning map change, *variance*, *special exception use* or *development plan* approval to correct such violation, in which case the person must indicate the intent to file such a petition on the served second notice or citation and return a copy to the *Zoning Administrator* or appropriate enforcement official. During the pendency of said petition the issuance of additional notices or citations and additional monetary fines as prescribed in Section 21-10 (h), shall be stayed. A person who files the petition within said time period shall pursue the petition in an expeditious and diligent manner. If the petition is denied, withdrawn or dismissed and the zoning violation continues, then a lawsuit may be commenced by the South Bend City Attorney, *Zoning Administrator* or appropriate enforcement official as provided by applicable laws.
- (B) Such person or any other interested party may elect to appeal the decision of the enforcement official pursuant to Section 21-09.03 (c) as an Administrative Appeal before the Board of Zoning Appeals.
- (3) Legal Action for Failure to Correct Violation.

If an owner, tenant, or occupant of any *building* or land or part thereof and any architect, builder, contractor, agent or other person who is served with a second notice of zoning violation or receives a citation fails to either correct the violation or take such actions to come into compliance within ten (10) days as set forth in Section 21-10 (g) (2), above, then the South Bend City Attorney, *Zoning Administrator* or appropriate enforcement official may institute legal action in a court of competent jurisdiction to enforce the terms and conditions of this Ordinance, including, but not limited to: enforcement of a Cease & Desist Order as provided in Section 21-10 (e) – Cease & Desist Order; assessment and collection of fines as provided in Section 21-10 (h) – Fines; or, the pursuit of injunctive and other equitable relief and remedies available under Indiana law.

**(h) Fines**

Monetary fines for zoning violations shall be assessed as follows:

(1) All Residential *Districts*.

The monetary fine for the first citation for a zoning violation shall be not less than Fifty Dollars (\$50.00). The following monetary fines shall apply for each subsequent citation:

|                 |  |
|-----------------|--|
| Second Citation | Minimum \$100.00   |
| Third Citation  | Minimum \$200.00   |
| Each additional | Not to exceed a \$300.00 increase in the previously assessed monetary fine, to a maximum monetary fine for each citation not to exceed Two Thousand Five Hundred Dollars (\$2,500.00). |

Each day that a zoning violation remains uncorrected shall constitute a violation which may result in the issuance of a subsequent citation.

(2) All Commercial/Mixed Use *Districts* and All Industrial *Districts*.

The monetary fine for the first citation for a zoning violation shall be not less than Fifty Dollars (\$50.00). The following monetary fines shall apply for each subsequent citation:

|                      |   |
|----------------------|---|
| Second Citation      | Minimum \$100.00 per day that the zoning violation remains uncorrected.   |
| Third Citation       | Minimum \$200.00 per day that the zoning violation remains uncorrected.   |
| Additional Citations | Not to exceed a \$300.00 increase in the previously assessed monetary fine for each day that the zoning violation remains uncorrected, to a maximum monetary fine for each zoning violation not to exceed Two Thousand Five Hundred Dollars (\$2,500.00) per day that the zoning violation remains uncorrected. |

Each day that a zoning violation remains uncorrected shall constitute a violation which may result in the issuance of a subsequent citation.

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(3) *All Wireless Telecommunications Facilities.*

Notwithstanding the provisions of sub-Section 21-10 (h) (1) or (2), above, to the contrary, the monetary fine for the first citation for a zoning violation of Section 21-08.01 (d) (1) (G) or Section 21-08.01 (d) (1) (I) regarding *signs* or lights located on a *Wireless Telecommunications Facility* shall be one-hundred dollars (\$100.00). The following monetary fines shall apply for each subsequent day that the zoning violation remains uncorrected:

|                 |  |
|-----------------|--|
| Second Day      | Minimum \$100, not to exceed \$150.00.   |
| Third Day       | Minimum \$100, not to exceed \$200.00.   |
| Fourth Day      | Minimum \$100, not to exceed \$250.00.   |
| Fifth Day       | Minimum \$100, not to exceed \$300.00.   |
| Additional Days | Minimum \$100, not to exceed an increase of \$300.00 per day in the previously assessed monetary fine for each day that the zoning violation remains uncorrected, to a maximum monetary fine for each zoning violation not to exceed two-thousand five-hundred dollars (\$2,500.00) per day that the zoning violation remains uncorrected. |

(4) All fines prescribed by this Section 21-10 (h) for zoning violations shall be paid as follows:

- (A) If enforcement action was initiated by the Building Department, all fines thus received shall be deposited with the applicable fund for fines of the Building Department.
- (B) If enforcement action is initiated by the Department of Code Enforcement, all fines thus received shall be deposited in same account as fines collected pursuant to Chapter 16, Article 8, Section 16-61 – Penalties of the South Bend Municipal Code.
- (C) The person making the payment shall receive a receipt stating the amount and purpose for which the fine has been paid, a duplicate of which shall be made a part of the records of the City of South Bend.

- (5) If a person who receives a citation fails to:
- (A) pay the assessed fine within:
    - i. in a Residential *District*, fourteen (14) days after the issuance of a citation;
    - ii. in a Commercial / Mixed Use *District* or Industrial *District*, seven (7) days after the issuance of a citation; or,
    - iii. for a Wireless Telecommunications Facility, five (5) days after the issuance of a citation or day upon which a fine has accrued;
  - (B) file a petition as prescribed in Section 21-10 (g) (2) (A), above; or,
  - (C) give notice of his intention to stand trial as prescribed in Section 21-10 (g) (2) (C), above,

the South Bend City Attorney, *Zoning Administrator* or appropriate enforcement official may file a lawsuit as provided by applicable law to enforce the terms and provisions of this Ordinance.

- (6) Violations in a *Planned Unit Development (PUD District)*.

In the event of a citation for a zoning violation in a *planned unit development district*, fines shall be assessed based upon the *use* authorized for the property on which the violation has occurred. Any property approved for residential *uses* only shall be assessed as if the property was located in a residential *district*. Any property approved for commercial / mixed *use* development or industrial *uses* shall be assessed as if the property was located in a commercial / mixed *use district* or an industrial *district*. Any property used for a *Wireless Telecommunications Facility* shall be assessed as specified above for a *Wireless Telecommunications Facility*.

**(i) Additional Remedies.**

- (1) Seeking a penalty as authorized in this Section does not preclude the designated enforcement entity from seeking alternative and additional relief from the Court in the same action, or from seeking injunctive relief or any other remedy in a separate action for the enforcement of this Ordinance available under applicable Indiana law.

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- (2) In the event that a violation of this Ordinance is determined to exist by a court of competent jurisdiction, the owner, tenant, or occupant of any *building* or land or part thereof and any architect, builder, contractor, agent or other person who commits, participates in, assists, directs, creates, or maintains any situation that is in violation of the terms and provisions of this Ordinance shall be liable to the City of South Bend for the City's reasonable attorney fees in accordance with Indiana law.