

Article

10

Enforcement

*City of Shelbyville
Unified Development
Ordinance*

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Enforcement

10.01 Actionable Violations

It shall be an actionable violation of this Unified Development Ordinance to:

- A. Non-permitted Structures: Construct, place, or modify a structure in a manner that is not expressly permitted by this Unified Development Ordinance;
- B. Permitted Structures: Construct, place, or modify a structure in a manner permitted by this Unified Development Ordinance without first being issued all permits and/or other approvals required by this Unified Development Ordinance;
- C. Exempt Permitted Structures: For structures that are exempt from needing a permit; construct, place, or modify a structure in a manner that is not expressly permitted by this Unified Development Ordinance;
- D. Non-permitted Uses: Utilize a property for a use that is not expressly permitted by this Unified Development Ordinance in the applicable zoning district; or by a use variance or other approval allowed under this Unified Development Ordinance;
- E. Permitted Uses: Utilize a property for a use expressly permitted by this Unified Development Ordinance without first being issued a permit and/or other approvals required by this Unified Development Ordinance;
- F. Non-compliance with Approvals: Fail to fully comply with procedural requirements, payment of fees, conditions, enforceable covenants, or commitments associated with any approval; or
- G. Other Violations: Otherwise fail to comply with any component of this Unified Development Ordinance.

10.02 Authority

Enforcement of this Unified Development Ordinance may be conducted by the Plan Commission, Board of Zoning Appeals, Building Commissioner, Mayor, Common Council, Board of Public Works and Safety, City Attorney, City Engineer, and/or the Zoning Administrator (including their staff and/or designees), hereafter referred to as an "enforcement official" or "Zoning Administrator." When a type of enforcement action or role is assigned to a specific board, body or individual by Indiana Code or applicable rules of procedure, then that board, body, or individual shall participate as specified.

10.03 Discovery of Violations

Any authorized person may survey the jurisdiction for violations or may investigate reported alleged violations in order to discover whether a violation occurred or exists.

10.04 Inspection of Property

- A. Standard Inspections: Inspections of property or structures may be conducted by the enforcement official at the property where the violation or alleged violation is located with permission from the owner or possessor at the time of the inspection; from a public right-of-way, from an adjacent body of water, or from an adjacent property with permission from its property owner. If requested, the enforcement official shall present identification and describe the purpose of the inspection.
- B. Denial of Access to Property: In the event the enforcement official is denied entry to a property or structure where there is a violation or alleged violation, the enforcement official may apply to a court of jurisdiction to secure a search warrant authorizing inspection of the property or structure.
- C. Granting of Right to Deny Access: A property owner shall grant an enforcement official access to his property or structure upon filing for any approval. Granting the right to access shall commence upon filing and shall cease upon the Zoning Administrator issuing a zoning compliance certificate or other required final inspection.

10.05 Responsibility for Violations

The owner or possessor (e.g. tenant or occupant) of the structure, land, and/or premises shall be liable for violations of this Unified Development Ordinance. If the possessor of the property or structure is determined to be liable for the violation, but fails to comply or otherwise cannot be sufficiently pursued, the owner shall be held liable for the violation.

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10.06 Attorney's Fees

If the City of Shelbyville utilizes the services of the city's attorney or any other attorney in investigating an alleged violation of this Unified Development Ordinance, or enforcing the provisions of the Unified Development Ordinance before any board, commission, or court (including appeals), and the investigation results in a determination that a violation has occurred; or if the Board of Zoning Appeals, Plan Commission, or City is successful in its enforcement of the Unified Development Ordinance by way of suit, appeal, or other appropriate proceeding; the owner, respondent, defendant, or party investigated for a violation shall pay the city's reasonable attorney's fees and all costs related to the investigation of the violation and/or the enforcement of the Unified Development Ordinance.

10.07 New Permits at Location Where a Violation Exists

When a violation or alleged violation of this Unified Development Ordinance has been identified on a property and notice of the violation or alleged violation has been conveyed in writing to the owner, any new filing for any approval concerning the same property shall be held by the Zoning Administrator until the violation or alleged violation is resolved.

10.08 Enforcement Options

When a violation or alleged violation exists and when it is determined that enforcement is necessary, the type of enforcement action will be at the discretion of the enforcement official and generally should reflect what is warranted by the evidence, severity of the violation or alleged violation, and history of violations on the same property or by the same violator. The following sections, may be used to enforce this Unified Development Ordinance:

- Construction Process Violation;
- Immediate Public Risk Violation; and
- General Violations.

10.09 Construction Process Violations

- A. **Stop Work Orders:** The Zoning Administrator may place a Stop Work Order on any land or property improvement process.
1. *Procedure:* Stop Work Orders shall be issued by written letter or form that shall describe the violation and state that the work or other illegal activity must stop immediately until the matter is resolved. This letter or form shall be posted in a conspicuous place and a copy shall be delivered or mailed to the property owner.
 2. *Reasons:* Reasons for a Stop Work Order include, but shall not be limited to:
 - a. Not complying with development standards or any other regulations of the Unified Development 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 the Unified Development Ordinance.
 - c. Not constructing structures or completing other improvements consistent with any approved Improvement Location Permit, variance, special exception, or other approval.
 - d. Not meeting the conditions or commitments of a special exception, variance, rezoning, or other approval.
 - e. Not meeting the conditions of a Site Development Plan, Planned Unit Development Detailed Plan, or written commitment.
 - f. Illegal use or expansion of use of structures, or structures and land in combination.
- B. **Memorandum of Agreement:** The Zoning Administrator shall meet or correspond with the person(s) served the Stop Work Order notice to discuss a remedy. A Memorandum of Agreement shall be drafted stating the conditions by which construction or action may be resumed. This Memorandum of Agreement shall be signed by the Zoning Administrator and the property owner that is responsible for the violation. If a Memorandum of Agreement can not be agreed upon and the owner wishes to seek a variance or administrative appeal, the Stop Work Order shall stay in place until the matter is resolved by the Board of Zoning Appeals or by the courts.
- C. **Appeals:** Any Stop Work Order issued as a result of the enforcement of the Unified Development Ordinance, as specified in this section, may be appealed to the Board of Zoning Appeals. This appeal shall follow the provisions established for Administrative Appeals in *Section 9.04: Administrative Appeal*. The Stop Work Order shall stay in place until the matter is resolved by the Board of Zoning Appeals.
- D. **Resumption of Construction Activity:** The Stop Work Order shall be lifted and construction activity may resume upon either the resolution of the violation(s), the issuance of a variance, or the completion of the Memorandum of Agreement.

10.10 Immediate Public Risk Violations

Any violation of the Unified Development 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 Zoning Administrator, or a person, firm, or organization selected by the Zoning Administrator 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:
1. *Obstructions*: Signs, structures, landscaping or other materials placed in a public right-of-way, easement, or sight visibility triangle in violation of the Unified Development Ordinance;
 2. *Distractions*: Any sign, structure, landscaping, or other material located on private property that serves to distract or inhibit operators of motor vehicles on adjacent public streets, pedestrians, or other members of the general public; and
 3. *Other Threats*: Any other immediate threat to public welfare as determined by a municipal entity, such as the Board of Public Works and Safety or Board of Zoning Appeals based on the advice and recommendation of the Zoning Administrator.
- B. Seizure of Materials: Any sign, structure, landscaping or other material that constitutes an immediate public risk violation may be seized by the Zoning Administrator 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 Zoning Administrator 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 the Unified Development Ordinance, by placing a notice in a conspicuous place on the property and by providing a letter to that property owner.
1. *Notice Time Requirements*: All notice letters shall be sent to the property owner via certified mail within twenty-four (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 or 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 welfare,
 - c. The address and phone number of the Zoning Administrator 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),
 - d. A fine amount, if applicable, and
 - e. Instructions describing how, where, and when the seized items may be claimed.
- D. Storage and Retrieval of Seized Materials: The Zoning Administrator shall store any sign, structure, landscape materials or other items seized in a secure location for a period of no less than thirty (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 the fine specified on the fee schedule and the establishment of a Memorandum of Agreement between the property owner and Zoning Administrator regarding the future use of the item in a manner consistent with the Unified Development Ordinance.
- E. Liability: Neither the Zoning Administrator, the City of Shelbyville, or 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.

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10.11 General Violations

- A. **General Procedures:** There shall be a minimum of a three (3) step procedure for the enforcement of violations. Intermediate steps, including additional notices of violation and extensions of time limits for compliance may be used by the Zoning Administrator at their discretion. However, the general procedure for all violations shall be consistent. The minimum steps are as follows:
1. **Notice of Violation:** The Zoning Administrator shall issue a Notice of Violation to the property owner. The Notice of Violation is a warning to the property owner that a violation has been determined and that it shall be corrected within a specified time frame from the date of the mailing.
 2. **Notice of Fines for Violation:** The Zoning Administrator shall issue a Notice of Fines for Violation to the property owner. The Notice of Fines for Violations is a citation that states the fines for the violation. The Notice of Fines for Violation shall be mailed via certified mail, return receipt. The property owner will have a specified number of days from the date of the mailing to pay all applicable fines in no less than thirty (30) days, and shall correct the violation within the time period specified by the Zoning Administrator or face additional fines.
 3. **Legal Action:** If the property owner refuses to pay the fines and/or to correct the violation within the time frame specified by the Notice of Fines for Violation, the Zoning Administrator may refer the violation to the Board of Public Works and Safety, Board of Zoning Appeals, or to the Plan Commission attorney in order to pursue court action through a court of jurisdiction. The Board of Public Works and Safety or Board of Zoning Appeals may subsequently attempt to remedy the violation or may forward the matter to the Plan Commission attorney for legal action. Additional fines and liens against the property may also be pursued until the matter is resolved.
- B. **Monetary Fines:** Monetary fines may be imposed at the discretion of the Zoning Administrator with the Notice of Fines for Violations.
1. **Multiple Violations:** Each violation shall constitute a separate offense.
 2. **Fine Amount:** Each separate offense shall be subject to a maximum fine specified by the adopted fee schedule issued on a per day basis from the date of compliance requested by the Zoning Administrator in the Notice of Violation.
 - a. In addition to any fine imposed, any person who initiates any activity that requires an Improvement Location Permit without first obtaining a permit may be required to pay up to three times (3X) the normal amount of the permit consistent with the adopted fee schedule.
 - b. The amount of any fine shall be at the discretion of the Zoning Administrator.
 3. **Admission:** A violator may admit the violation before the violation clerk of Shelbyville Ordinance Violations Bureau, located in the offices of the Clerk-Treasurer and at that time pay in cash or cashier's check.
- C. **Appeals:** Any person receiving a Notice of Violation and/or Notice of Fines for Violation may appeal the violation and/or fine to the Board of Zoning Appeals.
1. **Fines:** No additional fines shall accrue from the date of the appeal until the Board of Zoning Appeals or court of jurisdiction has made a ruling as to the violation and/or fine.
 2. **Additional Notices:** No additional notices will be issued by the Zoning Administrator if the property owner has submitted an appeal or notice of court review regarding the same violation.
- D. **Legal Remedies:** The Zoning Administrator via the Plan Commission attorney may 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 Unified Development Ordinance, and any other requirements adopted separately by the Common Council or adopted by their reference in the Unified Development Ordinance;
 - b. All agreements with the Plan Commission or its designees that have been established as written commitments;
 - c. All commitments made in accordance with *IC 36-7-4 et al*; and
 - d. All conditions imposed in accordance with *IC 36-7-4 et al*.
 2. **Restraint:** The Zoning Administrator may bring action in the Circuit or Superior Court of Shelby County to restrain a person violating *IC 36-7-4 et al* or any ordinance adopted under *IC 36-7-4 et al*.

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3. *Removal of Structures:* The Zoning Administrator may also 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 Unified Development Ordinance.
4. *Responsibility for Costs:* If the court finds in favor of the Zoning Administrator, the respondent shall bear all costs of their action, including the costs of any required remedy, any fines, and the costs of enforcement (including any attorneys fees, hours worked, photocopying charges, mileage, and other costs incurred directly or indirectly by the City).
 - a. *Documentation:* Only those costs of enforcement that are clearly documented by the Zoning Administrator, and that clearly have a relationship to the enforcement action shall be paid by the respondent.
 - b. *Determination:* In all instances the dollar amount to be paid by the respondent shall be determined by the court of jurisdiction.
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 and Procedures Provisions:* Any person who is entitled to enforce a commitment made in accordance with *IC 36-7-4 et al* under the Plan Commission Rules and Procedures or the Board of Zoning Appeals Rules and Procedures 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.