

**Article**

**10**

## Enforcement and Penalties

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*City of Richmond  
Unified Development  
Ordinance*

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# Enforcement and Penalties

## 10.01 Actionable Violations

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

- A. Non-permitted Structures: Construct, place, or modify a structure in a manner that is not expressly permitted by the Unified Development Ordinance;
- B. Permitted Required: Construct, place, or modify a structure in a manner permitted by the Unified Development Ordinance without first being issued all permits and/or other approvals required by the 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 the Unified Development Ordinance;
- D. Permit Exempt: Utilize a property for a use that is not expressly permitted by the Unified Development Ordinance in the applicable zoning district; or by a use variance or other approval allowed under the Unified Development Ordinance;
- E. Permitted Uses: Utilize a property for a use expressly permitted by the Unified Development Ordinance without first being issued a permit and/or other approvals required by the 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 the Unified Development Ordinance.

## 10.02 Enforcement Official

Enforcement of the Unified Development Ordinance shall be conducted by the enforcement official. 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 conduct the enforcement as specified.

## 10.03 Discovery of Violations

An enforcement official may survey the jurisdiction or may investigate 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 from the property where the violation or alleged violation is located with permission from the violator at the time of the inspection; from a public right-of-way, 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. Surrender of Right to Deny Access: A property owner surrenders his right to deny an enforcement official access to his property or structure upon filing for any approval. The surrender to deny 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 the 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.

## 10.06 New Permits at Location Where a Violation Exists

When a violation or alleged violation of the Unified Development Ordinance has been identified on a property and notice of the violation or alleged violation has been conveyed in writing to the violator, any new filing for any approval shall be held by the zoning administrator until the violation or alleged violation is resolved, provided that the desired approval would complicate, escalate, or add to the violation or alleged violation. All other filings for an approval shall be processed as described in the Unified Development Ordinance.

# Enforcement and Penalties

## 10.07 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 options, as described in subsequent sections, may be used to enforce the Unified Development Ordinance:

- A. Request to stop work;
- B. Stop work order;
- C. Enforcement as a common nuisance;
- D. Request to Remedy;
- E. Bring action to local court to invoke any legal, equitable or special remedy;
- F. Bring action to local court to enforce a condition, covenant or commitment;
- G. Bring action to local court to request a prohibitory or permanent injunction to restrain;
- H. Bring action to local court to request a mandatory injunction to remove a structure;
- I. Impose a fine for violations;
- J. Bring action to a local court to invoke a fine for violations; or
- K. Any remedy or actions set forth in Indiana Code, common law, or other applicable State regulations.

## 10.08 Request to Stop Work

- A. **Authority:** The enforcement official may issue a request to stop work.
- B. **Cause:** A request to stop work may be issued for any violation or alleged violation of the Unified Development Ordinance when one (1) or more of the following statements apply:
  - 1. *Cost to Remedy:* The violation or alleged violation is in regard to an active project, such that if work is not stopped, the cost to remedy the violation will likely increase;
  - 2. *Non-compliance:* The violation or alleged violation is in regard to an active project, such that if work is not stopped, the violation will likely escalate in non-compliance; or
  - 3. *Quantity of Violations:* The violation or alleged violation is in regard to an active project, such that if work is not stopped, the number of violations will likely increase; or
  - 4. *Public Risk:* The violation or alleged violation is in regard to an active project, such that if work is not stopped, the continuance will put the health, safety, or welfare of the public is at risk.
- C. **General Procedure:**
  - 1. *Issue Notice:* The request to stop work shall, in writing (i.e. notice), describe the violation or alleged violation and request the immediate cessation of work until the matter is resolved.
  - 2. *Post Notice:* The request to stop work shall be posted in a conspicuous place on the property. A copy may also be delivered or mailed to the property owner, developer, builder, property manager, tenant, occupant or other interested parties.
  - 3. *Effective:* The request to stop work shall become effective upon posting on the property.
  - 4. *Conditions:* An enforcement official may describe the conditions under which the request to stop work will be lifted on the notice. Otherwise, it is the responsibility of the violator to schedule a meeting with the enforcement official.
  - 5. *Agreement:* To lift a request to stop work, a memorandum of agreement identifying the process and steps necessary to resolve the violation shall be signed by the property owner and the enforcement official; or a court of jurisdiction shall rule on the matter; or the enforcement official shall rescind the request to stop work.
  - 6. *Failure to Abide:* An enforcement official may seek a court of jurisdiction to issue a temporary or preliminary injunction (i.e. stop work order) to the violator if he fails to abide by the request to stop work.
  - 7. *Refusal to Sign Terms:* An enforcement official may seek a court of jurisdiction to issue a temporary or preliminary injunction (i.e. stop work order) to the violator if he refuses to sign the terms of the memorandum of agreement, giving the enforcement official time necessary to pursue other enforcement options without furtherance of the violation or alleged violation.

# Enforcement and Penalties

## 10.09 Stop Work Order

- A. **Authority:** The enforcement official may bring action to a court of jurisdiction. A court of jurisdiction may issue a stop work order.
- B. **Cause:** A temporary or preliminary injunction may be issued when one or more of the following statements apply:
  - 1. *Cost to Remedy:* The violation or alleged violation is in regard to an active project, such that if work is not stopped, the cost, time, or challenge to remedy the violation will likely increase;
  - 2. *Non-compliance:* The violation or alleged violation is in regard to an active project, such that if work is not stopped, the violation will likely escalate in non-compliance; or
  - 3. *Quantity of Violations:* The violation or alleged violation is in regard to an active project, such that if work is not stopped, the number of violations will likely increase; or
  - 4. *Public Risk:* The violation or alleged violation is in regard to an active project, such that if work is not stopped, the continuance will put the health, safety, or welfare of the public is at risk.
- C. **General Procedure:**
  - 1. *Issue Notice:* Before or after filing with the court, the enforcement official shall mail a notice letter to the violator, the property address, or to the tax record address if mail is undeliverable to the property (e.g. a vacant site) describing the violation or alleged violation.
  - 2. *Investigation:* Before or after filing with the court, the enforcement official shall make reasonable attempt to investigate an alleged violation to conclude if there is a violation.
  - 3. *Stop Work Order:* The enforcement official shall file for an action for temporary or preliminary injunction, or temporary restraining order (i.e. Stop Work Order) in the court of jurisdiction to restrain a person from violating or further violating the Unified Development Ordinance.
  - 4. *Post Notice:* If the court grants the stop work order, the stop work order shall be posted in a conspicuous place on the property. A copy may also be delivered or mailed to the property owner, developer, builder, property manager, tenant, occupant or other interested parties.
  - 5. *Effective:* The stop work order shall become effective upon court issuance and either phone notification to the violator or posting the notice on site.
  - 6. *Conditions:* The court of jurisdiction may determine and describe the conditions and terms under which the stop work order will be lifted. Otherwise, it is the responsibility of the violator to schedule a meeting with the enforcement official and/or court of jurisdiction to resolve the violation.

## 10.10 Enforcing a Violation as a Common Nuisance

- A. **Authority:** The enforcement official may initiate enforcement action and prepare a formal conveyance to legal counsel. Legal counsel may then prosecute.
- B. **Cause:** According to Indiana Code, a structure that is erected, raised, or converted, or land or premises is used in violation of this Unified Development Ordinance is a common nuisance and the owner or possessor of the structure or land is liable for maintaining a common nuisance.
- C. **General Procedure:**
  - 1. *Issue Notice:* Before or after formal conveyance, the enforcement official shall mail a notice letter to the violator, the property address, or to the tax record address if mail is undeliverable to the property (e.g. a vacant site) describing the violation or alleged violation.
  - 2. *Investigation:* Legal counsel shall, upon formal conveyance of information in regard to an alleged violation of the Unified Development Ordinance, make an investigation of the alleged violation. If acts elicited by the investigation are sufficient to establish a reasonable belief that a violation has occurred on the part of the owner or possessor, the attorney representing the City may file a complaint against the person and prosecute the alleged violation.

# Enforcement and Penalties

## 10.11 Request to Remedy

- A. Authority: An enforcement official may initiate a Request to Remedy.
- B. Cause: A violation or alleged violation exists.
- C. General Procedure:
  - 1. *Investigation*: Before or after sending a notice letter, the enforcement official shall make reasonable attempt to investigate an alleged violation to conclude if there is a violation.
  - 2. *Issue Notice*: The enforcement official shall mail a notice letter to the violator, the property address, or to the tax record address if mail is undeliverable to the property (e.g. a vacant site) describing the violation or alleged violation.
  - 3. *Timeframe to Provide Evidence or Comply*: The enforcement official shall grant the violator an opportunity to provide evidence that there isn't a violation or to bring the violation into compliance; including a timeframe of at least one day but not more than 21 days. The timeframe granted shall be reasonably tied to the time necessary to remedy the violation (e.g. the time to remove an a-frame portable sign could be one day).
  - 4. *Timeframe Extension*: A timeframe extension may be granted upon request by the enforcement official if the violator is making satisfactory progress.
  - 5. *Timely Correction*: If corrective measures have not been initiated in a timely manner, or corrective measures are not effectively being conducted, or corrective measures are significantly behind schedule, or the violation remains after the timeframe given for remedy, then the enforcement official may choose another enforcement option. If the violator is making satisfactory progress and will likely meet the timeframe for remedy, the enforcement official shall not begin another enforcement option until the timeframe has expired and a violation remains unresolved.
- D. Safety from Fines: The enforcement official shall not impose a fine to a violator if a Request to Remedy is the first enforcement action and the violation is remedied within the granted timeframe.

## 10.12 Invoke a Legal, Equitable, or Special Remedy

- A. Authority: The Plan Commission may bring action to a court of jurisdiction as an independent enforcement action or concurrent to another enforcement action; except as stated in the Request to Remedy section. A court of jurisdiction may issue a legal, equitable, or special remedy.
- B. Cause: A violation or alleged violation exists on a property.
- C. General Procedure:
  - 1. *Issue Notice*: Before or after bringing an action to the court of jurisdiction, the Plan Commission shall mail a notice letter to the violator, the property address, or to the tax record address if mail is undeliverable to the property (e.g. a vacant site) describing the violation or alleged violation.
  - 2. *Investigation*: Before or after bringing an action to the court of jurisdiction, the Plan Commission shall make reasonable attempt to investigate an alleged violation to conclude if there is a violation.
  - 3. *Court-imposed Remedy*: The Plan Commission shall bring an action to the court of jurisdiction to invoke a legal, equitable or special remedy for a violation or alleged violation.
  - 4. *Liability*: Any violator found liable for a violation shall be subject to any court-imposed legal, equitable or special remedy. The legal, equitable or special remedy shall force compliance with the Unified Development Ordinance or be a unique court ruling that fulfills the intent of the *City of Richmond Comprehensive Plan* and Unified Development Ordinance. The severity of the court ruling may consider the severity of the violation, impact to property values in the area, impact to quality of life in the area, impact to the health, safety and welfare of the public, repetitiveness of similar violations by the same violator, and/or the precedent that may be set by the ruling.

# Enforcement and Penalties

## 10.13 Enforce a Condition, Covenant, or Commitment

- A. **Authority:** The Plan Commission may bring action to a court of jurisdiction as an independent enforcement action or concurrent to another enforcement action; except as stated in the Request to Remedy section. A court of jurisdiction may enforce compliance with a condition, covenant or commitment.
- B. **Cause:** A condition, covenant or commitment is not in compliance with terms of an approval.
- C. **General Procedure:**
  1. **Issue Notice:** Before or after bringing an action to the court of jurisdiction, the Plan Commission shall mail a notice letter to the violator, the property address, or to the tax record address if mail is undeliverable to the property (e.g. a vacant site) describing the non-compliance.
  2. **Investigation:** Before or after bringing an action to the court of jurisdiction, the Plan Commission shall make reasonable attempt to investigate an alleged violation to conclude if there is non-compliance.
  3. **Conditions:** The Plan Commission shall bring an action to a court of jurisdiction to enforce a condition, covenant (in connection to a plat, planned development or development plan), or commitment.
  4. **Court-imposed Remedy:** Any non-compliance shall be subject to any court-imposed remedy. The court-imposed remedy may include enforcing the condition, covenant, or commitment, or be a unique court ruling that fulfills the intent of the *City of Richmond Comprehensive Plan* and *City of Richmond Unified Development Ordinance*. The severity of the court ruling may consider the severity of the non-compliance, impact to property values in the area, impact to quality of life in the area, impact to the health, safety and welfare of the public, repetitiveness of similar violations by the same violator, and/or the precedent that may be set by the ruling.

## 10.14 Request a Prohibitory or Permanent Injunction to Restrain

- A. **Authority:** The enforcement official may bring action to a court of jurisdiction as an independent enforcement action or concurrent to another enforcement action; except as stated in the Request to Remedy section. A court of jurisdiction may issue a prohibitory or permanent injunction against a violator or potential violator.
- B. **Cause:** A violation, alleged violation or intent to violate exists.
- C. **General Procedure:**
  1. **Issue Notice:** Before or after bringing an action to the court of jurisdiction, the Plan Commission shall mail a notice letter to the violator, the property address, or to the tax record address if mail is undeliverable to the property (e.g. a vacant site) describing the violation, alleged violation, or intent to violate.
  2. **Investigation:** Before or after bringing an action to the court of jurisdiction, the Plan Commission shall make reasonable attempt to investigate an alleged violation to conclude if there is a violation, or an alleged intent to violate.
  3. **Request for Injunction:** The enforcement official shall bring an action to a court of jurisdiction to request a prohibitory or permanent injunction to restrain a violation of the Unified Development Ordinance.
  4. **Violation:** Any violator found liable for a violation or intending to violate the Unified Development Ordinance shall be subject to prohibitory or permanent injunction to restrain. The court-imposed restraint may instead result in a unique court ruling that fulfills the intent of the *City of Richmond Comprehensive Plan* and *City of Richmond Unified Development Ordinance*. The severity of the court ruling may consider the severity of the violation, impact to property values in the area, impact to quality of life in the area, impact to the health, safety and welfare of the public, repetitiveness of similar violations by the same violator, and the precedent that may be set by the ruling.

# Enforcement and Penalties

## 10.15 Request a Mandatory Injunction to Remove a Structure

- A. **Authority:** The Board of Zoning Appeals may bring action to a court of jurisdiction as an independent enforcement action or concurrent to another enforcement action; except as stated in the Request to Remedy section. A court of jurisdiction may issue a mandatory injunction against a violator.
- B. **Cause:** A structure was constructed, modified or installed in violation or alleged violation.
- C. **General Procedure:**
  1. **Issue Notice:** Before or after bringing an action to the court of jurisdiction, the Board of Zoning Appeals shall mail a notice letter to the violator, the property address, or to the tax record address if mail is undeliverable to the property (e.g. a vacant site) describing the violation or alleged violation.
  2. **Investigation:** Before or after bringing an action to the court of jurisdiction, the Board of Zoning Appeals shall make reasonable attempt to investigate an alleged violation to conclude if there is a violation.
  3. **Request for Injunction:** The Board of Zoning Appeals may bring an action to a court of jurisdiction to request a mandatory injunction to remove a structure in violation of the Unified Development Ordinance.
  4. **Violation:** If a structure is found in violation, the violator shall be subject to a mandatory injunction to remove the structure and all costs associated with the action. The court-imposed remedy may instead result in a unique court ruling that fulfills the intent of the *City of Richmond Comprehensive Plan* and *City of Richmond Unified Development Ordinance*. The severity of the court ruling may consider the severity of the violation, impact to property values in the area, impact to quality of life in the area, impact to the health, safety and welfare of the public, repetitiveness of similar violations by the same violator, and the precedent that may be set by the ruling.

## 10.16 Impose a Fine for Violation

- A. **Authority:** The enforcement official may impose a fine for violation as an independent enforcement action or concurrent to another enforcement action; except "Invoke a Fine for Violation" section or as stated in the Request to Remedy section.
- B. **Cause:** A violation exists.
- C. **General Procedure:**
  1. **Collect Evidence:** Before imposing a fine, the enforcement official shall collect evidence to conclude there is a violation.
  2. **Issue Notice:** The enforcement official shall mail a notice letter to the violator or the property address (or to the tax record address if mail is undeliverable to the property (e.g. a vacant site)) describing the violation. The notice letter shall also include the terms of the fine, including the fine amount and the date payment is due.
  3. **Timeframe to Provide Evidence or Comply:** If not addressed in a concurrent enforcement action, the enforcement official shall grant the violator an opportunity to provide evidence that there isn't a violation or to bring the violation into compliance, including a timeframe of at least one day but not more than 21 days. The timeframe granted shall be reasonably tied to the necessary time to remedy the violation (e.g. the time to remove an a-frame portable sign in violation could be one day).
  4. **Timeframe Extension:** A timeframe extension may be granted upon request by the enforcement official if the violator is making satisfactory progress.
  5. **Financial Liability:** The enforcement official may imposed a fine in an amount not less than \$50.00 or higher than \$2,500 for the first violation and not less than \$50.00 or higher than \$7,500 for the second or subsequent violations. Each unique violation from the day it was confirmed as a violation is subject to a fine; and each new day the violation persists, excluding days granted to remedy the violation, shall constitute another fine. The fine for a violation shall be reasonably in proportion to the severity of the violation, repetitiveness of similar violations by the same violator, and the cost associated with enforcing, mitigating, administering, researching, inspecting, legal fees, and the like.
  6. **Appeals:** Fines imposed by the enforcement official may be appealed to the Board of Zoning Appeals.

# Enforcement and Penalties

## 10.17 Invoke a Fine for Violation

- A. Authority: The enforcement official may bring action to a court of jurisdiction as an independent enforcement action or concurrent to another enforcement action; except "Imposing a Fine for Violation" or as stated in the Request to Remedy section. A court of jurisdiction may issue a fine for violation.
- B. Cause: A violation exists.
- C. General Procedure:
  1. *Collect Evidence*: Before or after bringing an action to the court of jurisdiction, the enforcement official shall collect evidence to conclude there is a violation.
  2. *Issue Notice*: Before or after bringing an action to the court of jurisdiction, the enforcement official shall mail a notice letter to the violator or the property address (or to the tax record address if mail is undeliverable to the property (e.g. a vacant site)) describing the violation.
  3. *Court-imposed Fine*: The enforcement official shall bring an action to a court of jurisdiction to invoke a fine for a violation.
  4. *Financial Liability*: A violator found liable for a violation shall be subject to a court-imposed fine. The fine for a violation shall be reasonably in proportion to the severity of the violation, repetitiveness of similar violations by the same violator, and the costs associated with enforcing, mitigating, administering, researching, inspecting, court fees, legal fees, and the like. Fines imposed by the court of jurisdiction shall be no higher than \$2,500 for the first violation, and no higher than \$7,500 for the second or subsequent violations according to *IC 36-1-3-8*.

## 10.18 Other Remedy

Any action allowed by Indiana Code, common law, or other applicable State regulations may be used to force a violation to be in compliance with the Unified Development Ordinance remedy or compliance with the terms of an approval.