
Unified Zoning Ordinance Amendment #105 ZONING VIOLATION ENFORCEMENT AMENDMENT

**Staff Report
JULY 14, 2022**

ADDENDUM FOR JULY 20 APC MEETING

At the June 1st Ordinance Committee meeting, committee members asked about the filing fee for someone wishing to formally appeal the issuance of a zoning violation. Staff indicated that the filing fee would be the same as for a variance or special exception petition, \$500. However, looking over our fee ordinance, staff discovered that an explicit exception is made for persons filing formal appeals of an administrative decision, and that there is no fee for such a filing.

Staff regards that zero-filing-fee as reasonable, and we would not suggest at this point any amendment to the fee ordinance to charge a fee. If we find that such appeals become numerous once we've taken on the responsibility for zoning enforcement, we may at that point want to consider instituting a filing fee to appropriately account for staff time.

ORIGINAL STAFF REPORT FOR JUNE 1 ORDINANCE COMMITTEE MEETING

Presently, zoning ordinance enforcement within Tippecanoe County, excepting the municipalities of Lafayette and West Lafayette, is the responsibility of the county Building Commission. The arrangement is cumbersome and inefficient as building inspectors are experts in building code, not zoning code. Additionally, zoning ordinance enforcement procedures are presently very time- and resource-intensive, as the existing enforcement language requires the involvement of external legal counsel in the event a violator does not willingly correct the violation. Zoning violations remain in place for months, even years. Area Plan Commission staff have worked with the Building Commissioner on a plan to transfer zoning ordinance enforcement responsibility to the APC, and we now propose an amendment to the zoning ordinance's enforcement language which would:

- 1) provide staff with the leeway to work in good faith with the property owner and give the owner every reasonable opportunity to remedy the zoning violation without incurring fees or other penalties,
- 2) (where a good faith effort to remedy the violation is lacking) give zoning enforcement tools real teeth, and place the ultimate burden for bringing the property into compliance on the violator, and
- 3) make the process essentially an administrative one, handled almost exclusively by staff, with only the rare need to engage legal counsel.

Upon adoption of the proposed ordinance amendment, Building Commission staff would

remain involved as field agents, visiting sites to visually verify the presence (or lack thereof) of alleged violations. All subsequent enforcement activities, however, including communication with violators and neighbors, would be managed by APC staff.

The proposed amended ordinance is attached in redlined form. Below is a summary of the Standard Operating Procedure which would be put in place should the proposed amendment be adopted.

A. TIMELINE

- 1) A zoning violation complaint is received by staff via phone, email, letter, or walk-in.
- 2) Staff conducts a site visit, confirms presence of violation (or not). Confirmation of violation may be achieved by visual inspection, receipt of compelling evidence, online research, other similar means of investigation, or any combination of the above.
- 3) If the violation is confirmed, staff issues the owner a Violation Letter. Per letter, the property owner is given a specific deadline date (at least 15 days following the issuance of the violation) by which the owner must:
 - a) bring the property into compliance with the zoning ordinance, or
 - b) file a land use petition to legally establish the non-compliance, or
 - c) formally appeal the issuance of the violation to the ABZA, or
 - d) propose, and have accepted by the Administrative Officer, an alternative means of resolution (such as an extended deadline).
- 4) If the owner lets the deadline date pass without initiating one of the above remedying options, staff proceeds with enforcement.

B. ENFORCEMENT

- 1) A minimum \$50 fine is issued each calendar day the violation remains in place, beginning on the deadline date specified in Violation Letter.
- 2) After one month, if the violation remains in place, the daily fine is doubled.
- 3) After two months, if the violation remains in place, the daily fine is again doubled.
- 4) After 90 days, if the violation remains in place, the aggregate fine (capped at \$10,000) is attached as a lien to the property and is collected in the same way property taxes are collected.

C. ONGOING ENFORCEMENT

- 1) Should the violation remain in place even after the imposition of the lien, the APC may begin the process anew with the issuance of a new Violation Letter. Alternatively, APC legal counsel may enjoin the violation by filing suit in Tippecanoe County circuit or superior court.

D. NOTES

- If the owner chooses to attempt to remedy the violation by filing for a variance or other land use petition, all further enforcement is stayed until the variance/petition is heard and decided. If that variance/petition is ultimately denied at public hearing, the ABZA shall provide guidance to staff at that hearing as to the length of any grace period the owner is granted prior to the resumption of enforcement.
- If the violation remains in place even after the lien is imposed, another violation case may be initiated, beginning the process anew, or the enforcement body may choose any other legal means of enforcement available to it.
- For repeat offenders (same owner, same property, same violation), subsequent instances of violation will not include the grace period referenced in A.3. Rather, the Violation Letter will indicate that the fine regimen begins the day the recurring violation is observed.
- At least initially, we do not anticipate needing additional APC to take over enforcement duties. The Building Commission receives about 60 legitimate zoning violation complaints per year, or a little over one per week. With the Building Commission's building inspectors continuing to act as field agents, we feel we can manage the load with existing staff.

STAFF RECOMMENDATION:

Approval

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTERS 3 & 5 OF ORDINANCE NO. _____ BEING THE UNIFIED ZONING ORDINANCE OF TIPPECANOE COUNTY.

Be it ordained by the (County Commissioners of Tippecanoe County, Indiana; the Common Council of the City of Lafayette, Indiana; the Common Council of the City of West Lafayette, Indiana; the Town Council of the Town of Battle Ground, Indiana; the Town Council of the Town of Dayton, Indiana; and the Town Council of Clarks Hill, Indiana), that Ordinance No. _____, being the Unified Zoning Ordinance of Tippecanoe County is hereby amended as follows:

Section 1: Change **UZO Section 6-3 ENFORCEMENT, 6-3-1 GENERAL PROVISIONS** to read as follows:

6-3-1 GENERAL PROVISIONS:

- (a) Any person may bring an action to enjoin the violation of this ordinance by suit filed in Tippecanoe County circuit or superior court.
- (b) The Area Board of Zoning Appeals or any **Administrative Officer** may require either:
 - (1) the removal of a **structure** erected in violation of this ordinance; or
 - (2) the removal of any **use** or condition created in violation of this ordinance.
- (c) A **structure** erected, raised, or connected, or real estate or premises used in violation of this ordinance, or any regulation adopted thereunder, is hereby declared to be a common nuisance. The owner and/or possessor is then liable for maintaining a common nuisance.
- (d) Any owner and/or possessor of real estate who:
 - (1) violates, or who permits a violation of any provision of this ordinance; or
 - (2) who fails to comply with any requirements of this ordinance; or
 - (3) who builds, reconstructs, or structurally alters a **building** or **structure** in violation of a detailed statement or plan for which an approval or grant is given under this ordinance shall be fined between \$50 and \$1500 for each determination of violation or failure to comply. Each day that the violation or failure to comply is permitted to exist will constitute a separate violation. In addition to the penalties provided herein, the Area Board of Zoning Appeals or the Administrative Officer bringing this action may recover reasonable attorney's fees, court costs, and other expenses of litigation by appropriate suit at law against the owner and/or possessor of real estate found to have violated this ordinance or any orders or permits issued hereunder.

- (e) Any action permitted to be commenced under this section against any owner and/or possessor of real estate, may also be brought against the owner of any personal property who has furnished that property or permitted it to be placed on real estate in a manner which results in any violation of this ordinance.
- (f) No permit application or land use petition, other than one intended as a Corrective Action under Section 6-3-3 of this Ordinance, may be submitted relative to any property which is the subject of an unresolved zoning violation.

Section 2: Eliminate **UZO Section 6-3-2 INDUSTRIAL PERFORMANCE STANDARDS**, and insert **UZO Section 6-3-2 PROCEDURE** and the following sections to read as follows:

6-3-2 PROCEDURE: NOTICE OF ZONING VIOLATION:

- (a) Upon determination of a zoning violation, a written Notice of Zoning Violation shall be delivered via certified mail to the Subject Property's legal owner(s) of record, as determined from the records of the County Auditor.
- (b) The Notice of Zoning Violation shall:
 - (1) identify the location of the zoning violation;
 - (2) detail the specific nature of the violation;
 - (3) cite the section(s) of the Ordinance violated;
 - (4) provide options for remedying the violation;
 - (5) establish a date, not less than fifteen calendar days following the mailing of the violation notice, by which resolution of the violation must occur, and;
 - (6) indicate the fines and penalties that may accrue if the violation remains unresolved.
- (c) If the certified letter containing the Notice of Zoning Violation is returned undelivered, additional written notice shall be posted in a conspicuous location at the Subject Property. No further notification shall be required.

6-3-3 CORRECTIVE ACTION:

Upon receipt of a Notice of Zoning Violation, the owner of the Subject Property must, not later than the deadline date established in the Notice of Zoning Violation:

- (a) bring the property into compliance with the Ordinance; or
- (b) file for a **variance, special exception**, rezoning, or other land use petition as necessary to resolve the violation; or
- (c) file a formal appeal of the Notice of Zoning Violation with the **ABZA**, which shall be docketed for the next available regularly scheduled hearing of the **ABZA**; or
- (d) propose, and have accepted by the **Administrative Officer**, an extended timeline or other alternative means of achieving compliance.

6-3-4 FAILURE TO REMEDY, AND ONGOING ENFORCEMENT:

- (a) If at least ninety (90) days have elapsed from the mailing of the Notice of Zoning Violation and the violation remains unresolved, the **Administrative Officer** may record with the County Auditor a statement enumerating all outstanding fees and fines related to the Notice of Ordinance Violation, as provided by IC § 36- 1-6-2. Said list shall include the name of the owner(s) of the parcel(s) of real property on which fees are delinquent; the legal description of the subject property as shown on the records of the County Auditor; and the amount of the delinquent fees.
- (b) The list shall then be certified by the County Auditor and recorded with the County Recorder.
- (c) A lien shall then be placed on the property owner’s tax duplicate. The total amount shall be collected in the same manner as delinquent taxes are collected and shall be distributed to the general fund.
- (d) If the violation is not corrected within thirty (30) days following the imposition of a lien as noted above, a lawsuit may be commenced by the designated enforcement entity in a court of general jurisdiction in Tippecanoe County, Indiana, as prescribed in this Ordinance, in IC § 36-1-6, and by other applicable laws and ordinances.

6-3-5 REPEAT VIOLATIONS:

If a zoning violation is substantially similar to a zoning violation that occurred on the same property, and under the same ownership, as a violation that occurred not more than five years prior, the 15-day grace period described in Section 6-3-2(b) of this Ordinance will be removed, and fines will begin the day the Notice of Zoning Violation is mailed.

6-3-6 ZONING ORDINANCE CITATION NOTIFICATION PROCESS:

- (a) For violations listed below in 6-3-6(b) and (c), the **Administrative Officer** may choose to issue a citation notification as outlined in this Section, before taking further action under 6-3-1. The purpose of this Section is to help protect the public health, safety, and general welfare of the community by allowing an alternative process to correct violations of this ordinance.
- (b) Land use violations that are subject to the citation notification process include:

Junk yards

Child Care Home

Child Care Center

Home Businesses (not legal ***Home Occupations***) such as but not limited to:

Lawn care

Vehicle repair

Building contractor

Small engine repair

Billboard/***outdoor advertising sign***

Transient guest house
Agricultural rental hall
Boarding **kennel**
Breeding kennel
Construction/demolition disposal site
Buildings in FP zones
Amusement and recreation (outdoor) SIC 7999

- (c) Development standard violations that are subject to the citation notification process include:

Electronic signs/**changeable copy signs** changing more frequently than once per minute
On-premise **signage**
Fill in the **Flood Plain**
Signs in public **right-of-way**
Home occupation limitations
Clear **vision setback**
Fences
Setbacks for porches, decks and **accessory buildings**
Event oriented signs

- (d) In the event of a violation under 6-3-6(b) or (c), the **Administrative Officer** may issue a citation notification, either in person or by certified letter, to the owner and/or possessor who violates, or who permits a violation of any provision of this ordinance. The person shall then have 15 days from the date of notice to contact the **Administrative Officer** and remedy the violation. If the violation is not corrected, or if no response is made within 15 days, the **Administrative Officer** may issue notice of a fine in an amount not to exceed \$250. If the violation is not corrected and no response is made to the **Administrative Officer** after 30 days, a second notice of fine may be issued in double the amount of the first fine. If the violation is not corrected and no response is made to the **Administrative Officer** after 45 days, a fine in triple the amount of the first fine may be issued, and the **Administrative Officer** may take further action under 6-3-1.
- (e) Nothing in this Section shall preclude or limit the Area Board of Zoning Appeals or any **Administrative Officer** from seeking any remedy under 6-3-1.

This ordinance shall be in full force and effect from and after its passage.