

Chapter 10: Enforcement and Penalties **10**

CONTENTS

10.1 Violations	346
10.2 Citation for Civil Zoning Violations.....	347
10.3 Trial for Civil Zoning Violations	348
10.4 Citation for Written Commitment Violations.....	349
10.5 Immediate Public Risk Violations	349
10.6 Construction Process Violations.....	351
10.7 Monetary Fine and Penalties	352
10.8 Subdivision Violations and Penalties	353

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10.1 Violations

10.1 VIOLATIONS

- A. COMPLAINTS.** Whenever a violation occurs, or is alleged to have occurred, any person may cite a written complaint. Such complaint stating fully the causes and basis thereof shall be filed with the Planning and Zoning Administrator or his/her designee.
- B. INVESTIGATION.** The Administrator shall properly record such complaint and immediately investigate. The Administrator may inspect the property in question from the right-of-way, from an adjacent property with permission of that property owner, and from the property suspected of violation once the Administrator has presented sufficient evidence. If acts elicited by such investigation are sufficient to establish a reasonable belief that a violation has occurred on the part of the party investigated, the Administrator shall proceed with the remedies for civil zoning violations as set forth in this chapter.
- C. AUTHORITY OF ADMINISTRATOR TO INSTITUTE ACTION.** In case any building or structure is, or is intended to be erected, constructed, reconstructed, altered or converted, or any building structure or premises is, or is intended to be used in violation of, or contrary to the provisions of this ordinance, the Administrator is hereby authorized, in addition to other remedies set forth in the Statutes of the State of Indiana and in this ordinance, to institute an action to enjoin or to take any other appropriate action or proceeding in order to prevent such erection, construction, alteration, conversion or use.
- D. COURT ORDERED ENTRY.** In the event that the owner or occupant of the premises refuses to permit entry to the Administrator or inspectors when entry is sought pursuant to this section, the Administrator may petition any judge of the Lebanon City Court, or any other court of jurisdiction, for the issuance of an administrative search warrant. The petition shall identify the premises upon which entry is sought and the purpose for which entry is desired. The petition shall state the facts giving rise to the belief that a condition which is in violation of this ordinance on the premises, or that 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 the petition shall order the owner or occupant to permit entry to the Administrator or inspectors for the purposes stated therein.
- E. COMMON NUISANCES.** Any building erected, raised or converted, or land or premises used in violation of any provision of this ordinance, or regulation thereof, is hereby declared to be a common nuisance, and the owner thereof shall be liable for maintaining a common nuisance, which may be restrained or enjoined or abated in any appropriate action or proceeding under existing law.

10.2 Citation for Civil Zoning Violations **10**

10.2 CITATION FOR CIVIL ZONING VIOLATIONS

- A. ISSUING AND SERVING.** The Administrator or his duly authorized designees may issue a civil zoning violation to a person who commits a civil zoning violation to the legal owner, the contract vendee, or any person or entity with a possessory interest in the real estate upon which the violation occurs. The citation may be served by personal service, by certified mail, or by placement in a conspicuous place on the property where the violation occurs and shall serve as notice to a person that he or she has committed a civil zoning violation.
- B. FIRST OFFENSE.** No citation shall be issued for the first offense unless the person who commits a civil zoning violation, or the legal owner, the contract vendee, or any person or entity with a possessory interest in the real estate upon which the violation occurs has been issued a warning ticket not less than fourteen (14) days before the issuance of the citation to allow said person to correct the violation to come into compliance with the prescribed unified development ordinance or regulations.
- C. PETITION FOR VARIANCE, REZONING, OR OTHER MEANS.** A person who receives a warning ticket or a citation may file a petition for a variance, conditional use permit, rezoning, or other means provided by this ordinance to correct the violation. A person who elects to file such a petition shall indicate this intent on the warning ticket or citation and return it to the issuing agency. A person shall have ten (10) days after issuance of the warning ticket to file the petition, and additional monetary fines as prescribed in [Section 10.7 Monetary Fine and Penalties](#) of this chapter shall be stayed upon the filing of such petition. A person who files the petition within said time period shall pursue the petition in an expeditious fashion. If the petition is denied, withdrawn, or dismissed for want of prosecution, and the civil zoning violation continues at the real estate, then a lawsuit will be commenced by the designated enforcement entity (BZA) in a court of competent jurisdiction in Boone County, Indiana.
- D. WARNING TICKET CONTENTS.** The warning ticket shall include:
1. Date
 2. Name and address
 3. Section number in violation and name of code
 4. Nature of violation
 5. Specific time allowed to bring the violative activity into compliance
 6. Name, business address, and phone number of person issuing warning ticket

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10.2 Citation for Civil Zoning Violations

7. Statement to violator of option to appear before the City of Lebanon Board of Zoning Appeals to file a petition.

E. CITATION CONTENTS. The Citation shall appear on serialized, designated form and include:

1. Date
2. Name and address
3. Section number in violation and name of code
4. Nature of violation
5. Place and date the violation was observed
6. Amount of fine assessed
7. Time, manner and location to pay fine
8. Notice that each day is a new violation
9. Name, business address, and phone number of person issuing citation
10. Statement to violator of right to elect trial.

10.3 TRIAL FOR CIVIL ZONING VIOLATIONS

A. PROCEDURE. A person who receives a citation may elect to stand trial for the offence by indicating on the citation his intent to stand trial and returning a copy of the citation to the issuing agency. The returned copy of the citation shall serve as notice of the person's intent to stand trial, and additional monetary fines prescribed in [Section 10.7 Monetary Fine and Penalties](#) shall be stayed upon receipt of the notice. The notice shall be given at least seven (7) days before the date of payment set forth on the citation. On receipt of the notice of intention to stand trial, a lawsuit will be commenced by the city attorney in a court of competent jurisdiction in Boone County, Indiana. The matter shall be scheduled for trial, and a Summons and Order to Appear shall be served upon the Defendant.

B. FAILURE TO PAY FINES. If a person who receives a citation fails to pay the assessed fine by the date of payment set forth in the citation and fails to give notice of his intention to stand trial as prescribed in this section, the city attorney may file a civil lawsuit as proscribed by applicable laws and seek penalties as prescribed in [Section 10.7 Monetary Fine and Penalties](#).

C. COURT COST AND FEES. A person adjudged to have committed a civil zoning violation is liable for the court costs and fees. No cost shall be assessed against the enforcement agency in any such action.

10.3 Trial for Civil Zoning Violations **10**

- D. BURDEN.** In proceedings before the court for a civil zoning violation, the Indiana Rules of Trial Procedure shall govern. The designated enforcement entity (BZA) has the burden of proving the civil zoning violation by a preponderance of the evidence.
- E. RELIEF OR REMEDY.** Seeking a civil penalty as authorized by this section does not preclude the city from seeking alternative relief from the court in the same action, or from seeking injunctive relief or other remedy in a separate action for the enforcement of this ordinance.
- F. CHANGE OF VENUE.** A change of venue from Boone County shall not be granted in such a case, as provided in IC 36-7-4-1014.

10.4 CITATION FOR WRITTEN COMMITMENT VIOLATIONS

- A. PROCEDURE.** At the discretion of the Plan Commission, the Administrator or his duly authorized designees may issue a citation to a person who commits a violation of written commitments, and to the legal owner, the contract vendee, or any person or entity with a possessory interest in the real estate upon which the violation occurs.
 - 1. The citation may be served by personal service, by certified mail, or by placement in a conspicuous place on the property where the violation occurs and shall serve as notice to a person that he or she has committed a violation of written commitments.
 - 2. The City shall enforce commitments made as part of plan/plat approval.
 - 3. The City may elect, but is not obligated, to enforce covenants when the violation has a severe negative impact on property values, health, safety, or the general welfare of adjacent property owners.

10.5 IMMEDIATE PUBLIC RISK VIOLATIONS

- A. GENERAL REQUIREMENTS.** Any violation of this ordinance that presents an immediate risk to the health, safety, or welfare of the public or to property within the City of Lebanon may be corrected by the Administrator, or a person, firm, or organization selected by the Administrator without prior notice to the property owner or other person responsible for the violation.
- B. IMMEDIATE PUBLIC RISK VIOLATION DEFINED.** Immediate Public Risk violations shall include but not limited to:
 - 1. Obstructions. Signs, structures, landscaping or other materials placed in an easement, sight visibility triangle, or other non-public right-of-way in violation of this ordinance;

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10.5 Immediate Public Risk Violations

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 any representative of the City of Lebanon, or by the Board of Zoning Appeals based upon the advice and recommendation of the Administrator.

C. SEIZURE OF MATERIALS. Any sign, structure, landscaping or other material that constitutes an immediate public risk violation may be seized by the Administrator in a manner that results in the least amount of damage to the material or the property on which it is located under the circumstances.

D. NOTICE OF VIOLATION. The Administrator shall provide notice to the owner of the property, as listed in the records of the Clerk Treasurer's Office, upon which the violation was located, or any discernible appropriate owner of materials placed within the right-of-way in violation of this ordinance, by placing a notice in a conspicuous place on the property and by mailing 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. Any notice that is to be 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 section(s) of the Ordinance that were violated and the characteristic(s) of the violation that posed an immediate threat to public welfare,
 - c. the address and phone number of the 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); and
 - d. instructions describing how, where, and when the seized items may be claimed.

E. STORAGE AND RETRIEVAL OF SEIZED MATERIALS. The 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 mailed 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

10.5 Immediate Public Risk Violations **10**

of Agreement between the property owner and Administrator regarding the future use of the item in a manner consistent with this ordinance.

- F. LIABILITY.** Neither the Administrator, City of Lebanon, 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.

10.6 CONSTRUCTION PROCESS VIOLATIONS

- A. STOP-WORK ORDERS.** The Planning and Zoning Administrator 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 nature of the violation and that the work and/or any other illegal activity must stop immediately until the matter is resolved. If someone other than the property owner occupies the property, a copy of said Stop Work Order shall be provided to said occupant(s). This letter shall be posted in a conspicuous place and be delivered/mailed to the property owner.
2. Reasons. Reasons for a Stop-Work Order include, but are not limited to:
 - a. not complying with any element of the development standards and/or any regulation 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 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 conditions or commitments of a conditional use, variance, rezoning, or other approval whether recorded or not.
 - e. not meeting the conditions of a Site Development Plan, Planned Unit Development Detailed Plan, or any written commitment associated therewith.
 - f. 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, may be appealed to the Board of Zoning Appeals. This appeal shall follow the provisions established for Administrative Appeals.

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10.6 Construction Process Violations

C. RESUMPTION OF CONSTRUCTION ACTIVITY. The Stop-Work Order shall be lifted and construction activity may resume upon the resolution of the violation(s) to the satisfaction of the Administrator.

10.7 MONETARY FINE AND PENALTIES

A. APPLICABILITY. Any person who uses property in violation of the Unified Development Ordinance of Lebanon shall be deemed to have committed a civil zoning violation and may be issued a citation by Lebanon Code Enforcement.

B. CITATION AND FINE. Each day a violation remains uncorrected is a distinct and separate civil zoning violation subject to an additional citation and fine in the amount prescribed below, provided a warning ticket has first been issued pursuant to [Section 10.2 Citation for Civil Zoning Violations](#).

1. Any person held liable by a court of competent jurisdiction for a violation of the Unified Development Ordinance of Lebanon shall be fined not less than \$100.00 and not more than \$2,500.00 for each violation.
2. The monetary fine for each civil zoning violation shall range from \$100.00 to \$2,500 per day from the Date of Compliance requested by the Administrator in the Notice of Violation.

C. PAYMENT OF FINES. All fines prescribed by this section for civil zoning violations shall be paid to the Administrator, who shall render to the person making the payment a receipt stating the amount and purpose for which the fine has been paid, and duplicate of which shall be made a part of the records of the Plan Commission. All fines thus received shall be forwarded to the City of Lebanon Clerk Treasurer for deposit in the General Fund.

D. ACCOUNTABILITY. The owner or tenant of any building, structure, premises, or part thereof, and any architect, builder, contractor, realtor, agent, or other person who commits, participates in, assists in, or maintains such violation may each be found guilty of a separate offense and suffer the penalties herein provided.

E. COST OF ATTORNEY, INVESTIGATION, AND OTHER FEES. If the Board of Zoning Appeals or the City of Lebanon is required to utilize the services of the City Attorney or any other attorney in investigating a possible violation of this ordinance or in enforcing the provisions of this ordinance pursuant to this section or any other Section; and such investigation results in a determination that a violation has occurred, or if the Board of Zoning Appeals or City is successful in its enforcement of the Ordinance by way of suit, appeal or other appropriate proceeding; the respondent, defendant or party investigated for a violation shall pay the City's reasonable attorney

10.7 Monetary Fine and Penalties **10**

fees and all costs related to the investigation of the violation and/or the enforcement of this ordinance, unless such attorney fees or the costs are specifically waived by the Common Council of the City of Lebanon.

- F. WAIVING FINES.** The Administrator may, at his/her discretion, waive the assessed fine for timely correction of the violation.

10.8 SUBDIVISION VIOLATIONS AND PENALTIES

- A. VIOLATION AND FINE.** Any person or corporation who shall violate any of the provisions of this ordinance or fail to comply therewith or with any of the requirements thereof, or who shall build, reconstruct or structurally alter any building in violation of any detailed statement or plan submitted and approved thereunder shall, for each and every violation or noncompliance, be guilty of a misdemeanor and, upon conviction, shall be fined not less than one hundred dollars (\$100.00), and not more than three hundred dollars (\$300.00). Each day that such violation or non-compliance shall be permitted to exist shall constitute a separate offense.
- B. CONSTRUCTION WITHOUT PERMIT.** Any person who shall initiate construction prior to obtaining any permit required by Chapter 9: Permits, Certificates, and Procedures of this ordinance, shall pay twice (2x) the amount of the filing fee set forth herein.
- C. FAILURE TO PROVIDE AS-BUILT PLANS.** Failure to provide correct As-Built Plans to the City of Lebanon within two (2) months of the completion of public improvements shall be considered a violation of this ordinance. Applicants who fail to provide these plans within the specified time period shall be guilty of an infraction, and upon conviction, shall be fined in the sum of not less than one hundred dollars (\$100.00), and not more than three hundred dollars (\$300.00) per day for each violation. Each day of violation shall constitute a separate offense.
- D. ACCOUNTABILITY.** The owner or tenant of any building, structure, premises, or part thereof, and any architect, builder, contractor, realtor, subdivider, agent, or other person who commits, participates in, assists in, or maintains such violation may each be found guilty of a separate offense and suffer the penalties herein provided.

