

Chapter 11

Enforcement and Penalties

Porter County
Unified Development
Ordinance

Enforcement and Penalties

11.01 Scope of Violations

It shall be a violation of the Unified Development Ordinance to:

- A. Construct or place a structure in a manner that is not expressly permitted by the Unified Development Ordinance;
- B. Fail to fully comply with the terms and requirements of grants of Special Exceptions, variances, rezonings, and other approvals associated with the administration of the Unified Development Ordinance and with conditions of approval or commitments associated with such;
- C. Fail to fully comply with the terms and requirements of permits, subdivision approvals, Development Plans and other approvals associated with the administration of the Unified Development Ordinance and with conditions of approval or commitments associated with such;
- D. Make any use of property that is not expressly permitted by the Unified Development Ordinance or by a permit or other approval granted under the Unified Development Ordinance.

11.02 Authority to Take Enforcement Action

The Plan Commission, Board of Zoning Appeals, and the Executive Director and persons to whom enforcement responsibility has been delegated by the Plan Commission, Board of Zoning Appeals or Executive Director are each empowered to enforce the provisions of the Unified Development Ordinance and of related requirements arising out of the administration of the Unified Development Ordinance.

When a section of the Unified Development Ordinance requires an act to be done which, by law, an agent or deputy as well may do as the principal, the requisition is satisfied by the performance of the act by an authorized agent or deputy.

11.03 Investigation of Violations

The Executive Director or a staff member may investigate complaints made pertaining to noncompliance with the Unified Development Ordinance. The Executive Director or a staff member shall investigate any possible violation of the Unified Development Ordinance reported by the Plan Commission or Board of County Commissioners. Enforcement action may or may not be taken, depending on the findings. If enforcement action is justified, the nature of the action will be at the discretion of the Executive Director and should reflect the action that is warranted by the findings.

11.04 Inspection of Property

- A. **Standard Inspections:** Inspections of property may be conducted by the Executive Director or a staff member under the direction of the Executive Director. Inspections shall be made at a reasonable time. If requested of the inspector by the owner or occupant before undertaking an inspection, the inspector shall present evidence of his authorization (identification, badge, or document) and describe the purpose of the inspection to the owner, tenant, or occupant at the time of the inspection.
- B. **Denial of Access to Property:** In the event that the Executive Director or staff member is denied entry to a lot or building where there is evidence of violation of this Unified Development Ordinance, the Executive Director or a County official may apply to a court that has jurisdiction to secure an administrative search warrant authorizing inspection of the lot or the interior of the building. Such application shall identify the lot or building to 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 violation of the Unified Development Ordinance exists on such lot or in such building to the best of the affiant's belief. The warrant issued pursuant to such application shall order the owner or occupant to permit entry to the Executive Director or staff member for the purposes of making an inspection.

11.05 Responsibility for Violations

The owner, contract vendee, tenant, and occupant of any property or structure, or part thereof, shall each be responsible for a violation of the Unified Development Ordinance. Architects, builders, contractors, developers, easement holders, persons making use of the property without legal right, or agents thereof may also be found responsible for the violation if evidence of their participation in the violation or negligence in allowing the violation to occur is found.

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11.06 Violations Justifying Issuance of a Stop Work Order

- A. Authority and Procedure for Issuance of Stop Work Order: The Executive Director may issue a Stop Work Order relative to any lot or structure where a violation of the Unified Development Ordinance is occurring or is likely to occur. The Stop Work Order shall be in writing. The Stop Work Order shall describe the violation and order the immediate cessation of work or illegal activity until the matter is resolved. The Stop Work Order shall be posted in a conspicuous place on the property and a copy shall be delivered or mailed to the owner, developer, builder, contractor, property manager, tenant, or occupant. The Executive Director shall ask to meet with the party served the Stop Work Order within seven (7) days of issuance of the order. If requested by the party served, the Executive Director shall state in writing the conditions under which the Stop Work Order may be lifted. In order for a Memorandum of Agreement resolving the matter to be valid, it must be signed by the owner, developer, builder, contractor, property manager, tenant, or occupant that has caused or is responsible for the violation and by either the Executive Director or the Plan Commission President. The Stop Work Order may be appealed to the Board of Zoning Appeals.
- B. Justifications for Issuance of Stop Work Order: Specific justifications for issuance of a Stop Work Order include:
1. Engaging in activity that does not comply with development standards or other requirements of the Unified Development Ordinance;
 2. Undertaking construction without obtaining a required Improvement Location Permit;
 3. Undertaking regulated land-disturbing activity without obtaining a required Erosion Control Permit;
 4. Carrying out construction that will result in a violation of the Unified Development Ordinance;
 5. Carrying out construction that is inconsistent with conditions or commitments related to a Special Exception or variance;
 6. Carrying out construction that is inconsistent with requirements of commitments, conditions of approval, Development Plans, or covenants which are enforceable by the Plan Commission; or
 7. Undertaking construction without obtaining any other permit necessary for site/property improvement as required by the Unified Development Ordinance.

11.07 No New Permits at Location Where Violation Exists

When a violation of the Unified Development Ordinance has been identified on a property and notice of the violation has been conveyed in writing to an owner or possessor of the property, but resolution of the violation has not been achieved, no permit authorized under the Unified Development Ordinance shall be issued relative to the property. However, the Executive Director may authorize the issuance of such a permit if justified to allow an owner or possessor of property to bring the property into compliance with the Unified Development Ordinance.

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11.08 Enforcement, Remedies, and Injunctive Relief

All remedies and enforcement actions set forth in IC 36-7-4-1000 *et. seq.*, and all other applicable State law, may be used to enforce the provisions of the Unified Development Ordinance.

A. Action to Bring Compliance:

1. If a condition violating the Unified Development Ordinance exists on real property, the Plan Commission or the Executive Director may enter onto that real property and take appropriate action to bring the real property into compliance with the Unified Development Ordinance. However, before action to bring compliance may be taken, all persons holding a substantial interest in the real property shall be given a reasonable opportunity of at least ten (10) days but not more than sixty (60) days to bring the real property into compliance. If the Plan Commission or the Executive Director takes action to bring compliance, the expenses incurred by the County to bring compliance constitute a lien against the real property. The lien is superior to all other liens except liens for taxes, in an amount that does not exceed:
 - a. Two thousand five hundred dollars (\$2,500.00) for real property that:
 - i. Contains one (1) or more occupied or unoccupied single- or two-family dwellings or the appurtenances or additions to those dwellings; or
 - ii. Is unimproved; or
 - b. Ten thousand dollars (\$10,000.00) for all other real property not described in §a.
 2. The County may issue a bill to the owner of the real property for the costs incurred by the County in bringing the real property into compliance with the Unified Development Ordinance, including administrative costs and removal costs.
 3. If the owner of the real property fails to pay a bill issued under §2, the County may, after thirty (30) days, certify to the County Auditor the amount of the bill, plus any additional administrative costs incurred in the certification. The County Auditor shall place the total amount certified on the tax duplicate for the real property affected, and the total amount, including any accrued interest, shall be collected as delinquent taxes are collected and shall be disbursed to the general fund of the County.
- B. The Plan Commission or the Executive Director may bring an action in the Circuit or Superior Court of the County to invoke any legal, equitable, or special remedy for the enforcement of IC 36-7-4 or of any ordinance created under IC 36-7-4. This includes, but is not limited to, the Unified Development Ordinance.
- C. The Plan Commission or the Executive Director may also bring an action in the Circuit or Superior Court of the County to enforce:
1. Covenants made in connection with a subdivision plat, a Development Plan, or a Planned Unit Development.
 2. All commitments made in accordance with IC 36-7-4.
 3. All conditions of approval imposed in accordance with IC 36-7-4.
- D. The Board of Zoning Appeals or the Executive Director may bring action in the Circuit or Superior Court of the County to restrain a person from violating IC 36-7-4 or any ordinance adopted under IC 36-7-4, which includes but is not limited to the Unified Development Ordinance.
- E. The Board of Zoning Appeals may also bring an action in the Circuit or Superior Court of the County for a mandatory injunction, directing a person to remove a structure erected in violation of IC 36-7-4 or the Unified Development Ordinance.
- F. If the Board of Zoning Appeals is successful in its action, the respondent shall bear all costs of the action.
- G. An action to enforce a commitment made in accordance with IC 36-7-4 may be brought in the Circuit or Superior Court of the County by:
1. Any person who was entitled to enforce a commitment made in accordance with IC 36-7-4 under the rules of the Plan Commission or the Board of Zoning Appeals in force at the time the commitment was made; or
 2. Any other specially affected person who was designated in the commitment.

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11.09 Court-imposed Fines

In addition to any other remedies, including injunctive relief provided herein, any person or entity who or which shall violate any provision of the Unified Development Ordinance shall, upon conviction thereof, be subject to a court-imposed fine. The fine shall be in a sum not less than \$50.00 or more than \$2,500.00. Each day during which the violation exists constitutes a separate violation of the Unified Development Ordinance.

11.10 Civil Zoning Violations

A. List of Civil Zoning Violations: It shall be unlawful for any person or entity identified in §11.05:

Responsibility for Violations to cause or allow any of the following civil zoning violations to occur on property subject to the jurisdiction of the Plan Commission:

1. The location, erection, or maintenance of any sign not specifically permitted by the Unified Development Ordinance;
2. The failure to obtain an Improvement Location Permit or any other required permit under the Unified Development Ordinance when required prior to initiation of improvements, change of land use, or other modifications regulated under the Unified Development Ordinance;
3. The failure to obtain an Erosion Control Permit when required prior to the initiation of regulated land-disturbing activity;
4. The failure to obtain a Certificate of Zoning Compliance when required by the Unified Development Ordinance;
5. The outdoor storage of junk, trash, or debris in any zoning district, the provisions of which do not specifically permit such a use;
6. The outdoor storage of inoperable or unlicensed motor vehicles or motor vehicle parts in any zoning district, the provisions of which do not specifically permit such a use;
7. The parking or storage in any zoning district of any motor vehicle not permitted by the Unified Development Ordinance;
8. The outdoor storage or display of merchandise or goods in any zoning district, the provisions of which do not specifically permit such a use or in violation of zoning district development standards regulating such use;
9. The conduct of any activity in a zoning district that is not specifically enumerated as a permitted primary or accessory use in that zoning district, and which activity has not been legally established by a currently valid Use Variance or Special Exception;
10. The failure to comply with zoning district development standards, including, but not limited to, landscaping, paving or striping of parking areas, minimum parking space requirements, Dumpster enclosure, fencing or screening requirements;
11. The failure to comply with the terms, provisions, conditions or commitments of a variance grant, Special Exception, rezoning ordinance, or other approval grant; and
12. Proceeding with work under a Stop Work Order or a violation of a Memorandum of Agreement made pursuant to a Stop Work Order.

B. Effect of Uncorrected Violation: Each day a civil zoning violation remains uncorrected constitutes a second or subsequent violation. It shall be a defense to an action to enforce a civil zoning violation that the use or activity alleged to be a civil zoning violation is a legal nonconforming use.

11.11 Civil Zoning Violations; Enforcement

The first civil zoning violation in any calendar year shall be subject to admission of violation and payment of the designated civil penalty through the Ordinance Violations Bureau in accordance with Title 2: Administration & Personnel; Chapter 2.048: Ordinance Violations Bureau of the Porter County Code. A person or entity cited for a violation of the Unified Development Ordinance may elect to file a Special Exception, variance, rezone or other pertinent approval application. However, neither the filing of such an application nor the granting of the application shall constitute a defense of any civil zoning violation that occurs prior to the granting of the Special Exception, variance, rezone, or other approval. Second violations and violations occurring after the second violation in the calendar year are subject to the enforcement procedures and penalties provided in §11.08: *Enforcement, Remedies and Injunctive Relief* and §11.09: *Court-imposed Fines* of this chapter.

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11.12 Violation of Unified Development Ordinance a Nuisance

A structure that is erected, raised, or converted, in violation of the Unified Development Ordinance or land that is used in violation of the Unified Development Ordinance is a common nuisance and the owner or possessor of the structure or land may be held responsible for maintaining said nuisance.