

Article 21-13: Nonconformities & Enforcement

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Section 21-13.01: Nonconformities

(a) Intent

Within the districts established by this Ordinance, there exist:

- (1) nonconforming lots of record;
- (2) nonconforming buildings or structures;
- (3) nonconforming uses of land;
- (4) nonconforming uses within nonconforming buildings or structures; and,
- (5) nonconforming signs

which were legally established prior to the effective date of this Ordinance, but which would be prohibited, regulated, or restricted under the provisions of this Ordinance. It is the intent of this Ordinance to permit these legally established nonconforming lots of record, buildings, structures, uses, and signs to continue until they are removed, but not to encourage their survival. It is further the intent of this Ordinance that legally established nonconforming buildings, structures, uses, and signs shall not: (a) be enlarged upon, expanded, or extended except as otherwise expressly permitted herein; or, (b) be used as grounds for adding other buildings, structures, uses, or signs which are prohibited elsewhere in the same district.

Nonconforming lots of record, nonconforming buildings or structures, nonconforming uses of land, nonconforming uses within nonconforming buildings or structures, and nonconforming signs that are either illegal or not legally established on the effective date of this Ordinance shall not become legally established by virtue of the enactment of this Ordinance.

Nonconforming lots of record, nonconforming buildings or structures, nonconforming uses of land,

nonconforming uses within nonconforming buildings or structures, and nonconforming signs which are in full compliance with the regulations of this Ordinance pertaining to the permitted uses and development standards of the district to which the real estate is zoned shall, after the effective date of this Ordinance, be considered validated as conforming lots of record, buildings, structures, uses, and signs for the purposes of interpreting and applying this Ordinance.

(b) Certificate of Legally Established Nonconforming Use of Land

In order to protect the lawful nonconforming status of a nonconforming lot, use, building, structure, or sign, a person who owns or operates said nonconforming lot, use, building, structure, or sign shall request a Certificate of Legally Established Nonconforming Use of Land. The applicant, prior to the issuance of the Certificate of Legally Established Nonconforming Use of Land, shall bear the burden of proof to demonstrate that the lot, use, building, structure, or sign was legally established per the requirements of this section. Submitted materials shall be provided in the manner prescribed by the Plan Commission.

(c) Legally Established Nonconforming Lots

- (1) **Legally Established Nonconforming Lots of Record.** Any legally established lot recorded or any legally established platted lot recorded prior to the effective date of this Ordinance, having less than the required minimum, or that is larger than the maximum, lot area, lot width, or lot depth required by the applicable district regulations of this Ordinance, shall be deemed a legal nonconforming lot of record and may be used for any permitted use within the applicable district in which such lot is located provided that all other development standards are met.

(2) Legally Established Nonconforming Lot Frontage.

Any legally established lot in which the frontage of such lot has been reduced below, or increased above, that which is required by the applicable district regulations of this Ordinance by the acquisition of right-of-way or access rights by a governmental entity shall be deemed a legal nonconforming lot of record and may be used for any permitted use within the applicable district in which such lot is located provided that all other development standards are met.

(3) Buildable Lots. A legal nonconforming lot of record may be used as a buildable lot if such legal nonconforming lot of record complies with one of the following:

(A) Any lot, in its entirety, of a subdivision that was recorded in the Recorder's Office prior to the adoption of this Ordinance; or

(B) A parcel described by a metes and bounds description, or as lots or any combination of parts of lots of an unrecorded subdivision; provided that it complies with all of the following:

- i. Recorded evidence of ownership evidencing the parcel as being under single and separate ownership was recorded in the Recorder's Office prior to June 13, 1949;
- ii. The current legal description describes the parcel as recorded in the Recorder's Office on or before June 13, 1949; and,
- iii. The parcel has frontage along an improved, dedicated, and accepted public street.

(C) A parcel described by a metes and bounds description, or as lots or any combination of parts of lots of an unrecorded subdivision; provided that it complies with all of the following:

- i. Recorded evidence of ownership evidencing the parcel as being under single and separate ownership was recorded in the Recorder's Office after June 13, 1949, but on or before December 11, 1961;

- ii. The current legal description describes the parcel as recorded in the Recorder's Office after June 13, 1949, but on or before December 11, 1961;
- iii. The total area of the parcel consists of at least 6,000 square feet; and,
- iv. The parcel has frontage along an improved, dedicated, and accepted public street.

(D) A parcel described by a metes and bounds description, or as lots or any combination of parts of lots of an unrecorded subdivision; provided that it complies with all of the following:

- i. Recorded evidence of ownership evidencing the parcel as being under single and separate ownership was recorded in the Recorder's Office on or before July 27, 1966;
- ii. The current legal description describes the parcel as recorded in the Recorder's Office on or before July 27, 1966;
- iii. The parcel meets or exceeds the minimum, and does not exceed the maximum, lot area, lot width, and lot depth requirements of the district in which the parcel is located; and,
- iv. The parcel has frontage along an improved, dedicated, and accepted public street.

(E) A parcel of land described by a metes and bounds description, or as a lot or lots or any combination of parts of lots of an unrecorded or recorded subdivision that does not comply with any of the above sub-sections of this Article, and provided that prior to the adoption of this Ordinance both of the following were met:

- i. Recorded evidence of ownership evidencing the property as being under single and separate ownership was recorded in the Recorder's Office; and
- ii. A primary building exists or once existed on the lot.

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(F) Any of the lots described in sub-sections (1) through (5), above, which is reduced in lot area as a result of action by a governmental unit or entity.

(4) Side Setback Provision for 32' and 33' Wide Lots.

A legally established lot of record as of January 1, 2020, in a S1, U1, U2, U3, or UF district that has a lot width of at least 32 feet but less than 34 feet only shall be required to have a minimum side setback of 4 feet for residential uses.

(d) Legally Established Nonconforming Buildings or Structures (Excluding Signs)

Where a legally established nonconforming building or structure exists on the effective date of this Ordinance that could not be built under the terms of this Ordinance by reason of restrictions on: gross floor area; building coverage; building height limitations; front, corner, side, and rear setbacks and yards; location on the lot; bulk; or other provisions of this Ordinance applicable to the building or structure, such building or structure may continue to exist so long as it remains otherwise lawful, subject to compliance with the following provisions:

- (1) Except as otherwise expressly permitted herein, such legally established nonconforming building or structure may not be enlarged, expanded, or altered in a way which increases its nonconformity, provided such building or structure may be altered so as to decrease the extent of nonconformity;
- (2) Should such legally established nonconforming building or structure, or legally established nonconforming portion of a building or structure, be damaged or destroyed by any means to the extent that restoration will exceed 50 percent of the cost of construction of the entire building or structure at the time the damage or destruction is reported, as determined pursuant to [Section 21-13.01\(n\)](#), said building or structure shall not be reconstructed except in conformity with the provisions of this Ordinance; and
- (3) Should such legally established building or structure be moved for any reason for any distance whatsoever, such legally established building or structure shall thereafter conform to the provisions of this Ordinance.

(e) Legally Established Nonconforming Uses of Land

Where legally established nonconforming uses of land exist on the effective date of this Ordinance which would not be permitted by the provisions of this Ordinance, such uses may be continued so long as they remain otherwise lawful; provided that:

- (1) Such legally established nonconforming uses shall not be enlarged, expanded, increased, or extended to occupy a greater area of land than was occupied on the effective date of this Ordinance;
- (2) Such legally established nonconforming uses shall not be moved in whole or in part to any portion of the lot or parcel other than that occupied by such uses on the effective date of this Ordinance; and,
- (3) No additional building or structure shall be erected in connection with such legally established nonconforming use of land.

(f) Discontinuation of Legally Established Nonconforming Uses of Land

- (1) If any legally established nonconforming use of land, other than a 1 unit dwelling, is abandoned for any period of time, then any subsequent use of such land shall conform to the provisions of this Ordinance. For purposes hereof, "Abandoned" shall mean an intentional discontinuance of the use by the property owner with no intention of continuing the use within the 12-month period following the date of discontinuance.
- (2) Any violation of this sub-section shall result in enforcement proceedings under [Section 21-13.02](#) of this Ordinance.

(g) Legally Established Nonconforming Uses Within Legally Established Nonconforming Buildings or Structures

If any legally established nonconforming use is located within a legally established nonconforming building or structure and such legally established nonconforming building or structure becomes unsafe or unlawful by reason of physical condition and is razed, the legally established nonconforming use previously being conducted in such legally established nonconforming building or structure shall be extinguished and no longer permitted.

If any legally established nonconforming use is located within a legally established nonconforming building or structure and such legally established nonconforming building or structure is damaged or destroyed by any means to the extent that restoration will exceed 50 percent of the cost of construction of the entire building or structure at the time the damage or destruction is reported, as determined pursuant to [Section 21-13.01\(n\)](#), the legally established nonconforming use previously being conducted in such legally established nonconforming building or structure shall be extinguished and no longer permitted.

(h) Repairs and Maintenance of Legally Established Nonconforming Buildings or Structures (Excluding Signs)

- (1) Ordinary Repairs.** On any legally established nonconforming building or structure, or portion of a building or structure containing a legally established nonconforming use, work may be done on ordinary repairs or on the repair or replacement of non-bearing walls, fixtures, wiring, or plumbing, provided that the cubic feet content existing when the building or structure, or portion of a building or structure containing a legally established nonconforming use, became nonconforming shall not be increased. Nothing herein shall be deemed to prevent the strengthening, repairing, or restoring to safe condition of any building or structure, or part thereof, declared to be unsafe by any official charged with protecting the public safety, upon order of such official.
- (2) Reconstruction Prohibited.** If a legally established nonconforming building or structure or portions of a building or structure containing a legally established nonconforming use becomes unsafe or unlawful by reason of physical condition and is razed, such building or structure shall not thereafter be rebuilt or used except in conformity with the provisions of this Ordinance.
- (3) Remodeling.** The gross floor area and the maximum building height devoted to the legally established nonconforming use shall not be increased, except as such increase is required to comply with other applicable federal, state or local regulations (i.e., minor enlargements to accommodate ADA

accessibility guidelines or current building codes), and as permitted in (1) below; and,

- (4) Parking Area, Outside Storage Area, or Outside Operations Area.** A legally established nonconforming parking area, outside storage area, or outside operations area may be maintained, repaired, or upgraded by hardsurfacing provided that:
- (A) There is no increase in the total area occupied by the parking area, outside storage area, or outside operations area;
- (B) If, in the discretion of the Zoning Administrator, the hardsurfacing would serve to reduce a potential negative impact of the existing parking area, outside storage area, or outside operations area on surrounding properties (e.g., reduction in fugitive dust emissions, noise, erosion, etc.); and
- (C) Such hardsurfacing shall require an improvement location permit and shall also be subject to full review under and compliance with the storm drainage requirements of the City of South Bend.

(i) Legally Established Nonconforming Signs

- (1)** Any legally established nonconforming sign within the City of South Bend may continue to exist, including the performance of normal and routine maintenance, so long as such sign remains otherwise lawful.
- (2)** Legally established nonconforming signs may receive normal and routine repair and maintenance subject to the following provisions:
- (A) A legally established nonconforming sign may not be enlarged, expanded, or altered in a way which increases its nonconformity;
- (B) A legally established nonconforming sign erected pursuant to the grant of a variance of either a previously enacted zoning regulation or this Ordinance for number of signs, height of sign, setback of sign, or sign surface area may be altered so as to decrease the extent of nonconformity authorized by such grant of variance;

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- (C) Except as provided for in sub-section (2)(B), above, the removal of a sign structure or a sign cabinet shall be deemed definitive evidence that such sign requires work beyond normal and routine repair and maintenance, and such sign shall not be repaired, maintained, or reconstructed except in conformity with the provisions of this Ordinance;
- (D) If a legally established nonconforming sign is damaged or destroyed by any means to the extent that the repair or reconstruction of the sign exceeds 50 percent of the cost of construction of the entire sign, determined pursuant to Section 21-13.01(n), said legally established nonconforming sign shall not be reconstructed except in conformity with the provisions of this Ordinance;
- (E) If the cost of normal and routine repair and maintenance of a legally established nonconforming sign exceeds 50 percent of the cost of construction of the entire sign, determined pursuant to Section 21-13.01(n), said legally established nonconforming sign shall not be repaired, maintained, or reconstructed except in conformity with the provisions of this Ordinance; and,
- (F) Except as provided in sub-section (2)(B), above, should a legally established nonconforming sign be moved for any reason for any distance whatsoever, such legally established nonconforming sign shall thereafter conform to the provisions of this Ordinance.

(j) Reconstruction, Remodeling, or Enlargement of a Legally Established Nonconforming 1 Unit Dwelling or 2 Unit Dwelling

Notwithstanding any provision of this section to the contrary, any legally established nonconforming 1 unit dwelling or 2 unit dwelling may be:

- (1) Reconstructed if damaged or destroyed by fire, natural disaster or for any other reasons; or,
- (2) Remodeled or enlarged, provided that such remodeling or additions comply with the development standards of the applicable district related to maximum building coverage, minimum

setbacks (except as set forth in (l) below), maximum setbacks, and building height.

(k) Reconstruction or Remodeling of a Legally Established Nonconforming Multi-Unit Dwelling

Notwithstanding any provision of this section to the contrary, any legally established nonconforming multi-unit dwelling which contains 4 or fewer dwelling units may be:

- (1) Reconstructed if damaged or destroyed by fire, natural disaster, or for any other reasons; or,
- (2) Remodeled, provided that such remodeling:
 - (A) Does not increase the height, area, or bulk of the building (except as set forth in (l) below);
 - (B) Does not increase the number of dwelling units in the building; or,
 - (C) Does not increase the number of bedrooms in any dwelling unit in the building.

(l) Additions Along a Legally Established Nonconforming Rear Setback

Acknowledging that the inability to expand or enlarge a legally established nonconforming building or structure may create a hardship for rear building additions, and where the extent of such rear building addition is not so significant as to have any adverse impacts on adjacent properties, the minimum rear setback for any legally established nonconforming building having a rear setback which is less than that which is required, or the maximum rear setback that is greater than that which is required, shall be allowed to expand one time up to an amount of 20 percent of the total gross floor area of the building or structure so long as all of the following are satisfied:

- (1) The expansion or enlargement does not result in the building or structure being nearer to any side lot line or front lot line;
- (2) The new rear setback is not less than 80 percent of the permitted rear setback; and
- (3) All other applicable development standards, except the rear setback to be expanded upon are in compliance with the requirements of the district.

The provisions of this sub-section shall not be applicable to any rear setback in which an additional setback is required due to adjacency to an S1, S2, U1, U2, U3, or UF district.

(m) Legally Established Planned Unit Development (PUD)

The Planned Unit Development (PUD) district is no longer included in the zoning districts applicable to this zoning ordinance. With the adoption of this ordinance, all projects previously designated PUD have been assigned to the zoning district that most closely meets the intent, uses, and development standards of the approved PUD. Any development standards approved as part of the PUD that do not meet the development standards of the district to which it was assigned shall be considered permissible as legal approvals in a manner consistent with the grant of a variance. Any use approved as part of the PUD but not permitted in the district to which it was assigned shall be considered permissible as a legal approval in a manner consistent with the grant of a special exception and shall be subject to the site development plan associated with the approved PUD.

(n) Determination of Cost of Construction

In determining the reported cost of construction of a building or structure (excluding signs) or the cost of construction of a sign, the Zoning Administrator may consider the following items:

- (1) Building or Structure.** Documentation prepared by and provided by the applicable insurance company responsible for adjusting the loss;
- (2) Sign.** Documentation prepared by and provided by an appraiser licensed by the State of Indiana to appraise the type of property involved; or,
- (3)** Other documentary evidence relevant to the reported cost of construction deemed appropriate by the Zoning Administrator.

(o) Existing Buildings – Zone Map Amendment, Special Exception, or Use Variance

In those instances where buildings exist on a lot or parcel that is subsequently rezoned to another zoning district (zone map amendment), granted a special exception, or approved for a use variance, those buildings shall be exempt from seeking variances from the required building placement and building form of the applicable zoning district. Such developments shall meet the access and parking, building components, building standards, site development, landscaping, and sign regulations of the applicable zoning district. All existing buildings at the time of the rezoning shall be deemed to be legal nonconforming buildings and shall comply with all other provisions of this Ordinance from that point forward.

Section 21-13.02: Enforcement

(a) Authority

The Building Department, the Department of Code Enforcement, the Plan Commission, and the Staff of each department are hereby designated to enforce the terms and provisions of this Ordinance in accordance with Indiana law.

(b) Alleged Violations

Whenever Staff receives a complaint or has reason to suspect that an alleged violation of the terms and provisions of this Ordinance are occurring, Staff shall investigate the complaint or suspicion and shall take whatever action is warranted in accordance with the provisions of this section.

(c) Responsibility for Violations

The owner, tenant, or occupant of any building or land or part thereof and any architect, builder, contractor, agent, or other person who commits, participates in, assists, directs, creates, or maintains any situation that is in violation of the terms and provisions of this Ordinance, may be held responsible for the violation, suffer the penalties, and be subject to the remedies herein provided.

(d) Inspection of Property - Right of Entry

Staff may enter upon any building, structure, or land or part thereof at any reasonable time for the purpose of inspecting all buildings, structures, or lands located within the corporate limits of the City of South Bend for the purpose of carrying out their duties in the enforcement of this Ordinance. Prior to entering upon any premises, Staff shall furnish sufficient identification and information to enable the owner, tenant, or occupant to determine the purpose of the inspection and that the person conducting the inspection is an authorized representative of the City of South Bend.

If entry is denied by the owner, tenant, or occupant of a premises, Staff may make application to any court of competent jurisdiction for the issuance of a search warrant. Such application shall identify the premises upon 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 condition which is in

violation of this Ordinance exists on the premises, or that such a violation in fact exists and shall 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 such application shall order such owner, tenant, or occupant to permit entry to Staff for the purposes stated therein.

(e) Cease & Desist Order

Staff is empowered to issue a Cease & Desist Order requiring the suspension of land improvement of any kind when any of the following circumstances exist:

- (1) A site improvement is occurring without an improvement location permit or any other permit required by this Ordinance having first been obtained; or,
- (2) A site improvement is occurring in violation of:
 - (A) The terms, conditions, or provisions of this Ordinance;
 - (B) The terms and conditions of an improvement location permit;
 - (C) The terms and conditions of any other permit required as a prerequisite to the issuance of an improvement location permit;
 - (D) The terms, provisions, conditions, or commitments of a variance or special exception;
 - (E) The terms of commitments made or conditions imposed in connection with the approval of a development plan;
 - (F) Other approval grant authorized by this Ordinance; or,
 - (G) Other applicable federal, state, or local law or ordinance.

- (3) The Cease & Desist Order shall be posted on the lot in a conspicuous place, or personally delivered to the owner, tenant, or occupant of any building or land or part thereof and any architect, builder, contractor, agent, or other person who commits, participates in, assists, directs, creates, or maintains any situation that is in violation of the terms and provisions of this Ordinance and state the conditions under which construction or other activity may be resumed. Staff shall meet with the recipient of a Cease & Desist Order upon request to explain the conditions under which construction or other activity may be resumed.
- (4) In addition to any other remedies available pursuant to any other applicable law and this Ordinance, the South Bend Corporation Council, Zoning Administrator, or appropriate enforcement official may institute a lawsuit in a court of competent jurisdiction to enforce the provisions of a Cease & Desist Order, including, but not limited to, injunctive relief.

(f) Violations

Subject to the provisions of [Section 21-13.01](#), each of the following shall constitute a zoning violation which may be enforced by the Building Department, Department of Code Enforcement, and the Department of Community Investment in accordance with the provisions set forth in [Section 21-13.02\(g\)](#) below:

- (1) The failure to obtain an improvement location permit when one is required by the terms and provisions of this Ordinance;
- (2) The violation of a Cease & Desist Order issued pursuant to this section;
- (3) The outdoor storage of junk, trash, or debris in any district the provisions of which do not specifically permit such a use;
- (4) The parking or storage, in any district the provisions of which do not specifically permit such a use, of any:
- (A) Motor vehicle used or designed for use in pulling, towing, hauling, transporting; or,
- (B) Motor vehicle or separate trailer as a temporary or permanent base, platform, or support for equipment, machinery, materials, or other goods (including but not limited to stake body trucks, dump trucks, trucks or tractors having dual rear wheels or more than two axles, semi-trailer tractors, semi-trailers, and trailers having dual rear wheels or more than one axle or having an overall length of more than 12 feet.
- However, this provision does not apply to motor vehicles which do not exceed three-quarter ton load classification in size and which are the primary source of transportation for an individual whose primary place of residence is the particular dwelling at which the commercial motor vehicle is parked on a regular basis.
- (5) The conduct of any activity that is not specifically enumerated as a permitted primary or accessory use in that district, and which activity has not been legally established by a currently valid special exception or other approval grant;
- (6) The location, erection, or maintenance of any sign not specifically permitted by this Ordinance;
- (7) The outdoor storage or display of merchandise or goods in any district the provisions of which do not specifically permit such a use or in violation of the district development standards regulating such a use;
- (8) Failure to comply with district development standards, including but not limited to landscaping, design and paving of parking areas, minimum loading space requirements, trash container enclosures, fencing, landscaping, or screening requirements;
- (9) The failure to comply with:
- (A) The terms, provisions, conditions, or commitments of a variance grant or special exception grant;
- (B) The terms of commitments made in connection with a zoning map change or the approval of a development plan;
- (C) The terms, provisions, or conditions of any other permit required as a prerequisite to the issuance of an improvement location permit; or,

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- (D) Other approval grant authorized by this Ordinance; and,
- (E) Any other provisions of this Ordinance, or other applicable federal, state, or local law or ordinance.

The primary enforcement responsibility for Items (1) and (2) above shall be vested with the Building Department; however, the Department of Code Enforcement or the Department of Community Investment may also initiate enforcement of these matters.

The primary enforcement responsibility for Items (3), (4), and (5) above shall be vested with the Department of Code Enforcement; however, the Department of Community Investment may also initiate enforcement of these matters.

The Zoning Administrator, as part of the Department of Community Investment, or his or her designee shall be responsible for enforcing against all other zoning violations set forth above; however, the Department of Code Enforcement and Building Department shall also be authorized to initiate enforcement at their discretion.

(g) Remedies or Penalties for Violation

Any owner, tenant, or occupant of any building or land or part thereof and any architect, builder, contractor, agent, or other person who commits, participates in, assists, directs, creates, or maintains any situation that is in violation of the terms and provisions of this Ordinance as defined in [Section 21-13.02\(f\)](#) above, may be issued a citation by Staff.

Subject to the provisions of (1) and (2), below, each day a zoning violation remains uncorrected is a distinct and separate zoning violation subject to an additional citation and fine in the amount prescribed in this Ordinance.

(1) Procedures for Initial Notice of Zoning Violation or Citation.

- (A) Staff may issue a notice of zoning violation to a person (i.e., any owner, tenant, or occupant of any building or land or part thereof and any architect, builder, contractor, agent, or other person) who commits a zoning violation or allows a zoning violation to be committed

on real estate in which the person has a possessory interest. The notice of zoning violation may be served by: personal service; certified mail, return receipt requested; registered mail; or, by posting such notice in a conspicuous place on the lot where the violation occurs, and shall serve as notice that a zoning violation has been committed.

- (B) No citation shall be issued unless notice as required by [Section 21-13.02\(g\)\(1\)\(A\)](#) has been provided at least 10 days before the citation is issued, in order to allow the person receiving notice an opportunity to correct the violation and to come into compliance with the terms and provisions of this Ordinance, provided, however, the service of a notice of zoning violation and the provision of time to correct the zoning violation is not required before issuing a citation for a violation of a Cease & Desist Order issued pursuant to [Section 21-13.02\(e\)](#). If upon re-inspection, the zoning violation remains unabated, a second notice of zoning violation may be served, or a citation accompanied by the fines as specified in [Section 21-13.02\(h\)](#), below, may be issued.

(2) Action After Second Notice or Citation. A person (i.e., any owner, tenant, or occupant of any building or land or part thereof and any architect, builder, contractor, agent, or other person) who is served with a second notice of zoning violation or receives a citation shall have 10 days from service of a second notice of zoning violation or receipt of citation to take one of the following actions:

- (A) Such person may elect to file a petition for a permit, zoning map change, variance, special exception, or development plan approval to correct such violation, in which case the person shall indicate the intent to file such a petition on the served second notice or citation and return a copy to the Zoning Administrator or appropriate enforcement official. During the pendency of said petition, the issuance of additional notices or citations and additional monetary fines as prescribed in [Section 21-13.02\(h\)](#), shall be stayed. A person who files the

petition within said time period shall pursue the petition in an expeditious and diligent manner. If the petition is denied, withdrawn, or dismissed and the zoning violation continues, then a lawsuit may be commenced by the South Bend Corporation Council, Zoning Administrator, or appropriate enforcement official as provided by applicable laws.

- (B) Such person or any other interested party may elect to appeal the decision of the enforcement official pursuant to [Section 21-12.03\(c\)](#) as an Administrative Appeal before the Board of Zoning Appeals.

(3) Legal Action for Failure to Correct Violation.

If an owner, tenant, or occupant of any building or land or part thereof and any architect, builder, contractor, agent, or other person who is served with a second notice of zoning violation or receives a citation fails to either correct the violation or take such actions to come into compliance within 10 days as set forth in [Section 21-13.02\(g\)\(2\)](#), above, then the South Bend Corporation Council, Zoning Administrator, or appropriate enforcement official may institute legal action in a court of competent jurisdiction to enforce the terms and conditions of this Ordinance, including, but not limited to: enforcement of a Cease & Desist Order as provided in [Section 21-13.02\(e\)](#); assessment and collection of fines as provided in [Section 21-13.02\(h\)](#); or, the pursuit of injunctive and other equitable relief and remedies available under Indiana law.

(h) Fines

Monetary fines for zoning violations shall be assessed as follows:

(1) In a S1, S2, U1, U2, or U3 District.

- (A) The monetary fine for the first citation for a zoning violation shall be not less than Fifty Dollars (\$50.00). The following monetary fines shall apply for each subsequent citation:
- (B) Second Citation - Minimum \$100.00
- (C) Third Citation - Minimum \$200.00
- (D) Each additional - Not to exceed a \$300.00 increase in the previously assessed monetary

fine, to a maximum monetary fine for each citation not to exceed Two Thousand Five Hundred Dollars (\$2,500.00).

- (E) Each day that a zoning violation remains uncorrected shall constitute a violation which may result in the issuance of a subsequent citation.

(2) In a UF, NC, DT, OS, U, C, or I District.

- (A) The monetary fine for the first citation for a zoning violation shall be not less than Fifty Dollars (\$50.00). The following monetary fines shall apply for each subsequent citation:
- (B) Second Citation Minimum - \$100.00 per day that the zoning violation remains uncorrected.
- (C) Third Citation Minimum - \$200.00 per day that the zoning violation remains uncorrected.
- (D) Additional Citations - Not to exceed a \$300.00 increase in the previously assessed monetary fine for each day that the zoning violation remains uncorrected, to a maximum monetary fine for each zoning violation not to exceed Two Thousand Five Hundred Dollars (\$2,500.00) per day that the zoning violation remains uncorrected.
- (E) Each day that a zoning violation remains uncorrected shall constitute a violation which may result in the issuance of a subsequent citation.

(3) All fines prescribed by this section for zoning violations shall be paid as follows:

- (A) If enforcement action was initiated by the Building Department, all fines thus received shall be deposited with the applicable fund for fines of the Building Department.
- (B) If enforcement action was initiated by the Zoning Administrator or Department of Community Investment, all fines thus received shall be deposited with the applicable fund for fines of the Department of Community Investment.

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(C) If enforcement action is initiated by the Department of Code Enforcement, all fines thus received shall be deposited in the same account as fines collected pursuant to Chapter 16, Article 8, Section 16-61 of the South Bend Municipal Code.

(D) The person making the payment shall receive a receipt stating the amount and purpose for which the fine has been paid, a duplicate of which shall be made a part of the records of the City of South Bend.

(4) If a person who receives a citation fails to:

(A) Pay the assessed fine within:

- i. In a S1, S2, U1, U2, or U3 district - 14 days after the issuance of a citation; or
- ii. In a UF, NC, DT, OS, U, C, or I district - 7 days after the issuance of a citation;

(B) File a petition as prescribed in [Section 21-13.02\(g\)\(2\)\(A\)](#), above; or,

(C) File an appeal as prescribed in [Section 21-13.02\(g\)\(2\)\(B\)](#), above,

The South Bend Corporation Council, Zoning Administrator, or appropriate enforcement official may file a lawsuit as provided by applicable law to enforce the terms and provisions of this Ordinance.

(5) **Additional Remedies**

(A) Seeking a penalty as authorized in this section does not preclude the designated enforcement entity from seeking alternative and additional relief from the Court in the same action, or from seeking injunctive relief or any other remedy in a separate action for the enforcement of this Ordinance available under applicable Indiana law.

(B) In the event that a violation of this Ordinance is determined to exist by a court of competent jurisdiction, the owner, tenant, or occupant of any building or land or part thereof and any architect, builder, contractor, agent, or other person who commits, participates in, assists, directs, creates, or maintains any situation that

is in violation of the terms and provisions of this Ordinance shall be liable to the City of South Bend for the City's reasonable attorney fees in accordance with Indiana law.

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