

## City of Alexandria, Virginia

## MEMORANDUM

DATE: JANUARY 22, 2004

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: PHILIP SUNDERLAND, CITY MANAGER *PS*

SUBJECT: CONSIDERATION OF REPORT ON ENFORCEMENT OF SPECIAL USE PERMIT CONDITIONS AND THE INCLUSION OF PROJECT IMPACT STATEMENTS IN CITY STAFF REPORTS

---

**ISSUE:** Enhancements to special use permit (SUP) practice: project impact statements and enforcement.

**RECOMMENDATION:** That City Council endorse staff's efforts to refine the SUP system in the following ways:

- (1) Include project impact statements in development SUP reports;
- (2) Include specific triggers in conditions for infrastructure requirements; and
- (3) Enhance SUP enforcement by
  - increasing outreach to the community on SUP enforcement
  - increasing fines for repeat SUP violators
  - eliminating necessity of a hearing for minor infractions
  - providing Council with an annual report on enforcement.

**BACKGROUND:** The special use permit is the approval mechanism the City uses for our discretionary land use cases. SUP cases include both large development projects, as well as use cases, such as restaurants or day care centers or auto repair businesses. In addition, there are a series of land use approvals, such as a parking reduction or an increase in density, that also require special use permit approval.

Over the last few months, a series of issues has been raised about specific aspects of the SUP process and enforcement of SUPs. Specifically, Councilmen Krupicka and Smedberg asked staff to report on improving special use permit enforcement, especially the enforcement of critical infrastructure requirements, and on improving the description of project impacts in SUP reports,

providing an example from Las Vegas, Nevada (Attachment 1.) Councilmen Gaines and Macdonald also discussed issues about SUP enforcement generally, and suggested methods used in other jurisdictions, most notably Bloomington, Indiana (Attachment 2). The issues raised in those two memoranda are addressed below.

## 1. Project Impact Statements

Major policy issues, such as transportation, open space, neighborhood compatibility and quality of life, are evaluated as part of Planning staff's comprehensive planning initiatives as the City identifies appropriate land use mixes and densities and balances impacts and goals. The policy framework for future development is established through these adopted plans, which have extensive community input and review. The specific and additional impacts of individual development proposals are identified and analyzed in light of these adopted plans, in the separate development application process and conditions are recommended to mitigate those impacts.

Each development SUP report includes a detailed analysis in order to give decision makers and the public a description and evaluation of the impacts and benefits of a proposal. (A "development" SUP is a development project that requires at least a site plan and a SUP; it is not just a "use" SUP, such as a restaurant.) The report's executive summary is an opportunity to present in a clear and concise manner the major impacts of a project, proposed mitigation measures, community concerns and staff conclusions as to the balance achieved among impacts and benefits. As part of the executive summary, staff will now begin to address these major development issues and conclusions. Specific impacts will be addressed in an outline format with bullets, and will reference 1) the section within the report where more detailed information and analysis can be found, and 2) the more important conditions recommended to mitigate the potential impacts. Staff will also concisely identify the more important community benefits arising from the project, as well as community impacts.

Regarding fiscal analyses, in the past we have performed in-depth fiscal impact analyses on very large projects, such as PTO and Potomac Yard. Planning staff is currently exploring the elements to be included in a fiscal impact model that could be applied to development SUP projects. Staff has developed the revenue models and is working with the City Manager, Finance and Budget offices, and with other Departments on the formulas for evaluating the cost impacts on City services and infrastructure. Some impacts, such as on school resources and fire and police services, are difficult to quantify on smaller projects. Thus, staff will include a recommended project threshold for the presentation of this more complex fiscal impact. We will describe this fiscal analysis in a separate memorandum to Council.

## 2. Infrastructure Requirements

It is important in development cases that significant infrastructure improvements be tied to specific, early events in the construction process, so that the developer cannot proceed with construction as planned unless all applicable infrastructure requirements have been satisfied. To

achieve this result, conditions for major infrastructure improvements must be clearly written in development cases so that specific infrastructure-related actions (e.g., design, construction start, construction x% complete) are tied to and must occur by specific dates or relate to specific permits or other actions involving the overall development project. In addition, systems must be established to track those key requirements. Staff proposes the following to address the issue of compliance with infrastructure improvements:

- writing infrastructure conditions so that one or more phases of the required infrastructure are tied to specific dates or to the release of permits or other actions relating to the overall project;
- establishing a tracking system to monitor the timing requirements imposed by these infrastructure conditions; and
- using the City's automated permit system to schedule and monitor key requirements by deadline dates.

#### Off-Site Improvements

Over the past several years, conditions of approval have specific triggers so that the required infrastructure construction take place before or at a specific, discernable event such as the final site plan, building permit or certificate of occupancy permit. These conditions have included construction of internal roads, pedestrian bridges, open space contribution and sewer line construction. For example, the completion of a new trunk sewer that would serve Potomac Yard was required prior to any development taking place. Attached are several examples of recent conditions included in Mill Race, Potomac Yard, and other development cases with specific triggers for the accomplishment of off-site construction of infrastructure.

Due to the developed nature of the City, most of the developments within the City are smaller infill projects that do not require off-site improvements. The developments that require off-site improvements are typically limited to the larger projects such as Carlyle and Potomac Yard. It is important in these larger cases that the City continue the interagency review and tracking that has been implemented in the past several months as part of the development review process. The enhanced interagency coordination and coordination with the developer, along with the above-discussed tracking and "specific conditions" steps, will help ensure the completion of future off-site improvements in a timely manner.

#### On-Site Improvements

The required construction of on-site improvements, or of immediately adjacent work, such as sidewalks, street widening or street trees, is typically self-regulating, and addressed through the final site plan, building permit and certificate of occupancy processes. In other words, the release of a final site plan, a building permit, or a certificate of occupancy, or all of them, are tied to the successful completion of the on-site infrastructure construction. In that way, the developer may not proceed to the next step of the building for the overall projects, and people will not be allowed to occupy structures, unless the on-site infrastructure requirement are met.

### 3. Enhanced SUP Enforcement for Other Conditions

For SUP cases that do not involve development (see Note 1), conditions are important elements of the SUP approval, designed to ensure that the approved use operates without serious impact on nearby properties. For example, it is typical in restaurant cases that litter be picked up on a regular basis, including on adjacent rights of way. In some cases, it is important that the applicant take steps to ensure its employees do not park on the public street. Some of the cases also require the construction or installation of relatively minor improvements, such as dumpster screening or landscaping.

Applicants in these non-development SUP cases are generally less knowledgeable about City processes than developers, and there has been discussion in the past about the need to impress on these applicants the importance of compliance with SUP conditions. Planning staff has worked over the years with applicants both before and after SUP approval to ensure that they understand the SUP system, and the consequences of not complying with SUP conditions. Significant staff resources, including two planners, administrative staff, and a part of the department's two zoning inspectors, are devoted to working with SUP applicants and on enforcement.

Nevertheless, there have been suggested improvements, including from Councilmen Gaines and Macdonald, and planning staff have met with citizens in the past to discuss some specific changes to the system. In response, staff intends to undertake the following:

1. Increased Community Outreach. In addition to the ongoing work within the planning department with individual applicants, staff discusses the SUP compliance system with business groups and civic associations on an ongoing basis. In addition, when planning staff works in a specific neighborhood on a small area planning study, it includes SUP discussions in its work with businesses. As an example, in Arlandria, staff attends Arlandria Business Association meetings and discusses the SUP requirements and the importance of complying with SUP conditions with both existing SUP businesses and those who may apply in the future. In addition, in Arlandria, a pilot program with different, more relaxed rules for SUP requirements has been in place for over a year. Planning staff will work with the City's new business facilitator on additional community outreach that can take place for small businesses throughout the City.

2. Increased Fines for Repeat Offenders. Under the zoning ordinance, SUP condition violations are class 5 violations, punishable by either criminal prosecution or civil fines. Staff typically proceeds with enforcement under its civil penalty authority, issuing warnings and then tickets with fines if the warning is not heeded. Under the zoning ordinance, staff is authorized to assess a fine of \$50 for a first violation and \$100 for a second or subsequent violation, up to a maximum of \$3,000 for any single violation. In addition, in the case of a serious violation, the Planning Director is authorized to, and has in the past, issued an order requiring that the event, activity or business cease. Violators who fail to heed the order can be arrested.

Although existing fines are lower than allowed by state statute (\$100 for first violation; \$250 for each additional; and \$5,000 cap), staff believes that they are effective in most cases. In the typical case, if staff finds a violation and issues a ticket for it, there is compliance after one or two tickets. Where there is room for additional tools to make SUP enforcement more effective is in the case of repeat offenders.

Specifically, staff recommends that the existing fine structure be changed to add a fine of \$500 for a third violation of an SUP condition within any 12 month period. See attached proposed ordinance language. This increased fine is designed to address those permittees who choose to ignore City requirements and continue to violate SUP requirements. A graduated approach to enforcement, being able to distinguish among the type and degree of violations, especially with regard to repeat offenders, has been suggested by the Federation of Civic Associations in the past.

The Bloomington, Indiana, example submitted by Councilmen Gaines and MacDonald includes a highly refined schedule of different violation types and fines; it also includes preset deadlines for complying with different types of zoning requirements. Staff does not believe this approach is appropriate in Alexandria. First, as to deadlines, the SUP conditions typically include a date for compliance with the requirement or, if no date is specified, there is a near universal one year review requirement, which acts as a default deadline. An SUP operation that is not in compliance at the one year point, in addition to being fined, is required to return to the Planning Commission and City Council for two public hearings. As to the highly differentiated system of fines used by Bloomington, the City's statutory authority for fines is limited by state law. The City has proposed a charter change to allow it to have its own charter authority, instead of state law, for fines for zoning violations. If that change is approved by the legislature, the proposal for greatly differentiated fine system can be pursued in the future.

3. Elimination of Hearing Requirement for Minor Infractions. Under two circumstances, on the one year review of a SUP or when an applicant seeks to amend an SUP to change the ownership of it, staff is required to docket the case for public hearing for any violation of the SUP conditions. Under these rules even minor violations now lead to a requirement for hearings before the Planning Commission and City Council. The business community has raised this hardship in the past, and staff and some community representatives agree that Commission and Council hearings are not required in such cases, assuming the violation is a minor one or, in the case of a change of ownership application, the violation is corrected or there is an agreement by the applicant to comply with new conditions or otherwise correct the problem.

Therefore, staff recommends that (1) the language of the standard review condition be changed so as not to require a hearing in all cases and (2) the zoning ordinance be changed so that applicants for a change of ownership who either correct or agree to new conditions, need not go through the process of a new hearing. Specific language to address each change is attached. Zoning ordinance changes must come back to Council for approval as a text amendment. This change assists businesses by allowing minor violations to be addressed administratively, but

requiring substantive, serious, or repeated violators to be docketed for hearing before the Planning Commission and City Council.

4. Annual Reporting. Planning staff can report annually to Council on its enforcement efforts generally, and with regards to SUP enforcement specifically.

The above additions to the SUP enforcement system will enhance it. They also respond to the various questions and suggestions raised over the last year or so regarding SUP enforcement. The suggested changes will educate the community about SUP enforcement, will impose citations for violations fairly, and will relieve businesses of undue consequences for minor infractions. This balanced approach creates a stronger, more comprehensive enforcement program that is responsive to the concerns of both the residential and business community.

**ATTACHMENTS:**

Attachment 1. October 9, 2003 Memorandum from Councilmen Krupicka and Smedberg

Attachment 2. October 27, 2003 Memorandum from Councilmen Gaines and Macdonald

Attachment 3. Proposed language for changes to conditions and ordinance for SUP enforcement

Attachment 4. Examples of Conditions with Specific Triggers for Compliance

**STAFF:**

Eileen Fogarty, Director, Planning and Zoning

Barbara Ross, Deputy Director, Planning and Zoning



# City of Alexandria, Virginia.

301 King Street, Suite 2300  
Alexandria, Virginia 22314



## MEMORANDUM

DATE: October 9, 2003

TO: MAYOR AND MEMBERS OF CITY COUNCIL

CC: PHILLIP SUNDERLAND, CITY MANAGER  
EILEEN FOGARTY, PLANNING DIRECTOR  
PLANNING COMMISSION

FROM: COUNCILMEN ROBERT KRUPICKA AND PAUL SMEDBERG

SUBJECT: DEVELOPMENT PLANNING & EVALUATION

Below is a discussion of two items we will mention during orals at the upcoming City Council meeting. We ask for your consideration and support for both items.

**Item 1:** We share concern about the enforcement of SUP's, particularly SUP provisions that are critical for the safe and effective implementation of the overall SUP plan as well as the general public good. We ask you to join with us in asking that City staff develop procedures to identify and enforce critical SUP elements, with specific attention to those SUP provisions that provide critical infrastructure enhancements as well as benefits to the greater Alexandria community. In addition, we ask that city staff develop monitoring plans to ensure that such provisions are implemented on time and according to plan and to also develop incentives and appropriate penalties to further encourage compliance with the designated provisions.

**Item 2:** We ask for Council support in our request to City staff to report back to Council with a recommended format for Project Impact Statements to accompany development projects reviewed by City Council.

We request staff's input on the implementation of project impact statements for development in Alexandria. In order for us to appropriately balance Alexandria's resources during the decision making process, we need to understand the fiscal and infrastructure impacts of new development projects. We believe that Alexandria's land use evaluation processes would benefit from impact statements on projects that meet pre-determined criteria of size and/or location.

We recognize that some of this information is already provided as part of development analysis. We are not looking to re-invent information that is already available. Instead, we simply want to pull it together with other relevant information so that a complete

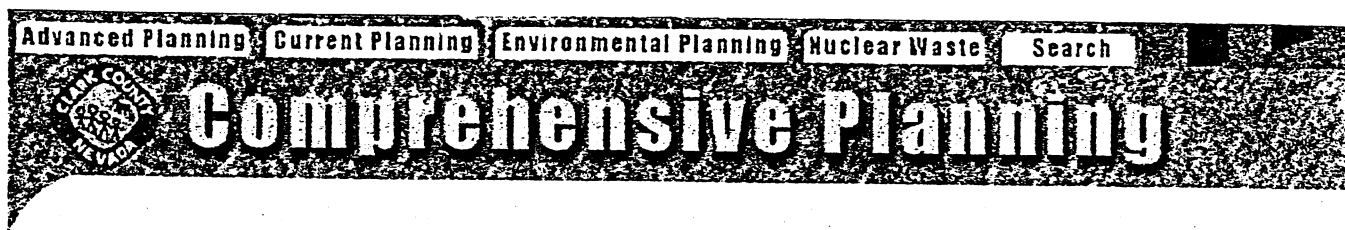
picture of each development project can be presented in an easy to understand and consistent format.

We also understand the limitations of staff resources and time, so would appreciate feedback regarding the most efficient approach for such a report. In general, we believe it would be beneficial for impact reports to address:

- The economic impact of the project for Alexandria's tax base.
- Community benefits gained from the project (e.g., Does it create new parks or public open space, increase/improve City infrastructure, provide new pedestrian benefits, add to Alexandria's tree canopy or provide funds to the open space fund, provide affordable housing, provide new recreation opportunities? etc.)
- Projected economic externalities from the project (e.g., Will it encourage small business growth, support existing businesses?)
- Projected transportation infrastructure impacts associated with the project and its compatibility with existing infrastructure (e.g., Does the project impact the rating of city roads? Does it impact infrastructure?)
- Mass transit impact (e.g. Will it lead to an increase in ridership? Does it create a need for new a bus stop or other capacity? etc.)
- Projected impact on School resources.
- Projected impact on fire and police resources.
- Impact on sewer and storm water infrastructure.

As an example of another jurisdiction's activities in this regard, we have attached the summary of a Project Impact statement used in Las Vegas, NV.





## CURRENT PLANNING DIVISION

### PROJECT IMPACT STATEMENTS (S.B. 191)

#### Impact Statements S.B. 191 (Excerpts)

A person who proposes to develop a project of significant impact as described below within the Las Vegas urban growth zone, shall submit an impact statement to the County. The impact statement must be submitted along with the appropriate application form *at the time of filing*.

**Project of Significant Impact** as used here means a project that would create:

- (a) Final maps or planned unit developments of 500 units or more;
- (b) Tourist accommodations of 300 units or more;
- (c) A commercial or industrial facility generating more than 3,000 average daily vehicle trips; or
- (d) A nonresidential development encompassing more than 160 acres.

An impact statement must set forth:

- (a) The number of vehicle trips that the project will generate, estimated by applying to the proposed project the average trip rates for the peak days and hours established by the Institute of Transportation Engineers or its successor.
- (b) The estimated number of additional pupils for each elementary school, junior high or middle school, and high school that the project will cause to be enrolled in local schools.
- (c) The quantity of sewage effluent that the project will generate, estimated by applying a sewage generation factor established by the provider of sewer service or an equivalent calculation to the number of units or area of indoor floor space that will be created by the project.
- (d) The quantity of water that the project will demand during and after its construction, estimated by applying a demand factor established by the provider of water service or an equivalent calculation to the number of units that will be created by and the gross acreage that will be occupied by the project.
- (e) The increase in quantity of storm water runoff that the project will generate, estimated by using standard hydrologic methods.
- (f) The distance from the site on which the project will be located to the nearest facilities from which fire-fighting, police and emergency services are provided, including, without limitation, facilities that are planned, but not yet constructed, and facilities which have been included in a plan for capital improvements prepared by the appropriate local government pursuant to NRS 278.0226.
- (g) The existing and planned capacities of schools, roads, sources of water supply and facilities for wastewater and flood control that will be affected by the project. This information must be obtained from the appropriate local providers of those services.

(h) A brief statement setting forth the anticipated effect of the project on housing, mass transit, open space and recreation.

The **impact statement** may include by reference any information or data relevant to such a statement that is a matter of public record or is generally available to the public, including, without limitation, information:

(a) Contained in a report required by another federal or state law or local ordinance, or as a condition imposed as a part of the process for approving the project; or

(b) Regarding a phase of a project that consists of multiple phases of construction, if information pertaining to that phase has already been disclosed in a report pertaining to another phase or to the project as a whole.

**The County shall not approve such a project unless:**

(a) An impact statement has been submitted for the project.

(b) The County determines that the appropriate local school district has been given an opportunity to review the project pursuant to NRS 278.346, if the provisions of that section are applicable.

(c) The County determines that the capacities of roads, sources of water supply and facilities for wastewater and flood control will be sufficient to support the project. The County may approve a project with respect to which the capacities of roads, sources of water supply or facilities for wastewater and flood control will not be sufficient to support the project if the County requires the person who proposes to develop the project to carry out appropriate measures of mitigation to reduce the impact of the project on those elements of infrastructure.

The rules concerning impact statements do not apply with respect to real property that is subject to a development agreement with a local government if the development agreement became effective before the effective date of this act.



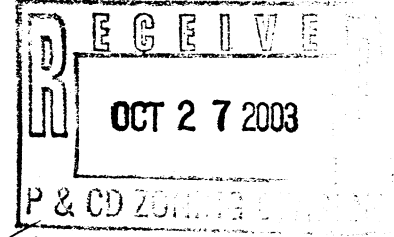
*This page was last revised: July 12, 2001*



Attachment 2  
✓ B. Ross

City of Alexandria, Virginia

MEMORANDUM



FROM: LUDWIG P. GAINES, MEMBER OF COUNCIL  
ANDREW H. McDONALD, MEMBER OF COUNCIL

TO: PHILLIP SUNDERLAND, CITY MANAGER

THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL:  
WILLIAM D. EUILLE, MAYOR  
REDELLA PEPPER, VICE MAYOR  
ROB KRUPICKA, MEMBER OF COUNCIL  
PAUL SMEDBERG, MEMBER OF COUNCIL  
JOYCE WOODSON, MEMBER OF COUNCIL

DATE: OCTOBER 27, 2003

RE: STRENGTHENING ZONING COMPLIANCE OUTREACH AND  
ENFORCEMENT

---

SUMMARY

This memorandum requests the City Manager and staff investigate opportunities to strengthen zoning compliance outreach to the business community and zoning enforcement. Several opportunities are identified below.

Compliance outreach and strengthened enforcement can lead to public benefits for the City of Alexandria and its residents in a number of important areas. These areas include increased zoning compliance, efficiencies in the enforcement process, protection of bargained for public benefits, and increased revenue from enforcement actions. It is understood that budget impacts, staffing, and compliance with legal requirements are also matters to be considered.

We recommend:

- (1) that the City Manager and Planning Staff explore enhancing compliance education and outreach to the business community,
- (2) that the City Manager and Planning Staff explore opportunities to strengthen enforcement, and

- (3) that the City Manager instruct Planning Staff to prepare and present to Council and Planning Commission annual zoning enforcement status reports.

## I. ZONING COMPLIANCE OUTREACH TO BUSINESSES.

Ensuring compliance with the City's zoning ordinance is good public policy.

Prior to violation, proactive education efforts by the City can play a critical role in strengthening compliance. By bolstering efforts to educate businesses on zoning requirements and on the City's expectations for compliance, prospects for compliance are strengthened. One means to accomplish this is to create a zoning compliance education and outreach program (ZCP-zoning compliance program) targeted at City businesses. In this regard, soliciting input from the business community is an obvious and effective means to tailoring any useful compliance effort.

## II. OPPORTUNITIES TO STRENGTHEN ZONING ENFORCEMENT.

Post-violation compliance must also be a priority. The City of Alexandria currently has an elaborate and effective enforcement system within the Department of Planning and Zoning, but opportunities exist to strengthen this system.

One opportunity is to institute a more readily transparent "deadlines and fines" structure (CD&FS) for business and property owners who fail to comply with appropriate zoning ordinances, and special use permits (SUPSs). Such a structure will provide a readily reviewable summary of the non-compliance penalties for various types of violations. Both the compliance deadlines, and the level of fines (specified amount and or range of fine) per specific type of violation will be indicated clearly.

Attached is an example of a successful effort to employ this enforcement tool.<sup>1</sup> (Attachment A)

### A. *Enforcement Against Serious or Repeat Offenders*

Not all violators or violations are identical, nor are their impacts on adjacent businesses, neighborhoods or city resources. Zoning enforcement options should account for this difference. Serious and repeat offenders – offenders whose violations are clearly distinguished by their egregious or repeat nature – merit particular attention. These offenders have, at least recently, been a source of particular frustration for City staff and Planning Commission.<sup>2</sup> Not only have they consumed staff resources and wasted

---

<sup>1</sup> Also, see, [http://www.city.bloomington.in.us/code/TITLE20/Chapter\\_20\\_09\\_ENFORCEMENT/20\\_09\\_05\\_00\\_ENFORCEMENT\\_PROCED.html](http://www.city.bloomington.in.us/code/TITLE20/Chapter_20_09_ENFORCEMENT/20_09_05_00_ENFORCEMENT_PROCED.html)

<sup>2</sup> The Pines of Florence restaurant at Foxchase, Dancing Peppers restaurant, and Afghan Restaurant are but three recent examples of repeat offenders.

taxpayer money, but these violators have also displayed a seemingly wanton disregard for zoning or special use requirements despite notice, repeated warnings, threats of fines and actual fines by the City. In dealing with this class of violators, we think it imperative to explore employing flexible penalty options that enable the assessment of a fine that is (1) commensurate with the violation, and/or (2) the repeat nature of the violation.

#### B. *Observations on Enforcing Special Use Permits*

Violations of special use permits (SUPs), by definition, present separate circumstances that at times merit separate or tailored approaches to enforcement. Here again, a violation's impact on the City, its infrastructure and resources, neighborhoods and businesses must be critical considerations when assessing a fine or penalty and should formally be reflected in our ability to protect against delayed or denied bargained for public benefits.<sup>3</sup>

Permit holders must be instructed that serious and/or repeat violations may result in increased fines and/or the revocation or withholding of other approvals, certificates and/or permits relevant to the use or development of the site on which the violation occurred.

Attached is an example of one effort to codify this remedy.<sup>4</sup> (Attachment B)

#### III. ESTABLISH A REPORTING SYSTEM.

Lastly, we think it prudent that Council and Planning Commission be kept abreast of enforcement actions in the form of annual status reports. Among others, these reports can provide decision makers with valuable information regarding City enforcement efforts, as well as the City's ability to marshal resources to meet specific or emerging enforcement challenges.

Attached is a copy of a successful attempt at enforcement reporting.<sup>5</sup> (Attachment C)

LPG  
AHM

---

<sup>3</sup> For example, enforceable Traffic Management Plans (TMPs) benefit the entire community. When they are not implemented, it means there will be more air pollution and more traffic.

<sup>4</sup> Also, see,

[http://www.city.bloomington.in.us/code/TITLE20/Chapter\\_20\\_09\\_ENFORCEMENT/20\\_09\\_06\\_00\\_AUTHORIZED\\_REMEDIE.html](http://www.city.bloomington.in.us/code/TITLE20/Chapter_20_09_ENFORCEMENT/20_09_06_00_AUTHORIZED_REMEDIE.html)

<sup>5</sup> This report includes, (a) types of enforcement actions handled, (b) resolution of enforcement actions (i.e., corrective action taken by property owner, amount of fine(s) assessed, revocation of business permits), (c) budgetary impacts, including administrative costs and revenue forwarded to the General Fund, and (d) enforcement items for future consideration.

Cc:

Chair and Members of the Planning Commission

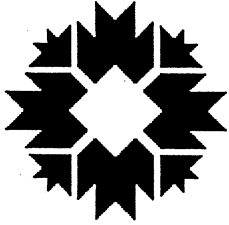
STAFF:

Mark Jinks, Assistant City Manager

Eileen Fogerty, Dir. of Planning & Zoning

Barbara Ross, Deputy Dir. of Planning & Zoning ✓

Att 1.



**City of Bloomington,  
Indiana**

Mayor  
City Council  
City Clerk

- [What's happening](#)
- [Services used often](#)
- [Departments](#)
- [Places & records](#)
- [Living in Bloomington](#)
- [Citizen Resources](#)
- [Permits & applications](#)
- [Payments, fees & fines](#)
- [Jobs & employee info](#)
- [Problems & questions](#)

[Display printable page](#)

## Title 20 ZONING

### Chapter 20.09 ENFORCEMENT

#### **20.09.05.00 ENFORCEMENT PROCEDURES AND OPTIONS.**

(a) If the Planning Director, Zoning & Enforcement Manager, or Manager of Engineering Services or their designees, collectively referred to as "Staff", find that any provision of this ordinance, with the exception of Section 20.06.05.03, is being, or has been, violated, said person shall issue a Notice of Zoning Violation (NOV) to the responsible party. For purposes of issuing notice of violation, the following persons shall be considered responsible parties, with liability for fines and responsibility for remedy of the violation: the property owner (s); persons with any possessory interest in the property, and/or any persons and/or their agents who have caused the violation.

(b) This notice of violation (NOV) shall be in writing and shall be served on one or more of the responsible parties in one or more of the following manners: delivery in person; by first class mail; and/or by placement in a conspicuous place on the property where the violation occurs. The notice shall state:

- (1) The location of the violation;
- (2) The nature of the violation;
- (3) The period of correction (if any);
- (4) The daily fine assessed for the violation during the correction period;
- (5) The increase in fine if violation continues beyond the correction period;
- (6) Additional remedies the city may seek for violation (20.09.06.00);
- (7) That the fine is paid at the city of Bloomington planning department;
- (8) That the fine may be contested in the Monroe County Circuit Courts;
- (9) That fines will not be assessed if the violation is remedied during the correction period.

Compliance Deadlines and Fines			
Type of Violation	Correction Period	Daily Fine	Daily Fine After

Compliance  
Deadlines &  
Fines Structure

UG

15

	from Date of NOV	During Correction Period	Correction Period has Elapsed
<b>Zoning Ordinance</b>			
Illegal temporary signage BMC 20.06.06.04	0	\$ 25.00	\$ 50.00
Parking on an unimproved surface BMC 20.06.02.05	0	25.00	50.00
Temporary occupancy BMC 20.06.07.00	0	50.00	100.00
Structure in setback BMC 20.07.16.03	20 business	25.00	50.00
Illegal permanent signage BMC 20.06.06.03	10 business	50.00	100.00
Occupancy without permit BMC 20.05.08.03	20 business	50.00	100.00
Home occupation BMC 20.05.11.00	20 business	100.00	100.00
Junkyard/auto storage BMC 20.07.01.00	10 business	50.00	100.00
Environmental & Urban Design Standards (Tree Preservation) BMC 20.06.04.020	3 business	100.00	100.00
Siltation and Erosion Control BMC 20.06.05.03	3 business	100.00	100.00
Environmental Performance Standards (other than 20.06.05.03) BMC 20.06.05.00	3 business	100.00	100.00
<b>Site Plan Requirements</b>			
No parking lot striping BMC 20.06.02.08	10 business	25.00	100.00
Missing bike racks	15 business	25.00	100.00

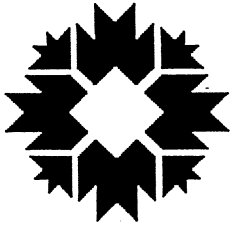


BMC 20.06.02.10 No dumpster screens	15 business	25.00	100.00
BMC 20.06.04.02 No handicapped parking provided	15 business	50.00	100.00
BMC 20.06.02.04 Missing landscaping	30 business	50.00	100.00
BMC 20.06.04.02 Missing paving	30 business	50.00	100.00
BMC 20.06.02.08 Missing sidewalk	30 business	50.00	100.00
BMC 20.06.04.03 Other condition of approval	30 business	50.00	100.00

(c) When, in the opinion of staff, the condition of the site causes danger to the health, safety, or welfare of the public, the city may enter upon the site to remedy the dangerous condition without notice to the responsible party or landowner. (Ord. 01-34 § 21, 2001; Ord. 00-17 § 4, 2000).

20.09.05.00

Edh. 2



**City of Bloomington,  
Indiana**

Mayor  
City Council  
City Clerk

- [What's happening](#)
- [Services used often](#)
- [Departments](#)
- [Places & records](#)
- [Living in Bloomington](#)
- [Citizen Resources](#)
- [Permits & applications](#)
- [Payments, fees & fines](#)
- [Jobs & employee info](#)
- [Problems & questions](#)

[Search](#) | [Advanced Search](#)

[Display printable page](#)

## Title 20 ZONING

### Chapter 20.09 ENFORCEMENT

#### **20.09.06.00 AUTHORIZED REMEDIES FOR VIOLATIONS.**

(a) At the end of the correction period specified in the notice of violation, staff shall inspect the site to determine whether the violation has been remedied/corrected.

(b) If upon inspection, staff has reasonable belief that a party is continuing to violate a provision of this title or a condition of approval, requirement or commitment imposed or made thereunder, the staff shall seek, with the assistance of the city legal department, in addition to fines, one or more of the following remedies:

(1) A citation for violation of Title 20 of the BMC, by certified mail, which states the relevant offense(s) and which assesses the appropriate penalty. Each enumerated item of noncompliance shall be considered to be a separate violation, and each day the violation continues shall be considered to be a separate violation. If not remedied, fines shall accrue from the date of the notice of zoning violation. The city may file a proceeding in court to enforce the fine(s); and/or

(2) A temporary restraining order, preliminary injunction or permanent injunction to restrain a person from violating the zoning ordinance or a condition of approval, requirement or commitment imposed or made thereunder; and/or

(3) A mandatory injunction directing a person to perform a condition, requirement or condition imposed or made under the zoning ordinance or to remove a structure erected in violation of the ordinance; and/or

(4) Revoke or withhold other approvals, certificates and/or permits relevant to the development or use of the site on which the violation has occurred; and/or,

(5) Request the County Building Department or City Engineering Department, where appropriate, to issue a stop work and instruct the Building Commissioner to suspend and withhold all building code inspections relevant to the development or use of the site on which the violation has occurred; and/or,

(6) Draw on an application letter of credit, or other financial guaranty, as necessary, with permission of the Manager of Engineering Services to effect any remedial actions required to abate the violations; and/or,

(7) Revoke the permits, certificates and/or approvals that have been violated.

codification

UAC

The purpose of each of the foregoing administrative remedies is to encourage compliance with this title and the terms and provisions of the approval, certificate and/or permit without having to resort to litigation. If used, the staff shall apply the foregoing remedies in a measured and reasonable fashion to achieve their recognized purpose.

(c) The remedies provided for in these regulations shall be cumulative, and not exclusive, and shall be in addition to any other remedies provided by law. (Ord. 01-34 § 22, 2001; Ord. 00-17 § 5, 2000).

20.09.06.00

Enforcement reporting

UG

[Home](#)[Divisions](#)[Projects](#)[Boards &  
Commissions](#)[What's New](#)**Bloomington Plan Commission Staff Report****Planning Department Enforcement Report  
(June – December 2000)****DATE:** January 8, 2001**INTRODUCTION**

On May 4, 2000, the Bloomington Common Council adopted significant revisions to Section 20.09 of the Zoning Ordinance entitled "Enforcement". The purpose of these revisions was to give the Planning Department authority to establish a ticketing program for the enforcement of zoning violations. As a requirement of this amendment, the Planning Department was required to compile a semi-annual status report for both the Plan Commission and Common Council. Below is a summary of the Department's enforcement activities. This summary is divided into the following sections:

- [Types of Cases Handled](#)
- [Resolution of Enforcement Cases](#)
  - [Budgetary Impacts](#)
  - [Items for Future Consideration](#)
- 1. [Erosion Control and Environmental Regulation Ticketing](#)
- 2. [Over-Occupancy Ticketing](#)
  - [Conclusion](#)
  - [Exhibit #1](#)

**Types of Cases Handled**

The table depicted in [Exhibit #1](#) outlines the types of enforcement cases that have been addressed by the Planning Department during the past 6-month period. The

largest number of cases falls into the category of "Parking on an unimproved surface". This zoning violation typically occurs in core neighborhoods, specifically in areas where heavy student populations park their vehicles on grass surfaces. In this category, a total of 795 warnings and 582 tickets were issued. During the six months previous to the ticketing program, a total of only 5 cases were processed in this category. In order to deal with this new volume of work, City Parking Enforcement personnel have been enlisted by the Planning Department to issue warnings and tickets for parking on unimproved surfaces. More specifically, parking enforcement officers issue tickets in neighborhoods already regulated under the City's residential permit program. Meanwhile, the Planning Department is responsible for providing the warning and ticket forms, as well as database maintenance and fine collection.

The second most frequent category of zoning violations deals with the placement of illegal temporary signage. This typically occurs when businesses place banners, blinking signs, sandwich board signs, etc. without permit authorization from the Planning Department. A total of 172 warnings and 8 tickets were issued in this category. During the six months previous to the ticketing program, a total of only 12 cases were processed in this category.

The third most frequent category of zoning violations deals with the lack of appropriate screening surrounding dumpsters. Since 1973, the Zoning Ordinance has required dumpsters to be screened by a wood, brick, or stone material. However, this regulation was not comprehensively enforced. In the past six months, a total of 23 warnings and 0 tickets were issued in this category. Previous to this period, no screened dumpster cases were processed by the Planning Department.

- TOP -

---

### **Resolution of Cases**

In addition to being able to address a larger volume of zoning violations, one of the clear purposes of developing a ticketing system is to improve the Planning Department's ability to resolve violations in an expeditious fashion. To that end, the Department has issued warnings for a total of 261 zoning violations during the last six months, other than parking on an unimproved surface. Out of these 261 violations, tickets were necessary in only 12 instances. This gives the department a compliance rate of just over 95 percent. With regards to the remaining 12 tickets, 7 of these cases have been successfully resolved. This increases the department's compliance percentage to 98 percent (256 out of 261 cases resolved). Out of the 5 outstanding cases, 3 of these are currently being processed by the City Legal Department, while 2 zoning violations have yet to be forwarded by the Planning Department.

- TOP -

---

### **Budgetary Impacts**

An important factor to be considered during the development of any new program is the fiscal impact created on the department. To this point in time, the Planning Department has spent approximately \$1,500 to implement the new

ticketing program. These expenses include the creation of such items as the production of warning and ticket forms, and the purchasing of a digital camera to improve tracking. In comparison, revenues produced by the new program total \$13,725. All of this money is forwarded to the City's General Fund. The \$1,500 in enforcement expenses has not created any need for additional appropriations or increases in budgetary line items.

- TOP -

---

### Items for Future Consideration

1. Adding ticketing authority to the enforcement of erosion control and other environmental regulations in the Zoning Ordinance.

During the next 6 months of the new ticketing system, the Planning Department will work with Engineering Department to add a ticketing provision to the Erosion Control Ordinance. This will necessitate minor amendments to both the Erosion Control Ordinance as well as the Enforcement Ordinance. In addition, the Planning Department will commence similar discussions with the Environmental Commission concerning adding Section 20.06.05.02, Standards for Sites Having Environmental Constraints: Karst Terrain, Wetlands, Steep Slopes, Water Resources, to the scope of the ticketing system.

2. Adding over-occupancy as a ticketable zoning violation.

During the Plan Commission hearings on the enforcement ordinance amendments, a Plan Commissioner requested that staff monitor the number of over-occupancy cases tracked during the first 6 months of the new ticketing system. The purpose of the request was to determine whether over-occupancy should be ticketed in the same fashion as more straightforward violations of the Zoning Ordinance. During the Plan Commission hearings, staff recommended not including over-occupancy as a ticketable offense due to the both its complex nature and its overlap with enforcement from the Housing and Neighborhood Development Department. In the past 6 months there have been 15 complaints for over-occupancy. Of the 15 complaints, 1 complaint was determined to be invalid, 1 complaint has been resolved, 4 have been referred to the City Legal Department, and 9 are ongoing. The Planning Department will continue to monitor the number of over-occupancy cases and work with the Housing and Neighborhood Development Department to determine whether any changes in existing enforcement procedures are necessary.

- TOP -

---

### CONCLUSION

The development of a ticketing system for enforcing zoning violations has

increased the department's effectiveness in both the volume of complaints addressed as well as the department's efficiency in resolving those complaints.

Over the next 6 months, the Planning Staff will work to add new items to the listing of ticketable zoning violations as well as monitor over-occupancy cases. In addition, the Planning Department will assess the need for additional staffing to assist with both clerical/bookkeeping duties as well as inspection support.

- TOP -

**EXHIBIT #1**

23

Missing bike racks	2	0.75%	0	0
No dumpster screens	23	9%	0	0
No handicapped parking	5	2%	0	0

Other condition of approval	8	3%	1	\$6,300
Subtotal	261	100%	12	\$6,625
Parking on an unimproved surface issued by City Parking Enforcement	795	42% of all citations were tickets	582	\$7,100
<b>Grand Total</b>	1056		594	\$13,725

- TOP -

**Note:** This document does not reflect changes made to the report prior to or at the hearing and may not include all exhibits presented to the hearing body. Please refer to the minutes of the meeting or contact the Planning Department for a complete staff report.

Material Copyright © 2001 City of Bloomington Planning Department  
Contact the Webmaster with comments



## PROPOSED NEW LANGUAGE FOR CONDITIONS AND ORDINANCE REGARDING SUP ENFORCEMENT

### *1. Proposed new ordinance language for increasing fines for repeat offenders*

Sec. 11-207 (C)(5) For a class five civil violation, the penalty for each individual offense shall be \$50.00 for the first violation, ~~and~~ \$100.00 for each subsequent violation of the same regulation or requirement arising from the same set of operative facts, **and 500.00 \$for the third violation of a special use permit condition within any one 12 month period.**

### *2. Proposed new review condition language to require a hearing only for serious SUP violations.*

The Director of Planning and Zoning shall review the special use permit after it has been operational for one year, and shall docket the matter for consideration by the Planning Commission and City Council if (a) there have been documented violations of the permit conditions **which were not corrected immediately, constitute repeat violations or which create a direct and immediate adverse zoning impact on the surrounding community;** (b) the director received a request from any person to docket the permit for review as the result of a complaint that rises to the level of a violation of the permit conditions, (c) the director has determined that there are problems with the operation of the use and that new or revised conditions are needed.

### *3. Proposed new ordinance language for change of ownership applications, allowing administrative changes to conditions with applicant agreement and requiring a hearing only for serious violations.*

- f. Change in ownership only. Where an application under this section 11-500 is necessitated solely by a change in ownership of the use that is subject to the special use permit, and the circumstances set forth below in paragraph (1) below apply, the director may administratively approve such application and transfer the special use permit to the new applicant only.
  - i. The circumstances which are a condition to such administrative approval are as follows:
    - (a) The applicant is not requesting a change in the conditions of the special use permit.
    - (2) There have been no substantiated violations of the special use permit **which were not corrected immediately, constitute repeat violations or which create a direct and immediate adverse impact on the surrounding community.**
    - (3) There are no changes proposed or anticipated in the operation of

the use involved.

- (4) The director has concluded that no new conditions, other than standard conditions promulgated by the director, approved by city council and agreed to by the applicant, and no amendments to existing conditions are necessary, other than to conform to such standard conditions. **The standard conditions included here shall include any condition that the director finds to be necessary for the public benefit, in keeping with the use and the prior Council approval, and agreed to by the applicant in writing.**
- (5) Following notice of the application in a newspaper of general circulation in the city, no person has requested the director to forward the application to city council.

**EXAMPLES OF CONDITIONS WITH SPECIFIC TRIGGERS FOR COMPLIANCE****Open Space - Potomac Yard (Linear Park)**

- Construction shall occur in conjunction with the development of each landbay which is adjacent to the Linear Park, and shall be completed by the date or event described in the initial preliminary development plan approval for the landbay; provided, that construction of the entire park shall be completed before the approval by final site plan of 2.5 million square feet of new development.

**Open Space- 124 South West Street Pedestrian Plaza:**

- The existing sidewalks on Prince and Commerce Streets shall be extended to create a pedestrian plaza as generally depicted within *Attachment No. 1* of the staff report. The final design and amenities within the plaza shall at a minimum include brick pavers, street trees, decorative tree grates, trash receptacles etc. to the satisfaction of the Director of P&Z. It shall be the responsibility of the applicant to install the plaza prior to a certificate of occupancy for the office building.

**Open Space- Potomac Greens**

- The applicant shall grant a deed of easement granting public access over all parkland and open space within the project that is not dedicated to the City, in accordance with CDD#99-0001 Condition 7, with the exception of the clubhouse and the area within the fence surrounding the adjacent swimming pool. The easement shall be granted prior to release of a final site plan. All park space subject to public access easement shall be privately maintained in accordance with CDD Condition 7.

**Streets - Potomac Yard - Potomac Avenue (Spine Road)**

- Construction of this road shall be completed before the issuance of a certificate of occupancy for the earliest of the following: (i) for 800,000 square feet of new office development in the portion of the CDD west of the relocated rail lines (including office development consisting of interim, permitted and special uses), for which final site plan approval is given after the date of concept plan approval; (ii) for 1,750,000 square feet of any new development in this portion of the CDD (including development consisting of interim, permitted and special uses, but excluding hotel uses), for which final site plan approval is given after the date of concept plan approval; or (iii) for 3,250,000 square feet of any new development in this portion of the CDD.

**Potomac Yard - Pedestrian Bridge:**

- Construction shall commence within 30 days of final site plan approval for 1,000,000

square feet of new development within the CDD (including development consisting of interim, permitted and special uses), for which final site plan approval has been given after the date of concept plan approval, and shall thereafter be diligently pursued to completion.

#### **Potomac Yard - Trunk Sewer**

- No preliminary development plan for any landbay west of the relocated rail lines, or for any portion of a landbay, which proposes the construction of a building or buildings pursuant to the Concept Plan or, if in effect, the Alternative Concept Plan, shall be approved by City Council until (i) a new sanitary sewer line (the "Trunk Sewer") from Potomac Yard to the Alexandria Sanitation Authority ("ASA") wastewater treatment plant has been designed by CAP to the satisfaction of the Director of T&ES and the Engineer/Director of ASA, and (ii) construction of the sewer has commenced. No Certificates of Occupancy shall be issued for any building, structure or facility within any landbay west of the relocated rail lines until the Trunk Sewer has been completed, has been accepted by the City, and is in service; provided, that, notwithstanding the status of the Trunk Sewer, certificates may be issued for buildings, structures or facility within landbay "F" (the Retail Center at the north end of the Yard), and within the warehouse complex in the Yard located generally to the east of the intersection of Route 1 Howell Avenue, which are buildings, structures or facilities that the City understood, at the time the sewage retention tank at the Four Mile Run Pump Station was constructed, were to be served

#### **Mill Race Open Space**

- The applicant shall contribute \$160,000 in 2002 dollars (adjusted per the CPI) to the Eisenhower East Open Space Fund. The contribution shall be paid prior to the issuance of the first final site plan for the project.

#### **Mill Race Street Improvements:**

- The extension of Grist Mill Road, Mill Race Lane and related intersection improvements to Mill Road and Eisenhower Avenue shall be designed and constructed by the applicant with the first building constructed on the site and shall be completed prior to release of any occupancy permits. The Director of T&ES may approve an alternate phasing plan to permit the office building to proceed without the construction of Mill Race Lane, if the applicant demonstrates to the Director's satisfaction that the traffic circulation and safety will not be adversely affected. The applicant shall be responsible for designing and constructing the portion of Grist Mill Road over WMATA owned land to connect to the Hoffman property. Plans for those streets shall be provided with the first final site plan. The construction shall occur prior to the CO (certificate of occupancy permit) for the first building. If the right-of-way is not available from the adjacent property owner for the

extension of Grist Mill Road, the Director may permit the issuance of certificates of occupancy provided the applicant has made a good faith effort to complete the construction. Curb, gutters and paving shall be constructed for all streets, but sidewalks and street trees shall be constructed only adjacent to buildings actually being constructed, with remaining streetscape to be installed to the satisfaction of the Directors of P&Z and T&ES.

**Mill Race Infrastructure:**

- The construction of the realigned 4' x 6' double box culvert shall be completed by the applicant and accepted by Transportation and Environmental Services prior to the issuance of any certificate of occupancy permits for Building #1. Segments of the new box culvert that are to be located beneath Grist Mill Lane must be completed as each road is built. The realignment of the existing double 4' x 6' double box culverts shall be designed to maintain the hydraulic capacity of the existing storm sewer to the satisfaction of the Director of T&ES.
- The construction of the Holmes Run Trunk Sewer (HRTS) relocation shall be completed simultaneously with the relocation of the existing HRTS immediately to the west of the site in conjunction with the Development Special Use Permit #2000-0028 (Hoffman Towne Center). The HRTS relocation project shall comply with the terms and conditions contained in an agreement to be negotiated between the applicant and the Alexandria Sanitation Authority (ASA). The relocated HRTS shall be 72 inches in diameter and shall meet the guidelines established for this project as provided by ASA and shall be subject to the approval of the Director of Transportation and Environmental Services and the Engineer-Director of ASA. After the relocation is complete, Eisenhower Avenue shall be reconstructed and re-paved to the satisfaction of the Director of T&ES. The cost of the HRTS relocation, including all associated engineering and legal cost, shall be paid in full by the applicant. Any abandoned HRTS in the public right-of-way shall be removed at the applicant's expense at the time of the relocation. HRTS on private property shall be abandoned according to the guidelines of ASA. The City and ASA shall be relieved of all responsibility for the abandoned HRTS. The construction of the realigned HRTS shall be designed and constructed with the first phase of the development and simultaneously with the relocation of the sewer along the adjacent Hoffman Towne Center project. Furthermore, the Alexandria Sanitation Authority shall be reimbursed for all engineering and construction supervision costs associated with the relocation of the sanitary sewer. The Director of Transportation and Environmental Services may approve an alternate construction phasing plan to permit the office building to proceed without the construction of the HRTS realignment if the applicant demonstrates to the Director's satisfaction that sewer construction will be coordinated with the construction of the third westbound lane on Eisenhower Avenue and that the construction will coincide with the realignment across the Hoffman Town Center property.