

ORDINANCE NO. 2004-1-1-28
ORDINANCE CONFIRMING ADOPTION OF REPLACEMENT ZONING ORDINANCE
AND
REPEAL OF ALL PRIOR ZONING ORDINANCES, AND ESTABLISHING EFFECTIVE
DATE FOR PENALTY PROVISIONS

WHEREAS, following public hearing and publication as required by law, on October 25, 2001 the Henry County Plan Commission did approve and certify the proposed Comprehensive Plan and the proposed Development Code (also known as “zoning ordinance”), and

WHEREAS, on November 7, 2001, the Henry County Board of Commissioners did approve the Comprehensive Plan as certified and proposed, and

WHEREAS, after notice as required by law, on December 12, 2001 the Henry County Board of Commissioners conducted a public hearing pursuant to I.C. 36-7-4-606 to consider the adoption of the zoning ordinance as proposed, which hearing was continued from week to week, and

WHEREAS, no written objections being filed, on January 23, 2002 the zoning ordinance took effect pursuant to I.C. 36-7-4-606(f), by operation of law, and

WHEREAS, said zoning ordinance replaces all prior zoning ordinances (including amendments thereto and prior maps) and consists of ten titles, specifically: Title 1 General Zoning Regulations; Title 2 Subdivision Control; Title 3 Major Streets and Highway; Title 4 Water and Sewage; Title 5 Utilities; Title 6 Stormwater Drainage; Title 7 Erosion Control; Title 8 Flood Damage Prevention; Title 9 Signage; and Title 10 Planned Unit Development; and may be referred to as the Henry County Development Code (hereinafter “Development Code”), and

WHEREAS, the text of the Development Code has been printed in book or pamphlet form, two copies of said book or pamphlet are on file in the Henry County Auditor’s Office, and such books or pamphlets are available for inspection or purchase by the public from the office of the Henry County Planning Commission, and

WHEREAS, the penalty provisions of the Development Code should be effective and in full force on March 5, 2004, following publication as required by law.

NOW THEREFORE, BE IT ORDAINED:

Section 1. Adoption of the Development Code by operation of law, is hereby ratified and affirmed, effective March 5, 2004.

Section 2. The penalty provisions of the Development Code, which provide:

Title 1, Section 14.10, subsection D. Civil Zoning Violations

1. Any person who uses property in violation of this Development Code is deemed to have committed a civil zoning violation and may be issued a citation by the Zoning Administrator or his duly authorized designees pursuant to Subsection E of this Section.
2. Each day a violation remains uncorrected is a distinct and separate civil zoning violation subject to an additional citation and fine in the amount prescribed by Subsection 3 below, provided a warning ticket has first been issued pursuant to Subsection E-2 of this Section.
3. The monetary fine for each civil zoning violation shall be Fifty Dollars (\$50.00) and for a repeated civil zoning violation, the following fines shall apply:

First Citation	Fifty Dollars (\$50.00)
Second Citation	One Hundred Dollars (\$100.00)
Third Citation	One Hundred Fifty Dollars (\$150.00)
Fourth Citation	Two Hundred Dollars (\$200.00)
Each Citation in excess of four (4)	Three Hundred Dollars (\$300.00)

4. All fines prescribed by this Section for civil zoning violations shall be paid to the Zoning Administrator, who shall render to the person making the payment 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 Planning Commission. All fines thus received shall be deposited with the Henry County Auditor.

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F. Trial for Civil Zoning Violations

1. A person who receives a citation may elect to stand trial for the offense by indicating on the citation his intent to stand trial and returning a copy of the citation to the Zoning Administrator. The returned copy of the citation shall serve as a notice of the person's intent to stand trial, and additional monetary fines prescribed in Subsection D-3 shall be stayed upon receipt of the notice. The notice shall be given at least seven (7) days before the date of payment set forth in the citation. On receipt of the notice of intention to stand trial, a lawsuit will be commenced by the designated enforcement entity in the Circuit or Superior Courts of Henry County, Indiana. The matter shall be scheduled for trial, and a Summons and an Order to Appear shall be served upon the Defendant.
2. If a person who receives a citation fails to pay the assessed fine by the date of payment set forth in the citation and fails to give notice of his intention to stand trial as prescribed in Subsection 1 above, the designated enforcement entity may file a civil lawsuit as provided by applicable laws and seek penalties as prescribed in Subsection G. A person adjudged to have committed a civil zoning violation is liable for the Court costs and fees, including attorneys' fees.

3. In proceedings before the Court for a civil zoning violation, the Indiana Rules of Trial Procedure shall govern. The designated enforcement entity has the burden of proving the civil zoning violation by a preponderance of the evidence.
4. Seeking a civil penalty as authorized in this Section does not preclude the designated enforcement entity from seeking alternate 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 Indiana Code IC 36-7-4 or any ordinance adopted or action taken under Indiana Code IC 36-7-4.
5. A change of venue from Henry County shall not be granted in such a case, as provided in Indiana Code IC 36-7-1014.

G. General Penalties – Court Actions

1. Whenever in any Title or Section of the Henry County Development Code as amended, or in any ordinance amendatory thereof or supplemental thereto, the doing of any act or the omission to do any act or to perform any duty is a violation, any person found liable by a court of competent jurisdiction for such violation shall be subjected to a fine of two thousand five hundred (\$2,500) for each such violation, act or omission.
2. For violations continued or renewed, each day's violation shall constitute a separate offense.
3. In addition to the penalties prescribed in Subsections 1 and 2 above, the designated enforcement entity may enjoin or abate any violation of the Development Code by appropriate action.

Reasonable attorney's fees incurred by the designated enforcement entity may be assessed against the violator as a general penalty in addition to the prescribed fines defined in this Section.

as adopted by operation of law, are hereby affirmed and shall be in force and effect from and after March 5, 2004.

Section 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 4. Any provision herein contained which is found by a court of competent jurisdiction to be unlawful or which by operation of law shall be inapplicable, shall be deemed omitted but the rest and remainder of this ordinance, to the extent feasible, shall remain in full force and effect.

Section 5. Notice of the adoption and effective date of such penalty provisions shall be published on February 5 and February 19, 2004, in two newspapers as required by law.

Adopted by a vote of 3 to 0 this 28th day of January, 2004.

Philip J. Estridge, President

Attest:

Linda S. Ratcliff, Auditor