

## Chapter 134. Zoning

# ARTICLE 8. ADMINISTRATION AND ENFORCEMENT

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### 134-8.1 Review and Decision-Making Bodies

#### 8.1.1 PLAN AND ZONING COMMISSION

The plan and zoning commission has the powers and duties that are expressly identified in this chapter and in [chapter 82, article II](#) and chapter 135 of this code.

#### 8.1.2 BOARD OF ADJUSTMENT

**A. Composition.** The board of adjustment shall consist of seven members, at least four of whom shall be persons representing the public at large, not involved in the business of purchasing or selling real estate.

**B. Appointment and Terms.** The terms of office of the members of the board of adjustment and the manner of their appointment shall be as provided by statute.

**C. Officers.** The board of adjustment must elect a chairperson and vice chairperson. The secretary of the board shall be staff, as assigned, from the community development department.

**D. Rules of Procedure.** The board of adjustment must adopt rules necessary for the conduct of its affairs.

**E. Meetings.** Board of adjustment meetings must be held at the call of the chairperson and at other times as the board of adjustment may determine. The chairperson, or in the chairperson's absence, the acting chairperson, may administer oaths and compel attendance of witnesses. All meetings of the board of adjustment must be open to the public, in accordance with chapter 21 of the Iowa Code. The board of adjustment must keep minutes of its proceedings and official actions. Minutes must indicate the vote of each member on each question including absences and abstentions, all of which must be open public record on file in the community development department, which serves as the office of the board of adjustment. The presence of four members shall be necessary to constitute a quorum.

#### F. Powers and Duties

1. The board of adjustment has the powers and duties that are expressly identified in this zoning ordinance, including hearing and acting on applications for zoning variances, zoning use variances, zoning exceptions, conditional uses and appeals of administrative decisions.

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appeals or considering variances or exceptions to the wireless telecommunication provisions of this chapter that include procedural or other requirements set forth in Iowa and federal law, including but not limited to Iowa Code Chapter 8C, the Spectrum Act, and similar FCC regulations. In addition, if the denial of an appeal or variance or exception will result in denial of wireless telecommunications services, or if approval of an appeal or variance or exception is necessary due to the type of technology proposed by an applicant, then the board of adjustment shall grant the relief sought, which may be subject to conditions allowed by city, state, and federal law.

**G. Appeals to District Court.** Any taxpayer or any officer, department, board or bureau of the city or any persons jointly or severally aggrieved by any decision of the board of adjustment may present to a court of record a petition for writ of certiorari, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. The petition must be presented to the court within 30 days after the filing of the decision in the community development department, which serves as the office of the board of adjustment.

### 8.1.3 COMMUNITY DEVELOPMENT DIRECTOR

The community development director has the powers and duties expressly identified in this chapter. For purposes of this chapter, "community development director" includes designees of the community development director.

### 8.1.4 ZONING ENFORCEMENT OFFICER

There is established within the community development department a zoning enforcement officer who shall be appointed by and responsible to the community development director.

#### A. Powers and Duties.

The zoning enforcement officer shall exercise the following powers and duties:

1. The zoning enforcement officer or the officer's designees shall exercise all enforcement powers under this chapter, including to the investigation of complaints of zoning violations, issuance of notices and municipal infraction citations to violators, and the preparation and submission to the legal department of reports of those zoning violations which continue unabated after exhaustion of reasonable administrative remedies toward their abatement, for such legal action as the facts of each report may require.
2. In all cases in which the city commences court action, the zoning enforcement officer shall cooperate with the assistant city attorney by performing such additional investigative work as the assistant city attorney shall require.
3. The zoning enforcement officer shall attend the meetings of the plan and zoning commission and the board of adjustment as requested by those bodies, shall investigate and review all cases presented to the board of adjustment, and shall advise that body on those cases upon request.
4. If the legal department, after analysis of the report, institutes legal proceedings, the zoning enforcement officer will cooperate fully with the legal department in the perfecting of such proceedings.
5. The zoning enforcement officer or the officer's designees may provide a written determination regarding the application of this chapter and related land use regulations in this code to a specific site to any person requesting such information upon receipt of a fee in the amount set in the schedule of fees adopted by the city council by resolution.

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## 134-8.2 Enforcement

### 8.2.1 RESPONSIBILITY FOR ENFORCEMENT

The zoning enforcement officer, under the direction and supervision of the community development director, is responsible for enforcing this chapter. All departments, officials and employees vested with the authority to review, recommend or issue development approvals, permits or licenses must act in accordance with the provisions of this chapter.

### 8.2.2 RIGHT TO INSPECT PROPERTY

The zoning enforcement officer or the officer's designees are authorized to enter at reasonable times onto and into open unobstructed property and structures to inspect, and a property owner or occupant is required to allow such inspection. If entry onto real estate for the purposes described in this chapter is refused, the community development director may pursue a municipal infraction or obtain an administrative search warrant as provided by law to gain entry onto the real estate for the purpose of inspection or otherwise as provided by law.

**8.2.3 VIOLATIONS**

Unless otherwise expressly allowed by this chapter or state law, any violation of a provision of this chapter is subject to the remedies and penalties provided for in this chapter.

**8.2.4 CONTINUING VIOLATIONS**

Each day that a violation continues constitutes a separate violation of this chapter.

**8.2.5 REMEDIES AND ENFORCEMENT POWERS**

The city has all remedies and enforcement powers allowed by law, including, without limitation, all of the following:

**A. Fines.** Any person violating any provisions of this chapter or failing to comply with any of its requirements may be deemed guilty of a misdemeanor or municipal infraction punishable in accordance with chapter [1-15 of this code](#).

**B. Withhold Permit**

1. The community development director may deny or withhold all zoning-related permits, certificates or other forms of authorization on any land or structure or improvements upon which there is an existing violation of a provision of this chapter or of a condition or qualification of a permit, certificate, approval or other authorization previously granted by the city. This enforcement provision may be used regardless of whether the current owner or applicant is responsible for subject violation.
2. Instead of withholding or denying a permit or other authorization, the community development director may grant such authorization subject to the condition that the violation be corrected.

**C. Revoke Permits**

1. A permit, certificate or other form of authorization required under this chapter may be revoked by the community development director when the community development director determines:
  - a. That there are unapproved departures from approved plans or permits; or
  - b. That any provision of this chapter or approval previously granted by the city is being violated.
2. Written notice of revocation must be sent by regular mail to the subject property owner or any party the zoning enforcement officer may deem responsible.

**D. Stop Work**

1. If the zoning enforcement officer finds work being performed in a manner contrary to the provisions of this chapter or in a dangerous or unsafe manner, the zoning enforcement officer is authorized to issue a stop work order.
2. A stop work order must be in writing and must be posted at the site of the violation. A copy of the order must also be provided to the owner of the subject property, to the owner's authorized agent, or to the person doing the work. Upon issuance of a stop work order, the cited work must cease immediately. The stop work order must state the reason for the order and the conditions under which the cited work is authorized to resume.
3. Any person who continues any work after having been provided with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe conditions, is subject to penalties and enforcement as set out in this section.

**E. Injunctive Relief.** The city may seek an injunction or other equitable relief in court to stop any violation of this chapter or of a permit, certificate or other form of authorization granted under this chapter or previous zoning ordinances.

**F. Forfeiture and Confiscation of Signs on Public Property.** Any sign installed or placed on public property, including rights-of-way, except in compliance with the regulations of this chapter will be considered forfeited to the public and subject to confiscation. In addition to other remedies and penalties of this article, the city has the right to recover from the sign owner or person who placed the sign, the full costs of sign removal and disposal.

**G. Abatement**

1. The city may seek a court order for abatement, injunction or other action requiring the owner to correct a violation and order that the city's costs for abatement or correction of the violation be entered as a personal judgment against the defendant or assessed against the property on which the violation occurred, or both.
2. The city may seek a court order authorizing the city to abate or correct the violation and order that the city's costs for abatement or correction of the violation be entered as a personal judgment against the defendant or assessed

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against the property on which the violation occurred, or both.

**H. Other Penalties, Remedies and Powers.** The city may seek such other penalties and remedies as are provided by law. The city may institute any other proper action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use of any building, structure or sign; to restrain, correct, or abate such violation; to prevent the occupancy of the building, structure, land; or to prevent any illegal act, conduct, business or use in or about the premises.

**I. Continuation of Previous Enforcement Actions.** Nothing in this chapter prohibits the continuation of previous enforcement actions, undertaken by the city pursuant to previous ordinances and laws.

**J. Stay of Enforcement Proceedings.** An appeal stays all enforcement proceedings in furtherance of the action appealed from, unless the zoning enforcement officer certifies to the board, after notice of appeal shall have been filed with him or her, that, because of the facts stated in the certificate, a stay would, in his or her opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board or by a court of record on application on notice to the zoning enforcement officer and on due cause shown.

### 8.2.6 REMEDIES CUMULATIVE

The remedies and enforcement powers established in this chapter are cumulative, and the city may exercise them in any combination or order.

### 8.2.7 PERSONS SUBJECT TO PENALTIES

The owner or tenant of any building, structure, premises, or part thereof, and any architect, builder, contractor, or agent, or other person who commits, participates in, assists in, or maintains such violations may each be found guilty of a separate offense and be subject to penalties, remedies and enforcement actions.

### 8.2.8 ENFORCEMENT PROCEDURES

**A. Non-Emergency Matters.** In the case of violations of this chapter that do not constitute an emergency or require immediate attention, the subject property owner must be given notice by regular mail. Notices of violation must state the nature of the violation and the time period for compliance and may state the corrective steps necessary and the nature of subsequent penalties and enforcement actions should the situation not be corrected.

**B. Emergency Matters.** In the case of violations of this chapter that constitute an emergency situation as a result of public health or safety concerns if not remedied immediately, the city may use the enforcement powers available under this chapter without prior notice to the subject property owner, including the authority to abate or correct the violation.

### 8.2.9 APPEALS

A determination made by the community development director, zoning enforcement officer or other administrative officials that a zoning ordinance violation has occurred may be appealed by the affected party in accordance with section 134-6.9 of this chapter.