

CHAPTER 3.02

ADMINISTRATION AND DISPOSITION OF INFRACTIONS

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3.02.010 ADMINISTRATION - PLANNING AND BUILDING DEPARTMENT.
There is hereby established the Benton County Planning and Building
Department. The Director thereof, appointed by the Board of County
Commissioners, shall serve as the Benton County Building Official.
The Planning and Building Department shall have responsibility for
the administration and enforcement of this title.
[Ord. 199 (1986) § 1; Ord. 247 (1993) § 1]

3.02.020 VIOLATIONS ~~S~~INFRACTIONS ~~S~~MISDEMEANOR. The first violation of any provision of this title shall constitute an infraction. Upon final disposition of an infraction, a determination by the Planning and Building Department's authorized representative of a continuing violation of the same provision shall constitute a second or subsequent offense. The court's finding of a second or subsequent violation of the same provision of this title shall constitute a misdemeanor.
[Ord. 199 (1986) § 2; Ord. 302 (1997) § 1]

3.02.030 INJUNCTIVE RELIEF. Notwithstanding the existence or use of any other remedy or means of enforcement of the provisions hereof, Benton County may seek legal or equitable relief to enjoin any acts or practices which constitute a violation of any of the provisions hereof and compel compliance with all provisions of this chapter. The costs of such action shall be taxed against the person violating the provisions of this chapter. The Planning and Building Department may accept a written assurance of discontinuance of any act in violation of this chapter from any person who has engaged in such act. Failure to comply with the assurance of discontinuance shall be a further violation of this chapter.
[Ord. 199 (1986) § 3; Ord. 247 (1993) § 2]

3.02.040 VIOLATIONS - INVESTIGATIONS - EVIDENCE. An authorized representative of the Planning and Building Department may investigate alleged or apparent violations of this title. If the name of the person or contractor allegedly or apparently in violation of this title is not known, or if the name of the person or contractor does not appear on the latest list of building permits compiled by the department, upon presentation of credentials, an authorized representative of the department may inspect sites at which work is performed to determine whether a building permit has been issued. Upon request of the authorized representative of the department, the person or contractor allegedly or apparently in violation of this title shall provide information identifying themselves and the contractor.
[Ord. 199 (1986) § 4; Ord. 247 (1993) § 3]

3.02.050 VIOLATIONS - FAILURE TO PROVIDE INFORMATION IDENTIFYING CONTRACTOR. Willful refusal to provide information

identifying a person or contractor as required by BCC 3.02.040 is a misdemeanor.

[Ord. 199 (1986) ▪ 5]

3.02.060 NOTICE OF INFRACTION - SERVICE. If an authorized representative of the Planning and Building Department reasonably believes that any provision of this title has been violated, the authorized representative may issue a notice of infraction for the first such violation. A notice of infraction issued under this title shall be personally served on the person or contractor named in the notice by an authorized representative of the department. If the contractor named in the notice of infraction is a firm or corporation, the notice may be personally served on any employee of the firm or corporation. If a notice of infraction is personally served upon an employee of a firm or corporation, the department shall within four days of service send a copy of the notice by certified mail to the firm or corporation if the department is able to obtain the firm or corporation's address.

[Ord. 199 (1986) ▪ 6; Ord. 247 (1993) ▪ 4; Ord. 302 (1997) ▪ 2]

3.02.070 NOTICE OF INFRACTION - FORM - CONTENTS. The notice of infraction shall include the following:

(a) A statement that the notice represents a determination that the infraction has been committed by the person or contractor named in the notice and that the determination shall be final unless contested as provided in this chapter;

(b) A statement that the infraction is a noncriminal offense for which imprisonment shall not be imposed as a sanction;

(c) A statement of the specific infraction for which the notice was issued;

(d) A statement that the civil penalty shall not exceed five hundred dollars (\$500) for said violation and that the person shall be ordered to pay restitution for any damages caused by said violation;

(e) A statement of the options provided in this chapter for responding to the notice and the procedures necessary to exercise these options;

(f) A statement that at any hearing to contest the determination the county has the burden of proving, by a preponderance of the

evidence, that the infraction was committed; and that the person or contractor may subpoena witnesses, including the authorized representative of the department who issued and served the notice of infraction;

(g) A statement, which the person who has been served with the notice of infraction shall sign, that the person or contractor promises to respond to the notice of infraction in one of the ways provided in this chapter;

(h) A statement that refusal to sign the infraction as directed in subsection (g) is a misdemeanor and may be punished by a fine or imprisonment in jail; and

(i) A statement that a person or contractor's failure to respond to a notice of infraction as promised is a misdemeanor and may be punished by a fine or imprisonment in jail.
[Ord. 199 (1986) § 7; Ord. 205 (1986) § 1; Ord. 302 (1997) § 3]

3.02.080 NOTICE OF INFRACTION - FILING - HEARING IN DISTRICT COURT. A violation designated as an infraction under this title can be heard and determined by either a district or superior court.
[Ord. 199 (1986) § 8]

3.02.090 NOTICE OF INFRACTION - DETERMINATION INFRACTION COMMITTED. Unless contested in accordance with this chapter, the notice of infraction represents a determination that the person or contractor to whom the notice was issued committed the infraction.
[Ord. 199 (1986) § 9]

3.02.100 NOTICE OF INFRACTION - RESPONSE - REQUESTING A HEARING - FAILURE TO RESPOND OR APPEAR - ORDER SET ASIDE.

(a) A person or contractor who receives a notice of infraction shall respond to the notice as provided herein within fourteen days of the date the notice was served.

(b) If the person or contractor named in the notice of infraction does not want to contest the determination, the person or contractor shall respond by completing the appropriate portion of the notice of infraction and submitting it, either by mail or in person, to the court specified on the notice. A check or money order in the amount of the penalty prescribed for the infraction

must be submitted with the response. When a response which does not contest the determination is received, an appropriate order shall be entered in the court's records, and a record of the response and order shall be furnished to the department.

(c) If the person or contractor named in the notice of infraction wants to contest the determination, the person or contractor shall respond by completing the portion of the notice of infraction requesting a hearing and submitting it, either by mail or in person, to the court specified on the notice. The court shall notify the person or contractor in writing of the time, place, and date of the hearing. The date of the hearing shall not be sooner than fourteen days from the date of the notice of hearing, except by agreement of the parties.

(d) If any person or contractor issued a notice of infraction (1) fails to respond to the notice of infraction as provided in subsection (b), or (2) fails to appear at a hearing requested pursuant to subsection (c), the court shall enter an order assessing a monetary penalty as provided under BCC 3.02.170 and shall notify the department of the failure of the person or contractor to respond to the notice of infraction or to appear at a requested hearing.

(e) An order entered by the court under subsection (d) (2) may, for good cause shown and upon such terms as the court deems just, be set aside for the same grounds a default judgment may be set aside in civil actions.
[Ord. 199 (1986) ▪ 10; Ord. 302 (1997) ▪ 4]

3.02.110 NOTICE OF INFRACTION - PERSON'S REFUSAL TO SIGN - MISDEMEANOR. It is a misdemeanor for any person who has been personally served with a notice of infraction to refuse to sign a written promise to respond to the notice.
[Ord. 199 (1986) ▪ 11]

3.02.120 NOTICE OF INFRACTION - PERSON'S FAILURE TO RESPOND - MISDEMEANOR. It is a misdemeanor for any person who has been personally served with a notice of infraction to wilfully violate the written promise to respond to the notice.
[Ord. 199 (1986) ▪ 12]

3.02.130 REPRESENTATION BY ATTORNEY. A person or contractor subject to proceedings under this title may appear or be represented by counsel. Each party to an infraction case is responsible for costs incurred by that party. No costs or attorney fees may be awarded to either party in an infraction case. [Ord. 199 (1986) ■ 13]

3.02.140 INFRACTION - HEARING - PROCEDURE - BURDEN OF PROOF - ORDER - APPEAL.

(a) A hearing held to contest the determination that an infraction has been committed shall be without a jury.

(b) The court may consider the notice of infraction and any sworn statement submitted by the department's authorized representative who issued and served the notice in lieu of his or her personal appearance at the hearing. The person or contractor named in the notice may subpoena witnesses, including the authorized representative who issued and served the notice, and has the right to present evidence and examine witnesses present in court.

(c) The burden of proof is on the department to establish the commission of the infraction by a preponderance of the evidence.

(d) After consideration of the evidence and argument, the court shall determine whether the infraction was committed. If it has not been established that the infraction was committed, an order dismissing the notice shall be entered in the court's records. If it has been established that the infraction was committed, an appropriate order shall be entered in the court's records. [Ord. 199 (1986) ■ 14]

3.02.150 INFRACTION - EXPLANATION OF MITIGATING CIRCUMSTANCES.

(a) A hearing held for the purpose of allowing a person or contractor to explain mitigating circumstances surrounding the commission of an infraction shall be an informal proceeding. The person or contractor may not subpoena witnesses. The determination that an infraction has been committed may not be contested at a hearing held for the purpose of explaining mitigating circumstances.

(b) After the court has heard the explanation of the circumstances surrounding the commission of the infraction an appropriate order shall be entered in the court's records.

(c) The person or contractor may not appeal the court's determination or order.
[Ord. 199 (1986) § 15]

3.02.160 CIVIL PENALTY - INFRACTION. A civil penalty imposed by the court under this title is immediately payable. If the person or contractor is unable to pay at that time, the court may, in its discretion, grant an extension of the period in which the penalty may be paid. If the penalty is not paid on or before the time established for payment, the court shall notify the department of the failure to pay the penalty and the department shall not issue the person or contractor any future permits for any work until the monetary penalty has been paid.
[Ord. 199 (1986) § 16; Ord. 302 (1997) § 5]

3.02.170 VIOLATIONS-PENALTIES. (a) Upon a finding of a first violation of any provision of Title 3, any person or contractor shall be punished by a civil penalty not to exceed five hundred dollars (\$500) for said violation, shall be responsible for court costs, if applicable, and shall be ordered to pay restitution for any damages caused by said violation.

(b) Upon the court's finding of a second or subsequent violation of the same provision of Title 3, any person or contractor shall be found guilty of a misdemeanor.
[Ord. 199 (1986) § 17; Ord. 205 (1986) § 2; Ord. 302 (1997) § 6]

3.02.180 SEVERABILITY. If any provision of this chapter is declared to be unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the chapter and the applicability thereof to other persons and circumstances shall not be affected thereby.
[Ord. 199 (1986) § 18]