Passed 9-0

ORDINANCE 00-17

TO AMEND THE TEXT OF TITLE 20
OF THE BLOOMINGTON MUNICIPAL CODE ENTITLED, "ZONING"
(Establishing an NOV and Citation Procedure Under Chapter 20.09 "Enforcement")

WHEREAS, the Bloomington Plan Commission wishes to make changes in the Enforcement Section of the BMC in order increase the City's ability to enforce the regulations;

WHEREAS, the Bloomington Plan Commission has considered this case, ZO-61-99, and recommended that the Bloomington Municipal Code be changed and requests that the Common Council consider their petition;

NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON, MONROE COUNTY, INDIANA, THAT:

SECTION 1. Section 20.09.02.00 entitled "PENALTIES AND REMEDIES FOR VIOLATIONS" shall be amended such that 20.09.02.01 and 20.09.02.03 read as follows:

20.09.02.01 Violations of any provision of Chapter 20 of the Bloomington Municipal Code (BMC) with the exception of 20.06.05.03 or failure to comply with any of its requirements, including violations of any condition established in connection with approval of a variance, conditional use or other development approval, shall be subject to the penalty as provided in Section 20.09.04 of the Bloomington Municipal Code.

20.09.02.03 The City Legal Department may institute appropriate action to prevent, enjoin, abate or remove any violation of this Zoning Ordinance.

SECTION 2. Section 20.09.03.00 entitled "ADMINISTRATION" shall be amended so that it reads as follows:

The Zoning & Enforcement Manager shall maintain a record and tabulation of all complaints and investigations, and the resolutions of those complaints, whether made by citizens or by staff; communicate on a regular basis with citizen complainants about the progress being made in investigating and resolving their complaints; and, report to the Plan Commission and the Common Council on a semi-annual basis as to the number and type of complaints and the outcome of each.

SECTION 3. Section 20.09.04.00 entitled "PENALTY" shall be added to Chapter 20.09 and shall read as follows:

<u>20.09.04.00</u> <u>PENALTY</u>

Any person who violates this ordinance shall be subject to a civil penalty of not more than one hundred dollars ($100.00) for each such violation except as noted in Section 20.09.08.00.

SECTION 4. Section 20.09.05.00 entitled "ENFORCEMENT PROCEDURES AND OPTIONS" shall be added to Chapter 20.09 and shall read as follows:

<u>20.09.05</u> <u>ENFORCEMENT PROCEDURES AND OPTIONS</u>

(a) If the Planning Director, or his designee, and/or the Zoning & Enforcement Manager, or his designee, collectively referred to as "Staff", find that any provision of this ordinance, with the exception of 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 when the violation is remedied during the correction period, except where the responsible party has been issued an NOV for the same section of Chapter 20 within the preceding eighteen (18) months.

Compliance Deadlines & Fines			
Type of Violation			
	Correction Period from Date of NOV	**Daily Fine During Correction Period**	**Daily Fine After Correction Period has Elapsed**
Zoning Ordinance			
Illegal temporary signage BMC 20.06.06.04	0	$25	$50
Parking on an unimproved surface BMC 20.06.02.05	0	$25	$50
Temporary Occupancy BMC 20.06.07.00	0	$50	$100
Structure in setback BMC 20.07.16.03	20 business	$25	$50
Illegal permanent signage BMC 20.06.06.03	10 business	$50	$100
Occupancy without permit BMC 20.05.08.03	20 business	$50	$100
Home Occupation BMC 20.05.11.00	20 business	$100	$100
Junkyard/auto storage BMC 20.07.01.00	10 business	$50	$100
Other code violations	10 business	$50	$100
Site Plan Requirements			
No parking lot striping BMC 20.06.02.08	10 business	$25	$100
Missing bike racks BMC 20.06.02.10	15 business	$25	$100
No dumpster screens BMC 20.06.04.02	15 business	$25	$100
No handicapped parking provided BMC 20.06.02.04	15 business	$50	$100
Missing landscaping BMC 20.06.04.02	30 business	$50	$100
Missing paving BMC 20.06.02.08	30 business	$50	$100
Missing sidewalk	30 business	$50	$100

BMC 20.06.04.03			
Other condition of approval	30 business	$50	$100

(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.

SECTION 5 Section 20.09.06.00 entitled "AUTHORIZED REMEDIES FOR VIOLATIONS" shall be added to Chapter 20.09 and shall read as follows:

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 ordinance 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 Chapter 20 of the BMC, by certified mail, which states the relevant offense(s) and which assesses the appropriate penalty. Each enumerated item of non-compliance 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 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 ordinance or to remove a structure erected in violation of the ordinance; and/or

(4) Suspend and 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 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 City Engineer to affect any remedial actions required to abate the violations; and/or,

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

The purpose of each of the foregoing administrative remedies is to encourage compliance with this Chapter 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.

SECTION 6 Section 20.09.07.00 entitled "APPEALS" shall be added to Chapter 20.09 and shall read as follows:

20.09.07.00 APPEALS

(a) Appeals shall be as set forth in Section 20.05.06.00.

SECTION 7 Section 20.09.08.00 entitled "SEBSEQUENT VIOLATIONS" shall be added to Chapter 20.09 and shall read as follows:

20.09.08.00 SUBSEQUENT VIOLATIONS

(a) In the event that the responsible party and/or landowner violates the same section of Chapter 20 within an eighteen (18) month period of the previous NOV, the staff shall proceed with enforcement of this Chapter as required in Section 20.09.05. However, the daily fine during the correction period shall be assessed.

(b) In the event that no additional violations occur for a period of eighteen (18) consecutive months, the fine and enforcement procedure for any violation shall be as set forth in this Chapter.

SECTION 8. Severability. If any section, sentence, or provision of this ordinance or the application thereof to any person or circumstances shall be declared invalid, such invalidity shall not affect any of the other sections, sentences, provisions, or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

SECTION 9. This ordinance shall be in full force and effect from and after its passage by the Common Council and approval by the Mayor and promulgation by law.

PASSED AND ADOPTED by the Common Council of the City of Bloomington, Monroe County, Indiana, upon this 3rd day of May, 2000.

TIMOTHY MAYER, President
Bloomington Common Council

ATTEST:

REGINA MOORE, Clerk
City of Bloomington

PRESENTED by me to Mayor of the City of Bloomington, Monroe County, Indiana, upon this 4th day of May, 2000.

REGINA MOORE, Clerk
City of Bloomington

SIGNED AND APPROVED by me upon this 4th day of May, 2000.

JOHN FERNANDEZ, Mayor
City of Bloomington

SYNOPSIS

This ordinance amends Chapter 20.09 of the BMC, regarding zoning enforcement, by establishing a procedure for issuing Notice of Zoning Violations (NOVs) and authorizing the issuing of citations to enforce minor zoning violations.

Note: On May 3, 2000, the Common Council adopted Ordinance 00-17 as amended by Amendment 1. Amendment 1 was sponsored by Councilmember Ruff. It modified part (9) of Section 4 and replaced the last sentence of part (a) in Section 7 and would have the effect of imposing a fine during the correction period for responsible parties who had received an NOV for the same offense within the last 18 months.

Submittal to Plan Commission: On May 4, 2000, pursuant to I.C. 36-7-4-607, the Common Council submitted the amended ordinance to the Plan Commission with the following written reasons for the amendment: The imposition of a fine during the correction period for repeat offenders will give enforcement officers a more effective means for deterring the commission of subsequent offenses.

Effective Date: Given this action by the Common Council, the effective date of the ordinance will be governed by the procedures set forth in the above statute.

On May 24, 2000 the Plan Commission submitted the attached Report to the Council and Certification of Action indicating that the Commission approved the amendment at their meeting on May 22, 2000.