

Gallatin County Guidance on Calculating Fines for Zoning Violations in 101 Zoning Districts

Introduction

Montana statute provides the guiding framework for the formation of zoning districts, and enforcement of the regulations.

MCA 76-2-101 et. seq. provides for the creation and administration of 101 zoning districts. **MCA 76-2-113** (Enforcement of zoning provisions) states:

If any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or if any building, structure, or land is used in violation of this part or of any resolution adopted under this part, the county, in addition to other remedies, may take any appropriate action or begin proceedings to:

- (1) prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use;
- (2) restrain, correct, or abate a violation;
- (3) prevent the occupancy of a building, structure, or land; or
- (4) prevent any illegal act, conduct, business, or use in or near the premises.

In addition, each zoning district supplements the state regulations with additional language for enforcement. The Gallatin County Commission adopted standardized enforcement procedures for fourteen 101 districts (Resolutions 2004-067 and 2004-144). These amendments create a comprehensive zoning enforcement program that requires alleged violators to promptly correct the violation. It also provides consistent language for investigating alleged violations and subsequent enforcement response. As part of its enforcement response, Gallatin County may impose fines as a means to achieve compliance, and to serve as a deterrent for future violations by the individual violator, and others in the regulated community.

The following guidance was designed to promote a more consistent, countywide approach to the assessment of fines, while allowing staff to exercise discretion for fining a particular violator. The procedures set forth in this document are intended for the guidance of Gallatin County personnel. They are not intended, and cannot be relied on, to create any rights, substantive or procedural enforceable by any party in litigation with Gallatin County. The county reserves the right to act at variance with these procedures and to change them at any time without public notice.

Determining a Fine

As provided for in the May 4, 2004 zoning amendment, the Planning and Zoning Commission may assess violators fines of up to \$500.00 per day of violation for noncompliance until the violation is remedied. When determining the amount and duration of a fine, the Commission shall consider the nature, circumstances, extent and gravity of the violation, any prior history of such violations, the degree of culpability, and such other matters as justice may require. In addition, the violator may be required to pay administrative costs. If the fine is not paid, it shall become a lien upon the property.

The county will generally not impose a fine that exceeds \$25,000 to any one violator for multiple days of a continuous violation. Most fines will be less than \$500 per day of violation. Only the most egregious violations will be assessed the maximum rate.

Staff shall assess the significance of the violation and the significance of compliance to calculate a fine. As new or better information is obtained, the fine should be adjusted, either upwards or downwards as necessary.

The results of these calculations should be documented as dollar amounts on the “Worksheet for Calculating Zoning Violation Fines” provided at the end of this document. Each component of the fine calculation (including all adjustments and subsequent recalculations) must be clearly documented with supporting materials and written explanations in the case file. In general, the county should seek a fine that reflects the gravity of the violation, but it should not exceed \$25,000.

Significance of the Violation

Determining the significance of the violation involves assessing the nature, circumstances, and extent and gravity of the violation. These factors depend largely on an assessment of impacts, general goals of the zoning district, and professional experience. Factors that should be considered include:

- Significance of the impact (including impacts to neighboring properties)
- Acreage of the affected area
- Duration of the violation
- Pre-existing quality of the affected area

The above factors are relevant to characterizing the significance of the violation in terms of whether and how the violation impacts the affected area. Overall effects of a violation will depend on a variety of factors unique to the circumstances of each case. For example, the size of a violation in the affected area, although a relevant factor, may not always be determinative of significance. A small violation may be of higher concern than a big violation after consideration of such factors as allowed uses in the district, location, and cumulative losses within the affected area.

The above factors demonstrate that the significance of the violation is appropriately evaluated over a range of impacts. The guidance provided here regarding the determination of “major,” “moderate,” and “minor” significance reflects generalizations intended to contribute to consistency in application of the fine matrix, rather than to establish hard and fast rules.

Generally if a high quality area is significantly impaired in performing its functions by a violation, the impairment should be characterized as having “major” significance. An example of a “major” violation would be a person that builds an unauthorized structure in a sensitive viewing area. A violation that results in violation of state or federal regulations would also be considered “major.” “Minor” significance of violation includes a violation that has negligible impacts to moderate or high-quality areas. An example of a “minor” violation would be a person that posts a sign in violation of zoning regulations. A violation that jeopardizes an area not recognized as either of particularity low or high quality, which performs relatively few functions, or where cumulative losses have been few, may be considered to have “moderate” significance. An example of a “moderate” violation would be a person that builds an unauthorized structure in violation of setback requirements.

Significance of Compliance

The fine matrix exhibits a range for significance of compliance of “minor, moderate, and major.” When determining whether to characterize a particular violation as being of “minor,” “moderate,” or “major” significance, the following factors should be considered:

- Degree of culpability
- Compliance history
- Deterrence value
- Recalcitrance

The two principal criteria for assessing **culpability** are the violator’s previous experience with zoning requirements and the degree of the violator’s control over the illegal conduct. The criteria for assessing the violator’s experience is whether the violator knew or should have known of the requirements of the zoning regulation. Someone who has had previous experience with zoning requirements should be characterized as having “major” compliance significance. With regard to the violator’s control over the violative conduct, there may be situations where the violator may bear less than full responsibility or may share liability for the occurrence of a violation. In such situations, the violation generally should be characterized as having “moderate” compliance significance for that particular violator.

The violator’s past **compliance history** should be considered when determining the compliance significance. Generally, a violator with one or more prior violations that were the subject of a formal enforcement response by the county should be characterized as having “major” compliance significance. Another relevant factor may be the need to **deter future violations** by this particular violator and/or others in the regulated community.

The **recalcitrance** adjustment factor may be used to increase the fine based on a violator’s unjustified delay in preventing, mitigating, or remedying the violation in question. As

distinguished from culpability, which relates to the violator’s level of knowledge of the regulatory program and responsibility for a given violation, recalcitrance relates to the violator’s delay or refusal to comply with the law, to cease violating, to correct violations, or to otherwise cooperate with regulators once specific notice has been given and/or a violation has occurred. The more serious the lack of cooperation or unjustified delay engendered by the violator, the higher the recalcitrance adjustment should be.

The above criteria are not in any order of priority, and the examples regarding the range of fines to be pursued are not intended to be all inclusive or mutually exclusive. The county should use best professional judgment to characterize the significance of the violation and significance of compliance.

Calculating a Fine

The fine matrix below should be used to assess a daily rate for a violation based on the significance of the violation and the significance of compliance. The amounts provided in the table are for a single day of violation. Each day the violation remains constitutes a separate violation, and the amounts may be added cumulatively, but may generally not exceed \$25,000.

For the purpose of calculating days of violation for the assessment of a fine, the first day of violation shall begin on the date Gallatin County first inspects and documents the alleged violation, i.e. the initial site inspection. At their discretion, staff may adjust the fine from the matrix based on the significance of the violation, and the significance of compliance. For example, the first 30 days of violation may be considered on the low end of “minor” for compliance significance. The next 30 days could result in an upward shift within the matrix because the violator has not resolved the violation as stipulated by the county. If the maximum fine of \$500 dollars a day were assessed, the maximum \$25,000 fine would be reached after 50 days of violation.

Daily Fine

	Significance of the Violation		
Significance of Compliance	Minor	Moderate	Major
Minor	0 - 50	51 - 100	101 - 200
Moderate	51 - 100	101 - 200	201 - 300
Major	101 - 200	201 - 300	301 - 500

Other factors as justice may require encompass both factors that operate to reduce a fine, as well as factors that operate to increase a fine. An example of a mitigating factor is where another regulatory agency has imposed a penalty on the violator for the same violation. These costs may be considered when determining the appropriate fine. The fine should be of a sufficient level to promote deterrence. If a fine is reduced or increased for any reason, the rationale should be clearly documented in the case file.

Worksheet for Calculating Fine for Noncompliance

Case Name: _____ Case #: _____

Violator: _____ Date of Calculation: _____

Date violation was documented: _____

Date compliance was achieved: _____

Date appeal was filed: _____

Total days of violation: _____

Dates: _____	# Days: _____	Fine/Day: \$ _____	Total: \$ _____
Dates: _____	# Days: _____	Fine/Day: \$ _____	Total: \$ _____
Dates: _____	# Days: _____	Fine/Day: \$ _____	Total: \$ _____
Dates: _____	# Days: _____	Fine/Day: \$ _____	Total: \$ _____
Dates: _____	# Days: _____	Fine/Day: \$ _____	Total: \$ _____
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Dates: _____	# Days: _____	Fine/Day: \$ _____	Total: \$ _____
Dates: _____	# Days: _____	Fine/Day: \$ _____	Total: \$ _____
Dates: _____	# Days: _____	Fine/Day: \$ _____	Total: \$ _____
Dates: _____	# Days: _____	Fine/Day: \$ _____	Total: \$ _____

Grand Total: \$ _____

Name of Preparer

Date