

CHAPTER 11.43

ADMINISTRATION AND DISPOSITION OF INFRACTIONS

SECTIONS:

11.43.010	Administration
11.43.020	Violations--Infraction--Misdemeanor
11.43.030	Injunctive Relief
11.43.040	Violations--Investigations--Evidence
11.43.050	Failure to Provide Information Identifying Person
11.43.060	Notice of Infraction--Service
11.43.070	Form--Contents
11.43.080	Filing--Hearing in District Court
11.43.090	Determination Infraction Committed
11.43.100	Response--Requesting a Hearing--Failure to Respond or Appear--Order Set Aside
11.43.110	Person's Refusal to Sign--Misdemeanor
11.43.120	Person's Failure to Respond--Misdemeanor
11.43.130	Representation by Attorney
11.43.140	Infraction--Hearing--Procedure--Burden of Proof--Order--Appeal
11.43.150	Explanation of Mitigating Circumstances
11.43.160	Civil Penalty--Infraction
11.43.170	Violation--Penalties
11.43.180	Severability
11.43.190	Effective Date

11.43.010 ADMINISTRATION. (a) Both the Benton County Planning Administrator and the Benton County Building Official and their authorized representatives shall have the responsibility for the administration and enforcement of this title.

(b) The Benton County Sheriff and his or her authorized deputies shall have concurrent authority with respect to enforcement of the marijuana regulations set forth in BCC 11.42.130.

[Ord. 611 (2018) § 175]

11.43.020 VIOLATIONS--INFRACTION--MISDEMEANOR. The first violation of any provision of this title shall constitute an infraction. Upon final disposition of an infraction, a determination of a continuing violation of the same provision by an official authorized to enforce the provision at issue 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. 611 (2018) § 176]

11.43.030 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 Administrator may accept 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. 611 (2018) § 177]

11.43.040 VIOLATIONS - INVESTIGATIONS - EVIDENCE. As set forth in BCC 11.43.010 of this title, officials may investigate alleged or apparent violations of this title. If the name of the person allegedly or apparently in violation of this title is not known, or if the name of the person does not appear on the latest list of permits compiled by the County, upon presentation of credentials, an authorized official may inspect sites at which work is performed to determine whether a permit has been issued. Upon request of the authorized representative of either

department, the person allegedly or apparently in violation of this title shall provide information identifying themselves.

[Ord. 611 (2018) § 178]

11.43.050 FAILURE TO PROVIDE INFORMATION IDENTIFYING PERSON.

Willful refusal to provide information identifying a person as required by BCC 11.43.040 is a misdemeanor.

[Ord. 611 (2018) § 179]

11.43.060 NOTICE OF INFRACTION--SERVICE.

If an authorized official reasonably believes that a provision of this title that he or she is authorized to enforce has been violated, that authorized official or the Prosecuting Attorney may issue a notice of infraction for the first such violation. A notice of infraction issued under this title shall be personally served upon the person named in the notice or filed with the court for service.

[Ord. 611 (2018) § 180]

11.43.070 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 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, the date and place the infraction occurred and the date 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 may be ordered to pay court costs, if applicable, and 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, including the name, address, and phone number of the court where the notice of infraction is to be filed and that the defendant must respond within fifteen (15) days;

(f) A statement that a mailed response must be mailed not later than midnight on the day the response is due;

(g) 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 may subpoena witnesses, including the authorized official who issued and served the notice of infraction.

[Ord. 611 (2018) § 181]

11.43.080 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. 611 (2018) § 182]

11.43.090 DETERMINATION INFRACTION COMMITTED. Unless contested in accordance with this chapter, the notice of infraction represents a determination that the person to whom the notice was issued committed the infraction.

[Ord. 611 (2018) § 183]

11.43.100 RESPONSE - REQUESTING A HEARING - FAILURE TO RESPOND OR APPEAR - ORDER SET ASIDE.

(a) A person who receives a notice of infraction shall respond to the notice as provided in this section within fifteen days of the date the notice was served.

(b) If the person named in the notice of infraction does not want to contest the determination, the person 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 named in the notice of infraction wants to contest the determination, the person 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 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 issued a notice of infraction (1) Fails to respond to the notice of infraction as provided in subsection (b) of this section, or (2) Fails to appear at a hearing requested pursuant to subsection (c) of this section, the court shall enter an appropriate order assessing the monetary penalty prescribed for the infraction and shall notify the authorized official of the failure of the person 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) of this section 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. 611 (2018) § 184]

11.43.110 PERSON'S REFUSAL TO SIGN - MISDEMEANOR. It is a misdemeanor for any person who has been appropriately served with a notice of infraction to refuse to sign a written promise to respond to the notice.

[Ord. 611 (2018) § 185]

11.43.120 PERSON'S FAILURE TO RESPOND - MISDEMEANOR. It is a misdemeanor for any person who has been appropriately served with a notice of infraction to willfully violate the written promise to respond to the notice.

[Ord. 611 (2018) § 186]

11.43.130 REPRESENTATION BY ATTORNEY. A person 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. 611 (2018) § 187]

11.43.140 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 authorized official who issued and served the notice in lieu of his or her personal appearance at the hearing. The person named in the notice may subpoena witnesses, including the authorized official 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 authorized official 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. 611 (2018) § 188]

11.43.150 EXPLANATION OF MITIGATING CIRCUMSTANCES.

(a) A hearing held for the purpose of allowing a person to explain mitigating circumstances surrounding the commission of an infraction shall be an informal proceeding. The person 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 may not appeal the court's determination or order.
[Ord. 611 (2018) § 189]

11.43.160 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 Planning Administrator of the failure to pay the penalty and the County shall not issue the person or contractor any future permits for any work until the penalty has been paid.
[Ord. 611 (2018) § 190]

11.43.170 VIOLATION--PENALTIES.

(a) Upon a finding of a first violation of any provision of this title, 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 this title, any person or contractor shall be found guilty of a misdemeanor.
[Ord. 611 (2018) § 191]

11.43.180 SEVERABILITY. If any provision of this chapter is declared 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. 611 (2018) § 249]

11.43.190 EFFECTIVE DATE. This chapter shall take effect and be in full force upon its passage and adoption.

[Ord. 611 (2018) § 250]