

23-114.05. County zoning; violations; penalty; injunction.

The erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use of any building, structure, automobile trailer, or land in violation of sections 23-114 to 23-114.04, 23-168.01 to 23-168.04, 23-172 to 23-174, 23-174.02, 23-373, and 23-376 or of any regulation made by the county board under such sections shall be a misdemeanor. Any person, partnership, limited liability company, association, club, or corporation violating such sections or any regulation of the county board or erecting, constructing, reconstructing, altering, or converting any structure without having first obtained a permit shall be guilty of a Class III misdemeanor. Each day such violation continues after notice of violation has been given to the offender may be considered a separate offense. In addition to other remedies, the county board or the proper local authorities of the county, as well as any owner or owners of real estate within the district affected by the regulations, may institute any appropriate action or proceedings to prevent such unlawful construction, erection, reconstruction, alteration, repair, conversion, maintenance, or use, to restrain, correct, or abate such violation, or to prevent the illegal act, conduct, business, or use in or about such premises. Any taxpayer or taxpayers of the county may institute proceedings to compel specific performance by the proper official or officials of any duty imposed by such sections or in resolutions adopted pursuant to such sections.

Source: Laws 1967, c. 117, § 6, p. 370; Laws 1975, LB 410, § 24; Laws 1977, LB 40, § 83; Laws 1991, LB 15, § 10; Laws 1993, LB 121, § 162; Laws 1999, LB 822, § 6; Laws 2012, LB709, § 3.

Annotations

The plain language of this section establishes that an appeal to a board of adjustment is not the exclusive remedy for challenging a land use alleged to be in violation of zoning regulations. *Conley v. Brazer*, 278 Neb. 508, 772 N.W.2d 545 (2009).

This section provides a procedure whereby "affected" owners of real estate may petition to enjoin proposed solid waste disposal operations alleged to be in violation of county zoning ordinances. *Omaha Fish and Wildlife Club, Inc. v. Community Refuse, Inc.*, 208 Neb. 110, 302 N.W.2d 379 (1981).

County brought action hereunder against municipal airport authority seeking to enforce county zoning regulations. *Seward County Board of Commissioners v. City of Seward*, 196 Neb. 266, 242 N.W.2d 849 (1976).

Since a request for specific performance is outside the scope of a petition in error, a proceeding for specific performance under this section may not be instituted by a petition in error. *Griess v. Clay Cty. Bd. of Supervisors*, 11 Neb. App. 910, 662 N.W.2d 638 (2003).