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1 **CHAPTER 21.12: ENFORCEMENT¹**

2 **21.12.010 GENERAL PROVISIONS**

3 **A. Purpose**

4 This chapter establishes procedures through which the Municipality seeks to ensure
5 compliance with the provisions of this Title and obtain corrections for violations of this
6 Title. The chapter also sets forth the remedies and penalties that apply to violations of
7 this Title. The provisions of this chapter are intended to encourage the voluntary
8 correction of violations, where possible.

9 **B. Compliance Required**

10 No person shall develop or use any land, building, or structure within the Municipality
11 in violation of this Title, regulations authorized under this Title, or the terms and
12 conditions of entitlements issued under this Title.

13 **C. Entitlements**

14 No entitlement may be issued under this Title unless all structures and uses of land
15 and structures permitted under the entitlement conform to this Title, the regulations
16 promulgated under this Title, and the terms and conditions of the other entitlements
17 issued under this Title that apply to the use or structure. An entitlement issued in
18 violation of this section is void.

19 **D. Continuation of Prior Enforcement Actions**

20 Nothing in this Title shall prohibit the continuation of previous enforcement actions
21 undertaken by the Municipality pursuant to previous regulations.

22 **E. Continuing Violations**

23 Each day that a violation occurs or remains uncorrected shall constitute a separate
24 and distinct violation of this Title.

25 **21.12.020 RESPONSIBILITY FOR ENFORCEMENT AND INSPECTIONS**

26 **A. Primary Responsibility**

27 **1. Public Enforcement Actions**

28 Except as otherwise provided, the Director shall have primary responsibility
29 for public enforcement actions (see Section 21.12.050) to enforce the
30 provisions of this Title.

31 **2. Private Enforcement Actions**

32 Except as otherwise provided, the administrative hearings officer shall have
33 primary responsibility for private enforcement actions (see Section 21.12.060)
34 to enforce the provisions of this Title.

¹ NOTE: Enforcement provisions are found in the current Title 21 in Chapter 21.25. This new draft chapter updates the existing provisions in a variety of ways, including: more specifically identifying the types of violations of the Title that can occur; adding a broad range of civil and criminal penalties allowed by state law; and clarifying enforcement procedures for both public and private enforcement actions. The use of incentives throughout other chapters of the code encourages code compliance generally and introduces some flexibility into the enforcement process.

1 **B. Inspections**

2 1. Subject to subsection 21.12.020.B.2. below, at any reasonable time, the
3 Director may, upon presentation of proper identification, enter upon and
4 inspect any land, building, or premises where he or she has reasonable cause
5 to believe there exists a violation of this Title, or enter upon such a building or
6 premises to perform a duty of the Director under this Title.

7 2. Where the Constitution of the United States or of the state so requires, the
8 Director shall obtain an administrative search warrant authorizing an
9 inspection and exhibit the warrant to the person in charge of the premises
10 before conducting the inspection. The Director or representative shall apply
11 to the trial courts of the state to obtain a warrant, stating in the application the
12 name and address of the premises to be inspected, the authority to conduct
13 the inspection, the nature and extent of the inspection, and the facts and
14 circumstances justifying the inspection. Warrants issued under this section
15 shall be returned within ten days.

16 **21.12.030 VIOLATIONS²**

17 Each of the following activities shall constitute a violation of this Title:

18 **A. Activity Inconsistent with Title**

19 Any erection, construction, reconstruction, remodeling, alteration, maintenance,
20 expansion, movement, or use of any building, structure, or sign, or development or
21 subdivision of any land, in contravention of any provision of this Title or any regulation
22 promulgated under this Title.

23 **B. Activity Inconsistent with Entitlement**

24 Any development, use, construction, remodeling, or other activity of any nature in any
25 way inconsistent with the terms or conditions of any entitlement required to engage in
26 such activity, whether issued under or required by this Title.

27 **C. Illustrative Examples**

28 Examples of activities inconsistent with this Title or with an entitlement issued under
29 this Title include, but are not limited to, the following:

30 1. Excavation, grading, cutting, clearing, or other land disturbance activity
31 without obtaining all necessary approvals required by this Title or other
32 applicable regulations;

33 2. Damage to or removal of vegetation inconsistent with this Title and all other
34 applicable regulations;

35 3. Creation, expansion, replacement, or change of a nonconformity inconsistent
36 with this Title and all other applicable regulations;

² NOTE: This expanded section builds upon the current Section 21.25.010, *Violations*, but is more specific as to what activities constitute violations of the code.

- 1 4. Reduction or diminishment of lot area, setbacks, vegetative buffers, or open
2 space below the minimum requirements set forth in this Title and all other
3 applicable regulations;
- 4 5. Increasing the density or intensity of any use of any land or structure except in
5 accordance with the requirements of this Title and all other applicable
6 regulations;
- 7 6. Storage or maintenance (intentionally or otherwise) of goods, materials,
8 products, or other items outside and in plain view including, but not limited to
9 operable vehicles or equipment, abandoned vehicles, or snow, except in
10 compliance with this Title and all other applicable regulations;
- 11 7. Filing or recording of a subdivision plat in any public office without approval
12 for recording by, and bearing the approval of, the platting authority under this
13 Title;
- 14 8. Failure to remove any sign installed, created, erected, or maintained in
15 violation of this Title, or for which the sign permit has lapsed; and
- 16 9. Failure to remove a temporary use once authorization for the temporary use
17 under this Title and all other applicable regulations has lapsed.

18 **21.12.040 REMEDIES AND PENALTIES**

19 The Director shall have the following remedies and powers to enforce this Title:

20 **A. Civil Remedies and Enforcement Powers³**

- 21 1. **Deny/Withhold Entitlements**
22 The Director may deny or withhold all entitlements, including certificates of
23 occupancy, or other forms of authorization to use or develop any land,
24 structure, or improvements, until an alleged violation, associated civil penalty,
25 and/or lien resulting from a previous final order related to such property, use,
26 or development is corrected. This provision shall apply whether or not the
27 current owner or applicant for the permit or other approval is responsible for
28 the violation.
- 29 2. **Revoke Entitlements**
30 Any entitlement or other form of authorization required under this Title may be
31 revoked when the Director determines that:
 - 32 a. There is a departure from the approved plans, specifications,
33 limitations, or conditions as required under the entitlement;
 - 34 b. The entitlement was procured by false representation;
 - 35 c. The entitlement was issued in error; or
 - 36 d. There is a violation of any provision of this Title.

³ NOTE: This is primarily a new section for the Municipality's consideration. It elaborates upon the brief list of penalties found in the current 21.25.050.

1 Written notice of revocation shall be served upon the property owner, agent,
2 applicant, or other person to whom the entitlement was issued, or such notice
3 may be posted in a prominent location at the place of violation. No work or
4 construction shall proceed after service of the revocation notice.

5 **3. Stop-Work Orders**

6 a. Whenever any building or structure or site or part thereof is being
7 demolished, constructed, reconstructed, altered, or repaired in a
8 hazardous manner, in substantial violation of any state or municipal
9 building law, or in a manner that endangers life or property, the
10 Director has the authority to issue a stop-work order for the specific
11 part of the work that is in violation or presents the hazard.

12 b. With or without revoking permits, the Director may issue an order to
13 stop work on any property on which there is an uncorrected violation
14 of either a provision of this Title or a provision of an entitlement or
15 other form of authorization issued under this Title.

16 c. The stop-work order shall be in writing directed to the person doing
17 the work, and shall specify the provisions of this Title or other law
18 allegedly in violation. After any such order has been served, no work
19 shall proceed on any building, other structure, or tract of land covered
20 by such order, except to correct such violation or comply with the
21 order.

22 d. The stop-work order may be issued at the same time as the
23 enforcement order (see subsection 21.12.050.B., *Non-Emergency*
24 *Matters*, below), or subsequent to such notice. The stop-work order
25 may also specify a shorter time for correction of the violation than the
26 time period specified in the enforcement order. The stop-work order
27 shall also indicate that failure to comply with the order may subject
28 the violator to civil and/or criminal liability as penalty for the
29 violation(s).

30 e. Once conditions for resumption of the work have been met, the
31 Director shall rescind the stop-work order.

32 **4. Civil Penalties⁴**

33 In addition to other remedies provided in Section 1.45.010 or other sections of
34 this Title, violation of this Title may be punishable through imposition of a civil
35 penalty as set forth in Section 14.60.030, or, if no penalty is set forth in
36 Section 14.60.030, a civil fine of not less than \$75.00 and not more than
37 \$400.00 for each violation.

38 **5. Restoration of Disturbed Areas**

39 The Director may require a person who is regulated under this Title and who
40 failed to retain sediment generated by a land-disturbing activity to restore the
41 waters and lands affected by the failure so as to minimize the detrimental
42 effects of the resulting pollution by sedimentation. This authority is in addition

⁴ NOTE: This section is carried forward from the current code. Are the fee amounts still correct? We recommend removing the dollar amounts (which can change often) from the code and placing them in a separate user's guide.

1 to any other civil or criminal penalty or injunctive relief authorized under this
2 Title or applicable law.

3 **6. Injunctive Relief**

4 The Director may seek injunctive relief or other appropriate relief in superior
5 court or other court of competent jurisdiction against any person who fails to
6 comply with any provision of this Title or any requirement or condition
7 imposed pursuant to this Title. In any court proceedings in which the
8 Municipality seeks a preliminary injunction, it shall be presumed that a
9 violation of this Title is a real, immediate, and irreparable injury to the public;
10 that the public will be irreparably injured by the continuation of the violation
11 unless the violation is enjoined; and that there is no plain and adequate
12 remedy at law for the subject Title violation.

13 **7. Abatement⁵**

14 The Municipality may abate the violation pursuant to this subsection.

15 a. Before action is taken to abate a violation, a final warning notice shall
16 be posted on the property and served personally or by certified mail
17 with return receipt required to the owner of record of the property.

18 b. Unless this notice is appealed, pursuant to subsection 21.03.210.B.,
19 to the Zoning Board of Examiners and Appeals within ten days of the
20 posting of the final warning, the Director shall proceed to abate the
21 violation.

22 c. The Director shall keep an account of the cost, including incidental
23 expenses, incurred by the Municipality in the abatement of any
24 violation. The Director shall forward a bill for collection to the violator
25 and owner of record of the property specifying the nature and costs of
26 the work performed. For purposes of this section, the term "incidental
27 expenses" shall include but not be limited to the actual expenses and
28 costs to the Municipality in the preparation of the notices,
29 specifications and contracts, work inspection, and interest from the
30 date of completion at the rate prescribed by law for delinquent real
31 property taxes.

32 d. The responsibility for payment of the charges for abatement as set
33 forth in this section shall rest solely upon the owners of the property
34 upon which the abatement occurred. Such charges become a lien
35 upon the real property upon which the violation was located. When
36 charges for abatement remain unpaid after 30 days from billing, the
37 Director shall record a claim of lien at the district recorder's office.
38 The lien shall be subordinate to all existing special assessment liens
39 previously imposed upon the same property and shall be paramount
40 to all other liens except for state or municipal property taxes, with
41 which it shall be upon a parity. The lien shall continue until the
42 charges and all interest due and payable thereon are paid.

43 e. The lien created under this section may be enforced as provided in
44 AS 34.35.005--34.35.045. The enforcement of the lien is a

⁵ NOTE: This section carries forward the current AMC 21-25-070 with no major substantive changes.

cumulative remedy and does not bar the collection of the charges for abatement or costs and attorney fees through a personal action.

B. Criminal Remedies and Enforcement Powers⁶

1. Misdemeanor

A person shall be guilty of a misdemeanor upon conviction in any case where a violation of this Title exists, where notice of violation, including any stop-work, enforcement, or compliance order has been properly served, and where such person fails to comply with such notice stop-work, enforcement, or compliance order.

a. It shall be the responsibility of the Municipal Attorney to bring any criminal enforcement action associated with violations processed through the public enforcement action process.

b. In private enforcement actions, either the Municipal Attorney or the court may bring any criminal enforcement action associated with failure to address a compliance order.

2. Penalty

Persons found guilty of a misdemeanor pursuant to this section shall be punishable by a fine of not more than \$1,000.00 or by imprisonment for not more than ten days, or by both such fine or imprisonment, for each violation.

C. Remedies Cumulative

The remedies provided for violations of this Title, whether civil or criminal, shall be cumulative and in addition to any other remedy provided by law, and may be exercised in any order.

21.12.050 PROCEDURES FOR PUBLIC ENFORCEMENT ACTIONS

A. Emergency Matters

In the case of a violation of this Title that constitutes a public health or safety emergency, the Director may use the enforcement powers available under this chapter without prior notice, but he or she shall attempt to give notice simultaneously with beginning enforcement action or as soon thereafter as possible. Notice may be provided to the property owner, agent, occupant, or to the applicant for any relevant entitlement.

B. Non-Emergency Matters

1. Enforcement Orders

a. In the case of a violation of this Title that does not constitute an emergency matter as described in subsection 21.12.050.A., the Director may issue an enforcement order pursuant to this section. The Director may order:⁷

⁶ NOTE: This is a proposed new provision; there appear to be no criminal penalties authorized in the current code. The Law Department still must comment on this provision.

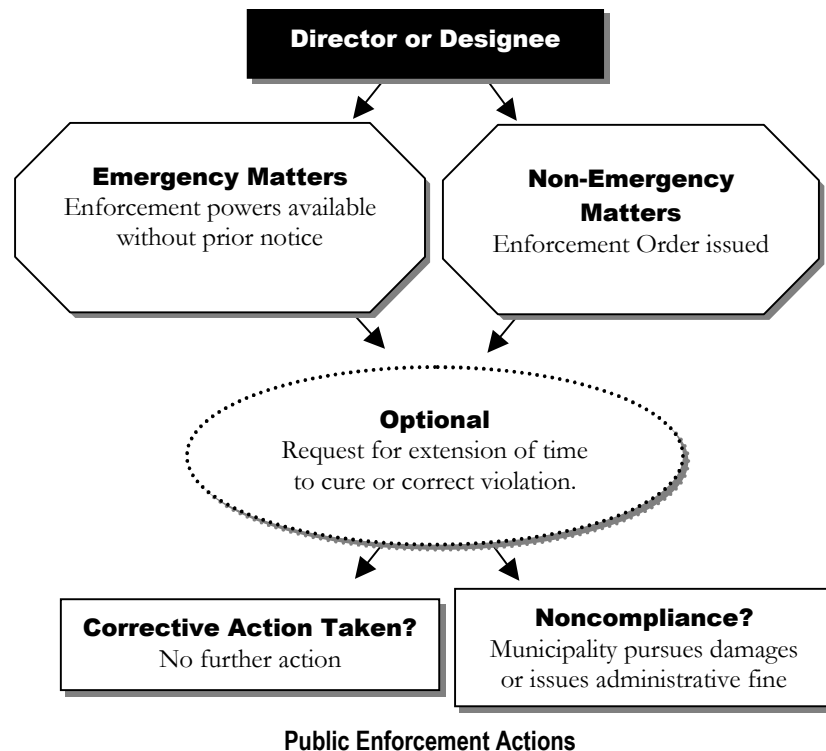
⁷ NOTE: This list is from the current AMC 21-25-030.

- 1 i. The discontinuation of a use of land or a structure that is in
2 violation of this Title;
- 3 ii. The abatement or removal of a structure or part of a structure
4 that is a violation of this Title;
- 5 iii. The discontinuation of construction or other activity
6 preparatory to a structure or use of land or a structure that is
7 a violation of this Title;
- 8 iv. The suspension or revocation of an entitlement issued under
9 this Title under the authority, or purported authority, of which
10 a violation of this Title is occupied, maintained, constructed,
11 or established;
- 12 v. The restoration of any structure, vegetation, land, water body,
13 or other thing upon the land that is destroyed, damaged,
14 altered, or removed in violation of this Title; or
- 15 vi. Any other action necessary to prevent, abate, or discontinue
16 a violation of this Title.
- 17 b. No penalty shall be assessed pursuant to this Title unless and until
18 the violator has been notified of the enforcement order in accordance
19 with this section, with the exception of a violation of a stop-work order.
20 In the case of stop-work orders, violations shall be processed in
21 accordance with subsection 21.12.040.A.3., and subject the violator
22 to immediate imposition of a penalty.
- 23 c. The enforcement order shall be in writing and shall describe the
24 violation, shall identify the provision or provisions of this Title that are
25 being violated, shall specify what actions must be taken to correct the
26 violation (including an order to stop any and all work which violates
27 this Title), shall direct the person to correct the violation within a
28 specified reasonable time period (beginning on the date such notice
29 is received) and shall warn that more severe measures (such as a
30 civil penalty or criminal prosecution) may be assessed or brought
31 against the violator if he or she fails to take appropriate action to cure
32 or correct the violation. If no other violator can be ascertained, then
33 the notice of violation shall be sent to the record owner of the land on
34 which the violation occurs.
- 35 d. An enforcement order issued under subsection 21.12.050.B.1.a.
36 above may be directed to one or more violators. An enforcement
37 order that is served on a violator personally or by certified mail is final
38 with respect to that violator if not appealed to the Zoning Board of
39 Examiners and Appeals within 30 days of its service.
- 40 e. An enforcement order need not be issued before legal action is
41 commenced with respect to a violation of this Title. The pendency of
42 any proceeding regarding an enforcement order issued under this
43 section does not stay any other legal action with respect to the
44 violation that is the subject of the enforcement order.

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2. Extension of Time to Cure or Correct Violation

Upon receipt of a written request from the alleged violator or the property owner for an extension of time to cure or correct the violation, the Director may grant a single extension of time, not to exceed a period of 30 days, in which the alleged violator may cure or correct the violation before the Director pursues any of the forms of relief or penalties listed in Section 21.12.040, *Remedies and Penalties*. Such extension of time shall not be granted unless the alleged violator or the property owner can demonstrate to the Director that the violation cannot be cured or corrected within the time period specified in the notice of violation because the labor or materials needed to take appropriate action are unavailable due to circumstances beyond the control of the alleged violator or the property owner.



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3. Corrective Action Taken

If the violation is cured or corrected within the time period specified in the enforcement order, or within the extension of time granted, then the Municipality shall take no further action against the violator.

4. Options Upon Noncompliance

Whenever a written enforcement order has become final, as specified in subsection 21.12.050.B.1.d. above, and the violation continues to exist, the Director may:

- a. Pursue any of the forms of relief under Section 21.12.040, *Remedies and Penalties*; or

- b. Assess an administrative fine, not exceeding \$250.00 per day, for failure to comply with a final enforcement order.

21.12.060 PROCEDURES FOR PRIVATE ENFORCEMENT ACTIONS⁸

A. Purpose and Intent

The private enforcement action process set forth in this section is offered as an alternative to the public enforcement action process set forth in Section 21.12.050, *Procedures for Public Enforcement Actions*. It provides a way for private individuals or community councils to charge that a violation of this or another Title has occurred, and to present their case directly to the administrative hearings officer for consideration and resolution.

B. Authorization

In addition to other remedies available under this Code, any person aggrieved by a violation of this Title, Section 15.20.020.A. with regard to public nuisances listed in Section 15.20.020.B., or Sections 25.70.040 and 25.70.045 relating to activities on public grounds, may initiate a private enforcement action before the administrative hearings officer as provided by Title 14. For purposes of actions brought under this Section 21.12.060, the term "person aggrieved" means any person who lives, owns, or lawfully occupies property within one mile of the property described in the complaint, or the duly appointed representative of any Community Council with jurisdiction in the area of the alleged violation.⁹

C. Limitations

The private enforcement action procedure may not be used to address code violations that are under concurrent consideration by the Director through the public enforcement action procedure under Section 21.12.050.

D. Procedure

Private enforcement actions shall follow the following procedure:

1. Filing of Complaint¹⁰

A private enforcement action is commenced upon filing of a written complaint to the Director by a person aggrieved by a violation described in subsection 21.12.060.B. The complaint must include the following information:

- a. The street address of the property involved or legal description if no street address has been assigned;
- b. The owner of record for the property;
- c. The occupants of the property (if known);

⁸ NOTE: This section proposes a slightly modified version of the existing private enforcement action process. Comments already received have suggested that many members of the public do not know this provision exists, and the few that do know and tried to use it have found it cumbersome. We have edited the section to make it simpler. Additional streamlining may be possible.

⁹ NOTE: Per the Annotated Outline, this is a new provision intended to give Community Councils standing to use the private enforcement process.

¹⁰ NOTE: We have removed the existing material about having to resolve the matter informally and paying the \$100 fee, since both seemed too onerous. If the complaint is spurious, then the hearings officer can assess the complainant under Section F.

- 1 d. The name of the persons alleged to have violated the Code (if
2 known);
- 3 e. The provision of the Code alleged to be violated;
- 4 f. The facts upon which the complaint is based;
- 5 g. A request that the complaint be prosecuted as a private enforcement
6 action;
- 7 h. The name and address of the complainant;
- 8 i. An explanation of how the complainant qualifies as a “person
9 aggrieved”; and
- 10 j. A notarized statement that all information in the complaint is true and
11 correct to the best of the complainant’s knowledge.

12 **2. Service or Return of Complaint**

13 Within ten days after filing of a complaint, the Director shall:

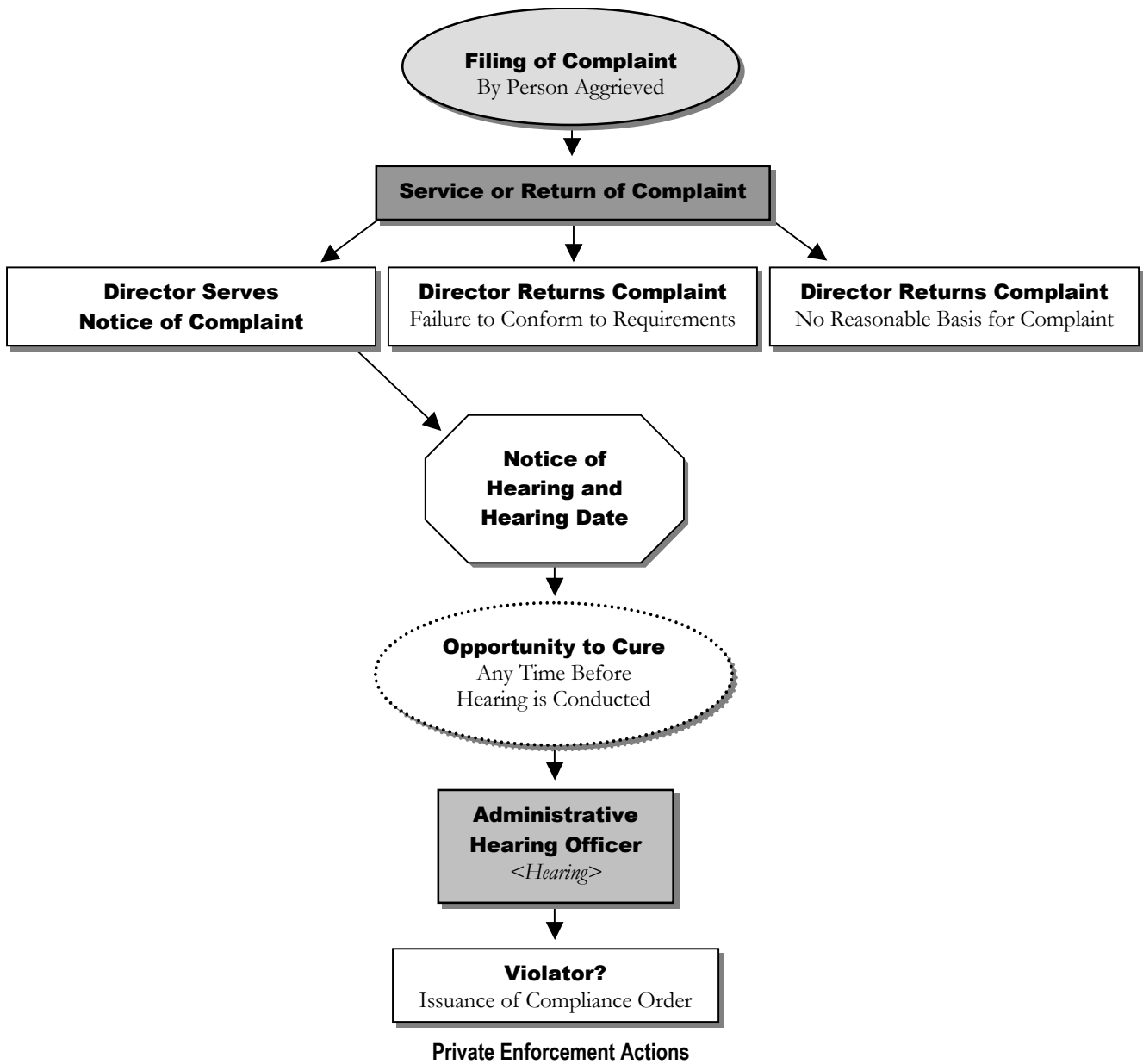
- 14 a. Serve notice of the complaint upon the violator(s) named in person or
15 by certified mail;
- 16 b. Return the complaint to the complainant with an explanation as to
17 why the complaint does not conform to this section; or
- 18 c. Return the complaint to the complainant with an explanation that
19 information available to the Director at the time of review
20 demonstrates that there is no reasonable basis for the complaint.

21 Appeals of the Director’s decision may be made to the Zoning Board of
22 Examiners and Appeals (see Section 21.03.210, *Appeals*).

23 **3. Notice of Hearing and Hearing Date¹¹**

24 After serving notice of a complaint on all alleged violators, the Director shall
25 schedule a hearing before the administrative hearings officer pursuant to
26 Section 14.30.050. The hearing shall occur no sooner than 30 days after that
27 date, and no later than 90 days after that date. All parties shall be notified in
28 writing at least 30 days prior to the date of the hearing.
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¹¹ NOTE: An alternative to using the administrative hearing officer would be to allow the public to file complaints, but then funnel those complaints into the public enforcement procedure set forth above.



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4. Opportunity to Cure

The alleged violator may, at any time before a hearing is conducted under this section, serve on the complainant and the Director an answer and any supporting documentation as appropriate. Upon request of the alleged violator and concurrence of the complainant filed at least 48 hours prior to the scheduled hearing, the complaint shall be dismissed and the hearing vacated, with no costs assessed.

5. Conduct of Hearing

Notwithstanding Section 14.30.060, complaints served pursuant to subsection 21.12.060.D.2. may not be resolved without a hearing. Hearings shall be conducted under the provisions of Chapter 14.30. The administrative hearings officer shall allow discovery between parties pursuant to subsection 14.30.080.D. No more than one continuance of the proceedings may be granted by the administrative hearings officer without giving the complainant the opportunity to present their case.¹²

6. Responsibility of Complainant

In actions brought under this section, the complainant bears the burden of proof and must prove the existence of the violation claimed by the preponderance of the evidence.

7. Issuance of Compliance Order

After the hearing and upon finding that a violation exists, the administrative hearings officer shall issue a compliance order as provided by subsection 14.50.010.A to each violator and set a reasonable time for compliance. In all cases where a violation has been found to exist, the violator shall be ordered to pay the reasonable costs, not to exceed \$1,000.00, incurred by the Municipality in hearing the matter.

8. Service of Decisions

A final decision of the administrative hearings officer and the compliance order issued under subsection 21.12.060.D.7. shall be served personally or by certified mail on any person who is the subject of the order and mailed to all parties to the proceeding.

9. Appeals; Collection of Fines

Final decisions issued under this section may be appealed to the superior court pursuant to Chapter 14.40. Fines imposed under this section shall be collected as provided by Sections 14.50.030 and 14.50.040.

E. Civil Fine

The administrative hearings officer shall also order payment of a civil fine payable to the Municipality in the amount of up to \$250.00 for each day the violation exists after expiration of the time ordered for compliance under this section. Civil fines authorized under this subsection are payable only after violators have been first provided notice and a hearing on the issue of whether they have fully complied with a compliance order.

¹² NOTE: This is a suggested new limitation on continuances, in response to criticisms that too many continuances are granted.

1 **F. Payment of Costs by Complainant**

2 After the hearing and upon a finding that a complaint under this section was brought
3 or maintained frivolously or in bad faith, the administrative hearings officer may order
4 the complaining party to pay actual costs incurred by the alleged violator in an amount
5 no greater than \$1,000.00 plus the reasonable costs, not to exceed \$1,000.00,
6 incurred by the Municipality in hearing the matter.

7 **G. Commencement of Action in Superior Court to Enforce Compliance Order**

8 Any person may commence an action in superior court to enforce a compliance order
9 of the administrative hearings officer issued under this subsection.

10 **H. Failure to Obey Compliance Order**

11 Upon written request to the Municipal Attorney by any person who has brought a
12 private enforcement action under this section that a compliance order issued by the
13 administrative hearings officer has not been obeyed, that more than 30 days have
14 passed since the date ordered by the hearings officer for compliance, and that no
15 action has been brought in court to enforce that order, the Department of Law shall
16 initiate and pursue action to enforce that order using all available remedies and
17 penalties authorized in Section 21.12.040, *Remedies and Penalties*.