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CHAPTER 21.12: ENFORCEMENT⁴ⁱ

21.12.010 GENERAL PROVISIONS

A. Purpose

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

B. Compliance Required

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

C. Entitlements

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

D. Continuation of Prior Enforcement Actions

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

E. Continuing Violations

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

21.12.020 ~~RESPONSIBILITY~~ RESPONSIBILITY FOR ENFORCEMENT AND INSPECTIONS

A. Primary Responsibility

1. Public Enforcement Actions

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

2. Private Enforcement Actions

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

⁴ ~~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
6 building or 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
22 regulation 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
29 under 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
34 other 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 outdoors~~ including, but not
9 limited to operable vehicles or equipment, appliances, building materials,
10 machine parts, abandoned vehicles, or snow, except in compliance with this
11 ~~Title~~ and all other applicable regulations;
- 12 7. Filing or recording of a subdivision plat in any public office without approval
13 for recording by, and bearing the approval of, the platting authority under this
14 ~~Title~~;
- 15 8. Failure to remove any sign installed, created, erected, or maintained in
16 violation of this ~~Title~~, or for which the sign permit has lapsed; and
- 17 9. Failure to remove a temporary use once authorization for the temporary use
18 under this ~~Title~~ and all other applicable regulations has lapsed.

21.12.040 REMEDIES AND PENALTIES

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

21 A. Civil Remedies and Enforcement Powers³ⁱⁱⁱ

22 1. Deny/Withhold Entitlements

23 The Director may deny or withhold all entitlements, including certificates of
24 occupancy, or other forms of authorization to use or develop any land,
25 structure, or improvements, until ~~an alleged a~~ violation, associated civil
26 penalty, and/or lien resulting from a previous final order related to such
27 property, use, or development is corrected. This provision shall apply
28 whether or not the current owner or applicant for the permit or other approval
29 is responsible for the violation.

30 2. Revoke Entitlements

31 Any entitlement or other form of authorization required under this ~~Title~~ may
32 be revoked when the Director determines that:

- 33 a. There is a departure from the approved plans, specifications,
34 limitations, or conditions as required under the entitlement;
- 35 b. The entitlement was procured by false representation;
- 36 c. The entitlement was issued in error; or

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 d. There is a violation of any provision of this ~~Title~~title or other applicable
2 regulations.

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

7 **3. Stop-Work Orders**

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

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

18 c. The stop-work order shall be in writing directed to the person doing
19 the work if known, and a copy mailed to the owner of record of the
20 property, and shall specify the provisions of this ~~Title~~title or other law
21 allegedly in violation. After any such order has been ~~served~~posted,
22 no work shall proceed on any building, other structure, or tract of land
23 covered by such order, except to correct such violation or comply with
24 the order.

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

33 e. Once conditions for resumption of the work have been met, the
34 Director shall rescind the stop-work order and shall notify the owner
35 in writing of the rescission.

36 f. Issuance of a stop-work order may be appealed to the Zoning Board
37 of Examiners and Appeals in the same manner as provided below for
38 public enforcement orders. The stop-work order shall remain in effect
39 until the Board takes final action on the appeal.^{iv}

40 **4. Civil Penalties^{4v}**

41 In addition to other remedies provided in ~~Section~~section 1.45.010 or other
42 sections of this ~~Title~~title, violation of this ~~Title~~title may be punishable through

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 imposition of a civil penalty as set forth in ~~Section~~section 14.60.030, or, if no
2 penalty is set forth in ~~Section~~section 14.60.030, a civil fine of ~~not less than~~
3 ~~\$75.00 and not more than \$400~~\$300.00 for each violation.

4 **5. Restoration of Disturbed Areas**

5 The Director may require a ~~person~~violator who is regulated under this ~~Title~~title
6 and who failed to retain sediment generated by a land-disturbing activity to
7 restore the waters and lands affected by the failure so as to minimize the
8 detrimental effects of the resulting pollution by sedimentation. This authority
9 is in addition to any other civil or criminal penalty or injunctive relief authorized
10 under this ~~Title~~title or applicable law.

11 **6. Injunctive Relief**

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

21 **7. Abatement^{5vi}**

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

23 a. Before action is taken to abate a violation, a final warning notice shall
24 be posted on the property and served personally or by certified mail
25 with return receipt ~~required~~requested to the owner of record of the
26 property.

27 b. Unless this notice is appealed, pursuant to subsection 21.03.210.B.,
28 to the Zoning Board of Examiners and Appeals within ten days of the
29 posting of the final warning, the Director shall proceed to abate the
30 violation.

31 c. The Director shall keep an account of the cost, including incidental
32 expenses, incurred by the Municipality in the abatement of any
33 violation. The Director shall forward a bill for collection to the violator
34 and owner of record of the property specifying the nature and costs of
35 the work performed. For purposes of this section, the term "incidental
36 expenses" shall include but not be limited to the actual expenses and
37 costs to the Municipality in the preparation of the notices,
38 specifications and contracts, work inspection, and interest from the
39 date of completion at the rate prescribed by law for delinquent real
40 property taxes.

41 d. The responsibility for payment of the charges for abatement as set
42 forth in this section shall rest solely upon the owners of the property
43 upon which the abatement occurred. Such charges become a lien
44 upon the real property upon which the violation was located. When

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

1 charges for abatement remain unpaid after 30 days from billing, the
2 Director shall record a claim of lien at the district recorder's office.
3 The lien shall be subordinate to all existing special assessment liens
4 previously imposed upon the same property and shall be paramount
5 to all other liens except for state or municipal property taxes, with
6 which it shall be upon a parity. The lien shall continue until the
7 charges and all interest due and payable thereon are paid.

8 e. The lien created under this section may be enforced as provided in
9 AS 34.35.005--34.35.045. The enforcement of the lien is a
10 cumulative remedy and does not bar the collection of the charges for
11 abatement or costs and attorney fees through a personal action.

12 **B.Criminal Remedies and Enforcement Powers⁶**

13 **1.Misdemeanor**

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

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

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

25 **2.Penalty**

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

29 **B. Remedies Cumulative^{vii}**

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

33 **21.12.050 PROCEDURES FOR PUBLIC ENFORCEMENT ACTIONS**

34 **A. Emergency Matters**

35 In the case of a violation of this ~~Title~~title that constitutes a public health or safety
36 emergency, the Director may use the enforcement powers available under this
37 chapter without prior notice, but he or she shall attempt to give notice simultaneously
38 with beginning enforcement action or as soon thereafter as possible. Notice may be

~~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.~~

provided to the property owner, agent, occupant, or to the applicant for any relevant entitlement and shall indicate the nature of the emergency.

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.viii}

i. The discontinuation of a use of land or a structure that is in violation of this Title;

ii. The abatement or removal of a structure or part of a structure that is a violation of this Title;

iii. The discontinuation of construction or other activity preparatory to a structure or use of land or a structure that is a violation of this Title;

iv. The suspension or revocation of an entitlement issued under this Title under the authority, or purported authority, of which a violation of this Title is occupied, maintained, constructed, or established;

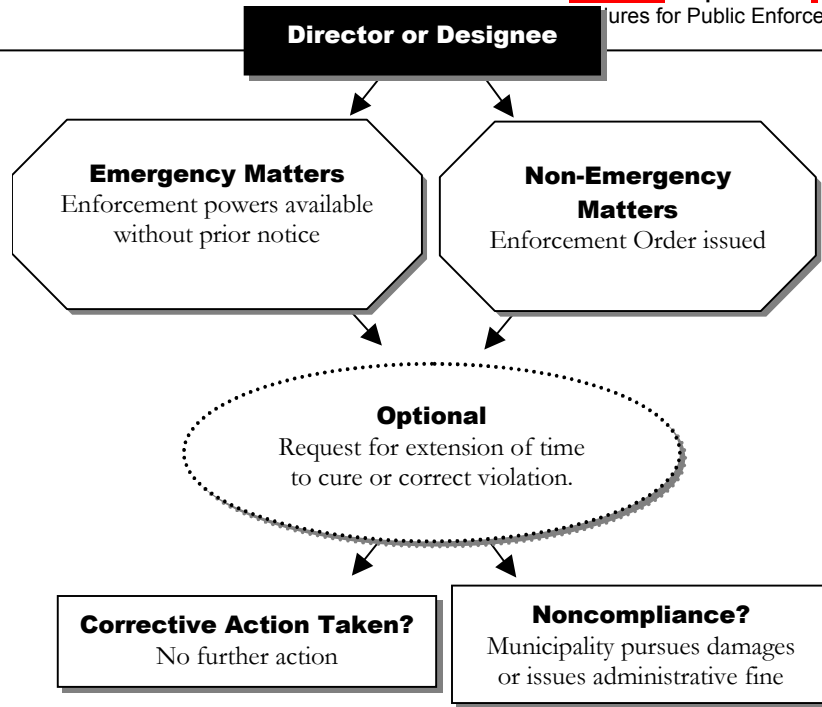
v. The restoration of any structure, vegetation, land, water body, or other thing upon the land that is destroyed, damaged, altered, or removed in violation of this Title; or

vi. Any other action necessary to prevent, abate, or discontinue a violation of this Title.

b. No penalty shall be assessed pursuant to this Title unless and until the violator has been notified of the enforcement order in accordance with this section, with the exception of a violation of a stop-work order. ~~In the case of stop-work orders, violations shall be processed in accordance with subsection 21.12.040.A.3., and subject the violator to immediate imposition of a penalty.~~

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

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Public Enforcement Actions

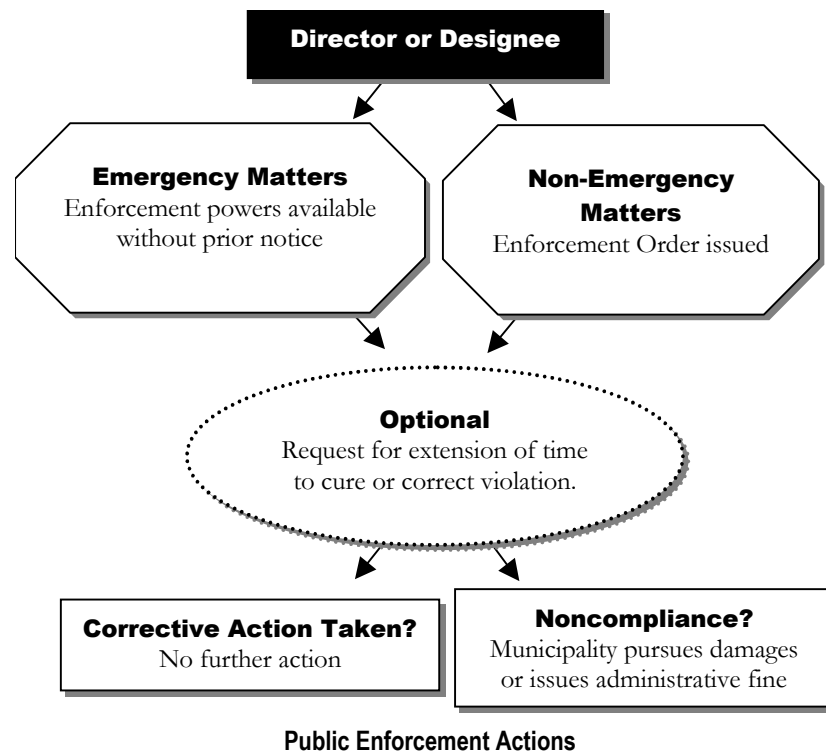
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- c. The enforcement order shall be in writing and shall describe the violation, shall identify the provision or provisions of this Title that are being violated, shall specify what actions must be taken to correct the violation (including an order to stop any and all work which violates this Title), shall direct the person to correct the violation within a specified reasonable time period (beginning on the date such notice is received) and shall warn that more severe measures (such as a civil penalty or criminal prosecution) may be assessed or brought against the violator if he or she fails to take appropriate action to cure or correct the violation. If no other violator can be ascertained, then the notice of violation shall be sent to the record owner of the land on which the violation occurs.
- d. An enforcement order issued under subsection 21.12.050.B.1.a. above may be directed to one or more violators. An enforcement order that is served on a violator personally or by certified mail is final with respect to that violator if not appealed to the Zoning Board of Examiners and Appeals within 30 days of its service.
- e. An enforcement order need not be issued before other legal action is commenced with respect to a violation of this Title. The pendency of any proceeding regarding an enforcement order issued under this section does not stay any other legal action with respect to the violation that is the subject of the enforcement order.

2. Extension of Time to Cure or Correct Violation

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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,~~^{ix} 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~~^{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~~^{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 ACTIONS^{8x}

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 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 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 title, section 15.20.020.A. with regard to public nuisances listed in Section section 15.20.020.B., or Sections 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 title 14. For purposes of actions brought under this Section 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 xi}.

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 section 21.12.050.

D. Procedure

Private enforcement actions shall follow the following procedure:

1. Filing of Complaint^{40xii}

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;

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.~~

⁴⁰ ~~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 c. The occupants of the property (if known);
- 2 d. The name of the persons alleged to have violated the Code (if
- 3 known);
- 4 e. The provision of the Code alleged to be violated;
- 5 f. The facts upon which the complaint is based;
- 6 g. A request that the complaint be prosecuted as a private enforcement
- 7 action;
- 8 h. The name and address of the complainant;
- 9 i. An explanation of how the complainant qualifies as a “person
- 10 aggrieved”; and
- 11 j. A notarized statement that all information in the complaint is true and
- 12 correct to the best of the complainant’s knowledge.

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

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

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

22 Appeals of the Director’s decision may be made to the Zoning Board of

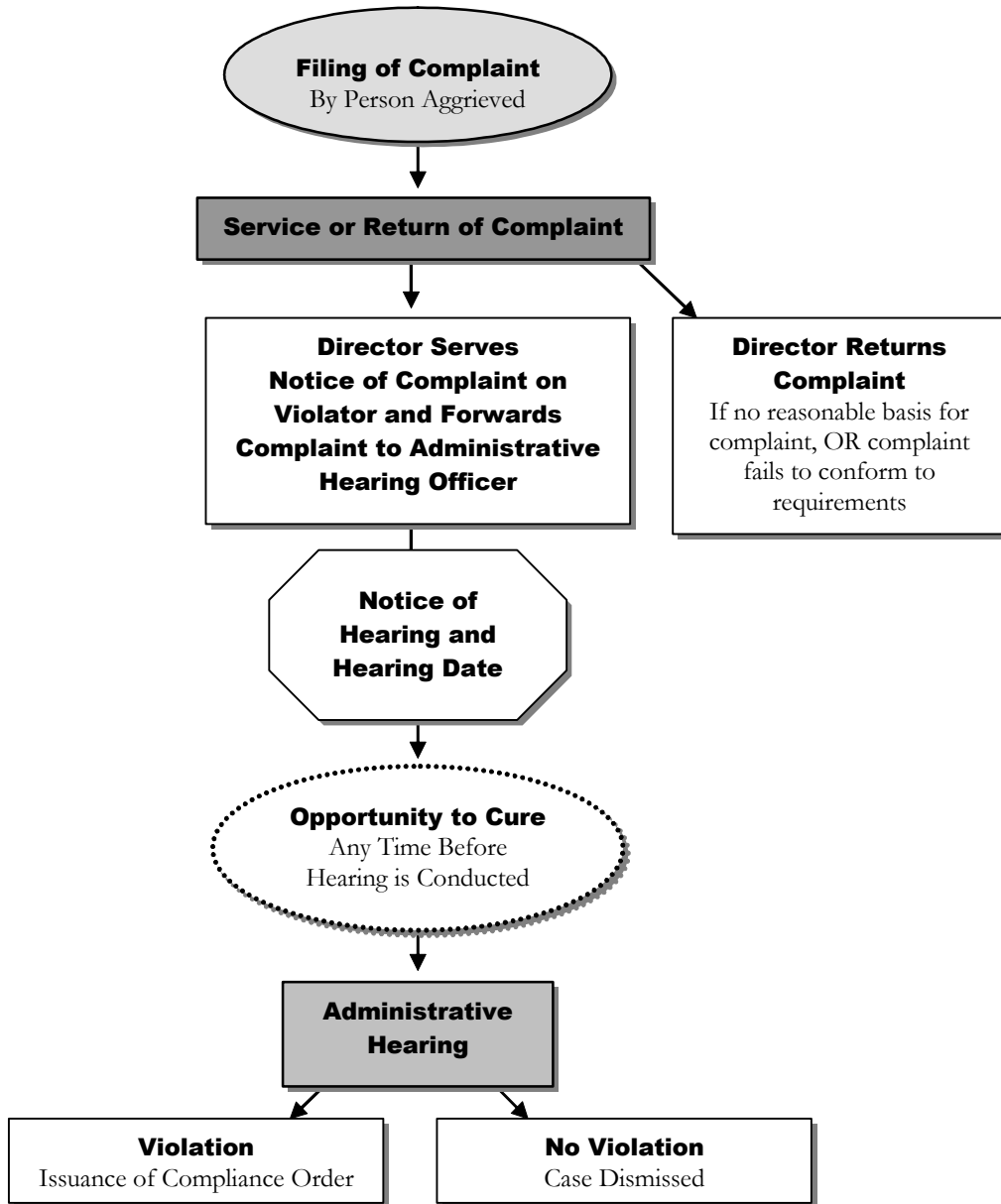
23 Examiners and Appeals (see ~~Section~~section 21.03.210, *Appeals*).

24 **3. Notice of Hearing and Hearing Date^{14xiii}**

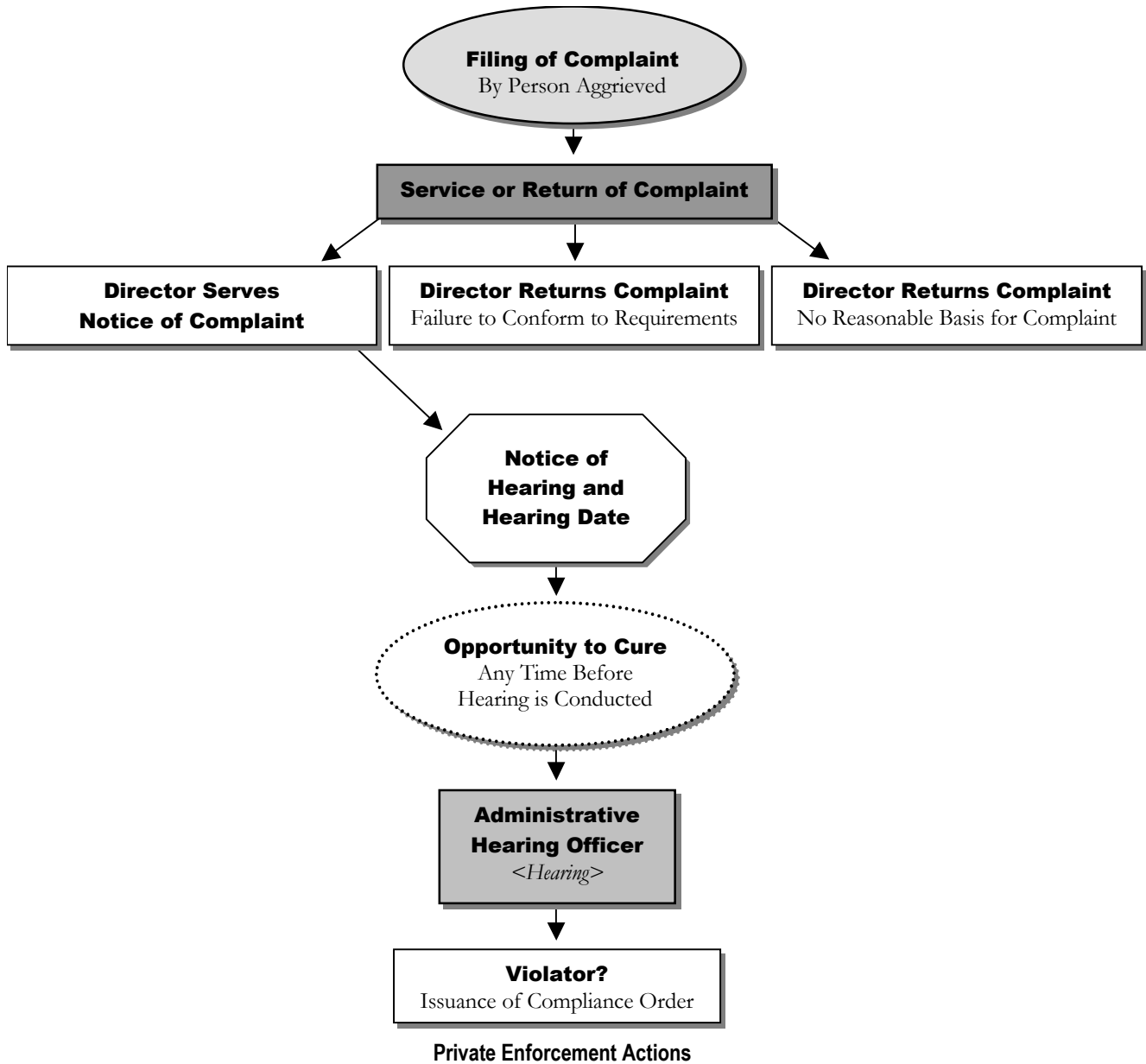
~~¹⁴ NOTE: An alternative to using the administrative hearing officer would be to allow the public to file complaints, but then funnel those complaints into the public enforcement procedure set forth above.~~

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After serving notice of a complaint on all alleged violators, the Director shall ~~schedule a hearing before forward~~ the ~~complaint to the~~ administrative hearings officer ~~who shall schedule a hearing~~ pursuant to ~~Section~~section 14.30.050. ~~The hearing shall occur no sooner than 30 days after that date, and no later than 90 days after that date. All parties shall be notified in writing at least 30 days prior to the date of the hearing.~~



Private Enforcement Actions



1
2 **4. Opportunity to Cure**

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

9 **5. Conduct of Hearing**

10 ~~Notwithstanding Section 14.30.060, complaints served pursuant to subsection~~
11 ~~21.12.060.D.2. may not be resolved without a hearing. Hearings shall be~~
12 ~~conducted under the provisions of Chapter 14.30. The administrative~~
13 ~~hearings officer shall allow discovery between parties pursuant to subsection~~
14 ~~14.30.080.D. No more than one continuance of the proceedings may be~~
15 ~~granted by the administrative hearings officer without giving the complainant~~
16 ~~the opportunity to present their case.¹²~~

17 Hearings shall be conducted under the provisions of chapter 14.30.060.^{xv}

18 **6. Responsibility of Complainant**

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

22 **7. Issuance of Compliance Order**

23 After the hearing and upon finding that a violation exists, the administrative
24 hearings officer shall issue a compliance order as provided by subsection
25 14.50.010.A to each violator and set a reasonable time for compliance. In all
26 cases where a violation has been found to exist, the violator shall be ordered
27 to pay the reasonable costs, not to exceed \$1,000.00, incurred by the
28 Municipality in hearing the matter.

29 **8. Service of Decisions**

30 A final decision of the administrative hearings officer and the compliance
31 order issued under subsection 21.12.060.D.7. shall be served ~~personally or~~
32 ~~by certified mail on any person who is the subject of the order and mailed to~~
33 ~~all parties to the proceeding per subsection 14.30.110.B.~~

34 **9. Appeals; Collection of Fines**

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

38 **E. Civil Fine**

39 The administrative hearings officer shall also order payment of a civil fine ~~payable to~~
40 ~~the Municipality as provided in the amount of up to \$250.00 for each day the violation~~
41 ~~exists after expiration of the time ordered for compliance under this section. Civil fines~~
42 ~~authorized under this subsection are payable only after violators have been first~~

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

~~provided notice and a hearing on the issue of whether they have fully complied with a compliance order. 14.50.010.C.~~

F. Payment of Costs by Complainant^{xvi}

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

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

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

H. Failure to Obey Compliance Order

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

ⁱ 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.

ⁱⁱ 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.

ⁱⁱⁱ 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.

^{iv} 2005 NOTE: Suggested new appeal provision in response to a comment. Is this how appeals of stop-work orders are handled now?

^v 2005 NOTE: Changed from \$400 in prior draft.

^{vi} NOTE: This section carries forward the current AMC 21-25-070 with no major substantive changes.

^{vii} 2005 NOTE: Criminal remedies appeared prior to this provision in the previous draft; they have been removed in this 2005 draft.

^{viii} NOTE: This list is from the current AMC 21-25-030.

^{ix} 2005 NOTE: The 30-day limit on the extension has been removed in this draft per numerous comments. Should there be *some* maximum limit?

^x 2005 NOTE: This section continues to be controversial. Several commentators say a private enforcement mechanism is unnecessary. Others argue the procedure itself is fine, but should be located in title 14 or elsewhere, not title 21. Still others are happy with the procedure in title 21 but want to further simplify it to encourage greater use. We have kept the section in this draft and made targeted edits, per direction from staff and pending further discussion. Again, this section proposes a slightly modified version of the existing private enforcement action process. We have edited the section to make it simpler. Additional streamlining may be possible.

^{xi} 2005 NOTE: Should this language be made consistent with the new appeals language in 21.03? That new section limits the right of appeal to "parties of interest," defined for a particular application shall include the applicant, the owner of the subject property, the owner of property within the notification area for the subject application, and anyone that presented oral or written testimony at a public hearing on the application

^{xii} 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.

^{xiii} 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.

^{xiv} 2005 NOTE: The specifics on the hearing time frame have been removed, at staff suggestion, to be consistent with title 14.

^{xv} 2005 NOTE: Edited to simply cross-reference title 14.

^{xvi} 2005 NOTE: Municipal Attorney's office should comment on this provision. Several comments strongly urge that it be deleted.