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# CHAPTER 21.12: ENFORCEMENT<sup>i</sup>

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## 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 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.

### B. Inspections

1. Subject to subsection 21.12.020.B.2. below, at any reasonable time, the Director may, upon presentation of proper identification, enter upon and inspect any land, building, or premises where he or she has reasonable cause

1 to believe there exists a violation of this title, or enter upon such a building or  
2 premises to perform a duty of the Director under this title.

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

## 12 **21.12.030 VIOLATIONS<sup>II</sup>**

13 Each of the following activities shall constitute a violation of this title:

### 14 **A. Activity Inconsistent with Title**

15 Any erection, construction, reconstruction, remodeling, alteration, maintenance,  
16 expansion, movement, or use of any building, structure, or sign, or development or  
17 subdivision of any land, in contravention of any provision of this title or any regulation  
18 promulgated under this title.

### 19 **B. Activity Inconsistent with Entitlement**

20 Any development, use, construction, remodeling, or other activity of any nature in any  
21 way inconsistent with the terms or conditions of any entitlement required to engage in  
22 such activity, whether issued under or required by this title.

### 23 **C. Illustrative Examples**

24 Examples of activities inconsistent with this title or with an entitlement issued under  
25 this title include, but are not limited to, the following:

- 26 1. Excavation, grading, cutting, clearing, or other land disturbance activity  
27 without obtaining all necessary approvals required by this title or other  
28 applicable regulations;
- 29 2. Damage to or removal of vegetation inconsistent with this title and all other  
30 applicable regulations;
- 31 3. Creation, expansion, replacement, or change of a nonconformity inconsistent  
32 with this title and all other applicable regulations;
- 33 4. Reduction or diminishment of lot area, setbacks, vegetative buffers, or open  
34 space below the minimum requirements set forth in this title and all other  
35 applicable regulations;
- 36 5. Increasing the density or intensity of any use of any land or structure except in  
37 accordance with the requirements of this title and all other applicable  
38 regulations;

- 1                   6.       Storage or maintenance (intentionally or otherwise) of goods, materials,  
2                   products, or other items outdoors including, but not limited to operable  
3                   vehicles or equipment, appliances, building materials, machine parts,  
4                   abandoned vehicles, or snow, except in compliance with this title and all other  
5                   applicable regulations;
- 6                   7.       Filing or recording of a subdivision plat in any public office without approval  
7                   for recording by, and bearing the approval of, the platting authority under this  
8                   title;
- 9                   8.       Failure to remove any sign installed, created, erected, or maintained in  
10                  violation of this title, or for which the sign permit has lapsed; and
- 11                  9.       Failure to remove a temporary use once authorization for the temporary use  
12                  under this title and all other applicable regulations has lapsed.

13 **21.12.040 REMEDIES AND PENALTIES**

14                  The Director shall have the following remedies and powers to enforce this title:

15                  **A.       Civil Remedies and Enforcement Powers<sup>iii</sup>**

16                   1.       **Deny/Withhold Entitlements**

17                   The Director may deny or withhold all entitlements, including certificates of  
18                   occupancy, or other forms of authorization to use or develop any land,  
19                   structure, or improvements, until a violation, associated civil penalty, and/or  
20                   lien resulting from a previous final order related to such property, use, or  
21                   development is corrected. This provision shall apply whether or not the  
22                   current owner or applicant for the permit or other approval is responsible for  
23                   the violation.

24                   2.       **Revoke Entitlements**

25                   Any entitlement or other form of authorization required under this title may be  
26                   revoked when the Director determines that:

- 27                   a.       There is a departure from the approved plans, specifications,  
28                   limitations, or conditions as required under the entitlement;
- 29                   b.       The entitlement was procured by false representation;
- 30                   c.       The entitlement was issued in error; or
- 31                   d.       There is a violation of any provision of this title or other applicable  
32                   regulations.

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

37                   3.       **Stop-Work Orders**

- 38                   a.       Whenever any building or structure or site or part thereof is being  
39                   demolished, constructed, reconstructed, altered, or repaired in a

- 1 hazardous manner, in substantial violation of any state or municipal  
2 building law, or in a manner that endangers life or property, the  
3 Director has the authority to issue a stop-work order for the specific  
4 part of the work that is in violation or presents the hazard.
- 5 b. With or without revoking permits, the Director may issue an order to  
6 stop work on any property on which there is an uncorrected violation  
7 of either a provision of this title or a provision of an entitlement or  
8 other form of authorization issued under this title.
- 9 c. The stop-work order shall be in writing directed to the person doing  
10 the work if known, and a copy mailed to the owner of record of the  
11 property, and shall specify the provisions of this title or other law  
12 allegedly in violation. After any such order has been posted, no work  
13 shall proceed on any building, other structure, or tract of land covered  
14 by such order, except to correct such violation or comply with the  
15 order.
- 16 d. The stop-work order may be issued at the same time as the  
17 enforcement order (see subsection 21.12.050.B., *Non-Emergency*  
18 *Matters*, below), or subsequent to such notice. The stop-work order  
19 may also specify a shorter time for correction of the violation than the  
20 time period specified in the enforcement order. The stop-work order  
21 shall also indicate that failure to comply with the order may subject  
22 the violator to civil and/or criminal liability as penalty for the  
23 violation(s).
- 24 e. Once conditions for resumption of the work have been met, the  
25 Director shall rescind the stop-work order and shall notify the owner in  
26 writing of the rescission.
- 27 f. Issuance of a stop-work order may be appealed to the Zoning Board  
28 of Examiners and Appeals in the same manner as provided below for  
29 public enforcement orders. The stop-work order shall remain in effect  
30 until the Board takes final action on the appeal.<sup>iv</sup>
- 31 4. **Civil Penalties<sup>v</sup>**  
32 In addition to other remedies provided in section 1.45.010 or other sections of  
33 this title, violation of this title may be punishable through imposition of a civil  
34 penalty as set forth in section 14.60.030, or, if no penalty is set forth in section  
35 14.60.030, a civil fine of \$300.00 for each violation.
- 36 5. **Restoration of Disturbed Areas**  
37 The Director may require a violator who is regulated under this title and who  
38 failed to retain sediment generated by a land-disturbing activity to restore the  
39 waters and lands affected by the failure so as to minimize the detrimental  
40 effects of the resulting pollution by sedimentation. This authority is in addition  
41 to any other civil or criminal penalty or injunctive relief authorized under this  
42 title or applicable law.
- 43 6. **Injunctive Relief**  
44 The Director may seek injunctive relief or other appropriate relief in superior  
45 court or other court of competent jurisdiction against any person who fails to

1 comply with any provision of this title or any requirement or condition imposed  
2 pursuant to this title. In any court proceedings in which the Municipality seeks  
3 a preliminary injunction, it shall be presumed that a violation of this title is a  
4 real, immediate, and irreparable injury to the public; that the public will be  
5 irreparably injured by the continuation of the violation unless the violation is  
6 enjoined; and that there is no plain and adequate remedy at law for the  
7 subject title violation.

8 **7. Abatement<sup>vi</sup>**

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

10 **a.** Before action is taken to abate a violation, a final warning notice shall  
11 be posted on the property and served personally or by certified mail  
12 with return receipt requested to the owner of record of the property.

13 **b.** Unless this notice is appealed, pursuant to subsection 21.03.210.B.,  
14 to the Zoning Board of Examiners and Appeals within ten days of the  
15 posting of the final warning, the Director shall proceed to abate the  
16 violation.

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

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

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

42 **B. Remedies Cumulative<sup>vii</sup>**

43 The remedies provided for violations of this title shall be cumulative and in addition to  
44 any other remedy provided by law, and may be exercised in any order.

**21.12.050 PROCEDURES FOR PUBLIC ENFORCEMENT ACTIONS**

**A. Emergency Matters**

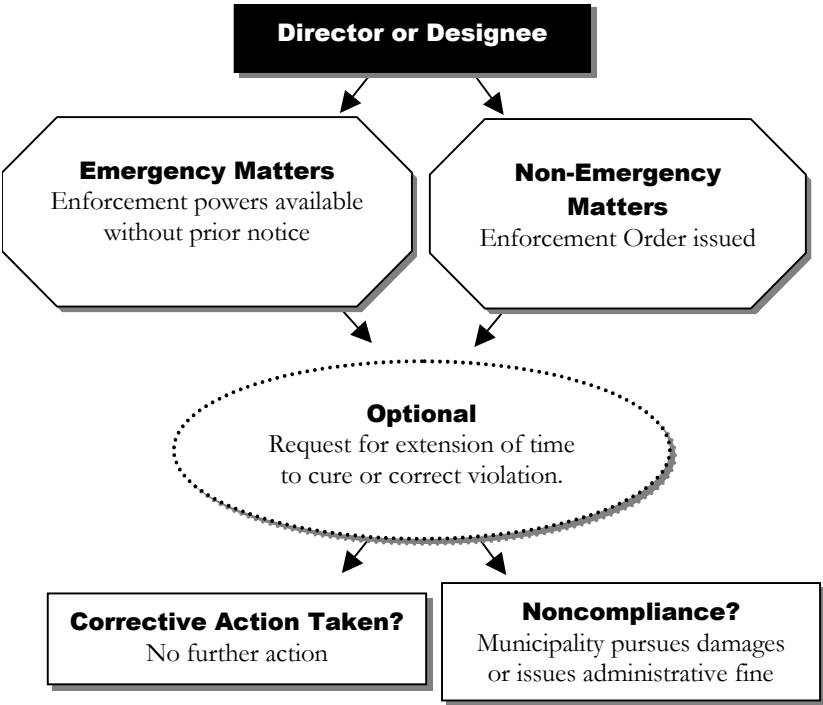
In the case of a violation of this title that constitutes a public health or safety emergency, the Director may use the enforcement powers available under this chapter without prior notice, but he or she shall attempt to give notice simultaneously with beginning enforcement action or as soon thereafter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

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Public Enforcement Actions

- 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.



1                   2.       **Extension of Time to Cure or Correct Violation**

2                   Upon receipt of a written request from the alleged violator or the property  
3                   owner for an extension of time to cure or correct the violation, the Director  
4                   may grant a single extension of time<sup>x</sup> in which the alleged violator may cure  
5                   or correct the violation before the Director pursues any of the forms of relief or  
6                   penalties listed in section 21.12.040, *Remedies and Penalties*. Such  
7                   extension of time shall not be granted unless the alleged violator or the  
8                   property owner can demonstrate to the Director that the violation cannot be  
9                   cured or corrected within the time period specified.

10                   3.       **Corrective Action Taken**

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

14                   4.       **Options Upon Noncompliance**

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

18                   a.       Pursue any of the forms of relief under section 21.12.040, *Remedies*  
19                   and *Penalties*; or

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

22       **21.12.060 PROCEDURES FOR PRIVATE ENFORCEMENT ACTIONS<sup>x</sup>**

23                   A.       **Purpose and Intent**

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

30                   B.       **Authorization**

31                   In addition to other remedies available under this Code, any person aggrieved by a  
32                   violation of this title, section 15.20.020.A. with regard to public nuisances listed in  
33                   section 15.20.020.B., or sections 25.70.040 and 25.70.045 relating to activities on  
34                   public grounds, may initiate a private enforcement action before the administrative  
35                   hearings officer as provided by title 14. For purposes of actions brought under this  
36                   section 21.12.060, the term "person aggrieved" means any person who lives, owns, or  
37                   lawfully occupies property within one mile of the property described in the complaint,  
38                   or the duly appointed representative of any Community Council with jurisdiction in the  
39                   area of the alleged violation.<sup>xi</sup>

1           **C.     Limitations**

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

5           **D.     Procedure**

6           Private enforcement actions shall follow the following procedure:

7           **1.     Filing of Complaint<sup>xii</sup>**

8           A private enforcement action is commenced upon filing of a written complaint  
9           to the Director by a person aggrieved by a violation described in subsection  
10          21.12.060.B. The complaint must include the following information:

- 11          a.     The street address of the property involved or legal description if no  
12                 street address has been assigned;
- 13          b.     The owner of record for the property;
- 14          c.     The occupants of the property (if known);
- 15          d.     The name of the persons alleged to have violated the Code (if  
16                 known);
- 17          e.     The provision of the Code alleged to be violated;
- 18          f.     The facts upon which the complaint is based;
- 19          g.     A request that the complaint be prosecuted as a private enforcement  
20                 action;
- 21          h.     The name and address of the complainant;
- 22          i.     An explanation of how the complainant qualifies as a “person  
23                 aggrieved”; and
- 24          j.     A notarized statement that all information in the complaint is true and  
25                 correct to the best of the complainant’s knowledge.

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

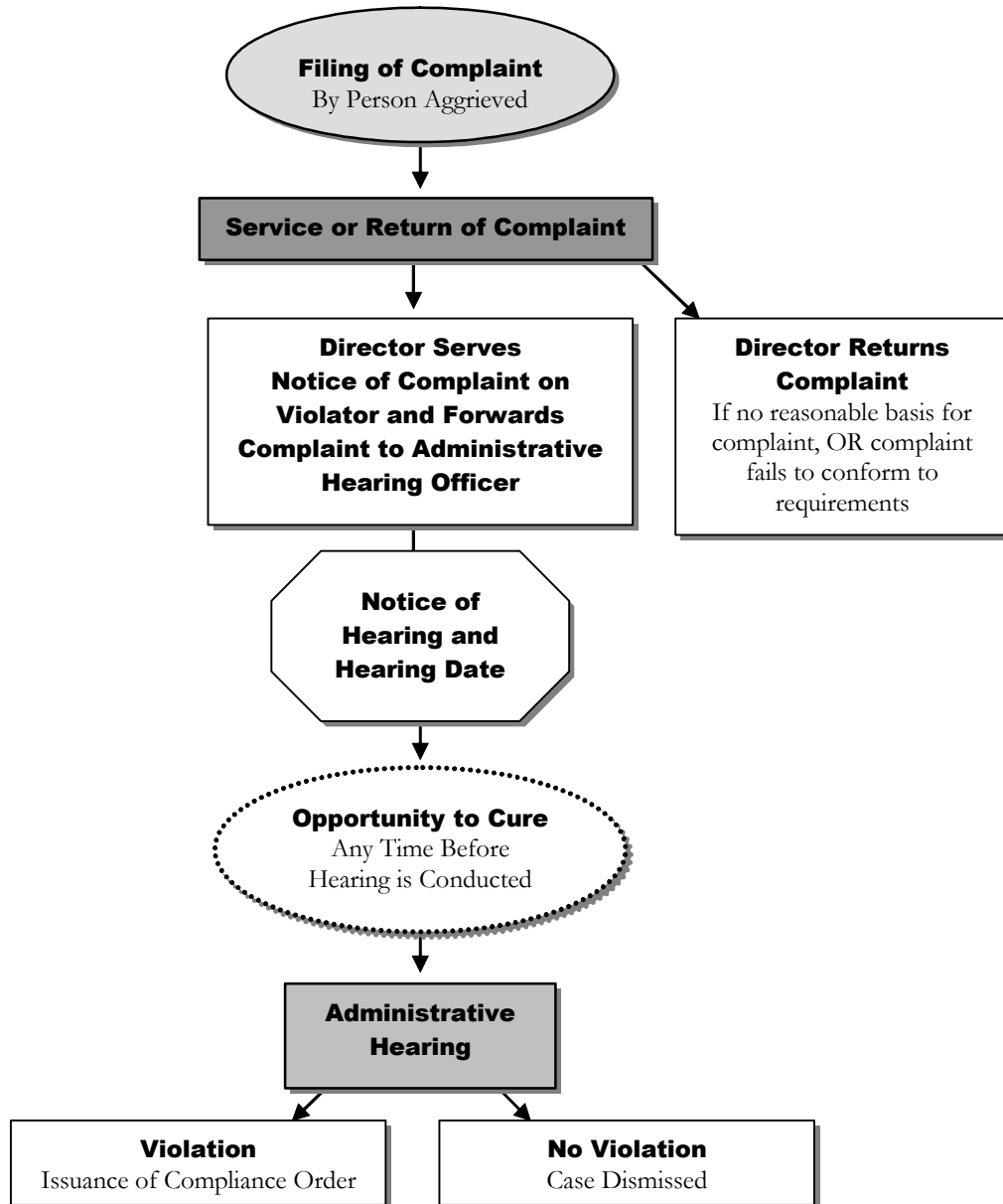
27          Within ten days after filing of a complaint, the Director shall:

- 28          a.     Serve notice of the complaint upon the violator(s) named in person or  
29                 by certified mail; or
- 30          b.     Return the complaint to the complainant with an explanation as to  
31                 why the complaint does not conform to this section; or
- 32          c.     Return the complaint to the complainant with an explanation that  
33                 information available to the Director at the time of review  
34                 demonstrates that there is no reasonable basis for the complaint.

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Appeals of the Director's decision may be made to the Zoning Board of Examiners and Appeals (see section 21.03.210, *Appeals*).

3. **Notice of Hearing and Hearing Date**<sup>xiii</sup>  
 After serving notice of a complaint on all alleged violators, the Director shall forward the complaint to the administrative hearings officer who shall schedule a hearing pursuant to section 14.30.050.<sup>xiv</sup>



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          Hearings shall be conducted under the provisions of chapter 14.30.060.<sup>xv</sup>
- 11          **6. Responsibility of Complainant**
- 12          In actions brought under this section, the complainant bears the burden of
- 13          proof and must prove the existence of the violation claimed by the
- 14          preponderance of the evidence.
- 15          **7. Issuance of Compliance Order**
- 16          After the hearing and upon finding that a violation exists, the administrative
- 17          hearings officer shall issue a compliance order as provided by subsection
- 18          14.50.010.A to each violator and set a reasonable time for compliance. In all
- 19          cases where a violation has been found to exist, the violator shall be ordered
- 20          to pay the reasonable costs, not to exceed \$1,000.00, incurred by the
- 21          Municipality in hearing the matter.
- 22          **8. Service of Decisions**
- 23          A final decision of the administrative hearings officer and the compliance
- 24          order issued under subsection 21.12.060.D.7. shall be served per subsection
- 25          14.30.110.B.
- 26          **9. Appeals; Collection of Fines**
- 27          Final decisions issued under this section may be appealed to the superior
- 28          court pursuant to chapter 14.40. Fines imposed under this section shall be
- 29          collected as provided by sections 14.50.030 and 14.50.040.
- 30          **E. Civil Fine**
- 31          The administrative hearings officer shall also order payment of a civil fine as provided
- 32          in subsection 14.50.010.C.
- 33          **F. Payment of Costs by Complainant<sup>xvi</sup>**
- 34          After the hearing and upon a finding that a complaint under this section was brought
- 35          or maintained frivolously or in bad faith, the administrative hearings officer may order
- 36          the complaining party to pay actual costs incurred by the alleged violator in an amount
- 37          no greater than \$1,000.00 plus the reasonable costs, not to exceed \$1,000.00,
- 38          incurred by the Municipality in hearing the matter.
- 39          **G. Commencement of Action in Superior Court to Enforce Compliance Order**
- 40          Any person may commence an action in superior court to enforce a compliance order
- 41          of the administrative hearings officer issued under this subsection.

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

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

---

<sup>i</sup> 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.

<sup>ii</sup> 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.

<sup>iii</sup> 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.

<sup>iv</sup> 2005 NOTE Suggested new appeal provision in response to a comment. Is this how appeals of stop-work orders are handled now?

<sup>v</sup> 2005 NOTE: Changed from \$400 in prior draft.

<sup>vi</sup> NOTE: This section carries forward the current AMC 21-25-070 with no major substantive changes.

<sup>vii</sup> 2005 NOTE: Criminal remedies appeared prior to this provision in the previous draft; they have been removed in this 2005 draft.

<sup>viii</sup> NOTE: This list is from the current AMC 21-25-030.

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

<sup>x</sup> 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.

<sup>xi</sup> 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

<sup>xii</sup> 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.

<sup>xiii</sup> 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.

<sup>xiv</sup> 2005 NOTE: The specifics on the hearing time frame have been removed, at staff suggestion, to be consistent with title 14.

<sup>xv</sup> 2005 NOTE: Edited to simply cross-reference title 14.

<sup>xvi</sup> 2005 NOTE: Municipal Attorney's office should comment on this provision. Several comments strongly urge that it be deleted.