

Postponed indefinitely 1/3/07

Submitted by: ASSEMBLY CHAIR SULLIVAN
ASSEMBLY MEMBER COFFEY
ASSEMBLY MEMBER BAUER
Prepared by: Assembly Counsel
For reading: January 23, 2007

ANCHORAGE, ALASKA
AO NO. 2007-23

AN ORDINANCE OF THE ANCHORAGE MUNICIPAL ASSEMBLY AMENDING ANCHORAGE MUNICIPAL CODE CHAPTER 21.87, SUBDIVISION AGREEMENTS, TO SPECIFY USE OF STOP WORK ORDERS IN THE ENFORCEMENT OF SUBDIVISION AGREEMENTS, ADD PROVISIONS TO THE SUBDIVISION AGREEMENTS, AND PROVIDE FOR ENFORCEMENT JURISDICTION BY THE BUILDING BOARD; AMENDING CHAPTER 23.10, ANCHORAGE ADMINISTRATIVE CODE, TO ADD SPECIFICITY TO STOP WORK ORDERS AND TO AUTHORIZE THE BUILDING BOARD TO HEAR APPEALS UNDER SUBDIVISION AGREEMENTS AND STOP WORK ORDERS, WITH JUDICIAL APPEAL TO THE SUPERIOR COURT; AND SETTING A TIME CERTAIN FOR THE PRODUCTION OF REGULATIONS ESTABLISHING THE TIMETABLE AND SCHEDULE FOR REVIEW AND APPROVAL OF ENGINEERING DESIGN PLANS FOR WORK UNDER SUBDIVISION AGREEMENTS.

THE ANCHORAGE ASSEMBLY ORDAINS:

Section 1. Anchorage Municipal Code chapter 21.87, Subdivision Agreements, 21.87.010.C, is hereby amended by adding new subsections to read as follows:

21.87.010 Agreement required; application; contents.

C. *Contents.* Except as provided in subsection D of this section, the subdivision agreement shall include but need not be limited to the following provisions:

14. A provision that the building official may issue a stop work order under 23.10.206 if the building official determines that the subdivider has failed to comply with the subdivision agreement. In all contracts for work to be performed under a subdivision agreement, the contracting parties shall acknowledge that work subject to the stop work order shall cease while the stop work order is in effect.

15. A provision that performance under the subdivision agreement is subject to appeal to the building board under Anchorage Administrative

Code 23.10.204. Performance subject to appeal under Anchorage Administrative Code 23.10.204 includes, without limitation, issuance of the stop work order, the means of compliance with the stop work order, and other actions or inactions within the terms and conditions of the subdivision agreement, or a stop work order.

(AMC 21.87.010; AO No. 83-142)

Section 2. Anchorage Municipal Code section 21.87.060 is hereby amended to read as follows:

21.87.060 Enforcement of chapter.

All provisions of this chapter are mandatory and may not be altered by the subdivision agreement. The obligations contained in this chapter shall be enforceable by methods of enforcement of ordinance as well as contract. Performance under a subdivision agreement is within the jurisdiction of the building board under administrative code and regulation. Any claim by the subdivider that the municipality's performance is incomplete or untimely under this chapter, or is in violation of the terms and conditions of a subdivision agreement, shall be preceded by 30-day advance written notice to the building official identifying the failure to act and requesting performance to be completed within thirty (30) days. If performance is not completed or issues remain in dispute after thirty days, the subdivider may initiate an appeal to the building board under Anchorage Administrative Code 23.10.204 and Anchorage Municipal Code of Regulations 23.10.204.

(AO No. 16-76)

Section 3. Anchorage Administrative Code section 23.10.204 is hereby amended to read as follows:

23.10.204 Board of appeals.

23.10.204.1 General. In order to hear and decide appeals of orders, decisions or determinations made by the building official relative to the application and interpretations of the technical code, or matters of performance under subdivision agreements entered into under AMC 21.87, including but not limited to the issuance of a stop work order, there shall be and is hereby created a board of appeals consisting of members qualified by experience and training to pass upon matters pertaining to building construction and building service equipment, and not employees of the jurisdiction. The building official shall be an ex officio

member and shall act as secretary to the board but shall not vote upon any matter before the board. The board of appeals shall be appointed by the governing body and shall hold office at its pleasure. The board shall adopt rules of procedures for conducting business and shall render all decisions and findings in writing to the appellant, with a duplicate copy to the building official.

23.10.204.2 Limitations of authority; finality of decision; appeal to superior court . An application for appeal shall be based on a claim that the true intent of this code, or the rules legally adopted thereunder, or terms and conditions of a subdivision agreement under AMC chapter 21.87 were incorrectly interpreted and applied, or that the provisions of this code do not fully apply, or that the municipality has failed to meet its obligations under a subdivision agreement or, that an equally good or better form of construction is proposed. The board shall have no authority to waive requirements of this code or the terms and conditions of a subdivision agreement. The board's final decision shall clearly state that it is a final decision with respect to all issues under the application for appeal, and that the board's final decision may be appealed to the superior court if filed within 30 days from the date the board's decision is issued to appellant and the building official.

(AO No. 2005-130, § 2, 1-1-06)

Section 4. Anchorage Administrative Code section 23.10.206 is hereby amended to read as follows:

23.10.206 Stop work order.

23.10.206.1 Authority. Whenever the building official finds any work regulated by this code, or a subdivision agreement entered under AMC 21.87, being performed in a manner [EITHER] contrary to the provisions of this code, or in violation of the subdivision agreement, or that is dangerous or unsafe, the building official is authorized to issue a stop work order.

23.10.206.2 Issuance. The stop work order shall be in writing and shall be given to the owner of the property involved, or to the owner's agent, or to the person doing the work. The stop work order shall also be posted at the work site where the permit is posted. The stop work order shall identify the specific work being performed in a manner contrary to the provisions of this code, or in violation of the subdivision agreement, or in an unsafe or dangerous manner, and the standards being applied. Upon issuance of a stop work order, the cited work shall immediately cease. The stop work order shall state the reason for the order, and the conditions under which the cited work shall be permitted to resume. The stop

work order shall not affect work in progress that is not specifically identified as unsafe or dangerous, or in violation of this code or the subdivision agreement. The stop work order shall set a time within one (1) business day of service of the stop work order for the property owner or the owner's agent to meet with the building official to discuss and outline an acceptable remedial plan to abate the stop work order.

Section 5. This ordinance shall apply prospectively to appeals or enforcement matters related to subdivision agreements or stop work orders filed after passage and approval.

Section 6. Within ninety (90) days of the passage of this ordinance, Project Management and Engineering and the Development Services Department, Division of Building Safety, through the Department of Law, shall present to the Platting Board proposed regulations providing a timetable and schedule applicable to the review, comment and acceptance of engineering design plans for work performed under subdivision agreements. The Platting Board shall take testimony on such regulations and recommend to the Assembly for adoption regulations governing the timetable for the filing, review and processing of permits for engineering design plans for work to be performed under subdivision agreements.

Section 7. This ordinance shall become effective immediately upon its passage and approval by the Assembly.

PASSED AND APPROVED by the Anchorage Assembly this _____ day of _____, 2007.

Chair

ATTEST:

Municipal Clerk



MUNICIPALITY OF ANCHORAGE
ASSEMBLY MEMORANDUM
NO. AM 74-2007

Meeting Date: January 23, 2007

From: Assembly Member Dan Coffey
Subject: **AO 2007-23 — AN ORDINANCE OF THE ANCHORAGE MUNICIPAL ASSEMBLY AMENDING AMC CHAPTER 21.87, SUBDIVISION AGREEMENTS, AND CHAPTER 23.10, ANCHORAGE ADMINISTRATIVE CODE, RELATING TO STOP WORK ORDERS AND ENFORCEMENT.**

AMC 21.87.060 currently provides that subdivision agreements entered into under chapter 21.87 may be enforced "by methods of enforcement of ordinance as well as by contract". This reference to "enforcement of ordinance" in AMC 21.87.060 is vague because there are several enforcement mechanisms under code, including but not limited to the procedures set forth in chapters 14.10, 21.25 and 23.10. This ambiguity has lead to disagreement over the applicable procedures to be used, appeal rights, and considerable delay in the resolution of disputes over the construction of improvements under subdivision agreements.

The current practice of the municipal staff in Project Management and Engineering is to try and avoid the ambiguity in code by providing in the subdivision agreement for the contractual use of stop work orders, issued without any right of review or appeal. There is currently no mechanism to test for abuse of discretion in issuing the stop work order, or to objectively grant administrative relief to resolve disputes between Project Management and Engineering and signatories to the subdivision agreements.

Examples of good faith issues arising under the subdivision agreements include questions of interpretation pertaining to technical requirements, application of warranty periods, and issuance of stop work orders. AO 2007-23 amends AMC 21.87.060 to provide a process for efficient and objective dispute resolution of issues arising under the contractual terms and conditions of a subdivision agreement. The Board of Building Regulation Examiners and Appeals is designated as the appellate board having jurisdiction because it has the necessary expertise to review the technical and contractual issues that arise during performance of subdivision agreements.

Respectfully submitted

Dan Coffey
Assembly Member, Section 4

Municipality of Anchorage
MUNICIPAL CLERK'S OFFICE
Agenda Document Control Sheet

AO 2007-23

(SEE REVERSE SIDE FOR FURTHER INFORMATION)

1	SUBJECT OF AGENDA DOCUMENT AMEND AMC 21.87, SUBDIVISION AGREEMENTS,	DATE PREPARED 1/20/07	
	TO SPECIFY USE OF STOP WORK ORDERS IN		
	THE ENFORCEMENT OF SUBDIVISION AGREEMENTS ...	Indicate Documents Attached <input checked="" type="checkbox"/> AO <input type="checkbox"/> AR <input checked="" type="checkbox"/> AM <input type="checkbox"/> AIM	
2	DEPARTMENT NAME Assembly	DIRECTOR'S NAME Daniel A. Sullivan, Chairman	
	THE PERSON THE DOCUMENT WAS ACTUALLY PREPARED BY Julia Tucker, Assembly Counsel	HIS/HER PHONE NUMBER 343-4419	
4	COORDINATED WITH AND REVIEWED BY	INITIALS	DATE
	Mayor		
	Municipal Clerk		
	Municipal Attorney		
	Employee Relations		
	Municipal Manager		
	Anchorage Parks & Recreation		
	Fire		
	Health & Human Services		
	Merrill Field Airport		
	Municipal Light & Power		
	Office of Management and Budget		
	Police		
	Port of Anchorage		
	Office of Economic & Community Development		
	Solid Waste Services		
	Public Transportation		
	Anchorage Water & Wastewater Utility		
	Executive Manager		
	Planning Department		
	Chief Fiscal Officer		
	Heritage Land Bank		
	Information Technology Department		
	Project Management & Engineering		
	Purchasing		
	Other		
5	Special Instructions/Comments		
	LAID ON THE TABLE ITEM - INTRODUCTION		
6	ASSEMBLY HEARING DATE REQUESTED 1/30/07	7	PUBLIC HEARING DATE REQUESTED

M.O.A.
 2007 JAN 22 AM 11:57
 CLERK'S OFFICE