

CHAPTER 21.13: ENFORCEMENT

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CHAPTER 21.13: ENFORCEMENT

21.13.010 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, provided however the director has the authority to enter into a civil compromise as to the amount of the fine.

(AO 2012-124(S), 2-26-13)

21.13.020 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 21.13.050) 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 21.13.060) to enforce the provisions of this title.

B. Inspections

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

2. At any reasonable time, the director may enter upon and inspect any land or structure where any entitlement has been applied for or issued. The purpose of such inspection shall be to verify conformity with the application or entitlement.

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

(AO 2012-124(S), 2-26-13)

21.13.030 VIOLATIONS

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

A. Activity Inconsistent with Title

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

B. Activity Inconsistent with Entitlement

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

C. Illustrative Examples

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

1. Excavation, grading, cutting, clearing, or other land disturbance activity without obtaining all necessary approvals required by this title or other applicable regulations;
2. Damage to or removal of vegetation inconsistent with this title;
3. Creation, expansion, replacement, or change of a nonconformity inconsistent with this title;
4. Reduction or diminishment of lot area, setbacks, vegetative buffers, or open space below the minimum requirements set forth in this title;
5. Increasing the density or intensity of any use of any land or structure except in accordance with the requirements of this title;
6. Storage or maintenance (intentionally or otherwise) of goods, materials, products, or other items outdoors including, but not limited to operable vehicles or equipment, appliances, building materials, machine parts, abandoned vehicles, or snow, except in compliance with this title;
7. Filing or recording of a subdivision plat in any public office without approval for recording by, and bearing the approval of, the platting authority under this title;
8. Failure to remove any sign installed, created, erected, or maintained in violation of this title, or for which the sign permit has lapsed; and
9. Failure to remove a temporary use once authorization for the temporary use under this title has lapsed.

(AO 2012-124(S), 2-26-13)

21.13.040 REMEDIES AND PENALTIES

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

A. Civil Remedies and Enforcement Powers

1. Deny/Withhold Entitlements

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

2. Revoke Entitlements

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

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

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

3. Stop-Work Orders

- a. Whenever any building or structure or site or part thereof is being demolished, constructed, reconstructed, altered, or repaired in a hazardous manner, in substantial violation of any state or municipal law, or in a manner that endangers life or property, the director has the authority to issue a stop-work order for the specific part of the work that is in violation or presents the hazard.
- b. With or without revoking permits, the director may issue an order to stop work on any property on which there is an uncorrected violation of either a provision of this title or a provision of an entitlement or other form of authorization issued under this title.
- c. The stop-work order shall be in writing directed to the person doing the work if known, and a copy mailed to the owner of record of the property, and shall specify the provisions of this title or other law allegedly in violation. After any such order has been posted, no work shall proceed on any building, other structure, or tract of land covered by such order, except to correct such violation or comply with the order.
- d. The stop-work order may be issued at the same time as the enforcement order (see subsection 21.13.050B., *Non-Emergency Matters*, below), or subsequent to such notice. The stop-work order may also specify a shorter time for correction of the violation than the time period specified in the enforcement order. The stop-work order shall also indicate that failure to comply with the order may subject the violator to civil and/or criminal liability as penalty for the violation(s).

- e. Once conditions for resumption of the work have been met, the director shall rescind the stop-work order and shall notify the owner in writing of the rescission.
- f. The owner of any property affected by a stop-work order, or his or her representative, may request that the director reconsider such stop-work order. The request shall be in writing and shall state the grounds for reconsideration. The director shall issue written findings and either confirm or rescind the stop-work order within 7 days of receiving the request for reconsideration. The stop-work order shall remain in effect until the director either confirms or rescinds the stop-work order. Decisions of the director may be appealed to the zoning board of examiners and appeals.

4. Civil Penalties

In addition to other remedies provided in AMC section 1.45.010 or other sections of this title, violation of this title may be punishable through imposition of a civil penalty as set forth in AMC section 14.60.030, or, if no penalty is set forth in AMC section 14.60.030, a civil fine of \$300.00 for each violation.

5. Restoration of Disturbed Areas

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

6. Injunctive Relief

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

7. Abatement

The municipality may abate the violation pursuant to this subsection.

- a. Before action is taken to abate a violation, a final warning notice shall be posted on the property and served personally or by certified mail with return receipt requested to the owner of record of the property.
- b. Unless this notice is appealed to the zoning board of examiners and appeals in accordance with subsection 21.03.050B. within ten days of the posting of the final warning, the director shall proceed to abate the violation.
- c. The director shall keep an account of the cost, including incidental expenses, incurred by the municipality in the abatement of any violation. The director shall forward a bill for collection to the violator and owner of record of the property specifying the nature and costs of the work performed. For purposes of this section, the term "incidental expenses" shall include but not be limited to the actual expenses and costs to the municipality in the preparation of the notices, specifications and contracts, work inspection, and interest from the date of completion at the rate prescribed by law for delinquent real property taxes.
- d. The responsibility for payment of the charges for abatement as set forth in this section shall rest solely upon the owners of the property upon which the abatement occurred. Such charges become a lien upon the real property upon

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

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

B. Remedies Cumulative

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

(AO 2012-124(S), 2-26-13)

21.13.050 PROCEDURES FOR PUBLIC ENFORCEMENT ACTIONS

A. Emergency Matters

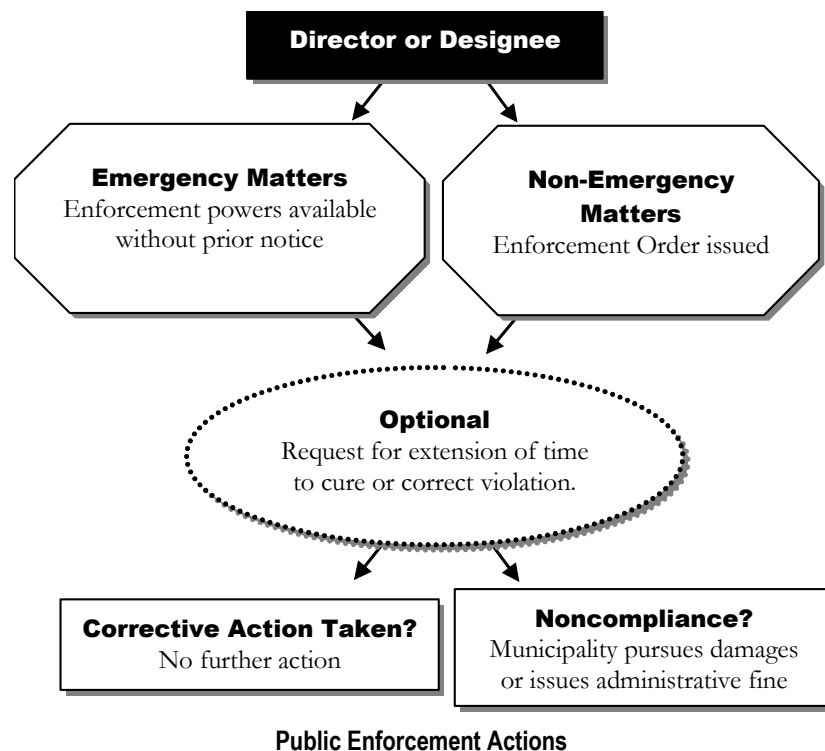
In the case of a violation of this title that constitutes a public health or safety emergency, the director may use the enforcement powers available under this chapter without prior notice, but he or she shall attempt to give notice simultaneously with beginning enforcement action or as soon thereafter 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 21.13.050A., 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; and
 - 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.

- 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 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 20 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

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 not more than two extensions of time of not more than six months each 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 21.13.040, *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 as specified in the enforcement order.

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 B.1.d. above, and the violation continues to exist, the director may:

- a. Pursue any of the forms of relief under section 21.13.040, *Remedies and Penalties*; and/or
- b. Assess an administrative fine, not exceeding \$250.00 per day, for failure to comply with a final enforcement order.

(AO 2012-124(S), 2-26-13)

21.13.060 PROCEDURES FOR PRIVATE ENFORCEMENT ACTIONS

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 21.13.050, *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, AMC section 15.20.020.A. with regard to public nuisances listed in AMC section 15.20.020.B., or AMC 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 21.13.060, the term "person aggrieved" means any person who lives, owns, or lawfully occupies property within the municipality, or the duly appointed representative of any community council the boundaries of which encompass all or part of the area of the alleged violation.

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 21.13.050.

D. Procedure

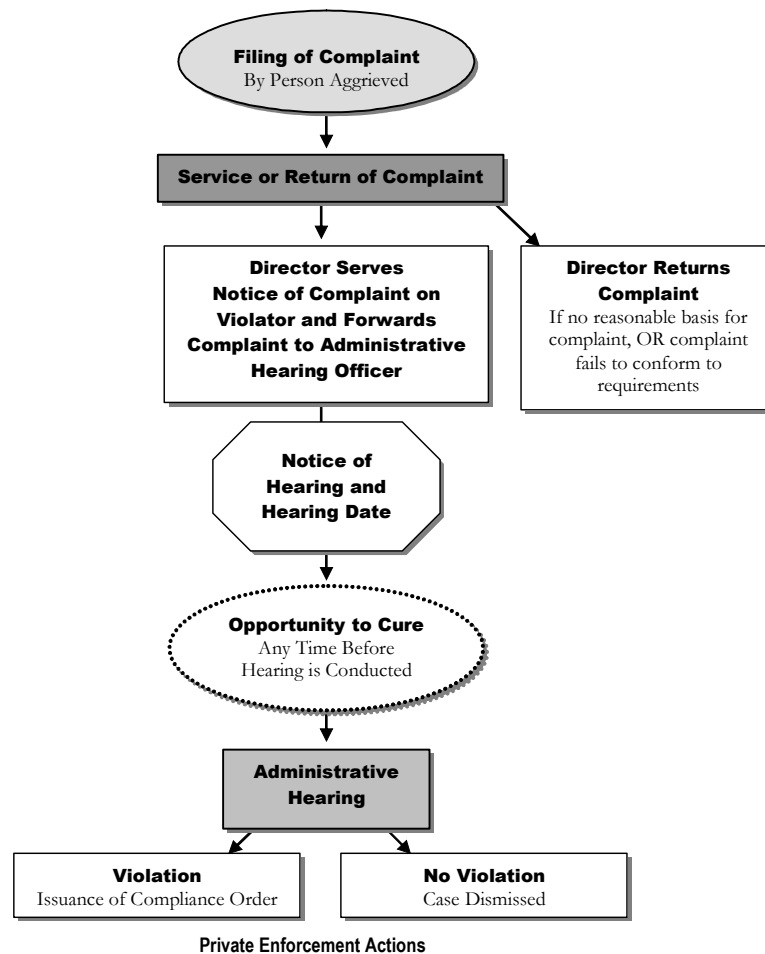
Private enforcement actions shall follow the following procedure:

1. Filing of Complaint

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 21.13.060B. 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);
- d. The name of the persons alleged to have violated the code (if known);
- e. The provision of the code alleged to be violated;
- f. The facts upon which the complaint is based;
- g. A request that the complaint be prosecuted as a private enforcement action;
- h. The name and address of the complainant;
- i. An explanation of how the complainant qualifies as a “person aggrieved”; and
- j. A notarized statement that all information in the complaint is true and correct to the best of the complainant’s knowledge.



2. Service or Return of Complaint

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

- a. Serve notice of the complaint upon the violator(s) named, and the property owner if different from the violator(s), in person or by certified mail; or
- b. Return the complaint to the complainant with an explanation as to why the complaint does not conform to this section; or

- c. Return the complaint to the complainant with an explanation that information available to the director at the time of review demonstrates that there is no reasonable basis for the complaint.

Appeals of the director's decision may be made to the zoning board of examiners and appeals in accordance with subsection 21.03.040B.

3. Notice of Hearing and Hearing Date

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 AMC section 14.30.050.

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

Hearings shall be conducted under the provisions of AMC section 14.30.060.

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 AMC subsection 14.50.010A 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 \$7,500.00, 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 21.13.060D.7. shall be served per AMC subsection 14.30.110B.

9. Appeals; Collection of Fines

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

E. Civil Fine

The administrative hearings officer shall also order payment of a civil fine as provided in AMC subsection 14.50.010C.

F. Payment of Costs by Complainant

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 \$7,500.00 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 21.13.040, *Remedies and Penalties*.

(AO 2012-124(S), 2-26-13)

