

CHAPTER 21

ENFORCEMENT PROCEDURES, ADMINISTRATIVE FEES AND ADMINISTRATIVE HEARING PROCEDURES

Article 1. Applicability.

Sec. 21-101. This Chapter specifies the procedures applicable to enforcement actions arising from Chapter 7 through Chapter 20 of The Code.

[Gen.Ord. 17-1996(A) Passed 11/20/96 Effective Date 11/1/96]

Article 2. Enforcement; Service Of Notices.

Sec. 21-201. The Health Officer, bearing proper credentials and identification, shall be permitted to enter upon all properties at reasonable times for the purposes of inspection, observation, measurement, sampling and testing necessary to carry out the provisions of The Code.

[Gen.Ord. 17-1996(A) Passed 11/20/96 Effective Date 11/1/96]

Sec. 21-202. Whenever the Health Officer determines that there are reasonable grounds to believe that there has been a violation of any provision of this Code, the Health Officer shall give notice of such alleged violation to the person or persons responsible therefore, or to any known agent of such person, as hereinafter provided. Such notice shall

- (a) Be in writing;
- (b) Include a statement of the reasons why it is being issued;
- (c) Allow a reasonable time for the performance of any act it requires; and
- (d) Be served upon the person or persons responsible or to any known agent of such person by personal delivery, by first class mail to the last known address, by posting a copy in a conspicuous place in or about the building or dwelling affected by the notice, or by any other method authorized or required under the laws of this state.
- (e) Such notice must contain an outline of remedial action which if taken will effect compliance with the provisions of this Code.

[Gen.Ord. 17-1996(A) Passed 11/20/96 Effective Date 11/1/96]

Article 3. License Suspensions.

Sec. 21-301.

- (a) Any license issued by the Health Officer may be temporarily suspended by the Health Officer upon the licensee's violation of any provision of The Code. At the request of the licensee, an administrative hearing as specified in Articles 8 and 9 of this Chapter shall be held within twenty-four hours of the issuance of the written suspension order and prior to the effective date and hour of such suspension order.

(b) Any license issued by the Health Officer may also be revoked for serious or repeated violations of any of the provisions of The Code or for interference with the Health Officer in the performance of his duties.

[Gen.Ord. 17-1996(A) Passed 11/20/96 Effective Date 11/1/96]

Sec. 21-302. Any holder whose license has been suspended may, at any time, make written application for the reinstatement of such license. Within one week after the receipt of a satisfactory application, accompanied by a statement signed by the applicant to the effect that the violated provision or provisions of this Code have been conformed with, the Health Officer shall make a reinspection as he may deem necessary to assure himself that the applicant is again complying with the requirements. If the Health Officer's inspection finding indicates compliance, he shall reinstate the license.

[Gen.Ord. 17-1996(A) Passed 11/20/96 Effective Date 11/1/96]

Article 4. Emergencies.

Sec. 21-401. When an emergency exists which requires immediate action to protect the public health, the Health Officer may without notice or hearing issue an emergency administrative notice of violation reciting the existence of the emergency and requiring that such action deemed necessary be taken to abate the emergency. The action to be taken could include, but is not limited to, license suspension.

[Gen.Ord. 17-1996(A) Passed 11/20/96 Effective Date 11/1/96]

Sec. 21-402. Upon issuance, an emergency notice of violation issued under this Article immediately becomes a judicially-enforceable final order. Any person subject to an emergency notice of violation shall comply immediately; however, upon written demand the person shall be afforded a hearing as soon as possible.

[Gen.Ord. 17-1996(A) Passed 11/20/96 Effective Date 11/1/96]

Sec. 21-403. The Health Officer may seek any other remedies available at law to abate an emergency without having first issued an emergency notice of violation.

[Gen.Ord. 17-1996(A) Passed 11/20/96 Effective Date 11/1/96]

Article 5. Administrative Fees.

Sec. 21-501.

(a) Licensed food operations which are found to be operating with non-critical violations of this Code shall be issued a violations correction form in addition to an inspection report and administrative notice of violation. The violations correction form shall be completed by the owner or operator of the licensed food facility or his agent within the time period designated by the Health Officer. By completing and returning the violations correction form, the owner, operator or agent certifies on behalf of the establishment or operation that the indicated violations have been corrected.

(b) An administrative inspection fee of fifty dollars shall be imposed upon each licensed food facility which:

- (1) fails to return a violations correction form within the time period prescribed by the Health Officer on the form;
- (2) returns the form timely but certifies that the necessary corrections have not been made and an administrative hearing was not timely requested; a timely request for hearing in these instances is ten days from the issuance of the initial administrative notice of violation and inspection report; or
- (3) falsely indicates that the necessary corrections have been made and falsely indicates that the violation(s) no longer are present at the time the form is completed.

The fifty dollar fee shall be imposed for each subsequent inspection performed until the licensed food facility achieves compliance with the administrative notice of violation issued at the time the violations correction form was issued.

[Gen.Ord. 17-1996(A) Passed 11/20/96 Effective Date 11/1/96]

Sec. 21-502.

- (a) A person who fails to comply with an administrative order of the Health Officer shall be liable for all costs or expenses paid or incurred by the Health Officer or authorized agents in executing the order, performing subsequent re-inspections to monitor compliance efforts or abating the underlying hazard. This amount may be recovered in a civil action by The Health and Hospital Corporation which is entitled to recover reasonable attorney's fees.
- (b) If a violation presents an emergency, the Health Officer may enter the premises immediately to correct the violation. For all other types of violations, the Health Officer shall allow a reasonable time for correction by the responsible party before entering the premises to correct the violation.

[Gen.Ord. 17-1996(A) Passed 11/20/96 Effective Date 11/1/96]

Article 6. Penalties; Injunctive Relief.

Sec. 21-601. Failure to comply with the provisions of The Code constitutes an ordinance violation.

[Gen.Ord. 17-1996(A) Passed 11/20/96 Effective Date 11/1/96]

Sec. 21-602.

- (a) Any person found to have committed an ordinance violation shall be fined in an amount not to exceed Two Thousand Five Hundred Dollars for each offense. Each day a violation remains in existence is a distinct and separate offense.
- (b) In addition to any fine levied under this Code, the Corporation may seek equitable relief to abate the public health hazard, nuisance or violation of this Code by proceeding in any court of competent jurisdiction.

[Gen.Ord. 17-1996(A) Passed 11/20/96 Effective Date 11/1/96]

Sec. 21-603.

Permanent injunctive relief and reimbursement of the Corporation's costs in the amount of \$500.00 should be requested by the Corporation against chronic violators. A chronic violator is any person who has committed repeated ordinance violations for which a court has entered final judgment against that person three or more times in a rolling three-year period.

[Gen.Ord. 17-1996(A) Passed 11/20/96 Effective Date 11/1/96]

Sec. 21-604.

In the event that the Corporation files enforcement action against a person and that person is ultimately adjudicated by a court of law to actually have complied with the terms of The Code at the time alleged in the Corporation's complaint, the Corporation will reimburse the person for his direct defense expenses up to \$500.00.

[Gen.Ord. 17-1996(A) Passed 11/20/96 Effective Date 11/1/96]

Article 7. Nonexclusivity.

Sec. 21- 701. Nothing in this Chapter shall impair the ability of The Corporation to seek any other remedies available at law.

[Gen.Ord. 17-1996(A) Passed 11/20/96 Effective Date 11/1/96]

Article 8. Right To Appeal; Timely Demand, Parties; Evidence.

Sec. 21- 801.

- (a) A person to whom an administrative notice of violation is issued is entitled to an administrative hearing on that matter upon timely demand for a hearing.
- (b) If an applicant is refused an on-site sewage disposal permit or the Health Officer determines that the pre-application / pre-construction requirements for an on-site sewage disposal permit are unfulfilled, the applicant shall be entitled to a hearing pursuant to the provisions of this chapter.

[Gen.Ord. 17-1996(A) Passed 11/20/96 Effective Date 11/1/96]

Sec. 21-802.

- (a) The person seeking an administrative hearing must timely demand, in writing, a hearing before the administrative law judge in order to obtain an administrative hearing as a matter of right.
- (b) If such persons fail to timely demand an administrative hearing, the Health Officer's notice becomes a final order and may be judicially enforced.

[Gen.Ord. 17-1996(A) Passed 11/20/96 Effective Date 11/1/96]

Sec. 21-803.

A demand for a hearing shall be deemed timely if the written demand is received by the administrative law judge within

- (a) two business days after the receipt of an administrative notice in the case of administrative notices issued for violations of Chapters 11 (Child Care Facilities) and 16 (Standards For Public Swimming Pools, Public Spas And Beaches), or

(b) in the case of administrative notices issued for violations cited under all other Chapters of The Code, ten business days after the receipt of the initial administrative notice of violation and ten business days after the first reinspection of violations cited in that initial administrative notice.

[Gen.Ord. 17-1996(A) Passed 11/20/96 Effective Date 11/1/96]

Sec. 21- 804. Staff may request the administrative law judge to hold a hearing upon a matter in which an administrative notice has not been complied with.

[Gen.Ord. 17-1996(A) Passed 11/20/96 Effective Date 11/1/96]

Sec. 21- 805. The person to whom an administrative notice is directed and the administrative staff of the Corporation shall be parties to the hearing proceedings. The parties may participate in the proceedings in person or by an authorized representative, including legal counsel, at the party's own expense.

[Gen.Ord. 17-1996(A) Passed 11/20/96 Effective Date 11/1/96]

Sec. 21- 806. The parties are entitled to file documents or submit written statements or affidavits with the administrative law judge for consideration as evidence.

[Gen.Ord. 17-1996(A) Passed 11/20/96 Effective Date 11/1/96]

Sec. 21- 807. All testimony of parties and witnesses shall be made under oath or affirmation.

[Gen.Ord. 17-1996(A) Passed 11/20/96 Effective Date 11/1/96]

Sec. 21- 808. The administrative law judge retains the power to control the proceedings for the efficient and orderly disposal of the matter, including, but not limited to, imposing reasonable time limitations.

[Gen.Ord. 17-1996(A) Passed 11/20/96 Effective Date 11/1/96]

Sec. 21- 809. The administrative law judge shall regulate the course of the proceedings in an informal manner without recourse to the technical common law rules of evidence applicable to civil actions in the courts.

[Gen.Ord. 17-1996(A) Passed 11/20/96 Effective Date 11/1/96]

Sec. 21- 810. The administrative law judge shall afford all parties the opportunity to respond, present evidence and argument, conduct cross-examination and submit rebuttal evidence. However, the administrative law judge may exclude evidence or impose conditions on a party necessary to avoid unreasonably burdensome, irrelevant, immaterial or repetitious presentations by the party and to promote the efficient, orderly, prompt and just disposition of the proceeding.

[Gen.Ord. 17-1996(A) Passed 11/20/96 Effective Date 11/1/96]

Sec. 21- 811. Hearsay evidence may form the basis for the administrative law judge's order unless objected to. If such hearsay does not fall into a generally recognized hearsay exception, the hearsay evidence may not form the sole basis for the order.

[Gen.Ord. 17-1996(A) Passed 11/20/96 Effective Date 11/1/96]

Sec. 21- 812. The administrative law judge may give nonparties an opportunity to present written or oral statements.

[Gen.Ord. 17-1996(A) Passed 11/20/96 Effective Date 11/1/96]

Sec. 21- 813. The hearing shall be recorded at the expense of The Corporation upon request. If a hearing is recorded, the Corporation is not required to prepare a transcript at its own expense. However, parties may request preparation of a transcript. The party requesting the transcript shall be charged a reasonable fee of \$0.75 per page for preparation of the transcript.

[Gen.Ord. 17-1996(A) Passed 11/20/96 Effective Date 11/1/96]

Article 9. Ultimate Authority; Final Order.

Sec. 21- 901. An administrative law judge shall conduct the proceedings of administrative adjudication and shall issue a final order.

[Gen.Ord. 17-1996(A) Passed 11/20/96 Effective Date 11/1/96]

Sec. 21- 902. The administrative law judge shall perform his duties in an impartial manner and shall be disqualified from hearing a matter in which the administrative law judge's ability to do so is affected by his bias, prejudice, or personal interest in the outcome of a proceeding.

[Gen.Ord. 17-1996(A) Passed 11/20/96 Effective Date 11/1/96]

Sec. 21- 903. The administrative law judge shall not engage in ex parte communications with the parties to a proceeding.

[Gen.Ord. 17-1996(A) Passed 11/20/96 Effective Date 11/1/96]

Sec. 21- 904. The administrative law judge may administer oaths and affirmations and rule on any offer of proof or other motion.

[Gen.Ord. 17-1996(A) Passed 11/20/96 Effective Date 11/1/96]

Sec. 21- 905. The administrative law judge is the ultimate authority for the Corporation, and the administrative law judge's order disposing of an adjudicative matter is a final order.

[Gen.Ord. 17-1996(A) Passed 11/20/96 Effective Date 11/1/96]

Sec. 21- 906. The administrative law judge has the authority to sustain, modify or revoke the administrative notice.

[Gen.Ord. 17-1996(A) Passed 11/20/96 Effective Date 11/1/96]

Sec. 21- 907. The final order shall contain:

- (a) a short and concise statement of the facts;
- (b) a statement of the applicable law;

- (c) the decision, which shall include a statement of whether the administrative notice was sustained, modified, or revoked; and
- (d) the administrative law judge's order to abate, if applicable, and/or penalties imposed.

[Gen.Ord. 17-1996(A) Passed 11/20/96 Effective Date 11/1/96]

Sec. 21- 908. The administrative law judge shall issue his decision in writing within fifteen business days of the hearing and shall forward a copy of the order to the parties. A copy of the agency record and the final order shall be maintained for public inspection in the offices of the Corporation.

[Gen.Ord. 17-1996(A) Passed 11/20/96 Effective Date 11/1/96]