Chapter 21.90 Administration and Enforcement

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21.90.010 Function of Department of Administration. The administration and enforcement of the Homer Zoning Code is a function of the Department of Administration under the supervision of the City Manager. (Ord. 08-29, 2008).

21.90.020 City Planner – Functions and Powers. a. The City Manager may appoint a City Planner and one or more assistants, however denominated.
b. If appointed by the City Manager, the City Planner shall have all functions and may exercise all powers necessary to administer and enforce the zoning code. Assistants to the City Planner may exercise the administration and enforcement functions and powers of the City Planner under the City Planner's supervision.
c. Administration and enforcement functions and powers of the City Planner include, but are not limited to, the following:
1. Maintaining records of all zoning text and district changes related to this title.
2. Providing technical assistance upon request by the City Manager.
3. Providing and processing all applications under this title.
4. Interpreting and enforcing this title.
5. Maintaining records of all activity related to this title.
6. Other functions and powers assigned by this title. (Ord. 08-29, 2008).

21.90.030 Invalid land use permits. No permit may be issued under the Homer Zoning Code unless all structures on and uses of the property conform to the Homer Zoning Code, regulations, and any previously issued permits that are applicable to the property and remain in effect. Any permit issued in violation of this section is voidable upon written notice from the City Planner or City Manager. (Ord. 08-29, 2008).

21.90.040 Inspections; right of entry. a. Subject to subsection (b) of this section, at any reasonable time, the City Manager, City Planner, or other city staff member designated in writing by either of them may, upon presentation of proper identification, enter upon and inspect any land, building or premises where he or she has probable cause to believe there exists a violation, or enter upon any land, building or premises to perform a duty of an official under this title.
b. Where the constitution of the United States or of the state so requires, the official 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 official may 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, the facts and circumstances justifying the inspection, and any other information necessary to obtain the warrant. Warrants issued under this section should be returned within ten days. (Ord. 08-29, 2008).

21.90.050 Evidence of Compliance. Upon request by the City Planner, any person who has obtained a permit under the Homer Zoning Code shall provide evidence showing compliance with the terms of the permit. The obligation to provide evidence of compliance is a condition of every permit granted under the zoning code, whether

expressly stated in the permit or not. (Ord. 08-29, 2008).

21.90.060 Enforcement orders. a. In addition to any other remedy or other method of enforcement available under the Homer Zoning Code or other provision of the Homer City Code or other law, the City Manager or the City Planner may order:
1. The discontinuation of a use of land or a structure that is in violation of the Homer Zoning Code, a regulation or a permit.
2. The abatement or removal of a structure or part of a structure that is in violation of the Homer Zoning Code, a regulation or a permit.
3. The discontinuation of construction or other activity preparatory to a structure or use of real property that is in violation of the Homer Zoning Code, a regulation or a permit.
4. The suspension or revocation of a permit under which a violation of the Homer Zoning Code or regulations is occupied, maintained, constructed or established.
5. 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 the Homer Zoning Code, regulations or a permit.
6. Any other action necessary to prevent, abate or discontinue a violation of the Homer Zoning Code, a regulation or a permit.
b. An enforcement order issued under subsection (a) of this section may be directed to one or more violators.
c. A written enforcement order issued under subsection (a) of this section that is served on a violator personally or by certified mail is immediately appealable to the Planning Commission. An appeal must be filed within 30 days of service of the written enforcement order. Failure to appeal to the Planning Commission within 30 days of service shall constitute a waiver of all rights of appeal from the order. The procedure for appeals is set forth in HCC Chapter 21.93.
d. During such time that an enforcement order is under appeal, no further use or development contrary to the order may continue.
e. Upon correction of the condition or termination of the activity that caused the issuance of an enforcement order under subsection (a), the officer who issued the order may terminate the order or issue written confirmation of satisfactory compliance with the order.
f. An enforcement order need not be issued before a prosecution or legal action is commenced with respect to a violation of the Homer Zoning Code, a regulation or a permit. The pendency of any proceeding regarding an enforcement order issued under subsection (a) of this section does not stay any prosecution or other legal action with respect to the violation that is the subject of the enforcement order. (Ord. 08-29, 2008).

21.90.070 Abatement of nuisance. a. Any use, activity, condition, property, or structure in violation of an enforcement order issued under HCC § 21.90.060 that continues after the time for appeal from the enforcement order has passed, or if appealed, continues after all appeals are exhausted, is a public nuisance and may be abated by the city as provided in this section.
b. Before action is taken to abate a nuisance, a final warning notice shall be posted on the property and served personally or by certified mail with return receipt requested to the violator and the owner of record of the property. Unless enjoined by court order within 30 days of the posting and service of the final warning notice, the City Manager will proceed to abate the nuisance. If the City Manager finds it necessary to effectively abate the nuisance, he or she may cause the physical destruction or removal of the nuisance.
c. The City Manager shall cause to be kept an account of the cost, including incidental expenses, incurred by the city in the abatement of any nuisance. The City Manager will cause an invoice for collection to be sent 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 city in the preparation of the notices, specifications and contracts, work inspection, attorney's fees, consultant fees and interest from the date of completion at the rate of ten percent per annum.
d. The property owners of the property upon which the abatement occurred are liable to the city for the entire cost of the abatement. Such charges become a lien upon the real property upon which the abatement occurred. If the invoice for the costs of the abatement remains unpaid after 30 days from the invoice, the City Manager will record a notice of lien at the district recorder's office. The lien shall be subordinate to all state and municipal tax liens and existing special assessment liens previously imposed upon the same property and shall be prior and paramount to all other liens. 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. (Ord. 08-29, 2008).

21.90.080 Civil remedies. a. With respect to any violation of the Homer Zoning Code, a regulation or a permit, the

city may bring a civil action for any or all of the following:
1. To enjoin or abate the violation. Upon application for injunctive relief and a finding that a person is in violation or threatening a violation, the superior court shall enjoin the violation.
2. To require the restoration of any structure, vegetation, land, water body or other thing upon the land that is destroyed, damaged, altered or removed in such violation.
3. To recover damages suffered because of the violation.
4. To recover, in addition to any injunctive or compensatory relief, a civil penalty, payable to the City, not exceeding $1,000.00 for each violation.
b. Whenever a written enforcement order is in effect that has not been appealed, or if appealed, remains in effect during an appeal or after all appeals are exhausted, and a violation continues to exist, the City Manager may:
1. Commence proceedings to cause the abatement of the violation pursuant to HCC § 21.90.070; or
2. Assess an administrative fine, not exceeding $250.00 per day, for failure to comply with an enforcement order.
c. The remedies provided in this section are not exclusive, but are cumulative of all other remedies available at law or in equity.
d. Any person aggrieved by a violation of the Homer Zoning Code, a regulation or a permit may bring a civil action against the violator as provided in subsection (a) of this section. For purposes of this section, a person occupying or owning land within 300 feet of the perimeter of the parcel containing the violation is irrebuttably presumed to be a person aggrieved. The city shall not be responsible for the costs or fees of such an action, which shall be the sole responsibility of the person filing the action. (Ord. 08-29, 2008).

21.90.090 Violations. a. The following are violations of this title:
1. A structure, alteration of a structure, or use of land or a structure that conflicts with a provision of the Homer Zoning Code, or a regulation or a permit issued under the Homer Zoning Code.
2. To use or occupy a structure, land or water other than as allowed by the Homer Zoning Code, regulations, or a permit issued under the Homer Zoning Code.
3. To erect, construct, reconstruct, enlarge, move, repair or alter a structure or part thereof other than as allowed by the Homer Zoning Code, a regulation or a permit issued under the Homer Zoning Code.
4. To violate the terms of an enforcement order that has not been appealed, or if appealed, remains in effect during an appeal or after all appeals are exhausted.
5. To develop, occupy or use any land or structure in contrary to or in violation of the terms of this title or the terms of any permit issued under this title.
6. To develop, occupy or use any land or structure in any manner for which a permit is required under the Homer Zoning Code without such a permit or after a required permit has been suspended or revoked.
7. To knowingly act in any manner declared by the Homer Zoning Code to be prohibited, unlawful, a violation, or an offense.
8. To cause another to commit a violation of this title.
b. Each act or condition in violation of this title, and every day upon which the act or condition occurs, is a separate violation.
c. A violator is a person who:
1. Commits or causes a violation of this title; or
2. Occupies, maintains, keeps, alters, constructs or establishes a structure, or use of land or a structure, in violation of the Homer Zoning Code, a regulation or a permit; or;
3. Owns, controls or has the right to control land or a structure where the land or structure is used, occupied, maintained, kept, altered, constructed or established in violation of the Homer Zoning Code, a regulation or a permit. (Ord. 08-29, 2008).

21.90.100 Fines for violations. Any violator of this title is, upon conviction by a court, subject to a fine as set forth in an applicable bail forfeiture schedule adopted by the city. If no fine is set forth in an applicable bail forfeiture schedule, upon conviction the violator is subject to a fine of not less than $75.00 and not more than $300.00 for each violation. (Ord. 08-29, 2008).

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