

CHAPTER 21
ENFORCEMENT PROCEDURES AND ADMINISTRATIVE HEARINGS

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. Administrative Searches and Notices.

Sec. 21-201. Administrative Searches.

(a) Upon consent of the owner or occupant, the Health Officer, bearing proper identification may enter any property at any reasonable time to inspect, investigate, evaluate, conduct tests, or take specimens or samples for testing as may be reasonably necessary to determine compliance with The Code.

(b) If the Health Officer is denied entry, the Corporation may seek an administrative search warrant from a court authorizing the investigation, evaluation, inspection, testing or taking of specimens or samples for testing.

(c) When a condition poses an imminent and serious threat to an individual's or the public's health and the Health Officer believes that delay could result in greater health risk, the Health Officer may enter the affected property without the consent of the owner or occupant and without an administrative search warrant to inspect, investigate and evaluate the conditions on the property.

(d) The Health Officer may enter any public place to inspect, investigate, evaluate, conduct tests, or take specimens or samples for testing as may be reasonably necessary to determine compliance with The Code.

(e) Consistent with the terms and conditions of a license, the Health Officer may enter a property at any reasonable time to inspect, investigate, evaluate, conduct tests, or take specimens or samples for testing as may be reasonably necessary to determine compliance with The Code and the conditions of the license.

[Gen.Ord. 4-2004 Passed 9/21/04 Effective Date 9/1/04]

Sec. 21-202. Administrative Notices.

Whenever the Health Officer determines that there are reasonable grounds to believe that there has been a violation of or observes a violation of The Code, the Health Officer shall issue an administrative notice of violation to the person responsible.

An administrative notice of violation 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) Contain an outline of remedial action which if taken will effect compliance with The Code.

[Gen.Ord. 4-2004 Passed 9/21/04 Effective Date 9/1/04]

Article 3. License Suspensions and Revocations.

Sec. 21-301. License Suspensions.

- (a) The Health Officer may issue an administrative notice of violation to suspend a license for a violation of The Code.
- (b) A suspended licensee may, at any time, apply for reinstatement of the license. Within one week after application for reinstatement, the Health Officer shall conduct an inspection. If the Health Officer's inspection indicates compliance with The Code, the license shall be reinstated.

[Gen.Ord. 8-2004 Passed 12/21/04 Effective Date 1/1/05]

Sec. 21-302. License Revocations.

- (a) The Corporation may initiate proceedings in a court with jurisdiction to revoke a license for serious or repeated violations of The Code.
- (b) A revoked licensee may, sixty days after a revocation order by the Court, apply for a license. Within two weeks after the license application, the Health Officer shall make an inspection. If the Health Officer's inspection indicates compliance with The Code and any court orders, the license shall be issued.

[Gen.Ord. 8-2004 Passed 12/21/04 Effective Date 1/1/05]

Article 4. Emergencies.

Sec. 21-401. When an emergency exists which requires immediate action to protect the public health, the Health Officer may issue an emergency administrative notice of violation reciting the existence of the emergency and requiring that action be taken to abate the emergency.

[Gen.Ord. 8-2004 Passed 12/21/04 Effective Date 1/1/05]

Sec. 21-402. Upon issuance, an emergency notice of violation immediately becomes a judicially-enforceable final order. Any person subject to an emergency notice of violation shall comply immediately.

[Gen.Ord. 8-2004 Passed 12/21/04 Effective Date 1/1/05]

Article 5. Abatement; Recovery of Costs.

Sec. 21-501. If a condition violating The Code exists on real property, employees or contractors of the Corporation may enter onto that property and take appropriate action to bring the property into compliance with The Code. However, before action to bring compliance may be taken, all persons holding a substantial interest in the property must be given a reasonable opportunity of at least ten (10) days but not more than sixty (60) days to bring the property into compliance.

Sec. 21-502. If the Corporation takes action to bring compliance, the expenses incurred by the Corporation to bring compliance constitute a lien against the property. The Corporation may issue a bill to the owner of real property for the costs incurred by the Corporation in bringing the property into compliance with The Code, including administrative and removal costs. The Corporation may collect the costs from the owner of the real property in accordance with Indiana Code § 36-1-6-2.
[Gen.Ord. 7-2006 Passed 6/20/06 Effective Date 7/1/06]

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 may be fined by a court in an amount not to exceed Two Thousand Five Hundred Dollars (\$2500.00) for each offense. Each day a violation remains in existence is a distinct and separate offense.
(b) The Corporation may bring a civil action to enforce an ordinance violation in a court with jurisdiction in accordance with Indiana Code § 36-1-6-4.
[Gen.Ord. 8-2004 Passed 12/21/04 Effective Date 1/1/05]

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. Administrative Hearings.

Sec. 21- 801.

(a) A person to whom an administrative notice of violation or a bill issued pursuant to Indiana Code § 36-1-6-2 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. 8-2004 Passed 12/21/04 Effective Date 1/1/05]

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 an administrative hearing shall be timely if received by the Corporation within two business days after the receipt of an administrative notice issued for violations of Chapters 11 and 16, or for administrative notices of violations and bills issued under all other Chapters of The Code, ten business days after the receipt of the administrative notice of violation or bill. *[Gen.Ord. 8-2004 Passed 12/21/04 Effective Date 1/1/05]*

Sec. 21- 804. The Corporation may request an administrative hearing.

[Gen.Ord. 11-2003 Passed 1/12/04 Effective Date 1/1/04]

Sec. 21- 805. The person to whom an administrative notice is directed and 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 Indiana Rules of Evidence.

[Gen.Ord. 8-2004 Passed 12/21/04 Effective Date 1/1/05]

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 by the Corporation upon request. If a hearing is recorded, the Corporation is not required to prepare a transcript at its own expense. The Corporation shall provide a copy of the hearing tape to the requesting party. Parties may have a transcript of the hearing prepared at their own expense.

[Gen.Ord. 1-2002 Passed 6/18/02 Effective Date 6/18/02]

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 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 bias, prejudice, or personal interest in the outcome of a proceeding.

[Gen.Ord. 8-2004 Passed 12/21/04 Effective Date 1/1/05]

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 final order for an administrative notice of violation shall contain a statement of the applicable facts and law and whether the administrative notice of violation is affirmed, modified or reversed.

[Gen.Ord. 8-2004 Passed 12/21/04 Effective Date 1/1/05]

Sec. 21- 907. The final order for a bill issued pursuant to Indiana Code § 36-1-6-2 shall state whether the bill is reduced or affirmed.

[Gen.Ord. 8-2004 Passed 12/21/04 Effective Date 1/1/05]

Sec. 21- 908. The administrative law judge shall issue the final order in writing within fifteen business days of the hearing and send the final order to the parties.

[Gen.Ord. 8-2004 Passed 12/21/04 Effective Date 1/1/05]