## Article 2: Code Enforcement
## Judicial and Administrative Remedies

### Division 6: Administrative Abatement
*("Administrative Abatement"*
*added 8–10–1993 by O–17956 N.S.)*

### §12.0601 Declaration of Purpose

The Council finds that its purpose in adopting Divisions 6 and 7 of Article 2 of Chapter 1 is to establish a procedure for the administrative and summary abatement of public nuisances and code violations. The procedures established in these sections are in addition to any other legal remedy, criminal or civil, established by law which may be pursued to address Municipal Code or applicable state code violations. These sections govern all other nuisance abatement procedures established in other chapters of the Municipal Code unless other procedures are specifically stated to apply.
*(Renumbered from Sec. 13.0302, retitled to "Declaration of Purpose" and amended 8–10–1993 by O–17956 N.S.)*

### §12.0602 Authority

Any condition caused, maintained or permitted to exist in violation of any provisions of the Municipal Code or applicable state codes which constitutes a public nuisance may be abated by the City pursuant to the procedures set forth in Divisions 6 and 7, Article 2 of Chapter 1.
*(Renumbered from Sec. 13.0304, retitled to "Authority" and amended 8–10–1993 by O–17956 N.S.)*

### §12.0603 General Procedures

(a) Abatement Notice

(1) Whenever a Director determines that public or private property or any portion of public or private property is a public nuisance as generally defined in Section 11.0210 or as declared in a specific section of the Municipal Code or applicable state codes, an Abatement Notice may be issued to the Responsible Person to abate the public nuisance.

(2) The Abatement Notice shall contain a description of the property in general terms reasonably sufficient to identify the location of the property. It shall refer to Divisions 6 and 7 of Article 2, Chapter 1 of

the Municipal Code or applicable state code violations which render the property a public nuisance.

(3) The Abatement Notice shall describe the action required to abate the public nuisance which may include corrections, repairs, demolition, removal, obtaining the necessary permits, vacation of tenants or other appropriate action and shall establish time frames by which each action must occur.

(4) The Abatement Notice shall explain the consequences should the Responsible Person fail to comply with the terms of the notice.

(5) The Abatement Notice shall state whether as part of the abatement action, an Abatement Penalty is being assessed against the Responsible Person pursuant to this Division.

(6) The Abatement Notice shall identify all applicable hearing and appeal rights.

(b) Service of Abatement Notice

The Abatement Notice shall be served by any one of the methods of service listed in Section 11.0301 of this Code.

(c) Compliance Time Frames

The Director shall follow the compliance time frames and specified procedures for either Time Frame One or Time Frame Two depending upon whether the criteria as provided in Section 12.0604 or 12.0605 of this Division applies.

*("General Procedures" added ((a)(b) portions previously contained in former Sec. 13.0305(a)–(c)) on 8–10–1993 by O–17956 N.S.)*
*(Amended 2-26-2007 by O-19579 N.S.; effective 3-28-2007.)*

## §12.0604 Time Frame for Compliance: Time Frame One

(a) Time Frame One shall require the Responsible Person to abate the public nuisance within ten (10) calendar days from the date of service of the Abatement Notice.

(b) A Director may require the Responsible Person to abate the public nuisance within Time Frame One in any one of the following instances:

(1) the condition causing the public nuisance is rubbish, weeds, waste or other obstructions as described in Division 2, Article 4 of Chapter 5 of this Code; or

(2) the condition causing the public nuisance is a vacant structure as described in Division 3, Article 4 of Chapter 5 of this Code; or

(3) the condition causing the public nuisance is graffiti as described in Division 4, Article 4 of Chapter 5 of this Code; or

(4) the condition causing the public nuisance is a dangerous sign as described in Section 95.0133 of this Code; or

(5) the condition causing the public nuisance is a lead hazard as defined in Division 10, Article 4, Chapter 5 of this Code; or

(6) the condition causing the public nuisance has been determined by a Director to be so serious or harmful that immediate abatement is required.

*("Time Frame for Compliance: Time Frame One " added (portions previously contained in former Sec. 13.0305(e)) on 8–10–1993 by O–17956 N.S.)*
*(Amended 2-26-2007 by O-19579 N.S.; effective 3-28-2007.)*

## §12.0605 Time Frame for Compliance: Time Frame Two

Time Frame Two shall apply to all other public nuisances not listed under Time Frame One. Time Frame Two shall require the Responsible Person to abate the public nuisance within a minimum of fourteen (14) calendar days from the date of service of the Abatement Notice. The Director may establish a longer time frame as is reasonable or necessary to complete the abatement.
*("Time Frame for Compliance: Time Frame Two" added (portions previously contained in former Sec. 13.0305(e)–(f)) on 8–10–1993 by O–17956 N.S.)*
*(Amended 2-26-2007 by O-19579 N.S.; effective 3-28-2007.)*

## §12.0606 Right to Appeal Under Time Frame One or Time Frame Two

(a) The Responsible Person may appeal the Abatement Notice within ten (10) calendar days from the date of service of the Abatement Notice by filing a written request to appeal to a Director. If the Abatement Notice includes the assessment of an Abatement Penalty, the fine shall automatically be stayed and be part of the appeal.

(b) Upon receiving a written request to appeal an Abatement Notice, a Director shall follow the procedures set forth in Division 5, Article 2 of Chapter 1 and request the City Manager to schedule a hearing to hear any objections why abatement should not be ordered and effected. If the Abatement Notice includes the assessment of an Abatement Penalty, the Enforcement Hearing Officer shall also consider evidence that is relevant to the following issues: (1) whether the Responsible Person caused or maintained a public nuisance on

the dates specified in the Notice and Order; and (2) whether the amount of penalties assessed by the Director was reasonable.

(c) Abatement shall not proceed until the Enforcement Hearing Officer issues an order, unless the Director concludes that an imminent threat to the public's health and safety exists.

(d) If the Enforcement Hearing Officer issues an order confirming the existence of a public nuisance, the City may immediately abate the public nuisance pursuant to the procedures of this Division. The Hearing Officer's decision is the final administrative decision and shall become effective upon the date of the order.

*("Abatement of a Public Nuisance by the City" added (portions previously contained in former Sec. 13.0305(g)–(j)) on 8–10–1993 by O–17956 N.S.)*
*(Amended and retitled on 2-26-2007 by O-19579 N.S.; effective 3-28-2007.)*

## §12.0607 Abatement Under Time Frame One and Time Frame Two

The City may abate the condition causing the public nuisance in the following circumstances:

(a) the Responsible Person fails to abate the public nuisance as required by the Abatement Notice and an appeal has not been timely filed; or

(b) an *Administrative Enforcement Order* has been issued confirming the existence of a public nuisance after an appeal by the Responsible Person.

*(Added by renumbering portions from 12.0604 on 2-26-07 by O-19579 N.S.; effective 3-28-2007.)*

## §12.0608 Abatement of a Public Nuisance by the City

(a) Once a Director follows the procedures set forth in this Division, the public nuisance may be abated by City personnel or by a private contractor.

(b) City personnel or a private contractor can enter upon private property in a reasonable manner to abate the public nuisance as specified in the Abatement Notice or Abatement Order.

(c) If the Responsible Person abates the public nuisance before the City performs the actual abatement pursuant to an Abatement Notice or Abatement Order, the Director may still assess all costs incurred by the City at that point against the Responsible Person pursuant to the provisions set forth in Division 3, Article 3 of Chapter 1 of this Code.

(d) When abatement is completed, a report describing the work performed and an itemized account of the total abatement costs shall be prepared by the Director. The report shall contain the names and addresses of the Responsible Persons of each parcel, the tax assessor's parcel number and a legal description of the property.

(e) The Director shall request the City Manager to schedule a confirmation of costs hearing pursuant to Section 13.0302 of this Chapter, unless waived in writing by all Responsible Persons.

(f) All administrative and actual costs incurred by the City in abating the public nuisance may be assessed and recovered against the Responsible Person pursuant to the provisions set forth in Division 3, Article 3 of Chapter 1. Costs shall include, but are not limited to: staff time to investigate and document violations; laboratory, photographic, and other expenses incurred to document or establish the existence of a violation; and scheduling and processing of the administrative hearing and all related actions. Any determination that documented costs are not reasonable must be supported by written findings.

*(Added by renumbering portions from 12.0606 on 2-26-07 by O-19579 N.S.; effective 3-28-2007.)*

## §12.0609 Abatement Penalty

(a) In addition to recovering the costs of abatement, the Director may also assess an Abatement Penalty against the Responsible Person for creating or maintaining a public nuisance. The penalty shall be assessed pursuant to the administrative procedures provided in this section.

(b) Each and every day the public nuisance exists constitutes a separate and distinct violation.

(c) An Abatement Penalty may be assessed irrespective of whether the Responsible Person abates the public nuisance within the Time Frame specified in the Notice and Order of Abatement.

(d) An Abatement Penalty may be assessed by means of a Notice and Order of Abatement issued by the Director or affirmed by an Enforcement Hearing Officer. Abatement penalties may be recovered by assessment of a Code Enforcement Lien pursuant to Division 2 of Article 3 of Chapter I or by a subsequent legal action brought by the City Attorney.

(e) Abatement penalties for causing or maintaining a public nuisance shall be assessed at a daily rate determined by the Director or Enforcement Hearing Officer pursuant to the criteria listed in section 12.0705 of this Division. The maximum rate shall be $2,500 per violation. The maximum amount of civil penalties shall not exceed $200,000 per parcel or structure for any related series of violations.

*(Added 2-26-2007 by O-19579 N.S.; effective 3-28-2007.)*

## §12.0610 Determination of Abatement Penalties

(a) In determining the initial date when abatement penalties shall accrue, the Director may consider the date when the Department first discovered the public nuisance.

(b) The assessment of abatement penalties shall end when all action required by the Notice and Order of Abatement has been completed.

(c) In determining the amount of the abatement penalty to be assessed on a daily rate, the Director may consider some or all of the following factors:

(1) The duration of the public nuisance.

(2) The frequency or recurrence of the public nuisance at the property.

(3) The nature and seriousness of the public nuisance.

(4) Crime statistics related to the public nuisance.

(5) The amount of times the City may have abated the property in the past.

(6) The estimated cost of abatement.

(7) The good faith effort by the Responsible Person to abate the public nuisance.

(8) The economic impact of the penalty on the Responsible Person.

(9) The impact of the public nuisance upon the community.

(10) Any other factors that justice may require.

(d) The City Manager has the authority to establish a penalty schedule for a Director to use as a guideline in determining the amount of abatement penalties in appropriate cases. The Manager shall also establish procedures for the use of this penalty schedule.

*(Added 2-26-2007 by O-19579 N.S.; effective 3-28-2007.)*

**§12.0611 Appeal of Abatement Penalty**

An appeal of an Abatement Penalty shall follow the procedures set forth in Division 5, Article 2 of Chapter 1.

*(Added 2-26-2007 by O-19579 N.S.; effective 3-28-2007.)*

**§12.0612 Administrative Costs**

A Director or Enforcement Hearing Officer is authorized to assess all reasonable costs. Costs may include, but are not limited to: staff time to investigate and document violations; laboratory, photographic, and other expenses incurred to document or establish the existence of a violation; and scheduling and processing of the administrative hearing and all actions. Any determination that documented costs are not reasonable must be supported by written findings.

*(Added 2-26-2007 by O-19579 N.S.; effective 3-28-2007.)*

**§12.0613 Abatement Hearing**

The procedures for the abatement hearing are the same as the hearing procedures set forth in Division 4 of Article 2 of Chapter 1.

*(Added 2-26-2007 by O-19579 N.S.; effective 3-28-2007.)*

**§12.0614 Allocation of Abatement Penalty**

Abatement penalties collected pursuant to this Division shall be deposited in the civil penalties fund established pursuant to Section 13.0402 of this Code.

*(Added 2-26-2007 by O-19579 N.S.; effective 3-28-2007.)*

## Article 2: Code Enforcement
## Judicial and Administrative Remedies

### Division 7: Summary Abatement
*("Summary Abatement"*
*added 8–10–1993 by O–17956 N.S.)*

### §12.0701 Summary Abatement

Division 7 of Article 2 of Chapter 1 of this Code governs the procedures relating to summary abatement of public nuisances.
*("Summary Abatement" added 8–10–1993 by O–17956 N.S.)*

### §12.0702 Authority

(a) Whenever a Director determines that an imminent life safety hazard exists that requires immediate correction or elimination, the Director may exercise the following powers without prior notice to the Responsible Person:

(1) Order the immediate vacation of any tenants and prohibit occupancy until all repairs are completed; or

(2) Post the premises as unsafe, substandard or dangerous; or

(3) Board, fence or secure the building or site; or

(4) Raze and grade that portion of the building or site to prevent further collapse and remove any hazard to the general public; or

(5) Make any minimal emergency repairs as necessary to eliminate any imminent life safety hazard; or

(6) Take any other action as appropriate under the circumstances.

(b) A Director is also authorized to exercise any summary abatement powers listed in this section to remove items placed or stored on City property, sidewalks or public rights-of way.

*(Renumbered from Sec. 13.0306, retitled to "Authority" and amended 8–10–1993 by O–17956 N.S.)*
*(Amended 2-26-2007 by O-19579 N.S.; effective 3-28-2007.)*

## §12.0703 Procedures

(a) A Director shall pursue only the minimum level of correction or abatement as necessary to eliminate the immediacy of the hazard. Costs incurred by the City during the summary abatement process shall be assessed and recovered against the Responsible Person through the procedures outlined in Section 12.0606 of Division 6 of this Chapter.

(b) The Director may also pursue any administrative or judicial remedy to abate any remaining public nuisance.

*("Procedures" added 8–10–1993 by O–17956 N.S.)*