

1 **Article 14. Hearings, Appeals and Other Procedures**

2 **Section 1401 Purpose**

3 This Article addresses procedures for hearings and appeals before the Board and to the
4 courts. Public hearings, hearings on applications, and petitions and hearings on appeals
5 are addressed.

6 **Section 1402 Powers Regarding Hearings**

7 The Board, the Administrator, and/or their designees, shall have the complete
8 jurisdiction, power, and authority to conduct a contested or public hearing, including:
9 (a) Determine the appropriate nature and means of transmittal of notices and filings;
10 (b) Administer oaths and affirmations;
11 (c) Issue and enforce subpoenas compelling the attendance of a person and/or the
12 presentation of things with civil penalties;
13 (d) Rule on offers of proof and receive relevant evidence;
14 (e) Take depositions or have depositions taken;
15 (f) Regulate the course of the hearing;
16 (g) Hold conferences for the settlement or simplification of the issues;
17 (h) Dispose of procedural requests or similar matters;
18 (i) Make or recommend orders or decisions;
19 (j) Take or review summary action; and
20 (k) Take such other action authorized by agency rule or regulation.

21 **Section 1403 Hearings**

- 22 (a) When a contested case hearing on an application is required, an applicant and/or an
23 appellant to the Board, and/or a person with an interest in an application or an
24 appeal, shall be entitled to notice and an opportunity to be heard.
25 (b) When an application is subject to a hearing by the Board, the hearing shall be
26 scheduled so there is sufficient time for a report of the Administrator to be
27 prepared and for the public notification requirements to be satisfied.
28 (c) The Board may schedule public hearings as appropriate or required.

29 **Section 1404 Notice and Interested Persons**

30 When notice is required, the Administrator and/or the Board shall provide for notice in
31 accordance with this Section.

- 32 (a) **Type of Notice.** Notice shall be given in a way, or ways, calculated to provide
33 actual, cost-effective notice, including by electronic means, posting, newspaper
34 publication, or by personal delivery. The Board shall by regulation determine the
35 notice required for each type of application, approval, or petition.
36 (b) **Content.** A notice for hearing shall include the nature of the request, the location
37 of the property, the time and place of hearing, and the address, e-mail address, and
38 phone number of the Board.
39 (c) **Recipients**
40 (1) Notice shall be given to each interested person.
41 (2) The Administrator shall determine who qualifies as an interested person
42 affected by a matter, including an application or appeal. In making such
43 determination, s/he shall consider:
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- 1 (A) Proximity;
 2 (B) Direct impacts, including drainage, views, noise, and air quality;
 3 (C) Indirect impacts, including public uses;
 4 (D) Financial effects; and
 5 (E) Extent to which the person represents an important interest that
 6 would otherwise not be heard.
- 7 (3) The Administrator shall provide for creation of a service list.
 8 (4) An interested person shall include at least each owner and/or lessee and
 9 sub-lessee subject to the application, and each owner and lessee of a lot
 10 within 300 ft of the subject property.
- 11 (d) **Mailed Notice.** When a notice is mailed, it shall be mailed at least 14 days (2
 12 weeks) before the public hearing. Notice shall be deemed mailed by its deposit in
 13 the United States mail, first class, properly addressed, postage paid.
- 14 (e) **Means for Giving Notice.** The Administrator may require an applicant or
 15 appellant to supply the means to give notice, including a database listing of all
 16 interested persons, first class stamped addressed envelopes, the costs of newspaper
 17 publication, and/or the resources to provide for hand-delivery.
- 18 (f) **List of Contact Information.** The Administrator may require that an applicant or
 19 appellant shall sign and provide to the Administrator an affidavit identifying all
 20 interested persons including contact information for each interested person,
 21 including name and address.
- 22 (g) **Content of Notice.** When notice is published, the Administrator shall prepare the
 23 content of the notice and provide for publishing the notice in a newspaper of
 24 general circulation two weeks prior to the public hearing.
- 25 (h) **Posted Notice**
 26 (1) When notice is posted, the Administrator shall provide for posting the
 27 notice at least 14 days (2 weeks) before the public hearing. The notice
 28 shall be on a weatherproof sign.
 29 (2) The posting shall be in a conspicuous location on the subject property.
 30 Where the property does not have frontage on a public street, the
 31 posting shall also be on the nearest public street, with a notation
 32 indicating the subject property's address, or if no address, its location,
 33 and the direction and distance to it.

34 Section 1405 Decisions

35 The decision maker on a matter shall make all deliberate effort to issue a decision, or
 36 recommended decision, within 56 days (8 weeks) of the availability of the record unless
 37 stated otherwise specifically in this Law.

38 Section 1406 Board Review of Administrator Decisions

- 39 (a) A decision of the Administrator shall be final unless:
 40 (1) The Board, on its own motion, decides to review the decision within 35
 41 days; or
 42 (2) An appeal is taken to the Board within 35 days of the decision.
- 43 (b) The Board shall provide, by regulation, for appeal procedures.
- 44 (c) An appeal of the Administrator's action or inaction shall be treated as an appeal,
 45 and not as an original action, and matters therein shall not be subject to discovery.
 46 Except that the Board may decide for good cause to take additional evidence.
- 47 (d) The Board shall decide an appeal within 56 days (8 weeks) of receiving the record.
- 48 (e) The Board may, on good cause shown, extend the decision period.

1 **Section 1407 Appeals of Board Decisions.**

- 2 (a) An appeal of the Board's action or inaction shall be conducted pursuant to the
3 APA.
4 (b) An appeal of the Board's action or inaction shall be treated as an appeal, and not as
5 an original action, and matters therein shall not be subject to discovery, except for
6 those limited matters that the reviewing court has by written order set for a trial de
7 novo.

8 **Section 1408 Bond Not Required**

9 Bond or other security shall not be required of the Board, including:

- 10 (a) To enforce the provisions of this Law and its regulations;
11 (b) To restrain any violation thereof; or
12 (c) On appeal.

13 **Section 1409 Abating Unauthorized Uses and Public Nuisances at**
14 **Owner's Expense**

- 15 (a) **Removal of an Unauthorized Use or Public Nuisance**
16 (1) In order to remove an unauthorized use or public nuisance, the
17 Administrator shall use the standard removal procedure described
18 below, Subsection (c) of this Section, except as provided otherwise.
19 (2) Except, if the Board finds that exigent circumstances require expedited
20 removal of an unauthorized use or public nuisance the Administrator
21 may utilize the expedited procedure described in Subsection (c) of this
22 Section. In order to find exigent circumstances the Board must certify
23 that expedited removal is required to:
24 (A) Respond to a health or safety emergency;
25 (B) Eliminate a condition creating substantial immediate risk of harm;
26 (C) Protect public property from a substantial immediate risk of harm;
27 (D) Allow works designed to protect the public health or safety; or
28 (E) Advance a public works project designed to benefit the public
29 safety, health or welfare and that, on balance, the public benefits in
30 proceeding on an expedited basis outweigh the costs of following
31 the standard removal procedure.
- 32 (b) **Administrative Remedies**
33 (1) **Removal**
34 (A) An unauthorized use or public nuisance shall be removed and
35 abated, and, upon the Administrator's determination, at the
36 owner's expense.
37 (B) An unauthorized use or public nuisance which provides a serious
38 and immediate threat to the public health, safety or welfare shall
39 be removed immediately and, upon the Administrator's
40 determination, at the owner's expense.
41 (C) The Administrator may order the person responsible for an
42 unauthorized use or public nuisance to remove and abate, or the
43 Administrator may remove and abate, through: his/her staff; by
44 agreement for the use of the staff of another instrumentality of the
45 Commonwealth government; and/or through a contractor.
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- (2) **Costs, Recovery, or Compensation**
 - (A) The Administrator or the Board may recover the costs of abatement from the person who caused the unauthorized use or public nuisance, and/or may secure a lien against the offending real estate, if any, in the amount thereof.
 - (B) The Administrator or the Board may compensate for injury to a person's property proximately caused by negligence, recklessness, or excessive removal or abatement that the Administrator or the Board has caused, as follows:
 - (i) Paying money;
 - (ii) Repairing the injury and/or replacing the injured property;
 - (iii) replacing the injured property with property of substantially similar value and use; and/or
 - (iv) Providing a formal apology
 - (v) Except that there shall be no compensation for such injury to: a public nuisance; unauthorized use, structure or sign; or other zoning violation.
 - (3) **Expedited entry upon private land.** If the Board finds exigent circumstances, as provided in Subsection (a)(2) of this Section, and notice is given thereafter pursuant to Subsection (c)(1)(A) of this Section, the Administrator, may enter upon private land on an expedited basis.
 - (c) **Administrative Procedure for Removal of Unauthorized Use or Public Nuisance and for Suspensions, Revocations and Fines**
 - (1) **Standard procedure for removal**
 - (A) Except as otherwise provided in this Law, the Administrator shall provide a person with notice and the opportunity for a hearing prior to action to remove an unauthorized use or public nuisance. Such hearing shall be conducted in order to provide a speedy, final, and effective determination of the limited matters governed by this Law.
 - (B) Notice. Ordinarily reasonable advance notice shall be given to the last known address of the owner of, or other person responsible for, the unauthorized use or public nuisance and shall be posted on or near the unauthorized use or public nuisance in a conspicuous place.
 - (C) Hearing. Except as otherwise provided in this Law, the Administrator shall provide a person with the opportunity for a contested case hearing that comports with the requirements of the APA; and
 - (D) The Administrator shall determine with respect to the action:
 - (i) The location of the unauthorized use, structure, or sign, or public nuisance which gives rise to the proposed action;
 - (ii) A short summary of the action and the reasons for it;
 - (iii) Whether the location is in a public right-of-way, or whether another person has superior right to the interest in real property on which the unauthorized use or public nuisance is present;
 - (iv) The nature of the person's property interest;
 - (v) The public need for removal of the unauthorized use or public nuisance;

- 1 (vi) The Government's related proposed works, if any;
 2 (vii) The schedule for the related proposed works, if any;
 3 (viii) The respective costs of government action and/or inaction;
 4 (ix) The effect of abatement on the person's property;
 5 (x) The public interest for and/or against the abatement, if
 6 any;
 7 (xi) The damages and/or other injuries to the parties, if any;
 8 and
 9 (xii) Whether the Administrator shall take the proposed action.
 10 (E) The Administrator or other government employee having personal
 11 knowledge of the relevant circumstances shall attest by signature
 12 that the determination is true and correct to the best of his/her
 13 knowledge, information and/or belief.
- 14 (2) **Summary pre-removal hearing**
 15 (A) The Board or Administrator may summarily order removal as
 16 follows.
 17 (B) The Board first determines that:
 18 (i) Expedited removal is required;
 19 (ii) But the time allows and the public safety, health and
 20 welfare will not be adversely affected if a limited hearing
 21 is scheduled and held.
 22 (C) The Administrator may hold a summary pre-removal hearing, the
 23 issues of which shall be limited to:
 24 (i) The location of the unauthorized use or public nuisance
 25 which gives rise to the proposed action;
 26 (ii) A short summary of the action and the reasons for it;
 27 (iii) Whether the location is in a public ROW, or whether
 28 another person has superior right to the interest in real
 29 property on which the unauthorized use or public nuisance
 30 is present;
 31 (iv) The public need for removal of the unauthorized use or
 32 public nuisance;
 33 (v) The schedule for the government's related proposed
 34 works, if any;
 35 (vi) The effect of abatement on the person's property; and
 36 (vii) Whether the Administrator shall take the proposed action.
 37 (D) The Administrator shall give the best notice which s/he determines
 38 feasible in the circumstances;
 39 (E) The Administrator shall provide the opportunity for a full,
 40 contested case hearing after the abatement is undertaken.
- 41 (3) **Expedited procedure for abatement before a hearing**
 42 (A) Upon determination that exigent circumstances require expedited
 43 action, the Administrator may immediately, without a pre-hearing,
 44 abate the unauthorized use or public nuisance if s/he gives the best
 45 notice which s/he determines feasible in the circumstances.
 46 (B) Thereafter, s/he shall provide as soon as convenient to the owner of, or
 47 other person responsible for, the unauthorized use or public nuisance,
 48 and/or other claimant, the opportunity for a post-abatement hearing
 49 that otherwise follows the standard procedure of this Law for
 50 contested case hearings.
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- 1 (4) **Summary procedures for suspending or revoking a permit**
- 2 (A) Upon the determination that exigent circumstances require
- 3 expedited action, the Administrator may immediately, without a
- 4 pre-hearing, suspend or revoke a permit related to the unauthorized
- 5 use or public nuisance if s/he gives the best notice which s/he
- 6 determines feasible in the circumstances.
- 7 (B) Thereafter, s/he shall provide as soon as convenient to the owner
- 8 of, or other person responsible for, the unauthorized use or public
- 9 nuisance, and/or other claimant, the opportunity for a hearing that
- 10 otherwise follows the standard procedure of this Law for contested
- 11 case hearings.
- 12 (5) **Waiver.** Failure to appear at the contested case hearing, or timely effort
- 13 to secure an excused absence and rescheduled hearing, shall waive the
- 14 right to contest the action.
- 15 (6) **Immediate effect.** A determination and/or order of the Administrator
- 16 shall take immediate effect unless stayed by the Administrator, the
- 17 Board or a reviewing court.
- 18 (7) **Notice of effect and appellate procedures.** The Administrator shall, in
- 19 his/her final order or other final determination, give notice to each
- 20 affected party of the party’s right to appeal, the place/address of the
- 21 appeal, and the time within which the appeal must be filed.
- 22 (8) If no internal administrative appeal to the Board is timely filed, and no
- 23 good cause is shown to excuse the failure to appeal timely, the
- 24 determination of the Administrator shall become final.
- 25 (d) **Enforcement of Penalties**
- 26 (1) The Administrator and the Board may enforce penalties to the extent
- 27 provided by law.
- 28 (2) The Administrator and the Board shall secure the assistance of the
- 29 Attorney General to implement penalties through an action in the
- 30 courts.

31 **Section 1410 Court Actions**

- 32 (a) In the case of a violation, the Board, the Administrator, or any person who would
- 33 be damaged by such violation may institute appropriate court action for damages
- 34 or for injunctive relief, including an order that would cause a structure or use to be
- 35 suspended, permanently stopped, vacated or removed.
- 36 (b) In the enforcement of this Law in the courts, the Administrator shall exercise all
- 37 the powers authorized by law to ensure compliance with and abate any violation of
- 38 this Law.
- 39 (c) The Attorney General or the Board’s counsel shall enforce this Law in the courts,
- 40 except in cases involving small claims, in which the Administrator or his designee
- 41 may enforce the Law in the courts.

42 **Section 1411 Criminal and Civil Penalties**

43 See the Zoning Code (2 CMC §7254).

44 **Section 1412 Remedies by Private Action**

45 See the Zoning Code (2 CMC §7201 et seq.).

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1 **Section 1413 Liens and Foreclosure**

- 2 (a) An unpaid fee, fine or other penalty applicable to a property shall be a lien on the
3 property.
4 (b) If the property is transferred, the lien shall be paid first, by proceeds from the
5 exchange. The Board may further enforce payment by judgment lien to be satisfied
6 upon sale or lease of the property.

7 **Section 1414 Disposition of Fines and Fees Collected**

- 8 (a) All fines and fees collected pursuant to this Law shall be expended for the
9 operations of the Board and the Administrator.
10 (b) The Board shall report annually to the Legislature on the amount of fines and fees
11 collected, and the cost of the zoning program.
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