

## POULSBO DISTRIBUTION SCHEDULE

### ORDINANCE NO. 2013-05

**SUBJECT:** Code Enforcement

#### CONFORM AS TO DATES & SIGNATURES

- (X) Filed with the City Clerk: 03/06/2013
- (X) Passed by the City Council: 03/13/2013
- (X) Signature of Mayor
- (X) Signature of City Clerk
- (X) Publication: 03/22/2013
- (X) Effective: 03/27/2013
- ( ) Recorded: N/A

#### DISTRIBUTED COPIES AS FOLLOWS:

- (X) NK Herald: Emailed by jb
- (X) Code Publishing
- ( ) City Attorney
- ( ) Civil Service Commission and/or Sec/Chief Examiner
- ( ) Clerk's Department:
- ( ) City Council
- ( ) Finance:
- (X) Posted to Library Drive and Website

Jill A. Boltz  
City Clerk

March 25, 2013  
Date

**ORDINANCE NO. 2013-05**

AN ORDINANCE OF THE CITY OF POULSBO, WASHINGTON, ENACTING A GENERAL PENALTY CHAPTER OF THE POULSBO MUNICIPAL CODE; AMENDING CHAPTERS 2.16, 9.50, 15.04, 15.05, 16.20, 16.24, AND 17.24, OF THE POULSBO MUNICIPAL CODE TO AMEND THE PENALTY PROVISIONS THEREIN; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

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**WHEREAS**, the City of Poulsbo seeks to protect and promote the public health, safety and welfare of the community by adopting and implementing a workable and efficient code enforcement system; and

**WHEREAS**, the City desires to formally adopt a general penalty chapter of the Poulsbo Municipal Code, and specifically a more detailed procedure for issuing notices of infraction in accordance with Chapter 7.80 of the Revised Code of Washington; and

**WHEREAS**, the City desires to utilize a public nuisance regulatory framework and criminal penalties as additional enforcement mechanisms, now, therefore,

THE CITY COUNCIL OF THE CITY OF POULSBO, WASHINGTON, DO ORDAIN AS FOLLOWS:

**Section 1. Chapter 1.16 Adopted.** A new Chapter 1.16 of the Poulsbo Municipal Code is hereby adopted to read as set forth fully in Exhibit A.

**Section 2. Amended - Municipal Court.** Chapter 2.16 of the Poulsbo Municipal Code is hereby amended to read as follows:

**2.16.020 Jurisdiction.**

A. The municipal court shall have exclusive original jurisdiction over traffic infractions arising under city ordinances and exclusive original criminal jurisdiction of all violations of city ordinances duly adopted by the city of Poulsbo.

B. The municipal court shall have original jurisdiction of all other actions brought to enforce or recover license penalties or forfeitures declared or given by such ordinances or by state statutes.

C. The municipal court is empowered to forfeit cash bail or bail bonds and issue execution thereon, and in general to hear and determine all causes, civil or criminal, including traffic infractions, arising under such ordinances and to pronounce judgment in accordance therewith.

D. The municipal court has the authority to hear and determine pursuant to Chapter 7.80 RCW civil infractions that are established by the Poulsbo Municipal Code and that are committed within the jurisdiction of the City of Poulsbo.

**2.16.110 Sentences—Fines—General penalty.**

A. In all cases of conviction, unless otherwise provided in Chapters 3.30 through 3.74 RCW as now or hereafter amended, where a jail sentence is given to the defendant, execution shall issue accordingly, and where the judgment of the court is that the defendant pay a fine and costs, the defendant may be committed to jail until the judgment is paid in full.

B. A defendant who has been committed shall be discharged upon the payment for such part of the fine and costs as remains unpaid after deducting from the whole amount any previous payment, and after deducting the amount allowed for each day of imprisonment, which amount shall be the same and computed in the same manner as provided for superior court cases in RCW 10.82.030 and 10.82.040, as now or hereafter amended. In addition, all other proceedings in respect of such fine and costs shall be the same as in like cases in superior court.

C. Every person convicted by the municipal court of a violation of the criminal provisions of an ordinance for which no punishment is specifically prescribed in the ordinance shall be punished by a fine of not more than five thousand dollars or imprisonment ~~in the city jail~~ for a period not to exceed ~~one year~~ 364 days, or both such fine and imprisonment.

**Section 3. Amended - Public Nuisance.** Section 9.50.070 of the Poulsbo

Municipal Code is hereby amended to read as follows:

**9.50.070 Public nuisance—Violation—Penalty.**

A. Any violation of any provision of this chapter constitutes a civil ~~violation~~ infraction for which a monetary penalty of two hundred fifty dollars may be assessed in accordance with Chapter 1.16 PMC and abatement may be required as provided therein. Each day that a violation exists constitutes a separate offense.

~~B. In addition to or as an alternative to any other penalty provided in this chapter or by law, any person who violates any provision of this chapter shall be guilty of a misdemeanor.~~

BE. As an alternative to any other penalty provided in this chapter, pursuant to a violation of Section 9.50.050(O), abatement proceedings may be instituted under Chapter 7.43 RCW as enacted or hereinafter amended.

**Section 4. Amended - City Construction Code.** Section 15.04.230 of the Poulsbo

Municipal Code is hereby amended to read as follows:

**15.04.230 Notice of violationinfrac~~tion~~.**

A. Whenever the enforcement officer determines that any activity, condition, structure, construction, building or use exists or is being conducted in a manner which does not conform to the provisions of this chapter, or any code adopted herein, the enforcement officer may issue a notice of ~~violation~~infrac~~tion~~ in accordance with Chapter 1.16 PMC. The notice shall ~~specifically indicate:~~

- ~~1. Which provisions of this chapter, or the codes adopted herein, are being violated;~~
- ~~2. What steps are necessary to correct the violation;~~
- ~~3. The time in which the violation is to be corrected;~~
- ~~4. A statement that all work, except work authorized by the enforcement officer to correct the violation shall be stopped; and~~
- ~~5. That failure to comply with the notice may subject the owner or person causing the violation to civil and criminal penalties.~~

~~B. The enforcement officer shall:~~

- ~~1. Leave a copy of the notice of violation with the occupant or person in charge of the property, or post it in a conspicuous place on the subject property if no one is present, or send a copy of the notice by certified mail, return receipt requested, to the occupant or person in charge of the property; and~~
- ~~2. Send a copy of the notice by certified mail, return receipt requested, to the owner of the subject property.~~

**Section 5. Amended - Outdoor Lighting Regulations.** Section 15.05.090 of the

Poulsbo Municipal Code is hereby amended to read as follows:

**15.05.090 Notice of violation.**

A. Whenever the building inspector or his designee determines that a violation of this chapter has occurred, the building inspector or his designee may issue a notice of violation infracton in accordance with Chapter 1.16 PMC. The notice shall specifically indicate:

- ~~1. Which provisions of this chapter are being violated;~~
- ~~2. What steps are necessary to correct the violation;~~
- ~~3. The time in which the violation is to be corrected;~~
- ~~4. A statement that all work, except work authorized by the planning director or his designee to correct the violation, shall be stopped; and~~
- ~~5. That failure to comply with the notice may subject the owner or person causing the violation to civil and criminal penalties.~~

B. The building inspector or his designee shall:

- ~~1. Leave a copy of the notice of violation with the occupant or person in charge of the property, or post it in a conspicuous place on the subject property if no one is present, or send a copy of the notice by certified mail, return receipt requested, to the occupant or person in charge of the property; and~~
- ~~2. Send a copy of the notice by certified mail, return receipt requested, to the owner of the subject property.~~

**Section 6. Amended - Critical Areas.** Section 16.20.150 of the Poulsbo Municipal

Code is hereby amended to read as follows:

**16.20.150 Enforcement.**

A. Authorization. The director is authorized to enforce this chapter, and to designate city employees as authorized representatives of the city to investigate suspected violations of this chapter, and to issue ~~orders to correct violations and~~ notices of infractions. In the event of a violation of this chapter, the director shall be authorized to require complete or partial restoration of the critical area including compensatory mitigation to rectify any net loss to the structure and function of the critical area.

B. Right of Entry. When it is necessary to make an inspection to enforce the provisions of this chapter, or when the director or his/her designee has

reasonable cause to believe that a condition exists on property which is contrary to, or in violation of, this chapter, the director or his/her designee may enter the property to inspect.

C. **Stop Work Orders.** Whenever any work or activity is being done contrary to the provisions of this chapter or conditions of an approved permit, the director or his/her designee may order the work stopped by notice in writing, served on any persons engaged in doing or causing such work to be done, or by posting the property, and any such persons shall forthwith stop such work or activity until authorized by the director or his/her designee to proceed. A failure to comply with a stop work order shall constitute a gross misdemeanor.

D. **Penalties.** The violation of any provision of this chapter or permit condition, where such violation constitutes a first offense, shall constitute a civil ~~and criminal~~ infraction. The director may issue a notice of infraction in accordance with Chapter 1.16 PMC. Any person who violates or fails to comply with any of the provisions of this chapter or permit conditions, where such person has been adjudged by the Poulso Municipal Court to have committed a previous violation of such provision, shall be guilty of a misdemeanor. Each violation shall constitute a separate ~~infraction~~ offense for each and every day or portion thereof during which the violation is committed, continued or permitted. ~~Every person convicted by the municipal court of a violation of the criminal provisions, or the provisions of this chapter, shall be punished by a fine of not more than five thousand dollars or imprisonment in the city jail for a period not to exceed one year, or both such fine and imprisonment.~~

E. **Imminent and Substantial Dangers.** Notwithstanding any provisions of these regulations, the director or his/her designee may take immediate action to prevent an imminent and substantial danger to the public health, welfare, safety or the environment by the violation of any provision of this chapter.

**Section 7. Amended - Public Tree Ordinance.** Chapter 16.24 of the Poulso

Municipal Code is hereby amended to read as follows:

**16.24.110 Violations and penalties.**

A. Any planting, destruction, pruning, or maintenance, or lack thereof that does not comply with this chapter or the urban forestry standards and specifications manual is a violation of this chapter and civil infraction. Upon a determination by the Poulso municipal court that such infraction has been committed, a civil penalty in an amount not to exceed ~~one thousand~~ two hundred fifty dollars may be imposed. Each separate violation shall be deemed a

separate offense. Each tree damaged or destroyed as a result of pruning or removal shall constitute a separate offense. Failure to comply with a condition of approval to plant or prune shall constitute a separate infraction for each day the failure to comply continues.

B. Violation of any part of this chapter is hereby declared to be a public nuisance and may be abated by the appropriate proceedings under state law.

C. Upon request of the mayor and city council, the city attorney may institute appropriate action in any court of competent jurisdiction to seek injunctive or other relief to enforce the provisions of this chapter. This chapter is not intended to limit the city's remedies in any way and the city reserves the right to pursue any and all such remedies, including, but not limited to, the right to seek treble damages and attorney's fees as provided in Chapter 64.12 RCW.

**Section 8. Amended - Subdivisions.** Section 17.24.050 of the Poulsbo Municipal Code is hereby amended to read as follows:

**17.24.050 Violations—Penalty.**

A. Any person, firm, corporation or association or any agent of any person, firm, corporation or association who violates any provision of this chapter shall be guilty of a gross misdemeanor and punishable by not more than six months in jail and a five hundred dollar fine. ~~Any person, firm or corporation, or association, or any agent of any person, firm, corporation, or association who knowingly violates any provision of this chapter relating to the sale, offer for sale, lease, transfer of any lot, tract or parcel of land, shall be guilty of a misdemeanor punishable by a fine of not more than five hundred dollars or six months in jail or both such fine and imprisonment and each sale, offer for sale, lease or transfer of each separate lot, tract or parcel of land in violation of any provision of this chapter shall be deemed a separate and distinct offense.~~

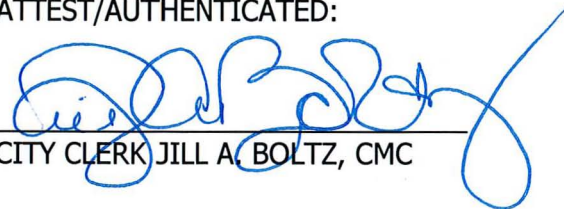
**Section 9. Severability.** If any section, sentence, clause or phrase of this ordinance or any code section adopted or amended hereby should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance or any code section adopted or amended hereby.

**Section 10. Effective Date.** This ordinance shall take effect and be in full force five (5) days after publication of the attached summary, which is hereby approved.

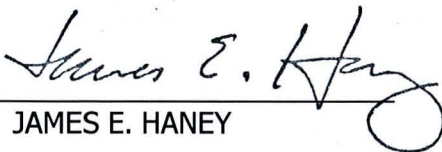
APPROVED:

  
MAYOR REBECCA ERICKSON

ATTEST/AUTHENTICATED:

  
CITY CLERK JILL A. BOLTZ, CMC

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY:

BY   
JAMES E. HANEY

FILED WITH THE CITY CLERK: 03/06/2013  
PASSED BY THE CITY COUNCIL: 03/13/2013  
PUBLISHED: 03/22/2013  
EFFECTIVE DATE: 03/27/2013  
ORDINANCE NO. 2013-05



SUMMARY OF ORDINANCE NO. 2013-05  
of the City of Poulsbo, Washington

On March 13, 2013, the City Council of the City of Poulsbo, Washington, approved Ordinance No. 2013-05, the main point of which may be summarized by its title as follows:

AN ORDINANCE OF THE CITY OF POULSBO, WASHINGTON, ENACTING A GENERAL PENALTY CHAPTER OF THE POULSBO MUNICIPAL CODE; AMENDING CHAPTERS 2.16, 9.50, 15.04, 15.05, 16.20, 16.24, AND 17.24, OF THE POULSBO MUNICIPAL CODE TO AMEND THE PENALTY PROVISIONS THEREIN; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

The full text of this ordinance will be mailed upon request.

DATED this 18th day of March, 2013

  
CITY CLERK, JILL BOLTZ, CMC

## **Exhibit A**

### **1.16.010 General penalties.**

Unless otherwise specified by City ordinance, anyone who violates the provisions of any ordinance shall be punished pursuant to the general penalty provision set forth below:

(1) Criminal Penalty. Any person violating any of the provisions of any ordinance of the City which is designated as a criminal offense shall be guilty of a misdemeanor or gross misdemeanor. Every person convicted of a gross misdemeanor shall be punished in accordance with RCW 9A.20.021(2) and as hereafter amended. Every person convicted of a misdemeanor shall be punished in accordance with RCW 9A.20.021(3) and as hereafter amended.

(2) Civil Penalty. Any person violating any of the provisions of any City ordinance, permit condition, or condition of a development agreement, which is not designated as a criminal offense, shall have committed a civil infraction. Unless otherwise provided, any such person shall be assessed a monetary penalty not to exceed \$250.00 for each day that the violation occurs.

### **1.16.020 Separate offense.**

Every person violating any of the provisions of any ordinance of the City is guilty of a separate offense for each and every day during any portion of which the violation is committed, continued or permitted by any such person.

### **1.16.030 Definitions.**

(1) "Code Enforcement Officer" shall mean any person authorized by a Director to enforce the provisions of this title.

(2) "Director" shall mean the Mayor, Planning Director, Public Works Director, or Parks and Recreation Director, and his or her designee(s), including the Code Enforcement Officer.

### **1.16.040 Enforcement authority.**

(1) The Director may call upon the Police or other appropriate City Departments to assist in enforcement.

(2) This chapter shall be enforced for the benefit of the health, safety, and welfare of the general public, and not for the benefit of any particular person or class of persons.

(3) It is the intent of this chapter to place the obligation of complying with its requirements upon the owner, occupier and/or other person responsible for any violation of the Poulsbo Municipal Code, and for compliance with the City's Shoreline Master Program.

(4) No provision of or any term used in this chapter is intended to impose any duty upon the City or any of its officers or employees which would subject them to damages in a civil action.

(5) The City's Code Enforcement Officer, in addition to any other City employee who may be authorized by the Director, is hereby specifically authorized to investigate code violations, issue and serve notices of infraction to enforce such violations, and to take any other enforcement action consistent with this chapter, Chapter 7.80 RCW, and the Infraction Rules for Courts of Limited Jurisdiction.

#### **1.16.050 Investigation and right of entry.**

Investigation and Right of Entry. The Director or Code Enforcement Officer may investigate any structure, condition, activity, or use, which the Director reasonably believes does not comply with the applicable standards and requirements of the Poulsbo Municipal Code. Upon presentation of proper credentials, the Director or Code Enforcement Officer may, with the consent of the occupant/tenant of a building or premises, or pursuant to a lawfully issued inspection warrant, enter, at reasonable times, any building or premises subject to the consent or warrant, in order to perform the duties imposed by this chapter.

#### **1.16.060 Voluntary correction.**

(1) Applicability. This section applies whenever the Director or Code Enforcement Officer determines that a civil infraction has occurred or is occurring.

(2) General. The Director or Code Enforcement Officer may attempt to secure voluntary correction by contacting the person responsible for the violation where possible, explaining the violation and requesting correction.

(3) Voluntary Correction Agreement. A voluntary correction agreement may be entered into between the person responsible for the violation and the city, acting through the applicable department director. The voluntary correction agreement is a contract between the city and the person responsible for the violation under which such person agrees to abate the violation within a specified time and according to specified conditions. The voluntary correction agreement shall include the following:

- a. The name and address of the person responsible for the violation; and
- b. The street address or a description sufficient for identification of the building, structure, premises, or land upon or within which the violation has occurred or is occurring; and
- c. A description of the violation and a reference to the provision(s) of the city ordinance or regulation which has been violated; and
- d. The necessary corrective action to be taken, and a date or time by which correction must be completed; and
- e. An agreement by the person responsible for the violation that the city may abate the violation and recover its costs and expenses and a monetary penalty as set forth in the agreement from the person responsible for the violation if terms of the voluntary correction agreement are not met; and

f. An agreement that by entering into the voluntary correction agreement the person responsible for the violation waives the right to an appeal of the violation and/or the required corrective action.

(4) Right to a Hearing Waived. The person responsible for the violation waives the right to an administrative appeal of the violation and the required corrective action upon entering into a voluntary correction agreement.

(5) Extension – Modification. An extension of the time limit for correction or a modification of the required corrective action may be granted by the applicable department director if the person responsible for the violation has shown due diligence and/or substantial progress in correcting the violation but unforeseen circumstances render correction under the original conditions unattainable.

(5) Abatement by the City. The city may abate the violation in accordance with this Chapter if the terms of the voluntary correction agreement are not met.

(6) Collection of Costs. If the terms of the voluntary correction agreement are not met the person responsible for the violation shall be assessed the monetary penalty set forth in the agreement commencing on the date set for correction and thereafter, plus all costs and expenses of abatement.

#### **1.16.070 Notice of infraction.**

(1) The following notice of infraction provisions are based upon and, in some cases, supplement Chapter 7.80 RCW and the Infraction Rules for Courts of Limited Jurisdiction (IRLJ). These provisions should be construed, whenever possible, to eliminate any conflict between this chapter, Chapter 7.80 RCW and the IRLJs.

(2) A notice of infraction may be issued by the Director or Code Enforcement Officer when a civil infraction occurs in the officer's presence. In addition, the municipal court may issue a notice of infraction if the Director or Code Enforcement Officer files with the court a written statement that a civil infraction was committed in the officer's presence or that the officer has reasonable cause to believe that a civil infraction was committed.

(3) The notice of infraction form shall contain the following information on the copy given to the defendant:

(a) The name, address, and phone number of the court where the notice of infraction is to be filed;

(b) The infraction, which the defendant is alleged to have committed, including the accompanying code citation or ordinance number;

(c) The date, time, and place the infraction occurred;

(d) The date the notice of infraction was issued;

- (e) The name of the Code Enforcement Officer or other person issuing the infraction;
- (f) A statement that the notice of infraction represents a determination that a civil infraction has been committed by the person named in the notice and that the determination is final unless contested;
- (g) A statement that a civil infraction is a noncriminal offense for which imprisonment may not be imposed as a sanction;
- (h) A statement of the monetary penalty established for the civil infraction;
- (i) A statement of the options provided for responding to the notice and the procedures necessary to exercise these options;
- (j) A statement that at any hearing to contest the determination the City has the burden of proving, by a preponderance of the evidence, that the civil infraction was committed and that either party may subpoena witnesses, including the person who issued the notice of infraction;
- (k) A statement that at any hearing requested for the purpose of explaining mitigating circumstances surrounding the commission of the civil infraction, the defendant will be deemed to have committed the civil infraction and may not subpoena witnesses;
- (l) A statement that the defendant must respond to the notice of infraction within 15 days of issuance;
- (m) A statement that a mailed response must be mailed not later than midnight on the day the response is due;
- (n) A statement that failure to respond to the notice or a failure to appear at a hearing requested for the purpose of contesting the determination or for the purpose of explaining mitigating circumstances will result in a default judgment against the defendant in the amount of the penalty and that this failure may be referred to the City Prosecutor for criminal prosecution for failure to respond or appear;
- (o) A statement that failure to respond to a notice of infraction as promised or to appear at a requested hearing is a misdemeanor and may be punished by a fine or imprisonment in jail; and
- (p) Any other information required by Chapter 7.80 RCW or the Infraction Rules for Courts of Limited Jurisdiction, as currently enacted or as may be amended in the future.

**1.16.080 Service and filing.**

- (1) A notice of infraction may be served either by:

(a) The Code Enforcement Officer serving the notice of infraction on the person named in the notice of infraction at the time of issuance; or

(b) The Code Enforcement Officer, City Prosecutor or City Attorney filing the notice of infraction with the court, in which case the court shall have the notice served either personally or by mail, postage prepaid, on the person named in the notice of infraction at his or her address. If a notice of infraction served by mail is undeliverable, the court shall issue a summons.

(2) The Code Enforcement Officer shall have the authority to require those receiving infractions to identify themselves by giving their name, address, and date of birth, and shall further have the authority to require the presentation of a driver's license or other reliable identification. If a defendant refuses to identify himself or herself, the Code Enforcement Officer shall request assistance from the police.

(3) When a notice of infraction has been issued, the notice shall be filed with the municipal court. The notice must be filed within two days (48 hours) of issuance of the notice, excluding Saturdays, Sundays, and holidays. A notice of infraction not filed within the time limits of this section may be dismissed without prejudice.

#### **1.16.090 Response to notice.**

(1) A person served with a notice of infraction must respond to the notice within 15 days of the date the notice is served or posted or, if the notice is served by mail, within 18 days of the date the notice is mailed.

(2) A person must respond to a notice of infraction by either:

(a) Paying the amount of the monetary penalty, in which case the court shall enter a judgment that the defendant has committed the infraction;

(b) Contesting the determination that an infraction occurred by requesting a hearing;

(c) Requesting a hearing to explain mitigating circumstances surrounding the commission of the infraction; or

(d) Submitting a written statement either contesting the infraction or explaining mitigating circumstances, if this alternative is authorized by the Poulsbo Municipal Court Local Rules. The statement shall contain the person's promise to pay the monetary penalty authorized by law if the infraction is found to be committed. For contested hearings the statement shall be executed in substantially the form set forth in the Infraction Rules for Courts of Limited Jurisdiction.

#### **1.16.100 Restitution.**

In addition to the civil penalty set forth in PMC 1.16.010(2), the municipal court is authorized to require any person having committed a civil infraction to make restitution for any and all damage to public or private property arising from such violation, including the cost of restoring the affected area to its condition prior to the violation.

**1.16.110 Stop work order.**

(1) Whenever a violation of the Poulsbo Municipal Code will materially impair the City's ability to secure compliance with the code, or when the continuing violation threatens the health, safety or welfare of the public, the Director may immediately issue a stop work order specifying the violation and prohibiting any work or other activity at the site. A failure to comply with a stop work order shall constitute a gross misdemeanor.

(2) A notice of infraction may be issued in conjunction with a stop work order.

**1.16.120 Nuisance.**

In addition to the penalties set forth above, all remedies given by law for the prevention and abatement of nuisances shall apply regardless of any other remedy. All violations of any City ordinance, permit conditions, or rules and regulations adopted thereunder, are determined to be detrimental to the public health, safety and welfare and are public nuisances. The mayor or his or her designee, at his or her option, may cause all conditions which are public nuisances to be abated pursuant to the procedures of Chapter 7.48 RCW.

**1.16.130 Applicability.**

The procedures for notification and enforcement set forth in this chapter are intended to apply in addition to any procedures or courses of action provided by law and elsewhere in the Municipal Code. The use of procedures set forth herein shall not require or preclude use of any other procedures allowed by the Municipal Code or State law.