

## Article 10. Violations and Penalties

### Sections:

- 16-10.1 Generally.**
- 16-10.2 Notice of violation.**
- 16-10.3 Criminal prosecution.**
- 16-10.4 Administrative enforcement.**

#### Sec. 16-10.1 Generally.

It is unlawful for any person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy or maintain any building or structure or cause or permit the same to be done in violation of this code. (Added by Ord. 90-57)

#### Sec. 16-10.2 Notice of violation.

- (a) Whenever any person, firm or corporation violates any provisions of this code, the building official shall serve a notice of violation to the party responsible for the violation to make the building or structure or portion thereof comply with the requirements of this code. A notice of violation must be served upon responsible persons either personally or by certified mail. However, if the whereabouts of such persons are unknown and the same cannot be ascertained by the building official in the exercise of reasonable diligence and the building official provides an affidavit to that effect, then a notice of violation may be served by publishing the same once each week for two consecutive weeks in a daily or weekly publication in the city pursuant to HRS Section 1-28.5.
- (b) The notice of violation shall include at least the following information:
- (1) Date of the notice;
  - (2) The name and address of the person noticed and the location of the violation;
  - (3) The section number of the ordinance, code or rule which has been violated;
  - (4) The nature of the violation; and
  - (5) The deadline for compliance with the notice.

(Added by Ord. 90-57; Am. Ord. 15-16)

#### Sec. 16-10.3 Criminal prosecution.

- (a) General. Any person, firm or corporation violating any of the provisions of this code shall be deemed guilty of a misdemeanor, and each such person shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any provisions of this code is committed, continued or permitted, and upon conviction of any such violation such person shall be punishable by a fine of not more than \$2,000.00, or by imprisonment for not more than one year, or by both fine and imprisonment.
- (b) Any officer, or inspector designated by the building official, who has been deputized by the chief of police as a special officer for the purpose of enforcing the provisions of the building, plumbing, electrical or housing codes (hereinafter referred to as "authorized personnel"), may arrest without warrant alleged violators by issuing a summons or citation in accordance with the procedure specified in this section. Nothing in this section shall be construed as barring such authorized personnel from initiating prosecution by warrant or such other judicial process as is permitted by statute or rule of court.
- (c) Any authorized personnel designated by the building official, upon making an arrest for a violation of the building, plumbing, electrical or housing codes, may take the name and address of the alleged violator and shall issue to the violator in writing a summons or citation hereinafter described, notifying the violator to answer the complaint to be entered against the violator at a place and at a time provided in said summons or citation.
- (d) There shall be provided for use by authorized personnel, a form of summons or citation for use in citing violators of the building, plumbing, electrical or housing codes which does not mandate the physical arrest of such violators. The form and content of such summons or citation shall be as adopted or prescribed by the administrative judge of the district court and shall be printed on a form commensurate with the form of other summonses or citations used in modern methods of arrest, so designed to include all necessary information to make the same valid within the laws and regulations of the State of Hawaii and the City and County of Honolulu.
- (e) In every case when a citation is issued, the original of the same shall be given to the violator; provided, that the administrative judge of the district court may prescribe by giving to the violator a carbon copy of the citation and provide for the disposition of the original and any other copies.
- (f) Every citation shall be consecutively numbered and each carbon copy shall bear the number of its respective original.

(Added by Ord. 90-57. Am. Ord. 12-34)

#### Sec. 16-10.4 Administrative enforcement.

In lieu of or in addition to enforcement pursuant to Section 16-10.3, if the building official determines that any person, firm or corporation is not complying with a notice of violation, the building official may have the party responsible for the violation served, by certified mail or delivery, with an order pursuant to this section.

- (a) Contents of the Order.
- (1) The order may require the party responsible for the violation to do any or all of the following:
    - (A) Correct the violation within the time specified in the order;
    - (B) Pay a civil fine not to exceed \$2,000.00 in the manner, at the place and before the date specified in the order;
    - (C) Pay a civil fine not to exceed \$2,000.00 per day for each day in which the violation persists, in the manner and at the time and place specified in the order.

- (2) The order shall advise the party responsible for the violation that the order shall become final 30 calendar days after the date of its delivery. The order shall also advise that the building official's action may be appealed to the building board of appeals.
- (b) Service of Notice of Order. A notice of order must be served upon responsible persons either personally or by certified mail. However, if the whereabouts of such persons are unknown and the same cannot be ascertained by the building official in the exercise of reasonable diligence and the building official provides an affidavit to that effect, then a notice of order may be served by publishing the same once each week for two consecutive weeks in a daily or weekly publication in the city pursuant to HRS Section 1-28.5.
- (c) Effect of Order--Right to Appeal. The provisions of the order issued by the building official under this section shall become final 30 calendar days after the date of the delivery of the order. The party responsible for the violation may appeal the order to the building board of appeals as provided in Chapter 16. The appeal must be received in writing on or before the date the order becomes final. However, an appeal to the building board of appeals shall not stay any provisions of the order.
- (d) Judicial Enforcement of Order. The building official may institute a civil action in any court of competent jurisdiction for the enforcement of any order issued pursuant to this section. Where the civil action has been instituted to enforce the civil fine imposed by said order, the building official need only show that the notice of violation and order were served, that a civil fine was imposed, the amount of the civil fine imposed and that the fine imposed has not been paid.

(Added by Ord. 90-57; Am. Ord. 96-58, 12-34, 15-16)