



Enforcement of Zoning and Other Local Laws

A Division of New York Department of State

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Topics to be covered

- Legal authority
- The enforcement official
- What is enforced
- Enforcement triggers & process
- Stays of enforcement
- Zoning Board of Appeal
- Court proceedings
- Penalties & remedies



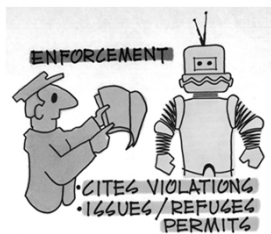
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Police power

Legitimate governmental purpose:

- Foster health, safety & welfare
- Maintain neighborhood property values
- Enhance aesthetics through land use regulation



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Statutory authority

- Enact local laws & ordinances
 - Regulate land use & design
 - Protect & enhance the physical & visual environment
- Zoning enabling statutes
 - With zoning must have:
 - Zoning Board of Appeals (ZBA)
 - Zoning Enforcement Officer (ZEO)
- Municipal Home Rule Authority

Enforcement officers

- A Zoning Enforcement Officer (ZEO) enforces zoning
- A Code Enforcement Officer (CEO) enforces NYS Uniform Fire Prevention & Building Code
- Our focus is on the enforcement of zoning
 - NOT “Uniform Code” enforcement
- Sometimes one person holds both jobs
 - Separate powers, duties & responsibilities

Sharing code & zoning officers

Multiple municipalities together may generate enough work to:

- Justify a full-time professional
 - Health insurance & retirement credit
- Add staff to provide broader range of expertise
 - Allow staff to specialize
- Maintain local control of building permits
- Employ ZEO who is also certified as CEO
 - Makes municipal insurance carrier happy

When acting under inter-municipal agreement, public officer must meet residency requirements of one participating municipality

Establish ZEO position

- Typically created in the zoning law or ordinance
- ZEO represents the municipality regarding land use regulation & enforcement
- Serves as the primary contact for applicants

Town Law §138
 Such inspector shall have charge of such codes, ordinances, rules and regulations of town and of zoning ordinance of the town

Possible ZEO responsibilities

- | Administrative |
|---|
| <ul style="list-style-type: none"> • Acquire, prepare & distribute forms • Receive applications • Maintain records of administrative actions • Make determinations regarding compliance <ul style="list-style-type: none"> – zoning & other land use laws |

- | Enforcement |
|---|
| <ul style="list-style-type: none"> • Receive complaints • Conduct investigations & inspections • Take necessary zoning enforcement actions |

What is enforced by the ZEO?

- Zoning law or ordinance requirements
 - ZEO may not modify or waive zoning regulations & is limited to enforcing law as written
- Conditions of land use approval, for example:
 - Landscaping required through site plan review
 - Limit number of cars parked overnight at auto repair shop upon issuance of a Special Use Permit
- Other local laws or ordinances, for example:
 - Flood protection or sign control laws

What is enforced by the CEO

- Penalties for violating the "Uniform Code"
 - Up to \$1,000 per day fine & one year of jail time
 - OR
 - Fines, jail & injunctions
 - Executive Law §382
- NYS Uniform Fire Prevention & Building Code
 - CEO
 - Special training required
 - Certification
 - Continuing education credits
- Appeals of CEO decisions made to Regional Review Boards
 - Not Zoning Board of Appeals

Property maintenance laws

- Municipalities can adopt local laws regulating junk, litter, and other property maintenance issues.
- For example:
 - Use of cargo containers for storage
 - Shoveling & maintenance of sidewalks
 - Unsafe Building laws



The Uniform Fire Prevention & Building Code has a Property Maintenance section

General Municipal Law §136

- Applies to any place of storage or deposit of two or more vehicles which are:
 - Unregistered, old, or secondhand motor vehicles no longer intended or in condition for legal use on the public highways
- Does not apply to municipalities with own junk yard regulations
- Must consider proximity to churches, schools, hospitals, public buildings, and places of public gathering
- Penalties established by law

Property Maintenance Code §302.8

“... two or more inoperative or unlicensed motor vehicles shall not be parked, kept or stored on any premises, and no vehicle shall at any time be in a state of major disassembly, disrepair, or in the process of being stripped or dismantled...”

- NOT apply to licensed junk yards
- Local governments can seek permission to be more restrictive

What triggers enforcement?

- Report of Municipal Official
- Citizen Complaint
 - Establish policies regarding citizen complaints
 - Are complaints FOIL-able?
 - Yes, but complaint form may be redacted to hide complainant's identity
 - Develop a follow-up process
- Observation of enforcement officer
 - Camera with time & date stamp is helpful



Inspection

Warrant may not be required if defendant does not have reasonable expectation of privacy in area that is subject of search, for example:

- Entry upon plaintiff's yard without warrant or consent to abate nuisance
- Warrantless inspection of backyard from driveway

- Valid permission is needed to conduct private property inspection not visible from road, adjoining property, or air
- Without permission, search warrant needed

Possible inspection results

- Activity described is permitted on property
- No evidence of illegal activity found
- Owner willing to voluntarily eliminate violation
- Normal administrative proceedings initiated
- Matter described appears to be controlled by deed restrictions; therefore, it is a private matter
 - Chambers v. Old Stone Hill Associates, 1 N.Y.3d 424 (2004)

When violations are observed

ZEO notifies owner or tenant of the violation

1. Persuasion: telephone, personal contact
2. Letter: notice of violation
3. Corrective action: revocation of permits, issuance of stop work order



Keep record of contacts, inspections, & enforcement actions

Stop Work Order

- Violator's options after receiving stop work order:
 - Correct violation
 - Seek legislative relief
 - Ask governing board to amend applicable law or ordinance
 - Appeal zoning matters to ZBA



True or false?

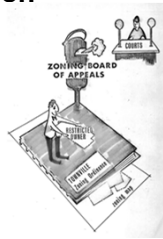
FALSE

- The offices are incompatible since ZBA's job is to rule on appeals of ZEO's decisions
- However, ZEO may usually serve on Planning Board without an incompatibility of office occurring

A ZEO may serve as member of that municipality's ZBA

Appealing the ZEO's decision

- ZBA acts as buffer between person aggrieved by decision of ZEO & courts
- If ZBA fails to get majority vote to overturn ZEO's decision, then decision stands



Types of appeals to ZBA

- Interpretation
 - ZEO read or applied law wrong
- Area Variance
 - ZEO read law correctly, but zoning should be varied due to dimensional problem
- Use Variance
 - ZEO read law correctly, but due to unnecessary hardship variance should be granted to allow use of property contrary to zoning

Not an appeal of the NYS Uniform Fire Prevention & Building Code

Who may appeal ZEO's decision?

"Aggrieved Parties"

- Recipient of enforcement action
- Recipient of permit denial
- Third-party believing permit improperly issued

- Town Law §267-a(4)
- Village Law §7-712-a(4)
- General City Law §81-a(4)

To be an eligible third party one scenario must apply:

- Suffer "special damages"
- Live close to subject property
- Be an officer of municipality
- Represent a department, board or bureau of the municipality

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Timelines for appeals

- Aggrieved parties must file notice of appeal within 60 Days after ZEO files decision in his/her office
- For Third Party Appeals, 60 day period commences from time neighbor knew or should have known permit was issued



- Appeal can be filed by letter or municipal form
- Copies to ZEO & ZBA

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Role of ZEO at ZBA hearing

ZEO may be requested to give testimony at ZBA hearing by providing information about the following:

- ZEO's observations of property
- Actions taken by the ZEO or by the property owner or tenant
- Applicable zoning provisions
- Previous variances or special use permits granted for this property & other similarly situated properties

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Automatic Stay Provision

An appeal stays enforcement proceedings that are underway, for example:

- ZEO believes Bob built garage too close to property line
- ZEO cites Bob for violation with stop work order
- Bob appeals ZEO's action to ZBA
- ZEO cannot issue another stop work order or go to justice court while appeal continues
 - If Bob continues to build while appeal is pending, he does so at his own risk
 - May have to tear it down or move it if loses on appeal



Lifting the stay

- Stay can be lifted
 - ZEO certifies to ZBA that stay would cause imminent peril to life or property
- Certificate of imminent peril can only be vacated by restraining order granted by ZBA
 - or if court re-imposes stay



- Town Law §267-a(6)
- Village Law §7-712-a(6)
- General City Law §81-a(6)

After the appeal

- If applicant loses appeal, violation should be corrected
- If not corrected, enforcement action proceeds
 - Violator can be fined or imprisoned



Two type of proceedings

Criminal	Civil
<ul style="list-style-type: none"> Commence a criminal proceeding Fine or penalty Incarceration Beyond a reasonable doubt 	<ul style="list-style-type: none"> Bring suit against another party Seek an injunction <ul style="list-style-type: none"> Court order to "abate" an activity or action Preponderance of evidence

Classify offenses of zoning violations

All legal wrongdoings are called offenses; not all offenses are crimes

Violations	Misdemeanors
<ul style="list-style-type: none"> Not a crime No right to jury trial Imprisonment 15 days or less Fine not to exceed \$250 	<ul style="list-style-type: none"> A crime Jury trial with defendant optional Imprisonment exceeds 15 days, but less than 1 year

Penalties provided in Town Law §268

Offense	Fine	Sentence
1st	\$350 Maximum	6 Months
2nd	\$360-\$700	6 Months
3rd	\$700-\$1,000	6 Months

Each week a violation continues could constitute separate additional violations

Provide for penalties locally

- The use of Town Law §268 exclusively can lead to jury trial
- Town should adopt own fines & jail time in local law
 - Town Law §135
 - AG Opinion No: 2005-18
 - MHRL §10(1)(ii)(4)(b)
- City or village must provide penalties in local law or ordinance
- If not, penalties are determined by classification of offense
 - AG Opinion No: 2004-14
 - MHRL §10(1)(ii)(4)(b)

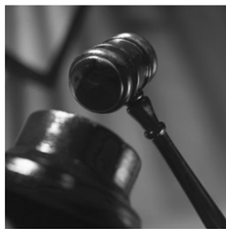
Possible penalties

Zoning offenses may provide punishment by:

- Civil penalty
- Fine
- Forfeiture
 - AG Opinion 2004-14
- Imprisonment
- Combination of punishments
 - MHRL §10(1)(ii)(4)(b)

Which courts handle these proceedings?

- Civil
 - State Supreme Court
- Criminal
 - Town Court
 - Village Court
 - District Court
 - Long Island
 - City Court



Injunction

Usually used for civil enforcement

- Preliminary Injunction
 - Purpose: maintain "status quo" pending final decision on lawsuit
 - Government must show likelihood of success & balancing of equities
- Permanent Injunction
 - Issued by State Supreme Court
 - After municipal claim is sustained

Temporary restraining order

- Usually used for civil enforcement
 - Issued by Supreme Court
 - Cannot be issued by Town & Village Courts
- Emergencies
- May be issued ex parte
 - Out of presence of property owner
- City courts may also issue temporary restraining orders & preliminary injunctions
 - City Court Act §209

Getting violator to court

Provide mechanism for getting violator into court:

- Appearance tickets
 - Municipal Home Rule Law §10(1)(ii)(4)(a)
- In criminal proceedings the ZEO files an accusatory instrument with the court:
 - Information/complaint
 - Written accusation filed with a criminal court
 - Supporting depositions
- Summons
- Arrest warrant

Getting violator to court

- Substitute service allowed for serving appearance tickets for building code & zoning violations
 - Civil Practice Laws & Rules §308
- Problems using substitute service in criminal context
 - Does not overcome jurisdictional limitation of appearance tickets
 - County in which offense was committed or adjoining county
 - Criminal Procedures Law §150.40(3)

Who prosecutes violations

- District Attorney: Primary responsibility
 - County Law §700(1)
- Municipal Attorney:
 - Traditionally delegated responsibility
 - Should confirm delegation in writing
 - Must file oath of office with county clerk as assistant district attorney
- Enforcement Officer: Occasionally appears in court on behalf of municipality

Discriminatory enforcement claim

Claimant must show:

- “Unequal hand”
 - Law not applied to others similarly situated
- “Evil eye”
 - Selective application of law was deliberately based upon impermissible standard such as race, religion, effort to suppress exercise of constitutional rights or individual malice

In the Matter of 303 West 42nd Street Corporation v. Klein, 46 N.Y.2d 686 (1979);
 Bower Associates v. Town of Pleasant Valley, 2 N.Y.3d 617 (2004)

New York Department of State

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Sections of relevant NYS Law

Penal Law § 80.05 Fines for misdemeanors and violation.

1. **Class A misdemeanor.** A sentence to pay a fine for a class A misdemeanor shall be a sentence to pay an amount, fixed by the court, not exceeding one thousand dollars, provided, however, that a sentence imposed for a violation of section 215.80 of this chapter may include a fine in an amount equivalent to double the value of the property unlawfully disposed of in the commission of the crime.

2. **Class B misdemeanor.** A sentence to pay a fine for a class B misdemeanor shall be a sentence to pay an amount, fixed by the court, not exceeding five hundred dollars.

3. **Unclassified misdemeanor.** A sentence to pay a fine for an unclassified misdemeanor shall be a sentence to pay an amount, fixed by the court, in accordance with the provisions of the law or ordinance that defines the crime.

4. **Violation.** A sentence to pay a fine for a violation shall be a sentence to pay an amount, fixed by the court, not exceeding two hundred fifty dollars.

In the case of a violation defined outside this chapter, if the amount of the fine is expressly specified in the law or ordinance that defines the offense, the amount of the fine shall be fixed in accordance with that law or ordinance.

5. **Alternative sentence.** If a person has gained money or property through the commission of any misdemeanor or violation then upon conviction thereof, the court, in lieu of imposing the fine authorized for the offense under one of the above subdivisions, may sentence the defendant to pay an amount, fixed by the court, not exceeding double the amount of the defendant's gain from the commission of the offense; provided, however, that the amount fixed by the court pursuant to this subdivision upon a conviction under section 11-1904 of the environmental conservation law shall not exceed five thousand dollars. In such event the provisions of subdivisions two and three of section 80.00 shall be applicable to the sentence.

6. **Exception.** The provisions of this section shall not apply to a corporation.

Penal Law § 70.15 Sentences of imprisonment for misdemeanors and violation.

1. **Class A misdemeanor.** A sentence of imprisonment for a class A misdemeanor shall be a definite sentence. When such a sentence is imposed the term shall be fixed by the court, and shall not exceed one year; provided, however, that a sentence of imprisonment imposed upon a conviction of criminal possession of a weapon in the fourth degree as defined in subdivision one of section 265.01 must be for a period of no less than one year when the conviction was the result of a plea of guilty entered in satisfaction of an indictment or any count thereof charging the defendant with the class D violent felony offense of criminal possession of a weapon in the third degree as defined in subdivision four of section 265.02, except that the court may impose any other sentence authorized by law upon a person who has not been

Criminal Procedures Law: elected section on appearance tickets

§ 150.10 Appearance ticket; definition, form and content.

1. An appearance ticket is a written notice issued and subscribed by a police officer or other public servant authorized by state law or local law enacted pursuant to the provisions of the municipal home rule law to issue the same, directing a designated person to appear in a designated local criminal court at a designated future time in connection with his alleged commission of a designated offense. A notice conforming to such definition constitutes an appearance ticket regardless of whether it is referred to in some other provision of law as a summons or by any other name or title.

2. When an appearance ticket as defined in subdivision one of this section is issued to a person in conjunction with an offense charged in a simplified information, said appearance ticket shall contain the language, set forth in subdivision four of section 100.25, notifying the defendant of his right to receive a supporting deposition.

§ 150.20 Appearance ticket; when and by whom issuable.

3. A public servant other than a police officer, who is specially authorized by state law or local law enacted pursuant to the provisions of the municipal home rule law to issue and serve appearance tickets with respect to designated offenses other than class A, B, C or D felonies or violations of section 130.25, 130.40, 205.10, 205.17, 205.19 or 215.56 of the penal law, may in such cases issue and serve upon a person an appearance ticket when he has reasonable cause to believe that such person has committed a crime, or has committed a petty offense in his presence.

§ 150.50 Appearance ticket; filing a local criminal court accusatory instrument; dismissal of insufficient instrument.

1. A police officer or other public servant who has issued and served an appearance ticket must, at or before the time such appearance ticket is returnable, file or cause to be filed with the local criminal court in which it is returnable a local criminal court accusatory instrument charging the person named in such appearance ticket with the offense specified therein. Nothing herein contained shall authorize the use of a simplified information when not authorized by law.

**INTER-MUNICIPAL AGREEMENT
RELATIVE TO THE PROVIDING OF BUILDING CODE
ENFORCEMENT SERVICES**

This Agreement, made as of the 1st day of **January, 2006**, by and between the **Town of New Hartford, New York ("Town")**, a municipal corporation with its offices and principal place of business located at 48 Genesee Street, New Hartford, New York and the **Village of New Hartford, New York ("Village")**, a municipal corporation with its offices and principal place of business located at 48 Genesee Street, New Hartford, New York.

W I T N E S S E T H:

WHEREAS, the **Town** acknowledges having a fully-staffed and functioning office designated the **Codes Enforcement Office ("Department")** for the administration and enforcement of building codes regulations and related matters with sufficient capacity to meet the obligations set forth herein; and

WHEREAS, the **Village** desires to contract with the **Town** for building codes administration and enforcement and related services ("**Building Code Services**") by the **Department**; and

WHEREAS, the **Town** is willing to provide such **Building Code Services** on the terms and conditions set forth herein; and

WHEREAS, municipal corporations have the authority under the New York State General Municipal Law to enter into agreements for the performance among themselves of their respective functions, powers and duties;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

1. **Administration**

- a) The **Department** shall furnish and administer the **Building Code Services** on behalf of the **Village** for the term of this Agreement. To this end, any authority heretofore conferred on the Village Code Enforcement Officer, pursuant to the **New York State Uniform Fire Prevention and Building Code ("UFPBC")** is hereby conferred upon the **Department**. Such **Building Code Services** shall include, without limitation, consultation with applicants regarding building and related applications; review of plans and other required applications; possible interfacing with the Village Board, Village Planning Board and Village Zoning Board of Appeals; issuance of building permits, certificates of occupancy, notices of violation, summonses, stop work orders and related documents; appearance in Justice Court as appropriate; investigation of bona fide

complaints in buildings; property inspections; construction inspections; and administration and enforcement of the **UFPBC**, including fire inspections on existing structures, such as public assembly, multi-family and non-residential structures.

- b) The **Department**, in carrying out the duties described herein shall follow its normal policies and procedures to the extent that such policies and procedures do not conflict with Village planning, building and zoning regulations or any other applicable state or local law, regulation or procedure.

2. **General Terms**

- a) The term of this Agreement shall commence on January 1, 2006 and continue for a period of one (1) year through December 31, 2006.
- b) The **Department** shall provide all forms and applications necessary in relation to the **Building Code Services**. They must notify the Village of New Hartford within twenty-four (24) hours of any applications submitted or any action on any permit.
- c) The **Village** shall adopt a Building Permit Fee Schedule to coincide with the Town's building permit fee schedule.
- d) The **Department** shall maintain a record of all activities related to the **Building Code Services** and shall provide reports thereof to the **Village Board**, as well as such other reports as may from time to time be reasonably requested by the **Village Mayor**.
- e) This Agreement shall be terminable by either party upon at least ninety [90] days prior written notice by either party to the other. In the event of the termination of this Agreement by either party, any amounts due under the agreement, or already paid, shall be pro-rated.

3. **Payment**

- a) The **Village** shall pay the **Town** at the annual rate of Six Thousand Dollars [\$6,000] ("**Contract Price**") payable as follows:
 - 1) Three Thousand Dollars (\$3,000) to be paid on February 1, 2006
 - 2) Three Thousand Dollars (\$3,000) to be paid on August 1, 2006

- b) The fees collected by the **Town** for **Village** permits shall be shared 50/50 between the two municipalities. Fees shall be delivered by the Town Clerk to said **Village** not later than the 15th of the month as follows:

EX:

January 2006 Fees	-	not later than February 15, 2006
February 2006 Fees	-	not later than March 15, 2006
March 2006 Fees	-	not later than April 15, 2006.

4. Miscellaneous

- a) This Agreement constitutes the complete understanding of the parties. No modification of any provisions thereof shall be valid unless in writing and signed by both parties.
- b) All notices hereunder shall be in writing, mailed first-class, certified or registered or delivered by hand to the address of the party as set forth on page one [1] of this Agreement, or to such other address as such party may designate from time to time by such notice, and shall take effect when mailed or when received if delivered by hand.
- c) It is expressly agreed that the **Town** shall not be an employee of the **Village** in performing the **Building Code Services** hereunder.

IN WITNESS WHEREOF, the parties have indicated their agreement by signing in the spaces provided below.

TOWN OF NEW HARTFORD

VILLAGE OF NEW HARTFORD

Earle C. Reed, Town Supervisor

Donald J. Ryan, Village Mayor

SEAL

SEAL

STATE OF NEW YORK)
COUNTY OF ONEIDA : SS
TOWN OF NEW HARTFORD)

On this ____ day of _____ 200 __, before me personally came Earle C. Reed, to me known, who being by me duly sworn, did depose and say that he is the Supervisor of the Town of New Hartford, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to this instrument is such corporate seal; and that it was affixed pursuant to a resolution of the Town Board of said corporation and that he signed his name thereto by like order.

NOTARY PUBLIC – Oneida Co., NY
My Commission Expires __ / __ / __.

STATE OF NEW YORK)
COUNTY OF ONEIDA : SS
VILLAGE OF NEW HARTFORD)

On this ____ day of _____ 200 __, before me personally came Donald J. Ryan, to me known, who being by me duly sworn, did depose and say that he is the Mayor of the Village of New Hartford, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to this instrument is such corporate seal; and that it was affixed pursuant to a resolution of the Board of Trustees of said corporation and that he signed his name thereto by like order.

NOTARY PUBLIC – Oneida Co., NY
My Commission Expires __ / __ / __.