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Division of Local Government Services

Zoning Enforcement

JAMES A. COON LOCAL GOVERNMENT TECHNICAL SERIES

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Kathy Hochul, Governor **Robert J. Rodriguez, Secretary of State**

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PREFACE

This publication was originally produced in 1991. It was updated in 1994 by the Jefferson County Planning Department in cooperation with the New York State Tug Hill Commission and the former St. Lawrence-Eastern Ontario Commission. It was updated in 1996 by Mark Gebo, Esq., partner in Hrabchak & Gebo, P.C., Attorneys and Counselors at Law in Watertown, New York, and in 1998 by the New York State Department of State.

INTRODUCTION

This publication discusses the zoning enforcement process, including options for enforcement, along with the laws that authorize enforcement in the towns and villages of New York State. It does not contain specific information regarding zoning enforcement in cities, as those procedures are more appropriately referenced within individual city charters.

Section I describes the roles of various key entities including the zoning enforcement officer. It is critically important that the enforcement official understand the responsibilities of these boards. This is only a summary; for more extensive treatment of the responsibilities of these entities, the reader should consult other publications in this Technical Series. Section II outlines the steps involved in the zoning enforcement process, referencing state enabling statutes. The actual process varies among municipalities; one should always, therefore, consult local laws and officials for more specific local procedural guidance. The Appendix provides useful sample forms for local adoption.

Land use legislation may be enacted by ordinance in towns, as well as by local law in both towns and villages. For simplicity, we will refer to all such legislation as the local "zoning law".

LOCAL BOARDS AND OFFICERS

The Legislative Body – The legislative body (town board or village board of trustees) plays a major role in zoning administration and enforcement. It appoints members of the planning board,[1] the zoning commission (applicable in towns and villages),[2] the zoning board of appeals (ZBA),[3] and the zoning enforcement officer (ZEO).[4] The legislative body must approve any by-laws, rules and regulations that govern these boards and officials, as well as any procedures to be used in administering the law. Though other boards may write initial drafts of, or advise on, various land use laws and procedures, only the legislative body may enact them into law.

The legislative body has the option to enact site plan review and special permit approval.[5] It may choose either to perform site plan review and/or special use permit approval directly, or instead delegate one or both of these procedures to an appointed board such as the planning board or zoning board of appeals. The power to approve subdivisions can, however, only be delegated to the planning board.[6] The legislative body typically delegates zoning enforcement authority to its ZEO.

By delegating some of the above mentioned powers to other boards and officials, the legislative body frees up time for its other numerous responsibilities. This is a good idea, but it is important to remember that once these powers have been delegated, the legislative body cannot overrule a decision made by the ZBA, ZEO, or planning board. It may appeal such a decision, as may any other concerned citizen, but it cannot simply overrule it.

The Zoning Enforcement Officer (ZEO) – The ZEO is the municipality's representative in land use regulation and enforcement, and should be the primary contact for all applicants. His/her major duties usually are: to prepare or acquire forms necessary to properly administer the zoning law; issue zoning permits; conduct inspections and investigations; issue a zoning certificate of compliance or occupancy; maintain records of all administrative actions and papers; and enforce the zoning law through the various methods discussed in this document.

The actual powers and duties of the position will vary among municipalities. They must be clearly spelled out in either the local zoning law or a separate ordinance or law providing for the enforcement of all zoning and land use laws.

The ZEO's power is limited to enforcement of the law as it is written. The ZEO has no power to modify or waive the zoning regulations even if s/he disagrees with a requirement of the regulation. When the ZEO finds that certain requirements of the zoning are inappropriate and consistently create problems for applicants, then s/he can and should propose an amendment to the legislative body. The legislative body is the only board that has the authority to make a zoning amendment, and this power cannot be delegated. The ZEO must deny a permit whenever s/he is in doubt about a project's legality, or about how the zoning law applies to the particular case. An applicant who is denied a permit can appeal to the ZBA for an interpretation of the zoning regulation, or for a variance.[7]

The ZEO must pursue all violations of the law without undue bias for or against a particular person, otherwise s/he will open himself or herself to lawsuits for discriminatory enforcement.[8]

Enforcement action can be taken whenever a zoning law or ordinance is violated, or a condition attached to an approval granted by a municipal board is not met**.** While the landowner can always be held responsible for a violation on his/her property, enforcement action may also be taken against other responsible parties, such as tenants and building contractors.

The Zoning Board of Appeals (ZBA) – The enabling statutes provide that the legislative body must appoint a ZBA whenever it initially adopts a zoning law.[9] The basic powers of the ZBA fall into two areas: original jurisdiction and appellate jurisdiction.[10]

Appellate (or appeals) jurisdiction allows an "aggrieved party" to bring an appeal of a decision of the ZEO to the ZBA for review. "Aggrieved parties" may include: the recipient of an enforcement action; an unsuccessful permit applicant; or a third party.

There are two types of appeals: an appeal seeking an interpretation of the zoning law; and an appeal seeking a zoning variance. An appeal for an interpretation simply claims that the ZEO's decision was incorrect under the zoning law, and requests the ZBA to overturn the decision. An

appeal for a variance, which can only be made by an owner following a ZEO's enforcement action or permit denial, claims that special circumstances warrant the ZBA to vary the strict terms of the zoning law.

The Planning Board – The planning board has an advisory role and must be aware of community needs and goals. It is concerned both with development and with the formulation of growth policies. The planning board usually advises other local boards on matters that affect the community's development.[11]

A planning board's powers exist solely at the legislative body's discretion. It can be given review and approval authority for special permits, subdivisions, site plans, and other land use-related laws, such as a historic district law. When given such jurisdiction, the legislative body should adopt appropriate regulations to govern the planning board's procedures. To carry out its duties, the planning board, on referral, may assist in the preparation of a comprehensive plan for development,[12] and make investigations, maps, reports, and recommendations dealing with local planning and development.

The Zoning Commission – State law provides that the legislative body must appoint a zoning commission to draft the community's initial zoning law.[13] If it so desires, the legislative body may appoint the existing planning board as its zoning commission. If, however, a separate zoning commission is created, it will cease to exist after the legislative body, by resolution, accepts the commission's final report and draft zoning law.

ZONING ENFORCEMENT PROCESS

Step 1: Report of Violation – The zoning enforcement process begins when the ZEO becomes aware of a violation. The ZEO may discover the violation himself or herself, or it may be reported to the ZEO by a municipal official or local resident. To improve the effectiveness of citizen involvement, every local government should have an established system for taking citizen complaints. Ideally, such a system should provide that anyone may file a citizen complaint form (see Appendix 1) setting forth information about the supposed violation. If possible, the municipality should allow the citizen to file this form electronically, and to receive a response in the same manner. The form should be filed at a central location (probably the town or village clerk's office) that is well publicized.

Should an oral, perhaps anonymous, complaint, trigger an enforcement investigation? Ordinarily, such complaints should be taken seriously and investigated, whether or not the complainant has identified him/herself.

Every system of receiving citizen complaints should include follow-up. The best approach is an immediate follow-up letter (or electronic response) (see Appendix 5) that tells the citizen the complaint has been received and will be investigated as soon as possible. Barring other priorities, a good rule of thumb is that the ZEO should proceed to investigate every citizen complaint within 24 to 48 hours.

In addition to the immediate follow-up letter, the ZEO should forward a subsequent letter to the complainant (see Appendix 6) explaining the final results of the enforcement action. If no action was taken, the ZEO should explain why.

Step 2: Investigation – Once a possible violation has been observed or reported, the ZEO is empowered to investigate the matter, make a preliminary determination of whether or not it constitutes a violation, and take the appropriate action in the enforcement process. While some older state statutes directly grant officials the power to enter into buildings to make inspections, those statutes do not supersede constitutional protections against unreasonable search. Without the owner's consent in a non-emergency situation, a search warrant (see Appendix 7A) is required before the ZEO may lawfully enter onto any premises that the general public is not already invited to enter.[14] All municipalities should, therefore, adopt provisions generally authorizing their ZEO to enter onto all premises, public or private, "consistent with constitutional safeguards and any requisite warrant", in order to effectuate enforcement. When the ZEO is in doubt about the legality of entering private property against an owner's will, the best advice is that s/he consult with the municipal attorney before entering the property.

Any investigation should be logged by the ZEO using an Enforcement Inspection Report (see Appendix 2) regardless of the results. This creates a record of initial inspection, and the report can be referred to for further questions or issues involving the project or matter.

Step 3: Notification To Remedy Violations; Administrative Actions – If a zoning violation does exist, then enforcement steps must be taken. The first step is to inform the property owner of the violation so that it can be corrected. Often, zoning violations are an oversight on the owner's part, and simply advising him/her of the violation will resolve the matter. There are a variety of ways that a violator can be notified, and generally the situation will dictate the most appropriate method.

Usually the first attempt at notification is informal contact with the property owner to explain the violation and the potential of enforcement. The ZEO should keep a record of the contact and the results. If the owner is hard to contact, then it is advisable that a letter requesting voluntary compliance be forwarded to the property owner (see Appendix 8). The letter should clearly identify the violation and state that "...This is the only letter you will receive. If you do not correct the violation by [DATE] or contact this office and make arrangements for an extension of time, we will begin enforcement action...." It is very important that this letter be sent by certified or registered mail with a return receipt requested. This will insure that the owner receives it and will provide proof that it was received.

Many local governments require that even informal contact with landowners be documented. While a "Notice of Apparent Violation" looks formal, it does not have any great legal significance. It is simply a way to inform the landowner that s/he may be in violation of the zoning law and that s/he needs to abate or correct the violation. The landowner can be given the opportunity to discuss the case with the enforcement officer. A second, more formal letter, a "Notice of Violation - Order to Remedy" (see Appendix 9) amounts to a determination by the ZEO that a violation exists, and directs the landowner to take specific corrective action.

There are four possible administrative actions that can and should be used in conjunction with notification to prevent the landowner from continuing the violation. The first is revocation or suspension of permits directly related to the questionable activity. Second, any new permits or certificates related to the same work should be denied from the date on which the violation is first determined to exist until the matter resolved. Third, a Stop Work Order (see Appendix 10) should be issued in conjunction with such revocations/suspensions, to prevent any expansion of possibly illegal construction activities (as well as to prevent possibly fruitless additional investment by the owner) until the matter is resolved. A Stop Work Order on construction projects must be authorized in the zoning law itself. Finally, a Cease and Desist Order may be issued to halt a continuing violation other than that related to construction.

It is extremely important that the ZEO keep a record of any written administrative actions, as well as other enforcement actions that go beyond informal contact. Please consult Appendix 3 for a suggested Enforcement Action Checklist that can be used to keep track of such record-keeping. The legislative body may also want to develop a system of regular communication, whereby it is kept informed by the ZEO of all zoning violations and the administrative steps taken to remedy them.

Step 4: The Respondent's Alternatives – Ideally, upon being notified of the violation the respondent will revise her/his plans and actions to conform with the zoning law. But, if s/he is dissatisfied with that approach, s/he has alternatives for seeking relief: s/he can appeal the ZEO's decision and apply to the ZBA for a zoning interpretation or variance; or s/he could ask the legislative body for a zoning amendment. These alternatives provide a method for respondents to obtain relief from unreasonable restrictions of the zoning law.

The ZBA's primary function under law is to hear appeals and grant relief (if appropriate) from the strict application of the zoning law. The respondent initiates an appeal by filing a Notice of Appeal to the ZBA.[15] Any appeal asks the ZBA to overturn the ZEO's action, but, depending on the stance the respondent takes, the ZBA will have either of two tasks: interpretation or variance. First, the respondent may believe the ZEO's action incorrectly applies the zoning law. Even a well written zoning law has provisions that are open to interpretation. In that instance, the respondent appeals presenting a case for an interpretation in his/her favor. If the ZBA agrees with the respondent, it overturns the ZEO's decision, finds in favor of the respondent, and issues an appropriate order. It should be noted that *only* the ZBA can definitively interpret the zoning law. Neither the legislative body nor any other officer or body has that jurisdiction.

Whenever the ZBA makes a determination that interprets a provision of the zoning law, the determination should serve as precedent for any future actions involving that particular provision, until and unless the legislative body amends the provision.[16] Importantly, the ZEO should consider him/herself to be governed by the determination in any future enforcement actions that involve that same provision.

The second broad area of appeal involves the appeal for a variance. Here, the respondent--almost always, in this case, the owner--may agree that the law was correctly applied, but believes that the property is beset by special circumstances that warrant the grant of a variance to the strict application of the law. There are two types of variance, use and area.[17] A use variance

involves a request for a use of land that is prohibited by the zoning law and requires proof of "unnecessary hardship." An area variance is a request to vary the dimensional standards, such as lot size, setbacks, sign area, or number of parking spaces. The test for an area variance does not require the owner to show hardship. Instead, the ZBA is required to engage in a "balancing of interests."

Whenever any appeal is taken of the ZEO's enforcement action, the appeal places into effect a *stay* against further enforcement.[18] This means that, from the date the Notice of Appeal is filed until the date the ZBA renders its determination, the municipality is prohibited from taking any further enforcement action. During such time the local justice court cannot hear or adjudicate the alleged violation, and the ZEO may not issue any further orders or appearance tickets. The stay may, however, be lifted in cases of imminent peril to life or property. To lift the stay, the ZEO must file a certificate of imminent peril with the ZBA.

Finally, the landowner may wish to apply for a zoning amendment. An amendment constitutes legislative relief, and can therefore only be approved by the legislative body (town or village board). Although the legislative body is not required to apply the tests that the ZBA must apply for a variance, any amendment that it adopts must be consistent with the comprehensive plan. A public hearing must be held before formal adoption of a zoning amendment.[19]

These alternatives are available to provide local relief from zoning restrictions as they may be applied by the enforcement officer. If the requested relief is denied, then the landowner must abide by the determination (which may include abating the violation) or appeal to the Supreme Court for judicial relief. If the owner instead continues to engage in an activity determined to be a violation, then the ZEO is free to take further enforcement action.

Step 5: Judicial Enforcement – While the ZEO is always empowered to seek criminal enforcement in the first instance, it may be his/her practice to undertake either informal or formal administrative action first. Nonetheless, where administrative action does not succeed in causing the owner to abate a zoning violation, then stronger enforcement methods can, and should, be used. The statutes provide for the imposition of both criminal and civil penalties, or sanctions that require abatement or removal of the violation.

Criminal Proceedings – Enforcement actions can be taken to the local criminal court, which can, under specific guidelines set by state law (or by a superseding local law), impose fines or imprisonment.[20] In New York State, zoning offenses are deemed misdemeanors for the purpose of conferring jurisdiction on the courts.

Although zoning offenses are deemed misdemeanors for jurisdictional purposes, they do not necessarily confer all the protections of misdemeanors if the imprisonment provisions are low enough to qualify for treatment as a *violation*.[21] The principal distinctions between treatment as a violation as opposed to treatment as a misdemeanor, are that for a violation the accused is not entitled to a jury trial or the appointment of an assigned attorney if unable to afford one of his/her own. Where imprisonment could exceed more than fifteen days, then the offense is instead considered a misdemeanor, and the aforementioned protections apply.[22]

To institute criminal proceedings against an accused, the ZEO must file an Information and Complaint (almost always accompanied by a Supporting Deposition) with the local justice court.[23] The Information and Complaint contains several parts. The first is an accusatory part that states the date, time, and place of the violation and the section of the zoning law that is at issue. Another part is factual; it outlines in detail the facts the ZEO relies on for establishing the violation. Lastly there is the attestation part, in which the ZEO affirms the information under penalties of perjury or swears to it before a notary.

The Supporting Deposition is meant to add more detail to what is in the Information and Complaint. Where a ZEO has not observed certain aspects of the situation, a Supporting Deposition should be taken from all persons with direct knowledge. The Supporting Deposition should be attached to the Information. Frequently, photographs or other documentary evidence may also be important and may be attached. The Information and Complaint must, however, on its face, contain each and every element of what must be proven to establish the violation. To assist the ZEO in determining what these elements are, we recommend the use of a Proof Chart (see Appendix 4). Once the ZEO compiles the Information and Complaint and Supporting Deposition and files them with the justice court, the local justice will then issue a Summons. A Summons is served by a police officer and requires the defendant to appear in court on a specified date.[24]

To streamline and perhaps shorten this procedure, we recommend the alternative use of the Appearance Ticket (see Appendix 11). The Appearance Ticket must be authorized in law by the legislative body for the ZEO to use it.[25] It is similar to a traffic citation in that it is issued by the enforcement officer directly to the defendant, without any documents having to be filed first with the court. It informs the accused of the section of law s/he is believed to have violated, and sets forth the court appearance date; it thereby takes the place of a Summons.[26] The ZEO can issue an Appearance Ticket to an alleged violator immediately, and then file the Information and Complaint and Supporting Deposition with the local court. Criminal proceedings require, of course, that the municipality prove the violation "beyond a reasonable doubt". The ZEO and the municipality should be prepared to provide such proof in the justice court.

The Town Law provides that each week that a violation continues constitutes a new and separate offense.[27] This raises the possibility of imposing successive (and escalating) fines imposed for each week that a violation continues. Even so, the municipality must follow due process: it must serve the defendant with a new Information and Supporting Deposition, and Criminal Summons (or Appearance Ticket) for each week that it seeks a conviction. This will require repeated inspections of the property to assure that the violation still exists. It is possible to list more than one violation in the same Information. For example, if a ZEO has been to the property on four or five occasions over a period of two months, trying to obtain voluntary compliance, and is now seeking court action because such voluntary compliance was not forthcoming, then all four incidents may be separately listed as separate counts within one Information. The ability to get successive fines is often a valuable deterrent in obtaining voluntary compliance after the start of a court action. Further, because of the high cost of going to court on such violations, local justices can help to offset some of this expense to a municipality by imposing a high fine.

Because zoning law violations are treated as misdemeanors for jurisdictional purposes, it is the district attorney who has the primary responsibility for prosecution.[28] But district attorneys do not commonly become involved in local zoning code prosecutions. Accordingly, district attorneys will delegate that responsibility to village and town attorneys. This delegation should be confirmed in writing. Usually, the district attorney annually forwards a letter to the municipal attorney, containing a blanket authorization to prosecute municipal code violations. Once authorized by the district attorney to prosecute the zoning violation(s), the village or town attorney becomes an assistant district attorney for that specific purpose, and should immediately file an oath of office as such with the county clerk.[29]

Civil Proceedings – State law provides ample authority by which a local government may bring proceedings to prevent, restrain, correct, or abate violations of zoning regulations.[30] Temporary restraining orders and injunctions are the vehicles used to accomplish this, and are often the final enforcement step taken by a local government.

A temporary restraining order is issued by a State court justice upon a showing that there is an activity going on, or a situation present, that may well cause imminent danger to life or property. Examples might be: allegedly illegal contamination of a public water supply, or storage of highly flammable material. Issuance of a restraining order requires application by the municipal attorney directly to the court, and is issued without a hearing. It remains in effect only so long as is necessary for the court to conduct a hearing on a preliminary injunction. At that hearing, the alleged violator is accorded an opportunity to show why a preliminary injunction should not be issued.

A preliminary injunction is a court order that either prevents someone from taking an action that will violate the zoning law, or orders someone to abate or correct an ongoing violation. The preliminary injunction provides temporary relief before a full trial can be held. No showing of imminent danger need be made. The court must, however, find that there is a reasonable chance that the municipality will succeed at the full trial, and that the alleged violator will not be unduly harmed by the injunction. A preliminary injunction can be issued to restrain enforcement of the zoning law or to suspend use or construction of a building.

Following a full trial on the merits of the case, the court may issue a permanent injunction against the violator. Unless appealed to a higher court, a permanent injunction abates the violation as a final matter. It either orders the violator permanently to cease the illegal activity, or orders that certain illegal construction be removed.[31]

As courts can impose jail sentences and heavy fines for the violation of court orders, the injunctive power often provides a significant weapon in cases of willful and determined violators. The local government has no power on its own to issue injunctions - they can only be issued by a State court. Thus the municipal attorney should always be called in to institute the proper action.

CONCLUSION

Effective zoning enforcement prevents or corrects violations of the zoning law, and therefore effectuates zoning's basic purposes: to protect the general health, safety and welfare of the citizens of the municipality. The zoning law is only as good as its enforcement; without proper enforcement, zoning consists merely of words on paper. Great care should therefore be taken when drafting the enforcement section of the zoning law. The authority to enforce, and the procedures for doing so, should be clearly spelled out. The ZEO should be given very specific guidelines regarding her/his powers and duties, to avoid confusion and to promote greater consistency in enforcement.

When a violation comes to the attention of the ZEO, it is critical that the enforcement process begin. In many cases, the violation results from an oversight on the landowner's part, and all that is needed is informal contact or a notice of violation. If not, the enforcement procedure provides for other administrative and judicial remedies to enforce compliance.

Written documentation and good record-keeping are also critical elements of the enforcement process. The ZEO best accomplishes this by using standardized forms that the legislative body adopts. Many sample forms are included for guidance, in the Appendix of this publication.

Appendix 1--Complaint Form

Tax Parcel Number: Section: Block: Lot: _____

Log No.: _____

COMPLAINT OF VIOLATION

Form of Complaint: □ Phone □ Letter (attach)

Complainant: _____

Address: _____

Phone: _____

Site Location: _____

Property Owner: _____

Nature of Complaint: _____

ACTION BY ENFORCEMENT OFFICER:

Possible violation of Article _____ , Section _____, Subsection _____ of the _____*(name of the law)*_____

Site Inspection completed on _____*(date)*____ at _____*(time)*_____[AM/PM]

Report of Findings:_____

_____

_____

Action taken: _____

_____

_____

_____

Zoning Enforcement Officer

Appendix 2—Enforcement Inspection Report Form

Tax Parcel Number: Section: Block: Lot: _____

Log No.: _____

ENFORCEMENT INSPECTION REPORT

Parcel

Location:_____

Property Owner: _____

Address: _____

Phone: _____

Initiated by:

□ Referral from Official □ Unrelated Inspection □ Citizen Complaint

□ Drive-by Inspection □ Routine Enforcement Inspection

Date of Inspection: _____

Violation Type:

□ Use □ Building Condition □ Setback

□ Sign □ Junk or trash □Abandoned Auto

□ Weeds □ Housing

□ None Observed □ Other *(Specify):* _____

Describe Violation: _____

_____

_____

Photos Taken: _____ Date: _____

Violation of Article _____ Section _____

Informal Contact Results: _____

_____

_____

Deadline(s) set (if applicable):

Date: _____

Action to occur by deadline:_____

Follow-up of Informal Contact: _____

□ Case closed □ Enforcement action checklist begun: _____*(date)*_____

_____

Zoning Enforcement Officer

Appendix 3–Enforcement Checklist

Tax Parcel Number: Section: Block: Lot: _____

Log No.: _____

ENFORCEMENT ACTION CHECKLIST

Owner: _____

Address: _____

City/State/Zip: _____

Phone: _____

Describe Violation: _____

_____

_____

in Violation of Article _____, Section _____, Subsection._____.

Action Recommended by Inspector:

□ Withhold Permits

□ Stop work order/ Cease and desist order

□ Information and Complaint filed with local justice

□ Attorney contacted to file for injunction

□ Appearance ticket issued

Recommended Action Approved:

_____ _____

Supervisor Date

Actions:

Date	**Action**	**Initials**
_____	No violation found/no action taken	_____
_____	Matter adjusted informally	_____
_____	Notice of Apparent Violation sent	_____
_____	Notice of Violation/Order to Remedy sent	_____

_____	Building Department notified to withhold permits	_____
_____	Stop Work/Cease and Desist Order issued & served	_____
_____	Information and Complaint filed with Local Justice	_____
_____	Appearance Ticket issued	_____
_____	Referred to Town/Village Attorney for Possible Injunction	_____

Appendix 4--Proof Chart Form

Tax Parcel Number: Section: Block: Lot:

Log No.: _____

PROOF CHART

Town/Village of :_____

Name of Violator :_____

Address of Violator :_____

T. M. Number:_____

Violation Alleged: _____

_____

_____

Elements to Be Proven	Witnesses	Evidence	Problems
1)			
2)			
3)			
4)			
5)			
6)			

Appendix 5--Initial Follow-up Letter of Citizen Complaint

(date)

(name)
(address)
(city, state, zip code)

Dear _____,

This letter will confirm the receipt and initial processing of your complaint about a possible zoning violation at _____*(location)*_____. It is our understanding that the alleged violation consists of the following: _____*(description)*_____
_____

(Select the appropriate paragraph to include in your letter.)

□ The information which you provided does not indicate a violation of the applicable zoning regulations or other land use regulations. The activity that you described is permitted on that property. If the description of the alleged violation contained is not accurate, please notify this office and we will reevaluate the situation. Unless we hear further from you this file will be closed.

□ An inspector from this office has completed a preliminary investigation and cannot confirm the facts that you reported to us. Specifically, on *(date of inspection)*, our inspector found no evidence of the activity that you described. If this situation recurs, or if you have additional information that might be useful to us, please contact this office. Unless we hear further from you, this file will be closed.

□ The matter that you describe may be controlled by deed restrictions. Deed restrictions, or restrictive covenants, are essentially private contractual agreements that are a part of the land title. Deed restrictions often control land use, building type, and location, just as zoning does. In some cases, deed restrictions are more restrictive than the zoning regulations. This municipality plays no part in the enforcement of private deed restrictions. Your attorney can furnish you with information on your rights

□ An inspector from this office has contacted the property owner informally. At this time, it appears that the property owner will voluntarily eliminate the violation in the near future. However, we will continue to monitor the situation until the violation is eliminated.

□ An inspector from this office has inspected the property and has initiated normal administrative proceedings for the correction of any violation. This matter has now become a formal enforcement action, identified as case number *(case #)*. If you have questions about the status of this case, you may contact this office. We will contact you when we believe the matter has been resolved.

Thank you for contacting us.

Sincerely,

_____
Zoning Enforcement Officer

Appendix 6--Final Follow-up Letter of Citizen Complaint

(date)

(name)
(address)
(city, state, zip code)

Dear _____,

On_____*(date)*_____ you contacted this office regarding a possible violation of zoning or land-use regulations at _____(v*iolation address)*_____. The purpose of this letter is to inform you of the conclusion of the enforcement action begun as a result of your complaint.

(Select the appropriate paragraph to include in your letter)

□ We are pleased to inform you that the violation has been eliminated as a result of:
- □ successful administrative enforcement action.
- □ the imposition of civil penalties.
- □ a court order for the abatement of the violation.

□ We regret to inform you that, after further investigation, our office, in consultation with an attorney, has determined that we do not have a case that can be successfully prosecuted in court. We understand your frustration with this situation, but we hope that you can understand our reluctance to prosecute a case we cannot win. We are reexamining the applicable regulations to determine whether those regulations should be revised to facilitate future prosecutions.

□ We regret to inform you that we took this enforcement action to court and were not successful. If you would like to see a copy of the court order in this matter, please contact this office.

Thank you for contacting us regarding this matter.

Sincerely,

_____
Zoning Enforcement Officer

Appendix 7A--Administrative Search Warrant Application

STATE OF NEW YORK }
_ COURT }
COUNTY OF _ }
In the Matter of an Administrative Inspection
of _____ under the control of _____ presently
located at _____
in the _____, County of
_____ by the _____

APPLICATION FOR ADMINISTRATIVE
INSPECTION WARRANT UNDER THE
_____

To: Honorable _____
Justice of the _____

1. _____*(Name)*_____, _____*(Title)*_____ of the _____, duly authorized by the _____ to act herein, applies for an Administrative Inspection Warrant, pursuant to the applicable provisions of statute, for:

□ (a) Entry upon the above captioned premises.

□ (b) Inspecting of such premises.

□ (c) Obtaining of materials described as _____.

□ (d) Access to and the copying of any records relating to such premises and materials.

2. Upon information and belief, said □ entry, □ access to and copying of records, □ inspection, □ obtaining of materials: □ was last undertaken on □_____ has never been undertaken.

3. Pursuant to _____and the law therein cited and authorizing the same, the _____of the _____ may enter and inspect any property, premise, or place for the purpose of:

□ inspecting an actual violation of that [local law/ordinance],
□ inspecting a suspected violation of that [local law/ordinance],
□ ascertaining compliance or non-compliance with that [local law/ordinance].

Further, _____ provides that an authorized representative of the _____ shall have a right to (a) enter any premises where a violation of that [law/ordinance] may have been committed; (b) inspect such premises; (c) obtain materials from any person which may substantiate allegation of such violation; and (d) have access to and copy any records relating to such alleged violation. To the

extent required by law, any information relating to the private concerns of persons which is obtained in the course of inspection or obtaining of materials shall be kept confidential.

4. The People of the _____ through the _____ Board have established that the public has a valid interest in the proper management of land use and in effective enforcement of the land use laws and regulations of the _____. The public interest necessarily includes, but is not limited to:

_____
_____
_____

5. In order to safeguard the public interest as outlined in paragraph 4 above, and to ensure the effective enforcement of the land use laws and regulations of the _____, the _____ must:

_____
_____

6. Based on the statutory authority allowing _____□ entry, □ to inspect, □ to obtain materials, □ access to and the copying of required records, and the public interest and necessity for said □ entry, □ inspection, □ obtaining of materials, o access to and copying, there is sufficient justification for the issuance of an Administrative Inspection Warrant.

7. Upon information and belief, _____*(Name)*_____, in his capacity as _____ of the _____, in the course of his duties attempted to:

_____
_____
_____
_____

the consent of _____. This _____ was controlled by_____, located at _____, in the _____, County of _____, State of New York. Permission to make the inspection was denied by _____ in the following manner:

_____
_____
_____
_____

8. Upon information and belief further attempts to_____

_____

at this time would be to no avail and would result in a similar refusal by _____ as described in paragraph 7 above.

9. Upon information and belief said _____ will in the future continue to refuse the statutory right of _____ to _____

_____

_____

as set forth in paragraph 3 above, unless the court grants the Administrative Inspection Warrant requested herein.

10. The □ entry, □ inspection, □ obtaining of materials, □ access to and copying of required records requested herein will be undertaken during reasonable hours and the credentials of the employee or employees of _____ undertaking the same will be exhibited to persons in control of _____ located at_____ in the State of New York. Such □ entry, □ inspection, □ obtaining of materials, □ access to and copying of required records will be undertaken by _____ or other agent of _____ as soon as practicable after the issuance of the warrant herein requested but in no event later than ten (10) days after the issuance of the Administrative Inspection Warrant and will be completed with reasonable promptness.

11. When the □ entry, □ inspection, □ obtaining of materials, □ access to and copying of required records has been completed, a return shall be made to this court showing that it has been completed.

12. The authority in support of this application for the issuance of the Administrative Inspection Warrant requested herein is based on Section 2-b of the Judiciary Law, the provisions of the _____ set forth herein, and the decisions in the cases of *Camara v. Municipal Court*, 387 U.S. 523, *See v. Seattle*, 387 U.S. 541, and *Marshall v. Barlow*, 436 U.S. 307.

STATE OF NEW YORK }
} ss.:
COUNTY OF _____}

_____being duly sworn, deposes and says: I have read the foregoing application for an Administrative Search Warrant and know the contents thereof to be true except as to the matters stated therein to be alleged on information and belief, and as to those matters I believe it to be true.

_____

Sworn to before me this _____
day of _____, 20___.

_____
NOTARY PUBLIC

Appendix 7B--Administrative Search Warrant Affidavit

STATE OF NEW YORK }
_____COURT }
COUNTY OF _____}
In the Matter of an Administrative Inspection
of _____ under the
control of _____ presently
located at _____
in the _____, County of
_____ by the _____

AFFIDAVIT

_____(Name)_____, an official of the _____, being duly sworn, deposes and says:

1. I am _____ of the _____. I have been employed by _____ to enforce its land use regulations and my responsibilities include:_____
_____
_____
_____

2. In order to ensure credible and effective enforcement of the _____ and rules and regulations promulgated pursuant thereto, it is necessary and reasonable to conduct unannounced periodic inspections of the _____ including places and points where violations of the _____are alleged to be or have been committed.

3. Upon information and belief and based on a review of evidence before me, _____ is believed to have committed a violation of Article ____, Section _____ of the _____ .

4. Upon information and belief, the above cited violation of _____ by _____consists, in part, of _____
_____
_____

5. The premises to be inspected, described in paragraph 4 above, is located at _____, in the _____, County of _____and State of New York, and is specifically situated and described as follows:
_____
_____
_____

6. Upon information and belief these premises ☐ have never been inspected or were last inspected on _____.

7. The _____ has developed a routine inspection program for the purpose of ascertaining compliance or non-compliance with _____.

8. On _____(date) _____, I attempted to conduct an inspection of the premises as described in paragraphs 4 and 5 above.

9. At that time, I stated the purpose of my inspection, the statutory authority under which I was conducting the inspection, and presented my credentials, consisting of _____, to _____. Following this identification process, I was denied the right to make the inspection or collect the materials. The denial consisted of _____
_____
_____
_____ As a result of this denial, I left without making the inspection or collecting materials.

10. Upon information and belief, further attempts by the _____to conduct an inspection or collect materials would be to no avail and would result in a similar refusal as set forth in paragraph 9 above.

11. I make this Affidavit in support of an application for an Administrative Inspection Warrant in relation to the alleged violation of _____ set forth in paragraphs 4 and 5 above and under the control of _____.

_____

Sworn to before me this _____
day of _____, 20___.

_____
NOTARY PUBLIC

Appendix 7C--Administrative Search Warrant

STATE OF NEW YORK }
_____COURT }
COUNTY OF _____ }
In the Matter of an Administrative Inspection
of _____ under the
control of _____ presently
located at _____
in the _____, County of
_____ by the _____

ADMINISTRATIVE
INSPECTION WARRANT

Index No.

To: Officers and Employees Charged with Land Use Enforcement of the _____

Application having made and administrative probable cause shown by_____,
_____ of the_____ for:

□ (a) Entry upon the above captioned premises.
□ (b) Inspecting of such premises.
□ (c) Obtaining of materials described as .
□ (d) Access to and the copying of any records relating to such premises and materials.

NOW, THEREFORE, pursuant to the provisions of _____and the decisions of the United States Supreme Court in *Camara v. Municipal Court*, 387 U.S. 523, *See v. Seattle*, 387 U.S. 541, and *Marshall v. Barlow*, 436 U.S. 307, you are hereby authorized to:

□ (a) Enter upon any premises where a violation of the land use regulations of is alleged to have been committed.
□ (b) Inspect such premises.
□ (c) Obtain materials as described above.
□ (d) Have access to and copy any records relating to such premises and materials.

Said □ entry, □ inspection, □ obtaining of materials, □ access to and copying of records shall be undertaken during normal business hours and as soon as practicable after the issuance of the warrant herein requested but in no event later than ten (10) days after the issuance of the Administrative Inspection Warrant and will be conducted with reasonable promptness.

The persons authorized to □ enter, □ inspect, □ obtain materials, □ have access to and copy records shall state their limited purposes of _____
_____
present to the owner, operator, or agent in control of _____
appropriate credentials and a copy of this Administrative Inspection Warrant.

Any person who refuses the execution of this Administrative Inspection Warrant or impedes the inspector in the execution of this warrant shall be advised that such refusal or action constitutes a violation of Section 195.05 of the Penal Law, and that if such person persists and the circumstances warrant, s/he shall be arrested and the inspection shall commence or continue.

A return shall be made to this court showing that the inspection has been completed and the date thereof.

_____,
Justice of the_____Court
Dated this _____day of_____, 20___

Appendix 7D--Administrative Search Warrant Return

STATE OF NEW YORK }
_____COURT }
COUNTY OF _____}
In the Matter of an Administrative Inspection
of _____ under the
control of _____ presently
located at _____
in the _____, County of
_____ by the _____

ADMINISTRATIVE INSPECTION
WARRANT RETURN

Index No.

To: Honorable _____
Justice of the _____

Pursuant to the Administrative Inspection Warrant issued to you over date of _____, inspection as authorized in said warrant was made and completed on _____*(date)*_____ by_____*(name)*_____, _____*(title)*_____ .

Attached is a copy of the Inspection Report dated _____.

STATE OF NEW YORK }
_____COURT }
COUNTY OF _____}

_____, being duly sworn, deposes and says that s/he has read the foregoing inspection warrant return subscribed by him/her; that s/he knows the contents thereof; and that the same is true to his/her knowledge.

Sworn to before me this _____
day of _____, 20___.

_____
NOTARY PUBLIC

Appendix 7E - Administrative Search Warrant Return - Directions for Filing

STATE OF NEW YORK }
_____COURT }
COUNTY OF _____}
In the Matter of an Administrative Inspection
of _____ under the
control of _____ presently
located at _____
in the _____, County of
_____ by the _____

DIRECTIONS
FOR FILING

Index No.

The annexed return of the Administrative Inspection Warrant issued by me over date of_____ _____has been returned to me.

I HEREBY DIRECT that the original warrant, the application for same, and the return be filed in the _____ (City, Town, Village) Clerk's office.

_____
Justice of the _____Court

Appendix 8--Letter of Violation

NOTICE OF APPARENT VIOLATION

(date)

(name)
(address)
(city, state, zip code)

Dear _____,

According to records of the Town of _____Assessor, you are the owner of property located at _____*(violation address)*_____. On ___*(inspection date)*___, I observed an apparent violation of the Zoning Law/Ordinance on your property, specifically: _____ *(description of violation)*_____.

That activity is a violation of Article _____, Section _____ of the Zoning Law, a copy of which is attached for your information. I hereby request that you either eliminate the violation or file plans with this office for corrective construction by _____*(date).*

If you believe that you are not in violation of the Zoning Law, please contact this office to review the situation. If you intend to bring your property into compliance with the law, but you cannot meet the stated deadline, please contact this office and we will attempt to work with you on a short extension.

If you do not take the requested action or make other arrangements with this office by __*(date)*__, we will begin formal enforcement action against you. You will **NOT** receive an additional warning before we begin formal enforcement action.

THIS IS THE ONLY LETTER YOU WILL RECEIVE. Your next communication from us will involve formal enforcement action.

If you wish to discuss any aspect of your case, you can call me at __*(phone number)*__. Because I am often in the field, the best time to reach me is between _____*(time and days available)*_____.

Sincerely,

_____

Zoning Enforcement Officer

Appendix 9--Notice of Violation Form

Tax Parcel Number: Section: Block: Lot:

NOTICE OF VIOLATION - ORDER TO REMEDY

(date)

(name)

(address)

(city, state, zip code)

Dear _____,

You are hereby notified that you have been found to be in violation of the Zoning Law Article _____, Section _____, Subsection _____. The specific violation is: _____

_____

_____

as observed by the zoning enforcement officer on _____*(date)*.

The following corrective measures should be taken no later than _____*(date)* or penalties may be assessed:_____

_____

For the purposes of applying the penalties described in the Administrative Section of the Zoning Law, your first violation shall be deemed to have occurred as of _____*(date).*

Please Note: A violation of this code is punishable by a fine not to exceed _____*(amount)*. Each _____*(time period)* of continued violation shall constitute an additional, separate offense, after court determination.

If you have questions, please contact me.

Sincerely,

_____

Zoning Enforcement Officer

Appendix 10--Stop Work Order Form

Tax Parcel Number: Section:		Block:	Lot: _____
			Log No.: _____

Town of _____
_____ County, New York
Zoning Law

Stop Work Order

YOU WILL PLEASE TAKE NOTICE that there exists a violation of Article _____, Section _____, Page

_____ of the _____ Zoning Law *(or line out "zoning law" and substitute other law or ordinance as applicable)* at the following location: _____

_____

Tax Map Number: _____ in that: _____(state character of violation)

_____

_____.

You are hereby

Directed and Ordered to Stop Work,

comply with the law, and to remedy the conditions above mentioned

on or before _____*(date)*_____.

Failure to remedy the condition aforesaid and to comply with the applicable provisions of law may constitute an offense punishable by fine, imprisonment, or both.

_____ _____

Date Zoning Enforcement Officer

cc: Town Clerk

Appendix 11--Appearance Ticket Form

VIOLATION APPEARANCE TICKET

Defendant Name _____
Address _____
Telephone _____Date _____

You are hereby notified that you are charged with violating the Law/Ordinance of the [Town/Village] of _____indicated below. A conviction on this charge could result in a maximum fine not to exceed _____.

Name of Law: _____
Article:_____Section:_____
Adopted _____

In that on the _____ day of _____, 20___, at _____ o'clock in the [fore/after] noon, at _____*(location)*_____, defendant did_____
_____
_____.

I hereby affirm the above to be true to the best of my knowledge

_____
Signature, Zoning Enforcement Officer

You are hereby directed to appear in the [Village/Town] Court on the _____ of _____ 20____, at _____ o'clock [AM/PM] at _____

YOUR FAILURE TO APPEAR COULD RESULT IN A WARRANT BEING ISSUED FOR YOUR ARREST.
NOTICE: YOU ARE ENTITLED TO RECEIVE A SUPPORTING DEPOSITION FURTHER EXPLAINING THE CHARGES, PROVIDED YOU REQUEST SUCH SUPPORTING DEPOSITION WITHIN THIRTY DAYS FROM THE DATE YOU ARE DIRECTED TO APPEAR IN COURT AS SET FORTH ON THIS APPEARANCE TICKET. DO YOU REQUEST A SUPPORTING DEPOSITION? □ Yes □ No
Receipt Acknowledged:_____
Defendant

Appendix 12—Criminal Summons

STATE OF NEW YORK }
} SS.:
COUNTY OF _____}
CITY/TOWN/VILLAGE OF_____COURT}

THE TOWN/VILLAGE OF_____,

Plaintiff,

Against_____,

Defendant

SUMMONS

In the name of the (City/Town/Village) of_____:

To:_____:

AN ACCUSATORY instrument, namely a Violation Code Appearance Ticket having been filed with the above court on the _____day of_____20___, by_____,
Stating that you did commit the following offense: Violation of (code section or title of local law) of the City/Town/Village of_____.

YOU ARE HEREBY SUMMONED to appear before this court at (address)
On the ____day of_____20__, at _____(A.M./P.M.) in connection with the said accusatory instrument.

AND UPON YOUR FAILURE to appear at the time and place herein mentioned a WARRANT may be issued for your arrest for the offense charged.

Dated: _____20__
_____, New York

_____
Justice of the (City/Town/Village) Court

Appendix 13--Information and Complaint Form

INFORMATION AND COMPLAINT

[Village/Town] Court of the *[Village/Town]* of _____, County of _____

The People of the State of New York

against

_____

(Defendant)

STATE OF NEW YORK }

} SS.:

COUNTY OF _____}

FIRST COUNT

The complainant, _____, Zoning Enforcement Officer of the [Town/Village] of _____, County of _____, being duly sworn, deposes and says:

1. I am the Zoning Enforcement Officer for the [Town/Village] of _____and make this information based upon personal knowledge.

2. On _____ *(date),* at _____ *(time),* defendant _____*(name)* did commit a violation of the [Town Village] Zoning [Law/Ordinance], Article _____, Section _____, in that at that date and time at _____*(location)*_____, in the [Town/Village] of_____, defendant did_____ _____.

3. Upon information and belief, defendant was and is the [owner/tenant] of the property referenced above in the [Town/Village] of _____, and as such, was responsible for the conditions described above.

4. The condition constituting the violation [is/is not] a continuing violation and has been observed or reported on the following other dates and times: _____ _____.

5. Defendant has failed to abate or remedy the alleged violation despite the following requests to do so: _____ _____ Copies of all written requests are annexed.

WHEREFORE, your deponent requests that the court take action against defendant as allowed by law.

Sworn to before me this

_____ day of _____20___

_____

Notary Public

ENDNOTES

[1] General City Law §27; Town Law §271; Village Law §7-718.
[2] Town L. §266; Vil. L. §7-710.
[3] Gen. City L. §81; Town L. §267; Vil. L. §7-712.
[4] Town L. §64; Vil. L. §4-412. For procedures in cities, the reader should consult individual city charters.
[5] Gen. City L. §§27-a, 27-b; Town L. §§274-a, 274-b; Vil. L. §7-725-a, 7-725-b.
[6] Gen. City L. §32; Town L. §276; Vil. L. §7-728.
[7] Gen. City L. §81-a(4); Town L. §267-a(4); Vil. L. §7-712-a(4).
[8] *Bower Associates v. Town of Pleasant Valley*, 2 N.Y.3d 617 (2004).
[9] See endnote 3.
[10] See endnote 7.
[11] Gen. City L. §27(14); Town L. § 271(14); Vil. L. §7-718(14).
[12] Gen. City L. §28-a; Town L. §272-a; Vil. L. §7-722.
[13] See endnote 2.
[14] See *Camara v. Municipal Court*, 387 U.S. 523 (1967); *See v. City of Seattle*, 387 US 541 (1967).
[15] Gen. City L. §81-a(5)(b); Town L. §267-a(5)(b); Vil. L. §7-712-a(5)(b).
[16] See *Knight v. Amelkin*, 68 N.Y.2d 975 (1986).
[17] Gen. City L. §81-b(1); Town L. §267(1); Vil. L. §7-712(1).
[18] Gen. City L. §81-a(6); Town L. §267-a(6); Vil. L. §7-712-a(6).
[19] Town L. §264; Vil. L. §7-706. For procedures in cities, the reader should consult individual city charters.
[20] Mun. Home Rule L. §10(4)(b); Town Law §268(1); Op. Atty. Gen. (Inf.) No. 2005-18.
[21] A "violation" is "an offense, other than a 'traffic infraction', for which a sentence to a term of imprisonment in excess of fifteen days cannot be imposed." Penal L. §10.00(3).
[22] A "misdemeanor" is "an offense, other than a 'traffic infraction', for which a sentence to a term of imprisonment in excess of fifteen days may be imposed, but for which a sentence to a term of imprisonment in excess of one year cannot be imposed." Penal L. §10.00(4).
[23] See, generally, Crim. Proc. L., Art. 100.
[24] Crim. Proc. L. §110.10 and, generally, Art. 130.
[25] Mun. Home Rule L. §10(4)(b).
[26] Crim. Proc. L. §110.10 and, generally, Art. 150.
[27] Town L. §268.
[28] County L. §700(1); *Peo. v. Van Sickle*, 13 N.Y.2d 61 (1963).
[29] Ops. Atty. Gen. (Inf.) Nos. 90-8, 97-52.
[30] Mun. Home Rule L. §10(4)(b); Town Law §268(2); Vil. L. §7-714.
[31] For information regarding the powers of courts to issue orders and injunctions, see, generally, Const., Art. 6§7; City Court Act §1508; *Youngs v. Carter*, 10 Hun. 194; *Matter of Schneider v. Aulisi*, 307 N.Y. 376 (1954).