



Division of Local  
Government Services

# Enforcement of Zoning and Other Local Laws

A Division of New York Department of State

2

## 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



## 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

- Acquire, prepare & distribute forms
- Receive applications
- Maintain records of administrative actions
- Make determinations regarding compliance
  - zoning & other land use laws

### Enforcement

- 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?

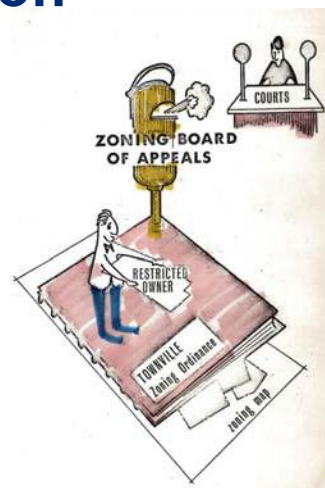
### FALSE

- 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



## Who may appeal ZEO's decision?

### “Aggrieved Parties”

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

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

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

## 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

## 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

## 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

## 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

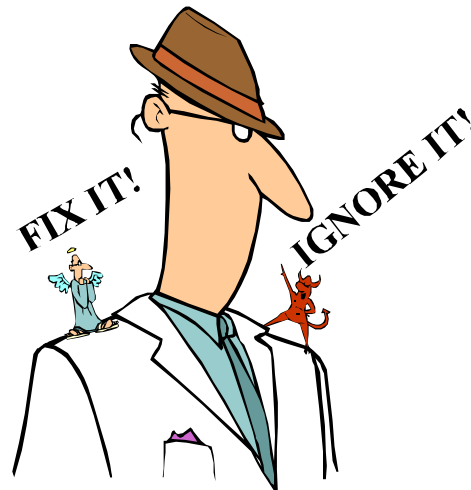
- Stay can be lifted
  - ZEO certifies to ZBA that stay would cause imminent peril to life or property
- Certificate of imminent peril can only be vacated by restraining order granted by ZBA
  - or if court re-imposes stay



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

## Classify offenses of zoning violations

All legal wrongdoings are called offenses

- Violation:
  - Imprisonment of 15 days or less
  - Fine not to exceed \$250
  - Not a crime
  - No right to jury trial
- Misdemeanor:
  - Imprisonment exceeds 15 days, but less than 1 year
  - Is a crime
  - Jury trial optional with defendant



## Penalties provided in Town Law §268

Offense	Fine	Sentence
1st	\$350 Maximum	6 Months
2 <sup>nd</sup>	\$360-\$700	6 Months
3 <sup>rd</sup>	\$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)

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