

AN ORDINANCE ESTABLISHING THE CITATION HEARING PROCEDURE

Section 1-12 of the Code of Ordinances of the Town of Durham, Connecticut is hereby modified but as follows:

(Now existing)

- (a) Purpose. The purpose of this section is to establish a citation hearing procedure as permitted under Public Act 88-221 so that the Town may have a mechanism by which to enforce violations of its ordinances.*
- (b) Appointment of hearing officers. The First Selectman shall appoint one or more citation hearing officers to conduct hearing authorized by Public Act 88-221, Section 2. The citation hearing officers shall not be police officers employed by the Town, shall not be employees of the Town, and shall not be persons authorized to issue citations for violations of municipal ordinances of the Town.*
- (c) Authority of hearing officers. The citation hearing officers appointed by the First Selectman shall have the authority and exercise all the powers set forth in Section 2 of Public Act 88-221, and shall conduct hearings in accordance with the requirements of that section.*
- (d) Town to make available to hearing officers. The Town shall make available to the hearing officer the necessary facilities and equipment for conducting hearings and reaching decisions as required under Section 2 of Public Act 88-221.*

(To be replaced as follows)

SECTION 1 -12- CITATION AND CITATION HEARING PROCEDURE

- (a) Purpose.** The purpose of this section is to establish a procedure for the issuance of citations in accordance with Conn. Gen. Stat. §§ 7-148(c)(10)(A) and 7-152c to be followed in all instances when citations are issued by the Town of Durham municipal officials.
- (b) Citation Officers.** A person who is expressly appointed as a citation officer by the First Selectman or who in his or her official duties has the authority to enforce the applicable municipal regulation or ordinance that is subject to this citation ordinance are citation officers and shall have the authority to issue citations in accordance with this ordinance.
- (c) Initial Citation Notice.** Any person receiving a citation issued under any regulation or ordinance of the Town shall be allowed a 30 day uncontested period from his/her receipt of the citation to make an uncontested payment of the fine, penalty, cost or fee specified in the citation to the Town. If the citation is mailed by regular or certified mail, the day of receipt of the citation shall be deemed to be three business days after the day of mailing of the citation. Such uncontested

payment shall be inadmissible in any proceeding, civil or criminal, to establish the conduct of such person or other person making the payment.

- (d) **Second Citation Notice and Notice of Right of Hearing.** If a person who has been issued a citation does not make uncontested payment of the fine, penalty, cost or fee specified in the citation to the Town within the time allowed under Subsection (c) above, the Town shall send notice to the alleged violator no later than 12 months after the expiration of the final period for the uncontested payment of the fine, penalty, cost or fee for any citation issued under any regulation or ordinance of the Town for an alleged violation, informing the violator and any other persons cited of the following:
- (1) The allegations against the violator and other persons cited and the amount of the fines, penalties, costs or fees due;
 - (2) That the alleged violator or other person cited may contest his/her liability by delivering in person or by mail written notice within 10 days of the date of the notice sent pursuant to this Subsection (d) to said violator that he/she desires to contest his/her liability before a citation hearing officer;
 - (3) That if the alleged violator does not demand such a hearing, an assessment and judgment shall be entered against him/her; and
 - (4) That such judgment may issue without further notice.
- (e) **Payment without hearing.** If the alleged violator or other person to whom notice has been sent pursuant to Subsection (d) above wishes to admit liability for any alleged violation, he/she may, without requesting a hearing, pay the full amount of the fines, penalties, costs or fees in person or by mail to the official designated by the Town.
- (f) **Assessment by Default.** A person who either (i) has been issued a section citation notice in accordance with Subsection (d) above and who does not deliver or mail a written demand for a hearing within 10 days of the date of that second notice, or (ii) requests a hearing but fails to appear at a duly notice hearing as required by subsection (g) (1) below, shall be deemed to have admitted liability. The designated municipal official shall enter a default assessment the fines, penalties, costs or fees provided for by law by default after making such findings that the applicable notice was duly issued. The hearing officer shall then file a certified copy of the assessment with the Superior Court in accordance with the procedures set forth in Subsection (g) (2) below.
- (g) **Hearing Procedure.**
- (1) Any person who requests a hearing in writing shall be given written notice of the date, time and place for the hearing. Such hearing shall be held not less than 15 days nor more than 30 days from the date of the mailing of such notice, provided that the hearing officer shall grant, upon good cause

shown, any reasonable request by an interested party for postponement or continuance. An original or certified copy of the initial notice of violation issued by the issuing officer shall be filed and retained by the Town, shall be deemed to be a business record within the scope of Conn. Gen. Stat. § 52-180 and evidence of the facts contained therein. The presence of the issuing officer shall be required at the hearing if such person so requests. The alleged violator or other person wishing to contest liability shall appear at the hearing and may present evidence in his/her behalf. A designated Town official, other than the hearing officer, may present evidence on behalf of the Town. The hearing officer may accept from such alleged violator copies of documents by mail and may determine thereby that the appearance of such person is unnecessary. The hearing officer shall conduct the hearing in the order and form and with such methods of proof as he/she deems fair and appropriate. The rules regarding the admissibility of evidence shall not be strictly applied, but all testimony shall be given under oath or affirmation. The hearing officer shall announce his/her decision at the end of the hearing. If he/she determines that the alleged violator is not liable, he/she shall dismiss the matter and enter his/her determination in writing accordingly. If he/she determines that the person is liable for the violation, he/she shall forthwith enter and assess the fines, penalties, costs or fees against such person as provided by the ordinance.

- (2) If such assessment is not paid on the date of its entry, the hearing officer shall send by first-class mail a notice of the assessment to the person found liable and shall file, not less than 30 days nor more than 12 months after such mailing, a certified copy of the notice of assessment with the clerk of the superior court for the geographical area in which the Town is located, together with an entry fee. The certified copy of the notice of assessment shall constitute a record of the assessment. Within such 12-month period, assessments against the same person may be accrued and filed as one record of assessment. The clerk of the court shall enter judgment in the amount of such record of assessment and court costs against such person in favor of the Town. Notwithstanding any other provision of the General Statutes, the hearing officer's assessment, when so entered as a judgment, shall have the effect of a civil money judgment and a levy of execution of such judgment may issue without further notice to such person.
- (3) The person against whom an assessment has been entered pursuant to this section is entitled to judicial review by way of appeal. An appeal shall be instituted within 30 days of the mailing of notice of such assessment by filing a petition to reopen assessment, together with an entry fee in an amount equal to the entry fee for a small claims case pursuant to C.G.S. § 52-259, in the superior court for the geographical area in which the Town is located, which shall entitle such person to a hearing in accordance with the rules of the judges of the superior court.

- (h) **Hearing Officer Appointment.** The Board of Selectmen shall appoint one or more citation hearing officers, who shall be other than police officers or employees of the Town or persons who issue citations pursuant to this ordinance, to conduct the hearings authorized by this section. All such officers shall serve for a term of two years.
- (i) **Amount of Penalties for Violations.** The fine, penalty, cost or fee imposed under this ordinance for any single violation shall not exceed the amount of \$100 per day, unless otherwise specifically provided by the particular ordinance being entered or the General Statutes.
- (j) **Disposition of Money Received.** All moneys received pursuant to the procedure set forth above shall be remitted to the office of the Town Tax Collector.