

Public Hearing

8:00 p.m., Monday, February 29, 2016

3<sup>rd</sup> Floor Meeting Room, Town Hall

Meeting Minutes

In attendance: Laura Francis, First Selectman; John Szewczyk, Selectman; Steve Levy, Selectman; Attorney Ken Slater, Halloran & Sage LLP and approximately fifteen members of the public.

The purpose of this public hearing is to present information and discuss amendments to the town's existing Citation Hearing Procedure Ordinance and to provide an opportunity for public comment.

**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**

**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.

**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.

**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.

**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 B 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:

The allegations against the violator and other persons cited and the amount of the fines, penalties, costs or fees due;

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 original notice to said violator that he/she desires to contest his/her liability before a citation hearing officer;

That if the alleged violator does not demand such a hearing, an assessment and judgment shall be entered against him/her; and

That such judgment may issue without further notice.

**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.

**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 Section (g) (2) below for the.

### **Hearing Procedure.**

Any person who requests a hearing 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.

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.

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.

**Hearing Officer Appointment.** The First Selectman shall appoint one or more citation hearing officers, who shall be other than police officers or employees or persons who issue citations, to conduct the hearings authorized by this section. All such officers shall serve for a term of two years.

**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, unless otherwise specifically provided by the General Statutes.

**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.

Laura Francis called the meeting to order at 8:00 p.m., and led with the pledge of allegiance. She stated that this amendment was brought forward when discussing the possibility of a Blight Ordinance. At that time the citation ordinance was found to have some deficiencies and it was decided that it should be corrected and improved upon. L. Francis then turned the meeting over to Attorney Ken Slater.

Attorney Slater explained that the original citation ordinance was not perfectly clear to either the official or the potential violator to clearly understand the requirements; contains state statutes that are generally confusing. With the amendments being brought forward it spells out exactly what the citation hearing procedure is, appointment of hearing officers, and their authority. He noted that this ordinance will apply to all Durham ordinances that require a citation. He then opened up the meeting to questions.

There was a question to clarify the citation procedure. Attorney Slater explained:

1. Initial first notice; a letter noting that they are in violation of an ordinance and they have 30 days to make an uncontested payment of the fine and that they will be subject to additional charges each day they are in violation.
2. Second notice; is sent 30 days later (no later than 12 months later) that they have been in violation for the past 30 days and are now subject to the first notice of violation and additional charges for every day (30 days).

3. Third notice; is issued for both citations and they have an opportunity for a hearing
4. If after the hearing it has not been resolved the matter would then go to Superior Court.

There was discussion surrounding the items below.

- Qualifications for a hearing officer appointment and if there should be any exclusion of the officer being a town resident; Attorney Slater stated that there are no restrictions in regards to the officer being a resident. He recommended using someone who was neutral and experienced or reaching out to other towns that have an officer to see how they filled the position. He also noted that this position was usually volunteer and not paid.
- (d) Second Citation Notice and Notice of Right of Hearing; refers to Subsection B above which is not correct.
- (d) Second Citation Notice and Notice of Right of Hearing (2) remove the word *original* before notice.
- (f) Assessment by Default; last line needs to be completed.
- (g) Hearing Procedure (1) add the words *in writing* after Any person who requests a hearing.
- The ordinance recommends the First Selectman shall appoint citation hearing officers; a resident felt it should be the Board of Selectmen who should create a pool of pre-qualified individuals.
- Who would collect the fines; it was recommended that the office of Tax Collector be the main office to collect the fines; it was suggested it be the Town Clerk. Attorney Slater will look to see if this would be permitted.
- (i) Amount of Penalties for Violations; ties to all town ordinances. Shall not exceed the amount of \$100 (add *per day*).
- What would the process be if the violation needed immediate action (life or death situation); the town would then utilize the building official, fire marshal, health director (limited to code) to advise immediate order in Middlesex Court.
- If you can clearly see a violation of an existing ordinance from street level to do have to gain access to a property; some ordinances maybe not, some ordinances you clearly would need to gain access.
- Would there be consequence if a property was in violation and then sold; who would then be in violation; the violation would remain with the original property owner. Transferring the property would not render the citation moot. If the condition continued on the property, a new citation can be issued against the new owner.

A resident who has been very concerned about a blight issue in the neighborhood for a very long time, noted his displeasure with past town officials and thanked the Board for committing and moving forward with this amendment. L. Francis responded that the town would now have enforcement ability and is prepared to start the process.

The public hearing was closed at 9:00 p.m.

Respectfully submitted,

Beth Moncata

