

MUNICIPAL INFRACTIONS AND CODE ENFORCEMENT

Practice and Procedure for the
City of Gaithersburg, Maryland

A View of the Entire Process
From Initial Complaint
To Court Order Enforcement

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THE CODE ENFORCEMENT PROCESS HELPS TO MAINTAIN BASIC COMMUNITY
STANDARDS AND CAN SUPPORT HEALTH, SAFETY AND QUALITY OF LIFE FOR
ALL MUNICIPAL RESIDENTS

“[N]o man has a natural right to commit aggression on the equal rights of another; and this is all from which the laws ought to restrain him”

Thomas Jefferson, President of the United States

“[E]very citizen shall hold his life, liberty, property, and immunities, under the protection of the general rules which govern society.”

Daniel Webster, U.S. Senator and Secretary of State

“The first requirement of a sound body of law is, that it should correspond with the actual feelings and demands of the community, whether right or wrong.”

Oliver Wendell Holmes, Jr., U.S. Supreme Court Justice

“[L]ogic, and history, and custom, and utility, and the accepted standards of right conduct, are the forces which single or in combination shape the progress of the law.”

Benjamin N. Cardozo, U.S. Supreme Court Justice

“When the law fails of execution, when the conduct of the government is hampered by dishonesty and corruption, when crime is prevalent, the value of property is reduced, the area of the slums is widened, ignorance becomes more dense and the poverty of the people is increased.”

Calvin Coolidge, President of the United States

“[E]very community gets the kind of law enforcement it insists on.”

Robert F. Kennedy, U.S. Senator and Attorney General

INTRODUCTIONS FOR THE MARYLAND VERSION OF THE MANUAL

The City of Gaithersburg is very proud of the efforts of Assistant City Attorney Frank Johnson in developing the Municipal Infractions and Code Enforcement Practice and Procedures Manual for the State of Maryland. He initially created the document for internal use in Gaithersburg, and it quickly became apparent that its comprehensive and thorough procedural information could be of benefit to a much broader audience. We are happy to share Frank's work and we hope that readers from all aspects of local government in Maryland find it useful as they work to preserve the quality of life in their communities.

-- *Hon. Jud Ashman, Mayor, City of Gaithersburg, Maryland*

On behalf of the Maryland Municipal Attorney's Association (MMAA), I have the pleasure of recommending and endorsing the "*Municipal Infractions and Code Enforcement Manual*", which has been prepared by Frank M. Johnson, Assistant City Attorney for the City of Gaithersburg. This Manual is an incredibly useful resource for anyone handling code enforcement cases in Maryland. Indeed it's the first comprehensive guide of this nature that covers the entire municipal infraction enforcement process, from the issuance of the citation, through the trial and post-trial enforcement.

While court practices may vary throughout Maryland, the Manual identifies the Maryland statutes, rules, practices and court decisions addressing key enforcement issues. It can provide guidance to not only code enforcement officers, but also to municipal attorneys and elected officials alike. The Manual is a useful tool for individuals possessing any level of knowledge and expertise in this area, from a newly appointed elected official or code enforcement officer in training, to an experienced municipal attorney. The MMAA appreciates the willingness of the Maryland Municipal League to publish this Manual and to make it available to its members.

--*Brynja M. Booth, President of the Maryland Municipal Attorney's Association (MMAA)*

The Code Enforcement and Zoning Officials Association (CEZOA) strongly recommends and endorses the "*Municipal Infractions and Code Enforcement Manual*" prepared by Frank M. Johnson, Assistant City Attorney for the City of Gaithersburg. It's an excellent document and resource tool to assist Code Enforcement Officers on legal aspects and court procedures. It also serves as a statewide training tool and reference guide, both for new and experienced code officers.

CEZOA is very grateful for Maryland Municipal League taking the initiative to make this Manual available statewide. We believe that all municipal officials and their staff will benefit from the Manual for many years to come.

--*Officers and Members of the Code Enforcement and Zoning Officials Association*

About the Author

Frank M. Johnson has worked in public service throughout his professional career, and in local government since 2000. He developed initial code enforcement guidelines for attorneys and department staff as an Assistant County Attorney for Montgomery County, Maryland. A decade and a half later, he found himself handling code enforcement trials for the City of Gaithersburg, Maryland, and looked to the old guideline memos. That led to this comprehensive, updated municipal infractions manual for the City, which was then expanded to a statewide version. Frank is from Montgomery County and lives in Bethesda, Maryland with his wife.

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INTRODUCTION: CODE ENFORCEMENT AND THE MUNICIPAL INFRACTIONS PROCESS

It has been said we are a nation of laws. While local ordinances do not (and should not) control everyone's behavior, certain priorities, including those touching on our quality of life, have to be written into law to have any meaning. These may involve keeping the grass cut, not playing loud music at midnight, or keeping the house in basic maintenance so it's not a community eyesore. They may also involve a parks code violation, cruelty to animals or an unvaccinated dog. And they may be related to a fire code or zoning violation, among other options. As hard as elected officials and government staff at all levels work to draft well-written, clear and effective laws, none matter if they aren't enforced. While most persons willingly follow the law, the more difficult cases are those who won't voluntarily do – or only follow the law after being warned. In those cases, ordinances just don't work by themselves.

It's the code enforcement process, also known as the municipal infractions process in Maryland, which is used to enforce laws and local ordinances against those who won't voluntarily comply. Most persons will follow the law voluntarily, but the reality is that when a law isn't enforced, it becomes less effective for everyone. Even those who voluntarily comply are less likely to take a law seriously when it's known the law won't be enforced. In addition, steps to enforce the law often involve the most serious violations which, if not corrected, can lead to results which have a significant community and neighborhood impact.

To make these laws work, an effective local government needs an enforcement process. That certainly starts with the City, but the municipal infraction process involves many players. It can start not just with the violator, of course, but another citizen raising concerns about the

violation. Sometimes other community leaders or groups will also raise concerns. Then a code enforcement officer will have to investigate once a complaint is made, and try to encourage voluntary enforcement – the most effective way to enforce the law. But when that doesn't work, then the code enforcement officer has to take the next steps, such as a formal notice, more inspections, and finally a citation charging a violation.

Often, the person who's been cited will simply pay the fine and take care of the problem. When that doesn't happen, or violations continue, then the City Attorney's office gets involved as the citation goes to court. Sometimes defendants won't dispute those cases, and the City wins by default. But if not, at the trial, the City lays out the violation, explains why we're in court, and the judge makes a decision on the defendant's guilt in committing the civil violation. Then the judge decides the amount of the fine to impose and whether to include an order requiring compliance, if requested. And after that, if the defendant still doesn't comply, the City may try to collect the fine or seek contempt charges if the defendant doesn't follow the court's order.

The goal is always to gain compliance rather than collect a fine or, in later enforcement efforts, simply have someone cited for contempt. But often the reality is that the willingness to take such steps helps encourage voluntary compliance in the first place – again, the most effective way to enforce the law.

This manual may be unique in its focus on the entire code enforcement process, from the initial complaint through court hearings, appeals, and enforcement. Other summaries may discuss some elements of municipal code enforcement or the appeals process, but none provide a comprehensive overview, and they do not focus on the City of Gaithersburg or Maryland in doing so. The hope is that this manual will fill that gap.

CHAPTER 1: WHAT'S A MUNICIPAL INFRACTION?

Civil Offenses. Municipal infractions are civil offenses subject to the citation and prosecution processes laid out at Md. Local Government Code Ann., §§6-103 through 6-107. A person commits a municipal infraction when they violate a local ordinance, the violation of which the Mayor and City Council have identified as a municipal infraction. *See* Md. Local Government Code Ann. §6-102(a)(1). Thus, violations of homeowner or condominium association violations are not included, as they are not municipal ordinances and must be handled by the association or HOA board of governors. Also, a municipal infraction is a civil offense, subjecting the person to a fine or a court order to enforce compliance; it is not a criminal offense that would subject a person to any punishment, such as imprisonment just for the violation. *See* Md. Local Government Code Ann. §6-102(a)(2). Criminal and civil offenses can both be prosecuted by the State's Attorney, and in some cases the County Attorney will handle such cases for that county's municipalities. But municipalities and counties may designate their own attorney to prosecute municipal infractions. *See* Md. Local Government Code Ann. §6-108(b).

Maryland law provides that the local legislative body can define and punish ordinance violations as criminal or civil offenses. *See* Md. Local Government Code Ann. §§6-101(a)(1), 6-102(a)(2). State law is not explicit that the same offense cannot be punished both as a criminal and civil offense, but the Gaithersburg City Code does specify that an offense deemed a municipal infraction cannot also be defined as a criminal violation. *See* Gaithersburg City Code §§1-7, 1-9(a)(2). Thus, when the violation of an ordinance is characterized in the City Code as a municipal infraction, it cannot be prosecuted as a criminal offense.

The Initial Complaint. The municipal infraction process may begin in several different ways. Probably most common is a complaint by an individual or group to the City. This can be a complaint from a neighbor about an unkempt yard, noise violations, or other activity affecting the neighborhood. Sometimes the call comes into the Neighborhood Services office at City Hall, but sometimes it is referred from other staff or officials, and may even be referred by an elected official. In those cases, the City code enforcement officer will normally investigate and make findings as to the nature of any violation. In some cases, witnesses can help to show – or may even be necessary to show – ongoing violations which are time sensitive, such as noise violations. A municipal infraction may also be identified by code enforcement officers directly. While the City doesn't have the resources to support regular inspections, some violations may stand out when a code enforcement officer is responding to another concern, and some community, condominium or HOA inspections are periodically set to ensure neighborhood safety and basic home maintenance, leading to direct or indirect reports of alleged violations

Complainant Confidentiality. In most cases, a citation begins with a neighbor or citizen complaint, but the code enforcement officer will still observe the violation personally, and thus serve as the witness who can provide personal information. In that case, the original complaining individual may not be part of the basis to establish the allegation. But some defendants facing neighborhood complaints will want to know if an individual made the initial complaint – and if so, they may want to know that person's identity. And this can even lead to a "Public Information Act" request, under Md. General Provisions Code Ann., §4-201(a), which lays out the general rule of disclosure unless an exception applies.

Some complainants will not be concerned if they are known as the individual initiating an investigation and citation process. But other neighbors will want confidentiality, and if they have to reveal their identity, may not be willing to make a complaint. Based on this, a limited exception is provided at Md. General Provisions Code Ann., §4-351(b), in which inspection can be denied “only to the extent” disclosure would interfere with a valid law enforcement proceeding, disclose a confidential source, or prejudice an investigation. This provision has been interpreted, in the municipal infractions context, to only allow nondisclosure to protect a confidential source. Thus, under Md. General Provisions Code Ann., §4-351(b)(4), the name is only protected when the information given by the complainant is offered “under a promise of confidentiality.” *Bowen v. Davison*, 135 Md. App. 152, 165 (2000). For this exception to disclosure under the Public Information Act to apply, the file records must specify that “the informant was guaranteed confidentiality when it reported . . . [the] alleged code violations.” *Id.* And staff must offer this assurance before the complaining person gives the information about the alleged violation – otherwise, nondisclosure cannot be considered necessary to “protect a confidential source.” *See* Md. General Provisions Code Ann., §4-351(b)(4).

The Initial Investigation. The first step after receiving a complaint is to investigate – to determine the facts, as opposed to allegations, and then consider whether the facts show a municipal infraction. Such investigation can be effective for complaints about home and building maintenance, including yards, trash, and other violations that can be viewed from the street. Notes, pictures and any other evidence must be noted and recorded, as this may be used as evidence at trial. But generally the physical evidence, as demonstrated by the pictures, shows either a clear violation or the lack thereof.

The Initial Response. The goal should be to solve the problem, so if a violation or concern is verified, code enforcement officers will approach the business or residence and attempt to talk with a responsible person about the concern. At that time, a formal “Notice of Violation” is typically issued, giving a deadline for compliance. This Notice is normally handed to the responsible person or, if no one can be reached, posted on the door with the code enforcement officer’s name and contact information. Many will call within a few hours after receiving such a notice, and in most cases problems are addressed, resolving the issues. But even if not resolved, the fact that the City let the person know about the violation and gave them an early opportunity to make corrections can be important if the violation leads to a citation and future trial. In that case, the notice itself is usually admitted as part of the evidence.

Search Warrants. In some cases, there is no view from the street. Some complaints may be related to inside activities, or allegations about a mistreated or endangered dog or cat. In those instances, the code enforcement officer needs to visit the property in question and speak with the resident or defendant. When that shows a basis for the complaint, but entry into that home is needed for investigation, the code enforcement officer should ask for permission to inspect. The Maryland Court of Appeals has recognized that such granted permission is effective. *Jones v. State*, 407 Md. 31, 33 (2008). But a signed statement is recommended, in case the defendant later denies granting permission. *See* Appendix 6, Consent to Inspection. Also, the search cannot exceed “the scope of that consent,” *Redmond v. State*, 213 Md. App. 163, 190 (2013), and must end if the defendant changes his or her mind on allowing the inspection.

When the defendant refuses any permission, the code enforcement officer then must decide whether to drop the issue or pursue the complaint with a search warrant. A search

warrant should be pursued only in the face of a clear, serious code violation raising concerns about safety. It involves an application to a judge, usually in Circuit Court, who will only grant a search warrant with documented evidence of a potential violation, combined with a threat to health or safety. *See* Appendix Four, Warrant Application. But, when justified, a search warrant application can be the critical step that stops a violation and in extreme cases prevent a tragedy.

An administrative search warrant is issued by a judge, after application by the code enforcement officer and the city attorney's office. Such an immediate application is generally *ex parte*, without a hearing. It requires any relevant evidence, such as pictures or other statements, as well as the code enforcement officer's affidavit and testimony. That application must also specify any local and any state laws implicated by the alleged activities in order to show a strong basis for the warrant. Indeed, activities which constitute violations of multiple laws at the state and local level are often included in warrant applications.

When a serious question is raised that a particular code violation is ongoing, and is a violation that puts an animal, person, or the community in some danger, the court will generally grant the warrant. *See* Appendix Five, Warrant Order. The City Police will then enforce the warrant, as ordered by the judge. To accomplish this, the code enforcement officer will coordinate with the police to ensure entry into the property, an investigation as specified in the warrant, and further steps as also outlined in that warrant – which may include seizing an animal in danger or equipment causing danger to other persons or the community, or taking immediate steps to otherwise stop a dangerous activity. Again, a search warrant is an extraordinary step, but when justified, may be the only means to address an ongoing violation endangering an animal, person, or even a community.

CHAPTER 2: THE FORMAL NOTICE OF VIOLATION

The purpose of code enforcement through municipal infractions is not to collect fines but solve problems, and gain compliance with the City Code. Both state law and the City Code specify that a citation may be issued against any person committing a municipal infraction by violating the City Code. *See* Md. Local Government Code Ann., §6-103(a) and Gaithersburg City Code, §1-9(c). No requirement for prior notice or opportunity to cure is mentioned at any level – but such notice can help solve the problem and, later on, prove the violation in court.

Thus, traditionally, alleged City Code violators are always notified of the problem before any citation is considered. The only exceptions usually involve emergencies, immediate safety concerns, animal control violations or repeated behavior, such as noise complaints. And in most other cases, staff will simply speak with responsible persons, and that resolves the problem. But where an informal discussion doesn't resolve the problem, it has been the City's general policy to issue a formal Notice of Violation (NOV) to a defendant with deadlines for compliance. And in many cases, additional NOVs are issued – especially when multiple violations are included and some, but not all, are addressed by the deadline.

The exceptions to issuing a formal NOV include emergencies or practical instances showing notice is not necessary or won't be effective. Thus, an NOV isn't needed when a code enforcement officer speaks with a responsible party who refuses to correct a violation; in that case, it can be most effective to simply issue a citation and then document the effort to first speak with the defendant. In addition, second or third NOVs giving new deadlines are probably less effective when addressing instances of ongoing or repeated violations, without any correction or

effort to make corrections. In that case, the defendant will already have received sufficient prior notice.

The reality is that the system overall, as well as judges, tend to favor citations only as a last resort. As such, it can be important to underscore that the citation hearing happens only after other options to solve the problem have failed. Judges at citation hearings expect that defendants have been notified of violations and given the chance to correct them, even before a citation is issued. Practically, showing a copy of a prior NOV helps to demonstrate the City's effort to resolve the problem without issuing a citation – as well as the defendant's failure to do so. Even where violations are clear, this also shows the City has been reasonable, and can demonstrate the defendant's disregard and willingness to continue committing a violation. It can later show the need for an abatement order or the full amount of the fine even after the violation is proven.

The general purpose of an NOV is to help solve the problem as quickly as possible. City NOVs thus always identify the specific problem and the code section being violated. It should be noted that simply identifying the code section by itself isn't sufficient, as the defendant also needs an explanation of the violation and some basic steps to correct it. NOVs also identify a clear deadline, at which time the property or area will be re-inspected. NOVs always include the code enforcement officer to contact with questions and identify the defendant or responsible person or company. NOVs are most effectively served on a responsible person individually, along with a discussion and emphasis of the need to comply with the City Code. But when there is no one to personally serve, NOVs are often posted at a prominent place on the property, usually the front door, with a picture being taken of the posting.

Usually, issuance of an NOV resolves the issue, and the violation is corrected or addressed before the deadline. In many cases, a responsible party will even reach out to the code enforcement officer and give an explanation and their own timeline for the correction. But even with such promises, a re-inspection is usually necessary to ensure corrections are made.

When the Violation Continues. City Code §1-7 specifies that each day any violation continues is a new offense. Most violations are resolved with the first notice, but not all. In some cases, a business or residence will take no action, possibly based on a misunderstanding, a presumption the City won't pursue the matter, or a conclusion that the concern isn't important. They may also believe that the law doesn't – or shouldn't – require compliance; and it's also possible the complaint leading to the investigation and Notice of Violation is part of an ongoing dispute between neighbors, in which positions have hardened and resolution will be difficult.

When a re-inspection shows a continuing violation, the code enforcement officer may decide to issue a second NOV, especially where some violations have been addressed. Doing so can help to specify the continuing problem as well as demonstrate the City's effort to communicate and solve the problem, especially in any future enforcement proceedings. But after the second NOV, with ongoing problems or a lack of any corrections, it's usually apparent that the notice isn't working. In that case, resolving the problem will require more, and few options remain other than to issue a formal citation.

While reasons for noncompliance after the first NOV may vary, the next steps involve either another Notice of Violation, as noted, or issuing a citation. Second or third notices can help clarify when a defendant is making an effort and where partial corrections have been made. Such notices can also emphasize the violation, and are always further evidence at trial that the

City has tried to be reasonable. But additional notices may not be effective if they are simply repeating prior NOVs – because that demonstrates that the initial deadline was not serious.

Thus, multiple NOVs should not be used for long standing violations, those posing safety risks or those for which notices have already been written. Indeed, sending additional notices may only encourage further delay. Instead, a citation is typically the next step when the Notice of Violation is effectively ignored.

CHAPTER 3: ISSUING THE CITATION

What Are Citations? A citation is the document charging a resident or business with a municipal infraction. It requires the defendant's name and address, some specific information to put the defendant on notice about the violation – such as date, time, location and a general description – and the specific code provision being allegedly violated. The conduct should be described, rather than simply citing the City code. The code provision also needs to be cited specifically, and if the violation is of a separate set of rules the City has adopted (such as the International Property Maintenance Code or National Fire Protection Association Uniform Fire Code), then both the City code section adopting those rules, and the specific rule being violated, need to be referenced. Otherwise, the defendant can argue they were not put on proper notice as to what law they were violating.

It should be noted that citations can't be combined, but are issued for a single violation – one instance of one code violation – against one defendant. Citations against two defendants, such as joint homeowners, even for the same act or omission, require two or more separate citations. So do citations against a single defendant for multiple violations, citing each action or each code section allegedly violated.

Vicarious Liability for the Employee and the Corporate Defendant. Defendants can be individuals, businesses or corporations. A citation against a business owned by a sole proprietor is issued that person, but the defendant may be the business or the individual sole proprietor. A citation against a corporation, under Maryland Rule 3-124(d), is issued against the corporation's registered agent or corporate officer – even for statewide or national businesses. In that case,

two citations can be issued: one against the individual employee committing the violation, and one against the employer. The legal theory is that the wrongdoer's acts are individual, but also as an agent, attributed to the employer, on whose basis the acts were committed. Thus, two citations are issued to two different defendants. Such "vicarious liability" can, for a regional or national corporation, help ensure local accountability. In addition, where an abatement order is needed, it is possible to pursue an individual employee rather than the corporate entity as a whole, or the corporation's resident agent, Board of Directors Chair or other officer.

Citation Deadlines/Statute of Limitations. Citations must specify the exact date and time of the alleged violation, as noted on the citation form and required under Md. Local Government Code Ann., §6-103(c)(4). But citations are not required to be issued immediately. Indeed, as noted above, giving the defendant notice and time to correct violations is practical, often required, and can help solve the problem. Maryland law provides that prosecution for "fines, penalties and forfeitures" must be instituted within one year of the violation, under Md. Courts and Judicial Proceedings Code Ann., §5-107, which applies to any civil proceedings seeking a fine – such as a municipal infraction – when brought by a local government. *See Williams v. Standard Federal Savings and Loan Association*, 76 Md. App. 452, 462-464 (1988).

Statute of limitations for ongoing violations may not pose a major concern when violations continue; City Code §1-7 specifies that each day any violation continues "shall constitute a separate offense." And in many cases, violations which are not ongoing do not result in citations – because the violations have been corrected. And other citations may be issued immediately or soon after the violation, especially in emergencies, cases involving animal control cases, neighborhood complaints such as noise violations, or the like.

CHAPTER 4: FILLING OUT THE CITATION FORM

Local government citations are issued under Maryland's "municipal citation" process established at Md. Local Government Code Ann., § 6-102(a). As specified at Md. Local Government Code Ann., §§ 6-103 and 6-104, these citations are issued on forms approved by the District Court of Maryland. Some computer programs may allow them to be issued electronically in the future, but today local governments, including the City of Gaithersburg, use the four-part form which is filled in by hand, with carbon copies provided to the defendant, court and the City. The form is entitled "Uniform Civil Citation," and the front and page pages appear on the pages following this chapter. *See* Uniform Civil Citation Sample, pages 23 - 24.

Witnesses and Related Citations. Start with the form by checking a box at the top on the front in reference to any witnesses or related citations. *See* Page 23. Required witnesses can be listed on the back, *see* page 24, and subpoenaed to attend the citation trial, as long as their address is listed. Such witnesses would be those with personal knowledge, meaning they observed the violation and are not insisting on confidentiality – and who will be likely to attend the hearing in compliance with the subpoena, rather than requiring action by the Sheriff to compel their presence. Related citations would consist of ongoing, repeated citations or multiple citations issued at the same time.

County and Petitioner (City of Gaithersburg). Because the citation form is used statewide, the next line on the front requires noting the county for the District Court, which for Gaithersburg is Montgomery County, and the court address, which is 191 East Jefferson Street,

Rockville, Maryland 20850. *See* page 23. Next is identification of the petitioner, which should be spelled out as the City of Gaithersburg, Maryland – the City’s formal name.

Defendant. Next is the defendant’s name and address. The defendant can be any individual or business entity committing the violation. Only one defendant can be included for each citation, though if a citation is issued against a related or joint defendant, that citation number can be noted at the top for related citations. The defendant’s address is that where the defendant is to be served, whether served personally or by mail, which may not be the location of the violation. It’s important to note that this will be the address the Court uses for all notices, including the trial date notice, so it must be accurate. The form does include a line for identifying information, including date of birth, height and weight, which reflects data typically obtained from the person’s driver’s license. But this information is optional and does not need to be added unless the driver’s license is reviewed, or there is some reason to identify a specific defendant from others – such as a personal offense on a City street, or when multiple defendants are cited at the same time and must be separately identified.

Based on Officer’s Personal Knowledge or Another Witness? The next paragraph on the front, *see* page 23, lays out the substance of the violation, and calls for specifying whether the allegations are based on the code enforcement officer’s personal observation or an attached affidavit, which will require other witnesses to establish the violation facts. Normally, violations will be based on the citation writer’s personal knowledge. That’s preferred because they will be available to testify at any hearing. But there are some instances, including noise and other neighborhood concerns, which may be based entirely on an affidavit or other witness testimony. And because the citation form is statewide, there are some local codes which for certain alleged

violations require sworn statements, also known as affidavits, before citations can be issued based on witness testimony other than the code enforcement officer.

When there is such an affidavit, it must be attached, and then the person signing that affidavit will need to appear in court at the hearing to provide the testimony – because that constitutes the personal knowledge of the violation. Thus, the person’s name and address are written on the back page of the citation to ensure they receive a subpoena from the court. Other witnesses do not need to provide affidavits, but if they have personal knowledge supporting a citation or will have to testify to establish the violation, their name and address should also be listed on the back of the citation in order to receive a subpoena from the court. If they are not listed, they can also be issued a separate subpoena requiring their attendance at the trial, but can testify even if no subpoena is issued. Such witnesses may be essential to show violations at a certain place and time – such as animal control violations, noise complaints, or the like. They will have the only personal knowledge of the specific violation, and the citation will have been issued based on their personal knowledge. Thus, they should receive a subpoena, because if they fail to attend the hearing, the City cannot prove the facts, unless other witnesses provide that personal knowledge.

Citations based on a third-party affidavit or witness testimony beyond the code enforcement officer can be more difficult to prepare and prosecute in court. City attorneys may have difficulty reaching a person before the hearing, and those may have sought to have the citation issued may not be so concerned three to four months later, when the hearing is scheduled, and so may not appear. At the other extreme may be neighbors who are heavily invested in the case, and seek maximum penalties or the most stringent abatement orders. Such

committed witnesses can be helpful in establishing the facts, and may reflect confidence in the ability of the citation process to address ongoing violations. But it's important for everyone to understand that the City is always the party prosecuting the citation, and thus must make the final decisions as to requested fines, orders or even settlements.

Outside witnesses thus provide evidence – to show an element of the facts necessary to show a violation. And while citations are based on a few key facts related to showing the violation, the reality is that outside witness testimony can also be less predictable; raising a higher chance that the defendant may not be found guilty. That said, citations based on outside witnesses are entirely enforceable, despite some practical preparation and witness concerns. If a code enforcement officer has any questions about issuing a citation based solely on a third-party affidavit or witness testimony, they should always check with the City Attorney's office.

The Facts. The next area on the front of the form is a brief description of the actual charge. This should be written with the specific Code violation in mind, but should not simply restate the Code section, because that's a conclusion, and additional facts are needed to show the violation. Thus, for a violation of City Code §12-5 prohibiting grass over 12 inches, simply stating "tall grass" does not show a violation. Instead, the citation needs to specify grass over 12 inches, or give the estimated height, such as: "grass over 12 inches and as much as 18 to 24 inches in height." Laying out the specifics is important in itself, but the other purpose is to notify the defendant what needs to be corrected to cure the violation. Some brief specificity in describing the violation will thus help prevent any later argument that the defendant wasn't aware of the facts constituting a violation, or that the acts or omissions constituted a violation.

At the end of the four lines on the written form is a space to identify the time and date. A specific time and date is essential to establish a violation, which is also important as it demonstrates personal knowledge. The form also requires the specific location. Here, the address should be sufficient as well as an indication the violation was within the City limits; this section also requires delineation that the violation was in Montgomery County.

The Law. The next part of the front of the citation form includes the specific law or code section the defendant is violating. *See* page 23. First, the form requires checking a box to delineate the State Code, local law, or Maryland regulations. In most cases, the middle box for a City code violation is checked. The next line requires the specific citation, giving a line to designate the City Code and then the specific section. Specifics are important, and there is a space to note any subsections. In some cases, the City Code section violated will only represent the Code section adopting an outside set of rules, such as for property maintenance or fire code protection. For example, City Code §17AA-1 doesn't proscribe activity, but adopts the International Property Maintenance Code (IPMC). In those instances, the defendant will have violated a specific section of the IPMC, which needs to be cited. Otherwise, the defendant could argue confusion or that they were never notified what law they were allegedly violating.

When other codes or rules have been adopted, it is most practical to refer to the City Code section adopting the outside rules at the first space marked "Document/Article." Then in the section/subsection area, the citation can refer to the outside rules and cite the specific rule section allegedly being violated. This puts the defendant on notice that the described actions are in violation of the identified section. There is a box after the code section to identify whether

every day of a violation may constitute a separate violation, leading to another citation. City Code §1-7 so specifies, and that box should be checked even if other citations aren't issued.

Defendant's Signature. This is the area of the citation addressing service or notice to the defendant. Here the defendant is invited to sign, admitting receipt but not guilt. Maryland Local Government Code Ann., §6-103(b), specifies that service rules under Maryland Rule 3-121 apply, and the preference is for personal service. If the defendant signs here, then it is established that the citation was personally served, as the preferred service option. And if the defendant refuses to sign, "refused to sign" can instead be noted here, which signifies that the defendant was personally served but refused to provide a signature to acknowledge such service.

But personal service is not the only option, under Md. Local Government Code Ann., §6-103(b) and the incorporated provisions of Maryland Rule 3-121. Maryland Rule 3-121(a) also permits service by certified mail, restricted delivery as well as leaving the citation "at the individual's dwelling house or usual place of abode" with a "resident of suitable age and discretion." While leaving the citation with a family member of suitable age is specified, court decisions addressing service challenges under this provision indicate it is safest, when personally delivering the citation to the defendant's residence, to leave it with a person who identifies himself or herself as the defendant or a family member who is at least 18 years old.

If the citation is not handed to the defendant, who then signs for it, the main method of service should be noted on this line, such as "certified mail," in which case the copies of the restricted mail delivery and signed cards need to be available for presentation to the court if necessary. Regular mail is allowed only with court permission under Maryland Rule 3-121(b),

which is possible but allowed only by court order after submission of an affidavit and sufficient facts to show that the defendant is likely evading service.

Regular mail, if combined with posting on the property, is permitted under Md. Local Government Code Ann., §6-103(b)(1)(ii), but only when the citations are related to that property, such as building code or maintenance violations. While court permission is not required, an affidavit specifying that “good faith efforts to serve the defendant” under the preferred options – personal service and certified mail – have not succeeded is needed. Because this is not submitted to court, the affidavit should be executed and kept in the file to demonstrate the affidavit requirement was satisfied, if any question is later raised. And as noted, both steps are required: if posted on the property, the citation must also be sent by regular mail to the defendant’s last known address. The signature line for the defendant should reference the posting/regular mail service, and when posting the citation, code enforcement officers will typically take a picture of the front door of the residence showing the posted citation.

Instructions. The last block on the front of the citation form, before signature, gives the specific instructions, which follow the prescribed processes and applicable fine payment deadlines under Title 6 of the Maryland Local Government Article. The first box to be checked states the defendant “May Pay a Fine,” which also requires the fine amount. The deadline to pay the fine is no more than twenty days after the citation date, under Md. Local Government Code Ann. §6-102(c)(2). The fine amounts are those laid out in the City Code or the Annual Budget Resolution. Overall, the fines cannot exceed \$1,000.00, pursuant to Md. Local Government Code Ann., §6-102(c)(1). Next is information on where to pay the fine, which is the City of Gaithersburg’s City Hall address, 31 S. Summit Avenue, Gaithersburg, Maryland 20877.

The box before the next paragraph should also be checked, specifying the defendant has the option to stand trial; in that case, the fine would not be paid but the defendant needs to notify the City, using the same address for paying the fine. Maryland Rule 3-307(b)(1) provides the general rule that answers or a trial request must be filed within fifteen days of the initial complaint, also referring to a citation. And the deadline for such notice is consistent with that fifteen-day deadline – which is always five days before the payment date, under Md. Local Government Code Ann., §6-105(a). The next sentence indicates the Court will send the actual trial date notice, but specifies the maximum amount of the fine the Court may impose – always the \$1,000.00 maximum fine, provided by Md. Local Government Code Ann., §6-102(c)(1).

If Relevant, Always Take the Abatement Order Option. The next box is very important; if it is checked and the City’s name is filled in at the blank, the City will be able to seek a court order requiring correction, or at least prohibiting future violations. Such an order, known as an abatement order, is submitted by the City, and may be critical. *See Appendix One.* That’s because a fine typically only encourages compliance if suspended along with an abatement order, or the City agrees not to pursue collection if the defendant complies. With an abatement order, rather than a fine, a future violation in the face of a court order can subject the defendant to constructive civil contempt, under Md. Court Rules 15-206 and 15-207. And constructive civil contempt can result in a defendant being incarcerated for ninety days, or until they comply or show compliance with the abatement order isn’t possible.

Checking the box for an abatement order is recommended to keep that option open, unless it is clear the City would only seek a fine, or an abatement order would never be needed. Checking the box doesn’t mean the City will have to seek an abatement order, but not checking it

removes that option altogether. As noted, allowing the City to seek an abatement order, which can bring in the possible future sanction of civil contempt, is in most cases an important option. Of course, checking the abatement order box does not create any possibility of constructive contempt proceedings based only on the citation; it simply allows for that future possibility, based on a future violation of an abatement order, issued after the defendant is found guilty and continues to violate the City Code in the same way.

Default Instructions. Finally, there is a large box with three smaller check-off boxes included. For civil citations, only the second and third boxes are checked, indicating the defendant will, under Md. Local Government Code Ann., §6-106, be deemed liable if they fail to respond or pay the fine, and that the fine amount may be doubled, at least up to the \$1,000 maximum fine amount. The second box notes the impact of failing to appear at the trial date, but then repeats that the fine may be doubled if the defendant defaults. It also specifies that the court can enter judgment by affidavit, just based on the citation itself. Even so, a defendant can show up in court even after failing to respond or request a trial. But if the City didn't have an inspector present based on that failure to file a written response, the City can request a postponement, based on the lack of notice the defendant would appear to contest the citation.

Code Enforcement Officer's Signature. Last on the form is the signature of the code enforcement officer issuing the citation, giving their printed name, date the citation was written, and then specifying the City as the "agency," noting any ID number or department abbreviation, and then noting the code enforcement officer's phone number.

UNIFORM CIVIL CITATION

WITNESS _____ Citation Number _____

RELATED CASE # / CITATION(S)

District Court of Maryland for _____

_____ Address _____

County/Municipality/State of Maryland _____ Agency _____

Defendant's (Last) Name _____ First _____ Middle _____

Current Street Address _____ Apt. No. _____

City _____ County _____ State _____ Zip _____

DOB _____ Height _____ Weight _____ Sex _____ Race _____ Hair _____ Eyes _____

Telephone No. Day/Night: _____ E-mail: _____

Based on personal knowledge of the undersigned officer the attached affidavit, the Defendant is charged with _____

_____ at _____ Time AM PM on _____ Month / _____ Day _____ Year

at _____ Location of Offense _____

_____ County, MD, in violation

of: Md. Ann. Code Municipal Infraction/County Ordinance/Public Local Law/Local Code COMAR

Document/Article _____ Section _____ Sub Section _____ Paragraph _____

Each day a violation continues is a separate infraction subject to an additional citation.

I sign my name as a receipt of a copy of this Citation and not as an admission of guilt. I will comply with the requirements set forth in this Citation.

Defendant's Signature _____

INSTRUCTIONS

YOU MUST APPEAR IN COURT. A notice of trial date will be mailed to you.

YOU MAY PAY A FINE of \$ _____ (entire amount required) by _____ Date _____ to the _____

District Court. Payment of the fine will not close the case if abatement action is pending.

Agency/Municipality _____

at _____ Payment Location _____

and AVOID TRIAL. This will be deemed an admission of guilt and a trial date will not be set.

YOU MAY ELECT TO STAND TRIAL by sending your request in writing to the:

District Court

Agency/Municipality _____

in writing by _____ at _____ Date _____ Address _____

DO NOT SEND PAYMENT OF FINE. The District Court will mail you a notice of your trial date, time, and location. AT TRIAL the Court may impose a fine up to the maximum allowed by statute plus court costs.

IN ADDITION, _____ Agency/Municipality _____ is seeking abatement of this infraction.

You may be ordered to abate this infraction or be assessed the costs for the abatement, as well as a fine of up to \$1,000, plus court costs. Payment of the preset fine will not satisfy the abatement action and an order of abatement may still be entered against you.

FAILING TO APPEAR OR PAY THE FINE MAY RESULT IN A WARRANT BEING ISSUED FOR YOUR ARREST.

FAILING TO PAY THE FINE OR REQUEST A TRIAL DATE:

will deem you liable for the fine assessed, the fine may be doubled and/or a judgment on affidavit may be entered against you including an order of abatement;

you may be found guilty of a Code violation and the maximum fines and costs can be imposed.

FAILURE TO APPEAR FOR A REQUESTED TRIAL DATE:

the fine may be doubled and a judgment on affidavit entered against you;

you may be found guilty of a Code violation and the maximum fines and costs can be imposed.

I solemnly affirm under the penalties of perjury, and based upon personal knowledge or the attached affidavit, that the contents of this citation are true and that I am competent to testify on these matters.

The Defendant is not now in the military service, as defined in the Servicemembers Civil Relief Act.

_____ Issuing Officer's Signature _____ Officer's Printed Name _____ Date _____

_____ Agency _____ Sub-Agency _____ I.D. No. _____ Telephone _____

DC-028 (Rev. 10/2016)

Front of Citation:

Copy #1: Municipality/Court Copy

Copy #2: Prosecutor's Copy

Copy #3: Defendant's Copy

Copy #4: Municipality's Copy

Copy #5: Officer's Copy

Reverse of Citation:

Copy #1: Witness List

Copy #2: (Blank)

Copy #3: Notice

Copy #4: (Blank)

Copy #5: Officer's Notes

Note to Law Enforcement: Remove this first copy of Citation before entering witness information.

TO THE DISTRICT COURT:

PLEASE SUMMONS THE FOLLOWING WITNESSES:

NAME _____
ADDRESS _____
CITY _____ STATE _____ ZIP _____
DAY PHONE _____ ROOM # _____
NIGHT PHONE _____ APT. # _____
If Law Enforcement Agency _____ Sub-Agency _____ I.D. _____

NAME _____
ADDRESS _____
CITY _____ STATE _____ ZIP _____
DAY PHONE _____ ROOM # _____
NIGHT PHONE _____ APT. # _____
If Law Enforcement Agency _____ Sub-Agency _____ I.D. _____

NAME _____
ADDRESS _____
CITY _____ STATE _____ ZIP _____
DAY PHONE _____ ROOM # _____
NIGHT PHONE _____ APT. # _____
If Law Enforcement Agency _____ Sub-Agency _____ I.D. _____

NAME _____
ADDRESS _____
CITY _____ STATE _____ ZIP _____
DAY PHONE _____ ROOM # _____
NIGHT PHONE _____ APT. # _____
If Law Enforcement Agency _____ Sub-Agency _____ I.D. _____

NAME _____
ADDRESS _____
CITY _____ STATE _____ ZIP _____
DAY PHONE _____ ROOM # _____
NIGHT PHONE _____ APT. # _____
If Law Enforcement Agency _____ Sub-Agency _____ I.D. _____

Reverse of Part #1
Municipality/Court Copy

CHAPTER 5: IDENTIFYING THE DEFENDANT

Defendants can be individuals, businesses or corporations, but identifying the responsible party for a municipal citation is not always easy. Individuals can be identified through their driver's licenses, and property owners can normally be identified through the State of Maryland's Department of Assessment and Taxation. Even so, that information is not always accurate, especially for persons who have deceased or for properties in foreclosure. There are a few options to help the City address those situations, but none are perfect. In some cases the City may have little practical choice, at least in the short term, but to allow the violation to continue or correcting the violation at the City's ultimate expense.

Citations against businesses can raise additional complications. A citation against a business owned by a sole proprietor is issued to the sole proprietor, but the citation will be against the business, not the individual, typically naming the individual under the business name. Similarly, a citation against a corporation must be issued against the corporate entity, referring to the corporation's registered agent for the State of Maryland – even for statewide or national businesses. Yet such citations can be difficult to pursue or enforce without identifying an individual who can, where violations continue, be held in contempt if an abatement order is issued.

Vicarious Liability and the Corporate Defendant. Citations against businesses, whether sole proprietorships or corporate entities, are typically committed by an individual employee working for the business who committed the violation. In that case, two citations can be issued: one against the individual employee directly committing the violation, and one against the

employer on whose behalf the employee was working. This is permitted as long as an “employer/employee relationship” is specified in the employee’s citation, coupled with the employee having acted “within the scope of employment” or otherwise “under express or implied authorization from the employer . . .” *Market Tavern, Inc. v. Bowen*, 92 Md. App. 622, 641-42 (1992), citing *Globe Indemnity Co. v. Victill Corp.*, 208 Md. 573, 584 (1955).

The legal theory for such vicarious liability, in which two citations are issued for a single violation, is that the wrongdoer’s acts are individual, but also as an agent, and thus also attributed to the employer on whose basis the acts were committed. As a result, two citations are issued to two different defendants. Such “vicarious liability” can, for a regional or national corporation, help ensure local accountability through the individual employee who is cited. In addition, where an abatement order is needed, it is more practical to pursue that individual employee rather than the corporate entity as a whole, through the registered agent, the corporation’s Board of Directors President, or other corporate officer.

Property Owners in Foreclosure. As clear as a City Code violation may be, the responsible party – the defendant – can in some cases be difficult to find. This is especially a problem for ongoing zoning or building code violations on real property when the legal owner is facing foreclosure. That owner may be absent, and even if not, will have little to no interest in taking any action to address citations or correct code violations, given the foreclosure action against them. But until the foreclosure is finalized, the City simply has no other party to pursue. In that case, there are few easy solutions. The City may be able to obtain a default judgment, if the owner is properly served. And the City can seek an abatement order, which may allow the City to consider abating the nuisance and billing the legal owner, under a “clean and lien”

enforcement effort, discussed *supra* at Chapter 11, pages 65 - 67. But ultimate collection of the costs may be delayed or even precluded if legal ownership changes in the meantime.

When legal ownership does change, either due to a sale or foreclosure proceedings, the City starts over – with a new notice, citation and court filing – because there is a new defendant. In many cases, however, the new owner or property servicing agent will honor prior notices or court decisions, and may be willing to attempt to make corrections, rather than forcing the City to take such legal action against them directly. But this is only possible when the City can identify and communicate with the new owner. As such, an additional complication can arise when, as in many cases involving foreclosures, there is a delay before the new owner is a matter of public record, even after foreclosure proceedings are complete. This means property ownership is practically in limbo, and leaves the City without any responsible party until legal ownership becomes clear. This can effectively eliminate any enforcement, or force “clean and lien” efforts, which may be at the City’s cost in extreme cases, without any responsible party.

Review of local Circuit Court filings may, in some cases, reveal the new owner. And in an effort to provide local governments a means to access this information, the State of Maryland in 2012 established a foreclosed property registry, under the Office of the Commissioner of Financial Regulation, which is part of the Department of Labor, Licensing and Regulation. Under Md. Real Property Code Ann., §14-126.1(d)(1), a foreclosure purchaser is required to submit their name and contact information to the foreclosure registry. But there is no direct State enforcement of this requirement. Instead, enforcement under Md. Real Property Code Ann., §14-126.1(e)(4), is legally limited to a municipal infraction enforced by the local government, when the local government requires such registry, which the City has not. But it would be

practically impossible to enforce the registry requirement until the new owner's information is publicly recorded and available.

In any event, for foreclosure owners who do register, the Department is empowered, under Md. Real Property Code Ann., §14-126.1(g)(2), to allow local jurisdictions and their representatives, including staff and attorneys, can access that information, and the Office of the Commissioner of Financial Regulation has established such online access. Even so, use of this information is limited, because the registry is not, under Md. Real Property Code Ann., §14-126.1(g), considered a public record. As such, City staff accessing registry information are, under Md. Real Property Code Ann., §14-126.1(g)(3), restricted from disclosing new ownership information to anyone other than owners of property on the same block, or the homeowner's or condominium association in which the property is located.

Accordingly, until new legal ownership is publicly recorded, the City can only communicate with the new owner or servicing agent, and could not pursue legal action until that ownership becomes publicly recorded. Even so, the foreclosure registry law does provide an abatement option, with proper notice. Thus, the City would have the ability in that instance to abate the nuisance and then bill the new owner as part of the property tax bill, under Md. Real Property Code Ann., §14-126.1(f) – as long as the City notifies the party identified in the foreclosed property registry at least 30 days in advance, and they are both responsible for maintenance and authorized to accept legal service for the foreclosure purchaser.

Deceased Property Owners. When a legal owner is deceased, their estate can also raise enforcement concerns. A property owned by a deceased person may be included in a petition for administrative probate, under Md. Estates and Trusts Code Ann., §5-301. Such proceedings are

handled by Orphan's Courts, pursuant to Md. Estates and Trusts Code Ann., §2-101, which under Md. Constitution, Art. IV, §20, are in Montgomery and Harford County handled by a Circuit Court judge. When such an estate is filed, the estate's personal representative would serve as the key contact person, under Md. Estates and Trusts Code Ann., §6-101. Thus the City could contact the personal representative with any notice or citation. But where no petition has been filed, the City faces ownership in limbo, with no responsible party to address violations. In some cases, it is possible to identify a responsible party, even where no probate petition is filed. But in extreme cases, the City in claiming property maintenance violations can consider filing a proceeding for judicial probate in the Circuit Court as an "interested person," under Md. Estates and Trusts Code Ann., §5-402.

CHAPTER 6: AFTER THE CITATION: FINE PAYMENTS AND COURT DATES

Few citations go to trial. In fact, typically citations are sent to the clerk for a trial date only after defendants fail to pay the fines and/or make the required corrections or changes. Indeed, most citations, especially those with fines of \$100 or less, are paid in full within a few weeks. State law provides a twenty-day deadline for fine payment, at Md. Local Government Code Ann., §6-102(c)(2), and City Code §1-9(d) also provides that fines may be paid within “twenty calendar days” from the time the citation is served. If the defendant pays, the citation is closed, unless there are notes on the citation form that the town or city may seek an abatement order to ensure compliance, and an order is needed. As such, paying the fine may not always resolve the case, especially if the conditions leading to the citation aren’t corrected. Thus, even when the fine is paid, cases can still go to court for a trial date to resolve the underlying issue.

When the fine isn’t paid, there is no request from the defendant for a trial, or the citation isn’t fully resolved, Md. Local Government Code Ann., §6-106(a) states the defendant is liable for the fine amount. But a court order is needed before any collection steps can be taken, so the City will send the citation to the District Court clerk for a hearing. A defendant has the right to disagree with the citation and seek a trial, while not paying the fine or correcting the violation in the meantime. That’s known as an “election to stand trial,” and in that case, City Code §1-9(e) gives the defendant 15 days after service, or 5 days prior to the fine payment deadline, to provide the City with notice of their election to stand trial. And Md. Local Government Code Ann., §6-105(a) also provides that the defendant has five days prior to the fine payment deadline to provide notice of their election to stand trial. At that time, Md. Local Government Code Ann.,

§6-105(b) specifies that the defendant will get their day in court, and City must forward the citation and notice to the District Court to open a case and set a hearing date.

Of course, some defendants don't respond in any way; they don't pay the fine or file any answer or response seeking a trial. The City will send the citation to the District Court for a hearing, but in addition, City Code §1-9(f)(1) specifies that after the 20-day deadline to pay the fine (or fifteen-day deadline to ask for a trial) the City has to send an additional "formal" notice of the infraction, noting the fine has not been paid. Sending such a final notice can help establish in court that a defendant has been fully notified of the proceedings, but also establishes the ability to increase the fine. Thus, with such additional notice, if the defendant fails to pay the fine within another fifteen days after that notice, the court can order the fine to be doubled, up to \$1,000 – the maximum fine permitted under Md. Local Government Code §6-102(c)(1).

After a citation is sent to the District Court, the clerk's office will send the City and the defendant, as well as all subpoenaed witnesses, notice of the hearing date. Normally the hearing date is 2 to 4 months after we send the citation to court, but there is no deadline. Municipal infraction hearings are usually scheduled for Tuesdays in District Court, and for municipalities they are now held on the first Tuesday of the month, starting at 9:00 a.m. Normally, all District Court matters related to citations, including trials, abatement order contempt hearings or motions, are scheduled for this time.

Before the hearing – and sometimes even in the midst of one – citations can be resolved. In some cases, the defendant will simply pay the fine just before the hearing, in which case the citation case can be marked as "paid and satisfied" if there is no ongoing violation for which the City would seek an abatement order. Such cases don't proceed to trial, and there is no additional

\$5.00 in court costs to be paid to the District Court clerk, as that is only required after a District Court judgment finding a defendant guilty. In other cases, the City and the defendant may reach agreement on a reduced fine, with the same effect – marking the case as paid and satisfied. In other cases, the City and the defendant may reach agreement on a reduced fine, perhaps with an agreement to correct the violation or not commit future violations. That can have the same court docket effect – marking the case as paid and satisfied. Other resolution options may include postponement, perhaps to allow a defendant the chance to pay the agreed upon fine amount, make corrections, or both; in that case, the court file can also be marked as paid and satisfied after the postponement, once the matter is resolved.

With the goal to correct the violation leading to the citation, payment of the fine can, but doesn't always, resolve the matter. When the violation remains in place, normally the settlement options include a consent order, by which the defendant agrees to a timeline for corrections, which is presented to the judge. Another option can be a settlement agreement between the town or city and the defendant, combined with postponement of the citation hearing; the City can also agree to consider waiving all or part of the fine pending correction of the violation. But this may also involve the court's issuance of an abatement order with certain provisions – such as a timeline for corrections – to which the Defendant agrees.

CHAPTER 7: THE TRIAL

Municipal infractions are, under Md. Local Government Code Ann., §6-102(a)(2), civil offenses; they are not criminal prosecutions. Even so, Md. Local Government Code Ann., §6-108(a) empowers the State’s Attorney to prosecute municipal infractions, though subsection (b) specifies that the municipality can appoint an attorney to prosecute infractions. The City of Gaithersburg, like most municipalities, has indeed designated the City Attorney’s office to prosecute municipal infractions.

While City Code §1-9(a)(2) likewise specifies that municipal infractions are not criminal, there are still certain similarities to criminal or traffic proceedings. For instance, under Md. Local Government Code §6-109(a), civil infraction proceedings start with the defendant’s plea of guilty or not guilty. Thus, the judge in a contested case will always ask the defendant how they plea to the charges. That same section mandates that the burden of proof is on the City to show the violation by “clear and convincing” evidence – higher than the “preponderance” standard for civil cases, but lower than the criminal “beyond reasonable doubt” standard. In addition, §1-9(g)(2) of the City Code specifies that a municipal infraction defendant has the same rights as in a criminal trial – including, as provided at Md. Local Government Code §6-109(a)(4), the right to counsel and to testify, present evidence and cross-examine opposing witnesses.

The Hearing. Citation hearings in Montgomery County are set at the Rockville, Maryland District Court, on the 5th Floor in Courtroom 514. Notices specify the hearings start at 8:00 or 8:30 a.m., but the judges usually enter the courtroom at 9:00 a.m. or shortly thereafter. On the first Tuesday of the month, the clerk schedules infraction hearings for all municipalities

and any Washington Suburban Sanitary Commission citations; Montgomery County handles its municipal citations on the other Tuesdays of the month.

The cases are usually not called by the judge or the clerk; instead, the attorneys representing the municipalities will typically introduce themselves, and then begin calling cases by the defendant names. Typically the attorneys for Gaithersburg, Rockville, Takoma Park and WSSC speak before the judge enters the courtroom, coordinating a general order of appearance.

While each citation creates a separate case, generally when there are multiple citations against the same defendant, they are all heard together. In combining the trial, however, the City needs to be careful to show that the evidence independently proves that each separate violation occurred. It may be acceptable for evidence of one violation to be related to, and thus help to show, the existence of another related violation – but proving one does not prove another, or automatically mean that another violation, either of another City Code section or the same violation on another day, happened. Independent proof is always needed for each citation.

Some general background and explanation is usually necessary, in the general form of an opening statement. This can help set the context for the hearing even when before judges who have heard numerous citation cases before, and can help provide the legal background for judges who are not as familiar with the municipal infractions process.

Dismiss, Nolle Prosequi, STET or Postponement. When the cases are called, the first step is to wait for the defendant to appear. Whether or not the defendant appears, however, the attorney has the initial option, as provided by Md. Local Government Code Ann., §6-108(a), to note the citation is being dismissed, or may enter a “nolle prosequi” or STET (Latin for “let it stand”), either of which dismisses citation but allows it to be re-filed within a year. Even if the

defendant wishes to go to trial, these steps are within the City Attorney's discretion. The City Attorney can also seek a postponement, which is typically granted if the Defendant doesn't appear. Defendants can also request postponement of the trial, and unless it is clear the Defendant is simply seeking to delay compliance, the court will typically grant such a request.

Defaults. When a defendant doesn't respond to a citation, the District Court will normally consider a default judgment, also known as a "Judgment by Affidavit" under Maryland Rule 3-306(b). That affidavit is provided as part of the citation, in which the code enforcement officer signs the citation, attesting to personal knowledge of the violation and asking for judgment if the defendant doesn't respond. And Md. Local Government Code Ann., §6-106(b) specifies that if the defendant does not respond to the trial notice and summons, where such an affidavit is provided in the citation, the court "shall enter judgment against the defendant in favor of the municipality in the amount then due."

District Court rules provide that a defendant in any civil case must file a "notice of intention to defend" to dispute any claim, under Maryland Rule 3-307(a). And that notice must be filed within 15 days after service of the complaint, under Maryland Rule 3-307(b)(1). That general rule also applies to citations. Indeed the citation specifies that the defendant has 20 days to pay the fine, under Md. Local Government Code Ann., §6-102(c)(2) and City Code §1-9(d). But, as noted, a defendant has 5 days less than that to dispute the facts, or the same 15 day period as under the Maryland Rules: Both Md. Local Government Code Ann., §6-105(a) and City Code §1-9(e) require the defendant to provide notice that they dispute the citation and elect to stand trial at least 5 days before the fine is due. And when there is no election to stand trial or

other response, Md. Local Government Code Ann., §6-106(a)(2) specifies that the fine may be doubled, up to \$1,000, if the defendant does not pay it or dispute the charges within the deadline.

In many cases, the court will issue a default judgment or “judgment on the affidavit” when a defendant doesn’t appear, and will typically also consider a request for doubling the fine. But some judges, before considering any default judgment, will ask for verification that the defendant was properly served. Many judges will accept a proffer from the City attorney laying out the manner of service – by certified mail, personal delivery, or posting, for example – but others may want to review the document or signed certified mail receipt. Thus, when the defendant fails to appear and a default judgment is requested, evidence of service can be critical.

In issuing a judgment on the affidavit, no testimony is needed, as the court will usually grant the decision based on the undisputed written citation. But the judgment on the affidavit – not requiring further evidence – only applies to the fine itself; the court will normally require testimony from the code enforcement agent before issuing an abatement order. That testimony will need to focus on the violation and the fact that it is continuing. Additionally, the deadline for disputing the citation by filing a response, whether entitled a “request for trial” or “notice of intention to defend,” is not enforced to exclude a late response. Thus, if a defendant does appear, despite having failed to respond in any way previously, the court will typically conduct a full hearing, especially if the defendant pleads not guilty. And the court will usually conduct a brief hearing on an abatement order request in order to verify the violation and that it is continuing.

Abatement Orders. State law specifies that if the court finds a defendant has committed a municipal infraction, the court may enter an abatement order requiring that the violation be corrected. See Md. Local Government Code Ann., §6-110(4). That section states the court can

require the defendant to correct the violation, or allow the City to do so at the defendant's expense. Normally, the City draft will seek both – to have the defendant correct the violation within thirty days, but also to obtain authority to correct it directly, and then bill the defendant for the costs, under Md. Local Government Code Ann., §6-111(a). *See* Appendix One. And if the defendant doesn't pay the bill, then the City would, under the abatement order's authority, charge the costs, if related to a violation on real estate, as part of the real estate tax bill, as permitted by Md. Local Government Code Ann., §5-205(d)(2) and Md. Tax-Property Code Ann., § 14-801(d) (defining "tax").

When the Defendant Appears. If the defendant appears at the trial, the City Attorney will normally give a very brief statement of the charge and note whether the City seeks only a fine or an abatement order as well. The judge will then ask the defendant how he or she pleads. In some cases, defendants will admit the violation, but may seek a fine reduction or object to an abatement order. It is at this stage that the City must decide whether to proceed to request an abatement order, and that decision should be based on whether (i) the violation has been corrected and (ii) is likely to recur.

When the City seeks an abatement order, even if the defendant admits guilt or doesn't appear, the court will unless the defendant consents still require some direct evidence of an ongoing violation. Thus, the City's witness – usually the code enforcement officer writing the citation and any other staff with personal knowledge – will be sworn in to describe the violation and present evidence that it continues. Typically, the City will show pictures that prove the violations remain, and testify those pictures were taken within a few days of the trial. With that evidence, the judge will normally sign the abatement order; note that three copies are required

from the City for each citation making up the abatement order – one to serve on the defendant, one for the court, and one for the City. When an abatement order is granted, the City Attorney will wait for the clerk to enter the order and provide two copies, one of which is to be served.

Fines. The local government can by ordinance or resolution set any fine amount, up to \$1,000. *See* Md. Local Government Code Ann., §6-102(c). Fines in the City are, under City Code §1-9(b), set by ordinance or resolution of the Mayor and City Council. Indeed, the fines are typically adopted as part of the annual budget when the Code does not otherwise specify the fine amount for a particular violation. The fine for the alleged violation is specified in the citation, under Md. Local Government Code Ann., §6-103(c)(5) and City Code §1-9(c)(4).

The wording of some applicable state law provisions do not indicate fine amounts are flexible when a defendant defaults or is found guilty, but that the court must issue judgment for the total fine amount. State law, however, is not consistent, and the judge’s discretion will also control. Where the defendant is found guilty, Md. Local Government Code Ann., §6-110(1) does state that the court “shall order the defendant to pay the fine,” plus any doubling of the fine permitted for failure to pay or dispute the charges within the initial twenty day deadline, under §§6-102(c)(2) and 107(1). But the next subsection broadly permits the judge to “suspend or defer payment of the fine under conditions the court sets,” which can include correcting the violation or even probation before judgment, conditioned on no future violations. *See* Md. Local Government Code Ann., §§6-109(b)(2), 6-110(2). Thus, the judge has wide latitude in deciding what fine should be imposed, if any.

Further, for defaults, Md. Local Government Code Ann., §6-106(b) specifies that if the defendant does not respond to the trial notice and summons, the court “shall” enter judgment for

the fine. And state law provides that the amount due consists of the imposed fine, which may be doubled up to \$1,000 if the defendant does not pay or dispute the charges within the initial twenty day deadline. *See* Md. Local Government Code Ann., §6-106(a)(2). Yet Md. Local Government Code Ann., §6-107, addressing that same situation in which the defendant fails to “pay or appear,” only indicates the court “may” double the fine and enter judgment for “the amount then due.” The word “shall” does not appear, and thus does not provide a mandate on the fine amount.

Given this inconsistent legal background – and the practical reality of judicial discretion – even with a guilty plea or finding, judges may reduce fines or refuse to double the fines when defendant appears at the trial, even where defendants have failed to dispute the charges before that time. The exact wording of these provisions aside, practicality may have the larger impact, largely flowing from the reality that only defendants can appeal in a municipal infractions case – not the municipality. *See* Md. Courts and Judicial Proceedings Code Ann., §12-401(d)(1). Thus, the City would have no ability to appeal a fine reduction from a guilty finding, even if the City were inclined to do so. In most cases, the court will grant a doubling of the fine for defendants who have defaulted. But especially for contested cases, it can be important to present evidence justifying the full amount of the fine, or the amount the City seeks, which may include repeat offenses, failure to address the violation, overall citizen or neighborhood complaints, or longstanding violations, among others.

Reduced Fines for Corrected Violations. If the defendant has corrected the violation, and it’s not likely to recur, the City will consider dismissing the case or entering a nolle prosequi. Even if not, the court will most likely seek to reduce the fine to a nominal level – sometimes as

low as \$25.00, even for a \$250.00 fine. While the judge could avoid any fine by imposing probation before judgment, most will reduce the fine. Some judges may even ask the City to dismiss the case. In that situation, the City will normally agree with a nominal fine. It's the judge's decision, and the City can in that case leave the exact fine amount to the judge's discretion. But to avoid a dismissal or probation before judgment in which no fine is issued, the City will normally suggest at least a nominal amount, such as \$25 to \$50. That will at least establish a first offense. That can be relevant if future citations are issued and abatement orders are considered, or the City seeks higher fines for the second or third offense.

Court Costs. Court costs for a municipal infraction case are imposed on the defendant once a court holds a hearing. Thus, if a citation is dismissed, marked paid and satisfied, a nolle prosequi is entered or the case is steted before the hearing, there is no court cost. But once the court holds a hearing or otherwise considers the case, the court costs are currently \$5.00, under Md. Local Government Code Ann., §6-112(a). While there is no imposition of costs on the municipality or the defendant who is found not guilty, costs are imposed on the defendant when they are found guilty. *See* Md. Local Government Code Ann., §6-110(3). Such costs should be paid directly to the court clerk, even as the fines themselves should be paid directly to the City.

Is A.D.R. or Mediation an Option? While the Circuit Court considers mediation in most cases, applying Title 17 of the Maryland Rules on Alternative Dispute Resolution (A.D.R.), no such formal process applies in the District Court. Even so, there no prohibition; indeed, the District Court statewide has a formal mediation program available, and both the Circuit and District Court in Montgomery County have a local program. Indeed, the Montgomery County

District Court clerks will normally ask all parties, in calling the civil litigation and collection docket, whether mediation has been considered or could help to resolve the dispute. Both parties must always agree to such a process, but this can allow resolution of longstanding issues without the time, effort and costs involved in civil litigation.

In many cases, mediation or A.D.R. processes may seem better suited to help address disputes between private individuals with substantial costs on all sides. And it is always possible that a defendant may raise the concept simply to delay the enforcement process or gain more time to make needed home improvement corrections. But mediation would be by consent in these cases, and the reality is that some cases may benefit. For example, the code enforcement process may involve an underlying private dispute between neighbors; and in those cases, mediation may help to solve the problem. Indeed, the basic goals of mediation – to reduce costs, solve problems, and reduce stress – reflect those of the code enforcement process. Thus, especially when a citation hearing will involve witness testimony from neighbors who may be invested in seeking judgment, mediation or A.D.R. may open the door for such neighbors to communicate openly. As such, mediation in those cases may help to solve the problem by encouraging the neighbors to consider creative solutions.

When mediation or A.D.R. poses such a possibility – whether raised by a neighbor or other witness, a defendant, City staff, or even the judge – the City attorney will consult with the City code enforcement officer who issued the citation. If there is consensus to pursue mediation, the District Court will normally try to have a mediator available that day, or may ask the parties to agree to a postponement so that a separate mediation session can be conducted. If the invested parties, including the City, any witnesses and the defendant, all reach consensus to try mediation,

it is possible to enter a Consent Order, dismiss the case upon agreement, enter a nolle prosequi or STET, or even postpone the hearing for a set period to allow the agreement to be tested.

The City is almost always willing to work with a defendant who, on their part, truly wants to solve the problem, and there are cases in which mediation would simply add delay without any substantive benefit. But especially in cases involving underlying neighborhood or personal disputes, mediation may present one way to solve problems for the long term.

Contested Hearings: The City's Case. When the trial proceeds – without mediation, postponement or dismissal – the judge will first ask the defendant how they plead to the City's charges. Defendants may admit guilt, but when the defendant denies or disputes the allegations, a trial follows, and the judge first normally directs the City to proceed with the evidence. As noted, the Md. Local Government Code, §6-109(a)(8) specifies that the City's burden of proof is "clear and convincing." Typically, the City begins with a brief introduction, noting the relief sought – such as a fine and an abatement order.

But then the presentation moves quickly into the City Code Enforcement Officer's testimony. Each witness for the City must give their name and staff position, and then focus their evidence on personal knowledge – what the witness personally saw on the day and time of the citation in question – rather than what someone else said they saw. It is important to focus on evidence of the violation, starting with any prior Notice of Violation or even informal communication, which shows both the ongoing violation and the City's efforts to work with the defendant to resolve it. The witness should then refer to any other background, such as prior citations, prior notices, or other related prior history. And then the current status of the violation

as of the hearing date should be highlighted, noting whether it is ongoing, unresolved, or increasing in severity.

It's important to focus not just on evidence showing the specific City Code violation, but also that the City has tried to communicate with the defendant to fix the problem. The City will want to show that City staff gave the defendant time to make corrections, so that the City's underlying argument is, essentially, that the defendant is in court because they have not taken advantage of such opportunities. Thus, the City should show evidence not only of the specific violation but prior meetings, missed deadlines, and additional efforts the City has made to correct the problem. Finally, the City will need to show that the violations were not corrected for some time, in order to demonstrate why the citation and the fine were issued. And the City will also need to show the violations are continuing, if the City seeks an abatement order.

Additional City Evidence. In giving the testimony, any additional background evidence may be important, but is considered with the caution not to unnecessarily extend the hearing or present duplicative evidence. The concern can be that a large mass of information may become confusing or hard to follow, while normally code enforcement cases are focused on a single violation or related violations. As such, with targeted testimony and pictures, the evidence is usually clear. Additional evidence typically includes pictures of the violation, but may also include the Notice of Violation, the follow-up letter noting the deadline to pay the fine, and any other past notices or letters. The City usually has copies of each document or picture, giving one to the defendant and then having the witness testify to the document or picture before asking that it be introduced. Once the judge accepts the document, he or she is given a copy.

Normally the person who took the picture will testify that they did so, and in a municipal infraction case, that's the code enforcement officer. But the key issue is whether the picture is accurate. The longstanding rule in Maryland is that photographs which are a "correct representation," also described as "fair and accurate," can be introduced. *Tobias v. State*, 37 Md. App. 605, 614-15 (1977), citing *Carroll v. State*, 11 Md. App. 412, 414 (1971), cert. den. 262 Md. 745 (1971). Thus, if a photo is a "fair and accurate" representation of what the witness saw, and it's relevant, the judge will almost always allow it to be introduced. But not every picture should be introduced. It's important not to introduce more than three to five key pictures for each violation, unless further explanation is needed. Otherwise, the City runs the risk of creating confusion. The pictures also need to show a clear violation. Thus, if a picture is taken across the street of a deteriorated porch, the photo should clearly show the deterioration. Cases in which the pictures don't show a serious violation can be denied, or have a reduced fine. A picture may speak for a thousand words, but in seeking a favorable hearing outcome, it's important to carefully review each picture so that they do tell the correct, accurate story.

Other evidence may include relevant documents, such as prior Notices of Violation or letters and warnings from the City about the violation. These can be introduced as long as the witness can verify that the notice or letter was the one they produced, signed or delivered to the defendant. Additional witnesses, such as a second Code Enforcement Officer, can verify the violation or introduce additional documents, but should not repeat prior testimony.

Occasionally, neighbors or other citizens will testify, given the reality that citations are often based on citizen complaints. In those cases, persons to be notified of the hearing and subpoenaed to attend are listed on the back of the citation, or may be separately subpoenaed,

even as witnesses can also attend voluntarily. If they do attend, it is important to focus the witness on evidence that will show their knowledge of the violation by the defendant. Nothing else will show the City is factually correct in its allegations. Indeed, presenting additional evidence that isn't relevant will undercut otherwise relevant testimony.

Of course, additional witnesses, such as other code enforcement officers, persons from the neighborhood, or others with personal knowledge, can also testify, even if they are not otherwise noted on the citation. Generally the City Attorney will want to be prepared for such testimony, and it is important to limit any additional testimony to the specific citations at hand as well as to avoid duplication. In most cases, any additional witnesses will consist of other staff or code enforcement officers who may also have been present or participated in the investigation.

The Defendant's Argument. The defendant first has the opportunity, during the City's case, to ask cross-examination questions of any witnesses. The defendant who is not represented by an attorney will often go further, and attempt to argue their own case. At that point, the judge will typically step in and limit the defendant to cross-examination questions only; if not, the City attorney may object. If a defendant is represented by an attorney, then counsel will ask each witness, in turn, numerous questions. But regardless of how questions are asked, all should be directly related to the City's original questions. After all, the defendant will have the chance to present their own case and provide additional evidence. After cross-examination questions, the City Attorney may ask what are known as "redirect" questions. These in turn have to be related to the cross-examination questions, and generally clarify or explain any issues raised on cross-examination. As a result, the City asks only a few questions, if any, on redirect.

After the City rests its case, the defendant's case begins. First the defendant proceeds with their witnesses. Often the defendant is not represented by counsel, but appears *pro se*, sometimes with a friend or relative. Usually the defendant will focus primarily on undermining the City's case during cross-examination, and their own evidence may be limited to their own brief testimony. It can be important to ensure any friends or relatives only participate to offer evidence based on personal knowledge.

Defendants Represented by Counsel. When the defendant is represented by counsel, a more detailed defense may be expected, and they will typically introduce their own independent evidence. Normally that starts with the defendant's testimony, who under questioning by their attorney will often attempt to show there was no violation or that City staff misled him or her in some way. They may present additional witnesses or evidence, but often the City will object unless the evidence is directly related to the citation. The City will then have the same right to cross-examine as the defendant has to cross-examine City witnesses, followed by any redirect by the defendant or their attorney. Generally, when the defendant is represented by counsel, judges will enforce a greater level of formality. This does not affect the City's presentation, and indeed may prevent defendants from being granted more leniencies on procedure. In any case, the facts are the same, and the City's evidence should be targeted to specific violations. While attorneys for the defendant may be prone to object to evidence, as long as it is clearly relevant and related to the issue, judges will normally allow it to be presented.

Indeed, a defendant represented by an attorney can increase the chance that future violations will be avoided. Bear in mind that many municipal infraction cases reach court because defendants do not take the City, City Code, the citation, the code enforcement officer, or

all of them, seriously. Thus many defendants will have ignored or disregarded prior City warnings. In some cases, a defendant's hiring of an attorney can indicate they now take the citation seriously. This may, even more than a defendant appearing without counsel, indicate that a settlement is a reasonable outcome; and in most cases, attorneys are open to reasonable settlements. In some situations, the defense attorney can underscore the importance of avoiding future violations even in proposing a settlement for a nominal fine. Again, the defendant who has hired an attorney has invested more time and money in their defense. That can be an open door to avoiding future violations, and thus practically helping to encourage resolution of the issues leading to the citation in the first place.

But when a case can't be resolved, there are additional arguments that attorneys may raise, for which the City should be prepared. These include any questions of proper service or proper notice of the violation – potential questions when property has been posted or citations have been left with a responsible adult who is not the defendant. In those cases, it will be important to have evidence prepared to verify proper notice and service.

Attorneys may also raise any questions about the validity or meaning of the City Code section laying out the violation. While these arguments can be successful, in most cases municipal ordinances establishing code violations are clearly written. Such City ordinances may even be based on similar Montgomery County or other laws already upheld under such challenges. Attorneys may also argue that the actual violation did not occur within City limits, or within the incorporated limits of the City of Gaithersburg. It is for this reason the City Attorney's office is careful to assert that the violations, in fact, did occur within City limits. And

a violation starting in the City but, as with hand carried sign violations for a business, for example, continuing outside City limits still constitutes a violation within the City.

Attorneys will often argue that the defendant's behavior simply didn't violate the Code, based on on highly technical, careful constructs of the evidence, the Code section, or both. But those arguments are between lawyers as they are based on the meaning of the evidence presented and the relevant law. When any legal problems are raised with a City Code section, the defendant may, regardless of the evidence, prevail, and City will then want to correct the problem – possibly by amending the Code section. But whether or not a defendant is represented by an attorney, the court's decision will usually depend on the key facts. It's important to show the existence of a clear violation, proper service, and any history of continued violations. Simple, straightforward presentations are the best antidote to any defense, with enough evidence, including pictures, to verify the violation and show the defendant has failed to respond to multiple City requests to address the problem.

The Unrepresented or Pro Se Defendant. Often, the defendant does not have counsel. This does not change the facts, the law or the basic rules, and it is important that the City's attorney and staff show respect for the defendant. But an unrepresented defendant does typically change the progress of the hearing. For example, the *pro se* defendant will often try to present their argument at the outset, even before the City's case. The judge will usually limit them from proceeding. Unrepresented defendants may ask cross-examination questions, but often turn them into an argument on their behalf, which the judge will usually stop.

After the City's argument, the defendant has the chance to present their evidence. Unrepresented defendants usually make a statement at that point, presenting their own testimony

or making an argument as to why they are not violating the City Code. The attorney representing the City needs to carefully listen, as the defendant will often admit the violation, seeking mercy and arguing the City is unreasonable. Often, the judge will ask the defendant questions directly, essentially focusing on what argument the defendant can make that the City is wrong. Since the defendant has no one to ask them questions or guide their defense, the judge's questions can help clarify the issues and highlight any disputes as to the evidence. Even so, after the defendant's statement, the City's attorney can ask cross-examination questions. These are normally not extensive, especially when arguing against *pro se* defendants, but limited in scope, which can help to re-verify the key violation at hand.

Closing Argument. While some court trials end with compelling and lengthy closing arguments, judges rarely tolerate long closing arguments for municipal infractions. Nor should that be necessary, as the presentation of evidence in most cases is not over 15 to 20 minutes, and many take much less, only a few minutes. Indeed, a long closing argument might suggest the case is complicated and imply that the City has failed to meet some aspects of its burden. Thus, the best closing argument is usually a brief summation and assertion that the defendant's actions, if not their own admission during the hearing, show a clear violation of the City Code.

Closing argument can serve as a reminder of key issues. As such, the City needs to underscore the relief it seeks, and specify the evidence of an ongoing or continuing violation if seeking an abatement order. If the City seeks only the fine, closing argument should still refer to the fine amount, pointing out elements of evidence that would justify imposing the full fine or a large portion. It may be true that the violation, itself, should justify the fine. But judges will reduce fines, especially where evidence doesn't show unreasonable conduct, serious violations

raising safety concerns, or longstanding violations. It's therefore important to refer to such evidence in making any such request, rather than baldly asking for a fine amount without explaining additional factors supporting the higher fine amount.

Judge's Decision. Typically, the judge will issue a decision immediately, announcing first whether they find the defendant guilty and the fine amount if they do. Only when critical legal issues have been raised, requiring memoranda to be prepared by counsel for both parties, have judges issued decisions after the hearing.

In issuing the decision from the bench, generally if the violation is ongoing, longstanding or the evidence shows repeated violations on multiple occasions, the judge will on request also consider signing an abatement order. Regardless of the outcome, even if it is disappointing, once the judge issues the final decision, the City almost never has any reason to object, request reconsideration, or even evince any frustration. Only a clear error of fact or law in the judge's decision would justify any request to clarify or correct. Indeed, losing parties will often thank the judge in the same way they would if successful. For the City, there is also the reality that staff and the attorney may have the same judge presiding at future hearings, and it is important to maintain as high a level of credibility as possible.

CHAPTER 8: PAYING THE FINE AFTER THE TRIAL

While new citations can in theory always be issued, a dismissal or not guilty finding ends a municipal infraction case – because under Maryland law, only the defendant found guilty can appeal. *See* Md. Courts and Judicial Proceedings Code Ann., §12-401(d)(1). And guilty findings are certainly not always the end of the case. A guilty finding means, at minimum, that the defendant needs to pay the court-imposed fine to the City plus \$5.00 court costs to the clerk. If the defendant fails to pay the fine, the City can try to collect the fine. And requiring payment of the fine can also be made contingent on whether violations are corrected – where the fine is waived for compliance – where such problems are ongoing. Defendants disagreeing with the decision may also appeal. And in many cases, the City is dealing with an ongoing problem, such that serving and enforcing the abatement order will start an entirely separate process.

Fines. The fine amount is paid to the municipality, as provided by Md. Local Government Code Ann., §6-113, whether paid immediately, within the 20-day deadline after the citation is issued, per Md. Local Government Code Ann., §6-102(c)(2), before the hearing, or after the judgment. Thus, defendants should pay the City for any fines, including those ordered by the court. But defendants will sometimes pay the District Court clerk, and in that case, the District Court clerk’s office sends the payment to the City. Indeed, the City Code, §1-9(g)(5), specifies that all fines paid to the District Court “shall be remitted directly to the city.”

When Fines Aren’t Paid. The defendant has 30 days to pay any court-ordered fine, under Md. Local Government Code Ann., §6-110(1)(iii). If the defendant doesn’t do so, Md. Local Government Code Ann., §6-114, states that such failure can be considered contempt of court,

which would allow the City to petition for constructive civil contempt, under Maryland Rule 15-206. But that usually isn't realistic, as Maryland courts specify that contempt must be willful. Thus, a defendant's claim they cannot afford it could create doubt that their refusal to pay a fine is willful. *See Fisher v. McCrary Crescent City, LLC*, 186 Md. App. 86, 120 (2009), *citing State v. Roll*, 267 Md. 714, 730 (1973). In addition, a civil contempt order must describe how the defendant can "purge" the order, such as by paying the fine. *See* Md. Rule 15-207(d)(2). If the defendant fails to do so, the court's only option would be incarceration.

Thus, the City when seeking collection of fines will not use contempt, but opt for the normal debt collection processes. State law, at Md. Local Government Code Ann., §6-110(1)(iii), indeed specifies that fine judgments are "enforceable in the same manner and to the same extent" as any other civil judgment. As such, municipalities will after 30 days generally file a lien with the Circuit Court clerk, under Maryland Rule 3-621(c), which is effective against any real estate the defendant owns in that county. Because the fine order is as enforceable as any other civil judgment, direct collection steps could be considered, such as property levy and sale, garnishment of bank accounts, and garnishment of wages, under Md. Rules 3-641 through 649.

The defendant should pay the District Court clerk directly for the \$5.00 court cost fee, imposed under Md. Local Government Code Ann., §6-110(3) on defendants found guilty. If such court costs are erroneously paid to the City, the City needs to send that payment to the District Court clerk, identifying the case in which the \$5.00 court costs have been paid, but should always first urge the defendant to pay the court clerk directly.

CHAPTER 9: ABATEMENT ORDERS AND CONTEMPT HEARINGS

The primary purpose of municipal code enforcement is not to collect fines, but solve problems and stop City code violations. The prospect of a fine will encourage many to correct violations, and the City can even encourage compliance by waiving the fine, contingent on the problem's resolution. But that doesn't always work; the reality is that in some cases, a citation and a fine are not enough to gain compliance. Indeed, when a building code, animal control, or any other code violation is continuing up to the time of the citation trial, it's apparent that further action is necessary to solve the problem. In that case, the City will typically seek an abatement order, authorized under City Code §1-9(g)(6). State law at Md. Local Government Code Ann., §6-110(4) specifies that the District Court can order the defendant to "abate the infraction" in a municipal infraction case, or authorize the municipality to do so, at the defendant's expense. In fact, the City's draft abatement orders usually include both options – requiring the defendant to correct the violation, usually within 30 days, and if not, authorizing either contempt or allowing the City to do so, at the defendant's expense. *See* Appendix One, Sample Abatement Order.

The City can seek an abatement order in any municipal infraction case. The Montgomery County District Court will, however, normally only consider an abatement order only when an infraction is continuing or in light of multiple past violations. Judges will typically not issue an abatement order for single violations, or violations which have been corrected – even at the last minute before the hearing; nor would the City request such orders. As such, especially for property or building code violations, testimony and pictures related to the condition of the property the day before the hearing is critical. Where pictures show violations, such as tall grass or a house with building code infractions, which remain in place the day before the hearing,

judges will usually agree to enter an abatement order. That's especially true when multiple notices have been provided to the defendant over the several months before the hearing, including notices of violation, inspections and the citation itself.

Many abatement orders are issued by default, without the defendant present. But the judges still require the code enforcement officer's testimony or other evidence, including pictures, which show that the violation is continuing. Whether defendants appear or not, the test remains the same: to receive such an order, the City must show the violation is continuing or, in light of repeated violations, likely to happen again.

Service of the Abatement Order. When the abatement order is issued, the Montgomery County District Court judge will sign three copies; one is retained by the clerk for the court file, and two are provided to the City. The City Attorney's office will typically retain one, and the final signed original will be served on the defendant. That can mean six or more copies are presented when multiple citations are included in the same abatement order, but that is because each citation has a separate court file and represents a separate court case.

Personal service of these abatement orders is required. That's because the City must present evidence of a willful act of disobedience to show a violation of the abatement order, which is intended to frustrate the court's order, such that it could bring the court into disrespect. *Fisher v. McCrary Crescent City, LLC*, 186 Md. App. 86, 113-114 (2009). Maryland Rule 15-206 also requires that a petition for contempt allege the court order has been willfully disobeyed. Showing such willful disobedience involves, at the outset, evidence that the defendant was aware of the order, which is shown by an affidavit of personal service. *See Appendix Two, Affidavit of Service.* If the defendant is present in court when judge signs the order, the court clerk will

usually serves it personally. But otherwise, the Code Enforcement Officer will attempt to personally serve the defendant, and will return their affidavit to the City Attorney's Office once the defendant is served.

Enforcement of the Abatement Order: Civil Contempt. In some cases, issuance and service of the signed abatement order leads the defendant to resolve the issue. But when that's not the outcome, the City may have to enforce it. Because the abatement order is a court order, the City would file a court action seeking a contempt finding and punishment from the court. At that point, it's not a City ordinance in question, but violation of a court order, after a court finding that the defendant violated the City code. The court considers violating a court order as more serious than a code because it implies disrespect – and thus contempt of court.

While an abatement order usually requires corrections within 30 days, the order, as any court judgment, remains in place for 12 years, under Md. Courts and Judicial Proceedings Code Ann., §5-102(a)(3). Thus, the City can technically take action to enforce an abatement order at any time during the 12 years after the order is first issued. But most contempt proceedings in Montgomery County are filed within 3 years, unless the filing is part of an ongoing pattern of contempt. If the violation has been corrected for 5 or more years, it will be important to re-verify property ownership and carefully notify the defendant of the violations. In many cases, the City will simply opt to file a new citation rather than seeking to enforce an order that is several years old, but could also attempt to pursue both avenues concurrently.

A contempt petition can be criminal or civil, but civil contempt is the only option for the City to consider. That's because criminal contempt is, under Maryland Rule 15-205, handled as a criminal matter, requiring the State's Attorney to proceed with charges. Such criminal

contempt requires evidence of an intentional, willful act, and the penalty, which can be a fine or prison sentence, is punitive. Criminal contempt seeks punishment for the past conduct. *See Corapcioglu v. Roosevelt*, 170 Md. App. 572, 607-608 (2006). Civil contempt, instead, seeks remediation rather than punishment. *Smith v. State*, 382 Md. 329, 338 (2004). The city's enforcement does not seek a penalty, but will always seek civil contempt, which is intended to solve the problem by correcting the defendant's conduct. *Smith*, 382 Md. at 338. As such, the critical element of civil contempt is the defendant's ability to "purge" or clear the violation, ending any punishment if the violation is resolved. *See Corapcioglu*, 170 Md. App. at 607, *citing State v. Roll*, 267 Md. 714, 728 (1973).

Civil contempt of court is either direct or "constructive." Under Maryland Rule 15-203(a), direct contempt may result from an act in court, which a judge has "personally seen" and which has interfered with the court's processes. Any other claim of contempt which requires evidence to be presented to the judge is considered "constructive" contempt. *Fisher*, 186 Md. App. at 115. Thus, any contempt petition the City files for the violation of a City citation abatement order is always constructive civil contempt.

Accordingly, the City would file a petition for "constructive civil contempt," under Maryland Rule 15-206. The first step before any such filing is, as noted, to ensure there was personal service of the abatement order; no other step can be taken until the defendant has been personally served. The Code Enforcement Officer completes an affidavit, identifying the day and time of such service, unless the order was served by the court clerk the day of the citation hearing. *See Appendix Two, Affidavit of Service.*

Additionally, the City must show that any timeframe included in the order – usually 30, 60 or 90 days – has after notice to the defendant passed without the required corrections, and that efforts have been made to communicate with the defendant in that regard. The point is to show that the City has taken steps to solve the problem without the court filing.

Under Maryland Rule 15-206(c)(1), the petition for civil contempt must notify the defendant that incarceration is sought as a remedy. Indeed, that is the ultimate sanction sought by a contempt petition, even as it's actually not the desired result. Additionally, the attached Show Cause Order will include required statutory language and notice to the defendant under Rule 15-206(c). *See* Appendix Three, Sample Petition for Contempt and Show Cause Order.

The petition must allege that the abatement order has been violated, and seeks a hearing for the court to determine the facts. Under Maryland Rule 16-206(c)(2), to schedule the hearing, the court will issue the Show Cause Order, directing the defendant to appear at the day and time specified to show that they have not committed contempt of court. *See Fisher*, 186 Md. App. at 117. As the Show Cause Order notice provides, the defendant's appearance at the hearing is not optional; if they fail to appear, the notice under Maryland Rule 15-206(c) states that the defendant is subject to arrest. As such, like the abatement order itself, Maryland Rule 15-206(d) requires that the show cause order be personally served on the defendant. Indeed, the court will establish a deadline for the City staff to serve the defendant. Typically the Code Enforcement Officer will serve the Show Cause Order, and the City will file an affidavit with the court verifying that service before that deadline, or the show cause hearing will not proceed.

The First Show Cause Hearing on Contempt. As long as the City files the affidavit showing the defendant received personal service of the Show Cause Order by the deadline, the

show cause hearing will proceed. Normally this hearing is set at the same time as the municipal infractions docket – currently held in District Court Room 514, on the first Tuesday at 8:30 a.m. As with the infraction cases, the show cause case will normally be called by the City Attorney, but the judge directs the process from that point, often acting as a prosecutor of sorts – because the focus is on following the court’s prior abatement order.

To start the hearing, the City will refer to the abatement order and indicate the evidence is that the corrections and other requirements have not been satisfied, such that the conditions leading to the abatement order remain uncorrected. The City seeks compliance rather than a finding of contempt or any punishment. Indeed, the underlying theme is that the City would rather not have filed the contempt petition, but had little choice but to do so. But after the introduction, the City doesn’t immediately move forward to offer testimony, as in the original code enforcement case. Instead, the judge will usually direct the next steps.

When the defendant doesn’t appear, there is no default judgment, as may happen in the initial citation trial. Instead, the defendant must appear, in no small part because incarceration could result. Thus, the court will issue a bench warrant if the defendant fails to appear, while usually setting a new tentative hearing date, potentially for the next first Tuesday. With a bench warrant, the sheriff will arrest and detain the defendant, who will normally be released on bond until the next contempt hearing. But it is possible the judge may not set a specific hearing date, pending arrest and detention of the defendant, and the date is set afterwards. In any event, no further action would take place on the initial hearing date.

If the defendant appears, the judge will first ask them to respond to the City’s statement, and in doing so will often emphasize the court order and the deadline. In most cases, the

defendant will not dispute the facts, but will admit the corrections haven't been made or the violations are otherwise ongoing. The defendant will usually attempt to explain why the corrections have been delayed – often related to cost, practical problems, or other delays they will argue are beyond their direct control – and then ask for additional time. At that point, with the admission, there is no need for the City to present evidence, but the judge may ask the City to react to the defendant's statements. The judge is in any event likely to ask whether the City would accept a 30 day correction timeline. Under this process, the defendant will be given a final 30 days to make the corrections to the City's satisfaction, and the court will typically set the next hearing on the first Tuesday of the next month as a final effective deadline.

If the defendant disputes the allegation that corrections remain to be completed, the judge will ask the City to present evidence. The City's evidence usually consists of brief testimony from the code enforcement officer – essentially stating that the conditions ordered corrected by the abatement order remain. The City will normally introduce a few photographs, usually no more than four or five, to visually demonstrate that the violations remain in place. The judge normally takes an active role in questioning, but will then ask the defendant to speak after the City's evidence. In most cases, the judge will ask several direct questions of the defendant, and in the process, most defendants will concede that the City's evidence is accurate and the violations are continuing. Regardless, in most cases, with clear evidence, testimony and pictures, the judge will find that violations remain. If not, the petition is denied.

A dispute may arise when the defendant claims corrections have been made since the City's last inspection – even where that inspection was the day before. Defendants often claim that, overnight, they completed work to correct the original violation, such that and as of the

contempt hearing, they have complied with the court's order. It is to address this potential last-minute claim that the City Attorney will ask code enforcement officers to re-inspect the relevant area, and take pictures as late as possible before the hearing. But because the hearings are scheduled for 8:00 or 8:30 a.m., it's rarely possible to inspect property that morning.

It's important to understand that a defendant stating corrections have been made at the last minute is admitting the City's petition was well founded, as corrections were not made earlier. Even so, last minute corrections can satisfy an abatement order. Thus, the judge will normally reset the hearing for the next first Tuesday of the month, giving the City time to make additional inspections to verify whether violations remain. The City would only have reason to object when there is clear evidence the defendant is not accurate. And the delay is similar to that which often results even when finding an uncorrected abatement order violation, because defendants are usually given the same timeframe to make corrections before facing prison.

Thus, the first show cause hearing does not typically result in incarceration; nor does the City seek that outcome. After all, the defendant cannot easily make repairs or corrections to a home when they are in detention, which is the typical penalty for contempt. But the judge will normally make the threat of incarceration very clear, pointing out that if corrections are not completed by the next hearing, the defendant will be ordered incarcerated for 30 to 90 days, or until the corrections are made.

Except when there is no finding from the judge, such as when the City has been given 30 days to verify the defendant's claim corrections have been made and the case is postponed, the judge will normally either deny the petition or find that the defendant has committed constructive civil contempt. A contempt finding means the defendant has committed contempt based on

outside evidence from the City, and the penalty of incarceration can generally be avoided only if the defendant cures the violation. The judge will then typically issue a sentence of 30 to 90 days of incarceration, suspending that sentence pending the outcome of the second hearing.

Where the defendant does not appear but a bench warrant is issued, the first hearing after that is treated in the same way, as though the defendant had voluntarily appeared.

The Second Show Cause Hearing on Contempt. The expected outcome of the first hearing is thus a second hearing, to verify whether the corrections are made. In most cases, it works, and the City will at the hearing state that sufficient corrections have been made to allow dismissal of the petition. If not, the judge will at that point, regardless of the excuse, usually order the defendant incarcerated. Even where the City is willing to grant additional time, judges are reluctant to grant a second postponement without a substantial, verified excuse, such as a medical emergency.

The defendant almost always appears at the second hearing, but if they do not, the judge will issue a bench warrant. Once the defendant is present, the second contempt hearing should not be extensive, as the inquiry is limited to whether required corrections have been made. The City will provide a brief introduction, briefly laying out the past hearing and identifying the remaining question. If the problem is resolved, the City can indicate it will dismiss the petition, or the judge may order the prior sentence suspended. But if the code enforcement officer states that corrections were not made, the judge will not ask for evidence, but will then turn to the defendant. The defendant who has not made corrections will usually not dispute the facts, but will ask for more time or identify a barrier, such as time, funds, or an intervening emergency.

In most cases, the judge will simply order the sentence previously suspended to be put in place, and will order the defendant incarcerated. Only in limited instances has the City been successful in asking the judge to grant additional time, and generally only when a defendant has clearly made substantial efforts to comply. Judges rarely grant a third hearing, because the defendant has already been found to violate the court's abatement order, and now has also violated the court's order issued after the first contempt hearing. Judges are usually reluctant to accept such multiple violations of court orders, even when the City is willing to grant another extension.

CHAPTER 10: INJUNCTIONS

In the face of a City Code violation, the municipal infractions process is not the only law enforcement option. Most City Code chapters laying out municipal infractions also specify the City may also opt to file a civil action, in order to seek either a temporary restraining order, preliminary injunction or both. Thus, City Code §4-2(a) specifies the municipal infraction process for Animal Control violations, while §4-2(b) allows “injunctive, mandamus or any other appropriate action or proceedings at law or equity for enforcement of this chapter.” Other sections, such as City Code §12-10, similarly specify the same broad options.

The reality is that injunction actions might be necessary for emergencies or violations needing immediate corrections, raising health, safety or other community concerns. The injunction sought would request an order mandating compliance with the City Code. While District Courts, under Md. Courts and Judicial Proceedings Code Ann., §§4-401(6) and (7), have limited exclusive jurisdiction to consider injunctions in replevin, lien and landlord-tenant actions, others are normally filed in the Montgomery County Circuit Court.

Injunctions may seek permanent, intermediate, or preliminary relief, and may often be filed together. Thus, the City may seek a mandatory injunction as the ultimate long-term relief, but file it with a preliminary injunction seeking short-term relief, pending the ultimate trial. When immediate relief is sought, such as in emergencies, the City may seek all three. Thus, with the mandatory and preliminary injunction, the City may also file a motion for a temporary restraining order, which would provide relief pending the preliminary injunction hearing.

Overall, injunctions generally must meet a high burden of proof, and in addition to a City Code violation, also show there is no other “adequate remedy at law,” meaning that monetary

damages would not provide a sufficient remedy. *Maloof v. State Dept. of Environment*, 136 Md. App. 682, 693 (2001). But when such motions are filed by government entities, the public interest may be more broadly considered. As such, even if money damages are arguably available, that may not prohibit relief, but will be weighed against the community concerns. *State Dep't of Health and Mental Hygiene v. Baltimore County*, 281 Md. 548, 555 (1977).

Preliminary Injunctions. Where the goal is long-term, such as a permanent injunction, the municipal infractions process can be effective. But when facing an emergency and the need for quick correction, the City would initially focus on a preliminary injunction before trial, under Maryland Rule 15-505. A preliminary injunction does not allow for change, but simply protects the “status quo.” *Maloof*, 136 Md. App. at 693. Thus it prevents further harm, and seeks to preserve “the relative positions of the parties until a trial on the merits can be held.” *Hamot v. Telos Corporation*, 185 Md. App. 352, 362 (2009), citing *University of Texas v. Camenisch*, 451 U.S. 390, 394-95 (1981). As such, the City must show the violation in question, as well as evidence of ongoing harm and irreparable injury that would result without the injunction. *Hamot*, 185 Md. App. at 362; *Maloof*, 136 Md. App. at 694.

In deciding whether to grant a preliminary injunction pending trial on the merits, the judge will weigh four key factors: (1) the likelihood that the plaintiff will succeed on the merits; (2) the “balance of convenience” determined by whether greater injury would be done to the defendant by granting the injunction than would result from its refusal; (3) whether the plaintiff will suffer irreparable injury unless the injunction is granted; and (4) the public interest. *Ehrlich v. Perez*, 394 Md. 691, 708 (2006).

Note that a preliminary injunction does not seek immediate relief. A preliminary injunction hearing is set after notice to all parties, giving “an opportunity for a full adversary hearing on the propriety of its issuance,” under Maryland Rule 15-505(a). While the City in moving for such relief need not show it will ultimately prevail, the City would still need sufficient evidence to prove that it has “a real probability of prevailing on the merits, not merely a remote possibility of doing so.” *Fogle v. H & G Restaurant*, 337 Md. 441, 456 (1995).

Temporary Restraining Orders. A preliminary injunction does not seek immediate relief, but is only issued after notice and a hearing involving both parties. But in an emergency situation, the City may, even in filing for a preliminary injunction, seek immediate relief through a motion for a temporary restraining order, under Maryland Rule 15-504. No formal notice or hearing for both parties is required, and as a result, a judge can issue a temporary restraining order – but only in limited circumstances, based on strong evidence of immediate harm. And such an order only remains in place for a limited time, up to 10 days.

Additionally while formal prior notice or an adversary hearing is not required when motions for temporary restraining orders are filed, “efforts commensurate with the circumstances” must still be made to give some practical notice or warning to the opposing party, under Maryland Rule 15-504(b). Such an order is only issued in limited circumstances – when the evidence clearly shows by affidavits or statements “under oath” that “immediate, substantial and irreparable harm” will result if the motion is not granted. See Maryland Rule 15-504(a). A temporary restraining order is also limited in duration. It only stays in effect for 10 days, under Maryland Rule 15-504(c), pending consideration of the longer-term preliminary injunction, which is only granted after notice and an adversary hearing.

CHAPTER 11: CLEAN AND LIEN

Most abatement orders related to property, resulting from maintenance or building code violations, also grant the City authority to correct the violation at the defendant's expense, as generally permitted by Md. Local Government Code Ann., §6-110(4). *See* Appendix One, Sample Abatement Order. The abatement order language usually specifies that the City may correct the violation itself, and then bill the defendant for the cost of doing so. Indeed, City Code §1-8(g)(7) specifies that the City can enforce an abatement order “and remove any property or condition causing the violation.” The defendant can reclaim any seized property only after paying the costs of enforcement, including storage and removal costs. Similarly, the City can under an abatement order correct property maintenance and property code violations, as also authorized under City Code §1-11.

Clearly, the City must keep records of all expenses, which must be reasonable and related to the violation outlined in the abatement order. But if the defendant, after being billed, does not pay, the City always has the option to follow the normal collection process, including filing a lawsuit to collect, as provided by City Code §1-11. But a separate lawsuit is generally not needed, as Md. Local Government Code Ann., §6-111(a) specifies that when the municipality itself “abates an infraction under a District Court order,” the defendant is billed, and then has thirty days, under Md. Local Government Code Ann., §6-111(b), to pay the bill before the municipality can move for an additional judgment against the defendant for the costs. This avoids the need to file a separate lawsuit to collect on the costs of making the repairs, even as further court action is necessary to obtain a court judgment related to the additional costs of the correction.

There is an alternative to further court action, if permitted by the terms of the abatement order. The City usually seeks in its abatement orders to have authority to collect the cost for corrections to real estate in the same manner as property taxes – thus, as part of the property tax bill, in which the municipal portion is sent as part of the annual County property tax bill. City Code §1-11 also independently specifies that the City can take such action to collect the costs of correcting such property violations by assessing them as liens against the property and collecting the costs “in the same manner as property taxes.” This provision supports the City’s authority, even as doing so without a court order specifying a violation and ordering abatement can be risky. Thus, the City will generally rely on an abatement order including this authority before adding the cost to the property tax bill. *See* Appendix One, Sample Abatement Order

This is often referred to as “clean and lien,” as the cost of repair is treated in the same manner as property taxes. This language is authorized under similar language included in Md. Local Government Code Ann., §5-205(d)(2). Clean and lien can be an additional tool to correct a violation, especially when a defendant does not otherwise respond, and safety or neighborhood concerns require a more expeditious response than a contempt proceeding, which can take several months. This can also be a useful tool against landlords or property owners living outside the area, or corporations as well, because in those cases the contempt petition may not present a viable solution. Attaching persons outside the County jurisdiction for contempt proceedings may pose significant challenges, even to effect proper service, and constructive civil contempt proceedings work against individuals rather than corporations. This is a key reason why citations seeking “vicarious” liability, against both a corporate entity and a responsible individual, are pursued, as discussed *infra*, pages 12-13.

But “clean and lien” is a limited tool. It is a way to correct a code violation expeditiously, but can only be used to address property maintenance or building code violations with an abatement order. It is also only practically effective against property owners who would be receiving a property tax bill. Additionally, payment isn’t assured even where the bill is included in the municipal portion of the bill, in which the County tax bill is the larger sum. But the County will often seek enforcement of the tax obligation by forcing a tax sale, as could the City for its portion of the tax bill, if it so desired. Otherwise, the City may be reimbursed at the time the property is sold through other means. Thus, while limited to property maintenance and building code violations, this can in the long term serve as an effective collection tool.

CHAPTER 12: APPEALS AND MOTIONS TO REOPEN

A final judgment isn't always the end. Not only may the City try to enforce a final judgment, but defendants have several options to challenge court orders, even after the court has found them guilty of committing a municipal infraction, issued a fine and even added an abatement order. Such rules allow defendants to ask for a new trial before the same District Court, if they do so within 10 days of the judgment, or appeal the decision to the Circuit Court within 30 days. And even where defendants fail to appear, and the City wins judgment by default, defendants can file a motion with the District Court for a new hearing. But there are deadlines in place for both options.

Motions for a New Trial, or to Reopen, Revise, or Vacate. Within 10 days after the judgment, any party, including the City or the defendant, can file a motion for a new trial. Maryland Rule 3-533(b) requires that the motion state the grounds for the new trial, but does not specify what those grounds may include. Under Maryland Rule 3-311(d), such a motion cannot be granted without a hearing. This motion does not stay the judgment, but when granted, it wipes away the prior judgment and results in an entirely new trial. This is the motion typically filed when the town or city wins by default because the defendant failed to appear at the hearing.

Maryland Rule 3-534 also allows any party, within the same brief 10 day deadline, to file a motion seeking to alter or amend the judgment. Such a motion to alter or amend may be combined with a motion for a new trial under Maryland Rule 5-333, but when granted, doesn't in itself always result in a new trial. It is rarely used for municipal infraction judgments, because it

focuses on a clear error or specific additional evidence, and may create a more limited result. It may allow the judgment to be opened for additional evidence or revised to correct an error.

For municipal infractions, usually any such motion – whether citing Maryland Rule 3-533 or 3-534, or neither one – is treated as a new trial motion, eliminating the prior judgment and resulting in a new, *de novo* trial. Again, such a motion is most often filed after a defendant has defaulted, in which a defendant will indicate they were unable to appear, or failed to receive notice of the court hearing. In those cases, the City typically does not oppose the motion, and the court simply sets a date to consider it, erasing the judgment. At that time, the municipal infraction hearing is conducted in the District Court as if it were the first hearing.

Motions for a new trial are usually filed after default judgment. They are rarely filed when a defendant was present, and in that case, would typically focus more on Md. Rule 4-534's motion to alter or amend, based on an error or additional evidence. Such motions are less likely to be granted unless a defendant can demonstrate a clear error or additional evidence not considered would change the outcome, but when granted, typically result in a new trial.

Appeals. While a defendant has only 10 days to seek a new trial, they have 30 days to file an appeal. An appeal is not a request for a new trial before the same District Court, but for a new trial before the Circuit Court. State law at Md. Courts and Judicial Proceedings Code Ann., §12-401(d) specifies that any defendant found guilty of a municipal infraction may appeal to the Circuit Court within 30 days from the final judgment being appealed. So, too, may a defendant found guilty of contempt, per Md. Courts and Judicial Proceedings Code Ann., §12-402. But the appeal to Circuit Court from a municipal infraction case is *de novo*, and not on the record. Thus there is no review of the District Court's original judgment. Instead, the appeal in a municipal

infraction case is, under Md. Courts and Judicial Proceedings Code Ann., §12-401(f), an entirely new trial.

Thus, an appeal has the same intent as a motion for new trial, but before a different court. Indeed, there are several other distinctions from a new trial motion. First, the more formal Circuit Court rules apply, as specified in Md. Rule 7-112(d)(3). Second, the District Court judgment is not eliminated, but remains in effect, under Md. Rule 7-112(b) “until superseded by a judgment of the circuit court.” Thus, an abatement order issued by the District Court may remain in effect, unless eliminated or changed with a new order by the Circuit Court – which under Md. Rule 7-112(e) is sent to the District Court clerk for entry into the District Court docket, thus truly superseding the prior District Court judgment but also allowing future contempt proceedings to enforce the order to be filed in the District Court..

Under Md. Rule 7-111, other appellate rules, including 8-422, 8-423 and 8-424, also apply to these Circuit Court appeals. Under these rules, including Md. Rule 8-422, the Circuit Court can consider a motion for a stay of enforcement pending appeal. But Md. Rule 8-423 specifies that upon filing an appeal, the District Court clerk will, before the appeal proceeds, require the defendant to pay a *supersedeas* bond in the amount of any money judgment – here, the fine – as security. This cost can discourage such appeals, especially where the District Court may have issued fines in the full amount of the fine, which can reach \$500 and which may even be doubled up to \$1,000. Thus, if defendants are within the 10-day deadline after a judgment, they will often simply seek a new trial rather than an appeal, which adds the bond costs.

It should be noted that appeals are exclusively options only for the defendant, as a municipality is not empowered to appeal from a District Court municipal infraction judgment.

Maryland law, at Md. Courts and Judicial Proceedings Code Ann., §12-401(d)(1) specifies that only the defendant may file such an appeal. Motions to reopen a judgment or seek a new trial may be filed by any party, however, and municipalities certainly can file such motions to make necessary corrections in the record or order. In most cases, however, only a defendant with a guilty finding at the municipal infraction trial will file such a motion.

Additional Appeals or New Trial Motions. A defendant who files a new trial request may be successful in winning the chance for a second trial, especially if they did not appear at the first trial. And the City will usually avoid opposing such motions, especially following a default judgment. But such a defendant should not expect success with a second new trial request, effectively asking for a third trial – even if they fail to appear for the second trial. The City likely would oppose such a duplicative motion, and courts are generally not willing to reset a trial twice. Additionally, new claims of error or new evidence rarely justify reopening a judgment for a second time. But if a defendant is found guilty in the second District Court trial, after a new trial is granted, the appeal option remains. Thus, that defendant can still seek a third trial by appealing to the Circuit Court, if filed within 30 days of the second final judgment.

A final judgment after appeal, after the trial by the Circuit Court, should be considered final. While the Circuit Court trial rules, like the District Court rules, permit reopening or the correction of errors, they do not apply to appeals, and even if a judge was willing to consider such a motion, it seems unlikely, after an appeal, that it would be granted. Additionally, such a motion does not stay the enforcement of the judgment. As in appellate practice, it is likely that only a motion to alter or amend the judgment to correct a specified, clear error of law or fact, under Md. Rule 2-534, would be considered. Such a motion is usually only relevant after a

hearing on the record, in which the Court issues a written opinion, and would be unlikely to be considered after a second de novo trial in which the final judgment is issued from the bench.

Maryland law also does not provide for any further appeal. Indeed, Md. Courts and Judicial Proceedings Code Ann., §12-301, specifies that an appeal to the next level, the Court of Special Appeals, is only allowed from a Circuit Court judgment “entered by a court in the exercise of original, special, limited, statutory jurisdiction,” unless exempted under Md. Courts and Judicial Proceedings Code Ann., §12-302 – which allows no appeal from “a final judgment of a court entered or made in the exercise of appellate jurisdiction in reviewing the decision of the District Court . . .” See *Anne Arundel County v. Nes*, 163 Md. App. 515, 526 (2005).

Similarly, Md. Courts and Judicial Proceedings Code Ann., §12-201, limits appeals to Maryland’s highest court, the Court of Appeals, to a petition for certiorari from a Court of Special Appeals judgment. Even so, Md. Courts and Judicial Proceedings Code Ann., §12-305 specifies that the Court of Appeals has authority to require a Circuit Court “final judgment on appeal from the District Court” to be certified for review, if “necessary to secure uniformity of decision” or if doing so is in the “public interest” based on other special circumstances. As such, the Court of Appeals does have authority to *sua sponte* assume such an appeal. Failing that, when a defendant has filed an appeal to the Circuit Court, the Circuit Court decision can almost certainly be considered the final decision.

It should be noted that the final Circuit Court decision, after the appeal and the new trial, will be entered in the District Court docket. It will substitute for the original District Court decision, under Md. Rule 7-112(e), which permits any future enforcement proceedings, such as contempt regarding any abatement order, to be handled by the District Court.

CONCLUSION

Maryland's municipal infractions process is not perfect, but in many ways serves as an effective balance between the local government desire to solve a problem and a defendant's rights to notice, a trial, and an appeal. It's not a process that gives immediate solutions – only temporary restraining orders can accomplish that – but in the long run, it usually works. For such results, cooperation at multiple levels is needed. That process starts with a person or business allegedly violating the City Code, and it continues when that person or business does not take steps to address the alleged violation – or, alternatively, does not demonstrate that the claims of a violation are erroneous.

When the problem is resolved after the first notice, no citations result, and further process results. But when a person or business continues with a violation, or an animal or person is put in danger by an alleged violation, the municipal infractions process takes shape. Except for emergencies, in which an injunction and/or temporary restraining order might be filed, it begins with a code enforcement officer trying to talk to someone or issuing a notice of violation. While formal, with dates and notations of specific violations, the notice of violation is nothing more than another attempt to resolve a problem without the need for further court action. And when the problem is resolved, there is no further court action.

The need for the municipal infractions process becomes especially clear when the problem continues. At that point, the City often faces the hard choice – to either attempt to enforce and uphold the law, or simply allow the law to be violated. After attempting to work with a person or business on a problem, in the face of continued violations, usually a citation is issued, and the court process begins. Short of paying the fine and addressing the problem,

usually that will involve a court hearing. And there are cases in which, even after a court hearing and an order directing that the violation stop, it continues. And persons in some cases end up facing contempt of court charges – serving time in jail.

No one involved with the City – from code enforcement officers, to police, to the City Attorney, wish to take any court action, have any innate desire to collect fines, and certainly do not wish to see any person face time in jail for a continuing violation. The goal is to solve problems and gain compliance with the City Code.

The municipal infractions process is in place to address these ongoing problems for which there is no easy solution. As such, it may be the only effective route to solving the problem. It can, when problems continue, involve a lengthy process, and success in any endeavor involves many players. The outcome is always subject to the strength of proof, combined with the City's credibility as the party trying to resolve the problem. In some cases, the risk and danger for the community, or community concerns overall, will also play a role. In the end, with persistence as well as patience, as City staff work together, the process can work to help solve problem, address community concerns and help the City better serve the public.

APPENDIX ONE: SAMPLE ABATEMENT ORDER

IN THE DISTRICT COURT FOR MONTGOMERY COUNTY, MARYLAND

CITY OF GAITHERSBURG

*

Plaintiff

*

v.

*

Citation Nos: Z

 Z

*

[DEFENDANT]

*

Defendant

*

* * * * *

ORDER FOR ABATEMENT

Upon consideration of the verified citation filed herein and any evidence presented at trial in this case, the Court finds that Defendant has committed the violation of the Gaithersburg City Code stated in the above-referenced citation and that the Plaintiff, City of Gaithersburg, Maryland, is entitled to this Order of Abatement pursuant to Gaithersburg City Code, Section 1-9(g)(6), and it is thereupon, this day of [Date], by the District Court of Maryland for Montgomery County,

ORDERED that the Defendant shall refrain from further violations of the Gaithersburg City Code, Section 17AA-1, International Property Maintenance Code §§ 302.1 and 302.8; and it is further

ORDERED that the Defendant shall take the following actions to correct the conditions which constitute a continuing violation of the City law at [address]:

Remove the vehicle from the property which has an expired registration; and

Remove solid waste from the property and from the yards.

ORDERED that compliance with this Order shall be completed no later than [30 days], and it is further

ORDERED that a representative of the City of Gaithersburg shall be permitted to inspect the premises to verify that the terms of this Order have been complied with; and it is further

ORDERED that if the Defendant fails to abide by this Order, the Plaintiff, City of Gaithersburg, Maryland has permission to enter the property and abate the violation; and it is further

ORDERED that if the Plaintiff, City of Gaithersburg, Maryland, abates any code violation upon the Defendant's property mentioned above pursuant to Section 6-110 of the Local Government Article of the Annotated Code of Maryland, the Plaintiff, City of Gaithersburg, shall send the a bill for the cost of correction by regular mail to the Defendants' last known address or by any other means that is reasonably calculated to bring the bill to the Defendants' attention. If the Defendant does not pay the bill within 30-days after it is presented, the Plaintiff may file a verified statement of the costs of correcting violations with the court; and it is further

ORDERED that once the Court has entered a judgment against the Defendant for the cost of correction of the violations, the Plaintiff may enforce a judgment in the same manner as any other civil judgment for money, or collect the judgment in the same manner as it collects real property taxes.

FAILURE TO COMPLY WITH THIS ORDER IS PUNISHABLE BY CONTEMPT.

Judge, Sixth District Court for
Montgomery County, Maryland

APPENDIX TWO: SAMPLE AFFIDAVIT OF SERVICE OF ABATEMENT ORDER

IN THE DISTRICT COURT FOR MONTGOMERY COUNTY, MARYLAND

CITY OF GAITHERSBURG

*

Plaintiff

*

v.

*

Citation No: _Z_____

*

[DEFENDANT]

*

Defendant

*

* * * * *

AFFIDAVIT OF SERVICE

I, [Name], Code Enforcement Officer, City of Gaithersburg state:

1. That I am now and at all times referred to in this Affidavit have been an adult above the age of eighteen years, a citizen of the United States of America and of the State of Maryland;

2. That I am competent to make this Affidavit and that I do so upon my own information and knowledge and that I am competent to testify to the matters contained herein;

3. That I served a copy of the Abatement Order, which was issued by this Court on [date] in this proceeding, personally on Defendant on the ____ day of _____, 20__ at __: __am/pm.

I do solemnly declare and affirm under the penalties of perjury that the contents of the foregoing Affidavit are true to the best of my knowledge and belief.

_____ Date

Name
Code Enforcement Officer
City of Gaithersburg, Maryland

**APPENDIX THREE: SAMPLE PETITION FOR CONTEMPT, SHOW CAUSE ORDER,
SERVICE OF ABATEMENT ORDER**

IN THE DISTRICT COURT FOR MONTGOMERY COUNTY, MARYLAND

CITY OF GAITHERSBURG, MARYLAND

*

Plaintiff

*

v.

*

Citation No.: Z

DEFENDANT

*

Defendant

*

* * * * *

**PETITION FOR CONSTRUCTIVE CIVIL CONTEMPT
AND ORDER TO SHOW CAUSE**

The City of Gaithersburg, Maryland, by its undersigned attorneys, respectfully requests this Honorable Court to hold [Defendant], [Address], Gaithersburg, Maryland 20878, (“Defendant”), in contempt for failing to abide by this Court’s Order of Abatement issued on [date], and for reasons states the following:

1. Gaithersburg, Maryland (the “City”) is a municipal corporation of the State of Maryland and is the local legislative body for the incorporated areas of the city limits and is authorized by various laws and statutes to exercise the police power within the city and to enforce its laws and those of the State of Maryland.

2. On or about [date], City of Gaithersburg Code Enforcement Officer [name] visited and conducted an inspection of the Defendant’s property located at [address], Gaithersburg, Maryland 20878, and issued citation number Z to the Defendant that same day for failing to ensure all accessory structures on the property located at [address],

Gaithersburg, Maryland are structurally sound and in good repair, violations of Sections 17AA-1, Gaithersburg City Code, which adopted § 302.7 of the 2002 International Property Maintenance Code.

3. A hearing on citation number Z_____ was held on [date] at which the City requested, and the Court granted, an Order of Abatement, attached hereto as Exhibit A, ordering the Defendant to abate the Gaithersburg City Code violations.

4. Specifically, the Defendant was required to maintain the property located at [address], Gaithersburg, Maryland and ensure all accessory structures are structurally sound and in good repair, in order to bring himself into compliance with the Gaithersburg City Code and comply with the Court's Order of Abatement.

5. Code Enforcement Officer [name] served the Order of Abatement on the Defendant on [date] (See Exhibit B, Affidavit of Service).

6. On [date], after the close of the thirty day period permitted by the Order of Abatement, Code Enforcement Officer [name] revisited and reinspected the Defendant's property located at [address] Gaithersburg, Maryland **20878** to ascertain whether the violation had been abated. The Code Enforcement Officer discovered that the violation remained unabated; specifically, the guardrail and banister surrounding the deck on the rear of the property has partially fallen away. [See either Exhibit pictures or add to affidavit]

7. Code Enforcement Officer [name] has revisited the premises at [address], Gaithersburg, Maryland since that time, **on** _____, _____ **and** August 7, 2014. The guardrail and banister remains partially fallen away and has not been corrected, and a new notice of violation has been issued. [See either Exhibit pictures or add to affidavit]

8. To this date, Defendant has willfully continued to fail to abate the Gaithersburg City Code violations, or to bring the property into compliance with the Abatement Order, as evidenced by the Code Enforcement Officer's on site observations and as shown in the attached photographs. (Exhibit C, Photographs).

WHEREFORE, the Plaintiff, the City of Gaithersburg, Maryland, respectfully requests that:

1. The Defendant [name] be ordered to show cause why he is not in contempt of Court for failure to abide by this Court's Abatement Order dated [date];

2. The Office of the City Attorney be appointed to prosecute this contempt proceeding;

3. This Honorable Court find Defendant in contempt of court, and impose sanctions against him as this case may demand, including incarceration if the Court sees fit, until such time as the Defendant performs and completes, to the standard required by the Gaithersburg City Code, the work enumerated in the Abatement Order;

4. And for such other and further relief as the nature of this cause may require.

Respectfully submitted,

[name and title]
City of Gaithersburg
31 South Summit Avenue
Gaithersburg, MD 20878-2098
301-258-6310

POINTS AND AUTHORITIES

1. POINT: Contempt has been defined as a despising of the authority, justice, or dignity of the court. . . . A person whose conduct tends to bring the authority and administration of the law into disrespect or disregard, interferes with or prejudices parties or their witnesses during litigation, or otherwise tends to impede, embarrass, or obstruct the court in the discharge of its duties, has committed a contempt.

AUTHORITY: *Scott v. State*, 110 Md. App. 464, 490, 671 A.2s 1078, 1081 (1996), quoting *Goldsborough v. State*, 12 Md. App. 346, 355, 278 A.2d 623, 628 (1971).

2. POINT: Any party to an action in which an alleged contempt occurred . . . may initiate a proceeding for constructive contempt by filing a petition with the court against which the contempt was allegedly committed.

AUTHORITY: Maryland Rule 15-206 (b).

3. POINT: Unless the court finds that a petition for contempt is frivolous on its face, the court shall enter an order that states:

(a) the time within which any answer by the Defendant shall be filed, which, absent good cause, may not be less than 10 days after service of the order;

(b) the time and place at which the Defendant shall appear in person for a prehearing conference, hearing, or both, allowing a reasonable time for the preparation of a defense, and, if a hearing is scheduled, whether it is before a master or before a judge; and

(c) if incarceration to compel compliance with the court's order is sought, a notice to the defendant. . . .

AUTHORITY: Maryland Rule 15-206 (c).

4. POINT: The Order, together with a copy of any petition and other documents filed in support of the allegation of contempt, shall be served on Defendant pursuant to Maryland Rule 3-121 or, if Defendant has appeared as a party in the action in which the contempt is charged, in the manner prescribed by the court.

AUTHORITY: Maryland Rule 15-206 (d).

5. POINT: The purpose of civil contempt is to coerce or facilitate compliance with court orders. Because the sanction is coercive, it must allow for purging.

AUTHORITY: *Dodson v. Dodson*, 380 Md. 438, 448-49, 845 A.2d 1194, 1200 (2004).

[name]
City Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this ____ day of [date], a copy of the foregoing Petition for Contempt, Points and Authorities, and Show Cause Order was mailed, first-class, postage prepaid to [defendant], [address], Gaithersburg, MD 20878.

[name]
City Attorney

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

CITY OF GAITHERSBURG, MARYLAND

*

Plaintiff

*

v.

*

Citation No.: Z

DEFENDANT

*

Defendant

*

* * * * *

SHOW CAUSE ORDER

Upon the Petition for Contempt filed by the Plaintiff, the City of Gaithersburg, Maryland, which alleges that [defendant] has violated the Order of Abatement this Court dated [date], issued by the Honorable Judge _____, it is hereby

ORDERED this _____ day of _____, 20__, by the District Court of Maryland for Montgomery County, that Defendant, [date], show cause, if any he has, why the relief prayed therein should not be granted; and it is further,

ORDERED that a hearing on said Motion for Contempt will be held before a judge on the _____ day of _____, 20__, at ___:___, ___. m., if Defendant has been served on or before the _____ day of _____, 20__; and it is further

ORDERED that Defendant's answer is due to be filed by the _____ day of _____, 20__; and it is further

ORDERED that the Office of the City Attorney for the City of Gaithersburg, Maryland shall prosecute this proceeding.

TO THE PERSON ALLEGED TO BE IN CONTEMPT OF COURT:

1. It is alleged that you have disobeyed a court order, are in contempt of court, and could go to jail until you obey the court's order.

2. You have the right to have a lawyer. If you already have a lawyer, you should consult the lawyer at once. If you do not now have a lawyer, please note:

(a) A lawyer can be helpful to you by:

- (1) explaining the allegations against you;
- (2) helping you determine and present any defense to those allegations;
- (3) explaining to you the possible outcomes; and
- (4) helping you at the hearing.

(b) Even if you do not plan to contest that you are in contempt of court, a lawyer can be helpful.

(c) If you want a lawyer but do not have the money to hire one, the Public Defender may provide a lawyer for you.

- To find out if the Public Defender will provide a lawyer for you, you must contact the Public Defender as soon as possible, or **at least 10 business days before the date of the hearing before the judge.**
- The court clerk will tell you how to contact the Public Defender.

(d) If you want a lawyer but you cannot get one and the Public Defender will not provide one for you, contact the court clerk as soon as possible.

(e) **DO NOT WAIT UNTIL THE DATE OF YOUR HEARING TO GET A LAWYER.**

If you do not have a lawyer before the hearing date, the court may find that you have waived your right to a lawyer, and the hearing may be held with you unrepresented by a lawyer.

3. **IF YOU DO NOT APPEAR FOR THE HEARING, YOU WILL BE SUBJECT TO ARREST.**

JUDGE, District Court for Montgomery
County, Maryland

IN THE DISTRICT COURT FOR MONTGOMERY COUNTY, MARYLAND

CITY OF GAITHERSBURG, MARYLAND

*

Plaintiff

*

v.

*

Citation No.: Z

DEFENDANT

*

Defendant

*

* * * * *

AFFIDAVIT OF SERVICE

I, [name], Code Enforcement Officer, City of Gaithersburg state:

- 1. That I am now and at all times referred to in this Affidavit have been an adult above the age of eighteen years, a citizen of the United States of America and of the State of Maryland;
- 2. That I am competent to make this Affidavit and that I do so upon my own information and knowledge and that I am competent to testify to the matters contained herein;
- 3. That I served a copy of the Abatement Order issued by the Court on [date] in this proceeding personally on Defendant, on the ___ day of [date] at ___ a.m.

I do solemnly declare and affirm under the penalties of perjury that the contents of the foregoing Affidavit are true to the best of my knowledge and belief.

[name]
Code Enforcement Officer
City of Gaithersburg

APPENDIX FOUR: SAMPLE ADMINISTRATIVE WARRANT APPLICATION

In the matter of	*	IN THE
	*	CIRCUIT COURT
[NAME]		
[Address]	*	FOR
Gaithersburg, MD 20878		
	*	MONTGOMERY COUNTY,
RE: APPLICATION FOR	*	MARYLAND
ADMINISTRATIVE WARRANT FOR		
SEARCH AND SEIZURE	*	
	*	Civil Citation No.
CITY OF GAITHERSBURG, MARYLAND,		
Applicant	*	

**APPLICATION FOR AN ADMINISTRATIVE WARRANT
FOR SEARCH AND SEIZURE**

To the Honorable [Duty Judge] of the Circuit Court for Montgomery County, Maryland:

The City of Gaithersburg, a municipal corporation of the State of Maryland, by N. Lynn Board, City Attorney, and Frank M. Johnson, Assistant City Attorney, respectfully submits, pursuant to Sections 4-66(4) and (8) of the City of Gaithersburg Code, this application for administrative search and seizure warrant on behalf of the Animal Control Division of the City of Gaithersburg Department of Planning and Code Administration, and in furtherance states:

1. On [date] at approximately 11:00 a.m., the Animal Control Division received information from the [name] Veterinary Clinic, located at [address], Gaithersburg, Maryland 20878 that [defendant], of [address], Gaithersburg, Maryland, and [second person], had arrived at their offices at approximately 3:00 p.m. on [date] with a male [description] Terrier named “[animal name]” to receive medical treatment for an [description] resulting from an injury of

undetermined origin. *See* Exhibit A, Veterinary Report, and Exhibit B, Client Communications/Summary of Events. As these records indicate, [defendant] is the dog's owner and [animal name]'s rabies vaccine was overdue, with the last vaccine expiring in 2009. *See* Exhibit A and B. While "[animal name]" was being examined by Dr. [name], D.V.M., he bit [name], Dr. [name]'s Animal Health Technician, on the right hand between the thumb and index finger. *See* Exhibits A and B. [Name] was given a rabies vaccination, *see* Exhibit C, Rabies Certificate.

2. [Name] was treated for her bite wound at {name} Medical Care, on [address] in Gaithersburg, Maryland. *See* Exhibit D, [name] Medical Care Animal Bite Report. [Name] Medical Clinic then filed the required Animal Bite Report. *See* Exhibit E, Animal Bite Report.

3. Upon investigation on [date], the City of Gaithersburg Animal Control Division [name and title], found that [animal name]'s last known rabies vaccination, completed at [name] Veterinary Clinic, expired in 2009. *See* Exhibit F, Affidavit of [name and title] Animal Control, City of Gaithersburg. [Name] called [defendant] on [date] and asked him for additional rabies vaccination records, but he indicated the rabies vaccination that expired in 2009 was [animal name]'s last vaccination, and he has produced no other record. *Id.* [Staff name] then provided records to the local health department, and the health officer found [animal name] to be an animal suspected of having rabies, under Code of Maryland Regulations §10.06.02.06, and accordingly ordered [animal name] to be quarantined and observed for 10 days and then isolated for 6 months, as required by Code of Maryland Regulations §10.06.02.04(b)(1). *See* Exhibit G, Health Officer's Order.

4. Maryland Health-General Code Ann., §18-320 and Code of Maryland Regulations §10.06.02.04, requires [animal name], upon the health officer's finding that he is an animal is suspected of being rabid, to be isolated and quarantined as per the local health officer's order, because [animal name] is unvaccinated, has bitten another person, and also has received a wound of undetermined origin. Without such required quarantine or isolation, as also mandated by the health officer's order, [animal name] constitutes a threat to public health, under Maryland Health-General Code Ann., §18-102(a) and (b).

5. When speaking with [defendant] by telephone on [date], [staff name] advised him of the 10-day quarantine and 6-month isolation period required by Maryland law. [defendant] refused to undertake either process and hung up the phone. {Staff name} called [defendant] back several times on [date] and he kept hanging up. [Staff name] finally left him a message on [date] repeating the Maryland quarantine and isolation requirements, but he has not contacted the Animal Control Division. *See* Exhibit F. [Defendant] has requested no waiver or permission to move [animal name] without going through the required treatment under Maryland Health-General Code Ann., §18-302(d).

6. The City of Gaithersburg Animal Control Division and the City of Gaithersburg Police Department located [animal name] and identified [defendant]'s residence. [Defendant]'s refusal to comply with Maryland law and the health officer's order requiring 10-day-quarantine and 6-month-isolation constitutes a threat to the health and safety of the people and animals that could come into contact with him. Accordingly, as per the health officer's order, [animal name] must be located and properly isolated and quarantined by the City of Gaithersburg. *See* Exhibit F.

7. Accordingly, the City of Gaithersburg Animal Control Division requests permission to impound the dog pursuant to §§4-66(4) and (8) of the City of Gaithersburg Code, which authorizes impoundment of animals pursuant to the health officer's order and which are suspected of being rabid, as well as §10.06.02.07 of the Code of Maryland Regulations.

WHEREFORE, the City of Gaithersburg, Maryland prays that an Administrative Warrant for Search and Seizure be issued, authorizing an Animal Control Officer and others whom he or she might recruit and delegate, together with assistance from the Gaithersburg Police Department as needed, to undertake the necessary and proper steps to enter, inspect, seize, and remove the [description] Terrier known as “[name],” located at [address], Gaithersburg, Maryland, and in the possession of [defendant] or any other custodian, based on Maryland law and the health officer's order that [name] is a threat to public health; [name] shall then be isolated and quarantined as required by Maryland law and the health officer's order.

Respectfully submitted,

N. LYNN BOARD
City Attorney

Name
Assistant City Attorney
31 S. Summit Avenue
Gaithersburg, Maryland 20877
Phone: (301) 258-6310
Attorneys for the City of Gaithersburg

NEED TO ATTACH ANY AFFIDAVITS, DOCUMENTS OR OTHER EVIDENCE

APPENDIX FIVE: SAMPLE ADMINISTRATIVE WARRANT ORDER

**CIRCUIT COURT
FOR
MONTGOMERY COUNTY, MARYLAND**

**T0: THE ANIMAL CONTROL OFFICER, CITY OF GAITHERSBURG
DEPARTMENT OF PLANNING AND CODE ADMINISTRATION, DIVISION OF
ANIMAL CONTROL**

The Affidavit of [name and title], Animal Control, City of Gaithersburg, has been presented to the Court along with documents, including veterinarian records and animal bite reports, as well as an application for Administrative Search Warrant. [Name and title] has obtained and presented reliable information that the dog [name], a [description] Terrier, bit a veterinarian technician in the City of Gaithersburg on [date], but his last rabies' vaccination expired in 2009. The health officer has found that the dog [name] is a suspected rabid animal and has ordered that [name] be quarantined and observed for 10 days and then isolated for 6 months, as required by Maryland Health-General Code Ann., §18-320 and Code of Maryland Regulations § 10.06.02.04. [Staff name] has notified the dog's owner that [animal name] must under Maryland law be quarantined and isolated because [animal name] is unvaccinated, has bitten another person and suffered from a wound of unknown origin. [Staff name] has made several attempts to further communicate with the dog's owner, but the dog's owner refuses to comply with Maryland law, has provided no evidence of a current rabies vaccination, and has taken no steps to request a waiver of the requirements for isolation and quarantine. Finally, [Staff name], the City of Gaithersburg Animal Control Division and the City of Gaithersburg Police Department have located the dog and the owner's residence at [address] in Gaithersburg,

Maryland, and requests permission to impound, quarantine, observe and isolate the dog as required by the health officer's order and Maryland law, pursuant to §§4-66(4) and (8) of the City of Gaithersburg Code. The City's Animal Control Division needs immediate access to the premises described above for the purpose of removing the dog which the health officer has determined poses a risk to the public health.

I am satisfied that the grounds for the issuance of an Administrative Warrant for Search and Seizure exist, being those grounds as stated in the Application and Exhibits attached hereto and incorporated herein by reference.

Therefore, you are commanded, with the necessary and proper assistance, to enter and inspect, and take all steps necessary and appropriate to seize and remove the dog [animal name] from [address], Gaithersburg, Maryland 20878, identified in the Administrative Warrant for Search and Seizure, so as to seize the dog and take all necessary steps to quarantine, observe and isolate the dog as required by Maryland law in an effort to protect public health and safety.

GIVEN, Under My Hand, this _____ day of [date].

Judge [duty judge]
Circuit Court for Montgomery County, Maryland

APPENDIX SIX: SAMPLE INSPECTION CONSENT

Consent To Inspection

I, _____, have been request to consent to an examination of my property located at: _____, Gaithersburg Maryland.

I am the lawful owner/occupant/ agent of this property and I have the legal authority to authorize the below officials and their agents permission to entry and inspection.

I have been advised of my constitutional rights to refuse any further entry, and to require that an administrative search warrant be obtained prior to any examination.

I hereby authorize the City of Gaithersburg Code Enforcement Officials and their agents to conduct an inspection of the above premises including the interior and exterior of structures and yard areas of the subject premises.

I agree that City staff may take photographs, measurements and other records and documents of conditions of the interior and exterior areas of the premises and board or otherwise secure the property. I understand that the photographs and other documents created during this inspection become public records that are open for public inspection under the Maryland Public Information Act. Further, I acknowledge that any information obtained can be used in subsequent Court action for violations of any State, County or Gaithersburg City Code.

By signing consent, I confirm and acknowledge the following:

- 2) I am over the age of 18 and a current owner/occupant/agent of the subject property;
- 3) That I have the right to refuse to consent to inspection;
- 4) That I have the right to withdraw consent at any time during the inspection;
- 5) That I am signing this consent form voluntarily and without threats or promises of any kind; and
- 6) That I acknowledge receiving a copy of this document.

Signature

Dated

Print Name

Time

Witness