



MUNICIPAL INFRACTIONS AND CODE ENFORCEMENT

Practice and Procedure for
City of Gaithersburg, Maryland
Second Edition – April 2024



By Frank M. Johnson
Assistant City Attorney
City of Gaithersburg, Maryland

**MUNICIPAL INFRACTIONS
AND
CODE ENFORCEMENT**

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City of Gaithersburg, Maryland

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

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By Frank M. Johnson
Deputy City Attorney
City of Gaithersburg, Maryland

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. It was revised and updated with several revised provisions and new chapters in 2024. Frank is from Montgomery County and lives in Gaithersburg, Maryland with his wife.

TABLE OF CONTENTS

INTRODUCTION Page 1

CHAPTER 1: WHAT’S A MUNICIPAL INFRACTION? Page 3

Civil Offenses Page 3

The Initial Complaint Page 3

Complainant Confidentiality Page 5

The Initial Investigation Page 6

The First Notice Page 6

Search Warrants Page 7

CHAPTER 2: THE NOTICE OF VIOLATION Page 9

When the Violation Continues Page 11

CHAPTER 3: ISSUING THE CITATION Page 13

What Are Citations? Page 13

Vicarious Liability for the Employee and the Corporate Defendant Page 13

Citation Deadlines/Statute of Limitations Page 14

The Uniform Civil Citation Form Page 15

CHAPTER 4: FILLING OUT THE CITATION FORM Page 16

Witnesses and Related Citations Page 16

County and Petitioner (City of Gaithersburg) Page 16

Defendant Page 17

Based on Officer’s Personal Knowledge or Another Witness? Page 17

The Facts: Description of the Alleged Violation Page 19

Date, Time and Place Page 20

The Law Page 20

Defendant’s Signature/Method of Service Page 21

Instructions Page 22

If Relevant, Always Take the Abatement Order Option. Page 23

Default Instructions Page 24

Code Enforcement Officer’s Signature Page 24

DISTRICT COURT CITATION FORM, DC-028 Page 26

CHAPTER 5: SERVING THE CITATION Page 28

Serving an Individual Page 29

Serving a Corporation Page 30

Serving a Partnership of Limited Liability Corporation Page 31

Serving an Out of State Corporation or Partnership Page 32

Serving a Sole Proprietorship Page 33

Serving an Unincorporated Association, such as an HOA Page 33

CHAPTER 6: IDENTIFYING THE DEFENDANT	Page 35
<i>Vicarious Liability and the Corporate Defendant</i>	Page 35
<i>Property Owners in Foreclosure</i>	Page 37
<i>Deceased Property Owners</i>	Page 39
 CHAPTER 7: AFTER THE CITATION: FINE PAYMENTS AND COURT DATES	Page 41
 CHAPTER 8: THE TRIAL	Page 45
<i>The Hearing</i>	Page 46
<i>Defendant’s Voluntary Appearance Waives Any Failure of Service</i>	Page 47
<i>Dismiss, Nolle Prosequi, STET or Postponement</i>	Page 48
<i>Defaults</i>	Page 48
<i>Military Service Affidavits Required for Default</i>	Page 51
<i>Abatement Orders</i>	Page 52
<i>When The Defendant Appears</i>	Page 53
<i>Fines</i>	Page 53
<i>Reduced Fines for Corrected Violations</i>	Page 55
<i>Court Costs</i>	Page 56
<i>Is A.D.R. or Mediation an Option?</i>	Page 56
<i>Contested Hearings</i>	Page 58
<i>Additional City Evidence</i>	Page 59
<i>The Defendant’s Argument</i>	Page 61
<i>Defendants Represented by Counsel</i>	Page 62
<i>The Unrepresented or Pro Se Defendant</i>	Page 64
<i>Closing Argument.</i>	Page 65
<i>Judge’s Decision</i>	Page 65
 CHAPTER 9: PAYING THE FINE AFTER THE TRIAL	Page 67
<i>Fines</i>	Page 67
<i>The \$5.00 Court Costs Fee</i>	Page 67
<i>When Fines Aren’t Paid</i>	Page 68
 CHAPTER 10: ABATEMENT ORDERS AND CONTEMPT HEARINGS	Page 69
<i>Service of the Abatement Order</i>	Page 70
<i>Enforcement of the Abatement Order</i>	Page 71
<i>The First Show Cause Hearing on Contempt</i>	Page 75
<i>The Second Show Cause Hearing on Contempt</i>	Page 81
 CHAPTER 11: INJUNCTIONS	Page 83
<i>Preliminary Injunctions</i>	Page 85
<i>Temporary Restraining Orders</i>	Page 86
<i>Conclusion: Seek an Injunction in an Emergency</i>	Page 87
 CHAPTER 12: CLEAN AND LIEN	Page 89

CHAPTER 13: MOTIONS TO REVISE AND REOPEN	Page 92
<i>Motions for a New Trial</i>	Page 92
<i>Motions to Alter or Amend</i>	Page 93
<i>Motions to Revise</i>	Page 94
CHAPTER 14: APPEALS	Page 96
CHAPTER 15: PREVENTION AND MANAGEMENT	Page 100
<i>Conflict Management Guidelines</i>	Page 101
1. <i>Encourage Cooperation</i>	Page 102
2. <i>Observe and Listen Strategically</i>	Page 103
3. <i>Acknowledge Emotions But Appeal to Reason</i>	Page 104
4. <i>Externalize and Narrow the Dispute</i>	Page 105
5. <i>Use Power Strategically</i>	Page 105
<i>The Goal: Use Power to Solve Problems</i>	Page 108
CHAPTER 16: USING ONLINE SYSTEMS	Page 109
<i>Online Systems Increase Access</i>	Page 109
<i>Online Options Increase Dialogue</i>	Page 110
<i>Online Options for Notice of Violation Recipients</i>	Page 112
<i>Conclusion: More Available and Equal Access</i>	Page 115
CONCLUSION	Page 117
<u>APPENDIX ONE: SAMPLE ABATEMENT ORDER</u>	Page 119
<u>APPENDIX TWO: SAMPLE AFFIDAVIT OF SERVICE OF ABATEMENT ORDER</u>	Page 121
<u>APPENDIX THREE: SAMPLE PETITION FOR CONTEMPT, SHOW CAUSE ORDER, SERVICE OF ABATEMENT ORDER</u>	Page 122
<u>APPENDIX FOUR: SAMPLE ADMINISTRATIVE WARRANT APPLICATION</u>	Page 128
<u>APPENDIX FIVE: SAMPLE WARRANT ORDER</u>	Page 135
<u>APPENDIX SIX: SAMPLE CONSENT TO INSPECTION</u>	Page 137
<u>APPENDIX SEVEN: SAMPLE MILITARY SERVICE AFFIDAVIT</u>	Page 138

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 do so voluntarily – or only follow the law after being warned. In those cases, ordinances just don't work by themselves.

The code enforcement process, also known as the municipal infractions process in Maryland, is used to enforce laws and local ordinances against those who do not 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 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. If not, the City at trial lays out the violation, explains why we're in court, and the judge decides if the defendant committed 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 revised manual may be unique in focusing on the entire code enforcement process, from the initial complaint through court hearings, appeals, and enforcement. Other summaries may discuss some elements of code enforcement or the appeals process, but none provide a comprehensive overview. Nor do other treatises focus on municipalities applying Maryland law, which is, as demonstrated herein, quite extensive. The hope is that this revised manual will help to fill that gap, and in doing so, show the legal basis for enforcement options statewide.

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 or business 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.

A complaint or referral, however, isn't always the start of the municipal infractions process. A violation may also be identified directly by code enforcement officers, perhaps during the investigation of another complaint, which may even be located on a different property; after all, in going through the community they serve, town and city staff will often identify problems that need to be addressed. While municipalities usually do not have the resources to support regular broad-scale inspections, some violations may stand out when a code enforcement officer drives by, is responding to another concern.

Complainant Confidentiality. Investigation of a municipal infraction may be prompted by a complaint or referral, but often the person making the initial complaint – who may be a next door neighbor – does not want their identity to be known. 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 infraction 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. In many cases, the physical evidence, especially pictures for property maintenance and related violations, shows either a clear violation or ends the investigation by showing the lack thereof.

The First Notice. 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. It shows the City started the process by communicating and seeking to resolve the problem. And in a

trial, the notice itself is usually admitted as part of the evidence, largely for just that reason and to show the defendant had prior notice.

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 Supreme Court has recognized that such granted permission is effective. *Jones v. State*, 407 Md. 31, 33 (2008). But a signed statement is recommended, just 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, and the citation form requires a specified date and time of the alleged violation, which implies that a violation continuing on the next day constitutes another municipal infraction. 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 does not – or should not – 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 communication 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 cannot 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. How can two separate citations be issued for the same offense? 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).

When a citation seeks only an abatement order and not a fine, that one-year deadline does not apply, as the City is not then seeking a penalty. When only seeking an abatement order, rather than a fine, the issuance of the citation grows out of the "exercise of a government function" to protect the public. *Goldberg v. Howard County Welfare Board*, 260 Md. 351, 359 (1971). In that instance, the doctrine of "nullum tempus occurrit regi" applies, which means that "time does not run against the King." *Spaw, LLC v. City of Annapolis*, 452 Md. 314, 358-59

(2017), citing *Anne Arundel County v. McCormick*, 323 Md. 688, 694 n.3 (1991). Even so, issuance of a citation should not be delayed even in seeking only an abatement order, as it is possible that “laches,” which is a defense based on an “inexcusable delay” if that delay potentially prejudices the defendant’s ability to defend itself. *Id.* at 350, citing *Lipsitz v. Parr*, 164 Md. 222, 226 (1933),

Statute of limitations for ongoing violations may not pose a major concern; most codes specify that each day a violation continues constitutes a separate offense, and the citation form requires identification of the specific date and time of the violation, at least implying that a violation on the next day, even if the same one from the day before, constitutes another violation. And often the reality is that citations are issued primarily for ongoing violations. In many cases, violations which are not ongoing do not lead to 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, specifically on Form #DC-028. The forms can also be filled out online but must be issued and filed on paper. Otherwise, local governments use the five-part form which is filled in by hand, with carbon copies provided to the defendant, court and the City. The municipal infraction form is entitled “Uniform Civil Citation,” and the front and page pages appear on the pages following this chapter. *See* Uniform Civil Citation Sample at the end of this Chapter.

Witnesses and Related Citations. Start with the form by checking a box at the top in reference to any witnesses or related citations. Required witnesses can be listed on the back, 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. 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 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 to ensure they 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: Description of the Alleged Violation. 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 shows there is a violation, but also notifies 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.

Date, Time and Place. At the end of the four lines on the written form is a space to identify the location of the violation as well as the time and date. 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. A specific time and date is essential to establish the existence of a violation, which is also important as it demonstrates personal knowledge of the person issuing the citation. The specified time and date of the violation does not refer to when it first occurred – as it may have been in place for many years. It only establishes a specified date upon which the violation existed.

The Law. The next part of the front of the citation form includes the specific law or code section the defendant is violating. 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/Method of Service. 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.

When the citation is posted and sent by regular mail, as permitted under Md. Local Government Code Ann., §6-103(b)(1)(ii) for alleged violations related to the property, such as zoning, building code or failure to maintain, the signature line should reference the posting/regular mail service. The citations must be related to the posted 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 (15) days of the initial complaint, also referring to a citation. And the deadline for such notice is consistent with that fifteen (15) day deadline – which is always five (5) days before the payment date, under Md. Local Government Code Ann., §6-105(a). The next sentence indicates the Court will send the 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. If that box isn’t checked, the City loses that option and can only seek the fine. Such an order, known as an abatement order, is

submitted as a draft 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
 RELATED CASE # / CITATION(S) →
Citation Number _____
District Court of Maryland for _____

Address _____
County/Municipality/State of Maryland vs. 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 / _____ Year
at _____ Location of Offense _____

County 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 _____
 District Court. Payment of the fine will not close the case. Enforcement action is pending.
 Agency/Municipality _____
at _____
Payment Due on Trial Date _____
and AVOID TRIAL. This will be deemed an admission of guilt. Trial date will be set.
 YOU MAY ELECT TO STAND TRIAL by sending your request in writing to the:
 District Court
 Agency/Municipality _____
in writing by _____ at _____ Address _____
Date _____

DO NOT SEND PAYMENT OF FINE. The District Court will mail a notice of your trial date, time, and location. AT TRIAL the Court may assess a fine plus the maximum assessed 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 stop 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:
 I will deem you guilty of the offense. The fine may be doubled and/or a judgment on affidavit may be entered against you requiring an order of abatement.
 you may be found guilty of the offense and the maximum fines and costs can be imposed.
 FAILING 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 the offense violation and the maximum fines and costs can be imposed.

I solemnly affirm under the penalty 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 performing 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 _____

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: SERVING THE CITATION

Notice and an opportunity to be heard is an “elementary and fundamental requirement of due process . . .” *Griffin v. Bierman*, 403 Md. 186, 197 (2008), *citing Mullane v. Central Hanover Bank & Trust Co.*, 339 US. 306, 314 (1950). It is therefore “[a] basic requirement of due process in any adversary proceeding, whether that proceeding be private litigation or the exercise of governmental power against an individual, that the person proceeded against be given notice and an adequate opportunity to contest the claim against him.” *Burns v. Mayor and City Council of Midland*, 247 Md. 548, 553 (1967). Any citation must therefore be delivered to or “served on” the defendant to provide notice before it can proceed in court, as well as a chance to dispute the allegations. The specific method of notice or service may vary but must always be “reasonably calculated” to provide “knowledge of the attempted exercise of jurisdiction and an opportunity to be heard.” *Barrie-Peter Pan Schools, Inc. v. Cudmore*, 261 Md. 408, 417 (1971), *citing Restatement, Conflict of Laws*, §75 (1934).

Providing the defendant in a municipal infraction proceeding with a providing a copy of the citation form, known as “service of process,” is so fundamental that it is a jurisdictional requirement – such that failure to serve the defendant means the court lacks jurisdiction, and cannot proceed. *Miles v. Hamilton*, 269 Md. 708, 713 (1973). When a service attempt has failed, only the defendant’s “voluntary appearance” can cure defective service and provide the court with jurisdiction to proceed. *Id.*, *citing Sheehy v. Sheehy*, 250 Md. 181, 184 (1968).

Maryland Local Government Code Ann., §6-103(b), specifies that service is required, and that the service rules under Maryland Rule 3-121 apply.

Serving an Individual. Personal service is “the preferred method” for service, *Pickett v. Sears, Roebuck & Co.*, 365 Md. 67, 83 (2001), including, “[h]istorically, in-hand delivery of process . . .” *Miserandino v. Resort Properties, Inc.*, 345 Md. 43, 55 (1997). Indeed, Maryland Courts and Judicial Proceedings Code Ann., §6-312(c)(1) specifies that “delivering a copy of the summons and complaint to a defendant personally” is always effective, which can include leaving copies “with a person of suitable age and discretion residing in the dwelling house or abode” of the defendant. The citation form provides a signature line for the defendant, which, if signed by the defendant, establishes personal service of the citation.

But personal service is not the only option for an individual, under Md. Local Government Code Ann., §6-103(b) and the incorporated provisions of Maryland Rule 3-121. Maryland Rule 3-121(c) also permits, for personal service of a citation, leaving it “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.

Service by mail is also an option in some circumstances. Maryland Rule 3-121 allows initial service by certified mail, but only by restricted delivery to ensure the citation is served only on the defendant. In this case, copies of the restricted mail delivery and card signed by the recipient need to be available for presentation to the court if necessary. Regular mail is not permitted as the first option, as the Maryland Supreme Court has found this option does not satisfy the due process notice requirement, *Miserandino*, 345 Md. at 65. But regular mail can be

allowed with court permission after showing evidence of evasion or simply after other efforts have failed; posting the citation on the property and mailing it by regular mail can also be allowed by court order. *Pickett*, 365 Md. at 83. Note that such options for substituted service require court permission, and as proof, Maryland Rule 3-121(b) requires the submission of an affidavit and sufficient facts to the court to show that the defendant is likely evading service. Even without evidence of likely evasion, subsection (c) allows substituted service upon an affidavit specifying the preferred personal service or certified mail service have not succeeded.

For initial service, regular mail combined with posting is permitted, but only when the citations are related to property, such as building code or maintenance violations, under Md. Local Government Code Ann., §6-103(b)(1)(ii). While court permission is not required as a prerequisite, 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 initially submitted to court, the affidavit is required and can be requested as proof. Thus, it 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.

Serving a Corporation. Many citations are issued not against individuals but businesses, which may be sole proprietorships, partnerships or corporations. Corporations are required by Md. Corporations and Associations Code Ann., §2-108(a)(2) to designate a “resident agent” and §1-401(a) specifies any resident agent must accept service of process, which would include citations. A corporation’s resident agent can be identified by checking the State Department of Assessments and Taxation (SDAT) listing, as long as the business is properly registered with the

State of Maryland and authorized to do business here. Maryland Rule 3-124(d) also provides that the president, secretary or treasurer can be served. Note that this list doesn't include the local store manager or employee; while serving such a person might be easier for local citations, they can't speak for the corporation overall.

While many corporations typically identify certain persons to accept service of process, those attempting to serve the corporation are not bound to know those internal procedures; thus the "corporate personnel specifically identified in the statute" can always be served. *Academy of IRM v. LVI Environmental Services, Inc.*, 344 Md. 434, 448 (1997). Thus, Maryland Rule 3-124(d) specifies that if there is no resident agent or if a "good faith" attempt to serve the resident agent or one of the three specified officers fails, a manager can then be served – as well as any director, vice president, assistant secretary or assistant treasurer. Alternatively, when a corporation is required to have a resident agent but does not, or the resident agent is dead, not to be found at the stated address, or two attempts to serve the resident agent on two separate days have failed, Maryland Rule 3-124(o) permits substituted service upon the State Department of Assessments and Taxation.

Serving a Partnership or Limited Liability Corporation. The service rules are similar but not identical for other business types, based in part on the business structure. For example, other business structures such as limited partnerships and limited liability corporations are, like corporations, required to designate resident agents by the Maryland Corporations and Associations Article (per §9A-1005(a)(2), limited liability partnerships; §4A-210(a)(2), limited liability companies). There is no specific requirement for partnerships to designate a resident agent, but that is typically required for registration with the State Department of Assessments

and Taxation to do business in this state, and Maryland Corporations and Associations Code Ann., §1-401(a) indeed specifies that any resident agent designated by a partnership, limited partnership, limited liability corporation or other business entity must accept service of process, including citations.

Pursuant to Maryland Rule 3-124(e), general partnerships can be served through any general partner. Limited partnerships, however, should under subsection (f) be first served through their resident agent, and then a general partner if they have no registered agent or such service fails. For limited-liability partnerships or companies, the resident agent is the preference. If that fails, for limited liability companies, any member or “other person expressly or impliedly authorized to receive service of process” may be served; for limited liability partnerships, any other person expressly or impliedly authorized to receive such service can be served. In all three cases, Maryland Rule 3-124(o) also applies, allowing service upon the State Department of Assessment and Taxation when any of these entities are required to have a resident agent but do not, or when two attempts on two different days to serve the resident agent have failed.

Serving an Out of State Corporation or Partnership. Each “foreign” or out of state corporation, partnership or other business entity is required to register and designed a resident agent for service of process. Maryland Corporations and Associations Code Ann., §7-202 (a) requires this for any foreign corporation conducting interstate business, and §7-203 requires this for business only within Maryland (“intrastate business”). Out of state or “foreign” corporations may attempt to argue they are not subject to Maryland jurisdiction, since under “long-arm” jurisdictional rules, having a registered agent for service does not by itself establish personal jurisdiction over that entity. *Republic Properties Corp. v. Mission West Properties, LP*, 391 Md.

732, 746-47 (2006). But for municipal infractions, the activity giving rise to the citation in the first place should be sufficient. It must simply be shown that the entity has sufficient “presence” in the state, which can be established through “continuous and systematic” activities – including those which “give rise to the liabilities sued on.” *Republic Properties*, 391 Md. at 753, citing *International Shoe Co. v. State of Washington, Office of Unemployment Compensation and Payment*, 326 U.S. 310, 316 (1945). Thus, jurisdiction over a foreign corporation properly served, whether through the resident agent or directly to the president, secretary or treasurer, should be established by any “cause of action arising out of the corporation’s activities within the state . . .” *Republic Properties*, 391 Md. at 755, citing *Perkins v. Benguet Consolidated Mining Company*, 342 U.S. 437, 444 (1952).

Serving a Sole Proprietorship. A sole proprietorship is an unincorporated business generally owned and operated by one person. If there is no corporate or other business entity, that individual person stands in place of the business. Citations can be issued in the name of the business but noting on the second line of the form that it’s issued in “care of” the individual serving as sole proprietor, but otherwise the same rules apply as for individuals as sole proprietorships are not required, as other business entities or foreign corporations, to designate resident agents in advance for service of process.

Serving an Unincorporated Association, such as an HOA. A homeowner or condominium association is rarely incorporated and typically does not have any registered agent. Most have management agents, and while it may be tempting to assume the management agent should be served – as that is the entity whom county or municipal staff will be communicating

with to address code violations – in fact doing so does not comply with Maryland Rule 3-124. Instead, that rule specifies that “any officer or member of its governing board” can be served. If the association has no officers or governing board, any member of the association, which would include any homeowner who is part of the HOA or condominium association, can be served. It should be noted this same rule applies to any unincorporated association, such as a community, advocacy or neighborhood group.

CHAPTER 6: 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. For larger businesses, keeping the local business office or other local location fully informed can be an important practical step. As the location of the violation, local business staff will be aware of enforcement efforts and the ones most impacted by inspections and other enforcement efforts. And in many cases, the City can safely presume that a statewide or national business will put pressure on local management and staff to satisfy local demands, simply to avoid ongoing costs and delays related to enforcement efforts. But some violations require more

stringent steps, including issuance and enforcement of abatement orders. Because local staff are not the corporate or business leaders held accountable when the corporation or business is a defendant in a court proceeding, finding someone to hold accountable can be the key challenge.

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. 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. The Foreclosed Property Registry, under the Office of the Commissioner of Financial Regulation as part of the Department of Labor, Licensing and Regulation may provide more information. Md. Real Property Code Ann., §14-126.2(b)(1) now requires the person authorized to “make the sale” of residential property under foreclosure to provide formal notice to the Department of Labor, Licensing and Regulation within seven (7) days after filing the foreclosure complaint. This notice must identify the property and provide the name, address and telephone numbers of the owners, person authorized to make the sale, and “persons authorized to manage and maintain the property before the foreclosure sale . . .” This information need only be provided “if known,” and there is no specific requirement on those filing foreclosure to discover this information, nor any enforcement mechanism. The foreclosure notice is also not public information but as part of the Foreclosure Registry, is accessible, under subsection (c), only to local jurisdictions and State agency representatives, and the information can only be disclosed to a person owning property on the same block or a homeowner’s association or condominium in which the property is located.

Under Md. Real Property Code Ann., §14-126.1(d)(1), a foreclosure purchaser is then required to submit their name and contact information to the Foreclosed Property Registry. Even so, be aware that 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 most, including the City, has not, in part due to the lack of information, making it practically impossible to enforce 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 thirty (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 7: AFTER THE CITATION: FINE PAYMENTS AND COURT DATES

Few citations go to trial. Indeed, a hearing isn't the goal in issuing a citation – and in some ways demonstrates the problem hasn't been solved. The City will send citations to the District Court clerk to seek a trial date only after defendants fail to pay the fines, fail to make the required corrections or changes, or simply dispute the citation and want a hearing to argue the facts or the law.

Most citation fines, especially those for \$100 or less, are paid in full within a few weeks. State law provides a twenty (20) 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 the letter asking for a trial is known as a “notice of intent to defend.” City Code §1-9(e) gives the defendant fifteen (15) days

after service, or five (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 (5) 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 twenty (20) day deadline to pay the fine (or fifteen (15) day deadline to ask for a trial) the City must 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 two (2) to four (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.

Despite trial notices and court formalities, citations can always be resolved. Thus, before the hearing – and sometimes even in the midst of one – fines can be paid and, in some cases, the City and defendant can reach an agreement to solve ongoing problems. 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” – but only if there is no ongoing violation for which the City would seek an abatement order. Such “paid and satisfied” 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 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.

Another option to resolve an ongoing violation can be a separate settlement agreement between the City and the defendant, combined with postponement of the citation hearing. Such an agreement can be tempting, given the chance to avoid a hearing, but as it is not approved by the court, the agreement would lack a strong enforcement mechanism, such as contempt of court. In most cases, the City would need to issue a new citation or, if the agreement allows, take steps to make the corrections directly, at the defendant's cost. The lack of direct enforcement by contempt can be addressed by only postponing the citation hearing, rather than dismissing. The new hearing date may, in itself, serve as a deadline and may also provide a forum for the City to seek further relief, such as an abatement order, if the defendant does not make the corrections.

The fine itself can also be used to encourage compliance, as the City can agree to consider waiving all or part of the amount, pending correction of the violation. One option is to take a court judgment for the fine, but since collection is up to the City, waive some or all of the fine or ultimately certifying it has been paid and satisfied if the defendant resolves the violation and corrects the problem. This can be especially feasible with larger fines of \$500, posing an argument in court for imposition of the full fine, rather than a reduction, as the full fine offers the City more options to gain compliance. In addition to – or as part of – a consent abatement order, certain provisions, such as a specific timeline for corrections, can also be included.

CHAPTER 8: 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 municipalities in Montgomery County use attorneys, be aware that in many district courts, attorneys do not present citation cases. They are, instead, routinely handled directly by town or city code enforcement staff, in similar fashion as traffic citation cases. Md. Local Government Code Ann., §6-108.1 additionally specifies that local practice aside, a “qualified” inspector or code enforcement officer can present citation cases without an attorney. The “qualified” condition requires that they be “nationally accredited and certified by the International Code Council or the National Fire Protection Association” as a building, fire, accessibility or property maintenance and housing inspector. No exceptions are provided, but subsection (c) does specify that a prosecuting attorney for a municipal infraction can call any individual to testify, including a town or city code enforcement officer who lacks the specified certification. And there is no certification requirement to write a citation, as they can be written by “[a]ny official authorized by the legislative body of a municipality to act as an enforcement officer” and to issue citations. Md. Local Government Code Ann., §6-103(a).

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 path for the route the staff or attorney presenting the municipal infraction will want to take. It can help to set the overall context for the hearing even when before judges who have heard numerous citation cases before. Laying out a basic framework should include the outline of the evidence, which is important as doing so can also help establish expectations and prevent judges from expecting more evidence than can be presented. Providing basic background as an introduction, prior to introducing the evidence, can help provide the practical background for judges who are not as familiar with the municipal infractions process, or for those presiding over specific categories of alleged violations for the first time.

Defendant's Voluntary Appearance Waives Any Failure of Service. No matter how the cases are called, the first step is to wait for the defendant to appear. While the failure of a defendant to appear can lead to a default judgment, there is at least one instance in which such an appearance can resurrect a citation which would have otherwise been dismissed or postponed. That's because the defendant's appearance eliminates any concern with improper service. Even when it is not clear proper service was completed, the "voluntary appearance of the defendant" at the hearing waives any failure of service. *Miles v. Hamilton*, 269 Md. 708, 713 (1973). Such appearance, therefore, waives the service problem posed by citations posted when they should have been served personally or by certified mail, as well as for those erroneously sent by

regular mail instead of certified mail. As such, a citation which would be dismissed can proceed to trial when the defendant appears, thereby waiving any problem with service.

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. The Nol Pros procedure dismisses the citation but allow it to be re-filed within a year; the STET process does not dismiss the citation but puts it on hold, followed by automatic dismissal after a year if the citation case is not reinstated. 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). That notice must be filed within fifteen (15) days after service, under Maryland Rule 3-307(b)(1), which also applies to citations. Indeed, the citation specifies that the defendant has twenty (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 fifteen (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 five (5) days before the fine is due. 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.

Even as the rules clearly provide for this fifteen (15) day deadline for the Notice of Intent to Defend, that deadline is not enforced. Thus, if a defendant does appear, despite having failed to respond in writing, the court will typically proceed with a full hearing, especially if the defendant pleads not guilty. The City can request a postponement if, based on the lack of any prior notice, especially if a witness is needed to prove the facts asserted in the citation, but otherwise the trial can proceed, as if the defendant had filed a timely notice of intent to defend.

When a defendant doesn’t respond to a citation, either by filing a Notice of Intent to Defend or a trial request, or by appearing on the date of the hearing, the District Court will in most cases, under Maryland Rule 3-306(b), issue a default judgment, also known as a “judgment

on the affidavit” if the City so requests. That affidavit is part of the citation’s signature line, in which the code enforcement officer attests to personal knowledge of the violation or specifies that it is based on an affidavit. The City would then ask for judgment by default based on that affidavit if the defendant doesn’t respond. Maryland Rule 3-509(a) allows the judge to require some elements of proof, even if the defendant has failed to respond in any way, but the affidavit as part of the citation provides that element of proof. Indeed, Md. Local Government Code Ann., §6-106(b) specifies that if the defendant defaults and 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.”

In addition, for those not appearing and who never responded in writing, judges will consider a request for doubling the fine, under Md. Local Government Code Ann, §§6-106(a)(2) and 6-107, as long as the defendant was warned, in writing, that the City would seek the double the fine back on the lack of any response. The City provides such notice in sending the citation to trial, but the judge may or may not grant such a request. Some may request additional evidence of repeated offenses or simply not grant the double fine. It is also less likely that a judge will grant double fines for multiple citations at the same time.

Most judges will in the face of an absent defendant accept the affidavit at least to verify the allegations of the violation at hand, even as they will first verify that the defendant was properly served and notified. In verifying service, many will accept a proffer from the City Attorney identifying the manner of service – by certified mail, personal delivery, or posting, for example – followed by review of the document or signed certified mail receipt. Thus, when the defendant fails to appear and a default judgment is requested, judgment still may not result

without evidence of proper service as well as a “military service affidavit,” as noted below, specifying that to the best of the knowledge of the Code Enforcement officer writing the citation, the defendant is not serving in active military service.

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.

Military Service Affidavit required for default. The U.S. Servicemembers Civil Relief Act, 50 U.S.C. App. §§ 501-597, provides some protection for military service members and their families, especially during active service, including that in another country. Part of that protection concerns civil default judgments against persons serving in active military service, including allowing a ninety (90) day postponement. To carry out that protection, the Act also requires an assertion that the defendant who is in default is not in the military service. Specifically, §521(b)(1)(A) of the U.S. Servicemembers Civil Relief Act requires, before entry of any default judgment, that the Plaintiff file an affidavit “stating whether or not the defendant is in military service and showing necessary facts to support the affidavit . . .” As such, the

citation form includes an optional statement, just before the issuing officer's signature, specifying that the Defendant is not in the military service. This should be selected by filling in the box if the code enforcement officer issuing the citation believes, based on the best of their personal knowledge, that the defendant is not in the military service. While the District Court has in past years considered this statement on the citation as sufficient to satisfy the default-protection requirements of the U.S. Servicemembers Civil Relief Act, the District Court statewide has added an additional requirement. Currently, the District Court now also requires, for all default judgments that in addition to the statement on the citation being checked, that the municipality also provide a separate affidavit specifying that, based on the code enforcement officer's best personal knowledge, the defendant is not subject to the protections of the U.S. Servicemembers Civil Relief Act as they are not in active military service. *See* Appendix Seven, Military Service Affidavit.

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 (20) 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 them. Judges will almost always refuse to double 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 stented 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, attorney representation can even help to prevent future violations. 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 other than 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 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 9: PAYING THE FINE AFTER THE TRIAL

Guilty findings are certainly not the end of the case., but often the beginning of new enforcement steps. 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 it, such as by filing a lien or attempting to garnish wages. The fine can also be used as an incentive to solve the problem, as the City can make required fine payment contingent on whether violations are corrected. Thus, when the violations are resolved, the fine can be reduced or waived for compliance. 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 of enforcement.

Fines. The fine amount is paid to the municipality, as provided by Md. Local Government Code Ann., §6-113, whether paid immediately, within the twenty (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. 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."

The \$5.00 Court Costs Fee. For any court judgment other than a not-guilty finding, a \$5.00 court fee applies, under Md. Local Government Code Ann., §6-110(3). This fee is mandated if the court issues any judgment against the defendant, even if the fine is waived. Thus, only a dismissal, whether outright or through nolle prosequi, STET or "paid and satisfied,"

will avoid the \$5.00 court costs, which should be paid to the District Court clerk directly. 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.

When Fines Aren't Paid. The defendant has thirty (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 can after thirty (30) days 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.

CHAPTER 10: 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 thirty (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 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 should the City request such orders, as it suggest purposes beyond solving the problem or gaining compliance with the City Code. 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. All of this shows the defendant has been notified of the violation, had multiple opportunities to make corrections, and chose not to take any such action. This presents a strong argument in favor of an abatement order, as it shows the added enforcement step of contempt of court is needed – as other steps have failed.

Some defendants will agree to enter a consent abatement order, especially when fines are reduced. If the orders are signed, the judges will typically accept them without a hearing. Short of consent, many abatement orders are nonetheless 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 seek to sign three (3) originals. One is retained by the clerk for the court file, and if the defendant is present in court when judge signs the order, the court clerk will usually serve the second order personally. The third is given to the City. If, however, the defendant is not in court, the City will receive two originals, one of which the Code Enforcement Officer will attempt to personally serve the defendant. In doing so, the officer will return their affidavit to the City Attorney's Office once the defendant is served, as that will be required

before any contempt petition can be pursued. The City Attorney's office will typically retain the last signed original abatement order. For multiple citations, six (6) or more copies are presented including when multiple citations are included in one consolidated abatement order – because each citation has a separate court file and represents a separate court case. While citations can be served by certified mail, left in some cases with a responsible adult at the defendant's residence, or even be posted for property-related violations (with regular mail follow up), among other options, that's not the case for abatement orders. Except for consent abatement orders signed by the defendant or their attorney, personal service of these abatement orders is required. That is because the City must present evidence of a willful act of disobedience to show a violation, which must be shown to violation or frustrate the court's order, such that the violation reflects disrespect for the judge and the court. *Fisher v. McCrary Crescent City, LLC*, 186 Md. App. 86, 113-114 (2009). Maryland Rule 15-206 also specifies that a petition for contempt must assert that the court order has been willfully disobeyed, and a condition precedent to willful disobedience is evidence that the defendant is personally aware of the order to begin with. Thus, an affidavit of personal service is needed, typically from the Code Enforcement Officer, demonstrating the defendant was handed the actual order, either by City staff or the Court Clerk. *See Appendix Two, Affidavit of Service*. If the defendant is present in court when the judge signs the order, the court clerk will usually ask the defendant to wait and serve it personally. Otherwise, the City Code Enforcement Officer issuing the citation will attempt to personally serve the defendant and return their affidavit to the City attorney 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. Most abatement orders have self-help elements, allowing the municipality to make the corrections and charge the defendant for those costs. As a court order, an abatement order can also be enforced by the court, through civil contempt. To pursue that option, the City would file a court action seeking a contempt finding and punishment from the court. At that point, the City is not seeking to enforce a City ordinance, but an order issued by the court after a court finding that the defendant violated the City code. Violation of a court order is considered more serious than a code, at least in part because it implies disrespect to the judge issuing the order – and thus contempt of court.

An abatement order usually requires corrections within thirty (30) days, the order, as any court judgment, remains in place for twelve (12) years, under Md. Courts and Judicial Proceedings Code Ann., §5-102(a)(3), and can be renewed, “at any time before expiration of the judgment,” for another twelve (12) years, per Maryland Rule 3-625. Since most abatement orders not only require corrections to stop an immediate violation but prohibit future violations as well, the City can technically take action to enforce an abatement order at any time for the next twelve (12) or, if it is renewed, twenty-four (24) years. But most contempt proceedings in Montgomery County seem to be filed within three (3) years unless the filing is part of an ongoing pattern of contempt. That’s primarily because ongoing violations lasting that long lead to enforcement and contempt proceedings, and if not, the identical violation may not recur, such that a new citation is needed. If the violation has been corrected for five (5) or more years, it will be important to re-verify property ownership, as the citations are personal to defendants and do not run with the land. The City must also be careful to 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, especially if the specific violation is not the same, but if circumstances have not changed and a violation has recurred, even an abatement order several years old is still valid. It is also possible to pursue both a new citation and contempt proceedings concurrently.

While a contempt petition can be criminal or civil, civil contempt is the only option for abatement orders. That's because criminal contempt seeks punishment for past conduct rather than correcting current behavior. Criminal contempt is also, under Maryland Rule 15-205, handled by the State's Attorney as a criminal matter, requiring evidence of an intentional, willful act, and the penalty, which can be a fine or prison sentence, is punitive. Correcting the problem makes no difference for criminal contempt, as it seeks punishment for the past conduct. *See Corapcioglu v. Roosevelt*, 170 Md. App. 572, 607-608 (2006). Civil contempt is focused on current conduct; it is not intended to punish, but instead seeks remediation. *Smith v. State*, 382 Md. 329, 338 (2004). The City must seek civil contempt to enforce an abatement order, therefore, as the intent is not to punish but 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 once 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." Code violations fall under constructive civil contempt, because, 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 is "constructive" contempt. *Fisher*, 186 Md. App. at 115. Thus, any enforcement action the City files for the violation of an abatement order is always constructive civil contempt.

The City therefore would file a petition for “constructive civil contempt,” under Maryland Rule 15-206, asking the Court to issue a “show cause” order requiring the defendant to answer the contempt charges. 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 should have submitted an affidavit to the City Attorney’s Office, identifying the day and time of such service, unless the order was served by the court clerk the day of the citation hearing – in which case the affidavit should so specify. *See Appendix Two, Affidavit of Service.*

Additionally, the City must show that the order’s deadline – usually thirty (30), sixty (60) or ninety (90) days – has passed, without correction of the violation. That timeline also needs to have passed not since the court issued the order, but after the defendant was served, such that they received the abatement order. In addition, the City must show that additional efforts have been made to communicate with the defendant, both to ensure notice but also underscore that the City, in seeking to solve the problem, is turning to contempt as one of the few remaining options if the abatement order was not to be ignored. This background element – that, effectively, the City had no other choice – may be independently helpful as judges may be reluctant to enforce an abatement order by using the ultimate sanction of imprisonment.

Indeed, under Maryland Rule 15-206(c)(1), the petition for civil contempt must notify the defendant that incarceration is sought as a remedy. Even if not intended, it is the ultimate sanction sought, in the hope such a threat will encourage the defendant to comply with the underlying order. This can be important as many defendants may presume, even in the face of an abatement order, that they will only face fines for violations. Additionally, the Show Cause

Order, presented by the City for the judge's signature, will further include similar required statutory language and notice to the defendant under Maryland 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 that the City 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.

Like the abatement order itself, Maryland Rule 15-206(d) requires that the show cause order be personally served on the defendant before the hearing can take place at all. An affidavit specifying such service must be filed with the court within a specific deadline, which the court will establish in issuing the Show Cause order. As to process, the Code Enforcement Officer issuing the citation – and seeking to enforce the abatement order – will usually attempt to serve the Show Cause Order, so that the City can file the affidavit before that deadline. But the Show Cause Order can be served by anyone, including municipal police or, if needed, a private process server. Anyone serving the order will simply fill out the same affidavit, specifying the date and time of service, and sign it.

The First Show Cause Hearing on Contempt. The hearing will proceed as scheduled as long as the City files the affidavit showing the defendant received personal service of the Show Cause Order by the deadline. While the City files the petition based on evidence of

noncompliance, it is not the City ordinance but the court's order which has been allegedly violated. In many instances the judge will take a strong role in directing the process, often directing attention to the violation and even asking the primary questions.

When the defendant doesn't appear, there is no default judgment, as may happen in the initial citation trial. Instead, the notices all specified that attendance was not optional, and that the defendant could face arrest if they failed to attend. Thus, the court should, if the defendant fails to appear, issue a bench warrant with a body attachment, sending the Sheriff to bring the defendant into court while setting a new tentative hearing date. With a bench warrant, the County sheriff will arrest and detain the defendant, who will normally be released on bond until the next contempt hearing. It is possible the judge will not set a specific hearing date, pending arrest and detention of the defendant, and the date will be set afterwards. In any event, no further action beyond the court's issuance of a bench warrant can take place at the initial hearing date if the defendant doesn't appear, as the defendant must be present to answer the contempt charges.

When the defendant does appear, the process of a contempt hearing is usually targeted to the issue. Such a hearing does not follow the municipal citation process, such as the defendant's plea and arguments. In a more summary fashion, the municipality identifies the claimed violation and the defendant responds – to admit, deny, or more typically, admit with an explanation and ask for more time to make the required corrections. To start the contempt hearing, the City attorney will focus on the abatement order and assert the evidence shows the violations continue uncorrected, a new violation has arisen (such as noise), and that, overall, a violation remains in place which violates the abatement order. The City should underscore that

they seek compliance, rather than punishment, emphasizing that the contempt petition was filed given the lack of other options.

Judges will sometimes control the proceedings, but if the judge allows the City to make such an introduction, the judge will subsequently ask the defendant to specifying whether they admit they are in violation of the order. Here, pictures of a building code violation can be critical. In asking the defendant to admit or deny the allegations, the judge will emphasize the court order and the deadline. In many cases, there is no factual dispute, and the defendant will admit the corrections haven't been made or the violations are otherwise ongoing. Most defendants will attempt to explain, raising cost, practical problems, or other delays they will argue are beyond their direct control. Most will simply ask for additional time. With the admission, there should be no need for the City to present more evidence or make an argument, unless the judge has further questions.

While the intent of a show cause hearing is to gain compliance, the practical, underlying purpose is to get the defendant's attention in the court setting a firm deadline or required steps to correct the violation. Delay, except for violations related to noise or voluntary behavior, is probably unavoidable, because the only alternative is incarceration. Facing this practicality, some defendants are willing to agree on a specific timeline just before the hearing is called in proposing a rehearing in thirty (30) days. Even without prior discussion, the hearing may produce the same result unless the defendant refuses to make the corrections, which rarely happens given the threat of incarceration. A postponement of thirty (30) days is to be expected after the first hearing.

But the City can, in seeking to limit the timeline, dispute the defendant's excuse and request for delay, especially when the Show Cause hearing is the culmination of a long process to address a longstanding problem. As the result of any first hearing, the City will seek to establish (1) firm deadlines; (2) a hearing usually in thirty (30) days; and (3) the defendant's understanding that failure to comply can lead to incarceration, which requires the judge to emphasize. The deadline should be further enforced as the next hearing date; thus, the petition is not dismissed, but a second hearing date is set – which will be the practical overall deadlines. As to time, thirty (30) days is often seen as a default selection, but if the violation includes safety concerns or other hazards, that can be limited to two (2) weeks, depending on the court's scheduling ability. Additional outside factors, such as weather (for outside building repairs or yard maintenance), finances, a defendant's health, property sales and the like can all influence the new deadline. Any future hearings will be focused on meeting that timeline.

Even when the defendant disputes that violations remain or that corrections are needed, a full evidentiary hearing is rarely needed. Unlike the initial citation hearing, it is established that the defendant has violated the municipal code, and the limited question at the show cause hearing is whether the violations remain in place. The judge may lead with the questions but may also ask the City to present targeted evidence focused on that issue, which is rarely extensive. Such evidence may consist of brief testimony from municipal staff describing the remaining violations and specifying that the conditions ordered corrected by the abatement order have not been completed. Here, photographs of building code violations can effectively demonstrate that the violations remain uncorrected.

In most cases, the judge will take an active role in questioning, directly asking the defendant a series of specific questions. In the face of clear evidence of an ongoing violation, even the defendant who had not yet admitted a continuing violation will usually do so. Only if the judge does not agree that the violation is continuing would the petition be denied.

While the evidence of an ongoing violation should always be targeted and direct, a dispute may arise when the defendant claims corrections have been made since the City's last inspection. Such a dispute can arise even where that inspection was the day before and a photo clearly shows the violation, such as an unpainted wall or uncut grass. Defendants indeed often claim that, overnight, they completed work to correct the original violation and as of the contempt hearing the next morning, the violation has been corrected. It is to address such potential last-minute claims of miracles that the Code Enforcement Officer will try to inspect as late as possible before the hearing, such as that morning, taking pictures if at all possible.

Last-minute corrections, if they address the violation, satisfy an abatement order. At that point, the constructive civil contempt petition is rendered moot – because it seeks compliance. While such last-minute corrections can be frustrating for the City, it also reflects that the process was effective. A defendant stating corrections have been made is also admitting the City's petition was well founded – after all, if it was not, no corrections would have been needed. . . It also demonstrates the underlying problem has finally been resolved. In some cases, if City staff are unable to verify a defendant's allegations that corrections have been made, the judge may be expected to reset the hearing, giving the City the chance to verify whether the violations remain. The City would focus any objection to the new date on any clear evidence the defendant is lying, such as an inspection just before the hearing showing no corrections were made. Even then, at

the first show cause hearing, defendants are usually given some time to make corrections before facing any penalty.

Thus, the first show cause hearing may result in resolving the violation. If the defendant makes the required corrections, the petition must be dismissed. In many cases, violations will remain, but that will rarely result in incarceration – which the City wouldn't prefer, anyway. A defendant cannot easily make repairs or corrections to a home when they are in detention, which is the typical penalty for contempt. But a judge enforcing an abatement order can make the threat of incarceration more tangible and may point out that if corrections are not completed by the next hearing, the defendant could be ordered incarcerated, usually for thirty (30) to ninety (90) days, or until the corrections are made.

Even as the first hearing leads to a new date, the court will usually decide whether the defendant has violated the abatement order and therefore committed constructive civil contempt. If the violation has been corrected, the petition would be dismissed. The decision can be postponed if the defendant claims last minute corrections were made, which the municipality needs to verify. Otherwise, the judge should, based on the evidence, find that the defendant has committed constructive civil contempt. A contempt finding at this stage is important, and adds meaning and credibility to the process, as the judge will often impose incarceration but suspend that ruling until the next hearing to allow the defendant to cure the violation.

Where the defendant does not appear but a bench warrant is issued, the first hearing after that bench warrant is issued, with the defendant in attendance, should be treated as the first hearing.

The Second Show Cause Hearing on Contempt. The expected outcome of the first hearing is thus a second hearing. But the second hearing's purpose is not to determine or re-argue whether the abatement order has been violated, because the judge at the first hearing should have so decided. Thus, the second hearing should simply verify whether the corrections are made. While it usually requires at least two (2) hearings to enforce an abatement order against a recalcitrant defendant, and can in some cases go beyond that, the process in most cases will work. At some point, the City will be able to state that sufficient corrections have been made to allow dismissal of the petition. If not, unless the defendant can produce a credible excuse, can show at least some steps towards making the corrections, or the municipality otherwise agrees to another delay to allow more corrections, the judge will simply order the defendant incarcerated for up to ninety (90) days, subject to release upon correction of the violations. Even where the town or city may be willing to grant more time, judges can in some cases seem reluctant to grant a second postponement without a verified excuse, such as a medical emergency or other legitimate reason preventing changes or corrections to comply with the abatement order – further underscoring the ultimate threat of incarceration to the defendant.

The defendant almost always appears at the second and subsequent hearings, but if not, the judge will usually issue a bench warrant. Once the defendant is present, the judge will, as at the first hearing, take the lead role. If presenting, the City will briefly lay out the findings at the past hearing and then state whether corrections were made. If the problem is resolved, the petition must be dismissed, in which case the judge will also order any prior sentence, imposed at the close of the first hearing, permanently suspended. But if the City does not verify that corrections were made, typically the judge will not ask for evidence, such as pictures unless the

defendant actively disputes the allegation that violations are continuing. Even so, where the extent of the ongoing violation is important to highlight, a small number of photos can be submitted. The defendant who at this point 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.

The judge may in some cases simply order the sentence previously suspended to be put in place and will order the defendant incarcerated. Or, if no sentence was issued at the first hearing, the judge may issue one at the second, especially where no changes have been made. Judges will only reluctantly grant a third hearing short of a defendant's credible excuse or some step towards compliance with the abatement order, because the defendant has already been found to violate the court's abatement order as well as the court's order issued after the first contempt hearing. Even where the City is willing to grant an extension, judges are in most cases reluctant to accept multiple violations or a complete lack of any progress.

Of course, the City seeks to have the violations corrected. While the defendant's incarceration, in itself, may not be helpful, it can be necessary to add credibility to the threat that they may face more of the same until the corrections are made. Taking such steps, after incarceration, are almost always unnecessary, but would require a new petition, a new show cause hearing, and new efforts to personally serve the show cause hearing notice on the defendant. Each case has unique facts, and while the most recalcitrant defendants may require two or even more contempt hearings, ultimately compliance is achieved in almost every instance.

CHAPTER 11: INJUNCTIONS

While local governments in Maryland most often use the municipal infractions process to address local code violations, and can under Md. Local Government Code Ann., §6-110(4) seek an abatement order as part of any municipal infraction, the process can take several months before a final decision. In fact, the municipal infraction process is not the only law enforcement option, and for more immediate relief, safety concerns may require seeking some form of injunction. Most City Code chapters laying out municipal infractions specify the City may also opt to file a civil action, in order to seek either a temporary restraining order, preliminary injunction or both. Injunctions are considered “equitable” relief, which generally refers to relief other than a fine or simple money damages in a civil case. Equitable relief therefore includes court orders which aren’t only focused on fines or money damages, but orders requiring a defendant to take action. Such action may include steps to correct code violations, for example. 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 City in seeking an injunction would request an order mandating compliance with the City Code, but to that end, would specify specific steps to be taken, as well as timelines. While injunction actions are often filed in the Circuit Court, District Courts have exclusive original jurisdiction over many municipal enforcement areas. Thus, Md. Courts and Judicial Proceedings Code Ann., §4-401(8)

gives the District Court exclusive jurisdiction to consider petitions seeking injunctions which are filed by any county or municipality to seek “enforcement of local health, housing, fire, building, electric, licenses and permits, plumbing, animal control, consumer protection, and zoning codes” when the ability to seek such “equitable relief” is specified. This listing broadly covers any building code, property maintenance, animal control or land use issues, which are substantial portions of most municipal infraction dockets as well. This may provide the basis for District Court’s exclusive jurisdiction in such cases, to avoid the Circuit Court considering those same issues in initial claims, other than on appeal.

The City is therefore likely to file an injunction to enforce local codes in the District Court. While often considered as immediate relief, injunctions may seek permanent, intermediate, or preliminary (immediate) relief, and may often be filed as a package. An intermediate injunction, pending a more permanent injunction after a trial, is considered a “preliminary injunction.” But a preliminary injunction is only issued after notice to the defendant; an injunction seeking more immediate relief, sometimes without prior notice and even pending a preliminary injunction hearing, is known as a temporary restraining order.

These three – permanent injunction, preliminary injunctions and temporary restraining orders – have three primary distinctions. First, only the temporary restraining order offers immediate relief, but second, that relief is also short-term, until the preliminary injunction hearing. Third, the preliminary and permanent injunctions are only considered after prior notice is provided to the defendant, with a future court date. The City may thus seek a permanent injunction as the ultimate long-term relief but would file it along with a preliminary injunction seeking more immediate, short-term relief to be put in place pending the ultimate trial. For

emergencies, the City would also seek the third option, a temporary restraining order, to gain the chance for immediate relief, such as violations raising a particular threat to health and safety.

Injunctions generally must meet a high burden of proof, and in addition to a local code violation, show the need for equitable relief rather than money damages. Thus, the first step in seeking an injunction requires a municipality to show that there is no “adequate remedy at law,” which means that monetary damages would not provide a sufficient remedy. *Maloof v. State Dept. of Environment*, 136 Md. App. 682, 693 (2001). This rule, however, is subject to several qualifying factors. First, Maryland Rule 15-502(c) prohibits the denial of an injunction “solely because the party seeking it has an adequate remedy at law” unless the opposing party posts a bond to cover the costs of any money damages and costs they could be required to pay. Additionally, the overall public interest becomes a key factor when public entities such as the City or other local governments are the petitioner, and the fact that money damages could provide a remedy becomes less critical as long as the City can identify clear community concerns. The courts will instead weigh the possibility of monetary relief against the community concerns, rather than denying an injunction outright. *State Dep't of Health and Mental Hygiene v. Baltimore County*, 281 Md. 548, 555 (1977).

Preliminary Injunctions. When facing an emergency and the need for correction on a faster timeline, the municipal infractions process may not be the best option. Instead, the City in seeking immediate relief may initially focus on seeking a preliminary injunction, which can be issued within a few weeks, pending the actual trial, under Maryland Rule 15-505. Such an injunction is issued prior to the trial’s “final determination on the merits of the action,” but does not offer immediate relief, as it is, by definition, only issued after notice and an opportunity for a

hearing, under Maryland Rule 15-501(b). Thus, a preliminary injunction does not provide immediate relief. Maryland Rule 15-505(a) specifies that a preliminary injunction cannot be issued without “notice to all parties and an opportunity for a full adversary hearing.” The court clerk’s office may also require payment of a bond prior to considering the motion, although Maryland Rule 15-503(b) allows the court to waive any bond payment for the state or local government. While it is possible, under Maryland Rule 15-505(b), to consolidate the full trial with the preliminary injunction hearing, in most cases the municipality will be seeking a hearing as quickly as possible. The defendant may also be expected to oppose combining the hearings, given the lack of time to prepare for a full trial, preferring instead that the preliminary injunction be denied, of course.

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 City (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 City will suffer irreparable injury unless the injunction is granted; and (4) the public interest. *Ehrlich v. Perez*, 394 Md. 691, 708 (2006). While the party moving for such relief need not show they will ultimately prevail, sufficient evidence must demonstrate “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. Unlike a preliminary injunction, which the judge will consider only after notice to all parties under Maryland Rule 15-505(a), a motion for a temporary restraining order seeks immediate relief. In an emergency, the City may, even in filing for a

preliminary injunction pending long-term trial on the merits, seek immediate relief through a motion for a temporary restraining order, under Maryland Rule 15-504. By definition, a temporary restraining order is “an injunction granted without opportunity for a full adversary hearing,” as specified in Maryland Rule 15-501(c). Thus, no formal notice or hearing for both parties is required before a temporary restraining order can be issued. As a result of such limited advance notice, however, temporary restraining orders may be issued in limited circumstances based on strong evidence of immediate harm. Such an order also remains in place only for a limited time, up to ten (10) days, under Maryland Rule 15-504(c)..

While notice is not formally required before a request for a temporary restraining order can be considered, the City must undertake some effort to notify the defendant. The court will almost always seek “efforts commensurate with the circumstances” to give some practical notice or warning to the opposing party, under Maryland Rule 15-504(b). Even with such efforts, such an order is only issued in limited circumstances, and even without an adversary hearing, the petitioner must present evidence of an emergency. In addition to requirements already in place for the grant of a preliminary injunction, the evidence must, per Maryland Rule 15-504(a), clearly further show, by affidavits or statements “under oath,” stating how “immediate, substantial and irreparable harm” will result if the motion is not granted. As noted, a temporary restraining order is also limited in duration. It can only stay in effect for up to ten (10) days, under Maryland Rule 15-504(c), pending consideration of the longer-term preliminary injunction, which is then only granted after notice and an adversary hearing.

Conclusion: Seek an Injunction Only in an Emergency. Injunction litigation does not use the municipal infractions process but has multiple other steps and normally involves at least three

or more hearings. That's because seeking an injunction typically involves all three options – immediate, preliminary and permanent. Indeed, it is quite likely that the City, in seeking an injunction, would opt to file all three options, in order to gain immediate as well as longer term relief. While a temporary restraining order can, if the higher standards are met, it offers short-term immediate relief. In its place, a preliminary injunction can be requested with notice to the defendant, but only stays in place until trial. The permanent injunction will be needed to correct a longstanding problem on a long-term, ongoing basis. Given the multiple steps and often stringent requirements to show the need for immediate relief, an injunction should only be sought in extreme circumstances – but it offers an avenue of relief when needed.

When there is no special emergency, the municipal infractions process may be most effective. That process provides notice, a full hearing and allows both imposition of fines, and a request for an abatement order for longer-term relief. An abatement order effectively serves as a permanent injunction in most respects, even allowing self-help and billing the defendant. It also provides an enforcement process, through a petition for contempt.

CHAPTER 12: 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.

To preserve the right to collect costs, the City must keep records of all reasonable expenses which are related to the violation outlined in the abatement order. Including such records in the billing sent to the defendant isn't required but may encourage payment of the bill without further collection effort. But if the defendant, after being billed, does not pay, the City can follow the normal collections process, including filing a lawsuit to collect. A separate collection case, however, should not be needed when the City relies on an abatement order to make the corrections, per Md. Local Government Code Ann., §6-111(a). That section specifies that when the municipality itself “abates an infraction under a District Court order,” the defendant is billed, and then has thirty (30) days, under Md. Local Government Code Ann., §6-111(b), to pay the bill. If the defendant does not do so, then the City can move for an additional judgment, as part of the same action, against the defendant for the costs. This avoids the need to

file a separate lawsuit. The City need only move for a separate court judgment for the additional costs of the correction.

The City's abatement orders are drafted to allow an alternative to further court action, by providing the City with authorization to collect the cost for corrections to real estate in the same manner as property taxes. That can avoid the need to reduce the costs to judgement, as the costs can simply be collected as part of the County's property tax bill, which includes the municipal portion. 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. Adding such costs to the property tax bill does depend on cooperation with the County department sending it to all property owners but is an important option to provide in abatement orders. It is certainly important that a municipality rely on such specific authority before attempting to add any cost to the property tax bill. *See* Appendix One, Sample Abatement Order.

The general process involving a town or city correcting a violation, and then billing a defendant afterwards to cover those costs, is often referred to as “clean and lien.” The “lien” reference indicates that if the cost of repair is included in the property tax billing, as authorized

under Md. Local Government Code Ann., §5-205(d)(2), it becomes a lien against the property when it is not paid, along with the underlying taxes. This can lead to later collection by the City upon future sale or transfer of the underlying property, even if the City takes no further collection action.

The first element of “clean and lien” – that is, “clean,” can present a more viable option than seeking contempt when quick corrective action is needed to correct safety or neighborhood concerns. Contempt proceedings can, in the face of recalcitrant defendants, take months. Clean and lien can also be effective in addressing landlords or absent property owners living outside the area, or corporations as well. Even so, attaching persons outside the County jurisdiction for contempt proceedings may pose significant challenges to obtain proper service, and constructive civil contempt proceedings are more effective against individuals rather than corporations. This is a key reason why citations seeking “vicarious” liability may be pursued against both a corporate entity and a responsible individual, as noted in Chapter 6.

While useful in targeted circumstances, “clean and lien” should be recognized as a limited tool in itself. It can only be used to address property maintenance or building code violations with an abatement order. It is most practically effective against property owners who would be receiving a property tax bill, even as any defendant subject to an abatement order with “clean and lien” provisions can still be sent a bill, and the costs can still be reduced to judgment. Additionally, payment as part of the tax bill isn’t always assured within the foreseeable future, even where the bill is included in the municipal portion of the bill, in which the County tax bill is the larger sum. In limited circumstances, “clean and lien” can serve as an effective collection and problem-solving tool.

CHAPTER 13: MOTIONS TO REVISE AND/OR REOPEN

A final judgment isn't always the end; in some cases it represents a new beginning. 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 a municipal infraction, issued a fine and even an abatement order. A defendant can appeal to the Circuit Court within thirty (30) days, but they can also file a motion asking for a new trial before the same District Court, if they do so within ten (10) days of the judgment. Defendants can seek a new trial even where they fail to appear, when the City won judgment by default.

Motion for New Trial. Within ten (10) days after the judgment, any party, including the City or the defendant, can file a motion for a new trial. As long as the motion is filed within ten (10) days of the judgment, under Maryland Rule 3-533, there are no specific requirements. Maryland Rule 3-533(b) requires that the motion state any grounds for the new trial but it is within the court's discretion as the rule does not specify any standards. The motion is presented to the same judge issuing the original decision. It can be granted or denied based on the judge's discretion, especially if no error in the judgment is identified. Such a motion can be denied summarily, but under Maryland Rule 3-311(d), it cannot be granted without a hearing. Filing a motion for new trial under Maryland Rule 3-533 does not stay the judgment, unless and until the motion is granted. The order granting a motion for new trial wipes away the prior judgment and results in an entirely new trial, subject to the new judgment. This is the motion a defendant may file when they default and fail to appear at the hearing. It should also be noted that when a motion is filed under Maryland Rule 3-533, the thirty (30) day appeal deadline is extended, per

Maryland Rule 7-104(c), starting again with the denial of the motion for new trial or, if the motion is granted, the judgment issued after the new trial.

Motion to Alter or Amend. There is an alternative motion, under Maryland Rule 3-534, which has the same ten (10) day deadline and does require identification of an error. It is therefore less open to discretion, even as the motion is considered by the same judge issuing the original decision. Maryland Rule 3-534 allows any party, within the same brief ten (10)-day deadline, to file a motion seeking to alter or amend the judgment. As the motion seeks to amend the judgment, granting it may not result in a new trial unless it is combined with a motion for new trial. The motion to alter or amend focuses on a clear error or specific additional evidence and seeks a limited result in correcting an error. Even so, granting such a motion may allow the judgment to be opened for additional evidence as needed, or may require a new trial. As with a motion for new trial, a motion to alter or amend does not stay the judgment, but the thirty (30) day appeal deadline is extended under Maryland Rule 7-104(c), until the motion is denied or a new, corrected judgment is issued.

For municipal infractions, usually any motion filed under the ten (10) day deadline under either Maryland Rule 3-533 (for new trial) or 3-534 (to correct an error) is simply treated as a new trial motion, eliminating the prior judgment and resulting in a new, *de novo* trial. Most typically, such a motion is filed after a default. In the motion, the defendant will indicate they were unable to appear, or failed to receive notice of the court hearing. In those cases, as a public entity serving the public interest, the City rarely opposes such a motion, barring evidence of unnecessary delay or some other improper motive. Thus, even where unnecessary delay may, in fact, be the result, the City may opt not to oppose the motion, and the court then sets a date to

consider it, erasing the judgment and typically conducting the new trial at the same time, as the first hearing.

Motions to alter or amend a judgment which are filed under Maryland. Rule 4-534, based on an error or additional evidence, may, as noted, be granted as a new trial. If, however, the motion specifies a clear mistake, such as in an abatement order or fine amount which does not require reopening, the City will likely accept the correction rather than risk a new trial based on an error. Nor would the City want to be perceived as seeking to benefit from a mistake.

Appeals are options only for the defendant, as a municipality is not empowered to appeal from a District Court municipal infraction judgment, per Md. Courts and Judicial Proceedings Code Ann., §12-401(d)(1). But any party may file motions to seek a new trial under Maryland Rule 5-533 or reopen a judgment to correct an error under Maryland Rule 3-534. Thus, the City will file such motions to make necessary corrections in the record or order, even as in most cases only a defendant will do so.

Motion to Revise. A third option, a motion to revise under Maryland Rule 5-535, allows the District Court order to be revised if filed within thirty (30) days. Generally, this motion is focused only on correcting errors, but the court is empowered, under Maryland Rule 5-535(a), to “take any action that it could have taken under Rule 3-534,” which would include accepting new evidence or effectively granting a new trial. A motion to revise may also be filed under Maryland Rule 5-535(c), based on newly discovered evidence, but only if the party filing the motion can show the evidence “could not have been discovered by due diligence in time to move for a new trial pursuant to Rule 3-533,” which requires a motion to be filed within ten (10) days of the judgment. It should also be noted that Maryland Rule 3-535 grants the court revisory

power over any judgment “in case of fraud, mistake or irregularity” without any specific timeline.

Unlike a motion for new trial or to alter or amend, under Maryland Rules 3-533 and 3-534 respectively, a motion filed under Maryland Rule 3-535 does not generally change the appeal timeline. *Nina & Narej, Inc. v. Movahed*, 369 Md. 187, 200 (2002). If, however, such a motion is filed within ten (10) days after the date of the original judgment, for appeal purposes the motion is treated as a motion under Maryland Rule 3-533 or 534, and the appeal deadline runs from the date of the decision on the motion, if is denied; if granted, the order is revised or a new order is issued after a new trial. *Sieck v. Sieck*, 66 Md. App. 37, 42 (1986), citing *Unnamed Attorney v. Attorney Grievance Commission*, 303 Md. 473, 485 (1985).

Any final decision by a court can be subject to a request for a new hearing or correction of an error. Thus, a defendant who is granted a new trial may win the chance for a second trial, but if not successful on the merits. should not expect success with a second new trial request, effectively asking for a third trial. While first requests are occasionally granted, second requests are usually not, largely because such motions go before the same judge issuing the original decision, who will be understandably reluctant to grant a third trial or revision. Further, if a defendant is found guilty in the second District Court trial, the appeal option remains. Thus, that defendant can still seek a third trial by filing an appeal to the Circuit Court, if filed within 30 days of the second final judgment.

CHAPTER 14: APPEALS

Any final District Court decision in Maryland is always subject to at least one appeal, pursuant to Md. Courts and Judicial Proceedings Code Ann., §12-401(a). Such appeal is to the Circuit Court, and Maryland Rule 7-104(a) provides that a notice of appeal must be filed within thirty (30) days “after the entry of the judgment or order from which the appeal is taken.” But only a defendant may appeal from a municipal infraction order; a municipality, such as the City, is not empowered to do so, under Md. Courts and Judicial Proceedings Code Ann., §12-401(d)(1). An appeal is not treated as a request for a new trial before the same District Court, and there is no requirement that the defendant identify an error or state any grounds for the appeal. The defendant need only seek an appeal within the thirty (30) day deadline. The result will be an entirely new *de novo* trial before the Circuit Court.

It should be noted, however, that Maryland 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. While subject to waiver, this cost can as a practical matter discourage 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. Such defendants have other options, and may, if they are within the ten (10) day deadline after a judgment, simply seek a new trial, which does not require payment of any bond.

A defendant may file an appeal to the Circuit Court from a municipal infraction judgment, under Md. Courts and Judicial Proceedings Code Ann., §12-401(d), or from a finding of contempt in an enforcement action, under Md. Courts and Judicial Proceedings Code Ann.,

§12-402. The appeal to Circuit Court from a municipal infraction case is *de novo*, and not on the record under Md. Courts and Judicial Proceedings Code Ann., §12-401(f). There is no review of the District Court's original judgment, but the Circuit Court holds an entirely new trial, applying formal Circuit Court rules, as specified in Md. Rule 7-112(d)(3).

While a defendant has the right to only one appeal, and as a practical matter only one new trial, the new trial and appellate rules can in some cases operate to give a defendant two appeals. The thirty (30) day appellate timeline runs from the date of the "judgment or order from which the appeal is taken," under Maryland Rule 7-104(a). But that timeframe is extended when a defendant files a motion for new trial or to alter or amend, under Maryland Rules 3-533 and 3-534, both of which must be filed within ten (10) days after the initial judgment. That also extends the appeal timeframe, under Maryland Rule 7-104(c), until after the motion is denied, or if granted, a new or revised order is finalized. That same extension is also provided for motions filed to revise a judgment filed within the ten (10) day timeline, under Maryland Rule 3-535(a).

Thus, a defendant who utilizes every avenue may be found guilty in one trial; then, if a motion for new trial is granted, found guilty again; and finally, after appeal of that second judgment, either found not guilty or found guilty a third time before the Circuit Court. This number of trials of course depends on a timely motion for new trial which is granted, as well as a timely appeal. The options do not extend further beyond the Circuit Court trial, however. While the Circuit Court trial rules permit reopening or the correction of errors, they do not apply to appeals. Even as a judge can always consider such a motion purely in its discretion, it seems unlikely, after an appeal, that it would be granted, and such a motion would not stay the enforcement of the judgment.

Maryland law also limits parties to one appeal. Indeed, Md. Courts and Judicial Proceedings Code Ann., §12-301, specifies that an appeal to the Appellate Court 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, requires parties seeking Supreme Court review to ask for it through a petition for *certiorari* from an Appellate Court judgment. Such review is within the Supreme Court’s discretion, and even without such a petition, the Supreme Court always 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, under Md. Courts and Judicial Proceedings Code Ann., §12-305. Failing that unusual turn of affairs, 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 even with a new Circuit Court trial, the District Court judgment is not eliminated, as it would be with the granting of a new trial motion under Maryland Rule 3-533. Instead, the existing District Court order remains in effect, under Md. Rule 7-112(b) “until superseded by a judgment of the circuit court,” unless the defendant requests and is granted a stay of the District Court order. Thus, a District Court abatement order remains in effect, until eliminated or changed with a new Circuit Court order. After an appeal to the Circuit Court, the

final Circuit Court decision will be entered in the District Court docket, where it will substitute for the original District Court decision, under Md. Rule 7-112(e). This reflects the fact that the District Court retains exclusive original jurisdiction of municipal infractions, under Md. Courts and Judicial Proceedings Code Ann., §4-401(10)(i), such that if the Circuit Court issues an abatement order, the District Court will enforce it as the court which retains exclusive original jurisdiction.

CHAPTER 15: PREVENTION AND MANAGEMENT

Maryland law, in establishing municipal infractions, outlines multiple formal steps that create a rights-based process leading to court hearings and appeals. At core, however, municipal infractions are not intended to serve as punishment – even as fines are involved – but should, for the local government, serve to solve a problem. Judges in Montgomery County also recognize this, often expressing reluctance to impose any fine if, by the time of the hearing, the defendant, even in admitting a violation, has corrected the problem. This Manual would therefore be incomplete without offering basic conflict management guidelines that will serve two primary purposes. First, these guidelines may serve to prevent the need to undertake the municipal infractions process at all. Second, using these guidelines even within the municipal infractions process may allow it to work more effectively, in some cases avoiding hearings, appeals or contempt petitions. This chapter will include footnote references to several resources in establishing what can be referred to as local government conflict guidelines.

It must first be acknowledged that conflicts in general, even beyond those leading to citations and the municipal infractions process, are generally not sought out by anyone. City staff have no interest in creating a dispute, and even the most stubborn defendant does not revel in conflict that develops from their failure to follow local ordinances. If anything, conflicts tend to be ignored until they become unavoidable – such as a violation requiring a citation. Moreover, the topic of conflict as an operating principle is also ignored; even at a personal level, conflict “is often not something we [are] taught how to handle.”¹ Without guidance, most of us,

¹ Holungs, Julie, “Stop Avoiding Conflict and Try These Five Tactics Instead,” (Forbes, April 7, 2021), <https://www.forbes.com/sites/forbescoachescouncil/2021/04/07/stop-avoiding-conflict-and-try-these-five-tactics-instead/?sh=2c4a2266175f>

including municipal staff and those handling citations, are left to use their own individual intuition and experience.

This conflict guidance is not a substitute for A.D.R., courtroom mediation or facilitation by a neutral party, as options otherwise discussed that can assist with difficult disputes. These guidelines are intended to help everyone consider new options in addressing others, and to suggest specific actions that can prevent major conflict as well as avoid needless disputes – which can often happen even where neither side is in serious factual dispute with the other.

Conflict Management Guidelines. The suggested conflicts management guidelines urge those facing a conflict, such as code enforcement staff, to take three key steps: invite cooperation, encourage communication and act deliberately.

- First, *inviting cooperation* depends on the choice of words and encourages speaking carefully and reflecting the intent is to communicate in a manner that does not heighten conflict and competition.
- Second, *encouraging communication* includes sharing information with everyone involved – which is, after all, public information: at a general level, all persons have a right to access any public record, per the Maryland Public Information Act, Md. General Provisions Code Ann., §4-103. That Act further defines a public record as any document made or received “in connection with the transaction of public business.” Md. General Provisions Code Ann., §4-101(j) (2023). The more compelling element of encouraging communication, however, is also to encourage dialogue in sharing, rather than simply recording opposition and following a formal process.

- Third, *acting deliberately* reflects the local government’s goal to enforce the code, solve a problem or provide services overall, based on applicable law and according to the facts, rather than engaging in a dispute.

Below is an outline of five steps that can help bring these three elements into meaning.

1. Encourage Cooperation. The City as a local government can exercise power in three manners: (i) normative, to seek cooperation or compliance as the “right thing to do;” (ii) utilitarian, by offering incentives for compliance; or (iii) coercive, forcing compliance with the implied threat of denial or a fine.² While it may seem that coercion is always an option, the City will typically seek cooperation. Voluntary cooperation is always more effective than issuing a citation. That is largely because voluntary compliance is more cost and time effective than the investment of both needed to enforce compliance. To accomplish this, through cooperation, the City should engage in a joint problem-solving effort rather than simply using a closed decision process to make decisions, even in issuing a citation.³

The elements of cooperation include communication, offering trust, coordination and a focus on the problem rather than a competition in which one party wins and the other loses.⁴ City staff have the power to enforce the law by issuing a notice of violation or citation; as a result, their communication “sets the ground for people’s experience.”⁵ Their words, especially in first encountering a defendant, should therefore be intentional, grounded in the purposes behind the communication – to solve the problem. Staff should also take the opportunity to

² Mayer, Bernard, “Staying with Conflict” (Jossey-Bass, San Francisco, California, 2009), at 157.

³ Susskind, Lawrence and Field, Patrick, “Dealing with an Angry Public: The Mutual Gains Approach to Resolving Disputes,” (The Free Press, Simon & Schuster: New York, New York, 1996) at 194.

⁴ Deutsch, Morton, “Cooperation, Competition and Conflict,” Chapter 1 in Coleman, Peter, Deutsch, Morton and Marcus, Eric, Eds., “Handbook of Conflict Resolution: Theory and Practice,” (3rd Ed.), (John Wiley & Sons: San Francisco, California, 2014), at 7-8.

⁵ Winslade, John and Monk, Gerald, “Practicing Narrative Mediation: Loosening the Grip of Conflict,” (John Wiley & Sons: San Francisco, California, 2008), at 17.

assess how their words “will be understood or interpreted.”⁶ This can be as simple as staff considering how they would “react to that statement if someone made it” to them, and how that information could be best conveyed to themselves.⁷

Reciprocation may be appropriate in the face of a code violator who, for example, takes the competitive approach by refusing to listen, resisting cooperation or otherwise becoming demanding. Reciprocation will consist of emphasizing the City’s ability to take action to issue a notice of violation or warning, or simply issue a citation. In doing so, however, City staff should not close the door to cooperation, but re-establish a more open tone if the applicant reduces their confrontation.⁸ Doing so will reflect acting with deliberation to encourage cooperation, with a clear focus on the facts in following the law – rather than engaging in pointless and distracting conflict.⁹

2 Observe and Listen Strategically. Code enforcement staff will communicate extensively with anyone making a complaint or alleged to be in violation of the local code. In the midst of that communication, anyone, including a defendant, may simultaneously express elements of conflict as well as cooperation. City staff may find themselves with a choice for either path – to ultimately encourage cooperation or to confront the defendant with competition.¹⁰ Competition would consist of standing firm on a dispute, while cooperation may reflect standing firm as well, but includes communication and coordinating towards a problem solving approach.¹¹ Careful observation and listening can reveal options; even in an angry

⁶ Mayer, Bernard, “Staying with Conflict: A Strategic Approach to Ongoing Disputes” (*supra*), at 146.

⁷ *Id.*

⁸ Susskind and Field (*supra*), at 228-229.

⁹ *Id.*, at 229.

¹⁰ Deutsch, Morton (*supra*), at 6-7.

¹¹ Deutsch, Morton (*supra*), at 7.

exchange, a person may exhibit elements of negotiation and a willingness to cooperate. Staff should recognize them as resources that may give an opening to a path of cooperation.¹² Thus, even where a dispute is unavoidable, encouraging the problem-solving approach can prevent a power struggle, and may even reduce the need to issue a citation.¹³ Even if not resolved, the scope of a dispute can in many cases be narrowed. Our choice of words matters, and such words have the power to increase the chances of competition, leading to conflict, or cooperation.¹⁴

By listening reflectively, City staff would allow a person to speak without interruption, but then offer a summary of what they heard the person say, deliberately inviting them to listen in turn, at which time staff can specify the local government's response and check their understanding.¹⁵ This can be the opportunity to narrow or reduce a conflict to the core issue, such as the actual level of factual disagreement. This can include identifying the lack of any dispute or reviewing remaining differences. This can also in some cases emphasize areas of new dispute, but with an emphasis on areas of agreement.¹⁶ This discussion will lead to a focus on the facts, potentially limiting the dispute and helping to open the door to cooperation.¹⁷ Encouraging cooperation will, as voluntary compliance, serve as the most effective way to solve the problem and honor the City Code.

3. *Acknowledge Emotions but Appeal to Reason.* Emotions play a role for all concerned; indeed, "human beings are motivated by a complex set of reasons, ideas, beliefs and emotions."¹⁸

¹² Winslade and Monk (*supra*), at 26-27.

¹³ *Id.*, at 7-8.

¹⁴ Susskind and Field (*supra*), at 228.

¹⁵ Katz, Neil and McNulty, Kevin, "Conflict Resolution," (Syracuse University Maxwell School of Citizenship & Public Affairs, 1994), at 14, https://www.maxwell.syr.edu/docs/default-source/ektron-files/conflict-resolution-neil-katz-and-kevin-mcnulty.pdf?sfvrsn=4de5d71e_9

¹⁶ *Id.*, at 15.

¹⁷ Mayer, Bernard, "Staying with Conflict: A Strategic Approach to Ongoing Disputes" (*supra*), at 13-14.

¹⁸ Susskind and Field (*supra*), at 183.

While City Code Enforcement officers may focus on facts, a defendant facing a code violation may become emotional. Rather than shutting any discussion down, it can be effective for City staff to “acknowledge strong emotion,” recognizing the concern while “appealing to reasoned arguments,” which may include reflective listening and a refocus on the simple facts as part of a problem-solving approach.¹⁹ At the same time, City staff cannot allow abuse to continue. Staff should impose boundaries to “[p]ut limits on abusive behavior,” not allowing any abuse to proceed by stopping the conversation.²⁰ By following the reciprocal approach – to recognize a more cooperative approach – it is possible to resume the discussion without the abuse.

4. *Externalize and Narrow the Dispute.* A dispute regarding a code violation can become personal. It is “not uncommon for one party to develop a conviction that the other party is in fact the problem,” and City may be that other party, if not the Code Enforcement officer personally.²¹ Externalizing shifts the source of the conflict from personality to the underlying problem leading to the code violation.²² This invites defendants “to see the conflict as a third party” as something to be confronted, rather than a competition with the City. This can allow problems to be ascribed “to the conflict itself, rather than themselves or the other party.”²³ This can, especially combined with reflective listening, help to narrow and minimize the dispute, allowing code enforcement staff to identify specific changes leading a code violation to be resolved.

5. *Use Power Strategically.* It should be recognized that power, in itself, can be limiting, such that the power to issue a citation does not, in itself, solve the problem. Instead,

¹⁹ *Id.*, at 183-184.

²⁰ Mayer, Bernard, “Staying with Conflict: A Strategic Approach to Ongoing Disputes” (*supra*), at 223.

²¹ Winslade and Monk (*supra*), at 12.

²² *Id.*, at 13.

²³ *Id.*

interacting with residents and business should reflect an overall strategy to use that power effectively. Ultimately, the City’s goal in using power should be to cooperate with those directly involved in a joint problem-solving effort, rather than to impose a decision that may lead to ongoing conflict, or issue a citation that will need to be prosecuted and separately enforced.²⁴

Bernard Mayer, a well-known researcher, mediator and facilitator, has provided guidance for the thoughtful use of power that can encourage a “constructive exchange among disputants.”²⁵ The most critical of these, for local government purposes, include:

- *Intentionality.* City staff should proceed deliberately, with an “intentional end” in mind.” This requires a “steady and strategic” approach, with continued focus on the violation that avoids allowing everyone to be distracted or sidetracked by new or irrelevant issues.²⁶
- *Realism.* City staff should be realistic about “the effectiveness and limits of using . . . power, the potential power of others,” and should consider in advance the other party’s “likely response to the use of that power.”²⁷ Thus, threatening a citation or even further enforcement efforts is not an effective first approach in addressing a violation.
- *Proportionality.* City staff should react in a proportional, reasonable manner “to accomplish their goals, but not so much as to squander power or unnecessarily escalate a conflict.”²⁸
- *Incrementalism.* In approaching a conflict, cooperation and resolution can be encouraged when City staff “start with a normative, integrative, informal and personal approach and

²⁴ Susskind and Field (*supra*), at 194.

²⁵ Mayer, Bernard, “Staying with Conflict: A Strategic Approach to Ongoing Disputes” (*supra*), at 164.

²⁶ *Id.*, at 165, 170.

²⁷ *Id.*

²⁸ *Id.*, at 166.

move in small steps and only as needed”²⁹ This is endemic to the informal process of issuing a notice of violation before the citation itself, as it serves as a warning inviting the defendant to cooperate and avoid the need for further enforcement efforts.

- *Reciprocity.* It is important to recognize the “reciprocal pattern of power that is being developed or encouraged.”³⁰ Thus, if a defendant cooperates, it can be effective to respond in kind, perhaps by adding an extra week to a compliance deadline, for example, before issuing a second notice or a citation.
- *Flexibility.* When a person “can alter their style to adapt to a particular situation, they are likely to be more effective.”³¹ City staff should therefore avoid locking themselves into only one approach, but maintain the flexibility to change that “as circumstances change” or as they find any “particular approach” is not working.³² Thus, cooperation which is reciprocated by the defendant may be effective, but typically must devolve into a more demanding or rights-based approach when that defendant refuses or fails to cooperate. That flexibility should replace a rigid, demanding approach, if and when the defendant becomes more cooperative.
- *Predictability and transparency.* Code enforcement officers should not react unpredictably to create surprise or encourage shock by a recalcitrant defendant. While doing so can be tempting to gain a defendant’s attention, doing so is more likely to

²⁹ *Id.*

³⁰ *Id.*

³¹ Mayer, Bernard, “The Dynamics of Conflict” (*supra*), at 71.

³² Mayer, Bernard, “Staying with Conflict: A Strategic Approach to Ongoing Disputes” (*supra*) at 167.

encourage “defensiveness and rigidity” in response. More transparent, predictable actions are “more likely . . . to engender a constructive response.”³³

The Goal: Use Power to Solve Problems. Cities and towns “generally provide a higher level . . . of services and facilities” than larger state or federal agencies,³⁴ as the City serves those living or working here. Local code enforcement is by its nature a conflict-based process, even as the more effective approach is to focus on problem solving – as the courts, who serve as the ultimate decision-makers in enforcing the law, also expect. As such, towns and cities seeking to enforce local codes face more direct conflicts than any other level of government. These guidelines can provide code enforcement and local officials with the tools to avoid wasting their power of enforcement by widening disputes needlessly or encouraging competition on the part of defendants. The goal is not to avoid conflict. Instead, these guidelines are intended to offer City staff the chance to narrow the issues, preventing or even resolving conflicts by extending cooperation at the outset, and as possible during the enforcement process, to encourage communication and a focus on problem solving. Perhaps in doing so, the City and other local governments can serve as a wider example as we try to work together. In another polarized time in this nation’s history, Robert F. Kennedy, in his last speech, said that “[w]hat I think is quite clear is that we can work together” to resolve divisions.³⁵ While he referred to wide public disputes, these guidelines can help to effectively manage and even prevent disputes regarding code violations – many involving whole communities rather than only one resident or business.

³³ *Id.*

³⁴ Lundin, Steve, “The Closest Governments to the People,” (Board of Regents of Washington State University, 2007; Steve Lundin, 2015), at 141, <https://mrsc.org/getmedia/1c25ae05-968c-4edd-8039-af0cf958baa7/closest-governments-to-the-people.pdf.aspx?ext=.pdf>

³⁵ Guthman, Edwin and Allen, C. Richard, “RFK: His Words for Our Times,” (Harper Collins Publishers: New York, New York, 2014) at 412.

CHAPTER 16: USING ONLINE SYSTEMS

The goal of code enforcement is not litigation, but to solve problems by having town and city code violations corrected, whether that includes property maintenance, zoning violations, excessive noise or the like. Communication is the critical element that can allow problem solving, as otherwise, the City must opt for the formal municipal infractions process by issuing a citation and seeking a court hearing to obtain a judgment offering a fine and, for ongoing problems, an abatement order.

Online Systems Increase Access. Communications between the City and defendant in a code enforcement case are typically face-to-face, by telephone or through email. Adding an online component, starting with a code enforcement webpage, can, if it is interactive, allow another avenue for communication. Such online systems can be used to create a remote process involving almost any dispute, such as alternative dispute resolution as well as court proceedings. The most frequently used may be the online mediation processes used by markets such as eBay, with a seller and buyer in different parts of the world. The reality is that such online processes can save time and costs, while allowing more access. Maryland courts use online processes for electronic court filing and document reviews, and during the pandemic during 2020 and 2021, relied exclusively on remote trials and hearings. Some courts, such as in Michigan and British Columbia, have online courts for specific cases, such as small claims, saving time to allow judges to address cases needing more. It's worth noting that studies show decisions made in online proceedings are less subject to claims of bias and prejudice.

In a similar way, using an interactive online system could serve as a cost-efficient option for open dialogue early in the code violation process, helping to focus on working together to

solve the problem, by addressing the violation. Such systems have demonstrated they can be a “successful tool for resolving disputes out of court,” with the ability to address the “nuances, difficulties and problems that arise in a disputed matter,” which includes local code violations.³⁶ Interactive online access could help to create dialogue in a new way by offering convenient, equally open, low cost and asynchronous communication online, reflecting the reality that residents are increasingly comfortable using such online processes.

Adding an online communication option for code enforcement could open access for those receiving notices of violation, allowing them to respond, identify options and acknowledge specific deadlines, followed by the City responding in turn, possibly the next day. Such an online system would waive no requirements nor restrict the City from pursuing the code enforcement process. It would, however, provide an online option to open dialogue by allowing interaction between the parties. As in many cases there is no factual dispute, such a process, in encouraging cooperation at the beginning, can rely on the avoid for almost all cases the delays, costs and inconveniences associated with court trials at the end.

Online Options Can Increase Dialogue. An online interactive process would encourage dialogue in an equal, open manner, likely assisting the City’s efforts to require property maintenance and repair, for example, especially if an in-person dialogue never occurs. In many cases, City staff, with normal working hours, may have little option other than to post notices, as property owners are not available during the day. An online system can fill this gap by providing dialogue, allowing equal, asynchronous communication between all parties at the start of the

³⁶ Chatterjee, Aranya and Sharique, Uddin, “Online Dispute Resolution: An Effective Mechanism and an Alternative Tool for Justice at a Reasonable Time,” *Arbitration: The International Journal of Arbitration, Mediation and Dispute Management* (Brekoulakis (ed.), November 2021) at 543.

process. Opening the online option for such dialogue is simply a way to allow communication, which can then lead to the resolution of code violations.

An online system would provide a webpage with further explanation, education and even highlight the need for assistance to help with costs. To that end, the notices of violation would, of course, need to include email and website information, encouraging the defendant, such as a property owner, to visit the City's code enforcement website for more information and options. While not all residents or businesses will have easy computer access, most of them do, and increasingly more are relying on similar online systems in seeking services. The City webpage could also be translated into multiple optional languages, even further increasing access by eliminating a key language barrier.

Such an online process would ultimately serve as a technique to encourage conciliation of local code violations by offering new avenues of communication and more information to businesses and residents receiving a notice of violation. Examples of local governments providing online information including the City of Oakland Park, Florida, which allows the submission of complaints online, provides education on the "community enhancement" process and outlines common violations the City can address. The City of San Jose, California, provides similar information as well as several forms, as well as the ability to check on the status of code violations at specific addresses. The City of Compton, California provides an online portal for code enforcement, providing tips to address nuisances and submit effective complaints as well as allowing updates for all complaints according to the address.

Adding such an online system to code enforcement would take advantage of the internet's ability to level the playing field with equal access, allowing open communication from

neutral, more convenient locations, such as an in-home setting, and removing time restrictions by including asynchronous communication. It could provide the business or resident facing violations with options, such as specifying whether they dispute the facts and encouraging them to outline their response, including proposed timeline for corrections. The page would include education, laying out the code enforcement process. It would explain that the purpose is to solve problems, such as property maintenance, while identifying specific options for resolution. Following the example from the City of San Jose and Compton, resources, such as suggested wording that can be effective in working towards problem solving in interacting with City staff, would also be provided, with a focus on working in partnership rather than as opponents.

The online option would also allow defendants to identify potential barriers, such as lack of finances, training or other ability to make property repairs, for example, which lead to ongoing violations. City staff, unless interacting with the defendant in some other way, would not otherwise be aware of such limitations. Such an online communication process could encourage persons to share that information simply by its convenience and ease of use. In some cases, for example, a property owner may have the resources but suffer from an infirmity, making it difficult for them to hire a contractor. These new avenues for communication would reduce misunderstanding between the city and property owner, as well as the complainant and surrounding community. In doing so, this online system may also reduce claims of mistreatment, bias or prejudice, including those based on language or cultural barriers.

Online Options for Notice of Violation Recipients. This would provide another avenue to engage both parties in working together to solve the problem. As such, in response to the

property owner's online entries, City staff could accept proposals, such as a timeline for correction, make a counteroffer or identify assistance, if needed.

For the initial notice, the online process could include:

1. Creation of a new "municipal infractions" page on the City website. It would allow online complaints, explain the process, identify why persons receive a Notice of Violation but also provide options to address the problem – for both the complainant and the property owner.
2. In addition to telephone numbers, adding City staff email addresses (if not already included) and the website address to the Notice of Violation, encouraging interaction, while emphasizing solving the problem and correcting the violation.
3. The new online code violations page should, if possible, be as transparent as possible, with a link to each property and notice, allowing the property owner as well as complainants to log in for up-to-date information.
4. The webpage would provide education on the code enforcement process for everyone, including suggested language to help resolve the problem, rather than focusing only on the dispute or on notices, citations and court dates.
5. Residents or businesses receiving notices of violations could select options, in a seamless and understandable format, such as:
 - a. Questions for the City regarding the Notice of Violation;
 - b. Whether the defendant admits, denies or partially denies the violation (and what parts, if any, they deny);

- c. Any concern with the deadline on the Notice and any other proposed timeline, identifying reasons for that change;
 - d. Any request for further consideration based on selected options, such as a town or city error or inaccuracy, lack of ability to pay, health, other inability, related problems or a revised timeline;
 - e. A chance to provide further information; and/or
 - f. Allowing further discussion, with a specific date and time proposed.
6. The online page completed by the defendant would open a dialogue, as City staff would respond and specify:
- a. The City's acknowledgment, if there is no dispute and the business or resident accepts the timeline in the notice, verifying a proposed date for re-inspection;
 - b. If the defendant proposes a new timeline, acceptance, rejection or suggested modification (subject to the property owner's response);
 - c. Responses to concerns such as incapacity, health, other need for more time, lack of funding or the like;
 - d. Answers to any questions;
 - e. Responses to any date or time for additional communication; and/or
 - f. Final verification of a re-inspection date.
7. The interactive online system would not be limited to pre-selected options but would provide interactive options to encourage the city and the defendant to identify any remaining issues or questions, or new issues if they arise.

8. If the violation calls for a re-inspection, if at that time City staff conclude that violations remain, they can proceed as they normally would - -with a new notice or citation. While City staff would continue to physically post or deliver such notices, the defendant using the online system would now also be notified as an online user, thus immediately opening the door for further dialogue identifying remaining issues or proposals.

The online system could create a new page for second notices that focuses on ongoing problems rather than allowing a repeat of the same process with unnecessary delays. This specific page could provide options in light of the ongoing concerns, asking the defendant to specify:

- a. Reasons for the delay which led to the second Notice of Violation;
- b. Any dispute as to the problems identified in the second Notice;
- c. Any disagreement with the new deadline, identifying the basis and allowing a proposed revised deadline;
- d. Any further information to share with the town or city to explain why the problem remains unresolved;
- e. Any question for the City code enforcement officer; and/or
- f. Any request for a discussion, along with identified date and time.

2. City staff would respond to respond to the proposed timeline, verify agreement or to provide additional information, along with a proposed date and time for discussion.

Conclusion: More Available and Equal Access. This system would require no changes to the municipal infractions process. Thus, if violations remain, the City can issue a citation and pursue formal enforcement steps. The only difference is that this system would open

communication in new avenues by using online processes persons increasingly rely upon to allow conciliation with a separate page to open dialogue. Even when the City has issued a citation, the online system could still be useful, in providing a separate page, focused on responses related to the citation, just as in creating a separate page related to second notices of violation.

This online system would, in allowing equal access to all parties, provide flexibility for defendants as well as the City in working through all steps of the complaint – simply by giving options and keeping communications lines open through the additional online avenue. The webpage could be used to provide education, and if possible, information should also be open, such that complainants and other residents could check the city website for updates. Such an online system should be cost effective, convenient and increase access by helping to overcome language and time barriers, as the City could ensure the webpage is translated into other languages, and access would be asynchronous for everyone. Such a system would of course not resolve all code enforcement cases, such as those involving recalcitrant defendants or defendants with a genuine legal dispute or factual disagreement. Yet it would provide an additional avenue to open communication in moving towards problem solving, as well as narrowing the scope of ongoing disputes. Ultimately, this process could provide another way for the community to work together to address violations and solve problems, by using online processes everyone increasingly relies upon otherwise. This would result in a more effective enforcement process, while potentially even supporting a stronger sense of community.

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. Conflict management guidance can assist City staff in working to achieve that goal, without being sidetracked by needless disputes, and new use of online systems also hold the potential to provide more equal and available avenues of communication to create such dialogue.

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 this 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

APPENDIX SEVEN: SAMPLE MILITARY SERVICE AFFIDAVIT

IN THE DISTRICT COURT FOR MONTGOMERY COUNTY, MARYLAND

CITY OF GAITHERSBURG	*	
Plaintiff	*	
v.	*	Citation No.
	*	
NAME	*	
Defendant	*	
	*	
* * * * *		

AFFIDAVIT OF MILITARY INVESTIGATION

I, [name of staff], on behalf of the City of Gaithersburg, Plaintiff herein, solemnly affirm under the penalties of perjury and upon personal knowledge that the contents of this affidavit are true and says:

1. I am over 18 years of age and am the Code Enforcement Officer for the City of Gaithersburg who wrote these citations.
2. My work address is [address], Gaithersburg, Maryland [zip].
3. In compliance with the Service Members Civil Relief Act I believe, to the best of my knowledge, that the Defendant is not currently in the military service of the United States, as based upon the following:
4. The Defendant has been residing in the City of Gaithersburg at [Defendant residence] and I've interacted with her on multiple occasions since [date of first contact] by contacting her at that address and speaking with her personally. [Add other contacts as known or relevant]. Defendant is not known to be in active or military service of the United States, in part by reason of her being in the community on a day to day basis here in the City.

Date:

NAME
Code Enforcement Officer
City of Gaithersburg, Maryland