

..title

ORDINANCE AMENDMENT AMENDING ARTICLE VIII, SECTION 62, TO THE NEW HAVEN CODE OF ORDINANCES TO AUTHORIZE THE ZONING ENFORCEMENT OFFICER OR DEPUTIES TO ISSUE ZONING VIOLATION FINES.

..body

WHEREAS: there is a need for the City of New Haven to strengthen its zoning ordinances to include needed and explicit powers from the State legislature, to enable it to develop solutions to address zoning violation fine; and

WHEREAS: the current New Haven Zoning Ordinance does not provide a mechanism to impose fines for zoning violations, thereby limiting the City's ability to enforce compliance with zoning regulations; and

WHEREAS: the absence of fines for zoning violations undermines the City's efforts to address violations that negatively impact residents' quality of life; and

WHEREAS: the proposed amendment to Article VIII, Section 62 of the New Haven Zoning Ordinance seeks to correct this by establishing a fine of one hundred fifty dollars (\$150) for each violation, with an additional one hundred fifty dollars (\$150) for each day such violation continues, pursuant to Connecticut General Statutes Section 8-12a; and

WHEREAS: the proposed amendment further clarifies and defines zoning violations, including but not limited to unlawful construction and land use, and holds property owners accountable for compliance; and

WHEREAS: provides that uncontested fines shall be payable within fifteen (15) days, while ensuring due process through a clear appeals process and the right to challenge citations; and

WHEREAS: this ordinance amendment has been developed with input and collaboration from the City Plan Department, the Office of the Corporation Counsel, and the Building Department; and

WHEREAS: this an essential step toward improving accountability, strengthening enforcement mechanisms, and preserving the standards that safeguard the quality of life in neighborhoods across the City of New Haven;

NOW, THEREFORE, BE IT ORDAINED by the New Haven Board of Alders that Article VIII, Section 62 of the New Haven Zoning Ordinance is hereby amended and be approved as follows:

Section 62. - Enforcement.

- (a) *Responsibility.* The Director of the Office of Building Inspection and Enforcement (OBIE) shall be the Zoning Enforcement officer (ZEO) and shall have the authority to enforce the provisions of this ordinance. The director may deputize one or more staff members as well as members of other city departments who have a particular skill or competence to act for

the director, and the term ZEO as used elsewhere in this ordinance shall be deemed to include such deputies, but no order or other enforcement action shall be issued unless approved and signed or countersigned by the director or designated OBIE staff.

- (b) *Interpretation.* The Zoning Enforcement Officer (ZEO) shall give information upon request as to the provisions of this ordinance, and shall interpret the meaning of the ordinance in the course of enforcement.
- (c) *Review of construction plans.* In all cases where a building permit is required, and in all other cases of construction or **use** where any provision of the zoning ordinance is involved, appropriate plans shall be filed in duplicate, subject to the provisions of the Building Code and to such other rules as the Zoning Enforcement Officer (ZEO) shall prescribe, sufficient in scope and character to determine that all relevant requirements of the zoning ordinance have been met. No building permit shall be issued until the ZEO has determined and certified that such plans comply fully with the zoning ordinance. In cases where the particular skill or competence of some other City Department is relevant to an evaluation of the plans under the zoning ordinance, the ZEO may refer such plans to such department for a report. Other City departments shall take cognizance of the zoning ordinance before issuing permits under their own jurisdiction.
- (d) *Inspections.* The Zoning Enforcement Officer (ZEO) is authorized to inspect or cause to be inspected any **building** or other **structure** or any land on which work is in progress, and to order the stoppage of any work being done in violation of the zoning ordinance. The ZEO shall inspect or cause to be inspected such premises after work is completed, and shall not issue a certificate of occupancy (C of O) until such final inspection has been made, except that a temporary certificate of occupancy (C of O) may be issued in an appropriate case before work is completed, for a period of not more than six months.
- (e) *Certificates of occupancy.* No **structure** or land or part thereof shall hereafter be occupied or used, in any case of establishment of a new **use**, extension or alteration of a **use**, or conversion from one use to another **use**, until the **Zoning Enforcement Officer (ZEO)** shall issue a certificate of occupancy (C of O), certifying that the zoning ordinance has been complied with in full. Upon request of the owner or tenant or any conforming or nonconforming **use** already established, the ZEO shall issue a certificate of occupancy (C of O) stating the exact status of such **use**. In the case of other uses already established, the **ZEO** may carry on such programs of registration of **uses** and issuance of certificates of occupancy (C of O) as deemed appropriate.
- (f) *Enforcement of regulations before or after issuance of a certificate of occupancy.* A violation shall be considered a violation of the Zoning Regulations of the City of New Haven.
 - (1) The Zoning Enforcement Officer shall institute any appropriate action or proceeding to prevent (a) the unlawful erection, construction, alteration, repair or conversion of any building or structure, or parcel of land; (b) the unlawful erection, construction, alteration, repair or conversion of landscaping, fencing, grading, paving, excavation or other site improvement; (c) a violation of a condition of approval; or (d) use of land or buildings in a manner inconsistent with approved plans in order to restrain, correct or abate such violations; to prevent the occupancy of said building, structure or land; or to prevent any illegal act, conduct, business or use in or about the premises. Whenever such acts shall be in contradiction to the

provisions of these regulations, penalties shall be as provided by the General Statutes.

- (2) In addition, any violation or attempted violation of these regulations or of any condition or requirement adopted pursuant hereto may be restrained, corrected, or abated, as the case may be, by all applicable remedies pursuant to the laws of the State of Connecticut.
- (3) The remedies of the City of New Haven shall include, but are not limited to, the following:
 - a. Issuing a cease and desist order for any and all work in progress where a violation occurs
 - b. Seeking an injunction or other order of restraint or abatement that requires the correction of a violation
 - c. Seeking in court the imposition of any penalties for a violation that can be imposed by such court
 - d. In the case of a violation that poses an immediate danger to the public health or safety, taking such measures as are available to the City of New Haven under the applicable provisions of the local and state law for such circumstances;
 - e. Imposing any penalties, including financial and/or criminal penalties, that can be imposed by the City of New Haven as outlined in subsection (j) below;
 - f. Other such remedies as are and as may from time to time be provided for or allowed by state law for a violation of this Zoning Ordinance.
- (g) *Administrative regulations.* The Zoning Enforcement Officer (ZEO) shall have the power to adopt such administrative regulations as deemed necessary to the carrying out of these enforcement responsibilities, which regulations shall have general applicability to cases of similar character.
- (h) *Other duties.* The Zoning Enforcement Officer (ZEO) may perform such other duties as are necessary to carry out the provisions of this ordinance, and shall have the same powers, duties and privileges, with respect to the zoning ordinance, as are applicable to an officer acting under the State Building Code. The ZEO shall maintain permanent and current records, prescribe such rules and forms as deemed necessary, refer appropriate cases to the Board of Zoning Appeals under section 63, investigate complaints and carry on an inspection program throughout the city, and issue written orders for compliance with the zoning ordinance, subject to the penalties for owner, agent, lessee, tenant, architect, builder, contractor or other person, as prescribed in ARTICLE XIII Sec. 2(G)-(H) of the New Haven Charter. The ZEO shall also maintain a current register of nonconforming uses under section 67 of this ordinance, and regulate the registration of nonconforming uses.
- (i) *Appeals.* An appeal from an administrative order of the Zoning Enforcement Officer (ZEO) issued pursuant to Sec. 8-12 of the Connecticut General Statutes may be taken to the Board of Zoning Appeals as provided in section 63, except that an appeal of an administrative order of the ZEO enforcing the orders and regulations of the Historic District Commission shall be to the Superior Court as provided by section 54 of the Zoning Ordinance. An

administrative order issued pursuant to 8-12a of the Connecticut General Statutes may be appealed pursuant to the process outlined in subsection (J)(g) below.

J. *Fines.*

- (1) *Violations designated.* Pursuant to Section 8-12a of the Connecticut General Statutes, as amended, and Public Act 96-210, any violation of a zoning regulation adopted pursuant to special act, shall be subject to a citation for a violation of this article. A violation of this article shall include but not be limited to:
 - a. Any building or structure which has been erected, constructed, altered, converted or maintained in violation of any zoning regulation; or
 - b. Any building, structure or land which has been used in violation of any zoning regulation; or
 - c. Any violation of any regulation concerning signage or excavation; or
 - d. A violation of any other zoning regulation.
- (2) *Each occurrence to be separate violation.* Each occurrence of a violation of any zoning regulation, and each such day that such violation shall continue, shall constitute a separate violation and shall be subject to a separate penalty. The Zoning Enforcement Officer (ZEO) shall not be responsible for a daily re-inspection; rather the person to whom the citation has been issued shall be responsible for reporting subsequent compliance to the ZEO. The ZEO shall re-inspect to confirm compliance within 24 hours of such report.
- (3) *Fine Amount.* The fine for a violation of this article shall be \$150 for each such occurrence of a violation and an additional \$150 for each such day that such violation continues, as defined above or maximum allowed by the Connecticut General Statutes. Said fines shall be payable to the Treasurer of the City of New Haven.
- (4) *Payment of uncontested fines.* All payments of uncontested fines for a violation of this article shall be made within fifteen (15) days of the date of issuance of the citation. Fines which are not paid or appealed within said fifteen (15) days of the date of issuance of the citation shall be deemed an admission of liability, in accordance with the citation hearing procedure below. Payment shall be deemed to be made on the date that it is received by the City of New Haven.
- (5) *Effect on statute or common law.* No municipal fine or penalty imposed by this article shall preclude any enforcement action or legal remedy provided by Section 8-12 or any other appropriate section of the Connecticut General Statutes or at common law.
- (6) *Enforcement.* This article shall be enforced by the Zoning Enforcement Officer (ZEO) or deputies.
- (7) *Procedures for violations including citation hearing procedure.* The citation hearing procedure shall apply to citations issued for a violation of this article, except that no Zoning Enforcement Officer (ZEO), Building Inspector or employee of the City of New Haven exercising zoning authority may be appointed to be a hearing officer on such matters.

- a. *Citation/Penalties.* If the owner fails to remove, correct or abate the violation within fifteen (15) calendar days after receiving a notice of violation the city shall send a written civil citation to the owner of the premises. However, if the owner, within fifteen (15) day period, demonstrates to the ZEO that they intend in good faith to abate the zoning violation, but the owner needs additional time to remove, correct or abate the violation, then the ZEO, in their discretion, may issue a written stay of the enforcement of the citation and the enforcement of any fines imposed against the owner of up to fifteen (15) days. Such stay shall be expressly conditioned upon the abatement of the zoning violation(s) at the premises within a specified period of time not to exceed an additional fifteen (15) days, unless the owner requests in writing to the Building Official within the time specified by the ZEO that the stay should be extended for an additional period of time, in which case, the Building Official may extend such stay in writing for an additional time not to exceed sixty (60) days. If the conditions of the stay have not been met within the specified time period, or the time period as it may be extended, as provided above, the stay will be terminated and all fines assessed against the owner shall be enforced against the owner in accordance with this section and such fines shall be effective from the date fifteen (15) days from the date of the citation. The citation may be served upon the owner by personal in-hand service or delivery or sent to the owner by mailing such citation to the owner's last known address by first class mail or certified mail, return receipt requested. The civil citation shall provide the owner with the following information:
1. The zoning violation(s) alleged against them and the amount of the proposed fines per day of continued violation of the ordinance;
 2. That they may contest their liability before the city's duly appointed hearing officer by delivering written notice in person or by mail to said Hearing Officer c/o the City of New Haven Building Official, Office of Building Inspection and Enforcement (OBIE), Hall of Records, 200 Orange Street 5th floor, Room 501, New Haven, CT 06510.
 3. The notice of assessed fine shall be brought to Superior Court for certification and upon certification by the Court shall constitute a civil judgement against the owner and the property;
 4. That the civil judgment may be enforced as prescribed by Connecticut General Statutes, Section 7-152c, and that a levy of execution may issue without further notice to the person against the civil judgment has issued.
- b. *Hearing officer.* The mayor shall appoint one or more hearing officer(s), who shall not be a city employee, to conduct the hearings authorized by this section. Such hearing officer shall serve without pay. The mayor may remove any such hearing officer at any time for whatever reason he/she deems sufficient.

- c. *Resolution conference.* Within seven (7) days of the date of the service or mailing date of a notice of violation of this article, any person receiving such notice may request a resolution conference with the Zoning Enforcement Officer (ZEO). The purpose of the resolution conference is to determine whether the owner is willing and able to correct the violation. Neither the request for, nor the scheduling of a resolution conference shall toll or abate the service of a civil citation upon the owner, the imposition of fines, or the time period to demand a hearing before a citation hearing officer. However, at the resolution conference, the person receiving the notice of violation may request an extension (also provided in writing) of a reasonable amount of time to correct the violation. The ZEO may grant this request in such officer's sole discretion and so notify the person of the extension in writing. If the violation is corrected within the time granted by the ZEO, the ZEO may waive some or all fines imposed. Notwithstanding the foregoing, the provisions of this section shall not apply to violations causing an immediate and significant danger to others. A request for a resolution conference shall not be deemed an admission of liability in any administrative or judicial proceeding. The notice of violation shall inform the property owner of the provisions of this section delivered by certified mail.
- d. *Appeal;* hearing procedure for citations. If an owner who is sent notice pursuant to Section (i) above wishes to admit liability for any alleged violation, they may, without requesting a hearing, pay the full amount of the fine(s) admitted to, in person or by mail to the city by delivering it to the ZEO or a deputy zoning enforcement officer. Said ZEO shall thereupon enter and assess the fine(s) so provided for, and shall follow the procedures set forth in this ordinance for obtaining a court judgment. Any owner who requests a hearing shall be given written notice of the date, time and place for the hearing. Such hearing shall be held not less than fifteen (15) days nor more than thirty (30) days from the date of the mailing of the notice, unless the owner requesting the hearing agrees to an earlier date. The hearing officer shall grant upon good cause shown any reasonable request by any interested party for postponement or continuance. The city shall present at the hearing the original notice of violation, or a certified copy of such notice, issued by the ZEO, and such original or certified copy shall be deemed to be a business record within the scope of Connecticut General Statutes, Section 52-180 and evidence of the facts contained therein. The ZEO may, but is not required, to appear at the hearing, but shall be required to appear if the owner specifically requests the enforcement officer's presence. An owner who wishes to contest their liability shall appear at an in-person hearing, and may present evidence on their behalf, or the owner may request that the hearing be conducted by video conference. If the zoning enforcement officer is not able to attend the hearing, and their presence has not been specifically requested by the owner, a designated city official, other than the hearing officer and other than the zoning enforcement officer, may present evidence

on behalf of the city. If the owner fails to appear, or fails to request a hearing within the timeframe set forth herein, the hearing officer may enter a default upon finding of proper notice and liability under applicable law. The hearing officer shall conduct the hearing in the order and form, and with such methods of proof as he/she deems fair and appropriate. The rules regarding the admissibility of evidence shall not be strictly applied, but all testimony shall be given under oath or affirmation. The hearing officer shall announce their decision at the end of the hearing, or by written order, within thirty (30) days, if, in the determination of the hearing officer, the issues raised at the hearing require additional time for evaluation and review. If the owner demonstrates that they intends to abate the zoning violation, by the submission of documentation such as an application for Zoning relief from the Board of Zoning Appeals (BZA), construction plans, permits and the availability of sufficient funds to pay for such work satisfactory to the hearing officer, then the hearing officer shall stay the matter and enter their determination in writing accordingly. Said stay shall be expressly conditioned upon the abatement of the zoning violation or demolition of the premises within a specified period of time not to exceed ninety (90) days, unless the ZEO Officer requests in writing to the hearing officer within the time specified by the hearing officer that the stay should be extended for an additional period of time, in which case, the hearing officer shall extend such stay for the additional time requested by the ZEO. If the conditions of the stay have not been met within the specified time period, or the time period as it may be extended, as provided above, the hearing officer shall enter and assess the fines against the owner as provided in this ordinance retroactive to the date of the hearing. If they determine that the person is not liable, the hearing officer shall dismiss the matter, and enter their determination in writing accordingly. If the hearing officer determines that the person is liable for the violation(s), the hearing officer shall forthwith enter and assess the fines against such owner, and levy such fines as provided for herein. The hearing officer shall forward a notice of assessment to the ZEO for further action. If such assessment is not paid on the date of its entry, the ZEO shall send by first class mail a Notice of Assessment to the Owner found liable and shall file, not less than thirty (30) days nor more than twelve (12) months after such mailing, a certified copy of the Notice of Assessment with the Clerk of the Superior Court, Housing Session, 121 Elm Street, New Haven, CT 06510, together with the appropriate entry fee. The certified copy of the Notice of Assessment shall constitute a record of assessment. Within such twelve (12) month period, assessments against the same person may be accrued and filed as one record of assessment. The clerk shall enter judgment, in the amount of such record of assessment with appropriate court costs against such owner in favor of the city. Notwithstanding any other provision of the General Statutes, the notice of Assessment, when entered as a court judgment, shall have the effect of a civil money judgment and a levy

of execution on such judgment may issue without further notice to such owner. An owner against whom an assessment has been entered pursuant to this ordinance is entitled to judicial review by way of appeal. An appeal must be instituted within thirty (30) days of the mailing of the notice of such assessment by filing a petition to reopen the assessment, together with an entry fee with the Clerk of the Superior Court, Housing Session 121 Elm Street, New Haven, CT 06510, which shall entitle such person to a court hearing.

- e. *Waiver of fines.* The ZEO or hearing officer may waive and release fines and liens, or release part or all of the fines and liens if in the ZEO or hearing officer's opinion, the owner has acted in good faith to address the zoning violation(s) and has been unable to completely resolve the violation.
 - f. *Funds.* The fines will be placed in city's General Fund payable to the Treasurer of the City of New Haven.
 - g. *Rules and regulations.* The Building Official may promulgate rules and regulations providing for the reasonable interpretation of the terms of this section, and for the day-to-day conduct of the investigation and enforcement under this section, so long as such rules and regulations do not exceed the scope of this section.
 - h. *Consistency with other enforcement methods.* This section is intended to be enforced and applied in a manner consistent with other available administrative remedies for the enforcement of zoning violations but is not intended to be exclusive of such other remedies, penalties or enforcement actions which may be available to the city.
- (8) *Penalty for filing false report.* Any person who knowingly files a false report of a zoning violation may be subject to a fine of up to \$150 for each such report.