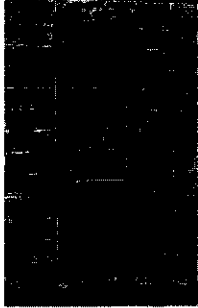


ENFORCEMENT OF ZONING & OTHER LOCAL LAWS

New York State Department of State

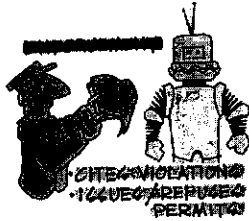
Topics to be covered

- Legal authority
- The enforcement official
- What is enforced
- Enforcement triggers & process
- Stays of enforcement
- Zoning Board of Appeal
- Court proceedings
- Penalties & remedies



Police power

- Legitimate governmental purpose:
 - Foster health, safety & welfare
 - Maintain neighborhood property values
 - Aesthetics
 - Considered a legitimate purpose for land use regulation



Statutory authority

- Enact local laws & ordinances
 - Regulate land use & design
 - Protect & enhance the physical & visual environment
- Zoning enabling statutes
 - With zoning must have:
 - Zoning Board of Appeals (ZBA)
 - Zoning Enforcement Officer (ZEO)
- Municipal Home Rule Authority

Zoning Enforcement Officer (ZEO)

- A ZEO enforces zoning
- A Code Enforcement Officer (CEO) enforces NYS Uniform Fire Prevention & Building Code
- Our focus is on the enforcement of zoning
 - NOT "Uniform Code" enforcement
- Sometimes one person holds both jobs
 - Separate powers, duties & responsibilities

Uniform Code & the CEO

Penalties for violating the "Uniform Code"

Up to \$1,000 per day fine & one year of jail time, OR

Fines, jail & injunctions

Executive Law §382

- NYS Uniform Fire Prevention & Building Code
 - CEO
 - Special training required
 - Certification
 - Continuing education credits
- Appeals of CEO decisions made to Regional Review Boards
 - Not Zoning Board of Appeals

Establish ZEO position

- Typically created in the zoning law or ordinance
- ZEO represents the municipality regarding land use regulation & enforcement
- Serves as the primary contact for applicants

Town Law §138

Such inspector shall have charge of such codes, ordinances, rules and regulations of town and of zoning ordinance of the town.

Sharing code & zoning officers

- Multiple municipalities joining together may generate enough work to:
 - Justify a full-time professional
 - Health insurance & retirement credit
 - Add staff to provide broader range of expertise
 - Allow staff to specialize
 - Maintain local control of building permits
 - Employ ZEO who is also certified as CEO
 - Makes municipal insurance carrier happy☺

When acting under intermunicipal agreement, public officer must meet residency requirements of one participating municipality.

Possible ZEO responsibilities

Administrative

- Acquire, prepare & distribute forms
- Receive applications
- Maintain records of administrative actions
- Make determinations regarding compliance
 - zoning & other land use laws

Enforcement

- Receive complaints
- Conduct investigations & inspections
- Take necessary zoning enforcement actions

What is enforced?

- Zoning law or ordinance requirements
 - ZEO may not modify or waive zoning regulations & is limited to enforcing law as written
- Conditions of land use approval, for example:
 - Landscaping required through site plan review
 - Limit number of cars parked overnight at auto repair shop upon issuance of a Special Use Permit
- Other local laws or ordinances
 - Examples: Flood protection or sign control laws

Other laws CEO might enforce

Variety of laws generally known as "property maintenance laws"

Municipalities can adopt local laws regulating junk, litter, and other property maintenance issues.

For example:

Use of cargo containers for storage

Shoveling & maintenance of sidewalks

Unsafe Building laws

The Uniform Fire Prevention & Building Code has a Property Maintenance section

General Municipal Law §136

Applies to any place of storage or deposit of two or more vehicles which are:

unregistered, old, or secondhand motor vehicles no longer intended or in condition for legal use on the public highways

Does not apply to municipalities with own junk yard regulations

Must consider proximity to churches, schools, hospitals, public buildings, and places of public gathering

Penalties established by law

Property Maintenance Code §302.8

"... two or more inoperative or unlicensed motor vehicles shall not be parked, kept or stored on any premises, and no vehicle shall at any time be in a state of major disassembly, disrepair, or in the process of being stripped or dismantled..."

NOT apply to licensed junk yards

Local governments can seek permission to be more restrictive

True or False?

A ZEO may serve as member of that municipality's ZBA

False

- The offices are incompatible since ZBA's job is to rule on appeals of ZEO's decisions
- However, ZEO may usually serve on Planning Board without an incompatibility of office occurring

What triggers enforcement?

- Report of Municipal Official
- Citizen Complaint
 - Establish policies regarding citizen complaints
 - Are complaints FOIL-able?
 - Yes, but complaint form may be redacted to hide complainant's identity
 - Develop a follow-up process
- Observation of enforcement officer
 - Camera with time & date stamp is helpful



Inspection

Valid Permission is needed to conduct private property inspection not visible from road, adjoining property, or air

Without permission, search warrant needed

- Warrant may not be required if defendant does not have reasonable expectation of privacy in area that is subject of search
 - For example:
 - Entry upon plaintiff's yard without warrant or consent to abate nuisance
 - Warrantless inspection of backyard from driveway

Possible inspection results

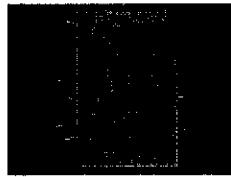
- Activity described is permitted on property
- No evidence of illegal activity found
- Owner willing to voluntarily eliminate violation
- Normal administrative proceedings initiated
- Matter described appears to be controlled by deed restrictions; therefore, it is a private matter

Chambers v. Old Stone Hill Associates, 1 N.Y.3d 424 (2004).

When violations are observed

ZEO notifies owner or tenant of the violation

1. Persuasion: telephone, personal contact
2. Letter: notice of violation
3. Corrective action: revocation of permits, issuance of stop work order



Keep record of contacts, inspections, & enforcement actions

Stop Work Order

Violator's options after receiving stop work order:

- Correct violation
- Seek legislative relief
 - Ask governing board to amend applicable law or ordinance

Appeal zoning matter ZBA



When ZEO won't act

Town Law § 268.2:

Resident taxpayers can participate in enforcement of zoning ordinances or laws where town authorities failed or declined to act.

- If town fails to abate violation within 10 days after receiving written notice by resident taxpayer, then any three town taxpayers residing in same zoning district where violation is allegedly occurring may bring action to enjoin the activity
- No similar provision exists for villages or cities
- Or, appeal to the ZBA

Who may appeal ZEO's decision?

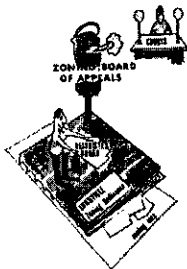
"Aggrieved Parties" may be:

- Recipient of enforcement action
- Recipient of permit denial
- Third-party believing permit improperly issued

- To be an eligible third party they must:
 - suffer "special damages" or
 - live close to subject property, or
 - be an officer of municipality, or
 - represent a department, board or bureau of the municipality

- Town Law §267-a(4)
- Village Law §7-712-a(4)
- General City Law §81-a(4)

Appealing the ZEO's Decision



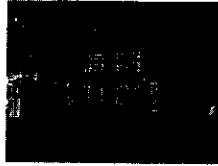
- ZBA acts as buffer between person aggrieved by decision of ZEO & courts
- If ZBA fails to get majority vote to overturn ZEO's decision, then decision stands

Timelines for appeals

Aggrieved parties must file notice of appeal within 60 Days after ZEO files decision in his/her office

Appeal can be filed by letter or municipal form
 Copies to ZEO & ZBA

For Third Party Appeals, 60 day period commences from time neighbor knew or should have known permit was issued



Types of appeals to ZBA

Interpretation

ZEO read or applied law

Area Variance

ZEO read law correctly, but zoning should be varied due to dimensional problem

Use Variance

ZEO read law correctly, but due to unnecessary hardship variance should be granted to allow use of property contrary to zoning

Not an appeal of the NYS Uniform Fire Prevention & Building Code

Role of ZEO at ZBA hearing

ZEO may be requested to give testimony at ZBA hearing by providing information about the following:

ZEO's observations of property

actions taken by the ZEO or by the property owner or tenant

applicable zoning provisions

previous variances or special use permits granted for this property & other similarly situated properties.

Automatic Stay Provision

- An appeal stays enforcement proceedings that are underway, for example:
 - ZEO believes Bob built garage too close to property line
 - ZEO cites Bob for violation with stop work order
 - Bob appeals ZEO's action to ZBA
 - ZEO cannot issue another stop order or go to justice court while appeal continues
 - If Bob continues to build while appeal is pending, he does so at his own risk
 - May have to tear it down or move it if loses on appeal



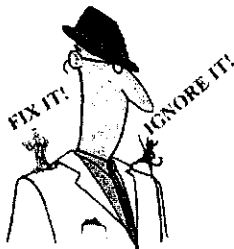
Lifting the stay

- Stay can be lifted
 - ZEO certifies to ZBA that stay would cause imminent peril to life or property
- Certificate of imminent peril can only be vacated by restraining order granted by ZBA
 - or if court re-imposes stay



- Town Law §267-a(6)
- Village Law §7-712-a(6)
- General City Law §81-a(6)

After the appeal



- If applicant loses appeal, violation should be corrected
- If not corrected, enforcement action proceeds
- Violator can be fined or imprisoned

Two type of proceedings

Criminal	Civil
<ul style="list-style-type: none"> <input type="checkbox"/> Commence a criminal proceeding <input type="checkbox"/> Fine or penalty <input type="checkbox"/> Incarceration <input type="checkbox"/> Beyond a reasonable doubt 	<ul style="list-style-type: none"> <input type="checkbox"/> Bring suit against another party <input type="checkbox"/> Seek an injunction <input type="checkbox"/> Court order to "abate" an activity or action <input type="checkbox"/> Preponderance of evidence

Classify offenses of zoning violations

- All legal wrongdoings are called offenses
 - Violation:
 - Imprisonment of 15 days or less
 - Fine not to exceed \$250
 - Not a crime
 - No right to jury trial
 - Misdemeanor:
 - Imprisonment exceeds 15 days, but less than 1 year
 - Is a crime
 - Jury trial optional with defendant

Penalties provided in Town Law §268

Offense	Fine	Sentence
1st	\$350 Maximum	6 Months
2nd	\$360-\$700	6 Months
3rd	\$700-\$1,000	6 Months

Each week a violation continues could constitute separate additional violations

Provide for penalties locally

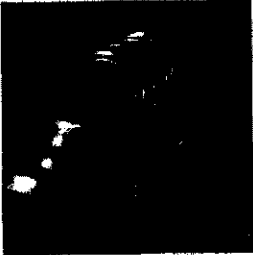
<ul style="list-style-type: none"> <input type="checkbox"/> The use of Town Law §268 exclusively can lead to jury trial <input type="checkbox"/> Town should adopt own fines & jail time in local law <input type="checkbox"/> Town Law §135 <input type="checkbox"/> AG Opinion No. 2005-18 <input type="checkbox"/> MHRL §10(1)(ii)(4)(b) 	<ul style="list-style-type: none"> <input type="checkbox"/> City or village must provide penalties in local law or ordinance <input type="checkbox"/> If not, penalties are determined by classification of offense <input type="checkbox"/> AG Opinion No. 2004-14 <input type="checkbox"/> MHRL §10(1)(ii)(4)(b)
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Possible penalties

- Zoning offenses may provide punishment by:
 - Civil penalty
 - Fine
 - Forfeiture
 - AG Opinion 2004-14
 - Imprisonment
 - Combination of punishments
 - MHRL §10(1)(ii)(4)(b)

Which courts handle these proceedings?

- Civil
 - State Supreme Court
- Criminal
 - Town Court
 - Village Court
 - District Court
 - Long Island
 - City Court



Injunction

- Usually used for civil enforcement
 - Preliminary Injunction
 - Purpose: maintain "status quo" pending final decision on lawsuit
 - Government must show likelihood of success & balancing of equities
 - Permanent Injunction
 - Issued by State Supreme Court
 - After municipal claim is sustained

Temporary restraining order

- Usually used for civil enforcement
 - Issued by Supreme Court
 - Cannot be issued by Town & Village Courts
- Emergencies
 - May be issued ex parte
 - Out of presence of property owner
- City courts may also issue temporary restraining orders & preliminary injunctions
 - City Court Act §209

Getting violator to court

- Provide mechanism for getting violator into court:
 - Appearance tickets
 - Municipal Home Rule Law §10(1)(ii)(4)(a)
 - In criminal proceedings the ZEO files an accusatory instrument with the court:
 - Information/complaint
 - Written accusation filed with a criminal court
 - Supporting depositions
 - Summons
 - Arrest warrant

Getting violator to court

- Substitute service allowed for serving appearance tickets for building code & zoning violations
 - Civil Practice Laws & Rules §308
- Problems using substitute service in criminal context
 - Does not overcome jurisdictional limitation of appearance tickets
 - County in which offense was committed or adjoining county
 - Criminal Procedures Law §150.40(3)

Who prosecutes violations

- District Attorney: Primary responsibility
 - County Law §700(1)
- Municipal Attorney:
 - Traditionally delegated responsibility
 - Should confirm delegation in writing
 - Must file oath of office with county clerk as assistant district attorney
- Enforcement Officer: Occasionally appears in court on behalf of municipality

Discriminatory enforcement claim

- Claimant must show:
 - "Unequal hand"
 - Law not applied to others similarly situated
 - "Evil eye"
 - Selective application of law was deliberately based upon impermissible standard such as race, religion, effort to suppress exercise of constitutional rights or individual malice
- In the Matter of 303 West 42nd Street Corporation v. Klein, 46 N.Y.2d 686 (1979); Bower Associates v. Tn of Pleasant Valley, 2 N.Y.3d 617 (2004)

New York Department of State

(518) 473-3355 Training Unit

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Series

A Model Local Resolution

**Whereby a Municipality Provides the
Services of a Building
Inspector/Zoning Enforcement Officer/
Code Enforcement Officer For
Another Municipality**

**Prepared by the NYS Legislative Commission
on Rural Resources
Legislative Office Building
Albany, New York 12247**

Intermunicipal Cooperation: Sharing of (Building Inspector, Zoning Enforcement Officer, Code Enforcement Officer)

At a regular meeting of the (City Council, Town Board, Village Board of Trustees) of the (City, Town , Village) of _____ duly held at the (City, Town, Village) Hall in such (City, Town, Village) on the _____ day of _____, 20___. Upon the calling of the roll by the clerk the following members were :

Present:

Absent:

The following resolution was offered for adoption by (Council Person, Trustee) _____, which resolution was seconded by (Council Person, Trustee) _____.

Resolution authorizing the (Mayor, Supervisor) to contract on behalf of the (City, Town, Village) of _____ with the (City, Town, Village) of _____ whereby the (city, town, village) will provide the services of (building inspector, zoning enforcement officer, code enforcement officer) for the (City, Town ,Village) of _____ by providing that the (city, town, village) (building inspector, zoning enforcement officer, code enforcement officer) will act as (building inspector, zoning enforcement officer, code enforcement officer).

Services as (building inspector, zoning enforcement officer, code enforcement officer) contract
Between (City, Town, Village) of _____ and (City, Town, Village) of
_____.

Whereas the (City, Town, Village) of _____ and the (City, Town, Village) of
_____ each have the power to regulate building construction, land use regulation and
subdivision regulations individually, they may, pursuant to the authority granted to each of them by Article
5G of the General Municipal Law, enter into agreements, one with the other, to provide that the (building inspector, zoning enforcement officer, code enforcement officer) of the (City, Town, Village) of
_____, perform the services normally provided by the (city, town, village) (building
inspector, zoning enforcement officer, code enforcement officer) for the City, Town, Village of
_____.

Now therefore be it resolved by the (city council, town board, village board of trustees) of the (City,
Town, Village) of _____ as follows:

§1. The (Mayor, Town Supervisor) is hereby authorized to sign a agreement on behalf of the (City, Town,
Village) of _____ with the (City, Town, Village) of _____ whereby
the (city, town, village) (building inspector, zoning enforcement officer, code enforcement officer) will
provide building inspection services and those services relating to the issuance of building permits, which
permits are required by the New York State Uniform Fire Prevention and Building Code and the land use
regulations of the (city, town, village) to the same degree and with the same effect as if the (city, town,
village) (building inspector, zoning enforcement officer, code enforcement officer) was the (city, town,
village) (building inspector, zoning enforcement officer, code enforcement officer) and pursuant to such
agreement such (building inspector, zoning enforcement officer, code enforcement officer) will have the
jurisdiction of a (city, town, village building inspector, zoning enforcement officer, code enforcement
officer) when performing duties pursuant to such agreement.

§2. That such agreement shall read as follows:

(Building Inspection , Zoning Enforcement Officer, Code Enforcement Officer Services)

1. The (City, Town, Village) of _____ agrees to perform within the (City, Town,
Village) of _____ with the personnel in the (city's, town's, village's) (building , zoning
enforcement, code enforcement) department all functions performed by such (building, zoning
enforcement, code enforcement) department within the (City, unincorporated area of the Town, Village)
of _____ which may be applicable to the (City, Town, Village) of _____ as
required by the New York State Uniform Fire Prevention and Building Code and the zoning and land use

regulations of the (City, Town, Village) of _____. The (city, town, village) (building, zoning enforcement, code enforcement) department may do additional work related to their particular areas of work when requested to do so by the (City, Town, Village) of _____ in writing at a charge to be agreed upon.

2. The (City, Town, Village) of _____ agrees to enforce within the (City, unincorporated area of the Town, Village) of _____, to the same degree and in the same manner as if performing such service in the (city, unincorporated area of the town, village) all the provisions of the New York State Uniform Fire Prevention and Building Code, the zoning and land use regulations of the (city, town, village) in the (city, town, village) and to make all inspections and to issue all permits and orders required in such enforcement. Such enforcement shall include all of the duties prescribed in the (city, town, village) (local laws, ordinances) rules and regulations relating to the New York State Uniform Building and Fire Prevention Code, the (city, town, village) zoning and land use regulations including the determination of those matters placed within the jurisdiction of the Board of Appeals by such (local laws, ordinances) rules and regulations and the furnishing of the evidence necessary in any prosecution of the violation of any local laws, rules or regulations relating to the New York State Uniform Fire Prevention and Building Code, zoning and land use regulations. In performing such work the officers and employees of the (City, Town, Village) of _____ shall have the powers and duties of (building inspectors, zoning enforcement officers, code enforcement officers) of the (City, Town, Village) of _____.

3. The (city, town, village) agrees to furnish the (city, town, village) building department all maps, forms, applications and other necessary papers, local laws, rules and regulations necessary to carry out the duties required by this agreement. It is agreed that the (City, Town, Village) of _____ shall provide all clerical work, provide office space and public counter service for the (city, town, village) including the storage of all records of the (city, town, village) relating to the performance of the duties as provided in this agreement. At the end of each month during the term of this agreement the records of the (building inspector, zoning enforcement officer, code enforcement officer) relating to his/her services when acting as a (city, town, village) (building inspector, zoning enforcement officer, code enforcement officer) shall be filed with the (city, town, village) clerk and copies of such records shall be on file in the office of the (city, town, village) (building inspector, zoning enforcement officer, code enforcement officer) during the term of this agreement.

4. The (city, town, village) agrees to furnish required furniture, and equipment necessary for the carrying out of the duties as agreed upon in this agreement. The extent and manner of equipping and furnishing are to be determined by the (city, town, village).

5. The (city, town, village) agrees to make reasonable efforts to collect the fees determined by the local laws, rules and regulations of the (city, town, village) relating to the inspection of buildings, the issuance of permits and any other fees collected in the performance of the duties as required under this agreement.

Fees collected shall be presented to the treasurer of the (city, town, village) on about the first day of each month.

6. The (City, Town, Village) of _____ shall pay all expenses for the performing of the services for the (city, town, village) including but not limited to salaries of officers and employees of the building department, vacation, sick leave, retirement, traveling expenses and overhead. The (city, town, village) shall annually determine the total amount to be paid for the services to be provided pursuant to this agreement and estimate the amount to be paid for the extension of the agreement for the next fiscal year and shall notify the (city, town, village) of such charge in writing no later than first day of January prior to the expiration of the agreement in order to enable the (city, town, village) to include such cost in the next succeeding (city, town, village) budget.

7. It is further agreed that the (city, town, village) shall provide appropriate liability insurance for all officers and employees performing work for the (city, town, village) under the terms of this agreement and that the (city, town, village) shall have no direct control over the work of the employees of the (city, town, village) and the (city, town, village) shall be responsible for the acts of the officers and employees of the (city, town, village) building department when performing duties for the (city, town, village) pursuant to the terms of this agreement. The officers and employees of the (city, town, village) when performing duties for the (city, town, village) for purposes of employee benefits, salaries and work rules shall be deemed to be employees of the (city, town, village).

8. This agreement shall be effective on _____ and shall continue in full force and effect until _____ unless terminated as provided in section nine hereof, this agreement shall be automatically renewed from year to year for successive one year periods thereafter.

9. This agreement may be terminated at the end of any term thereof by the (city, town, village) by giving a written notification of such intention to terminate to the other party before the expiration of the initial period of any succeeding one year period.

10. This agreement shall be subject to the provisions of the civil service law of the state of New York and all other laws of the state made and provided.

11. Should any party hereto fail to carry out the provisions of this agreement according to its terms and provisions, the other party shall give written notice of such default and should such default not be corrected within 30 days after the mailing of notice thereof this agreement may be terminated by the non defaulting party giving written notice thereof.

12. The amount to be paid to the (city, town, village) by the (city, town, village) for the period commencing _____ and ending on _____ shall be \$ _____ and such sum shall be paid in equal monthly installments of \$ _____, the first of which shall be paid upon the signing of this agreement.

IN WITNESS WHEREOF, the said (City, Town, Village) of _____ has by order of the (city council, town board, village board) caused these presents to be subscribed by the (Mayor, Supervisor,) and the seal of the (city, town, village) to be affixed and attested by the (city, town, village) clerk thereof, and the (city council, town board, village board of trustees) has caused this agreement to be subscribed by the (mayor, supervisor) and the seal of the (city, town, village) to be affixed and attested by the clerk of the (city, town, village) this _____ day of _____, 200__.

(City, Town, Village) of _____

By: _____
(Mayor, Supervisor)

Attest:

(City, Town, Village) Clerk

(City, Town, Village) of _____

By: _____
(Mayor, Supervisor)

Attest:

(City, Town, Village) Clerk

Approved as to form:

(City, Town, Village) Attorney

(City, Town, Village) Attorney

§3. This resolution shall take effect immediately.

A vote having been taken upon such resolution the result was as follows:

(Council person, Trustee)

Yes

No

(Mayor, Supervisor)

There being a majority of the (city council, town board, village board of trustees) voting to approve the resolution, the resolution was declared by the (mayor, presiding officer of the city council, supervisor) to have been adopted.

I, (City, Town, Village) Clerk of the (City, Town, Village) of _____ hereby certify that the above is a correct text of the resolution adopted by the (city council, town board, village board of trustees) of the (City, Town, Village) of _____ on the _____ day of _____, 20__ and that the above is the complete and whole text of such resolution.

(Seal)

(City, Town, Village) Clerk

Sections of relevant NYS Law

Penal Law § 80.05 Fines for misdemeanors and violation.

1. **Class A misdemeanor.** A sentence to pay a fine for a class A misdemeanor shall be a sentence to pay an amount, fixed by the court, not exceeding one thousand dollars, provided, however, that a sentence imposed for a violation of section 215.80 of this chapter may include a fine in an amount equivalent to double the value of the property unlawfully disposed of in the commission of the crime.

2. **Class B misdemeanor.** A sentence to pay a fine for a class B misdemeanor shall be a sentence to pay an amount, fixed by the court, not exceeding five hundred dollars.

3. **Unclassified misdemeanor.** A sentence to pay a fine for an unclassified misdemeanor shall be a sentence to pay an amount, fixed by the court, in accordance with the provisions of the law or ordinance that defines the crime.

4. **Violation.** A sentence to pay a fine for a violation shall be a sentence to pay an amount, fixed by the court, not exceeding two hundred fifty dollars.

In the case of a violation defined outside this chapter, if the amount of the fine is expressly specified in the law or ordinance that defines the offense, the amount of the fine shall be fixed in accordance with that law or ordinance.

5. **Alternative sentence.** If a person has gained money or property through the commission of any misdemeanor or violation then upon conviction thereof, the court, in lieu of imposing the fine authorized for the offense under one of the above subdivisions, may sentence the defendant to pay an amount, fixed by the court, not exceeding double the amount of the defendant's gain from the commission of the offense; provided, however, that the amount fixed by the court pursuant to this subdivision upon a conviction under section 11-1904 of the environmental conservation law shall not exceed five thousand dollars. In such event the provisions of subdivisions two and three of section 80.00 shall be applicable to the sentence.

6. **Exception.** The provisions of this section shall not apply to a corporation.

Penal Law § 70.15 Sentences of imprisonment for misdemeanors and violation.

1. **Class A misdemeanor.** A sentence of imprisonment for a class A misdemeanor shall be a definite sentence. When such a sentence is imposed the term shall be fixed by the court, and shall not exceed one year; provided, however, that a sentence of imprisonment imposed upon a conviction of criminal possession of a weapon in the fourth degree as defined in subdivision one of section 265.01 must be for a period of no less than one year when the conviction was the result of a plea of guilty entered in satisfaction of an indictment or any count thereof charging the defendant with the class D violent felony offense of criminal possession of a weapon in the third degree as defined in subdivision four of section 265.02, except that the court may impose any other sentence authorized by law upon a person who has not been

previously convicted in the five years immediately preceding the commission of the offense for a felony or a class A misdemeanor defined in this chapter, if the court having regard to the nature and circumstances of the crime and to the history and character of the defendant, finds on the record that such sentence would be unduly harsh and that the alternative sentence would be consistent with public safety and does not deprecate the seriousness of the crime.

2. **Class B misdemeanor.** A sentence of imprisonment for a class B misdemeanor shall be a definite sentence. When such a sentence is imposed the term shall be fixed by the court, and shall not exceed three months.

3. **Unclassified misdemeanor.** A sentence of imprisonment for an unclassified misdemeanor shall be a definite sentence. When such a sentence is imposed the term shall be fixed by the court, and shall be in accordance with the sentence specified in the law or ordinance that defines the crime.

4. **Violation.** A sentence of imprisonment for a violation shall be a definite sentence. When such a sentence is imposed the term shall be fixed by the court, and shall not exceed fifteen days. In the case of a violation defined outside this chapter, if the sentence is expressly specified in the law or ordinance that defines the offense and consists solely of a fine, no term of imprisonment shall be imposed.

Municipal Home Rule Law §§ 10(1)(ii)(4)(a)&(b). General powers of local governments to adopt and amend local laws.

4. In the exercise of its powers to adopt and amend local laws, the legislative body of a local government shall have power:

(a) To delegate to any officer or agency of such local government the power to adopt resolutions or to promulgate rules and regulations for carrying into effect or fully administering the provisions of any local law and to authorize issuance of an appearance ticket by a public servant who, by virtue of office, title or position is authorized or required to enforce any statute, local law, ordinance, rule or regulation relating to parking, licensing of occupations or businesses, fire prevention and safety, health and sanitation, and building, zoning and planning; provided however, that a peace officer may be authorized to issue an appearance ticket relating to enforcement of any statute, local law, ordinance, rule or regulation affecting the public health, safety and welfare.

(b) To provide for the enforcement of local laws by legal or equitable proceedings which are or may be provided or authorized by law, to prescribe that violations thereof shall constitute misdemeanors, offenses or infractions and to provide for the punishment of violations thereof by civil penalty, fine, forfeiture or imprisonment, or by two or more of such punishments, provided, however, that a local law adopted pursuant to subdivision two of this section shall provide only for such enforcement or punishment as could be prescribed if the action of the legislative body were taken by ordinance, resolution, rule or regulation, as the case may be.

Criminal Procedures Law: elected section on appearance tickets

§ 150.10 Appearance ticket; definition, form and content.

1. An appearance ticket is a written notice issued and subscribed by a police officer or other public servant authorized by state law or local law enacted pursuant to the provisions of the municipal home rule law to issue the same, directing a designated person to appear in a designated local criminal court at a designated future time in connection with his alleged commission of a designated offense. A notice conforming to such definition constitutes an appearance ticket regardless of whether it is referred to in some other provision of law as a summons or by any other name or title.

2. When an appearance ticket as defined in subdivision one of this section is issued to a person in conjunction with an offense charged in a simplified information, said appearance ticket shall contain the language, set forth in subdivision four of section 100.25, notifying the defendant of his right to receive a supporting deposition.

§ 150.20 Appearance ticket; when and by whom issuable.

3. A public servant other than a police officer, who is specially authorized by state law or local law enacted pursuant to the provisions of the municipal home rule law to issue and serve appearance tickets with respect to designated offenses other than class A, B, C or D felonies or violations of section 130.25, 130.40, 205.10, 205.17, 205.19 or 215.56 of the penal law, may in such cases issue and serve upon a person an appearance ticket when he has reasonable cause to believe that such person has committed a crime, or has committed a petty offense in his presence.

§ 150.50 Appearance ticket; filing a local criminal court accusatory instrument; dismissal of insufficient instrument.

1. A police officer or other public servant who has issued and served an appearance ticket must, at or before the time such appearance ticket is returnable, file or cause to be filed with the local criminal court in which it is returnable a local criminal court accusatory instrument charging the person named in such appearance ticket with the offense specified therein. Nothing herein contained shall authorize the use of a simplified information when not authorized by law.

