

LAND USE VIOLATION ORDINANCE

Be and it is hereby Ordained that

An ordinance adopted at Town Meeting held on October 25, 2005 entitled Civil Penalties for Violations and recorded at Volume T-6, Page 742 is repealed and the following Ordinance is adopted in lieu thereof.

Section 1. Appointment of Citation Hearing Officer(s)

A. The First Selectman shall appoint not more than two (2) Citation Hearing Officers to process citations issued, and to conduct hearings, pursuant to this Ordinance and to otherwise enforce the provisions of this Ordinance as contemplated by Section 8-12a, Section 22a-42g and Section 7-152c of the Connecticut General Statutes, as amended. The term of appointment shall be for a period of two years and shall be co-terminus with the term of office of the First Selectman. No Land Use Enforcement Officer, Zoning Enforcement Officer, Wetlands Enforcement Officer, Building Official or officer or employee of the Town of Sherman exercising zoning authority or wetlands authority may be appointed as a Citation Hearing Officer.

Section 2. Zoning Violations: Citation Authority of Land Use Enforcement Officer

A. For purposes of this Section 2, the Land Use Enforcement Officer is the person designated to act as the representative of the Planning and Zoning Commission in the enforcement of the Zoning Regulations of the Town of Sherman. The Land Use Enforcement Officer is the Zoning Enforcement Officer, but in the absence of the Land Use Enforcement Officer, the Planning and Zoning Commission may designate another person to temporarily act on its behalf under this ordinance.

B. The Land Use Enforcement Officer is authorized to issue a Citation for the violation of the Zoning Regulations of the Town of Sherman to the extent and in the manner provided by this ordinance and as authorized by Section 8-12a of the Connecticut General Statutes.

C. Any such Citation shall be served in one of the following ways: by in-hand service by the Land Use Enforcement Officer; by certified mail, personal return receipt requested and by regular mail, postage prepaid, both addressed to the person(s) named in the Citation; or by a State Marshal who shall serve the person(s) named in the Citation in hand, or by leaving a true copy of the Citation at the usual place of abode of such person(s) or by any other service authorized for the service of civil process in the State of Connecticut. A Citation sent by regular mail shall be deemed and considered received on the third business day following mailing. Marshal's service shall be effective at the time personal, abode or other service is made by the serving marshal. The Land Use Enforcement Officer shall file and retain a true and accurate copy of the original Citation so served, the date, place and manner of service and the date of mailing if service is by mail. If service is effected by a State Marshal, the Marshal's return of service shall be filed and retained by the Land use Enforcement Officer.

D. Except in unusual circumstances, the Citation shall be served upon the owner of the property giving rise to the zoning violation. A Citation may also be served upon any other person causing, contributing or participating in such zoning violation.

E. The fine for each such Citation shall be \$150.00. Each day that the violation remains uncorrected to the satisfaction of the Land Use Enforcement Officer after the date of service of the Citation shall be considered a separate offence subject to a \$150.00 fine up to a maximum of \$4,500.00. Notice of such additional daily accrual shall be included in the Citation, but service of subsequent additional citations shall not be required.

E. Any person receiving such a Citation shall be allowed a period of fifteen (15) days following service of the Citation to make an uncontested payment of the fine specified in the Citation. For purposes of calculating such fifteen day period, receipt of the copy of the Citation sent by regular mail shall be deemed to occur three (3) business days after the day of mailing.

Section 3. Wetlands Violations: Citation Authority of Land Use Enforcement Officer

A. For purposes of this Section 3, the Land Use Enforcement Officer is the person designated to act as the representative of the Inland Wetlands and Watercourses Commission in the enforcement of the Inland and Watercourses Wetlands Regulations of the Town of Sherman. The Land Use Enforcement Officer is the Wetlands Enforcement Officer, but in the absence of the Land Use Enforcement Officer, the Wetlands and Watercourses Commission may designate another person to temporarily act on its behalf under this ordinance.

B. The Land Use Enforcement Officer is authorized to issue a Citation for the violation of the Inland Wetlands and Watercourses Regulations of the Town of Sherman to the extent and in the manner provided by this ordinance and as authorized by Section 22a-42g of the Connecticut General Statutes.

C. Any such Citation shall be served in one of the following ways: by in-hand service by the Land Use Enforcement Officer; by certified mail, personal return receipt requested and by regular mail, postage prepaid, both addressed to the person(s) named in the Citation; or by a State Marshal who shall serve the person(s) named in the Citation in hand, or by leaving a true copy of the Citation at the usual place of abode of such person(s) or by any other service authorized for the service of civil process in the State of Connecticut. A Citation sent by regular mail shall be deemed and considered received on the third business day following mailing. Marshal's service shall be effective at the time personal, abode or other service is made by the serving marshal. The Land Use Enforcement Officer shall file and retain a true and accurate copy of the original Citation so served, the date, place and manner of service and the date of mailing if service is by mail. If service is effected by a State Marshal, the Marshal's return of service shall be filed and retained by the Land use Enforcement Officer.

D. Except in unusual circumstances, the Notice of Violation and the Citation shall be served upon the owner of the property giving rise to the wetlands violation. A Notice of

Violation and a Citation may also be served upon any other person causing, contributing or participating in such wetlands violation.

E. The fine for violation of the Inland Wetlands and Watercourses Regulations shall be as follows:

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| 1) No Permit: For regulated activity undertaken without wetlands permit that encroaches upon or impact upland regulated areas | \$250.00 |
| 2) No Permit: For regulated activity undertaken without wetlands permit that encroaches upon or impacts inland wetlands or watercourse | \$500.00 |
| 3) Permit Issued: For regulated activities that exceeds scope of wetlands permit and encroaches upon or impacts upland regulated areas | \$250.00 |
| 4) Permit Issued: For regulated activity that exceeds scope of wetlands permit and encroaches upon or impacts inland wetlands or watercourse | \$500.00 |
| 5) Permit Issued: For violation of permit conditions | \$150.00 |

Each day that the violation remains uncorrected shall be considered a separate offence. The Land Use Enforcement Officer may issue additional citations daily if the violation continues or remains uncorrected to his satisfaction.

Notwithstanding the foregoing, no fine may be levied against the State of Connecticut or any employee of the State acting within the scope of his State employment.

F. Any person receiving such a Citation shall be allowed a period of fifteen (15) days following service of the Citation to make an uncontested payment of the fine specified in the Citation. For purposes of calculating such fifteen day period, receipt of the copy of the Citation sent by regular mail shall be deemed to occur three (3) business days after the day of mailing.

Section 4: Enforcement and Assessment of Fine; Pre-Hearing Procedure

A. Notice: If the person to whom a Citation has been issued fails to make uncontested payment of the fine as specified in the Citation within the time allowed, at any time within ninety (90) days thereafter, the Land Use Enforcement Officer shall serve a Notice upon such person in the manner provided by Section 2(C) or Section 3(C) of this Ordinance informing such person:

(1) Of the allegations of the zoning or wetlands violation and the amount of the fine that is due;

(2) That such person may contest liability before a Citation Hearing Officer appointed by the First Selectman by delivering in person, or by mail, within ten (10) days of the date of the Notice, a written demand for a hearing. The Notice shall set forth the place, mailing address, telephone number and business hours where the written demand for hearing may be delivered.

(3) That if such person does not demand such a hearing, an assessment and judgment in the amount of the fine, together with any additional fees or court costs, shall be entered against such person; and

(4) That such judgment may issue without further notice.

B. Payment. If the person who is sent Notice pursuant to Section 4(A) of this Ordinance determines not to contest liability for the alleged zoning or wetlands violation and the fine assessed, he may pay the full amount of the fine without requesting a hearing. In such event, the fine shall be paid in good and sufficient funds within ten (10) days of receipt of such Notice, either in person or by mail, to the Treasurer of the Town of Sherman in accordance with the procedures established for such purpose. The fact of such payment shall be inadmissible in any subsequent civil, criminal or administrative proceeding for the purpose of establishing the conduct of such person or other person making the payment.

C. Demand for Hearing: If the person who is sent Notice pursuant to Section 4(A) of this Ordinance wishes contest liability for the alleged zoning or wetlands violation and the fine assessed, he shall deliver, in person or by mail, a written Demand for a Hearing within ten business (10) days of the date of service of the Notice. All Hearings and subsequent proceedings shall be conducted in accordance with the provisions of Sections 5 and 6 of this Ordinance.

D. Procedure: The First Selectman, in consultation with the Land Use Enforcement Officer shall establish uniform procedures for the receipt, recording and processing of all such written demands for hearing.

E. Failure to Make Payment or to Demand Hearing: Any person who fails to pay the fine and who fails to demand a hearing to contest liability within ten (10) days of receipt of the Notice issued pursuant to Section 4(A) of this Ordinance, shall be deemed to have admitted liability and consented to the assessment of the fine specified. Such person's failure to respond shall be certified to a Citation Hearing Officer who shall thereupon enter and assess the specified fine against such person and shall follow the procedures set forth in Section 7-152c(f) of the Connecticut General Statutes for the collection of such assessment/fine as a money judgment.

Section 5: Hearing Procedure

A. Any person who requests a hearing shall be given written notice of the date, time and place for the hearing. Such hearing shall be held not less than 15 days nor more than 30 days from the date of the mailing of notice, provided however, that the Hearing Officers shall grant, upon good cause shown, any reasonable request by an interested party for postponement or continuance. An original or a certified copy of the initial Notice of Violation and an original or a certified copy of the Citation, with proof of service as maintained by the Land Use Enforcement Officer shall be submitted and shall be deemed to be business records within the scope of Section 52-180 of the General Statutes and shall be evidence of the facts contained therein. The presence of the Land Use Enforcement Officer shall be required at the hearing if requested by the person who was issued the citation. A person wishing to contest liability shall appear at the hearing and

may present evidence on his own behalf. The Land Use Enforcement Officer or other person designated by the applicable land use agency may present evidence on behalf of the municipality. The person contesting the violation or liability for payment of the fine shall appear at the hearing and may present evidence and argument on his own behalf. The Citation Hearing Office, however, shall accept written testimony from the person who is contesting the Citation and may determine thereby that the personal appearance of such person is unnecessary. Upon the failure of the person contesting the Citation to appear, the Citation Hearing Officer may enter an assessment by default against him upon a finding of proper notice and liability under the applicable provisions of the Zoning Regulations or Inland Wetlands and Watercourses Regulations. The Citation Hearing Officer shall conduct the hearing in the order and form and with such methods of proof he deems fair and reasonable. The rules regarding the admissibility of evidence shall not be strictly applied, but all testimony shall be given under oath or affirmation.

The Citation Hearing Officer shall render his decision at the conclusion of the hearing. If the Citation Hearing Officer determines that the person who received the citation is not liable for the alleged violation, the Hearing Officer shall enter an appropriate order dismissing the matter. If the Citation Hearing Officer determines that the person who received the Citation is liable for the alleged violation, he shall enter an appropriate order and assess the appropriate fine under this Ordinance against such person. The Citation Hearing Officer shall make a written record of all such determinations and orders .

Section 6: Post -Hearing Procedure; Enforcement and Assessment of Fine

A. If the fine assessed by the Citation Hearing Officer is not paid on the date of its entry immediately following the hearing, the Citation Hearing Officer shall send a written notice of the fine so assessed by first-class mail, postage prepaid, to the person found liable for the violation.

B. The person against whom an assessment has been entered pursuant to this Ordinance is entitled to judicial review by way of appeal in accordance with the provisions of Section 7-152c(g) of the General Statutes. Such appeal shall be instituted within thirty (30) days of the mailing of the notice of such assessment by filing a petition to reopen assessment, together with the applicable entry fee with the Superior Court facility designated by the Chief Court Administrator for the purpose of hearing such appeals.

C. If the fine assessed by the Citation Hearing Officer remains unpaid for thirty days and if no appeal has been filed, the Citation Hearing Officer shall file, not less than 30 days nor more than 12 months after such mailing, a certified copy of the notice of assessment with the Clerk of the Superior Court designated by the Chief Court Administrator for such purposes, together with the applicable entry fee. Within such twelve (12) month period, assessments against the same person may be accrued and filed as one record of assessment. Subsequent proceedings to obtain and enforce a judgment for such assessment shall be in accordance with the provisions of Section 7-152c(e) of the Connecticut General Statutes.

Section 7. Payment of Fines, Assessment and Judgments

All fines, assessments and judgments levied, established and obtained pursuant to this Ordinance shall be payable to the Treasurer of the Town of Sherman and the excess over costs shall be deposited to the Land Acquisition Fund. The Treasure, in consultation with the Land Use Enforcement Officer, shall establish procedures for the payment of such fines and assessments. The Treasurer and shall keep a record of payment of all such fines, assessments and judgments for a period of not less than three years.

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Section 8. Other Laws not Affected

This Ordinance is intended to establish the means by which the Town of Sherman may more effectively enforce its Zoning Regulations and its Inland Wetlands and Watercourses Regulations by establishing a system of municipal fines for the violation of such Regulations. This Ordinance shall not be construed as any limitation on the powers of enforcement established under the provisions of Section 8-12 of the Connecticut General Statutes (as to the Zoning Regulations) or under the provisions of Section 22a-44 Connecticut General Statutes (as to the Inland Wetlands and Watercourses Regulations). This Ordinance shall not be construed as any limitation on a Judge of the Superior Court from imposing such other fines, penalties, fees and costs as may be permitted under the provisions of Section 8-12 of the Connecticut General Statutes (as to the Zoning Regulations) or under the provisions of Section 22a-44 Connecticut General Statutes (as to the Inland Wetlands and Watercourses Regulations).

Section 9. Effective Date

This Ordinance shall be effective fifteen (15) days following publication as provided in Section 7-157 of the Connecticut General Statutes.