

Ordinance # 116 Establishing Fines and Citation Procedure for Zoning Violations

BE IT ORDAINED BY THE BOARD OF MAYOR AND BURGESSES OF THE TOWN OF NAUGATUCK
THAT:

Pursuant to the authority of Connecticut General Statutes §8-12a and, notwithstanding any provisions of the "Naugatuck Zoning Regulations" (hereinafter referred to as the "Zoning Regulations") to the contrary, the Borough of Naugatuck hereby establishes penalties for violation of its Zoning Regulations and further authorizes its Zoning Enforcement Officer (ZEO) to issue citations therefore to the extent and in the manner provided by this ordinance.

1. Penalties

Any violation of the Zoning Regulations shall be punished, in the judgment of the ZEO, by a fine of One Hundred Fifty and 00/100 Dollars (\$150.00) for each and every day such violation exists and/or continues after the issuance of a citation as hereinafter set forth and such fine shall be payable to the treasurer of the Borough of Naugatuck.

2. Citations

Citations shall be issued imposing the penalties set forth above pursuant to the time frames and conditions as follows:

a. For violations or circumstances which place the health, safety and welfare of the community into imminent jeopardy, citations shall be issued immediately after the issuance of a cease and desist order.

b. For violations involving grading of land or removal of earth or soil, which have the immediate potential of creating soil erosion and sediment control problems, or for failure to install or maintain required soil erosion and sediment control measures, citations may be issued immediately after the issuance of a cease and desist order.

c. For circumstances of "repeated non-compliance", a citation may be issued immediately after the issuance of a cease and desist order. "Repeated non-compliance" shall mean that a cease and desist order has been issued within the past twelve (12) months for the same type of violation on the same property.

d. For all other violations, citations may be issued thirty (30) days after the issuance of a cease and desist order.

e. Citations shall not be issued if the property is subject to a pending application that would rectify the zoning violation.

f. The issuance of a citation shall not prevent the Borough of Naugatuck or Naugatuck Zoning Commission or its Zoning Enforcement Officer from simultaneously taking any and all other available actions to enforce the Zoning Regulations.

3. Service of Citation

Any citation may be served either by hand delivery or by certified mail, return receipt requested to the owner of the property being cited. Should a citation served via certified mail be refused, it may be forwarded by regular United States first class mail or by delivery from a proper officer. The ZEO shall file and retain an original or certified copy of the citation and any such printed standard form which shall notify the recipient of any and all rights such recipient shall have to a hearing to contest the citation and which shall notify the recipient of his/her/its obligation to inform the ZEO of his/her/its having brought the violation into compliance with the zoning ordinance.

4. Uncontested Payment Period

Uncontested payment to the Treasurer of the Borough of Naugatuck of the fine specified in the citation shall be allowed for a period of ten (10) calendar days from receipt of the citation. If the citation was sent by regular mail as set forth in paragraph 3 above, the day of receipt of the citation shall be deemed to be four (4) days after the date of its mailing.

5. Notice of Hearing

If uncontested payment of the fine specified in the citation is not made to the Treasurer of the Borough of Naugatuck within the ten (10) day period set forth above, the ZEO shall send a notice to the person cited, informing such person:

- a. Of the allegations against him or her and the amount of the fines, penalties, costs, or fees due;
- b. That he/she may contest his/her liability before the citation hearing officer by delivering, in person or by mail, within ten (10) days of the date of the notice, a written demand for a hearing;
- c. That filing a request for a hearing shall cause the daily accrual of fines to cease from the date such filing is received by the ZEO until the date the hearing officer renders a decision unless, during such period, the violation of or non-conformance to the zoning ordinance is expanded or increased;
- d. That if the person cited does not demand such a hearing, an assessment and judgment shall be entered against him or her; and
- e. That such judgment may issue without further notice.

6. Admission of Liability and Payment of Fines

If the person who is sent notice pursuant to paragraph 5 hereof wishes to admit liability for any alleged violation, he or she may, without requesting a hearing, pay the full amount of the fines, penalties, costs or fees admitted to, either in person or by mail, to the Treasurer. Such payment shall be inadmissible in any proceeding, civil or criminal to establish the conduct of such person or other person making the payment. Any person who does not deliver or mail written demand for a hearing within ten (10) days of the date of the notice described in paragraph 5 hereof shall be deemed to have admitted liability, and the ZEO shall certify such person's failure to respond to the hearing officer. The hearing officer shall thereupon enter and assess the fines, penalties, costs or fees provided for by this ordinance and shall follow the procedures set forth in paragraph 9 hereof.

7. Hearing

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 fifteen (15) days nor more than thirty (30) days from the date of the mailing of notice, provided the hearing officer shall grant, upon good cause shown, any reasonable request by any interested party for postponement or continuance. An original or certified copy of the initial notice of violation issued by the ZEO shall be filed and retained by the ZEO and shall be deemed to be a business record within the scope of Connecticut General Statutes, §52-180 and evidence of the facts contained therein. The presence of the ZEO shall be required at the hearing if requested by the person who was issued the citation. A person wishing to contest his liability shall appear at the hearing and may present evidence in his behalf. A designated municipal official, other than the hearing officer, may present evidence on behalf of the municipality. If the person who received the citation fails to appear, the hearing officer may enter an assessment by default against him or her upon a finding of proper notice and liability under the applicable provision(s) of the Zoning Regulations. The hearing officer may accept written information by mail from the person who received the citation and may determine thereby that the

appearance of such person is unnecessary. The hearing officer shall conduct the hearing in the order and form and with such methods of proof, as he 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.

8. Decision

The hearing officer shall announce the decision at the end of the hearing. If the hearing officer determines that the person who received the citation is liable for the violation, the hearing officer shall forthwith enter and assess the fines, penalties, costs and/or fees against such person as provided by this ordinance. Upon a finding by the hearing officer that a violation has occurred, any fines, penalties, costs and/or fees accrued to the date of filing of a request of a hearing or, if the hearing officer finds that the violation was expanded or increased, any fines, penalties, costs and/or fees accrued to the date of the hearing officer's decision, shall be immediately due and payable and the amount thereof shall be stated by the hearing officer in his/her decision.

9. Pursuit of Assessment and Judgment

If such assessment is not paid on the date of its entry, the hearing officer shall send by first class mail a notice of the assessment to the person 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 a superior court facility designated by the Chief Court Administrator together with an entry fee of eight dollars (\$8.00). 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 a judgment, in the amount of such record of assessment and court costs of eight dollars, against such person in favor of the municipality. Notwithstanding any provision of the general statutes, the hearing officer's assessment, when so entered as a 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 person.

10. Appeal of Assessment

A person against whom an assessment has been entered pursuant to this ordinance is entitled to judicial review by way of appeal. An appeal shall be instituted within thirty (30) days of the mailing of notice of such assessment by filing a petition to reopen assessment, together with an entry fee in an amount equal to the entry fee for a small claims case pursuant to Connecticut General & Statutes, §52-259, at a superior court facility designated by the Chief Court Administrator, which shall entitle such person to a hearing in accordance with the rules of the judges of the Superior Court. Nothing in this ordinance prohibits any property owner or person from pursuing any other right or remedy available to them by law.

11. Superior Court to Enforce Assessments and Judgments

The Superior Court shall be authorized to enforce the assessments and judgments provided for under this ordinance.

12. Appointment and Term of Hearing Officers

The Mayor shall appoint, subject to confirmation by the Board of Mayor and Burgesses one or more Naugatuck residents as citation hearing officers to conduct the hearings provided for by this Ordinance. Hearing Officers shall serve for a term of two (2) years, unless removed for cause. Neither the ZEO, Building inspector nor any employee of the Town of Naugatuck exercising zoning authority nor any other employee or elected or appointed official of the Town of Naugatuck may be appointed to be a hearing officer pursuant to this Ordinance.