

PROCEDURES FOR ENFORCEMENT OF BYLAWS AND STATUTES

Local officials are often called upon to respond to nuisance or dangerous conditions and activities being conducted in violation of state statutes and/or local bylaws or regulations. In this memorandum, we examine the steps that can be taken to require responsible parties to remediate such conditions and to comply with their obligations under the law.

Step 1: Identify the Law to Be Enforced

The enforcement process typically begins with a complaint from a concerned citizen. Upon receipt of such a complaint, it is important to determine what, if any, state or local requirements are subject to enforcement at the local level, and which Town officer, department or board is responsible for enforcing those requirements. Often a complaint will trigger the jurisdiction of more than one department and it is recommended that all appropriate officials be advised of the complaint so that enforcement efforts can be coordinated.

Step 2: Confirm Violation or Condition

Once it is determined who is responsible for responding to the complaint, the appropriate Town official(s) should attempt to verify the conditions complained of. This will usually require an inspection of real property. At this point, inspectors should be advised that they should not enter private property (beyond the point to which the general public would be expected to enter) without the consent of the owner. If it is necessary to conduct an inspection in an area that cannot be observed from a publicly accessible location, and consent cannot be obtained, it is recommended that an administrative search warrant be sought in the District Court.

During this initial inspection, the conditions at the property should be documented with photographs and described in writing. If the owner, occupant or responsible party is present, the inspector may use this as an opportunity to informally resolve the matter by advising the party of his obligations under the law and explaining what needs to be done to achieve compliance. Matters can often be resolved in this manner without further action by the Town.

Step 3: Determine if Emergency Action is Required

Once the conditions have been confirmed and documented, it may be the case that emergency conditions warranting immediate action exist. For example, under the State Sanitary Code, 105 CMR 410.000, an emergency exists when the conditions are such that the danger to life or health of the occupants is so immediate that no delay in enforcement may be permitted (see 105 CMR 410.831(D)).

If such an emergency exists, the Town may dispense with the normal notice requirements and take such action as is deemed necessary to eliminate the emergency condition. Under such circumstances, it is recommended that the owner, occupant and/or responsible party be given as much advance notice as is reasonable under the circumstances and that any order issued be limited to that which is necessary to eliminate the emergency, even if such order does not cure all violations.

If an emergency order is issued, the owner, occupant and/or responsible party should be given written notice of the order. The order should comply with the specifications set forth in Step 4 below to the greatest extent possible.

Even in emergency situations, although the Town may have the statutory authorization to take remedial action, it is recommended that a court order be sought before dispossessing parties of their property. While seeking such an order may result in some delay, courts can be persuaded to act quickly and the issuance of a court order will ensure that the property rights of individuals are protected and may insulate the Town from liability.

Step 4: Notify Owner, Occupants and/or Responsible Parties; Issue Order

If no emergency exists, and efforts to informally resolve the matter are unsuccessful, it will be necessary to formally commence the enforcement process. This process typically begins with the issuance of a formal order. The order should specify the conditions complained of, provisions of law violated, actions required and a deadline for compliance. In some circumstances, affected parties may have a right to request a hearing or file an appeal and they should be so advised. The order should include a copy of any inspection report and may advise the party of the consequences of failing to comply, such as any fines that may be authorized by law.

The responsible party should be given a reasonable opportunity to achieve compliance. What is reasonable will depend upon the circumstances of a particular matter and should be based on the nature of the violation, the potential for harm and the cost involved in achieving compliance. If the circumstances warrant, it may be appropriate to order that compliance be achieved in stages.

In addition to issuing an order, local bylaws and regulations may be enforced through a process known as “noncriminal disposition” as set forth in Massachusetts General Laws, Chapter 40, Section 21D, subject to local acceptance and compliance with the procedural requirements of said statute. To pursue enforcement in this manner, the enforcing official may issue a citation imposing a specific monetary penalty. If the offender chooses to pay, the matter is resolved. If the offender does not pay the fine, collection may be pursued through the District Court. Notably, although the issuance of such a citation does not necessarily demand compliance, each day a violation persists can be considered a separate offense subject to a new fine.

Step 5: Follow-up at the Local Level

After issuance of an order, it may be necessary to follow-up with the responsible party to confirm that compliance has been achieved. If compliance has not been achieved, it may be necessary to repeat Steps 2 through 4 above. Depending upon the circumstances, it is often desirable to attempt to resolve these matters at the local level by extending the time for compliance, providing alternative means of complying or issuing follow-up orders. This approach may be beneficial to the extent that it may conserve limited financial resources and demonstrate to a court, if necessary, that all reasonable alternatives were exhausted.

Step 6: Pursue Enforcement Through the Courts

If all reasonable efforts to obtain compliance have been exhausted and the violations persist, it may be necessary to seek enforcement through the Courts. Many statutes provide for enforcement through the assessment of fines and/or imprisonment. We refer to this as criminal enforcement. Criminal enforcement may be sought by filing a complaint in the District Court. Such a complaint is then subject to normal criminal procedure. The complaint may be filed by any Town official and the process is often handled by the District Attorney’s office.

In our experience, once a criminal complaint is filed, the Town may have little control over the process. Therefore, we often recommend civil enforcement. In civil enforcement actions, instead of seeking fines or imprisonment, the Town will be seeking an order of the Court requiring the responsible party to achieve compliance. In this regard, Town Counsel works with local officials to prepare a complaint for filing in the Superior Court or Housing Court. The complaint is typically accompanied by a Motion for Preliminary Injunction asking the Court to take immediate action. Often, a court order can be obtained within ten days of a complaint being filed.

If the issuance of a court order does not result in remediation of the adverse conditions, the Town may pursue penalties for contempt of court. Ultimately, the Court may dispossess the offending party of their property by authorizing the Town to remedy the violations in exchange for a lien on the property, appointing a third-party receiver to remedy the violations, or even ordering that the property be sold.

Conclusion

In this memorandum we have attempted to describe the steps in a “typical” enforcement action. Please note, however, that this document is for informational purposes only, is general in nature and is not intended to constitute legal advice. Each circumstance is unique, and as specific cases may require a different approach than is herein described, you are advised to refer to the underlying statutes and/or regulations to ensure that all procedural and substantive requirements are met. You are further advised not to take, or refrain from taking, any action based on this information without consulting with legal counsel about the specific issues.

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