MUNICIPAL INFRACTIONS
AND CODE ENFORCEMENT

Practice and Procedure for Municipalities in the State of Maryland

By Frank M. Johnson
Assistant City Attorney
City of Gaithersburg, Maryland
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A View of the Entire Process From Initial Complaint To Court Order Enforcement

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THE CODE ENFORCEMENT PROCESS HELPS TO MAINTAIN BASIC COMMUNITY STANDARDS AND CAN SUPPORT HEALTH, SAFETY AND QUALITY OF LIFE FOR ALL MUNICIPAL RESIDENTS

“[N]o man has a natural right to commit aggression on the equal rights of another; and this is all from which the laws ought to restrain him . . . .”

Thomas Jefferson, President of the United States

“[E]very citizen shall hold his life, liberty, property, and immunities, under the protection of the general rules which govern society.”

Daniel Webster, U.S. Senator and Secretary of State

“The first requirement of a sound body of law is, that it should correspond with the actual feelings and demands of the community, whether right or wrong.”

Oliver Wendell Holmes, Jr., U.S. Supreme Court Justice

“[L]ogic, and history, and custom, and utility, and the accepted standards of right conduct, are the forces which single or in combination shape the progress of the law.”

Benjamin N. Cardozo, U.S. Supreme Court Justice

“When the law fails of execution, when the conduct of the government is hampered by dishonesty and corruption, when crime is prevalent, the value of property is reduced, the area of the slums is widened, ignorance becomes more dense and the poverty of the people is increased.”

Calvin Coolidge, President of the United States

“[E]very community gets the kind of law enforcement it insists on.”

Robert F. Kennedy, U.S. Senator and Attorney General
INTRODUCTIONS

The City of Gaithersburg is very proud of the efforts of Assistant City Attorney Frank Johnson in developing the Municipal Infractions and Code Enforcement Practice and Procedures Manual for the State of Maryland. He initially created the document for internal use in Gaithersburg, and it quickly became apparent that its comprehensive and thorough procedural information could be of benefit to a much broader audience. We are happy to share Frank’s work and we hope that readers from all aspects of local government in Maryland find it useful as they work to preserve the quality of life in their communities.

-- Hon. Jud Ashman, Mayor, City of Gaithersburg, Maryland

On behalf of the Maryland Municipal Attorney’s Association (MMAA), I have the pleasure of recommending and endorsing the “Municipal Infractions and Code Enforcement Manual”, which has been prepared by Frank M. Johnson, Assistant City Attorney for the City of Gaithersburg. This Manual is an incredibly useful resource for anyone handling code enforcement cases in Maryland. Indeed it’s the first comprehensive guide of this nature that covers the entire municipal infraction enforcement process, from the issuance of the citation, through the trial and post-trial enforcement.

While court practices may vary throughout Maryland, the Manual identifies the Maryland statutes, rules, practices and court decisions addressing key enforcement issues. It can provide guidance to not only code enforcement officers, but also to municipal attorneys and elected officials alike. The Manual is a useful tool for individuals possessing any level of knowledge and expertise in this area, from a newly appointed elected official or code enforcement officer in training, to an experienced municipal attorney. The MMAA appreciates the willingness of the Maryland Municipal League to publish this Manual and to make it available to its members.

--Brynja M. Booth, President of the Maryland Municipal Attorney’s Association (MMAA)

The Code Enforcement and Zoning Officials Association (CEZOA) strongly recommends and endorses the "Municipal Infractions and Code Enforcement Manual" prepared by Frank M. Johnson, Assistant City Attorney for the City of Gaithersburg. It’s an excellent document and resource tool to assist Code Enforcement Officers on legal aspects and court procedures. It also serves as a statewide training tool and reference guide, both for new and experienced code officers.

CEZOA is very grateful for Maryland Municipal League taking the initiative to make this Manual available statewide. We believe that all municipal officials and their staff will benefit from the Manual for many years to come.

--Officers and Members of the Code Enforcement and Zoning Officials Association
About the Author

Frank M. Johnson has worked in public service throughout his professional career, and in local government since 2000. He developed initial code enforcement guidelines for attorneys and department staff as an Assistant County Attorney for Montgomery County, Maryland. A decade and a half later, he found himself handling code enforcement trials for the City of Gaithersburg, Maryland, and looked to the old guideline memos. That led to a comprehensive, updated municipal infractions manual for the City, which was then expanded to apply statewide. Frank is from Montgomery County and lives in Bethesda, Maryland with his wife.
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INTRODUCTION: CODE ENFORCEMENT
AND THE MUNICIPAL INFRACTIONS PROCESS

It has been said we are a nation of laws. While local ordinances do not (and should not) control everyone’s behavior, certain priorities, including those touching on our quality of life, have to be written into law to have any meaning. These may involve keeping the grass cut, not playing loud music at midnight, or keeping the house in basic maintenance so it’s not a community eyesore. They may also involve a parks code violation, cruelty to animals or an unvaccinated dog. And they may be related to a fire code or zoning violation, among other options. As hard as elected officials and government staff at all levels work to draft well-written, clear and effective laws, none matter if they aren’t enforced. While most persons willingly follow the law, the more difficult cases are those who won’t voluntarily do so – or only follow the law after being warned. In those cases, ordinances just don’t work by themselves.

It’s the code enforcement process, also known as the municipal infractions process in Maryland, which is used to enforce laws and local ordinances against those who won’t voluntarily comply. Most persons will follow the law voluntarily, but the reality is that when a law isn’t enforced, it becomes less effective for everyone. Even those who voluntarily comply are less likely to take a law seriously when it’s known the law won’t be enforced. In addition, steps to enforce the law often involve the most serious violations which, if not corrected, can lead to results which have a significant community and neighborhood impact.

To make these laws work, an effective local government needs an enforcement process. That certainly starts with the county, town or city, but the municipal infraction process involves many players. It can start not just with the violator, of course, but another citizen raising concerns about the violation. Sometimes other community leaders or groups will also raise
concerns. Then town or city staff will have to investigate once a complaint is made, and try to encourage voluntary enforcement – the most effective way to enforce the law. But when that doesn’t work, then the staff member, usually a code enforcement officer, must take the next step, such as a formal notice, more inspections, and finally a citation charging a violation.

Often, the person who’s been cited will simply pay the fine and take care of the problem. When that doesn’t happen, or violations continue, then the municipality’s attorney typically gets involved as the citation goes to court. Sometimes defendants won’t dispute those cases, and the municipality wins by default. But if not, at the trial, the town or city lays out the violation, the parties make their arguments, and the judge makes a decision as to the defendant’s guilt as to committing the civil violation. Then the judge decides the amount of the fine to impose and whether to include an order requiring compliance, if requested. And after that, if the defendant still doesn’t comply, the town or city may try to collect the fine or seek contempt charges if the defendant doesn’t follow the court’s order.

The goal is always to gain compliance rather than collect a fine or, in later enforcement efforts, simply have someone cited for contempt. But often the reality is that the willingness to take such steps helps encourage voluntary compliance in the first place – again, the most effective way to enforce the law.

This manual may be unique in its focus on the entire code enforcement process, from the initial complaint through court hearings, appeals, and enforcement. Other summaries may discuss some elements of municipal code enforcement or the appeals process, but none provide a comprehensive overview. Nor do other treatises focus on municipalities applying Maryland law, which is, as demonstrated herein, quite extensive. The hope is that this manual will fill that gap, and in doing so, show the legal basis for enforcement options statewide.
CHAPTER 1: WHAT’S A MUNICIPAL INFRINGEMENT?

Civil Offenses. Municipal infractions are civil offenses subject to the citation and prosecution processes laid out at Md. Local Government Code Ann., §§6-103 through 6-107. A person commits a municipal infraction when they violate a local ordinance, the violation of which the town or city council has identified as a municipal infraction. See Md. Local Government Code Ann. §6-102(a)(1). Thus, violations of homeowner or condominium association violations are not included, as they are not municipal ordinances and must be handled by the association or HOA board of governors. Also, a municipal infraction is a civil offense, subjecting the person to a fine or a court order to enforce compliance; it is not a criminal offense that would subject a person to any punishment, such as imprisonment just for the violation. See Md. Local Government Code Ann. §6-102(a)(2). Criminal and civil offenses can both be prosecuted by the State’s Attorney, and in some cases the County Attorney will prosecute on behalf of that county’s municipalities. But municipalities and counties may designate their own attorney to prosecute municipal infractions. See Md. Local Government Code Ann. §6-108(b).

Maryland law provides that the local legislative body can define and punish ordinance violations as criminal or civil offenses. See Md. Local Government Code Ann. §§6-101(a)(1), 6-102(a)(2). State law is not explicit that the same offense cannot be punished both as a criminal and civil offense, but some municipal codes specify that an offense deemed a municipal infraction cannot also be defined as a criminal violation. In that instance, when the violation of an ordinance is characterized as a municipal infraction, it cannot be prosecuted as a criminal offense. Otherwise, the town or city has the option to proceed with a municipal infraction rather than a criminal charge.
The Initial Complaint. The municipal infraction process may begin in several different ways. Probably most common is a complaint by an individual or group to the local government. This can be a complaint from a neighbor about an unkempt yard, noise violations, or other activity affecting the neighborhood. Sometimes the call comes into the town or city directly, but sometimes it is referred from other staff or officials, and may even be referred by an elected official. In those cases, the town or city code enforcement officer (who may be a staff member or, in some cases, an elected official) will normally investigate and make findings as to the nature of any violation. In some cases, witnesses can help to show – or may even be necessary to show – ongoing violations which are time sensitive, such as noise violations. A municipal infraction may also be identified by code enforcement officers directly. While municipalities usually do not have the resources to support regular inspections, some violations may stand out when a code enforcement officer is responding to another concern, and some community, condominium or HOA inspections may be periodically scheduled to ensure neighborhood safety and basic home maintenance, leading to direct or indirect reports of alleged violations.

Complainant Confidentiality. In most cases, a citation begins with a neighbor or citizen complaint, but the code enforcement officer will still observe the violation personally, and thus serve as the witness who can provide personal information. In that case, the original complaining individual may not even be part of the basis for the allegation. But some defendants facing neighborhood complaints will want to know if an individual made the initial complaint – and if so, they may want to know that person’s identity. And this can even lead to a “Public Information Act” request, under Md. General Provisions Code Ann., §4-201(a), which lays out the general rule of disclosure unless an exception applies.
Some complainants will not be concerned if they are known as the individual initiating an investigation and citation process. But other neighbors will want confidentiality, and if they have to reveal their identity, may not be willing to make a complaint. Based on this, a limited exception is provided at Md. General Provisions Code Ann., §4-351(b), in which inspection can be denied “only to the extent” disclosure would interfere with a valid law enforcement proceeding, disclose a confidential source, or prejudice an investigation. This provision has been interpreted, in the municipal infractions context, to only allow nondisclosure to protect a confidential source. Thus, under Md. General Provisions Code Ann., §4-351(b)(4), the name is only protected when the information given by the complainant is offered “under a promise of confidentiality.” Bowen v. Davison, 135 Md. App. 152, 165 (2000). For this exception to disclosure under the Public Information Act to apply, the file records must specify that “the informant was guaranteed confidentiality when it reported . . . [the] alleged code violations.” Id. And staff must offer this assurance before the complaining person gives the information about the alleged violation – otherwise, nondisclosure cannot be considered necessary to “protect a confidential source.” See Md. General Provisions Code Ann., §4-351(b)(4).

The Initial Investigation. The first step after receiving a complaint is to investigate – to determine the facts, as opposed to allegations, and then consider whether the facts show a municipal infraction. Such investigation can be effective for complaints about home and building maintenance, including yards, trash, and other violations that can be viewed from the street. Notes, pictures and any other evidence must be noted and recorded, as this may be used as evidence at trial. But generally the physical evidence, as demonstrated by the pictures, shows either a clear violation or the lack thereof.
The Initial Response. The goal should be to solve the problem, so if a violation or concern is verified, staff will approach the business or residence and attempt to talk with a responsible person. At that time, something in writing – a formal notice, statement or letter specifying the violation, is typically issued, giving a deadline for compliance. This notice is normally handed to the responsible person or, if no one can be reached, posted on the door with the staff person’s name and contact information. Many will call within a few hours after receiving such a notice, and in most cases problems are addressed, resolving the issues. But even if not resolved, the fact that the town or city let the person know about the violation and gave them an early opportunity to make corrections can be important if the violation leads to a citation and future trial. In that case, the notice itself is usually admitted as part of the evidence.

Search Warrants. In some cases, there is no view from the street. Some complaints may be related to inside activities, or allegations about a mistreated or endangered dog or cat. In those instances, staff needs to visit the property and speak with the resident or defendant. When that evidence shows that the original complaint may be accurate, but entry into the home is needed for investigation, the staff person should ask for permission to inspect. The Maryland Court of Appeals has recognized that such granted permission is effective. Jones v. State, 407 Md. 31, 33 (2008). But a signed statement is recommended, in case the defendant later denies granting permission. See Appendix 6, Consent to Inspection. Also, the search cannot exceed “the scope of that consent,” Redmond v. State, 213 Md. App. 163, 190 (2013), and must end if the defendant changes his or her mind on allowing the inspection.

When the defendant refuses any permission, staff must decide whether to drop the issue, or pursue the complaint with a search warrant. A search warrant should be pursued only in the
face of a clear, serious code violation raising concerns about safety. It involves making application to a judge, in Circuit or District Court, who will only grant a search warrant with documented evidence of a potential violation, combined with a threat to health or safety. See Appendix Four, Warrant Application. But, when justified, a search warrant application can be the critical step to stop a violation and in extreme cases even prevent a tragedy.

An administrative search warrant can be issued by a Circuit Court judge *ex parte*, without a hearing, though District Courts can also consider them. Such an application requires any relevant evidence, such as pictures or other statements, and the staff member’s affidavit and testimony. It must specify local and any state laws implicated by the alleged activities in order to show a strong basis for the warrant. Indeed, activities which constitute violations of multiple laws at the state and local level are often included in warrant applications.

When a serious question is raised that a code violation is ongoing which puts an animal, person, or the community in some danger, the court will consider and, in many cases, grant the warrant. It is important to provide a complete application, with affidavits, documentation, and cites to state and local laws, all showing the potential health and safety risks. If the court grants the application, the local police or sheriff will then enforce the warrant, as the Warrant Order provides. See Appendix Five, Warrant Order. To accomplish this, staff will have to coordinate with the police or sheriff to ensure entry into the property, an investigation as specified in the warrant, and further steps as also outlined in that warrant – which may include seizing an animal in danger or equipment causing danger to other persons or the community, or taking immediate steps to otherwise stop a dangerous activity. Again, a search warrant is an extraordinary step, but when justified, may be the only means to address an ongoing violation endangering an animal, person, or even a community.
CHAPTER 2: FORMAL NOTICE OF A VIOLATION

The purpose of code enforcement through municipal infractions is not to collect fines but solve problems, and gain compliance with the town or city laws. State law and most municipal ordinances on code enforcement specify that a citation may be issued against any person committing a municipal infraction by violating the municipal code. See Md. Local Government Code Ann., §6-103(a). No requirement for prior notice or opportunity to cure is mentioned in the state provisions or in almost any municipal code – but prior notice can help solve the problem and later prove the case. And where such notice is required, it must be provided.

Traditionally, even where the local code does not mandate formal notice, alleged violators should be, and usually are, notified of the problem before any citation is considered. Emergencies, particular safety concerns or repeated behavior, such as noise or some animal control complaints, are usually the only exceptions. In most cases, staff will simply speak with responsible persons, and that resolves the problem. But where an informal discussion doesn’t resolve the problem, most municipalities will issue a formal notice. And in many cases, additional notices may be issued – especially when multiple violations are included and some, but not all, are addressed by the deadline.

As noted, the exceptions to issuing a formal notice include emergencies or practical instances showing notice is not necessary or won’t be effective. Thus, a formal notice may not be needed when a town or city staff member speaks with a responsible party who refuses to correct a violation; in that case, it can be most effective to simply issue a citation and then document the effort to first speak with the defendant. In addition, second or third notices giving new deadlines are probably less effective when addressing instances of ongoing or repeated
violations, without any correction or effort to make corrections. In that case, the defendant will already have received sufficient prior notice.

The reality is that the system overall, as well as judges, favor citations as a last resort. Judges may vary as to how seriously they consider citations, and it can be important to underscore that the citation hearing happens only after other options to solve the problem have failed. And at citation hearings, judges will often expect that defendants are notified of violations and given the chance to correct them, even before a citation is issued – even if this is not formally required. Practically, then, showing a copy of a prior notice helps to demonstrate the town or city’s effort to resolve the problem without issuing a citation – as well as the defendant’s failure to do so. When violations are clear, this also shows the municipality has been reasonable, and can demonstrate the defendant’s willfulness to continue a violation. It can later show the need for an abatement order or the full amount of the fine of a proven violation.

The general purpose of a formal notice of violation, prior to issuing the citation, is to help solve the problem as quickly as possible. Any prior notice should identify the specific problem and the town or city ordinance being violated. It should be noted that simply identifying the town or city code section by itself isn’t sufficient, as the defendant also needs an explanation of the violation and some basic steps to correct it. An effective notice of violation must also identify a clear deadline, at which time the property or area will be re-inspected. Such notices should give the name of the staff member to contact with questions, and of course identify the defendant or responsible person or company. While not part of a formal legal process, such notices are most effectively served on a responsible person individually, along with a discussion and emphasis of the need to comply with the town or city code. But when there is no one to personally serve, the notices are often posted at a prominent place on the property, usually the
front door, and it can be effective to take a quick picture of the posting, to later show that notice was posted on the door.

Usually, issuance of a formal notice resolves the issue, and the violation is corrected or address before the deadline. In many cases, a responsible party will even reach out to staff and offer an explanation and their own timeline for the correction. But even with such promises, a re-inspection is usually necessary to ensure corrections are made.

*When the Violation Continues.* Most local codes specify that each day a violation continues is a separate offense. Most violations are resolved at the first notice, but not all. In some cases, a business or residence will take no action, possibly based on a misunderstanding, a presumption the town or city won’t pursue the matter, or a conclusion that the concern isn’t important. They may also believe that the law doesn’t – or shouldn’t – require compliance; and it’s also possible the complaint leading to the formal notice is part of an ongoing dispute between neighbors, in which positions have hardened and resolution will be difficult.

When a re-inspection shows a continuing violation, the staff member may decide to issue a second formal letter or notice, especially where some noted violations have been addressed. Doing so can help to specify the continuing problem as well as demonstrate the town or city’s effort to communicate and solve the problem, particularly in any future enforcement proceedings. But after the second notice, with ongoing problems or a lack of any corrections, it’s usually apparent that the notice isn’t working. In that case, resolving the problem will require more, and few options remain other than to issue a formal citation.
While reasons for noncompliance after the first formal notice may vary, the next steps involve either another formal notice, as noted, or issuing a citation. Second or third notices can help clarify when a defendant is making some effort and where partial corrections have been made. Such notices can re-emphasize the violation, and are always further evidence at trial that the town or city has tried to be reasonable. But additional notices may not be effective if they simply repeat a prior notice – because they imply that the original deadline was not serious. Thus, multiple notices should not be used for long standing violations, those posing safety risks or those for which notices have already been written. Indeed, sending additional notices may only encourage further delay. Instead, a citation is typically the next step when the formal notice is effectively ignored.
CHAPTER 3: ISSUING THE CITATION

What Are Citations? A citation is the document charging a resident or business with a municipal infraction. It requires the defendant’s name and address, specific information to put the defendant on notice about the violation – such as date, time, location and a description – and the specific code provision or ordinance being allegedly violated. The conduct should be described, rather than simply citing a town or city code. The ordinance also needs to be cited specifically, and if the violation is of a separate set of rules the town or city has adopted (such as, for example, the International Property Maintenance Code or National Fire Protection Association Uniform Fire Code), then both the town or city code section adopting those rules, and the specific rule being violated, need to be referenced. Otherwise, the defendant can argue they were not put on proper notice as to what law they were violating.

It should be noted that citations can’t be combined, but are only issued for a single violation – one instance of one code violation – against one defendant. Citations against two defendants, such as joint homeowners, even for the same act or omission, require two or more separate citations. So do citations against a single defendant for multiple violations, citing each action or each code section allegedly violated.

Vicarious Liability for the Employee and the Corporate Defendant. Defendants can be individuals, businesses or corporations. A citation against a business owned by a sole proprietor is issued to that person, but the defendant may be the business or the individual sole proprietor. A citation against a corporation must, under Maryland Rule 3-124(d), be issued against the corporate entity, by serving the corporation’s registered agent for the State of Maryland or one of the corporate officers, such as President, even for statewide or national businesses. In that
case, two citations can be issued: one against the individual employee committing the violation, and one against the employer. The legal theory is that the wrongdoer’s acts are individual, but also as an agent, attributed to the employer, on whose basis the acts were committed. Thus, two citations are issued to two different defendants. Such “vicarious liability” can, for a regional or national corporation, help ensure local accountability. In addition, where an abatement order is needed, it is possible to pursue an individual employee rather than the corporate entity as a whole, or the corporation’s resident agent, Board of Directors Chair or other officer.

*Citation Deadlines/Statute of Limitations.* Citations must specify the exact date and time of the alleged violation, as noted on the citation form and required under Md. Local Government Code Ann., §6-103(c)(4). But citations are not required to be issued immediately. Indeed, giving the defendant notice and time to correct violations is practical, often required, and can help solve the problem. Even so, Maryland law provides that prosecution for “fines, penalties and forfeitures” must be filed within one year of the violation, under Md. Courts and Judicial Proceedings Code Ann., §5-107, which applies to any civil proceedings seeking a fine – such as a municipal infraction – when brought by a local government. *See Williams v. Standard Federal Savings and Loan Association*, 76 Md. App. 452, 462-464 (1988).

Statute of limitations for ongoing violations may not pose a major concern when violations continue; most codes specify that each day a violation continues constitutes a separate offense. And often the reality is that violations which are not ongoing do not lead to citations, because the violations aren’t recurring and have been corrected. And other citations may be issued immediately or soon after the violation, especially in emergencies, cases involving animal control cases, neighborhood complaints such as noise violations, or the like.
Local government citations are issued under Maryland’s “municipal citation” process established at Md. Local Government Code Ann., § 6-102(a). As specified at Md. Local Government Code Ann., §§ 6-103 and 6-104, these citations are issued on forms approved by the District Court of Maryland. Some computer programs may allow them to be issued electronically in the future, but today local governments use the four-part form which is filled in by hand, with carbon copies provided to the defendant, court clerk and local government. The municipal citation form is entitled “Uniform Civil Citation,” the front and back pages of which appear on the pages following this chapter. See Uniform Civil Citation Sample, pages 23 - 24.

Witnesses and Related Citations. Start with the form by checking a box at the top on the front in reference to any witnesses or related citations. See Page 23. Required witnesses can be listed on the back, see page 24, and subpoenaed to attend the trial, as long as their address is listed. Witness are those with personal knowledge, meaning they observed the violation and do not insist on confidentiality – and who will be likely to attend the hearing in compliance with the subpoena, rather than requiring action by the Sheriff to compel their presence. Related citations would consist of ongoing, repeated citations or multiple citations issued at the same time.

County and Petitioner (town or city). The citation form is used statewide, so the next line on the front requires filing in the county for the District Court and the main court address. Next is identification of the petitioner, which would be the full name of the town or city issuing the citation. See Page 23.
**Defendant.** The next item is the defendant’s name and address. The defendant can be any individual or business entity committing the violation. Only one defendant can be included for each citation, though if a citation is issued against a related or joint defendant, that citation number can be noted at the top for related citations. The defendant’s address is that where the defendant is to be served, whether served personally or by mail, which may not be the location of the violation. It’s important to note that this will be the address the Court uses for all notices, including the trial date notice, so it must be accurate. The form does include a line for identifying information, including date of birth, height and weight, which reflects information obtained from the person’s driver’s license. But this information is optional and does not need to be added unless the driver’s license is reviewed, or there is some reason to identify a specific defendant from others – such as a personal offense on a town or city street, or when multiple defendants are cited at the same time and must be separately identified.

**Based on Officer’s Personal Knowledge or Another Witness?** The next paragraph on the front, see page 23, lays out the substance of the violation, and calls for specifying whether the allegations are based on the staff member’s personal observation or an attached affidavit, which will require other witnesses to establish the violation facts. Normally, violations will be based on the citation writer’s personal knowledge. That’s preferred because they will be available to testify at any hearing. But there are some instances, including noise and other neighborhood concerns, which may be based entirely on an affidavit or other witness testimony. And because the citation form is statewide, there are some local codes requiring sworn statements, also known as affidavits, before citations can be issued for certain alleged violations based on witness testimony other than the code enforcement officer.
When there is such an affidavit, it must be attached, and then the person signing that affidavit will need to appear in court at the hearing to provide the testimony – because that constitutes the personal knowledge of the violation. Thus, the person’s name and address are written on the back page of the citation, see page 23, to ensure they receive a subpoena from the court in order to appear at the hearing. Other witnesses do not need to provide affidavits, but if they have personal knowledge supporting a citation or will have to testify to establish the violation, their name and address should also be listed on the back of the citation to ensure they receive a subpoena from the court. If they are not listed, they can also be issued a separate subpoena requiring their attendance at the trial, but can testify even if no subpoena is issued. Such witnesses may be essential to show violations at a certain place and time – such as animal control violations, noise complaints, or the like. They will have the only personal knowledge of the specific violation, and the citation will have been issued based on their personal knowledge. Thus, they should receive a subpoena, because if they fail to attend the hearing, the town or city cannot prove the facts unless other witnesses provide that personal knowledge.

Citations based on a third-party affidavit or witness testimony beyond the staff member signing the citation can be more difficult to prepare and prosecute in court. The town or city attorney may have difficulty reaching a person before the hearing, and those may have sought to have the citation issued may not be so concerned three to four months later, when the hearing is scheduled, and so may not appear. At the other extreme may be neighbors who are heavily invested in the case, and seek maximum penalties or the most stringent abatement orders. Such committed witnesses can be helpful in establishing the facts, and may reflect confidence in the ability of the citation process to address ongoing violations. But it’s important for everyone to
understand that the town or city is always the party prosecuting the citation, and thus must make the final decisions as to requested fines, orders or even settlements.

Outside witnesses thus provide evidence – to show an element of the facts necessary to show a violation. And while citations are based on a few key facts related to showing the violation, the reality is that outside witness testimony can also be less predictable; raising a higher chance that the defendant may not be found guilty. That said, citations based on outside witnesses are entirely enforceable, despite some practical preparation and witness concerns. If a code enforcement officer has any questions about issuing a citation based solely on a third-party affidavit or witness testimony, it is advisable to check first with the town or city attorney.

The Facts. The next area on the front of the form, see page 23, is a brief description of the actual charge. This should be written with the specific code or ordinance violation in mind, but should not simply restate the municipal code section, because that’s a conclusion, and additional facts are needed to show the violation. Thus, for a violation of a typical municipal code, such as one prohibiting grass over 10 or 12 inches, simply stating “tall grass” may not show a violation. Instead, the citation needs to specify grass over the 10 or 12 inch limit, or even indicate the estimated height, such as: “grass over 10 (or 12) inches and as much as 18 to 24 inches in height.” Laying out the specifics is important in itself, but the other purpose is to notify the defendant what needs to be corrected to cure the violation. Some brief specificity in describing the violation will thus help prevent any later argument that the defendant wasn’t aware of the facts constituting a violation, or that the acts or omissions constituted a violation.

At the end of the four lines on the written form is a space to identify the time and date. A specific time and date is essential to establish a violation, which is also important as it
demonstrates personal knowledge. The form also requires the specific location. Here, the address should be sufficient as well as an indication the violation was within the town or city limits; this section also requires delineation of the county in which the violation occurred.

The Law. The next part of the front of the citation form includes the specific law or code section the defendant is violating. See page 23. First, the form requires checking a box to delineate the State Code, local law, or Maryland regulations. In most cases, the middle box for a local code violation will be checked. The next line requires the specific citation, giving a line to designate the town or city code and then the specific section. Specifics are important, and there is a space to note any subsections. In some cases, the code or ordinance section violated will only represent the adoption of an outside set of rules, such as for property maintenance or fire code protection. In those instances, the specific section of the adopted rules which the defendant has violated also needs to be cited. Otherwise, the defendant could argue confusion or they were never notified what law they were allegedly violating.

When other codes or rules have been adopted, it is most practical to refer to the code or ordinance section adopting the outside rules at the first space marked “Document/Article.” Then in the section/subsection area, the citation can refer to the outside rules and cite the specific rule section allegedly being violated. This puts the defendant on notice that the described actions are in violation of the identified section. There is a box after the code section to specify whether every day of a violation may constitute a separate violation, leading to another citation. In most cases, town or city codes specify that is the case. As such, in almost every case that box should be checked, just to keep that option open even if other citations aren’t issued immediately.
**Defendant’s Signature.** This is the area of the citation addressing service or notice to the defendant. Here the defendant is invited to sign, admitting receipt but not guilt. Maryland Local Government Code Ann., §6-103(b), specifies that service rules under Maryland Rule 3-121 apply, and the preference is for personal service. If the defendant signs here, then it is established that the citation was personally served, as the preferred service option. And if the defendant refuses to sign, “refused to sign” can instead be noted here, which signifies that the defendant was personally served but refused to provide a signature to acknowledge such service.

But personal service is not the only option, under Md. Local Government Code Ann., §6-103(b) and the incorporated provisions of Maryland Rule 3-121. Maryland Rule 3-121(a) also permits service by certified mail, restricted delivery, as well as leaving the citation “at the individual’s dwelling house or usual place of abode” with a “resident of suitable age and discretion.” While leaving the citation with a family member of suitable age is specified, court decisions addressing service challenges under this provision indicate it is safest, when personally delivering the citation to the defendant’s residence, to leave it with a person who identifies himself or herself as the defendant or a family member who is at least 18 years old.

If the citation is not handed to the defendant personally, who then signs for it, the main method of service should be noted on this line, such as “certified mail,” in which case the copies of the restricted mail delivery and signed cards need to be available for presentation to the court if necessary. Regular mail is allowed only with court permission under Maryland Rule 3-121(b), which is possible but allowed only by court order after submission of an affidavit and sufficient facts to show that the defendant is likely evading service.

Regular mail, if combined with posting on the property, is permitted under Md. Local Government Code Ann., §6-103(b)(1)(ii), but only when the citations are related to that property,
such as building code or maintenance violations. While court permission is not required, an affidavit specifying that “good faith efforts to serve the defendant” under the preferred options – personal service and certified mail – have not succeeded is needed. Because this is not submitted to court, the affidavit should be executed and kept in the file to demonstrate the affidavit requirement was satisfied, if any question is later raised. And as noted, both steps are required: if posted on the property, the citation must also be sent by regular mail to the defendant’s last known address. The signature line for the defendant should reference the posting/regular mail service, and when posting the citation, staff members will typically take a picture of the front door of the residence showing the posted citation.

Instructions. The last block on the front of the citation form, before signature, gives the specific instructions, which follow the prescribed processes and applicable fine payment deadlines under Title 6 of the Maryland Local Government Article. The first box to be checked states the defendant “May Pay a Fine,” which also requires the fine amount. The deadline to pay the fine is no more than twenty days after the citation date, under Md. Local Government Code Ann. §6-102(c)(2). The fine amounts are those laid out in the town or city code, or perhaps in the final town or city annual budget, which may list fines. Overall, the fines cannot exceed $1,000.00, pursuant to Md. Local Government Code Ann., §6-102(c)(1). Next is information on where to pay the fine, which is the town or city’s main address.

The box before the next paragraph should also be checked, specifying the defendant has the option to stand trial; in that case, the fine would not be paid but the defendant needs to notify the town or city, using the same address for paying the fine. Maryland Rule 3-307(b)(1) provides the general rule that a response or trial request must be filed within fifteen days of the
initial complaint, also referring to a citation. And the deadline for such notice is consistent with that fifteen-day deadline – which is always five days before the payment date, under Md. Local Government Code Ann., §6-105(a). The next sentence indicates the Court will send the actual trial date notice, but specifies the maximum amount of the fine the Court may impose – always the $1,000.00 maximum fine, provided by Md. Local Government Code Ann., §6-102(c)(1).

**If Relevant, Always Take the Abatement Order Option.** The next box is very important; if it is checked and the city or town’s name is filled in at the blank, the town or city can seek a court order requiring correction, or at least prohibiting future violations. Such an order, known as an abatement order, would be submitted by the city or town, and may be critical. See Appendix One. That’s because rather than a fine, a future violation in the face of a court order can subject the defendant to constructive civil contempt under Md. Court Rules 15-206 and 15-207. And constructive civil contempt can result in a defendant being incarcerated until they comply or show compliance with the abatement order isn’t possible.

Checking the box for an abatement order is recommended to keep that option open, unless it is clear the town or city would only seek a fine, or an abatement order would never be needed. Checking the box doesn’t mean the municipality must or will always seek an abatement order, but not checking it removes that option altogether. As noted, allowing the town or city to seek an abatement order, which can bring in the possible future sanction of civil contempt, is in most cases an important option. That’s because a fine typically only encourages compliance if suspended along with an abatement order, or the town or city does not pursue collection if the defendant complies. Rather than nonpayment of a fine, a future violation in the face of a court order can subject the defendant to constructive civil contempt, under Md. Court Rules 15-206
and 15-207. And constructive civil contempt can result in a defendant being incarcerated until they comply or show compliance with the abatement order isn’t possible. Of course, checking the abatement order box does not create any possibility of a contempt proceedings based only on the citation; it simply allows for that future possibility, based on a future violation of an abatement order issued after the defendant is found guilty and continues to violate the town or city code in the same way.

**Default Instructions.** Finally, there is a large box with three smaller check-off boxes included. For civil citations, only the second and third boxes are checked, indicating the defendant will, under Md. Local Government Code Ann., §6-106, be deemed liable if they fail to respond or pay the fine, and that the fine amount may be doubled, at least up to the $1,000 maximum fine amount. The second box notes the impact of failing to appear at the trial date, but then repeats that the fine may be doubled if the defendant defaults. It also specifies that the court can enter judgment by affidavit, just based on the citation itself. Even so, a defendant can show up in court even after failing to respond or request a trial. But if the town or city didn’t have an inspector present based on that failure to file a written response, a postponement can be requested, based on the lack of notice the defendant would appear to contest the citation.

**Code Enforcement Officer’s Signature.** Last on the front of the citation form is the signature of the person writing the citation, including their printed name, date the citation was written, and then specifying the town or city as the “agency,” noting any ID number or department abbreviation, and then noting the staff member’s telephone number or, alternatively, the town or city’s main phone number.
CHAPTER 5: IDENTIFYING THE DEFENDANT

Defendants can be individuals, businesses or corporations, but identifying the responsible party for a municipal citation is not always easy. Individuals can be identified through their driver’s licenses, and property owners can normally be identified through the State of Maryland’s Department of Assessment and Taxation. Even so, that information is not always accurate, especially for persons who have deceased or for properties in foreclosure. There are a few options to help towns and cities address those situations, but none are perfect. In some cases a local government may have little practical choice, at least in the short term, but to allow the violation to continue or correcting the violation at its own ultimate expense.

Citations against businesses can raise additional complications. A citation against a business owned by a sole proprietor is issued to the sole proprietor, but the citation will be against the business, not the individual, typically naming the individual under the business name. Similarly, a citation against a corporation must be issued against the corporate entity, referring to the corporation’s registered agent for the State of Maryland – even for statewide or national businesses. Yet such citations can be difficult to pursue or enforce without identifying an individual who can, where violations continue, be held in contempt if an abatement order is issued.

Vicarious Liability and the Corporate Defendant. Citations against businesses, whether sole proprietorships or corporate entities, are typically committed by an individual employee working for the business who committed the violation. In that case, two citations can be issued: one against the individual employee directly committing the violation, and one against the employer on whose behalf the employee was working. This is permitted as long as an
“employer/employee relationship” is specified in the employee’s citation, coupled with the employee having acted “within the scope of employment” or otherwise “under express or implied authorization from the employer . . .” Market Tavern, Inc. v. Bowen, 92 Md. App. 622, 641-42 (1992), citing Globe Indemnity Co. v. Victill Corp., 208 Md. 573, 584 (1955).

The legal theory for such vicarious liability, in which two citations are issued for a single violation, is that the wrongdoer’s acts are individual, but also as an agent, and thus also attributed to the employer on whose basis the acts were committed. As a result, two citations are issued to two different defendants. Such “vicarious liability” can, for a regional or national corporation, help ensure local accountability through the individual employee who is cited. In addition, where an abatement order is needed, it is more practical to pursue that individual employee rather than the corporate entity through the registered agent, Board of Directors President or other corporate officer.

Property Owners in Foreclosure. As clear as a code violation may be, the responsible party – the defendant – can in some cases be difficult to find. This is especially a problem for ongoing zoning or building code violations on real property when the legal owner is facing foreclosure. That owner may be absent, and even if not, will have little to no interest in taking any action to address citations or correct town or city code violations, given the foreclosure action against them. But until the foreclosure is finalized, the town or city simply has no other party to pursue. In that case, there are few easy solutions. The municipality may be able to obtain a default judgment, if the owner is properly served. And the town or city can seek an abatement order, which may allow the town or city to consider abating the nuisance and billing the legal owner, under a “clean and lien” enforcement effort, discussed supra at Chapter 11,
pages 65 - 67. But ultimate collection of the costs may be delayed or even precluded if legal ownership changes in the meantime.

When legal ownership does change, either due to a sale or foreclosure proceedings, the town or city starts over – with a new notice, citation and court filing – because there is a new defendant. In many cases, however, the new owner or property servicing agent will honor prior notices or court decisions, and may be willing to attempt to make corrections, rather than forcing the town or city to take such legal action against them directly. But this is only possible when the municipality can identify and communicate with the new owner. As such, an additional complication can arise when, as in many cases involving foreclosures, there is a delay before the new owner is a matter of public record, even after foreclosure proceedings are complete. This means property ownership is practically in limbo, and leaves the town or city without any responsible party until legal ownership becomes clear. This can effectively eliminate any enforcement, or force “clean and lien” efforts, which may be at the town or city’s cost in extreme cases, without any responsible party.

Review of local Circuit Court filings may, in some cases, reveal the new owner. And in an effort to provide local governments a means to access this information, the State of Maryland in 2012 established a foreclosed property registry, under the Office of the Commissioner of Financial Regulation, which is part of the Department of Labor, Licensing and Regulation. Under Md. Real Property Code Ann., §14-126.1(d)(1), a foreclosure purchaser is required to submit their name and contact information to the foreclosure registry. But there is no direct State enforcement of this requirement. Instead, enforcement under Md. Real Property Code Ann., §14-126.1(e)(4), is legally limited to a municipal infraction enforced by the local government, when the local government requires such registry. Few local governments have so required, as it
is practically impossible to enforce the registry requirement until the new owner’s information is publicly recorded and available.

In any event, for foreclosure owners who do register, the Department is empowered, under Md. Real Property Code Ann., §14-126.1(g)(2), to allow local jurisdictions and their representatives, including staff and attorneys, to access that information, and the Office of the Commissioner of Financial Regulation has established such online access. Even so, use of this information is limited, because the registry is not, under Md. Real Property Code Ann., §14-126.1(g), considered a public record. As such, local staff or attorneys accessing registry information are, under Md. Real Property Code Ann., §14-126.1(g)(3), restricted from disclosing new ownership information to anyone other than owners of property on the same block, or the homeowner’s or condominium association in which the property is located.

Accordingly, until new legal ownership is publicly recorded, the town or city can only communicate with the new owner or servicing agent, and could not pursue legal action until that ownership becomes publicly recorded. Even so, the foreclosure registry law does provide an abatement option, with proper notice. Thus, the municipality would have the ability in that instance to abate the nuisance and then bill the new owner as part of the property tax bill, under Md. Real Property Code Ann., §14-126.1(f) – as long as the town or city notifies the party identified in the foreclosed property registry at least 30 days in advance, and they are both responsible for maintenance and authorized to accept legal service for the foreclosure purchaser.

*Deceased Property Owners.* When a legal owner is deceased, their estate can also raise enforcement concerns. A property owned by a deceased person may be included in a petition for administrative probate, under Md. Estates and Trusts Code Ann., §5-301. Such proceedings are
handled by Orphan’s Courts, pursuant to Md. Estates and Trusts Code Ann., §2-101, which under Md. Constitution, Art. IV, §20, are in Montgomery and Harford County handled by a Circuit Court judge. When such an estate is filed, the estate’s personal representative would serve as the key contact person, under Md. Estates and Trusts Code Ann., §6-101. Thus, town or city staff could contact the personal representative with any notice or citation. But where no petition has been filed, the town or city faces ownership in limbo, with no responsible party to address violations. In some cases, it is possible to identify a responsible party, even where no probate petition is filed. But in extreme cases, the municipality in claiming property maintenance violations can consider filing a proceeding for judicial probate in the County’s Orphan’s Court (or, in Montgomery and Harford Counties, the Circuit Court) as an “interested person,” under Md. Estates and Trusts Code Ann., §5-402.
CHAPTER 6: AFTER THE CITATION:
FINE PAYMENTS AND COURT DATES

Few citations go to trial. In fact, typically citations are sent to the clerk for a trial date only after defendants fail to pay the fines and/or make the required corrections or changes. Indeed, many citations, especially with fines of $100 or less, are paid in full within a few weeks. State law provides a twenty-day deadline for fine payment, at Md. Local Government Code Ann., §6-102(c)(2), and most municipal codes have the same provision. If the defendant pays, the citation is closed, unless there are notes on the citation form that an abatement order may be sought to ensure compliance, and an order is needed. As such, paying the fine may not always resolve the case, especially if the conditions leading to the citation aren’t corrected. Thus, even when the fine is paid, cases can still go to court for a trial date to resolve the underlying issue.

When the fine isn’t paid, there is no request from the defendant for a trial, or the citation isn’t fully resolved, Md. Local Government Code Ann., §6-106(a) states the defendant is liable for the fine amount. But collection steps can’t take place without a court order, and the town or city must send the citation to the District Court clerk for a hearing. A defendant has the right to disagree with the citation and contest the charge by seeking a trial, while not paying the fine or correcting the violation in the meantime. That’s known as an “election to stand trial,” and in that case, most local codes or ordinances give the defendant 15 days after service to provide such a notice. And Md. Local Government Code Ann., §6-105(a) specifies that the defendant has 5 days before the fine payment deadline to provide the town or city notice of their election to stand trial. With that election to stand trial, Md. Local Government Code Ann., §6-105(b) provides that the defendant will get their day in court, and the town or city must forward the citation and notice to the District Court to open a case and set a hearing date.
Of course, some defendants don’t respond in any way; they don’t pay the fine or file any answer or response seeking a trial. The municipality will send the citation to the District Court for a hearing, but in addition, many town and city codes also require that after the deadline to pay the fine or ask for a trial, the town or city needs to send an additional notice. Thus in most cases, even in a default, the town or city must send the defendant an additional “formal” notice of the infraction, noting the fine has not been paid. Sending such a final notice can help establish in court that a defendant has been fully notified of the proceedings. This also establishes the ability to increase the fine. With such additional notice, if a defendant has not asked for a trial and has not paid the fine, the court can order the fine to be doubled, up to $1,000 – the maximum fine permitted under Md. Local Government Code §6-102(c)(1).

After a citation is sent to the District Court, the clerk’s office will send all parties and subpoenaed witnesses, listed on the back of the citation, the notice of the hearing date. The timing may vary, but normally the hearing date is 2 to 4 months after the citation is sent to the clerk’s office for a hearing. Some District Courts will schedule municipal infractions for certain days or times, but others hear all cases as they appear, and will assign an individual date simply based on when the hearing request was received.

Before the hearing – and sometimes even in the midst of one – citations can be resolved. In some cases, the defendant will simply pay the fine just before the hearing, in which case the citation case can be marked as “paid and satisfied” if there is no ongoing violation for which the town or city would seek an abatement order. Such cases don’t proceed to trial, and there is then no additional $5.00 in court costs to be paid to the District Court clerk, as that is only required after a District Court judgment finding a defendant guilty. In other cases, the municipality and the defendant may reach agreement on a reduced fine, perhaps with an agreement to correct the
violation or not commit future violations. That can have the same court docket effect – marking the case as paid and satisfied. Other resolution options may include postponement, perhaps to allow a defendant the chance to pay the agreed upon fine amount, make corrections, or both; in that case, the court file can also be marked as paid and satisfied after the postponement, once the matter is resolved.

With the goal to correct the violation leading to the citation, payment of the fine can, but doesn’t always, resolve the matter. When the violation remains in place, normally the settlement options include a consent order, by which the defendant agrees to a timeline for corrections, which is presented to the judge for their approval. Another option can be a settlement agreement between the town or city and the defendant, combined with postponement of the citation hearing; the town or city can also agree to consider waiving all or part of the fine pending correction of the violation. And a final option may also involve the court’s issuance of an abatement order with certain provisions – such as a timeline for corrections – to which the defendant agrees.
Municipal infractions are, under Md. Local Government Code Ann., §6-102(a)(2), civil offenses; they are not criminal prosecutions. Even so, Md. Local Government Code Ann., §6-108(a) empowers the State’s Attorney to prosecute municipal infractions, though subsection (b) specifies that the municipality can appoint an attorney to prosecute infractions. Most municipalities have designated their town or city attorney to prosecute their own municipal infractions.

While municipal infractions are not criminal, there are still certain similarities to criminal or traffic proceedings. For instance, under Md. Local Government Code §6-109(a), civil infraction proceedings start with a defendant’s plea of guilty or not guilty. Thus, the judge in a contested case will start by asking the defendant how they plea to the charges. That same section mandates that the burden of proof is on the town or city to show the violation by “clear and convincing” evidence. This is higher than the normal “preponderance” standard of proof for civil cases, but lower than the criminal “beyond reasonable doubt” standard. In addition, a municipal infraction defendant has the same rights as in a criminal trial – including, as provided at Md. Local Government Code §6-109(a)(4), the right to counsel and the right to testify, present evidence and cross-examine opposing witnesses.

The Hearing. District Courts and judges do not always handle citation cases in the same way statewide, and an individual judge’s background and understanding of the process varies as well. In some courts, citations may not be considered as a main priority, such that processes are sometimes unclear. In some cases, the town or city burden may be practically higher than “clear and convincing” as well. In any event, to begin the hearing in some courts, the judges will call
Regardless of how the cases are called, while each citation creates a separate case, multiple citations against the same defendant are typically all heard together when that defendant is called. In combining the trial, however, the town or city needs to be careful to show that the evidence independently provides that each separate violation occurred. It may be acceptable for evidence of one violation to be related to, and thus help to show, the existence of another related violation. But proving one does not automatically prove more than that, or mean that another violation, either of another town or city code section or the same violation on another day, happened. Independent proof is always needed for each citation.

Some general background and explanation is usually necessary, in the general form of an opening statement. This can help set the context for the hearing even when before judges who have heard numerous citation cases before, and can help provide the practical background for judges who are not as familiar with the municipal infractions process.

*Dismiss, Nolle Prosequi, STET or Postponement.* However the cases are called, the first step is to wait for the defendant to appear. Whether or not the defendant appears, however, the attorney has the initial option, as provided by Md. Local Government Code Ann., §6-108(a), to note the citation is being dismissed, or may enter a “nolle prosequi” or STET (Latin for “let it stand”), either of which dismisses citation but allows it to be re-filed within a year. Even if the defendant wishes to go to trial, these steps are within the town or city attorney’s discretion. The
town or city attorney may also seek a postponement, which is typically granted if the defendant doesn’t appear. Defendants can also request postponement of the trial, and unless it is clear the defendant is simply seeking to delay compliance, many judges will seriously consider such a request if not grant them automatically; obviously, that can vary depending on the judge.

**Defaults.** When a defendant doesn’t respond to a citation, the District Court will normally consider a default judgment, also known as a “Judgment by Affidavit” under Maryland Rule 3-306(b). That affidavit is provided as part of the citation, in which the code enforcement officer signs the citation, attesting to personal knowledge of the violation and asking for judgment if the defendant doesn’t respond. And Md. Local Government Code Ann., §6-106(b) specifies that if the defendant does not respond to the trial notice and summons, where such an affidavit is provided in the citation, the court “shall enter judgment against the defendant in favor of the municipality in the amount then due.”

District Court rules provide that a defendant in any civil case must file a “notice of intention to defend” to dispute any claim, under Maryland Rule 3-307(a). And that notice must be filed within 15 days after service of the complaint, under Maryland Rule 3-307(b)(1). That general rule also applies to citations. Indeed the citation specifies that the defendant has 20 days to pay the fine, under Md. Local Government Code Ann., §6-102(c)(2). But, as noted, a defendant has 5 days less than that to dispute the facts, thus being the same 15 day period as under the Maryland Rules. Both Md. Local Government Code Ann., §6-105(a) and most town or city codes require the defendant to provide notice that they dispute the citation and elect to stand trial at least 5 days before the fine is due. And when there is no election to stand trial or
other response, Md. Local Government Code Ann., §6-106(a)(2) specifies that the fine may be doubled, up to $1,000, if the defendant does not pay it or dispute the charges within the deadline.

In many cases, the court will issue a default judgment or “judgment on the affidavit” when a defendant doesn’t appear, and should consider a request for doubling the fine – which some judges will grant, while others will not without evidence of repeated offenses. But some judges, before considering any default judgment, will ask for verification that the defendant was properly served. Many will accept a proffer from the town or city attorney laying out the manner of service – by certified mail, personal delivery, or posting, for example – but others may want to review the document or signed certified mail receipt. Thus, when the defendant fails to appear and a default judgment is requested, evidence of proper service can be critical.

In issuing a judgment on the affidavit, no testimony is needed, as the court should grant the decision based on the undisputed written citation. But even when the judge is willing to grant a default judgment, the judgment on the affidavit – not requiring further evidence – may only apply to the fine itself. Judges normally require direct testimony from the staff member writing the citation if the town or city requests an abatement order. That testimony will need to focus on the violation and the fact that it is continuing. Additionally, it should be noted that in many courts, the deadline for disputing the citation by filing a response, whether entitled a “request for trial” or “notice of intention to defend,” is not enforced. Thus, if a defendant does appear, despite having failed to respond in any way previously, the court will often conduct a full hearing, especially if the defendant pleads not guilty. And the judge will, if considering an abatement order, normally conduct a brief hearing on the abatement order request, in order to verify the violation and that it is continuing.
Abatement Orders. State law specifies that if the court finds a defendant has committed a
municipal infraction, the court may enter an abatement order requiring that the violation be
corrected. See Md. Local Government Code Ann., §6-110(4). That section states the court can
require the defendant to correct the violation, or allow the town or city to do so at the defendant’s
expense. The town or city will present a draft abatement order. See Appendix One. And most
municipalities will include both options in the draft presented to the judge for signature – to have
the defendant correct the violation within thirty (30) days, but also a grant of authority to correct
it directly, and then bill the defendant for the costs, under Md. Local Government Code Ann.,
§6-111(a). And if the defendant doesn’t pay the bill, then the town or city would, under the
abatement order’s authority, be able to charge the costs, if related to a violation on real estate, as
part of the real estate tax bill, as permitted by Md. Local Government Code Ann., §5-205(d)(2)
and Md. Tax-Property Code Ann., §14-801(d) (defining “tax”).

When the Defendant Appears. If the defendant appears at the trial, the town or city
attorney will in introducing the citation normally give a very brief statement of the charge and
note whether the town or city seeks only a fine or an abatement order as well. The judge should
then ask the defendant how he or she pleads. In some cases, defendants will admit the violation,
apologize, and then may seek a fine reduction or object to an abatement order. In those cases,
with guilt established, the town or city must decide whether to proceed to request an abatement
order, and that decision should generally be based on whether (i) the violation has been corrected
and (ii) is likely to recur, in addition to the context of the defendant’s statement and the judge’s
overall willingness to consider or grant an abatement order in the first place.
When the town or city seeks an abatement order, a judge willing to consider granting the request may, unless the defendant consents, still require some direct evidence of an ongoing violation. That’s typically true even if the defendant admits guilt or doesn’t appear. Thus, the town or city’s witness, usually the staff member writing the citation and anyone else with personal knowledge, will describe the violation and present evidence that it continues. Typically, the staff member will show pictures that prove the violations remain, and testify those pictures were taken within a few days of the trial. With that evidence, the judge should consider the abatement order, but may ask additional questions. It should be noted that in most courts, at least three copies of the proposed order are required for each citation making up the abatement order – one to serve on the defendant, one for the court, and one for the town or city. When an abatement order is granted, the attorney or staff member who testified after writing the citation should wait for the clerk to enter the order and provide two copies, one of which is to be served, unless the attorney has to be pick the signed order up later from the clerk’s office.

Fines. The local government can by ordinance or resolution set any fine amount, up to $1,000. See Md. Local Government Code Ann., §6-102(c). And some increase fines for repeat violations. Fines are usually set by ordinance or resolution, and may be adopted as part of the annual budget if the local code does not specify a fine amount. The fine for the alleged violation is specified in the citation, under Md. Local Government Code Ann., §6-103(c)(5).

The wording of some state law provisions do not indicate flexible fine amounts when a defendant defaults or is found guilty, but that the court must issue judgment for the total fine. State law, however, is not consistent, and the judge’s discretion will also control. Where the defendant is found guilty, Md. Local Government Code Ann., §6-110(1) does state that the court
“shall order the defendant to pay the fine,” plus any doubling of the fine permitted for failure to pay or dispute the charges within the initial twenty day deadline, under §§6-102(c)(2) and 107(1). But the next subsection permits the judge to “suspend or defer payment of the fine under conditions the court sets,” such as correcting the violation or ordering probation before judgment, conditioned on no future violations. See Md. Local Government Code Ann., §§6-109(b)(2), 6-110(2). Thus, the judge has wide latitude in deciding what fine should be imposed, if any.

Further, for defaults, Md. Local Government Code Ann., §6-106(b) specifies that if the defendant does not respond to the trial notice and summons, the court “shall” enter judgment for the fine. And state law provides that the amount due consists of the imposed fine, which may be doubled up to $1,000 if the defendant does not pay or dispute the charges within the initial twenty day deadline. See Md. Local Government Code Ann., §6-106(a)(2). Yet Md. Local Government Code Ann., §6-107, addressing that same situation in which the defendant fails to “pay or appear,” only indicates the court “may” double the fine and enter judgment for “the amount then due.” The word “shall” does not appear, and thus does not provide a mandate on the fine amount.

Given this inconsistent legal background – and the practical reality of judicial discretion – even with a guilty plea or finding, judges may reduce fines, or refuse to double the fines when defendant appears at the trial. That may be the outcome even where defendants have failed to dispute the charges before that time. The exact wording of these provisions aside, practicality may have the larger impact, largely flowing from the reality that only defendants can appeal in a municipal infractions case – not the municipality. See Md. Courts and Judicial Proceedings Code Ann., §12-401(d)(1). Thus, the town or city simply has no ability to appeal a fine.
reduction from a guilty finding. The court can and should grant a doubling of the fine for defendants who have defaulted, but may opt not to do so – generally or in specific cases. But especially for contested cases, it can be important to present evidence justifying the full amount of the fine, which may include repeat offenses, repeated failure to address the violation, overall citizen or neighborhood complaints, or longstanding violations, among others.

**Reduced Fines for Corrected Violations.** If the defendant has corrected the violation, and it’s not likely to recur, entering a nolle prosequi or dismissing may be appropriate. If not, the court could avoid any fine by issuing a probation before judgement ruling, or more likely seek to reduce the fine to a nominal level anyway – sometimes as low as $25.00, even for a $250.00 or higher fine – or may opt for a probation before judgment. The judge may even ask why the case isn’t being dismissed. In that situation, the town or city has little choice but to accept a nominal fine. As such, it can be appropriate in some cases to leave the fine amount to the judge’s discretion. But to avoid a dismissal or “probation before judgment” in which no fine is issued, the town or city may request at least a nominal amount, such as $25 to $50. That will at least establish the guilty finding, and establish the first offense if there are future violations. That can be relevant if future citations are issued and abatement orders are considered; in addition, there are some municipal codes which impose higher fines for repeat offenses.

**Court Costs.** Court costs for a municipal infraction case are imposed on the defendant once a court holds a hearing and considers the case. Thus, if a citation is dismissed before the hearing, marked paid and satisfied, or a nolle prosequi or STET is entered before the hearing, there is no court cost. But once the court considers the case, the court costs statewide are currently $5.00, under Md. Local Government Code Ann., §6-112(a). While costs are not
imposed on municipalities or the defendant who is found not guilty, costs are imposed on the
defendant when they are found or plead guilty. See Md. Local Government Code Ann., §6-110(3). Such costs are paid directly to the court clerk, even as the fines themselves should be
paid directly to the town or city.

Is A.D.R. or Mediation an Option? While the County Circuit Courts may consider
mediation in many cases, applying Title 17 of the Maryland Court Rules on Alternative Dispute
Resolution (A.D.R.), no such formal process applies in the District Court. Even so, there is no
prohibition; indeed the District Court statewide has a formal mediation program available, and
some counties also have local programs, including Montgomery and Prince George’s. Of course,
both parties must always agree to such a process, but this can allow resolution of longstanding
issues without the time, effort and costs involved in civil litigation.

In many cases, mediation or A.D.R. processes may seem better suited to help address
disputes between private individuals with substantial costs on all sides. And it is always possible
that a defendant may raise the concept simply to delay the enforcement process or gain more
time to make needed home improvement corrections. But mediation would be by consent in
these cases, and the reality is that some cases may benefit. For example, the code enforcement
process may involve an underlying private dispute between neighbors; and in those cases,
mediation may help to solve the problem. Indeed, the basic goals of mediation – to reduce costs,
solve problems, and reduce stress – reflect those of the code enforcement process. Thus,
especially when a citation hearing will involve witness testimony from neighbors who may be
invested in seeking judgment, mediation or A.D.R. may open the door for such neighbors to
communicate openly. As such, mediation in those cases may help to solve the problem by encouraging the neighbors to consider creative solutions.

When mediation or A.D.R. poses such a possibility – whether raised by a neighbor or other witness, a defendant, City staff, or even the judge – the town or city attorney will want to consult with the staff member who issued the citation. If there is consensus to pursue mediation, the District Court may ask the parties to agree to a postponement so that a separate mediation session can be conducted, either with local assistance or with help from the District Court’s A.D.R. program. If the invested parties, including the municipality, any witnesses and the defendant, all reach consensus to try mediation, it is possible to enter a Consent Order, dismiss the case upon agreement, enter a nolle prosequi or STET, or even postpone the hearing for a set period to allow the agreement to be tested.

Most towns and cities will be more than happy to work with a defendant who, on their part, truly wants to solve the problem, and there are cases in which mediation will simply add delay without any substantive benefit. But especially in cases involving underlying neighborhood or personal disputes, mediation may present one way to solve problems for the long term.

*Contested Hearings: The Municipality’s Case.* Remember that the judge will probably first ask the defendant how they plead to the town or city charges. When the defendant denies or disputes the allegations, a trial follows, and the judge first typically directs the town or city to proceed with the evidence. As noted, the Md. Local Government Code, §6-109(a)(8), specifies that the burden of proof is “clear and convincing.” Typically the town or city begins with a brief introduction of the case, including the relief sought, such as a fine and an abatement order.
But then the presentation moves to the municipal staff factual testimony. That is based on personal knowledge – what the witness personally saw on the day and time of the citation in question – rather than what someone else said they saw. Each witness for the town or city must give their name and staff position, and then focus on direct, observed evidence of the violation, starting with any prior notice about the violation or even informal communication, which shows both the ongoing violation and the town or city’s efforts to resolve it. The witness should then refer to any other background, such as prior citations, prior notices, or other related prior history. And then the current status of the violation, as of the hearing date, should be highlighted, noting whether it is ongoing, unresolved, or increasing in severity.

It’s important to focus not just on evidence showing the specific code violation, but also that the municipality has taken steps to communicate with the defendant to fix the problem. The town or city should show they gave the defendant time to make corrections, so that the underlying argument is, essentially, that the defendant is in court because they have not taken advantage of such opportunities. Thus, the municipality should show evidence not only of the specific violation but prior meetings, missed deadlines, and additional efforts the town or city made to correct the problem. Finally, the municipality will need to show the violations were in place for some time, in order to show reason for the citation and the fine. And the town or city will also need to show the violations are continuing, if an abatement order is requested.

*Additional Evidence.* In giving the testimony, any additional background evidence may be important, but should be considered with the caution not to unnecessarily extend the hearing or present duplicative evidence. The concern can be that a large mass of information may become confusing or hard to follow, while normally code enforcement cases are focused on a
single violation or related violations. As such, with targeted testimony and pictures, the evidence is usually clear. Additional evidence typically includes pictures of the violation, but may also include any formal notice of the violation, any follow-up letter noting the deadline to pay the fine, and any other past notices or letters. The town or city should have copies of each document or picture, giving one to the defendant, if possible, and then having the witness testify to the document or picture before asking that it be introduced. Once the judge accepts the document, one copy is provided, though in some cases the judge will request the copy before that, while considering whether to accept it.

Normally the person who took the picture will testify that they did so, and in a municipal infraction case, that’s normally the code enforcement officer. But the key issue is whether the picture is accurate. The longstanding rule in Maryland is that photographs which are a “correct representation,” also described as “fair and accurate,” can be introduced. *Tobias v. State*, 37 Md. App. 605, 614-15 (1977), citing *Carroll v. State*, 11 Md. App. 412, 414 (1971), *cert. den.* 262 Md. 745 (1971). Thus, if a photo is a “fair and accurate” representation of what the witness saw, and it’s relevant, the judge will almost always allow it to be introduced. But not every picture should be introduced. It’s important not to introduce more than three to five key pictures for each violation, unless further explanation is needed. Otherwise, the town or city runs the risk of creating confusion. The pictures also need to show a clear violation. Thus, if a picture is taken across the street of a deteriorated porch, the photo should show the deterioration. Cases in which pictures don’t show a serious violation can be denied, or have a reduced fine. A picture may speak for a thousand words, but in seeking a favorable hearing outcome, it’s important to carefully review each picture to be introduced so that they do tell the correct, accurate story.
Other evidence may include relevant documents, such as prior notices or letters and warnings from the town or city about the violation. These can be introduced as long as the witness can verify that the notice or letter was the one they signed or delivered to the defendant. Additional witnesses, such as another staff person with personal information, can verify the violation or introduce additional documents, but should not repeat prior testimony.

Occasionally, neighbors or other citizens will testify, given the reality that citations are often based on citizen complaints. In those cases, persons to be formally notified of the hearing and subpoenaed are listed on the back of the citation, or may also be separately subpoenaed; witnesses can also attend voluntarily. If they do attend, it is important to focus the witness on evidence that will show their personal knowledge of a violation by the defendant. Nothing else will help show the town or city is factually correct in its allegations. Indeed, presenting additional evidence that isn’t relevant will undercut otherwise relevant testimony.

Of course, additional witnesses, such as other staff members, persons from the neighborhood, or others with personal knowledge, can also testify, even if they are not otherwise noted on the citation. Generally the town or city attorney will want to be prepared for such testimony, and it is important to limit it to the specific citations at hand while avoiding duplication. But in some cases, especially in courts where municipal infractions are not routinely handled, such additional witness testimony can verify the facts, underscore the importance of the violation, show why the town or city has pursued it, and demonstrate the need for correction.

*The Defendant’s Argument.* The defendant first has the opportunity, during the municipality’s case, to ask any cross-examination questions of any witnesses. A defendant not represented by counsel may go further, and attempt to argue their own case. At that point, the
judge may step in and limit the defendant to cross-examination questions only; if not, objecting may be necessary. If a defendant is represented by an attorney, then counsel will ask each witness, in turn, numerous questions. But regardless of how questions are asked, all should be directly related to the town or city’s original questions. After all, the defendant will have the chance to present their own case with additional evidence. After cross-examination questions, the town or city attorney may ask what are known as “redirect” questions. These in turn have to be related to the cross-examination questions, and generally clarify or explain any issues raised on cross-examination. As a result, only a few questions, if any, are usually asked on redirect.

After the municipality rests its case, the defendant’s case begins. First the defendant proceeds with their witnesses. Often the defendant is not represented by counsel, but appears pro se, sometimes with a friend or relative. Usually the defendant will focus primarily on undermining the town or city’s case during cross-examination, and their own evidence may be limited to their own brief testimony. It can be important to ensure any friends or relatives only participate to offer evidence based on personal knowledge.

**Defendants Represented by Counsel.** If represented by counsel, a more detailed defense may be expected, including their own independent evidence. Normally that starts with the defendant’s testimony, who under questioning by their attorney will often attempt to show there was no violation or that the town or city misled him or her in some way. They may present additional witnesses or evidence, but often the town or city will need to object unless the evidence is directly related to the citation. The town or city will then have the right to cross-examine, followed of course by any redirect by the defendant or their attorney. Generally, when the defendant is represented, judges enforce a greater level of formality. This should not affect
town or city’s presentation, and may prevent defendants from being granted more leniencies on procedure. After all, the facts remain the same, and the evidence is generally targeted to specific violations. While attorneys for the defendant may be prone to object to evidence, as long as it is clearly relevant and related to the issue, judges will normally allow it to be presented.

Indeed, a defendant represented by an attorney can increase the chance that future violations will be avoided. Bear in mind that many municipal infraction cases reach court because defendants do not take the town or city code, the citation, municipal staff, or all of them, seriously. Thus many defendants will have ignored town or city warnings. In some cases, a defendant’s hiring of an attorney can indicate they now take the citation seriously. This may, even more than a defendant appearing without counsel, indicate that a settlement is a reasonable outcome; and in some cases, attorneys are open to reasonable settlements. In some situations, the defense attorney can underscore the importance of avoiding future violations even in proposing a settlement for a nominal fine. Again, the defendant who has hired an attorney has invested more time and money in their defense. That can be an open door to avoiding future violations, and thus practically helping to encourage resolution of the issues leading to the citation in the first place.

But when a case can’t be resolved, there are additional arguments that attorneys may raise, for which the town or city should be prepared. These include any questions of proper service or notice of the violation – potential process questions when property has been posted or citations have been left with a responsible adult who is not the defendant. In those cases, it will be important to have evidence prepared to verify proper notice and service.

Attorneys may also raise any questions about the validity or meaning of the town or city code section laying out the violation. While these arguments can be successful, in most cases
municipal ordinances establishing code violations are clearly drafted. Such ordinances may even be based on similar laws already upheld under such challenges. Attorneys may also argue that the actual violation did not occur within municipal incorporated limits – a jurisdictional argument that can be critical. It is for this reason the town or city attorney should be careful to assert that the violations, in fact, did occur within the town or city limits. And a violation starting in the municipality but, as with hand carried sign violations for a business, continuing outside town or city limits still constitutes a violation within the municipality.

Attorneys will often argue that the defendant’s behavior simply didn’t violate the town or city code, based on highly technical, careful constructs of the evidence, the code or ordinance section, or both. Those arguments are based on the meaning of the evidence presented and the relevant law. When any legal problems are raised with a municipal ordinance, the defendant can always prevail, regardless of the evidence, and the town or city will then want to correct the problem. Ultimately, whether or not a defendant is represented by an attorney, the court’s decision will usually depend more on the key facts than legal arguments. It’s important to show the existence of a clear violation, proper service, and any history of continued violations. Simple, straightforward presentations are the best antidote to any defense, with enough evidence, including pictures, to verify the violation and show the defendant has failed to respond to multiple requests to address the problem.

The Unrepresented or Pro Se Defendant. Often, the defendant does not have counsel. This does not change the facts, the law or the basic rules, and it is important that the town or city attorney, as well as staff, show respect for the defendant. But an unrepresented defendant can change the progress of the hearing. For example, the pro se defendant will often try to present
their argument at the outset, even before the town or city’s case. The judge will usually stop them, especially if an objection is raised. Unrepresented defendants may ask cross-examination questions, but often turn them into an argument on their behalf, which the judge should stop.

After the town or city’s argument, the defendant has the chance to present their evidence. Unrepresented defendants usually make a statement at that point, presenting their own testimony or making an argument as to why they are not violating the law. The attorney representing the town or city needs to carefully listen, as the defendant will often admit the violation, seeking mercy and arguing the town or city is simply being unreasonable. The judge in some instances will ask the defendant questions directly, essentially focusing on what argument the defendant can make that the town or city is wrong. Since the defendant has no one to ask them questions or guide their defense, the judge’s questions can help clarify the issues and highlight any disputes regarding the evidence. Even so, after the defendant’s statement, the town or city attorney can ask cross-examination questions. These are normally not extensive, especially for pro se defendants, but limited in scope, which can help to re-verify the key violation at hand.

**Closing Argument.** While some court trials end with compelling and lengthy closing arguments, judges rarely tolerate long closing arguments for municipal infractions. Nor should that be necessary, as the presentation of evidence in most cases is not over 15 to 20 minutes, and many take much less, only a few minutes. Indeed, a long closing argument suggests the case is complicated and imply that the town or city has failed to meet some aspect of its burden. Thus, the best closing argument is usually a brief summation and assertion that the defendant’s actions, if not their own admission during the hearing, show a clear violation of the town or city code.
Closing argument can serve as a reminder of key issues. As such, the town or city should underscore the relief it seeks, and specify the evidence of an ongoing or continuing violation if seeking an abatement order. If the town or city seeks only the fine, closing argument should still refer to the fine amount, pointing out elements of evidence that would justify imposing the full fine or a large portion. It may be true that the violation, itself, should justify the fine. But judges may reduce fines, especially where evidence doesn’t, in their estimation, show unreasonable conduct, serious violations raising safety concerns, or longstanding violations. It’s therefore important to refer to such evidence in making any such request, rather than baldly asking for a fine amount without explaining additional factors supporting the higher fine amount.

*Judge’s Decision.* The judge can be expected to issue a decision immediately, announcing first whether they find the defendant guilty and the fine amount if they do. Only in rare cases, such as when critical legal issues have been raised, which require memoranda from counsel for both parties, will most judges issue decisions after the hearing.

In issuing the decision from the bench, generally if the violation is ongoing, longstanding or the evidence shows repeated violations on multiple occasions, the judge should be asked to consider signing the abatement order. Regardless of the outcome, even if it is disappointing, once the judge issues the final decision, there is almost never any reason on the municipality’s part to object, request reconsideration, or even evince any frustration. Only a clear error of fact or law in the judge’s decision, would justify any request to clarify or correct. Indeed, losing parties will often thank the judge in the same way they would if successful. For the town or city, there is also the reality that staff and the attorney may have the same judge presiding at future hearings, and it is important to maintain as high a level of credibility as possible.
CHAPTER 8: PAYING THE FINE AFTER THE TRIAL

While new citations can in theory always be issued, a dismissal or not guilty finding ends a municipal infraction case – because under Maryland law, only the defendant found guilty can appeal. See Md. Courts and Judicial Proceedings Code Ann., §12-401(d)(1). And guilty findings are certainly not always the end of the case. A guilty finding means, at minimum, that the defendant needs to pay the court-imposed fine to the municipality and $5.00 court costs to the District Court clerk. If the defendant fails to do so, the town or city can try to collect the fine. And requiring payment of the fine can also be made contingent on whether violations are corrected – where the fine is waived for compliance – where such problems are ongoing.

Defendants disagreeing with the decision against them may also appeal. And in many cases, the town or city is dealing with an ongoing problem, and if the judge signed an abatement order, serving and enforcing that abatement order will start an entirely separate process.

Fines. The fine amount is paid to the municipality, as provided by Md. Local Government Code Ann., §6-113, whether paid immediately, within the initial 20-day deadline after the citation is issued, per Md. Local Government Code Ann., §6-102(c)(2), before any court hearing, or after judgment. Thus, defendants should pay the town or city for any fines, including those ordered by the court. But defendants will sometimes pay the court clerk. In that case, the court clerk’s office should send the payment to the town or city. Indeed, most municipal codes specify that all fines paid to the District Court “shall be remitted directly” to the town or city.

When Fines Aren’t Paid. The defendant has 30 days to pay any court-ordered fine, under Md. Local Government Code Ann., §6-110(1)(iii). If the defendant doesn’t do so, Md. Local
Government Code Ann., §6-114 states that such failure can be considered contempt of court, which would allow the City to petition for constructive civil contempt, under Maryland Rule 15-206. But that usually isn’t realistic, as Maryland courts specify that contempt must be willful. Thus, a defendant’s claim they cannot afford it could create doubt that their refusal to pay a fine is willful. See Fisher v. McCrory Crescent City, LLC, 186 Md. App. 86, 120 (2009), citing State v. Roll, 267 Md. 714, 730 (1973). In addition, a civil contempt order must describe how the defendant can “purge” the order, such as by paying the fine. See Md. Rule 15-207(d)(2). If the defendant fails to do so, the court’s only option would be incarceration.

Thus, municipalities seeking collection of fines don’t use contempt, but opt for the normal debt collection processes. State law, at Md. Local Government Code Ann., §6-110(1)(iii), indeed specifies that fine judgments are “enforceable in the same manner and to the same extent” as any other civil judgment. As such, municipalities can after 30 days file a lien with the Circuit Court clerk, under Maryland Rule 3-621(c), which is effective against any real estate the defendant owns in that county. Because the fine order is as enforceable as any other civil judgment, direct collection steps could be considered, such as property levy and sale, garnishment of bank accounts, and garnishment of wages, under Md. Rules 3-641 through 649.

The defendant should pay the $5.00 court cost fee, imposed under Md. Local Government Code Ann., §6-110(3) on defendants found guilty, directly to the District Court clerk. If such court costs are erroneously paid to the town or city, municipal staff need to send that payment to the District Court clerk, identifying the case in which the $5.00 court costs have been paid, but should always first urge the defendant to pay the clerk directly.
The primary purpose of municipal code enforcement is not to collect fines, but solve problems and stop town and city code violations. The prospect of a fine will encourage many to correct violations, and the town or city can even encourage compliance by waiving the fine, contingent on solving the problem. But that doesn’t always work; the reality is that in some cases, a citation and a fine are not enough to gain compliance. Indeed, when a building code, animal control, or any other code violation is continuing up to the time of the citation trial, it’s apparent that further action is necessary to solve the problem. In that case, the town or city can seek an abatement order. State law at Md. Local Government Code Ann., §6-110(4) specifies that the District Court can order the defendant to “abate the infraction” in a citation case, or authorize the municipality to do so, at the defendant’s expense. In fact, the town or city’s draft abatement orders should include both options – requiring the defendant to correct the violation within a timeframe, usually 30 days, and if not, then authorizing the town or city to do so, at the defendant’s expense. See Appendix One, Sample Abatement Order.

The city or town can seek an abatement order in any municipal infraction case. Judges, however, are usually only willing consider issuing abatement orders to address continuing infractions or in light of multiple past violations. Thus, no abatement order will typically be issued – or should be requested – for single violations, nor for violations which have been corrected – even at the last minute before the hearing. As such, especially for property or building code violations, testimony and pictures related to the condition of the property the day before the hearing is critical. Where pictures show violations, such as tall grass or a house with building code infractions, remaining uncorrected the day before the hearing, judges are more
likely to consider an abatement order. That’s especially true when multiple notices have been provided to the defendant over the several months before the hearing, including notices of violation, inspections and the citation itself.

Abatement orders can be issued by default, without the defendant present. But judges may still require some affirmative evidence, including the code enforcement officer’s testimony, pictures and the like which show that the violation is continuing. Whether defendants appear or not, the test remains the same: the town or city must usually show the violation is continuing or, in light of repeated violations, likely to happen again.

Service of the Abatement Order. When the abatement order is issued, the judge will, in most cases, wish to sign at least three copies for each citation. One will be retained by the clerk for the citation court file, and two should be provided to the town or city. The town or city attorney will typically retain one, and the final signed original will be served on the defendant. As such, even if the judge doesn’t request three copies, it is sensible to have three available, based on the need for a copy for the court, town or city, and the defendant. That can mean six or more when multiple citations are included in the same abatement order, but that is because each citation has a separate court file and is therefore a separate court case.

Personal service of these abatement orders is required, as the town or city must present evidence of a willful act of disobedience to show a violation, which is intended to frustrate the court’s order, such that it could bring the court into disrespect. *Fisher v. McCrary Crescent City, LLC*, 186 Md. App. 86, 113-114 (2009). Maryland Rule 15-206 also requires that a petition for contempt allege the court order has been willfully disobeyed. Showing such willful disobedience involves evidence that the defendant was aware of the order, which is shown by an affidavit of
personal service. *See Appendix Two, Affidavit of Service.* If the defendant is present in court when the judge signs the order, the court clerk can serve it personally. But otherwise, town or city staff who, typically, issued the citation will attempt to personally serve the defendant, and return their affidavit to the town or city attorney once the defendant is served.

*Enforcement of the Abatement Order: Civil Contempt.* In some cases, issuance and service of the signed abatement order leads the defendant to resolve the issue. But when that’s not the outcome, the town or city may have little option other than to enforce the abatement order. Because an abatement order is a court order, the municipality may file a court action seeking a contempt finding – and resulting punishment – from the court. At that point, it’s not a town or city code violation in question, but violation of a court order, after a court finding that the defendant violated the town or city code. The court considers violating a court order as more serious than a code because it implies disrespect – and thus contempt of court.

While an abatement order usually requires corrections within 30 days, the order, as any court judgment, remains in place for 12 years, under Md. Courts and Judicial Proceedings Code Ann., §5-102(a)(3). Thus, the town or city can technically take action to enforce an abatement order at any time during the 12 years after issuance. But most contempt proceedings are filed within 3 years, unless there is a longer pattern of ongoing violations. And if the violation has been corrected for 5 or more years, it will be important to re-verify property ownership and carefully notify the defendant of the violations. In many cases, the town or city may opt to file a new citation rather than seeking to enforce an order that is several years old. The town or city attorney may also take both options, and attempt pursuing both avenues concurrently.
A contempt petition can be criminal or civil, but civil contempt is the only realistic option for municipalities to pursue. That’s because criminal contempt is, under Maryland Rule 15-205, handled as a criminal matter, requiring the State’s Attorney to proceed with charges. Such criminal contempt requires evidence of an intentional, willful act, and the penalty, which can be a fine or prison sentence, is punitive. Criminal contempt seeks punishment for the past conduct. See Corapcioglu v. Roosevelt, 170 Md. App. 572, 607-608 (2006). Civil contempt, instead, seeks remediation rather than punishment. Smith v. State, 382 Md. 329, 338 (2004). The town or city’s enforcement does not seek a penalty, but will always seek civil contempt, which is intended to solve the problem by correcting the defendant’s conduct. Smith, 382 Md. at 338. As such, the critical element of civil contempt is the defendant’s ability to “purge” or clear the violation, ending any punishment if the violation is resolved. See Corapcioglu, 170 Md. App. at 607, citing State v. Roll, 267 Md. 714, 728 (1973).

Civil contempt of court is either direct or “constructive.” Under Maryland Rule 15-203(a), direct contempt may result from an act in court, which a judge has “personally seen” and which has interfered with the court’s processes. Any other claim of contempt which requires evidence to be presented to the judge is considered “constructive” contempt. Fisher, 186 Md. App. at 115. Thus, any contempt petition a municipality might seek for the violation of a municipal citation abatement order will always be constructive civil contempt.

Accordingly, the town or city would file a petition for “constructive civil contempt,” under Maryland Rule 15-206. The first step before any such filing is, as noted, to ensure there was personal service of the abatement order; no other step can be taken until the defendant has been personally served. The town or city staff member completing service will complete an
affidavit, identifying the day and time of such service, unless the order was served by the court clerk the day of the citation hearing. See Appendix Two, Affidavit of Service.

Additionally, the town or city must show that any timeframe included in the order – usually 30, 60 or 90 days – has after notice to the defendant passed without the required corrections, and that efforts have been made to communicate with the defendant in that regard. The point is to show that the town or city has taken steps to solve the problem without first turning to the court filing, which may be independently helpful if the court is unfamiliar with the process of enforcing an abatement order or reluctant to do so.

Under Maryland Rule 15-206(c)(1), the petition for civil contempt must notify the defendant that incarceration is sought as a remedy. Indeed, that is the ultimate sanction sought by a contempt petition, even as it’s actually not the desired result. Additionally, the attached Show Cause Order will include required statutory language and notice to the defendant under Rule 15-206(c). See Appendix Three, Sample Petition for Contempt and Show Cause Order.

The petition must allege that the abatement order has been violated, and seeks a hearing for the court to determine the facts. Under Maryland Rule 16-206(c)(2), to schedule the hearing, the court will issue the Show Cause Order, directing the defendant to appear at the day and time specified to show that they have not committed contempt of court. See Fisher, 186 Md. App. at 117. As the Show Cause Order notice provides, the defendant’s appearance at the hearing is not optional; if they fail to appear, the notice under Maryland Rule 15-206(c) states that the defendant is subject to arrest. As such, like the abatement order itself, Maryland Rule 15-206(d) requires that the show cause order be personally served on the defendant. Indeed, the court will establish a deadline for municipal staff to serve the defendant. Typically the town or city staff person issuing the citation will serve the Show Cause Order, and the town or city will file an
affidavit with the court verifying that service before that deadline. If not, the show cause hearing will not proceed, as personal service on the defendant is a prerequisite.

*The First Show Cause Hearing on Contempt.* As long as the town or city files the affidavit showing the defendant received personal service of the Show Cause Order by the deadline, the hearing will proceed. The judge directs the process, often acting as a prosecutor of sorts – because the focus is on following the court’s abatement order rather than the local code.

To start the hearing, the town or city attorney will refer to the abatement order and assert the evidence is that the corrections and other requirements have not been satisfied, such that the conditions leading to the abatement order remain uncorrected. The town or city generally seeks compliance, rather than a contempt finding or punishment in itself. Indeed, the underlying theme should be that the municipality would rather not have filed the contempt petition, but had little choice but to do so. But after the introduction, the town or city doesn’t immediately move forward to offer testimony, as in the original code enforcement case. Instead, the town or city attorney will watch for the judge, who will, in most cases, direct the next steps.

When the defendant doesn’t appear, there is no default judgment, as may happen in the initial citation trial. Instead, the defendant must appear, in no small part because incarceration could now result. Thus, the court should issue a bench warrant if the defendant fails to appear, while usually setting a new tentative hearing date. With a bench warrant, the County sheriff will arrest and detain the defendant, who will normally be released on bond until the next contempt hearing. But it is possible the judge will not set a specific hearing date, pending arrest and detention of the defendant, and the date will be set afterwards. In any event, no further action would take place on the initial hearing date.
If the defendant appears, the judge will usually ask them to respond to the town or city’s statement, and in doing so will often emphasize the court order and the deadline. In most cases, the defendant will not raise a factual dispute but will admit the corrections haven’t been made or the violations are otherwise ongoing. Instead, most defendants may be expected to attempt to explain why the corrections have been delayed – often related to cost, practical problems, or other delays they will argue are beyond their direct control – and then ask for additional time. At that point, with the admission, there should be no need for the town or city to present evidence. But the judge may ask for a reaction to the defendant’s statements, and whether the town or city would accept the correction timeline, which may be a week, a month or more. As such, the defendant will be given a firm timeline to make the corrections to the town or city’s satisfaction. The court should then set the next hearing to consider whether the corrections were made.

If the defendant disputes that corrections remain to be completed, the judge will in response ask the town or city to present evidence. The town or city’s evidence would typically consist of brief testimony from staff stating that the conditions ordered corrected by the abatement order remain. The town or city will usually introduce a few photographs, usually no more than four or five, to visually demonstrate that the violations remain uncorrected. The judge typically takes an active role in questioning, and will normally, after the town or city’s statement, ask the defendant to speak or, as in most cases, to answer a series of specific questions. In the process, even the defendant who had not yet admitted a continuing violation will usually do so. With clear evidence of a continuing violation, the judge may be expected to agree with the town or city and find that violations remain. If not, of course, the petition would be denied.

A dispute may arise when the defendant claims corrections have been made since the town or city’s last inspection – even where that inspection was the day before. Defendants
indeed often claim that, overnight, they completed work to correct the original violation and as of the contempt hearing, there is no violation. It is to address this potential last-minute claim that the town or city attorney will try to have staff to re-inspect the relevant area, and take pictures as late as possible before the hearing, such as the day before.

It’s important to understand that a defendant stating corrections have been made at the last minute is admitting the town or city’s petition was well founded, as corrections were not made earlier. Even so, last minute corrections can satisfy an abatement order. Thus, the judge may be expected to reset the hearing, giving the town or city time to make additional inspections to verify whether the violations remain. The town or city should only object to the new date when there is clear evidence the defendant is not accurate. This should not be considered a loss, as it’s important to remember that even when the court finds that a defendant has violated the abatement order, and no corrections have been made, defendants are usually given some time to make corrections before facing any penalty.

Thus, the first show cause hearing may not result in incarceration, and that’s not the outcome the town or city would typically hope to achieve. After all, the defendant cannot easily make repairs or corrections to a home when they are in detention, which is the typical penalty for contempt. But a judge enforcing an abatement order can make the threat of incarceration very clear, and may point out that if corrections are not completed by the next hearing, the defendant could be ordered incarcerated, usually for 30 to 90 days, or until the corrections are made.

Except when the matter is postponed to allow the town or city to verify the defendant’s claim that corrections have been made, and the case is postponed, the judge can either deny the petition or find that the defendant has committed constructive civil contempt. A contempt finding means the defendant has committed contempt based on outside evidence from the town
or city, and if the penalty of incarceration is imposed, it can be avoided only if the defendant cures the violation. The judge can, in those cases, then issue a sentence of a specific number of days of incarceration, such as 30 to 90 days, suspending the sentence pending the outcome of the second hearing to determine if the violations remain uncorrected.

Where the defendant does not appear but a bench warrant is issued, the first hearing after that should be treated in the same way, as though the defendant had voluntarily appeared.

*The Second Show Cause Hearing on Contempt.* The expected outcome of the first hearing is thus a second hearing, to verify whether the corrections are made. In most cases, it works, and the town or city can state that sufficient corrections have been made to allow dismissal of the petition. If not, the judge, in enforcing a court order, may order the defendant incarcerated. Even where the town or city may be willing to grant more time, judges can be reluctant to grant a second postponement without a verified excuse, such as a medical emergency.

The defendant almost always appears at the second hearing, but if they do not, the judge will usually issue a bench warrant. Once the defendant is present, the second contempt hearing should not be extensive, as the inquiry is limited to whether required corrections have been made. The town or city will provide a brief introduction, briefly laying out the past hearing and then stating whether corrections were made. If the problem is resolved, the town or city can indicate it will dismiss the petition, or the judge may order the prior sentence suspended. But if corrections were not made, the judge will not ask for evidence, but will then usually turn to the defendant. The defendant who has not made corrections will usually not dispute the facts, but will ask for more time or identify a barrier, such as time, funds, or an intervening emergency.
The judge may be expected to simply order the sentence previously suspended to be put in place, and will order the defendant incarcerated. Judges are rarely willing to grant a third hearing, because the defendant has already been found to violate the court’s abatement order, and now has also violated the court’s order issued after the first contempt hearing. Judges are in most cases reluctant to accept such multiple violations of court orders, even when the town or city is willing to grant another extension.
CHAPTER 10: INJUNCTIONS

In the face of a town or city code violation, the municipal infractions process is not the only law enforcement option, and in some cases, other civil actions are necessary. Indeed, most local codes specify that the municipality may opt to file a civil action, in order to seek either a temporary restraining order, preliminary injunction or permanent injunction. Injunction actions might especially be necessary for emergencies or violations calling for immediate corrections, raising health, safety or other community concerns.

The injunction sought would typically request an order mandating compliance with the local ordinance. While District Courts, under Md. Courts and Judicial Proceedings Code Ann., §§4-401(6) and (7) have limited exclusive jurisdiction to consider injunctions in replevin, lien and landlord-tenant actions, injunctions are often filed in the Circuit Court.

Injunctions may seek permanent, intermediate, or preliminary relief, and may often be filed together. Thus, the town or city may seek a mandatory injunction as the ultimate long-term relief, but file it with a preliminary injunction seeking short-term relief, pending the ultimate trial. In the face of an emergency, immediate relief may be the primary goal – in which case the town or city may seek all three injunction options. Thus, along with a petition for mandatory and preliminary injunction, the town or city can file a motion for a temporary restraining order, for immediate relief for a short time, pending the preliminary injunction hearing.

Injunctions generally must meet a high burden of proof, and in addition to a local code violation, show there is no “adequate remedy at law,” meaning that monetary damages would not provide a sufficient remedy. *Maloof v. State Dept. of Environment*, 136 Md. App. 682, 693 (2001). But when such motions are filed by government entities, the public interest may be more
broadly considered, such that the arguable availability of money damages may not prohibit relief, but should instead be weighed against the community concerns. *State Dep't of Health and Mental Hygiene v. Baltimore County*, 281 Md. 548, 555 (1977).

**Preliminary Injunctions.** Where goal is a long-term, such as a permanent injunction, the municipal infractions process can be effective. But when facing an emergency and the need for quick correction, the town or city would initially focus on a preliminary injunction before trial, under Maryland Rule 15-505. A preliminary injunction does not allow for change, but simply protects the “status quo.” *Maloof*, 136 Md. App. at 693. Thus it prevents further harm, and seeks to preserve “the relative positions of the parties until a trial on the merits can be held.” *Hamot v. Telos Corporation*, 185 Md. App. 352, 362 (2009), citing *University of Texas v. Camenisch*, 451 U.S. 390, 394-95 (1981). As such, the municipality seeking a preliminary injunction must show the violation and evidence of ongoing harm and irreparable injury that would result without the injunction. *Hamot*, 185 Md. App. at 362; *Maloof*, 136 Md. App. at 694.

In deciding whether to grant a preliminary injunction pending trial on the merits, the judge will weigh four key factors: (1) the likelihood that the plaintiff will succeed on the merits; (2) the "balance of convenience" determined by whether greater injury would be done to the defendant by granting the injunction than would result from its refusal; (3) whether the plaintiff will suffer irreparable injury unless the injunction is granted; and (4) the public interest. *Ehrlich v. Perez*, 394 Md. 691, 708 (2006).

Note that a preliminary injunction does not seek immediate relief. A preliminary injunction hearing is set after notice to all parties, giving “an opportunity for a full adversary hearing on the propriety of its issuance,” under Maryland Rule 15-505(a). While the party
moving for such relief need not show they will ultimately prevail, sufficient evidence must prove that it has “a real probability of prevailing on the merits, not merely a remote possibility of doing so.” *Fogle v. H & G Restaurant*, 337 Md. 441, 456 (1995).

**Temporary Restraining Orders.** A motion for a temporary restraining order, unlike a petition for a preliminary injunction, seeks immediate relief. In an emergency situation, the town or city may, even in filing for a preliminary injunction pending long-term trial on the merits, seek immediate relief through a motion for a temporary restraining order, under Maryland Rule 15-504. No formal notice or hearing for both parties is required, and as a result, a judge can issue a temporary restraining order – but in limited circumstances based on strong evidence of immediate harm. And such an order only remains in place for a limited time, up to 10 days.

Additionally while formal prior notice or an adversary hearing is not required when motions for temporary restraining orders are filed, “efforts commensurate with the circumstances” must still be made to give some practical notice or warning to the opposing party, under Maryland Rule 15-504(b). Such an order is only issued in limited circumstances – when the evidence clearly shows by affidavits or statements “under oath” that “immediate, substantial and irreparable harm” will result if the motion is not granted. See Maryland Rule 15-504(a). A temporary restraining order is also limited in duration. It only stays in effect for 10 days, under Maryland Rule 15-504(c), pending consideration of the longer-term preliminary injunction, which is only granted after notice and an adversary hearing.
CHAPTER 11: CLEAN AND LIEN

Most abatement orders related to property, resulting from maintenance or building code violations, should include provisions granting the town or city authority to correct the violation at the defendant’s expense, as generally permitted by Md. Local Government Code Ann., §6-110(4). See Appendix One, Sample Abatement Order. The abatement order language usually includes language specifying that the town or city may correct the violation itself, and then bill the defendant for the cost of doing so. Indeed, most municipal codes also provide that the town or city can enforce an abatement order and correct property maintenance and property code violations.

Clearly, the town or city must keep records of all expenses, which must be reasonable and related to the violation outlined in the abatement order. But if the defendant, after being billed, does not pay, the town or city always has the option to follow the normal collections process, including filing a lawsuit to collect. But a separate lawsuit is generally not needed, as Md. Local Government Code Ann., §6-111(a) specifies that when the municipality itself “abates an infraction under a District Court order,” the defendant is billed, and then has thirty days, under Md. Local Government Code Ann., §6-111(b), to pay the bill before the municipality can move for an additional judgment against the defendant for the costs. This avoids the need to file a separate lawsuit to collect on the costs of making the repairs even as further court action is necessary to obtain a court judgment for the additional costs of the correction.

There is an alternative to further court action – when the abatement order provides sufficient specific authorization to allow the town or city to collect the cost for corrections to real estate in the same manner as property taxes. Thus, the costs can be collected as part of the
property tax bill, in which the municipal portion is sent as part of the annual property tax bill sent by the County. Most town or city codes also independently specify this authority, and provide that the town or city can collect the costs of correcting such property violations by assessing them as liens against the property and collecting the costs in the same manner as property taxes. Such a provision supports the town or city authority, even as doing so without a court order specifying a violation and ordering abatement can be risky. Thus, it is recommended that a municipality rely on an abatement order including this authority before adding the cost to the property tax bill. See Appendix One, Sample Abatement Order.

This is often referred to as “clean and lien,” as the cost of repair is treated in the same manner as property taxes, as authorized under Md. Local Government Code Ann., §5-205(d)(2). Clean and lien can be an additional tool to correct a violation, especially when a defendant does not otherwise respond and safety or neighborhood concerns require a more expeditious response than a contempt proceeding, which can take several months. This can also be a useful tool against landlords or property owners living outside the area, or corporations as well, because in those cases the contempt petition may not present a viable solution. Attaching persons outside the County jurisdiction for contempt proceedings may pose significant challenges, even to effect proper service, and constructive civil contempt proceedings work against individuals rather than corporations. This is a key reason why citations seeking “vicarious” liability may be pursued against both a corporate entity and a responsible individual, as discussed infra, pages 12-13.

But “clean and lien” is a limited tool. It is a way to correct a code violation expeditiously, but can only be used to address property maintenance or building code violations with an abatement order. It is also only practically effective against property owners who would be receiving a property tax bill. Additionally, payment isn’t assured even where the bill is
included in the municipal portion of the bill, in which the County tax bill is the larger sum. But the County will often seek enforcement of the tax obligation by forcing a tax sale, as could the town or city if it so desired. Otherwise, the town or city may be reimbursed at the time the property is sold through other means. Thus, while limited to property maintenance and building code violations, this can in the long term serve as an effective collection tool.
A final judgment isn’t always the end. Not only may the town or city try to enforce a final judgment, but defendants have several options to challenge court orders, even after the court has found them guilty of committing a municipal infraction, issued a fine and even added an abatement order. Such rules allow defendants to ask for a new trial before the same District Court, if they do so within 10 days of the judgment, or appeal the decision to the Circuit Court within 30 days. And even where defendants fail to appear, and the town or city wins judgment by default, defendants can file a motion with the District Court for a new hearing. But there are deadlines in place for both options.

*Motions for a New Trial, or to Reopen, Revise, or Vacate.* Within 10 days after the judgment, any party, including the municipality or the defendant, can file a motion for a new trial. Maryland Rule 3-533(b) requires that the motion state the grounds for the new trial, but does not specify any particular grounds. Under Maryland Rule 3-311(d), such a motion cannot be granted without a hearing. This motion does not stay the judgment, but when granted, it wipes away the prior judgment and results in an entirely new trial. This is the motion typically filed when the town or city wins by default because the defendant failed to appear at the hearing.

Maryland Rule 3-534 also allows any party, within the same brief 10-day deadline, to file a motion seeking to alter or amend the judgment. Such a motion to alter or amend may be combined with a motion for a new trial under Maryland Rule 3-533, but when granted, doesn’t in itself always result in a new trial. It is rarely used for municipal infraction judgments, because it focuses on a clear error or specific additional evidence, and may create a more limited result. It may allow the judgment to be opened for additional evidence or revised to correct an error.
For municipal infractions, usually any such motion – whether citing Maryland Rule 3-533 or 3-534, or not – is treated as a new trial motion, eliminating the prior judgment and resulting in a new, *de novo* trial. Again, such a motion is most often filed after a defendant has defaulted, in which a defendant will indicate they were unable to appear, or failed to receive notice of the court hearing. In those cases, the town or city may opt not to oppose the motion, and the court then sets a date to consider it, erasing the judgment. At that time, the municipal infraction hearing is conducted in the District Court as if it were the first hearing.

Motions for a new trial are usually filed after default judgment. They are rarely filed when a defendant was present, and in that case, would typically focus more on Md. Rule 4-534’s motion to alter or amend, based on an error or additional evidence. Such motions are less likely to be granted unless a defendant can demonstrate a clear error or additional evidence not considered would change the outcome, but when granted, typically result in a new trial.

*Appeals.* While a defendant has only 10 days to seek a new trial, they have 30 days to file an appeal. An appeal is not a request for a new trial before the same District Court, but for a new trial before the Circuit Court. State law at Md. Courts and Judicial Proceedings Code Ann., §12-401(d) specifies that any defendant found guilty of a municipal infraction may appeal to the Circuit Court within 30 days from the final judgment being appealed. So, too, may a defendant found guilty of contempt, per Md. Courts and Judicial Proceedings Code Ann., §12-402. But the appeal to Circuit Court from a municipal infraction case is *de novo*, and not on the record. Thus there is no review of the District Court’s original judgment. Instead, the appeal in a municipal infraction case is, under Md. Courts and Judicial Proceedings Code Ann., §12-401(f), an entirely new trial.
Thus, an appeal has the same intent and impact as a motion for new trial, but will be handled before a different court. Indeed, there are several other distinctions from a new trial motion. First, the more formal Circuit Court rules apply, as specified in Md. Rule 7-112(d)(3). Second, the District Court judgment is not eliminated, but remains in effect, under Md. Rule 7-112(b) “until superseded by a judgment of the circuit court.” Thus, an abatement order issued by the District Court may remain in effect, unless eliminated or changed with a new order by the Circuit Court, which under Md. Rule 7-112(e) is sent to the District Court clerk for entry into the District Court docket, thus truly superseding the prior District Court judgment but also allowing future contempt proceedings to enforce the order to be filed in the District Court.

Under Md. Rule 7-111, other appellate rules, including 8-422, 8-423 and 8-424, also apply to these Circuit Court appeals. Under these rules, including Md. Rule 8-422, the Circuit Court can consider a motion for a stay of enforcement pending appeal. But Md. Rule 8-423 specifies that upon filing an appeal, the District Court clerk will, before the appeal proceeds, require the defendant to pay a supersedeas bond in the amount of any money judgment – here, the fine – as security. This cost can discourage such appeals, especially where the District Court may have issued fines in the full amount of the fine, which can reach $500 and which may even be doubled up to $1,000. Thus, if defendants are within the 10-day deadline after a judgment, they will often simply seek a new trial rather than an appeal, which adds the bond costs.

It should be noted that appeals are exclusively options only for the defendant, as a municipality is not empowered to appeal from a District Court municipal infraction judgment. Maryland law, at Md. Courts and Judicial Proceedings Code Ann., §12-401(d)(1) specifies that only the defendant may file such an appeal. Motions to reopen a judgment or seek a new trial may be filed by any party, however, and municipalities certainly can file such motions to make
necessary corrections in the record or order. In most cases, however, only a defendant with a guilty finding at the municipal infraction trial will file such a motion.

Additional Appeals or New Trial Motions. A defendant who files a new trial request may be successful in winning the chance for a second trial, especially if they did not appear at the first trial. It’s generally not recommended that municipalities oppose such motions following a default judgment. But such a defendant should not expect success with a second new trial request, effectively asking for a third trial – even if they fail to appear for the second trial. The town or city could legitimately oppose such a duplicative motion, and courts are generally not willing to reset a trial twice. Additionally, new claims of error or new evidence rarely justify reopening a judgment for a second time. But if a defendant is found guilty in the second District Court trial, after a new trial is granted, the appeal option remains. Thus, that defendant can still seek a third trial by filing an appeal to the Circuit Court, if filed within 30 days of the second final judgment.

A final judgment after appeal, after the trial by the Circuit Court, should be considered final. While the Circuit Court trial rules, like the District Court rules, permit reopening or the correction of errors, they do not apply to appeals, and even if a judge is willing to consider such a motion, it seems unlikely, after an appeal, that it would be granted. Additionally, such a motion does not stay the enforcement of the judgment. As in appellate practice, it is likely that only a motion to alter or amend the judgment to correct a specified, clear error of law or fact, under Md. Rule 2-534, would be considered. Such a motion is usually only relevant after a hearing on the record, in which the Court issues a written opinion, and would be unlikely to be considered after a second de novo trial in which the final judgment is issued from the bench.
Maryland law also does not provide for any further appeal. Indeed, Md. Courts and Judicial Proceedings Code Ann., §12-301, specifies that an appeal to the next level, the Court of Special Appeals, is only allowed from a Circuit Court judgment “entered by a court in the exercise of original, special, limited, statutory jurisdiction,” unless exempted under Md. Courts and Judicial Proceedings Code Ann., §12-302 – which allows no appeal from “a final judgment of a court entered or made in the exercise of appellate jurisdiction in reviewing the decision of the District Court . . .” See Anne Arundel County v. Nes, 163 Md. App. 515, 526 (2005).

Similarly, Md. Courts and Judicial Proceedings Code Ann., §12-201, limits appeals to Maryland’s highest court, the Court of Appeals, to a petition for certiorari from a Court of Special Appeals judgment. Even so, Md. Courts and Judicial Proceedings Code Ann., §12-305 specifies that the Court of Appeals has authority to require a Circuit Court “final judgment on appeal from the District Court” to be certified for review, if “necessary to secure uniformity of decision” or if doing so is in the “public interest” based on other special circumstances. As such, the Court of Appeals does have authority to *sua sponte* assume such an appeal. Failing that, when a defendant has filed an appeal to the Circuit Court, the Circuit Court decision can almost certainly be considered the final decision.

It should be noted that the final Circuit Court decision, after the appeal and the new trial, will be entered in the District Court docket. It will substitute for the original District Court decision, under Md. Rule 7-112(e), which permits any future enforcement proceedings, such as contempt regarding any abatement order, to be handled by the District Court.
CONCLUSION

Maryland’s municipal infractions process is not perfect, but in many ways serves as an effective balance between the local government desire to solve a problem and a defendant’s rights to notice, a trial, and an appeal. It’s not a process that gives immediate solutions – only temporary restraining orders can accomplish that – but in the long run, it usually works. For such results, cooperation at multiple levels is needed. That process starts with a person or business allegedly violating a local code, and it continues when that person or business does not take steps to address the alleged violation – or, alternatively, does not demonstrate that the claims of a violation are erroneous.

When the problem is resolved after the first notice, no citations result, and further process results. But when a person or business continues with a violation, or an animal or person is put in danger by an alleged violation, the municipal infractions process takes shape. Except for emergencies, in which an injunction and/or temporary restraining order might be filed, it begins with a staff member or code enforcement officer trying to talk to someone or issuing a formal notice of violation. While formal, with dates and notations of specific violations, the notice of violation is nothing more than another attempt to resolve a problem without the need for further court action. And when the problem is resolved, there is no further action.

The need for the municipal infractions process becomes especially clear when the problem continues. At that point, municipalities often face the hard choice – to either attempt to enforce and uphold the law, or simply allow the law to be violated. After attempting to work with a person or business on a problem, in the face of continued violations, usually a citation is issued, and the court process begins. Short of paying the fine and addressing the problem,
usually that will involve a court hearing. And there are cases in which, even after a court hearing and an order directing that the violation stop, it continues. And persons in some cases end up facing contempt of court charges – serving time in jail.

Normally, no one involved with the town or city – from staff, to police, to the municipal attorney, wish to take any court action, have any innate desire to collect fines, and certainly do not wish to see any person face time in jail for a continuing violation. The goal is to solve problems and gain compliance with the local code.

The municipal infractions process is in place to address these ongoing problems for which there is no easy solution. As such, it may be the only effective route to solving the problem. It can, when problems continue, involve a lengthy process, and is always subject to the strength of proof, combined with the town or city’s credibility as the party trying to resolve the problem. Success in any endeavor also involves many players. In some cases, the risk and danger for the community, or community concerns overall, will also play a role. In the end, with persistence as well as patience, as town or city staff, municipal counsel, and community members who may be serving as witnesses work together, the process can work to help solve problems, address community concerns and help the town or city better serve the public.
APPENDIX ONE: SAMPLE ABATEMENT ORDER

IN THE DISTRICT COURT FOR ________________ COUNTY, MARYLAND

[TOWN OR CITY] *
Plaintiff *
v. Citation Nos: Z_______ Z_______ *
[DEFENDANT NAME] *
Defendant *

* * * * * * * * * * * *

ORDER FOR ABATEMENT

Upon consideration of the verified citation filed herein and any evidence presented at trial in this case, the Court finds that Defendant has committed the violation of the [Town or City] Code stated in the above-referenced citation and that the Plaintiff, [Town or City], Maryland, is entitled to this Order of Abatement pursuant to [Town or City] Code [Section] and Md. Local Government Code Ann., §6-110(4), and it is thereupon, this ___ day of ____________, 20__, by the District Court of Maryland for __________County,

ORDERED that the Defendant shall refrain from further violations of the [Town or City] Code, Section _________________________; and it is further

ORDERED that the Defendant shall take the following actions to correct the conditions which constitute a continuing violation of the [Town or City] law at [Address]:

Brief description
ORDERED that compliance with this Order shall be completed no later than [Date/30 days], and it is further

ORDERED that a representative of the [Town or City] shall be permitted to inspect the premises to verify that the terms of this Order have been complied with; and it is further

ORDERED that if the Defendant fails to abide by this Order, the Plaintiff, [Town or City], Maryland has permission to enter the property and abate the violation; and it is further

ORDERED that if the Plaintiff, [Town or City], Maryland, abates any code violation upon the Defendant’s property mentioned above pursuant to Section 6-110 of the Local Government Article of the Annotated Code of Maryland, the Plaintiff, [Town or City], shall send the bill for the cost of correction by regular mail to the Defendants’ last known address or by any other means that is reasonably calculated to bring the bill to the Defendants’ attention. If the Defendant does not pay the bill within 30-days after it is presented, the Plaintiff may file a verified statement of the costs of correcting violations with the court; and it is further

ORDERED that once the Court has entered a judgment against the Defendant for the cost of correction of the violations, the Plaintiff may enforce a judgment in the same manner as any other civil judgment for money, or collect the judgment in the same manner as it collects real property taxes.

FAILURE TO COMPLY WITH THIS ORDER IS PUNISHABLE BY CONTEMPT.

____________________________________
Judge, _________ District Court for
________________________ County, Maryland
APPENDIX TWO: SAMPLE AFFIDAVIT OF SERVICE OF ABATEMENT ORDER

IN THE DISTRICT COURT FOR ________________ COUNTY, MARYLAND

[TOWN OR CITY]     *

Plaintiff     *

v.       * Citation Nos:  _Z________
_Z________

[DEFENDANT NAME]     *

Defendant     *

AFFIDAVIT OF SERVICE

I, [Name], [Position], [Town or City] state:

1. That I am now and at all times referred to in this Affidavit have been an adult above the age of eighteen years, a citizen of the United States of America and of the State of Maryland;

2. That I am competent to make this Affidavit and that I do so upon my own information and knowledge and that I am competent to testify to the matters contained herein;

3. That I served a copy of the Abatement Order, which was issued by this Court on December 1, 2015 in this proceeding, personally on Defendant on the ____ day of __________, 2015 at __:__ am/pm.

I do solemnly declare and affirm under the penalties of perjury that the contents of the foregoing Affidavit are true to the best of my knowledge and belief.

_____________________   __________________________________
Date      [Name]
[Position]
[Town or City]

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APPENDIX THREE: SAMPLE PETITION FOR CONTEMPT, SHOW CAUSE ORDER, SERVICE OF ABATEMENT ORDER

IN THE DISTRICT COURT FOR ________________ COUNTY, MARYLAND

[TOWN OR CITY] *

Plaintiff *

v. * Citation Nos: Z______ Z______ *

[DEFENDANT NAME] *

Defendant *

* * * * * * * * * * * *

PETITION FOR CONSTRUCTIVE CIVIL CONTEMPT AND ORDER TO SHOW CAUSE

The [Town or City], Maryland, by its undersigned attorneys, respectfully requests this Honorable Court to hold [Defendant], [Address], (“Defendant”), in contempt for failing to abide by this Court’s Order of Abatement issued on [Date], and for reasons states the following:

1. [Town or City] is a municipal corporation of the State of Maryland and is the local legislative body for the incorporated areas of the [town or city] limits and is authorized by various laws and statutes to exercise the police power within the city and to enforce its laws and those of the State of Maryland.

2. On or about [date], [town or city] [staff name and title] visited and conducted an inspection of the Defendant’s property located at [address], and issued citation number Z______ to the Defendant that same day for failing to [describe] located at [address] are structurally sound and in good repair, violations of [code citation, city or town].
3. A hearing on citation number _Z________ was held on [date] at which the [town or city] requested, and the Court granted, an Order of Abatement, attached hereto as Exhibit A, ordering the Defendant to abate the [Town or City] Code violations.

4. Specifically, the Defendant was required to maintain the property located at [address] and [describe], in order to bring himself into compliance with the [Town or City] Code and comply with the Court’s Order of Abatement.

5. Code Enforcement Officer [name] served the Order of Abatement on the Defendant on [date] (See Exhibit B, Affidavit of Service).

6. On [date], after the close of the thirty day period permitted by the Order of Abatement, Code Enforcement Officer [staff name] revisited and reinspected the Defendant’s property located at [address] to ascertain whether the violation had been abated. The Code Enforcement Officer discovered that the violation remained unabated; specifically, [describe]. [See either Exhibit pictures or add to affidavit]

7. Code Enforcement Officer [name] has revisited the premises at [address] since that time, on [dates] and [dates]. The [describe] a new notice of violation has been issued. [See either Exhibit pictures or add to affidavit]

8. To this date, Defendant has willfully continued to fail to abate the [Town or City] City Code violations, or to bring the property into compliance with the Abatement Order, as evidenced by the Code Enforcement Officer’s on site observations and as shown in the attached photographs. (Exhibit C, Photographs).

WHEREFORE, the Plaintiff, [town or city], Maryland, respectfully requests that:

1. The Defendant [name] be ordered to show cause why he is not in contempt of Court for failure to abide by this Court’s Abatement Order dated [date];
2. The Office of the [town or city] Attorney be appointed to prosecute this contempt proceeding;

3. This Honorable Court find Defendant in contempt of court, and impose sanctions against him as this case may demand, including incarceration if the Court sees fit, until such time as the Defendant performs and completes, to the standard required by the [Town or City] Code, the work enumerated in the Abatement Order;

4. And for such other and further relief as the nature of this cause may require.

Respectfully submitted,

______________________________
[Attorney name]
[Town or City]
[Address]
[city/state/zip]
POINTS AND AUTHORITIES

1. POINT: Contempt has been defined as a despising of the authority, justice, or dignity of the court. . . . A person whose conduct tends to bring the authority and administration of the law into disrespect or disregard, interferes with or prejudices parties or their witnesses during litigation, or otherwise tends to impede, embarrass, or obstruct the court in the discharge of its duties, has committed a contempt.


2. POINT: Any party to an action in which an alleged contempt occurred . . . may initiate a proceeding for constructive contempt by filing a petition with the court against which the contempt was allegedly committed.

   AUTHORITY: Maryland Rule 15-206 (b).

3. POINT: Unless the court finds that a petition for contempt is frivolous on its face, the court shall enter an order that states:

   (a) the time within which any answer by the Defendant shall be filed, which, absent good cause, may not be less than 10 days after service of the order;

   (b) the time and place at which the Defendant shall appear in person for a prehearing conference, hearing, or both, allowing a reasonable time for the preparation of a defense, and, if a hearing is scheduled, whether it is before a master or before a judge; and

   (c) if incarceration to compel compliance with the court’s order is sought, a notice to the defendant. . . .

   AUTHORITY: Maryland Rule 15-206 (c).
4. POINT: The Order, together with a copy of any petition and other documents filed in support of the allegation of contempt, shall be served on Defendant pursuant to Maryland Rule 3-121 or, if Defendant has appeared as a party in the action in which the contempt is charged, in the manner prescribed by the court.

AUTHORITY: Maryland Rule 15-206 (d).

5. POINT: The purpose of civil contempt is to coerce or facilitate compliance with court orders. Because the sanction is coercive, it must allow for purging.


_____________________________
[Attorney name]
[Town or City] Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this ___ day of [Date], a copy of the foregoing Petition for Contempt, Points and Authorities, and Show Cause Order was mailed, first-class, postage prepaid to [defendant], [address].

_____________________________
[Attorney name]
[Town or City] Attorney
IN THE CIRCUIT COURT FOR ________________ COUNTY, MARYLAND

[TOWN OR CITY] * * * * * * * * * * * *

Plaintiff * * * * * * * * * * * *

v. * Citation Nos: Z ______

[DEFENDANT NAME] * * * * * * * * * * * *

Defendant * * * * * * * * * * * *

* * * * * * * * * * * *

SHOW CAUSE ORDER

Upon the Petition for Contempt filed by the Plaintiff, the [Town or City], Maryland, which alleges that [defendant] has violated the Order of Abatement this Court dated [date], issued by the Honorable Judge ________________, it is hereby

ORDERED this _____ day of ________________, 201__, by the District Court of Maryland for _____________ County, that Defendant, [name], show cause, if any he has, why the relief prayed therein should not be granted; and it is further,

ORDERED that a hearing on said Motion for Contempt will be held before a judge on the _____ day of ________________, 201__, at ___:__, ___ m., if Defendant has been served on or before the _____ day of ________________, 2014; and it is further

ORDERED that Defendant’s answer is due to be filed by the _____ day of ________________, 201__; and it is further [ 

ORDERED that the Town or City] Attorney for the [Town or City], Maryland shall prosecute this proceeding.
TO THE PERSON ALLEGED TO BE IN CONTEMPT OF COURT:

1. It is alleged that you have disobeyed a court order, are in contempt of court, and could go to jail until you obey the court’s order.

2. You have the right to have a lawyer. If you already have a lawyer, you should consult the lawyer at once. If you do not now have a lawyer, please note:

   (a) A lawyer can be helpful to you by:

      (1) explaining the allegations against you;

      (2) helping you determine and present any defense to those allegations;

      (3) explaining to you the possible outcomes; and

      (4) helping you at the hearing.

   (b) Even if you do not plan to contest that you are in contempt of court, a lawyer can be helpful.

   (c) If you want a lawyer but do not have the money to hire one, the Public Defender may provide a lawyer for you.

      • To find out if the Public Defender will provide a lawyer for you, you must contact the Public Defender as soon as possible, or at least 10 business days before the date of the hearing before the judge.

      • The court clerk will tell you how to contact the Public Defender.

   (d) If you want a lawyer but you cannot get one and the Public Defender will not provide one for you, contact the court clerk as soon as possible.

   (e) **DO NOT WAIT UNTIL THE DATE OF YOUR HEARING TO GET A LAWYER.**

      If you do not have a lawyer before the hearing date, the court may find that you have waived your right to a lawyer, and the hearing may be held with you unrepresented by a lawyer.
3. IF YOU DO NOT APPEAR FOR THE HEARING, YOU WILL BE SUBJECT TO ARREST.

JUDGE, District Court for __________
County, Maryland
IN THE DISTRICT COURT FOR ________________ COUNTY, MARYLAND

[TOWN OR CITY] *

Plaintiff *

v. * Citation Nos: ____________ ____________

[DEFENDANT NAME] *

Defendant *

AFFIDAVIT OF SERVICE

I, [Name], [Position], [Town or City] state:

1. That I am now and at all times referred to in this Affidavit have been an adult above the age of eighteen years, a citizen of the United States of America and of the State of Maryland;

2. That I am competent to make this Affidavit and that I do so upon my own information and knowledge and that I am competent to testify to the matters contained herein;

3. That I served a copy of the Abatement Order, which was issued by this Court on [date] in this proceeding, personally on Defendant on the ____ day of __________, 20__ at ___:___am/pm.

I do solemnly declare and affirm under the penalties of perjury that the contents of the foregoing Affidavit are true to the best of my knowledge and belief.

_____________________   __________________________________
Date      [Name]  
[Position]
[Town or City]
APPLICATION FOR AN ADMINISTRATIVE WARRANT FOR SEARCH AND SEIZURE

To the Honorable [Judge Name, if known] of the Circuit Court for ____________ County, Maryland:

The [Town or City], a municipal corporation of the State of Maryland, by [Name], Attorney, respectfully submits, pursuant to [cite local code section and reference town or city name], this application for administrative search and seizure warrant on behalf of the [town or city, and department or staff member, if relevant], and in furtherance states:

1. On [date] at approximately 11:00 a.m., the [department or staff] received information from the [name] Veterinary Clinic, located at [address] that [defendant], of [address], and [other name and address if relevant], had arrived at their offices at approximately 3:00 p.m. on [date] with a male [Detail]Terrier named “[Name]” to receive medical treatment for [describe] of undetermined origin. See Exhibit A, Veterinary Report, and Exhibit B, Client
Communications/Summary of Events. As these records indicate, [defendant] is the dog’s owner and [animal name]’s rabies vaccine was overdue, with the last vaccine expiring in 2009. See Exhibit A and B. While “[animal name]” was being examined by Dr. [name], D.V.M., he bit [name], Dr. [name]’s Animal Health Technician, on the right hand [description]. See Exhibits A and B. [Name] was given a rabies vaccination, see Exhibit C, Rabies Certificate.

2. [Name of victim] was treated for her bite wound at [name] Care, on [address]. See Exhibit D, [name] Bite Report. [Name] Clinic then filed the required Animal Bite Report. See Exhibit E, Animal Bite Report.

3. Upon investigation on [date], the [town or city] [department staff person], found that [name]’s last known rabies vaccination, completed at [name of clinic], expired in 2009. See Exhibit F, Affidavit of [staff person and title]. [Name] called [Defendant] on [date] and asked him for additional rabies vaccination records, but he indicated the rabies vaccination that expired in 2009 was [animal name]’s last vaccination, and he has produced no other record. Id. [Staff member name] then provided records to the local health department, and the health officer found [name of animal] to be an animal suspected of having rabies, under Code of Maryland Regulations §10.06.02.06, and accordingly ordered [name of animal] to be quarantined and observed for 10 days and then isolated for 6 months, as required by Code of Maryland Regulations §10.06.02.04(b)(1). See Exhibit G, Health Officer’s Order.

4. Maryland Health-General Code Ann., §18-320 and Code of Maryland Regulations §10.06.02.04, requires [name of animal], upon the health officer’s finding that he is an animal is suspected of being rabid, to be isolated and quarantined as per the local health officer’s order, because [name of animal] is unvaccinated, has bitten another person, and also has received a wound of undetermined origin. Without such required quarantine or isolation, as also
mandated by the health officer’s order, [name of animal] constitutes a threat to public health, under Maryland Health-General Code Ann., §18-102(a) and (b).

5. When speaking with [defendant] by telephone on [date], [staff member] advised him of the 10-day quarantine and 6-month isolation period required by Maryland law. [Defendant] refused to undertake either process and hung up the phone. [Staff member] called [defendant] back several times on [date] and he kept hanging up. [Staff member] finally left him a message on [date] repeating the Maryland quarantine and isolation requirements, but he has not contacted the [department or city or town]. See Exhibit F. [Defendant name] has requested no waiver or permission to move [animal name] without going through the required treatment under Maryland Health-General Code Ann., §18-302(d).

6. The [town or city and department if relevant] and the [town or city, or county or sheriff, as applicable] Police Department located [animal name] and identified [defendant]’s residence. [Defendant]’s refusal to comply with Maryland law and the health officer’s order requiring 10-day-quarantine and 6-month-isolation constitutes a threat to the health and safety of the people and animals that could come into contact with him. Accordingly, as per the health officer’s order, [animal name] must be located and properly isolated and quarantined by [town or city]. See Exhibit F.

7. Accordingly, the [town or city, and department if relevant] requests permission to impound the dog pursuant to §§[specific cite] of the [Town or City] Code, which authorizes impoundment of animals pursuant to the health officer’s order and which are suspected of being rabid, as well as §10.06.02.07 of the Code of Maryland Regulations.

WHEREFORE, the [town or city], Maryland prays that an Administrative Warrant for Search and Seizure be issued, authorizing an Animal Control Officer and others whom he or she
might recruit and delegate, together with assistance from the [town, city, county or sheriff] Police Department as needed, to undertake the necessary and proper steps to enter, inspect, seize, and remove the [description] Terrier known as “[name],” located at [address] Maryland, and in the possession of [defendant] or any other custodian, based on Maryland law and the health officer’s order that [name of animal] is a threat to public health; [name of animal] shall then be isolated and quarantined as required by Maryland law and the health officer’s order.

Respectfully submitted,

[NAME]  
[Town or City] Attorney

________________________________________________________________________

[Name]  
[Title]  
[Address]  
[City/State/Zip]  
Phone:  
Attorneys for the [Town or City]

NOTE: NEED TO ATTACH ANY AFFIDAVITS, DOCUMENTS, OR OTHER EVIDENCE
APPENDIX FIVE: SAMPLE ADMINISTRATIVE WARRANT ORDER

CIRCUIT COURT
FOR
COUNTY, MARYLAND

TO: THE [STAFF TITLE], [TOWN OR CITY/DEPARTMENT]

The Affidavit of [Staff Name], [Title], [Town or City], has been presented to the Court along with documents, including veterinarian records and animal bite reports, as well as an application for Administrative Search Warrant. [Name and Title] has obtained and presented reliable information that the dog [name], a [description] Terrier, bit a veterinarian technician in the [town or city] on [date], but his last rabies’ vaccination expired in 2009. The health officer has found that the dog [name] is a suspected rabid animal and has ordered that [name] be quarantined and observed for 10 days and then isolated for 6 months, as required by Maryland Health-General Code Ann., §18-320 and Code of Maryland Regulations § 10.06.02.04. [Staff name] has notified the dog’s owner that [animal name] must under Maryland law be quarantined and isolated because [animal name] is unvaccinated, has bitten another person and suffered from a wound of unknown origin. [Staff member] has made several attempts to further communicate with the dog’s owner, but the dog’s owner refuses to comply with Maryland law, has provided no evidence of a current rabies vaccination, and has taken no steps to request a waiver of the requirements for isolation and quarantine. Finally, [staff member], the [town or city] [department] and the [town, city, county, sheriff] Police Department have located the dog and the owner’s residence at [address], and requests permission to impound, quarantine, observe and isolate the dog as required by the health officer’s order and Maryland law, pursuant to [town or city code section] of the [town or city] Code.

Page 1 of 2
The [town or city]’s [department] needs immediate access to the premises described above for the purpose of removing the dog which the health officer has determined poses a risk to the public health.

I am satisfied that the grounds for the issuance of an Administrative Warrant for Search and Seizure exist, being those grounds as stated in the Application and Exhibits attached hereto and incorporated herein by reference.

Therefore, you are commanded, with the necessary and proper assistance, to enter and inspect, and take all steps necessary and appropriate to seize and remove the dog [animal name] from [address], identified in the Administrative Warrant for Search and Seizure, so as to seize the dog and take all necessary steps to quarantine, observe and isolate the dog as required by Maryland law in an effort to protect public health and safety.

GIVEN, Under My Hand, this __________day of [date].

_______________________________________
Judge [name]
Circuit Court for ____________ County, Maryland
APPENDIX SIX: SAMPLE INSPECTION CONSENT

Consent To Inspection

I, __________________, have been requested to consent to an examination of my property located at: __________________, in ____________ Maryland.

I am the lawful owner/occupant/agent of this property and I have the legal authority to authorize the below officials and their agents permission to entry and inspection.

I have been advised of my constitutional rights to refuse any further entry, and to require that an administrative search warrant be obtained prior to any examination.

I hereby authorize the _______________ Code Enforcement Officials and their agents to conduct an inspection of the above premises including the interior and exterior of structures and yard areas of the subject premises.

I agree that ____________ staff may take photographs, measurements and other records and documents of conditions of the interior and exterior areas of the premises and board or otherwise secure the property. I understand that the photographs and other documents created during this inspection become public records that are open for public inspection under the Maryland Public Information Act. Further, I acknowledge that any information obtained can be used in subsequent Court action for violations of any State, County or _____________ Municipal Code.

By signing consent, I confirm and acknowledge the following:

1) I am over the age of 18 and a current owner/occupant/agent of the subject property;
2) That I have the right to refuse to consent to inspection;
3) That I have the right to withdraw consent at any time during the inspection;
4) That I am signing this consent form voluntarily and without threats or promises of any kind; and
5) That I acknowledge receiving a copy of this document.

_____________________    ___________________
Signature            Dated

_____________________    ___________________
Print Name              Time

___________________________
Witness

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ACKNOWLEDGEMENTS

Gaithersburg Assistant City Attorney Frank Johnson in 2016 undertook a project to provide guidance to City of Gaithersburg staff regarding municipal infractions and how to process them from start to finish. Mr. Johnson shared the product of his work with other municipal attorneys at a meeting of the Maryland Municipal Attorneys Association (MMAA). Association members warmly received the handbook and discussed ways in which it could be shared with other municipal governments throughout the state. Working together with the Maryland Code Enforcement and Zoning Officials Association (CEZOA) and the Maryland Municipal Attorneys Association (MMAA), we are pleased to publish this document and to share hard copies and online versions with each city and town in Maryland.

The Maryland Municipal League would like to acknowledge affiliate departments, MMAA and CEZOA, for their contributions to help defray the costs of printing and for cosponsoring its publication. The League would also like to thank Gaithersburg Assistant City Attorney Frank Johnson for his many hours of research and drafting as he authored this handbook. Finally, the League wishes to thank the Mayor and Council of Gaithersburg, the City Attorney and City Manager for providing the worktime and support that allowed Mr. Johnson to complete this project that will provide valuable information to MML member municipalities for years to come.

Scott A. Hancock
Executive Director
Maryland Municipal League