

Chapter 1228: Enforcement and Penalties

1228.01 VIOLATIONS

- (a) The erection, construction, enlargement, conversion, moving or maintenance of any building or structure, and the use of any land or building which is continued, operated or maintained, contrary to the provisions of this code is hereby declared to be a violation of this code and unlawful.
- (b) Whenever the Development Code Administrator, or their designee, determines that there has been a violation of any provision of this code, the Development Code Administrator, or their designee, shall give notice of such violation to the person in accordance with Section [1228.06](#).

1228.02 COMPLIANCE OF OTHER CITY DEPARTMENTS (EXISTING)

All departments, officials and public employees of the City vested with the duty or authority to issue permits or licenses shall comply with the provisions of this code and shall issue no permit or license for any use, building or purpose in conflict with the provisions of this code. Any permit or license, issued in conflict with the provisions of this code, shall be null and void and of no effect whatever, and no utility or other public service shall be provided to any property used in violation of this or any other applicable ordinance of the City.

1228.03 FILING OF COMPLAINTS AND ENFORCING OFFICER (NEW)

Whenever a violation of this code occurs or is alleged to have occurred, any person may file a complaint with the Development Code Administrator. The Development Code Administrator shall record such complaint, investigate the complaint, and take action as provided by this code.

1228.04 AFFECTED PARTIES (NEW)

The owner or tenant of any building, structure, premises, or part thereof, and any architect, engineer, surveyor, builder, contractor, agent, or other person who commits, participates in, assists in, or maintains a violation may be found guilty of a separate offense and suffer the penalties herein provided.

1228.05 ENTRY AND INSPECTION OF PROPERTY (NEW)

The Development Code Administrator, or their designee, is authorized to make inspections of properties and structures for the purpose of enforcing the provisions of this code. Prior to seeking entry to any property or structure for such examination, the Development Code Administrator, or their designee, shall attempt to obtain the permission of the owner or occupant to inspect the property or structure. If such permission is denied or cannot be obtained, the Development Code Administrator shall request the assistance of the Middletown Law Director in securing a valid search warrant prior to entry.

1228.06 PROCEDURES UPON DISCOVERY OF VIOLATIONS (REVISED 1280.06)

(a) Initial Written Notice

- (1)** If the Development Code Administrator, or their designee, finds that any provision of this code is being violated, a written notice shall be sent to the person responsible for such violation,
- (2)** Such notice shall:
 - A.** Be in writing;
 - B.** Identify the violation;
 - C.** Include a statement of the reason or reasons why it is being issued and refer to the applicable sections of this code; and
 - D.** State the time by which the violation shall be corrected.
- (3)** Service of notice of violation shall be as follows:
 - A.** By personal delivery to the person or persons responsible, or by leaving the notice at the usual place of residence of the owner with a person of suitable age and discretion;
 - B.** By certified mail deposited addressed to the person or persons responsible at a last known address;
 - C.** If a certified mail envelope is returned with endorsement showing that the envelope is unclaimed, then service shall be sent by ordinary mail, and the mailing shall be evidenced by a certificate of mailing. Service shall be deemed complete when the fact of mailing is entered of record, provided the ordinary mail envelope is not returned by the postal authorities with an endorsement showing failure of delivery; or
 - D.** By posting a copy of the notice form in a conspicuous place on the property where the violation is located.
- (4)** Additional written notices may be sent at the Development Code Administrator's, or their designee's, discretion.

(b) Final Written Notice

A written final notice (the initial written notice may be the final notice) shall be sent to the person responsible for such violation. It shall state what action the Development Code Administrator, or their designee, intends to take if the violation is not corrected and shall advise that the Development Code Administrator's, or their designee's, decision or order may be appealed to the BZA in accordance with the provisions of Section [1226.13](#).

(c) Citation

- (1)** If no action is taken within the time period allowed for correction, cessation, or appeal to the BZA, a citation shall be issued in accordance with this subsection. The violator shall, within 20 days of the date of the citation, pay the citation to the City Clerk or the matter will be scheduled for a hearing at the Middletown Municipal Court. If no action is taken within these 20 days, additional citations may be issued each day the violation remains in noncompliance. Each day the violation occurs after the citation is issued is deemed a separate offense.
- (2)** The citation shall be put in writing on an appropriate form, describe the offense charged, refer to the section of the code violated, and order the defendant to appear in Municipal Court at a stated time and place.
- (3)** The citation shall be served on such person, in person. However, a citation shall be deemed to be properly served upon such person if a copy thereof is sent by registered or certified mail to his last known mailing address, residence, or place of business, and a copy is posted in a conspicuous place in or on the property affected.
- (4)** If a registered or certified mail envelope is returned with an endorsement showing that service was refused or unclaimed, the notice may be served by ordinary mail to their last known mailing address, residence, or place of business. The mailing shall be evidenced by a certificate of mailing, and service shall be deemed complete on the date of mailing, provided the ordinary mailing envelope is not returned from the postal authorities with an endorsement showing failure of delivery.
- (5) Alternatively:**
 - A.** The citation may be served by leaving it at his last known residence or place of business in the presence of a family member or other responsible person of suitable age and discretion who shall be informed of the general nature of the contents thereof; or
 - B.** If service is not accomplished by any of the above means, then a notification of the existence of the citation may be published at least once in a local newspaper of general circulation.
- (6)** The citation, as herein provided, shall be sufficient notice, summons, and legal service thereof for the purpose specified thereon, provided the use of such citations shall not prohibit the issuance of either additional citations in the event such violation is continued or repeated.

(d) Emergency Enforcement

Notwithstanding the foregoing, in cases when delay would seriously pose a danger to the public health, safety, or welfare, the Development Code Administrator, or their designee, may seek enforcement without prior written notice by invoking any of the penalties or remedies authorized in Section [1228.07](#).

1228.07 PENALTIES AND REMEDIES FOR VIOLATIONS

- (a) In case any building is or is proposed to be located, erected, constructed, reconstructed, enlarged, changed, maintained, or used or any land is or is proposed to be used in violation of this code, or any amendment or supplement thereto, City Council, the Law Director, the Development Code Administrator, City Engineer, or any adjacent or neighboring property owner who would be especially damaged by such violation, in addition to other remedies provided by law, may institute injunction, mandamus, abatement, or any other appropriate action or proceeding to prevent, enjoin, abate, or remove such unlawful location, erection, construction, reconstruction, enlargement, change, maintenance, or use.
- (b) **Civil Penalty and Appeals**
Any act constituting a violation of the provisions of this code or a failure to comply with any of its requirements, including violations of any conditions and safeguards established in connection with the grants of variances or conditional uses, COAs, certificates of zoning compliance, or other approvals authorized through this code, shall subject the offender to a civil penalty in accordance with Section <>²⁴. A civil penalty may not be appealed to the BZA if the offender was sent a final notice of violation in accordance with Section 1228.06 and did not appeal to the BZA within the prescribed time.
- (c) **Other Enforcement Actions**
Nothing herein contained shall prevent the City from taking such other lawful action as is necessary to prevent or remedy any violation.
- (d) **Multiple Citations**
Each day that any violation continues (for each citation) after notification by the Development Code Administrator, or their designee, that such violation exists shall be considered a separate offense for purposes of the penalties and remedies specified in this Chapter.
- (e) **Multiple Remedies**
Any one, all, or any combination of the foregoing penalties and remedies may be used to enforce this code.

²⁴ A table of civil penalties will be added after further City review.

