

50 Leavenworth Street
P.O. Box 1110
Waterbury, CT 06702

December 21, 2015

Town Council, Town of Prospect
Prospect Town Hall
36 Center Street
Prospect, CT 06712

Re: Suggested Revisions to Blight Ordinance

Members of the Council:

Now that the Anti-Blight Commission has been working with the Blight Ordinance and related forms for a while, it appears several changes to the ordinance are necessary or will be helpful. Enclosed is a copy of the relevant provisions of the ordinance with the suggested changes highlighted. The reasons for the revisions are as follows:

Sections 9 and 11. These revisions clarify that even if someone makes an uncontested payment of the civil penalty under Section 9 or admits liability by paying the civil penalty under Section 11, the person can still be subject to enforcement action, including remediation by the Town under Section 16.

Section 12. As drafted, the ordinance does not track Connecticut General Statutes § 7-152c, which governs citation hearing procedures. The revision corrects the language to track the statute, ensuring that if someone requests a hearing, it will be held between 15 and 30 days of the date that the notice of hearing is sent out (as opposed to between 15 and 30 days of the date of the request for the hearing).

Section 13. This revision allows someone found liable for a violation by the hearing officer to have 30 days from the hearing to remedy the violation before the Town may proceed with further enforcement action, including remediation under Section 16. This ensures that people requesting a hearing in good faith are not penalized for doing so and will still have time to address the condition if they are found liable. It further provides, however, that if the person has previously been found liable for the same or similar violation, the Town may proceed immediately.

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Town Council, Town of Prospect

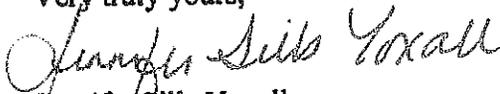
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Section 16. As the ordinance is currently drafted, this section allows the Town to proceed with remediation if someone is found liable either through failure to seek a hearing or if a hearing was held and the hearing officer determined the person was liable. However, the law does not prohibit the Town from pursuing further enforcement actions against someone who has paid the civil penalties. The revision enables the Town to do so.

Should you have any questions, please feel free to call me.

Very truly yours,


Jennifer Sills Yoxall

JSY/mg
Enclosure

(3) The amount of the civil penalties due for noncompliance and a statement that the owner/occupant has ten (10) days from receipt of the Citation within which to make uncontested payment;

(4) Notice that it is the owner/occupant's obligation to inform the Anti-Blight Commission in writing that the violation has been brought into compliance;

(5) A statement that the owner/occupant may contest his/her/its liability and request a hearing before a Citation Hearing Officer in accordance with Section 10 of this ordinance; and

(6) A statement that if the owner/occupant does not pay the civil penalties or request a hearing, an assessment and judgment shall be entered against him/her/it.

(c) The Citation shall be delivered to the owner/occupant, and a copy to any lien holder, in the same manner as set forth in Section 7 (e) above.

Sec. 9. Uncontested Payment Period

Uncontested payment to the Town of Prospect of the civil penalties specified in the Citation shall be allowed for a period of ten (10) calendar days from receipt of the Citation. If the Citation was sent by regular mail as set forth in Section 7 (d)(2) above, the day of receipt of the Citation shall be deemed to be four (4) days after the date of its mailing.

Such payment shall not preclude the Town from pursuing any and all options for addressing the blighted condition, including but not limited to remediation under Section 16 hereof.

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Sec. 10. Notice of Violation and Hearing

(a) If uncontested payment of the civil penalties specified in the Citation is not made within the ten (10) day period set forth in Section 9 above, at any time within twelve (12) months from the expiration of the 10-day period, the Anti-Blight Commission shall send notice to the person(s) cited, informing such person:

(1) Of the allegations against him/her/it and the amount of the civil penalties, costs, or fees due;

(2) That the cited person may contest his/her/its liability before a citation hearing officer by delivering, in person or by mail, within ten (10) days of the date of the notice (the date of delivery if hand delivered or the date of mailing if mailed), a written demand for a hearing;

(3) That filing a request for a hearing shall cause the daily accrual of civil penalties to cease from the date such filing is hand-delivered or mailed to the Anti-Blight Commission until the date the hearing officer renders a decision unless, during such period, the violation of this ordinance is expanded or increased.

(4) That if the cited person does not demand such a hearing, an assessment and judgment shall be entered against him/her/it; and

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

(b) The Notice shall be delivered to the owner/occupant, and a copy to any lien holder, in the same manner as set forth in Section 7 (d) above.

Sec. 11. Admission of Liability and Payment of Civil Penalty

Any cited person who wishes to admit liability without requesting a hearing may pay the full amount of the civil penalties admitted to in person or by mail to the Town of Prospect. Such payment shall be inadmissible in any proceeding, civil or criminal, to establish the conduct of such person or other person making the payment. Such payment shall not preclude the Town from pursuing any and all options for addressing the blighted condition, including but not limited to remediation under Section 16 hereof.

Any person who does not deliver or postmark written demand for a hearing within ten (10) days of the date of the notice described in Section 10 above (the date of delivery if hand delivered or the date of mailing if mailed) shall be deemed to have admitted liability, and the Anti-Blight Commission or its designee shall certify such person's failure to respond to the Citation Hearing Officer. The Citation Hearing Officer shall thereupon enter and assess the civil penalties provided for by this ordinance and shall follow the procedures set forth in Section 14 of this ordinance.

Sec. 12. Hearing.

(a) An owner/occupant may request a hearing after receiving a Citation or within ten (10) days of the date of the notice described in Section 10 above. Said request shall be made in writing to the following: Town of Prospect Anti-Blight Commission, 36 Center St., Prospect, CT, 06712.

(b) Any person who requests a hearing shall be given written notice of the date, time and place for a hearing to be held not less than fifteen (15) days nor more than thirty (30) calendar days from the date of the ~~notice of hearing~~~~original request notice~~. The Citation Hearing Officer shall grant, upon good cause shown, any reasonable request by any interested party for a postponement or continuance. An original or certified copy of the Citation shall be filed and retained by the Anti-Blight Commission and shall be deemed to be a business record within the scope of Connecticut General Statutes, Section 52-180 and evidence of the facts contained therein. Upon request of the person appealing the Citation, the presence of a member of the Anti-Blight Commission shall be required at the hearing. A person wishing to contest his/her/its liability shall appear at the hearing and may present evidence in his/her/its behalf and may appear with an attorney. A designated municipal official, other than the Citation Hearing Officer, may present evidence on behalf of the municipality. If the person who received the Citation fails to appear, the Citation Hearing Officer may enter an assessment by default against him/her/it or her upon a finding of proper notice and liability under the applicable provision(s) of this ordinance. The Citation Hearing Officer may accept written information by mail from the person who received the Citation and may determine thereby that the appearance of such person is unnecessary. The Citation Hearing Officer shall conduct the hearing in the order and form and with such methods of proof, as he/she deems fair and appropriate.

The rules regarding the admissibility of evidence shall not be strictly applied, but all testimony shall be given under oath or affirmation.

(c) Pending the hearing before a Citation Hearing Officer, no further enforcement activity as contemplated by Sections 16 and 18 shall occur until either a hearing is held or the Citation Hearing Officer assesses civil penalties or until the petitioner fails to appear for a scheduled hearing and the Citation Hearing Officer assesses civil penalties.

Sec. 13. Decision.

The Citation Hearing Officer shall announce the decision at the end of the hearing. If the Citation Hearing Officer determines that the person who received the citation is not liable, the Citation Hearing Officer shall dismiss the matter and enter that determination in writing accordingly. If the Citation Hearing Officer determines that the person is liable for the violation, he shall forthwith enter and assess the civil penalties against such person as provided by this ordinance, which penalties shall be immediately due and payable. The amount thereof shall be stated by the hearing officer in his/her decision.

If the Citation Hearing Officer determines that the person who received the citation is liable for the violation, such person shall have 30 days from the date of the hearing within which to correct the violation before the Town may take further action to correct the blighted condition including but not limited to remediation under Section 16 hereof. If, however, the person found liable for the violation did not attend the hearing or has previously been found liable for the same or similar blighted condition, the Town may proceed immediately with further action to correct the violation.

Sec. 14. Pursuit of Assessment and Judgment

If such assessment is not paid on the date of its entry, the Citation Hearing Officer shall send by first class mail a notice of the assessment to the person found liable and shall file, not less than thirty (30) days nor more than twelve (12) months after such mailing, a certified copy of the Notice of Assessment with the Clerk of a Superior Court facility designated by the Chief Court Administrator together with the required entry fee. The certified copy of the Notice of Assessment shall constitute a record of assessment. Within such twelve (12) month period, assessments against the same person may be accrued and filed as one record of assessment. The Clerk shall enter judgment, in the amount of such record of assessment and requisite court costs, against such person in favor of the municipality. Notwithstanding any provision of the Connecticut General Statutes, the Hearing Officer's assessment, when so entered as a judgment, shall have the effect of a civil money judgment and a levy of execution on such judgment may issue without further notice to such person.

Sec. 15. Appeal of Assessment

A person against whom an assessment has been entered pursuant to this ordinance is entitled to judicial review by way of appeal. An appeal shall be instituted within thirty (30) days of the mailing of notice of such assessment by filing a petition to reopen assessment, together with an entry fee in an amount equal to the entry fee for a small claims case pursuant to Connecticut General Statutes, Section 52-259, at a Superior Court facility designated by the Chief Court Administrator, which shall entitle such person to a hearing in accordance with the rules of the Judges of the Superior Court.

Sec. 16. Enforcement by Town Remediation

When an owner/occupant has been found liable for a violation of this ordinance through his/her/its failure to timely seek a hearing to contest liability before a Citation Hearing Officer or due to the determination of the owner/occupant's liability by the Citation Hearing Officer, or when an owner/occupant has failed to contest liability or admitted liability through payment of civil penalties pursuant to Sections 9 and 11 hereof, respectively, the Anti-Blight Commission, subject to the approval of the Town Council, may authorize a remediation company or the Public Works Department to enter the property during reasonable hours for the purpose of remediating the blighted conditions. In performing such remediation, however, the Town and/or its designated agents may not enter any dwelling, house or structure on such property without the written permission of the owner and any occupants.