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What every retail property owner and tenant should know about zoning violations in New York

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This article is the third in a 4-part series which explores what every retail property owner and tenant should know regarding zoning violations in New York. This article (part three) discusses the computation of penalties for zoning violations and how the duration of the violation can impact the penalty amount. Part one examined how zoning violations can be avoided and, when they do occur, who is responsible for them. Part two discussed the burden of proof and the factors to consider when determining whether to plead guilty or proceed to trial. Part four will address the importance of whether the alleged conduct is classified as a “misdemeanor” versus a “violation.”

Part Three: Computation of Penalties for Zoning Violations and How the Duration of the Violation Can Impact the Amount of the Penalty

Computation of Penalties for Zoning Violations

New York state laws governing towns and villages prescribe that for a first zoning violation, a municipality can impose a fine of up

to \$350, or a period of imprisonment up to six months. For a second violation that occurs within a five-year period, a municipality can impose a fine of not less than \$350 nor more than \$700, or imprisonment for a period not to exceed six months, or both. For a third or subsequent violation that occurs within a five-year period, a municipality can impose a fine of not less than \$750 nor more than \$1,000, or imprisonment for a period not to exceed six months, or both.

In practice, many municipalities have opted to adopt penalty provisions for zoning violations which prescribe fines ranging from \$250 to \$350 per violation and imprisonment for up to fifteen days, or both, rather than using the statutorily prescribed sliding scale for first, second, third and subsequent violations or the six month imprisonment period. In any event, imprisonment is rarely used by local justice courts as a penalty for a zoning violation absent the existence of severe, continuous and numerous violations. As will be discussed in part four of this series, some municipalities have catego-

rized zoning infractions as “misdemeanors” so that greater maximum fine amounts can be imposed than are statutorily permitted for zoning offenses classified as “violations.”

Penalties for zoning violations can typically be found at the end of the zoning chapter of the relevant municipal codebook. However, some municipalities have opted instead to use a general penalty provision which prescribes one set of penalties for a violation of any section of the codebook. Penalties are computed on a “per violation” basis meaning that different violations of the same chapter constitute separate violations and carry their own fine amounts. Thus, for example, a retailer charged with violating various provisions of the zoning chapter such as utilizing signage without a permit, operating outside of the hours of operation prescribed in its special permit and constructing an addition without a building permit can face fines of up to \$350 for each of these violations.

The Duration of the Violation Can Impact the Amount of the Penalty

Moreover, as long as a zoning violation continues, penalties may continue to accrue. State statutes prescribe that each week’s continued violation shall constitute a separate additional violation. However, some municipalities have used their municipal home rule authority to prescribe that each

day’s continued violation is deemed to constitute a separate violation. Thus, commercial property owners and retail tenants must be sure to review the applicable penalty provisions in the municipal code as soon as they are served with an appearance ticket, and implement an appropriate course of action so that additional violations do not accrue unnecessarily. Oftentimes an alleged violator can prevent the issuance of additional appearance tickets by obtaining counsel, if necessary, and timely contacting the individual who issued the appearance ticket to discuss a time frame for compliance and/or any mitigating factors or defenses that may help in negating the violation. Likewise, local prosecutors often take into consideration whether an alleged violator took immediate steps toward compliance or resolving the violation and thus, even if multiple violations have accrued, the prosecutor may opt to recommend to the court that some of the violations be dismissed or that one fine be imposed in full satisfaction of all pending violations.

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