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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 first 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 one) will examine how zoning violations can be avoided in the first instance and, when they do occur, who is responsible for them. Part two will review the burden of proof and the factors to consider when determining whether to plead guilty or proceed to trial. Part three will discuss the computation of penalties and how the duration of the violation can impact the penalty amount. Part four will address the importance of whether the alleged conduct is classified as a “misdeemeanor” versus a “violation.”

Part one: Responsibility for Zoning Violations

More often than not, zoning violations occur as a result of ignorance of local zoning requirements rather than blatant disregard for such requirements. In order to prevent zoning violations from occurring in the first place, it is essential for owners, as well as tenants of retail or other commercial establishments, to keep abreast of

local zoning requirements. Copies of local zoning requirements and pending or recently enacted local laws which may impact the day-to-day operations of a commercial establishment can easily be obtained through a municipality’s website or by contacting the municipal clerk’s office. Due to the ever-changing nature of local zoning requirements, retailers should review their municipality’s zoning requirements on at least a quarterly basis to ensure that they remain in compliance with the law.

Despite a retailer’s efforts toward awareness of and compliance with local zoning requirements, zoning violations may still be alleged by the enforcement officer. Once an appearance ticket has been issued, there are certain steps which every retail property owner or tenant should undertake prior to their initial court appearance:

- (1) Review the appearance ticket carefully to determine the nature of the alleged violation;
- (2) Consult the local zoning code to identify the requirement allegedly violated and to determine the

penalty prescribed for the violation; and

(3) Contact the person who issued the ticket to discuss the violation, ascertain the facts on which the enforcement official will rely in court, and determine what, if anything, can be done prior to the initial court appearance to abate the conditions which resulted in the issuance of the appearance ticket.

One important consideration upon which to focus is the person or entity in whose name the appearance ticket was issued, and whether that person or entity (a) is factually responsible for the violation alleged (i.e., did they engage in the conduct in question), and (b) can that person or entity be held legally responsible for the resulting conditions which allegedly violate the zoning code?

Tenant v. Owner - Who is Responsible for Zoning Violations?

Most zoning codes contain a penalty section which prescribes not only the penalties that can be assessed against an individual or entity for violating a provision of the zoning code, but also who can be held responsible for a zoning violation which occurs at a particular property. A typical zoning code provision will provide that “the owner, agent or contractor of a structure, building, premises, lot or land or part thereof where such violation has been committed or exists and any agent, contractor, architect, builder, corporation or other person who commits, takes

part in or assists in such violation shall be guilty of such an offense.” Due to the fact that multiple entities may be held responsible for the same violation, it is essential that all parties to a proposed or existing retail establishment be independently aware of not only what activities are being conducted at the property but also as to any applicable zoning requirements in order to avoid the expenditure of time and money in defending against zoning violations.

While it is true that a commercial lease typically will hold the tenant responsible for violations occurring at the demised premises during the term of the lease, enforcement officials and local judges often are more interested in abating the violation and collecting a monetary penalty than in determining which party ultimately bears responsibility under a contract. The party named as defendant may have recourse against another party having an interest in the property, but in most cases, all involved are better off avoiding the violation in the first instance rather than arguing later about who ultimately will pay the penalty.

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