

§4452. Enforcement of land use laws and ordinances

1. Enforcement. A municipal official, such as a municipal code enforcement officer, local plumbing inspector or building official, who is designated by ordinance or law with the responsibility to enforce a particular law or ordinance set forth in subsection 5, 6 or 7, may:

A. Enter any property at reasonable hours or enter any building with the consent of the owner, occupant or agent to inspect the property or building for compliance with the laws or ordinances set forth in subsection 5. A municipal official's entry onto property under this paragraph is not a trespass; [PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

B. Issue a summons to any person who violates a law or ordinance, which the official is authorized to enforce; and [PL 1993, c. 23, §1 (AMD).]

C. When specifically authorized by the municipal officers, represent the municipality in District Court in the prosecution of alleged violations of ordinances or laws, which the official is authorized to enforce. [PL 1993, c. 23, §1 (AMD).]

[PL 1993, c. 23, §1 (AMD); PL 2007, c. 699, §24 (REV).]

2. Liability for violations. Any person, including, but not limited to, a landowner, the landowner's agent or a contractor, who violates any of the laws or ordinances set forth in subsection 5 or 6 is liable for the penalties set forth in subsection 3.

[PL 1991, c. 732, §2 (AMD).]

3. Civil penalties. The following provisions apply to violations of the laws and ordinances set forth in subsection 5. Except for paragraph H, monetary penalties may be assessed on a per-day basis and are civil penalties.

A. The minimum penalty for starting construction or undertaking a land use activity without a required permit is \$100, and the maximum penalty is \$2,500. [PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

B. The minimum penalty for a specific violation is \$100, and the maximum penalty is \$5,000. [PL 2019, c. 40, §2 (AMD).]

B-1. Notwithstanding paragraph B, the maximum penalty is \$10,000 for any violation of a law or an ordinance set forth in subsection 5, paragraph Q, if the violation occurs within an area zoned for resource protection. [PL 2019, c. 40, §3 (AMD).]

C. The violator may be ordered to correct or abate the violations. When the court finds that the violation was willful, the violator shall be ordered to correct or abate the violation unless the abatement or correction results in:

- (1) A threat or hazard to public health or safety;
- (2) Substantial environmental damage; or
- (3) A substantial injustice. [PL 1989, c. 727, §1 (AMD).]

C-1. [PL 2007, c. 92, §1 (RP).]

C-2. Notwithstanding paragraph C, for violations of the laws and ordinances set forth in subsection 5, paragraph Q, the provisions of this paragraph apply. The court must order the violator to correct or mitigate the violation unless the correction or mitigation would result in a threat or hazard to public health or safety, substantial environmental damage or a substantial injustice.

- (1) Except for timber harvesting, correction or mitigation of a violation that involves the cutting of a tree or trees must include, but is not limited to, replacement of each tree cut with a tree or trees of varying size and species such that the visual impact from the cutting will be

remediated, the tree canopy that was cut will be restored within a reasonable time period and a total basal area equal to at least 50% of the basal area cut will be replanted.

(2) Except for timber harvesting, correction or mitigation of a violation that involves the cutting of understory vegetation must include, but is not limited to, replacement of the understory vegetation with understory vegetation of substantially similar size and species to the extent reasonably available and feasible.

(3) For violations requiring correction or mitigation pursuant to subparagraph (1) or (2), the violator shall submit to the municipality a reforestation plan and 5-year management plan developed with and signed by a forester licensed pursuant to Title 32, chapter 76 or other qualified professional. The reforestation plan must include consideration of specified site conditions and address habitat and other riparian restoration, visual screening, understory vegetation and erosion and sedimentation control. The management plan must address how the replacement trees must be maintained to enable the trees to grow to a healthy, mature height.

For purposes of this paragraph, "timber harvesting" has the same meaning as in Title 38, section 438-B, subsection 1, paragraph C.

For purposes of this paragraph, "understory vegetation" means all saplings that measure less than 2 inches in diameter at 4.5 feet above ground level and all shrubs. [PL 2011, c. 228, §1 (AMD).]

D. If the municipality is the prevailing party, the municipality must be awarded reasonable attorney fees, expert witness fees and costs, unless the court finds that special circumstances make the award of these fees and costs unjust. If the defendant is the prevailing party, the defendant may be awarded reasonable attorney fees, expert witness fees and costs as provided by court rule. [PL 1989, c. 727, §1 (AMD).]

E. In setting a penalty, the court shall consider, but is not limited to, the following:

- (1) Prior violations by the same party;
- (2) The degree of environmental damage that cannot be abated or corrected;
- (3) The extent to which the violation continued following a municipal order to stop; and
- (4) The extent to which the municipality contributed to the violation by providing the violator with incorrect information or by failing to take timely action. [PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

F. The maximum penalty may exceed the amounts set forth in paragraphs B and B-1, but may not exceed \$25,000, when it is shown that there has been a previous conviction of the same party within the past 2 years for a violation of the same law or ordinance. [PL 2019, c. 40, §4 (AMD).]

G. The penalties for violations of a septage land disposal or storage site permit issued by the Department of Environmental Protection under Title 38, chapter 13, subchapter 1, are as prescribed in Title 38, section 349. [PL 1997, c. 794, Pt. A, §1 (AMD).]

H. If the economic benefit resulting from the violation exceeds the applicable penalties under this subsection, the maximum civil penalties may be increased. The maximum civil penalty may not exceed an amount equal to twice the economic benefit resulting from the violation. Economic benefit includes, but is not limited to, the costs avoided or enhanced value accrued at the time of the violation as a result of the violator's noncompliance with the applicable legal requirements. [PL 1989, c. 727, §1 (NEW).]

[PL 2019, c. 40, §§2-4 (AMD).]

4. Proceedings brought for benefit of municipality. All proceedings arising under locally administered laws and ordinances shall be brought in the name of the municipality. All fines resulting from those proceedings shall be paid to the municipality.

[PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

5. Application. This section applies to the enforcement of land use laws and ordinances or rules that are administered and enforced primarily at the local level, including:

A. The plumbing and subsurface waste water disposal rules adopted by the Department of Health and Human Services under Title 22, section 42, including the land area of the State that is subject to the jurisdiction of the Maine Land Use Planning Commission; [PL 2007, c. 699, §18 (AMD); PL 2011, c. 682, §38 (REV).]

B. Laws pertaining to public water supplies, Title 22, sections 2642, 2647 and 2648; [PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

C. Local ordinances adopted pursuant to Title 22, section 2642; [PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

D. Laws administered by local health officers pursuant to Title 22, chapters 153 and 263; [PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

E. Laws pertaining to fire prevention and protection, which require enforcement by local officers pursuant to Title 25, chapter 313; [PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

F. Laws pertaining to the construction of public buildings for the physically disabled pursuant to Title 5, sections 4582-B, 4582-C and 4594-F; [PL 2011, c. 613, §28 (AMD); PL 2011, c. 613, §29 (AFF).]

G. Local land use ordinances adopted pursuant to section 3001; [PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

H. [PL 2007, c. 699, §18 (RP).]

I. [PL 2007, c. 699, §18 (RP).]

J. Laws pertaining to junkyards, automobile graveyards and automobile recycling businesses and local ordinances regarding junkyards, automobile graveyards and automobile recycling businesses, pursuant to chapter 183, subchapter 1 and Title 38, section 1665-A, subsection 3; [PL 2007, c. 699, §18 (AMD).]

K. Local ordinances regarding electrical installations pursuant to chapter 185, subchapter 2; [PL 2007, c. 699, §18 (AMD).]

L. Local ordinances regarding regulation and inspection of plumbing pursuant to chapter 185, subchapter 3; [PL 2007, c. 699, §18 (AMD).]

M. Local ordinances regarding malfunctioning subsurface waste water disposal systems pursuant to section 3428 and laws regarding malfunctioning subsurface waste water disposal systems pursuant to Title 38, section 424-A; [PL 2007, c. 568, §6 (AMD).]

N. The subdivision law and local subdivision ordinances adopted pursuant to section 3001 and subdivision regulations adopted pursuant to section 4403; [PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

O. Local zoning ordinances adopted pursuant to section 3001 and in accordance with section 4352; [PL 1989, c. 104, Pt. A, §45 (NEW); PL 1989, c. 104, Pt. C, §10 (NEW).]

P. Wastewater discharge licenses issued pursuant to Title 38, section 353-B; [PL 1999, c. 127, Pt. A, §46 (AMD).]

Q. Shoreland zoning ordinances adopted pursuant to Title 38, sections 435 to 447, including those that were state-imposed; [PL 2005, c. 240, §4 (AMD).]

R. The laws pertaining to harbors in Title 38, chapter 1, subchapter 1, local harbor ordinances adopted in accordance with Title 38, section 7 and regulations adopted by municipal officers pursuant to Title 38, section 2; [PL 2007, c. 112, §4 (AMD).]

S. Local ordinances and ordinance provisions regarding storm water, including, but not limited to, ordinances and ordinance provisions regulating nonstorm water discharges, construction site runoff and postconstruction storm water management, enacted as required by the federal Clean Water Act and federal regulations and by state permits and rules; [PL 2007, c. 661, Pt. A, §1 (AMD); PL 2007, c. 699, §18 (AMD).]

T. Laws pertaining to limitations on construction and excavation near burial sites and established cemeteries in Title 13, section 1371-A and local ordinances and regulations adopted by municipalities in accordance with this section and section 3001 regarding those limitations; [RR 2007, c. 2, §16 (COR).]

U. Standards under a wind energy development certification issued by the Department of Environmental Protection pursuant to Title 35-A, section 3456 if the municipality chooses to enforce those standards; [PL 2017, c. 409, Pt. C, §1 (AMD).]

REVISOR'S NOTE: (Paragraph U as enacted by PL 2007, c. 699, §18 is REALLOCATED TO TITLE 30-A, SECTION 4452, SUBSECTION 5, PARAGRAPH V)

V. **(REALLOCATED FROM T. 30-A, §4452, sub-§5, ¶U)** The Maine Uniform Building and Energy Code, adopted pursuant to Title 10, chapter 1103; and [PL 2017, c. 409, Pt. C, §2 (AMD).]

W. Local land use and business licensing ordinances adopted pursuant to Title 28-B, chapter 1, subchapter 4. [PL 2017, c. 409, Pt. C, §3 (NEW).]
[PL 2017, c. 409, Pt. C, §§1-3 (AMD).]

6. Septage and sludge permits issued by the Department of Environmental Protection. A municipality, after notifying the Department of Environmental Protection, may enforce the terms and conditions of a septage land disposal or storage site permit or a sludge land application or storage site permit issued by the Department of Environmental Protection pursuant to Title 38, chapter 13, subchapter 1.
[PL 1997, c. 38, §1 (AMD).]

7. Natural resources protection laws. A code enforcement officer, authorized by a municipality to represent that municipality in District Court and certified by the former State Planning Office or the Department of Economic and Community Development, Office of Community Development or the Department of Public Safety, Office of the State Fire Marshal under section 4453 as familiar with court procedures, may enforce the provisions of Title 38, section 420-C, Title 38, chapter 3, subchapter 1, article 5-A and Title 38, chapter 13-D by instituting injunctive proceedings or by seeking civil penalties in accordance with Title 38, section 349, subsection 2.
[PL 2019, c. 517, §6 (AMD).]

SECTION HISTORY

PL 1989, c. 104, §§A45,C10 (NEW). PL 1989, c. 287, §§3,4 (AMD). PL 1989, c. 727, §1 (AMD). PL 1991, c. 548, §D6 (AMD). PL 1991, c. 732, §§1-4 (AMD). RR 1993, c. 1, §77 (COR). PL 1993, c. 23, §§1,2 (AMD). PL 1995, c. 58, §1 (AMD). PL 1995, c. 704, §B1 (AMD). PL 1995, c. 704, §C2 (AFF). PL 1997, c. 38, §1 (AMD). PL 1997, c. 296, §8 (AMD). PL 1997, c. 794, §A1 (AMD). PL 1999, c. 127, §A46 (AMD). PL 1999, c. 370, §1 (AMD). PL 2003, c. 689, §B6 (REV). PL 2005, c. 148, §1 (AMD). PL 2005, c. 240, §§4-6 (AMD). RR 2007, c. 2, §§16-18 (COR). PL 2007, c. 92, §§1, 2 (AMD). PL 2007, c. 112, §§4-6 (AMD). PL 2007, c. 568, §6 (AMD). PL 2007, c. 569, §1 (AMD). PL 2007, c. 661, Pt. A, §§1-3 (AMD). PL 2007, c. 699, §18 (AMD). PL 2007, c. 699, §24 (REV). PL 2011, c. 228, §1 (AMD). PL 2011, c. 613,

§28 (AMD). PL 2011, c. 613, §29 (AFF). PL 2011, c. 655, Pt. FF, §9 (AMD). PL 2011, c. 655, Pt. FF, §16 (AFF). PL 2011, c. 682, §38 (REV). PL 2017, c. 409, Pt. C, §§1-3 (AMD). PL 2019, c. 40, §§2-4 (AMD). PL 2019, c. 517, §6 (AMD).

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