

TITLE LXIV PLANNING AND ZONING

CHAPTER 676 ADMINISTRATIVE AND ENFORCEMENT PROCEDURES

Penalties and Remedies

Section 676:17-b

676:17-b Local Land Use Citations; Pleas by Mail. – A building inspector or other local official with authority to prosecute an offense within the scope of RSA 676:17, and who, prior to or at the time of serving the summons, elects, pursuant to RSA 676:17, V, to charge the offense as a violation, may issue and serve upon the defendant, in addition to the summons, a local land use citation as set forth in this section. The defendant receiving such a citation may plead guilty or nolo contendere by mail by entering that plea as provided herein. If such a plea is accepted by the court, the defendant shall not be required to appear personally or by counsel; otherwise the defendant shall appear as directed by the court. The following procedure shall be used:

I. No local land use citation as set forth in this section shall be served unless the defendant has first been given written notice of the violation by the municipality. If the notice involves or includes a decision which may be appealed to the zoning board of adjustment pursuant to RSA 676:5, or to the building code board of appeals pursuant to RSA 674:34, such notice to the building code board of appeals pursuant to RSA 674:34, such notice shall set forth a reasonable period, as provided by the rules of the respective board, in no case less than 7 days, within which such appeal shall be filed after receipt of the written notice, and the citation shall not be served until after the end of such period. If such an appeal is filed, further proceedings shall be governed by RSA 676:6.

II. The local land use citation shall contain:

- (a) The caption: "Local Land Use Citation, Town (City) of ____".
- (b) The name of the offender, and address if known to the prosecuting official.
- (c) The statute, code, ordinance, regulation, provision, specification, requirement or condition the offender is charged with violating.
- (d) The act or circumstances constituting the violation.
- (e) The place of the violation.
- (f) The date upon which the offender received written notice of the violation by the municipality.
- (g) The time and date upon which the violation was witnessed subsequent to such written notice.
- (h) The amount of the civil penalty as set forth in RSA 676:17, I(b), which is payable by the offender for each day the violation continued subsequent to such written notice, up to a maximum of 5 days' violation charged in one citation.

(i) Instructions informing the defendant that the defendant may answer the citation by mail or may personally appear in court upon the date on the summons, and instructing the defendant how to enter a plea by mail, together with either the amount of the penalty specified in the citation, or a request for a trial.

(j) The address of the clerk of the district court, where the plea by mail may be entered.

(k) A warning to the defendant that failure to respond to the citation on or before the date on the summons may result in the defendant's arrest as provided in paragraph V.

(l) The signature of the prosecuting official.

III. Defendants who are issued a summons and local land use citation and who wish to plead guilty or nolo contendere shall enter their plea on the summons and return it with payment of the civil penalty, as set forth in the citation, to the clerk of the court prior to the arraignment date, or shall appear in court on the date of arraignment.

IV. Civil penalties collected by the district court under this section shall be remitted to the municipality issuing the citation. Whenever a defendant (a) does not enter a plea by mail prior to the arraignment day or does not appear personally or by counsel on or before that date or move for a continuance; or (b) otherwise fails to appear for a scheduled court appearance in connection with a summons for any offense, the defendant shall be defaulted and the court shall determine what the civil penalty would be upon a plea of guilty or nolo contendere and shall impose an administrative processing fee in addition to the civil penalty. Such fee shall be the same as the administrative processing fee under RSA 502-A:19-b, and shall be retained by the court for the benefit of the state.

V. The court may, in its discretion, issue a bench warrant for the arrest of any defendant who:

(a) Is defaulted in accordance with the provisions of paragraph IV of this section;

(b) Fails to pay a fine or other penalty imposed in connection with a conviction under this title which a court has determined the defendant is able to pay, or issues a bad check in payment of a fine or other penalty; or

(c) Fails to comply with a similar order on any matter within the court's discretion.

VI. For cause, the court in its discretion may refuse to accept a plea by mail and may impose a fine or penalty other than that stated in the local land use citation. The court may order the defendant to appear personally in court for the disposition of the defendant's case.

VII. The prosecuting official may serve additional local land use citations, without giving additional written notice or appeal opportunity under paragraph I, if the facts or circumstances constituting the violation continue beyond the date or dates of any prior citation. A plea of guilty or nolo contendere to the prior citation shall not affect the rights of the defendant with respect to a subsequent citation.

VIII. Forms and rules for the local land use citation and summons shall be developed and adopted by the New Hampshire supreme court.

IX. This section is not intended in any way to abrogate other enforcement actions or remedies in the district or superior court pursuant to this title, nor to require written notice as a prerequisite to other types of actions or remedies under this title.

Source. 1991, 374:2. 1996, 226:9-13, eff. Jan. 1, 1997.