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TECHNICAL BULLETIN

People v. Plateau Associates, LLC: Impact on Code Enforcement in New York State

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The Department of State ("DOS") is aware of the recent decision issued by the New York State Supreme Court, Appellate Term, Second Department, in the case People v. Plateau Associates, LLC,[1] and that some code enforcement officials are concerned that this decision may significantly limit the ability of local governments to administer and enforce the State Uniform Fire Prevention and Building Code (the "Uniform Code").

DOS has reviewed the People v. Plateau Associates, LLC decision. The purpose of this Technical Bulletin is to assure local governments that they remain to administer and enforce the Uniform Code in a meaningful and effective way and to urge Municipal Code Enforcement Officials to review the People v. Plateau Associates, LLC decision with their municipal attorneys.

Municipal Code Enforcement Officials should continue to administer and enforce the Uniform Code in accordance with their applicable local laws, and should continue to perform normal code enforcement functions, including issuing building permits, conducting construction inspections, issuing stop work orders, issuing certificates of occupancy and certificates of compliance, addressing unsafe structures, issuing operating permits, addressing complaints, performing fire safety and property maintenance inspections, issuing notices of violation, issuing appearance tickets, and, as will be more fully discussed below, after consulting with their own municipal attorneys, issuing orders to remedy.

[1] 2014 WL 4958175 (N.Y.Sup.App.Term)

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The Appellate Term Decision

The People v. Plateau Associates, LLC decision involved two "Orders to Remedy Violation" issued by the Village of Ossining. Each Order to Remedy Violation identified certain violations of the Uniform Code and directed the defendant to remedy the violations immediately. Each Order to Remedy Violation indicated a date by which a re-inspection would take place; however, neither Order to Remedy Violation expressly specified a date by which compliance with the Order would be required.

The Village charged the defendant under the first prong of Executive Law § 382 (2), which makes it a misdemeanor (a crime punishable by fine of up to $1,000, imprisonment for up to one year, or both) for a person who is served with an Order to Remedy to fail to comply with that Order to Remedy within the time fixed by Department of State regulations and specified in the Order. In People v. Plateau Associates, LLC, the Court held that in the absence of a DOS regulation fixing the time within which compliance with an Order to Remedy is required, an element of the crime cannot be established, and dismissed the criminal court informations charging the defendant under Executive Law § 382 (2). The Court rejected the Village's argument that the Village should be permitted to determine the "reasonable time" within which compliance with an Order to Remedy would be required.

The attorney for the Village of Ossining has advised that the Village has moved for permission to appeal the Appellate Term's order in People v. Plateau Associates, LLC. Nevertheless, until and unless the Appellate Term's decision is reversed or modified on appeal, it will have relevance, at least in local governments lying within the 9th and 10th Judicial Districts. As a result, upon learning of the decision in People v. Plateau Associates, LLC, the Department of State solicited information from code enforcement officials for local governments around the State regarding times within which compliance with an order to remedy is "typically" required. DOS is analyzing the responses received, and plans to promulgate a regulation of the type contemplated by Executive Law § 382 (2).

In the meantime, local governments have a number of enforcement tools available to them. People v. Plateau Associates, LLC deals only with imposing criminal liability for failure to comply with an Order to Remedy in the time specified in the Order. An Order to Remedy can also be enforced civilly through Executive Law § 382 (3), which authorizes local governments to seek an order from the Supreme Court directing the abatement of any condition in a building that violates the Uniform Code or the removal of the building.

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Furthermore, local governments can still charge people with violations of the Uniform Code and seek criminal sanctions for such violations under Executive Law § 382 (1), which authorizes local governments "to issue appearance tickets for violations of the [Uniform Code]." The second prong of Executive Law § 382 (2) further provides that any person or entity who takes part in or assists in the construction, reconstruction, alteration, conversion, repair, installation of equipment or use of a building,[2] and who knowingly violates any applicable provision of the Uniform Code, can be served with an appearance ticket, can be charged with that knowing violation of the Uniform Code, and can be subject to a fine of up to $1,000, imprisonment for up to one year, or both.[3]

[2] Executive Law § 372(4) provides that, for the purposes of Article 18 of the Executive Law, the term "construction" means "the construction, reconstruction, alteration, conversion, repair, installation of equipment or use of buildings, and requirements or standards relating to or affecting materials used in connection therewith, including provisions for safety and sanitary conditions."

[3] See Executive Law § 382 (2) (". . . any owner, builder, architect, tenant, contractor, subcontractor, construction superintendent or their agents or any other person taking part or assisting in the construction of any building who shall knowingly violate any of the applicable provisions of the uniform code or any lawful order of a local government, a county or the secretary made thereunder regarding standards for construction, maintenance, or fire protection equipment and systems, shall be punishable by a fine of not more than one thousand dollars per day of violation, or imprisonment not exceeding one year, or both").

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