

NOTICE OF CODE VIOLATION AND ORDER TO ABATE

To: Record owner or owners, holder of any mortgage or deed of trust, lien holder, lessee, other interested party:

MARK STANLEY
6223 PINNACLE PLACE
JOHNSTON, IA 50131

PLEASE TAKE NOTICE that as a person with a legal interest in property addressed as:
6223 PINNACLE PLACE, JOHNSTON, IA

Legally described as: LOT 14 THE ENCLAVE PLAT 4

The City of Johnston Community Development Department has received multiple complaints involving a home occupation at your address, described as consultant/corporate coaching and team building facilitator. The majority of the aforementioned complaints involve traffic generated by the use. It has been determined you are in violation of the following sections of the City of Johnston Code of Ordinances:

166.28 HOME OCCUPATIONS. Subject to the limitations set forth by this section, any home occupation that is customarily incidental to the principal use of a building as a dwelling shall be permitted in any dwelling unit. Any question of whether a particular use is permitted as a home occupation, as provided herein, shall be determined by the Zoning Administrator pursuant to the provisions of this section. **The regulations of this section are designed to protect and maintain the residential character of established neighborhoods** while recognizing that certain professional and limited business activities can be carried on in the home. **This section recognizes that, when properly limited and regulated, such activities can take place in a residential structure without changing the character of either the neighborhood or the structure.**

166.28.1.C. No alteration of the principal residential building shall be made which changes the character and appearance thereof as a dwelling.

166.28.1.J. No home occupation shall be permitted which is noxious, offensive, or hazardous by reason of **vehicular traffic generation** or emission of noise, vibration, smoke, dust or other particulate matter, odorous matter, heat, humidity, glare, refuse, radiation, or other objectionable emissions.

166.28.1.E. The home occupation shall be conducted entirely within the principal dwelling unit or no more than 400 square feet of floor area in a permitted building accessory thereto, **and in no event shall such use be apparent to adjoining residences and from any public street.**

While the use itself is considered an allowed home occupation under Chapter 166.28.2.F, the Zoning Administrator has adjudged multiple violations of the above-listed code sections demonstrate the home occupation does not conform to the intent of Chapter. Specifically: the traffic generated by the use has undermined the residential character of the neighborhood; the presence of multiple vehicles on the

premises has changed the character and appearance of the property as that of a residential dwelling; the use has generated excessive traffic to the dissatisfaction of neighboring property owners; and the number of vehicles on the property has made the use apparent as a home occupation to adjoining residences and from the public street.

At this time the City of Johnston requests you address the aforementioned issues by limiting client vehicles on premises in association with the home occupation to four at any one time and conduct consulting/coaching activities no more than two days in any one week.

Any interested party may appeal this notice and order to the Johnston City Council by filing an appeal in writing as provided in Section 50 of the Code of Ordinances, Administrative Abatement Procedure within ten (10) days from the date of service of such notice and order. You are also hereby notified that failure to appeal will constitute a waiver of all rights to an administrative hearing.

Any person found in violation of the Code of Ordinances and fails or refuses to conform to such within the time required and has made no request for a hearing within the time prescribed, the City will take action to impose penalties as described below and/or abate the condition pursuant to state law, any costs incurred on behalf of the City will be assessed to the property owner per state law.

PENALTIES

3.01 MUNICIPAL INFRACTION. A violation of this Code of Ordinances or any ordinance or code herein adopted by reference or the omission or failure to perform any act or duty required by the same, with the exception of those provisions specifically provided under State law as a felony, an aggravated misdemeanor, or a serious misdemeanor, or a simple misdemeanor under Chapters 687 through 747 of the Code of Iowa, is a municipal infraction punishable by civil penalty as provided herein.
(Code of Iowa, Sec. 364.22[3])

3.03 PENALTIES. A municipal infraction is punishable by the following civil penalties:
(Code of Iowa, Sec. 364.22[1])

1. Standard Civil Penalties.

A. First Offense – Not to exceed \$750.00

B. Each Repeat Offense – Not to exceed \$1,000.00

Each day that a violation occurs or is permitted to exist constitutes a repeat offense.

Questions regarding this notice should be directed to Aaron Wolfe, City Planner at 515-727-7766.

By order of the Zoning Administrator of the City of Johnston, Iowa

David Wilwerding, Community Development Department Director

Dated this 18th day of August, 2021

DISTRIBUTION: City Attorney

LAMBERTI, GOCKE & LUETJE

A PROFESSIONAL CORPORATION
ATTORNEYS AND COUNSELORS AT LAW

JEFFREY M. LAMBERTI
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LAURA R. LUETJE

WILLIAM C. STRONG

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ANKENY, IOWA 50021
515-964-8777
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www.ankenylaw.com

VIA CERTIFIED MAIL
& US MAIL

August 27, 2021

City of Johnston, Iowa
Attn: City Administrator
Johnston City Hall
6221 Merle Hay Road
Johnston, Iowa 50131

**RE: Notice of Code Violation and Order to Abate Dated August 18, 2021
6223 Pinnacle Place, Johnston, Iowa 50131**

Dear City Administrator:

Our office has been retained by the property owner of the above-referenced property, Mark Stanley. Please consider this letter our written notice of appeal pursuant to the Notice of Code Violation and Order to Abate dated August 18, 2021 (hereinafter the "Notice"), and Chapter 50.08 of the Code of Ordinances of the City of Johnston, Iowa. It is the request of the property owner that pursuant to Chapter 50.08 of the Code of Ordinances of the City of Johnston that an immediate hearing before the City Administrator be set to address the Notice.

Although Chapter 50.08 does not require our Notice of Appeal to contain the specific reasons or arguments as to why the appeal has been filed, it is pertinent for your understanding that I briefly outline the procedural history of this matter and basis for the appeal. Arguments will be presented in further detail at the time of the hearing, and the property owner reserves the right to present any additional facts, evidence, and/or arguments at the hearing as deemed appropriate at that time.

This matter ultimately arises out of a disgruntled neighbor making continued complaints to the Zoning Department about an ongoing home occupation at the property owner's residence. Mr. Stanley provides business consultation and coaching to his clients in a studio at the property. The property has adequate off-street parking to accommodate his clients, and no noxious noise, emissions, or other concerns have been alleged other than the presence of additional vehicles at the home address. The occupation occurs during

normal business hours, and does not disturb the peace of the neighborhood.

On or about April 20, 2021, Mr. Stanley was contacted by Aaron Wolfe in the City Zoning Department about a complaint from a neighbor regarding the number of vehicles frequently his residence. The residence was at the time, and remains to date, in a state of construction. As such, more vehicles than clients alone are frequenting the property. After reviewing the documentation provided by Mr. Stanley, Mr. Wolfe determined that a violation of the Code of Ordinances for the City of Johnston did not exist, and referred the matter to David Wilwerding, Community Development Department Director for the City of Johnston. Mr. Wilwerding wrote in an April 20, 2021 email:

Aaron,

I go by here frequently, and I have much more often seen construction vehicles than anything else. **I would agree with your line of thinking that what [Mr. Stanley] is doing isn't a violation of our home occupation ordinance.** If he had 6-8 employees or a more robust schedule of clients, perhaps, but what you have described below doesn't seem to meet the threshold of excessive vehicle traffic generation.

Thanks.

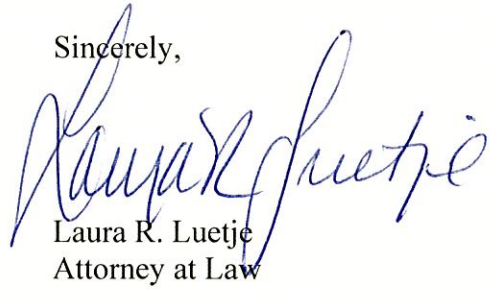
(emphasis added). The City of Johnston made a determination as to the viability of the home occupation of Mr. Stanley under the applicable ordinances, and specifically found that no violations existed. Fast forward to the date of the Notice on August 18, 2021, and the City of Johnston has now reversed course with no new information, evidence, or change in circumstances. The only change has been the continued litany of complaints, which can only be described as harassing in nature to Mr. Stanley and his business, by an aggrieved but ill-informed neighbor.

Furthermore, Mr. Stanley has relied upon the determination of the City of Johnston from April 20, 2021 in continuing his home occupation, booking clients, and maintaining his livelihood. To receive an abrupt Notice from the City of Johnston that completely reverses course from the prior determination robs Mr. Stanley of his rights as a citizen of the City of Johnston to due process and equal protection. It further interferes with his ability to conduct business.

By no means does Mr. Stanley mean this as a threat to the City, but upon advice of counsel it is highly important for me to notify the City that should any loss of income result from the City's changed interpretation that the City may be liable for damages to Mr. Stanley.

In addition to the foregoing, we believe that the factual record will show that Mr. Stanley is in full compliance with the applicable provisions of the Code of Ordinances presented in the Notice, and that the City will reverse the Notice upon hearing. We will look forward to receiving notification of the hearing, and resolving this matter with you. Should you require any information from our office prior to the hearing, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "Laura R. Luetje". The signature is fluid and cursive, with the first name being the most prominent.

Laura R. Luetje
Attorney at Law

CC: Client, by e-mail

September 13, 2021

Laura Luetje
Lamberti, Gocke & Luetje
210 NE Delaware Avenue, Suite 200
Ankeny, Iowa

Dear Ms. Luetje,

This letter is to confirm receipt of your written notice of appeal on behalf of Mark Stanley dated August 27, 2021 for a “Notice of Code Violation and Order to Abate” for property at 6223 Pinnacle Place, Johnston, IA 50131.

The public hearing on the appeal has been scheduled for October 21, 2021 at 6:30 P.M. in the City Council chambers at Johnston City Hall at which time the appellant and/or assigned agent are required to appear before the Board of Appeals. The board may choose to modify, reverse or affirm, wholly or partly, the order appealed from but does not have the power to grant exceptions or variances to the requirements of the code of ordinances. A majority vote of the members of the Board of Appeals present at the hearing shall be necessary to reverse any order, requirement, decision or determination appealed from.

Please present any information pertinent to Mr. Stanley’s appeal by October 8th, 2021 so city staff may prepare for dissemination and publication of the agenda and meeting packet. Please also be advised the applicant is required to pay a fee of \$60 per Chapter 170.30 of the City of Johnston Code of Ordinances. Said fee must be paid prior to October 8th, 2021 to proceed with the appeal.

If you have any questions, please contact me at 727-7766 or by email at awolfe@cityofjohnston.com.

Sincerely,

Aaron Wolfe, AICP

CC: Mark Stanley

LAMBERTI, GOCKE & LUETJE

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WILLIAM C. STRONG

VIA REGULAR MAIL
& E-MAIL

September 16, 2021

City of Johnston, Iowa
Attn: Aaron Wolfe
Johnston City Hall
6221 Merle Hay Road
Johnston, Iowa 50131

**RE: Notice of Code Violation and Order to Abate Dated August 18, 2021
6223 Pinnacle Place, Johnston, Iowa 50131**

Dear Mr. Wolfe:

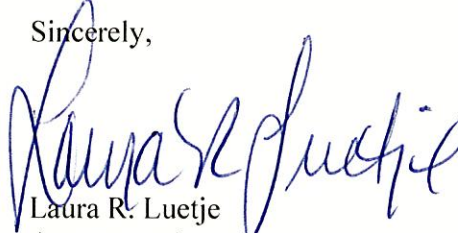
I am in receipt of your correspondence dated September 13, 2021 in which you have notified our office that the appeal filed by Mr. Stanley has been docketed for a public hearing before the Board of Appeals on October 21, 2021 at 6:30 p.m.

We contest this appeal being placed before the Board of Appeals. Your citation specifically identifies that the proper route for Appeal is under Chapter 50 of the Code of Ordinances. Ordinance 50.08 provides that a hearing before the City Administrator shall be held, and if the City Administrator determines that the appeal should be denied that a second level appeal to the City Council may be made on the citation.

Please consider this our formal request that the City of Johnston remove this appeal from the docket of the Board of Appeals, and immediately schedule an appeal hearing before the City Administrator to properly follow the procedures outlined in your Notice of Citation and the Code of Ordinances. Please be further advised that should the City abandon its duties under the Code of Ordinances or fail to schedule an appeal hearing as required by Ordinance 50.08 that it may subject the City to claims in the Polk County District Court for violating Mr. Stanley's rights under the Code of Ordinances and Iowa law. I sincerely hope that will not be necessary as I am merely requesting the appeal be heard pursuant to the Code of Ordinances and your citation.

Your written reply within the next five business days is requested. Thank you for your attention to this matter.

Sincerely,



Laura R. Luetje
Attorney at Law

CC: Client, by e-mail