

BUILDING OFFICIAL 2014 ENFORCEMENT REVIEW



DCJ HOUSING PROSECUTORS (current to 1/7/2014)



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Performance Objectives

Students will be able to:

1. Understand that the duly empowered code official is a governmental official and, similarly to police, is bound to administer and enforce code in accordance with the U.S. Constitution and the applicable state constitution.
2. Know and understand the law generally concerning the authority and obligations of a code official to obtain code compliance through administration and enforcement.
3. Review the code official's right of entry onto private property as it relates to the Fourth Amendment, and the application procedure for an administrative search warrant.
4. Recognize the orders available for building officials and review when and how each are used in enforcement.
5. Explain general procedure for referring a case to civil and criminal court and what occurs during criminal prosecution.

HOW ARE WE GOING TO MEET THE OBJECTIVES?



BY WHAT WE ARE GOING TO COVER:

- GOALS
- AUTHORITY
- RIGHT OF ENTRY/DENIAL OF ENTRY
- INSPECTION
- ABATEMENT PROCEDURE
- REFERRAL FOR CRIMINAL PROSECUTION
- PENDANCY OF CRIMINAL CASE
- CIVIL AND CRIMINAL COURT

GOALS OF ENFORCEMENT



1. COMPLIANCE

Using the abatement process.

TIP FOR SUCCESS: Request a written plan of compliance; which should include proposed dates of completion for all work required by code.

2. CORRECT HUMAN BEHAVIOR

Introduce the importance of building and fire safety to landlords, tenants and the surrounding community.

3. IMPROVE COMMUNITY WELL BEING

Create safer and healthier communities by enforcement of required code standards.

A real case study from Waterbury, 2011. The facts: A fire occurred in an attic apartment of a 4-family residence, with one fatality – the tenant in the unit. The victim died of smoke inhalation when his only exit was blocked by fire.

A joint investigation by CT local and state police, fire marshals and building officials determined that the building owner converted his 2-family into a 4-family apartment building without required permits or inspections. The attic apartment did not meet required building or fire safety code regulations including it lacked a secondary means of egress.

Charges were filed against the owner by the CT Chief State’s Attorney’s Office.

Owner pleads guilty to Manslaughter 2nd for Tenant's Death in Illegal Apartment

Courtesy of Waterbury Observer. Photographs By John Murray



At a press conference held on October 19, 2012, Waterbury, CT Mayor O'Leary told the gathering that the city was sending out a loud message that it would not tolerate illegal housing.

Courtesy of Waterbury Observer. Photographs By John Murray



INSPECTION

Many code regulations carry an inspection requirement of the code official. It may be based either on a complaint, open permit or other legally authorized ground.

Where required, the building official must use legal and reasonable means to inspect, including seeking consent or inspecting from a public place.



INSPECTION:

- Must be completed by a duly authorized code official.
- Your notes should indicate date, time and who was present when the inspection was completed.
- Your notes should be specific regarding the type of violations, where the violation occurs and include any special conditions that are present.



Denial of Entry? Can't take no for an answer?

- In the event the code official is denied access, an **administrative search warrant** may be applied for seeking court ordered entry.
- In most cases you should communicate to the correct person the lawful grounds and request to inspect before you seek a warrant.
- Must be permitted by state law. Generally must be approved by a prosecutor before submitting to the judge. Does not interfere with entry rights in case of emergency.



What does the U.S. Supreme Court say about it?



Camara v. Municipal Court,

387 U.S. 523, (1967)

PHOTOS



- Remember to take notes for the photos: who took the photos, what they depict and the address that you are taking the photos of along with the date/time of the picture.

About your files:



- General rule: If you write it, be prepared to have it reviewed. State laws must be consulted for applicable disclosure laws.
- Freedom of Information laws generally require disclosure of your files, however some items may be closed as confidential. Prior to disclosure, seek the opinion of the local prosecutor on disclosure of records or documents in or subject to a criminal investigation or pending case.

And, also seek the opinion of municipal or local counsel on all other disclosure concerns.

COMMUNICATION



“The single biggest problem in communication is the illusion that it has taken place.”
[George Bernard Shaw](#)

“No” is not a bad word.
“Why?” is a fair question.

http://www.youtube.com/watch?v=Mv_RIOCBPNs&feature=player_detailpage

Be prepared to answer questions about your authority in a respectful and professional manner.

ABATEMENT:



• **CITING THE OWNER:**

- The identity of the owner should be found on the municipal land records **NOT** the assessor’s card.
- Get a certified copy of the deed for you file as proof ownership.
- Owners should be listed with full name on order.
- Please be aware that if the owner is a business, estate, corporation or partnership different information is required.

EXAMPLE OF ABATEMENT ORDERS: NEW CT SBC BUILDING ORDER SET

Find at - <http://www.ct.gov/dcs/cwp/view.asp?a=4447&q=522242>

- 113 Notice of Violation and Order to Abate
- 114 Stop Work Order
- 115 Notice of Unsafe Structure
- 116 Notice of Imminent Harm, Order to Vacate and Posting of Unsafe Structure
- Notice of Referral for Criminal Prosecution

SBC 113
Violations

- SBC 113.1 states it shall be unlawful for any person firm or corporation to erect, construct, alter, extend, repair, move, remove, demolish or occupy any building, structure or equipment regulated by this code, or cause same to be done, in conflict with or in violation of the SBC.

SBC 113.1
Notice of violation

- Authorizes the BO to serve notice of violation or order on the person responsible for violation of the code, or of a permit or certificate issued under the code.
- Such order shall direct the discontinuance of the illegal action or condition and the abatement of the violation.



SBC 113.2.1
Written notice

- The notice of violation shall be in writing and shall be given to the owner of the property involved, or to the owner's agent or to the person doing the work.





113.3
Prosecution of violation.

- If the notice is not complied with promptly, the **BO is authorized to request the legal counsel of the jurisdiction to institute the appropriate proceeding at law** as well as the appropriate proceeding in **equity** to restrain, correct or abate such violation or to require the removal or termination of the unlawful occupancy or of the order or direction made pursuant thereto.



SBC 114
Stop work order.

- The BO is authorized to issue a **stop work order** whenever the BO finds any work regulated this code being performed in a manner either contrary to the provisions of this code or dangerous or unsafe.
- **Stop Work Order template now available for use in DPS approved format.**

SBC 114.2
Issuance of stop work order.

- The order **shall be in writing and shall be given** to the owner, owner's agent or the person doing the work.



SBC 115: Unsafe structures and equipment



- Unsafe Structure Order template now available for use in DPS approved format.
- The BO shall deem structures or equipment an unsafe condition which are or become:
 - Unsafe
 - Insanitary
 - Deficient because of inadequate means of egress, inadequate light and ventilation

SBC 115: Unsafe structures and equipment, cont.

- Can constitute a fire hazard



- Or are otherwise dangerous to human life or public welfare
- Or that involve illegal or improper occupancy or inadequate maintenance.

The BO shall cause a report to be filed on an unsafe condition. SBC 115.2

SBC 115: Unsafe structures and equipment, cont.

- The unsafe structure shall be taken down and removed or made safe, as the BO deems necessary.
- A vacant structure that is not secured against entry shall be deemed unsafe. Enforcement of this provision can be a tremendous help to community safety.



SBC 115.3
Notice of Unsafe Structure.

- If an unsafe condition is found, the **BO shall serve** on the owner, agent or person in control of the structure a written notice that describes the condition and specifies the abatement required, or demolition within a stipulated time.
- Requires the person notified declare immediately to the BO acceptance or rejection of the terms of the order.



SBC 115.4
Method of service

- The unsafe structure or equipment order is deemed properly served if delivered to owner personally, sent certified or registered mail at last known address return receipt requested, or any other manner prescribed by law.



Delivery:

- Although proof of delivery is not specifically required by the SBC, prosecution of a violation requires that the state prove the person knowingly violated the provision of the code.
- Proof of delivery is required to prove knowing violation of the order.



Proof of Service:



- Service is an *essential element* that we must prove in a criminal prosecution. It must be proved with documentation.
- Service must be in accordance with the code provision. If not particularly proscribed, service can be by other provable method.



SBC 115.6.1
Authority to seal equipment.

- The BO or his authorized representative shall in case of emergency have the authority to seal out of service immediately any unsafe equipment or device regulated by the SBC.
- The BO or his representative shall plainly identify it as out of service and indicate the reason.

SBC 116
Emergency measures



- Imminent danger of failure or collapse of a building or structure or any part thereof which endangers human life, or
- Has fallen and human life is endangered by the occupation.
- BO is authorized and empowered to order and require the occupants vacate forthwith.

SBC 116
Emergency measures, cont.

- The notice **shall** read: "This structure is unsafe and its occupancy has been prohibited by the building official."
- The notice **shall** be posted at each entrance of the building or structure.
- Entry after posting is unlawful without BO permission which may be granted for purposes of required repair or demolition.

SBC 116
Emergency measures, cont.



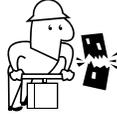
- SBC 116.2 **Temporary safeguards.**
When in the opinion of the BO there is imminent danger to human life due to an unsafe condition, the BO **shall** cause the necessary work to be done to render such building or structure temporarily safe, whether or not the legal procedure described in Section 115 has been instituted.

SBC 116.4
Emergency work.

- When imminent danger or an unsafe condition requiring immediate action exists and the owner cannot be located or refuses or is unable to expeditiously render the premises safe, the BO **shall** order the employment of necessary labor and materials as expeditiously as possible to make the premises temporarily safe up to and including demolition.

CONDEMNATION:

- When it has been determined the building is no longer safe to occupy a condemnation order is issued, the Uniform Relocation Act applies.
- The occupants relocation costs **MAY** recouped but as permitted under state law.
- May be ordered where necessary to protect life safety in cases of emergency.



SBC 116.5

Costs of emergency work.

- The costs incurred in performance of emergency repairs of demolition under the order of the BO shall be paid by the treasury of the town, city or borough.
- The legal counsel for the town, city or borough shall institute appropriate action against the owner to recover.



BE CAREFUL IN ADDRESSING THE ORDER

- First obtain the owner name from the deed for the property. Mirror the deed.
- If abating an occupant or other person, be careful to obtain the proper names from a reliable source.
- If a corporation, LLC or general partnership, check the exact name with proper filing authority in your state.



ADDRESSING THE ORDER

Mirror the deed...

- PERSONS: example - If deed states the grantees (owners) are John Owner and Lilly Owner, order should have both full names.

John Owner
 Lilly Owner
 123 Owner's Court
 No Name, CT 06000*



*One order is generally sufficient for multiple owners only if owners live at same address. Check with your local prosecutor for these matters.

ADDRESSING THE ORDER

- ESTATES:
 - The deed may contain the name of a person who is deceased, or their estate.
 - Check with the Probate Court to determine the person responsible for the estate of the deceased owner. (i.e. Executor or an heir).
 - Get certified copy of appointment document.
 - Cite responsible person for the estate.
 - Consider circumstances

CORPORATE AND PARTNERSHIP OWNERS

- CORPORATIONS (Corp.s and Inc.s)
- LIMITED LIABILITY CORPORATIONS (LLCs)
- PARTNERSHIPS
- LIMITED LIABILITY PARTNERSHIPS (LLPs)
 - DOMESTIC (Registered in your state)
 - FOREIGN (Registered outside of your state)



GENERALLY CORPORATIONS DOING BUSINESS IN A STATE MUST BE REGISTERED WITH THAT JURISDICTION'S SECRETARY OF STATE.

STATE LAWS VARY ON LIABILITY OF OFFICERS SO CHECK WITH YOUR LOCAL JURISDICTION



CORPORATIONS, THEIR AGENTS AND CRIMINAL LIABILITY

- Corporations and their agents may be held liable for their acts including failure to comply with an order of a code official.
- Example: Connecticut General Statute Sec. 53a-11. Criminal liability of an individual for conduct in name or behalf of corporation or limited liability company. A person shall be criminally liable for conduct constituting an offense which such person performs or causes to be performed in the name of or in behalf of a corporation or limited liability company to the same extent as if such conduct were performed in such person's own name or behalf.

ADDRESSING THE ORDER

Mirror the deed...

- CORPORATE OWNER (Ex.)
 - Deed says XYZ, Inc. is the owner.
 - Enter XYZ, Inc. in your search.
 - Identify the principal of the corporation = the PRESIDENT of the corporation.
 - Obtain residence address for service, if available.
 - Print copy of your search page or keep document for your file.

ADDRESSING THE ORDER

Mirror the deed...

- LIMITED LIABILITY CORPORATIONS
 - Deed says XYZ, LLC.
 - Enter XYZ, LLC in your search.
 - Identify the principal of the LLC = the MEMBER or Managing Member of the LLC.
 - Obtain residence address for service.
 - Print copy of your search page or keep document for your file.

ADDRESSING THE ORDER

Mirror the deed...

- CORPORATION (ex.)
 - LLC (ex.)
- | | |
|---------------------|---------------------|
| I. V. League, Pres. | I.V. League, Member |
| XYZ, Corp. | XYZ, LLC |
| 123 Big House Ave. | 123 Big House Ave. |
| No Name, Your State | No Name, Your State |
| 00000 | 00000 |

CIVIL AND CRIMINAL COURT

WHAT IS THE DIFFERENCE?



What is Civil Enforcement?

- INJUNCTIONS
- CIVIL ENFORCEMENT ORDERS
- RELOCATION
- CIVIL PENALTIES
- LIENS





Injunctions:

- Town Attorney/Corporation Counsel.
- This process will bring the property owners to court, for you and the town to ask the court to order the property owners to abate a violation.
- Be aware the Judge may not rule in your favor.



PROSECUTION OF CODE VIOLATIONS

As a Building Official, in most states you do not have authority to arrest any person. However, you do have authority to request an Arrest by Warrant by application to a proper authority.



- Requires application to judge which includes
- Your name, capacity, responsibilities and your jurisdiction.
 - Authority to inspect, inspection dates, and findings.
 - Identification of the proper person and how that person was determined, i.e. proof of ownership.
 - Notice and order issues, to whom and how the orders were issued showing due process.

ARREST BY WARRANT, cont.:

- Proof that the orders were received by the responsible person via marshal, certified mail return receipt requested or other provable method.
- Re-inspection date and findings.
- List of the violations and the code sections that are violated.
- Summary/Concluding paragraph.
- *Must be signed and sworn under penalty of perjury and submitted to the Prosecutor or to Office of the District Attorney as provided by local jurisdiction.*

Arrest

- Submitting an application for the arrest of an individual is very serious. Make sure this is the appropriate action to take.
You are asking for the initiation of a criminal case that may result in the deprivation of the rights of another individual.



What happens at court?

- Property owner will come to court.
- Remember, just because the owner comes to court, it does not mean compliance will be immediate.



CRIMINAL PROSECUTION:

- FIRST COURT DATE:
 - RIGHT TO COUNSEL.
 - REVIEW CHARGES AND PENALITIES.
 - REFER THEM TO YOU FOR A PLAN FOR COMPLIANCE.
 - IDENTIFY A TIME FRAME FOR COMPLIANCE AND WITH THE COURT'S PERMISSION GIVE A CONTINUANCE DATE FOR THAT COMPLIANCE.





- While the case is pending we will ask for inspections to be completed.
- Sometimes, we will ask for written updates so that we have current information in our files.
- If ADDITIONAL violations are found on a re-inspection, abate the additional violations and notify the State's Attorney IMMEDIATELY!!!!!!

TRIAL

- If the case goes to trial, you are the prosecutor's main witness.



Disposition:

- This is a fancy way of saying how we end the case.



- Cases generally will not be disposed of until there is full compliance or a plan for compliance.

How do we end the case?

In Connecticut, we can end the case with a:

- NOLLE
- ACCELERATED REHABILITATION
- SUSPENDED SENTENCE
 - CONDITIONAL DISCHARGE
 - PROBATION
- JAIL



Factors in creating the Disposition

- Seriousness of the violations.
- Number of the violations.
- Owner/Occupants' criminal history and other safety code violations.
- Number of people present in the property.
- Time frame in which compliance has been reached.



SPECIAL CONDITIONS OF PROBATION OR ACCELERATED REHABILITATION

- Plan for abatement.
- Cooperate with code officials.
- All properties must be code compliant.
- Attending appropriate classes depending on the types of violations.
- Community Service.
- Charitable Contribution.



Remember...

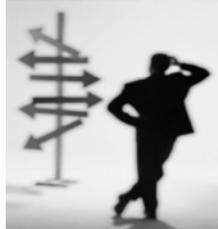
- Code issues do not arise just between 9:00 – 5:00, when everyone who could help you are in their offices.
- You need to have a plan for when this circumstance happens, who to contact, their emergency numbers, what the chain of supervision shall be and who makes the final determination.
- **WHY? BECAUSE IT WILL HAPPEN!!!!**



Referrals:

Everyone is busy, become familiar with and utilize the other agencies in your town to accomplish the goal.

- Building
- Police
- Health
- Housing
- Planning and Zoning
- Animal control
- Legal



Other concerns:

- Always be mindful of where you are.
- Various conditions/violations that you find may not be a result of purposeful disregard of your order. For example, there are mental health conditions that are a factor in some of the conditions you will find. For example, collapsing house with excessive combustibles which may be a result of hoarding, a mental health disorder.



UNLESS AUTHORIZED BY LAW,

NEVER, NEVER, NEVER...



- Tell anyone you will have them arrested.
- Tell anyone you will get an arrest warrant.
- Tell anyone you will get a search warrant.
- Tell anyone that you must be allowed on the property.
- Tell anyone what the prosecutor may or may not do with the case.
- Excuse someone from a court date.
- Tell them that you will get their case dropped.

CONTACT INFORMATION:

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Thank you.