

2018 Connecticut Fire Marshal Enforcement Review

Office of Education and Data Management

March 15, 2018
Code Official Enforcement Review Training

*Co-Sponsored by:
The CT Division of Criminal Justice, Office of the Chief State's Attorney, the CT Department of Administrative Services, Office of Education and Data Management and the University of New Haven, Henry C. Lee College, Department of Fire Science*

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2018 CT FIRE MARSHAL ENFORCEMENT REVIEW



In Memory of Detective John Sawyer, CSP – F&EIU

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University of New Haven – Buchnall Theater, January 5, 2018*

2018 CT FIRE MARSHAL ENFORCEMENT REVIEW

*Presented by the CT Division of Criminal Justice,
Office of the Chief State's Attorney, Housing Matters Unit*

by:

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Donna Parker, Senior Assistant State's Attorney*

PERFORMANCE OBJECTIVES

Students will be able to:

1. Know and understand Connecticut statutes and regulations concerning legally compliant fire inspections and procedures for abating violations.
2. Understand the code official's right of entry onto private property and the application procedure for an administrative search warrant.
3. Review the procedures under OSFM Directives #3 and #10 when ordering abatement of a fire violation.

PERFORMANCE OBJECTIVES

4. Review the procedures for referring a case for criminal prosecution vs. civil action.
5. Describe the preparation and filing of an arrest warrant application and affidavit.

HOW ARE WE GOING TO MEET THE OBJECTIVES?

WHAT WE ARE GOING TO COVER:

- GOALS
- AUTHORITY
- INSPECTION
- RIGHT OF ENTRY/DENIAL OF ENTRY
- ABATEMENT PROCEDURE
- CIVIL AND CRIMINAL COURT
- WORKING WITH YOUR STATE'S ATTORNEY
- WARRANT PREP/ CRIMINAL PROSECUTION

GOALS OF ENFORCEMENT

1. **COMPLIANCE**
Using the abatement process to prevent injuries to persons and property.
2. **CORRECT HUMAN BEHAVIOR**
Introduce and instill the importance of fire safety to landlords, tenants and the surrounding community.

GAINING COMPLIANCE

Communication

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

TIPS TO SUCCESS:

1. **Avoid miscommunications by obtaining an agreeable written plan of compliance.**
2. **Seek cooperative compliance in all cases.**

WHERE DOES YOUR AUTHORITY COME FROM?

- ◆ U.S. and CT State Constitution
- ◆ Connecticut General Statutes (CGS)
 - Connecticut State Fire Safety Code
 - Connecticut Fire Prevention Code
- ◆ U.S. and CT Court Opinions
- ◆ DAS, DCS, Office of the State Fire Marshal
 - OSFM Directives and Addendums

BEFORE YOU GET THERE...

Two fundamental questions must be answered:

- a. Do I have jurisdiction?
- b. Does the code apply?

WHAT DOES THIS MEAN?

- ◆ Jurisdiction: Do I have authority here geographically?
- ◆ Code Application: Is this the type of structure that is covered by code or by state statute?

**AUTHORITY –
CGS § 29-298(d)**

“Except as provided in this subsection, each deputy fire marshal, fire inspector or other fire code inspector or fire investigator, certified pursuant to this section, **shall** act under the direction and supervision of the local fire marshal while enforcing the provisions of this part. The local fire marshal **may** authorize, in writing, such deputy fire marshal or fire inspector to issue any **permit, order or citation** under the provisions of this part or to **certify compliance** with the provisions of this part, on his or her behalf. If no local fire marshal has been appointed in accordance with the provisions of section 29-297, the deputy fire marshal or acting fire marshal shall assume the authority granted to the local fire marshal under this section.”

**INSPECTIONS
AND RIGHT OF ENTRY**



CGS § 29-305 REVISED

- ◆ “Inspections by local fire marshals. Reports. Schedule of inspections.”
- ◆ PLEASE REFER TO STATUTE HANDOUT

IS THERE LIABILITY FOR FAILURE TO INSPECT?

- ◆ CT SUPREME COURT CASE *WILLIAMS v. HOUSING AUTHORITY OF BRIDGEPORT*, 327 C 338 (2017).
 - See opinion at: <http://www.jud.ct.gov/external/supapp/Cases/AROccr/CR327/327CR108.pdf>
 - See dissent at: <http://www.jud.ct.gov/external/supapp/Cases/AROccr/CR327/327CR108E.pdf>

INSPECTION WHERE ENTRY REFUSED

When cooperation ceases and access to the property is denied, an administrative search warrant is required before entry and inspection can be accomplished.


INSPECTION PROCESS ENFORCEMENT

An administrative search warrant is similar to a search and seizure warrant except no seizure takes place and there is no requirement to show probable cause that a violation exists. All that there is to be demonstrated to a judge is that the official has a lawful right to inspect and that the premises is within your jurisdiction.

ADMINISTRATIVE SEARCH WARRANT PROCESS UPHOLD


State v. Saturno (2016, CT Supreme Court), *State v. Burke* (1990, CT App. Court), *Camara v. Municipal Court* (1967, U.S. Supreme Court):

"Probable cause to issue a warrant to inspect for safety code violation exists if reasonable legislative or administrative standards for conducting an area inspection are satisfied."



INSPECTION PROCESS ENFORCEMENT

The administrative warrant affidavit and application is a simple form to complete.*
 It must be signed by two co-affiants and sworn to or affirmed in the presence of a judge of the superior court.
 Preparation of the affidavit is not complex, nor should it be. *See handouts for blank form.



INSPECTION PROCESS ENFORCEMENT

The following elements are to be written into every affidavit:

1. The two affiants' credentials and credibility.
2. The authority to inspect.
3. The locations to be inspected.
4. What the inspection is intended to determine.
5. Why you are requesting the warrant.

REVIEW OF WARRANT

- ♦ A state prosecutor must review all administrative search warrant applications before submittal to a judge.



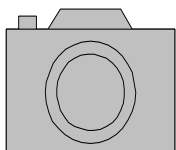
DRAFT THE APPLICATION

- ◆ A prosecutor may *reject* the application or request revisions and resubmittal.
- ◆ If the application is *approved* by a prosecutor, it must then be taken to a superior court judge for review.
 - Remember, both affiants must go together to apply for the warrant and to swear or affirm before the reviewing judge. Do not sign it in advance of seeing the judge.

INSPECTION PROCESS ENFORCEMENT

- ◆ If the administrative search warrant application is accepted by the reviewing judge, the search warrant will issue.
- ◆ The administrative search warrant must be executed within 10 calendar days. Request the assistance of your police department.
- ◆ Afterwards, file the return of service with your inspection report with the court.

PHOTOS



- ◆ OSFM guidelines.
- ◆ Remember to identify who took each photo, when it was taken, where and what the photo was taken to show.
- ◆ Maintain well.

CGS § 29-306 REVISED

- ◆ **“Abatement of fire hazards: Penalties. Notification. Order to vacate.”**
- ◆ PLEASE REFER TO STATUTE HANDOUT

INSPECTION PROCESS ENFORCEMENT

THE ABATEMENT PROCESS:

- ◆ Authority to abate is derived from Connecticut General Statute § 29-306.
- ◆ The procedures to abate are derived from the Office of the State Fire Marshal’s Directive #3.
 - Please refer to OSFM Directive # 3 handout.

DIRECTIVE # 3

- ◆ Revised (MAKE SURE YOU HAVE THE RIGHT FORM)
- ◆ Provides a uniform procedure for abatement of violations.
- ◆ Includes sample forms for notification to the owners, referral for criminal prosecution, inspection report form and requests for modification and extension.

INITIAL PHASE

- Inspection / Documentation
- Notification of Violations / Abatement Order (Send Inspection Report)
- Plan for Compliance
 1. Correction
 2. Time Extensions
 3. Modifications
- Notice of Right Of Appeal

INSPECTION PROCESS ENFORCEMENT

THE ABATEMENT PROCESS:

- ◆ The ***initial inspection*** is conducted.
- ◆ A ***notice*** of fire and life safety hazards is issued to the owner or occupant.

ABATEMENT:

- ◆ NOTICE – USE AS PROVIDED BY OSFM
 - MUST IDENTIFY THE VIOLATIONS WITH CODE SECTIONS AND LOCATION OF VIOLATION.
 - DATE AND TIME OF THE INSPECTION.
 - MUST CITE THE PROPERTY OWNER OR OCCUPANT.
 - MUST STATE THE TIME FRAME OF ABATEMENT.
 - LAW, AUTHORITY AND PENALTY.
 - REMEDY.
 - RIGHT OF APPEAL.
 - MUST BE SIGNED BY FIRE MARSHAL OR AUTHORIZED DESIGNEE.

ABATEMENT:

♦ CITING THE OWNER:

- The identity of the current owner is found on the municipal land records, and is not always accurately reflected on the assessor's card.
- Get a certified copy of the current deed for you file as proof ownership.
- Please be aware that if the owner is a business, estate, corporation or partnership different information is required.

ABATEMENT:

POSSIBLE OWNERS OF PROPERTY:

- Persons – cite all of record.
 - DBAs ("doing business as") – check Town Clerk Trade Name Certificate Book.
- Estates – check Probate Court
- Corporations and General Partnerships– check CT Secretary of State (SOS).
- Condominiums – cite the entire association Board of Directors (common areas only)

ADDRESSING THE ORDER

Mirror the deed...

- ♦ PERSONS: Cite all owners in full name, i.e. 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.

ADDRESSING THE ORDER

Mirror the deed...

- ◆ 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 as agent for the owner.

CORPORATE AND PARTNERSHIP OWNERS

- ◆ CORPORATIONS (Name ends with Corp. or Inc.)
- ◆ LIMITED LIABILITY CORPORATIONS (LLCs)
- ◆ PARTNERSHIPS
- ◆ LIMITED LIABILITY PARTNERSHIPS (LLPs)
 - DOMESTIC (Registered in CT)
 - FOREIGN (Registered outside of CT)

ALL FOREIGN ENTITIES DOING BUSINESS IN CT MUST BE REGISTERED WITH THE STATE OF CT SECRETARY OF STATE (SOS).

PROSECUTION OF CORPORATIONS AND LLCs

- ◆ **CGS § 53a-11. Criminal liability of individual for conduct in name of or on 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 on 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 on such person's behalf.

ADDRESSING THE ORDER

Mirror the deed...

- ◆ First obtain the name of the owner from the current deed for the property.
- ◆ If owner is a corporation, LLC or general partnership, check the exact name with the CT Secretary of State – CONCORD.
<https://www.concord-sots.ct.gov/CONCORD/online?sn=PublicInquiry&eid=9740>

ADDRESSING THE ORDER

Mirror the deed...

- ◆ CORPORATE OWNER (Ex.)
 - Deed says XYZ, Inc. is the owner.
 - Enter XYZ, Inc. in CONCORD search.
 - Identify the **principal** of the corporation = the PRESIDENT of the corporation. (NOT AGENT FOR SERVICE!)
 - Obtain residence address for service.
 - Print copy of CONCORD page for your file.

ADDRESSING THE ORDER

Mirror the deed...

- ◆ LIMITED LIABILITY CORPORATIONS
 - Deed says XYZ, LLC.
 - Enter XYZ, LLC in CONCORD search.
 - Identify the **principal(s)** of the LLC = the Member(s) or Managing Member of the LLC (NOT AGENT FOR SERVICE!)
 - Obtain residence address(es) for service.
 - Print copy of CONCORD page for your file.

ADDRESSING THE ORDER

Mirror the deed...

<ul style="list-style-type: none"> ◆ CORPORATION (ex.) <p>I. V. League, Pres. XYZ, Corp. 123 Home Road No Name, CT 06000</p>	<ul style="list-style-type: none"> ◆ LLC (ex.) <p>I.V. League, Member XYZ, LLC 123 Home Road No Name, CT 06000</p>
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PROOF OF SERVICE

- ◆ Service is an *essential element* that we must prove in a criminal prosecution. It must be proved with documentation.
- ◆ Service can be proven through certified mail return receipt requested or other provable methods.
- ◆ Service can also be completed by hiring a CT state marshal to serve the owner or occupant either in hand or at the person's abode (home). Be sure to get the marshal's return of service, as that is written proof of who and when the marshal made service.
- ◆ Pick a service method which gets the order to the responsible party as quickly as you deem necessary and reasonable to abate the fire hazards.

REQUESTS FOR MODIFICATION AND/OR EXTENSION

- ◆ Only the person under order or their authorized agent may request a modification/extension of time regarding the abatement.
- ◆ If compliance has not been reached by the date of the re-inspection it is important to know whether these requests have been made.

FOLLOW-UP PHASE:

- ◆ After the appropriate time frame has passed, you must conduct a **re-inspection** of the premises to determine compliance. Keep in mind, the rules of entry still apply.
- ◆ Reasonable extension(s) of time may be granted = filed in good faith + low safety risk.
- ◆ If violations are not corrected, no extension of time is granted, or no modifications are pending on the violation(s), it is time to **refer to court.**

NOTICE OF REFERRAL FOR CRIMINAL PROSECUTION

- ◆ Per Directive #3.
- ◆ Prepare and Send the Notice of Referral for Criminal Prosecution to the owner certified mail return receipt requested.
- ◆ Attach notice of fire and life safety code.
- ◆ Attach latest inspection report.
- ◆ Prepare and submit an Arrest Warrant Application to the appropriate state prosecutor having jurisdiction.
- ◆ We will review and either sign it or request corrections. If signed, it will be sent to the judge for review.

EMERGENCY ORDER TO VACATE

- ◆ CGS § 29-306(c)
Allows a local fire marshal or police officer to order any building vacated for up to 4 hours where one or more of the *enumerated violations* (known as the "five deadly sins") exist, *and* the LFM or PO determine that there exists a "*risk of death or injury*".
They are and include:

EMERGENCY ORDER TO VACATE, cont.

- ◆ CGS § 29-306(c), cont.
 - Blocked, insufficient or impeded egress
 - Required fire protection or warning system shut off or maintenance failure
 - Un-permitted flammable or explosive material or in excess of permitted quantities
 - Un-permitted fireworks or pyrotechnics
 - Exceeding occupancy limit established by FM

NOTICE TO STATE FIRE MARSHAL

- ◆ CGS 29-306(c), cont.
 - requires notification to the State Fire Marshal if (any of the 5) conditions ordered abated cannot be done in 4 hours or less.
 - Follow the notification procedures in OSFM Directive # 10.

OSFM DIRECTIVE #10

- ◆ OSFM Policy Directive 10
 - Effective May 1, 2009
 - Restricting use of a building
 - Immediate hazard
 - Involves one or more of the "5 deadly sins"
 - Correction is expected to take > 4 hours
 - Allows the SFM to: uphold, modify or reverse the order to vacate made by the LFM or LPO.
 - After hours CSP MS 1-800-842-0200

POLICY DIRECTIVE #10, cont'd

- ◆ Name of Establishment
- ◆ Address
- ◆ Name of official issuing the order
- ◆ Circumstances
- ◆ If an incident occurred
- ◆ Injuries/fatalities

VACATING

- ◆ When it has been determined the building is no longer safe to occupy an order to vacate may be issued. If done, the occupants must be relocated.
- ◆ The town **MAY** recoup those costs through a properly placed lien.

RELOCATION

- ◆ CGS § 8-266, et seq.
 - Uniform Relocation Act applies in circumstances involving removal of persons from use or occupancy of buildings.
 - Applies to shut down of a premises under CGS § 29-306(c).
 - Requires referral to Uniform Relocation Act administrator for your town, city or district for assistance to affected occupants.

Fire Officer Emergency Authority Unaffected

- ◆ CGS § 7-313e
 - authorizes the fire officer in charge broad authority to control a fire or emergency scene.

CIVIL AND CRIMINAL COURT

WHAT IS THE DIFFERENCE?

CIVIL:	CRIMINAL:
<ul style="list-style-type: none"> ◆ Handled only by jurisdiction's Town Attorney/ Corporation Counsel. ◆ Method MAY have more immediate compliance. ◆ Burden of proof is <i>preponderance of the evidence</i>. 	<ul style="list-style-type: none"> ◆ Handled only by state prosecutors. ◆ Method MAY NOT have immediate compliance. ◆ Involves criminal due process and rights. ◆ Burden of proof is <i>beyond a reasonable doubt</i>.

What is Civil Enforcement?

- ◆ RELOCATION
- ◆ INJUNCTIONS
- ◆ LIENS
- ◆ CONDEMNATION

INJUNCTIONS

- ◆ Town Attorney/Corporation Counsel may bring the property owner or occupant to court to ask for appropriate orders to abate violations, close or restrict the use of the building and/or recover costs.
- ◆ Violation of a civil order may subject the person to civil penalties for contempt of court.
- ◆ Be aware the judge may not rule in your favor.

WORKING WITH YOUR STATE'S ATTORNEY



**DCJ-OCSA HOUSING UNIT
PROSECUTORS**

Judicial District Assignments as of 1/2018
<http://www.ct.gov/csao/cwp/view.asp?a=1798&q=477038>

Judith R. Dicine, Supervisory Assistant State's Attorney, Statewide Housing Matters
Ansonia/Milford (Derby GA), Litchfield, Tolland and Windham JDs
(judith.dicine@ct.gov) 203-773-6755

Patrice K. Palombo, Senior Assistant State's Attorney
Ansonia/Milford (Milford GA), New Haven and Waterbury JDs
(patrice.palombo@ct.gov) 203-773-6755

Donna Parker, Senior Assistant State's Attorney
Fairfield, Stamford/Norwalk and Danbury JDs
(donna.parker@ct.gov) 203-579-7237

Steven M. Lesko, Assistant State's Attorney
Middlesex JD (steven.lesko@ct.gov) 860-344-2986

Open Position (Covered temporarily by Donna Parker, SASA)
Hartford, New Britain and New London JD's 860-756-7810

OUR GOAL: COMPLIANCE

- ◆ Referral of a case to the Office of the State's Attorney does not mean that compliance will be immediate.
- ◆ The accused has due process rights and may choose to take the case to trial; therefore, violations may not be corrected immediately.
- ◆ Where compliance cannot wait, you should consider referring the case for civil action pursuant to CGS § 29-306(b).

ARREST AND CRIMINAL PROSECUTION

Referral should be made when:

- ◆ Reckless or negligent failure to abate violation causes a fire, fatality or injury.
- ◆ Violation causes a delay in emergency response.
- ◆ Lack of abatement (most common).

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 liberty or property rights of another individual.

ARREST PROCESS

- a. Custodial by Police
Offender taken into physical custody, later released with written promise to appear in court or posts bond.
- b. Summons by Police or Prosecutor
Summons and complaint is issued for the offender to appear at court on a certain date.

ARREST PROCESS

- c. Arrest by Warrant
Requires application to a prosecutor and then to a superior court judge. Arrest warrants are executed by the police department.
- d. Fire Prevention Code Citation
Allows a ticket to issue for certain violations of the FPC, and is written by the Fire Marshal or authorized designee (CGS § 29-291c(c) and 298(d)).

CRIMINAL PROSECUTION:

- ◆ FIRST COURT DATE:
 - ADVISEMENT OF CONSTITUTIONAL RIGHTS.
 - A REVIEW CHARGES AND PENALITIES.
 - PROSECUTOR WILL SEEK A PLAN FOR COMPLIANCE, AND WITH THE COURT'S PERMISSION GIVE A CONTINUANCE DATE FOR THAT COMPLIANCE.

NEXT...

- ◆ While the case is pending we will ask for interim 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 PROMPTLY!

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 an agreed plan for compliance.

POSSIBLE DISPOSITIONS?

- ◆ NOLLE BY THE PROSECUTOR
- ◆ ACCELERATED REHABILITATION
- ◆ SUSPENDED SENTENCE
 - CONDITIONAL DISCHARGE
 - PROBATION
- ◆ JAIL

FACTORS IN CONSIDERED IN THE DISPOSITION

- ◆ Seriousness of the violations.
- ◆ Level of cooperation by the accused.
- ◆ Number of the violations.
- ◆ Owner's/Occupants' history of criminal and/or other safety code violations.
- ◆ Number of people risked by the violations.
- ◆ 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.
- ◆ Community Service.
- ◆ Charitable Contribution.

**IMPORTANT NOTE
ABOUT YOUR FILES**

- ◆ **Disclosure and Production:**
 - State law requires that your office and the prosecutor disclose and produce to the accused all non-exempted information known to be related to the charges, that is either *exculpatory* or *incriminating*.
 - Therefore maintain your files with the assumption that you and your file may have to go to court.
 - Forward all such information to the prosecutor!!!
 - FOI rules may yet apply. Ask us before you disclose information once we have accepted your case.

REMEMBER...

- ◆ Code issues do not arise just between 9:00 a.m.– 5:00 p.m., when those who might 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, so become familiar with and utilize the other agencies in your town and in the state to best achieve the goal of safety.

OTHER CONCERNS

- ♦ Various conditions/violations that you find may not be a result of purposeful disregard of your order, i.e., there are mental health conditions that are a factor in some of the cases you will find. For example, CGS § 29-306(a) and (c) apply to blocked egress and excessive combustibles especially liable to fire, which may be a result of hoarding disorder; a mental health condition.
- ♦ Always be mindful of media disclosures.

Never, never, never...

- ♦ tell anyone you will arrest them unless you are a police officer with probable cause.
- ♦ tell anyone you will obtain an arrest warrant or a search warrant; that is up to a judge.
- ♦ tell anyone that you must be allowed on the property without holding a legal right to entry.
- ♦ tell anyone what the prosecutor may or may not do with the case; you do not speak for us.
- ♦ excuse someone from a court date.
- ♦ tell anyone you will get their case dropped.

HOUSING PROSECUTORS CONTACT NUMBERS

- ♦ Judith R. Dicine, Supervisor 203-773-6755
- ♦ Patrice K. Palombo 203-773-6755
- ♦ Donna Parker 860-579-7237
- ♦ (Htfd./New Brit./New London) 860-756-7861
- ♦ Steven M. Lesko 860-344-2986

(AS OF 1/2018)

THANK YOU FOR ALL YOU
DO TO PREVENT FIRES