

LIABILITY OF MUNICIPALITIES & BUILDING AND FIRE OFFICIALS: CRIMINAL ISSUES

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LEGAL DISCLAIMER



This presentation includes important general principles of law regarding building and safety code administration and enforcement.

Questions on the legal administration and enforcement of code in your jurisdiction should be directed to the appropriate attorney for your jurisdiction.

Public safety requires cooperation
between building and fire officials.



INSPECTION PROCESS ENFORCEMENT

- THE LAW states you can inspect but what else is needed by a building or fire official?

1. CONSENT

» *By person with authority.*

2. LEGAL AUTHORITY TO ENTER

INSPECTION WHERE ENTRY REFUSED

U.S. SUPREME COURT AND CT APPELLATE COURT AUTHORITY TO INSPECT:

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

- State v. Burke (1990, CT App. Court)
Administrative search warrant upheld for fire code inspection. Cited 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

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.

BUILDING OFFICIALS WHERE DOES YOUR AUTHORITY COME FROM?

- CT General Statutes
- CT State Building Code
- Department of Construction Services
- Office of the State Building Inspector

CGS 29-261(b) Building Official Powers and Duties

- They **shall** require compliance with the provisions of the State Building Code, of all rules lawfully adopted and promulgated there under and of laws relating to the construction, alteration, repair, removal, demolition and integral equipment and location, use accessibility, occupancy and maintenance of buildings and structures, except as may be otherwise provided for.

SBC 104.1

- Also **authorizes and directs the BO** to enforce the SBC.
- Gives authority to the BO to establish policies and procedures to clarify the application of its provisions and long as they are in compliance with the intent and purpose of the code.

CGS 29-393

Building inspectors; duties, right of entry.

- On receipt of information from the local fire marshal or from any other authentic source that any building in his jurisdiction, due to lack of exit facilities, fire, deterioration, catastrophe or other cause, is in such condition as to be a hazard to any person or persons, the building inspector **shall** immediately make an inspection by himself or by his assistant, and may make orders for additional exit facilities or the repair or alteration of the building if the same is susceptible to repair or both or for the removal of such building or any portion thereof if any such order is necessary in the interests of public safety.

BUILDING OFFICIALS – USE YOUR MODEL ABATEMENT ORDERS!

CONNECTICUT STATE BUILDING CODE (SBC) BUILDING ORDER SET

FIND AT: <http://www.ct.gov/dcs/cwp/view.asp?s=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
- PLUS --- Notice of Referral for Criminal Prosecution

FIRE MARSHALS

WHERE DOES YOUR AUTHORITY COME FROM?

- Connecticut General Statutes
- Connecticut State Fire Code and Fire Prevention Code
- Department of Construction Services
- Office of the State Fire Marshal

FIRE MARSHALS - USE YOUR ABATEMENT ORDERS: 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.

A SPECIAL REVIEW Fire Marshal/ Police Order to vacate

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

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 abated in 4 hours or less.
 - SEE and follow OSFM Directive 10.

OSFM Directive # 10

- Policy Directive 10
 - Effective May 1, 2009
 - Restricting use of a building
 - Immediate hazard
 - 5 deadly sins
 - Correction > 4 hours
 - SFM to:
 - Uphold
 - Modify
 - Reverse
 - After hours CSP MS 1-800-842-0200

OSFM Directive # 10 cont'd

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

VACATING STRUCTURES UNDER BUILDING OR FIRE LAWS:

- When it has been determined the building is no longer safe to occupy an order to vacate may be issued. 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.
 - Affixes to shut down of a premises under CGS 29-306, and SBC 116 and in severe cases, SBC 115.
 - Requires referral to Uniform Relocation Act administrator for your town, city or district for assistance to affected occupants.

**NEED MORE ENFORCEMENT REVIEW?
(Everybody should say: Yes!)**



**ANNUAL FIRE MARSHAL
ENFORCEMENT REVIEW**

DECEMBER 18, 2014 CCSU



**ANNUAL BUILDING OFFICIAL
ENFORCEMENT REVIEW**

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