



1

Today's topics

- Guidelines for:
 - Effective code administration
 - Enforcement of the legal aspects of the code
- Subject matter



5

What is our goal today?

- Learn techniques in executing the legal aspects of your job.



6

What are the objectives?

Upon completion, participants will be better able to:

- Recognize complacency cycle
- Apply key legal concepts.
- Identify your legal authority.
- Describe how laws apply to you
- Identify the responsible parties
- Identify problems in the permit process.



7

More objectives

- Gather evidence
- Draft written notices/complaints
- Conduct inspections (Fourth Amendment compliant)
- Understand court process
- Be a good witness.
- Reduce exposure to liability lawsuits.



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Chapter 2

Historical Overview

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Why Do We Care?

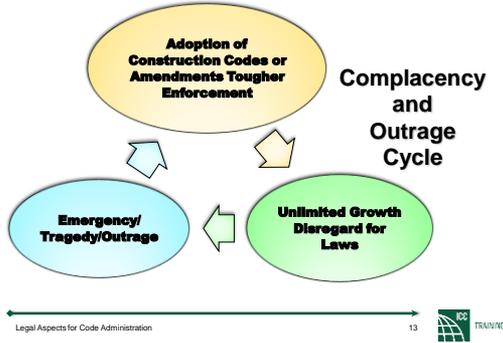
- Building official authority → Statute or ordinance
- No authority → Law forbids it, doesn't support it or constitutional restriction



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Where Does Law Come From?



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Where Do Laws Come From?

- Code of Hammurabi
- 27 A.D. Roman Empire
- 64 A.D. Roman Empire
- 1666 The London Building Act



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Development of Modern Codes

- 1905 National Building Code
- 1927 Uniform Building Code
- 1945 Southern Standard Building Code
- 1950 Basic Building Code
- 2000 International Building Code



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Chapter 5

Federal Legislative Law



16

Hierarchy of laws

- U.S. Constitution
- ↓
- State constitution
- ↓
- State legislature and statutes
- ↓
- Local governments and ordinances



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Terms

- **Common law** - judicial decisions
- **Legislative law** - written by legislature
- **Act** - another name for a statutory law
- **Immunity** – being free from the law



18

How the states get power

- Tenth Amendment of the U.S. Constitution – States are granted authority to adopt laws to protect and promote health, safety, morals and general welfare of its citizens. : “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”



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Where laws come from

- U.S. Congress and U.S. Courts
- State Legislature and State Courts
- Local Governments



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Forms of Government

- Federal
- State
- County
- Municipal Corporations
 - Cities, Villages, Towns, Townships, Boroughs
 - Class differentiation



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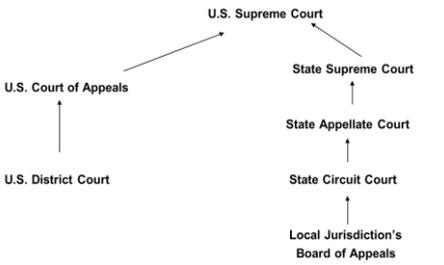
Checks and Balances



- Legislative branch - makes laws
- Executive branch - power to veto or approve laws
- Judicial branch - power to review laws

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Appellate Structure



23

Role of the federal government and building codes

- Very limited
- Most states give power to local government
- Administration and enforcement remains with local jurisdiction



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Doctrine of Preemption

- Supremacy Clause
- Congress deprives states of power
- To regulate of commerce



25

What's preempted by the feds?

Child car seats



Toys



Drywall

26

The Doctrine of Sovereign Immunity



- You can't sue the king!
- Local jurisdictions can't regulate state buildings
- Unless
 - Waiver by state
 - Waiver by state re certain buildings
 - Request for help



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Sovereign Immunity

- Federal government immune from:
 - Local building codes and zoning ordinances
 - Includes courthouses, post offices and office
 - What about leased buildings?



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Chapter 4

State Legislative Law

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Basis for the Building Official's Duties and Powers

- State law adopts building code or police powers that sets forth his or her authority or implies the authority for:
 - Local governments to adopt building codes that set forth his or her authority



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Dillon’s Rule: A municipal corporation has only those powers which are:

- Expressly granted
- Implied or necessarily incident to express power and
- Essential and indispensable

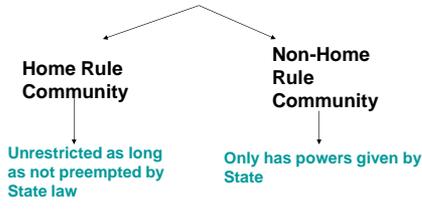


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Dillon’s Rule - Ultra Vires

- Power Derived from the State



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Home Rule Municipalities

- Different types
- Establish their own charter, rather than state legislated
- Building codes adopted without state authorization.
- Free to regulate own affairs

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Related Legislative Provisions

- Storm water management
- Protected development permitted in flood plain
- No development in floodway.
- Local jurisdiction adopts state law as its own



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Chapter 3

Local Governmental Law

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How to adopt building code

- Determine authority
- Publish notice of intent
- File code with the county or municipal clerk
- Hold public hearing
- File copies



36

So many codes

- Building Code
- Residential Code
- Fire Code
- Property Maintenance Code
- Zoning Ordinances – Land Use Ordinances
- Storm Water Management – National Flood Insurance Program (FEMA)



37

Board of Appeals

- May hear appeals of a building official's decision
 - If true intent of code or rules have been incorrectly applied
 - Provisions of the code do not fully apply
 - Empowered to consider new and innovative building materials and techniques if these are equally good or better than the code
- No authority to waive requirements of the code



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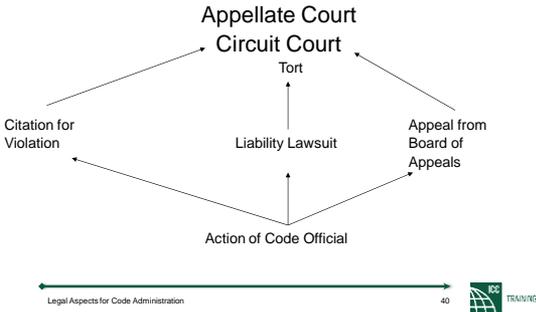


Chapter 6
Administration and Enforcement



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Code Official's Involvement in the Court System



40

Terms

- Complaint
- Due process
- Equitable estoppel
- Equitable powers
- Hearsay
- Injunctive relief
- Permanent injunction
- Probable cause
- Statute of limitations
- Temporary injunction
- Temporary restraining order
- Vested rights
- Writ of mandamus

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Permit Issuance

Importance of application and permit
 Error - safety and well-being of inhabitants of those mistakenly approved structures.
 Permit examiner can minimize possible fatal mistakes



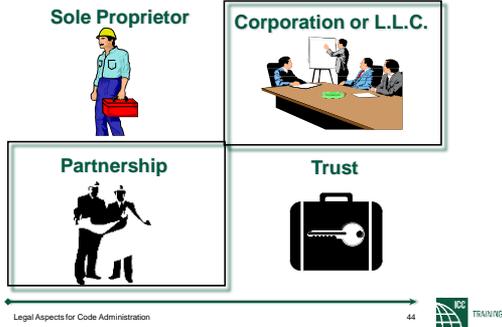
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Identifying responsible party



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Sole Proprietor



- Jimmy Joe d/b/a
- Jimmy Joe's Curbside Grill

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Common Mistakes Name (Individual)

- Wrong
 - Jimmy Joe's Curbside Grill
 - Cindy Adams, manager
- Correct
 - Jimmy Joe Smith d/b/a Jimmy Joe's Curbside Grill



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Corporation or Limited Liability Company



Jimmy Joe's Curbside Grill, Inc.

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How Do You Know It's a Corporation or LLC?

- Corporation or Corp.
- Incorporated or Inc.
- Company or Co.
- Limited or Ltd.
- Limited Liability Company or LLC



48

Alias or Assumed Names



- Check with County Clerk or
- Secretary of State

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Registered Agent



- Agent registered with the Secretary of State
- Accepts notices, service of process
- Never name in a citation

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Common Mistakes Name (Corporation)

- Wrong
 - Jimmy Joe's Curbside Grill
 - Jimmy Joe Smith
 - Jane Smith, registered agent for Joe's Hot Dog Stand, Inc.
 - Barry Adams, manager
- Correct
 - Jimmy Joe's Curbside Grill, Inc.



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Common Ownership Mistakes

- Wrong
 - Assumes person is the owner
 - Assumes taxpayer is the owner
 - Assumes there is only one owner
 - Doesn't do trust disclosure letter
 - Assumes management company is the defendant
- Correct
 - Checks with Recorder of Deeds / orders a tract search
 - Checks with Secretary of State about corporation
 - Sends and follows-up on trust disclosure letter
 - Gets admission from the defendant
 - Notifies and/or charges multiple owners



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Permit Revocation

- Revocation or suspension under the code
- Due process - vested interest
- Can't rely on courts
- Equitable estoppel.



53

Disclaimers

- Print disclaimer on building permit and application
- Permit issued wrongfully – revoke
- Writ of mandamus possible



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Plans Examination

- Potential liability
- Qualified plans examiners
- Can't rely on stamp of licensed architect or engineer



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Inspection

- IBC Section 109
- Documenting an inspection
 - Record date, address and description of observations violations and impressions.
 - Section of building code violated.
 - Take photographs or videos
 - Keep a copy of report



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Civil and Criminal Prosecutions

Complaint elements:

- Name of person or entity to be charged;
- Designating the charge;
- Body of the charge;
- Date and time of the offense;
- Signature of the complaining witnesses; and
- Notary or affidavit.



58

Where Do You Begin When Things Go Wrong?

- Who owns the property?
- Who occupies it?



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Owner – IBC Chapter 2

- Any person, agent, operator, firm or corporation having a legal or equitable interest in the property



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Person – IBC Chapter 2

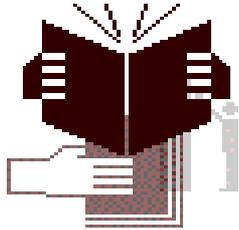
- An individual, heirs, executors, administrators or assigns and also includes a firm, partnership or corporation, its or their successors or assigns, or the agent of any of the aforesaid.



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But Who is Responsible?

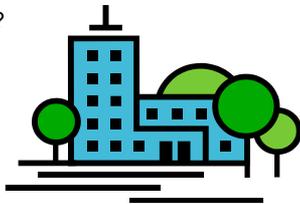
- What does the Code say?



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Violations (Unlawful Acts) – IBC 114.1

- Who is responsible?
 - Person
 - Firm
 - Corporation



63

Failure to Obtain Permit – 105.1

- Any owner
- Authorized agent



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Injunctive Relief

- Temporary restraining order
- Temporary injunction and
- Permanent injunction
- Issued by a court of equity or chancery court



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How to handle complaints

- Obtain as much information as possible
- Route to the proper inspector.
- Make inspection, complete report which details action taken.
- Notify complainant
- Have a procedure for anonymous complaints

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Where's the Evidence?

- Bring everything you need to court:
 - Files
 - Pictures
 - Review everything



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Types of Evidence

- Conversations
- Documents
- Audio or video files
- Photos
- Observations



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Photo foundation



69

Admissibility of Evidence

- **Must be competent** (reliable)
- **Must be material** - relationship between item and the offense
- **Must be relevant** - must tend to prove or disprove some issue in the case



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Foundation for Evidence

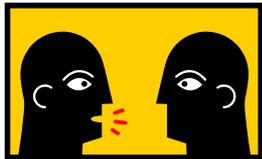
- Right to examine
- Right to challenge



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Types of Evidence - Conversations

- Conversations
 - No hearsay except:
 - Statements of defendant - Admissions of a party opponent
 - Foundation required - date, time, place, who was present



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Types of Evidence - Documents

- Common Documents
 - Deeds
 - Secretary of State corporate papers
 - Permit applications
 - Maps
 - Inspection reports
 - Certified copy of public documents



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Source of Documents

- Recorder of Deeds
- Secretary of State - corporation dept.
- Local jurisdiction
- Inspector's file
- Websites of public agencies



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Common Mistakes (Records)

- | | |
|---|--|
| <ul style="list-style-type: none"> ▪ Wrong <ul style="list-style-type: none"> ▪ Insufficient notes ▪ Can't remember dates, times, places and admissions ▪ Insufficient documentation | <ul style="list-style-type: none"> ▪ Correct <ul style="list-style-type: none"> ▪ Sufficient notes to refresh recollection ▪ Copies of all records, correspondence, return receipts, pictures, inspections |
|---|--|

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Types of Evidence - Observations and Photographs

- Observations of inspector
- Photographs and/or video - must truly and accurately depict subject matter therein



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Where's the perspective?



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Here it is!



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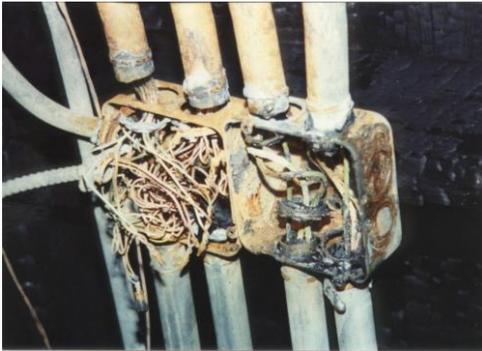
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Legal Aspects for Code Administration

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Chapter 7

Administrative Law

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Terms and Definitions

- Administrative action
- Answer
- Burden of proof
- De Novo

Legal Aspects of Code Administration

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99

Creation of the BBCA

- Governing body adopts procedures
- BBCA becomes involved after denial of permit
- Application to Board if application denied by building inspector
- Advise applicant of right to appeal



100

Powers of the Board – IBC 105.3.1

- An appeal is allowed:
 - If the true intent of this code or the rules legally adopted has been incorrectly interpreted;
 - The provisions do not fully apply;
 - An equally good or better form of construction is proposed.
- Board has no authority to waive requirements of this code.



101

Appeals Procedures

- Rules of Procedure
- Notice
- Burden of Proof and Presentation
- Granting Remedies
- Administrative Discretion
- Rehearings
- Orders



102

Zoning Board of Appeals

- Considers and acts upon appeals to the officials decisions
- Can grant variations to the restrictions of the ordinance
- Can make special exceptions to the ordinance itself



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Zoning Ordinances

- Local ordinances regulate use and development of property
- Specific districts based on types of uses for an area – residential, commercial and industrial



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Zoning establishes guidelines

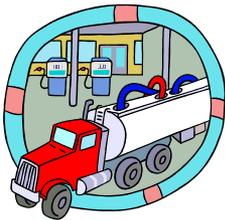
- Lot sizes, height and area restrictions, setbacks, number of structures, parking areas, etc. ...



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Conditional Use or Special Use Permit

- Conditional Use, Nonconforming Use, Special Use Permit
- Carries specific terms, restrictions, conditions, or requirements



107

First Amendment Issues

- Adult entertainment



108

Covenants

- An agreement or promise between two or more parties to either do something or to refrain from doing something.
 - Affirmative
 - Negative
 - Restrictive



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Affirmative Covenant

- Glenstone Homeowners Ass'n v. State, Dept. of Transp. 48 Ill.Ct.Cl. 388, Not Reported in N.E.2d, 1996 WL 1057751 Ill.Ct.Cl. 1996. - promise to pay subdivision assessments even applies to IDOT

110

Negative Covenant

- Shelley v. Kraemer 334 U.S. 1, 68 S.Ct. 836(1948).
- Case struck down restrictive covenant prohibiting transfer of land based on race

111

Restrictive Covenant

- Save the Prairie Soc. v. Greene Development Group, Inc. 323 Ill.App.3d 862, 752 N.E.2d 523 Ill.App. 1 Dist., 2001. - Can only build single family homes on land



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Easements

- Grant use or interest in land by entitling a person to use the land possessed by another person.



113

Types of Easements

- Affirmative easement - travel across or between adjoining properties
- Implied easement - owner of 2 or more adjacent lots sells part thereof, grants easements needed to use the property
- Utility easements



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Subdivision Regulations

- Developed to control future development and expansion of urban and municipal properties.



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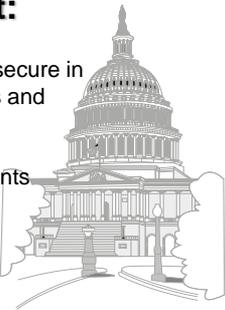
Chapter 8

Constitutional Law

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Fourth Amendment:

- The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, shall not be violated, and no Warrants shall be issued, but upon probable cause supported by Oath or affirmation and particularly describing the place to be searched and the persons or things being seized.



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Consequences of Violation of Fourth Amendment

- Exclusionary Rule
- Motion to Suppress Evidence
- Civil Rights lawsuit for violating the Fourth Amendment



118

Leading U.S. S.Ct. Cases

- Camara v. San Francisco 387 U.S. 523, 87 S.Ct. 1727, 18 L.Ed.2d 930(1967) – apartment building and health and safety inspection
- See v. Seattle – commercial warehouse 387 U.S. 541, 87 S.Ct. 1737, 18 L.Ed.2d 943(1967) – fire inspection



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Key Question

- What is the person's reasonable expectation of privacy that society is prepared to accept?



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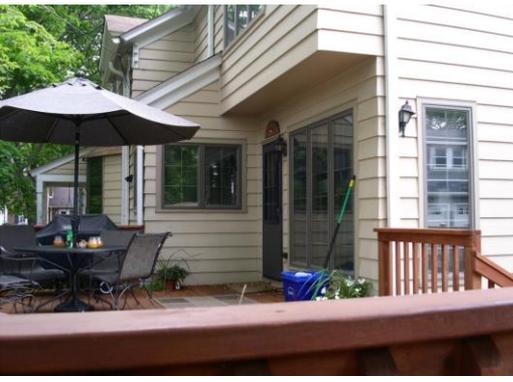


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Plain View Doctrine



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No warrant needed with plain view doctrine





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Plain view doctrine





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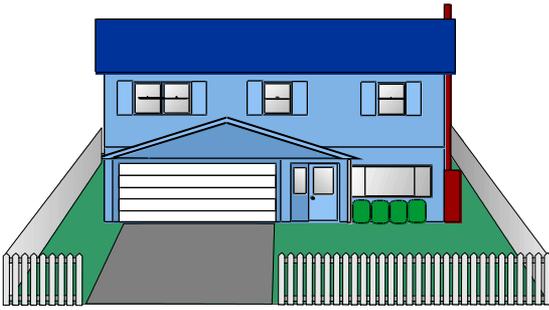


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Horizontal lines for notes.

Curtilage



Legal Aspects for Code Administration 143

143

Horizontal lines for notes.

Open Fields

- Area beyond curtilage
- No reasonable expectation of privacy
- Widgren v. Maple Grove township, 429 F.3d 575(2005)



Legal Aspects for Code Administration 144

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Horizontal lines for notes.

State v. Berry, 92 S.W.3d 823 (2003)



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Vacant Property



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Is It Abandoned?



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No expectation of property on for abandoned property

- A person has no expectation of privacy in premises which he has intentionally or constructively abandoned, and police entry of such premises is not a search under the Fourth Amendment.
- *Abel v. U.S.*, 362 U.S. 217, 80 S. Ct. 683, 4 L. Ed. 2d 668 (1960)



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Abandoned Property

- Look at all the relevant circumstances.
- Clear unequivocal and decisive evidence.
- Questions of fact and intent of the person who allegedly abandoned the premises.
- Infer intent from relevant circumstances and objective facts.



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Fourth Amendment and commercial property



150

Are all businesses created equal regarding inspections?



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Drones, aerial maps and the Fourth Amendment



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California v. Ciraolo, 476 U.S. 207, 221 (1986)

- To investigate an anonymous tip that Ciraolo was growing marijuana in his backyard, police officers flew an airplane over his property, photographing marijuana plants discovered on the property from one-thousand feet above.



154

Dow Chem. Co. v. United States, 476 U.S. 227(1986)

- Whether the curtilage or open-fields doctrine applied to the open areas between buildings on a large industrial property?
- Court concluded that the complex was more similar to an open field so no fourth amendment violation.



155

United States v. Jones, 132 S. Ct. 945 (2012)

- Whether attaching a Global Positioning System (GPS) to a suspect's vehicle and monitoring his movements on public roads for 28 days without a warrant constituted an unreasonable search?
- Supreme Court found that it violated the Fourth Amendment but judges couldn't agree on the theory: trespass v. reasonable expectation of privacy.



156

Florida v. Jardines, 133 S. Ct. 1409 (2013).

- Officers brought drug-sniffing dog onto private property so it could sniff from outside the door.
- Violated Fourth Amendment because it was beyond an implicit license to approach a home and solicit its occupants



157

Kyllo v. United States, 533 U.S. 27 (2001)

- Use of thermal-imaging device
- Conduct constitutes unreasonable search when technology "is not in general public use."
- Mapmaking cameras are conventional so aerial maps are fine.

158

Katz v. United States, 389 U.S. 347, 351 (1967)

- Wiretap on public phone booth.
- Established reasonable expectation of privacy standard



159

Florida v. Riley, 488 U.S. 445 (1989)

- Whether warrantless, naked-eye aerial observation interior of partially enclosed greenhouse violated the Fourth Amendment?
- 400 feet flight by helicopter okay



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Issues

- No trespass if above 400 feet (public air space)
- What if you don't know someone is watching your property? How can you have a subjective expectation of privacy?
- State statutes restrict use by law enforcement
- Could be constitutional but not legal under a state statute

161

Rental Inspection Ordinance



- Ashworth v. Moberly, 53 S.W.3d 564(2001)
- Rozman v. City of Columbia Heights, 268 F.3d 588(2001) - standing
- Jones v. Wildgen, 450 F. Supp.2d 1265(2006)

162

Towing Vehicles Off Private Property



Bezayiff v. City of St. Louis, 963 S.W.2d 225(1998)(need a warrant)

Redwood v. Lierman, 265 Ill.Dec. 432(2002)

163

But, is condemnation a Fourth Amendment taking?

- Freeman v. Dallas, 242 F.3d 642(2001)
- Seizure under state law - reasonable



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Third Party Consent

- Co-owner
- Roommates
- Child



165

What If One Consents and One Refuses?

- Georgia v. Randolph, 547 U.S. 103, 126 S.Ct. 1515(2006)
- Fernandez v. California, 134 S. Ct. 1126(2014)



166

Apparent Authority

- Illinois v. Rodriguez, 497 U.S. 177(1990)
- People v. Garza, 276 Ill.App.3d 659(1995)



167

Montville v. Lewis 87 F.3d 900 (1996)

- Apparent authority of contractor where no permit had been issued
- Qualified immunity



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Third Party Consent - Age



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Search Warrant Exceptions:

- Consent (i.e. waiver of Fourth Amendment right)
- Exigent Circumstances
 - Public Health or Safety
 - Closely Regulated Business
- No Search (e.g., observation from public area, open fields doctrine) - Artes -Roy v. City of Aspen, 31 F.3d 958(1994) Stop work order
- Good faith exception to exclusionary rule



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Consent

- Verbal or in writing by someone having authority over the property
- Permits
- Make sure you memorialize it



Legal Aspects for Code Administration 171 

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Exigent Circumstances

Public Health or Safety



Closely Regulated Business



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Closely regulated business

- Exceptions
- Closely Regulated Business
 - History of regulation
 - Substantial interest by state
 - Regulation serves that interest
 - Warrantless search is necessary
 - Adequate substitute for warrant



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When a Building Can Be Entered

>>>

- To put out a fire
- Conduct an initial inspection for its cause
- Seize evidence in plain view
- Michigan v. Tyler, 436 U.S. 499(1978) (Slight interruption OKAY)
- If owner consents



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When a Building Can Be Entered

- (When the emergency is over)
- With consent
- With a Search Warrant
- Michigan v. Clifford, 464 U.S. 287(1984)



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To Get a Search Warrant >>>

- Need probable cause or
- Administrative inspection
 - May be based on the passage of time
 - Nature of the building
 - Condition of the entire area
 - Specific knowledge of conditions



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Common Mistakes (Search and Seizure)

- | | |
|---|--|
| <ul style="list-style-type: none"> ▪ Wrong <ul style="list-style-type: none"> ▪ Fails to ask for consent ▪ Gets consent, but no authority ▪ Lacks probable cause to search ▪ Fails to get administrative search warrant | <ul style="list-style-type: none"> ▪ Correct <ul style="list-style-type: none"> ▪ Obtains consent from owner or tenant ▪ Searches under exigent circumstances ▪ Sees violation from area where a code official has a right to be ▪ Obtains administrative search warrant |
|---|--|



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Administrative Search Warrant Requirements >>>

- Complaint
 - Sets forth authority of code official to search
 - Sets forth probable cause in narrative form
 - Describes place to be searched
 - Cites code provisions violated
 - If no known violations, sets forth factors justifying warrant



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Administrative Search Warrant Requirements



- Search Warrant
 - Sets forth address of place to be searched and particular areas. if appropriate (e.g. Closets, drawers) and things to be seized
 - Recites finding of probable cause
 - Signature of neutral magistrate
 - Date and time of issuance
- Search Warrant Return
 - Sets forth when warrant was served, or
 - Sets forth that warrant was not served
 - If anything seized, lists inventory of property taken

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STATE OF ILLINOIS)
) SS.
COUNTY OF)

IN THE _____ JUDICIAL CIRCUIT, _____ COUNTY, ILLINOIS

IN THE MATTER OF)
) CASE NUMBER:
)
)

COMPLAINT FOR ADMINISTRATIVE SEARCH WARRANT

NOW APPEARS _____, Building and Code Enforcement Officer for the Village of _____, Complainant, before the undersigned Judge of the _____ Judicial Circuit, and requests the issuance of an Administrative Search Warrant, to inspect the premises of _____ to determine if said premises are maintained in compliance with the ordinances of the _____, being the 20XX International Property Maintenance Code (20XX IPMC) of the XXXXXXXXX, as adopted and amended in Section _____ of the _____ Code. In support hereof, Complainant states as follows:

1. That I am a Building and Code Inspector for the _____.

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2. The 20XX International Property Maintenance Code as amended and adopted by reference in Section _____ of the _____ Code prescribes minimum maintenance standards for all structures and premises for basic equipment and facilities for light, ventilation, occupancy limits, heating, plumbing, electricity and sanitation; for safety from fire, for space, use and location; and for safe and sanitary maintenance for all structures and premises now in existence.

3. Section IPMC 104.4 of the 20XX International Property Maintenance Code as amended and adopted by reference in Section _____ of the _____ Code provides that: "The code official is authorized to enter the structure or premises at reasonable times to inspect subject to constitutional restrictions on unreasonable searches and seizures. If entry is refused or not obtained, the code official is authorized to pursue recourse as provided by law".

4. Camara v. Municipal Court of San Francisco, 87 S.Ct. 1727(1967) provides that the issuance of a search warrant authorizing municipal health and safety inspections to enter and

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inspect dwellings include those situations where there is probable cause to believe there is a violation of the codes but need not be confined to cases in which inspectors possess probable cause to believe. Administrative search warrants are not limited to the issue as to whether that particular dwelling contains violations of minimum standards prescribed by the code being enforced. The court can look at the passage of time, the nature of the building or the conditions of the entire area in addition to specific knowledge of conditions.

5. People v. Sojourners Motorcycle Club, Ltd., 134 Ill.App.3d 448, 89 Ill.Dec. 358, 480 N.E.2d 840(2nd Dist. 1985) provides that the powers to inspect and procure an administrative search warrant are implied powers necessary to achieve enforcement of a code (in that case a county zoning ordinance). In this matter, the property maintenance code sets forth provisions for the code official to pursue recourse as provided by law to gain entry for inspections. In order to be able to enforce the _____'s property maintenance codes, it is necessary to perform inspections. When entry is refused or cannot be obtained, it must obtain an administrative search warrant as authorized by Camara v. Municipal Court of San Francisco in order to achieve the reasonable public goal of making sure that the dwelling meets minimum safety standards.

6. The Complainant, if allowed entry into the premises, shall inspect the items listed on the attached inspection form that is attached hereto and made a part hereof.



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7. There is probable cause and a reasonable basis for the issuance of an administrative search warrant due to the following evidence:
a. _____ is the owner and occupant of _____, II, _____, a single family residence in the _____, I know this because I checked the records of the _____ County Recorder on (date) and the records show that _____ is the last owner of record. I also know this because I have met with _____ a number of times in 20XX and 20XX (dates if you know) at his residence and he has admitted that he lives in the residence.
b. I first became involved with this property when I inherited a court case from my predecessor, XXXXXXXX on (date). Mr. _____ had been issued various citations in the past for existing code violations on the property at _____, II, _____ On June 7, 20XX, the _____ issued citations for the following code violations of the 20XX International Property Maintenance Code of the _____ of the _____ as adopted and amended in Section _____ of the _____ Code for the exterior of his property to _____ (see attached Complaint, Village Exhibit A):

- Failure to Maintain Driveway, 20XX IPMC 302.3
- Storage of Inoperable Vehicles, 20XX IPMC 302.8
- Failure to Provide Protective Treatment 20XX IPMC 302.4



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Failure to Maintain Roof and Drainage 20XX IPMC 304.7
Accumulation of Rubbish, 20XX IPMC 307.1
Though one vehicle has been removed, there is no compliance for the remaining violations based on my inspection on (date).

c. These charges were based on my inspections on (dates) during which I saw that the soffit and fascia boards on the home are missing, rotted and stuffed with random debris such as leaves, garbage and plastic toy particles (see attached Village Exhibit B). The roof and roof supports appear to be sagging and there are large holes on the northeast side of the home allowing animals to enter the structure and which allow moisture from rain and snow to enter the interior of the property (see attached Village Exhibit C). I was told by _____'s neighbor, on (date) that he saw animals such as squirrels, mice and raccoons entering into the structure. There is an unlicensed, inoperable red vehicle in the backyard which cannot be removed unless scrub trees are cut down to get the car out of the rear yard (see attached Village Exhibit D). Due to these various problems, the exterior of the property is in a dilapidated condition. The interior of the structure needs to be checked to see if there is damage to the structure because of water infiltration due to the holes in the exterior.

d. The 20XX IPMC as amended and adopted by reference in Section _____ of the _____ Code provides:



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302.5 Rodent Harborage: All structures and exterior property shall be kept free from rodent harborage and infestation".

304.2 Protective treatment. All exterior surfaces, including but not limited to, doors, door and window frames, cornices, porches, trim, balconies, decks and fences shall be maintained in good condition. Exterior wood surfaces, other than decay-resistant woods, shall be protected from the elements and decay by painting or other protective covering or treatment. Peeling, flaking and chipped paint shall be eliminated and surfaces repainted. All siding and masonry joints as well as those between the building envelope and the perimeter of windows, doors, and skylights shall be maintained weather resistant and water tight.

304.7 Roofs and drainage. The roof and flashing shall be sound, tight and not have defects that admit rain. Roof drainage shall be adequate to prevent dampness or deterioration in the walls or interior portion of the structure. Roof drains, gutters and downspouts shall be maintained in good repair and free from obstructions.

e. On _____, 20XX, _____ pleaded guilty to each and every code violation as set forth in the complaint, Village Exhibit A.

f. At the _____, 20XX court hearing _____ admitted in open court that he did not have running water or a working toilet in the home and has not had said sanitary facilities for an extended period of time. The _____ water records show no usage since (date).



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g. I met _____ at his home on _____, 20XX with a representative from the water department to verify that the water was on at the b-box. The _____ water department verified that the water was on at the main connection but not getting into the home due to an internal problem inside the structure.

h. On (date) I checked with the Sanitary District which verified that _____'s sanitary line is 90-95% blocked. This was discovered when new sewer lines were being laid on _____ Street in that area during (time period).

i. On (date) I checked with _____ at the Public Works Department and found out that _____ has refused to allow a new water meter to be installed at the residence.

j. The 20XX IPMC as amended and adopted by reference in Section _____ of the _____ Code provides:

504.1 General - Plumbing Systems and Fixtures All plumbing fixtures shall be properly installed and maintained in working order, and shall be kept free from obstructions, leaks and defects and be capable of performing the function for which such plumbing fixtures are designed. All plumbing fixtures shall be maintained in a safe, sanitary and functional condition.



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505.3 Water Supply The water supply system shall be installed and maintained to provide a supply of water to plumbing fixtures, devices and appurtenances in sufficient volume and at pressures adequate to enable the fixtures to function properly, safely, and free from defects and leaks.

506.2 Maintenance. Every plumbing stack, vent, waste and sewer line shall function properly and be kept free from obstructions, leaks and defects.

k. I have checked the refuse records from the _____ that show that _____ has not had garbage pickup since _____ of 2000.

l. On or about (dates) I spoke to _____'s next door neighbors on both sides of his residence. They both stated that there is a foul odor that they both smell emanating from his home especially in the warmer months. It is so strong that they cannot use the exterior of their properties to barbecue. I verified this odor on or about (dates) when I was walking the property with _____ discussing his code violations with him. The odor smells like a combination of rotting garbage and human waste. I smelled this odor when _____ opened his door. He has not allowed me to check out the odor inside his residence. _____ appears not to have bathed in sometime in that he appears encrusted with dirt and smells like urine and rotting garbage.



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m. The 20XX IPMC as amended and adopted by reference in Section _____ of the _____ Code provides:

108.1.3 Structure unfit for human occupancy. A structure is unfit for human occupancy whenever the code official finds that such structure is unsafe, unlawful or, because of the degree to which the structure is in disrepair or lacks maintenance, is insanitary, vermin or rat infested, contains filth and contamination, or lacks ventilation, illumination, sanitary or heating facilities or other essential equipment required by this code, or because the location of the structure constitutes a hazard to the occupants of the structure or to the public.

305.1 General. The interior of a structure and equipment therein shall be maintained in good repair, structurally sound and in a sanitary condition. Occupants shall keep that part of the structure which they occupy or control in a clean and sanitary condition.

307.1 Accumulation of rubbish or garbage. All exterior property and premises, and the interior of every structure, shall be free from any accumulation of rubbish or garbage.



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n. On _____, 20XX I served _____, the owner of _____, IL in the _____ Court with both a Notice of Condemnation (Village Exhibit E) under the 20XX IPMC and a 15-Day Notice to Demolish or Repair (Village Exhibit F) the structure. Since that time, I am not aware of anything _____ has done to abate the problem except for putting a handwritten "For Sale" sign on the property.

8. The Complainant, along with inspectors from the _____ and representatives of other public agencies if necessary if biohazard conditions are found in the interior due to a lack of toilet facilities, if allowed entry into the premises, would inspect the premises to determine if code violations exist. A _____ police officer would accompany said persons for the limited purpose of providing security.

9. Based on my observations, there is probable cause to believe that the following sections of the 20XX International Property Maintenance Code as amended and adopted by reference in Section _____ of the _____ Code have been violated:

- Structure Unfit for Human Occupancy, 108.1.3,
- Rodent Harborage, 302.5
- Failure to Maintain Exterior Surfaces, 304.2,
- Failure to Maintain Roof, 304.7,
- Failure to Maintain Interior Structure in Sanitary Condition, 305.1,



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- Accumulation of Rubbish or Garbage, 307.1,
- Failure to Maintain Plumbing System, 504.1,
- Failure to Maintain Water Supply 505.3
- Failure to Maintain Sewer Line 506.2 Maintenance

WHEREFORE, Complainant prays that this Court issue an Administrative Search Warrant to inspect the exterior and interior structure and property at _____, IL, _____ to determine if the building, and plumbing components in the home meet the minimum standards set forth in the codes cited in this complaint.

Complainant
Building and Code Enforcement Inspector

Subscribed and sworn to before me
On this _____ day of _____, 20XX

Judge _____



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INSPECTION LIST - _____, _____, Illinois

Check all that apply:

- Structural members will be checked for any evidence of deterioration that would render them incapable of carrying the imposed loads.
- The exterior of the property and premises will be inspected to determine that it is in a clean, safe, and sanitary condition free from the accumulation of rubbish or garbage and to ensure that the exterior structure is in good repair and structurally sound.
- The interior of the structure and its equipment will be examined to make sure it is in good repair, structurally sound and in a sanitary condition so as not to pose a threat to the health, safety or welfare of the occupants or visitors and to protect the occupants from the environment.
- The structure will be checked for dampness that would be conducive to decay or deterioration of the structure.
- The sanitation of the structure will be inspected to ensure that it is in a clean and sanitary condition free from any accumulation of rubbish or garbage.



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- The plumbing facilities will be inspected to ensure that they are in proper operating conditions, can be used in privacy, and are adequate for personal cleanliness and the disposal of human waste. The plumbing fixtures will be examined to ensure they are maintained in a safe and usable condition and to make sure they are of approved material. The sink, lavatory, bathtub or shower, water closet or other facility will be inspected to ensure that they are properly connected to either a public water system or to an approved private water system.
- All mechanical equipment will be checked to ensure it is properly installed and safely maintained in good working condition, and be capable of performing the function for which it was designed and intended.
- All electrical equipment, wiring and appliances shall be inspected to ensure they are installed and maintained in a safe manner.
- The residence shall be inspected for any signs of insects, rats, or other pests that could require extermination.



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STATE OF ILLINOIS)
) SS.
 COUNTY OF _____)
 IN THE _____ JUDICIAL CIRCUIT, _____, _____ COUNTY,
 ILLINOIS
 IN THE MATTER OF _____)
) CASE NUMBER:
 _____)
 _____, Illinois)

ADMINISTRATIVE SEARCH WARRANT

TO: All peace officers and inspectors in the State of Illinois:

On this day, _____, 20XX at _____ a.m./p.m., Complainant, _____ has subscribed and sworn to a Complaint for an Administrative Search warrant before me. Upon examination of the Complaint, I find that it states facts to show a reasonable basis and probable cause, and I therefore command that the structure and property, both the exterior and interior of _____, _____, IL, _____, be inspected and said inspectors shall inspect the items listed on the attached inspection form which is attached hereto and made a part hereof, using such force as is necessary to make entry in the event the owner or occupant refuses entry, to determine if said premises is in compliance with the ordinances of the _____, being the 20XX International Property Maintenance Code (20XX IPMC) of the _____, as adopted and amended in Section _____ of the _____ Code specifically but not limited to the following sections of the codes of the _____:

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20XX IPCM 108.1.3 Structure unfit for human occupancy. A structure is unfit for human occupancy whenever the code official finds that such structure is unsafe, unlawful or, because of the degree to which the structure is in disrepair or lacks maintenance, is insanitary, vermin or rat infested, contains filth and contamination, or lacks ventilation, illumination, sanitary or heating facilities or other essential equipment required by this code, or because the location of the structure constitutes a hazard to the occupants of the structure or to the public.

20XX IPCM 302.5 Rodent Harborage: All structures and exterior property shall be kept free from rodent harborage and infestation.

20XX IPCM 304.2 Protective treatment. All exterior surfaces, including but not limited to, doors, door and window frames, cornices, porches, trim, balconies, decks and



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fences shall be maintained in good condition. Exterior wood surfaces, other than decay-resistant woods, shall be protected from the elements and decay by painting or other protective covering or treatment. Peeling, flaking and chipped paint shall be eliminated and surfaces repainted. All siding and masonry joints as well as those between the building envelope and the perimeter of windows, doors, and skylights shall be maintained weather resistant and water tight.

20XX IPCM 304.7 Roofs and drainage. The roof and flashing shall be sound, tight and not have defects that admit rain. Roof drainage shall be adequate to prevent dampness or deterioration in the walls or interior portion of the structure. Roof drains, gutters and downspouts shall be maintained in good repair and free from obstructions.

20XX IPCM 305.1 General. The interior of a structure and equipment therein shall be maintained in good repair, structurally sound and in a sanitary condition. Occupants shall keep that part of the structure which they occupy or control in a clean and sanitary condition.

20XX IPCM 307.1 Accumulation of rubbish or garbage. All exterior property and premises, and the interior of every structure, shall be free from any accumulation of rubbish or garbage.



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20XX IPCM 504.1 Failure to Maintain Plumbing System in Working Order All plumbing fixtures shall be properly installed and maintained in working order, and shall be kept free from obstructions, leaks and defects and be capable of performing the function for which such plumbing fixtures are designed. All plumbing fixtures shall be maintained in a safe, sanitary and functional condition.

20XX IPCM 505.3 Water Supply. The water supply system shall be installed and maintained to provide a supply of water to plumbing fixtures, devices and appurtenances in sufficient volume and at pressures adequate to enable the fixtures to function properly, safely, and free from defects and leaks.

20XX IPCM 506.2 Maintenance. Every plumbing stack, vent, waste and sewer line shall function properly and be kept free from obstructions, leaks and defects.

Said inspection may be videotaped and/or photographed. A peace officer may accompany the inspectors for the limited purpose of providing security.

Time and date of Issuance: _____, 20XX at _____ a.m.
Judge _____



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STATE OF ILLINOIS)
) SS.
 COUNTY OF _____)

IN THE _____ JUDICIAL CIRCUIT _____ COUNTY,
 ILLINOIS

IN THE MATTER OF)
)
) CASE NUMBER:
)
 _____)
 _____, Illinois)

ADMINISTRATIVE SEARCH WARRANT RETURN

Premises: _____, _____, Illinois _____

I served this Administrative Search Warrant at the above named Premises and aided in its execution, this _____ day of _____ at 20XX.

Date: _____
Complainant

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Or:

I did not serve this Administrative Search Warrant within _____ hours of the time of issuance, and it is hereby returned to the Court as void and not executed.

Date: _____
Complainant



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Overcrowding

- Platteville Area Apartment Association v. City of Platteville, 179 F.3d 574(1999)
- Special rules for overcrowding search warrants



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Legal Aspects for Code Administration 202 

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Legal Aspects for Code Administration 203 

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Legal Aspects for Code Administration 204 

204

Civil Rights Act of 1871



Title 1983 Action

- 1. Color of state law
- 2. A deprivation of federal constitutional or statutory rights
 - a. Fourth Amendment - search and seizure
 - b. Fourteenth Amendment- due process/equal protection
 - c. Discrimination- race / disability / religion



205

Defenses

- Absolute immunity
- Qualified immunity



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Post-deprivation Hearing

- Flatford v. City of Monroe, 17 F.3d 162(1994)
- What process is due when government evicts citizens from their houses in an emergency?
- Building condemned after inspection
- Inspector entitled to qualified immunity for lack of pre-deprivation hearing but not post-deprivation hearing - residents must be notified and are entitled to a hearing



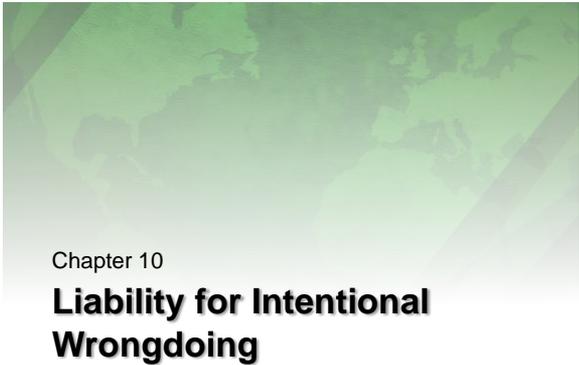
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Pretextual Searches

- Jones v. City of Youngstown, 980 F. Supp. 908(1997)
- Police accompanied inspectors who ordered residence be vacated due to emergency
- Inspectors should have informed residents of right to appeal order
- Police officers focused on drug violations and violated 4th Amendment
- Lack of post-deprivation hearing



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209

Government v. Individual Liability

- Each may be sued
- Government will provide attorney for individual sued



210

Intentional Torts v. Negligence

- **Intentional tort** - involves conduct the person intended to occur
- **Negligence** - no intent involved but harm caused and breach of duty of care



211

Intentional Torts

- Malicious prosecution
- Institution of criminal, civil or administrative proceedings
- Termination of proceedings in favor of the accused
- Absence of probable cause
- Malice



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Summary of Malicious Prosecution

- Examples of individuals who might file malicious prosecution suits against building officials include:
 - Contractors who do not follow building plans and specifications.
 - Contractors who do not call for necessary inspections.
 - Developers who begin construction without a permit.



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Question:

- Q. Which are examples of malice on the part of a building official?
 - a. Stopping work for minor, insignificant violations.
 - b. Extorting money from a contractor.
 - c. Citing all violations in hope that the current owner will sell out to a new owner.
 - d. All of the above.
 - e. None of the above.

- d. All of the above.



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Intentional Torts

- Abuse of Process
- False Imprisonment
- Intentional Infliction of Emotional Distress
- Assault and Battery
- Trespass



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Chapter 11

Negligent Wrongdoing



216

Public duty doctrine

- Plaintiff must prove that municipality owed a duty to the plaintiff not just the general public when performing the activity that gave rise to the action



217

Negligence

- Elements:
 - Duty owed to another to act according to a certain standard
 - Failure to act in accordance with the standard
 - Breach of duty
 - Misfeasance – improper performance
 - Malfeasance – doing something you shouldn't do
 - Nonfeasance – failure to do something
 - Proximate cause of injury or damage to another

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Breach of Duty

- Breach of duty is the third element of a negligence cause of action.

There are two ways a duty can be breached:

- By action, such as an improper inspection.
- By inaction, such as failure to inspect.

219

Summary of Defenses and Immunities

- Contributory Negligence
- Assumption of Risk
- Sovereign immunity



220

Summary of State Tort Liability Acts

- Many states have enacted state tort liability acts. Acts determine amount of immunity for government
- Goals:
 - Easier to sue government.
 - Clarifies the in which the government and its officials can be sued.



221

Summary of State Tort Liability Acts

- California and New Jersey state tort liability acts afford protection against liability for injury caused by:
 - Failure to adopt or enforce a code.
 - Issuance or revocation of permits.
 - Negligent inspections.
 - Malicious prosecution.



222

Summary of Indemnification and Insurance

- Many municipalities have enacted indemnification ordinances to protect public officials from any loss they may suffer.
- Indemnification ordinances require that whatever happened, the public official acted in good faith, within the scope of employment, and within the regulations of the building department.



223

Summary of Indemnification and Insurance

- Errors and omissions insurance protects in situations where an error is made which could give rise to liability. It applies only to areas of specialized skill to knowledge, such as the issuance of a building permit.



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Terms

- Absolute immunity
- Assumption of risk
- Breach of duty
- Contributory negligence
- Declaratory judgment
- Duty
- Malfeasance
- Misfeasance
- Nonfeasance
- Public duty doctrine
- Qualified immunity
- Joint and several liability



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Malfeasance

- The performance of some act which a person ought not do at all.
- An inspector falsifies an inspection report



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Misfeasance

- The improper performance of some act which a person may lawfully do.
- During an inspection of a townhouse, the inspector fails to check to see if the deck is properly connected to the structure which later collapses because it was not.



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Nonfeasance

- The nonperformance of some act which a person is obligated or has the responsibility to perform.
- An inspector fails to conduct an electrical inspection at a business and the problem overlooked causes a fire.



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Chapter 13

The Role of the Witness



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Terms

- Cross-examination
- Direct examination
- Discovery
- Expert witness
- Fact witness
- Hypothetical question
- Redirect
- Rule of sequestration
- Voir dire
- Impeachment
- Subpoena duces tecum



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Summary of Role of the Fact Witness

- Main witness = best field inspector
- Well versed in building code and able to communicate effectively



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Testifying Effectively - Listen

- Listen to the question asked
- Don't volunteer information
- If more information is needed, let attorney ask the question



Legal Aspects for Code Administration 232 

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Analyze

- Say "I don't know" if you don't know the answer.
- Don't guess!



Legal Aspects for Code Administration 233 

233

Speak Up

- The judge needs to hear you.
- If there is a court reporter, she or he needs to hear you.

Legal Aspects for Code Administration 234 

234

Objections

- Stop testifying until judge has ruled
- Objection overruled – you may answer
- Objection sustained – don't answer



235

Keep Your Cool

- Trying to rattle your opponent is a trial tactic
- Be polite but testify with authority
- Be the nicest person in the courtroom



236

Confused?

- Ask for the question to be repeated or rephrased
- Don't be pressured to answer a question you don't understand.



237

Feeling Frisky?

- Don't interrupt
- Never interject comments
- Don't talk back to anyone



238

Do You Swear to Tell the Truth?

- Always tell the truth even if it hurts your case
- Your reputation is paramount



239

Guidelines for Witnesses

- Leading questions suggests answers.
- "Wasn't the building foundation already laid by March 1, Mr. Building Official?"

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Guidelines for Witnesses

- Do not get angry under cross-examination.
- When addressing a judge and jurors:
 - Speak clearly and audibly.
 - Look directly at them.
 - Look and sound confident.



241

Guidelines for Witnesses

- Wear neat everyday clothes
- Attorney should prepare you for what will happen
- If either attorney raises an objection, wait until the judge rules on the motion.



242

Sequestration of Witnesses

- Keep witnesses apart
- Talking to opposing counsel
- Might get to sit with counsel



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Legal Aspects for Code Administration 244 

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Final Reflection

- **What?** What happened and what was observed in the training?
- **So what?** What did you learn? What difference did this training make?
- **Now what?** How will you do things differently back on the job as a result of this training?

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