

ZONING AND CODE ENFORCEMENT;
WHAT HAPPENS AFTER THE CITATION.

CITY ATTORNEY'S OFFICE
CITY OF COLUMBIA



THE PROBLEM



COMPLIANCE VIA CRIMINAL PROCESS



CHARGING DOCUMENT

SECTION 5-7-32. Municipal code enforcement officers; appointment; powers and duties.

A municipality may appoint and commission as many code enforcement officers as may be necessary for the proper security, general welfare, and convenience of the municipality. These officers are vested with all the powers and duties conferred by law upon constables in addition to duties imposed upon them by the governing body of the municipality. However, no code enforcement officer commissioned under this section may perform a custodial arrest. These code enforcement officers shall exercise their powers on all private and public property within the municipality.

HISTORY: 1994 Act No. 341, Section 1.

CHARGING DOCUMENT CONT.

SECTION 56-7-80. County or municipal uniform ordinance summons.

(A) Counties and municipalities are authorized to adopt by ordinance and use an ordinance summons as provided herein *for the enforcement of county and municipal ordinances*. Upon adoption of the ordinance summons, any county or municipal law enforcement officer or code enforcement officer is authorized to use an ordinance summons. Any county or municipality adopting the ordinance summons is responsible for the printing, distributing, monitoring, and auditing of the ordinance summons to be used by that entity.

(B) The uniform ordinance summons may not be used to perform a custodial arrest. No county or municipal ordinance which regulates the use of motor vehicles on the public roads of this State may be enforced using an ordinance summons.

CHARGING DOCUMENT CONT.

(C) An ordinance summons must cite only one violation per summons and must contain at least the following information:

- (1) the name and address of the person or entity charged;
- (2) the name and title of the issuing officer;
- (3) the time, date, and location of the hearing;
- (4) a description of the ordinance the person or entity is charged with violating;
- (5) the procedure to post bond; and
- (6) any other notice or warning otherwise required by law.

The ordinance summonses must be consecutively and discretely numbered. The ordinance summonses must be audited as part of the annual independent audit required in Section 4-9-150 for counties and in Section 5-7-240 for municipalities, and a separate copy of each audit must be furnished to the chief administrative officer of the county or municipality, as appropriate.

LIVABILITY COURT

Court can be as formal or informal as a municipality desires.

- In Columbia, Quality of Life Court is held on the first and third Mondays of each month (approximately 24 sessions a year).
- Specific judges are assigned to that court. Compliance is the overriding goal – most cases are resolved prior to day of court.
 - Code enforcement officers typically NP charges during initial court date.
 - The remaining cases are usually resolved via bench trial.

JURY TRIAL TRACK

Certain cases will be moved to the jury trial docket.

- Defendant's request
- Code Enforcement Officer's request
- City Attorney's office request

Case continues as any other JT case would.

- Case is assigned to city prosecutor for determination about how to proceed.

APPEALS FROM LIVABILITY COURT

§ 14-25-95. Appeals to Court of Common Pleas; procedures and time limits.

- Any party shall have the right to appeal from the sentence or judgment of the municipal court to the Court of Common Pleas of the county in which the trial is held.
- Notice of intention to appeal, setting forth the grounds for appeal, must be given in writing and served on the municipal judge or the clerk of the municipal court within ten days after sentence is passed or judgment rendered, or the appeal is considered waived.

HISTORY: 1980 Act No. 480, eff January 1, 1981; 1994 Act No. 520, Section 2, eff September 23, 1994.

APPEALS CONTINUED

§ 14-25-105. Municipal judge to make return to Court of Common Pleas in event of appeal; no appeal de novo.

- The municipal judge shall make a return to the Court of Common Pleas, and the appeal must be heard by the presiding judge upon the return.
- The return of the municipal judge shall consist of a written report of the charges preferred, the testimony, the proceedings, and the sentence or judgment.
- There shall be no trial de novo on any appeal from a municipal court.

HISTORY: 1980 Act No. 480, eff January 1, 1981; 1994 Act No. 520, Section 3, eff September 23, 1994.

THINGS TO THINK ABOUT...



- Pro se defendants
- Teaching other departments about the criminal process
- Neighborhood involvement/potential witnesses
- Community support (churches, organizations, etc.)

COMPLIANCE VIA CIVIL PROCESS

Injunctive Relief

- Summons & Complaint

Demolition Process

- IPMC
- State Law

INJUNCTIVE RELIEF



SUMMONS & COMPLAINT

Causes of Action

- Nuisance
 - Environmental Health
- Violation of IPMC
 - Applicable Sections
- Zoning Violations
 - Permitted Use

Temporary Restraining Orders

SUPPORTING DOCUMENTS

Attachments to Pleadings Include:

- Deed
- Notice of Violations
- Photos
- Criminal Disposition documents
- Affidavits of Neighbors/City Staff

OBJECTIVE



DEMOLITION PROCESS

S.C. Code Ann. Section 31-15-20, Repairing, closing, or demolishing unfit dwellings.

Whenever any municipality of this State finds that there exist in such municipality dwellings which are unfit for human habitation due to (a) dilapidation, (b) defects increasing the hazards of fire, accidents or other calamities, (c) lack of ventilation, light or sanitary facilities or (d) other conditions rendering such dwellings unsafe or insanitary, dangerous or detrimental to the health, safety or morals or otherwise inimical to the welfare of the residents of such municipality, such municipality may exercise its police powers to repair, close or demolish any such dwelling in the manner herein provided.

HISTORY: 1942 Code Section 36 502; 1952 Code Section 36 502; 1942 Code Section 5271 81; 1939 (41) 347; 1945 (44) 156.

THE HOUSE NEXT DOOR



DEMOLITION PROCESS

- Notice of Violation from Building Official
- Right to Hearing/Appeal
- Then Notice of Demolition Order filed same as Lis Pendens
Served on all contained in title search
Wait for proof of service
30-day waiting period for challenge in Circuit Court
- Demolition
- Cancel Notice of Demolition Order and file Demo Lien

THINGS TO THINK ABOUT...

- Circuit Court moves slowly
- Witnesses are crucial, personalize damage
- Social worker hat



COMPLIANCE VIA ADMINISTRATIVE REMEDIES



Sec. 8-40. - Institution of administrative remedy and penalty.

(a)

Revocation of licenses or permits for public nuisance: For any person or entity which holds or owns a license or permit issued by the City of Columbia, a determination of the public nature of a public nuisance must be made by the Chief of Police or must be made by the Director of Business Licenses for any public nuisance under Section 8-31(e). Upon such a finding, in addition to any other relief under these ordinances or applicable law, enforcement of this chapter's provisions may be accomplished upon the revocation of any license or permit issued by the City of Columbia by way of a Notice of Revocation to be served on the License Holder, his/her designee or a person of suitable age and discretion who lives or works at the subject location.

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.... WAIT.... WHA-...?

THE POLICE CHIEF REVOKES BUSINESS LICENSES??

YOU ALREADY HAVE THIS...

- Many Cities have some procedure for revoking business licenses, but they vary greatly and are rarely utilized
- The officials may be the code enforcement officer, or a hearing officer, or a board, but rarely is the process vetted through legal to determine whether it has utility
- This is a hidden gem!!

Sec. 11-45. - Suspension or revocation of license.

(b)
Authority of chief of police. When the chief of police determines, upon investigation, that:

....
(5)
A business licensee has engaged in an unlawful activity or nuisance related to the business;
he may direct that the city business license inspector revoke or suspend the business license in the manner provided in this article.

(Code 1979, §§ 2-2003, 8-1015)

Existing Law: Sec. 11-45. - Suspension or revocation of license.

- Inadequate definition of Nuisance

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Existing Law: Sec. 11-45. - Suspension or revocation of license

- There was no process:
- (5)
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1979

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One more thing...

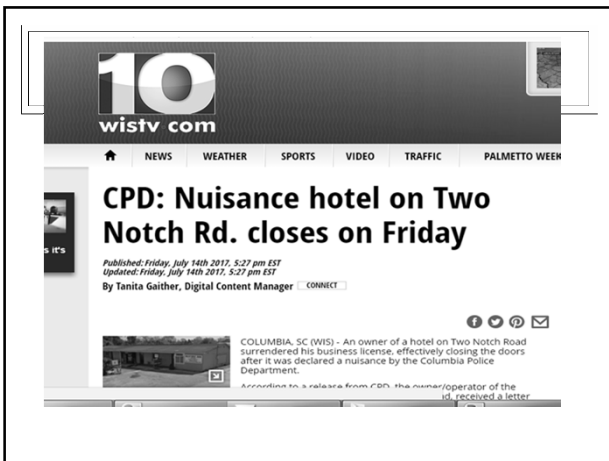
WHERE IS YOUR DATA?
AN ARGUMENT FOR RETHINKING CODE ENFORCEMENT

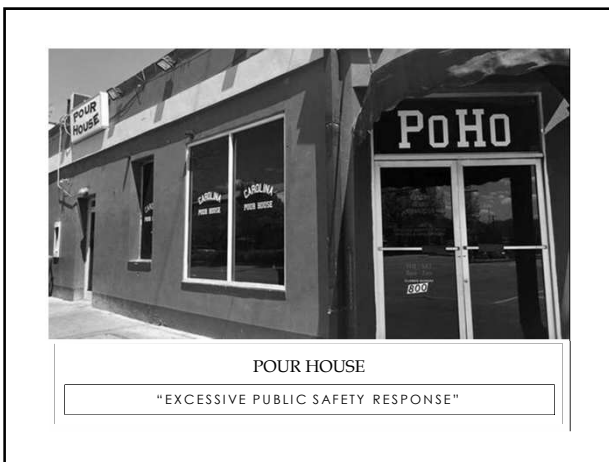
PROBLEMS WITH ALL NUISANCE/CODE ENFORCEMENT ISSUES

- Safety of your employees
- Sharing of department information (Data Silos)
- If is going to court, how is your Due Process?
- Notice? "No, tis not good notice"
- If you have good Due Process, how good is your employee at explaining it to a Judge?



BEST WAY INN
PROSTITUTION AND DRUGS





(5)
 Any structure, whether a commercial operation or a residential use, where violations against the federal, state or municipal laws occur with disproportionate frequency or intensity that they require an excessive public safety response cost. "**Excessive public safety response**" means:

a.
The reasonable deployment of five or more law enforcement officers to an emergency scene at any one time, or the reoccurring need for public safety or code personnel or emergency vehicles at the location when compared to the frequency or intensity of law or regulation enforcement required at other similarly situated structures;

b.
There have been more than two situations of unsafe traffic or crowd control issues which result in the request of emergency assistance or the need for law enforcement assistance from an emergency situation; provided, however, this does not include when traffic control or crowd control is requested in advance of a scheduled event pursuant to a city issued permit or prior discussions with law enforcement.

c.
There have been more than six citations, or search warrants executed, or a combination of the two, at that structure for any of the following behaviors during any 12-month period:
i. Violation of any state or local alcohol law;
ii. Violation of any federal, state or local narcotics law;
iii. Violation of any state or local gun law;
iv. Assaults; and/or
v. Crimes of violence against another person(s).



EMPIRE SUPPER CLUB

MASS SHOOTING

VISTA MASS SHOOTING

- Excessive Public Safety Response
- Operating outside of zoning
- Operating outside of business license
- Other issues



CHRIST COURT

THE GATES OF HELL TORN DOWN