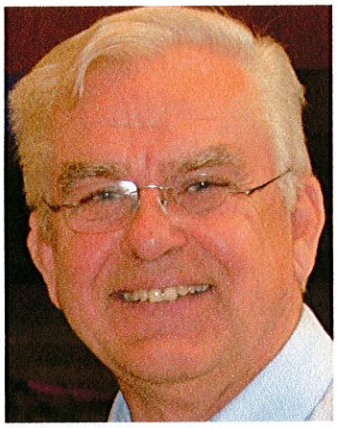
International Municipal Lawyers Association

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Municipal Superpowers: Getting Compliance through Injunctions, Contempt, Conditions of Probation, Deferred Sentences and Consent Orders

by Peter A. Letzmann, Attorney at Law



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Introduction

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Why are we here?

- A picture is worth a thousand words.



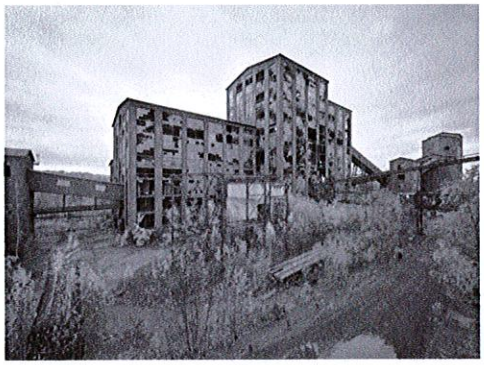
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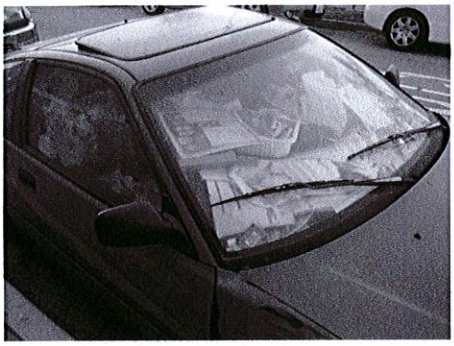
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We all have the problem

Pre-Test

- Four days of the week that start with the letter "t"?
  - _.
  - _.
  - _.
  - _.
- What word looks the same upside down and backwards ? _____

- The number of "F"s in sentence below?

FINISHED FILES ARE THE RESULT OF YEARS OF SCIENTIFIC STUDY COMBINED WITH THE EXPERIENCE OF YEARS.

- _____, _____, _____, _____.
- _____.
- FINISHED FILES ARE THE RESULT OF YEARS OF SCIENTIFIC STUDY COMBINED WITH THE EXPERIENCE OF YEARS.

First things first

- Goals – write them down
- Network – make an effort to meet people
- Participate; ask questions and share experiences, especially if you have some information or technique that will help
- I will do everything that I can so that this does not turn out to be a lecture
- Take lots of notes

- Find the "big ideas"
  - _____
  - _____
  - _____
  - _____
- Fill out the evaluations, honestly, and leave them with us at the end of the program
- Share your "big ideas" when you get back
- Write a "Dear Boss" thank you letter to the boss and to IMLA.

Practical Considerations

- Generally, when government (and others) takes action that interfere with the "rights" of others. Individuals should be informed of potential depravation of "rights."
- Criminal actions
- Civil action
- Administrative

2

Ethical / Moral Considerations

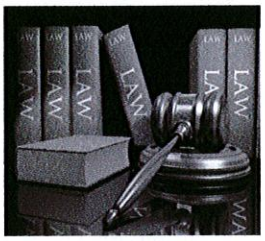
- Government is to serve its citizens
- Transparency in government
- Ethics
- Do unto others ...
- What do we want to accomplish with "Code Enforcement?"

3

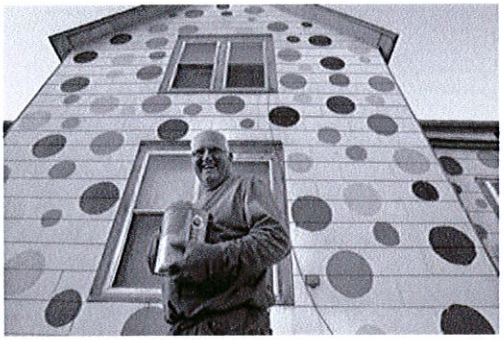


Legal Considerations

- US Constitutions
- State Constitutions
- Federal Statutes
- State Statutes



- Code of Federal Regulations (CFR)
  - Gpoaccess.gov/cfr/
  - Law.cornell.edu/cfr/
- State Administrative Codes
- Local Charters
  - Municode.com
- Local Ordinances
  - Municode.com



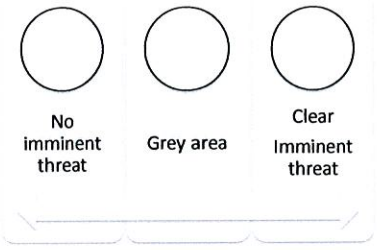
Legal Considerations: Liability

- Negligence
- Gross Negligence
- Attractive nuisance
- Defenses: Government Immunity?
- Litigation by home owners associations (HOA)

What are your "authorities?"

- What "gold" is in them there hills?
- Re-read the codes, statutes and ordinances

Exercise Discretion



Discretion / Priorities





"Broken Windows"

- Probably his most influential theory holds that when the police emphasize the maintenance of order rather than the piecemeal pursuit of rapists, murderers and carjackers, concentrating on less threatening though often illegal disturbances in the fabric of urban life like street-corner drug-dealing, graffiti and subway turnstile-jumping, the rate of more serious crime goes down. James Q. Wilson

From the beginning - "education"

- The local government attorney
- The public / property owners / neighbors
- The media
- At city hall, more than the enforcement personnel
- The courts

The normal prosecution / lawsuit

- When the City wins: Successful Completion?
  - Fine
  - Jail
  - And?
- Make safe?
- Non-repetition?

The goal: more than a piece of paper

- Make safe
- Non-repetition
- Recovery of costs

"Relief sought"

- What is it that is wanted or needed?
- Not only that there is understanding, but that there is no misunderstanding
  - The action
  - The time
  - The verification
  - What will be the consequence of failure to act

"Relief sought"

- When can the government take action?
- What action can the government take?
- Who will be responsible for the costs?
- What if the owner / responsible party does not pay?
- Tax liens
- Abandoned properties

Who is responsible? A person who can be jailed

- An individual; a natural person
- Not a partnership
- Not a corporation
- Not an other legal entity

If you can't find a "person"?

- Determine legal ownership
- The managing partner
- The COO
- Look at the resident agent
- What if the government is the owner?

Who are the parties of interests?

- Recorded interests
- Tenants
- Not recorded interests
- Freddie Mac
- Fannie Mae
- The United States of America
- Your state
- The municipality

Remember Due Process: Notice to Responsible Person

- Personal service is best



Who needs to be served?

- The owner(s)
- Parties of interest
- Others



Who Pays: Cost Recovery

- Contained in the probation order, injunction, judgment, etc.
- Tax Lien



Lis Pendens

- ***Lis pendens*** is Latin for "suit pending." This may refer to any pending lawsuit or to a specific situation with a public notice of litigation that has been recorded in the same location where the title of real property has been recorded.
- In some jurisdictions, when the notice is properly recorded, *lis pendens* is considered constructive notice to the other litigants or other unrecorded or subordinate lienholders.

Injunctions

An injunction commands an act that the court regards as essential to justice, or it prohibits an act that is deemed to be contrary to good conscience. It is an extraordinary remedy, reserved for special circumstances in which the temporary preservation of the status quo is necessary.

Injunctions

- Preliminary or temporary injunction
- Preventative injunction
- Mandatory injunction
- Permanent injunction
- Restraining order

Obtaining an injunction

- Presentation of evidence
  - Prep the witnesses (see So you're a witness)
  - Copies of Documents (photo are a must; the paper trail)
- Have copies of a prepared injunction / order
- Insist on immediate entry (if necessary edit injunction at the hearing)
- Serve the attorney and the respondent / defendant immediately

Contempt

- Contempt of court is behavior that opposes or defies the authority, justice, and dignity of the court. Contempt charges may be brought against parties to proceedings. Courts have great leeway in making contempt charges, and thus confusion sometimes exists about the distinctions between types of contempt.

Contempt

- Civil contempt
- Criminal contempt
- Direct contempt
- Indirect contempt
- Clear and present danger

Contempt Hearing / motion

- The order of what is required or prohibited
- That the responsible person had notice of the order
- That a violation occurred: proofs
  - Testimony
  - Documents (don't forget the photos)
  - Burden of proof?

Probation

- Generally, probation allows a convicted defendant to go free with a suspended sentence for a specified duration during good behavior. Probationers are placed under the supervision of a probation officer and must fulfill certain conditions. If the probationer violates a condition of probation, the court may place additional restrictions on the probationer or order the probationer to serve a term of imprisonment.

Deferred Sentences

- Like probation, negotiated, admission of guilt, but prior to sentencing



Conditions of Probation



Probation violation

- Hearing
- The order of what is required or prohibited
- That the defendant had notice of the order
- That a violation occurred: proofs
  - Testimony
  - Documents (don't forget the photos)
  - Burden of proof?
- Consequences

Consent Orders / Judgments

- During the enforcement process – court sanctions for violation?
- Administrative process – court sanctions?
- During litigation
- Post litigation

Consent

- **1.** Acceptance or approval of what is planned or done by another; acquiescence.
- **2.** Agreement as to opinion or a course of action.



Here are the problems



What should this consent judgment contain?

Advantage of the Consent Judgment

- Agreement of the owner / respondent
- Usually will meet the reasonable requirements of the parties
- Avoids the judge making a decision
- Usually eliminates appeals / delays
- Judges are more likely to enforce

Getting to Consent

- Negotiations (two party) –
  - generally confrontational,
  - limited training,
  - usually a win or loose result
- Mediation / ADR (with facilitator)

The Big Picture: Code Enforcement From Beginning to End

So What? (What are the "take aways?")

You are the sheriff in town, Good Luck

