

“Illegal” Dwelling Unit Seminar for CT Assoc of Housing Code Enforcement Officials

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Objectives

- What is an “illegal” unit?
 - Different disciplines, requirements.
- What to do when you find one.
- How to “correct”
- Difference between an “Illegal” and a “Bad” Unit



What is “Illegal”?

- Definition (Webster)
 - 1) Forbidden by law
 - 2) Forbidden by official rules
 - Synonyms
 - Illegal
 - Illicit
 - Unlawful
 - Wrongful



AHJ

- Many entities involved:
 - Fire marshal, building, zoning, health, ...
- Each has different requirements
- Just because it is not permitted by one official, it may not be permitted by all officials.
- Work together as a team
- Notify everyone; united front



Right of Entry

- The fact that a fire marshal has the **authority** (CGS 29-305) to inspect, it does not necessarily mean that the fire marshal has the **legal right** to enter the property.
- While 29-305 refers to the legal authority to inspect, the authority to physically enter the premises must be obtained lawfully.
- Voluntary permission granted to the fire marshal by the person(s) in lawful control of the property.



Access

- State v. Burke (1990, CT Appellate Court) Administrative Search Warrant upheld for fire inspection. Cites Camara v. Municipal Court, (1967, U.S. Supreme Court):

“Probable cause to issue a warrant to inspect for safety code violation ‘exist[s] if reasonable legislative or administrative standards for conducting an area inspection are satisfied.’”

ADMINISTRATIVE SEARCH WARRANT

C.G.S. § 54-33a.

**STATE OF CONNECTICUT
SUPERIOR COURT**

TO: A Judge of the Superior Court

The undersigned, being duly sworn, complains on oath that the undersigned has probable cause

[] 1. to inspect based on reasonable legislative and/or administrative standards for conducting an area inspection...

[] 2. to believe that statutes, regulations, codes and/or ordinances pertaining to fire safety, housing and/or buildings have been violated, based on complaint...

And that the certain place to be searched is a:

And is situated at and described as:

And that the facts establishing the grounds for issuing an Administrative Search Warrant are the following:

Application of the CSFSC

- CGS 29-292 (PA 09-35)
 - Adopt a nationally recognized model fire code...
 - ...provide for reasonable safety from fire, smoke and panic there-from....
 - ...except in private dwellings occupied by one or two families....
 - ...and shall include provisions for CO detectors in new residential buildings not exempt by the CSFSC occupied by 1 or 2 fam. with a BP after 10/1/2005...
 - ...smoke detection & warning equip. (smoke alarms) in buildings designed to be occupied by 2 or more fam., new resid. 1 fam. After 10/1/1978 (Note power sources vary by BP date.)



Layout of the CSFSC

- Current code effective 12/31/2005 with amendments effective 8/1/2009
- Part I - Administrative
- Part II – General
- Part III – New Const. Renovations & Change of Use
- Part IV – Existing Buildings /Occupancies
- Part V – Maintenance and Operational Issues



Frequency of Inspections

- CSFSC 2009 amendments effective 8/1/2009
- 29-292-7e (c)
 - The **minimum** requirements for the frequency of inspections as prescribed in section 29-305 of the Connecticut General Statutes shall be as follows:
 - Annual inspections for the occupancy classifications, all R Residential, A-1, A-2, E, H-1, I-1.
 - Inspections every two years for the occupancy classifications, A-3, H-2, I-2, I-3, I-4, B-Medical, B-College.
 - Inspections every three years for occupancy classifications B, H-3, M, S-1, A-4, A-5.
 - Inspections every four years for the occupancy classifications, F-1, F-2, H-4, H-5, S-2, U.



Application of the CSFSC

- CSFSC 2009 amendments effective 8/1/2009
- 29-292-10e (b) 4 - Application
 - For existing occupancies subject to an abatement order for violation of Part IV of this code, only new fire protection, electrical and mechanical system work shall be subject to the requirements of Part III.



CSFSC Part IV Definitions

- 3.3.152.12* *Residential Occupancy*. An occupancy that provides sleeping accommodations for purposes other than health care or detention and correctional
- 3.3.50 Dwelling Unit. One or more rooms arranged for the use of one or more individuals living together, providing complete, independent living facilities, including permanent provisions for living, sleeping, eating, cooking, and sanitation.



CSFSC Part IV Definitions

- 3.3.50.1 One- and Two-Family Dwelling Unit. A building that contains not more than two dwelling units with independent cooking and bathroom facilities.
- 3.3.50.2 One-Family Dwelling Unit. A building that consists solely of one dwelling unit with independent cooking and bathroom facilities.



CSFSC Part IV Definitions

- 3.3.50.3 Two-Family Dwelling Unit. A building that consists solely of two dwelling units with independent cooking and bathroom facilities.
- 3.3.16.5 Living Area. Any normally occupiable space in a residential occupancy, other than sleeping rooms or rooms that are intended for combination sleeping/living, bathrooms, toilet compartments, kitchens, closets, halls, storage or utility spaces, and similar areas.



CSFSC Part IV Definitions

- 3.3.27.3* Apartment Building. A building or portion thereof containing three or more dwelling units with independent cooking and bathroom facilities.

CSFSC Chap 31 Existing Apartments

- (Add) **31.1.1.3** All buildings containing three or more individual living units shall be classified as apartment buildings, except where the building and living unit arrangement is in accordance with items numbered (1) through (4) of this section, then the entire building shall be exempt from the requirements of this chapter and the individual living units need only comply with the requirements for smoke alarms in 31.3.4.5 and each living unit shall be treated as a single family home for the purposes of section 29-305 of the Connecticut General Statutes:
 - Residential buildings containing three or more individual living units, in which the living units are arranged so that no living unit is located either above or below another living unit.
 - Each living unit has at least one independent exit, serving that unit only which leads directly to the exterior of the building in one of the following manners:
 - An exit door opening directly to the street or yard at ground level.
 - An outside stair leads directly to the street or yard at ground level.
 - An interior stair that is part of the living unit served that leads directly to the street or yard at ground level.
 - Each living unit is separated from the adjoining unit by vertical fire barriers having at least a 1-hour fire resistance rating. Such walls shall extend from the lowest floor slab to the underside of the highest roof deck and shall be continuous through all spaces below the living unit such as basements and crawl spaces and all areas above the living unit, such as attics or other concealed spaces.
 - There are no spaces within the confines of the building's exterior perimeter walls that are subject to common occupant usage including, but not limited to, corridors, hallways, laundry rooms, furnace or utility rooms, storage areas or recreation areas.



CSFSC Chap 24 (1 & 2 Family)

- (Amd) **24.1.1.1*** The requirements of this chapter shall apply to existing one- and two-family dwellings, which shall include those buildings containing not more than two dwelling units in which each dwelling unit is occupied by members of a single family with not more than six outsiders, if any, accommodated in rented rooms, except those occupancies classified as health care, residential board and care or detention and correctional.
- Buildings which contain a maximum of two dwelling units **and no other occupancies** are specifically exempted by section 29-292 of the Connecticut General Statutes from the jurisdiction of this code, except for the specific smoke detection provisions set forth in 24.3.4.



CSFSC 29-292-11e

- **Changes of Occupancy or Use**
- In any building or structure, whether or not a physical alteration is needed, a change from one occupancy classification to another shall be permitted only where such a structure, building or portion thereof conforms with the requirements of this code that apply to new construction for the proposed new use, except that a change of tenants or ownership shall not be construed to be a change of occupancy classification where the nature of use and assigned occupancy classification remain the same.



CSFSC Time for Compliance

- 4.6.5 Time Allowed for Compliance. A limited but reasonable time, commensurate with the magnitude of expenditure, disruption of services, and degree of hazard, shall be allowed for compliance with any part of this Code for existing buildings.

CSFSC Conditions for Occupancy

- 4.6.10.1 No new construction or existing building shall be occupied in whole or in part in violation of the provisions of this Code, unless the following conditions exist:
 - (1) A plan of correction has been approved.
 - (2) The occupancy classification remains the same.
 - (3) No serious life safety hazard exists as judged by the authority having jurisdiction.

CSFSC Part III

- 903.2.7 exception #3 – (2009 amds)
- Existing buildings with conversion from 1&2 family dwelling or R3 to an R2 before 6/15/1994 and containing not more than 4 dwelling units, AS not required.



Abatement of fire hazards and penalty.

- CGS 29-306

- (a) requires the LFM to order the remedy / removal of enumerated fire hazards found in *any* building or premises. Further allows a penalty of one hundred dollars, three months incarceration or both against any person who violates the order. Also allows a fifty dollar a day civil penalty.

Also requires removal or remedy to be in conformance with all building codes and ordinances, rules and regulations of the municipality involved.



Notification

- CGS 29-306, cont.
 - (b) requires the LFM notify the prosecuting attorney if the owner or occupant fail to abate a hazard as reasonably ordered by the LFM.
 - (b) further requires the SFM be notified of the referral to the prosecutor.
 - (c) allows civil injunction to close or restrict use

Order to vacate

- CGS 29-306, cont.
 - (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 not maintained
 - Un-permitted flammable or explosive material or in excess of permitted quantities
 - Un-permitted fireworks or pyrotechnics
 - Exceeding occupancy limit established by FM



CGS 29-306(c) (PA 09-177)

- PA added provisions if the problem can not be abated in 4 hours or less, the SFM must be notified, and review such order, and determine to uphold, modify, or reverse such order.

CO Approval CSFSC

- **29-292-10e Certificate of Occupancy Approval**
- The local fire marshal shall provide to the local building official certification in writing that prior to the occupancy of any building, structure or use subject to the requirements of this code, such building, structure or use is in substantial compliance with the requirements of this code.



July 1, 2010

- Connecticut State Fire Prevention Code
- Authorized by CGS 29-291a
- Where required by law:
 - Permit requirements
 - Citations



- Connecticut Building Code
 - December 31, 2005
 - Amendment August 1, 2009



CGS – Building Code Adoption

- **Sec. 29-252. (Formerly Sec. 19-395). State Building Code: Adoption, revision and amendments. State Building Inspector: Appointment; interpretations of code. Appeal.** (a) As used in this subsection, "geotechnical" means any geological condition, such as soil and subsurface soil conditions, which may affect the structural characteristics of a building or structure. The State Building Inspector and the Codes and Standards Committee shall, jointly, with the approval of the Commissioner of Public Safety, adopt and administer a State Building Code based on a nationally recognized model building code for the purpose of regulating the design, construction and use of buildings or structures to be erected and the alteration of buildings or structures already erected and make such amendments thereto as they, from time to time, deem necessary or desirable. Such amendments shall be limited to administrative matters, geotechnical and weather-related portions of said code, amendments to said code necessitated by a provision of the general statutes and any other matter which, based on substantial evidence, necessitates an amendment to said code. The code shall be revised not later than January 1, 2005, and thereafter as deemed necessary to incorporate any subsequent revisions to the code not later than eighteen months following the date of first publication of said subsequent revisions to the code. The purpose of said Building Code shall also include, but not be limited to, promoting and ensuring that such buildings and structures are designed and constructed in such a manner as to conserve energy and, wherever practicable, facilitate the use of renewable energy resources. Said Building Code includes any code, rule or regulation incorporated therein by reference

CT Building Code - IBC

- 101.3 Intent. The purpose of this code is to establish the minimum requirements to safeguard the public health, safety and general welfare through structural strength, means of egress facilities, stability, sanitation, adequate light and ventilation, energy conservation, and safety to life and property from fire and other hazards attributed to the built environment and to provide safety to fire fighters and emergency responders during emergency operations



CGS – Building Official

- **Sec. 29-260. (Formerly Sec. 19-396). Municipal building official to administer code. Appointment. Dismissal.** (a) The chief executive officer of any town, city or borough, unless other means are already provided, shall appoint an officer to administer the code for a term of four years and until his successor qualifies and quadrennially thereafter shall so appoint a successor. Such officer shall be known as the building official. Two or more communities may combine in the appointment of a building official for the purpose of enforcing the provisions of the code in the same manner. The chief executive officer of any town, city or borough, upon the death, disability, dismissal, retirement or revocation of licensure of the building official, may appoint a licensed building official as the acting building official for a single period not to exceed one hundred eighty days



CGS 29-263

- **Sec. 29-263. (Formerly Sec. 19-398). Permit to construct or alter. Education fee.** (a) Except as provided in subsection (h) of section 29-252a and the State Building Code adopted pursuant to subsection (a) of section 29-252, after October 1, 1970, no building or structure shall be constructed or altered until an application has been filed with the building official and a permit issued. Such permit shall be issued or refused, in whole or in part, within thirty days after the date of an application. No permit shall be issued except upon application of the owner of the premises affected or the owner's authorized agent. No permit shall be issued to a contractor who is required to be registered pursuant to chapter 400, for work to be performed by such contractor, unless the name, business address and Department of Consumer Protection registration number of such contractor is clearly marked on the application for the permit, and the contractor has presented such contractor's certificate of registration as a home improvement contractor. Prior to the issuance of a permit and within said thirty-day period, the building official shall review the plans of buildings or structures to be constructed or altered, including, but not limited to, plans prepared by an architect licensed pursuant to chapter 390, a professional engineer licensed pursuant to chapter 391 or an interior designer registered pursuant to chapter 396a acting within the scope of such license or registration, to determine their compliance with the requirements of the State Building Code and, where applicable, the local fire marshal shall review such plans to determine their compliance with the State Fire Safety Code. Such plans submitted for review shall be in substantial compliance with the provisions of the State Building Code and, where applicable, with the provisions of the State Fire Safety Code.

CT Building Code - IRC

- Section 105 Permits

- R105.1

- Any owner or authorized agent who intends to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert, or replace any electrical, gas, mechanical, or plumbing system, the installation of which is regulated by this code, or to cause any such work to be done, shall first make application to the building official and obtain the required permit.



CT Building Code - IBC

- (Amd) 105.1 Required. Any owner or authorized agent who intends to construct, enlarge, alter, repair, move, demolish or change the occupancy of a building or structure, or to move a lot line that will affect any existing building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be done, shall first make application to the building official and obtain the required permit.



Zoning CGS 8-3

- **Sec. 8-3. Establishment and changing of zoning regulations and districts. Enforcement of regulations. Certification of building permits and certificates of occupancy. Site plans. District for water-dependent uses.**
- (f) No building permit or certificate of occupancy shall be issued for a building, use or structure subject to the zoning regulations of a municipality without certification in writing by the official charged with the enforcement of such regulations that such building, use or structure is in conformity with such regulations or is a valid nonconforming use under such regulations. Such official shall inform the applicant for any such certification that such applicant may provide notice of such certification by either (1) publication in a newspaper having substantial circulation in such municipality stating that the certification has been issued, or (2) any other method provided for by local ordinance. Any such notice shall contain (A) a description of the building, use or structure, (B) the location of the building, use or structure, (C) the identity of the applicant, and (D) a statement that an aggrieved person may appeal to the zoning board of appeals in accordance with the provisions of section 8-7.



CT Building Code - IRC

- (Add) **R105.3.1.2 Zoning approval.** Pursuant to subsection (f) of section 8-3 of the Connecticut General Statutes, no building permit shall be issued, in whole or in part, for a building, use or structure subject to the zoning regulations of a municipality without certification in writing by the official charged with the enforcement of such regulations that such building, use or structure is in conformity with such regulations or is a valid nonconforming use under such regulations.



CT Building Code - IBC

- (Add) **105.1.3 Connecticut State Fire Safety Code abatement.**
Where conflicts exist between the requirements of this code and the requirements of Connecticut State Fire Safety Code abatement orders issued in writing by the local fire marshal with respect to existing buildings, the requirements of that portion of the Connecticut State Fire Safety Code that regulates existing buildings shall take precedence.
- **Exceptions:**
 - New fire protection systems shall meet the requirements of Chapter 9 of this code.
 - Electrical work shall meet the requirements of the 2005 NFPA 70 National Electrical Code.
 - Structural, plumbing and mechanical work shall conform to the requirements of this code.



CGS 29-265

- **Sec. 29-265. (Formerly Sec. 19-400). Certificate of occupancy.** (a) Except as provided in subsection (h) of section 29-252a, no building or structure erected or altered in any municipality after October 1, 1970, shall be occupied or used, in whole or in part, until a certificate of occupancy, as defined in the regulations adopted under section 29-252, has been issued by the building official, certifying that such building, structure or work performed pursuant to the building permit substantially conforms to the provisions of the State Building Code and the regulations lawfully adopted under said code. Nothing in the code or in this part shall require the removal, alteration or abandonment of, or prevent the continuance of the use and occupancy of, any single-family dwelling but within six years of the date of occupancy of such dwelling after substantial completion of construction of, alteration to or addition to such dwelling, or of a building lawfully existing on October 1, 1945, except as may be necessary for the safety of life or property. The use of a building or premises shall not be deemed to have changed because of a temporary vacancy or change of ownership or tenancy.



CT Building Code - IRC

- (Add) **R110.9 Certificate of approval.** A certificate of approval shall be issued indicating substantial compliance with the requirements of this code for all completed work that requires a building permit but does not require a certificate of occupancy. Such work shall include, but not be limited to: re-roofing; re-siding; fences over 6 feet in height; retaining walls over 3 feet in height; and electrical, plumbing and mechanical repairs or alterations performed in the absence of additional work that requires a certificate of occupancy.



CT Building Code - IRC

- (Add) **R110.1.1 Zoning approval.** Pursuant to subsection (f) of section 8-3 of the Connecticut General Statutes, no certificate of occupancy shall be issued for a building, use or structure subject to the zoning regulations of a municipality without certification in writing by the official charged with the enforcement of such regulations that such building, use or structure is in conformity with such regulations or is a valid nonconforming use under such regulations.



CT Building Code – IBC

Section 113 – Violations

- **113.1 Unlawful acts.** It shall be unlawful for any person, firm or corporation to erect, construct, alter, extend, repair, move, remove, demolish or occupy any building, structure or equipment regulated by this code, or cause same to be done, in conflict with or in violation of any of the provisions of this code.



CT Building Code – IBC

Section 113 – Violations

- **113.2 Notice of violation.** The building official is authorized to serve a notice of violation or order on the person responsible for the erection, construction, alteration, extension, repair, moving, removal, demolition or occupancy of a building or structure in violation of the provisions of this code, or in violation of a permit or certificate issued under the provisions of this code. Such order shall direct the discontinuance of the illegal action or condition and the abatement of the violation.



CT Building Code – IBC

Section 113 – Violations

- (Add) **113.2.1 Written notice.** The notice of violation shall be in writing and shall be given to the owner of the property involved, or to the owner's agent or to the person doing the work.



CT Building Code – IBC

Section 113 – Violations

- (Amd) **113.3 Prosecution of violation.** If the notice of violation is not complied with promptly, the building official shall be authorized to request the legal counsel of the jurisdiction to institute the appropriate proceeding at law as well as the appropriate proceeding in equity to restrain, correct or abate such violation, or to require the removal or termination of the unlawful occupancy of the building or structure in violation of the provisions of this code or of the order or direction made pursuant thereto.



CT Building Code – IBC

Section 113 – Violations

- (Amd) **113.4 Violation penalties.** Any person who violates any provision of this code shall be fined not less than two hundred nor more than one thousand dollars or imprisoned not more than six months or both, pursuant to section 29-254a of the Connecticut General Statutes.



CT Building Code - IRC

- Definitions

- One Family Dwelling

- A building containing one dwelling unit with not more than six lodgers or boarders where care is not provided. Also known as a single family dwelling.

- Two Family Dwelling

- A building containing two dwelling units with not more than six lodgers or boarders per dwelling unit



CT Building Code - IRC

- Definitions

- Dwelling

- Any building that contains one or two dwelling units used, intended, or designed to be built, used, rented, leased, let or hired out to be occupied, or that are occupied for living purposes.

- Dwelling Unit

- A single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.



CT Building Code - IBC

- **R-3**

- R-3 Residential occupancies with independent means of egress where the occupants are primarily permanent in nature and not classified as R-1, R-2, R-4 or I and where buildings do not contain more than two dwelling units as applicable in Section 101.2, or adult and child care facilities that provide accommodations for six or fewer persons of any age for less than 24 hours per day. Adult and child care facilities that are within a single-family home are permitted to comply with the 2003 International Residential Code. R-3 occupancies shall allow not more than six lodgers or boarders where personal care services are not provided.



CT Building Code - IBC

- Definition
 - Dwelling Unit
 - A single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.

CGS - Right of Entry

- 29-261 (d) The building official or his assistant shall have the right of entry to such buildings or structures, except single-family residences, for the proper performance of his duties between the hours of nine a.m. and five p.m., except that in the case of an emergency he shall have the right of entry at any time, if such entry is necessary in the interest of public safety



CGS - Right of Entry

- **Sec. 29-393. (Formerly Sec. 19-391). 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. Any building inspector shall have the right of entry into all buildings for the performance of his duties between the hours of nine o'clock a.m. and five o'clock p.m., in the interests of public safety



CT Building Code - IBC

- (Amd) **104.6 Right of entry.** In accordance with the provisions of subsection (d) of section 29-261 of the Connecticut General Statutes, the building official or his assistant shall have the right of entry to such buildings or structures, except single-family residences, for the proper performance of his duties between the hours of nine a.m. and five p.m., except that in the case of an emergency, he shall have the right of entry at any time, if such entry is necessary in the interest of public safety. 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 official or his assistant shall immediately make inspection in accordance with the provisions of section 29-393 of the Connecticut General Statutes.

