

Public Safety as a Joint Responsibility



**MASSACHUSETTS
FEDERATION OF
BUILDING OFFICIALS**

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- The risk that municipalities take when reassessing properties for their use or occupancy without first verifying the legality of that change in a “use or occupancy”.
- How are these illegal properties & Life Safety violations are uncovered.

Public Safety as a Joint Responsibility

- The impact Building Code violations have on Public Safety & the safety of First Responders – Both public and as Civilians
- Reviewing how Public Safety around all Buildings & Structures is a “**Joint Responsibility**”

Public Safety as a Joint Responsibility

- Certified nationally by the International Code Council (also known as ICC) as a Building Safety Official
- Certified by the state of Massachusetts as a “Building Commissioner”

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- Conducts professional development programs for Building Officials throughout the United states
- **NOT an attorney,** an experienced Building Safety Official dealing with this topic and other related Building Code enforcement & violations for over 20 years.

Robert Camacho

- This program does not offer legal advice
- Consult your communities' attorney for guidance

Disclaimer

- 780 CMR the Massachusetts State Building code provides the Building Official with the authority to issue Certificate of Occupancy for all building, uses and spaces.
- The use or occupancy of a building may not be changed without evaluation of that change and the subsequent issuance of new Certificate of Occupancy.

Legal Use & Occupancy

- **MGL c. 143, Section 61** the Building Official is required to give written notice to the Assessor's Office upon granting a building permit for the construction or substantial renovation of any building or structure.
- **The Assessors' office is not** required to notify the Building Department of any change of "Use or Occupancy" that they observe during field inspections.

Notice of Permit

- **Common practice to assess** and tax properties for their use and occupancy regardless of its' legal status
- It appears that municipalities may be taking a calculated, liability risk if the "Municipality" fails to correct any **known hazardous conditions**

Pitfalls

- Or an illegal change of **“Use or Occupancy”**
- Especially if an incident causes a loss of property, personal injury or a death, on a property that is illegally occupied or modified.

Pitfalls

- **Unpermitted change** of use may result in
 - Inadequate exiting
 - Inadequate fire protection systems
 - Health code issues
 - Structural overload
 - Zoning violations
 - Neighborhood complaints

Pitfalls

- **MGL c. 40, Section 2 States in part** a town in its' corporate capacity may sue, and be sued...
- **MGL c. 258, Section 2 States in part.....**Public Employers shall be liable for injury or loss of property or personal injury or death caused by the negligent or wrongful act of omission of any public employee while acting within the scope of his office of employment.....

Considerations

- **ZONING MGL c. 40A, section 7:**
- **Six Year Statute of Limitations:**
 - Protects against enforcement if a building permit was issued in error
 - Protects the structure & Use authorized by a Building Permit
- 6 year period commences from the date of violation

Considerations

- **MGL c. 40A section 7**
- **Ten Year Statute of Limitations:**
 - Protects a structure not built in accordance with the terms of a building permit OR built without a permit
 - Provides protection from enforcement of structural violations if enforcement is NOT commenced within 10 years from the date of the violation
- There is no protection from a use violation

Considerations

- **Malfeasance** - Knew it was wrong and did it anyway
- **Misfeasance** - An error was made
- **Nonfeasance** - Didn't do something you were required to do under your job responsibilities.

Considerations

- **City West Haven Connecticut**
December 13th 1994 – Two Family home fire caused the deaths of Carol & Raymond Curley. Son was injured but did survive.
 - Building department record show only a single family home
 - Assessor files show reclassification to a two family

Case 1

- The Connecticut court indicated, a general Statute of the state of Connecticut clearly abrogates (rescinds) municipal immunity in certain circumstances... unless the political subdivision had notice of such a violation of law or such hazard.
- The complaint against the municipality states that if the **“Agent” (Assessor)** knows, the **“Principal” (Municipality)** is also aware of the potentially dangerous & illegal conditions.

Case 1

- The complaint against the municipality states that if the “**Agent**” (**Assessor**) knows, the “**Principal**” (**Municipality**) is also aware of the potentially dangerous & illegal conditions.
- The court found the City of West Haven had notice of the alleged violations of the applicable building codes, electrical codes, housing codes and fire codes. Therefore, the court denies the defendant's motion to strike as to all remaining counts.

Case 1

- **City of Oakland California**-Warehouse underwent an Illegal change of use & occupancy and became home to Artist & Musicians. The Warehouse was known as the “Ghost Ship”.
 - On December 2, 2016, a concert was held at that location, a fire broke out and thirty-six (36) people died in the blaze.

Case 2

- deadliest building fire in California's history *since* the 1906 San Francisco Earthquake.
- Records showed that Oakland police officers and firefighters, as well as county social workers, had been on the premises in the weeks and years before the inferno
- City had never formally inspected the warehouse or ordered any hazards to be abated.

Case 2

- An Alameda County Superior Court judge ruled that Oakland officials have a duty to act when they come across unsafe conditions in buildings such as this Ghost Ship warehouse,
- The judge allowed a lawsuit against the city stemming from the fire, could proceed.
- Judge also stated that by its own ordinances, the city was required to repair, rehabilitate or demolish structures deemed a public nuisance or danger to health and safety.

Case 2

- The claim against the City alleges that various Municipal Departments failed to meet their mandatory duties to protect the public once they became aware that there was a dangerous condition or unlawful use of the facility.
- There were documents and evidence that showed the various municipal departments knew of the dangerous conditions.

Case 2

- The Judge said the City had a “mandatory duty,” to fix the poor conditions of a building like the Fruitvale warehouse, which had been converted into a residential and performance space without city permission.
- By its own ordinances, the city of Oakland was required to repair, rehabilitate or demolish structures deemed a public nuisance or danger to health and safety.

Case 2

- An Alameda County Superior Court judge ruled that Oakland officials have a duty to act when they come across unsafe conditions in buildings such as the Ghost Ship warehouse,
- thereby allowing a lawsuit against the city stemming from the fire to proceed.

Case 2

- **Question**

- In Massachusetts does the Assessors' office have the authority to determine the legal or illegal use of a property-building or structure or a "SPACE" in a building or structure?

- **Answer**

- **No**, Under the State Building Code & Mass General Law.....only the **chief building code enforcement officer** for that municipality has that authority

Discussion

• Question

- A community official notices what appears to be a change in use of a structure what should be done?
 - 1 to 2 family
 - 2 to 3 family
 - Office building to warehouse
 - Store to church
 - Others

Discussion

- **Answer**

- Notify the Building Official in writing

- Becomes the duty of the Building Official and other officials to:

- Investigate
- Work with other authorities having jurisdiction
- Issue notice of violations
- Follow through with corrections and remediation

Discussion

- Applicant wishes to construct a new building and use
- Or applicant wishes to change the use or configuration of an existing building
- This is a process with joint responsibility of all the communities' departments

Proper System

• Preliminary

- Is the project allowed by the communities' zoning ordinance?
- Have the land use permits been issued?
- Are there wetland issues?
- Will infrastructure support the project?

System Steps

• **Building Official**

- Should coordinate with other departments to ensure all prerequisite steps have been completed
- Review submittal for application for, life safety and building code issues have been satisfied
 - Includes thousands of interlocking requirements
 - Based on construction type, use, size, height

System Steps

- **Building is constructed**
- Progress inspections
 - At various points, progress inspections by
 - Building inspector
 - Plumbing inspector
 - Wiring inspector
 - Gas inspector
 - Fire inspector
 - Other inspectors

System Steps

- **Project is completed**
 - Final inspections
 - Paperwork close out
 - Certificate of Occupancy issued
- **Certificate of Occupancy contains**
 - Use group
 - Construction type
 - Number of occupants
 - Special features
 - Additional information

System Steps

- **Change of use**

- Evaluate land use requirements
- Evaluation of existing building and systems
 - Plans for changes as required
- Repeat steps for new construction
- New Certificate of Occupancy is issued

System Steps

- The Building Code requires owners and other responsible parties to maintain the building and systems in the conditions at time of occupancy 780 CMR section 102.8
- **Periodic Inspections**
 - **Not** required for 1 or 2 family homes
 - **Not** required private areas of multi family structures

Maintenance of Existing Buildings

• **Periodic Inspections**

- **Not** required for business occupancies
- **Not** required for manufacturing occupancies
- **Not** required for storage occupancies
- Required for assembly occupancies
- Required for institutional occupancies
- Required for public areas of multi family
- Required for alcohol serving occupancies

Maintenance of Existing Buildings

- **When are issues identified**

- There is an incident
- Tenant complaint
- Tenant being evicted
- Neighbors complaints
- Requested inspection at sale or transfer
- Public record request

Conclusion

- Public safety in the built environment and illegal occupancy is
 - **Joint Responsibility**
 - Collaboration between municipal departments
 - Understanding roles and responsibility of other departments
 - Decision made by one department affect others area of responsibilities

Conclusion

• Remediation

- Support from the administration
- Good record keeping
- Interdepartmental meetings
 - What is going on
 - What did you see
- Joint inspections for suspected problems

Conclusion