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- Worked with local governments, private business and professional organizations to train their regulatory and enforcement professionals (40K officers and inspectors in over 18 states)
- Three decades working with various cities and counties in New York, Georgia and Colorado in roles such as code division manager, chief of enforcement and department director.
- Master's degree in Management and Public Administration, Bachelor of Science degree in Criminal Justice, Certificate of Leadership from Notre Dame University.
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The image shows a classical statue of Lady Justice, blindfolded and holding a sword and scales. Three arrows point to specific symbols: one to the scales, one to the sword, and one to the blindfold.

### The Symbols of Justice

- Balance Scales: These represent **impartiality** and the obligation of the law (through its representatives) to **weigh the evidence presented to the court**. Each side of a legal case needs to be looked at, and comparisons made as justice is done.
- Sword: This item symbolizes **enforcement and respect** and means that justice stands by its decision and ruling and is able to take action. The fact that the sword is unsheathed and very visible is a sign that **justice is transparent** and is not an implement of fear. A double-edged blade signifies that justice **can rule against either of the parties once the evidence has been perused**, and it is bound to enforce the ruling as well as protect or defend the innocent party.
- Blindfold: This first appeared on a Lady Justice statue in the 16th century and has been used intermittently since then. In modern times, **the blindfold represents the impartiality and objectivity of the law** and that it doesn't let outside factors, such as politics, wealth or fame, influence its decisions.



# Legal Aspects of Code Administration Review

Goals & Objectives

- Introduce the participant to terminology, concepts and principles of legal issues that affect code officials in the performance of their duties.
- Discuss relevant issues to code administration
- Introduce the participants to concepts associated with constitutional amendments, including the 1<sup>st</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 10<sup>th</sup> and 14<sup>th</sup> amendments.
- Understand their role as an official and witness.

## Disclaimer & Notes



- The purpose of this class is to assist you in understanding the legal concepts related to the administration of the building, property maintenance and other codes associated with regulatory inspection and codes.
- All participants should review all information presented with their local jurisdiction's attorney prior to adoption and implementation to ensure compliance with local ordinances and/or resolutions, as well as state and federal laws.
- Most of the information that we are covering is from the cited reference material

## Wave of litigation

- Increased litigation across all aspects of American life.
- Municipalities and Code Officials at the forefront of exposure to liability.
- While there is little chance of success, property owners are more apt to take offense and sue the building official.



## Historical Overview

Modern building, fire and property maintenance codes have evolved over the past 5,000 years.

- Served to regulate the methods of building construction.
- Address the **societal concerns over safety of the buildings in which people live and work.**
- The purpose of most codes is to establish the minimum requirements to safeguard the public health, safety and general welfare.





## The Code of Hammurabi

- Almost 4,000 years ago, King Hammurabi of Babylon, Mesopotamia, laid out one of the first sets of laws.
- Hammurabi's Code is among the oldest translatable writings. It consists of 282 laws, most concerning punishment.
- Each law takes into account the perpetrator's status.
- The code also includes the earliest known construction laws, designed to align the incentives of builder and occupant to ensure that builders created safe homes:



## The Code of Hammurabi

- If a builder builds a house for a man and does not make its construction firm, and the house which he has built collapses and causes the death of the owner of the house, that builder shall be put to death.
- If it causes the death of the son of the owner of the house, they shall put to death a son of that builder.
- If it causes the death of a slave of the owner of the house, he shall give to the owner of the house a slave of equal value.
- If it destroys property, he shall restore whatever it destroyed, and because he did not make the house which he builds firm and it collapsed, he shall rebuild the house which collapsed at his own expense.
- If a builder builds a house for a man and does not make its construction meet the requirements and a wall falls in, that builder shall strengthen the wall at his own expense.

## Building, Fire and Property Maintenance codes have developed in cycles

Civilization begins to develop and build.

Increase in density of population in a given area, typically urban.

Poor construction techniques to address rapid growth.

More tragedy – fire, collapse, earthquakes, communicable disease or some other major disaster that leads to the need to change or create codes to address the tragedy.



## Hard Rock Hotel New Orleans- 2019

- Heaslip Engineering was found to have committed both “serious” and “willful” violations and was fined \$154,214.

- OSHA's findings -“floor beams under-designed in load capacity” and “structural steel connections were inadequately designed, reviewed or approved”

- Other contractors were cited for violations that included a lack of training, not providing protective equipment and failing to keep exits clear.

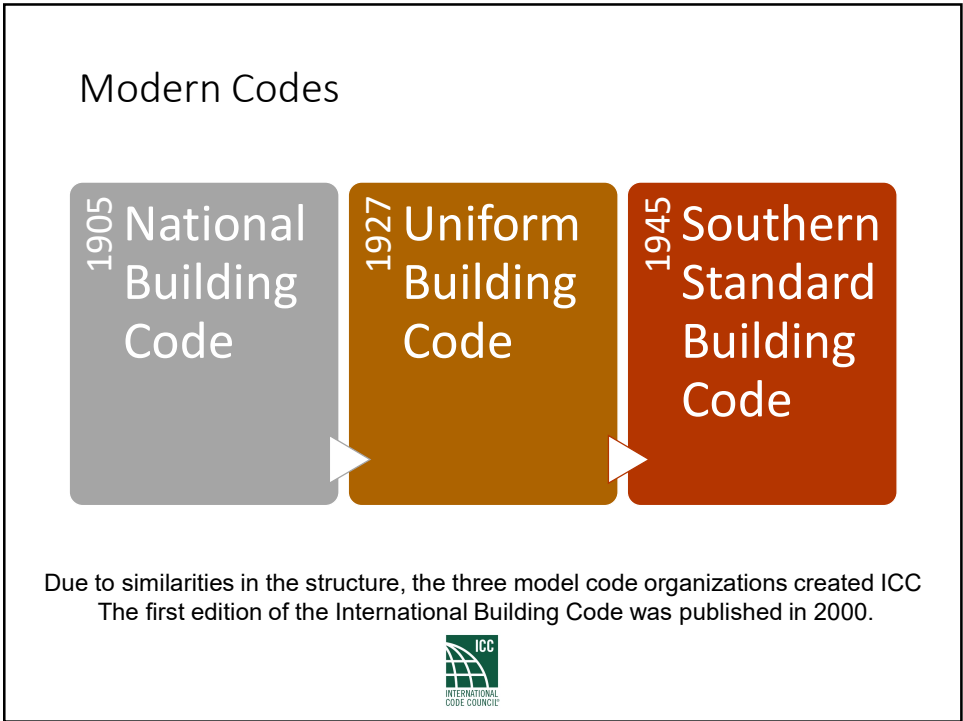


## Ghost Ship warehouse in Oakland



- "It's a huge fireplace in here," remarked Oakland police officer Moises Palanco during a 2015 visit to the Ghost Ship. In bodycam footage obtained by the Bay Area News Group, the officers commented on exposed electrical wires and poorly built stairs.
- The tragedy occurred on Dec. 2, 2016, but it was foretold way before.
- A fire breaks out at 11:20 p.m. during a concert at the Ghost Ship warehouse, a building that housed artists but was not permitted for housing or entertainment use.
- The fire began on the first floor and trapped partygoers in the second floor. It took firefighters five hours to extinguish the blaze.
- 36 people died in the blaze, the deadliest fire in Oakland history.

***Most tragedies are a result of inadequate enforcement of the provisions of building and fire codes that most municipalities have adopted.***





# Local Government Law

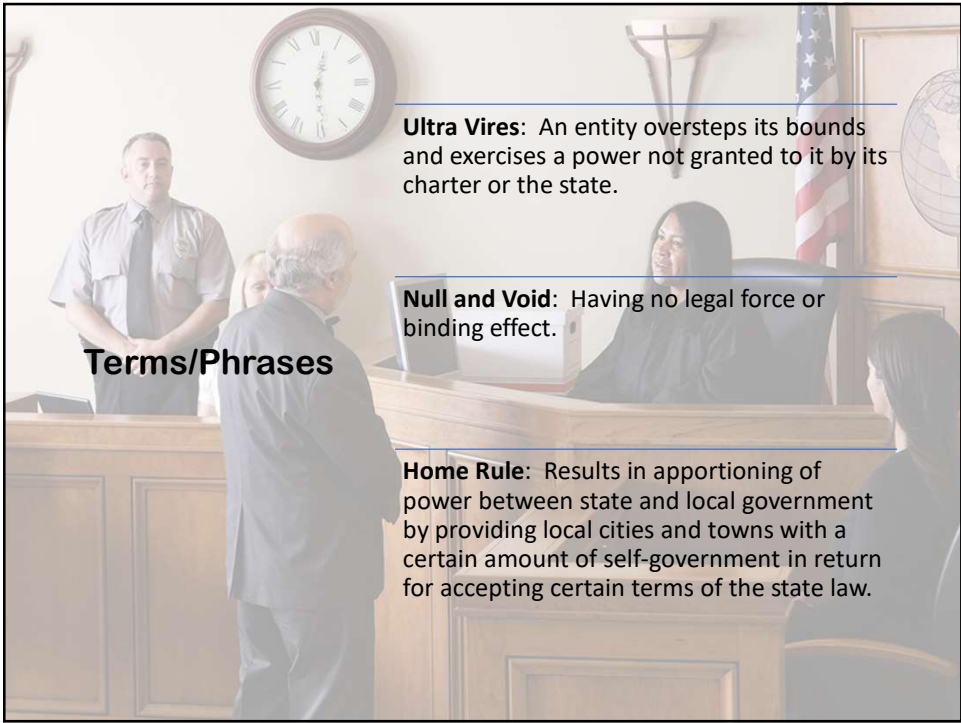
- There are four main types of local government:
  - counties,
  - municipalities (cities and town),
  - special districts, and
  - school districts
- **Counties** are the largest units of local government, numbering about **8,000 nationwide**. They provide many of the same services provided by cities.
- **Municipalities** include cities, villages, and boroughs and they number about **19,000** in the United States.
- Often called city government, municipalities provide services such as police and fire protection, parks and recreation, streets and sewers, among others.



## Local Government Law



- Local governments serve three primary functions:  
*health and safety, welfare and "housekeeping."*
- In the area of health and safety, local governments are responsible for police and fire protection, immunizations for contagious diseases, hospital services, local roads, garbage collection, and safe drinking water.
- Sanitation, housing, and air and water pollution are also under local jurisdiction
- Some states are considered **Home Rule** which means some local governments may act in areas without specific authorization from the state.



**Ultra Vires:** An entity oversteps its bounds and exercises a power not granted to it by its charter or the state.

**Null and Void:** Having no legal force or binding effect.

**Home Rule:** Results in apportioning of power between state and local government by providing local cities and towns with a certain amount of self-government in return for accepting certain terms of the state law.

**Terms/Phrases**



# Home Rule

- “Home rule” transfers authority over municipal matters from state laws to a local charter that’s drafted, adopted, and amended by voters in the municipality.
- A home rule charter is essentially a local constitution: it sets up the government structure and outlines its authority and its limitations.

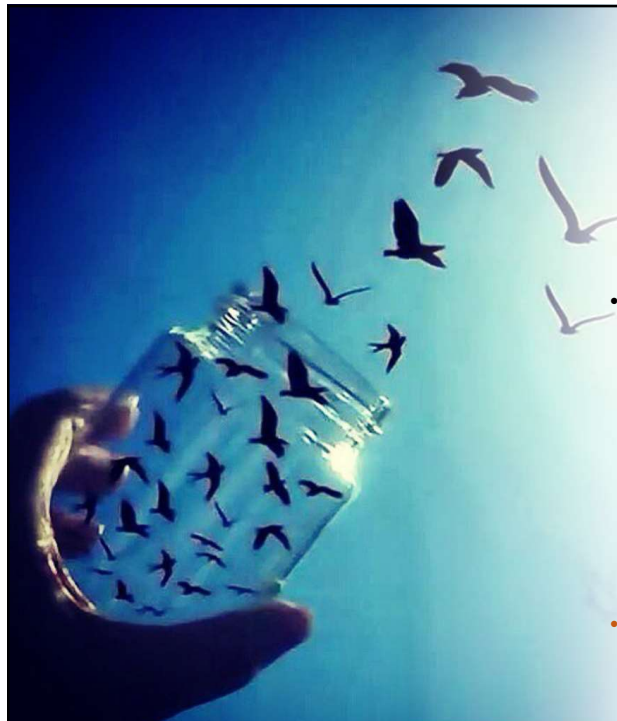
## Home Rule

- The bottom line? Home rule provides local control.
- It gives the municipal government the ability to craft ordinances and make decisions based on local needs, rather than having to follow a one-size-fits-all state code that's decided by state legislators.



## Elements of Home Rule

- Although home rule may not be the choice for all municipalities, it can be advantageous for many reasons.
- Advocates cite the ability to act more quickly and effectively to solve local problems, rather than waiting for state enabling legislation. Home rule can be a tool municipalities can use to respond to complex local problems with creative solutions.
- Home rule empowers local officials to solve local problems, leaving state legislators free to address issues of primarily statewide concern. It allows communities the freedom to choose the best form of government to best suit their needs.



## ELEMENTS OF HOME RULE

- Some states have seen the introduction of bills which would have not only severely restricted or completely abolished home rule powers, but also would have even restricted statutory municipal powers to an extent greater than Dillon's Rule by limiting municipal powers
- 44 states have provisions for home rule charters.

## DILLON'S RULE

- We interpretate statutes in light of something called "Dillon's Rule," named for Judge John Forest Dillon (who was Chief Justice of the Iowa Supreme Court over 100 years ago)
- Dillon's Rule became cemented into the legal system as a fundamental rule of statutory construction.
- It still *is the most determinative factor in interpreting general and specific powers of non home rule municipalities* as well as in most states around the country.



## DILLON'S RULE

The Dillon Rule is used in interpreting law when there is a question of whether or not a local government has a certain power.

- Dillon's Rule construes grants of power to localities very narrowly.
- The bottom line is -- if there is a question about a local government's power or authority, then **the local government does NOT receive the benefit of the doubt.**
- Under Dillon's Rule, one must assume the local government does NOT have the power in question.



## DILLON'S RULE

Local Governments have only three types of powers:

1. Those granted in **express words**;
2. Those necessarily or **fairly implied** in or incident to the powers expressly granted; and
3. Those **essential** to the declared objects and **purposes of the corporation**, not simply convenient, but indispensable.

It is the second part of the Dillon Rule this states if there is any reasonable doubt whether a power has been conferred on a local government, then the power has NOT been conferred. This is known as the rule of local government powers.

STATE  
LEGISLATIVE  
LAW

### Terms & Definitions

A **declaratory judgment** is an interpretation by a court of law as to whether the state has immunity in a particular field. The same as declaratory relief.

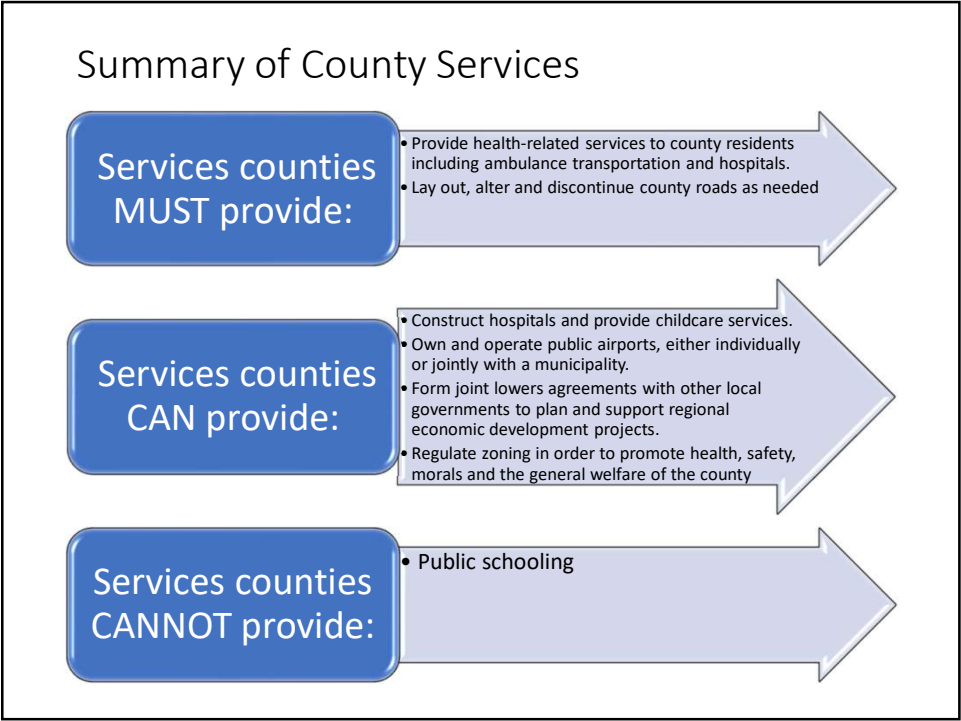
**Injunction** is a judicial order prohibiting specific conduct; it may be temporary or permanent.

**Preemption** is a judicially created doctrine that says a state may not pass a law which is inconsistent with federal law. If a state enacts such a law, the federal law takes precedence.

**Sovereign Immunity** is a judicially created doctrine that prevents a party from bringing a suit against a government.

County Authority- NEW MEXICO

- Mostly Dillon’s Rule: Counties in New Mexico have not been granted home rule status by state legislation and therefore are governed under general law.
- Counties are limited to the powers and government structure that have been explicitly defined by the New Mexico constitution and state statute.
- Nevertheless, the state grants home rule to municipalities including Los Alamos County which is a city-county consolidated government



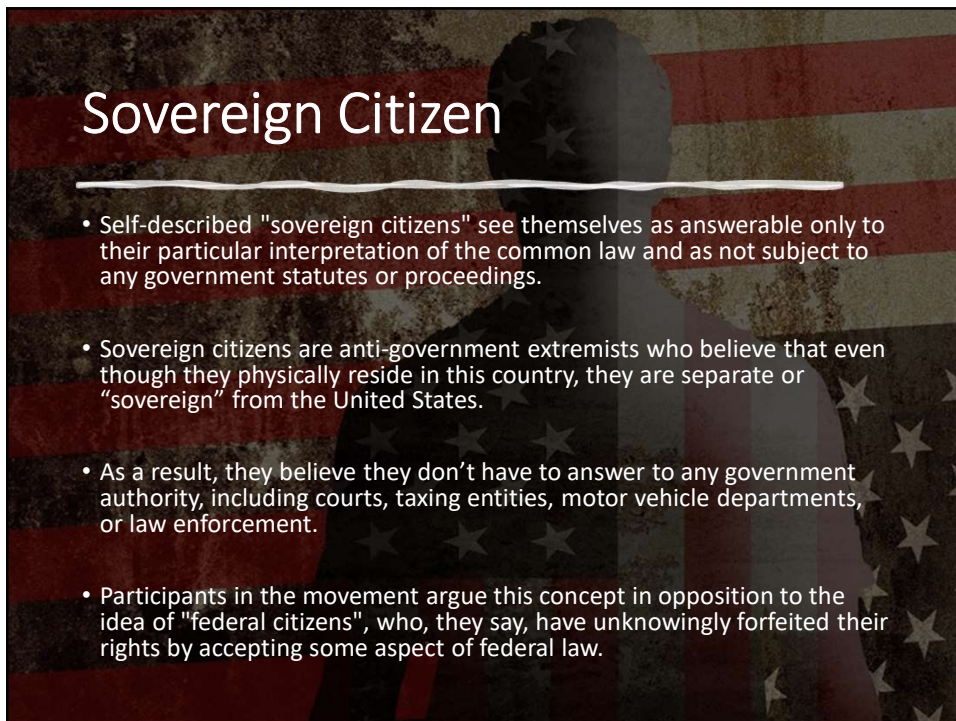
OVERVIEW OF COUNTY SERVICES

The background of this section is a photograph of a desert landscape. In the foreground, there are rocky hills with several large, green prickly pear cacti. The middle ground shows a valley with sparse vegetation. The sky is filled with soft, orange and yellow clouds, suggesting a sunset or sunrise. The overall tone is warm and scenic.

- Counties are authorized to deliver any and all of the services that municipalities provide unless explicitly prohibited by state legislature.
- Some of the services that counties have the authority to provide include public hospitals, airports, ambulances and foreign trade zones.
- Counties are also required by the state to consider plans and regulations for water conservation and drought management in unincorporated areas

## Sovereign Immunity Versus Sovereign Citizenry

- Sovereign immunity takes two forms: (1) immunity from suit (also known as immunity from jurisdiction or adjudication) and (2) immunity from enforcement.
- Sovereign citizens believe they are not under the jurisdiction of the federal government and consider themselves exempt from U.S. law.
- The former prevents the assertion of the claim; the latter prevents even a successful litigant from collecting on a judgment.
- They use a variety of conspiracy theories and falsehoods to justify their beliefs and their activities, some of which are illegal and violent.



## Sovereign Citizen

- Self-described "sovereign citizens" see themselves as answerable only to their particular interpretation of the common law and as not subject to any government statutes or proceedings.
- Sovereign citizens are anti-government extremists who believe that even though they physically reside in this country, they are separate or "sovereign" from the United States.
- As a result, they believe they don't have to answer to any government authority, including courts, taxing entities, motor vehicle departments, or law enforcement.
- Participants in the movement argue this concept in opposition to the idea of "federal citizens", who, they say, have unknowingly forfeited their rights by accepting some aspect of federal law.



## Sovereign Citizen Encounters

- The threat to officer safety posed by sovereign citizens is well known. One must look no further than the tragic deaths of Sergeant Brandon Paudert and Officer Bill Evans of the West Memphis Police Department in order to understand the risk of spontaneous violence from self-proclaimed sovereign citizens
- Sovereign citizen are likely to be argumentative with police authorities.
- They may proclaim themselves as sovereign citizens right from the beginning or they may simply challenge your right or authority to stop/detain them.
- They may question your authority or where you derive your jurisdiction and inform you that they do not believe in the United States Constitution or any other “illegitimate” government documents from which police powers are derived.



## Enabling Legislation

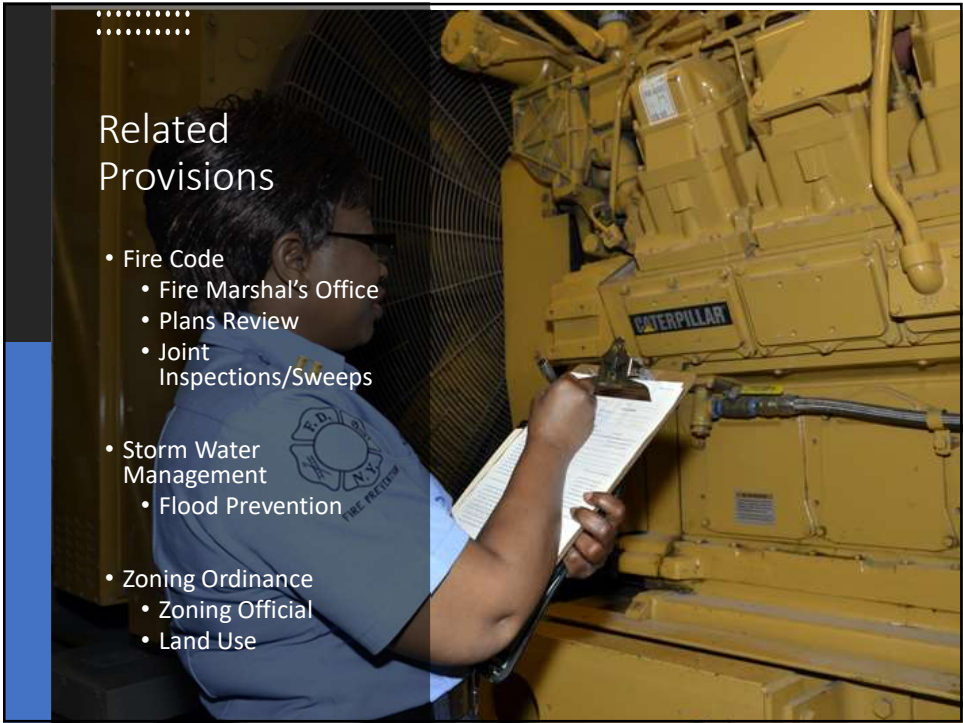


- Is some form of state legislation that is in place, which “enables” local government to enact building and property maintenance codes at the local level.
- Enabling legislation is traceable back to the 10<sup>th</sup> Amendment of the U.S. Constitution.
- 10<sup>th</sup> Amendment of the U.S. Constitution – is commonly known as the state’s “Police Powers”. This is where the states are granted authority to adopt laws to protect and promote the health, safety, morals and general welfare of its citizens.

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### Related Provisions

- Fire Code
  - Fire Marshal's Office
  - Plans Review
  - Joint Inspections/Sweeps
- Storm Water Management
  - Flood Prevention
- Zoning Ordinance
  - Zoning Official
  - Land Use



### Federal Legislative Law

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- Federal legislative law – has minimal impact on the regular day-to-day activities of the code official.
- Federal Constitutional Law on the other hand, has a significant impact on the decisions, actions and activities of the code official.



## Role of Government

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10<sup>th</sup> Amendment to the U.S. Constitution states “The powers not delegated to the U.S. by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

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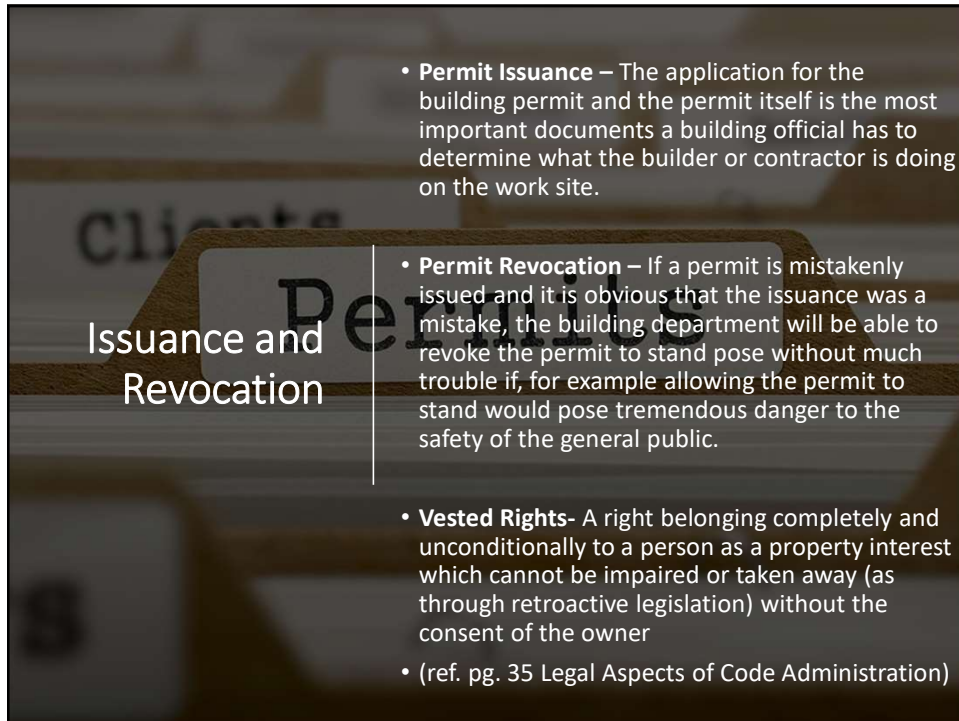
Generally, states have divested themselves of jurisdiction and authority over building codes. Administration and enforcement of building codes remains primarily the concern of local jurisdictions.

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Federal government is immune from the effect of municipal police power regulations such as building and zoning codes. Consequently, federal buildings such as courthouses, post offices and office buildings do not have to comply with the provisions of the local building codes.




## Issuance and Revocation



## Issuance and Revocation

- **Permit Issuance** – The application for the building permit and the permit itself is the most important documents a building official has to determine what the builder or contractor is doing on the work site.
- **Permit Revocation** – If a permit is mistakenly issued and it is obvious that the issuance was a mistake, the building department will be able to revoke the permit to stand pose without much trouble if, for example allowing the permit to stand would pose tremendous danger to the safety of the general public.
- **Vested Rights**- A right belonging completely and unconditionally to a person as a property interest which cannot be impaired or taken away (as through retroactive legislation) without the consent of the owner
- (ref. pg. 35 Legal Aspects of Code Administration)



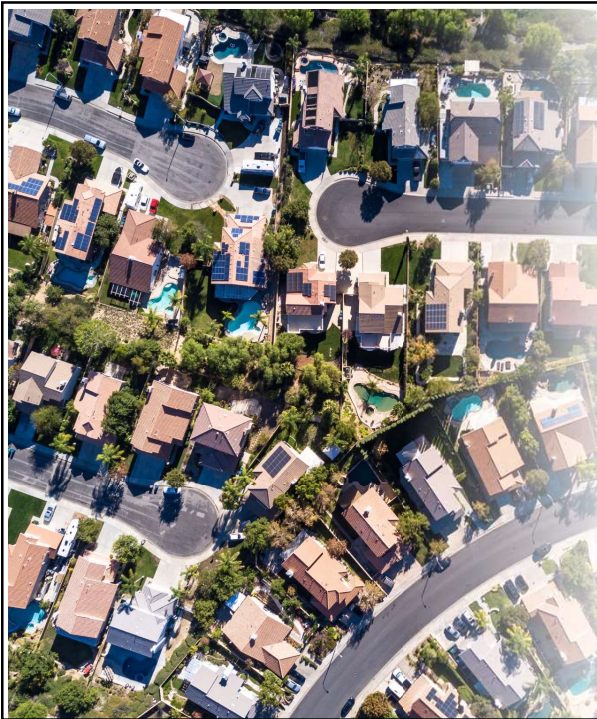
## Issuing a Permit- Discussion

- Who can apply for a permit?
  - Owners, agents, licensed contractors, etc....
- What is it needed for?
  - Permits are required for almost all construction projects involving building, electrical, plumbing or mechanical work.
- What is the permitting process in your community ?



## G.J.Z. ENTERPRISES, INC. v. CITY OF TROY

- The City of Troy mistakenly issued a building permit to plaintiff to build apartments on the land.
- Realizing its mistake, one month later, after the apartments were 70% complete, the city withdrew the building permit and issued a stop-work order.
- Plaintiff filed a complaint to enjoin the city from revoking its building permit and also filed a motion for a preliminary injunction to enjoin the city from enforcing the stop-work order.
- The circuit court, after allowing homeowners in the area to intervene, issued a preliminary injunction preventing the enforcement of the stop-work order and preventing withdrawal of the permit.



- G.J.Z. expressly conditioned the purchase of the land upon it being zoned for apartments, an R-3 designation.
- The seller provided to G.J.Z. the minutes of a town council meeting which indicated that the council had voted to change the zoning from R-2 to R-3.
- Relying on the minutes, G.J.Z. bought the land. Before construction, G.J.Z. contacted the city's building inspector, who said that the property was zoned R-2, but proceeded to "double check" with the city clerk.
- The city clerk provided the building inspector with minutes of the town council meeting which indicated a change in the zoning from R-2 to R-3. After reviewing the minutes, the inspector reviewed his plat; it also indicated R-3.
- With that, the inspector issued a building permit, and construction began.

## Due Process

- A legal procedure established by the 14<sup>th</sup> Amendment to the U.S. Constitution to enforce and protect individual rights. This includes the right to be present, to be heard and to present evidence before a judicial body.
- The constitutional guarantee of due process of law, found in the Fifth and Fourteenth Amendments to the U.S. Constitution, prohibits all levels of government from arbitrarily or unfairly depriving individuals of their basic constitutional rights to life, liberty, and property.

***Providing the builder/property owner with due process is one of the best defenses a code official can use to prevent possible Constitutional violations and reduce their exposure to liability.***

## Due Process (continued) :

- Proper notice
- A hearing with the Building Official or other hearing officer.
- Defendant has the right to appeal.
- Timely hearing
- A written record of the meeting must be produced.



4 <sup>th</sup> Amendment	5 <sup>th</sup> Amendment	14 <sup>th</sup> Amendment
Prohibits <u>unreasonable searches</u> and seizures and sets out requirements for <u>search warrants</u> based on <u>probable cause</u> as determined by a neutral judge or magistrate.	Sets out rules for indictment by grand jury and <u>eminent domain</u> , protects <u>the right to due process</u> , and prohibits <u>self-incrimination</u> and double jeopardy.	Defines <u>citizenship</u> , contains the Privileges or Immunities Clause, <u>the Due Process Clause</u> , the <u>Equal Protection Clause</u> , and deals with post-Civil War issues.

VERY IMPORTANT

**4<sup>th</sup> Amendment**

Prohibits unreasonable searches and seizures and sets out requirements for search warrants based on probable cause as determined by a neutral judge or magistrate.



## Procedural Due Process



- The phrase "**procedural due process**" refers to the aspects of the Due Process Clause that apply to the procedure of arresting and trying persons who have been accused of crimes and to any other government action that deprives an individual of life, liberty, or property.

Procedural due process limits the exercise of power by the state and federal governments by requiring that they follow certain procedures in criminal and civil matters. In cases where an individual has claimed a violation of due process rights, courts must determine whether a citizen is being deprived of "life, liberty, or property," and what procedural protections are "due" to that individual.





## Department Inspection Process

A specific process for conducting inspections should be adopted by the entire department to establish consistency.

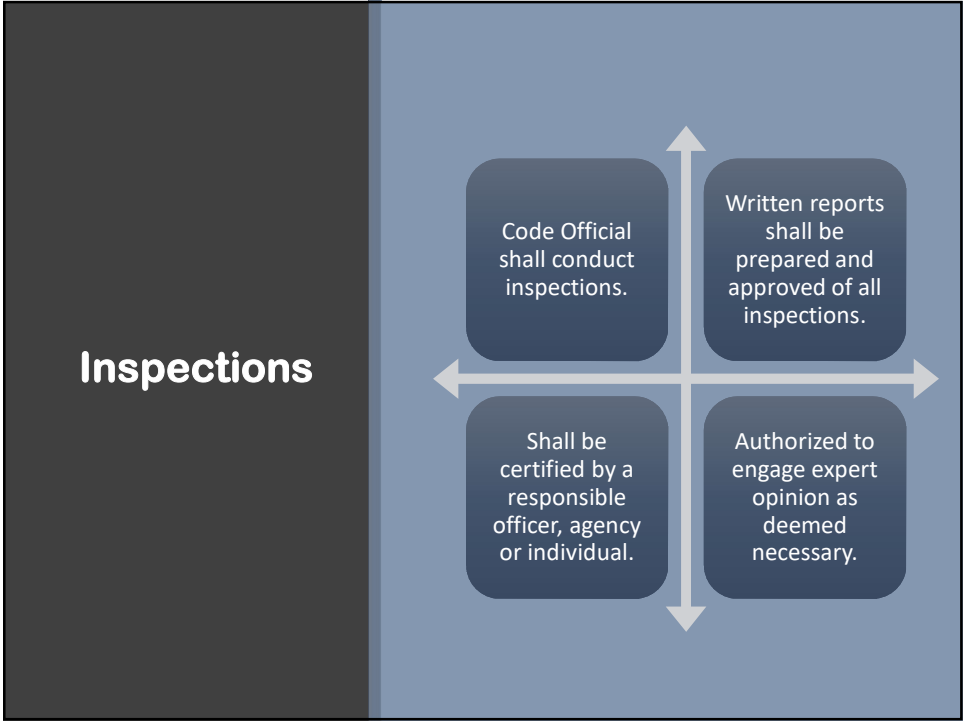
- All inspectors should be required to adhere to department process.
- Inspectors should be trained in the department process of conducting inspections.
- Should use a standard form for documenting inspections.
- Inspections should be consistent and avoid discrimination or selective enforcement.

## Documenting Inspections

Before conducting an inspection, the inspector shall become knowledgeable about the property, project and status of the construction.

- **When documenting an inspection, the inspector should:**

1. Record the date, address and description of the observed conditions, violations or impressions of the property/site.
2. Indicate what sections of the code are being violated.
3. Take photographs or videos whenever possible.
4. Keep a copy of each inspection report.



<b>Administrative Search Warrants</b>	<p>A tool available to the code official for seeking the right of entry to conduct an inspection or verify complaint of violations.</p> <hr/> <p>Must have state enabling legislation allowing this type of action detailing the rules of issuing a warrant</p> <hr/> <p>There must be <b>probable cause</b>, which has a lesser standard than criminal cases.</p>
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## Civil Prosecution

- This is a judicial process and tool available to the code official to seek compliance with violations when the other remedies have been exhausted (stop work orders, permit revocations, notices, etc.).
  - Courts are typically the final method of enforcement.
  - Civil or quasi-criminal complaints must be filed against the owner or occupant of the property.
  - Complaint notice must be either personally served or served through the mail, return receipt required.



Typical  
complaints in  
most  
jurisdictions  
will require  
the following  
six (6)  
elements.

1. Name of the person or entity to be charged – the property party.
2. Designating the charge – proper code section.
3. Body of the charge – every complaint must have a written description of the violation.
4. Date and time of the offense – this should be the actual date and time when the code official observed the violation.
5. Signature of the complaining witness – typically the code official is the complaining witness.
6. Notary or affidavit.

## Handling Complaints

Written guidelines or procedures should be established by the department for handling and processing complaints. The following are general guidelines for handling complaints:

- Obtain as much information as possible.
- Put the complaint in writing, general, on a formal complaint form and route it to the proper official.
- Schedule an inspection within a few days, write a report and take appropriate action.
- Notify complaining party of your progress.
- Anonymous complaints must be addressed and followed through.

## Evidence

The code official must have evidence of violations to prove their case in court. The following are the typical types of evidence that the code official may utilize:

- Verbal testimony.
- Photographs, video/audio recordings are permissible.
- Business records of the department related to the case.
- Third party information or testimony told to the inspector is not admissible under the hearsay rules.





## Witness types

- A fact witness is someone who has personal knowledge of events pertaining to the case and can only testify as to things he or she has personally observed
- An expert witness are there precisely to offer opinions that may assist the judge or jury in understanding technical knowledge that would otherwise be beyond their expertise.

## Elements of the Offense

- Familiarity of the elements of the charged violation
  - The grass was measured at a height of 16 inches which exceeds the required 12 inch restriction
  - The hole in the exterior wall violated the provision governing the requirement to have all walls structurally sound and in good repair






## Administrative Law

- Board of Building Appeals
  - Creation
  - Powers
  - Appeals

## Board of Building Appeals

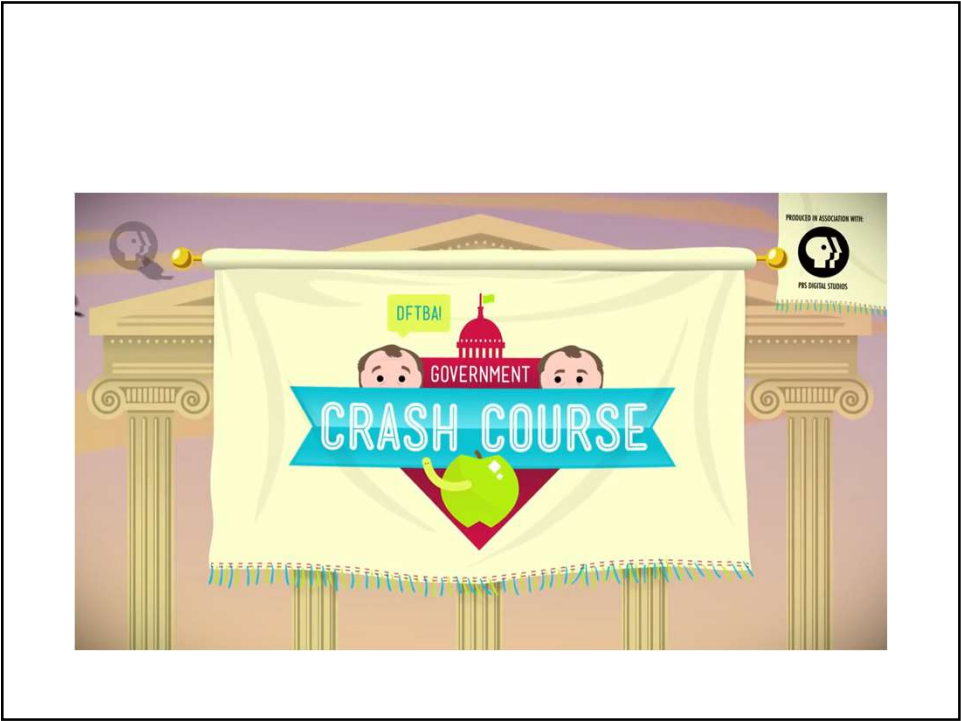


- The Board of Building Appeals (BBA) reviews permit-related decisions or orders made by the Building Official, except issues involving electrical requirements.
- The Board consists of members, including construction industry professionals and public representatives.



# Constitution Law

- Search and Seizure
  - 4<sup>th</sup> Amendment
    - It requires "reasonable" governmental searches and seizures to be conducted only upon issuance of a warrant, judicially sanctioned by probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons or things to be seized. Under the Fourth Amendment, search and seizure should be limited in scope according to specific information supplied to the issuing court, usually by a law enforcement officer who has sworn by it.





## Camara v. Municipal Court of City and County of San Francisco

- In 1967, a housing inspector from San Francisco's health department entered an apartment building to conduct a routine inspection to locate possible code violations.
- The building manager informed the inspector that a tenant might be using his space contrary to permitted policy. The inspector approached the tenant to enter the area, but the tenant denied entrance for lack of a search warrant.
- The inspector returned twice more, again without a search warrant, and was again denied entry. A complaint was subsequently filed against the tenant, and he was arrested for violating a city code.
- He filed suit under the Fourth and Fourteenth Amendments.

Are warrants  
necessary for  
inspections  
dealing with  
fire, health  
and housing  
codes?

- Under the Fourth Amendment the defendant had a constitutional right to insist that the inspectors obtain a warrant to search, in the absence of an emergency situation.
- The Supreme Court held that under the Fourth Amendment the defendant had a constitutional right to insist that the inspectors obtain a warrant to search, and that probable cause to issue a warrant must exist if standards for conducting an area inspection are satisfied.
- Area code inspections are supported by the court when no other canvassing technique would achieve desired results, when inspections involve a limited invasion of privacy.



### Camara v. Municipal Court of City and County of San Francisco

- The Supreme Court focused on whether the governmental interest justified a warrantless search.
- The Court assessed whether the burden of obtaining a warrant would frustrate the governmental purpose behind the search.
- Accordingly, the Court determined that a search could not be made without the owner's consent unless the city first obtained a warrant.
- Thus, the Court found the San Francisco ordinance unconstitutional because it permitted warrantless inspections to ensure compliance with the city's housing code.

### The Plain View Doctrine

- Under the plain view doctrine, **if officers are lawfully in a position from which they view an object**, if its incriminating character is immediately apparent, and if the officers have a lawful right of access to the object, they may "seize" it without a warrant.
- The tool used to enforce the Fourth Amendment's protections is called the **"exclusionary rule"**.
- Generally, unless one of the warrant exceptions applies, the police and other government agents need a search warrant before they can search your home, office, luggage, or even your pockets.
- A search that's made without a warrant, or in violation of a warrant, is considered an unreasonable search.



## Fruit of the Poisonous Tree

- And, under the exclusionary rule, any evidence that's obtained in violation of the Fourth Amendment - that is, through an illegal or unreasonable search, seizure or even an arrest - can't be used as evidence against you to convict you of a crime. The evidence is "excluded" or "suppressed."
- **Fruit of the Poisonous Tree-** The "fruit of the poisonous tree" doctrine goes hand-in-hand with the exclusionary rule. In fact, it takes the protection given by the exclusionary rule one step further. Under this doctrine, the state can't use evidence at trial against you if it was discovered through other evidence that was obtained in violation of the Fourth Amendment.
- The "poisonous tree" is evidence first seized or discovered through the initial violation of the Fourth Amendment - an illegal search, seizure, or arrest.
- The "fruit" is any evidence that's uncovered later because of information or evidence obtained from that illegal search, seizure or arrest.

## OFFICER DISCRETION AND DISCRIMINATORY ENFORCEMENT

- Although the Supreme Court has stated repeatedly and unequivocally that discriminatory enforcement violates the equal protection clause of the fourteenth amendment, many state and lower federal courts blandly withhold constitutional protection of any sort.
- Indeed, Supreme Court doctrine itself imposes so heavy a burden of proof that **the victim of discriminatory enforcement rarely finds vindication of his claim** in the judicial forum.
- *Officials are endowed by our criminal laws with the power to select from the universe of violators those persons who shall be subject to the criminal process.*
- Does discriminatory enforcement make our criminal system simply another institution to oppress the disfavored?



## Breach of Duty, Malfeasance & Misfeasance

- Breach of Duty- The neglect or failure to fulfill in a just and proper manner the duties of an office
- Intentional conduct that is wrongful or unlawful, especially by officials or public employees.
- Malfeasance is at a higher level of wrongdoing than nonfeasance (failure to act where there was a duty to act) or misfeasance (conduct that is lawful but inappropriate).



- Malfeasance is the intentional act of doing something wrong, either legally or morally. It is an act done with improper purposes and with the knowledge that the act being committed exceeds the authority of the wrongdoer.
- A judge taking bribes from the prosecution is an example of malfeasance.
- The judge knows that it is illegal to take money in order to give a favored ruling.
- Since the judge knows his actions are illegal, but continues to carry them out anyway, it is an act of malfeasance.

## What Is Malfeasance?

# What Is Misfeasance?

- Misfeasance is carrying out a legal or proper action, but doing so in a way that is harmful or wrong.
- A detective writing abbreviated versions of case files is another example of misfeasance.
- While he is still providing case files, which falls under his responsibility, he misses important details in more complex cases that could have changed a verdict.
- The detective just thought he found a quicker way to be more efficient with writing up case files, not realizing that his actions could be harmful in court.

## Other Significant Legislation

- Civil Rights Actions
- Fair Housing Act
- Americans With Disability Act
- Religious Discrimination
- Sexual Harassment





## Civil Rights Actions

- The Civil Rights Act of 1964 is a landmark civil rights and US labor law in the United States that outlaws discrimination based on race, color, religion, sex, or national origin. It prohibits unequal application of voter registration requirements, racial segregation in schools, employment, and public accommodations



- Title VIII of the Civil Rights Act of 1968 is commonly known as the Fair Housing Act and was meant as a follow-up to the Civil Rights Act of 1964.
- The Fair Housing Act, is a landmark part of legislation in the United States that provided for equal housing opportunities regardless of race, religion, or national origin and made it a federal crime to "by force or by threat of force, injure, intimidate, or interfere with anyone ... by reason of their race, color, religion, or national origin.
- The 1968 act expanded on previous acts and prohibited discrimination concerning the sale, rental, and financing of housing based on race, religion, national origin, and since 1974, gender; since 1988, the act protects people with disabilities and families with children.

## Civil Rights Actions

## Americans With Disability Act

- The Americans with Disabilities Act (ADA) became law in 1990.
- The ADA is a civil rights law that prohibits discrimination against individuals with disabilities in all areas of public life, including jobs, schools, transportation, and all public and private places that are open to the general public.



## Americans With Disability Act

- The purpose of the law is to make sure that people with disabilities have the same rights and opportunities as everyone else. The ADA gives civil rights protections to individuals with disabilities similar to those provided to individuals on the basis of race, color, sex, national origin, age, and religion.
- It guarantees equal opportunity for individuals with disabilities in public accommodations, employment, transportation, state and local government services, and telecommunications.
- The ADA is divided into five titles (or sections) that relate to different areas of public life.



## ADA Titles

- **Title I (Employment)** - Equal Employment Opportunity for Individuals with Disabilities
- **Title II (State and Local Government)** - Nondiscrimination on the Basis of Disability in State and Local Government Services
- **Title III (Public Accommodations)** - Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities
- **Title IV (Telecommunications)** - This title requires telephone and Internet companies to provide a nationwide system of interstate and intrastate telecommunications relay services that allows individuals with hearing and speech disabilities to communicate over the telephone.
- **Title V (Miscellaneous Provisions)** - The final title contains a variety of provisions relating to the ADA as a whole, including its relationship to other laws, state immunity, its impact on insurance providers and benefits, prohibition against retaliation and coercion, illegal use of drugs, and attorney's fees.

## Title III (Public Accommodations)

- Title III (Public Accommodations) - Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities
- This title prohibits private places of public accommodation from discriminating against individuals with disabilities. *Examples of public accommodations include privately-owned, leased or operated facilities like hotels, restaurants, retail merchants, doctor's offices, golf courses, private schools, day care centers, health clubs, sports stadiums, movie theaters, and so on.*
- This title sets the minimum standards for accessibility for alterations and new construction of facilities. It also requires public accommodations to remove barriers in existing buildings where it is easy to do so without much difficulty or expense.
- This title directs businesses to make "reasonable modifications" to their usual ways of doing things when serving people with disabilities. It also requires that they take steps necessary to communicate effectively with customers with vision, hearing, and speech disabilities. This title is regulated and enforced by the U.S. Department of Justice.



## Americans With Disability Act

- In 2008, the Americans with Disabilities Act Amendments Act (ADAAA) was signed into law and became effective on January 1, 2009.
- The ADAAA made a number of significant changes to the definition of “disability.”

## Religious Discrimination

- Religious discrimination involves treating a person (an applicant or employee) unfavorably because of his or her religious beliefs.
- The law protects not only people who belong to traditional, organized religions, such as Buddhism, Christianity, Hinduism, Islam, and Judaism, but also others who have sincerely held religious, ethical or moral beliefs.
- Religious discrimination can also involve treating someone differently because that person is married to (or associated with) an individual of a particular religion.



## What is RLUIPA?

- RLUIPA stands for “The Religious Land Use and Institutionalized Persons Act.”
- This is a federal law that, among other things, protects religious institutions from unduly burdensome or discriminatory land use regulations.
- Congress passed RLUIPA in 2000, after hearing testimony that land use/ zoning regulations were often burdening the ability of religious congregations to exercise their faiths in violation of the Constitution.

## Sexual Harassment

- The Sexual Harassment in Housing Initiative is an effort to combat sexual harassment in housing led by the Civil Rights Division of the Department of Justice.
- The goal of the Initiative is to address sexual harassment by landlords, property managers, maintenance workers, loan officers or other people who have control over housing.
- In 1980 the EEOC issued guidelines declaring sexual harassment a violation of Section 703 of Title VII, establishing criteria for:
  - determining when unwelcome conduct of a sexual nature constitutes sexual harassment,
  - defining the circumstances under which an employer may be held liable, and
  - suggesting affirmative steps an employer should take to prevent sexual harassment.





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