

Marijuana and The Building Codes



Steve Thomas
Colorado Code Consulting, LLC



Marijuana and Building Codes in Washington



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Instructor - Steve Thomas

Colorado Code Consulting, LLC

- 30 years experience in code inspection , plan review and administration
- ICBO Committees
 - Small Jurisdictions
 - Fire & Life Safety Code Development
 - Means of Egress Review
- ICC Means of Egress Code Development Committee
- Author – Building Code Basics, based on the 2009 IBC



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What are we going to talk about?

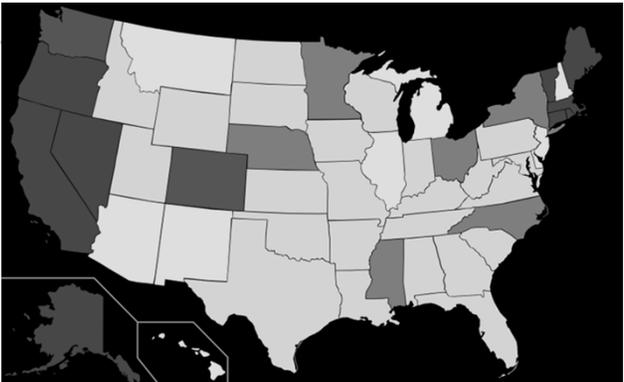
- Washington Rules
- Building Code Issues
- Energy Code Issues
- Plumbing, Mechanical, Electrical Code Issues
- Open Discussion



MARIJUANA LEGALIZATION ON CALIFORNIA BALLOT — NEWS ITEM

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English: Map of the US showing US cannabis laws.

- State with legalized cannabis.
- State with both medical and decriminalization laws.
- State with legal medical cannabis.
- State with decriminalized cannabis possession laws.*

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Profitable Business

- National Institute on Drug Abuse states:
 - Approximately 5 million regular marijuana users
 - If each user used one ounce per year
 - Annual consumption would be 5 million ounces
 - = 312,500 pounds
 - = 156 Tons
- With an average price of \$3,000 per pound, the value of the product that would be consumed is:

\$937,500,000

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What is it and why do we care?

- Washington Program
- Main Issue for building departments
 - Occupancy classification
 - Security
 - Electrical
 - Ventilation
 - Political Pressure
- Legal Issues



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Initiative Measure No. 502 Intent

- Treating adult marijuana use as a crime
 - (1) Allows law enforcement resources to be focused on violent and property crimes;
 - (2) Generates new state and local tax revenue for education, health care, research, and substance abuse prevention; and
 - (3) Takes marijuana out of the hands of illegal drug organizations and brings it under a tightly regulated, state-licensed system similar to that for controlling hard alcohol.



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Terms

- "Marijuana processor" means a person licensed by the state liquor control board to process marijuana into useable marijuana and marijuana-infused products, package and label useable marijuana and marijuana-infused products for sale in retail outlets, and sell useable marijuana and marijuana-infused products at wholesale to marijuana retailers.



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Terms

- "Marijuana producer" means a person licensed by the state liquor control board to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers.



Hydroponicist.com

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Terms

- "Marijuana-infused products" means products that contain marijuana or marijuana extracts and are intended for human use. The term "marijuana-infused products" does not include useable marijuana.



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Terms

- "Marijuana retailer" means a person licensed by the state liquor control board to sell useable marijuana and marijuana-infused products in a retail outlet.



MUSGETRY SD - MarijuanaRetailer.com

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Washington Initiative

- Licensing
 - Producers
 - Processors
 - Retailers
- Producers and Processors cannot have legal interest in retailer.



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Retailers

- Permitted to dispense marijuana
- Permitted to sell edible food products using medical marijuana



Marijuana Facilities

- Number of retail outlets limited in counties
 - Pierce County Total – 31
 - Tacoma – 8
 - King County Total – 61
 - Seattle – 21



Marijuana Facilities

- Located a minimum of 1000 feet from a perimeter of the grounds of any
 - elementary or secondary school,
 - playground,
 - recreation center or facility,
 - child care center,
 - public park,
 - public transit center,
 - library,
 - or any game arcade admission to which is not restricted to persons aged twenty-one years or older.



Marijuana Facilities

- At a minimum, each licensed premises must have a security alarm system on all perimeter entry points and perimeter windows. Motion detectors, pressure switches, duress, panic, and hold-up alarms may also be utilized.





Marijuana Facilities

- At a minimum, a complete video surveillance with minimum camera resolution of 640x470 pixel and must be internet protocol (IP) compatible and recording system for controlled areas within the licensed premises and entire perimeter fencing and gates enclosing an outdoor grow operation, to ensure control of the area.



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Marijuana Facilities

- All controlled access areas, security rooms/areas and all points of ingress/egress to limited access areas, all points of in-gress/egress to the exterior of the licensed premises, and all point-of-sale (POS) areas must have fixed camera coverage capable of identifying activity occurring within a minimum of twenty feet of all entry and exit points.



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Extraction Processes

- Processors may use the hydrocarbons N-butane, isobutane, pro-pene, or heptane or other solvents or gases exhibiting low to minimal potential human health-related toxicity approved by the board.



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Extraction Processes

- These solvents must be of at least ninety-nine percent purity and a process-or must use them in a professional grade closed loop extraction system designed to recover the solvents, work in a spark free environment with proper ventilation, and follow all applicable local fire, safety and building codes in processing and the storage of the solvents.



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Signage

- The board limits each retail licensed premises to one sign identifying the retail outlet by the licensee's business name or trade name that is affixed or hanging in the windows or on the outside of the premises that is visible to the general public from the public right of way.
- The size of the sign is limited to sixteen hundred square inches.



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Waste Disposal

- Wastes from the production and processing of marijuana plants must be evaluated against the state's dangerous waste regulations (chapter 173-303 WAC) to determine if those wastes designate as dangerous waste.



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Waste Disposal

- Must be evaluated
 - Waste from marijuana flowers, trim and solid plant material used to create an extract.
 - Waste solvents used in the marijuana process.
 - Discarded plant waste, spent solvents and laboratory wastes from any marijuana processing or quality assurance testing.
 - Marijuana extract that fails to meet quality testing.



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Waste Disposal

- Not required to be evaluated
 - A marijuana plant, usable marijuana, trim and other plant material in itself is not considered dangerous waste as defined under chapter 173-303 WAC unless it has been treated or contaminated with a solvent.



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Waste Disposal

- Must render marijuana plant waste unusable by grinding and incorporating the marijuana plant waste with other ground materials so the resulting mixture is at least fifty percent non-marijuana waste by volume.



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Waste Disposal

- Compostable mixed waste
 - Compost, anaerobic digester, or other facility with approval of the jurisdictional health department.
- Non-compostable mixed waste
 - Landfill, incinerator, or other facility with approval of the jurisdictional health department.



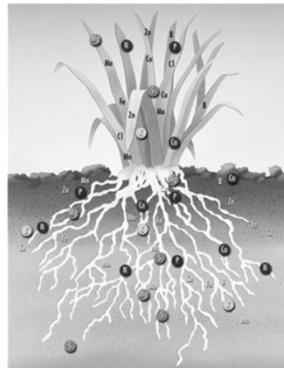
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Plant Growth Process

- Osmosis
 - The plant takes up water and minerals from the soil through its roots and transfers it to the leaves through the stem and branches.
- Photosynthesis
 - The plant uses absorbed light and air to transform water and minerals received through osmosis into plant tissue.



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Plant Life Cycle

- Germination
- Seedling
- Vegetative Growth
- Pre-Flowering
- Flowering



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Reproduction

- Plants can be reproduced by:
 - Germination of seeds, or
 - Cloning
 - A clone is always taken from an adolescent female plant
 - Will have the same characteristics of the mother plant



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Harvesting/Drying

- Hang plants upside down
- Place buds in canning jars



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Harvesting/Drying

- Ovens
 - 125-140 degrees F
- Flat piece of foil under 100 watt lamp within 2-4 inches
- Wrap in paper and place over water heater, radiator or back of television
- Microwave oven



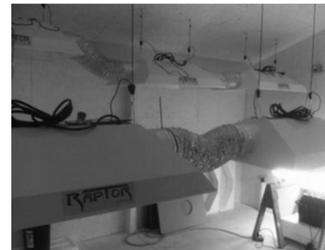
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How Do They Grow It?

- Lighting
 - Metal Halide (Blue Spectrum)
 - High Pressure Sodium (Red Spectrum)
 - 400 – 1,000 Watt bulbs



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How Do They Grow It?

- Heat and Temperature Control
 - Ventilation
 - Fans
 - Air Conditioning
- Temperature Control is KING
- Lights & ballasts give off lots of heat



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What Does It Need To Grow?

- Water
- Air
 - Often enriched with CO²
- Medium
- Nutrients
- Chemicals
 - To control pH levels



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Ventilation

- Large amounts of plants, photosynthesis uses up all the carbon dioxide and fills the room with oxygen
- Plants need a fresh supply of CO² in the room or they stop growing



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Temperature

- Marijuana grows best at 68 – 72 degrees and will stop growing at temps above 90 degrees



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Concerns

- Heat
- Electrical Loads
- Ventilation Rate
- Carbon Dioxide
- Egress
- Humidity
- Odor



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Ventilation Equipment

- Large Squirrel Cage Fans
- Inline Fans
- Blowers
- Induction Fans
- Flex Hose Insulated Ducts



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Ventilation Equipment

- CO² Bottles
- CO² Generators
- Environmental Controllers
 - Temp
 - Humidity
 - CO² Levels
- Carbon Filters



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Ventilation Equipment

- Charcoal Filters
 - Reduce Odors
- Ionizers
 - Reduce Odors
- Ozone Generators
 - Odor Control
 - Humidity Control
- De-Humidifiers

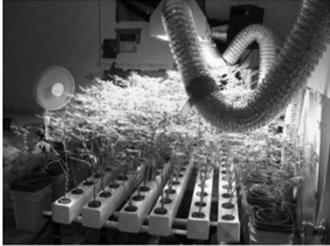


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Ventilation Equipment

- Oscillating Fans
 - Move the CO²
 - Strengthen the stalks
 - Cool the plants
- Exhaust fans to eliminate the heat and excess oxygen



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Types of Grow

- 3 Stages
 - Propagation
 - Vegetation
 - Flowering
- Indoor or Outdoor
- Need high ceilings
 - Plants at harvest 6' – 10'



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Types of Grow



- Propagation to Harvest
 - 90 – 110 days
- Minimum 3 crops per year
- Advantage
 - More yield per plant
- Disadvantage
 - Plants need more space, water, nutrients, electricity and care

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Types of Grow

- 2 stage
 - Eliminates Summer stage
 - Propagation and Flowering
- Timers set with equal amount of daylight and darkness (12 hours ea.)
- Smaller flowering plants at harvest
 - 20" – 36"



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Types of Grow

- Minimum 3 oz. bud per plant
- Propagation to harvest
 - 60 Days
- Minimum 6 crops per year
- Advantages
 - More crop/yield per year, more plants in limited space, less electricity, nutrients and water



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Types of Grow

- Modified 2 Stage
 - Eliminates the dark stage
- Advantages
 - Similar to normal 2 stage process.



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Yield per Harvest

- Outdoors
 - 1 pound per plant
- 3 stage
 - 7 – 11 oz. of buds per plant
- 2 stage
 - 3 – 5 oz. of buds per plant
- Modified
 - 4 – 7 oz. of buds per plant



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Lighting

- High Intensity Discharge (HID) Grow Lights
 - High pressure sodium
 - Metal halide
- 250-1,000 watt bulbs
- Requires ballast
 - = increased heat and fire hazard



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Lighting

- Compact Fluorescent Grow Lights
 - 300 W
- LED Grow Lighting
 - Lower temperature



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Lighting

- Lighting Reflectors
 - Ceiling and walls
 - Directs lights onto plants
 - Reduces waste of lighting
 - Mylar used on walls



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Power Consumption

- One 1,000 watt HID lamp draws approximately 1KW/Hr.
 - 12/12 light cycle will drawing 12KW per day or 360 KW per month
- Most growers will use more than one light

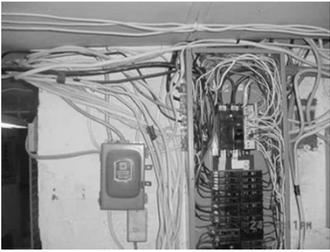


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Power Consumption

- Average Home utilizes between 700 – 1200 KW per month
- Most homes can probably handle the increased loading of 305 HID lamps without additional wiring

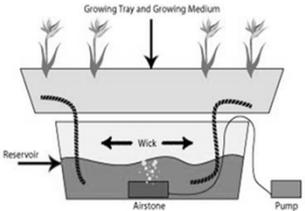


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Hydroponics

- Grow plants in an inert, sterile growing medium instead of soil.
 - Rockwool
 - Perlite
 - Clay pellets
- Flowering begins in 2-4 weeks
- Harvest two months later



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Hydroponics

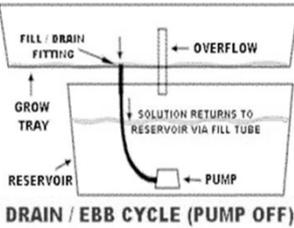
- Nutrients
 - Nitrogen (N)
 - Phosphorus (P)
 - Potassium (K)
- Basic plant food
 - Liquid
 - powder



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Hydroponics



- Ebb & flow system
 - Reservoir with solution
 - Pump on timer
 - Pumps water and nutrient solution to the plants
 - Solution drains back to reservoir

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Home Based Grow Issues

- Electrical
 - Unsafe electrical practices
 - Open wiring
 - Inadequate fuses or circuit breakers
 - Bad connections
 - Overloading of circuits
 - 24 more times likely to catch fire



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Home Based Grow Issues



- Carbon Dioxide Poisoning
 - Propane CO2 generators
 - Vent furnaces and water heaters into grow rooms
 - Normal levels
 - 300 – 600 ppm
 - Desired grow levels
 - 1,000 – 3,000 ppm
 - Lethal Level
 - 100,000 ppm
 - OSHA
 - 30,000 ppm

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Home Based Grow Issues

- Ozone Gas
 - Eliminates odor
 - Consumes excess oxygen from plants
 - Reduces mold growth



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Home Based Grow Issues



- Chemical Hazards
 - Explosive/toxic fumes from “weed oil” extraction
 - Butane, Sulfuric Acid, Methanol, Isopropyl Alcohol, Toluene
 - Fertilizers
 - Plant & water conditioners

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Home Based Grow Issues

- Mold
 - Heat
 - Humidity
 - Cellulose
- Optimal conditions for mold growth



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Home Based Grow Issues



- Lighting Hazards
 - Grow light surface temperature
 - Approximately 500 degrees
 - Grow lights are under pressure

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Commercial Grow Issues

- Power Consumption
 - HID Grow lamps
 - Usually obtain proper permits
 - Work performed by electrical contractors

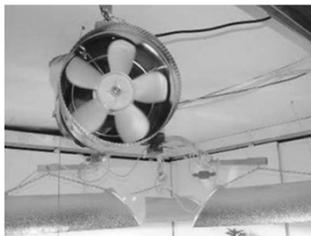


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Commercial Grow Issues



- Ventilation
 - High humidity issues
 - Odor control

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Commercial Grow Issues

- Means of Egress
 - Security control
 - Limited access



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Commercial Grow Issues

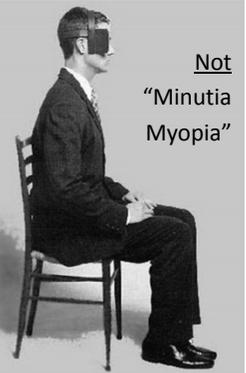


- CO2 Generation
- Ozone Generation
- Fertilizers
- Oil Extraction operations

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Big Picture...

Not
"Minutia
Myopia"

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What are these things?



- Dispensaries
- Grow Facilities
- Processing and Packaging
- Legal vs. Illegal Facilities

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Dispensaries

- Mercantile Group M occupancy includes, among others, the use of a building or structure or a portion thereof, for the display and sale of merchandise and involves stocks of goods, wares or merchandise incidental to such purposes and accessible to the public.



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Smoking/Treatment Rooms

- Group B
 - Less than 50 occupant assembly area



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Grow Facilities

- Group F-1
 - Factory Industrial Group F occupancy includes, among others, the use of a building or structure, or a portion thereof, for assembling, disassembling, fabricating, finishing, manufacturing, packaging, repair or processing operations that are not classified as a Group H hazardous or Group S storage occupancy.



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Grow Facilities

- Group U
 - Buildings and structures of an accessory character and miscellaneous structures not classified in any specific occupancy shall be constructed, equipped and maintained to conform to the requirements of this code commensurate with the fire and life hazard incidental to their occupancy. Group U shall include, but not be limited to, the following:
 - Agricultural buildings



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Processing & Packaging

- COMBUSTIBLE FIBERS.
 - Readily ignitable and free-burning materials in a fibrous or shredded form, such as cocoa fiber, cloth, cotton, excelsior, hay, **hemp**, henequen, istle, jute, kapok, oakum, rags, sisal, Spanish moss, straw, tow, wastepaper, certain synthetic fibers or other like materials. This definition does not include densely packed baled cotton.



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Processing and Packaging

(F) TABLE 307-1(1)
MAXIMUM ALLOWABLE QUANTITY PER CONTROL AREA OF HAZARDOUS MATERIALS POSING A PHYSICAL HAZARD^{1,2,3,4,5}

MATERIAL	CLASS	GROUP WHEN THE MAXIMUM ALLOWABLE QUANTITY IS EXCEEDED	STORAGE ⁶			USE-CLOSED SYSTEMS ⁷			USE-OPEN SYSTEMS ⁸	
			Solid pounds (cubic feet)	Liquid gallons (gounds)	Gas (cubic feet at NTP)	Solid pounds (cubic feet)	Liquid gallons (gounds)	Gas (cubic feet at NTP)	Solid pounds (cubic feet)	Liquid gallons (gounds)
Combustible liquid ^{9,10}	II	H-2 or H-3	N/A	120 ¹¹	N/A	N/A	120 ¹¹	N/A	N/A	30 ¹²
	IIIA	H-2 or H-3	N/A	3,300 ¹¹	N/A	N/A	3,300 ¹¹	N/A	N/A	30 ¹²
	IIIB	N/A	N/A	13,200 ¹¹	N/A	N/A	13,200 ¹¹	N/A	N/A	3,300 ¹²
Combustible fiber	Loose baled ¹³	H-3	(100) (1,000)	N/A	N/A	(100) (1,000)	N/A	N/A	(20) (200)	N/A

- Group H-3
 - Buildings and structures containing materials that readily support combustion or that pose a physical hazard shall be classified as Group H-3. Such materials shall include, but not be limited to, the following:
 - Combustible fibers, other than densely packed baled cotton

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Extraction

- A solvent is used to extract the oil from the dried plant.
- The product is soaked, mixed and stirred in the solvent.
- The solvent/oil solution is then boiled to evaporate the solvent to leave the oil.



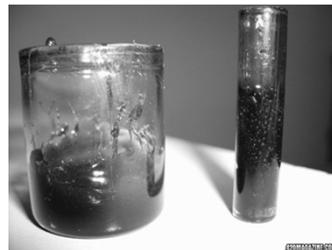
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Extraction

- Solvents include
 - Alcohol
 - Naphtha
 - Ether
 - Butane
- All flammable liquids or gases



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Extraction

- Depending on the amount of solvent that is used, the extraction area could be classified as a Group H-2.
- Ventilation is required regardless of occupancy classification.



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CO2 Extraction

- Equipment isolates cannabinoid oils with a CO2 extraction process.
- No part of the cannabis plant is wasted.
- The cannabis by-products that would usually be discarded as waste are used in the extraction process.
- The CO2 equipment uses cannabis "trim" to produce a clean oil extract that can be used in food products and vape pens.



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Fire Sprinklers

- F-1 exceeding 12,000 square feet
- All Group H Occupancies
- Group M Occupancies fire area exceeds 12,000 square feet.



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Means of Egress

- Security Issues
- Egress doors shall be readily openable from the egress side without the use of a key or special knowledge or effort.



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Access-Controlled Egress Doors

1008.1.4.4

- The entrance doors in a means of egress in buildings with an occupancy in Group A, B, E, I-2, M, R-1 or R-2 and entrance doors to tenant spaces in occupancies in Groups A, B, E, I-2, M, R-1 and R-2 are permitted to be equipped with an approved entrance and egress access control system which shall be installed in accordance with all of the following criteria:



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 **Access-Controlled Egress Doors**
1008.1.4.4

1. A sensor shall be provided on the egress side arranged to detect an occupant approaching the doors. The doors shall be arranged to unlock by a signal from or loss of power to the sensor.
2. Loss of power to that part of the access control system which locks the doors shall automatically unlock the doors.



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 **Access-Controlled Egress Doors**
1008.1.4.4

3. The doors shall be arranged to unlock from a manual unlocking device located 40 inches to 48 inches vertically above the floor and within 5 feet of the secured doors.
4. Ready access shall be provided to the manual unlocking device and the device shall be clearly identified by a sign that reads "PUSH TO EXIT." When operated, the manual unlocking device shall result in direct interruption of power to the lock - independent of the access control system electronics - and the doors shall remain unlocked for a minimum of 30 seconds.

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 **Access-Controlled Egress Doors**
1008.1.4.4

4. Activation of the building fire alarm system, if provided, shall automatically unlock the doors, and the doors shall remain unlocked until the fire alarm system has been reset.
5. Activation of the building automatic sprinkler or fire detection system, if provided, shall automatically unlock the doors. The doors shall remain unlocked until the fire alarm system has been reset.



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 **Access-Controlled Egress Doors**
1008.1.4.4

4. Entrance doors in buildings with an occupancy in Group A, B, E or M shall not be secured from the egress side during periods that the building is open to the general public.



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Delayed Egress Locks 1008.1.9.7

- Approved, listed,
- Permitted in any occupancy except Group A, E and H occupancies
- NFPA 13 sprinkler system or automatic smoke or heat detection system
- Doors must unlock in accordance with Items 1 through 6 below.
- Cannot pass through more than one door equipped with a delayed egress lock before entering an exit.



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Delayed Egress Locks 1008.1.9.7

1. The doors unlock upon actuation of the automatic sprinkler system or automatic fire detection system.
2. The doors unlock upon loss of power controlling the lock or lock mechanism.
3. The door locks shall have the capability of being unlocked by a signal from the fire command center.



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Delayed Egress Locks 1008.1.9.7

4. The initiation of an irreversible process which will release the latch in not more than 15 seconds when a force of not more than 15 pounds is applied for 1 second to the release device.
Exception: Where approved, a delay of not more than 30 seconds is permitted



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Delayed Egress Locks 1008.1.9.7

5. A sign shall be provided on the door located above and within 12 inches of the release device reading: **PUSH UNTIL ALARM SOUNDS. DOOR CAN BE OPENED IN 15 [30] SECONDS.**
6. Emergency lighting shall be provided at the door.



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High Humidity

- No Code Requirements for excessive humidity



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Ventilation

- IMC Section 403.3
 - Smoking Lounges
 - 60 cfm of outdoor air per person
 - All air must be exhausted including air in excess of that required by Table 403.3



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Exhaust Discharge IMC 501.2.1

- Product Conveying Exhaust
 - 10' from the property lines; 3' from exterior walls and roofs; 10' from operable openings into buildings; 10' above adjoining grade.
- Environmental Air Exhaust
 - 3' from property lines; 3' from operable openings into buildings for all occupancies other than Group U, and 10' from mechanical air intakes. Such exhaust shall not be considered hazardous or noxious.



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Odor Ventilation

- Local requirements
 - Ventilation rates
 - Charcoal filters
 - Exhaust termination
 - Effect on neighboring properties



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City of Boulder Ventilation Requirements

- “A medical marijuana business shall be properly ventilated to filter the odor from marijuana so that the odor cannot be detected by a person with a normal sense of smell at the exterior of the medical marijuana business or at any adjoining use or property”.



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Contaminant sources IMC 401.6



- Stationary local sources producing airborne particulates, heat, odors, fumes, spray, vapors, smoke or gases in such quantities as to be irritating or injurious to health shall be provided with an exhaust system in accordance with Chapter 5 or a means of collection and removal of the contaminants.
- Such exhaust shall discharge directly to an approved location at the exterior of the building.

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City of Boulder Ventilation Requirements

- Walls should be sealed between units to avoid odors from migrating into adjacent spaces.
- Exhaust from space filtered with a listed & labeled filter to avoid odors.
- Inlet for ventilation system located in area of highest contaminant concentration.



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Required Outdoor Ventilation Air IMC Table 403.3



- Cultivation Facilities
 - 60 cfm/person (similar to smoking lounges)
- Dispensaries
 - 7.5 cfm/person (retail sales)

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Exhaust Outlets IMC 501.2.1

- Cultivation Facilities
- Product-conveying outlets
 - 10 feet from the property lines;
 - 3 feet from exterior walls and roofs;
 - 10 feet from operable openings into buildings;
 - 10 feet above adjoining grade.



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Exhaust Outlets IMC 501.2.1

- Dispensaries
- Environmental air exhaust
 - 3 feet from property lines;
 - 3 feet from operable openings into buildings for all occupancies other than Group U, and
 - 10 feet from mechanical air intakes.



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Carbon Dioxide Generators

- Listed Appliance?
- Gas Piping
 - Sizing
 - Installation
- Proper Venting
 - Is it really vented?



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Plumbing Issues

- Backflow Protection?
 - Lawn Irrigation system
 - Chemical fertilizer dispensers
- Pipe installations
 - Support
 - Sizing



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Energy Code Issues

- Total connected interior lighting power
Exceptions:
6. Task lighting for plant growth or maintenance



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Electrical Code Issues

- Illegal installations
- Total Electrical Load
- Wiring methods



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Electrical Code Issues

- GFCI Protection
- Ballast Installations
- Homeowner installations



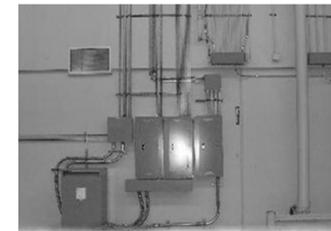
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Electrical Code Requirements

- One-line diagram
 - Existing system
 - Proposed electrical system
 - Include main electrical service
- All electrical equipment to be listed and labeled by an approved testing agency



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Electrical Code Requirements



- Flexible cords not permitted to be substituted for fixed wiring systems
- Can't run through walls, doors, ceiling, etc.
- Approved wiring methods required

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Electrical Code Requirements

- NM cable not allowed for use in damp locations such as cultivation facilities



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Property Maintenance Code



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108.1 Unsafe Structures And Equipment

- When a structure or equipment is found by the code official to be unsafe, or when a structure is found unfit for human occupancy, or is found unlawful, such structure shall be condemned pursuant to the provisions of this code.



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Unlawful Structure 108.1.4

- Occupied by more persons than permitted by code
- Erected, altered, occupied contrary to law



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109.1 Imminent danger

- When, in the opinion of the code official, ... or when there is actual or potential danger to the building occupants or those in the proximity of any structure because of explosives, explosive fumes or vapors or the presence of toxic fumes, gases or materials, or operation of defective or dangerous equipment, the code official is hereby authorized and empowered to order and require the occupants to vacate the premises forthwith.

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104.4 Right of entry

- The code official is authorized to enter the structure or premises at reasonable times to inspect subject to constitutional restrictions on unreasonable searches and seizures.
- If entry is refused or not obtained, the code official is authorized to pursue recourse as provided by law.



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Fourth Amendment

- Protection from unreasonable search and seizure.
 - The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.



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Consent



- 4th Amendment Exception....
- The easiest way to gain entry is to obtain consent.
- Do not rely on a minor's consent.

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Consent



- Generally, a tenant may give consent for entry (Jackson v. Davis)
- Not landlord *unless* specifically permitted in the lease.
- Tenant may give consent to common areas.
- 2 Tenants – only to that under their control

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Consent



- Trespassers may not give consent.
- Not on lease, no consent.
- However...courts grant latitude to those that *believe* they have received lawful consent.

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Plain View Doctrine



- Exception to the fourth amendment
- Holds that an inspector is not required to obtain a warrant to find a violation that is visible from a location they are entitled to be.
- Commercial property is public

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Camara



Supreme court held:

1. If any occupant of a residential structure does not consent to an inspection, a warrant must be obtained to gain legal entry.
2. An occupant who does not consent to an inspection cannot be prosecuted for any law requiring obedience to a municipal official.

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Enter? Or go get a warrant?

- Do not enter through locked gates or "No Trespassing" signs, except with the owner's permission.
- Areas that might normally be accessed by someone like the mailman, a delivery man or a salesperson, or anything that can reasonably be seen from those kinds of public areas or from a public road or street, may usually be investigated without the owner's permission and without a search warrant.
- If there is any doubt, consult with your attorney before entering!



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Administrative Search Warrants



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Administrative Search Warrants

- State provisions for administrative search warrants, rules, procedures
- **Probable cause**
- Important to work with your attorney
- Avoid potential liability under federal civil rights acts or state law tort of trespass
- Also good to have a good working relationship with local judge(s)

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Emergencies



- 4th Amendment Exception
- If an inspector believes an emergency exists, he/she may lawfully inspect the premises without consent or a warrant
- Should be relied on **ONLY** in very limited circumstances.

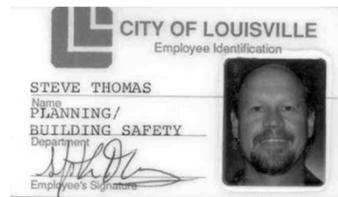
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104.5 Identification

- The code official shall carry proper identification when inspecting structures or premises in the performance of duties under this code.



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104.6 Notices and orders

- The code official shall issue all necessary notices or orders to ensure compliance with this code.



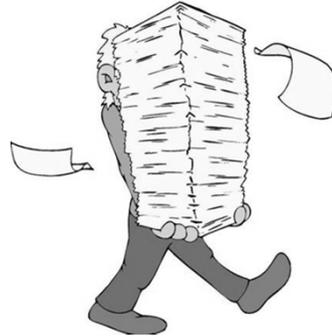
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Documentation:

- Date stamp everything that comes into the office.
- Keep a record of all conversations, including names and phone numbers and as many other details as possible.
- If you aren't sure, tell people that you will call them back later with an answer. Don't guess.



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Documentation, cont'd

- Respond in writing if at all possible, especially if the response is to a letter sent to you stating an assumption of facts unless the sender hears otherwise.
- Have regularly scheduled meetings with your enforcement team, at least monthly, but more often as needed to discuss current issues.
- Keep your attorney informed on issues and people who may be contacting them. Don't let them be "blind-sided." Keep information & copies of files supplied to the attorney up to date.

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Form Letters...use that computer!

- "Automatic" Enforcement Process
 - Complaint
 - Inspection to verify
 - Notice of violation
 - Re-inspection
 - 2nd Notification
 - Legal Action



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"The Whole File And Nothing But The File..."

- In preparing for trial, include originals or copies of all of the following, if applicable, all of which should already be in the building permit or violation file:
 - A summary or chronology of the case
 - Record of receipt of initial complaint(s)
 - Record of attempt(s) to contact owner of property
 - Affidavit for administrative search warrant
 - Administrative search warrant
 - Report from initial site investigation



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“The Whole File And Nothing But The File...” (cont’d)

- Photos from initial site investigation
- Video tape from initial site investigation
- Copy, stub and/or photo/video of posted stop work notice



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“The Whole File And Nothing But The File...” (cont’d)

- Initial violation letter sent to property owner
- Follow up inspection report
- Any additional photos or video tape



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“The Whole File And Nothing But The File...” (cont’d)

- Follow up letter sent to property owner
- All correspondence received from property owner
- Records of all phone calls or other conversations with property owner
- Building permit application
- Plans, specifications and all other documents received as part of any building permit application
- All correspondence sent to property owner
- Applicable codes or ordinances adopted by the jurisdiction

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107.3 Method of service



- Such notice shall be deemed to be properly served if a copy thereof is:
 1. Delivered personally;
 2. Sent by certified or first-class mail addressed to the last known address; or
 3. If the notice is returned showing that the letter was not delivered, a copy thereof shall be posted in a conspicuous place in or about the structure affected by such notice.

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Injunction...



- **Injunction / injunctive relief.** A judicial order prohibiting a specified conduct; it may be *temporary or permanent*.
- An injunction could operate for or against the building department.

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Due Process

- “The legal aspects of building department administration are composed of two major components - enforcement and prosecution. The mechanics of administering, carrying out or invoking either are governed by a broad spectrum of legal maneuvers, restrictions, prohibitions and mandates. Omitting or ignoring any required legal step dilutes the intent and effectiveness of law and raises serious questions of the integrity or intelligence of the individual who is responsible.”
 - -Robert E. O'Bannon, *Building Department Administration*-

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Due Process

- A party has the right to be granted all remedies available.
 - Hearing in front of the BO
 - If aggrieved, hearing in front of the Construction Board



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Other Legal Considerations



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Equal Protection Clause

- Clause to the Fourteenth Amendment
- Ensures that state governments do not arbitrarily discriminate in applying laws to different individuals or groups of people.
- Code provisions must be applied consistently to persons and buildings.
 - Residential provisions to residential

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Discriminatory Enforcement



- A legal concept that looks at whether some person or group was impermissibly singled out for enforcement.
- Permit issuance and enforcement can be discriminatory IF inconsistent

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Liability for Intentional Wrongdoing

- | | |
|------------------------------|--|
| • Intentional Torts | • Abuse of Process |
| • Malicious Prosecution | • False Imprisonment |
| • Wrongful Civil Proceedings | • Intentional Infliction of Emotional Distress |
| | • Assault and Battery |
| | • Trespass |

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Intentional Tort v. Negligence

- | | |
|---|--|
| <ul style="list-style-type: none"> • Intentional Tort. Wrongful conduct which was intended, i.e., punching an alleged code offender in the mouth (battery). | <ul style="list-style-type: none"> • Negligence. Involves conduct which was not intended to cause harm or injury but which, nonetheless, did so, and which also breached some duty of care imposed by the law, i.e., running a red light and causing a traffic accident. |
|---|--|

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Elements of Negligence

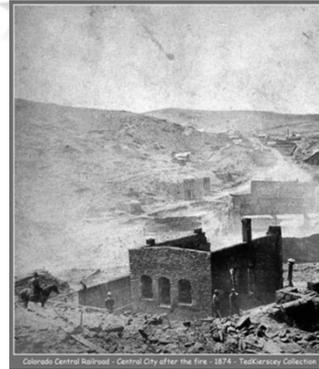
- The defendant must have:
 1. Owed a duty to another to act to a certain standard
 2. Failed to act in accord with that standard
 3. Therefore breached that duty
 4. Thereby causing injury or damage to another.

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Public Duty Doctrine



Colorado Central Railroad - Central City after the Fire - 1871 - Yellowstone Collection

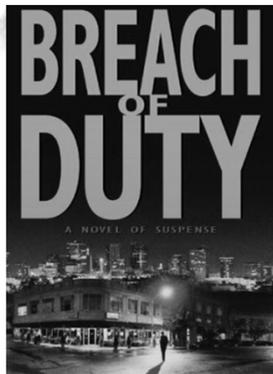
- To whom is the *duty* owed?
- Must prove that the duty is individually owed and not just to the general public.
- The purpose of the building code tells us which.

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Breach of Duty



- Neglect or failure to fulfill in a just and proper manner the duties of an office.
- Can be breached by either:
 - Action
 - Inaction (most common)

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Malicious Prosecution



- The wrongful institution of criminal proceedings by one private citizen against another.
- Building Official may be vulnerable

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Malicious Prosecution

- Issues:

1. The person who makes the complaint may be sued
 1. Always have a complainant sign a complaint
 2. Always perform your own investigation.
2. Must have termination of the proceeding favoring the accused
 1. Consult w/ Atty. to determine termination policy

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Malicious Prosecution

- More issues:

3. Probable Cause
 1. Plaintiff has burden of determining if BO had probable cause. ALWAYS HAVE PROBABLE CAUSE!!!!
 2. Know who you are serving! Is it REALLY the owner?
 3. Date the citation on the day the violation occurred, not the date the citation was served. 30 days – reinspect the site.
4. Malice
 1. Can be easily found by the court. Usually assumed if no probable cause is found. Be very cautious with enforcement actions.

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Intentional Infliction of Emotional Distress



- Results when someone exceeds the limits of “reasonable bounds of decency”.
- Cases are often brought, but rarely proven.
- Be consistent and professional.

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Trespass



- Acting in good faith does not constitute a defense.
- Most important defense is CONSENT.
 - Consent is valid only as long as it is given.
 - If asked to leave...LEAVE!
- A valid warrant is another defense.

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The Feasance Family



- **Mal Feasance.** The performance of some act which a person ought not do at all.
- **Mis Feasance.** The improper performance of some act which a person may lawfully do.
- **Non Feasance.** The nonperformance of some act which a person is obligated or has the responsibility to perform.

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Questions?

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