

The Five “W’s” and an “H” Of City Code Enforcement Vol. 3, Number 6 March 26, 2010

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Who Dat?
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All of the fine police officers who enjoy writing reports¹ know the rule about the five “w’s” and an “h.” A good journalist, investigative reporter, or police officer tries to answer six main questions when writing:² Who was involved? What happened? When did it take place? Where did it take place? Why did it happen? How did it happen?³ Today we are going to use these inquiries to discuss a topic that has been burning at the forefront of everyone’s thoughts lately: enforcing the High Point City Code.

Judging by the groans and rolling eyes that sentence just produced, I gather that many readers believe that enforcing the city ordinances is not that important in the grand scheme of things. After all, we have homicides and rapes and impaired drivers with which to deal. But let me point out that while any officer knows how to charge a violation of a state statute, it takes a special⁴ officer to know the possible ways to charge a violation of a city ordinance.

The WHAT: Enforcement of the City Code

When charging a violation of a North Carolina General Statute, you generally have two options: you can write a citation or obtain a warrant.⁵ However, when charging a violation of a city code or “municipal ordinance” (as we lawyers like to call it) those options may or may not be available to you and you may or may not have another option: the “city citation.”⁶

¹ All those fine officers who enjoy writing reports raise your hand...Let’s see some hands out there....Anyone?...Anyone?...

² The voices in my head also like to ask questions as we’ll see in a bit. Maybe you’ve asked some of these same questions.

³ You probably use the five “w’s” without realizing it every time you read of these legal updates. Maybe you’ve asked some of these questions: Who cares? Who is this guy? What is he talking about? What stupid jokes is he going to throw at us today? When does he find time to write all of this stuff? Where did we find him? Why did we hire him? How can we get rid of him without getting caught? Why did UNC start playing defense only after the regular season was over? You get my drift.

⁴ A nice way of saying “anal-retentive.”

⁵ This is grossly oversimplified, of course. If you make a warrantless arrest, you are generally obtaining a magistrate’s order; an indictment could be issued prior to a warrant being taken out, and so on. But bear with me and let’s overlook the oversimplification for now.

⁶ The city citation is one of those slips that you have in your “parking ticket” book. Or “city citation” book. Clever, I know.

The HOW: How Do I Know The Correct Way To Charge A Violation?

Unfortunately, the only way to know what your charging options are is to read the language of the particular city ordinance that you are dealing with. Fortunately, you have a legal advisor who can read and doesn't mind sharing this gained knowledge with you.

The starting point actually comes from North Carolina General Statute 14-4 and 160A-175 which read as follows:

§ 14-4(a) Violation of local ordinances misdemeanor.

(a) Except as provided in subsection (b), if any person shall violate an ordinance of a county, city, town, or metropolitan sewerage district created under Article 5 of Chapter 162A, he shall be guilty of a Class 3 misdemeanor and shall be fined not more than five hundred dollars (\$500.00). No fine shall exceed fifty dollars (\$50.00) unless the ordinance expressly states that the maximum fine is greater than fifty dollars (\$50.00).

§ 160A-175(b) Enforcement of ordinances.

(b) Unless the Council shall otherwise provide, violation of a city ordinance is a misdemeanor or infraction as provided by G.S. 14-4. An ordinance may provide by express statement that the maximum fine, term of imprisonment, or infraction penalty to be imposed for a violation is some amount of money or number of days less than the maximum imposed by G.S. 14-4.

These statutes set out the default position: if the ordinance is silent on the enforcement question, you are limited to charging a violation just as you would a Class 3 misdemeanor. In other words, write a criminal citation⁷ and send it through the criminal court system.

Despite this default position, many ordinances will specify how they may be enforced in the ordinance itself which will change the options at your disposal.⁸ For instance, the animal offenses found in the High Point City Code such as letting your dog run at large expressly state that a violation is not criminal, but civil. Section 12-2-5(c) states: "A violation listed in this chapter shall not constitute a misdemeanor or infraction punishable under North Carolina General Statutes 14-4, but instead shall be subject to the civil penalties fixed by subsection (a) of this section. . ." This means that you may not write a criminal citation or make an arrest, but must write a civil citation to enforce a violation of this ordinance.

⁷ Of course, an arrest is possible as well, but I am thinking (hoping?) that this option will be saved for only those defendants and situations that scream out for an arrest. Under G.S. 14-4(b), a violation of an ordinance governing the operation or parking of vehicles can only be an infraction, and therefore an arrest would be prohibited.

⁸ The statutory authority for this is N.C.G.S. 160A-175(c) – I know you were dying to know.

The Who:⁹ Who Makes the Decision?

For the most part under our City Code, the decision of how to charge is made for you. The ordinances usually only allow one or the other method of enforcement. However, there is one ordinance that allows you to make the call. Our noise ordinance provides that either a criminal or a civil citation may be issued. If the officer decides to write a civil citation, the penalty is \$200 for the first violation, \$400 for a 2nd violation within 12 months, and \$500 for a third or subsequent violation within 12 months. A criminal citation carries a maximum fine of \$500 and court costs.

The other situation in which you may have some choice in the matter occurs when an ordinance prohibits something that is also prohibited by state statute. In that case, you could choose to write a criminal citation under the General Statute or a civil citation under the City Code. For example, handicapped parking is a violation of City Ordinance 5-1-23 and also N.C.G.S. 20-37.6.

The Why: Why Does It Matter?

Answer: Because of the “Where” and the “When”

The decision you make with regards to enforcing an ordinance will make a big difference in how it is handled. A civil citation imposes a civil penalty, gives a deadline within which the penalty must be paid,¹⁰ and puts the ticket under the purview of our friends at City Hall. You will not need to testify and although there may be some informal appeals process, it is generally difficult to dispute a city citation. If the civil penalty is not paid, the city can take an enforcement action by way of civil suit or debt collection.

On the other hand, if you write a criminal citation, the violator will have to appear in district criminal court. You may be called on to testify at trial if the violator contests the citation. The court will end up setting the fine within the parameters set out by the ordinance and there will be a right to appeal to Superior Court for a jury trial if the defendant is found guilty. The defendant may have to make multiple trips to the courthouse and sit in court for long periods of time on the criminal citation, but in contrast would almost always be able to handle the civil citation relatively quickly.¹¹ The

⁹ No – not the English rock band popular in the 60’s and 70’s whose name led to a lot of real-life Abbott and Costello routines. “We’re going to see The Who.” “Who?” “Right.” “Who’re you going to see?” “The Who.” “That’s what I’m asking you – who?” “Yes.” I realize I just lost a lot of our younger readers who not only don’t know who The Who is but have never heard of Abbott and Costello. Google them, my friends, and learn about a simpler time.

¹⁰ Noise ordinance violators issued city tickets have ten days to pay the penalty.

¹¹ The difference in the amount of time is the “when.” As officers who have to sit in court know all too well, time spent in court is a punishment all on its own. I’ve heard stories of prosecutors who would call their cases in such a way that a particular defendant’s case, such as a speeding ticket or stop sign violation, would not be reached for trial until the very end of the court day. At that time, the prosecutor would take a dismissal and tell the person he was free to go on “time served.” I never did this, mind you, but I’ve heard stories....

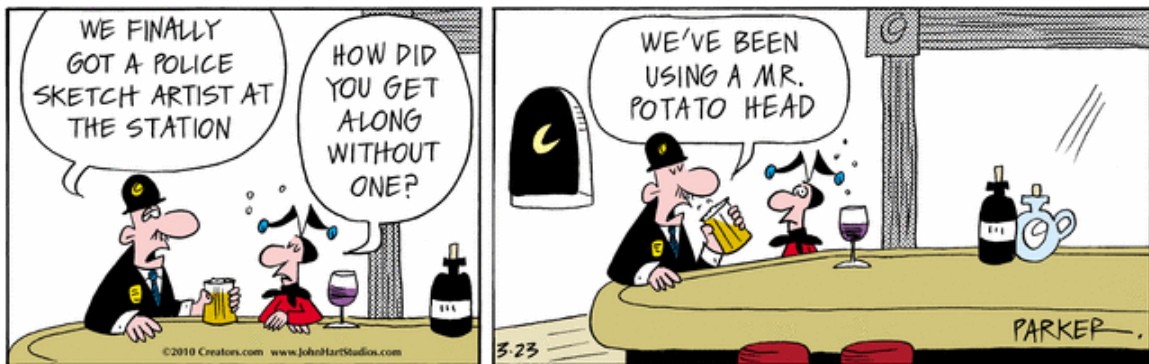
other difference is that a conviction in criminal court is a “criminal conviction”¹² that will go on a person’s criminal record while a civil citation would not.

You can weigh these factors however you like to decide how best to enforce your particular case of violating the city’s ordinance when you have a choice. But hopefully now you’ll be making an informed and educated decision.

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¹² Ta-da! I went to law school for three years to learn stuff like a conviction in criminal court is a criminal conviction.