

NUISANCES,
ZONING & NON-
TRAFFIC
ENFORCEMENT

Judge Mike Roy

Biographical Information

Michael Roy

Mike Roy has served as Municipal Judge for the Town of Glenrock since 1994. He is Vice President of the Wyoming Conference of Municipal Courts, previously served as Vice President of the Wyoming Conference of Special Court Judges, and is a Circuit Court Magistrate for the 8th Judicial District. In addition to his judicial duties, Mike is the Community Development Director for the City of Douglas, Wyoming. His previous work experience includes serving as a police chief; fire chief; director of ambulance operations; and basic programs supervisor for the Wyoming Law Enforcement Academy. Mike has attended Jefferson Community College, Eastern Kentucky University, and Eastern Wyoming College, and has received an honorary Juris Doctorate from the College of St. Thomas.

- 1 **Zoning Codes, Nuisances Codes, And Others**
(The Really Challenging Stuff)
- 2 **Overview**
 - Why the increased interest in zoning, nuisance, and property maintenance codes?
 - Enabling Statutes.
 - Authorizing Ordinances.
 - Typical codes in Wyoming cities/towns.
- 3 **Overview**
 - Zoning law "language."
 - Thoughts on handling these types of cases.
 - An example or three.
 - Questions.
- 4 **Why So Much Interest?**
 - 30 year sea change.
 - (Zoning: Four letter word? Or sacred cow?)
 - "Quality of Life." (Courts are taking note of.)
 - Information Age.
 - More travel.
 - NIMBY's.
 - Economic Development!
 - Crime Prevention/Prevention of Decay.
- 5 **The "Broken Window" Theory**
 - Developed by James Q. Wilson & George Kelling
 - Premise: Accumulated trash, broken windows, deteriorated building exteriors cause area residents to feel more vulnerable, and begin to withdraw. They become less willing to intervene to maintain public order.
- 6 **The "Broken Window" Theory**
 - Unattended broken windows, accumulated trash, abandoned/junk vehicles – cause a downward spiral.

- The theory has its critics.
- It also has its supporters.

7 Enabling Statutes

- **15-1-103. General powers of governing bodies.**
- (xiv) Regulate or prohibit animals running at large.
- (xix) Declare and abate nuisances and impose fines.
- (A) The municipal court of the city or town has jurisdiction to punish any violator of the ordinances of the city or town governing those areas;

8 Enabling Statutes Continued

- 15-1-103 continued:
- (xxiv) Prevent ... dangerous construction...;
- (xxv) Prescribe the thickness, strength and manner of constructing any buildings ... and provide for their inspection;
- (xxvi) Provide for the repair, removal or destruction of any dangerous building or enclosure;

9 Still More Enabling Statutes

- (xxxvi) Require all buildings to be numbered ... and in case of failure to comply with such requirements, cause the numbering to be done and assess the costs against the property or premises numbered;

10 Even More Enabling Statutes

- (xli) Adopt ordinances, resolutions and regulations... necessary for the health, safety and welfare of the city or town, enforce all ordinances by imposing fines not exceeding seven hundred fifty dollars (\$750.00), or imprisonment not exceeding six (6) months, or both.

11 Are You Tired of Enabling Statues Yet?

- (xliv) Take into custody abandoned, or junk motor vehicles and parts or remains thereof which are nuisances and are on public property or on public streets, alleys and ways...
 - (Definitions of "junk vehicle," "abandoned vehicle," etc., can be

critical.)*

- 12 **On-line Source for Municipal Codes**
- www.bpcnet.com
- 13 **Who Typically Handles...**
- Animal Control?
 - Nuisance Abatement?
 - Building Code Enforcement?
 - Zoning Code Enforcement?
- 14 **Typical City Ordinances**
- **Municipal Court**
 - **Created and established.**
 - There is created and established in the town a municipal court for the trial of all offenses arising under the ordinances of the town. The office of police justice (municipal judge) is established to preside over the municipal court. (Ord. 343 Art. 8, Ch. 1, § 1-1, 1981)
- 15 **Typical Municipal Codes**
- **Business Taxes, Licenses, and Regulations**
 - Transient Merchant's Licenses
 - Contractor's Licenses
 - Enforcement *
- 16 **Typical Municipal Ordinances in Wyoming**
- **Animals**
 - Animals at Large
 - Harboring or keeping of vicious animals
 - Licensing
 - *Conditional Use Permits* for keeping certain animals
 - Certain animals prohibited (exotics, snakes, etc.) *
- 17 **Typical Municipal Ordinances**
- **Health & Safety**
 - **Property Maintenance & Nuisance Abatement Regulations**
 - Accumulation of garbage, refuse, debris & junked vehicles; *
 - Weeds; **
 - Interior sanitation (typically processed very carefully);
 - Structure exteriors, accessory structures, fences and walls;
 - Dilapidated structures.

- 18 **Example – Douglas Municipal Code**
- **Property Maintenance and Nuisance Abatement**
 - **Includes (partial list):**
 - Power to declare
 - Purpose
 - Applicability and Enforcement
 - Investigations and Inspections
 - Right of Entry
 - Notices and Orders - form
- 19 **Property Maintenance & Nuisance Abatement - continued**
- **Method of Service**
 - **Correction or Abatement by City – Recovery of Costs**
 - Actual costs plus administrative fee up to 50% of actual cost
 - **Penalty for non-compliance**
 - Can be fined not more than seven hundred fifty dollars (\$750.00) for each separate offense. Every twenty-four (24) hour period after the time specified in the written notice in which such person refuses or neglects to correct or abate the violation shall be an additional offense and subject to the same penalty. (Ord. 744 (part), 2005)
- 20 **Enforcement – Notices & Orders**
- **Shall be issued by code compliance officer or building official;**
 - **Notices, Orders and Citations must:**
 - A. Be in writing;
 - B. Include a description of the real estate sufficient for identification;
 - C. Include a statement of the violation(s) and why the notice and order is being issued;
 - D. Allow reasonable time to make the correction(s) specified to bring the premises or structure into compliance with this chapter. (Ord. 744 (part), 2005)
- 21 **Method of Service**
- **Such notice shall be deemed to be properly served if a copy thereof is:**
 - A. Delivered personally;
 - B. Sent by certified mail to the last known address; or
 - C. Posted in a conspicuous place upon the premises affected by such notice.
 - **(Sometimes the officer will use two or even all three methods.)**
- 22 **Typical Municipal Codes in Wyoming**
- **Buildings and Construction**
 - Adoption of ICC Codes by local jurisdictions.
 - **Enforcement alternatives:**

- Correction Notices
- "Stop Work" Orders
- *Withholding of Certificate of Occupancy*
- Citation

23 **Zoning Cases**

- Types:
 - Lawsuits.
 - Violations of local zoning ordinances.

24 **Typical Municipal Codes**

- Zoning
 - Includes (partial list):
 - Definitions (Very Important!) *
 - Various Zoning Classifications
 - Sign Codes
 - Off-street Parking Requirements
 - Supplemental Regulations (fences; exceptions for lots of record; nonconforming uses, etc.)

25 **Zoning Can Be Different**

- Language
 - Prohibitive v. Permissive
 - Example:
 - **Assault and battery.**
 - A. It is unlawful for any person, having the present ability to do so, to attempt or threaten to unlawfully touch another in a rude, insolent, or angry manner.
 - B. It is unlawful to touch another in a rude, insolent or angry manner.

26 **Prohibitive v. Permissive Language**

- R-1 Residential Zone – Regulations Designated
 - A. Uses permitted:
 - 1. Single-family residence;
 - 2. Public schools;
 - 3. Home occupation;
 - 4. Accessory building use.

27 **Sometimes It Can Be Both...**

- Example:

- **Permitted Use:**
 - Accessory building and uses;
 - Animal clinic;
 - Arena, commercial;
 - Auto repair shop;
 - Auto storage, **but not salvage;**

28 Permitted Uses

- "Permitted uses – does not mean they have a paper "permit" for the *use/occupancy* (key terms there), but rather the use/occupancy is "allowed."
- Typical argument: "So I should be able to run a business on my property – the code doesn't say I can't."
- The only "legal" uses (occupancies) are those specifically listed under the particular zoning classification.

29 Exceptions

- *Conditional Permitted Uses*
 - Requires going through the C.U.P. process
 - Any other similar use which conforms to the general purpose and intent of the R-1 residential district and which will be no more injurious, economically or otherwise, to property or improvements in the surrounding area than would any use generally permitted in the district;
- Burden of proof is on the property owner.
- "There shall be no right of appeal from a decision of the city council denying a conditional use permit. The decision of the city council shall be final and exclusively within the province of the city council."

30 Typical Arguments

- "I can do whatever I want, it's my property!" (Funny how that changes when it's the neighbor that wants to do something with *his* property.)
 - This position is not supported by case law.

31 Zoning Cases - Suggestions

- Remember:
 - Permissive v. Prohibitive Language
 - Consult the Definitions Section
 - May be helpful to consult *Community Development (Master) (Comprehensive) Plan*
 - Master Plans have carried great weight in appellate level court decisions

32 Actual Cases

- Animals:

- Keeping a raccoon in city limits.
- Vicious dog – fence in public r.o.w.
 - Key points:
 - Fenced yard
 - Signs – “Beware of Dog”
 - Fence located in public r.o.w.

33 **Actual Cases**

- Nuisance abatement:
 - An expensive lawn mowing job
 - \$350 fine, plus reimbursing city for cost of mowing.
 - Karl’s whole house abatement.
- Interesting idea
 - 4’ X 8’ sign identifying property owner

34 **Actual Cases**

- Zoning:
 - Operating a “non-permitted” business (Auto repair shop & “salvage yard”)
- Key points:
 - Located in General Business District
 - Permitted uses include:
 - Auto repair shop;
 - Auto storage, but not salvage
 - (Industrial zone permits Auto Salvage & Junk Yards)

35 **Zoning Case - continued**

- Key points:
 - Definition: Junk Yard
 - Place where junk...discarded or salvaged materials are bought, sold, exchanged, stored...or handled, including automobile wrecking yards...but not including...used vehicles in operable condition, used or salvage materials as part of manufacturing operations.
 - Manufacturing not permitted in General Business Zone – has to be in Industrial Zone

36 **Zoning Case...continued**

- Key points:
 - Another definition – Garage, Automotive Repair
 - Any building or premises used for the repair of vehicles for profit. Repair activity shall be conducted in enclosed places or screen(ed) from public view.

37 Zoning Case - continued

- Key points:
 - Prosecution arguments. *
 - Defense arguments. *
 - Testimony & photographic evidence. *

- Defense response to ruling.

38 Questions?

- Good Luck!