



ALAN WILSON
ATTORNEY GENERAL

June 1, 2021

The Honorable Annie E. McDaniel, Member
South Carolina House of Representatives
2247 Kennedy Road
Winnsboro, SC 29180-7520

Dear Representative McDaniel:

You have requested an opinion from this Office regarding the constitutionality of certain sections of the International Property Maintenance Code, which has been adopted by the City of Columbia in its Code of Ordinances. We will address each of your questions below.

LAW/ANALYSIS

Pursuant to the South Carolina Code of Laws, municipalities are empowered to adopt by reference the latest edition of the International Property Maintenance Code ("IPMC"). See S.C. Code Ann. § 6-9-60 (1976 Code, as amended). The 2018 version of the IPMC is the latest edition.

Your first question involves section 107.2 of the IPMC. To provide some background, section 107.1 states that "[w]henver the code official determines that there has been a violation of this code or has grounds to believe that a violation has occurred, notice shall be given in the manner prescribed in Sections 107.2 and 107.3 to the person responsible for the violation . . ." Section 107.2 provides that the notice "shall be in accordance with all of the following:"

1. Be in writing.
2. Include a description of the real estate sufficient for identification.
3. Include a statement of the violation or violations and why the notice is being issued.
4. Include a correction order allowing a reasonable time to make the repairs and improvements required to bring the dwelling unit or structure into compliance with the provisions of this code.
5. Inform the property owner or owner's authorized agent of the right to appeal.

6. Include a statement of the right to file a lien in accordance with Section 106.3.

Section 107.3 provides for a method of service.

You inform us that the Notice of Violation issued by the City of Columbia Code Enforcement Officers to violators of the IPMC does not contain the fourth element of section 107.2, regarding the correction order. You question whether this is a violation of a citizen's constitutional right to due process of law.

Please be aware that this Office does not have the authority of a court to adjudicate or investigate factual questions in a legal opinion. See Op. S.C. Atty. Gen., 1989 WL 406130 (April 3, 1989). However, we can assist you by providing you with the applicable law. The IPMC provides a means of appeal. Pursuant to section 111.1, any person who is directly affected by a code official's decision has the right to appeal in a timely manner to a board of appeals on certain grounds. Section 111.4 states that "[t]he appellant, the appellant's representative, the code official and any person whose interests are affected shall be given an opportunity to be heard." Additionally, section 111.7 provides for court review, stating that "[a]ny person . . . shall have the right to apply to the appropriate court for a writ of certiorari to correct errors of law."

In a November 14, 2019 opinion, this Office explained:

Municipal ordinances must comply with the due process requirements of the South Carolina Constitution. See S.C. Const, Art. I, § 3. The State Constitution grants an individual certain procedural rights in administrative matters:

No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard; nor shall he be subject to the same person for both prosecution and adjudication; nor shall he be deprived of liberty or property unless by a mode of procedure prescribed by the General Assembly, and he shall have in all such instances the right to judicial review.

S.C. Const, art. I, § 22.

Op. S.C. Atty. Gen., 2019 WL 6445343 at 2 (Nov. 14, 2019).

We further opined that “[t]he South Carolina Constitution guarantees the right to judicial review to a person aggrieved by the result of an administrative or quasi-administrative review, which we understand to be distinct from the administrative appeal process . . .” *Id* at 2. We also pointed out that an ordinance “is entitled to a presumption of constitutionality.”¹ *Id* at n.4. We concluded that “a court most likely would conclude that the Ordinance as written does allow for sufficient avenues for appeal.” *Id* at 2.

The IPMC establishes an administrative appeals process for decisions made by code officials. Any person whose interests are affected is given the opportunity to be heard by an appellate board. The IPMC specifically states that an aggrieved person has the right to apply for judicial review. Because the IPMC allows for sufficient avenues for appeal, we believe that a court would find that the omission in a notice of violation of the fourth element of section 107.2 does not rise to the level of a violation of a citizen’s constitutional right to due process of law.

You also have questions regarding the maintenance of exterior property. Section 302.1 of the IPMC provides:

[e]xterior property and premises shall be maintained in a clean, safe, and sanitary condition. The occupant shall keep that part of the exterior property that such occupant occupies or controls in a clean and sanitary condition.

You question whether use of the terms “clean, safe, and sanitary condition” violates due process because they are too vague, either on their face or as applied by the city. You point out that these terms are not defined in the IPMC.

In *State v. Albert*, 257 S.C. 131, 134, 184 S.E.2d 605, 606–07 (1971), the court stated that the following must be considered when determining if a statute is unconstitutionally vague:

The concept of vagueness or indefiniteness rests on the constitutional principle that procedural due process requires fair notice and proper standards for adjudication. The primary issues involved are whether the provisions of a penal statute are sufficiently definite to give reasonable notice of the prohibited conduct to those who wish to avoid its penalties and to apprise judge and jury of standards for the determination of guilt. If the statute is so obscure that men of common intelligence must necessarily guess at its meaning and differ as to its applicability, it

¹ See *Op. S.C. Atty. Gen.*, 2003 WL 21043502 at 1 (Mar. 21, 2003) (quoting *Rothschild v. Richland County Bd. of Adjustment*, 309 S.C. 194, 197, 420 S.E.2d 853, 855 (1992) (“it is well settled that ordinances, as with other legislative enactments, are presumed constitutional; their unconstitutionality must be proven beyond a reasonable doubt.”))

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is unconstitutional. State v. Zwicker, 41 Wis.2d 497, 164 N.W.2d 512, 32 A.L.R.3d 531.

The court, in S.C. Dep't of Revenue, Petitioner, No. 97-ALJ-17-0627-CC, 1998 WL 226372 at 13 (Apr. 15, 1998), added that “[o]ne very practical means of determining whether fair notice has been given is to examine the statute or regulation for the presence of plain language.”

Regarding the interpretation of a statute or ordinance,² our Office has stated:

‘[s]ections which are part of the same statutory law of the State must be construed together. In construing statutory language, the statute must be read as a whole and sections which are part of the same general statutory law must be construed together and each one given effect, if it can be done by any reasonable construction. Statutes pertaining to the same subject matter must be harmonized if at all possible.’ In Interest of Doe. 318 S.C. 527, 531-32, 458 S.E.2d 556, 559 (Ct. App. 1995) (citations omitted).

Op. S.C. Atty. Gen., 2014 WL 3886690 (July 28, 2014) (quoting Op. S.C. Atty. Gen., 2008 WL 3198122 (July 11, 2008)).

A review of the IPMC shows that Section 302 in its entirety addresses exterior property areas and contains several subsections. As you stated in your letter, section 302.1 addresses sanitation. Other subsections are more detailed: section 302.2 concerns grading and drainage; section 302.3 involves sidewalks and driveways; section 302.4 discusses weeds; section 302.5 addresses rodent harborage; section 302.6 concerns exhaust vents; section 302.7 involves accessory structures; section 302.8 discusses motor vehicles; and section 302.9 addresses defacement of property. Reading all of these subsections as a whole, a person of common intelligence has received fair notice of what conditions in an exterior property are not clean, safe, or sanitary. Accordingly, we believe that a court would find that section 302 in its entirety is not unconstitutionally vague on its face. We cannot determine whether or not section 302 is vague as applied by a city, as we do “not have the jurisdiction of a court to investigate and determine facts.” Op. Atty. Gen., 2015 WL 4497734 (July 2, 2015).

You are also inquiring as to whether section 302.8, regarding motor vehicles, is constitutional or whether it has been preempted by state law. Section 302.8 provides:

² In interpreting ordinances, the rules of statutory construction may be applied. Op. S.C. Atty. Gen., 2019 WL 1644874 at 7 (Apr. 8, 2019) (citing Forrester v. Smith & Steele Builders, Inc., 291 S.C. 196, 352 S.E.2d 522 (1987)).

Except as provided for in other regulations, inoperative or unlicensed motor vehicles shall not be parked, kept or stored on any premises, and vehicles shall not at any time be in a state of major disassembly, disrepair, or in the process of being stripped or dismantled. Painting of vehicles is prohibited unless conducted inside an approved spray booth.

Exception: A vehicle of any type is permitted to undergo major overhaul, including body work, provided that such work is performed inside a structure or similarly enclosed area designed and approved for such purposes.

Additionally, section 102.10 of the IPMC states that “[t]he provisions of this code shall not be deemed to nullify any provisions of local, state, or federal law.”

In your letter, you direct us to the Uniform Act Regulating Traffic on Highways (“Uniform Act”), S.C. Code Ann. § 56-5-10 et seq. (1976 Code, as amended), which is exclusively for the operation of vehicles on highways³ and gives local authorities the power to regulate the standing or parking of vehicles on streets and highways.⁴ You also refer us to section 56-3-110 of the South Carolina Motor Vehicle Registration and Licensing Act, which provides that “every motor vehicle . . . operated or moved upon a highway in this state shall be registered and licensed.” S.C. Code Ann. § 56-3-110 (1976 Code, as amended).

You inform us that the Notice of Violation issued for section 302.8 by the City of Columbia Code Enforcement Officers requires the person:

To correct this violation by registering and licensing the vehicle. The vehicle must also be in operable condition or removed from the premise. Upon expiration of this notice if the vehicle is not in compliance or removed from the premise, a summons to appear in court will be issued to the owner of the vehicle or to the homeowner . . .

Although we cannot adjudicate or investigate factual questions,⁵ we can address the constitutionality of section 302.8. The South Carolina Constitution provides that “[t]he structure and organization, powers, duties, functions, and responsibilities of the municipalities shall be

³ See S.C. Code Ann. § 56-5-20 (1976 Code, as amended). There are some exceptions.

⁴ See S.C. Code Ann. § 56-5-710 (1976 Code, as amended).

⁵ See Op. S.C. Atty. Gen., 1989 WL 406130 (April 3, 1989), supra.

established by general law . . .” S.C. Const, art. VIII, § 9. As authorized by the State Constitution, the Legislature granted broad powers to municipalities:

Each municipality of the State, in addition to the powers conferred to its specific form of government, may enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State, including the exercise of powers in relation to roads, streets . . . health . . . in the municipality or respecting any subject which appears to it necessary and proper for the security, general welfare, and convenience of the municipality or for preserving health, peace, order, and good government in it, including . . . the authority to abate nuisances . . .

S.C. Code Ann. § 5-7-30 (1976 Code, as amended).

In addition to the powers granted by section 5-7-30, the Legislature specifically empowered municipalities to enact ordinances relating to the “upkeep of property:”

(1) Any municipality is authorized to provide by ordinance that the owner of any lot or property in the municipality shall keep such lot or property clean and free of rubbish, debris and other unhealthy and unsightly material or conditions which constitute a public nuisance.

(2) The municipality may provide by ordinance for notification to the owner of conditions needing correction, may require that the owner take such action as is necessary to correct the conditions, may provide the terms and conditions under which employees of the municipality or any person employed for that purpose may go upon the property to correct the conditions and may provide that the cost of such shall become a lien upon the real estate and shall be collectable in the same manner as municipal taxes.

S.C. Code Ann. § 5-7-80 (1976 Code, as amended).

In our opinion, a court would find section 302.8 to be constitutional. The Legislature, pursuant to the State Constitution, has equipped municipalities with the power to regulate any subject which appears necessary and proper for the general welfare of the municipality, including the preservation of public health. Municipalities are authorized to enact ordinances relating to the upkeep of private property and to abate nuisances. Nuisances include rubbish, debris, and other unhealthy and unsightly material or conditions. Pursuant to section 302.8, municipalities can prohibit inoperative or unlicensed vehicles on private property in order to promote the health and

welfare of the municipality and to abate nuisances. It is therefore our opinion that a court would find that section 302.8 only gives municipalities the powers which have been authorized by legislative enactment as required by the State Constitution.

You are also asking us to address whether section 302.8 has been preempted by certain sections of the Uniform Act and section 56-3-110. Pursuant to the Uniform Act, municipalities can establish traffic ordinances and regulations which are not in conflict with the Act. See S.C. Code Ann. § 56-5-30 (1976 Code, as amended). As you stated in your letter, the Uniform Act applies exclusively to the “operation of vehicles upon highways.” S.C. Code Ann. § 56-5-20 (1976 Code, as amended). It also grants local authorities the power to regulate the standing or parking of vehicles on streets and highways. S.C. Code Ann. § 56-5-710 (1976 Code, as amended). A highway is defined as “[t]he entire width between boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel is a ‘street’ or ‘highway.’” S.C. Code Ann. § 56-5-430 (1976 Code, as amended).

In your letter, you pointed out that section 56-3-110 requires “[e]very motor vehicle operated or moved upon a highway in this State” to be “registered and licensed.” S.C. Code Ann. § 56-3-110 (1976 Code, as amended). Pursuant to the definitions section, “[s]treet’ or ‘highway’ means the entire width between boundary lines of every way publicly maintained when any part of it is open to the use of the public for vehicular travel.” S.C. Code Ann. § 56-3-20 (1976 Code, as amended).

We do not believe that section 302.8 of the IPMC has been preempted by the Uniform Act or by section 56-3-110. Section 302.8 involves inoperable and unlicensed motor vehicles on private property, while the Uniform Act and section 56-3-100 are applicable to motor vehicles being operated or traveling on public highways and streets. Accordingly, it is our opinion that section 302.8 is not preempted by these state laws.

CONCLUSION

In our opinion, a court would find that the omission in a notice of violation of the fourth element of section 107.2 of the International Property Maintenance Code (“IPMC”), regarding a correction order, does not rise to the level of a violation of a citizen’s constitutional right to due process of law. In addition to an ordinance being entitled to a presumption of constitutionality, the IPMC allows for sufficient avenues for appeal.

We believe that a court would find that section 302 of the IPMC in its entirety is not unconstitutionally vague on its face. We cannot determine whether or not section 302 is vague as applied by a municipality, as we do “not have the jurisdiction of a court to investigate and determine facts.” Op. Atty. Gen., 2015 WL 4497734 (July 2, 2015).

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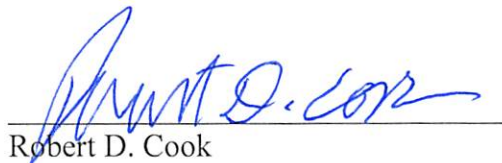
It is our opinion that a court would find section 302.8 of the IPMC, regarding motor vehicles, to be constitutional because it only gives municipalities the powers which have been authorized by legislative enactment as required by the State Constitution. We do not believe that section 302.8 has been preempted by the Uniform Act Regulating Traffic on Highways ("Uniform Act"), S.C. Code Ann. § 56-5-10 et seq. (1976 Code, as amended), or by section 56-3-110.

Sincerely,



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REVIEWED AND APPROVED BY:



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