

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

CITY OF CINCINNATI,	:	APPEAL NO. C-070115
	:	TRIAL NO. 05CRB-38166
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
PAUL WALLPE,	:	
	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.<sup>1</sup>

Following a bench trial, defendant-appellant Paul Wallpe was convicted of failing to comply with a lawful order of Cincinnati's fire chief. Wallpe now appeals.

On August 25, 2005, Captain William Long of the Cincinnati Fire Department, acting upon the authority of the city's fire chief, served upon Wallpe an order that he remove more than 100 tires from the roof of a building located at 2724 Woodburn Avenue. The order directed Wallpe to remove the tires by September 5, 2005.

Wallpe did not remove the tires, so, on September 28, 2005, he was charged with failing to comply with the fire chief's removal order under Cincinnati Municipal Code 1201-47. That ordinance provides, "If, after service of any lawful order from the fire chief, the owner, agent, contractor or other person responsible for the work or violation refuses to comply with such orders or does not comply within the period stated in the order or notice, such failure to comply shall constitute a misdemeanor punishable as provided for in this code."

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<sup>1</sup> See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

In his first assignment of error, Wallpe now argues that Cincinnati Municipal Code 1201-47 violated his right to procedural due process. Wallpe contends that the ordinance provided no opportunity for him to challenge the order of the fire chief before he was subjected to criminal prosecution for failing to comply with the order.

It is well settled that ordinances are entitled to a strong presumption of constitutionality.<sup>2</sup> Any doubt as to the constitutionality of an ordinance must be resolved in favor of its validity.<sup>3</sup>

Under both the Ohio and the United States Constitutions, procedural due process requires an opportunity to be heard where the state seeks to infringe upon a protected liberty or property interest.<sup>4</sup> The opportunity to be heard must occur “at a meaningful time and in a meaningful manner.”<sup>5</sup>

The Cincinnati Fire Prevention Code provides such an opportunity. Under Cincinnati Municipal Code 1201-51, any person affected by an order of the fire chief may appeal the order to the city’s fire prevention board of appeals. The board is authorized to affirm, modify, or reverse the action of the fire chief.

And in this case, the record reflects that on August 25, 2005, Wallpe had been given ten days to comply with the fire chief’s order. Then, on September 28, 2005, Wallpe was charged with failing to comply with the fire chief’s order. Wallpe was not served with the criminal complaint until August 2006. At no time during the one-year period between the order and service of the criminal complaint did Wallpe abate the fire hazard or avail himself of an appeal to the fire prevention board of appeals.

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<sup>2</sup> *State ex rel. Dickman v. Defenbacher* (1955), 164 Ohio St. 142, 128 N.E.2d 59, paragraph one of the syllabus.

<sup>3</sup> *Id.* at 149.

<sup>4</sup> See *State v. Cowan*, 103 Ohio St.3d 144, 2004-Ohio-4777, 814 N.E.2d 846, at ¶8, citing *Boddie v. Connecticut* (1971), 401 U.S. 371, 377, 91 S.Ct. 780.

<sup>5</sup> See *Mathews v. Eldridge* (1976), 424 U.S. 319, 333, 96 S.Ct. 893.

Because Wallpe did not pursue the available appeal remedy, he cannot now contend that he was deprived of procedural due process. We overrule the first assignment of error.

In his second assignment of error, Wallpe argues that Cincinnati Municipal Code 1201-47 is unconstitutionally vague on its face and as applied. But his argument focuses not on Cincinnati Municipal Code 1201-47, which prohibits persons from disobeying an order of the fire chief, but on Cincinnati Municipal Code 1219-63, which compels the fire chief to order the removal of “any substance or device which may be a fire hazard, or which may create danger in case of fire, or which may cause personal injury or loss of life to any person \* \* \*, or which may interfere with the fire force in the exercise of its duty.” Wallpe contends that the code fails to define the term “fire hazard,” leaving individuals to guess about whether they are in violation of the ordinance.

In analyzing a vagueness challenge, a court must determine whether the ordinance (1) gives adequate notice of what is forbidden, and (2) is specific enough to prevent arbitrary or discriminatory enforcement.<sup>6</sup>

Neither Cincinnati Municipal Code 1201-47 nor Cincinnati Municipal Code 1219-63 is unconstitutionally vague. The code adopted the Ohio Fire Code, which provides a common-sense definition of the term “fire hazard.”<sup>7</sup> Wallpe himself testified to the dangers of burning tires. Even if the term had not been defined by the code, at least one Ohio court has held that the term “fire hazard” is a common term, not susceptible to varying definitions.<sup>8</sup> We overrule the second assignment of error.

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<sup>6</sup> *Kolender v. Lawson* (1983), 461 U.S. 352, 357-358, 103 S.Ct. 1855.

<sup>7</sup> Ohio Adm.Code 1301:7-7-02.

<sup>8</sup> *Lebanon v. McClure* (1988), 44 Ohio App.3d 114, 541 N.E.2d 1073.

In his third assignment of error, Wallpe argues that his conviction was against the manifest weight of the evidence and was based upon insufficient evidence. We disagree.

The city presented evidence that Wallpe's tire storage had created a dangerous fire hazard. Not only were the tires themselves a fire hazard in that a burning tire would generate more than twice the British thermal units per pound than wood, but their combined weight could have caused a roof collapse that would have endangered responding firefighters. In addition, burning tires release toxic chemicals into the atmosphere and require specialized equipment and resources to extinguish.

After reviewing the record, we are convinced that the city presented sufficient evidence that Wallpe had failed to comply with a lawful order of the fire chief.<sup>9</sup> And we are not persuaded that the trier of fact lost its way and created a manifest miscarriage of justice when it found Wallpe guilty of the offense.<sup>10</sup> Accordingly, we overrule the third assignment of error and affirm the judgment of the trial court.

Further, a certified copy of this Judgment Entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**HILDEBRANDT, P.J., HENDON and CUNNINGHAM, JJ.**

*To the Clerk:*

Enter upon the Journal of the Court on March 5, 2008

per order of the Court \_\_\_\_\_  
Presiding Judge

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<sup>9</sup> *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52, 678 N.E.2d 541.

<sup>10</sup> *Id.* at 387.