

COMMITTEE ASSISTANT  
MARISA LANCHESTER

STAFF DIRECTOR  
COLIN GRINNELL

CONSULTANTS  
MYRIAM BOUAZIZ  
ANTON FAVORINI-CSORBA  
JIMMY MACDONALD

STATE CAPITOL, ROOM 408  
SACRAMENTO, CA 95814  
TEL (916) 651-4119  
FAX (916) 322-0298

California Legislature  
Senate Committee  
on  
Governance & Finance

MIKE MCGUIRE  
CHAIR

MEMBERS  
JANET NGUYEN  
VICE CHAIR  
  
JIM BEALL  
ED HERNANDEZ  
ROBERT M. HERTZBERG  
RICARDO LARA  
JOHN M. W. MOORLACH

## SENATE COMMITTEE ON GOVERNANCE & FINANCE

March 15, 2017

### *Committee Background*

This background paper prepares the members of the Senate Governance & Finance Committee for the March 15, 2017, informational hearing titled “**Preventing Another Ghost Ship Fire: Reviewing Local and State Regulations to Advance Solutions.**” The hearing will explore several issues relating to the December 2, 2016, fire that occurred at the “Ghost Ship,” an unpermitted warehouse conversion located in the City of Oakland that housed an artist collective and event space. The hearing will also examine local building and fire inspection and code enforcement practices and constraints. The hearing is intended to identify obstacles and possible reforms needed to ensure that local governments in California are properly equipped to inspect buildings and enforce building and fire codes.

To provide context for members of the committee, this paper:

- Describes the statutory framework and general practices for fire inspections, building inspections, and code enforcement;
- Summarizes the factual history of inspections of Ghost Ship and related properties in the City of Oakland and the steps Oakland has taken in the aftermath of the fire; and
- Identifies challenges that Oakland and other jurisdictions throughout the state have faced in their code enforcement and building and fire inspection programs.



## **State Codes, Local Practices**

***Building Codes Regulated at State Level.*** The California Building Standards Code (Title 24 of the California Code of Regulations) contains building standards and regulations as adopted by the California Building Standards Commission. These standards include, among other requirements, structural standards for building safety (the Building Code), fire safety standards (the Fire Code), energy efficiency standards (the Energy Code), and standards for green buildings (CalGreen).

The Building Standards Code is updated on a three year cycle—the most recent update occurred in 2016. Building and fire codes in California are typically developed and adopted according to the following process:

- A model code is developed by a national organization.
- The California Building Standards Commission then adopts that model code, with any amendments specific to California. In the case of the California Fire Code, the State Fire Marshal (SFM), with the advice of the State Board of Fire Services—composed of representatives from relevant state agencies, fire chiefs, firefighters, the insurance industry, and local governments—recommends standards for adoption.
- Local agencies in California then enact an ordinance to adopt the codes. Those ordinances may include amendments that are more stringent than the state codes, if the local governing body makes findings that the amendments are necessary because of local climatic, geological, or topographical conditions.

New construction and improvements to existing buildings must comply with the current building codes, and improvements to an existing building may trigger additional code upgrades for other parts of a building.

***Code Enforcement Procedures and Tenant Protections.*** Buildings are considered substandard under state law if a violation of building standards results in any of the following conditions:

- Inadequate sanitation;
- Structural hazards;
- Nuisances;
- Unsafe or inoperable wiring, plumbing, or mechanical equipment;
- Faulty weather protection;
- Other fire, health or safety hazards.

Various local officials may be delegated responsibilities for ensuring compliance with building standards. Local building officials generally enforce structural building standards, and fire departments and districts ensure compliance with fire safety, at the direction of the agency's fire chief. Code enforcement officers investigate compliance with zoning codes, land use regulations, and other nuisances.

To identify a violation, local officials must generally secure access to the property with the consent of the property owner, or must be able to identify violations from outside the property without extraordinary effort. With probable cause, local officials can secure an inspection warrant to enter a property without the owner's consent.

Under state law, when violations are reported by complainants or otherwise discovered, a local official sends the owner a notice of the deficiency. Except in cases of imminent danger, the officials then give the owner at least thirty days to correct the violation (60 days in the case of residential buildings). If violations remain uncorrected, the code officials may hold an administrative hearing and pursue fines or liens on the property. In cases involving recalcitrant owners, a code enforcement agency may seek a receivership for the property or may ask the district attorney or city attorney to file criminal charges.

A court may order additional remedies for substandard residential buildings, including payment of relocation benefits if necessary repairs to remedy a violation make the building uninhabitable by tenants. These relocation benefits must include:

- Actual reasonable moving and storage costs, such as transit costs, setup costs, and costs associated with damage to the tenant's property;
- Relocation compensation, defined as the difference between the rent and the fair market value of a unit of comparable size within the area for the period that the unit is being repaired (not to exceed 120 days).

The benefits provided under state law are eligible only to lawful tenants. However, local ordinances may provide for additional relocation benefits.

***State Law Mandates Some Inspections.*** State law mandates inspections of four categories of buildings for fire-related building standards and other regulations of the SFM: K-12 schools (both public and private); multifamily dwellings and other buildings with multiple sleeping quarters such as hotels; high-rise buildings, defined as buildings where the highest usable floor area is 75 feet above ground level; and detention facilities such as jails and prisons. Local fire chiefs are responsible for performing these inspections, but a fire chief or the governing body of a local agency may request that the SFM perform the inspections. The SFM may bill the local agency for the cost of performing those inspections.

Outside of the mandated building types, local officials exercise discretion over how to perform inspections and at what frequency. For example, commercial buildings that are not classified as high-rises are not required by state law to be inspected at any frequency. Some jurisdictions, such as the City of Oakland, have established a program for inspecting commercial buildings. Others, such as the City of Sacramento, have developed programs to monitor vacant buildings.

Oversight of local fire and building inspection programs and code enforcement activities resides at the local level; neither the SFM nor any other state agency reviews whether a local

government is completing its mandated inspections. Similarly, no state agency reviews whether local agencies are appropriately addressing the fire and safety risks in their communities, although the National Fire Protection Association promulgates voluntary best practices for fire officials to follow in performing their duties.

***Local Funding of Inspections and Code Enforcement.*** Local governments fund their building and fire inspections and code enforcement processes through a variety of mechanisms. Fees often fund a significant portion of fire and building inspections. State law allows the local agency responsible for fire inspections to charge a fee to recover the reasonable cost of providing the service. Building officials charge fees for building permits and can charge for associated costs, which can include inspections.

In addition to fees, some local governments spend local general funds on code enforcement or inspection activities. These funds can be more stable than fee revenues, which can depend on the number of permit applications received or other market forces. At the same time, local general funds are limited and local governments may prioritize other uses of these funds over code enforcement and related activities.

Finally, cost recovery is an important component of local code enforcement efforts. As noted above, local agencies can charge fines to property owners and place liens on property to recover costs associated with abating nuisances or remedying code violations. However, in the short term it can be difficult to compel property owners to pay fines, and liens may not produce revenue until a property is sold. For example, according to a 2014 Alameda County Grand Jury report, the City of Oakland was only able to recover between 43% and 50% of its billed costs for commercial fire inspections in each of two years studied in the report.

## **The Ghost Ship Fire and City of Oakland's Response**

***Description of the Ghost Ship.*** Initially constructed in 1930, the Ghost Ship was a two-story warehouse located in the Fruitvale neighborhood of the City of Oakland. It was purchased in 1988 by its current owner, Chor Nar Siu Ng, who also owns an adjacent empty lot and two nearby properties. In 2013, Ng leased the warehouse to Derrick Almena, who subleased the space to other tenants—artists that lived and worked within the building—at rates significantly below the median Oakland rent. The Ghost Ship was also periodically used for events, including concerts. The parcel was zoned as a warehouse, and neither residential or assembly uses were legally permitted by the city.

***History of Inspections and Complaints Prior to Fire.*** Records released by the City of Oakland show that the Oakland Building and Planning Department documented 39 code enforcement inspections and 10 code enforcement complaints of the warehouse and the adjacent vacant lot between 2004 and 2016. Other city departments had also responded to calls at these addresses as

well, including 19 calls to the Police Department and three emergency medical services calls to the Fire Department.

***Fire on December 2, 2016.*** Late on the night of December 2, 2016, the Oakland Fire Department responded to a 911 call reporting a fire at the Ghost Ship. At the time of the fire, a concert was in progress on the second story of the Ghost Ship, attended by approximately 50 people. The fire resulted in the deaths of 36 individuals by smoke inhalation—the highest death toll for a structural fire in the United States in over ten years.

Following the fire, the Alameda County District Attorney began a criminal investigation into the fire. Lawsuits alleging responsibility for the fire were also filed against numerous parties, including the City of Oakland, Alameda County, the owner of the building, the lessee, and the promoter of the concert. At the time of this hearing, those investigations and lawsuits are pending.

***City of Oakland's Response.*** The City of Oakland has taken several steps in response to the fire, and its efforts are ongoing. These steps include enacting an emergency ordinance that enhanced tenant protections from evictions related to code violations. Among other things, the emergency ordinance:

- Increases relocation payments for tenants displaced for code compliance repairs to more closely match the current cost of housing in Oakland and provides additional payments to low income, elderly, disabled, or minor children tenants;
- Expands eligibility for relocation payments to include tenants living in non-compliant units and tenants who are displaced because a property owner proactively corrects a potential code violation; and
- Enhances penalties and remedies for property owners that fail to make relocation payments.

In addition, the Oakland Mayor issued an executive order directing applicable city departments to take several actions with the goal of enhancing safety within unpermitted spaces while reducing the risk of displacement, including to:

- Require, within 60 days, property owners to enter into plans to fix code violations at buildings that are not permitted for residential occupancy and otherwise do not comply with fire, building, and zoning codes;
- Identify budgetary and other resources available to legalize non-conforming residential units that house vulnerable community members;
- Review ordinances to identify changes that strengthen tenant protections and avoid displacement of occupants of non-conforming buildings;

- Charges the City's Fire Safety Task Force, established in the immediate aftermath of the fire, to promptly complete its efforts to: (1) develop and conduct a Community Risk Assessment and Risk Reduction Plan; (2) assess the performance of the city's fire prevention program; and (3) improve sharing of data across city departments.

## **Jurisdictions Throughout California Face Code Compliance Challenges**

While the Ghost Ship fire was the single deadliest U.S. fire in recent years, other cities in California have faced challenges carrying out effective inspection programs and ensuring fire and building code compliance in their jurisdictions. These challenges have been documented in grand jury reports, audits, and news investigations; some key examples are highlighted below.

***City of Los Angeles Illegal Garage Conversions.*** In 1997, a spate of eight deaths in three months occurred in the City of Los Angeles due to fires occurring in illegal conversions of garages to housing units. These deaths prompted the City of Los Angeles to investigate ways to ensure the safety of what was estimated to be between 50,000 and 100,000 illegal dwelling units. Cost was among the obstacles identified by the city at the time; the Building Department estimated that it would cost approximately \$27 million to inspect and permit all garages in the City.

Los Angeles continues to grapple with these issues. A 2015 report to the City Council's Housing Committee noted that over 5 years, the City cited 2,560 illegal dwelling units. Only 12% of those units were able to be converted to legal units. The report recommended changes including:

- Assist property owners in achieving compliance by allowing anonymous inquiries about the legal status of housing units, temporary pauses in enforcement actions for owners actively seeking legalization, and helping owners estimate the costs of legalization for their particular unit;
- Establish a path to legalizing non-conforming units by offering density bonuses to property owners that dedicate a portion of the units for affordable housing;
- Include a sunset date for the legalization process;
- Protect tenants by: (1) extending rent stabilization to newly legalized units, (2) temporarily prohibiting no fault evictions before a property owner applies to legalize a unit, and (3) barring owners from passing the cost of rehabilitation onto tenants; and
- Protect neighbors by offering opportunities for input and restricting the age of units that can utilize a path to legalization.

A draft ordinance implementing the report's recommendations is pending in the Los Angeles City Council Housing Committee and Planning and Land Use Management Committee.

***San Francisco Apartment Fires.*** From September 2014 to June 2016, San Francisco experienced 20 major fires and 119 smaller ones in multi-family dwellings, mostly centered around the Mission District. These fires caused 10 deaths, over \$40 million in property damage, and the displacement of over 500 residents. Responding to these incidents, the Civil Grand Jury for the City and County of San Francisco investigated the practices of the San Francisco Department of Building Inspection and Fire Department. The Grand Jury found that these departments were not completing all inspections of residential buildings within the mandated timeframes, leading to inspection backlogs. According to the report, both departments also failed to ensure that all fire safety violations are corrected in a timely manner.

Prior to the release of the Grand Jury report, in June 2015 the San Francisco Board of Supervisors enacted an ordinance forming an Emergency Interagency Fire Safety Task Force to review and make recommendations to improve fire safety in multi-unit residential and multi-use buildings. That task force produced a report in January 2016 that recommended, among other suggestions, requiring property owners to disclose fire safety information to residents of multi-family dwellings and to install certain fire protection measures in attics when applying for permits for improvements of greater than \$20,000 in estimated job cost.

***City of Sacramento Audit of Fire Prevention Program.*** A 2012 city audit found several shortcomings with the City of Sacramento's fire prevention program during fiscal year 2010-11. In particular, the audit found no evidence of fire inspections for 51 of 87 types of permits required by state or local laws and that the city therefore may not be performing all of those required inspections. One of the permit types with no recorded inspections were artist live-work spaces. In its response to the audit, the City's Fire Chief noted that work to address the issues raised by the audit was ongoing and was expected to be completed within 12 months.

***Other Illegal Dwellings and Event Spaces.*** As a result of the Ghost Ship fire, other cities in California and across the nation are more closely examining illegal occupancies—particularly of unpermitted event spaces and live-work buildings—including San Francisco, Los Angeles, San Diego, Dana Point, Nashville, Philadelphia, Dallas, Austin, Indianapolis, New Haven and Dubuque.

***Code Enforcement Practices in Placer County Incorporated Cities.*** Although not prompted by any incidents, in 2016 the Placer County Grand Jury examined code enforcement policies and procedures for the six incorporated cities within the County and found significant variation in code enforcement processes. In particular, four of the six cities lacked written code enforcement procedures. However, in their response to the Grand Jury report, these four cities noted that they had established or would establish written code enforcement procedures.