

*H. M. O'Brien*  
Assistant City Attorney

1242  
1143  
ORDINANCE NO. 6501 C.M.S.

AN ORDINANCE AMENDING SECTIONS 102, 201, 211, 301.1, 301.2, 301.3 AND 401.6 OF, ADDING SECTION 201.1 TO, AND REPEALING SECTION 212 OF, THE OAKLAND HOUSING CODE TO ENLARGE THE DUTIES AND POWERS OF THE HOUSING ADVISORY AND APPEALS BOARD WITH RESPECT TO APPEALS AND PROTESTS THERETO; REVISING THE PROCEDURE WITH RESPECT TO THE DECLARATION OF A BUILDING AS SUBSTANDARD OR UNSAFE BY PROVIDING FOR HEARINGS BEFORE SAID BOARD UPON SAID ISSUE, MAKING SAID BOARD'S ACTION FINAL, LIMITING THE PERIOD IN WHICH AN AGGRIEVED PROPERTY OWNER MAY APPLY TO THE COURTS, AND AFFORDING LIENHOLDER RIGHT TO MAKE IMPROVEMENTS UPON DEFAULT OF OWNER.

BE IT ORDAINED by the Council of the City of Oakland as follows:

SECTION 1. Sections 102, 201, 211, 301.1, 301.2, 301.3 and 401.6 of the Oakland Housing Code are hereby amended to read respectively as follows:

SEC. 102 SCOPE OF CODE. The requirements of this Code are applicable to any and all new or proposed residential building construction, and to all existing residential buildings as defined herein to the extent that such requirements may be applied to existing buildings under applicable law.

SEC. 201 CREATION-MEMBERSHIP. There is hereby created a Housing Advisory and Appeals Board to consist of five (5) members who are residents of the City of Oakland and are qualified by training and experience to pass upon matters pertaining to housing and health, safety and welfare of the public and none of which may be a public employee. Matters pertaining to housing to be brought before this Board shall be concerned with occupancy, use, arrangement of rooms, light and ventilation, sanitation and maintenance of residential buildings. The Board shall exercise its powers on these matters in such manner that the public welfare is secured and substantial justice done most nearly in accord with the intent and purpose of this code.

The members of said Board shall be appointed by the Council upon nomination by the Mayor, or by any three (3) members of the City Council and each member shall hold office for four (4) years, or until his successor is appointed and qualified; provided, however, that those first appointed shall so classify themselves by lot that their several terms shall expire two at the end of one year, and one each after two, three, and four years respectively, from the date this ordinance

becomes effective. Each member of said Board shall qualify by taking and filing the oath prescribed by Section 18 of the Charter.

SEC. 211 Appeals. At any time prior to the giving of the first official notice, the property owner, the person in control of the premises, or the Department, may appeal to the Housing Advisory and Appeals Board on subjects coming within the Board's jurisdiction. The appeal shall be made in writing and filed at the office of the Board. The decision of said Board shall be final and conclusive.

SEC. 301.1 GENERAL. Whenever the Executive Director of Urban Renewal determines by inspection that an existing residential building has become substandard or unsafe, he shall institute proceedings to declare such building to be substandard or unsafe, and to cause the repair or rehabilitation of the building, or if such repairs or rehabilitation are impracticable, then he shall order the building vacated and demolished in the manner hereinafter provided.

SEC. 301.2 NOTIFICATION. ORDER TO COMPLY OR SHOW CAUSE. HEARING. RIGHTS OF LIENHOLDERS. LIMITATION ON RIGHT TO APPLY TO COURT. The Executive Director of Urban Renewal Department shall give official notice in writing to the owner of a substandard residential building, or an unsafe building, or to any person in control of the building, specifying the inadequacies and hazards contained therein. He shall in said official notice fix the time and place of a hearing before the Housing Advisory and Appeals Board where said owner, or person in control, may show cause, if any he has, why said building should not be declared a substandard residential building, or an unsafe building. Said notice shall further advise said property owner, or person in control, that if he does not so appear and show cause, said structure shall be declared a substandard residential building or unsafe building. Said official notice shall likewise be given to any mortgagee or beneficiary under any deed of trust of record. Said notice to said owner, or person in control, and to any mortgagee or beneficiary under a deed of trust of record shall be given as hereinafter set forth.

The Housing Advisory and Appeals Board at the time and place fixed for such hearing shall hear said matter and shall (1) find and determine and declare that said building is, in fact, a substandard residential building or an unsafe building, or both; and thereupon determine what, if any, of the specified inadequacies or hazards which render the building a substandard residential building or unsafe building must be corrected or abated to render said building standard and safe; or (2) find and determine that said building is neither a substandard residential building nor an unsafe building. Said hearing shall be conducted pursuant to the rules and regulations of the Board.

The Housing Advisory and Appeals Board shall render its decision in writing and shall give official notice thereof to all interested persons appearing at said hearing. A copy of a decision declaring a building substandard or unsafe shall

be posted upon said building.

If the Housing Advisory and Appeals Board finds and determines that said building is a substandard residential building or unsafe building it shall include in its aforementioned notice of decision an order to correct or abate all of the conditions rendering the building substandard or unsafe by the closing or repair of said building within thirty (30) days after the date of the mailing and posting of such notice of its said decision. If such building is encumbered by a mortgage or deed of trust of record and the owner, or person in control of the building, has not complied with the order of said Housing Advisory and Appeals Board within a period of thirty (30) days after the mailing and posting of said notice of said decision, the mortgagee or beneficiary under such deed of trust may, within a period of fifteen (15) days after the expiration of said thirty-day period, comply with the requirements of the decision of said Board, in which event the cost to such mortgagee or beneficiary shall be added to and become a part of the lien secured by said mortgage or deed of trust and shall be payable at the same time and in the same manner as may be prescribed in said mortgage or deed of trust for the payment of any taxes advanced or paid by said mortgagee or beneficiary for and on behalf of said owner.

Any owner or other interested person having any objections or feeling aggrieved at any proceedings taken by the Executive Director of Urban Renewal, or the Housing Advisory and Appeals Board, must bring an action in a court of competent jurisdiction within thirty (30) days after the posting of the decision of said Board, upon said building, otherwise all objections will be deemed to have been waived.

If the decision of said Board shall not have been complied with on or before the expiration of forty-five (45) days after the mailing and posting of the notice of said decision the Executive Director of the Department of Urban Renewal shall order the building immediately vacated and may institute appropriate action or proceedings to correct or abate the conditions. Disobedience of said order of said Executive Director to vacate said premises shall constitute a separate misdemeanor for each and every day said violation shall continue. In addition to the punishment provided by law, the person found guilty of violating said order to vacate shall be liable for all costs, expense, and disbursements paid or incurred by the Director in the prosecution of the violation as shall be fixed by the Court in which the violation is prosecuted.

SEC. 301.3 OFFICIAL NOTICE--HOW GIVEN.  
Any official written notice required by the provisions of this Code, unless it is herein otherwise specifically provided, shall be given in the following manner:

The Department of Urban Renewal shall personally serve, or shall send one copy of the official notice by certified mail, postage prepaid, to the person owning the land on which the building is located, or to any person in control of said building, as such person's name and address

appear on the last equalized assessment roll, or as known to the City Clerk, and if such address is unknown to the Department of Urban Renewal then said fact shall be stated in said copy so mailed and it shall be addressed to him at the City of Oakland. Service by mail shall be deemed completed at the time of deposit in the United States mail.

The Department shall likewise personally serve, or shall send one copy of the official notice by certified mail, postage prepaid, to any mortgagee or beneficiary under any deed of trust of record at the last known address of such mortgagee or beneficiary.

At the time of giving the official notices mentioned in the paragraphs immediately preceding, the Executive Director of Urban Renewal upon giving notices as aforesaid shall file an affidavit thereof with the City Clerk certifying to the time and the manner in which such notices were given. In the event the Housing Advisory and Appeals Board finds and determines said building to be substandard or unsafe he shall file with the office of the County Recorder a certificate to that effect, and that the owner thereof has been so notified.

The failure of any owner or other person to receive any official notice shall not affect in any manner the validity of any proceedings taken thereunder.

After all required corrections to a substandard residential building or an unsafe building have been made, or said building demolished, the Executive Director of Urban Renewal shall file with the office of the County Recorder a certified copy of a Certificate of Occupancy, or a certified copy of a Termination of Notice, as the case may be.

SEC. 401.6 FIRE HAZARD. Fire hazard means any thing or any act which increases or may cause an increase of the hazard or menace of fire to a greater degree than that customarily recognized as normal by persons in the public service of preventing, suppressing, or extinguishing fire, or which may obstruct, delay, or hinder, or may become the cause of an obstruction, a delay, or a hindrance to the prevention, suppression or extinguishment of fire.

SECTION 2. Section 201.1 is hereby added to the Oakland Housing Code to read as follows:

SEC. 201.1 DUTIES. POWERS. The duties of the Housing Advisory and Appeals Board shall be as follows:

1. To consider written appeals and protests concerning the provisions of this Code.

2. To exercise all necessary powers in proceedings to abate as a nuisance vacated dangerous and unsafe buildings and structures by the removal or demolition thereof.

3. At any time, in exceptional cases where it is impractical or physically impossible to comply with the strict letter of this Code, and in order to provide for reasonable

interpretation of the provisions thereof, upon the written application of the property owner, the Department, or any person in control of the premises, to grant variances from the strict requirements of this Code; and

4. To determine whether a residential building is in fact a substandard residential building, and/or an unsafe building, within the meaning of said terms in this Code.

SECTION 3. Section 212 of the Oakland Housing Code is hereby repealed.

Said Sections 102, 201, 211, 301.1, 301.2, 301.3 and 401.6 now read as follows: "Sec. 102. Scope of Code. The requirements of this Code are applicable to any and all new or proposed residential building construction, and all existing residential buildings as defined herein. Sec. 201. CREATION-MEMBERSHIP. In exceptional cases where it is impractical or physically impossible to comply with the strict letter of this Code, and in order to provide for reasonable interpretations of the provisions of this Code, there is hereby created a Housing Advisory and Appeals Board to consist of five (5) members who are residents of the City of Oakland and are qualified by training and experience to pass upon matters pertaining to housing and health, safety and welfare of the public and none of which may be a public employee. Matters pertaining to housing to be brought before this Board shall be concerned with occupancy, use, arrangement of rooms, light and ventilation, sanitation and maintenance of residential buildings. The Board shall exercise its powers on these matters in such manner that the public welfare is secured and substantial justice done most nearly in accord with the intent and purpose of this code. The Board shall exercise all necessary powers in proceedings to abate as a nuisance vacated dangerous and unsafe buildings and structures by the removal or demolition thereof. The members of said Board shall be appointed by the Council upon nomination by the Mayor, or by any three (3) members of the City Council and each member shall hold office for four (4) years, or until his successor is appointed and qualified; provided, however, that those first appointed shall so classify themselves by lot that their several terms shall expire two at the end of one year, and one each after two, three, and four years respectively, from the date this ordinance becomes effective. Each member of said Board shall qualify by taking and filing the oath prescribed by Section 18 of the Charter. Sec. 211. Appeals. Any person or persons may appeal and shall be apprised of his right to appeal to the Housing Advisory and Appeals Board on subjects coming within the Board's jurisdiction, provided the appeal is made in writing and filed at the office of the Board, within ten (10) days after notice of any protested decision or action made pursuant to this Code. Compliance with a notice of violation shall not be required pending an appeal with the following exception: Exception: Whenever the

Director of the Department of Urban Renewal, or his duly authorized representative, finds that there exists an emergency requiring immediate correction to protect the safety or well being of any occupant of a residential building or the public, he may issue a notice of violation reciting the existence of an emergency and requiring such action as necessary be taken to correct the violations. SEC. 301.1 GENERAL. Whenever the Executive Director of Urban Renewal determines by inspection that an existing residential building has become substandard or unsafe, he shall institute proceedings to cause the repair or rehabilitation of the building, or if such repairs or rehabilitation are impracticable, then he shall order the building immediately vacated and demolished in the manner hereinafter provided. SEC. 301.2 NOTIFICATION. The Executive Director of Urban Renewal shall give official notice in writing to the owner of an unsafe building or a substandard residential building, or to any person in control of the building, specifying the inadequacies and hazards contained therein, and shall apprise the owner or person of his right to appeal. Within ninety (90) days after such official notice is given, the owner or his agents shall obtain the necessary permits and shall physically commence the elimination of the specified inadequacies and hazards, or shall cause the building to be vacated. If such official notice shall not have been complied with, on or before the expiration of one hundred twenty (120) days after official notice is given, the Executive Director of Urban Renewal shall order the building immediately vacated and institute appropriate action or proceedings to correct or abate the conditions. SEC. 301.3 OFFICIAL NOTICE - HOW GIVEN. Any official written notice required by the provisions of this Code, unless it is herein otherwise specifically provided, shall be given in the following manner: The Department of Urban Renewal shall personally serve, or shall send one copy of the official notice by certified mail, postage prepaid, to the person owning the land on which the building is located as such person's name and address appear on the last equalized assessment roll, or as known to the City Clerk, and if such address is unknown to the Department of Urban Renewal then said fact shall be stated in said copy so mailed and it shall be addressed to him at the City of Oakland. Service by mail shall be deemed completed at the time of deposit in the United States mail. Provided, however, that at least one copy of that notice given by the Department of Urban Renewal which declares the building to be, in fact, unfit, unsafe and substandard, and declares it to be vacated forthwith, shall be sent to the person owning the land on which the building is located as stated above, and one copy of the official notice shall be sent by certified mail, postage prepaid, to any mortgagee or beneficiary under any deed of trust of record at the last known address of such mortgagee or beneficiary, and one copy shall be posted conspicuously on said building. At the time of giving the official notice mentioned in the paragraph immediately preceding, the Executive Director of Urban Renewal upon giving notice as aforesaid shall file an affidavit thereof with the City Clerk certifying to the time and in the manner in which such notice was given, and shall also file with the office of the County Recorder a certificate that the building described is an unsafe building or a substandard residential building and that the owner thereof has been so notified. The failure of any owner or other person to receive

any official notice shall not affect in any manner the validity of any proceedings taken thereunder. After all required corrections to a substandard residential building have been made, the Executive Director of Urban Renewal shall file with the office of the County Recorder a certified copy of the Certificate of Occupancy. Sec. 401.6 Family. One or more persons related by blood or marriage, or a group of not more than five persons (excluding servants) who need not be related by blood or marriage living together in a dwelling unit. Fire Hazard. Any building, device, appliance, apparatus, equipment, tank, vehicle, combustible waste, fence, or vegetation which under the regulations of the Oakland Fire Department is in such condition as to cause a fire or explosion or provide a ready fuel supply to augment the spread and intensity of fire or explosion arising from any cause."

IN COUNCIL, OAKLAND, CALIF., JAN 2 1962, 19      

PASSED BY THE FOLLOWING VOTE:

CHIALVO, EANGE, MAGGIORA, MAROVICH, McKEEN, OSBORNE, READING, RILEA,  
AYES ~~CHIALVO, EANGE, MAGGIORA, MAROVICH, McKEEN, OSBORNE, READING, RILEA,~~  
~~CHIALVO, EANGE, MAGGIORA, MAROVICH, McKEEN, OSBORNE, READING, RILEA,~~  
AND PRESIDENT ~~CHIALVO~~ HOULIHAN 9

NOES None  
ABSENT None

ATTEST: *[Signature]*  
MAYOR OF THE CITY OF OAKLAND, CALIF.

ATTEST: *[Signature]*  
CITY CLERK AND CLERK OF THE COUNCIL  
OF THE CITY OF OAKLAND, CALIF.



**CITY OF OAKLAND**  
**Inter-Office Letter**

To: City Manager's Office Attention: Wayne E. Thompson Date December 18, 1961

From: Building and Housing Department

Subject: PROPOSED HOUSING CODE ORDINANCE AMENDING CERTAIN SECTIONS OF CHAPTER 2, HOUSING ADVISORY AND APPEALS BOARD; CHAPTER 3, ENFORCEMENT - VIOLATIONS - RESPONSIBILITY; AND CHAPTER 4, DEFINITIONS.

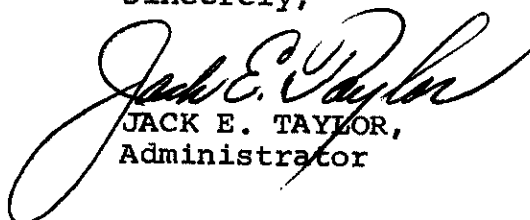
Dear Mr. Thompson:

The Superior Court case of Smith v. City of Oakland (Portland Hotel) ruled that the Housing Code does not substantially comply with the procedural provisions contained in the Health and Safety Code of the State.

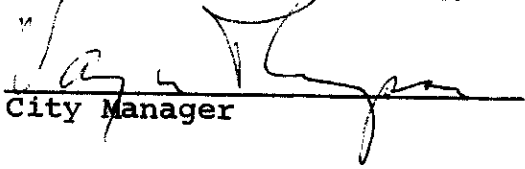
As a result of the Court's decision the proposed ordinance repeals certain sections, enlarges the duties and powers of our Housing Advisory and Appeals Board by providing for hearings at which the final determination is made whether a residential building is substandard or unsafe. It limits the period in which an aggrieved property owner may apply to the Courts, and affords a lienholder the right to make building improvements upon default of the owner.

The additional duties and responsibilities have been explained to the Housing Advisory and Appeals Board with their approval. As the proposed ordinance amending the present ordinance, considered invalid by the Court, provides for the due process of law, it is recommended that it be presented to the City Council for review and action.

Sincerely,

  
JACK E. TAYLOR,  
Administrator

FORWARD TO CITY COUNCIL:

  
City Manager

JET:jr

cc: File

CITY OF OAKLAND  
BUILDING AND HOUSING DEPARTMENT

JACK E. TAYLOR, ADMINISTRATOR  
OAKLAND 12, CALIFORNIA

December 18, 1961

CR 3-3991

TELEPHONE 2-3500  
EXT. 541

CITY HALL

HOUSING ADVISORY AND APPEALS BOARD

EARL W. SMITH  
CHAIRMAN

ALFRED THOMAN  
VICE-CHAIRMAN

CLINTON W. WHITE

MARGO MARGOSSIAN

DAVID L. FOULKES

—  
ENRICO LABARBERA  
SECRETARY

HONORABLE JOHN C. HOULIHAN AND  
MEMBERS OF THE OAKLAND CITY COUNCIL

Gentlemen:


As a result of a recent Superior Court final judgment, it has been brought to the attention of the Housing Advisory and Appeals Board on several occasions that the Housing Code would have to be amended to substantially comply with the State Health and Safety Code procedural provisions.

The Board has been fully informed of their added responsibilities provided in the proposed amendments and will accept the enlarged duties and powers in accordance with the Board's Rules of Procedure.

The Board realizes that the added duties will be time consuming, and experience may prove that extra meetings or additional members may be required in order to meet its obligations. The Board respectfully desires to reserve the right to request your assistance if necessary.

At their last regular meeting held on December 14, the Board unanimously recommended that the City Council adopt the proposed amendments and additions to the Housing Code.

Sincerely,

  
ENRICO LABARBERA, Secretary  
Housing Advisory and Appeals Board

EL:bjd