

Adoption of the 2007 California Building Standards
Board of Supervisors Agenda: November 6, 2007

Attorneys and Property Owners Note the (we noted in red) new wording below in direct conflict with the California Building Code Statute 108.8:

2. Strike-through Ordinance, including annotation and required findings, **repealing** Chapter 12.10 of the Santa Cruz County Code and adopting replacement Chapter 12.10-Building Regulations.
3. Clean copy of the Ordinance repealing Chapter 12.10 of the Santa Cruz County Code and adopting replacement Chapter 12.10-Building Regulations.
4. Existing Chapter 12.10, to be **repealed and replaced** with the new Chapter 12.10

Exhibit A to Attachment 1
12.10.435 Appeals

All appeals of actions taken pursuant to the provisions of this chapter shall be made in conformance with the procedures set forth in Chapter 12.12. The Building and Fire Code Appeals Board **shall have no authority relative to interpretation of the administrative provisions of this code nor shall the Board be empowered to waive requirements of this code.** (Ord.4389A, 4/2/96)

SECTION III

If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional.

SECTION IV

This Ordinance shall take effect on January 1, 2008. Board of Supervisors.

See Harold Griffith, Paralegal, objection protest letter below. This is a very important on the record letter ignored by the Board of Supervisors in their trail of deceit mismanaging the county and violated our constitutional rights.

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November 5, 2007

Board of Supervisors
County of Santa Cruz
701 Ocean Street, Room 500
Santa Cruz, CA 95060

AGENDA: NOV. 6, 2007 -- ITEM 64: Public Hearing
Subject: Adoption of Santa Cruz County Building Codes

Members of the Board,

Item 64 on the agenda reaches the pinnacle of the type of conscious opposition to the dominant political and ethics of the time that drove Nietzsche over the edge into insanity. On the one hand this proposed local Ordinance purports to embrace "Law and Order" by adopting a set of local laws that have been developed and approved by the State Building Standards Commission but at the same time both the proposed local ordinance and the regulations of the State Building Standards Commission are directly and obviously in conflict with state law. The result is exactly the opposite of the legal concepts of "Rule of Law" and "Due Process of Law". "Rule of Law" requires that the County and its employees follow the law as it is written and states that they have no authority to interpret, define, ignore or disregard the state or local laws as written. "Due Process of Law" requires the laws to be "fair" and "unambiguous". Obviously, if the state law commands the following of one set of rules and a local law and state commission commands the following of a different set of rules, then the law on the subject is ambiguous and unconstitutional. The State Constitution's Article XI **9** 7 states that: "A county or city may make and enforce within its limits all local police, sanitary, and other ordinances and regulations not in conflict with general laws."

It is very obvious that the State law Health & Safety Code **5** 17922 (a) requires that the County of Santa Cruz adopt:

- “(1) The Uniform Housing Code of the International Conference of Building Officials, except its definition of "substandard building."
- (2) The Uniform Building Code of the International Conference of Building Officials.
- (3) The Uniform Plumbing Code of the International Association of Plumbing and Mechanical Officials.
- (4) The Uniform Mechanical Code of the International Conference of Building Officials and the International Association of Plumbing and Mechanical Officials.
- (5) The National Electrical Code of the National Fire

Protection Association.”

It is also very obvious that the proposed Ordinance (Exhibit A to Attachment 1) proposes the adoption of:

12.10.210 2007 California Building Standards Codes adopted by ⁶⁶ Reference.

12.10.211 Application of adopted Building Standards Codes to existing buildings.

12.10.215 2007 California Building Code adopted.

12.10.216 Swimming Pool enclosures amendment of 2007 California Building Code adopted.

12.10.217 Appendix J (Grading) of the 2007 California Building Code adopted.

12.10.225 2007 California Historical Building Code adopted.

12.10.230 2007 California Mechanical Code adopted.

12.10.235 2007 California Plumbing Code adopted.

12.10.240 2007 California Electrical Code adopted.

12.10.245 2007 California Energy Code adopted.

12.10.250 Appendix Chapter A1 of the 2007 California Existing Building Code adopted.”

This list does not include the 2007 California Fire Code.

Additionally, while the state law requires that the codes adopted be produced by the International Conference of Building Officials (ICBO) etc. the proposed codes were, in many cases, produced by the International Code Council (ICC).

The proposed ordinance proposes new fire regulations (page 4 of 193 --0456) that require the exterior of rural buildings to be fire retardant. These regulations didn't seem to work too well in the southern California fires that we have just experienced because 2 rows and rows stucco houses with tile roofs and fire sprinkler systems were burnt to the ground.

The attached ordinance proposes new seismic regulations (page 9- 12) even though no one died in the 1989 earthquake from a structural failure in a dwelling. In addition, the 2007 California Building Code already increases the shear walls, hold downs and foundation requirements. Overkill, on top of overkill, and regulations for the sake of regulations seems to be standard. Is this kind of over wasteful regulation necessary in “green” Santa Cruz?

This Ordinance proposes, on page 6 (0467) of Exhibit A to attachment 1 (under

12.10.2 1 5 2007 California Building Code adopted),

(b) Administrative amendment - Appeals Board. Section 108.8 of the California Building Code, entitled “Appeals Board”, is deleted. (See Chapter 12.1 2 and Chapter 2.100 of the Santa Cruz County Code.)

But Health and Safety Code § 17920.5 and § 17920.6 state:

17920.5. As used in this part “local appeals board” means the board or agency of a city or county which is authorized by the governing body of the city or county to hear appeals regarding the building requirements of the city or county. In any area in which there is no such board or agency, “local appeals board” means the governing body of the city or county having jurisdiction over such area.

17920.6. As used in this part, “housing appeals board” means the board or agency of a city or county which is authorized by the governing body of the city or county to hear appeals regarding the

requirements of the city or county relating to the use, maintenance, and change of occupancy of hotels, motels, lodginghouses, apartment houses, and dwellings, or portions thereof, and buildings and structures accessory thereto, including requirements governing alteration, additions, repair, demolition, and moving of such buildings if also authorized to hear such appeals. In any area in which there is not such a board or agency, "housing appeals board" means the local appeals board having jurisdiction over such area. Thus it would appear that the State law requires both a "local appeals board" and a "housing appeals board" and the proposed local ordinance is then void, being in conflict with state law, because it requires and permits neither.

This Ordinance proposes, on page 5 (0466) of Exhibit A to attachment 1 (under 12.10.150) Definitions

"**shall**. Shall is mandatory except where it is used to direct a county or other public officer or employee to perform certain acts, in which case it is directory only."

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This redefinition of "shall" to "may" is self explanatory and only serves to highlight the attitude of the County government employees toward the public. It seems obvious from this definition that government employees shall never be required to follow the law but they may do so if they choose to do so. This concept was completely rejected by the California Supreme Court in *Lockyer v. City and County of San Francisco* (2004)

33 Cal.4th 1055. Could someone please explain how this works? All pigs are equal but some are more equal than others? - From the book "1984".

The majority of the rest of the proposed changes to the Santa Cruz County Building Code purport to make changes to the Uniform Codes adopted as are reasonably necessary because of local climatic, geological or topographical conditions.

Health and Safety Code tj 17958.5 states:

17958.5. Except as provided in Section 17922.6, (Noise Control) in adopting the ordinances or regulations pursuant to Section 17958, a city or county may make such changes or modifications in the requirements contained in the provisions published in the California Building Standards Code and the other regulations adopted pursuant to Section 17922 as it determines, pursuant to the provisions of Section 17958.7, are reasonably necessary because of local climatic, geological, or topographical conditions.

For purposes of this subdivision, a city and county may make reasonably necessary modifications to the requirements, adopted pursuant to Section 17922, contained in the provisions of the code and regulations on the basis of local conditions.

17958.7. (a) Except as provided in Section 17922.6, the governing body of a city or county, before making any modifications or changes pursuant to Section 17958.5, shall make an express finding that such modifications or changes are reasonably necessary because of local climatic, geological or topographical conditions. Such a finding shall be available as a public record. A copy of those findings, together with the modification or change expressly marked and identified to which each finding refers, shall be filed with the California Building Standards Commission. No modification or change

shall become effective or operative for any purpose until the finding and the modification or change have been filed with the California Building Standards Commission. modification or change filed by the governing body of a city or county if no finding was submitted.

(b) The California Building Standards Commission may reject a

It is true that Santa Cruz County does NOT have any climatic, geological or topographical conditions which differ significantly from San Francisco, San Jose, Salinas etc. The only purpose of pretending to have significant differences in conditions is to make the planning and building bureaucracy of Santa Cruz County more cumbersome, wasteful and expensive for the potential builder. This larger bureaucracy increases the

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Uniform Building Code adoption

cost of housing even though the County pretends to support low-income and low-cost housing. It is shocking that “green” Santa Cruz County would support such a huge waste of paper and resources to establish meaningless red-tape regulations as these changes in the local building code would produce.

Other things that are especially troubling are found in:

Part IV - AUTHORITY AND ENFORCEMENT. This section of the proposed ordinance is flawed for many reasons.

First of all, the County proposed changes to the codes that are NOT based upon any local, climatic, geological or topographical conditions so these proposed changes are NOT allowed by Health & Safety Code tJ 17958 and are in conflict with Health & Safety 5 5 17980 and 17955.

Second, the California Building Standards Code adopts the California Existing Building Code as the state standard NOT the Uniform Code for the Abatement of Dangerous Buildings as the County proposes but Health & Safety Code tj 17922(a)(1) requires the adoption of the Uniform Housing Code for the regulation of existing buildings.

Third, Section 12.10.4 10 (page 44 of Exhibit A to Attachment 1 and page 0505) misquotes Penal Code 5 836.5 by leaving out the critical phrase “has committed a misdemeanor in the presence of the officer or employee” and so this section is in conflict with state law.

Fourth, 12.10.420 (c) - Right of Entry, is in direct conflict with California Code of Civil Procedure tJ 1822.50 et seq. which allows a search warrant to be issued after permission to inspect has been sought and refked. This local section allows an employee to enter land or dwellings without reasonable cause to inspect to see if a provision of this local code has been violated.

Fifth, 12.10.420 (e) - Occupancy Violations is in conflict with DUE PROCESS rights which require a hearing and prohibit summary abatement. Summary building abatement is unconstitutional.

Sixth, 12.10.420 (f) - Authority to Disconnect Utilities is a violation of constitutional rights. *Village of Willowbrook v. Olech* (2000) 145 L.Ed 2d 1060 – equal protection violation - “spiteful effort to “get” him for reasons wholly unrelated to

any legitimate state objective.” and violation of DUE PROCESS abatement action without a hearing and appeal because summary abatement of a building regulation is illegal.

Seventh, 12.10.420 (g) - Authority to Condemn is in conflict with the standards of the Uniform Housing Code, the California Existing Building Code, Health & Safety Code *ff* 17980 et seq., Health & Safety Code § 17995 and DUE PROCESS of LAW.

Eight, 12.10.420 (f) Liability - is in conflict with the 5th and 14th Amendment to the Constitution of the United States of America and Article I § 7 of the State of California which allow a citizen or person to sue for a violation of a right secured by law.

Also, the local laws are void when a state law can be made applicable - Article IV §

16(b) of the State Constitution. Government Code § 820 et seq. is operative where the liability of a public employee is concerned so this local section is void.

Nine, 12.10.425 et seq. Abatement of Structural and Geologic Hazards etc. is

illegal because it conflicts with state law - Health & Safety Code § 17922(a)(1) which requires the adoption of the Uniform Housing Code, not the Uniform Code for the Abatement of Dangerous Buildings, and a local law is void when a state law can be made applicable - Article IV § 16(b). Thus, all of the sections of the proposed ordinance section 12.10.245 and subsections a to o, are void being in conflict with state laws.

Ten, 12.10.430 Violations is void being in conflict with state law - Article XI § 7

and a local law is void when a state law can be made applicable - Article IV § 16(b).

Health and Safety Code § 17995 prescribes the penalties for violations of building laws.

Eleven, the rules for building and fire board appeals are found in the California Building Code and California Fire Code so local rules on the subject are void.

Twelve, 19.0 1.070 the local rules that allow the Planning Department to place a red-tag or a “Notice of Violation” on a property are illegal because summary abatement of a violation is illegal and the local county process does not allow for a hearing before property is “taken” (recordation) in violation of both state and federal Constitutions.

Also, Health & Safety Code section 17922 states:

(9) A local ordinance may not permit any action or proceeding to abate violations of regulations governing maintenance of existing buildings, unless the building is a substandard building or the violation is a misdemeanor.

Since Santa Cruz County does not declare a building to be substandard pursuant to Health & Safety Code section 17920.3, then violations must be prosecuted as misdemeanors.

Is someone guilty of a misdemeanor before a trial is held to determine guilt? How can the County place a “Notice of Violation” on a person’s property title until a trial is held?

The whole Santa Cruz County code enforcement system is in conflict with state law - Health & Safety Code section 17922, 17980 et seq. and 17995. The County building code enforcement program is in conflict with the Penal Code and the presumption of innocence, fourth amendment, fifth amendment, and fourteenth amendment.

Conclusion

It is truly amazing that County planning and building employees get compensated with huge salaries which are way beyond the pay their counter parts in private enterprise

receive. County employees get pensions benefits that are rare in the private sector. County employees get over 1/4'h of the year off - with pay. County employees receive health coverage that almost no one in private employment receives. At the same time County employees seem to know so little about construction or planning law. It is also amazing that Santa Cruz County has one of the largest planning departments in the state but has one of the smallest geographical areas in the state. These employees haven't read the State law, don't follow the State law and it seems that they think they are above the law or should be above the law. Are the citizens supposed to respect them? Are we supposed to respect a Board of Supervisors who can't supervise their own employees? I propose that the Board of Supervisors reject this local Ordinance in its entirety and let the Health & Safety Code *Section 17958* automatically adopt the same requirements as those adopted by the State Building Standards Commission. Since the State Building Standards were published July 1,2007 these state standards would become effective on January 1,2008 and the County would have no exposure to litigation for adopting conflicting regulations.

Sincerely,

Harold Griffith