

**Harold Griffith
P.O. Box 96
Freedom, CA 95019
(831)763-0607**

May 4, 2009

Santa Cruz County Board of Building & Fire Appeals
701 Ocean Street, Room 400
Santa Cruz, CA 95060

To whom it may concern,

I am a landlord. It is important for landlords to know the procedures when the government abates a nuisance or alleges a substandard building. I believe that the administrative hearing officer proceedings found in Santa Cruz County Code Chapter 1.12 to be illegal as applied to existing buildings. Please consider the following analysis which I believe shows the illegality of the Santa Cruz County Planning Department's Code Enforcement policies on existing buildings.

I.

NO AUTHORITY TO DISREGARD STATUTORY MANDATE

In *Lockyer v. City and County of San Francisco* (2004) 33 Cal.4th 1055 on page 1068, while discussing whether city officials have the authority to issue marriage licenses when the state law forbids that conduct, the Court states:

“When, however, a duly enacted statute imposes a ministerial duty upon an executive official to follow the dictates of the statute in performing a mandated act, the official generally has no authority to disregard the statutory mandate based on the official's own determination that the statute is unconstitutional. [citation] [“To contend, that the obligation imposed on the president to see the laws faithfully executed, implies a power to forbid their execution, is a novel construction, and entirely inadmissible.”.]

Neither the County Planning Department nor the County Building Department has the authority to disregard the mandatory requirements of Health and Safety Code § 17922(a)(1) or Health and Safety Code § 17958 which when read together require all local governments to adopt the Uniform Housing Code.

The County Building Department does not have the authority to disregard the requirement in the Uniform Housing Code § 201.1 that states that the Building Official is authorized and directed to enforce the provisions of the Uniform Housing Code. Exhibit 1 attached.

///

II.
OATH TO UPHOLD STATE CONSTITUTION

All public officers, employees, executive, legislative and judicial, except those exempted, before they enter upon the duties of their offices, shall take an oath of office in which they swear (or affirm) that they will support and defend and bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California and that they do so without mental reservations or purpose of evasion and that they will faithfully discharge the duties of their office. Cal. Const. Article XX § 3.

III.
LIABILITY OF PUBLIC ENTITY

Government Code § 815.6 states that where a public entity is under a mandatory duty imposed by an enactment that is designed to protect against a particular kind of injury then the public entity is liable for an injury of that kind proximately caused by its failure to discharge the mandatory duty.

IV.
CONSTITUTIONAL REQUIREMENTS

1. California Constitution Article IV § 16(b) states:

“A local or special statute is invalid in any case if a general statute can be made applicable.”

2. California constitution Article XI § 7 states:

“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.”

In *Leslie v. Superior Court* (1999) 73 Cal.App.4th 1042 at page 1046 (In Dan Bronson’s handout page C9) the court states:

“Counties may not make and enforce laws conflicting with general state laws.”

“A conflict exists if an ordinance “’’’ duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication.’’’”
(*Sherwin-Williams C. City of Los Angeles*, supra, 4 Cal. 4th at p. 897.)”

Therefore, a County Code section is not legal where a state law can be used and a County Codes section that duplicates, occupies the same area of law or conflicts with state laws is void.

V.
UNIFORM HOUSING CODE

The State of California has occupied the area of Housing Code regulation as evidenced by *Briseno v. City of Santa Ana* (1992) 6 Cal.App.4th 1378 at page 1381 (In Dan Bronson's handout page C1-C7) where the court states:

“The Uniform Housing Code was adopted into state law pursuant to Health and Safety Code section 17922. We must first decide whether the Legislature has expressed its intent, through the adoption of the Uniform Housing Code to occupy the field of occupancy standards; i.e. does the Uniform Housing Code preempt local occupancy ordinances generally? We believe it does.”

The California State Law – Health and Safety Code § 17922 (a) (1) requires the adoption of the Uniform Housing Code of the International Conference of Building Officials. (In Dan Bronson's handout page F10 and also on page O3).

The Santa Cruz County Code Chapter 1.12 sets up administrative procedures to enforce provisions of the Santa Cruz County Code. Santa Cruz County Code § 1.12.070 “B. prohibits any person to construct or convert a structure for human habitation etc.” That provision conflicts with Health and Safety Code § 17920.3(n) because the state statute is preemptive and can be used to enforce the same violation.

Santa Cruz County Code 1.12.070 D. provides that the County shall provide independent hearing officers to conduct hearings etc., issue enforcement orders with regard to county codes and provide for recovery costs, any civil penalties, etc. Those local provisions conflict with state law because the state law – the Uniform Housing Code and Health and Safety Code § 17920.6 both provide for a “Housing Appeals Board” to hear and decide Appeals from a “Notice and Order” and to stay of the “Notice and Order” after an appeal has been filed.

In addition Health and Safety Code § 17922(g) (In Dan Bronson's handout page O4) states:

“(g) 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.”

Santa Cruz County Code § 1.12.070 B states that any person who constructs or converts a structure for human habitation without a building or development permit in violation of any provision of this code which would otherwise be a misdemeanor shall be liable for a civil penalty ... This local provision is prohibited by 17922(g) (above) because it is a local ordinance that does not declare a building to be substandard nor does it make it a misdemeanor prosecuted by the District Attorney. The Uniform Housing Code is required to be used to commence enforcement in determining if an existing building is “substandard”. The Uniform Housing Code is the procedure for declaring an existing building to be “substandard” as defined by Health and Safety Code § 17920.3. The Uniform Housing Code provides for the issuance of a “Notice and Order”, contents

of the “Notice and Order” and the requirement that the “Notice and Order” advise the owner of the property of their right to an Appeal within 30 of the issuance of the “Notice and Order”.

Santa Cruz County Code 1.12.070 A sets out civil penalties for anyone who fails to comply with the Santa Cruz County Code. Health and Safety Code § 17980 sets out the state enforcement procedures for building and housing code violations. Health and Safety Code § 17995 (In Dan Bronson’s handout page F13) provides for a maximum penalty of \$1,000.00 for building and housing code violations as misdemeanors so that area of law is preempted and the County cannot set up different penalties like: administrative fines, cost and attorney fees for misdemeanor violations.

In *People v. Minor* (2002) 96 Cal.App. 4th 29 the appellate court ruled that the trial court erred in ordering the defendant to pay for the cost of investigating, analyzing, and prosecuting an action for having a non-permitted structure, maintaining a hog farm without permits, using a storage unit as a residence and accumulation of trash, rubbish and junk on his land. *The Administrative Costs of enforcing code violations may not be recovered as a penalty in a Criminal Enforcement Action.*

In Santa Cruz County Code § 1.12.070 C a person violating any provision of this code that would otherwise be a misdemeanor shall be liable for costs of enforcement, including charges for reasonable attorney fees. This local code seems to conflict with the holding in *City of Monte Sereno v. Padgett* (2007) 149 Cal.App.4th 1530 where the court ruled against a city’s request for attorney fees under a local ordinance for abatement of a public nuisance.

Health & Safety Code § 17980 states:

17980. (a) If any building is constructed, altered, converted, or maintained in violation of any provision of, or in violation of any order or notice that gives a reasonable time to correct that violation issued by an enforcement agency pursuant to this part, the building standards published in the California Building Standards Code, or other rules and regulations adopted pursuant to this part, or if a nuisance exists in any building or upon the lot on which it is situated, the enforcement agency shall, after 30 days' notice to abate the nuisance or violation, or a notice to abate with a shorter period of time if deemed necessary by the enforcement agency to prevent or remedy an immediate threat to the health and safety of the public or occupants of the structure, institute any appropriate action or proceeding to prevent, restrain, correct, or abate the violation or nuisance.

(b) (1) Whenever the enforcement agency has inspected or caused to be inspected any building and has determined that the building is a substandard building or a building described in Section 17920.10, the enforcement agency shall commence proceedings to abate the violation by repair, rehabilitation, vacation, or demolition of the building. The enforcement agency shall not require the vacating of a residential building unless it concurrently requires expeditious demolition or repair to comply with this part, the building standards published in the California Building Standards Code, or other rules and regulations adopted pursuant to this part. The owner shall have the choice of repairing or demolishing. However, if the owner chooses to repair, the enforcement agency shall require that the building be brought into compliance according to a reasonable and feasible schedule for expeditious repair. Etc. etc. etc.,

Therefore, it seems that the only legal way to prosecute violations of regulations on existing buildings is to follow the procedure contained in the Uniform Housing Code: Issue a “Notice and Order”; advise of Appeal rights; hold a hearing before the Housing Appeals Board; and then issue a ruling.

VI.

VOID FOR VAGUENESS

Health & Safety Code § 17922 states:

(e).... Regulations governing abatement of substandard buildings shall permit those conditions prescribed by Section 17920.3 which do not endanger the life, limb, health, property, safety, or welfare of the public or the occupant thereof.

Does the concept of void for vagueness apply here? In *U.S. v. Broussard* (1991) 767 F. Supp. 1536 the concept of void for vagueness is explained as a requirement that a criminal offense must be explained with definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement. Also see: *U.S. v. Jackson* (1991) 768 F.Supp. 97 which comes to the same conclusion.

Therefore, it would seem that if the same condition could be legal or illegal then it cannot be a crime or subject to a civil penalty because the requirement cannot be explained with enough clarity that ordinary people can understand what is illegal behavior so that the ordinance or law is void for vagueness.

VII.

VESTED PROPERTY RIGHTS

In *Anderson v. City of La Mesa* (1981) 118 Cal.App.3d 657 the property owner built a house five feet off the property line when the zoning ordinance required a ten foot setback. The City refused to final her building permit so she sued. Even though the permit was issued in error the City had many opportunities to stop her before the addition was completed. The court states on page 660:

“Once she built her house, her right was vested.”

Therefore, the County of Santa Cruz cannot legally say to a homeowner that the homeowner must prove that the house was built with a valid permit or face an administrative hearing, civil penalties and administrative fines because vested rights require a hearing before those VESTED PROPERTY RIGHTS CAN BE TAKEN AWAY !

VIII.
ILLEGAL RECORDING OF NOTICE

Santa Cruz County Code § 19.01.080 allows Code Enforcement to place a red-tag or a “Notice of Violation” on a property without a declaration as a substandard building, a conviction for a misdemeanor, or a hearing to ensure due process of law. In *Ward v. Superior Court* (1997) 55 Cal.App.4th 60 at page 64 the court states: *There is no specific authorization for recordation of a notice of noncompliance by homeowners association.* The court goes on to say, on page 66, that only documents that are authorized by law can be recorded.

In *Flahive v. City of Dana Point* (1999) 72 Cal.App4th 241 at page 245 in footnote 5, the court writes describes the terms “abatement” and “summary abatement.” The court also seems to distinguish between a situation where it is an emergency abatement and when the situation is an administrative abatement where a hearing is required.

But a federal holding requires a hearing before summary abatement. In *Smith v. Village of Maywood* (1988) 699 F.Supp. 157 the court determined that a property owner’s procedural civil rights were violated by municipal officers who boarded up several rental units without notice or an opportunity to be heard prior to the “taking of property.” The summary abatement procedure that the County of Santa Cruz has is a civil rights violation. The County does not follow state law in declaring a building substandard or prosecuting for a misdemeanor but places a lien on existing buildings without notice and without an opportunity to be heard.

IX.
GOVERNMENT CODE § 53069.4

The County of Santa Cruz has adopted County Code Chapter 1.12 et al., as allegedly being adopted pursuant to Government Code § 53069.4. But Government Code § 53069.4 only allows a legislative body of a local agency may make a violation of any ordinance enacted by the local agency subject to an administrative fine or penalty. Since the state Legislature has adopted this whole regulatory process which includes the Uniform Housing Code, Uniform Building Code, etc. to regulate building and housing standards and the Legislature has a process to enforce those provisions in Health and Safety Code § 17980, with maximum penalties in Health and Safety Code § 17995, then

it would seem that the local ordinances (Chapter 1.12) are in reality state laws adopted locally but not local ordinances. Local ordinances cannot conflict with state laws.

In *Martin v. Riverside County Department of Code Enforcement* (2008) 166 Cal.App.4th 1406 the court ruled that the Plaintiff needed to get a County issued grading permit under the Uniform Building Code and that a fine of \$500.00 was legal under the County Code for not doing so.

Therefore, this case wrote about the issue of the local code being adopted by reference and that the Uniform Building Code was the actual authority but the court didn't state how the local code could set a fine when there is a state law that mandates the penalty.

The Court in *Great Lakes Properties, Inc. v. City of El Segundo* (1977) 19 Cal.3d 152 at page 155 stated that in statutory interpretation:

“where the language is clear, its plain meaning should be followed.”

The Supreme Court in *Coachella Valley Mosquito & Vector Control Dist. v. California Public Employment Relations Bd.* (2005) 35 Cal.4th 1072 stated on page 1089:

“Finally, and perhaps most importantly, we do not construe statutes in isolation; rather, we construe every statute with reference to the whole system of law of which it is part, so that all may be harmonized and anomalies avoided.”

It is my contention that Santa Cruz County Chapter 1.12 is illegal as applied to existing buildings and the state mandated Uniform Housing Code is the required enforcement tool.

Conclusion

The whole Santa Cruz County Code enforcement system is in conflict with state law – Health & Safety Code § § 17920.6, 17920.3, 17922(a)(1), 17958, 17980 et seq. and 17995 as applied to existing buildings. The Santa Cruz County code enforcement program is in conflict with the Penal Code, the presumption of innocence, fourth amendment, fifth amendment, and the fourteenth amendment.

Sincerely,

Harold Griffith