



CITY OF SACRAMENTO

38

DEPARTMENT OF LAW

812 TENTH ST.
SUITE 201

SACRAMENTO, CALIF. 95814
TELEPHONE (916) 449-5346

April 24, 1981

JAMES P. JACKSON
CITY ATTORNEY
THEODORE H. KOBAY, JR.
ASSISTANT CITY ATTORNEY
LELIAND J. SAVAGE
SAMUEL L. JACKSON
WILLIAM P. CARNAZZO
SABINA ANN GILBERT
STEPHEN B. NOCITA
CHRISTINA PRIM
DEPUTY CITY ATTORNEYS

Honorable City Council
City of Sacramento
City Hall
Sacramento, California

In re: Forum Building

Members in Session:

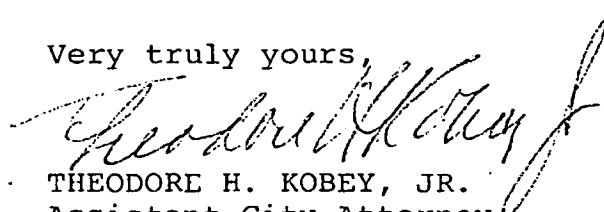
This is a summary of the attached materials regarding the Forum Building:

(1) Ordinance which would give the right to appeal the decisions of the Building Inspector re: dangerous building to the Housing Code Appeals Board and the Board's decision to the City Council. The ordinance would also extend the appeal period for the Forum Building to May 5, 1981;

(2) Opinion concerning the subpoena powers of the Council; and,

(3) Opinion concerning the validity of permitting or requiring the tenants of a dangerous building under City Code Chapter 50 to pay rent into an escrow account until the building is made to comply with the Code. In this connection, we have not had time to prepare such an ordinance for the Council's consideration.

Very truly yours,


THEODORE H. KOBAY, JR.
Assistant City Attorney

APPROVED
BY THE CITY COUNCIL

APR 28 1981

OFFICE OF THE
CITY CLERK

THK:kn

Attachments



CITY OF SACRAMENTO

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SUITE 201 TELEPHONE (916) 449-5346

CITY MANAGER'S OFFICE
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APR 24 1981

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April 24, 1981

Honorable City Council
City of Sacramento
City Hall
Sacramento, California

In re: ORDINANCE EXTENDING APPEAL RIGHTS RE:
DANGEROUS BUILDINGS TO TENANTS

Members in Session:

DISCUSSION


The attached ordinance would:

- (1) extend to all tenants appeal rights re dangerous buildings. Under the existing ordinance, only owners and persons with recorded leases are entitled to appeal to the Housing Code Board and to the City Council; and,
- (2) extend the time for appeal to the City Council of any nonresidential building from April 23, 1981 to May 5, 1981.


RECOMMENDATION

If the Council desires to extend appeal rights to tenants re dangerous buildings under Chapter 50, and desires to extend appeal period for the Forum Building, the attached ordinance should be adopted.

RECOMMENDATION APPROVED:


WALTER S. SLIPE
City Manager
THK:kn
Attachment

Very truly yours,


THEODORE H. KOBAY, JR.
Assistant City Attorney

81-0234

ORDINANCE NO. FOURTH SERIES

AN ORDINANCE RELATING TO APPEALS OF ACTIONS AND ORDERS UNDER CHAPTER 50 OF THE SACRAMENTO CITY CODE (DANGEROUS BUILDINGS CODE) AND DECLARING THIS ORDINANCE TO BE AN EMERGENCY ORDINANCE TO TAKE EFFECT IMMEDIATELY

APPROVED BY THE CITY COUNCIL

APR 28 1981

OFFICE OF THE CITY CLERK

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO AS FOLLOWS:

SECTION 1.

Sec. 50.501(a) is hereby amended to read as follows:

(a) Form of appeal: Any person entitled to service under section 50.401(c), and any person who is a tenant or lessee of any person entitled to such service, may appeal from any notice and order or any action of the director under this code by filing at the office of the director within thirty days from the date of such order, a written appeal containing:

1. A brief statement setting forth the legal interest of each of the appellants in the building or the land involved in the notice and order.
2. A brief statement in ordinary and concise language of the specific order or action protested, together with any material facts claimed to support the contentions of the appellant.
3. A brief statement in ordinary and concise language of the relief sought, and the reasons why it is claimed the protested order or action should be reversed, modified or otherwise set aside.
4. The signatures of all parties named as appellants, and their official mailing addresses.
5. The verification (by declaration under penalty of perjury) of at least one appellant as to the truth of the matters stated in the appeal.

SECTION 2.

Sec. 50.606 is hereby amended to read as follows:

Sec. 50.606 Appeal from order of housing code advisory and appeals board.

Any person entitled to service under section 50.401(c) and any person who is a tenant or lessee of any person entitled to such service, may appeal the decision of the housing board by filing with the city clerk within fifteen days of the effective date of such decision a written request that the decision be set for an appeal hearing by the city council. The request shall be in the same form as that prescribed by section 50.501.

SECTION 3.

Notwithstanding any provision in City Code Section 50.606 or any other provision of City Code Chapter 50 to the contrary, the time for appeal pursuant to Section 50.606 is hereby extended to May 5, 1981 for any nonresidential building which the Housing Code Advisory and Appeals Board declared to be in violation of City Code Chapter 50 (Dangerous Buildings Code) in a resolution adopted on April 8, 1981.

SECTION 4. Emergency.

This ordinance is hereby declared to be an emergency ordinance to take effect immediately. The facts constituting the urgency are the need to provide a right of appeal as soon as possible after the decision of the Housing Code Advisory and Appeals Board referred to in Section 3 would otherwise become final.

ENACTED:

EFFECTIVE:

MAYOR

ATTEST:

CITY CLERK

ORDINANCE NO.

FOURTH SERIES

AN ORDINANCE RELATING TO APPEALS OF ACTIONS AND ORDERS UNDER CHAPTER 50 OF THE SACRAMENTO CITY CODE (DANGEROUS BUILDINGS CODE) AND DECLARING THIS ORDINANCE TO BE AN EMERGENCY ORDINANCE TO TAKE EFFECT IMMEDIATELY

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO AS FOLLOWS:

SECTION 1.

Sec. 50.501(a) is hereby amended to read as follows:

(a) Form of appeal: Any person entitled to service under section 50.401(c), and any person who is a tenant or lessee of any person entitled to such service, may appeal from any notice and order or any action of the director under this code by filing at the office of the director within thirty days from the date of such order, a written appeal containing:

1. A brief statement setting forth the legal interest of each of the appellants in the building or the land involved in the notice and order.

2. A brief statement in ordinary and concise language of the specific order or action protested, together with any material facts claimed to support the contentions of the appellant.

3. A brief statement in ordinary and concise language of the relief sought, and the reasons why it is claimed the protested order or action should be reversed, modified or otherwise set aside.

4. The signatures of all parties named as appellants, and their official mailing addresses.

5. The verification (by declaration under penalty of perjury) of at least one appellant as to the truth of the matters stated in the appeal.

SECTION 2.

Sec. 50.606 is hereby amended to read as follows:

Sec. 50.606 Appeal from order of housing code advisory and appeals board.

~~Any person who has filed an appeal with the housing board which has been acted on by the board~~
Any person entitled to service under section 50.401(c) and any person who is a tenant or lessee of any person entitled to such service, may appeal the decision of the housing board by filing with the city clerk within fifteen days of the effective date of such decision a written request that the decision be set for an appeal hearing by the city council. The request shall be in the same form as that prescribed by section 50.501.



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DEPARTMENT OF LAW

812 TENTH ST.
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SACRAMENTO, CALIF. 95814
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DEPUTY CITY ATTORNEYS

April 24, 1981

Honorable City Council
City of Sacramento
City Hall
Sacramento, California

In re: SUBPOENA POWERS

Members in Session:

The Council inquired as to whether it has the power to subpoena persons to testify in proceedings before it. This question arose in connection with the Council discussion of the Forum Building at the April 21st City Council meeting.

Generally, it has such power, which would extend to subpoenaing owners, tenants and other persons with relevant information concerning the Forum Building.

In addition to Section 34 of the Charter which provides subpoena power and a specific procedure therefor when the Council is making investigations into affairs of City government, California Government Code Sections 37104-37109 provide for a subpoena power in the City Council. Section 37104 provides:

The legislative body may issue subpoenas requiring attendance of witnesses or production of books or other documents for evidence or testimony in any action or procedure pending before it.

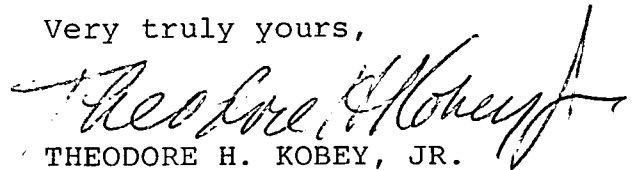
Under the procedure, the Mayor issues the subpoena (Section 37105) and if persons fail to respond thereto, or fail to respond to questions, they are referred to the Superior Court (Section 37107) and dealt with by the Court (Sections 37107-37109).

This procedure can be utilized by the City Council under the provisions of Section 10 of the City Charter which states in part that:

...the city is hereby authorized to exercise, any and all rights, powers and privileges heretofore or hereafter granted or prescribed by the general laws of the state including those specifically applicable to general law cities; provided, also that where the general laws of the state provide a procedure for the carrying out and the enforcement of any rights or powers belonging to the city, said procedure may be followed unless a different procedure is provided or required by the Charter, ordinance or resolution.

Inasmuch as the only subpoena procedure specifically provided for by City Charter, ordinance or resolution is that relating to investigations under Charter Section 34 supra, the Council can avail itself if the subpoena power and procedure in Government Code Sections 37104-37109.

Very truly yours,



THEODORE H. KOBAY, JR.
Assistant City Attorney

THK:kn



CITY OF SACRAMENTO

JAMES P. JACKSON
CITY ATTORNEY

THEODORE H. KOBEY, JR.
ASSISTANT CITY ATTORNEY

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812 TENTH ST
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SACRAMENTO, CALIF. 95814
TELEPHONE (916) 449-5346

April 24, 1981

City Council
Council Chamber
City Hall
Sacramento, California

RE: POSSIBLE REVISION OF CHAPTER 50 TO ALLOW TENANTS
IN DANGEROUS STRUCTURES TO PAY RENT INTO ESCROW

Honorable Members in Session:

QUESTION:

May the City by ordinance permit or require tenants in dangerous buildings to pay their rent to an escrow account?

ANSWER:

The City may pass an ordinance providing that (1) tenants may (or must) deposit their rent payments into a City-established escrow account after a final adjudication, pursuant to Chapter 50 of the City Code, that the building in which they are tenants is dangerous, (2) such rent payments shall remain in escrow until all of the conditions which render the building dangerous have been corrected, or the building is demolished, and (3) the timely payment of rent into an escrow account shall be an affirmative defense to a defendant tenant in an unlawful detainer or other judicial eviction action brought by a landlord.

ANALYSIS:

Several Eastern jurisdictions have legislatively authorized the withholding of rent from a landlord and the payment of that rent into an escrow account during the period in which a landlord fails to maintain his/her rental property in accord with state and local building code standards. 40 ALR 3d 821.

All of the enactments mentioned in the ALR annotation appear to extend only to residential units. However, the rationale used by the numerous state court decisions which have uniformly sustained these enactments as not violative of a variety of constitutional guarantees applies also to non-residential rentals. The decisions have found (1) no violation of procedural due process because landlords had adequate notice and opportunity to challenge the initial issuance of the building code violation notice; (2) a proper exercise of a legitimate police power to eliminate slums and to encourage building code compliance, and (3) the right to contract is not impermissively impaired; government may legislatively modify rights established in existing contracts when such legislation is a reasonable means of promoting the public interest.

Accordingly, although there are no California or federal decisions on point, no constitutional impediments bar the enactment of an ordinance which authorizes the deposit of rent into an escrow account during the time in which a structure is dangerous.

Furthermore, the legal analysis in a recent California Supreme Court decision indicates that locally imposed rent-withholding probably would not be vulnerable to attack on the ground that State law comprehensively regulates tenancy relationships and therefore preempts municipal ordinances which effect the respective rights and duties of landlords and tenants. In Birkenfeld v. City of Berkeley, 17 Cal.3d 129 (1976) a local rent control charter provision was struck for several reasons, including the court's conclusion that part of the enactment conflicted with - and was therefore preempted by - unlawful detainer eviction statutes (Code of Civil Procedure §1159 et seq.). These statutes are intended to provide landlords with a quick and relatively simple procedure for exercising their right to repossession against tenants. The Berkeley requirement that a landlord must first obtain from a community rental control board a "certificate of eviction" before filing an unlawful detainer action represented, in the view of the court, an "onerous" stumbling block to a landlord's ability to use the quick eviction procedure.

However, the court found no state preemption of another part of the Berkeley rent control charter provision which stated that a landlord could evict a tenant in good standing at the end of a tenancy only for the tenant's failure to execute a new rental agreement on substantially the same terms as the preceding agreement. The landlord plaintiffs argued that this provision

April 24, 1981

was preempted by Civil Procedure Code §1161 which allows eviction at the end of the tenancy without further cause. The court disagreed, explaining:

Insofar as the charter amendment simply prohibits eviction of tenants who are in good standing except for the expiration of their tenancies, it is a reasonable means of assuring compliance with maximum rent limits and does not conflict with statutory repossession proceedings even though making available a substantive defense of eviction. 17 Cal.3d, 152.

In other words, Birkenfeld held that State law preempts locally imposed procedural barriers to the filing of an eviction action, but does not preempt municipalities from limiting landlord's substantive rights at the eviction proceeding--provided that the limitation on landlords' rights is a reasonable means of protecting the public interest. We believe that a procedure for paying rent into escrow is a reasonable means to enforce the Dangerous Building Code, and, therefore, is valid under the Birkenfeld analysis of the limited scope of State preemption of landlord-tenant rights.

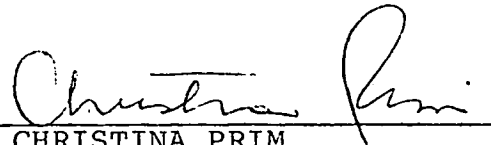
CONCLUSION

In conclusion, the City may enact an ordinance authorizing or requiring tenants in dangerous buildings to pay their rent into an escrow account. Such an ordinance should also provide that timely payment of rent into escrow is an affirmative defense to an eviction proceeding based on the non-receipt of rent by a plaintiff landlord.

Very truly yours,

THEODORE H. KOBAY, JR.
Assistant City Attorney

By:


CHRISTINA PRIM
Deputy City Attorney

L. Nguyen

38



CITY OF SACRAMENTO

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CITY CLERK'S OFFICE
CITY OF SACRAMENTO

APR 23 4 45 PM '81

DIVISION OF BUILDING INSPECTIONS
927-10TH STREET SACRAMENTO, CALIFORNIA 95814
ROOM 100

April 22, 1981

Dear

This is to inform you that on April 21, 1981 the City Council, at their regular meeting, had discussion on the following and will be considering these items on April 28, 1981, at 7:30 P. M. or as soon thereafter as the matter may be heard, at the Council Chambers, City Hall, 915 - I Street, Sacramento, with respect to the Forum Building, 1107 - 9th Street, Sacramento, California.

- (1). An ordinance which would allow tenants to appeal the decision of the Housing Code Advisory and Appeals Board dated April 8, 1981, re: Forum Building, 1107 - 9th Street.
- (2). An ordinance which would extend the time for appeal of said decision.
- (3). The possibility of requiring that the rents from tenants of the Forum Building be paid to the City, to be placed in an escrow account until building is made to comply with the Sacramento City Code, Chapter 50 (Dangerous Building Code) and,
- (4). Other methods to require or encourage the owner to perform the work required in order for the Forum Building to comply with said City Code, Chapter 50.

You are encouraged to attend the Council meeting on April 28, 1981 at 7:30 P. M. and your participation is invited.

D. T. Sullivan, Director

Elmer M. Larsen
Chief Building Inspector

EML:ml

- cc: City Clerk ✓
- City Attorney
- Ron Parker
- Mac Mailes

COPIES OF THIS LETTER SENT TO THE FOLLOWING:

Mr. & Mrs. Charles Folcke
46 Brena
Irvine, CA 92714

Norma Shely, Etal
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Lexington, Ken. 40580

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15466 Lorraine Way
Irvine, CA 92714

Jeanne Lee Newman, Etal
1107 - 9th Street
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CITY OF SACRAMENTO

DIVISION OF BUILDING INSPECTIONS
927 - 10TH STREET SACRAMENTO, CALIFORNIA 95814
ROOM 100

April 22, 1981

Tenants of The Forum Building
1107 - 9th Street
Sacramento, California 95814


Dear Tenant:

This is to inform you that on April 21, 1981 the City Council, at their regular meeting, had discussion on the following and will be considering these items on April 28, 1981, at 7:30 P. M. or as soon thereafter as the matter may be heard, at the Council Chambers, City Hall, 915 - I Street, Sacramento, with respect to the Forum Building, 1107 - 9th Street, Sacramento, California.

- (1). An ordinance which would allow tenants to appeal the decision of the Housing Code Advisory and Appeals Board dated April 8, 1981, re: Forum Building, 1107 - 9th Street.
- (2). An ordinance which would extend the time for appeal of said decision.
- (3). The possibility of requiring that the rents from tenants of the Forum Building be paid to the City, to be placed in an escrow account until building is made to comply with the Sacramento City Code, Chapter 50 (Dangerous Building Code) and,
- (4). Other methods to require or encourage the owner to perform the work required in order for the Forum Building to comply with said City Code, Chapter 50.

You are encouraged to attend the Council meeting on April 28, 1981 at 7:30 P. M. and your participation is invited.

D. T. Sullivan, Director


Elmer M. Larsen
Chief Building Inspector

EML:ml

cc: City Clerk
City Attorney
Ron Parker
Mac Mailes

