
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

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Author: McGuire

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Consultant: GC

Fiscal: Yes

Subject: *Housing*

HISTORY

Source: Author

Prior Legislation: None known

Support: California Building Officials

Opposition: None known

PURPOSE

The purpose of this legislation is to grant specified building officials powers or arrest and to create misdemeanor penalties for interference with fire marshals and code enforcement officers for specified behavior at dangerous buildings, as defined.

Existing law provides that any person who willfully commits specified acts at the burning of a building or at any other time and place where any firefighter or firefighters or emergency rescue personnel are discharging or attempting to discharge an official duty is guilty of a misdemeanor. (Pen. Code, § 148.2.)

This bill would provide that any person who willfully commits specified acts relating to interfering with the official duties of code enforcement officers and fire marshals is guilty of a misdemeanor (punishable by up to six months in the county jail). Specifically, under the bill it is unlawful for any person to willfully commit any of the following acts at a dangerous building:

- Resist or interfere with the lawful efforts of any fire marshal or code enforcement officer or their representatives in the discharge of or attempt to discharge an official duty.
- Disobey the lawful orders of any fire marshal or code enforcement officer.
- Engage in any disorderly conduct which delays or prevents a dangerous building from being secured in a timely manner.
- Forbid or prevent others from assisting in the securing of a dangerous building or addressing an imminent safety hazard, or exhort another person, as to whom he or she has no legal right or obligation to protect or control, from assisting in the securing of a dangerous building or addressing an imminent safety hazard.

This bill defines a “dangerous building” as either of the following:

- A substandard building as defined in the Health and Safety Code.
- Any other time and place where any fire marshal or their designee, or other code enforcement officer is discharging or attempting to discharge an official duty related to an imminent safety hazard.

Existing law defines “code enforcement officer” as a person who is not described in Penal Code Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 and who is employed by a governmental subdivision, public or quasi-public corporation, public agency, public service corporation, a town, city, county, or municipal corporation, whether incorporated or chartered, who has enforcement authority for health, safety, and welfare requirements, and whose duties include enforcement of a statute, rule, regulation, or standard, and who is authorized to issue citations or file formal complaints. And, states that a “code enforcement officer” is also a person who is employed by the Department of Housing and Community Development who has enforcement authority for health, safety, and welfare requirements, as specified. (Penal Code § 829.5.)

Existing law defines a “code enforcement officer” as any person who is not a peace officer and who is employed by any governmental subdivision; public or quasi-public corporation; public agency; public service corporation; or any town, city, county, or municipal corporation, whether incorporated or chartered, who has enforcement authority for health, safety, and welfare requirements; whose duties include enforcement of any statute, rules, regulations, or standards; and who is authorized to issue citations, or file formal complaints. (Penal Code § 243(f)(11)(A).)

Existing law defines “code enforcement officer” as also including any person employed by the Department of Housing and Community Development who has enforcement authority for health, safety, and welfare requirements pursuant to the Employee Housing Act, State Housing Law, the Mobilehomes-Manufactured Housing Act, the Mobilehome Parks Act, and the Special Occupancy Parks Act. (Penal Code § 243(f)(11)(B).)

This bill defines “code enforcement officer” as any person who is employed by any governmental subdivision, public or quasi-public corporation, public agency, public service corporation, any town, city, county, or municipal corporation, whether incorporated or chartered, who has enforcement authority for health, safety, and welfare requirements, whose duties include enforcement of any statute, rule, regulation, or standard, and who is authorized to issue citations, or file formal complaints. “Code enforcement officer” does not include any person employed by the University of California or the California State University. “Code enforcement officer” also includes any person who is employed by the Department of Housing and Community Development who has enforcement authority for health, safety, and welfare requirements pursuant specified provisions.

Existing law authorizes certain persons who are not peace officers to exercise the powers of arrest under certain circumstances, if they have completed a specified training course prescribed by the Commission on Peace Officer Standards and Training. (Pen. Code, § 830.7.)

This bill would extend that authority to persons employed as building officials or their designees, to the extent necessary to enforce laws related to unpermitted, dangerous, or otherwise illegal structures, and provided that those officials are authorized to do so by a memorandum of understanding with specified local law enforcement officials.

This bill makes various changes to housing law provision that require building inspections of specified industrial and storage structures, authorize fees to cover inspection costs, require reporting of the backlog of mandated building inspections by local governments, and generally extends existing tenant protections and notifications to buildings which are used for human habitation, as distinct from residential buildings.

COMMENTS

1. Need for This Bill

According to the Author:

Late on the night of December 2, 2016, a fire at a converted warehouse known as the “Ghost Ship” resulted in the tragic deaths of 36 residents—the highest death toll for a structural fire in the United States in over ten years. This tragedy shook the community of Oakland and the rest of the state.

Because of the severity of these fires, the Senate Governance and Finance Committee hosted two legislative hearings to advance potential collaborative solutions forward to ensure a tragedy like the Ghost Ship Fire won’t happen in the Golden State again. The Committee also convened several working group meetings and identified a set of proposed solutions.

Currently, local officials must inspect four types of buildings for fire safety: K-12 schools; multi-family dwellings; high-rises, and jails and prisons. Local fire chiefs are responsible for performing these inspections. Outside of the mandated building types, local officials exercise discretion over how to perform inspections. This means warehouses do not receive the same level of oversight as other building types.

Local governments use various enforcement strategies to make buildings safer, including issuing fines for violations of building codes and, for particularly dangerous buildings, asking the courts to appoint a receiver, who is empowered to take any necessary actions to make a building safer. Tenants who are displaced while repairs are made are entitled to relocation benefits.

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Warehouses and factory spaces sometimes are converted to residential use without the knowledge of local officials. These buildings aren’t covered under state laws mandating fire inspections, meaning that unsafe conditions can go undetected for years. And even if local officials discover a dangerous building, variation in how judges interpret the law make it difficult for locals to use all of their available tools, particularly when a space is used as an unpermitted residence. This lets unscrupulous landlords off the hook while leaving cities and tenants to pick up the pieces.

At the same time, not all jurisdictions make it easy to bring buildings up to code—notices of violation often don’t tell building occupants what they need to fix or how to fix it.

SB 1415 helps prevent these types of fires by improving the process for identifying and fixing dangerous buildings from start to finish. SB 1415 beefs up local inspections by ensuring that spaces often used as unpermitted residences are regularly inspected, and allows local officials to charge a fee to cover those inspections. It also ensures accountability by requiring reports on inspections already mandated by law. Once a dangerous building is discovered, SB 1415 improves the tools that local governments have by ensuring that receivership laws and relocation benefits apply to any space used for habitation, regardless of legal status, and by removing other hurdles to enforcement. Finally, SB 1415 makes it easier for tenants and landlords to bring buildings up to code by directing local officials to identify specific violations of building codes and offer advice on how to fix those violations.

2. Creation of a New Misdemeanor Penalty for Interference with a Fire Marshal or a Code Enforcement Officer

Under current law there are misdemeanor penalties for interfering with peace officers and emergency medical technicians. (Pen. Code, § 148.) Additionally there are misdemeanor penalties for interfering with firefighters and emergency rescue personnel who are in the process of dealing with an emergency situation. (Pen. Code, § 148.2) Specifically, a person can be convicted of a misdemeanor if they engage in the following conduct at the site of a burning building:

- Resist or interfere with the lawful efforts of any fireman or firemen or emergency rescue personnel in the discharge or attempt to discharge an official duty. Disobey the lawful orders of any fireman or public officer.
- Engage in any disorderly conduct which delays or prevents a fire from being timely extinguished.
- Forbid or prevent others from assisting in extinguishing a fire or exhort another person, as to whom he has no legal right or obligation to protect or control, from assisting in extinguishing a fire.

This bill would apply the same misdemeanor penalties for a person who interferes with the efforts by a fire marshal or code enforcement officer at the site of a “dangerous building” as defined in the bill:

- Resist or interfere with the lawful efforts of any fire marshal or code enforcement officer or their representatives in the discharge of or attempt to discharge an official duty.
- Disobey the lawful orders of any fire marshal or code enforcement officer.
- Engage in any disorderly conduct which delays or prevents a dangerous building from being secured in a timely manner.

- Forbid or prevent others from assisting in the securing of a dangerous building or addressing an imminent safety hazard, or exhort another person, as to whom he or she has no legal right or obligation to protect or control, from assisting in the securing of a dangerous building or addressing an imminent safety hazard.

Under the provisions of this bill, California criminal penalties that exist for interfering with firefighters and emergency medical personnel at a burning building will be expanded to fire marshals and employees of Department of Housing that the bill defines as code enforcement officers.

3. Powers of Arrest Granted to Building Officials and their Designees

Under current law we grant powers of arrest to specified persons who are not peace officers if they complete a course in the exercise of those powers offered by the Commission on Peace Officer Standards and Training (POST). Under current law we grant this authority to persons such as: cemetery authorities, higher education security officers, health facility security officers, specified forestry and fire protection officials, transit inspectors, illegal dumping enforcement officers, and many others.

This bill would add building officials and their designees to the list of persons who are granted powers of arrest. The committee may consider only granting these building officials the authority to cite and release persons they “arrest” and not the authority to take a person into custody. Additionally, the committee could consider limiting the authority of these officials from using force.

4. Ghost Ship Fire

In December 2016, a deadly fire at an Oakland warehouse, known as the Ghost Ship, killed 36 people, the highest death toll for a structural fire in the United States in over ten years. The Ghost Ship was a two-story warehouse that had been leased to artists who lived and worked in the building, periodically using it for events. Zoned as a warehouse, neither residential nor assembly uses were permitted by the city. Issues with the Ghost Ship had surfaced prior to the fire: The City of Oakland documented 39 code enforcement inspections and 10 code enforcement complaints of the warehouse and the adjacent vacant lot between 2004 and 2016. Media reports suggest that the Ghost Ship hadn’t been inspected in 30 years. Had an inspection occurred, officials could have raised concerns about the safety and occupancy of the building.¹ Two people, including the property manager, have been criminally charged because of the deaths. The Senate Committee on Governance and Finance (G&F) convened two informational hearings to understand the issues around this fire. This bill is one of the work products of those hearings.

5. Criminal Law Provisions of This Legislation

This bill creates a number of additional misdemeanor offenses for interfering with official duties of code enforcement officers and fire marshals. Under current law, it is a misdemeanor to willfully commit specified acts at the burning of a building or at any other time and place where any firefighter or firefighters or emergency rescue personnel are

¹ The Oakland Fire Department’s Origin and Cause Report, Incident # 2016-085231, showed pictures of an eclectic and crowded interior with non-standard multi-story construction and apparently unpermitted occupancy.

discharging or attempting to discharge an official duty. This bill seeks to expand similar provisions to code enforcement officers and fire marshals.

Additionally, this bill will extend that authority to persons employed as building officials or their designees, to the extent necessary to enforce laws related to unpermitted, dangerous, or otherwise illegal structures, and provided that those officials are authorized to do so by a memorandum of understanding with specified local law enforcement officials.

According to the author, one of the issues with the Ghost Ship Fire was the resistance by the property manager to building inspectors. The issue before the committee today is whether misdemeanor penalties are necessary to force compliance with building inspections.

6. Code Enforcement Officers

A Code Enforcement Officer is a sworn or non-sworn inspector, officer or investigator, employed by a city, or county, or city and county, who possesses specialized training in, and whose primary duties are the prevention, detection, investigation, and enforcement of violations of laws regulating public nuisance, public health, safety, and welfare, public works, business activities and consumer protection, building standards, land-use, or municipal affairs.

Code Enforcement is the prevention, detection, investigation and enforcement of violations of statutes or ordinances regulating public health, safety, and welfare, public works, business activities and consumer protection, building standards, land-use, or municipal affairs.

Under California law there aren't existing criminal penalties for interfering with code enforcement officers as imagined in this bill. This bill takes provisions related to interfering with peace officers and applies those provisions to code enforcement officers, in the form of building inspectors.

7. Housing Provisions of the Bill

Inspections

Existing law requires local officials, typically the local fire chief or his/her representative, to conduct annual fire safety inspections on K-12 schools, multi-family dwellings and high rise dwellings, and requires the State Fire Marshall to biannually inspect jails and prisons. Fees to conduct these inspections are authorized.

This bill requires:

- Local governments to annually report to the State Fire Marshall on the number of structures which it is required to inspect and the number which are overdue for inspection. These reports shall be published on the State Fire Marshal's website.
- Local governments to, at least every five years, inspect specified industrial and storage structures, as defined, for which the local government may assess a fee.

Abatement Notices

Existing law requires an enforcement agency that finds a building in violation of the California Building Standards Code to notify the owner to abate the violation.

This bill requires that such notice shall specifically identify the needed repairs and the codes being violated, with specific exemptions.

Receivership

Existing law authorizes enforcement agencies, tenants, or tenant associations to petition a court to appoint a receiver for a substandard building if the owner fails to comply within a reasonable time with the terms of the notice of violation. The receiver takes complete control of the building, including management and repairs to remedy any violations. The court has broad discretion in its decision.

This bill narrows the discretion of the court by requiring that a receiver be appointed unless the owner can provide clear and convincing evidence that the existing law regarding code violations and notice requirements were not followed. This bill also clarifies that a receiver can be appointed for any property used for human habitation.

Relocation Benefits

Existing law provides for the payment of relocation benefits to a tenant who is displaced because of a building violation that endangers the immediate health and safety of the residents.

This bill provides that existing tenant relocation benefits shall be extended to any unit used for human habitation, regardless of zoning designation.

Numerous Clarifications

Existing law allows enforcement agencies to enforce provisions of the California Building Standards Code. This bill clarifies that enforcement agencies may also enforce their municipal codes and municipal building and fire codes.

Existing law requires enforcement agencies to provide each resident with copies of any notices of violation, orders and permits. This bill clarifies that these notices shall also be posted on the building.

Existing law provides that receivers are entitled to the same fees, commissions, and necessary expenses as receivers in actions to foreclosed properties. This bill clarifies that any person, who acquires a property which is in violation of building codes and is in receivership, shall be responsible for any costs and fees of the receiver and the enforcement agency.