

STATE OF CALIFORNIA BUSINESS, TRANSPORTATION AND HOUSING AGENCY

OCT 03 2003

SEATTLE, WA**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF CODES AND STANDARDS**

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October 3, 2003

Dan Scannell, Chief
Legislative and Regulatory Affairs Unit
California Department of Health Services CLPPB
1515 Clay Street #1801
Oakland, CA 94612

RE: Asserting Title 25 Authority and Preemption

Dear Dan:

You inquired regarding a jurisdiction that believes that it cannot enforce Senate Bill 460 (lead-based paint as a violation of the State Housing Law) until it enacts a local ordinance to do so. You also stated that the jurisdiction enforces the "uniform housing code".

First of all, all jurisdictions are required to enforce the State Housing Law ("SHL", H&SC §§17910, et seq.) for activities related to use, occupancy and maintenance of housing (as well as construction and repair). In addition, pursuant to the SHL, all jurisdictions must adopt and enforce Title 25, California Code of Regulations ("Title 25 CCR"), §§ 1, et seq. Only portions of the "Uniform Housing Code" are adopted by HCD in Title 25 CCR for enforcement in the State of California.

The mandatory obligation to enforce the SHL is derived from H&SC § 17950 which says that the State Housing Law ("this part") and building standards and "other rules and regulations promulgated pursuant to the provisions of this part" (e.g., Title 25 CCR) apply in all parts of the state.

Section 17958 of the H&SC says that local governments may make certain amendments, additions, or repeals to the building standards "or other regulations (e.g., Title 25 CCR) adopted pursuant to section 17922. If no changes are made, the provisions themselves become effective for the local government 180 days after state adoption or amendments. Thus, Title 25 CCR and the SHL statutes are automatically effective unless the jurisdiction properly adopts alternative provisions. In addition, Title 25 CCR, section 6, states "The governing body of every city or county shall adopt ordinances or regulations imposing the same requirements as are contained in this subchapter..."

The enforcement authority allowed by H&SC §§ 17995, et seq., applies directly to the "provisions of this part [the State Housing Law]...any other rules and regulations [Title

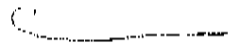
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25 CCR)" for the purposes of misdemeanor and civil contempt prosecution. Similarly, the civil prosecution authority under H&SC §§ 17980, et seq., apply to all violations.

A local jurisdiction may adopt local ordinances for enforcement of State Housing Law violations, as long as they are consistent with the State Housing Law and regulations adopted pursuant thereto. However, adoption of such an ordinance is not required to enforce the statutory prohibitions, since, as noted above, they are automatically effective unless alternates are properly adopted.

One additional issue that has concerned some local governments: subdivision (g) of H&SC § 17922 states that 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". In the case of lead-based paint enforcement, while the presence of lead does not create a "substandard building" (compared H&SC § 17920.3 with § 17920.10), the violation of § 17920.10 is a violation of the State Housing Law and, pursuant to § 17995, it is a misdemeanor. Therefore, such a local ordinance may be adopted.

Sincerely,


Ronald S. Javor
Assistant Deputy Director

cc: Dave Walls, SHL Program Manager