

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 468 (Quirk-Silva)
Version: April 11, 2023
Hearing Date: July 6, 2023
Fiscal: Yes
Urgency: No
ID

SUBJECT

State building standards

DIGEST

This bill allows for any building used for human habitation to be declared to be a substandard building if it does not meet standards required by code, regardless of the building's zoning or approved use.

EXECUTIVE SUMMARY

Housing affordability and availability is a major problem in California. Because of this problem, buildings not otherwise zoned or permitted for occupancy are used for housing nonetheless. To ensure that such buildings still will be upheld to building standards for inhabited buildings so that human beings living in them will not be harmed, this bill makes changes to the law regarding what buildings can be determined by local housing code enforcement agencies to be a substandard building. Specifically, it provides that a building may qualify as a substandard building regardless of whether it is zoned or designated for habitation. This bill creates an exception from enforcement for instances in which the inhabitant is illegally inhabiting the building, the owner is diligently pursuing an unlawful detainer against the inhabitant, and that the enforcement agency determines that the building poses no risk to lawful occupants, nearby residents, or the public. This bill will also expand relocation benefits to inhabitants when violations are so serious that they pose an immediate threat to the health or safety of a resident to residents who are occupying a building not zoned or approved for human habitation. In an effort to ensure that building owners make necessary repairs, the bill strengthens the law regarding receiverships and appeals of superior court orders for compliance with building standards. AB 468 is sponsored by the California Association of Code Enforcement Officers, and is supported by the California Building Officials. It has no known opposition. This bill passed out of the Senate Housing Committee on a vote of 11 to 0.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Defines a substandard building as any building or portion thereof in which there exists specified conditions that endanger the life, limb, health, property, safety, or welfare of the public or the occupants thereof, including:
 - a) inadequate sanitation;
 - b) structural hazards or inadequate structural resistance to horizontal forces;
 - c) any nuisance;
 - d) hazardous wiring, mechanical equipment, or construction equipment;
 - e) plumbing that is not in a good and safe condition;
 - f) faulty weather protection;
 - g) any building, device, equipment, combustible waste, or vegetation that, in the opinion of the fire department, could cause a fire or explosion or provide fuel to augment the spread and intensity of fire or explosion;
 - h) accumulations of weeds, vegetation, junk, dead organic matter, debris, offal, garbage, rodent habitats, stagnant water, combustible materials, and similar materials or conditions that constitute fire, health, or safety hazards; and
 - i) buildings that have been inadequately maintained per the California Building Code (CBC), that are not provided with adequate exit facilities, that lack fire-resistive construction or fire-extinguishing systems or equipment required by code, or are occupied for living, sleeping, cooking, or dining purposes that were not intended or designed to be used for those occupancies. (Health & Saf. Code § 17920.3.)
- 2) Provides that any officer, employee, or agent of an enforcement agency may enter and inspect any building or premises whenever necessary to secure compliance with, or prevent a violation of, any provision of state habitability laws or the building standards, as specified. (Health & Saf. Code § 17970.)
- 3) Requires that, if a city or county receives a complaint from a tenant, resident, or occupant regarding a potential violation of the habitability laws, the city or county must inspect the building that may be in violation, document any violations discovered, and advise the owner as applicable of each violation and the action required to remedy it. (Health & Saf. Code § 17970.5.)
- 4) Provides that an officer of an enforcement agency may issue an order to an owner or their agent regarding any violations of the habitability laws, requiring the violations to be remedied. (Id.)
- 5) Provides that, if an order by an officer of an enforcement agency is not complied with in a reasonable time to remedy a violation, the enforcement agency may file an

application with the superior court for an order authorizing the agency to remove the violation or abate the nuisance. (Health & Saf. Code § 17982.)

- 6) Allows that a superior court may make any order pursuant to the laws on habitability of a building for human habitation, for which an application for order is made. (Health & Saf. Code § 17983.)
- 7) Establishes that any tenant who is displaced or subject to displacement from a residential rental unit as a result of a specified violation where the immediate health and safety of the residents is endangered, is entitled to receive relocation benefits from the owner. (Health & Saf. Code § 17975.)
- 8) Requires the lessor of a building intended for human occupancy, in the absence of an agreement to the contrary, to keep it in a condition fit for such occupation, and repair all subsequent dilapidations thereof, which render it un-tenantable unless otherwise provided for in law.

This bill:

- 1) Defines a “substandard building” to mean any building, including any building used for human habitation, that is declared substandard under state habitability laws.
- 2) Provides that any building or portion thereof in which there are specified substandard conditions to an extent that endangers the life, limb, health, property, safety, or welfare of the occupants of the building, nearby residents, or the public, may be declared a substandard building regardless of zoning designations or approved uses of the building.
- 3) Requires relocation assistance for any lawful tenant renting a unit used for human habitation in a building that is deemed substandard, regardless of the zoning designation or approved uses of the building, when an order to vacate is issued by a local enforcement agency as a result of a habitation violation so extensive as to endanger the immediate health and safety of the resident.
- 4) Expands existing nuisance abatement requirements to apply when there is an immediate threat to health and safety of nearby residents.
- 5) Provides that, if an enforcement agency determines a building is substandard based solely on the building being occupied, the agency is prohibited from commencing court proceedings to abate the violation by repair if all of the following conditions are met:
 - a) the building owner declares under penalty of perjury that the occupant is illegally occupying the building;

- b) the owner filed and is diligently prosecuting an unlawful detainer action against the occupant; and
 - c) the enforcement agency determines the building poses no risk to lawful occupants, nearby residents, or the public.
- 6) Provides that the appointment of a receiver for a substandard building as a result of reasons other than the substandard condition does not prevent an enforcement agency from seeking, or the court from appointing or replacing, a receiver based on the substandard nature of the building. In those cases, both statutory provisions allowing appointment of a receiver apply.
- 7) Allows a receiver, with court approval, to place a lien on the real property of the substandard building to pay for services performed by and any moneys owed to the enforcement agency or the receiver.
- 8) Provides that the court's authority to retain ownership of a substandard building through a receiver for 18 consecutive months after a receiver has been discharged may be extended by order of the court to ensure continued compliance with a court order.
- 9) Specifies that an appeal of a court order or judgment issued pursuant to substandard building laws after application by the enforcement agency does not stay the order or judgment, absent an extraordinary writ issued by the appropriate appeals court upon a properly filed petition.
- 10) Provides that when a new owner acquires an ownership interest in a property subject to specified requirements to correct a code enforcement violation, the owner must also cover the costs and fees of the receiver or enforcement agency.

COMMENTS

1. Author's statement

According to the author:

California's housing crisis, including lack of affordable housing and homelessness is critical. We have provided billions of dollars to combat this severe problem. However, this crisis has multiple layers which affect individuals, families, communities and the state on various levels. Providing a bed is not a solution. It is a temporary service provided each night. There are no guarantees to a bed, and if there are, shelters have been ridden with their own crisis; overcrowding, broken showers and toilets, theft, and abuse. The other options are living on the streets, which come with its own set of safety and health problems or living in warehouses, factories, and buildings without proper permits and oversight. We need to better

empower local and state agencies to deal with vacant dilapidated commercial and industrial building that should be brought up to code, and ideally, returned to a beneficial use in the community, perhaps even much needed safe housing.

2. Substandard buildings are being increasingly used for habitation

California is facing a dire housing crisis. The average price for a home has increased so significantly that only the wealthiest of prospective buyers can afford to purchase them. In mid-2022, the median price of a single-family home set an astounding record high of \$898,980.¹ Accordingly, homeownership rates in California are the second lowest in the country, at 56 percent in from 2016 to 2020.² At the same time, rent in California has also experienced significant increases, in part due to how unobtainable homeownership is becoming for most Californians. The largest cities in California are among the most expensive cities for renters in the United States, and renters are spending a significant portion of their income on rent. Homelessness has increased significantly in the state at the same time, in part due to the increases in the cost of housing, and in part due to the lack of housing available. These realities have pushed many to resort to other means of creating more housing, or have forced some to accept poor, unpermitted housing. This includes the conversion and use of warehouses and other buildings not initially intended for housing into spaces for habitation. While these strategies may create more housing options, including more affordable housing options, they may do so at the cost of safety and health.

When a building is built or designated for housing, it must meet various standards in construction and safety to ensure it does not pose risks to its residents. These include standards of sanitation, structural integrity, electrical wiring, plumbing, mechanical equipment, and fire hazards, among others. (Health & Saf. Code § 17920.3.) If a building does not meet the standards and the deficiency endangers the life, limb, health, property, safety, or welfare of the public or the occupants, it is considered substandard housing, and the deficiency must be corrected. Local housing authorities are required to regularly inspect buildings for compliance with these requirements, respond to complaints about violations of these standards, and issue orders relating to violations. An officer of a city's enforcement agency may enter and inspect a building whenever necessary to ensure compliance with the building standards. (Health & Saf. Code § 17970.) If the agency receives a complaint regarding a violation of the habitability standards, it must inspect the building or portion that is intended for human habitation, document any violations, and advise the owner or operator of each violation and the action required to remedy the violation. (Health & Saf. Code § 17970.5.)

¹ Ryan Lillis, "Unaffordable: California home prices break yet another record. How do we compare to US?" The Sacramento Bee (Jun. 29, 2022), available at <https://www.sacbee.com/news/california/article262865873.html>.

² Marisol Cuellar Mejia et al, "Homeownership Trends in California," Public Policy Institute of California (Jun. 14, 2022), available at <https://www.pplic.org/blog/homeownership-trends-in-california/>.

However, when a building is being inhabited but is not permitted or zoned for residential use, there is ambiguity about whether the standards for habitability apply because such buildings are not specifically mentioned. Additionally, such inhabited spaces may evade detection and inspection precisely because they are not permitted or zoned, and because tenants in such spaces are not protected if they are forced to vacate the building for the deficiencies to be fixed. Such scenarios can result in occupants having to endure substandard and unsafe living conditions. In the worst of cases, this could result in serious harm to the occupants. One example highlighted by the author is the “ghost ship” fire of 2016, in which a warehouse in Oakland that was being occupied by tenants caught fire during a small concert.³ Thirty-six people died in the blaze. The fire was likely caused by poor wiring in the building, something that could have been caught if the building had been inspected to ensure the building standards for buildings used for habitation.

3. This bill would increase consumer protections by extending habitability requirements to all buildings being used for habitation, regardless of whether the habitation is permitted or zoned

AB 468 makes a number of changes to the law in an attempt to better ensure that building standards are applied to all buildings used as habitation, such as the Ghost Ship, regardless of whether they have been zoned or permitted for habitation. It does this by amending section 17920.3 of the Health and Safety Code to specifically include any building “regardless of zoning designations or approved uses,” thereby making it clear that the section applies to buildings that are not zoned or designated for habitation. AB 468 also amends the definition of those who may be endangered by the substandard conditions sufficient to trigger a finding that the building is substandard. The new definition under AB 468 would include not only situations where the substandard conditions endanger an occupant or the public, but also where they endanger nearby residents. This expanded definition may expand the applicability of section 17920.3 to buildings where part of the building is used for business or events, and an adjoining part is used for residences, as the Ghost Ship was. If part of the building, or an adjoining or nearby building is substandard sufficient to endanger residents in another part of the building or an adjacent building, AB 468 would permit that building to be deemed substandard. For mixed-use spaces or particularly dense developments, this would provide further protections and safety to residents.

AB 468 also attempts to ensure that buildings unofficially used for habitations will be covered by building standards by including in section 17920 a definition of substandard building that includes “any building used for human habitation.” This definition, along with the amendments to section 17920.3, clarifies that section 17920.3’s standards for

³ “Presenting Solutions to Help Local Officials Avoid another Ghost Ship Fire,” Sen. Comte. On Governance & Finance, Cmte. Background Paper (Jan. 11, 2018), available at <https://sgf.senate.ca.gov/content/2018-oversight-and-informational-hearings-1>.

inhabited buildings apply to buildings in which or near which individuals live, regardless of the zoning or permitted use.

4. This bill would expand the availability of relocation benefits to displaced residents

Sometimes a local enforcement agency will be required to issue an order to vacate a building that is so substandard that the immediate health and safety of a resident is endangered. (Health & Saf. Code § 17975.) When it does, under current law a resident required to vacate under such an order may be eligible for relocation benefits from the owner of the substandard building. Relocation benefits are required to be a payment equal to two months of an established fair market rent for the area, and an additional payment for utility service deposit. (Health & Saf. Code section 17975.1.)

The section regarding relocation benefits states that a local enforcement agency shall determine a tenant's eligibility for relocation benefits. AB 468 adds a provision to the section regarding relocation benefits to specify that tenants forced to vacate a substandard building are considered eligible for relocation payments regardless of whether the building in which they were inhabiting was zoned or designated for residential use. This additional provision will ensure that such residents will be able to access relocation benefits from the owner of the building, regardless of whether the residential use is authorized. Such a change will help implement the enforcement of the building standards on such buildings, as it will facilitate orders to vacate for appropriate repairs, and will also help minimize fears such tenants may have of filing complaints regarding substandard conditions. With the relocation benefits, tenants dealing with substandard conditions will feel more comfortable reporting those conditions to the appropriate local enforcement agency for correction.

In addition to those changes, AB 468 makes a number of other amendments to the Health and Safety Code to make it easier for both local enforcement agencies and building receivers to be repaid for costs they incur, and to clarify certain procedural steps after a substandard building has gone into receivership. AB 468 also amends a provision relating to receiverships for substandard housing. The amendments clarify that an enforcement agency is prevented from seeking a receivership for a substandard building by the fact that a receiver has been appointed pursuant to another provision of law. AB 468 also amends the provisions relating to receiverships to allow that a court may extend its jurisdiction over the substandard housing beyond the 18 months after the discharging of a receiver that is currently allowed.

5. AB 468 allows superior court orders to go into effect while the order is appealed

If an enforcement agency issues an order to remedy a deficiency in a substandard building, and the deficiency is not remedied within a reasonable time as specified in the agency's order, the agency may request that a superior court issue an order allowing the agency to remove the violation or abate the nuisance itself. (Health & Saf. Code §17982.)

AB 468 adds a subdivision to this section specifying that any appeal of a superior court order issued pursuant to that section shall not stay proceedings, without any extraordinary writ being issued by the appropriate appeals court from a proper petition for such a writ. This amendment clarifies that an owner appealing a superior court order authorized under the statute when the owner does not comply with the enforcement agency's initial orders will continue to remain in effect during the appeal. In other words, simply appealing a court's order will not allow the owner to avoid having to comply with that order, unless the appellate court issues an order for such a stay. This clarification will help ensure that a court's orders will have force when made against an owner who has already failed to comply with orders of the enforcement agency. It nonetheless allows for extraordinary situations where an owner may be irreparably harmed by having to comply with the superior court's order, as it does not preclude a request of a stay of the lower court's order. However, absent such a request on appeal and grant of such stay, AB 468 specifies that a superior court's order to enforce the provisions relating to building standards shall go into effect.

6. This bill includes a provision to protect against enforcement when an inhabitant is not lawfully occupying the space

Under the provisions as amended by AB 468, it is possible that a local enforcement agency could attempt to enforce the habitability building standards in section 17920.3 on a building in which the inhabitants have not been provided permission to inhabit the building. To protect building owners with such unlawful inhabitants in their building from having to comply with habitation building standards, AB 468 creates a carve out for when the building owner is actively trying to evict the unlawful inhabitants. This carve out prohibits the enforcement agency from commencing proceedings to abate a violation if the owner declares under penalty of perjury that the occupant is illegally occupying the building, the owner filed and is diligently prosecuting an unlawful detainer against the occupant, and the enforcement agency determines that the building poses no risk to lawful occupants, nearby residents, or the public.

This provision, while meant to protect owners when they may have had nothing to do with the occupants of their buildings, nonetheless places such occupants at risk. Considering the nature of unlawful detainer cases and the fact that the owner may not win such a case, it might make more sense to extend this exception only to the case where an owner wins the unlawful detainer action. It is also unclear how it will be determined that an owner is "diligently prosecuting" the unlawful detainer, and without a specific definition or evidence required for providing that the occupant is illegally occupying the building, this could allow for an owner to avoid necessary repairs by initiating an unlawful detainer action against a tenant they otherwise had agreed to allow the occupant to use or acquiesced to their use of the building.

SUPPORT

California Association of Code Enforcement Officers (CACEO) (sponsor)
California Building Officials (CALBO)

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: AB 548 (Boerner, 2023) requires local enforcement agencies to develop policies and procedures for inspecting multiple units in a building if an inspector or code enforcement officer has determined that a unit in that building is substandard or is in violation of state habitability standards. This bill is currently pending before the Appropriations Committee.

Prior Legislation:

AB 1858 (Quirk-Silva, 2022) was substantially similar to this bill. This bill was held in the Assembly Appropriations Committee.

AB 838 (Friedman, Ch. 351, Stats. 2021) required local governments to respond to a substandard building or a lead hazard violation complaint from a tenant or specified others in a timely manner.

SB 1415 (McGuire, 2018) was substantially similar to this bill, and would have also required inspections of buildings used for human habitation, regardless of zoning or permitted use. This bill also included provisions related to fire inspections. SB 1415 was vetoed by the Governor Jerry Brown. In his veto message Governor Brown wrote: "Local governments have a better understanding of the type of local inspections needed in their communities. Let's leave these decisions to the sound discretion of local governments."

PRIOR VOTES:

Senate Housing Committee (Ayes 11, Noes 0)

Assembly Floor (Ayes 78, Noes 0)

Assembly Appropriations Committee (Ayes 15, Noes 0)

Assembly Housing and Community Development Committee (Ayes 8, Noes 0)
