From HCD: State Health & Safety Code Enforcement

Questions

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1 of 7 2/19/13 11:16 AM

From: **"Shawn@HCD Huff" <Shawn.Huff@hcd.ca.gov>**

To: **"astuffler@cityofventura.net" <astuffler@cityofventura.net>**

Cc: **"Doug@HCD Hensel" <Doug.Hensel@hcd.ca.gov>, "Bradley@HCD Sutton"**

**<Bradley.Sutton@hcd.ca.gov>**

Sent: **Tuesday, February 12, 2013 8:25:23 AM**

Subject: **State Health & Safety Code Enforcement Questions**

2-12-2013

Andrew Stuffler

Building & Safety Manager

Community Development Department

City of Ventura

On January 23, 2012 the Department of Housing and Community Development (HCD)

Legal Affairs Division (LAD) received an electronic correspondence from you. The title

of your inquiry was “State Health & Safety Code Enforcement Questions.” Specifically,

you asked three (3) questions.

State Housing Law Program staff, in the Division of Codes and Standards, was asked to

provide analysis based upon their knowledge of the specific provisions within the

California Health and Safety Code in question. Below are their conclusions to your

inquiry.

Question 1:

If a building is found to have undergone a change or addition that required a permit, and

no permit is on file in our office (never obtained or lost by the City), can the City enforce

the State Health & Safety Code Section 17960 by estimating the date of the change or

addition and applying only the State Building Standards that were in effect at the time of

the change or addition?

1. California Health and Safety Code (HSC) Section 17910 et seq., regulates the

applicability of regulations to existing buildings and structures. HCD regulations to

clarify interpret or make those provisions of law are found in Title 25, Division 1,

Chapter 1,

Subchapter 1., State Housing Law Regulations.

2. California Code of Regulations (CCR) Title 25, Section 16 makes clear that a permit

must be obtained to erect, construct, alter, enlarge etc., a building or structure under the

State Housing Law . However, no specific language exists regarding permitting and the

ministerial functions of compliance (there are exceptions for some types of buildings).

3. California Building Code Section 1.8.4.3.1, adopted by HCD, requires building

departments to maintain a copy of the plans of every building, during the life of the

building, for which the department issued a building permit (with specific exceptions).

Conclusion:

Differences exist between a permit never obtained and a legally permitted addition

alteration and/or repair that files were lost by the local enforcing agency. One common

thread between the two circumstances is that the California Health and Safety Code

under HCD purview and the California Building Standards Code is silent to specific

remedies and/ or courses of action.

The Definition of “Enforcement” found in HSC Section 17920 (e) reads in part, that

enforcement is a diligent effort to secure compliance, including review of plans, permit

applications, response to complaints, citation of violations and other legal process. The

term diligent, while perhaps imprecise, does appear to allow the local enforcing agency

some discretion and arguably that includes enforcement based on estimation of when an

addition was completed. This should be a fact bound inquiry based on all relevant

circumstances including but not limited to: permitting process at the time in question,

history of record retention practices, type and characteristics of the addition, etc.

However, HSC Sections 17922 (d) and 17958.8 are very clear that alterations and

repairs to existing buildings shall permit the replacement retention and extension of

original materials and that additions or alterations increasing area, volume or size shall

comply with the requirements for new buildings as specified by statute, regulation or the

California Building Standards Code.

California Health and Safety Code Article 3, commencing with section 17980, also

provides text specific to actions and proceedings regarding violation of nuisance; repair

and demolition of substandard buildings; orders requiring building to be retrofitted to

local building standards.

Question 2:

If a building is found to have undergone a change or addition that required a permit, and

no permit is on file in our office (never obtained or lost by the City), can the City enforce

the State Health & Safety Code Section 17960 by granting amnesty from all State

Building Standards and publish its own “Life-Safety Checklist” of standards to apply in

the inspection process?

1. As the general rule, HSC Section 17960 requires building departments to enforce all

provisions in the State Building Standards Code, the provisions in the HSC (State

Housing Law), and other rules and regulations adopted by HCD pertaining to the

erection, construction, reconstruction, movement, enlargement, conversion, alteration,

repair, removal, demolition, or arrangement of apartment houses, hotels or dwellings.

2. Section 17958 through 17958.7 allow local enforcing agencies to make express finding

of reasonably necessary changes to the California Building Standards Code or other

regulations, based upon specified criteria, if the local amendments, ordinances or

regulations impose the same requirements as the provisions published in the California

Building Standards Code.

3. The HSC allows building departments (Section 17951) to approve the use of alternate

material, appliance, installation, devise, or method of work on a case-by-case basis if

certain conditions are met.

Conclusion:

Differences exist between a permit never obtained and a legally permitted addition

alteration and/or repair that files were lost by the local enforcing agency. One common

thread between the two circumstances is that sections of the California Health and Safety

Code sections under HCD purview, is silent to a specific remedies and/ or courses of

action. Neither the Health and Safety Code nor California Building Standards Code

acknowledges amnesty as an enforcement choice. HCD does not believe that amnesty

is a diligent effort to secure compliance as outlined under the definition of enforcement in

HSC 17920 (e).

At face-value, a Life-Safety Checklist contradicts the Health and Safety Code. In

principle, the checklist is intended to be used regularly in this type of scenario which

circumvents evaluation of a building or project on case-by-case basis to determine

reasonable alternatives; including the determination of initial construction, alternate

methods and/or materials of compliance as outlined by regulation and statute. Second,

the checklist as described would be utilized in lieu of tools provided a local enforcement

agency to modify building standards as permitted in HSC Sections 17958-17958.7.

Question 3:

Can the City enforce State Health & Safety Code Section 17960 (and State Building

Standards referenced thereby) by relying solely on third-party construction professionals

that are not certified per Health & Safety Code Section 18949.25?

1. Section 18949.25 defines a “construction inspector” as any person who is hired or

contracted by a local agency in a temporary or permanent capacity for the purpose of

inspecting construction for structural, seismic safety, fire and life safety, or building

system requirements of adopted uniform codes or standards, as applied to residential,

commercial, or industrial buildings. This section does not mandate any specific

certification. Experience and certification requirements are contained in Section

18949.28, and these are the minimum requirements a building inspector/plans

examiner/building official have to comply with.

Conclusion:

HSC Section 17960 directs the local Building Department to enforce all the requirements

of Health and Safety Code Section 17910 et, seq., the California Building Standards

Code and other regulations promulgated by the HCD. HSC Section 17964 permits a

local city, county or city and county by resolution, ordinance or charter to designate

another department or officer to carry out enforcement functions.

HSC Section 17960.1 permits the governing body of a local agency to authorize its

enforcement agency to contract a private entity or person to perform plan checking on a

temporary basis.

HSC Section 17960 does not specifically authorize local government with the authority to

rely solely on third-party construction professionals for enforcement. The HSC permits

designation of enforcement to a department or officer other than the building department

under specific conditions.

Section 17960.1 permits plan check by a third-party professional(s) on a temporary basis

only. This would lead us to the conclusion that relying solely on third- party for

enforcement is not permissible. However, third-party enforcement is not specifically

prohibited by statute either. HCD has not promulgated regulations to clarify, interpret or

make specific the aforementioned bodies of law because traditionally HCD has not

adopted ministerial administrative provisions nor does HCD govern employment

practices of local government. HSC 18949.28 does set forth inspector qualifications and

exemptions. Therefore, it is the governing body that must select whom performs

inspections within their municipality and if they are complying with state law.

In summary, it appears that the local enforcing agency has a range of flexibility to

enforce the codes, modify them or except alternate methods which are necessary to

provide equivalent protections. However, that does not preclude a local enforcing agency

from obtaining substantial compliance and equivalency with building standards adopted

by HCD. No provisions exist in statute or regulation for amnesty.

If I may be of any further assistance please feel free to contact me.

Sincerely,

SHAWN P. HUFF

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