

The City Attorney
City of San Diego
MEMORANDUM
236-6240

DATE: July 15, 1988

TO: Councilman Bob Filner
FROM: City Attorney and City Manager
SUBJECT: Absentee Landlords

INTRODUCTION

In your memorandum of June 1, 1988, you requested the City Attorney and City Manager to analyze the concept of holding absentee property owners responsible for violations of the Municipal Code on their property. As your memorandum indicates, a substantial number of code enforcement violations arise on real properties which are not occupied by the owner. This memorandum will first discuss the current state of the law regarding owner responsibility and then follow with a few suggestions and ideas for policy development.

LEGAL BASIS

The Municipal Code of San Diego contains several provisions which explicitly hold the property owner responsible for the violation. San Diego Municipal Code (SDMC) section 44.0119 makes the property owner responsible for maintaining his or her real

property free of litter, garbage, trash and debris. It also requires the owner to take preventive steps to deter illegal dumping by the erection of signs or physical barriers.

San Diego Municipal Code section 101.0212 outlines the enforcement mechanisms for any violation of the City's land use and planning regulations in Chapter Ten of the Code. "It shall be unlawful for any property owner(s) to maintain or use, or allow to be maintained or used, his (their) real property and appurtenances in violation of any provision of this Chapter of the Code."

The key word is "maintain." Section 101.0212 was patterned after Section 205 of the Uniform Building Code which makes it unlawful not only to construct or repair but also to use, occupy or maintain any building or structure in violation of this uniform code.

Section 205 of the Uniform Building Code becomes an issue where the present owner did not create the violation, but merely purchased the property - thus, the new owner "maintains" the violation by virtue of his or her ownership. This scenario

frequently occurs where the previous owner illegally converted the building without proper permits. The Building Inspection Department can still pursue enforcement against the current owner as long as it proceeds diligently once the violation is first discovered.

Some state statutes have been interpreted to apply to absentee landlords. In the area of Drug and Redlight Abatement (California Health and Safety Code section 11570 et seq. and Penal Code section 11220 et seq.) a showing of personal knowledge on part of the owner or operator of the premises is not a prerequisite to relief. *People ex rel. Hicks v. Sarong Gals*, 42 Cal.App.3d 556, 561 (1974).

This concept of imposing liability on property owners without fault or intent is often referred to as "strict liability." The courts have applied strict liability where the statute or ordinance involves public welfare regulations and the language is silent with respect to intent. The courts have traditionally applied strict liability in the area of consumer goods. In *People v. Travers*, 52 Cal.App.3d 111, (1975) the court found the defendant guilty for the mislabeling of consumer goods despite no intent on behalf of the manufacturer to violate the regulations. Strict liability has also been extended to the area of fire and building code violations. In *Leslie Salt Co. v. San Francisco Bay Conservation, etc.*, 153 Cal.App.3d 605 (1983), the Court reaffirmed this principle in the context of land use regulations:

"Thus, whether the context be civil or criminal, liability and the duty to take affirmative action flow not from the landowner's active responsibility for a condition of his land that causes widespread harm to others or his knowledge of or intent to cause such harm but rather, and quite simply, from his very possession and control of the land in question."

See also *People v. Bachrach*, 114 Cal.App.3d Supp. 8, (1980).

While these decisions discussed above support the concept of strict liability, this area of the law is still relatively new and unsettled. Many judges are still reluctant to apply strict liability in cases where the property owner has no direct involvement or knowledge of the violation. This hesitation lends further justification for the creation of the Environmental Court.

POLICY DEVELOPMENT

The general practice for the majority of enforcement units within the City Manager's Office is to seek compliance from the property owner or landlord rather than the tenant, or from both of them at

the same time. This strategy applies to the most common violations investigated by Building Inspection, Housing Division, Fire, Litter Control and the Planning Department as well. There are some exceptions such as noise violations caused by the tenant's loud stereo or barking dogs and some fire code violations where the responsibility might be delegated to the tenant via a private lease agreement.

As discussed above, the principle of strict liability is codified in many parts of the San Diego Municipal Code. Enforcement provisions similar to San Diego Municipal Code section 101.0212 could be enacted in other chapters of the Municipal Code to clearly state the Council's intent to hold property owners responsible for violations on their property. The City Attorney and City Manager will survey the numerous enforcement units throughout the City to identify issues and problem areas that might be corrected by amendments to the Municipal Code. The newly approved position of Code Enforcement Coordinator, working with the City Attorney, can establish priorities for handling any such legislative changes.

Specifically, with regard to the abatement of drugs, the Drug Abatement Task Force developed by the City Manager and City Attorney continues to successfully remove local drug businesses from neighborhoods throughout the City. Since its early meetings in November, 1987, the Task Force has closed approximately 20 locations just by sending demand letters to property owners. The coordination of the Police Department with the Fire, Zoning and Housing Inspectors has proved to be a valuable tool in our efforts to combat the proliferation of illegal drugs in our neighborhoods. Please note that this successful program has been accomplished by the use of existing personnel and resources.

Part of the Task Force's energies includes community outreach and public relations. This starts with the police officers in the field contacting neighbors as well as meeting with neighborhood organization. Recently representatives from the City Attorney's Office met with the Apartment Owners' Association to discuss methods that their members could use to prevent illegal drug dealing on their property. The Association published an article in its June, 1988 edition of the "Rental Owner" in an effort to educate property owners about Drug Abatement.

Community outreach, like that described above, might be a way to improve the absentee owners' awareness about their responsibilities with regard to the Municipal Code.

Unfortunately, many of the owners who create violations do not belong to organizations like the Apartment Owners' Association. Development of a program which identifies, contacts and educates

the "small-time" landlords about their responsibilities would directly enhance their awareness and might actually decrease violations. Such a program could be modeled after the Police Department's Neighborhood Watch, but focus on zoning, building and other land use violations created by absentee landlords in a particular neighborhoods.

Many of the ideas and issues discussed in this memorandum will soon be the responsibility of the newly approved Code Enforcement Coordinator. As the City Manager reported during the adoption of the budget, the creation of a Code Enforcement Coordinator and Environmental Court will strengthen the City's overall capabilities to expeditiously enforce the Municipal Code against property owners, as well as tenants. Certainly the goal of holding property owners responsible is important. The Code Enforcement Coordinator will be advised of this issue and instructed to pursue any state and/or local legislation or procedural changes which might increase our efficiency in enforcement.

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