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HOUSING CODES AND THEIR ENFORCEMENT IN SIX CONNECTICUT CITIES

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By the
Connecticut State Advisory Committee
to the
United States Commission on Civil Rights

July 1967

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TO THE

UNITED STATES COMMISSION ON CIVIL RIGHTS

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PREFACE

The United States Commission on Civil Rights

The United States Commission on Civil Rights is an independent agency of the Executive Branch of the Federal Government created by the Civil Rights Act of 1957. By the terms of that Act, as amended by the Civil Rights Acts of 1960 and 1964, the Commission is charged with the following duties: investigation of individual discriminatory denials of the right to vote; study of legal developments with respect to denials of the equal protection of the law; appraisal of the laws and policies of the United States with respect to denials of equal protection of the law; maintenance of a national clearinghouse for information respecting denials of the equal protection of the law; and investigation of patterns or practices of fraud or discrimination in the conduct of Federal elections. The Commission is also required to submit reports to to the President and the Congress at such times as the Commission, the Congress, or the President shall deem desirable.

The State Advisory Committees

An Advisory Committee to the United States Commission on Civil Rights has been established in each of the 50 states and the District of Columbia pursuant to section 105 (c) of the Civil Rights Act of 1957 as amended. The Committees are made up of responsible persons who serve without compensation. Their functions under their mandate from the Commission are to: advise the Commission of all relevant information concerning their respective States on matters within the jurisdiction of the Commission; advise the Commission upon matters of mutual concern in the preparation of reports, suggestions, and recommendations from individuals, public and private organizations, and public officials upon matters pertinent to inquiries conducted by the State Committee; initiate and forward advice and recommendations to the Commission upon matters which the State Committee has studied; assist the Commission in matters in which the Commission shall request the assistance of the State Committee; and attend, as observers, any open hearing or conference which the Commission may hold within the State.

This report was submitted to the United States Commission on Civil Rights by the Connecticut State Advisory Committee. The conclusions and suggestions for action are based upon the Advisory Committee's evaluation of information received in its study of six cities in Connecticut. This report has been received by the Commission and will be considered by it in making its report or recommendations to the President and the Congress.

INTRODUCTION

Growing demands for Federal urban renewal funds provide the opportunity to improve housing conditions in the whole community, particularly among low income nonwhite families who are concentrated in urban ghettos. Razing housing units in one ghetto forces the displaced occupants to seek marginal accommodations in other areas, thus perpetuating the very conditions which urban renewal seeks to alleviate.

But economic renewal is not enough. There must be added emphasis on enforcing housing codes which impose at least minimum standards. Though the Federal Government requires that communities have such codes as a prerequisite to applying for urban renewal grants, the existence of such codes does not, of itself, insure compliance with and/or enforcement of their standards.

In October 1964, the Connecticut State Advisory Committee to the U.S. Commission on Civil Rights began a study of municipal housing code enforcement in New Haven, Hartford, Waterbury, Stamford, Norwalk, and Bridgeport. The study involved a series of interviews with housing code enforcement officials, with a special housing code prosecutor, and with other interested persons, and a survey of 75 to 100 families in each of the substandard areas of each city. This report divides the problems of enforcement into three general areas: problems arising (1) before the code enforcement agency is actively involved, (2) while the agency is engaged in administering the code, and (3) when the courts are ultimately resorted to for enforcement.

The survey was taken of families living in depressed areas in each city. In most cases, the homes were located in designated urban renewal areas. Interviewers talked with a specified number of tenants in selected blocks. The sample was a random one and consequently no attempt will be made to suggest that the findings of this survey accurately reflect general conditions in depressed areas. The findings are considered useful to the degree which they reveal people's knowledge of municipal housing codes which would enable them to complain to a city agency about poor sanitary and physical conditions. Of the individuals interviewed, 31 percent thought there was such a code, 13 percent thought there was none, and 56 percent did not know. Thus, even though codes existed in each of the cities, fewer than one in three of those interviewed knew of their existence.

While it is true that one need not know that a code exists in order to believe that a landlord is required to maintain certain standards of maintenance, nevertheless, ignorance of a code will prevent tenants from knowing the full scope of their rights and obligations and prevent agencies from receiving complaints about possible violations in a building. From the Committee's findings, it is reasonable to assume that there is widespread ignorance of housing codes. Therefore, because

tenant knowledge of codes is an integral part of effective enforcement, the Committee feels that new steps must be taken to educate residents in depressed areas concerning their rights and duties under housing codes.

This report is significant because Negroes occupy a disproportionate share of housing that is unsafe, unsanitary, overcrowded, or otherwise in violation of minimum housing standards. Since Negroes are denied free access to the housing market, they are the principal victims of ineffective code enforcement. This report also raises issues which have specific impact upon those who live in the ghetto. One, for example, is the unavailability of credit needed for rehabilitating property. Another issue, the Committee feels, is that the welfare shelter allowance keeps a landlord of substandard housing in business.

These circumstances caused the Committee to make this study and forward this report to the Commission.

The study could not have been completed without the generous assistance and cooperation of Hugh B. Price, a student at the Yale University Law School; Frank Logue, director, Community Action Institute of Community Progress, Inc., New Haven; the Reverend Raymond C. Schulze, pastor, Zion Lutheran Church, New Haven; William Jenks, Hartford; Mrs. Eric Wormser, Stamford; Dr. Henry Stetter and Alvin T. Robinson, Research Division,

Connecticut Civil Rights Commission; University of Bridgeport Branch, National Association for the Advancement of Colored People; Robert C. Reichel, director of Codes and Building Standards Branch, Renewal Projects Administration (formerly Urban Renewal Administration), Washington, D.C., and many other government officials whose valuable contributions made the study possible.

The Committee thanks Mrs. Sarah G. Rosenthal who served as chairman of the study Subcommittee for her special services in the preparation of this report.

I. BARRIERS TO EFFECTIVE HOUSING CODE ENFORCEMENT

A. Lack of information or education techniques

Although housing code enforcement officials in Waterbury, Norwalk, and Bridgeport believed that tenants knew of their rights under the code, returns from the study indicated that most tenants knew nothing of the existence of a housing code, much less the provisions or procedures involved. Consequently, where the housing code enforcement agency relies primarily upon complaints as evidence of violations, enforcement is severely impeded.

B. Coercion by landlords

Connecticut officials differed in their opinions on the degree to which a landlord's coercion tactics against complaining tenants impede code enforcement. Several officials were pessimistic that much could be done about threats of eviction or increased rents.

C. Overlapping agency jurisdiction in administration

A factor in the delays in housing code enforcement is the problem of overlap among municipal departments. These six cities have housing, building, and zoning codes, all of which may affect one substandard unit. If a landlord is ordered to make certain

structural repairs costing $100 in order to comply with the housing code, he must obtain a building permit which might, in turn, require more expensive or different changes than those compelled by compliance with the housing code.[1/] In Bridgeport, for example, the building inspector investigates buildings for construction, plumbing, and electrical violations; firemen inspect for potential fire hazards, and health officers for threats to health. In Stamford and New Haven, while the traditional health departments continue to enforce the housing code in non-renewal areas, new agencies have been created to carry out code enforcement at redevelopment projects. Where the boundaries of the renewal areas are clearly drawn and the tasks of old and new agencies are clearly defined, complications from such a division are minimized.

D. Staffing and budgeting problems

In 1964 housing inspection staffs ranged from a single person in Stamford's Health Department to 28 in the Division for Neighborhood Improvement (DNI) in New Haven. This allocation in Stamford was deemed adequate in view of the relaxation of the code enforcement due to redevelopment and the availability of a task force which conducts area inspections and is composed of health, building, and fire department inspectors. In other cities, the small staff is unable to respond rapidly to complaints, to follow up with checks, or to maintain pressure on the offenders.

Proper staff size depends on the number of dwelling units for which the agency is responsible. A Waterbury official preferred at least one man per 100-300 dwelling units. In Norwalk, three men per 1,000 was considered adequate.

Once the proper size is determined, an obvious problem is the source of additional funds. One official expressed reluctance to apply for a Federal grant. He feared that the grant would be for a short period and that experienced inspectors would not join the staff and that untrained men could only fully function six months after an orientation program.

As it now stands, both the Housing and Urban Development Act of 1965 and the Housing and Home Finance Agency Letter #345 fail to state any time limits on the grants. The letter, however, does state that "A single application for grant may cover more than one area in the municipality, subject to the requirement... that it is feasible to complete the code enforcement for all areas covered by the application within three years."[2/]

New Haven's Division of Neighborhood Improvement (DNI) has applied for a Code Enforcement and Urban Renewal Project (CEURP) grant from the U.S. Department of Housing and Urban Development with the understanding that disbursements will be available as long as the code enforcement program is linked to an acceptable urban renewal project. DNI expects the grant to fund several

of its programs and enable it to hire more inspectors. Officials in all cities reported difficulty in finding qualified inspectors with college-level training in public health, engineering, and real estate due to low starting salaries.

E. Attitude of code officials toward slum housing

The opinions of the housing officials on how to eliminate substandard housing may affect the nature of their enforcement programs. In New Haven, the DNI believes that the majority of substandard housing is reparable and, therefore, emphasizes voluntary rehabilitation. DNI issues recommendations instead of orders and relies upon negotiation and reasonable time limits to secure compliance. This approach can create an atmosphere of cooperation which results in prompt rehabilitation. But, it also can be exploited by the slumlord who partially complies in order to delay full enforcement of the code. The New Haven attitude also was reflected in the comments of the Hartford officials.

In Stamford, Bridgeport, and Waterbury, by contrast, the officials asserted that much substandard housing in their cities should be torn down. A health official in Stamford said flatly that he believed that the housing code should not be enforced to the full letter of the law; that the city should not force good money to be thrown after bad. The primary

activity of the Stamford task force is preventive enforcement in old but presentable areas, and not remedial enforcement in deteriorated areas. The blighted areas await renewal.

Where there is an extensive renewal program, code enforcement may also be restricted. In Stamford, for example, virtually all of the substandard housing is to be razed. With the exception of structural or health emergencies, code enforcement is in abeyance. The Urban Renewal Commission and the Health Department use their discretion in deciding when a substandard condition warrants remedial enforcement.

F. Financial inability of landlord to repair

Code authorities differed on whether landlord inability to repair properties was a major impediment to enforcement. In the case of major slumlords, of course, financial inability is not a problem. But it can be for the owner of only a few properties. A Hartford official observed that lending institutions do not want to risk investment capital in blighted areas to support a private rehabilitation effort. Because tenants wear down property, and the small landlord lacks cash for repairs and is unable to borrow for that purpose, deterioration increases.

The field offices of DNI in New Haven advise landlords of the existence of Federal aid programs for repairs (under the Housing Act of 1964, and the Housing and Urban Development Act of 1965). As of November 1965, owners in New Haven had received approximately $5 million in insurance for mortgages and in rehabilitation loans. There have been no grants yet, but DNI is assisting several owners in filing applications for them.

G. Substantive deficiencies in codes

Illegal conversion and subdivision of buildings was cited by several officials as a major cause of slums. Property deterioration accelerates when dwellings become overcrowded. In New Haven, housing officials are trying to combat the problem through improved coordination and communication between the building and housing departments.[3/] A Norwalk official, indicating that he did not know the location of all the tenements in the city, would require the registration of multi-family dwellings each year. An official in Waterbury would outlaw subdivision altogether. The problem of subdivision, however, obviously involves both the building and housing code enforcement agencies. A law forbidding subdivision does not appear to be feasible and is inconsistent with local building and housing codes and the State Tenement House Act which require legal minimums

regarding square feet of area and cubic feet of air per occupant. Such a proposed law, even if the owner conforms to these current minimums, would be inconsistent with existing statutes. Yet, a law which permits subdivision down to the legal minimums would accomplish no more than the existing law--unless, of course, it were administered more conscientiously.

II. AGENCY ENFORCEMENT PROCEDURES

A. Agency records

Agency records are a vital source of information for public and private groups concerned with the performance of a housing agency. In Norwalk, New Haven, Stamford, and Hartford complete records of complaints are collected and maintained. With the receipt of an HHFA urban renewal grant, Waterbury has recently begun to chart its activities. Bridgeport was the only city surveyed in which code enforcement records were not available to the public.

B. Inspection procedures

1. Complaint inspections

All of the housing code enforcement agencies in each of the six cities respond to complaints. In Waterbury, if the inspector finds a substandard dwelling, he will survey the entire building as well as the site of the asserted violation. In addition, the health department will inspect other units owned by the delinquent landlord in question although no complaints have been received. Inspectors from DNI in New Haven will issue a recommendation for compliance instead of an order. Health departments in Norwalk, Bridgeport, and Waterbury rely primarily on complaints for code enforcement.

Complaint-initiated inspections cannot be expected to result in a reasonable level of code enforcement because (a) they tend to focus only on the alleged violation, the result being peice-meal repair; and (b) because of tenant indifference or ignorance and landlord coercion; thus, many violations are not reported and enforcement is on a random basis. Uneven enforcement reduces incentives to voluntary compliance.

2. Area inspections

Hartford, New Haven, Waterbury, and Stamford have initiated comprehensive area-by-area inspections in an attempt to overcome the defects in a complaint inspection system. The New Haven program is voluntary and is underway in three of the four designated substandard areas. Prior to the initiation of an inspection campaign, DNI solicits the support of neighborhood, community, and church groups and requests the cooperation of each resident. When violations are found, DNI issues a recommendation rather than an order for compliance. The agency does follow up to try to ensure that compliance results, voluntarily or, later if necessary, by compulsion. The Waterbury Health Department now makes limited surveys of the census tract with the most deteriorated housing. Only the worst of violations are followed up, however. The department plans

to operate a more comprehensive area inspection system in the future. Stamford has an inspection task force and compliance with its orders is obligatory.

C. Post-Inspection procedures and problems

1. Responsibility for violations

The initial problem facing an agency after the discovery of a violation is determining its source and proceeding with effective enforcement against the responsible person. Where the landlord is clearly responsible, the agency may face the problem of ascertaining the identity of the owner. Officials interviewed maintained that rotation of ownership to avoid liability is not a serious problem. All concurred that tenant violations are a major obstacle to effective code enforcement. It may be difficult to prove that the tenant rather than the owner is responsible for a code violation. Where the tenant is responsible, the Harvard Law Review Note suggests that the tenant be proceeded against for creating the illegal condition and the landlord for allowing the condition to persist.[4/] A Bridgeport official recommends the enactment of a good housekeeping code and the arrest of tennants for violation of it. However, before enactment against tenants can achieve the desired result, they should

be (1) informed of their obligations under the current housing codes, and (2) instructed in the techniques of good housekeeping.

3. Dilatory procedures

The housing codes of each city permit extensive delays following the issuance of an order to comply. In Norwalk, a person charged with a violation may request a hearing by petitioning the board within 20 days after the compliance order is served. The hearing shall be commenced within 60 days after the petition is filed. If, in the judgment of the hearing board, the petitioner submits good and sufficient reason for postponement, it may grant a 60-day delay. The time for performance of any act required by notice may not be extended for more than 18 months.[5/]

In Hartford, approximately 17 percent of offending landlords exploit the dilatory procedure to avoid complying. Only when the violation poses an immediate or dangerous health hazard is there no possibility of delay. The landlord, however, may seek a hearing which must be granted in no more than five days at which time the order may be extended, revoked, or modified.

While dilatory procedures afford the agency an opportunity to negotiate for voluntary compliance, they are also used to frustrate the purposes of the codes. The agency is not compelled to permit delays authorized by the code.

Once the landlord's liability for a violation has been determined, the hearing officer issues the original or a modified order of compliance. The agency then gives the landlord a certain number of days to comply, depending upon the nature of the violation. In Waterbury, a written order with a time limit for compliance is served on the landlord or sent to him by registered letter. The time limit may vary from one day to two months, depending upon the type of violation, the ability of the landlord to raise the money for repairs and the availability of workmen. The agency investigator checks the progress every fifth day. If at the end of the time limit there is no compliance, the case is sent directly to the city prosecutor. If there has been partial compliance, the agency tries to determine whether the delay was in good faith or was designed to delay compliance. This determination affects the length of any extension which may be granted. The Health Department in Hartford mails three compliance notices to a property owner. The first gives the landlord 30 days; the second, 15 days; and the final notice may require immediate to 10-day compliance. The Stamford Task Force makes four inspections before a notice of non-compliance is forwarded to the city corporation counsel who decides whether or not to prosecute the case.

The delays possible in this process of multiple notices may be attributed to such factors as: (1) laxity on the part of the agency; (2) insufficient staff; (3) landlord's use of partial compliance to frustrate enforcement, or (4) a bona fide effort by the agency to secure voluntary compliance through negotiation and flexible time limits.

4. Agency sanctions

a. Notice and order to comply. For some landlords the mere receipt of an order to comply is sufficient administrative action to induce them to comply. A Hartford official estimated that approximately one-third of the violators respond immediately to orders to comply.

b. Powers of summons and arrest. Several officials noted that landlords dislike arrest and adverse publicity. The appointment of a special housing code prosecutor in New Haven has enabled the courts and the enforcement agency to develop a potentially successful, constructive use of the summons and arrest power. Once a violation (non-emergency type) is discovered by DNI and once efforts at securing voluntary compliance have failed, DNI notifies the landlord to make the necessary repairs within 90 days.

If, after 45 days, there has been no satisfactory partial compliance, the owner is placed on a summons list. He is

notified that if he has not substantially complied with the order within the 90-day period he will be summoned to court. A summons is then issued and the landlord must report for a hearing before the special prosecutor where the proceedings are transcribed by a court reporter. The prosecutor has the authority to grant extensions based upon the problem involved and the apparent good faith intention of the owner to comply. If the owner fails to remove the code violations as promised during the hearing, a warrant may be issued for his arrest. In New Haven this procedure has persuaded many landlords to comply more readily.

c. Threat to enforce in court. Once the final notice has been issued and ignored the DNI inspector begins preparations to turn the case over to the prosecutor. The housing officials concurred in the opinion that this action was one of the agency's most effective sanctions. In Bridgeport, the sanitation division sends a letter on police department stationery which states the probability of court action if there is no compliance within a specified number of days. According to an official, this procedure has resulted in 98 percent compliance. In New Haven, if the special prosecutor's summons works as intended, compliance should be more easily obtainable since landlords will know that, if they do not cooperate, they will be subject automatically to summons, arrest and prosecution.

Action to prosecute is currently a significant weapon, but it could be even more effective if the agency staffs were larger. In Hartford, for example, approximately 17 percent of violators are uncooperative and there is a backlog of 280 cases. With a larger staff, the agency could both reinspect properties and threaten prosecution more quickly. Were there a high probability that every uncooperative landlord would be prosecuted immediately upon failure to heed the final notice, the formerly recalcitrant offenders might be more inclined to comply within the specified period. The effectiveness of this sanction is contingent upon the willingness of the agency to threaten its use and the existence of a sufficient staff to back up the threat.

d. Summary emergency powers. Each municipal housing code confers upon the lcoal health director the powers to placard, vacate and/or condemn unfit housing. The placard will not be removed and the building reoccupied until the offensive conditions are corrected. While it is generally agreed that this sanction should be employed when the conditions imminently and seriously threaten health or safety, a debate persists over whether the power should be extended to less grievous situations.

Proponents of more extensive use of this power argue (1) that it is a good method of scaring the landlord, (2) that it deprives him of rental income and (3) that it subjects the landlord to adverse publicity.[6/] Although the action forces tenants to move, the Hartford Health Department has authorized 110 placardings in the last 11 months. It discovered that some families had no trouble relocating, that welfare families who encountered difficulties were relocated by the city and that sufficient alternative housing was available.

Opponents of expanded use of the sanction contend that placarding contributes to existing blight and reduces the number of available habitable homes. The tenant is forced to re-enter the rental market, which in many cities is limited. Though middle-income families may not experience difficulty in relocating, the low-income families may well be left homeless whether or not there is alternative housing. Increased placarding and condemning would be a valid and effective agency sanction if adequate housing were made available for prompt relocation and if the agency could assist all families in relocating.

e. Agency power to order and pay for repairs. In New York City, the building department can order the repair of blighted dwellings and pay for it with municipal funds.[7/] The department then acquires a lien on that property. Section H-5-6

of the 1963 Bridgeport Housing Code authorizes a board of condemnation to abate, summarily or by civil action, a condition in any building which is a menace to public safety and a nuisance. The feasibility of using this sanction depends upon the availability of municipal funds for repairs and on the priority and extent of the lien which the city obtains. The sanction offers to the tenant the most immediate alleviation of his plight and also counteracts the spread of deterioration through delay. Nevertheless, agency power to repair has been opposed on the grounds that there is not enough money to conduct this activity and, more basically, that the taxpayers' dollars ought not be spent in this manner. Opponents observe that where the city acquires an inferior lien which attaches only to the property involved, there is no reasonable assurance of reimbursement short of protracted, expensive litigation.[8/]

If the agency has enough money and staff to carry on the other aspects of its program, as well as pay for repairs and if the lien it acquires is of first priority and is attached to all of the landlord's properties, then the exercise of the power to repair would benefit the tenant and still hold the landlord financially responsible. None of these conditions exist now, however, and they probably will not in the near future. Therefore, this sanction is not likely to be available to the Connecticut agencies.

f. Agency receivership. Critics of current code enforcement sanctions have recommended that housing agencies be authorized to appoint themselves receivers for substandard dwellings. The agency would collect the rents, order repairs and subsidize the cost if the bill exceeded the accumulated rents.

The agency receivership proposal was adversely received by several Connecticut officials. Some expressed fears of complicated procedures, corruption and unnecessary bureaucracy: attorneys afforded an unwarranted chance to make money, tenants ordering unnecessary repairs, and possible unrecoverable tax dollars spent. Finally, one official protested that receiverships would constitute too great an invasion of the owner's property rights.

Such objections might be eliminated through proper administration. In New York City, a rent receivership law was enacted some years ago, but it has rarely been invoked. Frequently, the cost of repair far exceeds the building's fair market value. New York City Assemblyman William Greene has observed that the city, by repairing these buildings, incurs cost which will take decades of rent collections to recoup.[9/] His view must assume, of course, that for some reason, such as prior liens or insolvency, the property owner cannot be sued for the costs. The city has taken over, therefore, only

those buildings where repairs could be completely paid for with a few months of rent. The city has thus refused to make receivership repairs a significant item in the municipal budget. Mr. Greene felt that the receivership method is valid for the buildings requiring only moderate repairs. Where the costs far exceed the value and where the landlord refuses or is unable to make repairs, Mr. Greene recommended that the city treat the property as a new source of public housing by paying a repair subsidy directly to the owner and by initiating a vigorous code enforcement program to prevent property deterioration.

In 1965, the Connecticut Legislature enacted an enabling statute which authorizes municipalities to adopt receivership ordinances. Despite the adversity to the method expressed by some housing officials, at least three cities (Hartford, New Haven and Stamford) have adopted such ordinances. The cities must face the problems of proper administration, cooperation from agencies and courts, and financial support to carry out the law.

5. Other agency remedies.

a. Annual licensing. Other remedies to assist the agency in code enforcement include the requirements of annual license or certificate of code compliance or certificates of occupancy. The Connecticut State Tenement House Act (C.G.S. S19-371) authorizes vacating of premises or allowing tenants

to withhold their rents where an owner operates a multiple dwelling without a certificate of compliance with structural and spatial requirements.

Proper administration of the licensing program presupposes, however, a staff which is large enough to handle the inspection chores and is trained in all of the relevant codes. The familiar problem of insufficient funds to hire the required staff is raised again. A program of annual license inspection may supplant area inspections of multiple dwellings, but it should be run in conjunction with periodic inspections of other property in substandard areas.

b. Rent control. As the rent control law operates in New York City, a reduction in the maximum legal rent is authorized where the code violation results in reduced space or services.[10/] Only one Connecticut official expresses interest in rent control as a weapon against landlords.

c. Withholding of rent by the Welfare Department. To the Connecticut officials, a more acceptable complementary remedy was the withholding of rent by the city welfare department. The procedure is currently employed in condemnation cases in Waterbury. The health department sends a copy of the condemnation notice to the welfare department which, in turn, withholds the aid allocated for rent to welfare recipients occupying the condemned premises. Unless the tenant is to be left homeless, the city must then assume responsibility for relocating the family.

The rent withholding sanction, to be more effective, should also apply in the case of recalcitrant landlords whose violations are less serious. The city would then have to protect, by law, the tenant from eviction for non-payment of rent or any other ground the landlord could present at that time.

III. PRIVATE MEANS TO INDUCE ENFORCEMENT AND COMPLIANCE

The inablility of public code enforcement agencies to secure prompt, satisfactory compliance has encouraged private groups to resort to extra-legal means of redress.

The most direct and potentially, the most successful sanction is the rent strike which has been employed against landlords in Hartford and New Haven. The first New Haven landlord who was the object of such a strike agreed to make repairs rather than lose months of rent and/or to evict each participating tenant by a lengthy, expensive process.

Organizers of rent strikes face serious problems in convincing tenants to participate, protecting them from threats of evictions, and providing legal representation should evictions occur. The success of the initial strikes makes it easier to recruit participants. Many groups have obtained the services of attorneys associated with municipal and neighborhood legal assistance programs, as well as interested private attorneys.

Other recent events in New Haven, i.e., the controversy over the establishment of housing court and the designation of certain property owners as slumlords, indicate the highly political nature of the problem of code enforcement. The promise by Mayor Richard C. Lee of more stringent enforcement following as it did the threat of action by a neighborhood

tenants organization, suggests that the executive departments and, of course, the administrative departments of city government are acutely aware of and potentially responsive to effective pressure by private groups. The Waterbury and Hartford officials observed that a major problem in securing compliance was the lack of insistence by public officials and the community that the code be enforced and that the offenders comply. The New Haven events also reveal the acute sensitivity of landlords to adverse publicity which reduces the desirability of demand for their properties and calls them to the attention of the code enforcement agencies--exposure which could provoke action.

IV. JUDICIAL ACTION

A. The Prosecutor

The city prosecutor often continues the process of negotiation which the agency begins. With the discretion to proceed in court or to delay prosecution, he poses a more immediate threat to the landlord than the agency. Generally, after a final notice to a landlord has been sent by the agency and ignored, the case is passed on to the prosecutor. In Norwalk, the landlord is given three days after the final notice to show cause why he should not be prosecuted. This action allegedly secures compliance in many cases. If there is still no cooperation, a warrant may be issued for the landlord's arrest. The timing of these events varies considerably in each city and in each case.

The prosecutor has discretion to nolle prosse a case (drop prosecution) if the landlord has complied by the time of the court hearing. Though compliance has been obtained, this procedure benefits unduly the uncooperative landlord and nullifies the fine and imprisonment sanctions in the housing code. When this practice is combined with the judicial reluctance to impose more than a nominal fine where the landlord has complied by the time of judgment, the result is that the stiff code sanctions pose no threat to the landlord.

Early in 1965, New Haven Mayor Lee announced that compliance no longer would be a ground for nolle prosse. A housing code prosecutor felt that while this policy decision limits the prosecutor's discretion, the courts remain free to ignore the code sanctions. Furthermore, according to a special housing code prosecutor, nolles will not be eliminated in all cases. For example, prosecuting and fining the small-time landlord who is also poor accomplishes nothing once compliance is secured.

1. Selective prosecution

Included in the prosecutor's discretion is the power to decide who shall be prosecuted. The exercise of this power is, of course, responsive to political pressure. However, the prosecutor can decline to proceed against the poorer landlords who are unable to comply promptly or who would not be able to repair more quickly even in the face of a court decree.

Finally, the prosecutor can group housing cases so that the circuit court judge handles several at the same time. When specially trained or well-informed judges are not hearing the cases, housing officials theorize, the less prepared judges will be more impressed with the needs of code enforcement if they see a cluster of cases rather than isolated ones.

2. Problems with prosecutors

Housing officials were very critical of the system of relying upon the city prosecutor to institute legal action. Even though

continued negotiation may be desirable in some cases, an official in Norwalk contended that unnecessary delays are permitted and advised that the prosecutor should not wait until the final notice before issuing the warrant. The prosecutor, as a part-time city employee, frequently has too many obligations which impede the full discharge of his duties. Furthermore, since the housing cases constitute only a portion of the prosecutor's work load, he often lacks the time or staff to do a thorough job.

The housing officials who commented on this problem unanimously agreed that a special housing code prosecutor should be appointed in each city. In Norwalk, it was suggested that the appointee be a young attorney who had not developed subjective notions of code enforcement. The recommendation was recently adopted in New Haven where a special assistant to the city prosecutor was appointed and assigned the responsibility for selecting, researching, and arguing housing code cases.

B. The Court

1. Court Procedures and Attitudes

Criticisms were directed at the courts and judges by the housing officials. Judges, claimed the housing officials, neither appreciate the need for code enforcement nor know enough about the code. Housing officials also accused the judiciary

of permitting unwarranted delays in enforcement by granting continuances and by refusing to enforce the potentially effective penalties of the codes.

Special housing courts or designated days in court for housing cases have been proposed as solutions for what housing officials consider as shortcomings of the judicial system. Several officials observed that there probably would not be enough cases to justify the establishment of a permanent special court. Special days in court have been adopted from time to time in certain cities in the past, but this system apparently has not solved the problem.

A compromise arrangement has been established in New Haven. Whenever possible, one of the three circuit courts is the forum for code cases. If, however, these courts are busy, an auxiliary, specially staffed court, including an extra judge and housing prosecutor, is set up to hear housing cases. The court is to be in session as cases require. The appointment of special staff, the presentation of cases in groups, and the formation of the court itself should impress upon the judge assigned there the need to enforce the code and to prepare himself for the cases. This arrangement also may eliminate unnecessary delays.

One of the major impediments to code enforcement is the attitude reflected in some courts that there is no moral culpability to a refusal to comply. When the wrong is righted, according to current thought, there is no need for punishment. As a result of this attitude, the alert landlord can escape with only a nominal fine if he complies by the time of judgment. Although the maximum code penalties--$100 or 30 days in jail for each day's violation--are potentially quite onerous, their coercive effect is emasculated by the courts, which generally are not convinced of the urgency for conscientious enforcement.

2. Judicially imposed sanctions

a. Fines

Each municipal housing code provides for a fine of up to $100 for violation of any provision. Each day of failure to comply constitutes a separate violation.[11/] The State Tenement Housing Act authorizes a fine of $200 for code violation. Invocation of the latter act is at the discretion of the local prosecutor.[12/] If one considers the final notice as the starting point for "failure to comply", it is apparent that, with the lapse of time between the notice and judgment, a fine could be substantial. The precise operation of the fine provisions is not clear because it is rarely used. The courts clearly have and should use this authority to impose fines reasonably

calculated to deter landlords from pursuing the same obstructionist course in the future. The nominal fines now imposed are treated by the landlords as mere operating expenses.

In New Haven, in the fall of 1965, there was a decision in a housing code case which officials hope will establish a precedent. A circuit court judge found a landlord guilty of over 20 violations of the code. The landlord was given time to repair. This procedure, thus exposed the landlord to the possibility of a fine even if he repaired and also a fine for the delay. The judge indicated a willingness to impose fines, but the decision could impress other landlords only if the fines are actually imposed and are sizable.

b. Jail sentences

The codes also permit sentences of up to 30 days in jail for each day of noncompliance. In New Haven, no landlords are ever imprisoned. Jail sentences are inconsistent with the New Haven effort to create a cooperative atmosphere which will encourage voluntary compliance. Although fines should be resorted to first, jail sentences applied in cases of exceptional recalcitrance would punish that offender and warn future violators of the consequences of protracted obstinancy.

c. Housing clinics for offending tenants

Tenant violations pose a serious impediment to any program to eliminate substandard housing. Baltimore, Maryland, has attempted to solve this problem by establishing a housing clinic. The tenant who violates the code must choose between a fine or a sentence to attend the housing clinic for eight weeks. If the tenant who chooses the clinic fails to attend, his case is reopened and the fine imposed. Baltimore officials claim that the number of repeat violators is extremely low and the officials are enthusiastic about the effectiveness of their sanction.[13/]

All of the Connecticut housing officials agreed that housing clinics were a good idea. The only issues raised were who should conduct the clinics and whether they should be mandatory. From the Baltimore experience it is apparent that the clinic may be an effective sanction. If utilized, the clinic must be run by the city and attendance must be mandatory. Since tenant violations are a major cause of deterioration in housing, elimination of that cause should not depend on the whim, initiative, or even enlightenment of the tenant or of private interest groups. As the agency awaits that eventuality, housing will further deteriorate and tenants will remain untrained. The cost of conducting a clinic may well be recouped by the savings from the decrease in manhours spent in enforcing the code against tenants and landlords.

The Committee concludes that fines and jail sentences are not effective sanctions against tenant violators. Any fine which would be significant enough to deter on tenant from repeating would impose a tremendous hardship for these families, many of whom are on welfare. The fine serves no constructive purpose. Nor is the jail sentence a reasonable penalty, for it may have ramifications far out of proportion to the evil which it is intended to deter. Imprisonment not only could result in loss of employment, loss of vital wages, and removal of a parent from the home but is unlikely to deter future violations. If the tenant knows nothing about his responsibilities under the code, he will not learn of them in jail. Only when the tenant takes the initiative to inform himself will the possibility of his committing a future violation be diminished.

V. SUGGESTIONS FOR ACTION

On the basis of the information gathered by its Study Subcommittee, the Connecticut State Advisory Committee offers the following suggestions for action to the Connecticut cities surveyed:

1. Conduct an education campaign to inform tenants of the code.

   An education campaign would apprise the tenants of their rights and obligations and those of the landlords. Local enforcement agencies should print and distribute simple explanatory brochures, summarizing the major code provisions and complaint procedures. Code enforcement could then be more effective and comprehensive due to the increased number of complaints received from an informed group of tenants.

2. Provide statutory protection from eviction or raised rents for the tenant who complains to an enforcement agency or who resided in a unit not in code compliance.

   The threat of eviction and/or raised rents frequently deters tenants from exercising their rights under the codes by complaining to the enforcement agency. This stifling of complaints can seriously impair effective code enforcement under systems which rely exclusively upon complaints for the discovery of violations.

3. Make sufficient funds available to hire adequate and qualified staffs.

Effective enforcement is unlikely where staffs are too small and/or ill-trained for the task. Federal funds for code enforcement which have recently been made available may be sought in order to remedy the situation, but the final responsibility is essentially a local one and Federal funds are not available for long-term efforts.

4. Reorganize enforcement agencies to eliminate jurisdictional disputes.

Conflicting standards for compliance under different codes dealing with housing (e.g., housing, building, and fire codes) serve to confuse landlords and to delay the completion of repairs. Greater cooperation among the agencies which enforce these codes is needed. Ideally, all code enforcement responsibilities should be placed in one department, such as a consolidated Department of Licenses and Inspections.

5. Establish area inspection and/or licensing programs for all structures.

To insure comprehensive and continuing code enforcement, a system of routine inspections of all structures should be established. An exclusively complaint-oriented system has several major weaknesses. It requires a level of tenant education and concern which may never pertain.

Its coverage may be limited because landlords coerce tenants not to complain. The sporadic pattern of enforcement encourages landlords to await discovery. Regular, systematic inspections would not suffer from these problems.

6. Secure the cooperation of courts.

Enforcement can be more effective if landlords know that defiance will automatically and inevitably result in stiff penal sanctions. This threat is illusory, however, if courts do not enforce the penal provisions of the code.

7. Establish tenant education classes.

Tenant violations of codes cannot be dealt with realistically or effectively through traditional penal sanctions. Tenant education at the neighborhood level, utilizing neighborhood instructors, may prove to be an effective device. Expenditures for such an educational program can pay for itself in better housing maintenance and less frequent inspection needs. Such a program can be conducted in cooperation with the local public schools.

8. Amend codes to minimize opportunities for delay.

Delays in compliance are granted by agencies as part of their programs for voluntary compliance. This privilege is too often abused, however, by landlords, to the great

detriment of their tenants. To protect the interests of the tenants and to spur agencies to vigorous, expeditious enforcement, the opportunities under the codes for delay must be minimized. When owners know that the enforcement agency means what it says, delays tend to be reduced. Extensions should be permitted only in extraordinary circumstances.

9. Expand use of summary emergency powers under certain conditions.

In cases of extreme dilapidation or infestation, housing agencies can usually vacate and placard the buildings. Enforcement agencies should be given the power and funds for emergency repair to abate, on a short-term basis, conditions which are less serious but which still imminently threaten health and safety. The tenant should not have to await the course of administrative action in order to obtain relief.

10. Allow direct tenant action in court.

To protect the tenant from inefficient and slow enforcement by agencies which fail to do their job, he should be given standing in court to have the code enforced. The complications attending any court action will probably discourage resort to this remedy except in the most meritorious cases.

11. Provide statutory protection for the rent strike.

The rent strike can be, on occasion, the sole effective action which tenants can take against a recalcitrant landlord who refuses to comply, yet who is not effectively compelled to do so by agencies or courts. Due to the complications in organizing such action, it is unlikely to be resorted to except where absolutely necessary.

12. Enact rent receivership ordinances.

Agencies and courts must be given a wide range of techniques for securing compliance. Where the landlord refuses to or is financially unable to repair, the agency or the court should be empowered to order repairs and to apply the rents collected to reimbursement of the costs of repairs. However, the Committee recognizes that receivership is not a substitute for sustained enforcement.

13. Establish a citizens' review board.

Through its resources for periodic review of enforcement efforts and for publicizing results, a board could bring pressure to bear on agencies and landlords in order to ensure more conscientious enforcement and compliance.

14. Appoint special prosecutors for housing code cases.

The needs for cooperation between agencies and courts and for expeditious court action could be met through the appointment of special prosecutors. The landlords probably would be more convinced of the inevitability of penal sanctions than where such cooperation did not exist.

15. Create special court procedures to expedite the disposition of code cases.

The potentially great number of housing cases and the need to impress judges with their importance require that special court procedures be established. There could be special housing days, special courtrooms, etc.

16. Provide machinery and funds for proper relocation.

Where there is an effective code enforcement program, families will be dislocated. Unsafe, unsanitary, and overcrowded facilities must be vacated and unless there is a method for relocating families, enforcement will suffer. An agency equipped to assist families displaced by code enforcement, including payment of temporary rent supplements, should be established.

FOOTNOTES

1. Peter Rowley, Building Inspector for New Haven Building Department, in a panel discussion on "Housing Code Enforcement", Yale Law School, December 15, 1964.

2. Housing and Home Finance Agency, Local Public Agency Letter #345, "Policies and Requirements for Federal Financial Assistance for Local Code Enforcement Programs", August 18, 1965.

3. Rowley, "Housing Code Enforcement".

4. Harvard Law Review, Note, Volume 78, 801, p. 811.

5. Norwalk, Connecticut Housing Code, Section 3.3.

6. Report from Action, "Municipal Housing Codes in the Courts", Report #11, September 1956.

7. New York City Multiple Dwelling Law, Section 309.

8. Bemen and Sofner, "No Rent for Rats, An Analysis of the City Bar Proposal", p. 8, 1964.

9. Assemblyman William Greene, talk at Yale Law School, September 30, 1965.

10. Bemen and Sofner, "No Rent for Rats", p.8.

11. Hartford, Connecticut, Housing Code, Section 12.1 (1956).

12. Connecticut General Statutes, Section 19-347.

13. Harvard Law Review 801, p. 825 and Edgar Ewing, "Baltimore Housing Clinic", National Association of Housing and Redevelopment Officials, Number 6, 1962.

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