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on  
**Governance & Finance**

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**SENATE COMMITTEE ON GOVERNANCE & FINANCE**

**January 11, 2018**

*Committee Background*

This background paper prepares the members of the Senate Governance & Finance Committee for the January 11, 2018, informational hearing titled “**Presenting Solutions to Help Local Officials Avoid Another Ghost Ship Fire.**” The hearing serves to present proposals emerging from a working group developed to explore solutions to help local officials improve the safety of unpermitted spaces while ensuring that housing remains affordable in some of the state’s highest cost markets.

This hearing is a follow-up to the informational hearing that the Committee held on March 15, 2017, relating to the December 2, 2016, fire that occurred at the “Ghost Ship,” an unpermitted warehouse conversion located in the City of Oakland that housed an artist collective and event space. That hearing, entitled “Preventing Another Ghost Ship Fire: Reviewing Local and State Regulations to Advance Solutions,” brought together representatives from the City of Oakland, the Office of the State Fire Marshal, code enforcement officers, fire protection agencies, private industry, and the artist community to: (1) learn about best practices for local building inspection and code enforcement; and (2) identify obstacles that hinder local governments from properly inspecting buildings and enforcing building and fire codes. Following the hearing, the Committee convened a working group composed of interested parties to identify and discuss potential solutions to the challenges brought to light by the circumstances surrounding the Ghost Ship fire.

For additional information on the statutory framework for the establishment of building codes, building and municipal code enforcement practices, and tenant protections, as well as recent

examples of substandard housing that have resulted in deaths due to fire, please see the background paper for March 15 hearing. That paper is available on the Senate Governance and Finance Committee website at <http://sgf.senate.ca.gov/hearings>.

## **Background on the Ghost Ship Fire**

***Description of the Ghost Ship.*** Initially constructed in 1930, the Ghost Ship was a two-story warehouse located in the Fruitvale neighborhood of the City of Oakland. It was purchased in 1988 by its current owner, Chor Nar Siu Ng, who also owns an adjacent empty lot and two nearby properties. In 2013, Ng leased the warehouse to Derick Almena, who subleased the space to other tenants—artists that lived and worked within the building—at rates significantly below the median Oakland rent. The Ghost Ship was also periodically used for events, including concerts promoted by Max Harris, the creative director for the collective. The parcel was zoned as a warehouse, and neither residential nor assembly uses were legally permitted by the city.

***History of Inspections and Complaints Prior to Fire.*** Records released by the City of Oakland show that the Oakland Building and Planning Department documented 39 code enforcement inspections and 10 code enforcement complaints of the warehouse and the adjacent vacant lot between 2004 and 2016. Other city departments had also responded to calls at these addresses as well, including 19 calls to the Police Department and three emergency medical services calls to the Fire Department.

***Fire on December 2, 2016.*** Late on the night of December 2, 2016, the Oakland Fire Department responded to a 911 call reporting a fire at the Ghost Ship. At the time of the fire, a concert was in progress on the second story of the Ghost Ship, attended by approximately 50 people. The fire resulted in the deaths of 36 individuals by smoke inhalation—the highest death toll for a structural fire in the United States in over ten years. According to the “Origin and Cause Report” released in June 2017 by the City of Oakland, no specific source of fire could be identified because only a few potential causes could conclusively be ruled out, leaving several other potential sources, such as candles, smoking, or an open flame, as possible causes. However, a City of Oakland assistant fire marshal who contributed to the report identified the electrical system as the most likely source of the fire. Specifically, residents of the Ghost Ship frequently used extension cords in place of functioning wiring inside the Ghost Ship, and power was provided through a connection to a neighboring auto body shop instead of being directly provided to the warehouse.

***Criminal and Civil Actions Related to the Fire.*** Following the fire, the Alameda County District Attorney began a criminal investigation into the fire, and on June 5, 2017, the lessee (Derick Almena) and the promoter of the concert (Max Harris) were charged with 36 counts of involuntary manslaughter. An Alameda County judge subsequently ruled on December 14<sup>th</sup> that there was sufficient evidence for the case against Almena and Harris to proceed to jury trial.

According to a statement by a lawyer for Harris, the trial can be expected to commence in the summer of 2018.

Civil lawsuits alleging responsibility for the fire were also filed against numerous parties, including the City of Oakland, Alameda County, PG&E, and the owner of the building. In September 2017, an Alameda County judge allowed a lawsuit against PG&E to proceed because the company may have known that there were electrical problems at the Ghost Ship. Subsequently, the same judge allowed a lawsuit against the City of Oakland to proceed in November 2017, stating that the City had a mandatory duty to act to remedy the substandard conditions at the Ghost Ship pursuant to city ordinances. At the time of this hearing, those lawsuits are pending.

## **City of Oakland's Response**

**Immediate Response.** In the immediate aftermath of the fire, the City of Oakland took several steps in response to the fire, and its efforts are ongoing. These steps included convening representatives from the National Fire Prevention Association (NFPA) to identify ways to better align the City of Oakland's fire prevention activities with NFPA best practices. Recommendations from NFPA led to the establishment of a Fire Safety Task Force, which was charged with:

- Developing a system that integrates parcel data from multiple city sources to ensure all City staff have accurate information about properties and can share information easily;
- Developing a risk reduction strategy that prioritizes needed inspections and ensures adequate resources to implement the strategy;
- Considering changes to the City's building and municipal codes; and
- Considering changes to building and code enforcement and inspection processes.

The City also enacted an emergency ordinance that enhanced tenant protections from evictions related to code violations. Among other things, the emergency ordinance:

- Increases relocation payments for tenants displaced for code compliance repairs to more closely match the current cost of housing in Oakland and provides additional payments to low income, elderly, disabled, or minor children tenants;
- Expands eligibility for relocation payments to include tenants living in non-compliant units and tenants who are displaced because a property owner proactively corrects a potential code violation; and
- Enhances penalties and remedies for property owners that fail to make relocation payments.

In addition, the Oakland Mayor issued an executive order just over one month after the fire directing applicable city departments to take several actions with the goal of enhancing safety within unpermitted spaces while reducing the risk of displacement, including to:

- Require, within 60 days, property owners to enter into plans to fix code violations at buildings that are not permitted for residential occupancy and otherwise do not comply with fire, building, and zoning codes;
- Identify budgetary and other resources available to legalize non-conforming residential units that house vulnerable community members;
- Review ordinances to identify changes that strengthen tenant protections and avoid displacement of occupants of non-conforming buildings;
- Charge the Fire Safety Task Force to promptly complete its efforts.

***Progress to Date on Implementing the Executive Order and Fire Safety Task Force***

***Recommendations.*** In the time since those initial steps were taken, Oakland has continued to make progress on remedying challenges identified by NFPA and others. These changes are fully detailed in the City's November 9<sup>th</sup>, 2017, "Ghost Ship Fire Anniversary Update and Progress Report" and summarized below.

Among other steps taken, the City has modified its inspection practices in several ways. The City has conducted joint inspections of priority sites with fire prevention staff, firefighters, and building officials and established an interdepartmental case management team to ensure coordination between the relevant city agencies and better communication with the public. In addition, the City has updated the guidance issued to inspectors to minimize displacement by focusing on remedying imminent threats to fire and life safety while placing less emphasis on noncompliance with zoning codes.

The report indicates that the City is adding new resources to its inspection programs as well. It has added six new fire code inspectors since the Fire and anticipates hiring an additional six in 2018—more than doubling the number of inspectors—and will add seven new code enforcement staff by 2019. The City is also placing additional emphasis on reducing the backlog in state mandated inspections by hiring a contractor to perform inspections while permanent staff are hired. Finally, it is updating its inspection data systems to allow for improved tracking of inspections, including commercial inspections logged by firefighters, as well as incorporating data from the Building and Planning Department, business tax licenses, and calls for service received by other departments. The new system is also expected to offer the public the ability to view information about inspections online and track the progress of complaints.

The Progress Report notes that since the issuance of the executive order, the City has identified and reviewed 135 priority properties that were considered to have multiple hazards and investigated 32 commercial properties where potential unpermitted residential or assembly

violations were identified after the Ghost Ship fire. 11 of those cases have been closed or resolved, and the City is working on resolving the remaining 21 cases with property owners. The City issued an abatement order for one of the 21 properties due to a fire that occurred at the site, and the City is attempting to secure an inspection warrant for access to another of the 21 properties. According to the report, tenants have been evicted by owners at five properties, including the property that was the site of the fire.

Members of the artist community in Oakland argue that the number of displacements is greater and that the culture has been slow to change among Oakland building departments. An *East Bay Express* review in November 2017 found that 64 investigations of non-residential properties had been conducted since the fire. According to the review, tenants were subsequently evicted at 10 of those properties, totaling 45 people. The City has stated that 32 of those properties had been identified prior to the Ghost Ship fire and that instructions to discontinue residential use at the investigated properties are based on outdated guidance issued previously to city officials.

The City has not released the Fire Safety Task Force's recommendations on changes to the building codes or other city laws, but potential ideas under consideration include: (1) establishing a revolving loan fund to support safety improvements in nonconforming residential spaces; (2) creating alternative code requirements for unpermitted live/work spaces, conditioned on a restriction on the property to maintain the affordability of rents; and (3) streamlining event permitting.

## **Senate Committee on Governance & Finance: March 15, 2017 Oversight Hearing**

### ***Preventing Another Ghost Ship Fire: Reviewing Local and State Regulations to Advance Solutions***

The Senate Governance and Committee conducted an oversight hearing on the Ghost Ship on March 15, 2017, approximately four months after the fire. The Committee first heard from Edwin Bernbaum—the father of Jonathan Bernbaum, a casualty of the fire who had been performing at the Ghost Ship that night. Based on his understanding of his son's life and wishes, Mr. Bernbaum stressed the importance of having safe spaces in which artists can perform and work. He noted that overly burdensome administrative regulations, such as event permitting requirements or prohibiting events from continuing later than 2am, can push some spaces and events underground, making them less safe. Claudia Cappio, the Assistant City Administrator for the City of Oakland, next presented the City's actions to improve building safety following the fire. Ms. Cappio also identified potential legislative changes that could help local officials improve building safety, including expanded use of alternative building materials and methods to lower costs of fixing substandard buildings and allowing city attorneys in smaller jurisdictions to bring suits against owners of substandard properties under the Unfair Business Practices Act.

Next, the Committee received on-the-ground perspectives from a panel of local and state officials who regulate buildings and investigate building and fire code compliance, including: State Fire Marshal Dennis Mathisen; Chief Michael DuRee, past President of the California Fire Chiefs Association and Long Beach Fire Chief; Kerry Simpson, Neighborhood Services Manager for the City of Rancho Cordova, presenting on behalf of the California Association of Code Enforcement Officers; and Shane Diller, Assistant Director for Development Services with the City of Elk Grove, presenting on behalf of the California Building Officials (CALBO). The panel presented best practices in code enforcement including: (1) utilizing community risk reduction strategies to identify structures that present serious fire or life safety issues and (2) **conducting inspections with multi-disciplinary teams that include a representatives from a city's fire department, building department, and code enforcement.** They also highlighted several financial challenges that local governments face, including difficulty maintaining funding for proactive inspections of buildings to head off issues, and difficulty recovering enforcement costs from property owners. Ms. Simpson also noted that some enforcement efforts, such as trying to place a commercial building under receivership, are frustrated by judicial interpretations that can vary by jurisdiction or by the individual judge.

Finally, the Committee heard from individuals potentially affected by state and local reactions to the Ghost Ship fire, including Tom Dolan, an architect and expert on live-work spaces based out of Oakland, and Matthew Hargrove, the Senior Vice President for Governmental Affairs at the California Business Properties Association (CBPA). Mr. Hargrove noted that CBPA represents large commercial property owners, not those types of owners who would rent warehouse space for residential use. He also indicated that while his members can afford the high cost of compliance with energy code requirements, other owners cannot, and are therefore incentivized not to improve their properties even if they are unsafe. Mr. Dolan urged a reevaluation of the state's live-work code to allow construction of properties that are affordable to artists and meet their needs as a workspace.

## **Working Group Proposals**

Following the March 15, 2017, hearing, Senator McGuire convened a working group to explore the concepts raised in the hearing and to identify steps that could be taken to reduce fire and life safety risks from substandard buildings such as the Ghost Ship, potentially including legislative proposals, administrative changes, and model ordinances. Over the course of two large group meetings and individual phone conversations, the following five proposals emerged from the group with some level of general agreement:

1. Reduce the cost of achieving fire and structural code compliance at substandard buildings by allowing a narrowly targeted waiver or delay of code requirements unrelated to fire and life safety (e.g. energy code) for existing, inhabited buildings with imminent fire or life safety issues:

- Only granted in exchange for an affordability restriction on the units in the building; and
  - Include a sunset date, possibly combined with amnesty, to encourage owners to come forward in a timely fashion.
2. Expand use of alternative materials/methods of achieving fire and life safety standards by providing more prescriptive direction to building officials about when to grant variances from building code.
    - Would be done by directing Building Standards Commission to investigate and revise standards under California Building Code Section 104.11.
  3. Expand funding available for proactive inspections of commercial buildings through small add-on to business license fees—levied through state law but reserved for use by the local government that collects the fee.
  4. Protect tenants of substandard buildings by:
    - Strengthening protections from retaliation for tenants that report substandard conditions by making it easier to prove that retaliation occurred; and
    - Ensuring that receivership laws and relocation payment requirements apply to commercial buildings that are used illegally as a residence.
  5. Expedite code enforcement processes by:
    - Improving access to properties by standardizing the process for securing inspection warrants;
    - Allowing smaller cities to bring unfair business practices act (Business and Professions Code 17200) lawsuits for violations of municipal codes related to building and fire safety; and
    - Allowing fines to be attached as a lien on the property to encourage compliance.

These proposals will be presented for discussion at the January 11<sup>th</sup> hearing.

