MEMORANDUM OF LAW

DATE: February 4, 1986
TO: Patricia Frazier, Director of the Housing Division
FROM: City Attorney
SUBJECT: Modification of Procedures for Abatement of Dilapidated Structures as Public Nuisances

INTRODUCTION

Current procedure for the abatement of vacant, dilapidated and substandard structures begins with a referral from the Housing Division of the Building Inspection Department to the Housing Advisory and Appeals Board. The Board reviews the facts and circumstances of each case to determine whether a building is substandard pursuant to the California Health & Safety Code. If the Board finds sufficient evidence, it declares the building substandard and recommends that the City Council declare the building substandard. The Council generally adopts the Board's findings and declares it substandard and a public nuisance, ordering the City Attorney to take appropriate legal action to abate the nuisance. The City Attorney's office then files a civil complaint seeking a permanent injunction and court order to demolish the building.

This process is painfully slow. It duplicates the city's efforts by combining the distinct remedies of injunctive relief and administrative abatement. If a structure is significantly substandard and deteriorated, the city has unquestionable legal authority to order demolition by administrative abatement. City of Bakersfield v. Miller, 64 Cal.2d 93 (1966).

The purpose of this memo is to establish new procedures for the abatement of dilapidated structures as public nuisances. The procedures described in this memo are not "etched in stone." Change will naturally occur. Several amendments may be proposed to appropriate Municipal Code sections. The following issues will be addressed through this step-by-step outline:

1. When a does a dilapidated building become a public nuisance requiring abatement?
2. What legal and administrative actions are available for the demolition of dilapidated buildings as a public nuisance?
3. When is administrative abatement more appropriate than filing a court action?

4. What type of legislative findings must the City Council make when it declares a structure substandard and a public nuisance and administratively orders demolition?

STEP ONE: IDENTIFICATION

The first step is to identify and separate the public nuisance abatement cases from the violations which will be criminal prosecutions. Generally, cases which demand repairs should be filed as criminal actions instead of requesting abatement. Where the property owner maintains a single family dwelling or several apartment units in violation of a few provisions of California Health and Safety Code section 17920.3, abatement is not the appropriate remedy. A criminal prosecution or an injunction should be sufficient to persuade the owner to make all necessary repairs.

Once the Housing Division identifies an appropriate case for abatement it should refer a brief case report to the Criminal Division's Code Enforcement Unit for its preliminary review. This report must include:

1. Case Report Cover Sheet
2. Investigator's Narrative Statement
3. Photographs of all violations.
4. Copies of violation notices issued

The investigator's statement should describe in detail any communications with tenants or owners, all violations of the Health and Safety Code and Municipal Code, and facts which, in the inspector's opinion, justify demolition.

STEP TWO: PRELIMINARY REVIEW MEETING/CITY ATTORNEY EVALUATION

Upon receipt of the information discussed above the Code Enforcement Unit will evaluate the circumstances to determine whether the case is ripe for abatement by demolition or by injunction. Instead of sending this information via interoffice mail, I would suggest scheduling a meeting with the Code Enforcement Deputy to expeditiously evaluate the appropriateness of demolition.

Buildings Subject to Abatement

The first question Code Enforcement will confront is determining when a dilapidated building requires abatement by demolition. The case law is replete with detailed descriptions of dilapidated structures where the appellate courts upheld abatement by demolition. After a thorough analysis of the cases, the following common factors appear to be most persuasive to the courts when they approve the demolition of a structure:

1. Fire Hazard

"It is well settled that a fire hazard is a public nuisance

(citation omitted), and that a proper remedy for abatement of a nuisance is a mandatory injunction." San Francisco v. City Investment Corp., 15 Cal.App.3d 1031, 1041 (1971) quoting with approval, County of San Diego v. Carlstrom, 196 Cal.App.2d 485, 491 (1961)(moveon structures).

When determining the existence of a fire hazard, the courts consider the owner's failure to secure openings to abandoned buildings, the amount of combustibles and the obstacles which may prevent or hinder a firefighting operation. People v. Oliver, 86 Cal.App.2d 885, 888 (1948). The combustibles may consist of lumber, bails of newspapers, piles of cardboard cartons, old mattresses, rags, and deteriorated furniture. Id.

A fire gutted building which was not barricaded to prevent the entry of unauthorized persons or transients and vagrants may cause a structure to become a public nuisance. San Francisco v. City Investment Corp., 15 Cal.App.3d at 1041; see also, Baird v. Bradley, 109 Cal.App.2d 365, 366 (1962) (damage in excess of 60% of its physical proportion declared to be a public nuisance); People v. Forest, 10 Cal.App.2d 274, 275 (1935).

Whether or not the structure was built with current fire resistant materials and the danger of spreading smoke are also important considerations. See generally, City of Bakersfield v. Miller, 64 Cal.2d at 98.

2. Health Hazards

Where the conditions pose a threat to the health of the occupants, a public nuisance may be present. See generally, Smith v. David, 120 Cal.App.3d 101, 107 (1981) (mother of family testified about the presence of bugs and animals in the house; the wearing of jackets and sweaters because of no heating and poor insulation; the increased number of colds and respiratory problems; and electrical shocks caused by deficient outlets).

A public nuisance existed where a basement was filled with an accumulation of rubbish, rats, vermin and general filth which emitted obnoxious odors offensive to the senses and injurious to the health of neighboring residents. People v. Forest, 10 Cal.App.2d at 275. "The alleged violations, as particularized in the complaint, include inadequate toilet and bathing facilities, filthy and insanitary conditions, inadequate ventilation and airspace, leaky plumbing and gas pipes, sleeping in kitchens, defective and unsafe stairways, walls, floors, fixtures, etc." People Ex Rel Dept. of Industrial Relations v. Morehouse, 74 Cal.App.2d 870, 871 (1946). See also, Perpletchikoff v. City of Los Angeles, 174 Cal.App.2d 697, 700 (1959).

In People v. Wheeler, 30 Cal.App.3d 282, 287 (1973), Sonoma

County properly abated a public nuisance caused by a commune on a local ranch. It consisted of tents, woodframe structures, and canvass shelters. A large number of code violations included: lack of electrical lighting; general dilapidation and improper maintenance; lack of a connection to the required sewage disposal system; discharge of sewage on the ground; lack of an approved water supply; inadequate foundation; insufficient floor support to carry imposed loads with safety; faulty weather protection; use of faulty material for construction; improper drainage; improper number of garbage receptacles; etc. Id. Moreover, the water supply on the premises was highly contaminated.

3. Structural Defects/Dilapidation/State Housing Law Violations

One of the most important factors supporting the demolition of dilapidated buildings is its structural defects and assorted housing code violations. Where buildings meet the definition of "substandard" pursuant to the Health and Safety Code, courts have found the structures to be public nuisances "per se" which may be enjoined by appropriate procedures. See, 7 Witkin, Summary of Cal. Law (8th ed. 1974), Equity, Secs. 99-100, pp. 5320-5322; City of Bakersfield v. Miller, 64 Cal.2d at 99-101. Smith v. David, 120 Cal.App.3d at 113.

What follows is a detailed discussion of the case law describing the structural conditions and housing code violations of various dilapidated structures. In each of these cases, the courts upheld an injunction or administrative abatement order to demolish the buildings as public nuisances. The Housing Division should study these excerpts and apply them in their current investigations.

In the case of People v. Forest, 10 Cal.App.2d at 275, a 50 year old wooden structure was declared a public nuisance. It was unoccupied, decayed, and greatly dilapidated for several years before being condemned. The house posed a serious danger to passers-by and a fire and health menace to the entire neighborhood. All of the doors and windows were destroyed. The stairways, joists and floors were rotten and broken. The plumbing was wrecked, insanitary, and not connected to the sewer. The chimney was off balance and likely to fall. The basement was full of rubbish. Id.

The building in Perepletchikoff, 174 Cal.App.2d at 700, contained hazards and code violations regarding the wiring, lath, plaster, brick, sash, doors, corridors, and weight bearing beams. The footings were overloaded and various plumbing deficiencies existed. There was insufficient ventilation, a lack of bracing

and dryrot. Id.

In this case, the building inspector, Mr. R. E. Dankan, testified as an expert, that this building was more than 50% damaged, decayed, deteriorated and dilapidated. These conditions existed to such an extent that repairs would not remove the dangers to the public. He explained:

> "The floor joists on the second would present a major problem and would either require additional bearing partitions or it would require joists of a larger dimension. The fact that the roof load is subjecting this floor to additional weight would have to be taken into consideration. Some means of providing stability and removing a great deal of load from the joists which are actually supporting most of the second floor at (sic) would have to be taken into consideration. I think it would be a question of rebuilding the entire building."

Id., at 708.

Pursuant to the California Health & Safety Code, an apartment building was declared substandard in the case of Takata v. Los Angeles, 184 Cal.App.2d 154, 162 (1960). This conclusion was based on the following facts:

> Foundations were structurally deficient; the building was wrecked and out of plumb; it was progressively collapsing; it had inadequate fire exits and no fire resistant construction; its electrical wiring was deteriorated, hazardous and overloaded; its plumbing and heating facilities were inadequate and in such a state of disrepair that it created an unhealthful condition.

An apartment building in San Francisco failed to meet the minimum requirements of the State Housing laws in the following respects:

> "The only window in a room utilized as a kitchen opens into a vent shaft; food is prepared in sleeping rooms; kitchens are installed in closets without required windows or floor area; all front apartments lack two means of egress; a stair railing is loose; a water closet is not contained within each apartment; there is less than one bath for each three apartments; the basement is without any bath or toilet facilities; sash doors are broken and windows cannot be properly operated; cord wiring and other unlawful wiring is used; plug receptacles are lacking in rooms; gas appliances

> are improperly and unlawfully installed; gas appliances are improperly vented and not connected to approved flues;. . ."

City & County of San Francisco v. Meyer, 208 Cal.App.2d 125, 129 (1962). In Meyer, the appellate court affirmed a judgment in favor of the municipality enjoining the use of the building and ordering its demolition.

Another apartment building was declared substandard and a public nuisance exhibiting the following conditions:

> Approximately 200 square feet of plaster on walls and ceilings had actually fallen off while in other places plaster was separated from the lath where it might fall at any time; exterior lath nails rusted through; termite damage and dry rot had severely damaged or destroyed structural members; at several points in foundation timbers, the wood was so badly damaged that it would disintegrate under the pressure of the inspector's finger; the iron vaults attaching the fire escape ladder
>
> to the building had completely rusted through; the fire escape balcony was pulling away from the wall of the building and sagged substantially; transoms, stairways and certain hall doors and skylights were not built of fire resistant materials; gas outlets without vents; hot water heater improperly vented; totally inadequate lighting in hallways; insufficient window area; rotten drain board; toilet facilities in disrepair; fire hazard from debris accumulation; hazardous electrical wiring; and inoperative roof drains.

Knapp v. City of Newport Beach, 186 Cal.App.2d 669, 674 (1960). Here the court gave the owners 30 days to repair or the city had permission to demolish the structure.

In the case of Yen Eng v. Board of Safety and Commissioners, 184 Cal.App.2d 514, 518 (1960), a 50 year old wooden, 7-story apartment-hotel was demolished by an administrative board on the grounds that it caused a public nuisance:

> Decay, fire damage and deterioration were evident. The building was dried out, weathered and damaged. It offered no fire resistance and would be consumed by a fire in a matter of minutes. The building was located on a steep hill (30% slope) and rested upon deteriorated footings without an underlying foundation pad or fastening into the slope for lateral support. It showed a severe structural failure and instability; unvented cooking appliances were used; the electrical system was

> dilapidated and overloaded; heating was limited to unvented ranges and hot plates; plumbing was inadequate. Detailed testimony was presented about the decayed and fallen plaster, sagging floors and ceilings, fractured and sinking foundations, rotted woods, studs and mudsills, split girders, deteriorated mortar and inadequate base which permitted the chimney to settle. Id.

4. Abatement Standards

The Los Angeles Municipal Code establishes a 50% standard as a guideline for the demolition of dangerous or substandard residential buildings. Section 96.112, Chapter 9 of the Los Angeles Municipal Code provides:

> "The following standards shall be followed in substance by the board in ordering the repair, vacation or
>
> demolition of any building or structure. Any order to demolish rendered pursuant to this subsection shall not indicate an alternative permission to repair; however, an order to repair may be satisfied by demolition.
>
> a) If the dangerous building or substandard residential building can be reasonably repaired so that it will no longer exist in violation of the Los Angeles Municipal Code, it shall be ordered repaired.
>
> b) If the dangerous building or substandard residential building is in such a condition as to make it dangerous to the health, morals, safety or general welfare of its occupants, it shall be ordered to be vacated.
>
> c) In any case where a dangerous building is 50% damaged, or decayed or deteriorated, it shall be demolished.
>
> d) In all cases where a dangerous building or substandard residential building cannot be reasonably repaired so that it will no longer exist in violation of the terms of the Los Angeles Municipal Code, it shall be vacated and demolished.
>
> e) In all cases where a dangerous building or a substandard residential building is a fire hazard, existing or erected in violation of the terms of this division or any ordinance of this city or statute of the State of California, it shall be demolished."
>
> Takata, 184 Cal.App.2d at 166.

On a similar note "(t)he provision requiring the entire building to be made to conform or be demolished when its

deterioration exceeds 50% of the replacement cost, has been upheld as a reasonable exercise of the police powers. . . ." Perpletchikoff, 174 Cal.App.2d at 706.

At one time the San Diego Municipal Code per the Uniform Building Code established such a provision. However, this standard has since been deleted from the Uniform Building Code.

Recently, the state legislature enacted a policy guideline establishing a preference for repairs of substandard dwellings. California Health & Safety Code Sec. 17980(b) provides:

> In deciding whether to require vacation of the building or to repair as necessary, the enforcement agency shall give preference to the repair of the building whenever it is economically feasible to do so, without having to repair more than 75 percent of the dwelling, as determined by the enforcement agency, and shall give full consideration to the needs for housing as expressed in the local jurisdiction's housing element. (Emphasis added.)

Please be advised that this is a policy guideline. It does not prohibit demolition of a structure which is less than 75 percent. This amendment is primarily designed to avoid a shortage of available housing units. Moreover, the precise language of the statute is advisory in nature. It does not prohibit demolition. Consequently, the Housing Division should use this standard in evaluating the issue of repair versus demolition. Yet, it may still determine that demolition is necessary even where the structure demands repairs of less than 75 percent.

Abatement Procedures

The second step in the review process is selecting the appropriate remedy to abate the structure. There are three basic remedies available: 1) injunctive relief; 2) administrative abatement; 3) emergency or summary abatement. The selection will vary depending on the facts and circumstances of each case. Before selecting the remedy, it is crucial again to identify the ultimate goal in requesting abatement. Should the building be demolished or repaired? What repairs, if any, can be performed? Can the owner financially repair the structure? Consequently, the Housing Division should issue a recommendation stating its opinion as to the ultimate goal when it refers its report to the Code Enforcement Unit for the preliminary review.

The following guidelines are intended to assist the Housing Division's understanding of Code Enforcement's evaluation and selection of the appropriate legal procedure:

1. Injunction Guidelines

There are three types of injunctions: 1) a temporary restraining order; 2) a preliminary injunction; 3) a permanent injunction. A temporary restraining order is appropriate where there is an imminent danger and serious threat to life, limb or property. It is probable that some serious injury or damage will occur within a matter of hours unless it can be restrained by a court order. A temporary restraining order can be issued immediately by going to the judge's chambers equipped with a declaration by an inspector. A temporary restraining order might be appropriate where a roof or wall is about to collapse or large amounts of sewage are being discharged into the public streets.

Instead of an imminent danger or emergency, a preliminary injunction requires a significant injury which must be restrained before trial. Since the court system will take several months or even years before a trial is scheduled, a preliminary injunction restrains the violator during this waiting period. Generally, it takes 4-6 weeks before a court will hear a request for a preliminary injunction. This might be an appropriate remedy to compel an owner to board up and secure a vacant building or make necessary repairs.

When a preliminary injunction is sought, Code Enforcement will also file a civil complaint seeking a permanent injunction. This complaint may request the ultimate goal of demolition. A trial on the issue of demolition would not occur until approximately 1-2 years from the filing of the complaint. If there is any danger or violation which cannot wait two years, a preliminary injunction should be sought.

As a general policy guideline, injunctions are appropriate in any of the following situations:

1. Board-up and secure a vacant or abandoned building.
2. Multi-family dwelling units where the landlord has neglected the maintenance of several apartment units in the building; each unit has several violations of the State Housing laws; the ultimate goal is repair.
3. "Close Call": the ultimate goal is to demolish the structure but the evidence does not conclusively support demolition; other engineers might disagree on the structural integrity of the building. It is a wiser course to have the courts determine the issue of demolition by filing a request for a permanent injunction. Otherwise, the city could be liable for substantial damages if a court later disagrees with the City Council's determination via administrative abatement. Leppo v. City of Petaluma, 20 Cal.App.3d 711 (1971).

Please note that all injunctions are coercive by nature. The court will order the owner/landlord or tenant to comply with the code. Injunctions are generally fruitless where it is financially or physically impossible for the violators to comply.

After careful review, if the Code Enforcement Unit selects some type of injunctive relief, the case will remain in the City Attorney's office to prepare the pleadings. Instead of returning the case to the Housing Division, it will be filed once Code Enforcement receives all evidence and supporting declarations. A copy of a declaration is attached as a guideline.

2. Administrative Abatement

As a general policy, administrative abatement is appropriate when the following three factors are present: 1) Immediate need for demolition; 2) sufficient evidence of serious and dangerous housing conditions and 3) impossibility of repair or demolition by the owner. All factors must be present before Code Enforcement will recommend administrative abatement as a general rule.

An easy way to "draw the line" is where the ultimate goal of demolition is supported by sufficient evidence and the owner refuses to demolish, administrative abatement is the only practical alternative. Where reasonable repairs would effectively abate the nuisance, administrative abatement is not the appropriate remedy. Injunctive relief is the better solution. A preliminary injunction could be issued within 6 weeks to order repairs pending a trial on the merits. I would recommend against a policy where the City repairs private property through the procedure of administrative abatement. It would create an incentive for slumlords to hire the City to improve private property instead of locating their own private contractor. Should a property owner claim financial inability, a court can still order city crews to perform the repairs and assess the costs as a lien against the property as part of an injunction. In a rare case where the owner cannot be located and repairs would abate the nuisance, administrative abatement might be appropriate.

Inherent in this determination is the immediate need for demolition to abate the public nuisance. The conditions must be serious and substantial. Basically, they must match some of the factors described in the cases discussed above.

Once the first two factors are satisfied the owner's position must still be evaluated before recommending administrative abatement. Where the owner will eventually respond to a court's order the better solution is injunctive relief. However, if the

owner has filed bankruptcy, the property is in probate, or the owner is incarcerated, administrative abatement may be the most expedient method to correct the nuisance.

3. Emergency or Summary Abatement

In the extraordinary case where the lives of people are threatened by a structure and the Housing Division cannot wait a couple of days to request a temporary restraining order, it can summarily abate any structure. This power should be used only as a last resort. As an example, the Fire Department exercises its power of summary abatement at the scene of the fire when it destroys a building to prevent the fire from spreading to other buildings. The newly enacted Housing Code empowers the Housing Division to use this extraordinary remedy. See, San Diego Municipal Code Sec. 98.0119. The Housing Division should contact Code Enforcement before exercising their summary abatement authority.

Administrative Abatement Procedures

Should administrative abatement be selected as the most appropriate remedy, the next step is to identify the proper procedure. There are two basic administrative abatement procedures: 1) State Housing Law; 2) Municipal Code.

1. State Housing Law

The Housing Division could abate a dilapidated building by declaring it a substandard structure as defined in California Health & Safety Code section 17920.3. Administrative abatement procedures are outlined in California Health & Safety Code section 17980(b) and Title 25, California Administrative Code Chapter 6, Secs. 54-70. However, the City Council recently adopted San Diego's local amendments to the State Housing laws. These new abatement procedures now supplant the statewide regulations. See, San Diego Municipal Code Secs. 98.0115 et seq. San Diego's new regulations basically adopt the same approach as the State Housing laws.

The Housing Code abatement procedures should be used when the structure violates the provisions of the California Health & Safety Code, specifically section 17920.3. See, San Diego Municipal Code Sec. 98.0115. The Housing Division should accomplish the preliminary steps of serving the proper parties with notice, establishing a hearing before the Housing Advisory and Appeals Board (HAAB), and drafting a detailed report describing the conditions which make the structure substandard and a public nuisance. See generally, San Diego Municipal Code Sec. 98.0116 et seq.

2. Municipal Code Abatement

Where the structure violates provisions of the San Diego Municipal Code other than Chapter Nine, the Housing Division should institute administrative abatement via section 11.16. This procedure provides for a notice and hearing before the City Council to determine whether the violations of the Municipal Code amount to a public nuisance.

This remedy should only be used for Municipal Code violations. Recently, the Housing Division requested an amendment to Section 11.16 to allow for administrative abatement of California Health & Safety Code violations (substandard buildings). There is no legal obstacle to such an amendment. From a policy standpoint, however, it might confuse the process by merging together two administrative abatement procedures. Violations of the Health and Safety Code should be administratively abated through the Housing Code abatement procedures in San Diego Municipal Code section 98.0115 et seq. If section 11.16 is amended to include substandard structures which violate the California Health & Safety Code, it appears that San Diego has enacted two sets of local abatement procedures. Section 98.0115 et seq. was specifically adopted as a substitute for the traditional remedy provided in the State Housing laws. Any amendment to section 11.16 to include housing code violations might cast confusion upon the effect of San Diego's local amendments.

At the conclusion of this meeting, the Code Enforcement Deputy will determine the appropriate action and procedure. If administrative abatement is selected, the Housing Division will issue its "substandard" letter pursuant to San Diego Municipal Code Sec. 98.0115 et seq. for violations of the State Housing laws or send a notice pursuant to San Diego Municipal Code Sec. 11.16 for Municipal Code violations. The Housing Division should also coordinate follow-up investigations with other city departments and begin preparation of a final report.

STEP THREE: FOLLOW-UP INVESTIGATIONS AND PREPARATION OF A FINAL REPORT

At this time the Deputy will request the Housing Division to coordinate further investigations with the Fire, Health and Building Departments. It should ask the Fire and Health Departments to inspect the property, assess the potential public dangers, and list all municipal code violations. An engineer's report on the structural integrity of the building may also be necessary. While the courts are concerned with a building's physical and structural conditions, fire and health dangers are most persuasive when it orders demolition of a particular

building. Code Enforcement would recommend requesting a litigation guarantee and a certified copy of the deed at this juncture. A litigation guarantee is necessary to identify all parties having an interest in the property. Due process requires that these people be notified about any pending administrative hearing or served with any court papers seeking an injunction.

Once all inspections are complete, the Housing Division should begin to prepare the case for final review by the Code Enforcement Unit. Essentially, the same format used for prosecution referrals will apply to this report with the foregoing exceptions:

1. Litigation guarantee.
2. Certified copy of the deed.
3. Declarations by all inspectors (Housing Division, Fire, Building and Health Departments).

Preparation for abatement actions will be more time consuming than the normal case. All of the information listed above must be completed before it is referred to the Code Enforcement Unit for final review. These changes are necessary because demand letters will not be issued in abatement cases. This is the general rule. Exceptional circumstances will occasionally demand deviation from this general policy. Since Code Enforcement is going to file a civil action, or supervise the administrative abatement process, all crucial information must be incorporated in the report before it is reviewed by the City Attorney's office.

The declarations are especially important. A copy of a declaration is attached for your review. Essentially, a declaration is divided into three parts: First, the investigator should state his or her educational qualifications and experience which qualify them as experts in the housing field. Second, the investigator must describe in detail his or her inspections of the particular structure and explain how the building violates the housing codes. This part should also discuss communications with the violators and any search of public records. Third, the declaration must describe the potential harms which these violations pose to the public's health, safety and welfare. This last section will usually be in the form of an opinion by the housing inspector.

STEP FOUR: FINAL CITY ATTORNEY REVIEW

Once a complete report is sent to the Code Enforcement Unit, the deputy will review the case to ensure that administrative abatement is still appropriate. If administrative abatement is still supported by the additional investigations, the appropriate

notices should be sent to all of the parties identified on the litigation guarantee.

STEP FIVE: ADMINISTRATIVE ABATEMENT HEARINGS

The City Council and various administrative boards sit as quasi-judicial panels when they hear evidence to determine whether a dilapidated building is substandard and a public nuisance. Consequently, these public bodies must make specific findings to support their decisions. See generally, Topanga Assn. for a Scenic Community v. County of Los Angeles, 11 Cal.3d 506 (1974).

The precise issue before the Housing Advisors and Appeals Board (HAAB) is whether the structure is substandard as defined in Health & Safety Code section 17920.3. If HAAB declares the structure substandard and recommends demolition, it has implicitly declared the building a public nuisance. The City Council must review all of the reports and HAAB's recommendation to determine whether the building is substandard and a public nuisance requiring demolition. Basically, the Council or HAAB must measure the severity of the housing violations and their impact upon the rights of the neighbors, community and the general public. The public body should match the facts in each case with the volumes of cases where the courts have ordered the demolition of a dilapidated structure as a public nuisance. Once it determines that a public nuisance exists, the public body must evaluate all of the possible remedial actions. Is repair or demolition the most cost effective way to abate this nuisance? If city crews or their subcontractor demolish their building, does the city have a reasonable chance to collect on its lien?

When the Housing Division prepares a report for administrative hearing before HAAB or the City Council, it should address these basic issues:

1) List all code violations.
2) Describe the condition of the structure in detail; attach 8x10 photographs.
3) Discuss the danger it poses to the neighbors and general public.
4) State the inspector's analysis about demolition versus repair as the appropriate remedy.

5) Provide estimates for the cost of abatement.

The next question involves the applicability of evidentiary rules to administrative abatement hearings. Some guidance can be derived from the case law governing administrative hearings in the field of planning and zoning.

As a general rule, technical rules of evidence are not

followed in zoning hearings for variances and conditional use permits. Desert Turf Club v. Board of Supervisors, 141 Cal.App.2d 446, 455 (1956). Cross-examination within reasonable limits must be allowed in administrative hearings. Id. The swearing of witnesses is not required. Flagstad v. San Mateo, 156 Cal.App.2d 138, 142 (1957). Due process requires that the applicant for administrative zoning relief and his opponents be informed of all evidence considered by the administrative agency. Id. Reading into the record the contents of letters and petitions may be a violation of due process. However, reading into the record the bare fact that the letter writers and petitioners support or oppose the application is proper. Id.

Administrative hearings to abate a public nuisance by demolition of a structure must also comport with the constitutional requirements of due process. Leppo v. City of Petaluma, 20 Cal.App.3d 711 (1971). However, these administrative hearings must strictly adhere to due process requirements because they involve the destruction of property. The owner must be provided with: 1) adequate notice; 2) a reasonable opportunity to be heard, and 3) a chance to cross-examine the witnesses against him. Id., at 718. "(D)ue process of law requires that any order of demolition of private property under the police power must be based upon competent, sworn evidence that the subject property falls within the legal concept of a nuisance (citations omitted), and that in fairness and in justice there is no other way reasonably to correct the nuisance." (Citations omitted.) Armistead v. City of Los Angeles, 152 Cal.App.2d 319, 324 (1957). In the administrative abatement hearing, the municipality has the burden of proof by a preponderance of the evidence that a dilapidated structure is a public nuisance and requires immediate abatement. Leppo v. City of Petaluma, 20 Cal.App.3d at 718.

Unfortunately, the practical realities of testifying before HAAB or the City Council make it extremely difficult to swear each citizen who wants to speak in favor or against demolition. Therefore, I would recommend that reports used by the Housing Division before HAAB and the Council be presented in a declaration format signed by the inspector under penalty of perjury. This at least demonstrates that our case-in-chief is sworn. This recommendation would apply only to new cases which are ready to go before HAAB or the City Council.

STEP SIX: DEMOLITION COST AND ASSESSMENTS

As the process of administrative abatement develops, the Housing Division should consider creating a standard approach for

the procurement of private contractors. Special forms to record the costs and preparation of abatement will also be needed. Once a case is selected for administrative abatement, the Housing Division should keep a log of all hours spent in the preparation and investigation of this administrative abatement action. These costs are probably recoverable as part of the lien.

STEP SEVEN: RECORDATION OF LIEN

Once the demolition is complete, the Housing Division should prepare a detailed accounting of the costs. In addition to the contractor's costs for men and equipment, the amount of time spent by city personnel in conducting their investigations and preparing for administrative hearings is probably recoverable.

The costs for the litigation guarantee and any photographs should also be included in the accounting. Housing Division can send the final accounting to Code Enforcement. Our office will prepare and record the lien.

CONCLUSION

The primary goal in this memo is to establish guidelines in the demolition of dilapidated buildings as public nuisances. Hopefully, the procedures discussed above will be more efficient and cost effective than the current operation. Just like any policy, however, these guidelines are flexible and can be shaped to respond to unique circumstances.

With regard to the cases already declared a public nuisance by the City Council via the State Housing Laws, it may be necessary to return them for Council action where administrative demolition is the ultimate goal. The previous resolutions adopted by Council merely instructed the City Attorney's office to take appropriate legal action. They did not authorize the Housing Division to hire a contractor to demolish the building. Once these cases are identified, I would recommend they be rescheduled for a hearing before the City Council with a recommendation to demolish.

At this juncture, I would suggest removing all pending cases before the HAAB and the City Council. If we continue to hear cases under the old process, the chances increase that a court might reverse our action and assess damages in a later lawsuit. It is my goal to effectively establish these procedures immediately with your consent. Except for specific proposals discussed above, these new procedures should not require amendments to the Municipal Code.

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