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Healthy Housing Reference Manual



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“The poorest man may in his cottage bid defiance to all the force of the Crown. It may be frail—its roof may shake—the wind may blow through it—the storm may enter, the rain may enter—but the King of England cannot enter—all his force dares not cross the threshold of the ruined tenement!”

William Pitt, March 1763

Introduction

William Pitt, arguing before the British Parliament against excise officers entering private homes to levy the Cyder Tax, eloquently articulated this long-held and cherished notion of the sanctity of private property. However, a person’s right to privacy is not absolute. There has always been a tension between the rights of property owners to do whatever they desire with their property and the ability of the government to regulate uses to protect the safety, health, and welfare of the community. Few, however, would argue with the right and duty of a city government to prohibit the operation of a munitions factory or a chemical plant in the middle of a crowded residential neighborhood.

History

The first known housing laws are in the Code of Laws of Hammurabi [1], who was the King of Babylonia, circa 1792–1750 BC. These laws addressed the responsibility of the home builder to construct a quality home and outlined the implications to the builder if injury or harm came to the owner as a result of the failure to do so. During the Puritan period (about 1620–1690), housing laws essentially governed the behavior of the members of the society. For example, no one was allowed to live alone, so bachelors, widows, and widowers were placed with other families as servants or boarders. In 1652, Boston prohibited building privies within 12 feet of the street. Around the turn of the 18th century, some New England communities implemented local ordinances that specified the size of houses. During the 17th century, additional public policies on housing were established. Because the English tradition of using wooden chimneys and thatched roofs led to fires in many dwellings, several colonies passed regulations prohibiting them.

After the early 17th century came an era of very rapid metropolitan growth along the East Coast. This growth was due largely to immigration from Europe and was spurred by the Industrial Revolution. The most serious housing problems began in New York about 1840 when

the first tenements were built. In 1867, a report by the New York Metropolitan Board of Health on living conditions in tenements convinced the New York State legislature to pass the Tenement Housing Act of 1867 [2]. The principal requirements of the act included the following:

- Every room occupied for sleeping, if it does not communicate directly with the external air, must have a ventilating or transom window of at least 3 square feet to the neighboring room or hall.
- A proper fire escape is necessary on every tenement or lodging house.
- The roof is to be kept in repair and the stairs are to have banisters.
- At least one toilet is required for every 20 occupants for all such houses, and those toilets must be connected to approved disposal systems.
- Cleansing of every lodging house is to be to the satisfaction of the Board of Health, which is to have access at any time.
- All cases of infectious disease are to be reported to the Board by the owner or his agent; buildings are to be inspected and, if necessary, disinfected or vacated if found to be out of repair.

There were also regulations governing distances between buildings, heights of rooms, and dimensions of windows. Although this act had some beneficial influences on overcrowding, sewage disposal, lighting, and ventilation, perhaps its greatest contribution was in laying a foundation for more stringent future legislation.

Jacob A. Riis, a Danish immigrant and a police reporter on New York’s Lower East Side, published a book titled *How the Other Half Lives—Studies Among the Tenements of New York* [3], which swayed public opinion in the direction of housing reform and resulted in the Tenement House Act of 1901. The basic principles established in the Tenement House Act of 1901 still underlie much of the housing efforts in New York City today [4]. Since 1909, with the establishment of the Philadelphia Housing Association, that city has had almost continual inspection and improvement. Chicago enacted housing legislation as early as 1889 and

health legislation as early as 1881. Regulations on ventilation, light, drainage, and plumbing were put into effect in 1896.

Before 1892, all government involvement in housing was at a local level. In 1892, however, the federal government passed a resolution authorizing investigation of slum conditions in cities with 200,000 or more inhabitants. Congress appropriated only \$20,000 (roughly equal to \$390,000 in 2003) to cover the expenses of this project, which limited the number of investigations.

No significant housing legislation was passed in the 20th century until 1929 [5], when the New York State legislature passed its Multiple Dwelling Law. Other cities and states followed New York's example and permitted less strict requirements in their codes. This decreased what little emphasis there was on enforcement. Conditions declined until, by the 1930s, President Franklin D. Roosevelt's shocking report to the people was "that one-third of the nation is ill-fed, ill-housed, and ill-clothed." In response to the overwhelming loss of homes during the Great Depression, Congress passed the United States Housing Act of 1937, which created the United States Housing Authority (USHA). This act subsidized construction of new public housing units and required the elimination of at least an equivalent number of units from the local housing supply that were determined to be inferior. In 1942, the USHA was renamed the Federal Public Housing Administration and, in 1947, was renamed the Public Housing Administration.

The federal government not only encouraged the construction of public housing, but took on the role of financing private housing. In 1938, the Federal National Mortgage Association was created. (Fannie Mae became a private organization in 1968 [6].) Its purpose was to provide a secondary market for the FHA, created in 1934, and Veterans Administration (VA) mortgage loans. The Servicemen's Readjustment Act of 1944, also known as the GI Bill of Rights, created a VA loan program guaranteeing home mortgage loans for veterans. This legislation, in conjunction with the FHA loan program, was the impetus for initiating the huge program of home construction and subsequent suburban growth following World War II. In 1946, the Farmers Home Administration, housed in the United States Department of Agriculture (USDA), was created to make loans and grants for constructing and repairing farm homes and assisting rural self-help housing groups.

The Housing Act of 1949 allowed "primarily residential" and "blighted" urban areas to be condemned, cleared of buildings, and sold for private development. In addition to assisting in slum clearance, this act also provided for additional public housing and authorized the USDA to provide farmers with loans to construct, improve, repair or replace dwellings to provide decent, safe, and sanitary living conditions for themselves, their tenants, lessees, sharecroppers, and laborers.

Because the many housing responsibilities administered by various agencies within the federal government proved unwieldy, the Housing and Urban Development Act was passed in 1965. The U.S. Department of Housing and Urban Development (HUD) was created to centralize the responsibilities of the Housing and Home Finance Agency and incorporated the FHA, the Federal National Mortgage Association, the Public Housing Administration, Urban Development Administration, and the Community Facilities Administration.

Zoning, Housing Codes, and Building Codes

Housing is inextricably linked to the land on which it is located. Changes in the patterns of land use in the United States, shifting demographics, an awareness of the need for environmental stewardship, and competing uses for increasingly scarce (desirable) land have all placed added stress on the traditional relationship between the property owner and the community. This is certainly not a new development.

In the early settlement of this country, following the precedent set by their forefathers from Great Britain, gunpowder mills and storehouses were prohibited from the heavily populated portions of towns, owing to the frequent fires and explosions. Later, zoning took the form of fire districts and, under implied legislative powers, wooden buildings were prohibited from certain sections of a municipality. Massachusetts passed one of the first zoning laws in 1692. This law authorized Boston, Salem, Charlestown, and certain other market towns in the province to restrict the establishment of slaughterhouses and stillhouses for currying leather to certain locations in each town.

Few people objected to such restrictions. Still, the tension remained between the right to use one's land and the community's right to protect its citizens. In 1926, the United States Supreme Court took up the issue in *Village of Euclid, Ohio, v. Ambler Realty* [7]. In this decision, the Court noted,

“Until recent years, urban life was comparatively simple; but with great increase and concentration of population, problems have developed which require additional restrictions in respect of the use and occupation of private lands in urban communities.”

In explaining its reasoning, the Court said,

“the law of nuisances may be consulted not for the purpose of controlling, but for the helpful aid of its analogies in the process of ascertaining the scope of the police power. Thus the question of whether the power exists to forbid the erection of a building of a particular kind or a particular use is to be determined, not by an abstract consideration of the building or other thing considered apart, but by considering it in connection with the circumstances and the locality... A nuisance may be merely the right thing in the wrong place—like a pig in the parlor instead of the barnyard.”

Zoning, housing, and building codes were adopted to improve the health and safety of people living in communities. And, to some extent, they have performed this function. Certainly, housing and building codes, when enforced, have resulted in better constructed and maintained buildings. Zoning codes have been effective in segregating noxious and dangerous enterprises from residential areas. However, as the U.S. population has grown and changed from a rural to an urban then to a suburban society, land use and building regulations developed for the 19th and early 20th centuries are creating new health and safety problems not envisioned in earlier times.

Zoning and Zoning Ordinances

Zoning is essentially a means of ensuring that a community’s land uses are compatible with the health, safety, and general welfare of the community. Experience has shown that some types of controls are needed to provide orderly growth in relation to the community plan for development. Just as a capital improvement program governs public improvements such as streets, parks and other recreational facilities, schools, and public buildings, so zoning governs the planning program with respect to the use of public and private property.

It is very important that housing inspectors know the general nature of zoning regulations because properties in violation of both the housing code and the zoning ordinance must be brought into full compliance with the zoning ordinance before the housing code can be enforced. In

many cases, the housing inspector may be able to eliminate violations or properties in violation of housing codes through enforcement of the zoning ordinance.

Zoning Objectives

As stated earlier, the purpose of a zoning ordinance is to ensure that the land uses within a community are regulated not only for the health, safety, and welfare of the community, but also are in keeping with the comprehensive plan for community development. The provisions in a zoning ordinance that help to achieve development that provides for health, safety, and welfare are designed to do the following:

- **Regulate height, bulk, and area of structure.** To provide established standards for healthful housing within the community, regulations dealing with building heights, lot coverage, and floor areas must be established. These regulations then ensure that adequate natural lighting, ventilation, privacy, and recreational areas for children will be realized. These are all fundamental physiologic needs necessary for a healthful environment. Safety from fires is enhanced by separating buildings to meet yard and open-space requirements. Through requiring a minimum lot area per dwelling unit, population density controls are established.
- **Avoid undue levels of noise, vibration, glare, air pollution, and odor.** By providing land-use category districts, these environmental stresses upon the individual can be reduced.
- **Lessen street congestion by requiring off-street parking and off-street loading.**
- **Facilitate adequate provision of water, sewerage, schools, parks, and playgrounds.**
- **Provide safety from flooding.**
- **Conserve property values.** Through careful enforcement of the zoning ordinance provisions, property values can be stabilized and conserved.

To understand more fully the difference between zoning and subdivision regulations, building codes, and housing ordinances, the housing inspector must know what cannot be accomplished by a zoning ordinance. Items that cannot be accomplished by a zoning ordinance include the following:

- **Overcrowding or substandard housing.** Zoning is not retroactive and cannot correct existing conditions. These are corrected through enforcement of a minimum standards housing code.
- **Materials and methods of construction.** Materials and methods of construction are enforced through building codes rather than through zoning.
- **Cost of construction.** Quality of construction, and hence construction costs, are often regulated through deed restrictions or covenants. Zoning does, however, stabilize property values in an area by prohibiting incompatible development, such as heavy industry in the midst of a well-established subdivision.
- **Subdivision design and layout.** Design and layout of subdivisions, as well as provisions for parks and streets, are controlled through subdivision regulations.

Content of the Zoning Ordinance

Zoning ordinances establish districts of whatever size, shape, and number the municipality deems best for carrying out the purposes of the zoning ordinance. Most cities use three major districts: residential (R), commercial (C), and industrial (I). These three may then be subdivided into many subdistricts, depending on local conditions; e.g., R-1 (single-unit dwellings), R-2 (duplexes), R-3 (low-rise apartment buildings), and so on. These districts specify the principal and accessory uses, exceptions, and prohibitions [8].

In general, permitted land uses are based on the intensity of land use—a less intense land use being permitted in a more intense district, but not vice versa. For example, a single-unit residence is a less intense land use than a multiunit dwelling (defined by HUD as more than four living units) and hence would be permitted in a residential district zoned for more intense land use (e.g., R-3). A multiunit dwelling would not, however, be permitted in an R-1 district. While intended to promote the health, safety, and general welfare of the community, housing trends in the last half of the 20th century have led a number of public health and planning officials to question the blind enforcement of zoning districts. These individuals, citing such problems as urban sprawl, have stated that municipalities need to adopt a more flexible approach to land use regulation—one that encourages creating mixed-use spaces, increasing population densities, and reducing reliance on the automobile.

These initiatives are often called smart growth programs. It is imperative, if this approach is taken, that both governmental officials and citizens be involved in the planning stage. Without this involvement, the community may end up with major problems, such as overloaded infrastructure, structures of inappropriate construction crowded together, and fire and security issues for residents. Increased density could strain the existing water, sewer and waste collection systems, as well as fire and police services, unless proper planning is implemented.

In recent years, some ordinances have been partially based on performance standards rather than solely on land-use intensity. For example, some types of industrial developments may be permitted in a less intense use district provided that the proposed land use creates no noise, glare, smoke, dust, vibration, or other environmental stress exceeding acceptable standards and provided further that adequate off-street parking, screening, landscaping, and similar measures are taken.

Bulk and Height Requirements. Most early zoning ordinances stated that, within a particular district, the height and bulk of any structure could not exceed certain dimensions and specified dimensions for front, side, and rear yards. Another approach was to use floor-area ratios for regulation. A floor-area ratio is the relation between the floor space of the structure and the size of the lot on which it is located. For example, a floor-area ratio of 1 would permit either a two-story building covering 50% of the lot, or a one-story building covering 100% of the lot, as demonstrated in Figure 3.1. Other zoning ordinances specify the maximum amount of the lot that can be covered or merely require that a certain amount of open space must be provided for each structure, and leave the builder the flexibility to determine the location of the structure. Still other ordinances, rather than specify a particular height for the structure, specify the angle of light obstruction that will assure adequate air and light to the surrounding structures, as demonstrated in Figure 3.2.

Yard Requirements. Zoning ordinances also contain minimum requirements for front, rear, and side yards. These requirements, in addition to stating the lot dimensions, usually designate the amount of setback required. Most ordinances permit the erection of auxiliary buildings in rear yards provided that they are located at stated distances from all lot lines and provided sufficient open space is maintained. If the property is a corner lot, additional requirements are established to allow visibility for motorists.

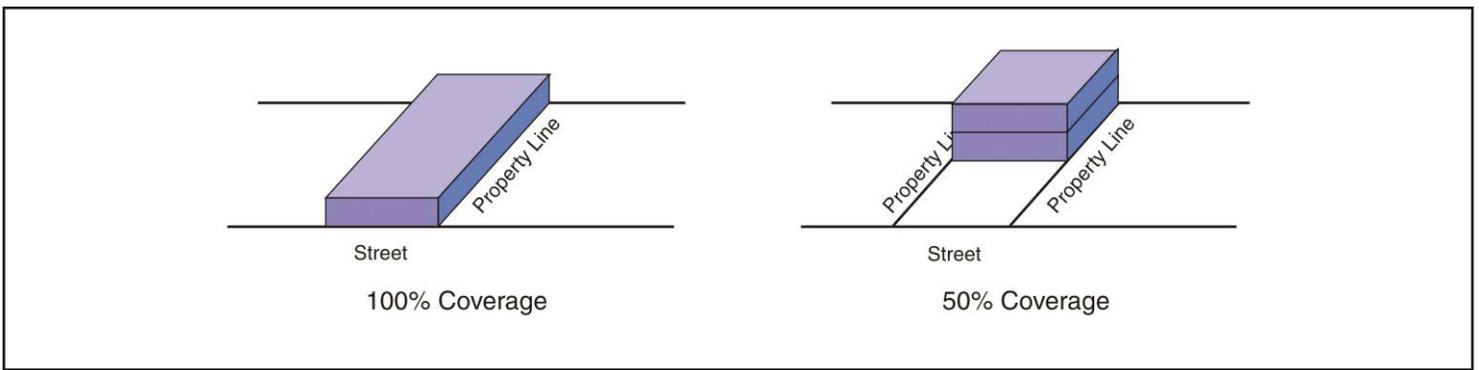


Figure 3.1. Example of a Floor Area

Off-street Parking. Space for off-street parking and off-street loading, especially for commercial buildings, is also contained in zoning ordinances. These requirements are based on the relationship of floor space or seating capacity to land use. For example, a furniture store would require fewer off-street parking spaces in relation to the floor area than would a movie theater.

Exceptions to the Zoning Code

Nonconforming Uses

Because zoning is not retroactive, all zoning ordinances contain a provision for nonconforming uses. If a use has already been established within a particular district before the adoption of the ordinance, it must be permitted to continue, unless it can be shown to be a public nuisance.

Provisions are, however, put into the ordinance to aid in eliminating nonconforming uses over time. These provisions generally prohibit a) an enlargement or expansion of the nonconforming use, b) reconstruction of the nonconforming use if more than a certain portion of the building should be destroyed, c) resumption of the use after it has been abandoned for a period of specified time, and d) changing the use to a higher classification or to

another nonconforming use. Some zoning ordinances further provide a period of amortization during which nonconforming land use must be phased out.

Variations

Zoning ordinances contain provisions for permitting variances and providing a method for granting these variances, subject to certain specified provisions. A variance may be granted when, owing to the specific conditions or use of a particular lot, an undue hardship would be imposed on the owner if the exact content of the ordinance is enforced. A variance may be granted due to the shape, topography, or other characteristic of the lot. For example, suppose an irregularly shaped lot is located in a district having a side yard requirement of 20 feet on a side and a total lot size requirement of 10,000 square feet. Further suppose that this lot contains 10,200 square feet (and thus meets the total size requirement); however, due to the irregular shape of the lot, there would be sufficient space for only a 15-foot side yard. Because a hardship would be imposed on the owner if the exact letter of the law is applied, the owner of the property could apply to the zoning adjustment board for a variance. Because the total area of the lot is sufficient and a lessening of the

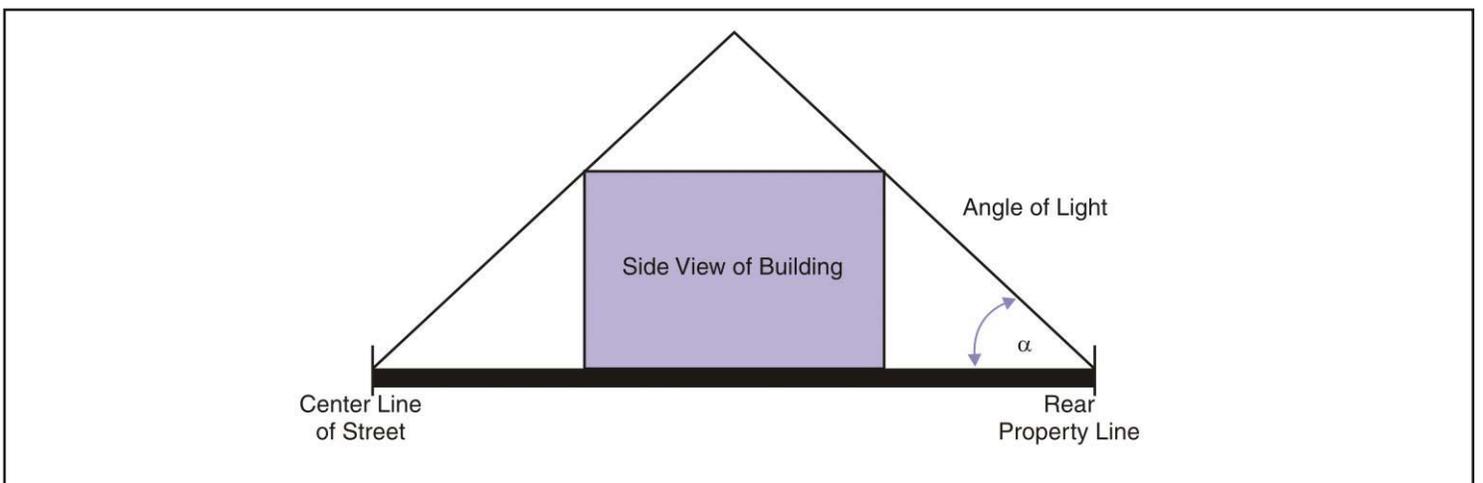


Figure 3.2. Example of an Angle of Light Obstruction

ordinance requirements would not be detrimental to the surrounding property, nor would it interfere with neighboring properties, a variance would probably be granted. Note that a variance is granted to the owner under specific conditions. Should use of the property change, the variance would be voided.

Exceptions

An exception is often confused with a variance. In every city there are some necessary uses that do not correspond to the permitted land uses within the district. The zoning code recognizes, however, that if proper safeguards are provided, these uses would not have a detrimental effect on the district. An example would be a fire station that could be permitted in a residential area, provided the station house is designed and the property is properly landscaped to resemble or fit in with the characteristics of the neighborhood in which it is located.

Administration

Zoning inspectors are essential to the zoning process because they have firsthand knowledge of a case. Often, the zoning inspector may also be the building inspector or housing inspector. Because the building inspector or housing inspector is already in the field making inspections, it is relatively easy for that individual to check compliance with the zoning ordinances. Compliance is determined by comparing the actual land use with that allowed for the area and shown on the zoning map.

Each zoning ordinance has a map detailing the permitted usage for each block. Using a copy of this map, the inspector can make a preliminary check of the land use in the field. If the use does not conform, the inspector must then contact the Zoning Board to see whether the property in question was a nonconforming use at the time of the passage of the ordinance and whether an exception or variance has been granted. In cities where up-to-date records are maintained, the inspector can check the use in the field.

When a violation is observed, and the property owners are duly notified of the violation, they have the right to request a hearing before the Zoning Board of Adjustment (also called the Zoning Board of Appeals in some cities). The board may uphold the zoning enforcement officer or may rule in favor of the property owner. If the action of the zoning officer is upheld, the property owner may, if desired, seek relief by appealing the decision to the courts; otherwise, the violation must be corrected to conform to the zoning code.

It is critical for the housing or building inspector and the zoning inspector to work closely in municipalities where these positions and responsibilities are separate. Experience has shown that illegally converted properties are often among the most substandard encountered in the municipality and often contain especially dangerous housing code violations.

In communities where the zoning code is enforced effectively, the resulting zoning compliance helps to advance, as well as sustain, many of the minimum standards of the housing code such as occupancy, ventilation, light, and unimpeded egress. By the same token, building or housing inspectors can often aid the zoning inspector by helping eliminate some nonconforming uses through code enforcement.

Housing Codes

A housing code, regardless of who promulgates it, is basically an environmental health protection code. Housing codes are distinguished from building codes in that they cover houses, not buildings in general. For example, the housing code requires that walls support the weight of the roof, any floors above, and the furnishings, occupants, etc., within a building.

Early housing codes primarily protected only physical health; hence, they were enforced only in slum areas. In the 1970s, it was realized that, if urban blight and its associated human suffering were to be controlled, housing codes must consider both physical and mental health and must be administered uniformly throughout the community.

In preparing or revising housing codes, local officials must maintain a level of standards that will not merely be minimal. Standards should maintain a living environment that contributes positively to healthful individual and family living. The fact that a small portion of housing fails to meet a desirable standard is not a legitimate reason for retrogressive modification or abolition of a standard. The adoption of a housing ordinance that establishes low standards for existing housing serves only to legalize and perpetuate an unhealthy living environment. Wherever local conditions are such that immediate enforcement of some standards within the code would cause undue hardship for some individuals, it is better to allow some time for compliance than to eliminate an otherwise satisfactory standard. When immediate health or safety hazards are not involved, it is often wise to attempt to create a reasonable timetable for accomplishing necessary code modifications.

History

To assist municipalities with developing legislation necessary to regulate the quality of housing, the American Public Health Association (APHA) Committee on the Hygiene of Housing prepared and published in 1952 a proposed housing ordinance. This provided a prototype on which such legislation might be based and has served as the basis for countless housing codes enacted in the United States since that time. Some municipalities enacted it without change. Others made revisions by omitting some portions, modifying others, and sometimes adding new provisions [9].

The APHA ordinance was revised in 1969 and 1971. In 1975, APHA and the CDC jointly undertook the job of rewriting and updating this model ordinance. The new ordinance was entitled the *APHA-CDC Recommended Housing Maintenance and Occupancy Ordinance* [10]. The most recent model ordinance was published by APHA in 1986 as *Housing and Health: APHA-CDC Recommended Minimum Housing Standards* [11]. This new ordinance is one of several model ordinances available to communities when they are interested in adopting a housing code.

A community should read and consider each element within the model code to determine its applicability to their community. A housing code is merely a means to an end. The end is the eventual elimination of all substandard conditions within the home and the neighborhood. This end cannot be achieved if the community adopts an inadequate housing code.

Objectives

The Housing Act of 1949 [12] gave new impetus to existing local, state, and federal housing programs directed toward eliminating poor housing. In passing this legislation, Congress defined a new national objective by declaring that “the general welfare and security of the nation and the health and living standards of its people...require a decent home and a suitable living environment for every American family.” This mandate generated an awareness that the quality of housing and residential environment has an enormous influence upon the physical and mental health and the social well-being of each individual and, in turn, on the economic, political, and social conditions in every community. Consequently, public agencies, units of government, professional organizations and others sought ways to ensure that the quality of housing and the residential environment did not deteriorate.

It soon became apparent that ordinances regulating the supplied utilities and the maintenance and occupancy of

dwellings were needed. Commonly called housing codes, these ordinances establish minimum standards to make dwellings safe, sanitary, and fit for human habitation by governing their condition and maintenance, their supplied utilities and facilities, and their occupancy. The 2003 International Code Council (ICC) [13,14] International Residential Code-One- and Two-Family Dwellings (R101.3) states

“the purpose of this code is to provide minimum requirements to safeguard the public safety, health and general welfare, through affordability, structural strength, means of egress, facilities, stability, sanitation, light and ventilation, energy conservation, safety to fire and property from fire and other hazards attributed to the built environment.”

Critical Requirements of an Effective Housing Program

A housing code is limited in its effectiveness by several factors. First, if the housing code does not contain standards that adequately protect the health and well-being of the individuals, it cannot be effective. The best-trained housing inspector, if not armed with an adequate housing code, can accomplish little good in the battle against urban blight.

A second issue in establishing an effective housing code is the need to establish a baseline of current housing conditions. A systems approach requires that you establish where you are, where you are going, and how you plan to achieve your goals. In using a systems approach, it is essential to know where the program started so that the success or failure of various initiatives can be established. Without this information, success cannot be replicated, because you cannot identify the obstacles navigated nor the elements of success. Many initiatives fail because program administrators are without the necessary proof of success when facing funding shortfalls and budget cuts.

A third factor affecting the quality of housing codes is budget. Without adequate funds and personnel, the community can expect to lose the battle against urban blight. It is only through a systematic enforcement effort by an adequately sized staff of properly trained inspectors that the battle can be won.

A fourth factor is the attitude of the political bodies within the area. A properly administered housing program will require upgrading substandard housing throughout the community. Frequently, this results in political pressures being exerted to prevent the enforcement of the code in certain areas of the city. If the housing effort is backed

properly by all political elements, blight can be controlled and eventually eliminated within the community. If, however, the housing program is not permitted to choke out the spreading influence of substandard conditions, urban blight will spread like a cancer, engulfing greater and greater portions of the city. Similarly, an effort directed at only the most seriously blighted blocks in the city will upgrade merely those blocks, while the blight spreads elsewhere. If urban blight is to be controlled, it must be cut out in its entirety.

A fifth element that limits housing programs is whether they are supported fully by the other departments within the city. Regardless of which city agency administers the housing program, other city agencies must support the activities of the housing program. In addition, great effort should be expended to obtain the support and cooperation of the community. This can be accomplished through public awareness and public information programs, which can result in considerable support or considerable resistance to the efforts of the program.

A sixth limitation is an inadequately or improperly trained inspection staff. Inspectors should be capable of evaluating whether a serious or a minor problem exists in matters ranging from the structural stability of a building to the health and sanitary aspects of the structure. If they do not have the authority or expertise, they should develop that expertise or establish effective and efficient agreements with overlapping agencies to ensure timely and appropriate response.

A seventh item that frequently restricts the effectiveness of a housing program is the fact that many housing groups fail to do a complete job of evaluating housing problems. The deterioration of an area may be due to factors such as housing affordability, tax rates, or issues related to investment cost and return. In many cases, the inspection effort is restricted to merely evaluating the conditions that exist, with little or no thought given to why these conditions exist. If a housing effort is to be successful, as part of a systems approach, the question of why the homes deteriorated must be considered. Was it because of environmental stresses within the neighborhood that need to be eliminated or was it because of apathy on the part of the occupants? In either case, if the causative agent is not removed, then the inspector faces an annual problem of maintaining the quality of that residence. It is only by eliminating the causes of deterioration that the quality of the neighborhood can be maintained. Often the regulatory authority does not have adequate authority within the

enabling legislation of the code needed to resolve the problem or there are gaps in jurisdiction.

Content of a Housing Code

Although all comprehensive housing codes or ordinances contain a number of common elements, the provisions of communities will usually vary. These variations stem from differences in local policies, preferences, and, to a lesser extent, needs. They are also influenced by the standards set by the related provisions of the diverse building, electrical, and plumbing codes in use in the municipality.

Within any housing code there are generally five features:

1. **Definitions** of terms used in the code.
2. **Administrative provisions** showing who is authorized to administer the code and the basic methods and procedures that must be followed in implementing and enforcing the sections of the code. Administrative provisions deal with items such as reasonable hours of inspections, whether serving violation notices is required, how to notify absentee owners or resident-owners or tenants, how to process and conduct hearings, what rules to follow in processing dwellings alleged to be unfit for human habitation, and how to occupy or use dwellings finally declared fit.
3. **Substantive provisions** specifying the various types of health, building, electrical, heating, plumbing, maintenance, occupancy, and use conditions that constitute violations of the housing code. These provisions can be and often are grouped into three categories: minimum facilities and equipment for dwelling units; adequate maintenance of dwellings and dwelling units, as well as their facilities and equipment; and occupancy conditions of dwellings and dwelling units.
4. **Court and penalty sections** outlining the basis for court action and the penalty or penalties to which the alleged violator will be subjected if proved guilty of violating one or more provisions of the code.
5. **Enabling, conflict, and unconstitutionality clauses** providing the date a new or amended code will take effect, prevalence of more stringent provision when there is a conflict of two codes, severability of any part of the ordinance that might be found unconstitutional, and retention of all other parts in full course and effect. In any city

following the format of the *APHA-CDC Recommended Housing Maintenance and Occupancy Ordinance* [10] the housing officer or other supervisor in charge of housing inspections will also adopt appropriate housing rules and regulations from time to time to clarify or further refine the provisions of the ordinance. When rules and regulations are used, care should be taken that the department is not overburdened with a number of minor rules and regulations. Similarly, a housing ordinance that encompasses all rules and regulations might have difficulty because any amendments to it will require action by the political element of the community. Some housing groups, in attempting to obtain amendments to an ordinance, have had the entire ordinance thrown out by the political bodies.

Administrative Provisions of a Housing Code

The administrative procedures and powers of the housing inspection agency, its supervisors, and its staff are similar to other provisions in that all are based on the police power of the state to legislate for public health and safety. In addition, the administrative provisions, and to a lesser extent, the court and penalty provisions, outline how the police power is to be exercised in administering and enforcing the code.

Generally, the administrative elements deal with procedures for ensuring that the constitutional doctrines of reasonableness, equal protection under the law and due process of law are observed. They also must guard against violation of prohibitions against unlawful search and seizure, impairment of obligations of contract, and unlawful delegation of authority. These factors encompass items of great importance to housing inspection supervisors such as the inspector's right of entry, reasonable hours of inspection, proper service, and the validity of the provisions of the housing codes they administer.

Owner of Record. It is essential to file legal actions against the true owners of properties in violation of housing codes. With the advent of the computer, this is often much easier than in the past. Databases that provide this information are readily available from many offices of local government such as the tax assessment office. The method of obtaining the name and address of the legal owner of a property in violation varies from place to place. Ordinarily, a check of the city tax records will suffice unless there is reason to believe these are not up to date. In this case, a further check of county or parish records will turn up the legal owner if state law requires

deed registration there. If it does not, the advice of the municipal law department should be sought about the next steps to follow.

Due Process Requirements. Every notice, complaint, summons, or other type of legal paper concerning alleged housing code violations in a given dwelling or dwelling unit must be legally served on the proper party to be valid and to prevent harassment of innocent parties. This might be the owner, agent, or tenant, as required by the code. It is customary to require that the notice to correct existing violations and any subsequent notices or letters be served by certified or registered mail with return receipt requested. The receipt serves as proof of service if the case has to be taken to court.

Due process requirements also call for clarity and specificity with respect to the alleged violations, both in the violation notices and the court complaint-summons. For this reason, special care must be taken to be complete and accurate in listing the violations and charges. To illustrate, rather than direct the violator to repair all windows where needed, the violator should be told exactly which windows and what repairs are involved.

The chief limitation on the due process requirement, with respect to service of notices, lies in cases involving immediate threats to health and safety. In these instances, the inspection agency or its representative may, without notice or hearing, issue an order citing the existence of the emergency and requiring that action deemed necessary to meet the emergency be taken.

In some areas housing courts on the municipal level have advocates that assist both plaintiffs and defendants prepare for the court process or to resolve the issue to avoid court.

Hearings and Condemnation Power. The purpose of a hearing is to give the alleged violator an opportunity to be heard before further action is taken by the housing inspection agency. These hearings may be very informal, involving meetings between a representative of the agency and the person ordered to take corrective action. They also may be formal hearings at which the agency head presides and at which the city and the defendant both are entitled to be represented by counsel and expert witnesses.

Informal Hearings. A violator may have questions about a violation notice or the notice may be served at a time when personal hardship or other factors prevent a violator from meeting the terms of the notice. Therefore, many

housing codes provide the opportunity for a hearing at which the violator may discuss questions or problems and seek additional time or some modification of the order. Administered in a firm but understanding manner, these hearings can serve as invaluable aids in relieving needless fears of those involved, in showing how the inspection program is designed to help them and in winning their voluntary compliance.

Formal Hearings. Formal hearings are often quasijudicial hearings (even though the prevailing court rules of evidence do not always apply) from which an appeal may be taken to court. All witnesses must therefore be sworn in, and a record of the proceedings must be made. The formal hearing is used chiefly as the basis for determining whether a dwelling is fit for human habitation, occupancy, or use. In the event it is proved unfit, the building is condemned and the owner is given a designated amount of time either to rehabilitate it completely or to demolish it. Where local funds are available, a municipality may demolish the building and place a lien against the property to cover demolition costs if the owner fails to obey the order within the time specified. This type of condemnation hearing is a very effective means of stimulating prompt and appropriate corrective action when it is administered fairly and firmly.

Procedures for Coping With Common Problems. Several states and local communities have developed innovative ways to resolve code violation issues.

Limitation of Occupancy Notification. This technique was pioneered in Wilmington, Delaware. It makes it mandatory for property owners in the community to obtain a legal notice from the housing inspection agency specifying the maximum number of persons that may occupy each of their properties. It also requires these owners to have a residence, place of business, or an agent for their properties within the community. The agent should be empowered to take remedial action on any of the properties found in violation. In addition, if the property is sold, the new owner must obtain a new Limitation of Occupancy Notification.

Request for Inspections. Several states permit their municipalities to offer a request for inspection service. For a fee, the housing inspector will inspect a property for violations of the housing code before its sale so that the buyer can learn its condition in advance. Many states and localities now require owners to notify prospective purchasers of any outstanding notice of health risk or violations they have against their property before the sale.

If they fail to do so, some codes will hold the owner liable to the purchaser and the inspection agency for violations.

Tickets for Minor Offenses. Denver, Colorado, has used minimal financial fines to prod minor violators and first offenders into correcting violations without the city resorting to court action. There are mixed views about this technique because it is akin to formal police action. Nevertheless, the action may stimulate compliance and reduce the amount of court action needed to achieve it.

Forms and Form Letters. A fairly typical set of forms and form letters are described below. It should be stressed that inspection forms to be used for legal notices must satisfy legal standards of the code, be meaningful to the owner and sufficiently explicit about the extent and location of particular defects, be adaptable to statistical compilation for the governing body reports, and be written in a manner that will facilitate clerical and other administrative usage.

The Daily Report Form. This form gives the inspection agency an accurate basis for reporting, evaluating, and, if necessary, improving the productivity and performance of its inspectors.

Complaint Form. This form helps obtain full information from the complainant and thus makes the relative seriousness of the problem clear and reduces the number of crank complaints.

No-entry Notice. This notice advises occupants or owners that an inspector was there and that they must return a call to the inspector.

Inspection Report Form. This is the most important form in an agency. It comes in countless varieties, but if designed properly, it will ensure more productivity and more thoroughness by the inspectors, reduce the time spent in writing reports, locate all violations correctly, and reduce the time required for typing violation notices. Forms may vary widely in sophistication from a very simple form to one whose components are identified by number for use in processing the case by automation. Some forms are a combined inspection report and notice form in triplicate so that the first page can be used as the notice of violation, the second as the office record, and the third as the guide for reinspection. A covering form letter notifies the violator of the time allowed to correct the conditions listed in the report form.

Violation Notice. This is the legal notice that housing code violations exist and must be corrected within the

indicated amount of time. The notice may be in the form of a letter that includes the alleged violations or has a copy of these attached. It may be a standard notice form, or it may be a combined report-notice. Regardless of the type of notice used, it should make the location and nature of all violations clear and specify the exact section of the code that covers each one. The notice must advise violators of their right to a hearing. It should also indicate that the violator has a right to be represented by counsel and that failure to obtain counsel will not be accepted as grounds for postponing a hearing or court case.

Hearing Forms. These should include a form letter notifying the violator of the date and time set for the hearing, a standard summary sheet on which the supervisor can record the facts presented at an informal hearing, and a hearing-decision letter for notifying all concerned of the hearing results. The latter should include the names of the violator, inspector, law department, and any other city official or agency that may be involved in the case.

Reinspection Form Letters or Notices. These have the same characteristics as violation notices except that they cover the follow-up orders given to the violator who has failed to comply with the original notice within the time specified. Some agencies may use two or three types of these form letters to accommodate different degrees of response by the violator. Whether one or several are used, standardization of these letters or notices will expedite the processing of cases.

Court Complaint and Summons Forms. These forms advise alleged violators of the charges against them and summon them to appear in court at the specified time and place. It is essential that the housing inspection agency work closely with the municipal law department in preparing these forms so that each is done in exact accord with the rules of court procedure in the relevant state and community.

Court Action Record Form. This form provides an accurate running record of the inspection agency's court actions and their results.

Substantive Provisions of a Housing Code

A housing code is the primary tool of the housing inspector. The code spells out what the inspector may or may not do. An effort to improve housing conditions can be no better than the code allows. The substantive provisions of the code specify the minimal housing conditions acceptable to the community that developed them.

Dwelling units should have provisions for preparing at least one regularly cooked meal per day. Minimum equipment should include a kitchen sink in good working condition and properly connected to the water supply system approved by the appropriate authority. It should provide, at all times, an adequate amount of heated and unheated running water under pressure and should be connected to a sewer system approved by the appropriate authority. Cabinets or shelves, or both, for storing eating, drinking, and cooking utensils and food should be provided. These surfaces should be of sound construction and made of material that is easy to clean and that will not have a toxic or deleterious effect on food.

In addition, a stove and refrigerator should be provided. Within every dwelling there should be a room that affords privacy and is equipped with a flush toilet in good working condition.

Within the vicinity of the flush toilet, a sink should be provided. In no case should a kitchen sink substitute as a lavatory sink. In addition, within each dwelling unit there should be, within a room that affords privacy, either a bathtub or shower or both, in good working condition. Both the lavatory sink and the bathtub or shower or both should be equipped with an adequate amount of heated and unheated water under pressure. Each should be connected to an approved sewer system.

Within each dwelling unit two or more means of egress should be provided to safe and open space at ground level. Provisions should be incorporated within the housing code to meet the safety requirements of the state and community involved. The housing code should spell out minimum standards for lighting and ventilation within each room in the structure. In addition, minimum thermal standards should be provided. Although most codes merely provide the requirement of a given temperature at a given height above floor level, the community should give consideration to the use of effective temperatures. The effective temperature is a means of incorporating not only absolute temperature in degrees, but also humidity and air movement, giving a better indication of the comfort index of a room.

The code should provide that no person shall occupy or let for occupancy any dwelling or dwelling units that do not comply with stated requirements. Generally, these requirements specify that the foundation, roof, exterior walls, doors, window space and windows of the structure be sound and in good repair; that it be moisture-free, watertight and reasonably weather tight and that all structural surfaces be sound and in good repair.

HUD defines a multifamily dwelling unit as one that contains four or more dwelling units in a single structure. A dwelling unit is further defined as a single unit of residence for a family of one or more persons in which sleeping accommodations are provided but toileting or cooking facilities are shared by the occupants.

Building Codes

Building codes define what materials and methods are to be used in the construction of various buildings. Model building codes have been published by various trade organizations such as the Southern Building Code Congress International (SBCCI), Building Officials and Code Administrators (BOCA), and the International Conference of Building Officials (ICBO). Each of these groups published a model building code that was widely used or adapted regionally in the United States. BOCA national codes were used mostly in eastern and Great Lakes states, ICBO uniform codes in western and Midwest states, and SBCCI standard codes in southern states. As a result, the construction industry often faced the challenge, and cost, of building to different codes in different areas of the country.

In 1994, BOCA, ICBO, and SBCCI created the International Code Council (ICC) to develop a single set of comprehensive, coordinated model construction codes that could be used throughout the United States and around the world. The first I-Code published was the International Plumbing Code in 1995. By 2000, a complete family of I-Codes was available, including the International Building Code. The ICC Performance Code for Buildings and Facilities joined the I-Code family in 2001.

On February 1, 2003, the three organizations (BOCA, SBCCI, and ICBO) were consolidated into the ICC [13,14]. According to ICC Board president, Paul E. Myers,

“The ICC International Codes (I Codes) combine the strengths of the regional codes without regional limitations. The ICC is a nonprofit organization dedicated to developing a single set of comprehensive and coordinated national codes to make compliance easier and more cost-effective. I Codes respond to the needs of the construction industry and public safety. A single set of codes has strong support from government, code enforcement officials, fire officials, architects, engineers, builders, developers, and building owners and managers.”

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