

## Chapter 8. Building and Housing Codes

- Existed for centuries but modern history traced to Tenement House Act 1901 in NYC.
- Building permit and certificate of occupancy are focal points for growth management and infrastructure funding (usually last point at which local govt. can exercise leverage)
- Basic goal to ensure buildings are safe, sanitary, and increasingly, convenient and efficient
- Building codes are either
  - Specification based (most common)
  - Performance based (preferred by architects)

## Model Codes

- Multiple model building codes exist
  - National Building Code of American Insurance Association
  - Uniform Building Code of International Conference Building Officials
  - Southern Standard Building Code
  - Basic Building Code
  - Other supplemental codes
    - National Electric Code
    - National Plumbing Code
- Only largest jurisdictions attempt to develop own codes
- Model codes reflect state of the art of building rather than scientific engineering data
- Considerable variety in codes from one locale to another

## Unauthorized or Unconstitutional Applications of Codes

- Two major routes for challenging the application of a building or housing code
  - Regulation is not authorized by a statute or home rule power
  - Claim that it is unconstitutional
- Requirement that specific provisions be demonstrably related to health and safety
- Regulations can also be challenged as unreasonable and therefore unconstitutional
- Courts often compare cost of compliance with the value of the building
- Courts often hold retroactive zoning ordinances unconstitutional but not so with housing codes
  - Often applied retroactively to rid buildings of nonconformities
  - Property owner often loses attack on housing code provisions unless the requirements deal with peripheral matters rather than health and safety

## State and Federal Preemption

- Over half the states have adopted statewide building codes drafted by one of the three major building code organizations
- Uniformity of law may be sufficient basis for legislative preemption but local governments may adopt more stringent requirements
- In California, administrative code allows city or county to determine modifications to state's building requirements because of local conditions
- Federal mobile home construction and safety standards established in 1974

## Enforcement of Building and Housing Codes

- Enforced by commissioner of buildings or similar official
- Building code usually requires submission of plans for the project for approval by building official
- Application for plan approval and work permits are often separate processes but they may be applied for at once
- Certificate of occupancy will be issued when a building is found to substantially conform to applicable laws and regulations
- Violations in housing codes usually occurs when tenant files complaint
- Owners or landlords may be liable for injuries to tenants caused by defects in premises
- Building inspectors must have consent or a search warrant to look for violations of housing code with criminal penalties
- The number of inspectors are often inadequate and lack training
- Courts show great reluctance to impose criminal sanctions for failure to comply with repair orders
- Until recently, the issuance of building permits and certificates of occupancy was considered non-discretionary. Now, however, these requirements are increasingly linked to payment of impact fees.