INTRODUCTION

Most American cities have grown without the benefit of planning, either in terms of land use or in terms of minimum standards for construction and maintenance of human habitations. An increasingly serious manifestation of this haphazard growth is the spread of what has been designated urban blight.

Blight is physical, structural decay. It is evidenced by buildings which are run down or are overcrowded, damp, lacking in sanitary facilities or infested with vermin. Though so-called slums are the most obvious and serious examples of blighted areas, neighborhoods not classified as slums may also be blighted to varying degrees. While the effects of blight are easily recognized, its causes are harder to discern. Mere age of the buildings in a particular area may, of course, be an important factor. Overcrowding, which is a symptom of blight, may also hasten blight. Other causes include the neglect and indifference of landlords and tenants and the poor quality of municipal services.

Early attempts at checking the spread of blight ranged from public nuisance abatement actions to prosecutions for violations of zoning, health, and building codes. These efforts met with little success. Among the reasons for failure were lack of coordination among the officials charged with enforcement of the separate codes, a lack of understanding of the problem of blight, poorly drafted laws and court delays when prosecutions finally ensued. In response to the fact that blight had become a matter of national concern and in view of the need for concerted action, Congress enacted in 1949 a measure calling for the expenditure of federal funds to aid redevelopment projects: demolition and rebuilding of slum areas, thus making unused and misused land available for community improvement.

It was soon realized, however, that redevelopment was not a panacea. Even with the Government's liberal two-thirds subsidy, the cost of re-
development was in many cases prohibitive.\(^7\) Moreover,\(^\) redevelopment created an immediate problem of relocation of the tenants of the structures to be destroyed. And it did not take account of the fact that blight was causing non-slum areas to deteriorate into slums.

In recognition of these shortcomings, a special presidential advisory committee was established in 1953 to study the Federal Housing Laws.\(^8\) Many of the committee’s recommendations were enacted in the Housing Act of 1954.\(^9\) This act shifted emphasis from clearance alone to a comprehensive approach to the problem of combating blight known as “urban renewal.” The act provides that no loan or grant may be made to a locality, unless the locality presents to the Housing and Home Finance Agency Administrator a “workable program” designed not only to eliminate slums, but also to combat blight in other areas and protect sound neighborhoods from being afflicted with blight. To this end all available tools are to be utilized: zoning, building, health and fire codes, clearance, conservation and, finally, housing codes.\(^10\)

Housing codes,\(^11\) as such, are not new,\(^12\) but until recently their use was uncommon.\(^13\) Under the impetus of the Housing Act, many existing

\(^7\) Note, Municipal Housing Codes, 69 Harv. L. Rev. 1115 n.2 (1956). In addition, political problems are likely to develop; see Myerson & Banfield, Politics, Planning and the Public Interest passim (1955). Relocation of displaced families is a further problem for the city to cope with; see Slayton, supra note 5, at 444, 455.

\(^8\) See President’s Advisory Committee.


\(^10\) The Housing Act of 1954 requires that seven standards be met: 1) provision of sound local housing and health codes, enforced; 2) a general master plan for the community’s development; 3) basic analysis of neighborhoods and the kind of treatment needed in each; 4) an effective administrative organization to run the program; 5) financial capacity to carry out the program; 6) rehousing of displaced persons; 7) full-fledged, community-wide citizen participation and support. The passage of this act has encouraged the enactment of many new housing codes. See Housing and Home Finance Agency (hereinafter cited as HHFA), The Workable Program (1955); see also Guandolo, Housing Codes in Urban Renewal, 25 Geo. Wash. L. Rev. 1, 9-10 n.35 (1956).

\(^11\) Housing codes represent a legislative exercise of the police power. Municipal corporations have no inherent right to exercise the police power, but must acquire it from the state. 7 McQuillin, Municipal Corporations § 24,504 (3d ed. 1949). Philadelphia’s Home Rule Charter gave this city the legislative authority to enact and enforce its present housing law. Philadelphia Home Rule Charter Ann. § 1-100 (1951).

\(^12\) While regulatory measures affecting housing may be traced back as far as the Code of Hammurabi, Guandolo, supra note 10, at 5, and n.8, the first important work in the field of housing in the modern era was the Lawrence Veiller Model Housing Law of 1914. See Veiller, A Model Housing Law preface (1920). This enterprise was sponsored by the Russell Sage Foundation. Shortly after its publication both state and city housing laws were drafted using Veiller’s work as a model. Ibid. More recently, the American Public Health Association drafted a “Proposed Housing Ordinance,” American Public Health Association, A Proposed Housing Ordinance (1952), which in turn has served as the point of departure for drafting of up to date, comprehensive measures affecting existing housing. The drafters of the new Philadelphia Housing Code made use of it. Siegel & Brooks, Slum Prevention Through Conservation and Rehabilitation 22 (1953).

\(^13\) Frequently, provisions found in present housing codes were scattered through other codes. Cf. Siegel & Brooks, op. cit. supra note 12, at 2; Mitchell, Historical Development of the New York Multiple Dwelling Law, Law Notes, May 1946, p. 7.
codes were refurbished and a rash of new codes have appeared. As of 1955 more than seventy cities had comprehensive housing codes. In general, housing codes establish minimum standards relating to the facilities and equipment required in each habitation, the permissible level of maintenance for both dwelling and the facilities and equipment therein, and the number of persons who may occupy a given living area. The need for housing codes may be better appreciated by a brief reference to the functions of related codes. Zoning ordinances, for example, are designed to maintain existing desirable land uses, check the spread of undesirable land uses and provide for orderly future development. But zoning laws are prospective in operation; existing non-conforming uses (e.g., a junk yard in a residential area) continue to have an undesirable effect on the surrounding dwellings. And, of course, zoning has no impact on a decaying, but conforming structure. Building codes are primarily concerned with the structural safety of new and renovated buildings. Enforcement is achieved through the use of permits and by close surveillance during the construction period. Like the zoning ordinance, the building code operates prospectively; it has little impact on existing housing until renovation of that housing begins. It does not compel the renovation. Existing housing is regulated to a certain extent by health and fire codes or by ordinances specifically dealing with plumbing, wiring and the like; but enforcement of these measures is not directed at blight, as such, and leaves unaffected many important causes of blight.

Some housing codes are framed in general terms with delegation of authority to an administrative agency to prescribe specific regulations. Others, including the Philadelphia Housing Code, are specific in their

14. E.g., PHILADELPHIA HOUSING CODE (1954). States as well as municipalities have housing codes. E.g., IOWA CODE ANN. §§ 413.1-.125 (1949), as amended, § 413.1 (Supp. 1955).
17. In addition, zoning ordinances regulate the density of land coverage, the height, size and other aspects of structures, including to some extent their position on the land. See, e.g., the ordinance upheld in Village of Euclid v. Ambler Realty Co., 272 U.S. 365 (1926).
21. See Guandolo, supra note 10, at n.37.
22. Cf. Guandolo, supra note 10, at 9. This paper proceeds on the premise that some sort of governmental regulation is necessary in the field of existing housing; for a discussion of private enforcement see Dunham, Private Enforcement of City Planning, 20 LAW & CONTEMP. PROBS. 463, 476-78 (1955).
24. This code contains minimum standards, applicable to all dwellings now in existence or hereafter constructed, for basic equipment and facilities, light, ventilation and heating, safety from fire, space, use and location, and safe and sanitary maintenance of cooking equipment. The code also delineates the responsibilities of owners, operators and occupants of dwellings; provides, as an incident to the primary regula-
declarations of what constitute acceptable standards. For example, the Philadelphia Code, recognizing that overcrowding is both a symptom and a cause of blight, provides in detail for the determination of maximum occupancy levels for all except single family dwellings. Owners or operators are required to give prospective occupants written notice of the capacity of their space, and, in addition, rooming houses are required to have a license conspicuously displayed, which, among other things, specifies the maximum permissible occupancy of the building.

Perhaps one of the most difficult problems in drafting the substantive requirements in a housing code is that of setting standards high enough to deal effectively with blight even in its early stages, while at the same time not creating standards so high as to make compliance unreasonably difficult, particularly in slum areas where large expenditures on existing structures would be economically not feasible. One suggested solution is the division of the city into areas and establishment of separate standards appropriate for each. Thus, standards in a slum area would be less demanding than those in an area which had not deteriorated into the slum category. The setting of standards too low for the community in general

25. See generally Philadelphia Housing Code § 7 (1954). Section 7.5 of the code manifests the legislative judgment that single family dwellings are generally healthful and sanitary for purposes of space, use and location requirements. Such dwellings are therefore exempted from the occupancy provisions of the code. It is suggested that this is error for it exempts a large number of dwellings which are only slightly less subject to the effects of overcrowding.


27. Id. §§ 12.4, 12.5.

28. Standards unreasonably high will be nullified through public disregard and judicial decision. See Guandolo, supra note 10, at 37-42. Standards higher than the minimum necessary for purposes of health, safety and morals present constitutional questions. See Note, 69 Harv. L. Rev. 1115, 1120-23 (1956). Many courts recognize that aesthetic considerations are properly cognizable under the police power. See Bergs, Aesthetics as a Justification for the Exercise of the Police Power or Eminent Domain, 23 Geo. Wash. L. Rev. 730 (1955). Pennsylvania has rejected the doctrine, however; Appeal of Medinger, 377 Pa. 217, 226, 104 A.2d 118, 122 (1954). Thus, for the present at least, standards in housing codes based on considerations of attractiveness and the like are not permissible in Pennsylvania.


30. Such a classification may raise a constitutional question under the “equal protection” clause of the fourteenth amendment. See Note, 69 Harv. L. Rev. 1115, 1120-23 (1956). Housing code regulations have been held discriminatory. See, e.g., Bailey v. People, 190 Ill. 28, 60 N.E. 98 (1901); Brennan v. Milwaukee, 265 Wis. 52, 60 N.W.2d 704 (1953). In the Brennan case, supra, a housing law was struck down because its requirements for plumbing were based on the number of rooms in a structure, rather than the number of occupants, the court holding that the classification based on the number of rooms was not reasonably related to the purpose to be accomplished. Id. at 57, 60 N.W.2d at 707. The Philadelphia Housing Code does not distinguish on the basis of rooms. Rather, its requirements are stated in terms of dwelling units, which in turn are defined as any number of rooms housing a single family. Philadelphia Housing Code § 3.10 (1954). This would answer the objections raised in the Brennan case, supra.

PHILADELPHIA HOUSING CODE

has been advanced as one of the two major causes for the failure of most housing codes to accomplish fully their objective of eliminating blight.31

The second major cause of failure has been a deficiency in enforcement procedures.32 To be effective, of course, a code must not only provide for adequate substantive standards, but must also establish methods of assuring compliance. This requires both a statutory framework and a vigorous enforcement body. The balance of this Note will be concerned with an examination and evaluation of enforcement procedures under the Philadelphia Housing Code.33

ENFORCEMENT OF THE PHILADELPHIA HOUSING CODE

The Enforcement Agency

Several city and state agencies play a role in Philadelphia’s city planning and urban renewal programs, with a certain amount of coordination being achieved through the Office of the Development Coordinator.34 Among the agencies involved are the Philadelphia Redevelopment Authority, the Philadelphia Housing Authority, the City Planning Commission, the city fire department, the city health department and the Commission on Human Relations. In addition, a host of private and charitable organizations lend their aid.

The task of administering the Housing Code itself has been allotted to the Department of Licenses and Inspections (hereinafter referred to as


The Brennan case supra, listed five general rules upon which classifications are to be based in the exercise of the police power: “(1) All classification must be based upon substantial distinctions which make one class really different from another. (2) The classification adopted must be germane to the purpose of the law. (3) The classification must be based upon existing circumstances only. (4) To whatever class a law may apply, it must apply equally to each member thereof. . . . (5) That the characteristics of each class should be so far different from those of other classes as to reasonably suggest at least the propriety, having regard to the public good, of substantially different legislation.” Brennan v. Milwaukee, supra at 56, 60 N.W.2d at 706. For an excellent and exhaustive discussion of the constitutional aspects of housing codes see, Guandomo, supra note 10, at 14-35.

31. See SIEGEL & BROOKS, op. cit. supra note 12, at 1-2. Standards may be raised gradually over a period of years. See HHFA, LOCAL DEVELOPMENT AND ENFORCEMENT OF HOUSING CODES 5-6 (1953).

32. E.g., the 1950 census revealed that there were approximately 70,000 dwellings in Philadelphia so deficient as to warrant redevelopment action. This, of course, did not include the countless thousands of dwellings that were blighted or nearing that stage. The housing section of the Department of Licenses & Inspections reported that approximately 25,000 initial inspections were made during each of the past two years. DEPARTMENT OF LICENSES & INSPECTIONS, COMPARATIVE ANNUAL REPORT ON HOUSING INSPECTIONS (1955-56). It may be seen, therefore, that the city has not found it possible to inspect all blighted structures within the course of a year.

33. Although the Philadelphia Housing Code was the subject matter of this study, it is the hope of the writer that material contained herein will be of some benefit to other cities as well.

34. This is a staff organization reporting directly to the mayor. It was created in 1954 and is not a charter body. The function of the office is to coordinate the policies and procedures of the various organizations in Philadelphia touching on any phase of urban renewal. It does not have power to dictate policy.
L & I). This department, created under the recent Philadelphia Home Rule Charter, represents a new concept in city governmental organization: the consolidation of all licensing and inspection functions in one specialized agency. Within the Department, the Housing and Sanitation section has specific responsibility for administering the code. Personnel of eight district inspection offices perform inspections, while a prosecutions unit handles pre-court inspections, testifies at magistrates' hearings, and conducts reinspections when necessary.

Recruitment and Training of Inspectors

The honesty, intelligence and vigor of the housing inspector accounts in large measure for the success or failure of the enforcement program. Here, as in other departments of the city there is the need to adjust compensation to a level which will attract capable personnel and which will encourage them to remain with the department.

L & I presently conducts a unique and effective training program. Prior to any formal training the neophyte is assigned to field work with an experienced inspector for six months. This permits him to get a taste of the type of work in which he will be involved, before the city spends funds on a formal training program for him. At the end of the six months, if he has expressed satisfaction with the work and if he has shown aptitude, he will receive detailed in-service training.

Philadelphia housing inspectors are not uniformed. Baltimore, on the other hand, assigns uniformed policemen to assist in making inspections and has found that their presence adds impetus to the enforcement program. It is probable that a uniformed inspector does command more respect than one working in his street clothes. On the other hand, if greater compliance can be achieved through education and cooperation, a non-uniformed inspector may have more success. Limited observation suggests, however, that the need for respect is greater, which in turn indicates that Philadelphia should uniform its inspectors.


36. The Charter also provides L & I with substantive power to enforce the many codes its administers, id. § 5-1002(a); the power to train inspectors, id. § 1-1002(c); as well as providing any officer or employee of L & I with a right of entry, subject only to constitutional limitations, a necessity if the department is to fulfill its inspection functions, id. § 5-1004. An appeal board for aggrieved parties is furnished by the Board of Licenses and Inspections Review. Id. § 5-1005. The Board of Review is a departmental appeal board appointed by the mayor. An autonomous unit, its decisions are binding on L & I, subject to any other appeal to the courts as might exist.

37. "'Due process' under state law requires that a defendant be faced by his accuser in any proceeding in which a penalty may be imposed against him. Therefore, an inspector must appear personally at the magistrate's hearings to assist in the prosecution of violators." Bureau of Municipal Research, Administrative Survey of the Philadelphia Department of Licenses and Inspections 64 (1956) (hereinafter referred to as BMR Report).


Procedures for the Discovery of Violations

Violations are brought to light in two ways: through complaints made either to L & I or to the Mayor's Office of Information and Complaints, followed by inspections, and through inspections initiated by L & I. Upon discovery of a violation, a notice is sent to the owner of the premises. After thirty days have elapsed, a reinspection is made and, if the violation order has not been complied with, a final ten day notice is sent and the case is referred to the prosecutions unit. Notice of a right to appeal to the department's board of review is contained therein. At the end of the ten days an inspector from the prosecutions unit makes a second reinspection and, if the violation has not been corrected, makes a recommendation as to the further disposition of the case. The sanctions which may be imposed are discussed in a subsequent section of this Note. The experience of L & I is, however, that compliance can be achieved in the field in the great majority of cases without resort to sanctions.

Inspection Procedures

L & I is understaffed, particularly with reference to the number of available inspectors. The problem is to deploy the inspectors as efficiently as possible. The largest part of the inspector's time is devoted at present to the following up of complaints. But it is a generally accepted proposi-

40. Heretofore, complaints coming to the Mayor's Office of Information and Complaints have received preferential handling and treatment. BMR Report at 58.

41. A right of entry is a necessary adjunct to a scheme of enforcement. In a recent study of fifty-seven housing codes, it was found that thirty-eight authorized entry onto the premises, while forty-four had provisions permitting inspection. HHFA, URBAN RENEWAL BULLETIN No. 3 (1956). It has been argued that inspection without a warrant would constitute an unlawful search and seizure. In two recent decisions the courts felt it unnecessary to decide this question. Little v. District of Columbia, 62 A.2d 874 (D.C. 1948), aff'd, 178 F.2d 13 (D.C. Cir. 1949), aff'd on other grounds, 339 U.S. 1 (1950) (majority of Justices felt it unnecessary to decide the question of whether a search warrant would be required for an inspector to gain entry into appellant's premises, although the court of appeals had already decided the issue adversely to the respondent); Richards v. City of Columbia, 227 S.C. 538, 88 S.E.2d 683 (1955) (court held question not before them since there had been no entry made). However, a recent Maryland decision held that the Baltimore ordinance did not violate the prohibition against unreasonable searches and seizures. Givner v. Maryland, 210 Md. 484, 124 A.2d 764 (1956). See discussion in Guandolo, supra note 10, at 29. The District of Columbia Code requires that an inspector secure a warrant when denied entrance. See Little v. District of Columbia, supra. As a practical matter it is unlikely that an owner will risk alienating an inspector by seeking to exercise his constitutional right to bar entry. See Note, 69 Harv. L. Rev. 1113, 1125 (1956).

42. Administrative procedures under a housing code may be subject to attack on due process grounds unless the violator is given notice and a right to appeal. Cf. Security Ins. Co. v. Rosenberg, 227 Ky. 314, 12 S.W.2d 688 (1929); Petrushansky v. State, 182 Md. 164, 32 Atl. 696, 701 (1943). The Philadelphia Code makes provision for written notice and appeals in §§ 15.1-15.3.

43. During interviews, no criteria were offered on which an inspector could base his decision on whether to prosecute or not.

44. See text and notes at notes 56-66 infra.

45. See PHILADELPHIA HOUSING ASSOCIATION, STATEMENT OF THE COMMITTEE ON HOUSING LAW ENFORCEMENT 8-10 (June 19, 1957).
tion that code enforcement on a complaint basis alone will not rid a city of blight. The answer appears to lie in the effectuation of an area inspection system. Philadelphia has experimented along these lines in a few selected sections of the city. The thrust of this approach, as implemented in Philadelphia, is to seek a modicum of enforcement in those sections of the city which are scheduled for redevelopment within a reasonably short time, and a maximum in the "fringe" or "conservation" areas where blight has not yet gained a substantial foothold. The rationale of this approach is that it is unfair and uneconomical to expect a landlord to make a major repair on a structure that will shortly be torn down, while inspection in fringe areas can contain blight by requiring compliance where compliance can be had relatively easily.

Other cities have found area enforcement to be an extremely useful tool in the problem of combating blight. Coupled with a program of systematic reinspections plus periodic inspections of multiple dwelling units, code enforcement on the area level can produce results far more effective than can be achieved under the present complaint system. Moreover, if inspectors inspect each dwelling only for certain essential items and merely spot-check for other violations, flagrant violations will be uncovered and corrected and the requirements of the code will become generally known, without at the same time unduly impeding the enforce-

46. Prior to the enactment of the new code, the city attempted an area enforcement scheme but it met with little success. See Siegel & Brooks, op. cit. supra note 12, at 71. After passage of the Housing Code an area enforcement program was staged in one of the city's most blighted areas. The active cooperation of the residents was solicited, and violations were handled separately by the Department, most of the cases being brought before a single magistrate. Philadelphia Housing Association, A Report on Housing Law Enforcement in Philadelphia 4 (1955). A second code enforcement area selected was located on the fringe of the city's central blighted core. It has been suggested that this represents the wiser approach to the problem of area enforcement, since only redevelopment will suffice in slum areas. News Release, Office of the City Representative, Philadelphia, Pa. (April 2, 1957).

47. See, e.g., Philadelphia Housing Association, A Statement on Housing and Urban Renewal Policy in Philadelphia 6 (1955); Housing Authority of Baltimore City, Signs of a Better Baltimore, 28 Baltimore Health News 93, 95 (1951); Letter from the city of Cincinnati to the University of Pennsylvania Law Review, Aug. 9, 1957, on file in the Biddle Law Library.

48. It has been estimated that if the present system (10% of inspection time on area projects) were continued it would take the proposed inspection staff for 1958 between thirty-seven and fifty-five years to bring only those structures not slated for demolition at the present time in the central urban renewal area into compliance with the Housing Code. A generation is too long to wait in any project as vital as urban renewal. See Philadelphia Housing Association, Statement of the Committee on Housing Law Enforcement n.16 (June 19, 1957).

49. It is essential during inspections, that every effort be made to discover the actual occupancy of a given dwelling. Overcrowding, caused by illegal conversions and conversions by use, is one of the most serious causes of blight. The task is a difficult one; inspections are made in the daytime when most occupants are at work or at school, and the most that an inspector can do is question neighbors and count the number of beds on the premises. Cf. Slayton, Urban Redevelopment Short of Clearance, in Urban Redevelopment Problems and Practices 315, 365 (Woodbury ed. 1953). One solution is to place the task of initial detection on committees of citizens' groups. The city could provide them with data on the permissive occupancy for all the dwelling units in the area and the groups, being familiar with their own neighborhoods, could check to see if limits were being adhered to.
ment process by an attempt to correct all the existing faults.\textsuperscript{50} Thereafter, tenants may police their own dwellings more effectively.

At the present time Housing Code and Fire Code inspections are performed by the same men, while separate staffs enforce other codes dealing with housing.\textsuperscript{51} A landlord may accordingly be subjected to several inspections during the course of the year, no one of which uncovers more than a few violations. The advantages to be gained by separate inspection staffs are that they make possible a certain degree of specialization which may be necessary for enforcement of the more technical codes such as the electrical code, and, secondly, they make the landlord more frequently aware of the condition of his premises, albeit in a limited context. Merger of inspection staffs would appear to be the more desirable alternative, however, in that it would permit better utilization of available manpower and more effective coverage of the city thereby. It would also have the advantage from a public relations standpoint of allowing the landlord to undertake all his necessary repairs at one time.

Complaint Procedure

In order, within the existing budget, to release more inspectors for area inspections, a revision of L & I's complaint procedure is called for. At present, every complaint is followed by an original inspection and several reinspections until compliance is secured.\textsuperscript{52} This procedure is slow and represents an uneconomic use of manpower. The Department should make a determination of which categories of violations do not command immediate personal attention. These complaints should then be handled through the mail, a copy of the violation notice being sent to both tenant and landlord. If compliance is not achieved, a later inspection will reveal this.\textsuperscript{53} The burden should be placed on the violator to contact the city when repairs have been made so that his name may be removed from the violations list.

Certification

Another way to gain greater compliance with the code without increasing the inspection staff is to attempt to make the code self-policing. Instead of depending upon complaints and inspections to gain compliance, the burden would be shifted to individual landlords by a system of certification.\textsuperscript{54} Under this plan, which Philadelphia has not adopted, all landlords

\textsuperscript{50} This will also reduce the possibility that housing inspectors may develop the habit of smothering cases where the landlord involved has been "friendly" towards them.

\textsuperscript{51} As for example, the Health, Plumbing and Electrical Codes.

\textsuperscript{52} BMR Report at 58.

\textsuperscript{53} For a discussion of complaint procedure in other cities, see \textit{Philadelphia Housing Association, Statement of the Committee on Housing Law Enforcement} appendix (June 19, 1957).

\textsuperscript{54} New York City tried this technique in 1954 as part of its own "war on skowflaw landlords," calling over 11,000 into the housing court. The burden of achieving compliance was effectively shifted. See \textit{City of New York, Department of Buildings, Annual Report 19-20} (1954-55).
would be required at intervals to certify by affidavit 55 the condition of
their premises, using a checklist prepared by L & I covering the physical
specifications relevant to important code provisions. Those failing to certify
or those certifying with reservations would be contacted by L & I and an
inspection would be made. In addition, spot checks would be made of all
replies and stiff penalties would be imposed for falsification.

While this device is not a substitute for a policy of area inspection, it
can be a useful supplement, particularly in neighborhoods where blight has
not gained a firm hold and violations of the code are not numerous. Certifi-
cation would not only help the Department to obtain compliance with-
out a great expenditure of man-hours, but it would also serve as an edu-
cational tool, familiarizing landlords with code requirements.

Sanctions

Section 19.1 of the code prescribes a maximum fine of $25 for a first
offense, $100 for a second offense, and $300 or imprisonment for not more
than ninety days, or both, for any subsequent offense. 56

While fines are the most commonly utilized sanction, the city has
other sanctions at its disposal. Thus, section 16.1 confers the power upon
L & I, under circumstances amounting to a public nuisance, to enter a
dwelling and make needed repairs, the cost becoming a lien upon the
property. Only occasional use is made of this provision, one obvious rea-
son being that it involves the expenditure of city funds. Further, there is
doubt as to the status of the lien vis à vis a mortgagee 57 since the code

55. Having individuals state whether or not they have been complying with the
law is roughly analogous to the practice under a recent state law which requires every
seller of real estate to present the purchaser and the Recorder of Deeds with a sworn
statement listing both the zoning classification of the property and the present use.

56. The effectiveness of the city's enforcement program has been somewhat im-
peded by an error in the code's drafting which has the effect of requiring that at least
first and second violations be made the subject of a civil action, whereas violations
of related city codes are prosecuted as criminal offenses. E.g., Philadelphia Fire Code
§ 5-4108, as amended by Act of Council, Oct. 18, 1956. Civil suits for penalties were
first differentiated from summary convictions of a criminal nature by a provision in
the state law calling for different procedures on appeal to a court of record. See 3
Purdon's Pennsylvania Digest of Statutes 2414 (Stewart 1907). Presently, a
penalty clause is criminal in nature if it provides for both fines and imprisonment in the
alternative.

The jurisdiction of a magistrate in a civil suit is limited to one hundred dollars.

57. The lien is valid against the owner of the premises. See, e.g., Nashville v.
Weakley, 170 Tenn. 278, 95 S.W.2d 37 (1936).
makes no provision for the priority of the municipal lien.\textsuperscript{58} Some ordinances specifically provide for the superiority of the repair lien,\textsuperscript{59} but a provision of this sort was declared unconstitutional in \textit{Central Sav. Bank v. City of New York.}\textsuperscript{60} Notwithstanding \textit{Central Savings Bank}, a strong argument can be made that the lien should be accorded the same position as tax and special assessment liens, the priority of which is everywhere upheld, on the theory that the repairs constitute a benefit to the property.\textsuperscript{61} It is recommended that the city enact an amendment to the code providing for the superiority of the lien and that it make more extensive use of this procedure for correcting violations, particularly where the violation seriously endangers the health or safety of the tenants of the property and conditions for one reason or another militate against their relocation.

Sections 17.1 and 17.2 of the code confer power upon L & I to order a building vacated within a reasonable time upon a determination by the Department that the building is unfit for human habitation.\textsuperscript{62} The purpose of this provision is to protect the health and safety of the occupants and to pressure the landlord into making repairs by depriving him of the income from his property. But like a city's power to order demolition of a structure as a public nuisance, the provision is seldom invoked.\textsuperscript{63} The prime reason for this is that the city is under at least a moral duty to relocate the tenants which it has made homeless by its action. The displaced family may find new accommodations in one of three ways: through its

\textsuperscript{58} Compare Philadelphia Housing Code, with Denver, Colorado, Ordinance No. 27, § 9 (1944), which spells out the priority of the repair lien over all liens except general and special tax liens.

\textsuperscript{59} Denver, Colorado, Ordinance No. 27, § 9 (1944).

\textsuperscript{60} 279 N.Y. 266, 18 N.E.2d 151 (1938), aff'd on reargument, 280 N.Y. 9, 19 N.E.2d 659, cert. denied, 306 U.S. 661 (1939). It may also be argued that a housing code constitutes an unconstitutional impairment of contracts. \textit{Id.} at 280, 18 N.E.2d at 156. \textit{But see} Matter of City of New York (Jefferson Houses), 208 Misc. 757, 143 N.Y.S.2d 346 (Sup. Ct. 1955); City of Nashville v. Weakley, 170 Tenn. 278, 95 S.W.2d 37 (1936). The statute which was declared unconstitutional in \textit{Central Savings Bank}, failed to provide for either notice or hearing.

\textsuperscript{61} Under a special assessment, property owners are made to bear the costs of local improvements on the theory that the assessment is in the nature of an exaction from them of compensation for the presumed increase in their property values resulting from the improvements. See Hammett v. Philadelphia, 65 Pa. 146, 150-51 (1870). It has been held that the special assessment must result from an improvement which specifically benefits the property in question, and is different in kind from the benefit received by the city at large. Erie City's Appeal, 297 Pa. 260, 147 Atl. 58 (1929).

\textsuperscript{62} Some cities have enacted provisions in their codes which enable the city to compel the owner to demolish his structure without compensation. See, \textit{e.g.}, \textbf{Allegheny County Health Department, Rules and Regulations} art. VI, § 617. That such a provision raises due process questions is obvious. \textit{Cf.} Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 415 (1922). An ordinance of this sort was recently upheld. Richards v. City of Columbia, 227 S.C. 538, 88 S.E.2d 683 (1955).

\textsuperscript{63} The Philadelphia Housing Code contains no provision specifically giving the city the power to order a building to be demolished. At least twenty-one other cities have this power. \textbf{HHFA, Urban Renewal Bulletin} No. 3, table 1 (1956). Some codes provide for demolition orders where it would not be economically feasible for the owner to comply with the city's order to repair. See \textbf{HHFA, Local Development and Enforcement of Housing Codes} 28 (1953).
own initiative, through relocation in public housing or through employment of the services of the Rehousing Bureau of the Redevelopment Authority in an effort to find other suitable private accommodations. Unfortunately, the Rehousing Bureau has been relatively unsuccessful in relocating persons referred to it and, unless the effectiveness of this service is increased, it is unlikely that vacation can be frequently utilized as a Housing Code sanction.

Section 19 provides that a continuing violation of the same provision of the code, after notice to the owner, shall constitute a separate violation for each day. This would seem an excellent way of coping with flagrant offenders, but L & I has never invoked it. Whether this is attributable to a belief on the part of city officials that the provision is too harsh is not known. Its wholesale use is not advocated here, but if it were employed occasionally in aggravated situations, it might have a profound effect in encouraging future voluntary compliance.

The city should consider amendment of the code to make available an additional sanction utilized with success in California. The California statute permits the tenant to make minor repairs which the landlord has refused to make after reasonable notice. The tenant may then deduct the cost of the repairs from his rent so long as the amount does not exceed the whole of a monthly rental payment. Difficulties are inherent in such a scheme: many tenants would take no pride in their living quarters, others would fear the wrath of the landlord and still others would be unaware of the law and how it operates. A suggested approach is to have the inspector, following an inspection, apprise the tenants of a building of their right to repair and deduct the costs from their monthly rental.

**Administrative Practices in Securing Judicial Enforcement**

Assuming that L & I has decided in a particular case that resort to judicial enforcement of the code is necessary, the fines provided would seem adequate to insure compliance. However, in practice, the effectiveness of judicial enforcement has largely been nullified.

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64. The Bureau has been able to find housing for only one-fifth of those referred to it and less than one per cent of the Bureau's applicants are relocated in private dwellings. See Philadelphia Housing Association, Statement of the Committee on Housing Law Enforcement 18-20 (June 19, 1957). It has been estimated, however, that there is adequate private housing available to accommodate all families displaced by city and state action. Philadelphia Housing Association, Memorandum of Recommendations To Be Made at Council Hearings 5 (May 15, 1957). Whatever form relocation takes, it is obvious that Philadelphia's Rehousing Bureau must expand its facilities. The problem seems to lie in bringing demand in contact with supply. There is little correlation between the amount of rent paid per week and the quality of housing in many cases. It should therefore be possible to put families in contact with supplies of better housing at the same rent they have been paying.


66. 1 Hearings Before the Joint Committee: Licenses & Inspections and Public Safety—Council of the City of Philadelphia 92 (May 22, 1957).

There is an extended delay between initial detection of a violation and prosecution for its non-correction. L & I estimates a one to two year lapse between the date of the first inspection and ultimate prosecution.68 This time lag tends to neutralize the effect that the fear of prosecution is supposed to have on the code violator. As a first step in reducing this delay the number of reinspections prior to prosecution should be reduced.69 Once it has been determined that a violation exists, the case should be prepared for prosecution (allowing an appeal to the L & I Board of Review) and the burden shifted to the violator to notify the Department of any corrections made so that his name may be removed from the list of pending prosecutions. In those cases to be heard by a magistrate, a final pre-hearing inspection should be made. If this inspection reveals that the violation has not been corrected, the hearing should proceed forthwith.70

The city's Law Department, which is charged with the actual prosecution of violations,71 has adopted a policy of seldom, if ever, requesting a fine. It is apparently the rule that first, and often second and third offenders, who have begun work on the offending portions of their structures immediately prior to the hearing, or who promise to begin work at once, will not be fined but merely discharged upon payment of costs.72 In a study conducted by the Housing Inspection Supervisor of L & I over a five month period, penalties were imposed in only thirteen per cent of the cases heard.73 L & I contends that its chief interest is in obtaining compliance, not in fining landlords, a viewpoint shared by similar agencies in other cities.74 But to accept in court the promise of a landlord who has been in violation of the code, often for over a year, that he will repair immediately only serves to encourage delay and argument by other landlords. As soon as it becomes general knowledge that a fine can be avoided by promising to correct the violation or presenting a contract with a repairman, respect for the code and L & I is lost. Once a case is brought to court, only evil will be accomplished by seeking compliance in the present violation. The offender has been brought to court to pay a penalty for something he has failed to do. Fines uniformly imposed will assure compliance in the future, a proper objective of the penalty system.

To mitigate the severity of this approach, it is recommended that the Department develop a system of refunding fines upon proof that repairs were made within a reasonable time. Such a procedure would serve to

68. Interview with administrative analyst for L & I; see PHILADELPHIA HOUSING ASSOCIATION, STATEMENT OF THE COMMITTEE ON HOUSING LAW ENFORCEMENT 21 n.42 (June 19, 1957).
69. See text and notes at notes 40-43 supra.
71. PHILA. HOME RULE CHARTER ANN. § 4-400(b) (1951).
72. See 2 Hearings, supra note 66, at 169 (May 29, 1957).
73. 1 Hearings Before the Joint Committee: Licenses & Inspections and Public Safety—Council of the City of Philadelphia 30 (May 22, 1957).
74. E.g., letter from Urban Renewal Coordinator, Dallas, Texas, to the University of Pennsylvania Law Review, Aug. 13, 1957, on file in the Biddle Law Library.
demonstrate the city's sincerity when it proclaims that its basic objective is compliance, rather than punishing violators. A similar system has been successfully practiced in Pittsburgh. This is not to suggest that all fines be returned. This technique should only be used where, in the magistrate's discretion, there is actual hardship (as is likely to be the case with owner-occupants) or other mitigating circumstances are present.

The Role of the Magistrate's Court

Enforcement of the Housing Code is not expedited by the fact that prosecutions are brought in magistrate's courts. Aside from the charge that some magistrates are susceptible to political influence, many others are not impressed with the seriousness of Housing Code violations. The magistrates' conception of the role they play in these actions may be summarized in the words of the Chief Magistrate: "[The] true function of a Magistrate in these cases [is to act as a] buffer between overzealous law enforcement on behalf of an administrative department, and the negligence of wilful violations on the part of the citizen whose duty is to the community." Against this philosophy, it is difficult to successfully effectuate a "get tough" policy of code enforcement. Even when fines are imposed, they are seldom set at the maximum that the law allows. Only when a party fails to appear will a stiff fine be assessed; and these are generally commuted when the party does appear at the next hearing. Many landlords look upon the payment of costs and occasional small fines as a necessary cost of doing business.

The Law Department has attempted to remedy this situation by searching out "friendly" magistrates. It is desirable from the standpoint of effective code enforcement to have all Housing Code cases heard before magistrates who are thoroughly familiar with both the code and the problems it seeks to remedy. Baltimore took the lead some years ago when it established the "Baltimore Housing Court." This was a magistrate's

75. Letter from Allegheny County Health Department, Pittsburgh, Pa., to the University of Pennsylvania Law Review, Sept. 18, 1957, on file in the Biddle Law Library.

76. See SIEGEL & BROOKS, op. cit. supra note 12, at 61.

77. The picture of a well dressed landlord following close on the heels of a bevy of drunk and disorderly citizens before a magistrate may help to explain their frequent laxity in housing cases.

78. 4 Hearings Before the Joint Committee: Licenses & Inspections and Public Safety—Council of the City of Philadelphia 390 (June 12, 1957).

79. BMR REPORT at 345.

80. Originally, violations of the Housing Code were prosecuted before any of the city's twenty-eight magistrates. More recently, however, it has been the practice to select only those magistrates who have appeared friendly towards the efforts of the Department. In Philadelphia's first code enforcement area all the violations were heard before two magistrates and it was generally thought that this procedure was successful.

81. See Williams & Schulze, Housing Law Enforcement and the City Health Department's Attack on Slums, 25 BALTIMORE HEALTH NEWS 81, 84-85 (1948).
court, but due to the specialization it afforded, a great deal of success was initially experienced.\textsuperscript{82}

The idea is not new; witness, for example, the experience of municipalities with "traffic courts." Such a court has a more dignified air than does the typical magistrate's court and the presence of a bench, with the magistrate in judicial robes, has a profound effect on defendants. In addition, the magistrate will be thoroughly familiar with the workings of the Housing Code, and thus more prone to levy the fines sought by the city. However, it is the general feeling among city officials that no code can ever be rigidly enforced in any magistrate's court. It is felt that such a court can never be made completely immune from political pressures since the magistrates are elected officials. Therefore, were a separate housing court to be established, the term of service and salary of the magistrate should be increased in order to afford him more security and independence.\textsuperscript{83} It has been estimated that a special court of this nature, working in conjunction with an active program of area code enforcement, would be entirely self-sufficient.\textsuperscript{84} This, of course, assumes a policy of uniform fines, strictly enforced.

An alternative to a special housing court manned by a magistrate is the utilization of a branch of the municipal court for the same purpose as outlined above. At present no such branch exists, and an act of the state legislature would be necessary to establish it. The creation of such a court is worthy of serious consideration.\textsuperscript{85}

\section*{Administrative Hearings}

Voluntary compliance remains the primary objective of Housing Code enforcement. To facilitate this goal and to provide a stimulant for recalcitrant landlords, the Department should hold administrative hearings prior to instituting judicial proceedings.\textsuperscript{86} The suggestion has been made that the city institute a system of executing consent decrees at these hearings, followed by prosecution in a court of equity for contempt in the event that compliance is not achieved.\textsuperscript{87} The District of Columbia has found that a

\textsuperscript{82} See \textit{HHFA, Local Development and Enforcement of Housing Codes} 29-43 (1953), for an analysis and appraisal of the "Baltimore Plan."

\textsuperscript{83} For a discussion of the importance of salaries in providing qualified judges for specialized duty, see \textit{Note, 70 Harv. L. Rev.} 320, 324 (1956).

\textsuperscript{84} \textit{BMR Report} at 346.

\textsuperscript{85} "The addition of this function to the Municipal Court would seem to be in the tradition of the general purposes of the Municipal Court since its inception, namely to hear such types of cases as from time to time were transferred to it by statute because of their specialized nature and because such cases were not receiving in the Magistrate's Courts the high quality of judicial attention necessary." \textit{Ibid.}

\textsuperscript{86} L & I has in fact held examinations for the position of an administrator to head a Hearing Section. The actual technique has been tried, with great success, in cases involving zoning violations.

hearing in which the landlord is simply asked to justify his actions and show why he should not be prosecuted at law is generally sufficient for compliance.\textsuperscript{8} L & I should actively encourage this type of informal hearing with landlords. The psychological effect of such a procedure would appear to be an important stimulus completely aside from any enforcement mechanism such as a consent decree.

**PUBLIC EDUCATION**

The importance of securing the cooperation of landlords, tenants and citizens' groups is underestimated and many times ignored. In the final analysis, the success or failure of code enforcement lies in public understanding of the problems involved coupled with a sympathetic attitude towards the role of the city in meeting these problems. At present, too few tenants are aware of the Housing Code and its provisions. If people are made aware of the law, of the penalties for its violation, and of the fact that the city intends to enforce the code, problems incident to securing compliance will be greatly reduced. The substance of the Housing Code should be widely circulated. This should be supplemented by school and adult education programs and organized publicity through mass media designed to teach good housekeeping, hygiene and community responsibility.\textsuperscript{89}

Citizens' groups can be useful in aiding the Department in enforcement of the Housing Code. In one code enforcement area in Philadelphia a citizens' committee made follow-up inspections after the city's representative had been at a dwelling. Interestingly enough, the committee found many violations which the city inspectors apparently overlooked. In Chicago, a civic group complaint service has greatly expedited the handling of complaints.\textsuperscript{90} Local groups can work together to register complaints with the city and actively seek to achieve voluntary compliance. Such activities have met with success. Through the efforts of the contemplated Community Relations Branch of L & I, the formation of these groups should be actively promoted.\textsuperscript{91}

**CONCLUSION**

Blight and slums are luxuries which Philadelphia and other cities cannot afford. The increased cost of municipal services in such areas and the diminishing productivity of land so used, from the tax standpoint, place

\textsuperscript{8} See *Philadelphia Housing Association, Statement of the Committee on Housing Law Enforcement* 23 (June 19, 1957).

\textsuperscript{89} For steps taken by other large cities in the field of public relations, see, e.g., *City of Chicago, Department of Buildings, Annual Report* 13 (1956); *City of New York, Department of Buildings, Annual Report* 20-21 (1954-55).

\textsuperscript{90} *City of Chicago, Department of Buildings, Annual Report* 13 (1956).

\textsuperscript{91} See recommendation for the establishment of a community relations officer to be a part of the housing division of L & I. *BMR Report* at 318.
extreme burdens on city revenues. Significant changes in established practices and policies are called for if the problem of urban blight is to be met. Environmental and health conditions are not the only reasons for demanding effective enforcement of the Housing Code. An increasing amount of existing housing is being condemned to make way for a variety of projects, thereby placing a heavier burden on remaining housing units.

A policy of stricter enforcement is called for, particularly with respect to repeated offenders. The argument made by some landlords that a policy of strict code enforcement would drive them out of business should be ignored for it is the very purpose of the Housing Code to eliminate the type of conditions which these landlords wish to perpetuate. More effort should be expended in attempting to secure compliance at the administrative level through formal or informal hearings. To reinforce a stronger enforcement drive, educational programs should be undertaken which not only seek to make city citizens familiar with the requirements of the code, but which also seek to inculcate a certain degree of pride in those who are prone to be content to live among substandard conditions.

H. A. K.

92. For illustrations of how slum areas cost cities more in the fields of municipal services, disease and property taxes (they go down and are often deliquent) than better residential sections, see HHFA, URBAN RENEWAL BULLETIN No. 2, at 5-7 (1955); PRESIDENT'S ADVISORY COMMITTEE at 110-11 (1953). Municipalities are aware of the problems confronting them and consequently are taking the needed steps to counteract blight. See, e.g., letter from the City of New Orleans to the University of Pennsylvania Law Review, Oct. 8, 1957, on file in the Biddle Law Library (recognizing a resurgence of business in the rehabilitated sections of the city, over a four year period, totaling nearly $10,000,000).