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**SENATE COMMITTEE ON HOUSING**  
**Senator Scott Wiener, Chair**  
**2021 - 2022 Regular**

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**Bill No:** AB 838 **Hearing Date:** 7/1/2021  
**Author:** Friedman  
**Version:** 6/23/21 Amended  
**Urgency:** No **Fiscal:** Yes  
**Consultant:** Alison Hughes

**SUBJECT:** State Housing Law: enforcement response to complaints

**DIGEST:** This bill requires local governments to respond to lead hazard and substandard building complaints from tenants and specified other parties and to provide free copies of inspection reports and citations to the requestor and others who may be impacted.

**ANALYSIS:**

*Existing law, pursuant to the State Housing Law:*

- 1) Provides that any building or portion thereof that contains lead hazards is a violation of the State Housing Law. Defines “lead hazards” as deteriorated lead-based paint, lead-contaminated dust, lead-contaminated soil, or disturbing lead-based paint without containment, if one or more of these hazards are present in one or more locations in specified amounts and that are likely to endanger the health of the public or the occupants thereof as a result of their proximity to the public or the occupants thereof.
- 2) Defines a substandard building as any building or portion thereof in which there exists specified conditions to an extent that endangers the life, limb, health, property, safety, or welfare of the public or the occupants thereof, including, but not limited to:
  - a) Inadequate sanitation;
  - b) Structural hazards;
  - c) Any nuisance;
  - d) All wiring, as specified;
  - e) All plumbing, as specified;

- f) All mechanical equipment, including vents, as specified;
  - g) Faulty weather protection;
  - h) Any building or portion thereof, device, apparatus, equipment, combustible waste, or vegetation that, in the opinion of the chief of the fire department or his deputy, is in such a condition as to cause a fire or explosion or provide a ready fuel to augment the spread and intensity of fire or explosion arising from any cause;
  - i) All materials of construction, as specified;
  - j) Those premises on which an accumulation of weeds, vegetation, junk, dead organic matter, debris, garbage, offal, rodent harborages, stagnant water, combustible materials, and similar materials or conditions constitute fire, health, or safety hazards;
  - k) Any building or portion thereof that is determined to be an unsafe building due to inadequate maintenance, in accordance with the latest edition of the Uniform Building Code;
  - l) All buildings or portions thereof not provided with adequate exit facilities, as specified;
  - m) All buildings or portions thereof that are not provided with the fire-resistive construction or fire-extinguishing systems or equipment required by this code, as specified;
  - n) All buildings or portions thereof occupied for living, sleeping, cooking, or dining purposes that were not designed or intended to be used for those occupancies; and
  - o) Inadequate structural resistance to horizontal forces.
- 3) Requires the Department of Housing and Community Development (HCD), upon appropriation by the Legislature, to make funds available as matching grants to cities, counties, and cities and counties to increase staffing or capital expenditures dedicated to local building code enforcement efforts, as specified.
- 4) Provides that any officer, employee, or agent of an enforcement agency may enter and inspect any building or premises whenever necessary to secure compliance with, or prevent a violation of, any provision of the State Housing Law, the building standards as specified, and certain other rules, which the enforcement agency has the power to enforce.

- 5) Establishes that any tenant who is displaced or subject to displacement from a residential rental unit as a result of a specified violation where the immediate health and safety of the residents is endangered, is entitled to receive relocation benefits from the owner.

**This bill:**

- 1) Requires a city or county that receives a complaint from a tenant, resident, or occupant regarding a building that contains lead hazards or is substandard to do all of the following:
  - a) Inspect the building or portion intended for human occupancy that may contain lead hazards or that may be substandard pursuant to State Housing Law.
  - b) Document any violations that would be discovered based upon a reasonably competent and diligent visual inspection of the property and identify any building or portion intended for human occupancy or the premises that is determined to be substandard, as applicable.
  - c) Advise the owner or operator of each violation and of each action required to remedy the violation and schedule a re-inspection to verify correction of the violations, as applicable.
- 2) Requires a city or county to perform an inspection pursuant to (1) above at least as promptly as required for a final building inspection.
- 3) Provides that a city or county is not required to conduct an inspection in response to either of the following types of complaints:
  - a) A complaint that does not allege one or more substandard conditions.
  - b) A complaint submitted by a tenant, resident, or occupant who, within the last 180 days, submitted a complaint about the same property that the chief building inspector or their designee reasonably determined was frivolous or unfounded.
- 4) Requires a city or county to provide free, certified copies of an inspection report and citations issued pursuant to this bill if any to the complaining tenant, resident, occupant or their agent. If the inspection reveals a condition potentially affecting multiple tenants, residents, or occupants, the city or county shall provide free copies to all those potentially affected.

- 5) Prohibits a city or county from collecting a fee, cost, or charge from a property owner or owner's agent for any inspection of their property, or associated report, unless the inspection reveals material and substantial violations of the state housing law. Nothing limits or alters the ability of a city or county to establish charges, fees, or assessments to cover the costs of inspections or associated reports.
- 6) Provides that an inspection or report shall not be subject to any unreasonable conditions, including a requirement that:
  - a) The tenant, resident, or occupant first make a demand for correction upon the owner of the property.
  - b) The tenant be current on rent.
  - c) The tenant otherwise be in compliance with their rental agreement.
  - d) The tenant, resident, or occupant not be involved in a legal dispute with the owner of the property.
- 7) Prohibits a city or county from unreasonably refusing to communicate with a tenant, resident, occupant, or agent of the tenant regarding any matter covered by this bill.
- 8) Provides that this bill shall not impose a mandatory duty or be construed to affect any immunity otherwise applicable to a city or county under existing law.
- 9) Requires enforcement to be brought through a writ of mandate.
- 10) Requires this bill to become operative on July 1, 2022.

**COMMENTS:**

- 1) *Author's Statement.* "Everyone has the desire to live in quality housing. The majority of tenants maintain their rental units in good condition and the majority of property owners are responsive to housing concerns brought to their attentions by tenants. State and local governments enact building codes to require that residential properties meet health and safety standards. Housing and building code enforcement not only helps to ensure the habitability of specific properties that are in violation of the code, but also helps to keep the surrounding community safe. A building that shows signs of abandonment and neglect, for example, may be a target for criminal activity that compromises the safety of neighboring residents. This goal is crucial in the context of multi-

family rental dwellings, where tenants have limited ability to correct health and safety problems. Some local code inspection agencies in California place restrictions or preconditions on responding to tenants' habitability complaints. For example, requiring tenants to prove that the property owner has been unresponsive to their complaints, or that the tenants are current on their rent, before the local agency will send out an inspector. This should not matter to a local government, which is supposed to ensure that all dwelling units are habitable."

- 2) *State Housing Law*. The State Housing Law defines a substandard building as any building or part of a building that has specified problems and endangers the life, limb, health, property, safety, or welfare of the public or the buildings occupants. Examples of substandard building conditions include sanitation deficiencies (i.e., pests, and lack of water or heat), structural problems, fire hazards, and lack of sufficient exits. Additionally, lead hazards include deteriorated lead-based paint, lead-contaminated dust, lead-contaminated soil, or disturbance of lead-based paint without containment that endangers the health of the occupants or the public.

Both lead hazards and substandard building conditions can create serious health and safety risks for the people living in a building and for the larger community. While substandard buildings and lead hazards are violations of the State Housing Law, which local governments are authorized to enforce, an inspection is required to identify and cite such violations. Since renters do not own the property they live in, they face a unique set of challenges with obtaining inspections for substandard buildings and lead hazards.

- 3) *Ensuring timely inspections of rental units*. This bill seeks to ensure that a tenant can receive free and timely inspections of their rental unit by requiring the local government to act as quickly as they would when conducting a final building inspection. Some renters may be hesitant to raise health and safety concerns to their landlord or property manager due to fears of retaliation or interference with existing disputes about other matters. This bill protects renters by explicitly prohibiting local governments from placing conditions on inspections and guaranteeing tenants a free and timely inspection in response to a complaint. Additionally, the bill requires that other potentially affected parties are given notice of violations and provides that, if a tenant submits a complaint to a city or county, the local government is required to cite any violations and provide free copies of inspection reports to the individual who submitted a complaint and others who may be impacted.
- 4) *Seeing Double*. This bill is substantially similar to AB 3352 (Friedman, 2020), which the author dropped due to constraints related to COVID.

5) *Opposition.* California Association of Realtors was opposed to a prior version of the bill because it allowed “small housing providers to be held responsible for costs associated with inspections that do not reveal any violations.” Urban Counties of California (UCC), the California State Association of Counties (CSAC), the League of California Cities (Cal Cities), and the Rural County Representatives of California (RCRC) are opposed unless amended to the current version of the bill. The most recent amendments state that, “a city or county shall not collect a fee, cost, or charge for any inspection, or report about, a property, unless the inspection reveals material and substantial violations of Section 17920.10 or Section 17920.3.” They state that this language is overly broad and would preclude collection of fees, costs, or charges related to other building, zoning, or safety inspections. To resolve this issue, they suggest the following language to replace (e) and (f):

“(e) This section does not authorize the imposition of a fee, cost, or charge upon a property owner or property owner's agent for any inspection of or any inspection report about that owner's or agent's property pursuant to this section, and does not limit or prohibit the levy or collection of any fee, cost, or charge authorized by any other law including without limitation Section 54988 of the Government Code.”

#### **RELATED LEGISLATION:**

**AB 3352 (Friedman, 2020)** — would have required local governments to respond to lead hazard and substandard building complaints from tenants and specified other parties and to provide free copies of inspection reports and citations to the requestor and others who may be impacted. *This bill died in the Senate Housing Committee.*

**FISCAL EFFECT:** Appropriation: No    Fiscal Com.: Yes    Local: Yes

**POSITIONS:** (Communicated to the committee before noon on Friday, June 25, 2021.)

#### **SUPPORT:**

California Rural Legal Assistance Foundation (Co-Sponsor)  
 Western Center on Law & Poverty (Co-Sponsor)  
 AIDS Healthcare Foundation  
 Community Action to Fight Asthma  
 Health Net  
 Legal Aid of Sonoma County

National Association of Social Workers, California Chapter  
Regional Asthma Management and Prevention

**OPPOSITION:**

California Association of Realtors  
California Rental Housing Association  
California State Association of Counties  
League of California Cities  
Rural County Representatives of California  
Southern California Rental Housing Association  
Urban Counties of California

**-- END --**