

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Curtis P. Jacobson
Harry Freitas

SUBJECT: CITY OF SAN JOSE BUILDING
INSPECTION PRACTICES

DATE: February 1, 2017

Approved

D. D. SyL

Date

2/1/17

INFORMATION

In the wake of the December 2, 2016, fire that killed 36 people during a performance at an Oakland warehouse called the Ghost Ship that had been converted into an artists' collective, the City has received inquiries and complaints from the public and news media about warehouses within its jurisdiction. Queries have come into the San José Fire Department Bureau of Fire Prevention as well as to the Building and Code Enforcement divisions of the Department of Planning, Building and Code Enforcement. Most have asked what preventive measures San José has implemented to prevent a similar tragedy here, as well as asking how the City is working to ensure safe living and working conditions for residents and businesses.

Fire safety regulations are written by the State Fire Marshal and found in Title 19 of the California Code of Regulations and Title 24 of the Building Standards Code. The California State Health & Safety Code requires local fire departments to inspect and enforce, within their jurisdiction, the building standards and other regulations of the State Fire Marshal.

Bureau of Fire Prevention

The Bureau of Fire Prevention performs inspection activities as required for: new construction or tenant improvements; activities requiring renewable or annual permits; investigation of complaints; and inspections mandated by the State Fire Marshal. The purpose of every inspection is to ensure compliance with applicable laws, codes, ordinances and standards in place for the respective type activity or occupancy use in order to protect public safety:

- *Construction Inspections* generally address installation of or modifications to existing fire suppression or alarm systems and life safety features (e.g. panic hardware, exits or exit routes, fire extinguishers, etc.) prior to building use or approval of the Building Department issuing a Certificate of Occupancy.
- *Renewable Permitted Inspections* are those in which the Fire Department inspects facilities or activities that pose a greater risk to life safety than those of non-permitted

activities. For example, facilities where hazardous materials are used, pyrotechnic displays, or places of assembly where people gather.

- *Inspections of Complaints.* Generally, within 48 hours of receipt, the Bureau of Fire Prevention assigns complaints to Fire Inspectors and investigates the subject property for compliance with the fire code and City ordinances. Some complaint investigations require joint actions with Planning, Building, and Code Enforcement to address concerns about occupancy and safety adequately.
- *State Fire Marshal Mandated Inspections* involve activities related to the following occupancies where there is greater risk of loss of life in a fire or other emergency: assembly uses, camps (organized), educational facilities, institutions, laboratories, multi-family residential dwellings, and high-rise buildings.

In fiscal year 2015-2016, the Fire Department conducted 5,787 initial site visits at facilities where the State of California mandates annual inspections, including 604 educational facilities, 62 high-rise buildings, and 5,121 multi-family residential facilities such as hotels, motels, lodging houses, apartment houses and dormitories.

The Fire Department also inspected an additional 1,640 locations where the state mandates inspections, but does not mandate the frequency of those inspections. These included 1,579 places of assembly, 58 institutions, and three laboratories.

Table 1

State-Mandated Fire Inspections 2015-2016	
Use	Total Inspections
Annual Inspection Required	
Educational Facilities	604
High-Rise Buildings	62
Multi-Family Residential Facilities*	5,121
Total	5,787
Annual Inspection Not Required	
Assembly Uses	1,579
Institutions	58
Laboratories	3
Total	1,640
Total State-Mandated Inspections	7,427

* includes hotels, motels, lodging houses, apartment buildings, and dormitories

The 2016 California Fire Code defines “Assembly” as: “*The gathering together of 50 or more persons for such purposes as deliberation, education, instruction, worship, entertainment, amusement, drinking, dining, or awaiting transportation.*” While the state does not require

annual inspections of places of assembly, the Bureau of Fire Prevention chooses to conduct annual inspections of these type facilities due to their increased occupancy load and potential for increased number of injuries and greater loss of life during emergency situations. These inspections are in alignment with the Fire Department's mission, *"To serve the community by protecting life, property, and the environment through prevention and response."*

During 2015-2016, the Bureau of Fire Prevention also initiated life safety inspections at 4,213 non-mandated facility locations as outlined in Table 2 below.

Table 2

Non-Mandated Fire Inspections 2015-2016	
Use	Total Inspections
Business Offices	962
Factories (low to moderate hazard)/Industrial	755
High Hazard	102
Mercantile	319
Storage (low to moderate hazard)/Garages/Hangers	1,561
General Buildings & Structures	514
Total	4,213

As mentioned above, the California State Health & Safety Code places responsibility on local fire departments for inspection and enforcement actions¹. However, entry upon premises and access into buildings to perform such activities is not automatic and often requires a coordinated effort with the property owner, management company, or occupying tenant. When cooperation from the property owner cannot be achieved, the City will seek an Inspection Warrant from the courts that allows for inspection of the premises.

Code Enforcement Division

In general, the San José Code Enforcement Division does not conduct proactive inspections of industrial type buildings. However, when a report of improper occupancy is received, the division attempts an inspection within 72 hours. Code Enforcement does not have the ability to require that an owner/tenant grant access without an Inspection Warrant; however, staff is usually successful in achieving access voluntarily.

When a report of improper occupancy is confirmed, Code Enforcement issues a notice to the property owner requiring that the building be vacated and all violations corrected. If the requirement to vacate the building is not met, Code Enforcement has the ability to bring the case before the City's Appeals Hearing Board, where penalties of up to \$2,500 per day can be assessed until compliance is achieved or the maximum penalty of \$100,000 is reached. The

¹ H&S §13109 – "The Fire Chief or authorized representative may enter any building or premise not used for dwelling purposes at any reasonable hour for the purposes of enforcement."

assessment of these fines can eventually lead to a lien being placed on the property. Code Enforcement, working with the City Attorney's Office, also has the ability to bring the most egregious cases to court for injunctive relief and/or civil penalties.

Code Enforcement has reviewed its case files and determined that, in the past two years, nine complaints were filed regarding illegal occupancy of a warehouse. Following inspection, most complaints were determined to be unfounded or involving minor violations of the Code. All others were brought or are being brought into compliance.

While these types of reports are not common, staff takes them seriously and investigates them thoroughly. Our primary goal is to achieve compliance first; promote and maintain safe and healthy living conditions and working environments; and whenever possible, to use an education-first approach that provides property and business owners the opportunity to voluntarily correct any violations that are not an immediate threat to life or safety.

/s/
CURTIS P. JACOBSON
Chief, San José Fire Department

/s/
HARRY FREITAS
Director, Planning, Building and Code Enforcement

For questions, please contact Ivan Lee, Fire Marshal, at (408) 535-7794 or Diane Buchanan, Deputy Director, Code Enforcement, at (408) 535-7780.