

A Bill for an Act Amending Section 53-60, Hawaii Revised Statutes, Relating to the Creation of a Board of Appeals to Hear Matters Involving the Repair, Closing and Demolition of Dwellings Unfit for Human Habitation.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 53-60, Hawaii Revised Statutes, is hereby amended to read as follows:

**“Sec. 53-60 Ordinance relating to repair, closing, and demolition of dwellings unfit for human habitation.** (a) Whenever any county finds that there exists in urban areas in the county dwellings which are unfit for human habitation due to dilapidation, defects increasing the hazards of fire, accidents, or other calamities, lack of ventilation, light or sanitary facilities, or due to other conditions, including those set forth in subsection (c) hereof, rendering the dwelling unsafe or unsanitary, or dangerous or detrimental to the health, safety, or welfare, or otherwise inimical to the welfare of the residents of the county, power is hereby conferred upon the county to require or cause the repair, closing or demolition or removal of the dwellings in the manner herein provided. A “dwelling” means any building, or structure, or part thereof, used and occupied for human habitation or intended to be so used, and includes any appurtenances belonging thereto or usually enjoyed therewith.

(b) Upon the adoption of an ordinance finding that dwelling conditions of the character described in subsection (a) hereof exist within a county, the council may adopt ordinances relating to the dwellings within the county which are unfit for human habitation. The ordinances shall include the following provisions except as otherwise provided by chapter 91:

- (1) That a public officer be designated or appointed to exercise powers prescribed in the ordinance, and that a board of appeals be created to conduct hearings prescribed hereinafter and setting forth the qualifications, the manner of appointment and term of office of its members.
- (2) That whenever a petition is filed with the public officer by at least five residents of the county charging that any dwelling is unfit for human habitation or whenever it appears to the public officer (on his own motion) that any dwelling is unfit for human habitation, he shall, if his preliminary investigation discloses a basis for the charges, issue and cause to be served upon the owner, every mortgagee of record, and all parties in interest in the dwelling (including persons in possession) a complaint stating the charges in that respect. Such complaint shall contain a notice that a hearing will be held before the board of appeals at a place therein fixed not less than ten days nor more than thirty days after the serving of the complaint; that the owner, mortgagee, and parties in interest shall be given the right to file an answer to

the complaint and to appear in person or otherwise, and give testimony at the place and time fixed in the complaint; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the board of appeals.

- (3) That the board of appeals may administer oaths, affirmations, examine witnesses and receive evidence, and that if, after such notice and hearing, the board of appeals determines that the dwelling under consideration is unfit for human habitation it shall state in writing its findings of fact in support of the determination and shall issue and cause to be served upon the owner thereof an order which,
- (A) If the repair, alteration, or improvement of the dwelling can be made at a reasonable cost in relation to the value of the dwelling (the ordinance of the county shall fix a certain percentage of the cost as being reasonable for the purpose), requires the owner, within the time specified in the order, to repair, alter, or improve the dwelling to render it fit for human habitation or to vacate and close the dwelling as a human habitation; or
- (B) If the repair, alteration, or improvement of the dwelling cannot be made at a reasonable cost in relation to the value of the dwelling (the ordinance of the county shall fix a certain percentage of the cost as being reasonable for the purpose), requires the owner, within the time specified in the order, to remove or demolish the dwelling.
- (4) That, if the owner fails to comply with an order to repair, alter, or improve or to vacate and close the dwelling, the public officer may cause the dwelling to be repaired, altered, or improved, or to be vacated and closed.
- (5) That, if the owner fails to comply with an order to remove or demolish the dwelling, the public officer may cause the dwelling to be removed or demolished.
- (6) That the amount of the costs of the repairs, alterations, or improvements, or vacating and closing, or removal or demolition by the public officer shall be a lien against the real property upon which the cost was incurred. If the dwelling is removed or demolished by the public officer he shall sell the materials of the dwelling and shall credit the proceeds of the sale against the cost of the removal or demolition and any balance remaining shall be deposited with the clerk of the circuit court of the circuit in which the county is situated, by the public officer, shall be secured in such manner as may be directed by the court, and shall be disbursed by the court to the persons found to be entitled thereto by final order or decree of the court.
- (c) An ordinance adopted by a county pursuant to this section shall provide that the public officer or the board of appeals may determine that a dwelling is unfit for human habitation if it is found that conditions exist in such

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dwelling which are dangerous or injurious to the health, safety, or welfare of the occupants of such dwelling, the occupants of neighboring dwellings, or other residents of such county, or which have a blighting influence on properties in the area. The conditions may include the following, without limitation: defects therein increasing the hazards of fire, accident or other calamities; lack of adequate ventilation, light, or sanitary facilities; dilapidation; disrepair; structural defects; uncleanness; overcrowding; inadequate ingress and egress; inadequate drainage; or any violation of health, fire, building or zoning regulations, or any other laws or regulations relating to the use of land and the use and occupancy of buildings and improvement. Such ordinance may provide additional standards to guide the public officer or his agents or employees or the board of appeals in determining the fitness of a dwelling for human habitation.

(d) Complaints or orders issued pursuant to an ordinance adopted under this section shall be served upon persons either personally or by registered mail, but if the whereabouts of the persons is unknown and the same cannot be ascertained by the public officer in the exercise of reasonable diligence, and the public officer makes an affidavit to that effect, then the serving of the complaint or order upon the persons may be made by publishing the same once each week for two consecutive weeks in a newspaper printed and published in the county, or, in the absence of such newspaper, in one printed and published in the State and circulating in the county in which the dwellings are located. A copy of the complaint or order shall be posted in a conspicuous place on the premises affected by the complaint or order. A copy of the complaint or order shall also be filed with the registrar of conveyances or, in the case of registered land, with the assistant registrar of the land court as provided in section 501-136, and the filing of the complaint or order shall have the same force and effect as other lis pendens notices provided by law.

(e) Any person affected by an order issued by the board of appeals may petition the circuit court for an injunction restraining the public officer from carrying out the provisions of the order and the court may, upon such petition, issue a temporary injunction restraining the public officer pending the final disposition of the cause, provided that the petition is filed within sixty days after the posting and service of the order of the board of appeals. Hearings shall be held by the court on such petitions within twenty days, or as soon thereafter as possible, and shall be given preference over other matters on the court's calendar. The court shall hear and determine the issues raised and shall enter a final order or decree in the proceeding. In all the proceedings the findings of the board of appeals as to the facts, if supported by evidence shall be conclusive. Costs shall be in the discretion of the court. Except as otherwise provided in chapter 91, the remedies herein provided shall be exclusive remedies and no person affected by an order of the board of appeals shall be entitled to recover any damages for action taken pursuant to any order of the board of appeals, or because of compliance by the person with any order of the board of appeals.

(f) An ordinance adopted by the board may authorize the public officer to exercise such powers as may be necessary or convenient to carry out and ef-

fectuate the purposes and provisions of this section, including the following powers in addition to others herein granted:

- (1) To investigate the dwelling conditions in the county in order to determine which dwellings therein are unfit for human habitation;
- (2) To enter upon premises for the purpose of making examinations, provided that the entries shall be made in such manner as to cause the least possible inconvenience to the persons in possession, and to obtain an order for this purpose from a court of competent jurisdiction in the event entry is denied or resisted;
- (3) To appoint and fix the duties of such officers, agents, and employees as he deems necessary to carry out the purposes of such ordinance;
- (4) To delegate any of his functions and powers under the ordinance to such officers, agents, and employees as he may designate.

(g) The board adopting an ordinance under this section shall as soon as possible thereafter prepare an estimate of the annual expenses or costs to provide the equipment, personnel, and supplies necessary for periodic examinations and investigations of the dwellings in the county for the purpose of determining the fitness of the dwellings for human habitation, and for the enforcement and administration of its ordinance or ordinances adopted under this section.

(h) Nothing in this section shall be construed to abrogate or impair the powers of the courts or of any department of any county or the State to enforce any provisions of its charter or its ordinances or regulations, nor to prevent or punish violations thereof; and the powers conferred by this section shall be in addition and supplemental to the powers conferred by any other law.

(i) Nothing in this section shall be construed to impair or limit in any way the power of the county or of the department of health of the State to define and declare nuisances and to cause their removal or abatement, by summary proceedings or otherwise.

SECTION 2. Material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.\*

SECTION 3. This Act shall take effect upon its approval.

(Approved June 6, 1970.)

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\* Edited accordingly