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CITY OF BERKELEY DRUG HOUSES

INTRODUCTION

The grand jury investigated a complaint regarding drug houses in the city of Berkeley. A drug house is a private residence where illegal drug activity takes place. The complaint alleged that the city has been derelict in its duty to safeguard public safety and has shown willful intent to not enforce local and state laws pertaining to abating public nuisance drug houses. The grand jury requested information from the city with regard to what action had been taken with respect to drug houses in Berkeley.

HISTORY

Since 1990, neighbors in Berkeley have participated in ongoing meetings with city staff and police regarding one particular neighborhood drug house. Between 1992 and 2006, these neighbors won two judgments in small claims court against the specific property owner who was alleged to have a drug house. In the lawsuit, the neighbors testified how their quality of life was negatively affected. For example, bullet casings, drug paraphernalia and used condoms were frequently found in the neighbors' yards and on the street. In a court proceeding in April 2006, the owner of the drug house stipulated that the house was a legal nuisance.

INVESTIGATION

The grand jury learned that the city of Berkeley has a multi-faceted approach to addressing the problem of illegal drug use:

Drug House Ordinance

Berkeley Municipal Code (BMC) chapter 13.56 allows the city manager to order a property owner to take corrective actions whenever it has been determined that “the unlawful sale, storage, manufacturing or selling or giving away of a controlled substance, precursor or analog has occurred in or about the premises of any privately owned property.” (BMC section 13.56.020)

Such corrective action “may include, but is not limited to, the hiring of a resident manager or security guard; the installing of secure doors at the front and rear of the buildings; the posting of ‘no trespassing’ signs in and on the property; the development of property rules which regulates [*sic*] the entrance to and egress from the property of nonresidents; and the institution of actions to remove any resident or others engaging in such illegal conduct on or about the premises.” (BMC section 13.56.020.A) If an owner fails to comply with the city manager’s directive, the owner may be fined \$100 per day. (BMC section 13.56.030.B)

Nuisance Abatement Law

In 1999 the city revised its zoning ordinance, adopting chapter 23B.64, which permits the abatement of nuisances and expedites the processing of these cases.

The city of Berkeley has the authority to use progressively stronger measures to abate illegal activities in drug houses. The city has been reluctant to apply the most severe measures to owner-occupied properties. In application of these measures the city does take into consideration the possibility of retaliation against neighbors.

The city has been monitoring this problem property for many years. The grand jury learned that the city of Berkeley believes that under the law it must have a high benchmark for seizure of private property, particularly a home.

CONCLUSION

In 2006, the city of Berkeley failed to take action on the owner occupied drug house when the court concluded and the property owner stipulated that the property was indeed a nuisance. The court noted that the owner “need[ed] to either actively manage the property so as to eliminate the nuisance or sell it.” The court further noted that there has been a 30-year history of drug problems with this property. The city failed to follow through with all possible measures to eliminate this drug house problem. The property remains a chronic nuisance to the neighborhood.

RECOMMENDATIONS

Recommendation 08-14:

That the city of Berkeley apply the same standards regarding abatement of owner-occupied drug houses as it does for tenant-occupied and commercial properties.

Recommendation 08-15:

The city of Berkeley review its municipal codes and state legislation to ensure appropriate tools are in place to abate owner-occupied drug houses. If current laws are insufficient, adopt or modify city ordinances to abate drug house problems.

RESPONSES REQUIRED

Berkeley City Manager

Recommendations 08-14 and 08-15

Mayor, City of Berkeley

Recommendations 08-14 and 08-15

Berkeley City Council

Recommendations 08-14 and 08-15