

APPROVED AS TO FORM AND LEGALITY


CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

A RESOLUTION DENYING THE APPEAL OF APPELLANT 955 57TH LLC AND UPHOLDING THE DECISION OF THE INDEPENDENT HEARING OFFICER REGARDING THE DECLARATION OF PUBLIC NUISANCE AT 955 57TH STREET/5655 LOWELL STREET.

WHEREAS, the Planning and Building Department, Bureau of Building, Code Enforcement Services responds to complaints related to Property Maintenance, Building Maintenance and Zoning as stated in the Oakland Municipal Code (“O.M.C.”) chapter 15.08 and Title 17; and

WHEREAS, the Building Official has a duty to enforce the provisions of the Building Code and the Building Maintenance Code pursuant to O.M.C. § 15.08.080(A); and

WHEREAS, the Appellant, 955 57th LLC, is the owner and operator of the property at 955 57th Street, also known as 5655 Lowell Street; and

WHEREAS, between 2013 and 2021, in response to complaints filed by members of the public, Code Enforcement Services conducted numerous inspections and issued Stop Work Orders, Notices of Violation and Re-Inspection Notices to the Appellant regarding conditions that the property; and

WHEREAS, on October 4, 2021, after all other efforts to gain compliance at the property had failed, the Building Official issued an Order to Abate- Habitability Hazards (“Order to Abate”) requiring the Appellant to abate numerous violations at the property including, but not limited to:

- The unpermitted construction of a loading dock, dock door, and canopy;
- The unpermitted construction of windows and window openings;
- The unpermitted installation of interior wall partitions;
- The inadequate natural light and ventilation in partitioned areas;
- The unpermitted installation of CMU wall;

The inadequate fire and sound separation un the unpermitted construction of wall partitions;

The installation of refrigeration equipment, electric motors, circulation/distribution systems and alteration of the electrical system without required permit;

The unapproved plumbing work including unpermitted installation of sump pump and drainage;

The unpermitted construction of air circulation/distribution system with electric motor units, hoses and ducts, attached to the building rafters, posts, and on top of masonry wall along the property line;

The unpermitted installation of interior partitions;

The unpermitted removal and framing of windows and window openings;

And the lack of fire rated drywall and non-fire rated intumescent sealers used for sealing penetrations in partitioned areas; and

WHEREAS, the Appellant appealed the Order to Abate; a hearing was conducted by an Independent Hearing Officer, Michael Roush, over the course of two days, on May 23 and May 24, 2023; and

WHEREAS, both the Appellant and the City submitted documentary evidence in advance of and during the two-day Hearing including photographs of the Subject Property and past correspondence between the parties, along with witness testimony from Principal Inspection Supervisor David Miles, Inspector Chris Candell, Principal Civil Engineer Tim Low, the owner's general manager, the owner's architect, and the owner's agent of the Subject Property; and

WHEREAS, documentary evidence submitted at the hearing included but was not limited to: Stop Work Orders, Notices of Violation, Re-Inspection Notices, the Order to Abate, photographs of the Subject Property, a Compliance Plan agreement between the parties including list of unpermitted improvements, email communications, and record comments showing the inspection history of the Subject Property.

WHEREAS, on July 6, 2023, the Independent Hearing Officer issued a Hearing Decision in favor of the City, upholding the Order to Abate and finding no error or abuse of discretion by the City; and

WHEREAS Appellant did not file a timely appeal of the Independent Hearing Officer's Decision on the Order to Abate and therefore waived their right to appeal that matter to Council; and

WHEREAS, on June 27, 2022, the Building Official declared the Subject Property a public nuisance and assessed civil penalties based on ongoing unabated building code violations; including all of the violations listed in the earlier Order to Abate and prior Notices of Violation; and

WHEREAS, on July 18, 2022, the Appellant filed an appeal of the Declaration of Public Nuisance; and

WHEREAS, the Appeal Hearing for the Declaration of Public Nuisance took place on October 19, 2023, and was conducted by the same Independent Hearing Officer, Michael Roush; and

WHEREAS, the Independent Hearing Officer took judicial notice of the record from the prior hearing on the Order to Abate including the witness testimony, documentary evidence, and the final decision in making his determination; and

WHEREAS, both the Appellant and the City submitted additional documentary evidence in advance of and during the single day Hearing, including photographs of the Property, additional witness testimony from David Miles and Permit Inspector David Carillo, and the owner's architect for the Subject Property.

WHEREAS, on December 13, 2023, the Independent Hearing Officer issued a Hearing Decision in favor of the City, finding no error or abuse of discretion by the City in the issuance of the Declaration of Public Nuisance, and

WHEREAS, on February 8, 2024, the Appellant filed the instant Appeal of the Independent Hearing Officer's Decision regarding the Declaration of Public Nuisance; and within the time frame specified within the O.M.C.; and

WHEREAS, after giving due notice to the Appellant and all interested parties, the Appeal came before the City Council on June 4, 2024; and

WHEREAS, Appellant has not established that there is no substantial evidence in the record to support the Independent Hearing Officer's Decision, and

WHEREAS, Appellant has not established that the Independent Hearing Officer's Decision is based on an error of law; now, therefore, be it

RESOLVED: That the City Council, having reviewed the record and heard and considered arguments from both the Appellant and City Staff, determines that the Appellant has failed to establish that there is no substantial evidence in the record to support the Hearing Decision, and failed to establish that there was an error of law; and be it

FURTHER RESOLVED: That the Appeal is denied, and the Independent Hearing Officer's Decision regarding the Declaration of Public Nuisance, dated December 13, 2023, is upheld; and be it

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FURTHER RESOLVED: That the recitals contained in this Resolution are true and correct and are an integral part of the City Council's decision.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - FIFE, GALLO, JENKINS, KALB, KAPLAN, RAMACHANDRAN, REID, AND
PRESIDENT FORTUNATO BAS NOES – ABSENT –
ABSTENTION –

ATTEST: _____

ASHA REED
City Clerk and Clerk of the Council of the
City of Oakland, California