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CITY OF OAKLAND



ONE FRANK H. OGAWA PLAZA • 6TH FLOOR • OAKLAND, CALIFORNIA 94612

Office of the City Attorney  
Barbara J. Parker  
City Attorney

(510) 238-3601  
FAX: (510) 238-6500  
TTY/TDD: (510) 238-3254

March 19, 2019

Community and Economic Development Committee  
HONORABLE CITY COUNCIL  
Oakland, California

**Re: Ordinance Amending Ordinance No. 13408 C.M.S. and Ordinance No. 13407, Which Adopted California Building Codes with Local Amendments in Oakland Municipal Code Chapter 15.04 (Oakland Amendments to California Model Building Construction Codes) and Chapter 15.08 (Oakland Building Code Maintenance), to Create an Appeals Process Consistent with the California Building Code**

Dear Chairperson Vice Mayor Reid and Members of the Committee:

The City Attorney's Office recommends that the Council amend Oakland's Building Code appeals processes to make them consistent with state law. The Office of the City Attorney has prepared an ordinance amending Chapter 15.04, Oakland Amendments To California Model Building Construction Codes, and Chapter 15.08, Oakland Building Code Maintenance, to: 1) provide an appeals process for building code appeals that is consistent with the California Building Code, and (2) consolidate provisions related to building code appeals into a single section of the City's code.

### **Background**

Oakland's current building code enforcement appeals process is codified in Oakland Municipal Code (O.M.C.) sections 15.04.1.125, 15.08.100, and 15.08.40. Those sections provide for appeals before a single, independent hearing officer. Decisions of the hearing officer are final, and a party who wishes to challenge the hearing officer's decision must seek review in Superior Court.

California Building Code section 1.8.8.1 requires every city to establish a local appeals board to hear appeals of building code enforcement orders and determinations. Where a city has not established a local appeals board, the governing body of the city must serve as the appeals board.

Chairperson Vice Mayor Reid and Members of the Committee  
March 19, 2019

**Re: Ordinance Amending Ordinance No. 13408 C.M.S. and Ordinance No. 13407,  
Which Adopted California Building Codes with Local Amendments in Oakland  
Municipal Code Chapter 15.04 (Oakland Amendments to California Model Building  
Construction Codes) and Chapter 15.08 (Oakland Building Code Maintenance), to  
Create an Appeals Process Consistent with the California Building Code**

Page Two

**Proposed Amendments**

The proposed amendments will provide for appellants to appeal hearing officer determinations to a neutral appeal board appointed by the City Administrator or to the City Council. The proposed amendments also consolidate in a single section of the code the procedures and requirements to: 1) request hearing officer review of inspector determinations, and 2) appeal decisions of a hearing officer to an appeals board or the City Council.

Very truly yours,

  
BARBARA J. PARKER  
City Attorney

Attachment

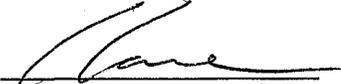
cc: Mayor Libby Schaaf  
Sabrina Landreth, City Administrator

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APPROVED AS TO FORM AND LEGALITY

INTRODUCED BY COUNCILMEMBER \_\_\_\_\_

  
CITY ATTORNEY'S OFFICE

## OAKLAND CITY COUNCIL

ORDINANCE NO. \_\_\_\_\_ C.M.S.

**ORDINANCE AMENDING ORDINANCE NO. 13408 C.M.S, AND ORDINANCE NO. 13407, WHICH ADOPTED CALIFORNIA BUILDING CODES WITH LOCAL AMENDMENTS IN OAKLAND MUNICIPAL CODE CHAPTERS 15.04 (OAKLAND AMENDMENTS TO CALIFORNIA MODEL BUILDING CONSTRUCTION CODES) AND 15.08 (OAKLAND BUILDING CODE MAINTENANCE), TO CREATE AN APPEALS PROCESS CONSISTENT WITH THE CALIFORNIA BUILDING CODE**

**WHEREAS**, California Building Code 1.8.8.1 requires local governments to establish a process to hear and decide appeals of orders, decisions and determinations made by the Building Code enforcement agency relative to the application and interpretation of the Building Code and other regulations governing use, maintenance and change of occupancy of real property; and

**WHEREAS**, California Building Code 1.8.8.1 further requires that the governing body of any city either establish an appeals board or agency to hear such appeals or have such appeals heard by the governing body of the city; and

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:**

**SECTION 1. Modification of Section 15.04.1.125 of the Oakland Municipal Code.** Section 15.04.1.125 of the Oakland Municipal Code is hereby amended to read as follows (additions are shown as double underline and deletions are shown as strikethrough):

15.04.1.125 - Appeal: Administrative Hearings

- A. General. In order to ~~hear and decide appeals of~~ appeal orders, decisions, or determinations made by the Building Official relative to the application and interpretation of the non-administrative (technical) requirements of this Code, any person adversely affected by the order, decision, or determination may request an administrative hearing with a Hearing ~~Officer~~Examiner. The request shall be filed in writing with the Building Official and shall be accompanied with by a fee as established in the Master Fee Schedule.

The written request for an administrative hearing with the accompanying fee shall be received by the Building Official within fourteen (14) calendar days from the date of the service of such order, decision or determination of the Building Official, provided however, that if the building or structure is in such condition as to make it Dangerous or an Imminent Hazard and is ordered vacated in accordance with Section 15.08.380 of this Code, such request and fees shall be received by the City within 7 calendar days from the date of the service of the Declaration or Order of the Building Official. Failure to file such written request along with full payment of fees within the period of time prescribed herein shall constitute a waiver of the right to an administrative adjudication of such action or to any portion thereof and constitutes a failure to exhaust administrative remedies.

The request for an administrative hearing shall contain the following information:

1. A brief statement setting forth the legal interest of the appellant party or parties in the real property identified in the order, decision or determination made by the Building Official; and
2. A brief statement in ordinary and concise language of that (those) specific order(s), decision(s) or determination(s) protested; and
3. A brief statement in ordinary and concise language contending that issuance of the order, decision or determination was a result of error or abuse of discretion together with any material facts claimed to support such contention; and
4. A brief statement in ordinary and concise language of the relief sought and the reasons why it is claimed the protested order, decision or determination should be reversed, modified, or otherwise set aside; and
5. The signature of the appellant property owner, and his or her mailing address; and
6. The verification (by declaration under penalty of perjury) of at least one person requesting a hearing as to the truth of the matters stated in the request for hearing; and

~~The written request for an administrative hearing with the accompanying fee shall be received by the Building Official within fourteen (14) calendar days from the date of the service of such order, decision or determination of the Building Official.~~

- B. Scheduling and Noticing. As soon as practicable after receiving the request for administrative hearing, the Building Official shall fix a date, time and place for the administrative hearing. Written notice of the time and place of the hearing shall be given to the appellant at least seven (7) calendar days prior to the date of the hearing.

The failure of the Building Official to serve any person required herein to be served shall not invalidate any proceedings hereunder as to any other person duly served or relieve any such person from any duty or obligation imposed by the provisions of this section.

- C. Scope of Hearing. The administrative hearing before a hearing officer shall be an evidentiary hearing. Only those technical matters or issues specifically raised by the appellant in the request for administrative hearing shall be considered. The appellant and the City may present witnesses and such documentary evidence as are relevant to the issues. The Hearing Officer shall have the power to administer oaths. Upon a showing of good cause by the appellant or the City, the Hearing Officer may request that the City Clerk issue subpoenas under the seal of the City for a witness to appear and testify or to produce documents. Willful failure to appear to testify or to produce documents under subpoena may be punished as an infraction or as an administrative citation. The City has the burden of proof by a preponderance of the evidence.
- D. Hearing Officer~~Examiner~~. The Hearing Officer ~~Examiner~~ shall not be an employee of the City of Oakland and shall be qualified by experience and training to pass on building construction and other matters pertaining to this Code.
- E. Limitations of Authority. The Hearing Officer ~~Examiner~~ shall have no authority relative to interpretations of the administrative provisions of this Code and shall not be empowered to waive or otherwise set aside the non-administrative (technical) requirements of this Code.
- F. Effect of Hearing. Decisions of the Hearing ~~Examiner~~ Officer in all instances shall be final and conclusive unless the appellant files an appeal, as set forth in Section 15.04.1.125G.
- G. Appeal of Hearing Officer Decision to Appeals Board. The appellant may appeal the Hearing Officer's determination to an Appeals Board as follows:
1. Appeals Board. The Appeals Board shall be, at the City's discretion, either the City Council or an Appeals Board appointed by the City Administrator. Appeals Board members shall not be employees of the City of Oakland.
  2. Only appeals based on a substantive violation of Chapter 15.04, 15.08, or the California Model Building Construction Code may be appealed as provided in section 15.04.1.125.G. This includes Building Code violations, substandard/public nuisance determinations, and orders to abate. The following may not be appealed to the Appeals Board: billing appeals, blight violations (unless based on a Building Code violation)(O.M.C Ch.8.24), graffiti (O.M.C. Ch. 8.10), public nuisance determinations not based on a Building Code violations, planning code or zoning violations, and any other violation of a City ordinance not based on a Building Code violation.

3. The appellant must file the appeal within 14 calendar days of service of the Hearing Officer's determination, The appellant shall file the appeal on a form, under such procedures, and at such location as may be established by the City Administrator. The appellant must state the basis for the appeal and how the decision by the Hearing Officer was in error. The appellant shall pay a fee established for appeals to the Appeals Board in the Master Fee Schedule.
  4. The Appeals Board's consideration shall be limited to the record established by the hearing officer. The Appeals Board shall not consider new evidence unless the proponent shows that the evidence is both newly discovered and material and could not, with reasonable diligence, have been produced at the hearing before the Hearing Officer. If, the Appeals Board makes such determination, it may hear the additional evidence at a continued hearing, allowing the opposing party to respond, or may remand the matter to the Hearing Officer to consider the new evidence.
  5. The appellant shall have the burden of demonstrating that there is no substantial evidence in the record to support the Hearing Officer's decision, or that the decision is based on an error of law.
- H. ~~G. Review of Administrative Determination.~~ The decision of the Appeals Board shall be final. The limitation period provided pursuant to California Code of Civil Procedure Section 1094.6 shall apply to all petitions filed seeking judicial review of administrative determinations made by the Appeals Board Building Official or the Hearing Examiner.

**SECTION 2. Modification of 15.08.100 of the Oakland Municipal Code.**  
 Section 15.08.100 of the Oakland Municipal Code is hereby amended to read as follows (additions are shown as double underline and deletions are shown as strikethrough):

15.08.100 - ~~Appeals.~~ Administrative Hearings

- A. ~~Deteriorated Conditions.~~ Any person adversely affected by ~~The record owner may appeal from the initial issuance of an order, decision, or determination made relative to the applications and interpretations of Articles V, VI, VII, VIII, and IX of this Code may appeal by requesting an administrative hearing before a Hearing Officer following the procedures set forth in Section 15.04.1.125.~~

~~filing a written request which shall contain the following information:~~

1. ~~A brief statement in ordinary and concise language of that specific action protested, together with any material facts claimed to support the contentions of the appellant.~~

- ~~2. A brief statement in ordinary and concise language of the relief sought and the reasons why it is claimed the protested action was a result of error or abuse of discretion and therefore should be reversed, modified, or otherwise set aside.~~

~~Such written request (appeal) together with fees as established in the Master Fee Schedule shall be received by the Building Official within twenty-one (21) calendar days from the date of the service, as set forth in Section 15.08.110.B of this Code, of the initial issuance of such order, decision, or determination. Failure by the record owner to file such written request along with full payment of fees within the period of time prescribed herein shall constitute a waiver of his or her right to an administrative adjudication of such action or to any portion thereof.~~

- ~~B. Hazardous Conditions. The record owner may appeal from orders, decisions, or determinations made relative to the applications and interpretations of Article X of this Code, to a Hearing Examiner, who shall be a person who is qualified by experience and training to pass on matters pertaining to health and safety and welfare of the public, and who may not be an employee of the City of Oakland.~~

~~the Hearing Examiner shall have no authority relative to interpretations of the administrative (non-technical) provisions of this Code. The Hearing Examiner shall not be empowered to waive non-administrative (technical) requirements of Article X of this Code, but may grant reasonable alternatives in exceptional cases where it is demonstratively impractical or physically impossible to comply strictly with such requirements.~~

- ~~C. Review of Administrative Actions. The limitation period provided pursuant to California Code of Civil Procedure Section 1094.6 shall apply to all petitions filed seeking judicial review of administrative actions made by the Building Official or Hearing Examiner.~~

**SECTION 3. Modification of 15.08.410 of the Oakland Municipal Code.**  
Section 15.08.410 of the Oakland Municipal Code is hereby amended to read as follows (additions are shown as double underline and deletions are shown as strikethrough):

Article XII. - Appeal Administrative Hearing

15.08.410 - General.

- A. Administrative Hearing. Any person adversely affected by an order, decision, or determination made ~~The record owner may appeal from an action under Section 15.08.350 of this Code~~ may appeal by requesting an administrative hearing before a Hearing Officer following the procedures set forth in Section 15.04.1.125. ~~by filing a written request with the Building Official and paying a fee as established in the Master Fee Schedule. A request for an Administrative Hearing shall contain the following information:~~

- ~~1. A brief statement setting forth the legal interest of each of the appellants in the building or structure or the land involved in the Declaration of Public Nuisance--Substandard.~~

- ~~2. A brief statement in ordinary and concise language of that specific action protested, together with any material facts claimed to support the contentions of the appellant.~~
- ~~3. A brief statement in ordinary and concise language of the relief sought and the reasons why it is claimed the protested action was a result of error or abuse of discretion by the Building Official and therefore should be reversed, modified, or otherwise set aside.~~
- ~~4. The signatures of all appellants and their requested mailing addresses.~~
- ~~5. The verification (by declaration under penalty of perjury) of all appellants as to the truth of the matters stated in the appeal.~~

~~The written appeal and fees as established in the Master Fee Schedule shall be received by the Building Official within 14 calendar days from the date of the service of the Declaration of Public Nuisance Substandard, provided, however, that if the building or structure is in such condition as to make it Dangerous or an Imminent Hazard and is ordered vacated in accordance with Section 15.08.380 of this Code, such appeal and fees shall be received by the Building Official within 7 calendar days from the date of the service of the Declaration or Order of the Building Official.~~

~~B. Scheduling and Noticing for Hearing. As soon as practicable after receiving the written appeal and fees, the Building Official shall fix a date, time, and place for the hearing of the appeal by the Hearing Officer Examiner. Written notice of the time and place of the hearing shall be given at least seven (7) days prior to the date of the hearing to each appellant.~~

~~15.08.420 Effect of failure to appeal.~~

~~Failure of any person to file an appeal and pay fees in accordance with the provisions of Sections 15.08.410 of this Code shall constitute a waiver of the right to an administrative hearing and adjudication of the Declaration or Order or to any portion thereof.~~

~~15.08.430 Scope of hearing on appeal.~~

~~Only those matters or issues specifically raised by the appellant's written appeal shall be considered by the Hearing Examiner in the hearing of the appeal.~~

~~The Hearing Examiner shall have the power to administer oaths, and may request that the City Clerk issue subpoenas under the seal of the City. Willful failure to appear for testimony in response to any subpoena or to produce at any time under subpoena "duces tecum" shall be punished as an infraction.~~

~~15.08.440 Staying of enforcement.~~

~~Except for vacation orders made pursuant to Section 15.08.380 of this Code, enforcement of any Declaration shall be stayed during the pendency of an appeal there from which is properly and timely received by the Building Official.~~

~~15.08.450 Effect of administrative hearing.~~

~~Decisions made and determinations rendered by the Hearing Examiner shall be in all cases final and conclusive.~~

~~15.08.460 Review of administrative determination.~~

~~The limitation period provided pursuant to California Code of Civil Procedure Section 1094.6 shall apply to all petition filers seeking judicial review of administrative determination made by the City Council or Appeals Board Hearing Examiner.~~

**SECTION 4.** This action is exempt from the California Environmental Quality Act ("CEQA) pursuant to, but not limited to, the following CEQA Guidelines: § 15378 (regulatory actions), § 15061(b)(3) (no significant environmental impact), and § 15183 (consistent with the general plan and zoning).

**SECTION 5. Severability.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

**SECTION 6. Effective Date.** In accordance with Charter Section 216 this ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR, THAO AND PRESIDENT KAPLAN

NOES –

ABSENT –

ABSTENTION –

ATTEST: \_\_\_\_\_

LATONDA SIMMONS  
City Clerk and Clerk of the Council of the City of  
Oakland, California

Date of Attestation: \_\_\_\_\_

## NOTICE AND DIGEST

**ORDINANCE AMENDING ORDINANCE NO. 13408 C.M.S, AND ORDINANCE NO. 13407, WHICH ADOPTED CALIFORNIA BUILDING CODES WITH LOCAL AMENDMENTS IN OAKLAND MUNICIPAL CODE CHAPTERS 15.04 (OAKLAND AMENDMENTS TO CALIFORNIA MODEL BUILDING CONSTRUCTION CODES) AND 15.08 (OAKLAND BUILDING CODE MAINTENANCE), TO CREATE AN APPEALS PROCESS CONSISTENT WITH THE CALIFORNIA BUILDING CODE**

This Ordinance creates an appeals process in compliance with California Building Code 1.8.8.1.