



AGENDA REPORT

TO: Edward D. Reskin
City Administrator

FROM: William A. Gilchrist
Director, Planning &
Building Department

SUBJECT: Ordinance Updating the Oakland
Building Maintenance Code

DATE: October 31, 2022

City Administrator Approval

Date: Nov 17, 2022

RECOMMENDATION

Staff Recommends That The City Council Adopt An Ordinance Amending The Oakland Building Maintenance Code (Oakland Municipal Code 15.08) to (1) Conform to the 2022 California Building Standards; (2) Establish Lead Hazard Abatement Standards; (3) Provide Standards for Delayed Enforcement for Accessory Dwelling Units and Joint Live Work Quarters When Correction of Violations is Not Necessary for Health and Safety; and (4) Adopt California Environmental Quality Act Exemption Findings.

EXECUTIVE SUMMARY

The proposed Ordinance will amend the City of Oakland (City) Oakland Building Maintenance Code, in the Oakland Municipal Code (OMC) Chapter 15.08, to conform to the State 2022 California Building Standards Code. It will also add three new Articles to the Building Maintenance Code. Article XIII establishes lead hazard abatement standards in conformance with state law and County Health Department recommendations. Article XIV provides standards for owners of Accessory Dwelling Units to obtain a five-year delay of enforcement if correcting violations is not necessary for health and safety, as required by state law. Separate from state law requirements noted above, Article XV provides standards for owners of non-compliant Joint Live Work Facilities to obtain a delay of enforcement, at the discretion of the Building Official, for no more than five years when correction of violations is not necessary for health and safety, to promote the City's anti-displacement goals.

BACKGROUND / LEGISLATIVE HISTORY

The Building Department of every city in California is charged with enforcing within its jurisdiction the California Building Standards Code (Cal. Code of Regulations Title 24), the State Housing Law (Cal. Health and Safety Code §§17010-19997), and the State Housing Law Regulations (Cal. Code of Regulations Title 25, Div. 1, Chapter 1, Subchapter 1).

CED Committee
November 29, 2022

Updates to 2019 Building Maintenance Code

The California Building Standards Code is revised every three years, at which time the City adopts the state building and maintenance code with local amendments, as allowed by Health and Safety Code §17958. The last revision was in 2019 when the City Council passed Ordinance No. 13575 C.M.S. to adopt the 2019 California Building Standards Code with local amendments, and Ordinance No. 13666 C.M.S. which amended the Oakland Building Maintenance Code (OMC 15.08) to conform with the 2019 California Building Standards Code. The newly revised 2022 California Building Standards Code will become effective January 1, 2023 and will be adopted by the City with local amendments. It is, therefore, necessary to update the Oakland Building Maintenance Code to remain consistent with the updated state building, electrical, plumbing, mechanical, energy, green, and maintenance codes, state health and safety codes and local amendments.

Lead Based Paint Hazard Abatement

Recent changes to state laws (Health and Safety Code Sections 17920.10 and 105256) have tasked local jurisdictions with enforcement of lead-based paint on residential properties. In a 2009 report, *Childhood Lead Poisoning: Conservative Estimates of the Social and Economic Benefits of Lead Hazard Control*, the author found that even small increases in lead exposure have significant health impacts including: lower IQ rates, reductions in lifetime earnings, increases in demand for special education, and correlations with more violent behavior and crime rates. In 2017, a Reuters examination of lead testing results in the United States found that children in the Fruitvale neighborhood had higher incidence of lead poisoning than children in Flint, Michigan. Finally, in 2021 the City's Department of Race and Equity released: *"Racial Equity Impact Analysis: Eliminating Lead Paint Hazards in Oakland and Alameda County"* that further analyzed the prevalence of lead-based paint within the City and the health and economic impacts of deteriorated lead-based paint on our community. Given that over ninety percent of the housing stock within the City was built before 1978, and of the 90% about 40% of the housing stock was built before 1940 the Planning and Building Department is proposing to incorporate lead-based paint hazard standards and enforcement into the Oakland Building Maintenance Code.

Accessory Dwelling Unit (ADU) Delay of Enforcement

California is experiencing a housing supply crisis, with housing demand far outstripping supply. In 2018, California ranked 49th out of the 50 states in housing units per capita. Consequently, existing housing in this state, especially in its largest cities, has become very expensive. Seven of the ten most expensive real estate markets in the United States are in California. California is also experiencing rapid year-over-year rent growth with three cities in the state having had overall rent growth of 10 percent or more year-over-year, and of the 50 United States cities with the highest United States rents, 33 are cities in California. Oakland ranks ninth nationally with an average rent of \$2,200 according to the October 2022 Zumper National Rent Report.

As a response the State of California has enacted legislation (Assembly Bill 68/ Assembly Bill 881/ Senate Bill 13) to encourage the construction of accessory dwelling units and junior accessory dwelling units. The new Accessory Dwelling Unit (ADU) state legislation consists of five bills that amend and supplement existing legislation. Part of the state legislation directed local jurisdictions to establish an ADU delay of enforcement program for any unpermitted ADU built before January 1, 2020. Upon an owner's application, the Building Official shall delay enforcing

any building standards if the Building Official determines that correcting the violation is not necessary to protect health and safety.

Joint Live Work Quarters Delay of Enforcement

Unpermitted living, assembly and workspaces are under ongoing scrutiny. The focus of this maintenance code update is to ensure both that the safety of our residents is addressed and that members of our community who may reside in these facilities are not displaced unnecessarily as a result of code enforcement actions. To address the unpermitted use of former industrial buildings and facilities as living quarters and to ensure that the facilities are safe for habitation and to prevent displacement, the Planning and Building Department retained the services of a third-party consultant (WC3) to help the City establish health and safety approaches that must be verified for the Joint Live Work Quarters to be considered for a delay of enforcement for a period of five years. As a result, the Planning and Building Department is proposing to establish a Delay of Enforcement for Joint Live Work Quarters for a period of no more than five years if corrections of violations are not necessary to protect health and safety. The approach advanced by the consultant has been sent to the State of California Building Standard Commission for review and comment; it is hoped that it might become a model for use by other jurisdictions.

ANALYSIS AND POLICY ALTERNATIVES

The Oakland Building Maintenance Code provides procedures for enforcement of building standards in residential and non-residential buildings throughout the City. Initially modeled on the Uniform Housing Code, it has been amended regularly to remain consistent with the California Building Standards Code, State Housing Law, State Housing Law Regulations, and Oakland's Building Construction Code. Because the 2022 edition of the California Building Standards Code will become effective throughout the state on January 1, 2023, staff recommends amending Oakland's Building Maintenance Code to remain consistent with state law.

In addition, California Code of Regulations, Title 25, Section 6, requires the governing body of every city to adopt an ordinance or regulation imposing the requirements contained in the State Housing Law Regulations. For that reason, this ordinance explicitly imposes those requirements.

Lead Based Paint Hazard Abatement

Inclusion of lead-based paint hazard abatement into the Oakland Building Maintenance code will establish guidelines for abatement of lead-based paint, procedures for enforcement of deteriorated presumed lead-based paint in pre-1978 housing, and procedures for enforcement when presumed lead-based paint is disturbed due to painting and/or construction activities consistent with federal and state regulations.

Accessory Dwelling Unit (ADU) Delay of Enforcement

Inclusion of state mandated ADU regulations into the Oakland Building Maintenance Code establishes guidelines and procedures.

Joint Live Work Quarters Delay of Enforcement

Inclusion of Joint Live Work Quarters Delay of Enforcement into the Oakland Building Maintenance Code addresses the need to ensure the safety of unpermitted living, assembly and workspaces while avoiding displacement of members of the community. This section establishes minimum requirements to meet health and safety criteria and allows for projects that are eligible a five-year delay for the project to address other non-minimum health and safety criteria during this time frame. Avoiding a future tragedy and non-displacement are essential features of this section.

The adoption of this ordinance aims to meet the following two **citywide priorities** of achieving **holistic community safety** and **supporting vibrant sustainable infrastructure**.

FISCAL IMPACT

This item does not have a fiscal impact or cost to the City. This is an administrative action mandated by State law. Resources from existing budgeted staff will continue to enforce State Housing Law Regulations.

PUBLIC OUTREACH / INTEREST

The item was posted on the City's website and noticed in the East Bay Times.

COORDINATION

This report and legislation have been reviewed by the Office of the City Attorney and the Budget Bureau.

SUSTAINABLE OPPORTUNITIES

Economic: Updating the Oakland Building Maintenance Code supports the affordable rental housing and economic revitalization policies of the City.

Environmental: Updating the Oakland Building Maintenance Code supports the maintenance of rental housing and other buildings throughout the City and supports the reduction of public health irritants, contaminants, pollutants, toxics, and vectors for occupants and neighbors.

Race and Equity: Updating the Oakland Building Maintenance Code supports the anti-displacement and affordable rental housing policies of the City. The majority of the older housing stock and unpermitted Joint Live Work Quarters facilities are located in census tracts that have historically suffered from disinvestment, lack of City services, and higher indices of poor health outcomes due to unsafe housing conditions in particular for African Americans, Latinos, and people of color. Updating the Building Maintenance code and adding the additional articles ensures that low-income, disenfranchised populations, elderly, disabled, and the general population has access to healthy and safe housing and prevents displacement due to unpermitted conditions as it relates to ADUs and Joint Live Work Quarters.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Staff has made the determination that the proposed amendments are exempt from the California Environmental Quality Act pursuant to CEQA Guidelines sections 15378; 15061(b)(3) (General Rule), 15301 (Existing Facilities), 15303 (New Construction or Conversion of Small Structures), and 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning). Each of the foregoing provides a separate and independent basis for CEQA compliance and, when viewed collectively, provides an overall basis for CEQA compliance.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council adopt an Ordinance **Amending The Oakland Building Maintenance Code to (1) Conform to the 2022 California Building Standards; (2) Establish Lead Hazard Abatement Standards; (3) Provide Standards for Delayed Enforcement for Accessory Dwelling Units and Joint Live Work Quarters When Correction of Violations is Not Necessary for Health and Safety; and (4) Adopt California Environmental Quality Act Exemption Findings.**

For questions regarding this report, please contact Christopher Ragland, Deputy Director/Building Official at (510) 238-6435.

Respectfully submitted,



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