

NOTICE OF SPECIAL MEETING

Pursuant to Section 54956 of the Government Code of the State of California, a Special meeting of the **Board of Appeals** is hereby called for:

Date/Time: **Tuesday, September 29, 2015, 3:00 p.m.**
(or as soon thereafter as possible)

Location: **Room 109, City Hall**
333 Civic Center Plaza, Tracy

Government Code Section 54954.3 states that every public meeting shall provide an opportunity for the public to address the Board of Appeals on any item, before or during consideration of the item, however no action shall be taken on any item not on the agenda.

1. Call to Order
2. Roll Call
3. *Items from the Audience - In accordance with Procedures for Preparation, Posting and Distribution of Agendas and the Conduct of Public Meetings, adopted by Resolution 2015-052 any item not on the agenda brought up by the public at a meeting, shall be automatically referred to staff. If staff is not able to resolve the matter satisfactorily, the member of the public may request a Board Member to sponsor the item for discussion at a future meeting.*
4. Approval of May 25, 2010, minutes
5. Review, Discuss and Recommend Adopting Bylaws
6. Review, Discuss and Adopt Hearing Procedures
7. Appoint Chair and Vice Chair
8. Schedule Hearing Date
9. Adjournment

September 22, 2015

The City of Tracy complies with the Americans with Disabilities Act and makes all reasonable accommodations for the disabled to participate in public meetings. Persons requiring assistance or auxiliary aids in order to participate should call City Hall (209-831-6105), at least 24 hours prior to the meeting.

Any materials distributed to the majority of the Board of Appeals regarding any item on this agenda will be made available for public inspection in the City Clerk's office located at 333 Civic Center Plaza, Tracy, during normal business hours.

May 25, 2010, 3:00 p.m.

Room 109, City Hall, 333 Civic Center Plaza

Web Site: www.ci.tracy.ca.us

1. Chairperson Alegre called the meeting to order at 3:05 p.m.
2. Roll call found Board Members Alegre, Aubin, Corallo, and Davis present; Board Member Yerian absent. Board Member Yerian arrived at 3:15 p.m. Also present were Debra Corbett, Special Counsel; Kevin Jorgensen, Building Official and Staff Liaison to the Building Board of Appeals; and Carole Fleischmann, Secretary.
3. Items from the Audience – None
4. Minutes Approval – It was moved by Chairperson Alegre and seconded by Board Member Corallo to adopt the minutes of the Building Board of Appeals special meeting held on April 27, 2010. Voice vote found all in favor; passed and so ordered.
5. Review, Discuss and Adopt Bylaws - Ms. Corbett stated the Bylaws for the Building Board of Appeals (BBA) under consideration for approval were based on the standard bylaws adopted by the City Council for all City boards and commissions. Ms. Corbett stated she had modified the bylaws slightly to make them more relevant to the BBA. Ms. Corbett added the bylaws would need to go to Council for final approval. Board Member Corallo moved to adopt the Bylaws of the Building Board of Appeals. Board Member Davis seconded the motion. Voice vote found all in favor; passed and so ordered.

Kevin Jorgensen, Building Official and Staff Liaison, agreed to prepare the staff report and submit the bylaws to the City Council for approval.

6. Review, Discuss and Adopt Hearing Procedures – Ms. Corbett gave a brief overview of the Draft Administrative Appeal Hearing Procedures. Member Corallo asked how appeal hearings were conducted. Ms. Corbett responded they are based on the City Attorney's office administrative hearings which have been modified for the Building Board of Appeals.

In response to a question regarding burden of proof, Ms. Corbett responded the burden of proof is on the appellant to convince the Building Board of Appeals. Decisions rendered by the Building Board of Appeals will be written up by staff, and can be appealed to the City Council. Member Corallo inquired if the Board could have an attorney. Ms. Corbett responded in the affirmative. A brief discussion occurred regarding how much time would be allowed for presentations. The Board agreed the maximum time limit for presentations would be 60 minutes. Ms. Corbett added that the Board has the authority to allow additional time for the presentations and/or to continue the hearing to another time or day.

With regard to section B2 – Preparing for the Hearing – Report and Background Information – the Board agreed the appellant should have the information at least 10

City of Tracy business days before the hearing. The Building Official shall submit a written report for consideration, then the person requesting the hearing shall get a copy of that report at least 10 City of Tracy business days before the hearing. With regard to Exchange of Information and Documents – it was agreed Documents, expert opinions, copies of the relevant code provisions, and supporting materials shall be submitted to the City Clerk's office for distribution to the Building Board of Appeals no later than 15 City of Tracy business days before the hearing.

Ms. Corbett stated she would amend the hearing procedures and forward them to the secretary for distribution to the Board.

7. Schedule Hearing Date – Mr. Jorgensen reported that while the two sides are close to resolving the issue the appeal remains pending. Therefore, no hearing date was scheduled.

Ms. Corbett reminded Board Members that the bylaws include a requirement that the Board meet at least once a year in the spring.

8. ADJOURNMENT - It was moved by Board Member Corallo and seconded by Board Member Aubin to adjourn. Voice vote found all in favor; passed, and so ordered. Time: 4:01 p.m.

The above agenda was posted at the Tracy City Hall on May 13, 2010. The above are summary minutes.

Attest:

Kevin Jorgensen, Staff Liaison

Secretary

BYLAWS OF THE BOARD OF APPEALS
CITY OF TRACY, CALIFORNIA

WHEREAS, Pursuant to Tracy Municipal Code Chapter 9.44, the City Council has established a Board of Appeals for the purpose of hearing appeals by persons aggrieved by any administrative decisions in the application of the Uniform Housing, Building, Mechanical, Electrical, Plumbing, Abatement of Dangerous Buildings, and Fire Codes, or regulations adopted pursuant thereto; and

WHEREAS, the Board of Appeals desires to adopt Bylaws consistent with those set forth by the City Council for the operation of the Board and the conduct of its meetings; and

WHEREAS, administrative appeal hearing procedures, adopted by the Board of Appeals pursuant to Tracy Municipal Code section 9.44.040, shall prevail over any inconsistency with these Bylaws.

NOW, THEREFORE, unless otherwise provided in the Board of Appeals adopted hearing procedures, these Bylaws govern the conduct of the meetings and the transaction of its affairs.

A. PURPOSE

Pursuant to Tracy Municipal Code Chapter 9.44, the City Council has established a Board of Appeals for the purpose of hearing appeals by persons aggrieved by any administrative decisions in the application of the Uniform Housing, Building, Mechanical, Electrical, Plumbing, Abatement of Dangerous Buildings, and Fire Codes, or regulations adopted pursuant thereto.

B. ROLE AND RESPONSIBILITIES

The role of the Board of Appeals is set forth in Tracy Municipal Code Chapter 9.44.

C. MEMBERSHIP GUIDELINES

1. Membership. The Board of Appeals shall consist of five (5) members with qualifications established in the Tracy Municipal Code.
2. Term. The Board will be appointed promptly whenever the City receives an appeal requiring a hearing by the Board. The Board shall be comprised of five members appointed by the Mayor with the advice and consent of the Council. Members shall serve only until the matter appealed has been concluded and the Board's participation is no longer required.
3. Attendance. If a member of Building Board of Appeals fails to attend four meetings in any calendar year, his or her position on the Board shall automatically become vacant and the staff liaison shall so inform the City Clerk. Absences may not be excused; however, a Board member may request a leave of absence as outlined in these bylaws. For quorum confirmation, a member who needs to miss a meeting shall inform the staff liaison designated by the relevant City Department at least 48 hours before the next meeting.

4. Leave of Absence. A member may submit a written request to the City Council, for a leave of absence of up to six-months, which may be approved in its discretion.

D. QUORUM

A quorum of the Board of Appeals shall consist of a majority of the members (including any vacancies). A quorum must be present in order for the Board of Appeals to hold a meeting.

E. SELECTING CHAIRPERSON AND DUTIES

1. The officers will be selected by the members at each specially called meeting.
2. The officers shall be:
 - a. The Chairperson and
 - b. The Vice-Chairperson.
3. The Chairperson shall:
 - a. Preside at the meeting.
 - b. Rule on all points of order and procedure during the meeting.
 - c. Provide recommendations to staff liaison regarding agenda items.
4. The Vice Chairperson shall assume all duties of the Chairperson in his or her absence or disability.
5. In case of the absence of both the Chairperson and Vice Chairperson from any meeting, an Acting Chairperson shall be elected from among the members present.

F. MEETINGS

1. Meetings of the Board of Appeals shall be convened as needed to hear appeals filed pursuant to Tracy Municipal Code Chapter 9.44.
2. All meetings are subject to the Brown Act as set forth in Government Code sections 54950 and following. Accordingly, all meetings shall be noticed and agendas for all meetings shall be prepared and posted in accordance with the current City Council meeting procedures. All agendas shall be prepared and distributed in accordance with City Council meeting procedures and the Brown Act.
3. Except as otherwise provided in the Board of Appeals adopted hearing procedures, all meetings shall be conducted in accordance with the current City Council meeting procedures.

G. STATEMENTS OF ECONOMIC INTEREST (Form 700)

1. The City Clerk's Office will monitor compliance with state and City Form 700 filing requirements.
2. If a member of a City board, commission, or committee, who is required to file a Form 700, does not do so in a timely manner, the City Clerk's Office will send two written notices at least 10 days apart to the member.
3. If the member does not file a Form 700 with the City Clerk's Office within 30 days of receiving the second written notice, his or her appointment will automatically terminate.

H. FUNDING

Any funding necessary for operation of the Building Board of Appeals shall be included in the City of Tracy budget, which shall be approved by the City Council.

I. ADMINISTRATIVE PROCEDURES AND POLICIES

City Boards and Commissions shall follow all applicable City fiscal administrative policies and procedures.

J. STAFF LIAISON

The Board of Appeals shall have a staff liaison designated by the relevant City Department. The staff liaison shall:

1. Receive and record all exhibits, petitions, documents, or other material presented to the Board in support of, or in opposition to, any question before the Board.
2. Sign all meetings minutes and resolutions upon approval.
3. Prepare and distribute agendas and agenda packets.

K. ADOPTION

This document, as adopted and amended by City Council resolution, shall serve as the Bylaws for the Board of Appeals.

DRAFT

City of Tracy

Board of Appeals

Administrative Appeal Hearing Procedures

Adopted September 29, 2015, pursuant
to Tracy Municipal Code Chapter 9.44

A. INTRODUCTION.

The purpose of the Board of Appeals (Board) is to hear appeals by persons aggrieved by any administrative decisions in the application of the Uniform Housing, Building, Mechanical, Electrical, Plumbing, Abatement of Dangerous Buildings, and Fire Codes, or regulations adopted pursuant thereto.

The purpose of these Administrative Appeal Hearing Procedures (“Procedures”) is to establish procedures, as required by Tracy Municipal Code (“TMC”) Chapter 9.44, for the conduct of those hearings.

TMC section 9.44.040(c)(1) states: “The Board shall exercise its powers in such a manner that substantial justice is done most nearly in accord with the intent and purpose of this Code”. TMC section 9.44.040(d) sets forth procedures for hearings of appeals. These Procedures are intended to complement those provisions. In any conflict between these Procedures and the TMC, the TMC provisions shall prevail. In any conflict between these Procedures and the Board Bylaws, these Procedures shall prevail.

In accordance with TMC Chapter 9, when the Building Official issues an administrative citation for a code violation, the person receiving the citation has the right to contest it. Or, when someone objects to some other notice that he or she has violated the code, a hearing may be necessary. In either case, the Board may be called upon to conduct an appeal hearing.

The Board may refer to the Administrative Hearing Guidelines in Chapter 1.28 of the TMC for any matter not covered in these Guidelines.

Whenever the Building Official determines that a violation of the code has occurred, he or she may issue an administrative citation to the person responsible. The citation must include the date, address, code section violated, description of the violation, amount of the fine and time for payment, an order prohibiting re-occurrence, description of the administrative citation review process (and the time for contesting the citation), and the name and signature of the citing officer.¹

¹ TMC §1.28.040.

B. CONDUCTING AN ADMINISTRATIVE HEARING.

1. Importance of an impartial Board of Appeals.

Both the federal and state constitutions require that no person be deprived of life, liberty or property without due process of law.² Among other things, a person is entitled to “procedural due process”, which means a person has the right to notice and an opportunity to be heard. The hearing must be fair, and the Board impartial and unbiased.³

To preserve due process rights, a Board member should disqualify himself or herself if he or she has any financial or other personal interest in the matter, if any of the parties involved are family members or friends, or if the Board member feels he or she cannot be impartial.

In addition, the Board should conduct the hearing with fairness and respect for both sides, without even the *appearance* of partiality or favoritism. This applies not only at the hearing, but before and after the hearing. For example, copies of information should be provided equally to both sides. Specific requirements related to the exchange of information are set forth in these Procedures.

2. Preparing for the hearing.

When preparing to conduct an administrative appeal hearing, Board members shall keep in mind the following:

- Notice. The time and date of the hearing shall be set to be sure the notice of the hearing to the appellant is sent (person contesting the citation or other code enforcement action) within the time period set in the Municipal Code, subject to extensions mutually agreed upon between City staff and the appellant.
- Report and background information. The Board shall be provided a copy of the report and background information from the Building Official. In addition, the Board shall receive a copy of the appeal with all attachments. The appellant should have the information at least

² U.S. Const. 14th Amendment; Cal. Const. art I, §7.

³ See generally, 7 Witkin Summary of California Law (10th Edition), §§657 – 673.

10 City of Tracy business days before the hearing. The Building Official shall submit a written report for consideration, then the person requesting the hearing shall get a copy of that report at least 10 City of Tracy business days before the hearing. At the hearing, both the Building Official and the person contesting the citation may present evidence concerning the citation.

- Municipal Code. Review any relevant portions of the Tracy Municipal Code (whether or not they were included with the Building Official's report). This includes not only the sections that describe what the violation is, but also the sections that describe the procedures involved (time for requesting a hearing, notice requirements, conducting the hearing, etc.).
- Exchange of information and documents. Documents, expert opinions, copies of the relevant code provisions, and supporting materials shall be submitted to the City Clerk's office for distribution to the Board no later than 15 City of Tracy business days before the hearing. The parties are required to provide eight (8) copies of all materials. These copies are to be distributed as follows: one for each member of the Board, one to the Building Official, one to the appellant (or the appellant's representative or attorney), and one for the City Clerk's official Board file. Additional documentation may be submitted at the hearing at the discretion of the Board.

3. Conducting the hearing.

All meetings of the Board are subject to the Brown Act.

In a court room, a judge follows very formal rules of evidence – what can be admitted into evidence and what cannot; who speaks when, etc. But such formal rules do not apply to a city administrative hearing. The Board determines who speaks when and what evidence is relevant and appropriate. No formal rules of evidence apply to these types of hearings. The hearing may be tape recorded if either party requests it, or if the Board would like a taped version to assist in rendering the decision. The Board decides who is present. If witnesses are called by either side, the Board may request that witnesses wait outside the hearing room until it is time for their testimony. A suggested checklist for the hearing is Attachment "A". A suggested sequence for the hearing is as follows:

- Board members introduce themselves. All others in attendance introduce themselves. The introductions should include the person's role (Building Official, attorney, friend of the appellant, etc.). A sign in sheet should be circulated that includes this information as well as contact information for any necessary follow-up and for distribution of the Board decision.
- The Chair shall briefly explain the hearing process: how the hearing will be conducted, when a decision will be made, the fact that the decision will be in writing and a copy provided to the parties, etc. The Chair should inquire whether anyone has questions about the process itself.
- City staff (Building Official /Code enforcement officer) presents his/her case: what happened, what the violation is, what he/she did, etc. The Officer/Official may present witnesses and question them. Members of the Board and the appellant may ask questions of any witnesses when the Official/Officer has completed their questions.
- When the Building Official/Code enforcement officer is finished presenting the case, the appellant proceeds with his/her side of the case. Members of the Board and City staff may ask questions of any witnesses when the appellant has completed their questions.
- If staff wishes, he or she may want to offer a rebuttal at the end, to refute information presented by the appellant.
- The appellant may then want to rebut what the Building Official/Code enforcement officer has just said.
- The parties shall submit documentation in advance of the hearing to the other side and to Board. Documentation submitted at the hearing shall be subject to the discretion of the Board. Consideration shall be given to the volume of documentation necessary to support the submitter's position and extraneous materials shall be avoided in order to expedite the hearing and decision making process.

- Time limits for the hearing shall be as follows:
 - Presentation of City's position: 60 minutes
 - Presentation of Appellant's position: 60 minutes
 - City's Rebuttal: 10 minutes
 - Appellant's Rebuttal: 10 minutes

Time limits shall not include questions by Board members. The City Clerk, or designee, shall be timekeeper.

During this hearing, the Board is in charge of the proceedings. The Board of Appeals decides who speaks and when, and when and if to take a break. The Board objectives are to understand the facts, and to keep order and fairness in the process. If a situation becomes tense, the Board can announce that there will be a break (for a specified time, usually 5 or 10 minutes).

- The Board of Appeals closes the hearing. The Board shall keep one copy of any documents submitted at the hearing. The Board shall inform the parties of an anticipated date of its decision and confirm the appellant's mailing address.

If the matter is complicated or the Board needs more information from someone, or time to read documents that were presented at the hearing, a quorum can continue the hearing to another time or day and establish time limits and deadlines for the submission of additional documentation or information requested by the Board.

4. Render decision.

The Board, through a simple majority, should reach a decision within the time specified by the Municipal Code (unless otherwise mutually agreed by the parties). In accordance with TMC section 9.44.040(e), the BBA shall formally report its findings of fact and, together with the reasons, its decision in writing. In accordance with Chapter 9.44.040(e), the report shall order the petition or application either granted, denied, or modified and specify any conditions or limitations imposed.

5. Fines.

The City Council establishes the maximum amount of the fine for each code violation.⁴ To these the City may add (1) increased fines for repeat violations, (2) late payment charges, (3) administrative costs, (4) costs of compliance re-inspections, and (5) collection costs.⁵

The enforcement officer initially sets the fine at the maximum amount. If the person violating the ordinance asks for a hearing, the Board has the discretion to reduce the amount of the fine based on specific factors set out in the Municipal Code: duration of the violation, frequency and number of violations, seriousness, good faith efforts to comply, impact on the community, and such other factors as are just.⁶ The decision should be specific if fines are reduced (to what amount? when due?), or if establishing a later time for compliance, etc.

The fine is due to the City within 30 days, even if the person requests a hearing. The City may suspend the imposition of fines while the violator is getting permits and actively pursuing compliance. If there is a hearing and the Board determines there was no violation or the person was not responsible for it, the City will refund the fine.⁷

6. Distribution of Decision; Appeal to City Council.

The decision shall be mailed by the City Clerk's office to the appellant and the Building Official. A sample form for the statement of decision is Attachment "B". The City Clerk's office shall keep a copy of the decision, along with the other documents related to the appeal for at least two years, or longer, in compliance with the City's Records Retention Policy.

The decision of the BBA is final unless appealed to the City Council in accordance with TMC section 9.44.040(f) and TMC section 1.12.020.

⁴ This was done by Council Resolution No. 2002-420. A copy is attached for your information.

⁵ TMC §1.28.050 (a) and (b).

⁶ TMC §1.28.050 (c).

⁷ TMC §1.28.060.

Attachment “A” - Checklist for Board of Appeals

- 1. Disqualification. Consider whether there are any reasons for a member of the BBA to disqualify himself or herself.
- 2. Timely appeal. Determine whether the appeal or request for hearing was filed within the time period allowed for filing. This will depend on the Municipal Code sections cited in the violation.
- 3. Setting date and time for hearing; Sending notice. At a special meeting of the Board of Appeals, set the time, place and date for the hearing and send out a notice to the appellant and to the Building Official. Be sure this is done in a timely way, depending upon the City Municipal Code provision which has been cited by the Building Official. The City Clerk’s office shall reserve the hearing room.
- 4. Report and background information. The Board of Appeals should review all of the relevant information, including: the Building Official’s report, background information (which is also provided to the appellant), and copies of the Municipal Code sections cited.
- 5. Procedural requirements satisfied. Based on the particular Municipal Code sections cited for the violation, determine whether the Building Official has met all of the procedural requirements in a timely way, for example, has the Building Official given adequate notice of the violation to the person and did it contain the required elements?
- 6. Conduct the hearing. Conduct the hearing in accordance with its adopted Procedures and any requirements in the particular Municipal Code which apply.
 - Open hearing.
 - Introductions.
 - Explanation of the hearing process.
 - The Building Official presents case and all evidence. (Appellant may cross examine witnesses)
 - Appellant presents case and any evidence. (the Building Official may cross-examine any witnesses.)
 - Rebuttal by the Building Official (if necessary).
 - Rebuttal by appellant (if necessary).
 - Close hearing
 - Board Discussion and decision
- 7. Render decision. Evaluate the evidence and render a decision in writing. If the Board of Appeals decides to modify the conclusion of the Building Official, the Board of Appeals must be very specific about what is now required (i.e. new time for performance, amount of fine, etc.) Send a copy to the appellant, the Building Official and to the City Clerk’s file.

Attachment "B" - Statement of Decision (Sample)

Date

Ms. Jane Doe
3333 First Street
Tracy, CA 95376

Re: Statement of Decision: Code enforcement violation regarding determination
[include property address and/or nature of the violation]

Dear Ms. Doe:

By letter dated _____, 2015, the City's _____ Office notified you were in violation of Tracy Municipal Code section _____ and ordered that _____.

You appealed that determination by filing a letter of appeal with the City Clerk on _____.

The Board of Appeals ("") held an administrative appeal hearing on _____. Present were: [list all people present including witnesses, lawyers, etc.]

This Statement of Decision reflects the Board of Appeals decision based on the evidence presented at that hearing.

The Board of Appeals finds that

If you disagree with this decision, you have the right to appeal this decision to the Tracy City Council pursuant to TMC section 9.44.040 and 1.12.020. This must be done within 10 days after the date of this letter, pursuant to Tracy Municipal Code section _____.

cc: Building Official
City Clerk

Chapter 1.28 ADMINISTRATIVE CITATIONS AND PENALTIES

(Attached to Board of Appeals Administrative Hearing Procedures for reference only. The Board of Appeals may refer to the Administrative Hearing Guidelines in Chapter 1.28 for any matter not covered in their Procedures)

Sections:

- 1.28.010 Applicability.
- 1.28.020 Definitions.
- 1.28.030 Continuing violations of building and zoning issues.
- 1.28.040 Administrative citation.
- 1.28.050 Amount of fines.
- 1.28.060 Payment of the fine.
- 1.28.070 Hearing request.
- 1.28.080 Advance deposit hardship waiver.
- 1.28.090 Hearing procedure.
- 1.28.110 Hearing officer's decision.
- 1.28.120 Late payment charges.
- 1.28.130 Recovery of administrative citation fines and costs.
- 1.28.140 Right to judicial review.
- 1.28.150 Notices.

1.28.010 Applicability.

This chapter provides for administrative citations, which are in addition to all other legal remedies, criminal or civil, which the City may pursue to address a violation of this Code. Use of this chapter is at the sole discretion of the City. This chapter is authorized under Government Code sections 53069.4 and 36901.

The procedures in this chapter shall not be used to enforce a continuing violation regarding building, plumbing, electrical, or other similar structural or zoning issues, without first allowing the person in violation a reasonable time to correct the violation, consistent with the procedures set forth in section 1.28.030.

(Ord. 1040 § 2 Exh. B (part), 2002)

1.28.020 Definitions.

In this chapter:

"Enforcement officer" means any City employee or agent of the City with the authority to enforce a provision of this Code.

"Hearing officer" means a person designated by the City Manager to conduct an administrative hearing. The designated hearing officer shall be an impartial person, such as (1) a City employee from a department which has no involvement in Code enforcement, or (2) someone selected randomly from a panel of law students and/or local attorneys willing to volunteer as a hearing officer, or (3) someone hired from an organization which provides hearing officers, in which case the cost will be shared equally by the City and the person cited.

(Ord. 1040 § 2 Exh. B (part), 2002)

1.28.030 Continuing violations of building and zoning issues.

If a violation pertains to building, plumbing, electrical, or other structural or zoning issues that do not create an immediate danger to health or safety, the City shall provide a reasonable period of time for a person responsible for a continuing violation to correct or otherwise remedy the violation before the imposition of an administrative citation or penalty under this chapter.

Before issuing an administrative citation, the enforcement officer shall give notice to the person responsible, in accordance with section 1.28.150. The notice shall be delivered personally or by certified mail. The notice shall State: the date and location of the violation; the section(s) of the Code violated; a description of the violation(s); the actions required to correct the violation(s); the time period allowed for correcting the violation(s); a Statement that an administrative citation may be issued each day after the time for correction has passed, if correction is not completed; the amount of the fine if an administrative citation is issued; and either a copy of this chapter or an explanation of the consequences of noncompliance and a description of the hearing procedure and appeal process.

The enforcement officer shall allow at least fifteen (15) days from the date the first notice is sent for compliance with the notice. If the nature of the condition is such that compliance is very complicated or expensive, and the condition is not an immediate threat to health or safety, the enforcement officer may extend the compliance period to thirty (30), sixty (60) or ninety (90) days, depending upon the circumstances.

If the enforcement officer determines that all violations have been corrected within the time specified in the notice, no further action shall be taken.

(Ord. 1040 § 2 Exh. B (part), 2002)

1.28.040 Administrative citation.

(a) Authority. Whenever an enforcement officer charged with the enforcement of a provision of this Code determines that a violation of that provision has occurred, the enforcement officer has the authority to issue an administrative citation to the person responsible for the violation.

(b) Contents of citation. Each administrative citation shall contain the following information:

- (1) The date of the violation, or date the violation was observed;
- (2) The address or a definite description of the location where the violation occurred;
- (3) The section of this Code violated and a description of the violation;
- (4) The amount of the fine for the Code violation;
- (5) A description of the fine payment process, including a description of the time within which, and the place to which, the fine shall be paid;
- (6) An order prohibiting the continuation or repeated occurrence of the Code violation described in the citation;
- (7) A description of the administrative citation review process, including the time within which the administrative citation may be contested and the place from which a request-for-hearing form may be obtained to contest the citation; and
- (8) The name and signature of the citing enforcement officer.

In the case of a continuing violation involving building, plumbing, electrical, or other similar structural or zoning issues identified under section 1.28.020, the administrative

citation shall also have attached a copy of the notice that had been sent to the responsible party.

(c) Delivery of citation. The administrative citation shall either be delivered personally or sent by first class mail to the person responsible for the violation.

(Ord. 1040 § 2 Exh. B (part), 2002)

1.28.050 Amount of fines.

(a) Maximum amount of fine. The maximum amount of the fine for each Code violation imposed under this chapter shall be established in a schedule of fines adopted by resolution of the City Council. The schedule of fines shall specify:

(1) Any increased fines for repeat violations of the same Code provision by the same person within a twelve (12) month period; and

(2) Any late payment charges imposed for the payment of a fine after its due date.

(b) Additional amounts. Administrative costs, interest, late payment charges, costs of compliance reinspections, and collection costs are in addition to the fines.

(c) Factors in establishing fine.

(1) Enforcement officer. When preparing the administrative citation, the enforcement officer shall set the fine at the maximum fine established by the City Council.

(2) Hearing officer. Upon request before or at the hearing held under section 1.28.090, the hearing officer may in his or her sole discretion reduce the amount of the fine based on the following factors: (A) the duration of the violation; (B) the frequency, recurrence and number of violations, related or unrelated, by the same violator; (C) the seriousness of the violation; (D) the good faith efforts of the violator to come into compliance; (E) the impact of the violation on the community; and (F) such other factors as justice requires.

(Ord. 1040 § 2 Exh. B (part), 2002)

1.28.060 Payment of the fine.

(a) Due date. The fine shall be paid to the City within thirty (30) days from the date of the administrative citation. The City may suspend the imposition of fines for any period of time during which the violator has filed for necessary permits, and such permits are required to achieve compliance, and the permit applications are actively pending before the appropriate governmental agency.

(b) Refund. The City shall refund a fine paid if the hearing officer determines, after a hearing held under section 1.28.090, that the person charged in the citation was not responsible for the violation or that there was no violation as charged.

(c) Further violations not excused. Payment of a fine under this chapter shall not excuse or discharge any continuation or repeated occurrence of the Code violation.

(Ord. 1040 § 2 Exh. B (part), 2002)

1.28.070 Hearing request.

A person who receives an administrative citation may contest the citation on the basis that there was no violation of the Code or that he or she is not the responsible party. To contest the citation, the person shall submit a request for hearing form to the City within thirty (30) days from the date of the administrative citation. The request form may be obtained from the department specified on the citation. The completed request must be submitted together with either an advance deposit of the fine or notice that a request for an advance deposit hardship waiver has been filed under section 1.28.080.

(Ord. 1040 § 2 Exh. B (part), 2002)

1.28.080 Advance deposit hardship waiver.

(a) A person who intends to contest an administrative citation under section 1.28.070 and who is financially unable to make the required advance deposit of the fine may file a request for an advance deposit hardship waiver under this section.

(b) An advance deposit hardship waiver shall be filed with the finance department on a form provided by that department. The application submitted shall include an affidavit, together with any supporting documents or materials, demonstrating the person's actual financial inability to deposit with the City the full amount of the fine. The waiver form shall be filed within ten (10) days of the date of the administrative citation.

(c) The requirement of depositing the fine shall be stayed unless or until the Finance Director makes a determination not to issue the advance deposit hardship waiver.

(d) The Finance Director may waive the requirement of an advance deposit under section 1.28.070 and issue the waiver only if the evidence submitted demonstrates to the satisfaction of the director the person's actual financial inability to deposit with the City the full amount of the fine in advance of the hearing.

(e) The director shall issue a written determination listing the reasons for his or her determination to issue or not issue the advance deposit hardship waiver. The written determination of the director is final. The written determination shall be served upon the person who applied for the waiver.

(f) If the director determines not to issue a waiver, the person cited shall deposit the fine with the City within ten (10) days of the date of that decision or thirty (30) days from the date of the citation, whichever is later.

(Ord. 1040 § 2 Exh. B (part), 2002)

1.28.090 Hearing procedure.

(a) Setting the hearing. A hearing before the hearing officer shall be set for a date that is not less than fifteen (15) days and not more than sixty (60) days from the date that the request for hearing is filed. The person requesting the hearing shall be notified of the time and place set for the hearing as soon as it is set, and at least ten (10) days before the hearing. If the enforcement officer submits a written report concerning the citation to the hearing officer for consideration at the hearing, then a copy of the report shall be served on the person requesting the hearing at least five (5) days before the hearing.

No hearing shall be held unless the fine has been deposited in advance, under section 1.28.070 or an advance deposit hardship waiver has been issued under section 1.28.080.

(b) Failure to appear. The failure of the person requesting the hearing to appear at the hearing shall constitute a forfeiture of the fine and a failure to exhaust his or her administrative remedies.

(c) At the hearing. The administrative citation and any additional report submitted by the enforcement officer shall constitute prima facie evidence of the respective facts contained in those documents. At the hearing, the party contesting the citation shall be given the opportunity to testify and to present evidence concerning the citation.

(d) Continuances. The hearing officer may continue the hearing and may request additional information from the enforcement officer or the person receiving the citation before issuing the decision. (Ord. 1040 § 2 Exh. B (part), 2002)

1.28.110 Hearing officer's decision.

(a) Decision. After considering the testimony and evidence presented at the hearing, the hearing officer shall issue a written decision to uphold or cancel the administrative citation. The hearing officer shall State the reasons for the decision and shall send a copy of the decision to the person requesting the hearing and to the enforcement officer. The decision of the hearing officer is final, and may not be appealed under chapter 1.12. (b) Status of fine. If the citation is upheld, then the fine amount on deposit with the City shall be retained by the City. If the fine has not been deposited because there was an advance deposit hardship waiver, the hearing officer shall set forth in the decision a payment schedule for the fine.

If the person cited requests a reduction in the fine under section 1.28.050(c), the hearing officer's decision shall respond to that request. If the fine has been reduced, the City shall refund the difference between the amount on deposit with the City and the amount of the reduced fine.

If the citation is canceled, the City shall promptly refund the amount of any fine deposited, together with interest at the average rate earned on the City's portfolio for the period of time that the fine was held by the City.

(c) No employment evaluation based on citations upheld. If the hearing officer is an employee of the City, the employment, performance evaluation, compensation and benefits of the hearing officer shall not be directly or indirectly conditioned upon or affected by the amount of administrative citation fines upheld by the hearing officer. (Ord. 1040 § 2 Exh. B (part), 2002)

1.28.120 Late payment charges.

A person who fails to pay to the City any fine imposed under this chapter on or before the due date is liable for payment of any applicable late payment charges set forth in the schedule of fines.

(Ord. 1040 § 2 Exh. B (part), 2002)

1.28.130 Recovery of administrative citation fines and costs.

(a) A person who fails to pay any fine or other charge owed to the City under this chapter is liable in any action brought by the City for all costs incurred in securing payment of the delinquent amount, including, but not limited to, administrative costs and attorneys' fees. Such collection costs are in addition to any fines, interest, and late charges.

(b) In addition to the administrative citation fine, the City may collect its administrative costs, interest, late payment charges, costs of compliance reinspections, and collection costs.

(c) The City may collect any past due administrative citation fine and other costs and charges by any available legal means.

(Ord. 1040 § 2 Exh. B (part), 2002)

1.28.140 Right to judicial review.

Notwithstanding section 1.20.010 of this Code, a person aggrieved by an administrative decision by a hearing officer under this chapter may obtain review of the administrative decision by filing a petition for review with the Superior Court of California, San Joaquin County, Tracy Branch, within twenty (20) days after service of the final decision, in accordance with Government Code section 53069.4.

(Ord. 1040 § 2 Exh. B (part), 2002)

1.28.150 Notices.

(a) Method of service. The administrative citation and all notices required to be given by this chapter shall be served on the responsible party either by personal service, by first class mail, or by certified mail, return receipt requested. (See section 1.08.100.)

(b) Real property. When real property is involved in the violation, the original notice, the administrative citation and all notices required to be given by this chapter shall be served on the responsible party and, if different, to the property owner at the address as shown on the last equalized county assessment roll. If personal service or service by mail on the property owner is unsuccessful, a copy of each notice and the citation shall be conspicuously posted at the property which is the subject of the violation. The City may, in its discretion, also serve notice on a tenant, a mortgagor or any other person having an interest in the property.

(c) Failure to receive notice. The failure of a person to receive a required notice shall not affect the validity of any proceedings taken under this chapter.

(Ord. 1040 § 2 Exh. B (part), 2002)

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RESOLUTION 2002-420

**ADOPTING A SCHEDULE OF FINES FOR ADMINISTRATIVE CITATIONS
PURSUANT TO TRACY MUNICIPAL CODE §1.28.050**

WHEREAS, On July 2, 2002, City Council adopted Chapter 1.28 of the Tracy Municipal Code ("TMC") allowing for Administrative Citations and Penalties and TMC §1.28.05 states:

"The maximum amount of the fine for each code violation imposed under this chapter shall be established in a schedule of fines adopted by resolution of the City Council,"

WHEREAS, Staff proposes that fines be imposed as follows:

- A. One hundred dollars (\$100.00) for the first violation of any provision of the TMC
- B. Two hundred dollars (\$200.00) for the second violation of any provision of the TMC
- C. Five hundred dollars (\$500.00) for subsequent violations of any provision of the TMC

WHEREAS, These fines are consistent with fines set forth in the Tracy Municipal Code §1.04.030 for criminal citations;

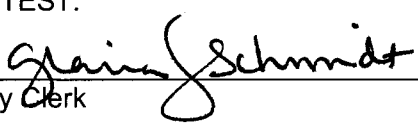
NOW, THEREFORE, BE IT RESOLVED, That City Council adopts the scheduling of fines for administrative citations pursuant to Tracy Municipal Code §1.28.050.

The foregoing Resolution 2002-420 was adopted and passed by the Tracy City Council on the 1st day of October, 2002, by the following vote:

AYES: COUNCIL MEMBERS: HUFFMAN, IVES, TOLBERT, TUCKER, BILBREY
 NOES: COUNCIL MEMBERS: NONE
 ABSENT: COUNCIL MEMBERS: NONE
 ABSTAIN: COUNCIL MEMBERS: NONE



 Mayor

ATTEST:


 City Clerk

DES

TMC - Chapter 9.44 - Board of Appeals

- 9.44.010 - Name and purpose.
- 9.44.020 - Definitions.
- 9.44.030 - Organization and membership.
- 9.44.040 - Powers and duties.

- **Chapter 9.44 - BOARD OF APPEALS**

Sections:

FOOTNOTE(S):

--- (4) ---

Editor's note—Sec. 3 of Ord. No. 1176, adopted Nov. 20, 2012, amended Ch. 9.44, §§ 9.44.010—9.44.040, and Sec. 4 of said ordinance deleted § 9.44.050. Former Ch. 9.44 pertained to the Building Board of Appeals and derived from prior code §§ 9-11.01—9-11.04; Ord. 1111, 2007; and Ord. No. 1157, adopted Apr. 5, 2011.

- **9.44.010 - Name and purpose.**

The Board of Appeals is created in order to hear appeals by persons aggrieved by any administrative decisions in the City's application of the Uniform Housing, Building, Mechanical, Electrical, Plumbing, Abatement of Dangerous Buildings, Residential, Green Building Standards, Historical Building Code, Energy Code, Existing Building Code and Fire Codes, or regulations adopted under them. (See TMC Chapter 9; and TMC sections 9.02.050 and 9.06.050.) It will also serve as the appeal board when determinations are made regarding special conditions for persons with disabilities, under California Building Code section 1.9.1.5 or California Health and Safety Code section 19957.5.

(Ord. No. 1176, § 3, 11-20-2012)

- **9.44.020 - Definitions.**

In this chapter, unless otherwise apparent from the context:

"Board" means the Board of Appeals.

"Building Official" means the Chief Building Official or his or her designee.

"Member" means a member of the Board of Appeals.

(Ord. No. 1176, § 3, 11-20-2012)

- **9.44.030 - Organization and membership.**

(a)

Time of Appointment; Term. The Board will be appointed promptly whenever the City receives an appeal requiring a hearing by the Board. The Board shall be comprised of five

(5) members appointed by the Mayor with the advice and consent of the Council. Members shall serve only until the matter appealed has been concluded and the Board's participation is no longer required.

(b)

Qualifications. The Board will be appointed from a list of potentially interested and qualified candidates maintained by the City Clerk. The Board shall consist of members who are qualified by experience and training to pass on matters pertaining to building construction (such as licensed contractors, engineers and architects). When the appeal concerns the Fire Code, at least two (2) of the members shall be qualified by experience with the Fire Code. When the appeal concerns access for persons with disabilities, at least two (2) members shall be disabled individuals.

A member may not be an employee or elected officer of the City, but may be a member of another City board or commission. A member need not be a resident of the City. A member may not have any interest in property which is the subject of the appeal to the Board.

(c)

Officers; Procedures. Once appointed, the Board shall meet to elect a chair and vice-chair, and to set the time and place of its meetings. The Board shall function in accordance with the standard commission bylaws which apply to other City commissions and boards.

(d)

Secretary; Ex Officio Members. The Chief Building Official shall be the ex officio Secretary of the Board but shall not vote. When an appeal is heard regarding the Fire Code, the Fire Chief or his or her designee shall sit as an ex officio member.

(Ord. No. 1176, § 3, 11-20-2012)

- **9.44.040 - Powers and duties.**

(a)

Functions. The functions of the Board shall be as follows:

(1)

To hear appeals of administrative decisions regarding the use of alternative materials, interpretations pertaining to the enforcement of any of the Codes and related regulations listed in TMC section 9.44.010; and

(2)

To hear appeals of administrative decisions in the application of the Uniform Housing Code, the Uniform Code for the Abatement of Dangerous Buildings, and related sections of this Code in actions declaring certain building structures or conditions therein substandard, unsanitary, or hazardous and requiring their consideration, rehabilitation, reconstruction, correction, or abatement as applicable.

(b)

Limitation on appeals. An application for appeal must be based on a claim that:

(1)

The true intent of the applicable code or the related regulations has been incorrectly interpreted;

(2)

The provisions of the applicable code do not fully apply;

(3)

An equally good or better form of construction is proposed.

The Board does not have the authority to waive requirements of the Code. (California Building Code section 113.2.)

(c)

Conduct of appeals.

(1)

The Board shall exercise its powers in such a manner that substantial justice is done most nearly in accord with the intent and purpose of this Code.

(2)

The Board shall follow fair procedural rules, including giving adequate notice of hearings to all parties, providing hearings open to the public, assuring that the hearing is commenced within sixty (60) days after the date of the filing of the petition for an appeal, recording minutes of its proceedings, and providing copies of minutes for inspection as a public record.

(d)

Procedure of petitions for hearing of appeals. Upon the filing of a petition and appointment of the Board under [section 9.44.030](#), the Secretary shall set the matter on the Board's agenda for consideration. The Secretary shall give written notice of at least seven (7) days to the applicant or petitioner, specifying the time and place of the hearing. At the hearing, the petitioner shall be given an opportunity to be heard and present any evidence to support the request. If necessary, the hearing may be continued.

(e)

Decisions. In rendering its decision, the Board has no authority to waive requirements of any code. (California Building Code section 113.2.) No later than ten (10) days after the close of the hearing(s) the Board shall formally report its decision in writing, including its findings of fact and reasons for the decision. The report shall either approve, approve with modifications or deny the appeal, and shall specify any conditions or limitations imposed. A copy of the report shall be forwarded to the petitioner or his or her representative at the address shown on the petition within ten (10) days after the decision. The Secretary shall provide a copy of the report to the administrative office whose decision was appealed, and shall maintain a copy in the Board's permanent records.

(f)

Appeals to the Council. The decision of the Board in granting or denying an appeal shall become final and effective unless timely appealed to the City Council under [section 1.12.020](#). Upon the receipt of a written appeal filed with the Council, the Secretary of the Board shall transmit to the Council the Board's complete record of the case.

Within ten (10) days after the Council adopts a resolution ordering that an appeal be granted or denied, or modified subject to conditions, the Secretary shall mail a copy of the resolution to the appellant, and one copy shall be attached to the Board's file of the case.

(Ord. No. 1176, § 3, 11-20-2012)