

# 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:**                **Thursday, January 25, 2018, 1:00 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 September 29, 2015, special meeting minutes
5. Appoint Chair and Vice Chair
6. Review Hearing Procedures
7. Beginning at 2:00 p.m. pursuant to notice given to appellant:

Hearing on appeal of Notice and Order dated October 26, 2017, for violations relative to the 2016 Building Code, 2016 California Plumbing Code (CPC), 2016 California Electrical Code (CEC), 2016 California Fire Code (CFC), the Health and Safety Code (H & S), the 1997 Uniform Code for the Abatement of Dangerous Buildings (UCADB), and Section 10.08.3460 (a) of the Tracy Municipal Code. Property Located at 714 North Central Avenue, Tracy. Appellant – Bradley S. Albom, BBS Adventures, LLC. Code Enforcement Case 16CD-0188.

8. Adjournment

**Posted: Tuesday, January 9, 2018**

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.

BOARD OF APPEALS

SPECIAL MEETING MINUTES

September 29, 2015, 3:00 p.m.

Room 109, City Hall, 333 Civic Center Plaza

Web Site: [www.ci.tracy.ca.us](http://www.ci.tracy.ca.us)

1. Chairperson Alegre called the meeting to order at 3:00 p.m.
2. Roll Call found Board Members Alegre, Caling, Davis, and Yerian present; Board Member Aubin absent. Also present were Bill Sartor, Assistant City Attorney, and Adrienne Richardson, Secretary.
3. Items from the Audience - None
4. Approval of May 25, 2010, minutes – It was moved by Board Member Yerian and seconded by Board Member Davis to adopt the May 25, 2010, special meeting minutes. Voice vote found all in favor; passed and so ordered.

DEVIATION

7. Appoint Chair and Vice Chair – It was moved by Board Member Yerian and seconded by Board Member Davis to appoint Board Member Alegre as Chairperson. Voice vote found all in favor; passed and so ordered.

It was moved by Board Member Alegre and seconded by Board Member Davis to appoint Board Member Yerian as Vice Chair. Voice vote found all in favor; passed and so ordered.

5. Review, Discuss and Recommend Adopting Bylaws – Bill Sartor, Assistant City Attorney, stated the Bylaws had been modified to accommodate the amendments to Tracy Municipal Code Section 9.02.050, 9.0.00 and Chapter 9.44 Board of Appeals adopted by Ordinance 1176 on November 20, 2012. Mr. Sartor provided a brief overview of the amended Bylaws. It was moved by Board Member Yerian and seconded by Board Member Caling to recommend adoption by Council of the Board of Appeals Bylaws. Voice Vote found all in favor; passed and so ordered.
6. Review, Discuss and Adopt Hearing Procedures – Bill Sartor, Assistant City Attorney, gave a brief overview of the Draft Administrative Appeal Hearing Procedures. It was moved by Board Member Davis and seconded by Board Member Yerian to adopt the Board of Appeals Administrative Appeal Hearing Procedures. Voice vote found all in favor; passed and so ordered.
8. Schedule Hearing Date – The City Clerk's office received a request for a hearing on July 27, 2015, appealing a Notice for Order for violations on a residential property in Tracy. It was moved by Board Member Yerian and seconded by Board Member Caling to set Tuesday, September 29, 2015, at 4:00 p.m. as the hearing date. Voice vote found all in favor; passed and so ordered.

9. Adjournment – It was moved by Board Member Davis and seconded by Board Member Caling to adjourn. Voice vote found all in favor; passed and so ordered. Time: 3:39 p.m.

The above agenda was posted at the Tracy City Hall on September 22, 2015. The above are action minutes.

Attest:

\_\_\_\_\_  
Chairperson Alegre

\_\_\_\_\_  
Secretary

BOARD OF APPEALS

SPECIAL MEETING MINUTES

September 29, 2015, 4:00 p.m.

Room 109, City Hall, 333 Civic Center Plaza

Web Site: [www.ci.tracy.ca.us](http://www.ci.tracy.ca.us)

1. Chair Alegre called the meeting to order at 4:00 p.m.
2. Board of Appeals Members Caling, Davis, Vice Chair Yerian and Chair Alegre present. Code Enforcement Officer Jim Decker, Code Enforcement Manager Ana Contreras, Building Inspector Supervisor Scott Owen, Secretary Adrienne Richardson, and Appellant Hines Anthony Prejean also present.
3. Items from the Audience - None
4. CONSIDER AN APPEAL OF A CITY OF TRACY NOTICE AND ORDER DATED JUNE 30, 2015, FOR HAZARDS ASSOCIATED WITH A FIRE IN TWO-BUILDINGS ON PROPERTY LOCATED AT 229. W. CARLTON WAY, TRACY, - APPELLANT ANTHONY HINES PREJEAN, CODE ENFORCEMENT CASE 15CD-0065 – Chair Alegre opened the hearing and asked all individuals in attendance to introduce themselves. Chairperson Alegre provided an overview of the hearing process and asked if the City and the Appellant had any additional documents to submit other than the packet provided prior to the meeting. The City representatives did not have any additional documents. Hines Anthony Prejean (Appellant) provided copies of photographs of fencing that has been erected.

Chair Alegre invited the City representatives to present their case. Scott Owen, Building Inspector Supervisor, deferred the presentation of evidence to Jim Decker, Code Enforcement Officer. Mr. Decker read from the Notice and Order. A fire started in a debris pile located at the south east corner of the back yard at the apartment building on 1630 Parker Ave, quickly spread along the back fence to the apartments at 229 West Carlton Way. Both of the wood frame buildings were heavily damaged and rendered non-habitable. The two unit building had partial roof collapse in both units and the west exterior wall was falling away from the building. The property owner was contacted at the site and directed to board up the buildings immediately. At the time, the property owner stated that he had no insurance on either structure and no idea of what to do with the buildings. State law provisions concerning dangerous buildings were explained to the property owner as were the two options relative to abatement of these properties; wither (a) rebuild or (b) demolish the structures. The property owner was contacted approximately three months after the fire and stated that he had not made a decision about the buildings yet. The property owner was informed that if no action was taken to either rebuild or demolish the structures, the City would have no further option but to move forward with abatement action.

During inspections at the damaged apartment building at 1630 Parker Avenue on August 21, 2014, and October 16, 2014, further structural failure of the roof and west wall was observed at the two unit building. A follow-up inspection performed on January 28, 2015, and March 17, 2015, found the plywood used as a board-up method at the

west wall of the two unit building had been removed and both structures were open and unsecured.

Mr. Owen referred to provisions in the 1997 Dangerous and Hazardous Buildings and referred to remediation. If the building itself falls down within confines of its own boundaries, it could be a matter of attractive nuisance, but being so close to other properties and property line, it would fail because it is not able to sustain further damage to high winds or the like.

Board Member Caling asked the age of the structure. Mr. Owen responded approximately 1930s or 1940s originally.

Board Member Caling asked if there were any hazard materials that can cause more damage. Mr. Owen responded he could not say without testing.

Chair Alegre invited Hines Anthony Prejean to present his case.

Mr. Prejean stated he sustained damage to three apartments and was a victim of criminal activity. A fire was deliberately started by unsupervised kids. There were witnesses to the fire. City of Tracy investigated but was unable to find culprits. Mr. Prejean added he has sustained considerable losses and lost three apartments and income of over \$1,700 a month. Mr. Prejean has retained legal counsel and has not done anything because he is negotiating a settlement with the insurance company for 1630 Parker Ave (First American Insurance Company). Mr. Prejean is following the dictate of his attorney who needs the structure as evidence in court. Mr. Prejean added Mr. Decker said the building was not boarded up on west side on the rear of the building but on the day of the fire he boarded that up and the pictures show evidence it was boarded up. Work has started in the adjacent apartment on 1630 Parker Ave and two burned trees have been removed and the fence that was burned down was reinstalled. Someone stole plywood panels. The west wall has been re-boarded and the fence has been reestablished, so there is a different configuration than most recent pictures.

Vice Chair Yerian asked if Mr. Prejean had a copy of the letter from his attorney stating he needed the buildings for evidentiary needs. Mr. Prejean responded he did not bring the letter.

Mr. Owen said the Building Department was very concerned about structural stability of all three structures. The care that the attorney is trying to provide for Mr. Prejean to maintain the evidence for the insurance people, does not out way the concerns for the general public.

Board Member Caling asked for a sketch of the area. Mr. Decker drew a sketch of the area on the white board.

Vice Chair Yerian asked if it was possible to have a temporary cyclone fence built around the property so no one can access it. Mr. Owen responded the biggest concern is the structural stability of the units. The west side sustained the majority of the damage and it is not known if the barrier is adequate enough to be able to sustain any impact of load from the structure itself if it decides to go.

Chair Alegre asked if there was a law suit with 1630 Parker Ave. Mr. Prejean responded yes, kids were playing in a debris pile and lighting matches which was witnessed by his tenants.

Chair Alegre asked if Mr. Prejean owned 1630 Parker Ave. Mr. Prejean responded no.

Chair Alegre asked if it was the owner Mr. Prejean is trying to deal with to get them to pay for it. Mr. Prejean responded yes, they did send out an adjuster to examine the fire. Negotiations were going along swimmingly and all of a sudden they stopped. The owner said there needed to be more investigation and that was the last he heard from them. Mr. Prejean did get estimates on the building and one is from Eagle Construction who specializes in remediation of properties and they are of the opinion that the property is stable enough to renovate. Mr. Prejean handed copies of the estimate from Eagle Construction to the board members.

Mr. Owen referred to the estimate stating Eagle Construction indicated the building and foundation system are substantial enough to be able to be reconstructed, and asked if that was the opinion of a licensed engineer. Mr. Prejean was not sure but indicated the company has access to a licensed engineer.

Mr. Owen stated Page 31 of Eagle Construction's estimate provided a floor plan of the duplex. All the walls of the duplex that face east west are gone except for the one front main wall off of C bedroom.

Chair Alegre asked if east west runs towards the adjacent property. Mr. Owen responded Carlton runs east west, Parker runs north south. Those walls that provide structural integrity for those buildings would be non-existent.

Board Member Caling asked if they were deemed to be share walls. Mr. Owen responded back in those days they were not called share walls. Mr. Owen provided other ways that were used to support structures back in the day. The structural aspect is the concern. The attractive aspect can be fenced and gated.

Mr. Decker referred to page 31 of Eagle Construction's estimate indicating the space between these two buildings is not nearly what is shown. Mr. Decker expressed his concern regarding the exposed area with wind and unknown particles being blown through the buildings.

Chair Alegre asked Mr. Decker if he could confirm the fire started on the other property. Mr. Decker used the diagram on the white board to show where the fire started.

Mr. Prejean added the neighbor adjacent to 1630 Parker Ave witnessed kids starting the fire. Mr. Owen asked about positive identification of the kids. Mr. Prejean responded in the fire report it said they saw the kids but he did not know if they followed up.

Board Member Davis stated the report said plywood was missing in March and asked if staff let Mr. Prejean know. Mr. Decker responded he was going back and forth on the inspections for the apartment for 1630 Parker Ave, and this was just noted as a side note. Mr. Decker said he was waiting for Mr. Prejean to come forward with a remediation plan. Mr. Prejean responded he did not know the boards were missing.

Ana Contreras, Code Enforcement Manager, added the Notice and Order that is contained in the information packet provided to the Board, dated June 30, 2015 is the Notice and Order sent to Mr. Prejean. Any information contained in the Notice and Order was relayed to Mr. Prejean.

Vice Chair Yerian asked Mr. Prejean about the \$123,645.00 estimate to rebuild. Mr. Prejean responded the estimate was not to rebuild but to refurbish or remodel to get it back to the way it was.

Vice Chair Yerian asked Mr. Prejean how he planned to bring the building back to a safe structure in a timely manner without insurance. Mr. Prejean responded he had some money and did not have insurance because he paid off the mortgage. Mr. Prejean added he was paying \$5,000 insurance, the recession got tough and if tenants lose their job, landlords do not have any income. Mr. Prejean stated there were issues with insurance so he cancelled with the insurance company.

Chair Alegre asked if it was Mr. Prejean's attorney or the insurance company's attorney for 1630 Parker Ave dealing with it. Mr. Prejean responded his attorney is dealing with the insurance attorney.

Chair Alegre asked by taking pictures, Mr. Prejean's attorney did not feel it would stand up in court. Mr. Prejean responded had he destroyed the structures in June of last year, they would not have been able to adjust the fire. They sent in an adjuster and adjusted the fire.

Chair Alegre asked if the buildings have been adjusted. Mr. Prejean responded he thought so but did not get much communication as it is between lawyers. Mr. Prejean said he met the adjuster on May 27.

Vice Chair Yerian asked Mr. Prejean if his attorney had given him a date that he will be able to do something. Mr. Prejean responded no as he is dependent on the time schedule of the insurance company who want to investigate.

Vice Chair Yerian added insurance companies move quickly because they do not want any liability of the building being open. Mr. Prejean responded hopefully they will do that in this particular case. Mr. Prejean added he is trying to get this resolved because he understands the predicament it puts the City of Tracy in but he is being pulled in two opposite directions.

Mr. Owen stated although staff understands Mr. Prejean's predicament, staff's duty to the City is to protect everyone. Mr. Owen added something needed to be done to secure this building to prevent coming to a hazard. Mr. Owen said there are options, remediate the building in accordance with the Notice and Order.

Chair Alegre asked if the City representatives had any rebuttal or closing statement.

Mr. Owen responded it is the City's duty is to protect the general public. This has been going on for a year plus with no movement.

Chair Alegre asked Mr. Prejean if he had a closing statement.

Mr. Prejean responded he is an innocent victim. A fire rolled onto his property. He did not have insurance at the time, but is willing to mitigate any damages to the general public. If there is anything he can do to wrap the property. This should be resolved shortly.

Chair Alegre closed the public hearing at 4:39 p.m.

Board discussion followed.

Vice Chair Yerian stated the structure is 70 or 80 years old. The City has given Mr. Prejean a year to get it fixed. Vice Chair Yerian asked if Eagle Construction was brought in by the 1630 Parker Ave folks or by Mr. Prejean. Mr. Prejean responded he brought Eagle Construction in.

Vice Chair Yerian stated Mr. Prejean has had ample time to do something. Vice Chair Yerian added he did not have evidence to say the attorney is asking to leave the structure in one piece so they can put a law suit together. Vice Chair Yerian asked who the law suit would be against. Mr. Prejean responded the insurance company and property owner of the building at 1630 Parker Ave.

Vice Chair Yerian asked about the assailant that started the fire. Mr. Prejean responded there is a kid who is living in the apartments. Vice Chair Yerian asked if that tied him to 1630 Parker Ave.

Board Member Davis asked how they know the kid lived in the apartment.

Mr. Prejean responded in addition to that they have maintained an attractive nuisance and had a lot of boxes and debris stored against a wooden fence, which kids lit on fire. The fence and trees caught on fire.

Vice Chair Yerian responded the building cannot sit as a public nuisance forever. There has to be some kind of time frame and no one is giving anything in letter form. Mr. Prejean responded he could get the letter form.

Board Member Davis said he agreed with the City. The building is not structural anymore. There is nothing there holding the building up yet it is still standing. The pictures indicate there is no share wall and a good wind will push it over.

Board Member Caling told Mr. Prejean he was sorry this happened to him. The building has no structural integrity. With the high winds in Tracy it is a matter of time before the building falls over. Because of the age of the buildings and materials that were used back then, they may have hazardous in them which may cause more damage to the kids living around there areas. Board Member Caling asked if buildings F, D and E were occupied and if buildings A and B are protected by fence. Mr. Prejean responded that F, D and E are occupied and A and B are not protected by fence. Board Member Caling confirmed he agreed with the City.

Chair Alegre asked if the board upholds the City's position what would be the next step.



Mr. Owen responded staff would expect the buildings to be abated. An option, even if the buildings were going to be repaired would minimally require a certain amount of remediation to stabilize the structures so they do not sustain any further damage or pose threat to general public. There would have to be a time line because of the nature of materials that may be in the building.

Ms. Contreras responded it would depend if the board were to uphold Code Enforcements recommendation; then a new time line would be established for the property owner to either pull the demolition permit or to submit plans along with engineers' drawings.

Chair Alegre asked what would happen if Mr. Prejean did not do either after that time line. Ms. Contreras responded Mr. Prejean could begin accruing both administrative citations and criminal citations. Staff could also look at taking the property into receivership process which would take it out of the City's and property owners hands, and can continue citing every day the property is in violation, which costs could add up quickly.

Chair Alegre asked if the board upheld the recommendation, would the next step be to give Mr. Prejean a certain amount of time to do one of two things and if it was to rebuild there is a certain amount of time to make it safe. Mr. Owen responded that is immediate and then of course plans and submittals for reconstruction would follow shortly after.

Chair Alegre asked how long it would take to get plans. Mr. Prejean responded the time limitations are much too short.

Ms. Contreras added if the buildings continue to deteriorate where it is an eminent hazard and the City is required to abate the nuisance, the cost would be borne by the property owner along with any administrative charges. The City has to pay prevailing wage to the contractor who does the abatement. If taken into City's hands to abate, it could cost the property owner a lot more than if he would abate himself.

Chair Alegre stated he had a problem with a fire starting on someone else's property and now Mr. Prejean is feeling the brunt, but a year to take care of it is a substantial amount of time. Chair Alegre added he did not believe the buildings are going to fall over and damage the other property, but a child is shown in one of these pictures playing on the porch of one of burnt ones which bothered him. Those three buildings should have been separated from the other buildings on Mr. Prejean's property. The property has been seen by an adjuster for the other company. There is a lot of pictures and paperwork to substantiate that this burned down. Chair Alegre did not see the need to keep the building as evidence for court as the whole site can be videoed.

Vice Chair Yerian made a motion to uphold the City's Notice and Order. Board Member Calings seconded the motion. Voice vote found all in favor; passed and so ordered. The board's decision is to uphold the Cities position.

Mr. Prejean asked what the Boards decision meant. Chair Alegre responded Mr. Prejean needed to get with the Building Department and come to a quick resolution to solve their concerns.

Ms. Contreras stated staff spoke to Mr. Prejean prior to the hearing and explained everything that was explained to the Board today. Ms. Contreras added staff will meet with Mr. Prejean within a few days and establish a timeline for submitting plans or demolition. In the meantime, staff will put together a schedule of events that need to happen to at least sure up the building until Mr. Prejean decides whether he wants to demolish or rebuild. Staff has provided Mr. Prejean ample time to come up with a decision of what he is going to do. Staff will continue to work with Mr. Prejean in an expedient fashion so there can be a final resolution on the issue.

Mr. Prejean asked how many days he had to appeal to Council

Ms. Contreras responded staff will provide Mr. Prejean with the appeal process information and guidance on how to file that appeal.

5. Adjournment – It was moved by Vice Chair Yerian and seconded by Board Member Davis to adjourn. Voice vote found all in favor; passed and so ordered. Time: 4:55 p.m.

The above agenda was posted at the Tracy City Hall on September 22, 2015. The above are action minutes.

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Dennis Alegre, Chair

Attest:

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Secretary



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.<sup>1</sup>

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<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

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.

### 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. The Board’s secretary will be in charge of ensuring that this is done.
- 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 Board should review this material to be familiar with the matter prior to the hearing.

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<sup>2</sup> U.S. Const. 14<sup>th</sup> Amendment; Cal. Const. art I, §7.

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

- Municipal Code. Prior to the hearing, the Board should review any relevant portions of the Tracy Municipal Code. 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 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 person requesting the hearing shall get a copy of the City's report at least 10 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. The Board's secretary will ensure that this is done. Additional documentation may be submitted at the hearing by both sides. The Chairperson of the Board should ensure there are sufficient copies made for all parties and individual Board members.

### 3. Conducting the hearing.

All meetings of the Board are subject to the Brown Act. The hearing and deliberations of the Board must take place during a noticed meeting. If the hearing and deliberations cannot be completed during the initial noticed meeting, another noticed meeting for continuing the hearing will need to be set.

The objective of the hearing is for the Board to conduct a fair and orderly hearing, to hear the evidence from both sides, determine the facts, and make a decision whether to uphold, modify or deny the appeal. Formal rules of evidence do not apply. However, the Board is in charge of the proceedings. The Chairperson of the Board decides who speaks and when, and when and if to take a break.

- If a situation becomes tense, the Board Chair can announce that there will be a break (for a specified time, usually 5 or 10 minutes).
- 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 to ensure that the hearing is conducted fairly and in an orderly manner 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. 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 or make a closing argument.
- The appellant may then want to rebut what the Building Official/Code enforcement officer has just said or make a closing argument.
- The parties shall submit documentation in advance of the hearing to the other side and to Board. Documentation may also be submitted at the hearing by either side. The Board shall determine whether the documentation submitted is relevant and material to the hearing and give it whatever consideration is due.

4. Render decision.

After both parties have completed presenting the case, the Chairperson of the Board shall close the evidentiary portion of the hearing and the Board shall discuss and evaluate the evidence and render a decision. This needs to be done during the noticed meeting. The Board may choose to approve, modify or deny the appeal (which will in essence either deny, modify or uphold the City's action).

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. 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 Board shall formally report its findings of fact and, together with the reasons, its decision in writing. The Secretary for the Board can complete this action at the direction of the Board. The Board shall inform the parties of an anticipated date of its written decision and confirm the appellant's mailing address before the close of the hearing.

In accordance with Chapter 9.44.040(e), the written decision shall order the petition or appeal 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.<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup> 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.<sup>7</sup>

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.

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

<sup>5</sup> TMC §1.28.050 (a) and (b).

<sup>6</sup> TMC §1.28.050 (c).

<sup>7</sup> 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 and advise parties when decision will be rendered.
- 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 \_\_\_\_\_, 2010, 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 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)



City of Tracy  
Board of Appeals Administrative Appeal Hearing Procedures

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;

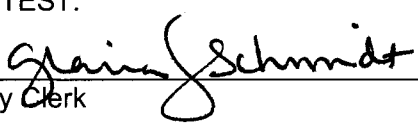
NOW, THEREFORE, BE IT RESOLVED, That City Council adopts the scheduling of fines for administrative citations pursuant to Tracy Municipal Code §1.28.050.

\*\*\*\*\*

The foregoing Resolution 2002-420 was adopted and passed by the Tracy City Council on the 1<sup>st</sup> 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)