



Office of the City Manager

CONSENT CALENDAR

May 26, 2015

To: Honorable Mayor and Members of the City Council

From:  Christine Daniel, City Manager

Submitted by: Eric Angstadt, Director, Planning and Development Department

Subject: Amending BMC Chapter 19.44 to Extend the Date of Appeal Hearings

RECOMMENDATION

Adopt first reading of an Ordinance amending Chapter 19.44, Section 19.44.040 of the Berkeley Municipal Code (“BMC”) to extend the date by which an appeal hearing must be scheduled before the Housing Advisory Commission (“HAC”) from 30 to 45 days from the appeal date.

FISCAL IMPACTS OF RECOMMENDATION

No foreseeable fiscal impacts.

CURRENT SITUATION AND ITS EFFECTS

BMC Section 19.44.040.C requires that a timely appeal of a Substandard Notice and Order be scheduled for a hearing before the HAC within 30 days from receipt of the appeal.

Setting a hearing before the HAC within 30 days is not sufficient time for the Building Official to adequately review and respond to appeal points especially in light of the HAC Secretary’s need to prepare and distribute the HAC packet in advance of the meeting. Therefore, the proposed amendment changes the date by which an appeal hearing must be conducted from 30 to 45 days.

This ordinance also amends Section 19.44.040.A by eliminating the word “from,” which was used incorrectly.

BACKGROUND

BMC Chapter 19.44 was adopted to implement state law and regulations to provide for an administrative appeal of determinations by the Building Official that a property was a Substandard Building pursuant to Health and Safety Code Section 17980.

In 2014, Council adopted a proposed amendment to this subsection to increase the time between the appeal and the HAC hearing from 15 to 30 days. However, since then staff has continued to experience difficulty adequately responding to appeal points and meeting the HAC Secretary deadlines for inclusion in the HAC packet.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

RATIONALE FOR RECOMMENDATION

The proposed ordinance would allow staff the time it needs to properly respond to Substandard Order appeals which frequently involve complex issues.

ALTERNATIVE ACTIONS CONSIDERED

BMC Section 19.44.040 could remain as currently drafted. However, staff will likely continue to request appellants' consent for continuances of the HAC hearing in order to comply with the ordinance requirements and adequately respond to appeal points.

CONTACT PERSON

Eric Angstadt, Director, Planning and Development, 981-7400

Attachments:

1: Ordinance

ORDINANCE NO. #,###

AMENDING SECTION 19.44.040 OF THE BERKELEY MUNICIPAL CODE TO ALLOW FOR A HEARING TO BE SCHEDULED WITHIN 45 DAYS FROM A TIMELY APPEAL

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Section 19.44.040 of the Berkeley Municipal Code is amended to read as follows:

**19.44.040 Appeals.**

A. Form of Appeal. Any person entitled to service under Section 1101 of the Berkeley Housing Code may appeal ~~from~~ any notice and order or any action of the Building Official under this code by filing at the Office of the Building Official a written appeal containing:

1. A heading in the words: "Before the Housing Advisory Commission of the City of Berkeley"
2. A caption reading: "Appeals of.....," giving the names of all appellants participating in the appeal.
3. A brief statement setting forth the legal interest of each of the appellants in the building of the land involved in the notice and order.
4. A brief statement in ordinary and concise language of that specific order or action protested, together with any material facts claimed to support the contentions of the appellant.
5. A brief statement in ordinary and concise language of the relief sought and the reasons why it is claimed the protested order or action should be reversed, modified or otherwise set aside.
6. The signatures of all parties named as appellants and their official mailing addresses.
7. The verification (by declaration under penalty of perjury) of at least one appellant as to the truth of the matters stated in the appeal.

Except as otherwise provided by ordinance, the appeal shall be filed within thirty days from the date of the service of such order or action of the Building Official, provided, however, that if the building or structure is in such condition as to make it immediately dangerous to the life, limb, property or safety of the public or adjacent property and is ordered vacated and is posted in accordance with Section 1103 of the Berkeley Housing Code, such appeal shall be filed within ten days from the date of service of the notice and order of the Building Official.

B. Effect of Failure to Appeal. Failure of any person to file an appeal as provided for herein shall constitute a waiver of the right to an administrative hearing and adjudication of the notice and order or any portion thereof.

C. Processing of Appeal and Decision. Upon receipt of any appeal filed pursuant to this section, the Building Official shall present it for hearing to the Commission within ~~thirty~~thirty-fourty-five days from receipt of the appeal. The Commission may continue the hearing for good cause shown, and shall render a decision no later than ten days after the hearing on the appeal is closed.

D. Scope of Hearing on Appeal. Only those matters or issues specifically raised by the appellant shall be considered in the hearing of the appeal.

E. Staying of Order Under Appeal. Except for vacation orders made pursuant to Section 1103 of the Berkeley Housing Code as adopted by the City, enforcement of any notice and order of the Building Official issued under this Code shall be stayed during the pendency of an appeal therefrom which is properly and timely filed.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.