

CITY OF ALAMEDA ORDINANCE NO. _____

New Series

AMENDING THE ALAMEDA MUNICIPAL CODE BY AMENDING: (1) SECTION 2-17 OF CHAPTER II (ADMINISTRATION); (2) SECTION 1-7 (ADMINISTRATIVE CITATIONS) OF CHAPTER I (GENERAL); (3) SECTION 2-44 (BUILDING INSPECTOR) OF CHAPTER II (ADMINISTRATION); (4) SECTION 1-5 (PENALTY PROVISIONS; ENFORCEMENT) OF CHAPTER I (GENERAL); (5) SECTION 30-23 (CERTIFICATE OF OCCUPANCY) OF CHAPTER XXX (DEVELOPMENT REGULATIONS); AND (6) OTHER RELATED AMENDMENTS CONCERNING CODE ENFORCEMENT

WHEREAS, this Ordinance is adopted pursuant to the City's police powers, afforded by the state constitution and state law to protect the health, safety, and welfare of the public.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ALAMEDA DOES HEREBY ORDAIN AS FOLLOWS:

Section 1: SECTION 2-17 (HOUSING AND BUILDING CODE HEARING AND APPEALS COMMISSION) of Chapter II (ADMINISTRATION) of the Alameda Municipal Code, is hereby amended as follows (in redline; otherwise, no change):

2-17 – HOUSING AND BUILDING CODE HEARING AND APPEALS COMMISSION.

2-17.1.1 ~~[Deleted.] Building Code shall mean collectively or individually, the Alameda Administrative Code, the Alameda Building Code, the Alameda Residential Code, the Alameda Electrical Code, the Alameda Plumbing Code, the Alameda Mechanical Code, the Alameda Fire Code, the Alameda Housing Code, the Alameda Historical Building Code, the Alameda Code for the Abatement of Dangerous Buildings, the Alameda Green Building Standards Code, the Alameda Energy Code, and the State Housing Laws.~~

2-17.1.2 ~~[Deleted.] Building Official shall mean the Chief Building Inspector, Fire Marshal or Code Enforcement Officer, or his or her appointed or designated representative.~~

2-17.1 – Commission Created.

[No Change.]

2-17.2 – Membership; ~~Appointment; Term of Office; Removal; Vacancies.~~

- a. The Commission shall consist of three (3) members of the Historical Advisory Board as outlined in AMC Section 2-11.5, subsections a through c.five ~~(5) members, all of whom shall at the time of their appointment and continuously throughout their incumbency be residents of the City.~~

- b. ~~[Deleted.]Upon nomination of the Mayor, the City Council shall appoint, between May 1 and July 1 of each year, such members as are necessary to maintain a full Board, for terms commencing on the first day of July following such appointment and continuing for four (4) years thereafter until the successor of such member is appointed and qualified.~~
- c. ~~[Deleted.]No person shall be eligible for the office held by that person for two (2) consecutive terms immediately prior to the term for which the person seeks appointment.~~
- d. ~~[Deleted.]A member of the Commission may be removed by the vote of a majority of the Council. A vacancy in the office of a member shall be filled for the unexpired term by nomination and appointment by the Mayor and the City Council, respectively, for the duration of the unexpired term of office.~~

2-17.3 – Meetings; Voting.

- a. [No Change.]
- b. The votes of a majority of the entire membership of the Commission shall be necessary to take any action thereof, except where one or more members are unavailable due to recusal (conflicts of interest), the remaining Commissioners may hear the matter, but unanimity will be required where applicable.
- c. [No Change.]

2-17.4 - Duties of Commission.

It shall be the duty of the Housing and Building Code Hearing and Appeals Commission to:

- a. Hear and decide appeals from orders, decisions or determinations made by the Building Official regarding the application and interpretation of the Alameda Administrative Code, the Alameda Building Code, the Alameda Residential Code, the Alameda Historical Building Code ~~the Alameda Code for Building Conversation~~, the Alameda Electrical Code, the Alameda Plumbing Code, the Alameda Mechanical Code, the Alameda Code for the Abatement of Dangerous Buildings, the Alameda Housing Code, the Alameda Energy Code, the Alameda Mechanical Code, the Alameda Green Building Standards Code and all determinations made by the Fire Chief regarding the application of the Alameda Fire Code.
- b. [No Change.]
- c. Render all decisions and findings in writing to any appellant with a duplicate copy to the Building Official~~Chief Building Inspector~~.

d. [No Change.].

2-17.5 – Composition of the Commission; Special Terms, Qualifications, and Conditions.

a. [No Change.].

b. The Building Official~~Chief Building Inspector~~, or his/her designee, shall be an ex officio member of the Commission, but shall have no vote on any matter before the Commission.

c. [No Change.].

Section 2: SECTION 1-7 (ADMINISTRATIVE CITATIONS) of Chapter I (GENERAL) of the Alameda Municipal Code, Section 1-7.3 is hereby amended as follows (in redline; otherwise, no change):

1-7.3.1 – Notice of Violation.

a. Prior to issuance of an administrative citation, except as provided for below, the Enforcement Official shall issue a Notice of Violation to a person responsible for any municipal code violation, including a continuing violation which pertains to building, plumbing, electrical or other structural or zoning issues.

b. The Notice of Violation shall specify the action required to correct or otherwise remedy the violation(s) within a reasonable period of time.

c. A reasonable time period within which to correct or remedy the violation(s) shall be not less than 24 hours and not more than 30 calendar days, unless the Enforcement Official determines that good cause exists for some other time period. The Enforcement Official shall specify for each violation this reasonable time period. In doing so, the Enforcement Official may consider the cost of abatement or correction, the time required to obtain permits for correction, the time needed to obtain estimates, drawings and contracts for correction, time required for physical relocation of personal property, the time required to review submittals in determining the reasonable warning period to be assigned for each violation, and/or his/her experience. Subsections a. and b. above are inapplicable and the Enforcement Official may take immediate enforcement action, including issuance of an administrative citation, under the following circumstances:

a. The violation poses an immediate danger to the public's health, safety, or welfare; and

a-b. The violation exists because of, facilitates in some manner, or is otherwise related to the illegal cultivation of cannabis, subject to subsection (C) of California Government Code section 53069.4 (as amended).

1-7.3.2 – Administrative Citation.

- a. [No change.].
- b. [No change.].

Section 3: SECTION 1-7 (ADMINISTRATIVE CITATIONS) of Chapter I (GENERAL) of the Alameda Municipal Code, Section 1-7.9 is hereby amended as follows (in redline; otherwise, no change):

1-7.9 – Hearing Procedure.

- a. [No change.].
- b. The hearing shall be set for a date that is not less than fifteen (15) days nor more than sixty (60) days from the date that the request for hearing is filed in accordance with the provisions of this section. Either party may request one continuance of the hearing, but in no event may the hearing begin later than ninety (90) days after receipt of their request for hearing, except as set forth below. The party contesting the administrative citation may attend the hearing in person or, in lieu of attending, may submit written argument and documentation under penalty of perjury at least five (days) prior to the date scheduled for the hearing. Notwithstanding the foregoing, the hearing officer may continue the hearing beyond the 90 day period for a reasonable amount of time in the interests of justice.
- c. At the hearing, the party contesting the administrative citation shall be given the opportunity to present oral and documentary evidence concerning the administrative citation. The hearing shall be informal, the rules of evidence shall not apply, and all evidence shall be admissible which is of the kind that reasonably prudent persons rely upon in making decisions. The hearing officer shall have the ability to control the proceeding, including the ability to limit testimony and the admissibility of evidence that is unduly repetitious or make other rulings or place other limitations on the hearing that s/he deems to be in the interests of judicial economy or justice.
- d. [No change.].
- e. [No change.].

Section 4: SECTION 2-44 (BUILDING OFFICIAL) of Chapter II (ADMINISTRATION) of the Alameda Municipal Code, is hereby amended as follows (in redline; otherwise, no change):

2-44 – BUILDING OFFICIAL

2-44.1 - Office of ~~Chief~~ Building InspectorOfficial; Duties.

The Office of ~~Chief~~ Building InspectorOfficial is hereby created. The ~~Chief~~ Building InspectorOfficial shall be appointed by the City Manager, and it shall be the ~~Chief~~ Building Inspector'sOfficial's duty to make all building inspections required by law or ordinance; to enforce all building laws and ordinances; to attend to the official numbering of buildings, and to perform such other duties as may be imposed by the City Council or City Manager.

Section 5: SECTION 1-5 (PENALTY PROVISIONS; ENFORCEMENT) of Chapter I (GENERAL) of the Alameda Municipal Code, Section 1-5 is hereby amended as follows (in redline; otherwise, no change):

1-5.1 - Misdemeanors; Infractions; General Penalty; Continuing Violations.

- a. [No change.].
- b. [No change.].
- c. Whenever in this Code or in any other ordinance of the City or in any order, rule or regulation issued or promulgated by any duly authorized officer or agent of the City, any act is prohibited or is made or declared to be an infraction, where no specific penalty is provided therefor, the violation thereof shall be punished by a fine not exceeding five hundred (\$500.00) dollars as set forth in California Government Code Section 36900, as amended Ordinance--REDLINE--1.17.2019.
- d. [No change.].
- e. [No change.].
- f. [No change.].
- g. A fine not exceeding two thousand five hundred dollars (\$2,500) for each additional violation of the same ordinance within two years of the first violation if the property is a commercial property that has an existing building at the time of the violation and the violation is due to failure by the owner to remove visible refuse or failure to prohibit unauthorized use of the property.
- h. All fines levied for infractions pursuant to California Government Code Section 36900 (as amended) shall be permitted to apply for a hardship waiver to reduce the fine under the same process that governs administrative citations, as set forth below in Section 1-7.7 of this Chapter (as amended).

1-5.2 - Authorization of Code Enforcement Officers; Limitations.

- a. The following classification of City employees and agents shall have the authority under Penal Code Section 836.5 to issue citations for violations of the Alameda Municipal Code:
 1. Fire/Building Code Compliance Officer;
 2. Planning and Building Director;
 3. Public Works Director;
 4. Public Works Maintenance Superintendent;
 5. City Engineer;
 6. Building Official;
 7. Combination Building Inspector;
 8. Supervising Building Inspector;
 9. Environmental Service Manager;
 10. Environmental Services Program Specialist I and II;
 11. Fire Inspector, Assistant Fire Marshal, Fire Marshal;
 - 10-12. Any other position designated by the City Manager.
- b. [No change.].

Section 6: SECTION 30-23 (Certificate of Occupancy) of Chapter XXX (DEVELOPMENT REGULATIONS) of the Alameda Municipal Code, Section 30-23.2 (Application) is hereby amended as follows (in redline; otherwise, no change):

Application for a certificate of occupancy for a new use or occupant, a change of land use, for a new building or for an existing building which has been altered or moved shall be made to the City Building Official before any such land or building is occupied or used. No permit for excavation on any building site shall be issued before an application for a certificate of occupancy has been made.

Section 7: DECLARATORY OF EXISTING LAW

The provisions of paragraph 6 of Section 30-23.2 are deemed to be declaratory of existing law.

Section 8: CEQA DETERMINATION

Adoption of the Ordinances amending the AMC is not a project under California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15378 and Public Resources Code section 21065 because it does not: (1) approve a project or result in a direct physical impact on the environment, or (2) contemplate known future projects, and as such, no known environmental impacts are known at this time. Instead, the proposed amendments would clarify procedural aspects related to the implementation of locally adopted building and other related codes.

As a separate and independent basis, adoption of the Ordinances amending the AMC is exempt from CEQA pursuant to CEQA Guidelines section 15061(b)(3) because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

Section 9: SEVERABILITY

If any provision of this Ordinance is held by a court of competent jurisdiction to be invalid, this invalidity shall not affect other provisions of this Ordinance that can be given effect without the invalid provision and therefore the provisions of this Ordinance are severable. The City Council declares that it would have enacted each section, subsection, paragraph, subparagraph and sentence notwithstanding the invalidity of any other section, subsection, paragraph, subparagraph or sentence.

Section 10: EFFECTIVE DATE

This Ordinance shall be in full force and effect from and after the expiration of thirty (30) days from the date of its final passage.

Presiding Officer of the City Council

Attest:

Lara Weisiger, City Clerk

* * * * *

I, the undersigned, hereby certify that the foregoing Ordinance was duly and regularly adopted and passed by the Council of the City of Alameda in a regular meeting assembled on this ____ day of _____, 2019, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said City this ____ day of _____, 2019.

Lara Weisiger, City Clerk
City of Alameda

Approved as to form:

Michael H. Roush, Interim City Attorney
City of Alameda