

ORDINANCE NO 10578 (N.S.)

AN ORDINANCE AMENDING SECTIONS OF TITLES 1 AND 6 OF THE SAN DIEGO COUNTY CODE OF REGULATORY ORDINANCES RELATED TO HEARING BOARDS AND HEARING OFFICERS

The Board of Supervisors of the County of San Diego ordains as follows:

Section 1: Purpose. Section 27721 of the California Government Code provides that a County hearing officer may be authorized by ordinance to hear any matter that state law or local ordinance provides shall be heard by any county board, agency, commission or committee. This ordinance clarifies that this process is applicable to certain hearings under the State Housing Law. The ordinance also relieves the Clerk of the Board of responsibility to make decisions on applications for hardship waivers of appeal fees in nuisance abatement cases; those decisions will now be made by a hearing officer before a hearing is scheduled. Finally, the ordinance clarifies that a timely appeal of an order to pay an administrative civil penalty will stay the requirement to pay penalties until the hearing officer renders a decision on that appeal.

Section 2: Section 16.101 of the County Code is amended to read as follows:

SEC. 16.101. ESTABLISHMENT OF APPELLATE HEARING BOARD.

This chapter establishes an Appellate Hearing Board to hear appeals from designated decisions by County departments. This chapter only applies when this code authorizes an appeal to the Appellate Hearing Board, or state law authorizes an appeal to a local appeals board or a housing appeals board. In the event other sections of this code contained within other chapters specify procedures for processing and hearing an appeal applicable to those chapters, those specific procedures shall apply and Sections 16.103-16.106 shall not apply.

Section 3: Section 16.102 of the County Code is amended to read as follows:

SEC. 16.102. DEFINITIONS.

- (a) Pursuant to section 27721 of the California Government Code, the "Appellate Hearing Board" shall be a County hearing officer appointed pursuant to sections 650 et seq. of the County Administrative Code, or where authorized, are appointed by the director of the department initiating the enforcement action. For purposes of section 17920.5 and 17920.6 of the California Health and Safety Code, "local appeals board" and "housing appeals board" shall have the same meaning as "Appellate Hearing Board".
- (b) An "appellate hearing officer" shall be a County hearing officer assigned to hear an appeal under this chapter.

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Section 4: Section 16.297 of the County Code is amended to read as follows:

SEC. 16.207. APPEAL PROCEDURE.

- (a) Any owner or other person in possession of the property may appeal an abatement proceeding commenced pursuant to this chapter within the number of days allowed in the Notice and Order to Abate. The appeal shall be submitted in writing, specify the grounds upon which the appeal is taken, and contain the name, address and telephone number of the appellant. The appeal shall be accompanied either by the payment of the appeal fee or by a hardship waiver application as set out in section 16.208, and shall be filed with the Clerk. Timely appeal shall stay any further abatement action until the hearing is concluded, or until the appeal is automatically denied pursuant to section 16.208(e).
- (b) If the appeal fee is paid, either with the appeal or after review by a hearing officer as set out below, the Clerk shall set the matter for hearing, assign the appeal to a hearing officer and provide at least 10 days notice to the parties in writing of the date and location of the hearing.
- (c) If an application for a hardship fee waiver is filed as provided in section 16.208, the Clerk shall refer the hardship fee waiver determination to a hearing officer as soon as practicable, but shall not set the matter for hearing.

Section 5: Section 16.208 of the County Code is amended to read as follows:

SEC. 16.208. APPEAL FEE: DETERMINATION OF AMOUNT/WAIVER OF PAYMENT/REFUND.

- (a) The amount of the appeal fee shall be determined periodically by the Board of Supervisors based upon the County's costs incurred in processing an appeal pursuant to this chapter. The calculation shall include all costs of the County Abatement Officer, Clerk, and the hearing officer, but shall exclude actual costs for any work of abatement calculated pursuant to Section 16.21.
- (b) If the appellant claims an economic hardship in paying the appeal fee, the appellant may apply for a waiver of the appeal fee on forms provided by the County Abatement Officer for that purpose and served with the Notice and Order to Abate. The forms shall be substantially similar to those required of litigants initiating court proceedings in forma pauperis pursuant to Government Code section 68511.3. The forms shall be executed under penalty of perjury and contain a declaration as to the truthfulness and correctness of the information contained therein.
- (c) Upon filing a timely appeal and for good cause shown, the Clerk may grant the appellant a period of time beyond expiration of the appeal period in which to complete and submit the waiver forms. In no event shall the additional time exceed two days.

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- (d) A hearing officer assigned to make a hardship fee waiver determination will do so within ten business days and thereafter notify the Clerk of such determination. Failure to make such determination within ten business days shall be deemed denial of the hardship fee waiver determination. The determination shall be made based solely on the information contained in the waiver forms filled by the appellant. If the appellant does not provide required information or the application is not signed under penalty of perjury, the fee waiver may be denied on those grounds. The decision of the hearing officer shall be final. If a waiver is granted the Clerk shall proceed as if an appeal fee had been paid. If a waiver is denied, the Clerk shall notify the appellant the appeal fee must be paid within five business days or the appeal will be automatically denied.
- (e) If the appellant fails to submit completed waiver forms or pay the appeal fee in a timely manner, the Clerk shall automatically deny the appeal and shall notify the appellant and the County Abatement Officer of denial. Enforcement of the order to abate may then proceed as if no appeal request was submitted.
- (f) If the appeal fee is paid and the hearing officer finds there is no public nuisance, the appeal fee shall be refunded to the appellant without interest.

Section 6: Section 18.207 of the County Code is amended to read as follows:

SEC. 18.207. PAYMENT OF CIVIL PENALTIES.

- (a) Civil penalties assessed shall be paid in full within 15 days from the date the Notice and Order is served unless the person served with the Notice and Order files a timely request for a hearing under section 18.208. If a timely request for a hearing is filed, no payment of the assessed civil penalties shall be required until the conclusion of the hearing.
- (b) In the case of a continuing violation, the person charged shall pay any amount assessed in the Notice and Order within 15 days from the date the Notice and Order was served. If a Director assesses continuing penalties as provided in section 18.204(b)(5) the person charged with a continuing violation shall be responsible to pay accrued penalties within 15 days from the date of notice from a Director that payment of an additional amount is due. If a timely request for a hearing is filed, penalties for continuing violations will continue to accrue, but payment shall not be required until the conclusion of the hearing.
- (c) Civil penalties paid to the County before a hearing under section 18.208 shall be refunded in full or in part if a hearing officer determines:
 - (1) A violation enforceable under this chapter did not occur or did not occur on some or all of dates charged, or
 - (2) The person charged was not responsible for a violation, or
 - (3) The amount of the civil penalties shall be reduced.

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Section 7: Section 69.103 of the County Code is amended to read as follows:

SEC. 69.103. DEFINITIONS.


The following definitions shall apply to this chapter:

- (a) "Residence" means any dwelling unit, guest room or suite of rooms that is subject to the State Housing Law.
- (b) "Substandard condition" means a condition described in Section 17920.3 of the Health and Safety Code (i.e., the State Housing Law).
- (c) "Unsanitary condition" means a condition inside a building or mobilehome that exposes occupants to unconfined sewage, or the presence of sewage or greywater at the soil surface outdoors.
- (d) "Wiring" means all parts and components of the electrical system in a residence.

Section 8: Effective Date. This Ordinance shall take effect and be in force thirty (30) days after the date of its passage, and before the expiration of fifteen (15) days after its passage, a summary shall be published once with the names of the members voting for and against the same in a newspaper of general circulation published in the County of San Diego.

APPROVED AS TO FORM AND LEGALITY
THOMAS E. MONTGOMERY, COUNTY COUNSEL
By: Rodney Lorang, Senior Deputy County Counsel

PASSED, APPROVED, AND ADOPTED by the Board of Supervisors of the County of San Diego this 13th day of November, 2018.


KRISTIN GASPAR
Chairwoman, Board of Supervisors
County of San Diego, State of California

The above Ordinance was adopted by the following vote:

AYES: Cox, Jacob, Roberts, Horn
ABSENT: Gaspar

ATTEST my hand and the seal of the Board of Supervisors this 13th day of November, 2018.

DAVID HALL
Clerk of the Board of Supervisors

By C. Rozky
Chrystal Rodriguez, Deputy



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