



## STAFF REPORT

**Date:** April 17, 2017  
**To:** Mayor and City Councilmembers  
**From:** William R. Galstan, Special Counsel *wrb*  
**Cc:** Bryan Montgomery, City Manager; Derek Cole, City Attorney; Troy Edgell, Code Enforcement Manager; Libby Vreonis, City Clerk/Paralegal  
**Subject:** Ordinance Amending Oakley Municipal Code Sections 1.5.209(c)(i), 1.5.209(c)(iv) and 1.5.210(a) dealing with Administrative Appeal Hearings

### FOR CONSIDERATION AT THE CITY COUNCIL MEETING ON APRIL 25, 2017

#### Summary and Recommendation

Waive the first reading and introduce an ordinance amending Sections 1.5.209(c)(i), 1.5.209(c)(iv) and 1.5.210(a) of the Oakley Municipal Code, dealing with administrative appeal hearings.

#### Fiscal Impact

None.

#### Background and Analysis

On March 28, the Oakley City Council adopted an amendment to Section 1.5.209(b) of the Oakley Municipal Code providing for an initial review of administrative citations. The initial review would take place after an appeal has been filed by a person who has received an administrative citation. In order to move forward with an administrative hearing, a deposit of the citation amount must be made or a request for waiver of the deposit can be made due to financial hardship. Absent a waiver of the deposit amount for the hearing due to hardship, the deposit is due within ten (10) regular business days of the City issuing notice of the initial review to the appellant.

Oakley Municipal Code Section 1.5.209 (c)(i) currently provides that a request for waiver of the deposit amount for the administrative hearing must be filed within ten (10) regular business days of the date of issuance of the citation. Staff recommends amending this section to provide that the request for waiver must be filed within ten (10) regular business days of the date of the notice regarding the initial review of the matter to be consistent with Section 1.5.209(b).

Oakley Municipal Code Section 1.5.209(c)(iv) currently provides that if a hardship waiver is denied, the deposit for the hearing is due within ten (10) days after the date of the decision or thirty (30) days after the citation was issued, whichever is later. To simplify the process, staff recommends eliminating the option of remitting payment thirty (30) days after the citation and require that the deposit is due within ten (10) regular business days of the date of the decision.

Oakley Municipal Code Section 1.5.210(a) currently provides that an administrative hearing must occur not less than fifteen (15) nor more than thirty (30) days after the appeal request is filed, unless continued with the consent of the appellant. Staff recommends the hearing occur no later than forty-five (45) regular business days after the appeal is filed. This change would allow adequate time for the initial review of the citation, for the deposit amount to be collected or hardship waiver to be granted, to schedule the hearing and for the appeal to be heard.

### **Conclusion**

Staff recommends the Oakley City Council adopt the proposed amendments to coincide with the recent amendment to Section 1.5.209(b) of the Oakley Municipal Code and to provide adequate time for each step of the process for an appeal hearing.

### **Attachment**

1. Ordinance amending Sections 1.5.209(c)(i), 1.5.209(c)(iv) and 1.5.210(a) of the Oakley Municipal Code.
2. Redlined version of proposed amendments

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OAKLEY AMENDING SECTIONS 1.5.209(c)(i), 1.5.209(c)(iv) and 1.5.210(a) OF THE OAKLEY MUNICIPAL CODE, DEALING WITH ADMINISTRATIVE HEARINGS**

Section 1. Section 1.5.209(c)(i) of the Oakley Municipal Code is hereby amended to read as follows:

“The request for a hardship waiver shall be filed with the Community Development Director or designee (“Director”) within ten (10) regular business days of the date of issuance of the notice regarding initial review of the matter as set forth in Section 1.5.209(b). The requirement for submitting an Advance Deposit shall be stayed unless and until the Director has rendered a decision on the request for a hardship waiver.”

Section 2. Section 1.5.209(c)(iv) of the Oakley Municipal Code is hereby amended to read as follows:

“If the request for a hardship waiver is denied, the citee shall submit the full Advance Deposit to the City within ten (10) regular business days after the date of the Director’s decision. If the request for a hardship waiver is granted, but the Administrative Citation is upheld by the Hearing Officer, the fine shall be due and payable within ten (10) working days after the date the Hearing Officer’s decision is issued.”

Section 3. Section 1.5.210(a) of the Oakley Municipal Code is hereby amended to read as follows:

“The Administrative Hearing shall be conducted by a Hearing Officer not more than forty-five (45) regular business days after the City Clerk’s office receives the request for Administrative Hearing, unless continued with the consent of the citee.”

Section 4. California Environmental Quality Act (CEQA) Finding.

This Ordinance is exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3), Review for Exemption, because it can be seen with certainty that the project will not have a significant effect on the environment; therefore the project is not subject to CEQA.

Section 5. Severability.

In the event any section or portion of this Ordinance shall be determined to be invalid or unconstitutional, such section or portions shall be deemed severable and all other sections or portions hereof shall remain in full force and effect.

Section 6. Effective Date and Publication.

This ordinance shall take effect and be in force and effect thirty (30) days from and after the date of its passage. The City Clerk shall cause the ordinance to be published within fifteen (15) days after its passage in a newspaper of general circulation, or by publishing a summary of the proposed ordinance, posting a certified copy of the proposed ordinance in the office of the City Clerk at least five (5) days prior to the City Council meeting at which the ordinance is to be adopted, and within fifteen (15) days after its adoption, publishing a summary of the ordinance with the names of the Council Members voting for and against the ordinance.

The foregoing ordinance was adopted with the reading waived at a regular meeting of the Oakley City Council on \_\_\_\_\_, 2017 by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

APPROVED:

\_\_\_\_\_  
Sue Higgins, Mayor

ATTEST:

\_\_\_\_\_  
Libby Vreonis, City Clerk

\_\_\_\_\_  
Date

**1.5.209 Request for Administrative Hearing.**

a. Any person receiving an administrative citation may contest it by filing a request for an Administrative Hearing, except that a hearing for a building violation may not be requested unless and until a Notice of Noncorrection is issued. To obtain a hearing, the citee shall file a signed written request on an appeal form to be provided by the City. The request for a hearing shall indicate the grounds for contesting the citation and fine. A citee may contest the citation by denying that a violation occurred, by denying that it was not corrected within the correction period, if applicable, or by denying that the citee is a responsible person for the violation.

b. To be effective and complete, the request must be received by the City Clerk's office within ten (10) regular business days of the date the citation was issued. Upon receipt of the request, the Code Enforcement Manager shall conduct an initial review of the matter by examining the written request and the citation and determine whether issuance of the citation was erroneous. If the Manager determines the issuance of the citation was erroneous, the Manager shall cause the citation to be cancelled and shall so inform the citee. Otherwise, the Manager shall cause a notice to be sent to the citee stating that an initial review has determined that the citation was not erroneously issued and that an administrative hearing will be scheduled upon payment of the fine or a determination of the citee's inability to pay the fine. Payment of the fine or application for waiver of fine must be received by the City within ten (10) regular business days of the notice regarding the initial review of the matter. All requests shall be date-stamped upon receipt. If the deadline to request a hearing or fine payment falls on a weekend or City holiday, then the deadline shall be extended until 5:00 p.m. on the next regular business day.

c. Any person who intends to request an Administrative Hearing and is financially unable to make the Advance Deposit as required by this section, may file a request for a hardship waiver on a form provided by the City.

i. The request for a hardship waiver shall be filed with the Community Development Director or designee ("Director") within ten (10) regular business days of the date of issuance of the notice regarding initial review of the matter as set forth in Section 1.5.209(b), citation. The requirement for submitting an Advance Deposit shall be stayed unless and until the Director has rendered a decision on the request for a hardship waiver.

ii. The Director may waive the requirement for an Advance Deposit and issue the waiver only if the citee submits to the Director a signed, sworn affidavit, together with any supporting documents or materials, demonstrating to the satisfaction of the Director the person's actual financial inability to provide the Advance Deposit in advance of the hearing. The person requesting the hardship



waiver bears the burden of establishing by substantial evidence that he or she does not have the financial ability to make the Advance Deposit.

iii. The Director shall either grant or deny the request within ten (10) days of receipt of such request. If the Director denies the request for a hardship waiver, the Director shall issue a written decision on the request to the person requesting the waiver. The decision of the Director shall be final. A copy of the Director's decision shall be mailed to the citee at the address provided in the request for the hardship waiver.

iv. If the request for a hardship waiver is denied, the citee shall submit the full Advance Deposit to the City within ten (10) regular business days after the date of the Director's decision ~~or thirty (30) days after the citation was issued, whichever is later.~~ If the request for a hardship waiver is granted, but the Administrative Citation is upheld by the Hearing Officer, the fine shall be due and payable within ten (10) working days after the date the Hearing Officer's decision is issued.

d. The person requesting the Administrative Hearing may file a written declaration with the Hearing Officer before the hearing or personally attend the hearing on the date, time and place specified on the citation. A failure to file a written declaration before the hearing or personally attend the hearing will be considered a non-appearance. Non-appearance by the citee shall constitute an abandonment of the request, unless the hearing was continued pursuant to Section [1.5.210\(f\)](#).

e. Failure to request a hearing in accordance with the provisions of this Section shall constitute a waiver of rights to contest an administrative citation and the imposition of a fine.

#### **1.5.210 Hearing Procedures.**

a. The Administrative Hearing shall be conducted by a Hearing Officer not ~~less than fifteen (15) nor~~ more than ~~thirty forty-five (4530)~~ regular business days after the City Clerk's office receives the request for Administrative Hearing, unless continued with the consent of the citee.