

Approved as to Form and Legality


Office of the City Attorney

**Emergency Order No. 3 of the City of Oakland
Interim City Administrator/Director of the Emergency Operations Center**

Whereas, due to the spread of COVID-19 (coronavirus) within the state, on March 1, 2020 the Alameda County Public Health Department, and on March 4, 2020, Governor Gavin Newsom, declared local and state public health emergencies due to the spread of COVID-19 locally and within the state, pursuant to Health & Safety Code section 101080 and Government Code section 8625, respectively, and

Whereas, on March 9, 2020, the City Administrator in her capacity as the Director of the Emergency Operations Center (EOC), issued a proclamation of local emergency due to the spread of COVID-19 in Oakland, and on March 12, the City Council passed Resolution No. 88075 C.M.S. confirming the existence of the local emergency proclaimed by the City Administrator pursuant to her power under Oakland Municipal Code section 8.50.050(C) to proclaim a local emergency provided that the local emergency proclamation shall remain in effect only if the City Council confirms the existence of the emergency within seven days; and

Whereas, on March 19, 2020, Governor Newsom issued Executive Order N-33-20, ordering “all individuals living in the State of California to stay home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors”, and further acknowledged that the “supply chain must continue, and Californians must have access to such necessities as food, prescriptions, and health care”; and

Whereas, the Order N-33-20 provides that, to mitigate/control the spread of COVID-19, when people need to leave their homes or places of residence to carry out specified essential functions or to facilitate necessary activities, they should at all times practice “social distancing”, which means remaining a distance of six (6) feet from other persons when in public places; and

Whereas, the City Administrator in his capacity as the Director of the EOC has authority “to promulgate orders, rules, and regulations on matters reasonably related to the protection of life and property and the preservation of public peace and order, in accordance with Article 14 of the California Emergency Services Act, [and such] rules and regulations must be confirmed at the earliest practicable time by the governing body as required by law;” and

Whereas, on March 23, 2020, the Interim City Administrator in his capacity as the Director of the EOC issued an emergency COVID-19 order (Emergency Order of the City Of Oakland), which, among other things, cancelled meetings of all City commissions, committees and boards related to the processing of planning and building applications, including the Planning Commission, Design Review Committee and Landmarks Advisory Board until further notice; and

Whereas, on April 29, 2020, the County Health Officer issued County Order No. 20-10, which defines the scope of construction activities deemed “Essential Businesses” to include “. . . construction, but only as permitted under the State Shelter Order [Order N-33-20] and only pursuant to the Construction Safety Protocols listed in Appendix B and incorporated into [the County Order] by reference”; and

Whereas, under Order N-33-20 Critical Infrastructure is allowed to continue, if remote working is not possible. Critical infrastructure includes: “Construction Workers who support the construction, operation, inspection, and maintenance of construction sites and construction projects (including housing, commercial, and mixed-use construction); and workers who support the supply chain of building materials from production through application/installation, including cabinetry, fixtures, doors, cement, hardware, plumbing, electrical, heating/cooling, refrigeration, appliances, paint/coatings, and employees who provide services that enable repair materials and equipment for essential functions”; and

Whereas, the City Administrator in his capacity as the Director of the EOC has determined that it is now necessary to amend his March 23, 2020 Order to allow City commissions, committees and boards related to the processing of planning and building applications, including the Planning Commission, Design Review Committee and Landmarks Advisory Board, to commence meetings in order to provide the reviews, hearings, approvals and/or other actions necessary for construction activities specified in Alameda County Order no. 20-10 as “Essential Businesses” to proceed; and

Whereas, on May 4, 2010, City Council passed Resolution No. 82727 C.M.S., urging City departments to refrain from, among other things, entering into any new or amended contracts for services or supplies with companies headquartered in Arizona until Arizona rescinds SB 1070 (“Arizona Boycott Policy”) when doing so will not result in significant additional costs to the City or conflict with law; and

Whereas, Oakland Municipal Code (“OMC”) section 2.22.010 directs the City Administrator to refrain from entering into any new or amended contracts for services or supplies with businesses that have entered into a contract to provide services, goods, materials or supplies to build the U.S.-Mexico border wall (“Border Wall Policy”) when doing so will not result in significant additional costs to the City or conflict with law; and

Whereas, O.M.C. section 2.22.050 authorizes the City Administrator to waive the Border Wall Policy for contracts within his/her authority when the policy conflicts with the law; and

Whereas, the City will be entering into contracts for the provision of emergency services and supplies to respond to the COVID-19 crisis; and

Whereas, the City intends to seek reimbursement, to the greatest extent practicable, from the Federal Emergency Management Agency or other federal agencies for its expenses related to providing COVID-19 emergency services and supplies; and

Whereas, the California Governor’s Office of Emergency Services has informed City staff that the City’s Arizona Boycott Policy and Border Wall Policy may conflict with federal regulations governing the award of federal financial assistance and may therefore jeopardize the City’s ability to secure federal funds and reimbursements; and

Whereas, the City Administrator has determined that it is necessary to waive application of the City’s Arizona Boycott Policy and Border Wall Policy to emergency contracts the City needs to execute to address the impacts of COVID-19 to avoid any potential conflict with federal law and to maximize the City’s ability to obtain reimbursement from the Federal Emergency Management Agency and/or other federal agencies for its COVID-19 emergency expenditures.

Now, Therefore, I, Steven Falk, Interim City Administrator/Director of the Emergency Operations Center of the City of Oakland, in accordance with the authority vested in me pursuant to Oakland’s Emergency Services Act, Oakland Municipal Code Chapter 8.50, specifically section 8.50.050.C.5.(a), hereby order the following:

1. Section 3 of the Interim City Administrator’s Emergency COVID-19 Order dated March 23, 2020, is deleted (see language with strike-throughs below) and new Building and Planning Department procedures are promulgated as follows:

~~“All time limits, shotlocks, and other deadlines associated with Planning Department and Building Department notices, application reviews, appeals, enforcement activities and other matters set forth in Titles 15 and 17 of the OMC and related administrative instructions, regulations and policies are suspended for the duration of the local emergency or until such time as this order is rescinded or the City Council terminates the emergency, whichever is earlier.”~~

All time-limits and deadlines associated with Planning and Building Department notices and appeals are hereby replaced by the notice and appeal procedures set forth in **Attachment A** and **Attachment B** respectively, which are attached hereto and incorporated as if fully set forth herein. The attached notice and appeal procedures shall remain in effect for the duration of this Order. Upon termination of this Order, all former procedures under the Oakland Municipal Code (O.M.C.) shall be reinstated, unless otherwise amended by subsequent orders.

2. Section 4 of the Interim City Administrator’s Emergency COVID-19 Order dated March 23, 2020, is deleted (see language with strikethroughs below):

~~Meetings of all City commissions, committees and boards related to the processing of planning and building applications, including the Planning Commission, the Design Review Committee and Landmarks Advisory Board, are cancelled until further notice~~

3. Application of the City’s Arizona Boycott Policy is hereby waived for emergency contracts the City executes to address the impacts of COVID-19 that may be eligible for reimbursement from the Federal Emergency Management Agency and/or other federal agencies.

4. Application of the City's Border Wall Policy is hereby waived for emergency contracts the City executes to address the impacts of COVID-19 that may be eligible for reimbursement from the Federal Emergency Management Agency and/or other federal agencies.

I FURTHER DIRECT that as soon hereafter as possible, this Order shall be filed in the Office of the City Clerk, posted on the City of Oakland website, and that widespread publicity and notice of this Order shall be provided to the public.

IN WITNESS WHEREOF I have hereunto set my hand this 13th day of May, 2020



Steven Falk
Interim City Administrator/Director of Emergency
Operations Center, City of Oakland, California

Attest:

LaTonda Simmons
City Clerk and Clerk of the City Council
City of Oakland, California

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May 2020

Attachment A
Interim Procedures for Posting and Mailing Public Notice of Development Projects for the Duration of the Order

Pursuant to the shelter-in-place orders issued by both the Governor of California and the Alameda County Health Officer for the COVID-19 pandemic (“Emergency Orders”), the City of Oakland offices are closed to the public and non-essential personnel are required to work remotely. These requirements extend to the Planning Bureau, resulting in much of the Bureau’s personnel working remotely.

Without the ability for requisite staff to be present in the office, the City does not have the capacity to post and mail public notices for development projects on behalf of applicants, in accordance with its currently established procedures. As a result, it is necessary for development project applicants to demonstrate compliance with these established procedures, by posting and mailing requisite notices as outlined below and as may be further clarified by the Director of Planning and Building or his designee.

The following procedures set forth how development projects will be noticed by applicants for the duration of this Order, or until the previous procedure is restored or further amended:

1. The City hereby replaces the City’s 17-day notice period required under Title 17 of the Oakland Municipal Code (O.M.C.) with the 10-day notice period as set forth under Government Code sections 65905, 65090, 65091, 65092, and 65094.
2. For a development project ready for public notice, the staff planner for the project will prepare the public notice, using the City’s template.
3. The staff planner will verify that the entire file, including the most recent submitted plan set and any correspondence that would constitute public record, is available on the City’s Accela website in a publicly viewable format prior to the posting and mailing of the public notice.
4. The staff planner will send the completed public notice form and address labels to the applicant, with instructions on posting and mailing the public notice for interested parties.
5. The applicant will then be required to post and mail the public notice according to staff planner instruction. Thereafter, the applicant will e-mail the staff planner with proof of project site posting, PDFs of the mailing receipts, and a certificate of mailing evidencing that the public notice was posted and mailed on the date agreed upon with the staff planner. The staff planner must receive proof of posting, the mailing receipts and certificate of mailing on the date of posting and mailing, which the staff planner will place in the development file and upload to Accela.
6. Failure of the applicant to provide proof of posting and mailing of the public notice will result in the development project not moving forward until termination of the City Administrator’s Order and/or resumption of the normal public noticing procedures.
7. Interested parties who desire to comment on the development project will be encouraged to e-mail any questions or comments to the staff planner during the 10-day public notice period. Those members of the public who choose to send written comments must call the staff planner no later than the date of mailing but before the public comment period has ended, to inform the staff planner written comments are being mailed. The staff planner will work with on-site City staff to receive a copy of the written comments.
8. If an applicant or member of the public has any questions regarding the above public notice procedures, they shall direct the questions first to the staff planner, who may consult with the Director of Planning and Building or his designee for further direction.

Attachment B
Interim Procedures for Appeals of City Planning Bureau Decisions for Development Projects for the Duration of the Order

Pursuant to the shelter-in-place orders issued by both the Governor of California and the Alameda County Health Officer for the COVID-19 pandemic (“Emergency Orders”), the City of Oakland offices are closed to the public and non-essential personnel are required to work remotely. These requirements extend to the Planning Bureau, resulting in much of the Bureau’s personnel working remotely.

Without the ability for requisite staff to be present in the office, the City does not have the capacity to receive in-person appeals of Planning Bureau decisions. Under the City’s past practice, the City receives appeals by way of appellant’s physical submittal of the appeal form and documents at the Permit Center, followed by in-person payment to the City’s cashier.

Since Permit Center is not open to the public at this time, the City is altering its appeal submittal requirements to respond to the lack of onsite staff for the duration that this Order remains in effect.

The below appeal submittal requirements shall apply to all development projects processed under Titles 16 or 17 of the Oakland Municipal Code (O.M.C.) or O.M.C. Chapter 17.132 Planning Director determinations:

1. Planning Staff will accept written appeals by e-mail only, unless an alternative submittal process is arranged pursuant to Section 5 below and is accomplished before the appeal deadline.
2. To initiate an appeal, the appellant **must** email: a) the case planner, b) the Development Planning Manager (cpayne@oaklandca.gov) and c) the Zoning Manager (rmerkamp@oaklandca.gov) a signed copy of the Planning Bureau’s appeal application form, as well as all supporting documents, no later than 4:00 p.m. on the final appeal date stated in the City’s decision letter. Failure to submit the appeal form and supporting documents in a timely manner will result in the rejection of the appeal. Additional material may **not** be submitted at a later date. Within one (1) business day of the appeal submittal, the project’s staff planner will create the appeal record in Accela and email the appellant with the record ID and invoice numbers. Appellant will then have five (5) calendar days from the date of appeal submittal to pay the appeal fee to the City’s cashier. If the fifth (5th) calendar day falls on a weekend or City holiday, appellant will have until the end of the following City business day to pay the appeal fee.
3. Failure to pay the appeal fee in full within the timeframe identified in Section 2 above will result in the rejection of appellant’s appeal and, if the appeal period has closed, will not allow for resubmittal of the appeal.
4. Once the appeal documents are uploaded onto Accela and payment of the appeal fee is verified, the staff planner will notify the original applicant of the appeal (assuming the applicant is not also the appellant).
5. **No Appellant E-mail Access:** If the appellant does not have internet access so that appellant is effectively prevented from e-mailing the appeal, the appellant shall contact the staff planner as soon as possible following the decision date to arrange an alternative appeal submittal process. Upon approval by the staff planner, it may be acceptable to submit the appeal, all related documents, and the appeal fee via U.S. Mail, provided the postmark date is no later than the last date of appeal and the appellant has alerted the staff planner of the appeal in a timely manner.
6. Appellant is solely responsible for adherence to the above timelines. If an applicant or member of the public has any questions regarding the above public notice procedures, they shall direct the questions first to the staff planner, who may consult with the Director of Planning and Building or his designee for further direction.