

Planning and Development  
Building and Safety Division

October 2, 2014

**SENT CERTIFIED AND 1<sup>ST</sup> CLASS MAIL**  
Assessor's Parcel Number: 052-1529-009-06

Mr. Leonard F. Powell  
Trustee Leonard Felton Powell Living Trust  
1911 Harmon Street  
Berkeley, California 94703

Subject: **NOTICE OF SUBSTANDARD AND UNSAFE BUILDING AND PUBLIC NUISANCE  
PURSUANT BERKELEY MUNICIPAL CODE (BMC) SECTIONS 19.40.020,  
SUBSECTION 202, 19.28.020, SUBSECTION 116.1 AND 1.24.030 AT  
1911 HARMON STREET AND ORDER TO CORRECT.**

Dear Mr. Powell:

Based upon an inspection by Code Enforcement Supervisor Gregory Daniel and Housing Code Enforcement Supervisor Brent Nelson on August 13, 2014, the Building Official of the City of Berkeley has determined that the building at 1911 Harmon Street, APN 052-1529-009-06, is a Substandard and Unsafe building as well as a Public Nuisance in accordance with California Health and Safety Code Section 17920.3 and Section 202 of the Uniform Housing Code as adopted by the City of Berkeley pursuant to BMC Section 19.40.020, BMC Section 19.28.020, Subsection 116.1 and Section 1.24.030.

The basis of this determination is described below.

#### **DETERMINATION OF SUBSTANDARD BUILDING**

##### **Housing Code Violations – Conditions relating to the entire building**

1. **Deteriorated or Ineffective Waterproofing. (Broken windows)** There are broken windows on the east side of the building. This condition creates inadequate weather protection and potential cutting hazard. The lack of weather protection also has the potential to cause water and structural damage to the building. Health and Safety Code Section 17920.3(g)(2)
2. **General Dilapidation or Improper Maintenance.** The top of the kitchen sink drain line vent on the east exterior side of the building was noted to be partially missing and does not terminate above the roof line. Both conditions create an unsanitary condition. Health and Safety Code Section 17920.3(a)(13)

3. Deteriorated or Ineffective Waterproofing. (Exterior siding missing) A portion of the exterior siding is missing at the rear of the building on the east side. This condition creates inadequate weather protection. The lack of weather protection has the potential to cause water and structural damage to the building. Health and Safety Code Section 17920.3(g)(2)
4. Faulty Weather Protection. Peeling paint was noted at various locations on the south and west exterior sides of the building. The lack of weather protection has the potential to cause water and structural damage to the building. Health and Safety Code Section 17920.3(g)(3)
5. Faulty Weather Protection. The base of the upper wooden window sash at the south window located in the bay window on the west side of the building was noted to be broken/rotted. The lack of weather protection has the potential to cause water and structural damage to the building. Health and Safety Code Section 17920.3(g)(4)
6. Deteriorated or Ineffective Waterproofing. (Broken window) There is a broken window on north facing exterior wall located on the west side of the building. This condition creates inadequate weather protection and potential cutting hazard. The lack of weather protection also has the potential to cause water and structural damage to the building. Health and Safety Code Section 17920.3(g)(2)
7. Deteriorated or Ineffective Waterproofing. (Exterior siding deteriorated) The lower portion of the exterior siding adjacent to the exterior porch on the west exterior side of the building was noted to be separating exposing the structural framing. This condition creates inadequate weather protection. The lack of weather protection has the potential to cause water and structural damage to the building. Health and Safety Code Section 17920.3(g)(2)
8. Deteriorated or Ineffective Waterproofing. (Exterior siding missing/deteriorated) The lower portion of the exterior siding at the base of the north wall is deteriorated/missing. This condition creates inadequate weather protection. The lack of weather protection has the potential to cause water and structural damage to the building. Health and Safety Code Section 17920.3(g)(2)

**Housing Code Violations – Conditions relating to the main unit**

9. Lack of Carbon Monoxide device(s). The building/unit is missing the required carbon monoxide device(s). This condition creates a possibility for carbon monoxide exposure/poisoning. Health and Safety Code Section 17926(a)(3)
10. Lack of Operational Smoke Detector(s). The building/unit(s) smoke detector(s) are either missing or non-operational. This condition creates a hazard due to the possibility the occupants would not be alerted in the event of a fire. Health and Safety Code 17920.3(M)
11. General Dilapidation or Improper Maintenance. A hole was noted in the south wall of the common hallway located on the second floor. The lack of intact wall coverings diminishes fire protection. Health and Safety Code Section 17920.3(a)(13)
12. Inadequate Egress. A lockable hasp was noted on the outside of the north room door that leads to the northern most bedroom off the second floor hallway. This condition poses an

egress hazard if locked from the outside while the bedroom is occupied. Health and Safety Code 17920.3(l)

13. **Illegal Change in Use.** The living room (Southern room) on the second floor is being used for sleeping purposes. Gas fired appliances are not permitted within sleeping rooms. Improper use creates a potential combustion air hazard due to depletion of oxygen level. Health and Safety Code Section 17920.3(n)
14. **General Dilapidation or Improper Maintenance.** The water closet (Toilet) in the second floor bathroom is loose and not properly mounted to the floor. This condition creates the potential for leakage and/or structural water damage. Health and Safety Code Section 17920.3(a)(13)
15. **Faulty Weather Protection.** Water damage was noted at the plaster/wall on the east interior wall of the northwest bedroom on the second floor. The lack of weather protection has the potential to cause water and structural damage to the building. Health and Safety Code 17920.3(g)(1) and 17920.3(g)(2)
16. **Inadequate Egress.** A lockable hasp was noted on the outside of the northwest bedroom door on the second floor. This condition poses an egress hazard if locked from the outside while the bedroom is occupied. Health and Safety Code 17920.3(l)
17. **Inadequate Egress.** The windows in the northwest bedroom on the second floor do not operate properly. This condition presents a hazard due to the improper window operation will hamper egress in the event of an emergency. Health and Safety Code 17920.3(l)
18. **Faulty Weather Protection.** Deteriorated plaster was noted at the ceiling in the southwest corner of the southwest room (Living room) on the first floor. The lack of weather protection has the potential to cause water and structural damage to the building. Health and Safety Code 17920.3(g)(1) and 17920.3(g)(3)
19. **Faulty Weather Protection.** Deteriorated plaster was noted along the south end of the ceiling in the middle/west room (Dining room) on the first floor that is being used as a sleeping room. The lack of weather protection has the potential to cause water and structural damage to the building. Health and Safety Code 17920.3(g)(1) and 17920.3(g)(2)
20. **Lack of Adequate Heating.** The floor furnace that serves the first floor is non-operational. The lack of an operational heating system creates a risk of a fire or carbon monoxide poisoning due to the potential use of an alternate heating device(s). Health and Safety Code Section 17920.3(a)(6)
21. **Faulty Weather Protection.** The base of the upper wooden window sash at the west window in the kitchen sink area was noted to be broken/rotted/missing. The lack of weather protection has the potential to cause water and structural damage to the building. Health and Safety Code Section 17920.3(g)(4)
22. **Inadequate Sanitation.** The lavatory in the bathroom north of the kitchen was noted to be lacking hot and cold running water. This condition creates an unsanitary condition. Health and Safety Code 17920.3(a)(5)

23. Deteriorated or Ineffective Waterproofing. (Broken window) The east window in the north bedroom on the first floor was noted to be broken/will not close at the top. This condition creates inadequate weather protection. The lack of weather protection also has the potential to cause water and structural damage to the building. Health and Safety Code Section 17920.3(g)(2)

**Housing Code Violations – Conditions relating to the basement**

24. Improper Venting. The gas fired clothes dryer located in the basement area was noted to not be properly vented. The lack of proper venting presents a fire hazard. Health and Safety Code 17920.3(a)(7)

**DETERMINATION OF UNSAFE BUILDING**

25. Unsafe Electrical Condition. There is exposed wiring at the main electrical service due to the dead front being missing. This condition creates an electrocution/shock hazard. BMC 19.28.020, CBC 116.1
26. Unsafe Mechanical Equipment. Water heater flue on the east side of the building is separated at the base and does not terminate above the roof line. This condition presents a carbon monoxide poisoning hazard. BMC 19.28.020, CBC 116.1
27. Structural Hazard. The exterior stairs, guardrails and deck surface at the porch on the west side of the building are rotted, deteriorated and deficient. Lack of adequate guard rails present a fall hazard. Rotted deck surface/framing present a potential structural failure/collapse hazard. BMC 19.28.020, CBC 116.1
28. Unsafe Electrical Condition. An electrical junction box cover was noted to be missing at the junction box located at the top of the wall at the base of the interior stairwell. This condition presents both an electrical and fire hazard. BMC 19.28.020, CBC 116.1
29. Unsafe Electrical Condition. Exposed electrical wiring was noted at an electrical junction box in the ceiling over the kitchen sink. This condition presents both an electrical and fire hazard. BMC 19.28.020, CBC 116.1
30. Unsafe Electrical Condition. There is exposed wiring at an electrical junction box located behind the door that leads to the exterior off the lower kitchen area. This condition presents both an electrical and fire hazard. BMC 19.28.020, CBC 116.1
31. Unsafe Electrical Condition. Several of the electrical junction box covers were noted to be missing at the junction boxes located throughout the basement area. This condition presents both an electrical and fire hazard. BMC 19.28.020, CBC 116.1
32. Unsafe Electrical Condition. Electrical wiring has been installed throughout the basement area without required electrical permit(s). This condition creates a potential fire hazard due to installation not meeting local code requirements. BMC 19.28.020, CBC 116.1

33. Unsafe Condition. Water heater replaced without a plumbing permit. The water heater located in the basement area was noted to have been replaced and does not meet local code requirements. The water heater is also not properly vented. Improper installation presents a fire hazard due to lack of required clearance to combustibles and also poses a carbon monoxide poisoning hazard. BMC 19.28.020, CBC 116.1

These conditions, including but not limited to, electrical systems and lighting installed without required electrical permits, exposed electrical wiring, water heater replaced without permits, lack of hot and cold running water in lavatory, deteriorated or ineffective waterproofing, lack of adequate heating, general dilapidation or improper maintenance, illegal changes in use, and improper termination of gas vent endanger property, life, safety, and welfare of the occupants, the neighbors and the neighboring structures.

### Zoning Ordinance Violations

1. An internal wall and exterior door between the first floor and second floor has been removed and the kitchen on the second floor has been removed, thereby converting the duplex into a single family home without the issuance of a Zoning Certificate or Building Permits.
2. Two vehicle(s) and a trailer are parked within the required rear yard setback. The required rear yard setback is the rear 15 feet of the property.

### CONVERSION BACK TO TWO UNIT RESIDENTIAL DWELLING

Rather than pursue legalization of the illegal single family residential use, you may pursue conversion of the use of the property back to its original two unit residential dwelling. If you intend to do so, notify the City in writing or by email **within five (5) days** of the date of this Notice and the City will issue a revised Notice identifying the code corrections required to convert the use back to a two unit dwelling. If you do not notify the City **within five (5) days** of the date of this Notice that you intend to convert the use back to a two unit dwelling, the City will pursue compliance with this Notice and Order as set forth below.

### ORDER TO CORRECT

Based on these conditions which substantially endanger the health and safety of the occupants and/or the public, and pursuant to Section 202 of the Uniform Housing Code as adopted by the City of Berkeley, your building is hereby declared to be a **Substandard Building and Unsafe Building** as well as a **Public Nuisance** and is subject to abatement by the City of Berkeley if you do not fully comply with the following Order:

**YOU ARE HEREBY ORDERED** to submit complete Building, Plumbing and Electrical Permit applications to the Planning Department to correct all violations relating to the entire building, main unit and basement **within 45 days** from the date of this Notice and Order.

You are further required to fully and completely respond to all plan check corrections within 10 days of notification by the Permit Service Center, obtain the permit within 10 days of approval by the City and complete all work within 180 days of issuance of the permit.

**YOU ARE FURTHER ORDERED** to either obtain the appropriate permits from the Planning Department Land Use Division to legalize the rear yard and side yard parking within 45 days of this Notice or remove all automobiles and trailer from the side yard and rear yard within 45 days of this Notice. You are further required to fully and completely respond to all plan check corrections within 10 days of notification by the Permit Service Center, obtain the permit within 10 days of approval by the City and complete all work within 60 days of issuance of the permit.

### **RIGHT TO APPEAL**

You, or anyone with a legal interest in the building, may appeal this Notice and Order, or any determination contained herein. To do so, you must file an appeal with the Housing Advisory Commission, as set forth in the Uniform Housing Code as adopted by the City of Berkeley (BMC Chapters 19.40 and 19.44) no later than thirty (30) days from the date of this Notice and Order. **Failure to file an appeal will constitute a waiver of your right to an administrative hearing to contest the Notice and Order, and any determination contained herein.**

Any appeal must be filed with the Building Official of the City of Berkeley, in the form required by the Uniform Housing Code as adopted by the City of Berkeley, at:

City of Berkeley  
Building and Safety Division  
2120 Milvia Street  
Berkeley, California 94704

A copy of the form and BMC Chapter 19.44 is enclosed. Appeals may be filed in person, by mail, or by facsimile to (510) 981-7450.

### **FAILURE TO COMPLY**

**Failure to comply with this Order in any respect may result in the City of Berkeley entering your property and abating the Substandard, Unsafe and/or Public Nuisance conditions set forth above pursuant to BMC Chapter 1.24. If the City abates the conditions on your property and you fail to pay for those costs, a special assessment lien may be placed on your property which may be collected at the same time and in the same manner as property taxes.**

Also, in accordance with Revenue & Taxation Code Sections 17274 and 24436.5, if this has been or will be a rental property, failure to comply may result in your inability to claim a tax deduction for interest, taxes, depreciation, or amortization paid or incurred in the taxable year.

### **CITATION**

In addition, if you do not correct the violations described above within the time periods set forth, you may be cited for violations of the Berkeley Municipal Code. Citation Penalties will begin at a rate of \$250 per day, per violation for every day that the orders above are not met. Partial compliance with the orders do not satisfy meeting the order and you may be cited if all of the above mentioned orders are not met in the timeframes specified.

The administrative penalties for violation of the Berkeley Municipal Code can be as much as **\$2,500 per violation** or **\$10,000 per violation if an injury results**. You may be cited for a separate violation for each day and the penalties for subsequent violations may be increased.

If you have any questions concerning this Notice and Order, please contact Code Enforcement Supervisor Gregory Daniel at 510-981-2492.

Sincerely,

A handwritten signature in cursive script, appearing to read "A. Roshal".

Alex Roshal  
Building Official

Attachment: Appeal form  
BMC Chapter 19.44

## PROOF OF SERVICE

I, the undersigned, certify that I am employed in the City of Berkeley, County of Alameda, California; that I am over the age of eighteen years and not a party to the within action; that my business address is 2180 Milva St Berkeley CA 94704, Berkeley, California 94704. On this date, I served City of Berkeley Administrative Citation Number \_\_\_\_\_ on:

*Notice of Substandard Order*

Leonard F. Powell

Name Trustee Leonard Felton Powell Living Trust

1911 Harmon Street

Street

Berkeley, CA 94703

City, State, Zip Code

by the following means of service:

By Personal Service - I personally gave the citation to the person whose name appears above.

By Posting - I posted the citation in a conspicuous place on the property of the person whose name appears above, specifically:

\_\_\_\_\_  
Description of location where posted

By First Class Mail - I am readily familiar with the City's practice for collection and processing of correspondence for mailing. Under that practice, the correspondence is deposited with the U.S. Postal Service on the same day as collected, with first-class postage thereon fully prepaid, in Berkeley, California, for mailing to the office of the addressee following ordinary business practices.

By Certified Mail, Return Receipt Requested - I mailed the citation by certified mail at the U.S. Post office, return receipt requested.

By Facsimile - I caused the citation to be transmitted to the person whose name appears above following ordinary business practices in compliance with applicable rules of civil procedure and rules of court.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on \_\_\_\_\_ at Berkeley, California.

*Sylvia Jimenez*  
(Name)



## Chapter 19.44 APPEALS

### Sections:

19.44.010	Purposes.
19.44.020	Housing Advisory Commission.
19.44.030	Rules of procedure.
19.44.040	Appeals.
19.44.050	Notice of hearing.
19.44.060	Hearings.
19.44.070	Subpoenas and evidence.
19.44.080	Method and form of decision.
19.44.090	Hearing by Council.
19.44.100	Contest.

### **19.44.010 Purposes.**

The purpose of this chapter, in conjunction with the procedural provisions of Section 19.40.020C, is to establish fair and efficient procedures for the enforcement of the State Housing Law and implementing regulations and uniform codes, and for the recovery by the City of any and all recoverable costs it may incur in the enforcement of the State Housing Law and implementing regulations and uniform codes, with fairness to both owners, tenants and the affected public.

The City Council determines and declares that the procedures established in this chapter, in conjunction with the procedural provisions of Section 19.40.020C, are intended to constitute procedures for the implementation of Part 1.5 of Division 13 of the Health and Safety Code, including Sections 17980 et seq. and are in substantial compliance therewith, and are substantially equivalent, for the purposes intended and the purposes stated above, to the provisions of Title 25 of the California Code of Regulations and the State Housing Law. (Ord. 6475-NS § 11 (part), 1999)

### **19.44.020 Housing Advisory Commission.**

A. Creation. There is created a Housing Advisory Commission in the City of Berkeley. The Housing Advisory Commission shall consist of nine members. Appointments to said Commission shall be filled in accordance with provisions of the Berkeley Municipal Code, Section 2.04.040 and 2.04.140, enacted by the voters of the City. All members shall be residents of the City.

B. Jurisdiction. The jurisdiction of the Commission shall extend the following manners and proceedings, as well as to any other matter made subject to its jurisdiction by any other chapter of this code, or by the Zoning Ordinance.

1. The Commission shall hear and determine appeals of all matters respecting the abatement of substandard or deficient buildings pursuant to the provisions of Chapter 19.40 of this code.

2. The Commission shall review and advise the Council on matters respecting the Community Development Block Grant and Emergency Shelter Grant Programs.

3. The Commission shall serve as a General Appeals Board for tenants and landlords regarding the correction of code violations as provided in Chapter 12.48 of this code, providing for periodic inspection of residential rentals and hotels.

4. The Commission shall make recommendations to the Council defining hardship categories and shall hear appeals concerning the designation of the hardship category. The Commission may grant time extensions for compliance in hardship cases, excepting those violations which pose a clear and present danger to human life, health and safety.

5. The Commission shall make recommendations to the City Council regarding code enforcement priorities.

6. The Commission shall monitor code enforcement procedures to ensure adherence to Council policies and shall make recommendations for changes in such procedures to the City Council.

7. The Commission shall be the Board of Appeals for the Uniform Housing Code. In order to determine the suitability of alternative materials and methods of construction and to provide for reasonable interpretations of the provisions of this Code, the City's Code Review Task Force shall serve as the Technical Advisory Committee to the Commission. When serving in this capacity, the Technical Advisory Committee shall render all recommendations in writing to the Commission with a duplicate copy to the Building Official and the appellant and may recommend such new legislation as is consistent therein.

8. The Commission shall be the Relocation Appeals Board for purposes of Chapter 13.84, as well as for the Redevelopment Agency. Pursuant to Health and Safety Code Section 33417.5, shall hear all complaints brought by residents of the various project areas relating to relocation. Notwithstanding, any other provision of this chapter, when the Commission convenes as the Relocation Appeals Board the entire Commission shall hear the appeal.

9. The Commission shall hear appeals brought by any person regarding actions taken by the Building Official pursuant to Division 13, Page 5.5 of the California Health and Safety Code, beginning with Section 19950 (Disabled Access).

10. The Commission shall review and advise the City Council on housing policy, housing programs, and related issues.

C. Automatic Termination of Appointment. The appointment of any member of the Commission who has been absent from three consecutive regular meetings shall automatically terminate as hereinafter set forth. The Secretary of the Commission shall report the attendance record of each member of said Commission to the City Clerk at the end of each six months' period, the first report after the date on which this Ordinance becomes effective to be made on July 1, 1985, and to cover the period from January 1, 1985 to June 30, 1985. The City Clerk shall notify any member whose appointment has automatically terminated and report to the City Council that a vacancy exists on said Commission and that an appointment should be made for the unexpired term. (Ord. 6475-NS § 11 (part), 1999)

#### **19.44.030 Rules of procedure.**

A. Chair and Secretary. The Commission shall elect one of its members Chairperson. The Housing Director, or his or her appointee, shall act as Secretary to the

Commission for all matters not related to the Building Code and determinations that buildings or portions thereof are substandard. The Building Official shall act as Secretary to the Commission for all matters related to the Building Code and determinations that buildings or portions thereof are substandard. The Secretary shall have no vote upon any matter before the Board.

B. Meetings. The Commission shall establish a regular time and place of meeting and shall hold at least one regular meeting each month. Special meetings may be called by the Chairperson, or by a majority of the members of the Commission, upon personal notice being given to all members of written notice being mailed to each member at least twenty-four hours prior to such meeting, unless such notice requirement is waived in writing.

C. Rules. The Commission may make and alter rules governing its organization and procedures which are not inconsistent with this or any other applicable ordinance of the City. Copies of all rules of procedure adopted by the Board shall be delivered to the Building Official, who shall make them accessible to the public.

D. Quorum. A majority of the members shall constitute a quorum and the affirmative vote of a majority of the members is required to take any action. The Commission shall keep an accurate record of its proceedings and transactions and shall submit an annual report to the City Council, with a copy to the City Manager. (Ord. 6475-NS § 11 (part), 1999)

#### **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 at the next regular or special meeting of the Commission which is not less than ten days later than the date the appeal was filed. 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. (Ord. 6475-NS § 11 (part), 1999)

#### **19.44.050 Notice of hearing.**

A. **Contents.** The Notice to appellant shall be substantially in the following form, but may include other information:

You are hereby notified that a hearing will be held before (the City of Berkeley Housing Advisory Commission or name of hearing examiner) at \_\_\_\_\_ on the day of \_\_\_\_\_, 19\_\_\_\_, at the hour, upon the Notice and Order served upon you. You may be present at the hearing. You may be, but need not be, represented by counsel. You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You may request the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or things by filing an affidavit therefor with (Commission or name of hearing examiner).

B. **Service.** At least ten days prior to the date set for the hearing, the notice shall be served by certified mail, postage prepaid, addressed to the owner of the property as the owner's name and address appears on the last equalized assessment roll of the county, if such so appears, or as known to the clerk of the appellate body, as well as to the following, if known or disclosed from official public records: the holder of any mortgage or deed of trust or other lien or encumbrance of record; the owner or holder of any lease of record; and the holder of any other estate or legal interest of record in or to the building or the land on which it is located. The failure of the clerk of the appellate body to serve any person required herein to be served shall not invalidate any proceeding hereunder as to any person duly served or relieve any such person from any duty or obligation imposed by the provisions of this section. (Ord. 6475-NS § 11 (part), 1999)

#### **19.44.060 Hearings.**

A. **Record.** A record of the entire proceedings shall be made by tape recording, or by any other means of permanent recording determined to be appropriate by the Commission.

B. **Reporting.** The proceedings at the hearing shall also be reported by a certified court reporter if requested by any party thereto no less than three working days prior to the hearing. All such requests, to be effective, shall be accompanied by payment of a deposit of one-half the estimated cost of the court reporter services. A transcript of the proceedings shall be made available to all other parties upon request and upon payment of the fee prescribed therefor. Such fees may be established by the Commission, but shall in no event be greater than the cost involved.

C. **Oaths--Certification.** In any proceedings under this chapter, the Commission or any Commission member has the power to administer oaths and affirmations and to certify to official acts.

D. **Reasonable Dispatch.** The Commission and its representatives shall proceed with reasonable dispatch to conclude any matter before it. Due regard shall be shown for the convenience and necessity of any parties or their representatives. (Ord. 6475-NS § 11 (part), 1999)

#### **19.44.070 Subpoenas and evidence.**

A. **Subpoenas.** The Commission may obtain the issuance and service of a subpoena for the attendance of witnesses or the production of other evidence at a hearing upon the request of a member of the Commission upon the written demand of any party. The issuance and service of such subpoena shall be obtained upon the filing of an affidavit therefor which states the name and address of the proposed witness; specifies the exact things sought to be produced and the materiality thereof in detail to the issues involved; and states that the witness had the desired things in possession of under control. A subpoena need not be issued when the affidavit is defective in any particular, or not requested at least ten days prior to the hearing, and no hearing shall be continued due to the failure to file a timely request for a subpoena. The City may charge its reasonable costs of producing documents in compliance with a subpoena. Any person who refuses without lawful excuse to attend any hearing, or to produce material evidence which the person possesses or controls as required by any subpoena served upon such person as provided for herein shall be guilty of a misdemeanor.

B. **Rules of Evidence.** Hearings need not be conducted according to the technical rules relating to evidence and witnesses.

1. **Oral Evidence.** Oral evidence shall be taken only on oath or affirmation, if requested by any party.

2. **Hearsay Evidence.** Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions in courts of competent jurisdiction in this state, and the party against who it is offered objects.

3. **Admissibility of Evidence.** Any relevant evidence shall be admitted if it is the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory

rule which might make improper the admission of such evidence over objection in civil actions in courts of competent jurisdictions in this state.

4. Exclusion of Evidence. Irrelevant and unduly repetitious evidence shall be excluded.

C. Official Notice. In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any fact which may be judicially noticed by the courts of this state or of official records of the boards, commissions or departments, and ordinances of the city or rules and regulations of the Commission.

1. Parties present at the hearing shall be informed of the matters to be noticed, and these matters shall be noted in the record, referred to therein, or appended thereto.

2. Parties present at the hearing shall be given a reasonable opportunity, on request, to refute the officially noticed matters by evidence or by written or oral presentation of authority, the manner of such refutation to be determined by the Commission.

D. Inspection of the Premises. The Commission may inspect any building or premises involved in the appeal during the course of the hearing, provided that (1) notice of such inspection shall be given to the parties before the inspection is made, (2) the parties are given an opportunity to be present during the inspection, and (3) the Commission shall state for the record upon completion of the inspection of the material facts observed and the conclusions drawn therefrom. Each party then shall have a right to rebut or explain the matters so stated by the Commission.

E. Rights of Parties. Each party shall have these rights, among others:

1. To call and examine witnesses on any matter relevant to the issues of the hearing;
2. To introduce documentary and physical evidence;
3. To cross-examine opposing witnesses on any matter relevant to the issues of the hearing;
4. To impeach any witness regardless of which party first called the witness to testify;
5. To rebut the evidence;
6. To be represented by anyone who is lawfully permitted to do so. (Ord. 6475-NS § 11 (part), 1999)

#### **19.44.080 Method and form of decision.**

A. Hearing before Commission. A Commission member who has not heard the evidence or has not read the entire record of the proceedings shall not vote on or take part in the decision of any appeal.

B. Form and Notice of Decision. The decision shall be in writing and shall contain findings of fact, a determination of the issues presented, and the requirements to be complied with. A copy of the decision shall be delivered to the appellant personally or sent by certified mail, postage prepaid, return receipt requested.

C. Effective Date of Decision. The effective date of decision shall be the earlier of the dates of delivery or mailing pursuant to subsection B of this section, unless the decision itself expressly specifies a later effective date. (Ord. 6475-NS § 11 (part), 1999)

**19.44.090 Hearing by Council.**

A. Except as otherwise provided by ordinance, decisions of the Commission may be appealed to the City Council by filing a notice of appeal which substantially conforms to Section 19.44.040, with the City Clerk, within ten days of the effective date of the decision.

B. The City Council shall review the action of the Commission and may do any one of the following:

1. Refer the matter back to the Commission for further consideration, in which case the Commission shall conduct such further investigation as it shall deem advisable and report its conclusions to the City Council.

2. If the facts stated or ascertainable from the application, the notice of appeal, the written statement of the Commission setting forth the reasons for its decision, and the other papers, if any constituting the record do not, in the opinion of the City Council, warrant further hearing, the City Council may affirm the decision of the Commission.

3. If in the opinion of the City Council, said facts warrant further hearing, the City Council shall set the matter for hearing and shall give notice of the time and place of said hearing before as set forth in Section 19.44.050.

C. The City Council may reverse or affirm wholly or partly, or modify any decision, determination, or requirement of the Commission, and may make decisions or determinations or may impose such conditions as the facts warrant and may grant a variance and its decision or determination shall be final. Any hearing may be continued from time to time.

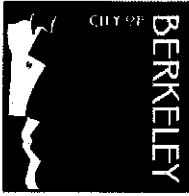
D. If none of the above actions have been taken by the City Council within thirty days from the date the appeal first appears on the City Council agenda, then the decision of the Commission shall be deemed affirmed and the appeal shall be deemed dismissed.

E. If the appeal is set for hearing but the disposition of the appeal has not been determined within ninety days from the date the appeal first appears on the City Council agenda, then the decision of the Commission shall be deemed affirmed and the appeal deemed denied.

F. The decision of the Council shall be final. The form, notice of and effective date of City Council decisions shall be as set forth in Section 19.44.080B and C. (Ord. 6475-NS § 11 (part), 1999)

**19.44.100 Contest.**

The validity of any decision by the City Council under the provisions of this chapter shall not be contested in any action or proceeding unless the same is commenced within thirty days after it becomes final. (Ord. 6475-NS § 11 (part), 1999)



Planning Department  
Building and Safety Division

## HOUSING ADVISORY COMMISSION (HAC) APPEAL PROCESS

The Housing Advisory Commission is the local appeals board designated to hear appeals regarding enforcement of the building and housing codes. An appeal is a request to be heard at a higher level regarding the Building Official's determination of the code or findings, a request for a modification of the code or alternate method of construction, or a complaint about services rendered. A property owner or tenant affected by the Building Official's decision has a right to appeal within 30 days of notification from the Building Official.

Before you request an appeal, we ask that you first request a determination from the Building Official. After submitting a completed Request for Building Official Determination form and obtaining a decision in writing, you may appeal the decision by stating your reasons in the Housing Advisory Commission Appeal Form (information on the HAC appeal form is received from the Housing [or Building] Inspector), with supporting documentation.

If you are an owner, do not proceed with construction in the vicinity of the disputed area until a decision on your appeal has been rendered. The Housing Advisory Commission requires that if you are an owner, you are responsible for notifying tenants of the affected property of this appeal. If you are a tenant, you are responsible for notifying the owner of the affected property of this request.

The attached form and supporting materials should be returned to:

Building Official/Housing Advisory Commission Secretary  
Building and Safety Division  
2120 Milvia Street  
Berkeley, CA 94704

A copy of your proof of service notifying either the tenant (if you are the owner), or the owner (if you are a tenant) must also be provided.

A committee of the Housing Advisory Commission will review your appeal and contact you if a site visit or additional information is necessary. The Housing Advisory Commission will schedule a hearing on your appeal, usually within six (6) weeks, and no longer than 60 days. A written notice of the time and place of the hearing will be sent to you ten (10) days prior to the hearing. Hearings are usually the first Thursday evening of the month.

The Housing Advisory Commission will consider the information presented and come to a decision on your appeal. You will be notified in writing of the decision. If additional information is needed, you may call the Building and Safety Division at (510) 981-7440.





