



OFFICE OF THE CITY ATTORNEY
Long Beach, California

ORD-27

CHARLES PARKIN
City Attorney

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Assistant City Attorney

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November 11, 2014

PRINCIPAL DEPUTIES

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Anne C. Lattime

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Richard F. Anthony
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Tiffani L. Shin
Linda T. Vu
Amy R. Webber
Theodore B. Zinger

HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

Recommendation to declare ordinance amending the Long Beach Municipal Code by amending Section 18.10.020 relating to the Board of Examiners, Appeals and Condemnation; and repealing Section 18.10.030, read the first time and laid over to the next regular meeting of the City Council for final reading. (Citywide)

DISCUSSION:

Pursuant to your request on June 10, 2014, this ordinance has been prepared and is submitted for your consideration. If passed, the proposed ordinance would have the effect of transferring to the Board of Examiners Appeals and Condemnation (BEAC) the additional authority to adjudicate appeals relating to the enforcement of State regulations pertaining to access to public accommodations by disabled persons. In keeping with the requirements of State law, at least two (2) of the seven (7) appointed members of the BEAC would be required to have physical disabilities as a qualification to sit on the Board.


Currently, appeals regarding public access accommodations are adjudicated by the Disabled Access Appeals Board (DAAB). However, historically the DAAB has met infrequently due primarily to the lack of written appeals submitted to the Board. If the proposed ordinance is passed, the DAAB will be dissolved and the functions of the DAAB will transfer to the BEAC. Staff of the Development Services Department believes that the recommended action will serve to conserve resources and strengthen the BEAC, while at the same time retaining all of the core functions of the DAAB.

SUGGESTED ACTION:

Approve recommendation.

Very truly yours,

CHARLES PARKIN, City Attorney

By 
MICHAEL J. MAIS
Assistant City Attorney

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

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ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF LONG BEACH AMENDING THE LONG
BEACH MUNICIPAL CODE BY AMENDING SECTION
18.10.020; AND BY REPEALING SECTION 18.10.030,
RELATING TO THE BOARD OF EXAMINERS,
APPEALS AND CONDEMNATION AND DISABLED
ACCESS APPEALS BOARD

WHEREAS, in 1981, pursuant to Section 19957.5 of the California Health and Safety Code, the Disabled Access Appeals Board (DAAB) was established by the City Council. The DAAB was established to hear written appeals regarding actions taken by the City's Building Official relating to enforcement of State regulations pertaining to access and public accommodations by disabled individuals. Historically, the DAAB has met infrequently; and

WHEREAS, the Board of Examiners, Appeals and Condemnation (BEAC) was established by the City Council in 1977 to determine the suitability of alternate materials and types of construction, and to hear appeals of decisions made by the City's Building Official on matters related to enforcement of State codes and substandard conditions. The BEAC meets regularly once a month and holds meetings in accordance with the Brown Act; and

WHEREAS, the existence of two separate boards with functional similarities is no longer viable. Therefore, it is prudent and appropriate that the DAAB be dissolved and their responsibilities shifted to the BEAC, and that the BEAC act as the hearing body for all appeal proceedings. Currently, the BEAC has seven (7) members with no disabled individuals represented on the Board. The DAAB has five (5) members, including two disabled individuals. Combining these boards will require the appointment of two (2)

1 disabled individuals to the BEAC in accordance with State law. The consolidation of
2 these two boards will reduce redundancies, improve efficiencies and enhance the delivery
3 of programs and services;

4 NOW, THEREFORE, the City Council of the City of Long Beach ordains as
5 follows:

6 Section 1. Section 18.10.020 of the Long Beach Municipal Code
7 is amended to read as follows:

8 A. General. In order to determine the suitability of alternate
9 materials and types of construction and to provide for reasonable
10 interpretations of the provisions of this title, municipal code or other
11 ordinances of the City or laws and statutes of the State, and in order to
12 provide a forum to review the determinations of the Building Official relative
13 thereto as well as to make determinations relative to correction of
14 substandard conditions in buildings and to abate nuisances, and to hear
15 written appeals regarding action taken by the Building Official in its
16 enforcement of State regulations pertaining to access to public
17 accommodations by physically handicapped persons, there is created a
18 Board of Examiners, Appeals and Condemnation established pursuant to
19 Ordinance No. C-5332 in 1977 and amended pursuant to Ordinance No. C-
20 5709 in 1981.

21 B. Members. The Board of Examiners, Appeals and
22 Condemnation shall consist of seven (7) members at least five (5) of whom
23 are qualified by experience and training to pass judgment upon matters
24 pertaining to building construction; in accordance with State regulations at
25 least two (2) of the seven (7) members shall be physically handicapped
26 persons; they shall be recommended by the City Manager for appointment
27 by the Mayor and confirmation by the City Council. Members shall serve
28 two (2) year terms and shall be eligible for reappointment if their service

1 does not exceed the eight (8) year maximum established by City Council.
2 The Building Official shall serve as Secretary to the Board.

3 C. Duties. The Board of Examiners, Appeals and Condemnation
4 shall conduct hearings on written appeals regarding any action taken by the
5 Building Official in enforcing the provisions of this title, municipal code or
6 other ordinances of the City or laws and statutes of the State. In the appeal,
7 the Board of Examiners, Appeals and Condemnation may approve or
8 disapprove interpretations of these regulations and enforcement actions
9 taken by the Building Official. The Board of Examiners, Appeals and
10 Condemnation shall also conduct hearings on written appeals regarding
11 any action taken by the Building Official in enforcing the provisions of State
12 law pertaining to access to public accommodations by physically
13 handicapped persons, including any exceptions contained in Section 19957
14 of the California Health and Safety Code. In the appeal, the Board may
15 approve or disapprove interpretations of these regulations and enforcement
16 actions taken by the Building Official.

17 D. Procedure. The Board of Examiners, Appeals and
18 Condemnation shall adopt reasonable rules and regulations for conducting
19 its investigations and hearings and where not specifically provided
20 otherwise by such rules, Robert's Rules of Order shall govern. All decisions
21 and findings of the Board of Examiners, Appeals and Condemnation shall
22 be in writing and shall be filed with the Secretary with copies to the
23 interested parties. Four (4) members shall constitute a quorum for
24 transaction of business; and each member, including the member serving
25 as Chairman, shall be entitled to vote on any matter coming before the
26 Board of Examiners, Appeals and Condemnation. For those hearings on
27 written appeals regarding the provisions of State law pertaining to access to
28 public accommodations by physically handicapped persons, at least two (2)

1 members of the Board present and participating in the hearing shall be
2 physically handicapped. All decisions shall be entered upon the minutes of
3 the meetings of the Board, and the Building Official shall be guided in
4 accordance therewith. All decisions of the Board of Examiners, Appeals and
5 Condemnation shall be final and conclusive in the absence of fraud or
6 prejudicial abuse of discretion.

7 E. Filing requirement. Any person aggrieved by any ruling of the
8 Building Official interpreting the provisions of this title, municipal code or
9 other ordinances of the City or laws and statutes of the State or requiring
10 the doing of any remedial work, or with respect to such person's application
11 for approval of a substitute material or type of construction may appeal to
12 the Board of Examiners, Appeals and Condemnation within thirty (30) days
13 from the date of such ruling or order by serving a written notice upon the
14 Secretary of the Board. A written notice shall be submitted together with a
15 fee as set forth in Section 18.06.100. Such written notice shall state that the
16 applicant is dissatisfied with a ruling or order of the Building Official and
17 shall describe the nature of the complaint. Such appellant shall pay the cost
18 of all tests made or ordered by the Board of Examiners, Appeals and
19 Condemnation. Such notice shall be at once transmitted to the Board of
20 Examiners, Appeals and Condemnation, and the Board of Examiners,
21 Appeals and Condemnation shall thereafter fix a time and place for a
22 hearing, at which time all persons interested in the appeal shall be heard.
23 The Secretary shall give the appellant at least ten (10) days' notice of
24 hearing.

25 F. Filing requirement pertaining to public access for handicapped
26 persons. Any person may file a written notice of appeal with the Secretary
27 of the Board within thirty (30) days after an action is taken by the Building
28 Official regarding the regulations pertaining to public access for

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handicapped persons. A written notice shall be submitted together with a fee as set forth in Section 18.06.100. Such written notice shall state that the applicant is dissatisfied with a ruling or order of the Building Official and shall describe the nature of the complaint. Thereafter, the Disabled Access Appeals Board shall set a time and place for hearing the appeal and all persons interested shall be heard. The Secretary shall give the appellant at least ten (10) days notice of hearing.

Section 2. Section 18.10.030 of the Long Beach Municipal Code is hereby repealed.

Section 3. The City Clerk shall certify to the passage of this ordinance by the City Council and cause it to be posted in three (3) conspicuous places in the City of Long Beach, and it shall take effect on the thirty-first (31st) day after it is approved by the Mayor.

I hereby certify that the foregoing ordinance was adopted by the City Council of the City of Long Beach at its meeting of _____, 20____, by

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

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the following vote:

Ayes: Councilmembers:

Noes: Councilmembers:

Absent: Councilmembers:

City Clerk

Approved: _____
(Date)

Mayor

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CITY OF LONG BEACH AMENDING THE LONG BEACH
MUNICIPAL CODE BY AMENDING SECTION 18.10.020;
AND BY REPEALING SECTION 18.10.030, RELATING TO
THE BOARD OF EXAMINERS, APPEALS AND
CONDEMNATION AND DISABLED ACCESS APPEALS
BOARD

WHEREAS, in 1981, pursuant to Section 19957.5 of the California Health and Safety Code, the Disabled Access Appeals Board (DAAB) was established by the City Council. The DAAB was established to hear written appeals regarding actions taken by the City's Building Official relating to enforcement of State regulations pertaining to access and public accommodations by disabled individuals. Historically, the DAAB has met infrequently; and

WHEREAS, the Board of Examiners, Appeals and Condemnation (BEAC) was established by the City Council in 1977 to determine the suitability of alternate materials and types of construction, and to hear appeals of decisions made by the City's Building Official on matters related to enforcement of State codes and substandard conditions. The BEAC meets regularly once a month and holds meetings in accordance with the Brown Act; and

WHEREAS, the existence of two separate boards with functional similarities is no longer viable. Therefore, it is prudent and appropriate that the DAAB be dissolved and their responsibilities shifted to the BEAC, and that the BEAC act as the hearing body for all appeal proceedings. Currently, the BEAC has seven (7) members with no disabled individuals represented on the Board. The DAAB has five (5) members, including two disabled individuals. Combining these boards will require the appointment of two (2)

1 disabled individuals to the BEAC in accordance with State law. The consolidation of
2 these two boards will reduce redundancies, improve efficiencies and enhance the
3 delivery of programs and services;

4 NOW, THEREFORE, the City Council of the City of Long Beach ordains as
5 follows:

6 Section 1. Section 18.10.020 of the Long Beach Municipal Code is
7 amended to read as follows:

8 18.10.020 Board of Examiners, Appeals and Condemnation.

9 A. General. In order to determine the suitability of alternate
10 materials and types of construction and to provide for reasonable
11 interpretations of the provisions of this title, municipal code or other
12 ordinances of the City or laws and statutes of the State, and in order to
13 provide a forum to review the determinations of the Building Official relative
14 thereto as well as to make determinations relative to correction of
15 substandard conditions in buildings and to abate nuisances, and to hear
16 written appeals regarding action taken by the Building Official in its
17 enforcement of State regulations pertaining to access to public
18 accommodations by physically handicapped persons, there is created a
19 Board of Examiners, Appeals and Condemnation established pursuant to
20 Ordinance No. C-5332 in 1977 and amended pursuant to Ordinance No. C-
21 5709 in 1981.

22 B. Members. The Board of Examiners, Appeals and
23 Condemnation shall consist of seven (7) members at least five (5) of whom
24 are qualified by experience and training to pass judgment upon matters
25 pertaining to building construction; in accordance with State regulations at
26 least two (2) of the seven (7) members shall be physically handicapped
27 persons; they shall be recommended by the City Manager for appointment
28 by the Mayor and confirmation by the City Council. Members shall serve

1 two (2) year terms and shall be eligible for reappointment if their service
2 does not exceed the eight (8) year maximum established by City Council.
3 The Building Official shall serve as Secretary to the Board.

4 C. Duties. The Board of Examiners, Appeals and Condemnation
5 shall conduct hearings on written appeals regarding any action taken by
6 the Building Official in enforcing the provisions of this title, municipal code
7 or other ordinances of the City or laws and statutes of the State. In the
8 appeal, the Board of Examiners, Appeals and Condemnation may approve
9 or disapprove interpretations of these regulations and enforcement actions
10 taken by the Building Official. The Board of Examiners, Appeals and
11 Condemnation shall also conduct hearings on written appeals regarding
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22 and findings of the Board of Examiners, Appeals and Condemnation shall
23 be in writing and shall be filed with the Secretary with copies to the
24 interested parties. Four (4) members shall constitute a quorum for
25 transaction of business; and each member, including the member serving
26 as Chairman, shall be entitled to vote on any matter coming before the
27 Board of Examiners, Appeals and Condemnation. For those hearings on
28 written appeals regarding the provisions of State law pertaining to access

1 to public accommodations by physically handicapped persons, at least two
2 (2) members of the Board present and participating in the hearing shall be
3 physically handicapped. All decisions shall be entered upon the minutes of
4 the meetings of the Board, and the Building Official shall be guided in
5 accordance therewith. All decisions of the Board of Examiners, Appeals
6 and Condemnation shall be final and conclusive in the absence of fraud or
7 prejudicial abuse of discretion.

8 E. Filing requirement. Any person aggrieved by any ruling of the
9 Building Official interpreting the provisions of this title, municipal code or
10 other ordinances of the City or laws and statutes of the State or requiring
11 the doing of any remedial work, or with respect to such person's application
12 for approval of a substitute material or type of construction may appeal to
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19 cost of all tests made or ordered by the Board of Examiners, Appeals and
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following vote:

Ayes: Councilmembers:

Noes: Councilmembers:

Absent: Councilmembers:

City Clerk

Approved: _____
(Date)

Mayor