

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF
FRESNO, CALIFORNIA, SETTING FORTH THE
PROCEDURE FOR A PANEL APPEAL TO HEARING
OFFICER DECISIONS FOR CALIFORNIA BUILDING
CODE VIOLATIONS

WHEREAS, the First District Court of Appeal has held in *Lippman v. City of Oakland* that hearings on state building code violations must be heard initially or on appeal by a panel, rather than a single administrative hearing officer; and

WHEREAS, in light of the *Lippman* decision, the City deems it advisable to institute a secondary appeal process allowing a Hearing Officer's ruling on building code violations to be appealed de novo to a panel of three hearing officers.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Fresno as follows:

1. The initial appeal for all municipal code violations shall continue to be governed by Municipal Code Chapter 1, Article 4. The procedure set forth in this resolution shall be for a secondary appeal only of notices and orders and citations under Chapter 11 (Building Permits and Regulations) and other violations that cite to the California Building Code, and shall allow an appellant to appeal a Hearing Officer's Decision rendered under Section 1-410 to a panel of three hearing officers knowledgeable in the applicable building codes, regulations and ordinances. The Hearing Officer who rendered the initial decision shall not participate in the panel appeal.

2. In all applicable cases, the Hearing Officer's Notice of Decision rendered under Section 1-410 shall include a "Notice of Right to Panel Appeal," in a form

substantially similar to the attached Exhibit A. Either the City or the appellant may exercise the right to a panel appeal. Exercise of the right to a panel appeal shall be a prerequisite to an appellant filing a petition for writ of mandate in superior court.

3. To exercise its right to a panel appeal, within ten days of the date of the Hearing Officer's Notice of Decision under Section 1-410, the party requesting the panel appeal shall submit its notice of exercise of right to panel appeal, pay the fee set forth in the Master Fee Schedule, and submit a written brief outlining the reasons it believes the Hearing Officer's decision to be in error. The opposing party shall then have ten days to submit a brief in opposition. The appeal will be decided based solely on the written submissions of the parties with no oral argument. The panel shall render its written decision within forty five days after the request for panel appeal.

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STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, YVONNE SPENCE, City Clerk of the City of Fresno, certify that the foregoing resolution was adopted by the Council of the City of Fresno, at a regular meeting held on the _____ day of _____, 2018.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2018
Mayor Approval/No Return: _____, 2018
Mayor Veto: _____, 2018
Council Override Vote: _____, 2018

YVONNE SPENCE, MMC
City Clerk

By: _____
Deputy

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: _____
Katie Doerr Chief Assistant [Date]

KBD:ns [79581ns/kbd] 4/9/18