



# CITY OF HAYWARD

Hayward City Hall  
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www.Hayward-CA.gov

## Cover Memo

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**File #:** LB 15-034, **Version:** 1

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**DATE:** December 15, 2015

**TO:** Mayor and City Council

**FROM:** Development Services Director

### **SUBJECT**

Introduction of an Ordinance to Amend the Hayward Building Code to Rescind Previously Adopted Amendments to the State Building Code that Restricts Issuance of Permits Only to Licensed Contractors and Resident Owners, and that Limits all Building Permits to a Duration of One Year

### **RECOMMENDATION**

Staff recommends that the City Council introduces the attached ordinance.

### **SUMMARY**

In response to complaints from owners of properties who do not live on-site and who wish to pull permits as owners-builders, staff is recommending that the Hayward Building Code be amended to better align it with the California Building Code and the codes and practices of most other jurisdictions. Additionally, because many permits associated with active projects are not completed within the currently required one-year timeframe, staff is also recommending additional amendments to Hayward's Building Code to better align it with the State Code and most other jurisdictions related to the "life" of a building permit.

Legacy concerns with non-resident owners pulling permits and having their workers perform construction work are addressed via the City's building inspectors, who serve as the quality control for construction, and concerns with construction projects continuing indefinitely without completion are addressed in the California Building Code as written. Also, the recommended changes would provide Hayward rental unit owners the same privileges enjoyed by such owners in other jurisdictions throughout the State.

### **BACKGROUND**

Owner-Builder Permit Restriction - Prior to 2013, the City ordinances simply restated state law, or did not mention this subject at all. In other words, they did not prohibit non-resident property owners from pulling permits as owner-builders. The amendment in question was adopted in late 2013 via Ordinance 13-21 to require that only licensed contractors be permitted to apply for building permits where non-resident owners were involved. The staff felt that this restriction would improve the quality of work,

particularly in the case of multi-family (rental) buildings. There is no proof that this results in a better built environment. The building inspectors remain the source of quality control for compliance with the minimum codes, and this ordinance denies property owners of rights enjoyed elsewhere in California.

Permit Expiration - Hayward's current Building Code (see text below) indicates a building permit will expire after one year of issue date, with the ability for a permittee to request an additional one-year extension from the Building Official. The regulation affects all permits issued and potentially negatively impacts those permittees who are actively building or improving their properties. For homeowners doing their own work on nights and weekends and using funds as they become available, the two-year limitation is onerous and untenable. There are many unforeseen circumstances that may preclude someone whose true desire is to complete a project expeditiously from doing it within the current regulations' absolute time limit.

Section 105.5 of Hayward's Building Code currently reads:

105.5 Expiration. With the following exceptions, every permit issued by the building official under the provisions of this code **shall expire by limitation and become null and void if the building or work authorized by such permit is not completed within 1 year from the date of issuance:**

1. The building official shall have the authority to authorize longer time periods for specific projects.
2. Whenever a permit is issued specifically to correct a violation of this code or of any pertinent law, rule, regulation, or ordinance, or to rehabilitate, repair, modify, remove, or demolish a dangerous or illegal building or structure or equipment, or to otherwise abate a nuisance, the building official shall establish a reasonable time period for the completion of the work.
3. Whenever a permit is issued for certain short-term projects, the building official shall have the authority to establish a time period of less than 1 year. These projects may include, but not be limited to, termite repairs, free - standing fireplace stoves, solar system installations, spas and hot tubs, demolition, and electrical service alterations.
4. **The permit holder may renew a permit for a period of no longer than 1 year after the original date of expiration, provided that the request for renewal is submitted to the building official prior to the said expiration date** along with the payment of a renewal fee, that no changes have been made or will be made in the original plans and specifications, and that no laws, regulations, rules, or ordinances have been changed in such a manner as to prohibit the completion of the proposed work. This renewed permit shall require that all incomplete work conform to the laws, regulations, rules, and ordinances in effect at the time of renewal. The permit renewal fee shall be established as indicated in Sections 108.

This amendment to the State Building Code was first adopted in Hayward in 2010 and, according to staff at the time, was intended primarily for code enforcement actions to force permit holders to pursue compliance projects to completion in an expeditious manner. The City's Community Preservation and Improvement regulations allow code enforcement action when a public nuisance exists, such as that created by an abandoned construction site, in terms of becoming an attractive nuisance, a harborage for vermin, etc.

Besides local public nuisance regulations, provisions in the State Health and Safety Code prescribe

procedures to address violations of the State Housing Code, rendering the 2010 and current amendment contradictory and unnecessary. Other than allowing a single one-year extension by the Building Official, the current regulation does not accommodate justifiable delays in construction, which include financial shortfalls, health issues, family deaths and changes in materials pricing. An additional issue is raised because the California Energy Commission requires that renewed permits must comply with current energy standards. For example, a house begun prior to July 2014, even if well under construction, could not have a permit renewed without revisions to comply with the new standards, in some cases at prohibitive expense and building modification. The intent of the California Building Code language is that a construction project, begun in good faith and not abandoned, should be allowed to proceed to completion as designed.

## DISCUSSION

Owner-Builder Permit Restriction - Contrary to the California Building Code and the State Business and Professions Code, the Hayward Building Code currently prohibits the issuance of a building permit to a property owner when the owner plans to perform construction work at a non-owner-occupied rental or commercial property. Under local law, only a licensed contractor is authorized to obtain a building permit at a non-owner occupied property, with allowance for a resident owner of a single-family dwelling to obtain a permit. Hayward is the only municipality in the area that has this restriction. Therefore, the language below is proposed to be stricken from the Hayward Building Code and Section 105.3.1 of the California Building Code, as written, would be reinstated.

- a) Permits may only be issued to a person holding a valid State of California Contractors license except when otherwise provided in this section.
- b) Any permit required by this code may be issued to any person to do any work regulated by this code in a single-family dwelling used exclusively for living purposes, including the usual accessory buildings and quarters in connection with such buildings, provided the applicant is the owner **and resident** in such buildings, accessory buildings, or quarters.

Permit Expiration - The Hayward Building Code currently requires that permitted work be completed within one year of permit issuance, with language permitting the City Building Official to allow a single one-year extension to the permit under extenuating circumstances. Many projects in Hayward, although they proceed with construction in a timely manner, exceed such timeframes, which forces staff to either require permit reinstatements or to conduct inspections on technically expired permits.

Under state law and provisions of the California Building Code, a project with an expired permit must be stopped and no further work toward completion shall be permitted until a new permit, with all applicable fees paid, is issued. In California, by state law, no permit may be issued OR renewed without requiring the project to comply with current energy standards. This provision prohibits completion of the project until the current standards are met. The energy standards in July 2014 increased the required energy conservation by thirty to forty percent and changed the mandatory minimum insulation and glazing standards so much that a project might no longer be economically or physically viable. As of December 1, 2015, the City has 1, 033 permits which have expired or are about to expire. Many of these are active permits with recent inspections, including two City fire stations, at least one church, and many new single-family dwellings.

To rectify this problem, staff is recommending the language below from the Hayward Building Code be stricken as shown in strike-out mode, and replaced with language from the State Building Code, as shown below in red and in the attached ordinance.

Existing language proposed to be deleted:

New language proposed:

105.5 Expiration. Every permit issued shall become invalid unless the work on the site authorized by such permit is commenced within 180 days after its issuance, or if the work on authorized on the site by such permit is suspended or abandoned for a period of 180 days after the time the work is commenced. The building official is authorized to grant, in writing, one or more extensions of time, for periods of not more than 180 days each. The extension shall be requested in writing and justifiable cause demonstrated.

None of the jurisdictions surrounding Hayward have these restrictions. An internet search found a similar ordinance/restriction for owner-builder permits in the City of Burbank. Also, it is normal for errors to be found and correction notices to be issued on projects done by either contractors or owner-builders. There are procedures in place to charge additional fees for the third and subsequent inspections on a single item of construction until the work is shown to be in compliance with the codes. If time is a factor, as happens with life-safety and/or code enforcement issues, there are other avenues to force compliance through the City's Community Preservation regulations and the State Health and Safety Code.

## **ECONOMIC AND FISCAL IMPACTS**

Allowing issuance of permits to non-resident owners lowers costs of construction to such owners, which may encourage more substantial remodels and upgrades and potentially encourage some owners to pull permits versus do construction illegally without permits. No significant fiscal impacts are anticipated as a result of these amendments to current regulations.

## **PUBLIC CONTACT**

Notice of this meeting was published in *The Daily Review* newspaper on December 5, 2015. Also, notice of Council's scheduled review of this item was sent to the Hayward Rental Housing Association. No responses to the notice have been received by staff at time of finalization of this report.

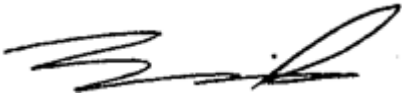
## **NEXT STEPS**

If Council introduces the attached ordinance, it will be brought back for adoption at the December 15 meeting. If the ordinance is adopted on December 15, it will become effective thirty days after adoption and staff will notify the Rental Housing Association of the amendments, as well as contractors and permittees via signs in the Permit Center and information on the City's website.

*Prepared by:* Fred Cullum, City Building Official

*Recommended by:* David Rizk, Development Services Director

Approved by:



Fran David, City Manager

Attachments:

Attachment I

Ordinance