



Public Law Update - Court of Appeal Holds City Must Follow Building Code Provisions Regarding Administrative Hearings for Appeals of Building Code Violations

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The Court of Appeal held that a city’s code could not provide for an administrative hearing for appeals of building code violations by a hearing officer appointed by a City Manager, but must allow for appeals to be heard by a board, agency or other governing body.

The Court held that the City of Fremont’s (“Fremont”) Municipal Code (“FMC”) was preempted by the California Building Code (“CBC”) when the CBC requires hearings before a board, agency, or the governing body for appeals, orders or determinations concerning the application of the CBC and the FMC provided that, wherever the FMC allows for a board of appeals, the board will be an administrative hearing officer appointed by the city manager. *Temple of 1001 Buddhas v. City of Fremont* (March 6, 2024, A167719) __ Cal.App.4th __ (2024 WL 973921) [pp. 8].

The Temple of 1001 Buddhas (“Petitioner”) owned property within Fremont and, after complaints were made and inspection warrants were obtained over the course of three years, Fremont issued a third notice of order to abate nuisances (“NOA 3”) for, among other things, new construction and alteration to dwelling units and structures, and electrical and plumbing improvements. *Ibid.* at 1-3. Fremont determined that these conditions violated the CBC and were nuisances, and informed the Petitioner that it had the right to appeal the determination to a hearing officer appointed by the City Manager pursuant to the FMC. *Ibid.*

The Petitioner appealed NOA 3 and after a two-day administrative hearing, the hearing officer found that the City met its burden of establishing the violations and ordered abatement of the various violations. *Ibid.* at 3. Subsequently, the Petitioner filed an action with the trial court for administrative mandamus, declaratory, and injunctive relief, which the trial court denied, and the petitioner appealed. *Ibid.*

On appeal, the Petitioner argued that the FMC provision that replaced

a board of appeals with a single administrative officer was preempted by the California building code which requires a hearing before a board, agency, or the government body. *Ibid.*

Local regulations are preempted by state regulations when they duplicate, contradict, prevent the attainment of, or enter an area that is fully occupied by state law. *Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 897-98.

The FMC adopts the CBC, subject to certain amendments designated in the FMC. *Ibid.* at 6. The court relied on previous case law which observed that:

the plain language of Building Code Section 1.8.8.1 . . . mandates that governments establish an appellate process, which may be satisfied in one of three ways: (1) by creating a local appeals board for new construction and a housing appeals board for existing buildings; (2) by creating an agency authorized to hear such appeals; or (3) by having the governing body of the city serve as the local appeals board or housing appeals board. Ibid. at 8. (citing *Lippman v. City of Oakland* (2017) 19 Cal.App.5th 750).

The CBC does not contemplate an appeal before a single hearing officer, and its plain language imposes a mandatory duty to establish a local appeals board or an agency that is authorized to hear appeals; otherwise, the governing body must act as the appeals board. *Temple of 1001 Buddhas*, at 6. Accordingly, the Court held that the FMC conflicts with the CBC because the FMC does not authorize a board or distinct agency possessing the qualifications required by the CBC, or otherwise authorize the City Council to hear appeals from those adversely affected by a decision, order or determination relating to the application of building standards as published in the CBC. *Ibid.* at 8.

The Court rejected Fremont's argument that the case involved public nuisance determinations rather than administrative citations for building code violations because the determinations that public nuisances existed were based on CBC violations, which is necessarily a determination that the CBC was violated. *Ibid.*

The Court also rejected Fremont's argument that CBC 1.8.8.1 is inapplicable where determinations concerning CBC violations are entwined with determinations of zoning violations because Fremont failed to cite any controlling authority; "[f]or [determinations relative to violations of the Fremont Building Standards Code], the required appeals process is clear." *Ibid.* at 9.

Local agencies should review their municipal codes and where it conflicts with the Court's opinion, should ensure that determinations, appeals, and orders concerning the building code, as adopted by the

local agency, are heard before an established local appeals board or agency or its governing body.

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