

## **LEGISLATIVE DIGEST**

[Administrative Code - Retention of Department of Building Inspection Records]

### **Ordinance amending the Administrative Code to require the Department of Building Inspection to retain certain records permanently.**

#### Existing Law

The City's records retention laws, codified primarily in Chapter 8 of the Administrative Code, apply to all City departments. Many departmental records need not be retained at all. For those records that must be retained, or that a department chooses to retain, there is considerable discretion as to the length of the retention period for many of those records.

#### Amendments to Current Law

This ordinance supplements existing records retention laws by requiring the Department of Building Inspection to retain certain categories of records permanently, if any one of numerous criteria is met.

Two of these criteria concern the Department's decision to issue a construction or occupancy permit, which the ordinance defines to include building permits, site permits and related addenda, certificates of final completion, certificates of final completion and occupancy, and temporary certificates of occupancy. Permanent retention is required (1) if the record is submitted to the Department to obtain a construction or occupancy permit, or (2) if the record pertains to a building that is or was the subject of a construction or occupancy permit, and the Department possessed the record prior to making any decision regarding the issuance of a construction or occupancy permit.

The remaining criteria all concern developments after the Department's decision to issue a construction or occupancy permit.

In particular, permanent retention is required if the record was created or received by the Department after the issuance of a construction or occupancy permit, and contains any reference to the possibility that (1) the Department should not have issued the permit for the building in question as it was then designed, (2) the building's physical conditions present a greater-than-expected risk of endangering human health or safety, (3) the building's physical conditions present a greater-than-expected risk of damaging property, (4) the building's physical conditions present a greater-than-expected risk of adversely affecting real estate values, or (5) the building's physical conditions present a greater-than-expected probability of litigation.

Permanent retention is also required if the record was created or received by the Department after the issuance of a construction or occupancy permit, and refers to the possibility that (1) the building, or any part of it, is experiencing more mechanical stress than expected, (2) the building, or any part of it, is tilting or may tilt more than expected, (3) the building, any part of the building, or any soil or other material beneath or adjacent to the building, is subsiding or settling, or may subside or settle, more than expected, (4) the building, or any part of it, is at greater risk of collapse than expected, (5) the building is more vulnerable than expected to natural hazards, including earthquake-related hazards, (6) the building is more vulnerable than expected to fires of any kind, or (7) the building, its construction, or related pre-construction activities, has made any other building more vulnerable to any of the conditions listed in this paragraph.

There are two exceptions to the ordinance's records retention requirements. First, if all or substantially all of the record consists of mathematical calculations underlying architectural or engineering plans that the Department will retain, and the Department does not possess an electronic version of the record, then the Department need not retain it. Second, if the record concerns a building for which the Department issues a construction or occupancy permit for the overall building, and issues or plans to issue separate construction or occupancy permits for individual units or uses within the building, the Department need not retain records that concern those individual units or uses, but must retain records that concern the building's overall structure.

Additionally, the ordinance prohibits the Department from basing its decision to issue a construction or occupancy permit, in whole or in part, on any work product of any kind produced by persons who are not employed by the City or another government, or by entities that are not part of the City or another government, unless those outside persons or entities agree to give the Department a copy of any record that would, if it were in the Department's possession, be subject to the ordinance's retention requirements.

Finally, the ordinance also requires the Department to make available, via its public website, contact information for the employee or employees responsible for receiving public records requests.