

<div>DEPARTMENT OF LICENSES AND INSPECTIONS</div> <div>CODE INTERPRETATION</div> <div>A-1701</div>		<div>CODE OF GENERAL ORDINANCES OF THE CITY OF PHILADELPHIA</div> <div>TITLE 4</div> <div>PHILADELPHIA BUILDING CONSTRUCTION AND OCCUPANCY CODE</div>
<div>SUBJECT OF INTERPRETATION:</div> <div>EFFECT OF APPEALS ON PERMITS</div>		<div>REFERENCE CODE SECTION(S):</div> <div>A-805</div>
<div>ISSUED BY</div>		<div>ISSUE DATE:</div> <div>April 10, 2017</div>
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<div>TITLE:</div> <div>Chief Code Official</div>		<div>PAGE 1 OF 2</div>

QUESTIONS:

Occasionally appeals are filed challenging the issuance and validity of a permit. Two questions typically arise when such appeals are filed.

1. Can a permit which is the subject of an appeal, expire during the appeal process?
2. Can a permit holder act on a permit after an appeal is filed?

DISCUSSION:

The questions involving the effect of appeals on permits revolves around the legal term of a “stay.” A “stay” is typically a court order preventing further action until a future event occurs, or the order is lifted. In some instances, the law provides for an automatic stay. In most instances, however, the law is silent, and there is no stay unless one of the parties actively seeks it.

Where a stay is provided by statute, no court order is necessary to stay the action, and the mere filing of a notice of appeal operates to put a regulatory decision on hold pending review of that decision. For example, work that has been cited as a violation of the code could continue if the enforcement order is appealed and enforcement of the order is stayed.

The Administrative Code includes such language as follows:

SECTION A-805 ACTION PENDING APPEAL

A-805.1 Stay of action: Whenever an appeal filed pursuant to Sections A-801.0 or A-803.0 is pending, compliance with the decision, notice of violation, order, or license suspension or revocation which is the subject of appeal shall not be required except as provided in Section A-805.2.

A-805.2 Compliance action: An appeal shall not constitute a stay of proceedings by the department or the Fire Department where either department finds and certifies in writing that the violation is intentional or that there exists a condition of immediate danger or hazard to health, safety or welfare which requires immediate compliance. An appeal shall not constitute grounds for lifting a Stop Work Order or Cease Operations Order.

The time limit of a permit is an order by the Department, and therefore would be subject to Section A-805 while an appeal is pending. The period of time specified by the Code for action on a permit would not include the period of time during which an appeal involving the approval of such permit is or was pending in the Courts.

No such automatic stay exists to prevent a permit holder from acting on a permit after an appeal against such permit has been filed. Since there is no automatic stay on the action under the permit, work authorized by a challenged permit must be halted by an injunction prohibiting development while the appeal is pending. An injunction is a court order that “enjoins” or requires a party to take or to refrain from taking specified action.

If no injunction is sought, the permit holder can proceed while the permit is under appeal. However, the permit holder acting on such permit does so at considerable risk. Should the appeal be upheld and the permit found invalid, the work performed would be considered unpermitted and could be ordered removed by the Court.

INTERPRETATION:

Can a permit which is the subject of an appeal, expire during the appeal process?

No. When an appeal is filed challenging the issuance and/or validity of a permit, while such appeal is pending, action on the permit, which is the subject of that appeal, shall not be required.

The time limit of a permit is an order of the Department. The appeal places a stay of action on such an order. The time limit imposed on the permit, which is the subject of the appeal, shall not begin until the appeal and any subsequent appeals have been exhausted.

In such cases, the permit holder is not required to request a permit extension, but must present proof of a final decision on the appeal, including the date of that decision to confirm that the time limit on the permit has not expired.

Can the permit holder act on a permit after an appeal is filed?

Yes. There is no automatic stay on the action authorized by the permit. The burden falls to one of the parties to seek an injunction from the Court to stay action by the permit holder during the appeal. If no injunction is issued, the permit holder may proceed at his/her own risk while the permit is under appeal.