



BUILDING BOARD OF APPEALS STAFF REPORT

CITY OF YORBA LINDA

COMMUNITY DEVELOPMENT DEPARTMENT

DATE: JUNE 2, 2021

TO: HONORABLE CHAIRMAN AND MEMBERS OF THE BUILDING BOARD OF APPEALS

FROM: COMMUNITY DEVELOPMENT DEPARTMENT

BY: JIM SOWERS, BUILDING OFFICIAL

SUBJECT: ESTABLISHMENT OF OPERATING AND HEARING PROCEDURES FOR YORBA LINDA BOARD OF APPEALS

RECOMMENDATION

Staff recommends that the Yorba Linda Board of Appeals adopt the attached Resolution establishing operating and hearing procedures for the Board of Appeals.

BACKGROUND

Chapter 1 (Scope and Administration), Division I (California Administration), Section 1.8.8 (Appeals Board) establishes requirements and procedures for appeals of orders, decisions and determinations made by the City's building and safety enforcement agency (i.e., the Building Division of the Community Development Department).

Subsection 1.8.8.1 provides guidance on the establishment of an Appeals Board as follows:

"The governing body of any city, county, or city and county may establish a local appeals board...to serve this purpose. Members of the appeals board shall not be employees of the enforcing agency and shall be knowledgeable in the applicable building codes, regulations and ordinances as determined by the governing body of the City."

Accordingly, on April 20, 2021, the Yorba Linda City Council adopted Resolution 2021-5743 authorizing the establishment of a Building Board of Appeals.

Appendix B – Board of Appeals of the 2019 California Building Code provides a framework for board operations. Section B101 – General sets parameters for board membership, terms of office, member qualifications, selection of officers, rules and procedures, etc. Certain of the Board's operating procedures, including the method for

conducting appeals hearings, require further definition by the Board. Appendix B Sections B101.2.3 *Rules and procedures* and B101.3.2 *Procedure* grant the Board of Appeals the authority and duty to establish general operating procedures and hearing procedures, respectively. Thus, staff provides below proposed operating procedures for the Board's consideration and adoption.

DISCUSSION

The City of Yorba Board of Appeals' function is to consider and decide appeals to the application and interpretation of the technical (non-administrative) provisions of the adopted building codes made by the City of Yorba Linda. The procedures for the Board's hearing of appeals generally shall be applied as described in the procedures noted herein. Where not directly discussed herein, the Board shall operate in compliance with the procedures outlined in Appendix B – Board of Appeals of the 2019 California Building Code (see attached). In the interest of ensuring a fair hearing and due process, staff is recommending the following procedures for adoption by the Board of Appeals.

PROCEDURES

Manner of Conducting Hearing

- A. The Board shall only consider evidence that it deems relevant to the Building Department's interpretation and/or application of the building standard that has been appealed. Formal rules of the California Evidence Code shall not apply and presentations by staff and appellant need not be under oath or affirmation.
- B. At least (7) calendar days prior to the hearing (counting the day of the hearing as the seventh day), the City shall provide notice to the Appellant as to the time and location of the hearing, and shall provide the Appellant copies of any report, evidence and other document that the City will use at the appeal hearing. At the time it provides notice to Appellant, the City must also identify witnesses (other than City staff or the City Attorney), if any, it intends on calling at the hearing. No later than four (4) calendar days prior to the hearing (counting the day of the hearing as the fourth day), the Appellant must submit to the Board copies of any report, evidence and other documents (other than the already submitted appeal narrative) that the Appellant will use at the appeal hearing, and must identify witnesses, if any, that it intends on calling at the hearing. The Board shall have the discretion to disallow the use of any report, evidence, or document that was not timely submitted from being offered or considered at the appeal hearing.
- C. The Board may continue the hearing to request additional information from the parties.

- D. The Hearing will be recorded by the City by audio and video, if conducted through a video-based interface (e.g., Zoom or similar remote meeting platform).

Order of the Hearing

- A. The Board Chairman will introduce the item (as it appears on the agenda). City staff and counsel and Appellant (or Appellant's representative) should identify themselves for the record.
- B. City staff will provide a brief (no more than 15 minutes) presentation to the Board.
- C. The Board may ask any questions of staff (or any witness called by the City). The Appellant shall also be afforded the right to ask questions of staff (or any witness). The following items shall be adhered to during the questioning.
 - a. Generally, a time limitation of five (5) minutes per witness shall be applied to Appellant's questioning. At the Chairman's discretion, additional time may be afforded.
 - b. All questions shall be related to the Code related compliance item(s) in question, only.
 - c. All questions shall be related to the related Code section(s) and its (their) interpretation.
- D. Appellant or Appellant's representative may make a presentation of no more than fifteen (15) minutes. Appellant may divide up the fifteen (15) minutes between various speakers or have only one speaker, provided that the time limit is observed. Time devoted to responding to Board questions shall not be included as part of the fifteen (15) minute time limit.
- E. The Board may ask any questions of the Appellant (or any witness called by Appellant). City staff may also be afforded the right to ask questions of Appellant (or any witness). The following items shall be adhered to during the questioning.
 - a. Generally, a time limitation of five (5) minutes per witness shall be applied to City staff's questioning. At the Chairman's discretion, additional time may be afforded.
 - b. All questions shall be related to the Code related compliance item(s) in question, only.
 - c. All questions shall be related to the related Code section(s) and its (their) interpretation.

Additional Discussion

- A. The Board at its discretion may entertain additional testimony and/or argument by staff or the Appellant.

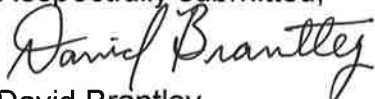
Public Comment

- A. After the testimony portion of the appeal hearing is complete, the Board will open a public comment period in which any member of the public may speak on the item for no more than three (3) minutes. Public speakers are not allowed to ask questions of staff or Appellant but may only address their remarks to the Board. Comments must be relevant to the specific Code compliance item referenced in the submitted appeal, or the speaker will be ruled Out of Order.

Discussion, Deliberation and Decision

- A. The Board will close the testimony and public comment portion of the appeal hearing and begin deliberation on the appeal. There will be no more staff, appellant, or public testimony accepted, unless requested by the Board through the Chairman.
- B. Generally, the Board will discuss the matter as a group prior to any motion being made, with an opportunity for individual Board members to express initial opinions but retaining the right to be swayed on an issue prior to a vote.
- C. If the Board determines to deny the appeal and uphold the Building Official's determination, it shall do so by a majority vote to adopt a Resolution denying the appeal. Should the Board's determination be to modify or reverse the Building Official's decision, such determination shall be by vote of two-thirds of the Board's membership to adopt a Resolution modifying or reversing the Building Official's decision.
- D. The City of Yorba Linda staff will provide the appellant with a certified copy of the Board's decision resolution within five (5) business days of its adoption.

Respectfully submitted,



David Brantley
Community Development Director

**Building Board of Appeals Staff Report
Establishment of Operating and Hearing Procedures
June 2, 2021
Page 5**

Attachments:

1. 2019 CBC Appendix B
2. Resolution

RESOLUTION NO.

**A RESOLUTION OF THE BUILDING BOARD OF APPEALS
OF THE CITY OF YORBA LINDA ESTABLISHING
OPERATING AND HEARING PROCEDURES FOR THE
BOARD OF APPEALS**

WHEREAS, on April 20, 2021, the Yorba Linda City Council adopted Resolution 2021-5743 authorizing the establishment of a Building Board of Appeals; and,

WHEREAS, Appendix B – Board of Appeals of the 2019 California Building Code provides a framework for board operations. Section B101 – General sets parameters for board membership, terms of office, member qualifications, selection of officers, rules and procedures, etc. Certain of the Board’s operating procedures, including the method for conducting appeals hearings, requires further definition by the Board. Appendix B Sections B101.2.3 *Rules and procedures* and B101.3.2 *Procedure* grant the Board of Appeals the authority and duty to establish general operating procedures and hearing procedures, respectively; and,

WHEREAS, the City of Yorba Board of Appeals’ function is to consider and decide appeals to the application and interpretation of the technical (non-administrative) provisions of the adopted building codes made by the City of Yorba Linda. The procedures for the Board’s hearing of appeals generally shall be applied as described in the procedures noted herein. Where not directly discussed herein, the Board shall operate in compliance with the procedures outlined in Appendix B – Board of Appeals of the 2019 California Building Code; and,

WHEREAS, this matter requires an open hearing in accordance with Section B101.3.1 of the 2019 California Building Code; and,

WHEREAS, notice of the open hearing before the Board of Appeals of the City of Yorba Linda concerning this matter was given in accordance with applicable law; and,

WHEREAS, on Wednesday, June 2, 2021, the Board of Appeals held an open hearing pertaining to this matter; and,

WHEREAS, city staff prepared a written report on this matter, a copy of which was made available to the public in advance of the open hearing; and,

WHEREAS, the Board of Appeals finds that the adoption of this Resolution is exempt from the California Environmental Quality Act (“CEQA”) pursuant to Title 14 California Code of Regulations Sections 15061(b)(3), in that it can be seen with certainty that the adoption of the Resolution is not a project, and further, that it proposes no activity that may have a significant effect on the environment and will not cause a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment.

WHEREAS, after consideration of the staff report and all of the information, testimony, and evidence presented at the open hearing, the Yorba Linda Board of Appeals does hereby find that the operating and hearing procedures outlined below provide the public a framework for further review of determinations of applicability of the California Building Codes and Yorba Linda Municipal Code to construction projects in the interest of ensuring a fair hearing and due process:

PROCEDURES

Manner of Conducting Hearing

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- B. Generally, the Board will discuss the matter as a group prior to any motion being made, with an opportunity for individual Board members to express initial opinions but retaining the right to be swayed on an issue prior to a vote.
- C. If the Board determines to deny the appeal and uphold the Building Official's determination, it shall do so by a majority vote to adopt a Resolution denying the appeal. Should the Board's determination be to modify or reverse the Building Official's decision, such determination shall be by vote of two-thirds of the Board's membership to adopt a Resolution modifying or reversing the Building Official's decision.
- D. The City of Yorba Linda staff will provide the appellant with a certified copy of the Board's decision resolution within five (5) business days of its adoption.

NOW THEREFORE BE IT RESOLVED that the Yorba Linda Board of Appeals does hereby adopt the foregoing operating and hearing procedures in the interest of ensuring due process and a fair hearing process and to ensure the public health, safety and welfare.

PASSED AND ADOPTED at an open hearing of the City of Yorba Linda Board of Appeals on June 2, 2021.

CHAIRMAN

TO WIT:

I HEREBY CERTIFY that the foregoing Resolution was duly adopted at a regular meeting of the Yorba Linda Board of Appeals on June 2, 2021, and carried by the following roll call vote:

AYES:	COMMISSIONERS:
NOES:	COMMISSIONERS:
ABSENT:	COMMISSIONERS:

DAVID BRANTLEY, AICP
SECRETARY TO THE BOARD OF APPEALS

CALIFORNIA BUILDING CODE – MATRIX ADOPTION TABLE APPENDIX B – BOARD OF APPEALS

(Not adopted by state agencies)

Adopting agency	BSC	BSC- CG	SFM	HCD			DSA			OSHPD					BSCC	DPH	AGR	DWR	CEC	CA	SL	SLC
				1	2	1/AC	AC	SS	SS/CC	1	1R	2	3	4								
Adopt entire chapter																						
Adopt entire chapter as amended (amended sections listed below)																						
Adopt only those sections that are listed below																						
Chapter / Section																						

APPENDIX B BOARD OF APPEALS

The provisions contained in this appendix are not mandatory unless specifically adopted by a state agency, or referenced in the adopting ordinance.

User notes:

About this appendix: Appendix B provides criteria for Board of Appeals members. Also provided are procedures by which the Board of Appeals should conduct its business.

Code development reminder: Code change proposals to this appendix will be considered by the Administrative Code Development Committee during the 2019 (Group B) Code Development Cycle. See explanation on page ix.

SECTION B101 GENERAL

[A] B101.1 Application. Applications for appeal shall be obtained from the building official. Applications shall be filed within 20 days after notice has been served.

[A] B101.2 Membership of board. The board of appeals shall consist of persons appointed by the chief appointing authority as follows:

1. One for 5 years; one for 4 years; one for 3 years; one for 2 years; and one for 1 year.
2. Thereafter, each new member shall serve for 5 years or until a successor has been appointed.

The building official shall be an ex officio member of said board but shall have no vote on any matter before the board.

[A] B101.2.1 Alternate members. The chief appointing authority shall appoint two alternate members who shall be called by the board chairperson to hear appeals during the absence or disqualification of a member. Alternate members shall possess the qualifications required for board membership and shall be appointed for 5 years, or until a successor has been appointed.

[A] B101.2.2 Qualifications. The board of appeals shall consist of five individuals, one from each of the following professions or disciplines:

1. Registered design professional with architectural experience or a builder or superintendent of building

construction with not fewer than 10 years of experience, 5 of which shall have been in responsible charge of work.

2. Registered design professional with structural engineering experience.
3. Registered design professional with mechanical and plumbing engineering experience or a mechanical contractor with not fewer than 10 years of experience, 5 of which shall have been in responsible charge of work.
4. Registered design professional with electrical engineering experience or an electrical contractor with not fewer than 10 years of experience, 5 of which shall have been in responsible charge of work.
5. Registered design professional with fire protection engineering experience or a fire protection contractor with not fewer than 10 years of experience, 5 of which shall have been in responsible charge of work.

[A] B101.2.3 Rules and procedures. The board is authorized to establish policies and procedures necessary to carry out its duties.

[A] B101.2.4 Chairperson. The board shall annually select one of its members to serve as chairperson.

[A] B101.2.5 Disqualification of member. A member shall not hear an appeal in which that member has a personal, professional or financial interest.

APPENDIX B

[A] **B101.2.6 Secretary.** The chief administrative officer shall designate a qualified clerk to serve as secretary to the board. The secretary shall file a detailed record of all proceedings in the office of the chief administrative officer.

[A] **B101.2.7 Compensation of members.** Compensation of members shall be determined by law.

[A] **B101.3 Notice of meeting.** The board shall meet upon notice from the chairperson, within 10 days of the filing of an appeal or at stated periodic meetings.

[A] **B101.3.1 Open hearing.** All hearings before the board shall be open to the public. The appellant, the appellant's representative, the building official and any person whose interests are affected shall be given an opportunity to be heard.

[A] **B101.3.2 Procedure.** The board shall adopt and make available to the public through the secretary procedures under which a hearing will be conducted. The procedures shall not require compliance with strict rules of evidence, but shall mandate that only relevant information be received.

[A] **B101.3.3 Postponed hearing.** When five members are not present to hear an appeal, either the appellant or the appellant's representative shall have the right to request a postponement of the hearing.

[A] **B101.4 Board decision.** The board shall modify or reverse the decision of the building official by a concurring vote of two-thirds of its members.

[A] **B101.4.1 Resolution.** The decision of the board shall be by resolution. Certified copies shall be furnished to the appellant and to the building official.

[A] **B101.4.2 Administration.** The building official shall take immediate action in accordance with the decision of the board.