

**RESOLUTION NO. 2021-01**

**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 8101 - 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 8101.2.3 *Rules and procedures* and 8101.3.2 *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 8101.3.1 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

- 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.
- 8. 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.

**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.

  
BOB HEINRICH  
CHAIRMAN

TOWIT:

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:	5	COMMISSIONERS:	KUWITZKY, SESAR, ESKENAZI, MCFARLAND, HEINRICH
NOES:	0	COMMISSIONERS:	NONE
ABSENT:	0	COMMISSIONERS:	NONE

  
DAVID BRANTLEY, AICP  
SECRETARY TO THE BOARD OF APPEALS