



## **Rules of Procedure for Sacramento County Building Board of Appeals**

### **GENERAL**

**Name of Board.** The official body referred to in these Rules of Procedure shall be known and referred to as the "Building Board of Appeals" or, in the alternative, the "Board of Appeals" or "Appeals Board" or "Board".

**Authority.** These Rules of Procedure are adopted pursuant to Section 113.1 of the Building Code, as amended (ref. Sac. County Code, § 16.02.080).

**Office of Board.** The official office and mailing address of the Board of Appeals shall be:

Secretary—Sacramento County Board of Appeals  
Building Permits and Inspections  
827 7<sup>th</sup> St Sacramento, Ca 95814  
Rm 102

**Meeting Place of Board.** Except as otherwise may be provided by the Appeals Board from time to time, the regular meeting place of the Appeals Board shall be at a County Facility by means of virtual including in the Community Room at the Office of the Board at:

827 7<sup>th</sup> St Sacramento, Ca 95814

**Number of Members.** The board of appeals shall consist of seven (7) members, not including the Building Official. The members of the board of appeals shall be appointed by the Building Official and confirmed by the Board of Supervisors.

### **OFFICERS**

**Election of Chairperson.** The Chairperson of the Appeals Board shall be elected by the members of the Board.

**Qualification of Chairperson.** The Chairperson of the Appeals Board shall be one of the members of the Board.

**Term of Office of Chairperson.** The term of Office of the Chairperson of the Appeals Board shall be one (1) year. The office of Chairperson shall be voted upon annually by the Appeals Board.

**Powers and Duties of Chairperson.** The Chairperson shall have the following powers and duties:

Preside at all meetings of the Appeals Board and at all hearings conducted by the Board. The Chair shall manage the proceedings and preserve order and decorum. The

Chair shall be entitled to make or second any motion, discuss and present any matter as a member of the Board without having to step down from the Chair.

On behalf of the Appeals Hearing Board, the Chair shall sign all written resolutions of the Appeals Board making findings and conclusions and reciting decisions of the Appeals Hearing Board in matters brought before it, as required by the Municipal Code and applicable laws, and such other resolutions, orders, or documents that are authorized by the Board.

**Chairperson Pro Tempore.** In the event of the absence or disability of the Chairperson, at any meeting or hearing of the Appeals Board, the Board shall elect one of its members as Chairperson pro tempore to preside over such meeting or hearing.

**Open Membership.** Criteria and selection for membership shall not discriminate based upon sex, race, religion, creed, color, national or ethnic origin, or any other classification protected by law. Employees of the County are not eligible for appointment.

**Appointment of Secretary.** The secretary shall be the Building Official or designee. The secretary is not a member of the Board and shall have no vote.

For non-hearing matters, the Board Secretary shall maintain a record of the proceedings ("minutes" and/or action summary), which may consist of a written summary of the proceedings and need not include a recording or transcript of proceedings.

## **MEETINGS**

**Regular Meeting.** The Board of Appeals shall hold monthly meetings as needed.

**Quorum.** A quorum to do business shall consist of four (4) members of the Appeals Board, but a lesser number may constitute a quorum for the purpose of adjourning a meeting or adjourning a meeting to a stated time. In the absence of all the members of the Board from any meeting, the Secretary of the Appeals Board may adjourn the meeting or adjourn the meeting to a stated time.

**Voting.** No action of the Board shall be valid unless a majority (4 votes) of the entire membership of the Board concurs therein.

**Motion to Reconsider.** A final vote on any matter before the Board may be reconsidered during the same meeting at which the vote was taken, provided all persons who have addressed the Board relative to the matter are still present and, further, provided the motion to reconsider shall be made by a member that voted in the majority of the original motion. A successful motion to reconsider does not reverse the original vote but, rather, simply brings the matter back before the Board again anew for a subsequent action.

**Procedure.** Except as otherwise provided in these Rules or by the Appeals Board, the procedure to be followed by the Board at its meetings shall generally be that set forth in Robert's Rules of Order. The Board may act by resolution or motion, but an affirmative vote of at least four (4) members shall be necessary for all decisions of the Board except in matters of adjournment.

**Open and Public.** All meetings of the Appeals Board shall be open and public to the extent required by law. All persons shall be permitted to attend except as otherwise provided by law.

**Agenda.** The Board Agenda shall be posted in accordance with the timelines of the Ralph M. Brown Act (Open Meeting Law). The Agenda may, initially, be prepared by assigned County staff in conjunction with the Chair, although a majority of the Board shall have final determination over the order of business.

**Order of Business.** The order of Business shall be set by the Appeals Board. The Appeals Board may at any time alter the order of business at any meeting. Generally, the order of business shall be as follows:

1. Pledge of Allegiance.
2. Roll Call.
3. Building Department Report.
4. Scheduled Hearings.
5. Misc. Scheduling Matters.
6. Non-agenda public comment.
7. Adjournment.

**APPEAL PROCEDURE.** An appeal must be delivered to the Building Official in writing and must describe in plain language the action, decision, determination, interpretation, notice or order by a County employee or official sought to be addressed. The Appeal must also specifically identify the issue(s) sought to be considered in the hearing as well as any applicable code citations. No request for an appeal will be processed unless it is accompanied by the \$500.00 Building Board of Appeals filing fee. The appeal and filing fee must be delivered to the Building Official within thirty (30) days of the order, determination, interpretation, or notice in dispute, **unless indicated by a shorter appeal time limit elsewhere in these Rules or the County Code (see following provision regarding appeals in violation cases).** Failure of any party to timely submit an appeal and/or filing fee pursuant to this section is a waiver of his or her right therein. The Board of Appeals' decision on the issue in dispute shall be served in writing to the appellant within fourteen (14) calendar days of the appeal hearing. The decision shall advise that the time for judicial review of the decision is governed by the California Code of Civil Procedure Section 1094.6. The decision shall be final upon service.

**APPEALS IN VIOLATION CASES.** An appeal of a notice and/or order issued pursuant to the Administrative Code ("Administrative and Enforcement" portion of the technical building codes adopted by the County) must be made to the Building Official in writing within ten (10) calendar days of the issuance date of the notice or order.

**LIMITATIONS ON AUTHORITY.** An appeal shall be based on a claim that the true intent of the Building Code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of the Building Code do not fully apply or an equally good or better form of construction is proposed. The Board shall have no authority to waive requirements of the County Code or Building Code.

### **HEARING PROCEDURES**

**Application.** The hearing procedures shall govern all hearings and appeals which the Appeals Board is authorized to conduct by the Sacramento County Code.

**Scheduling.** Not later than thirty (30) calendar days following the date of filing an appeal, the Board shall initiate a hearing to determine whether the challenged action, decision, determination, interpretation, notice or order should be upheld or overturned. Written notice of the time, date, and place of the hearing shall be served upon the Appellant and the Building Official not later than fourteen (14) calendar days preceding the date of the hearing.

**Administrative Record.** Any and all written, documentary and photographic evidence or exhibits submitted by either party shall become part of the administrative record. Hearings shall be recorded. Any person wishing to listen to or make a copy of the taped record of a hearing may do so by contacting the Secretary and making a request. Nothing herein shall preclude the Board or any person interested in the hearing from using the services of a court reporter in any public hearing, provided notice is given to the Secretary 24-hours before the hearing. The party desiring the services of a court reporter shall be responsible for making arrangements and for payment for such services.

**Burden of Proof.** During the hearing, the burden of proof shall rest with the Appellant and such proof shall be based upon a preponderance of the evidence. The provisions of the California Administrative Procedure Act (commencing at Section 11500 of the Government Code) shall not be applicable to such hearing nor shall formal rules of evidence in civil or criminal judicial proceedings be applicable. The Appellant and County representatives may appear, present evidence, and examine and cross-examine witnesses.

**Scope of Hearing.** The scope of the appeal hearing will be limited to the issues specifically raised in the timely written appeal. The Board shall review the entire proceeding or proceedings relating to the act or decision being appealed *de novo* and may make any result in any order deemed just and equitable. The hearing may be continued from time to time. At the conclusion of the hearing a written decision which

either grants or denies the appeal shall be issued containing findings of fact and conclusions.

**Submission and Exchange of Evidence.** . Notification of matters to be presented to the Appeals Board including, but not limited to, documents and exhibits, must be exchanged between the parties, and provided to the Secretary of the Appeals Hearing Board, clearly identifying that the submittals are for the Appeals Hearing Board, identifying the hearing by title, and specifying the relevant hearing date(s), no later than seven (7) days before the scheduled hearing so that there is adequate time for County staff to prepare the packets for the Board members.

The Chair may waive the time requirement for good cause, including occasions when compliance with the time requirement is rendered impossible or impracticable because of the date upon which the hearing is scheduled.

**Absences and Continuances.** In the event the Appellant fails to appear at the time, date, and place appointed for the hearing, the hearing shall be continued one time. Thereafter, if the Appellant fails to appear, the hearing shall be conducted in the absence of the Appellant and the Board shall render a decision based upon evidence presented during the hearing.

For good cause as determined by the Board, the hearing may be continued, but for not more than thirty (30) calendar days, upon request of either the Appellant or County staff. Notice of the continuance, if granted, and the new date and time of the hearing shall be made to all parties to the hearing.

**Conduct of Hearing.** The hearing shall generally proceed as follows:

1. Oath. All testimony shall be given under oath to be administered by the Secretary of the Board.
2. Opening statement of Appellant.
3. Opening statement of County.
4. Appellant's presentation of evidence.
5. County's presentation of evidence.
  - a) Questions by the Board
  - b) Public comments
6. County's closing arguments.
7. Appellant's closing arguments.
8. Board discussion and (tentative) vote. Continue to next meeting for final action and adoption of written findings.

There shall be no particular time limit on the hearing proceedings, although no party shall unreasonably delay, disrupt or confuse the proceeding with misleading or irrelevant argument or evidence. The Chair has discretion to maintain the proceedings at a reasonable pace while also preserving the Appellant's due process rights.

**Fair and Impartial Hearing Board.** The individual members of the Appeals Board shall be free of any financial conflicts of interest related to hearing matters, consistent with the California Political Reform Act, and shall objectively consider the evidence and arguments of the parties without bias or predetermination. In the event of a conflict of interest, the Appeals Board member shall recuse himself/herself/themselves from the proceeding.

**Findings and Order.** Within fourteen (14) days following the conclusion of the hearing, the Appeals Board shall issue a decision and make written findings of fact, based upon the evidence received at the hearing to support its decision. Unless otherwise agreed by the parties, notice of the written decision, including a copy thereof, shall be filed with the Building Official and shall be personally served upon or deposited in the United States mail to the Applicant not later than fourteen (14) calendar days following the date on which the hearing was concluded. The Decision of the Board shall become final when announced and there shall be no provision for reconsideration following issuance of the written decision.

**Record.** A record of the entire proceedings before the Appeals Board shall be made by tape or digital recording or by any other means of permanent recording determined to be appropriate by the Appeals Board.

**Effect of technical procedural violation.** Failure to comply with any procedural requirements or time limits of these Rules shall not deprive the Board of jurisdiction over the issue or shall not vitiate any hearing conducted or order made pursuant to these Rules unless such failure constitutes a denial of due process of law.