

BYLAWS OF THE PASO ROBLES BOARD OF APPEALS

Adopted January 5, 2016 - City Council Resolution 16-004
Amendment 1 – May 3, 2016 – City Council Resolution 16-044

BYLAWS OF THE PASO ROBLES BUILDING BOARD OF APPEALS

ARTICLE I - THE BUILDING BOARD OF APPEALS

Section 1: Name of Board

The name of the Board shall be the Paso Robles Building Board of Appeals (hereinafter referred to as the “Appeals Board”).

Section 2: Purpose

The Appeals Board serves at the pleasure of the City Council. The Building Board of Appeals authority shall be limited to hearing and deciding appeals by any person aggrieved by an order, decision or determination of the Building Official regarding:

- a. The interpretation by the Building Official of any provisions within Title 17 of the Paso Robles Municipal Code or any of the technical codes adopted by Chapter 17.04 or 17.18,
- b. The applicability of any of the technical codes adopted by Chapter 17.04 or 17.18; or,
- c. The suitability of alternative materials and/or methods of construction.

The “Local Board of Appeals” shall combine the function of three different State required appeals bodies: the Building Board of Appeals (CBC Section 113), the Local Appeals Board (Health & Saf. Code §17920.5.), and the Housing Appeals Board (Health & Saf. Code §17920.6.).

The Appeals Board shall be and remain established following the adoption of these Bylaws unless otherwise abolished by an affirmative vote of the majority of the City Council.

Section 3: Membership

a. Membership Categories and Qualifications.

To be eligible for membership on the Appeals Board, a person must be one of the following:

1. Registered design professional with architectural experience or a builder or superintendent of building construction with at least ten years’ experience, five 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 at least ten years’ experience, five of which shall have been in responsible charge of work.
4. Registered design professional with electrical engineering experience or an electrical contractor with at least ten years’ experience, five of which shall have been in responsible charge of work.

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5. Registered design professional with fire protection engineering experience or a fire protection contractor with at least ten years' experience, five of which shall have been in responsible charge of work.

6. Certified Building Officials or building inspectors with at least ten years' experience

b. 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 City are not eligible for appointment. Preference shall be given to persons who live and/or work outside of the City.

c. Total Membership & Term of Appointment.

The Appeals Board shall have five (5) regular members and two (2) alternate members. Terms for initial appointment shall be for a term of two (2) years for two (2) members and one (1) alternate and four (4) years for three (3) members and one (1) alternate. Subsequent appointments shall be for a term of four (4) years. In addition, the following shall apply:

- (1) No person shall be eligible for appointment for more than three consecutive terms, exclusive of prior appointment to fill an unexpired term of office.
- (2) Persons who have served three full consecutive terms may be reappointed following a one-term absence.

d. Secretary of the Appeals Board

The City of Paso Robles' Building Official shall serve as the Secretary of the Appeals Board.

e. Member Code of Ethics

Members of the Appeals Board shall adhere to the City Council's Code of Ethics (Appendix A).

Section 4: Conflict of Interest

a. No member shall participate in any decision which directly or indirectly affects his or her property or economic interests in a manner which is distinguishable from the effect on the City as a whole or his or her interests in common with others similarly situated.

b. Appeals Board members shall not engage in any *ex parte*¹ communication with any party to a matter pending before the Appeals Board or with any member of the City Council, commission, board or committee regarding any matter pending, or reasonably expected to come, before the Appeals Board.

¹ *Ex parte* communication is any oral or written communication that is intended, or is reasonably calculated, to influence decisions made by one party outside the hearing and without the presence of the other party or parties.

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Section 5: Termination of Membership.

Membership in the Appeals Board shall terminate in the event that:

- a. The member shall not be, or shall no longer be, a member of that membership category from and for which he or she was elected or appointed; or
- b. The member shall have acted in violation of Section 9 of Article III of these Bylaws.
- c. The member shall have served three consecutive full terms.

Section 6: Removal of Members.

A member may be removed by an affirmative vote of a majority of the City Council, if, after a hearing, it is found and determined that any one of the grounds for termination specified in Section 5 of this Article I exists.

Section 7: Resignation

Any Appeals Board member may resign at any time by giving written notice to the Secretary, who shall forward such notice to all members of the Appeals Board and the City Council. Any such resignation will take effect upon receipt or upon any date specified therein. The acceptance of such resignation shall not be necessary to make it effective.

Section 8: Filling of Vacancies

In the event of a vacancy on the Appeals Board, the City Council shall select an individual to fill such vacancy as soon as reasonably practicable. New members must meet the qualifications set forth in Section 3 of Article I.

Section 9: Remuneration

Members shall serve without pay except for reimbursement for travel expenses to meetings.

ARTICLE II - OFFICERS

Section 1: Officers

The officers of the Appeals Board shall consist of a Chairperson and a Vice Chairperson, who shall be elected in the manner set forth in this Article II.

Section 2: Chairperson

The Chairperson shall preside at all meetings of the Appeals Board. The Chairperson may sign documents necessary to carry out the business of the Appeals Board.

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Section 3: Vice-Chairperson

The Vice Chairperson shall perform the duties of the Chairperson in the absence or incapacity of the Chairperson. In the event of the death, resignation or removal of the Chairperson, the Vice Chairperson shall assume the Chairperson's duties until such time as the Appeals Board shall elect a new Chairperson.

Section 4: Additional Duties

The officers of the Appeals Board shall perform such other duties and functions as may from time to time be required by the Appeals Board.

Section 5: Election

The Chairperson and Vice Chairperson shall initially be elected from among the members of the Appeals Board's first regular meeting. Thereafter, the Chairperson and Vice Chairperson shall be elected from among the members of the Appeals Board annually. Such officers shall hold office for one year following their election and until their successors are elected and in office. Any such officer shall not be prohibited from succeeding him or herself, but no person shall be elected as an officer for more than three consecutive terms.

Section 6: Removal of Officers

Upon an affirmative vote by a majority of the members present at a regular or special meeting of the Appeals Board at which a quorum is present any officer may be removed from office, and a successor elected pursuant to Section 7 of this Article II.

Section 7: Vacancies

Should the offices of the Chairperson or Vice Chairperson become vacant, the members shall elect a successor from among the Appeals Board members at the next regular or special meeting, and such office shall be held for the unexpired term of said office.

ARTICLE III - MEETINGS

Section 1: Meetings

The Appeals Board shall meet only when needed to hear an appeal of an order, decision or determination of the Building Official.

Meetings shall be held at the Conference Center, 1000 Spring Street, Paso Robles, CA.

A notice, agenda and other necessary documents shall be delivered to the members, personally or by mail, at least ten days prior to the hearing. If a regular board member is unable to attend a meeting, that member shall promptly notify the clerk of the Appeals Board so that an alternate Board member can be designated to participate in the hearing. The designation of which alternate board member shall be asked to participate in a hearing shall be made by the chair of the Appeals Board on an rotating basis and based upon availability. Once designated, such alternate shall function as a regular board member for purposes of that hearing.

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Any meeting may be adjourned to an adjourned meeting without the need for notice requirements of a special meeting, provided the adjournment indicates the date, time and place of the adjourned meeting. Appeals Board members absent from the meeting at which the adjournment decision is made shall be notified by the Secretary of the adjourned meeting.

Section 2: All Meetings to be 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.

Section 5: Posting Agendas/Notices

The Secretary to the Appeals Board or his or her authorized representative, shall post an agenda for each meeting containing a brief description of each item of business to be transacted or discussed at the meeting together with the time and location of the meeting. Agendas/notices shall be posted at the Paso Robles City Library and Police Department at least ten (10) days in advance of each meeting. The Secretary shall maintain a record of such posting.

Section 6: Right of Public to Appear and Speak

At every meeting, members of the public shall have an opportunity to address the Appeals Board on matters within the Appeals Board subject matter jurisdiction. Public input and comment on matters on the agenda, as well as public input and comment on matters not otherwise on the agenda, shall be made during the time set aside for public comment; provided, however, that the Chairperson may direct that public input and comment on matters on the agenda be heard when the matter regularly comes up on the agenda. The Chairperson may limit the total amount of time allocated for public discussion on particular issues and/or the time allocated for each individual speaker.

Section 7: Quorum

The powers of the Appeals Board shall be vested in the members thereof in office from time to time. Three of the Appeals Board members or designated alternates then in office shall constitute a quorum for the purpose of conducting the Committee's business, exercising its powers and for all other purposes, but less than that number may adjourn the meeting from time to time until a quorum is obtained. An affirmative vote by a majority of the members present at a meeting at which a quorum is present shall be required for approval of any questions brought before the Appeals Board.

Section 8: Unexcused Absences

If a member shall be absent without the consent of the Appeals Board from three (3) meetings, within six (6) consecutive calendar months, such absence shall result in the termination of the membership of the absenting member. A member's absence shall be excused if, prior to the meeting from which said member will be absent, said member notifies the Chairperson of his or her intent to be absent and the reasons therefore; provided, however, that a member shall be entitled to only two (2) excused absences within twelve (12) consecutive calendar months. At each meeting, after the roll has been called, the Chairperson shall report to

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the Appeals Board the name of any member who has so notified him or her of his or her intent to be absent and the reason for such absence.

Section 9: Order of Business

All business and matters before the Appeals Board shall be transacted in conformance with the City Council's established practice.

Section 10: Minutes (Action)

Minutes of the Appeals Board shall be prepared in writing by the Secretary of the Appeals Board. Copies of the minutes of each meeting shall be made available to each member and the Appeals Board. Approved minutes shall be filed in the official book of minutes of the Appeals Board and forwarded to the City Council for information.

ARTICLE IV – HEARING PROCEDURES

Section 1. General Provisions

The purpose of these provisions is to ensure that each party (both the Building Department and the appellant) receives a fair and impartial appeal hearing. Each party has the right to be represented by counsel or his/her representative. References to the “department” or “appellant” include the representative of each party.

The burden of proof is on the department to show that the incidents resulting in the action regarding a proposed building site or project occurred. The standard of proof is preponderance of the evidence.

Section 2. Briefs. Each side is entitled, but is not required, to submit a hearing brief to address the facts and the law of the case. The briefs shall not exceed five (5) pages in length; longer briefs will not be considered by the Appeals Board. The briefs may be submitted to the Appeals Board at the time of the hearing or may be submitted to the Secretary of the Appeals Board at least five (5) days before the hearing for distribution to the Appeals Board members and the other party and its representative. Eight (8) copies of the brief shall be submitted so that each Appeals Board member, Secretary, opposing party and its representative may have a copy.

Section 3. Opening Statements. Each party may make a brief opening statement to provide an overview of what the evidence will show. The department shall make its statement first. Either side may waive the opening statement.

Section 4. Evidence. The formal rules of evidence shall not apply. The Chair of the Appeals Board will rule on the admissibility of evidence. Such a ruling will be final. The main limitation on the admission of evidence is that the evidence proffered must be relevant to the issues of the case and not unnecessarily duplicative.

Admissible evidence includes testimony, affidavits or declarations, and documents or other types of physical evidence. In order to preserve the right to cross-examination, the Chair

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may refuse to admit the affidavit or declaration of a witness who is available to testify and who could have been required to attend the hearing.

Upon the written requires of either side, the parties shall exchange witness lists five (5) business days before the hearing. Additional witnesses may not be called without the approval of the Appeals Board on a showing of good cause.

The Appeals Board may limit the amount of time afforded to each party to present its case, to cross-examine the other side's witnesses, to present rebuttal evidence and/or to present opening statements or closing arguments. The Appeals Board may modify its time limits as it deems necessary.

Section 5. Decision Following close of the hearing, the Appeals Board shall make findings and render its decision in writing to affirm, modify or reverse the decision or determination(s) of the building official present on appeal. The decision will be issued within ten (10) business days after the close of the hearing, or within such additional reasonable time as the Appeals Board may determine necessary to make findings and render a decision given the complexity of the matter(s) submitted and other such considerations. The decision will be mailed or hand delivered to the building official and to the appellant, by the Secretary of the Appeals Board within three (3) business days after the decision has been rendered.

Section 6. Additional Procedures. In certain instances where the appeal presents a multitude of issues or parties, or in which the issues are complex, the Appeals Board may adopt additional procedures for the conduct of the hearing to ensure that the rights of the parties are protected.

REPRESENTATION BEFORE PUBLIC BODIES

The Chairperson, the Vice-Chairperson in the Chairperson's absence or a member of the Appeals Board, may make official representations on behalf of the Committee before the Agency and/or the City Council if so specifically designated by the Appeals Board. The Appeals Board may present information to other public bodies with the affirmative vote of a majority of the City Council.

ARTICLE V - AMENDMENTS

These Bylaws may be amended upon an affirmative vote by a majority of the City Council.

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APPENDIX

CODE OF ETHICS

PREAMBLE

The residents and businesses of Paso Robles are entitled to have fair, ethical and accountable local government. Such a government requires that:

- ▶ Public officials comply with both the letter and spirit of the laws and policies affecting operations of the government;
- ▶ Public officials be independent, impartial and fair in their judgment and actions;
- ▶ Public office be used for the public good, not for personal gain; and
- ▶ Public deliberations and processes be conducted openly, unless legally confidential, in an atmosphere of respect and civility.

To this end, the Paso Robles City Council has adopted this Code of Ethics to encourage public confidence in the integrity of local government and its operation.

PUBLIC INTEREST

Advisory Body Members will work for the common good of the people of Paso Robles and not for any private or personal interest, and they will endeavor to treat all persons, claims and transactions in a fair and equitable manner.

Advisory Body Members shall comply with the laws of the nation, the State of California, and the City in the performance of their public duties.

CONDUCT

Advisory Body Members shall refrain from abusive conduct, personal charges or verbal attacks upon the character or motives of others.

Advisory Body Members shall perform their duties in accordance with the processes and rules of order established by the City Council.

Advisory Body Members shall inform themselves on public issues; listen attentively to public discussions before the body; and focus on the business at hand.

Advisory Body Members shall base their decisions on the merits and substance of the matter at hand.

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Advisory Body Members shall publicly share substantive information that is relevant to a matter under consideration that they may have received from sources outside of the public decision-making process.

CONFLICT OF INTEREST²

Advisory Body Members shall not use their official positions to influence government decisions in which they have a financial interest, or where they have an organizational responsibility or personal relationship that would present a conflict of interest under applicable State law.

In accordance with the law, members shall file written disclosures of their economic interests and, if they have a conflict of interest regarding a particular decision, refrain from participating in that decision, unless otherwise permitted by law.

Advisory Body Members shall not take advantage of services or opportunities for personal gain, by virtue of their public office that are not available to the public in general. They shall refrain from accepting gifts, favors or promises of future benefits that might compromise their independence of judgment or action or give the appearance of being compromised.

Advisory Body Members shall respect and preserve the confidentiality of information provided to them concerning the confidential matters of the City. They shall neither disclose confidential information without proper legal authorization, nor use such information to advance their personal, financial or other private interests.

Advisory Body Members shall not use public resources not available to the public for private gain or personal purposes.

Advisory Body Members shall not appear on behalf of the private interests of third parties before the City Council or any board, commission, committee or proceeding of the City.

Advisory Body Members shall represent the official policies and positions of the City Council to the best of their ability. When presenting their personal opinions and positions, members shall explicitly state they do not represent the Council or the City.

² State laws governing conflicts of interest are written to ensure that actions are taken in the public interest. These laws are very complex. Councilmembers should consult with the City Attorney or the Fair Political Practices Commission for guidance in advance.

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Advisory Body Members shall refrain from using their position to unduly influence the deliberations or decisions of City commissions, boards or committees.

POLICY ROLE

Advisory Body Members shall respect and adhere to the Council-Manager structure of Paso Robles City government as provided in State law and the Municipal Code.

Advisory Body Members shall support the maintenance of a positive and constructive environment for residents, businesses, and City employees.

COMPLIANCE & ENFORCEMENT

Advisory Body Members themselves are primarily responsible for assuring they understand and meet the ethical standards set forth herein.

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