

## BUILDING AND FIRE BOARD OF APPEALS

**AUTHORIZATION:** Established by Uniform Building Code, Vol. 1, Chapter 2, by Ordinance No. 1604; amended by Ordinance No. 82-22, adopted October 12, 1982; and responsibilities amended by Resolution No. 86-84 on September 22, 1986; amended by Ordinance No. 97-31 on August 11, 1997; amended by Ordinance No. 2006-11 on May 9, 2006; amended by Ordinance No. 2011-14 on July 12, 2011.

**MEMBERSHIP:** Seven (7) members appointed by the City Council.

**TERM:** Each member shall serve a term of four (4) years and such terms shall be on a staggered basis, pursuant to Ordinance No. 2011-14.

**PURPOSE & RESPONSIBILITIES:**

- A. Determine the suitability of alternate materials and methods of construction;
- B. Provide for reasonable interpretations of the provisions of the Building and Fire Codes and any other matter specified in the Newport Beach Municipal Code;
- C. To hear written appeals brought by any person regarding the Building Official's or the Fire Marshal's orders, decisions or determinations;
- D. Five (5) members of the Building and Fire Board of Appeals shall act as the Rehabilitation Commission and conduct hearings on abatement of substandard buildings in accordance with Chapter 15.28 of the Newport Beach Municipal Code. The Secretary to the Building and Fire Board of Appeals shall select the five (5) Rehabilitation Commissioners from the seven (7) members of the Building and Fire Board of Appeals on a rotating basis.

**MEETING:** As called

**STAFF LIAISONS:** Building Official and Fire Marshal, as appropriate.

**RULES OF PROCEDURES OF THE  
BUILDING AND FIRE BOARD OF APPEALS  
CITY OF NEWPORT BEACH, CALIFORNIA**

**I. TITLE**

The official title of this Board shall be the “Building and Fire Board of Appeals of the City of Newport Beach, California.”

**II. MEMBERSHIP AND TERM**

A. The Board of Appeals hears and decides appeals of orders, and decisions or determinations made by the Building Official or the Fire Marshal relative to the application and interpretation of the technical provisions of the Code. The Board serves as the Disabled Access Board to ratify the Building Official findings and determinations regarding disabled access matters. In addition to its role in hearing appeals, the Board acts as the Rehabilitation Commission to hear and decide upon matters relating to the rehabilitation and demolition of substandard buildings. The Board of Appeals shall have no authority to interpret the administrative provisions of Codes; nor shall the Board be empowered to waive requirements of Codes.

Pursuant to Section 15.02.020 of the Newport Beach Municipal Code, the Building and Fire Board of Appeals shall consist of seven members appointed and approved by the City Council, two of whom shall be physically disabled. Board members shall not be employees of the City and their terms are indefinite.

B. Pursuant to Resolution No. 86-84 of the City of Newport Beach, the Board acts as the Rehabilitation Commission to conduct hearings on abatement of substandard buildings in accordance with Chapter 15.28 of the Newport Beach Municipal Code. The Board Secretary shall select the five rehabilitation Commissioners from the (7) members of the Building and Fire Board of Appeals on a rotating basis. All other rules of procedures specified herein will apply to the business conduct of the Rehabilitation Commission.

### III. OFFICERS

A. The Officers of the Board shall be:

1. Chairman, whose duties shall be to preside at all meetings, and to call all special meetings, appoint committees, and perform all other proper duties of a presiding officer.
2. Vice Chairman, who in the absence of the Chairman, or his inability to act, shall preside at all meetings and perform all other duties of the Chairman.
3. Secretary. The Building Official or the Fire Marshal shall be an Ex-Officio member and shall act as the Board Secretary. The Secretary shall keep written record of all business transacted by the Board, prepare meeting agendas, arrange proper and legal notice of hearings, attend to correspondence of the Board, and such other duties as are normally carried out by a secretary. The Building Department Executive Secretary shall serve as the Recording Secretary.

B. The Chairman and Vice Chairman shall hold office for a period of one year or until their successors are elected. Election of officers and term of office will begin at the first meeting of the calendar year.

### IV. ADVISORS

The Chairman may, with the Board's consent, request the attendance at the Board meetings of any officer or employee of the City to assist the Board in its deliberations in an advisory capacity.

### V. LOCATION OF MEETINGS

The Building and Fire Board of Appeals shall hold all of its meetings, whether the same shall be a regular or special meeting or study session, in the council chambers of the City Council in the City Hall Building, or in any such other place after notice duly given, within the corporate limits of the City.

### VI. TIME OF MEETINGS

- A. The Board shall meet on as needed basis at the discretion of the Building Official or the Fire Marshal.
- B. Any meeting may be adjourned from time to time by the majority vote of the members present.

- C. Special meetings may be held as deemed necessary at the request of the majority of the members of the Board or by call of the Chairman, Vice Chairman, or Secretary; notice of such special meetings shall be posted and served upon all members at least 72 hours before the special meeting, and be posted outside City Hall in the official posting window. The notice shall specify the time, place, and matters to be considered at the special meeting, and only the matters specified may be considered.

## VII. AGENDAS

- A. An agenda containing a brief description of each item of business to be transacted or discussed shall be posted at a location freely accessible to the public at least 72 hours before each regular meeting. Study session agendas shall be distributed to the public on the same basis as regular agendas.
- B. All regular, adjourned, special meetings or study session of the Building and Fire Board of Appeals shall be open to the public. Every agenda shall provide an opportunity for members of the public to speak on any off-agenda item of interest to the public.
- C. No action may be taken on an off-agenda item unless (a) a majority of those Board members present determine that an emergency situation exists; or (b) two-thirds of the Board members, or all of the Board members if less than two-thirds are present, determine there is a need to take immediate action and that the need for action came to the attention of the City subsequent to the posting of the agenda. It is inevitable that subjects will arise, either during the course of consideration of agenda items or during public comment, on which no action can be taken because the circumstances outlined in (a) and (b) above do not exist. In such event, the Chairman shall have the power to refer the matter to staff, or to place the item on the agenda of a future meeting, or both.

## VIII. VOTING PROCEDURE

- A. At any meeting of the Building and Fire Board of Appeals, a majority of said Board shall constitute a quorum for the transaction of business. Every Board member should vote unless disqualified by reason of a conflict of interest. A Board member who abstains from voting is counted as being present and in effect consents that a majority of those present and voting shall decide the question voted upon.
- B. Any vote of the Board, including a roll call vote, may be registered by the members by answering “YES” for an affirmative vote, or “NO” for a

negative vote upon the member's name being called by the Recording Secretary, or by pressing a switch to cause a green light to show for an affirmative vote, or a red light to show for a negative vote upon a vote being called for by the Chairman. The result of any vote registered by means of a lighting system shall be audibly announced by the Recording Secretary and recorded in the minutes as the vote. If a member is present and does not cast a vote as described above, that member shall be considered as abstaining.

- C. Any Board member who is disqualified from voting on a particular matter by reason of a conflict of interest shall publicly state or have the Chairman state the nature of such disqualification in open meeting. Where no clearly disqualifying conflict of interest appears, the matter of disqualification may, at the request of the Board member affected, be decided by the City Attorney or his representative. A Board member who is disqualified by reason of a conflict of interest in any matter shall not remain in his seat during the debate and vote on such matter, but shall request and be given the permission of the Chairman to step down from the Board table. A Board member stating such disqualification shall not be counted as a part of the quorum and shall be considered absent for the purpose of determining the outcome of any vote on such matter.
- D. Tie votes shall be lost motions and may be reconsidered.
- E. A motion to reconsider any action taken by the Building and Fire Board of Appeals (other than a tie vote) must be made at the same meeting.

IX. ORDER OF BUSINESS

- A. The order of business for regular, adjourned, or special meetings shall be:
  - 1. Call to order by the Chairman.
  - 2. Approval of minutes of preceding meeting.
  - 3. Public comment.
  - 4. Old business.
  - 5. New/current business.
  - 6. Communications.

7. Any other business which may properly come before the Board.
8. Adjournment.

X. CONDUCT OF MEETINGS

- A. All meeting shall be conducted under the order of parliamentary procedure as specified in the last revised edition of Robert's Rules of Order to the extent that such rules are not in conflict with these Rules of Procedure.
- B. All Board members shall address all questions and comments through the Chairman.
- C. All persons attending meetings of the Board will be asked to identify themselves, and address Board members or other persons present through the Chairman.
- D. Exhibits: All maps, letters and documents considered by the Board at any hearing shall become a part of the records of the Board.
- E. Motion: Second Not Required. A motion by any member of the Board, including the presiding officer, may be considered by the Board without receiving a second.
- F. Substitute Motions: A substitute motion may be made by any member of the Board after a motion is on the floor. The substitute motion will suggest a different course of action or the opposite action of the main motion. No more than two substitute motions can be placed on the table for consideration at the same time. If the substitute motion fails, the main motion remains on the floor. If the substitute motion passes, it will cancel out the main motion. Prior to voting on the substitute motion, any member of the Board may ask to have the substitute motion treated as an amendment, in which case the substitute motion is treated as an amendment.
- G. If an applicant submits additional written or printed material for the Building and Fire Board of Appeals' consideration less than seven (7) working days prior to the date of the hearing on the matter, the Board may continue the matter and the applicant shall be deemed to have consented to such a continuance.

XI. COMMITTEES

The chairman may appoint such committees as may be deemed necessary to carry out the function of the Building and Fire Board of Appeals. Members shall serve at the pleasure of the Chairman.

XII. CORRESPONDENCE AND COMMUNICATIONS

It shall be the duty of the Ex-Officio Secretary to draft and sign all correspondence necessary for the execution of the duties and functions of the Board as stated in these rules of the Newport Beach Building and Fire Board of Appeals.

XIII. ATTENDANCE

- A. Regular attendance at meetings of the Building and Fire Board of Appeals is required of all members to enable the Board to discharge the duties imposed upon it by law.
- B. A Board member absent from three consecutive regular meetings without prior consent of the Chairman, shall be deemed to have resigned.
- C. The Secretary shall notify the City Council of such resignation and request, in the name of the Board, appointment of a new member to fill the unexpired term of the member resigning.

XIV. POLICY

All matters of policy not covered by law may be adopted as a "Resolution of Policy" and when so adopted shall be considered as the official policy of the Board.

XV. AMENDMENT OF RULES

These rules may be amended or added to by four affirmative votes of the Building and Fire Board of Appeals at a regular meeting.