

RULES AND REGULATIONS  
OF  
COUNTY FIRE'S BOARD OF APPEALS

1. Definitions:

- a. "Appeal Application" or "Application" means an application for appeal submitted to the Board of Appeals.
- b. "Applicant" means the individual or entity that has filed an appeal application with the Board of Appeals.
- c. "Board" means the Board of Appeals created pursuant to the California Fire Code as amended by Sec 15-9 of Chapter 15 of the Santa Barbara County Code.
- d. "Clerk" means the Santa Barbara County Executive Office.
- e. "Days" mean calendar days.
- f. "Enforcement order" means any directive issued by the Fire Department to gain compliance with California Fire Code as amended by Chapter 15 of the Santa Barbara County Code, including corrective orders and stop orders.
- g. "Fire Chief" means the Fire Chief or designee of the Santa Barbara County Fire Department.
- h. "Fire Department" means the Santa Barbara County Fire Department.

2. Board's Jurisdiction and function:

- a. The board's functions are:
  - i. To hear appeals to determine the suitability of alternate materials and types of construction and to provide for reasonable interpretations of the provisions of the California Fire Code as amended by the Santa Barbara County Code.

- ii. To render decisions after appeal applications are heard, and to render interim orders related to an underlying appeal.

3. Appeal Application:

- a. No relief may be granted by the board with regards to an enforcement order that is the subject of an appeal application unless a timely application is filed with the board as set forth below:

- i. An application is filed by applicant or by applicant's agent.
- ii. If the applicant is a corporation, limited partnership, or a limited liability company, the agent authorization must be signed by an officer or authorized employee of the business entity.
- iii. An application shall be filed within 10 days after effective service of an enforcement order. Service of an enforcement order shall be effective upon any one of the following, at the election of the fire department:
  - 1. Personal delivery on the applicant or on his/her representative at the subject property, by a fire department representative and the mailing of the enforcement order by certified mail to the last known address of applicant. The service is effective on personal service of the enforcement order on applicant or on his/her representative. The mailing does not extend the time to file an appeal; or
  - 2. Mailing the enforcement order by regular mail and by certified mail to the last known address of applicant. The service is effective five days after the date of mailing.
- iv. The applicant or the applicant's agent shall pay the required appeals fee.

- b. The application shall be in writing and signed by the applicant or the applicant's agent.
- c. The fire department shall provide forms, free of charge, on which applications are to be made.
- d. The application form shall require that the applicant to provide the following information:
  - i. The name and address of the applicant;
  - ii. The name and address of the applicant's agent;
  - iii. The applicant's written authorization for an agent, if any, to act on the applicant's behalf;
  - iv. A description of the property that is the subject of the application;
  - v. A description of the enforcement order that is the subject of the application.
- e. After an application is filed and during a hearing, the board may for good cause permit amendments and corrections to applications.
- f. The board, on its own motion or on a timely request of the applicant or the fire department, may consolidate applications when the applications present the same or substantially related issues of fact or law. The board shall notify all parties of the consolidation if the applications are consolidated.
- g. The clerk may destroy records consisting on the appeal when five years have elapsed since the final action of the application.

4. Prehearing Conferences:

The board may set prehearing conferences to discuss with the parties the status of the case, calendaring for hearing, the issues of fact and law of the case, and any other matters for the

efficient administration of the case. The clerk shall give notice to the parties of any prehearing conferences.

5. Notification of Hearing:

After the filing of the application, the clerk shall set the matter for hearing and notify the applicant or the applicant's agent in writing by personal delivery or by deposition of the notice in the United States mail directed to the address given in the application.

- a. The notice shall designate the time and place of hearing.
- b. The notice shall be given no less than 10 days before the hearing.
- c. The clerk shall notify the fire department of the time and place of hearing.

6. Disqualification:

The party affected or the party's agent or the fire department may file with the clerk a written statement objecting to the hearing of a matter before a member of the board.

- a. The statement shall set forth the facts constituting the ground of the disqualification of the member and shall be signed by the party affected or the party's agent, or by the fire department, and shall be filed with the clerk at the earliest practicable opportunity after discovery of the facts constituting the ground of the member's disqualification, and in any event before the commencement of the hearing of any issue of fact or law in the proceeding before such member. Copies of the statement shall be served by the presenting party on each party to the proceeding and on the board member alleged to be disqualified. Within 5 days after the filing of the statement or 5 days after service of it on him or her, whichever is later, the board member may file with the clerk an answer:

- i. Consenting to the proceeding being heard without his or her participation, or

- ii. Denying his or her disqualification, which answer may admit or deny any or all of the facts alleged in the statement and set forth any additional facts relevant to his or her disqualification.
- b. The clerk shall forthwith transmit a copy of such answer to each party.
- c. Every statement and answer shall be verified by oath in the manner prescribed by section 446 of the Code of Civil Procedure.
- d. The question of the member's disqualification shall be heard and determined by a board member, other than the member subject to the disqualification challenge, agreed upon by the parties who have appeared in the proceeding, or in the event of their failing to agree, by a member assigned to act by the clerk. Within five days after the expiration of the time allowed by these rules for the member to answer, the clerk shall assign a member to hear and determine the matter of the disqualification.
- e. Once the member has been selected pursuant to subsection (d) that member shall determine the qualification of the challenged member.

7. Setting Hearing:

A hearing must be held within 30 days after the filing of the application with the clerk, unless the parties and the board mutually agree in writing or on the record to an extension of time.

8. Chair:

The board shall select one of its members to act as chair and preside over the hearing. The chair shall exercise such control over the hearing as is reasonable and necessary. He or she shall make all rulings regarding procedural matters and regarding the admission or exclusion of evidence.

9. Quorum:

Three members shall constitute a quorum for a hearing. No hearing shall be held unless a quorum is present. No decision, determination, or order shall be made by the board by less than a majority of vote of all the members of the board who have been in attendance throughout the hearing. If after the commencement of the hearing, a board member becomes unavailable, the parties may stipulate that the hearing may continue with the smaller board, so long as, at least a quorum is present.

10. Hearings Recorded: All hearings before the board shall be recorded or reported. The parties, at their expense, may have the hearing reported by a stenographer. If a stenographer is present, the board may designate the reporter's transcript as the official record upon it being file with the board.

11. Hearing Procedure:

a. The chair or the clerk shall announce the application and the name of the applicant.

The chair shall then determine if the applicant or the applicant's agent is present. If neither is present, the chair shall ascertain whether the clerk or the fire department has notified the applicant of the time and place of the hearing. If the notice has been given and neither the applicant nor the applicant's agent is present, the application shall be denied for lack of appearance, or, for good cause of which the board is timely informed prior to the hearing date, the board may postpone the hearing to a later date and the clerk or fire department directed to give proper notice thereof to the applicant.

b. If the applicant or the applicant's agent is present, the chair or the clerk shall announce the nature of the application. The chair may request that either or both parties briefly describe the subject property, the nature of the enforcement action, the

- issues the board will be requested to determine, and any agreements or stipulations agreed to by the parties.
- c. In applications where the fire department has the burden of proof, the board shall require the fire department to present its evidence first, and then the board shall determine whether the fire department has presented proper evidence supporting its position. This is sometimes referred to as the burden of production. In the event the fire department has met its burden of production, the board shall then require the applicant to present his or her evidence.
  - d. All testimony shall be taken under oath.
  - e. The hearing need not be conducted according to the technical rules relating to evidence and witnesses. Any relevant evidence may be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.
  - f. Hearsay evidence shall be admissible for any purpose, but shall not be sufficient by itself to support the written findings and decision unless it would be admissible over objection in a civil action.
  - g. Failure to timely object to evidence constitutes a waiver of the objection. The board may act only on the basis of proper evidence admitted into the record. Board members may not act or decide an application based upon consideration of prior knowledge of the subject property, information presented outside of the hearing, or personal research. A full and fair hearing shall be accorded the application. There shall be reasonable opportunity for the presentation of evidence, for cross-examination of all witnesses and materials preferred as evidence, for argument and

for rebuttal. The party having the burden of proof shall have the right to open and close the argument.

- h. Hearings by the board shall be open, accessible, and audible to the public, except that:
  - i. Upon conclusion of the evidentiary portion of the hearing, the board may take the matter under submission and deliberate in private in reaching a decision, and
  - ii. The board may grant a request by the applicant to close to the public a portion of the hearing relating to trade secrets. For purposes of this rule, a “trade secret” is that information defined by section 3426.1 of the Civil Code. Such a request shall be made by filing with the clerk a declaration under penalty that evidence is to be presented by the fire department or the applicant that relates to trade secrets. The declaration shall state the estimated time it will take to present the evidence. Only evidence relating to the trade secrets may be presented during the time the hearing is closed, and such evidence shall be confidential unless otherwise agreed to the party to whom it relates.

12. Legal Counsel Fire Department and Applicant: The applicant and the fire department may be represented by legal counsel.

13. Legal Counsel for Board: County Counsel may serve as legal advisor for the board.

14. Examination by Board: The board may examine the parties on the issues and subject matter of the application.

15. Personal Appearance by Applicant; Appearance by Agent:

- a. The applicant must personally appear at the hearing or be represented by an agent. If the applicant is represented by an agent, the agent shall be thoroughly familiar with the facts pertaining to the matter before the board.
- b. Where the applicant is a corporation, limited partnership, or a limited liability company, the business entity shall make an appearance by the presence of an officer, employee, or an authorized agent, thoroughly familiar with the facts pertaining to the matter before the board.
- c. If an agent is previously authorized by the applicant to file an application, no further authorization is required for that agent to represent the applicant at the subsequent hearing.

16. Burden of Proof:

- a. The fire department has the burden of proof to establish the correctness of any enforcement orders that are the subject of the application.
- b. The applicant has the burden of proof to establish any new matter raised as a defensive matter in response to the fire department's enforcement order that is the subject of the application.
- c. In weighing the evidence, the board shall apply the same evidentiary standard to the testimony and documentary evidence presented by the applicant and the fire department.

17. Postponement and Continuances:

- a. The board may continue a hearing before the commencement of the hearing or during a hearing.

- b. If a party requests a continuance of the hearing before the date set for the hearing, the party shall file a written request for the continuance of the hearing with the clerk showing good cause for the continuance and appear before the board on the scheduled hearing date for the board's consideration of the request for continuance, unless the board excuses such personal appearance.

18. Decision:

- a. Acting upon proper evidence before it, the board shall render and make a final written determination on the subject matter of the application.
- b. The determination shall be supported by a preponderance of the evidence presented during the hearing.
- c. The board is not bound by the opinions promoted by the parties to the appeal, but shall make its own determination of the factual and legal issues based upon the evidence properly admitted at the hearing.
- d. The final written decision, which shall constitute the board's written findings of fact, shall fairly disclose the board's decision and findings on all material points, both legal and factual, raised in the application and at the hearing.
- e. The decision of the board may be appealed to the Board of Supervisors, if an appeal application is filed with the clerk of the board within 20 days of when the written findings of fact is served on the parties.

19. Notice and Clarification of Decision:

- a. The board may announce its decision to the applicant and the fire department at the conclusion of the hearing, or it may take the matter under submission. The decision becomes final when the board issues the final written decision and findings of fact.

- b. The board may request any party to submit proposed written decision and findings of fact and shall provide the other party an opportunity to review and comment on the proposed findings. If both parties prepare proposed findings of fact, no opportunity to review and comment need be provided.
- c. When findings of fact have been prepared, either party may submit a request for clarification about the details of the decision, but such clarification shall not alter the final determination of the board.

20. Reconsideration and Rehearing:

- a. The decision of the board upon an application is final. The board shall not reconsider or rehear an application or modify a decision unless the decision reflects a ministerial clerical error.

21. Filing Appeal Does Not Stay Enforcement Order:

- a. The filing of an application does not operate as a stay of an enforcement order that enjoins or prohibits the performance of an act, operation, activity and/or that mandates and requires the performance of an act, operation or activity. However, the Fire Chief has the discretion, as circumstances may require, to provisionally modify an enforcement order after an appeal has been filed and pending the board's final decision on the appeal. However, such a modification does not give right to an appeal since such modification is a provisional remedy that is effective up to the board's final determination on the appeal.