

To: Tom Frutchey, City Manager

From: Warren Frace, Community Development Director

Subject: Building Board of Appeals - Reconsideration of Appointment Terms

Date: February 2, 2016

Needs: That the City Council reconsider the appointment terms for members of the Building Board of Appeals.

Facts:

1. On January 4, 2016 the City Council interviewed 10 applicants for the Building Board of Appeals. The Council determined the top five scoring candidates should be appointed to the Board.
2. Section 17.04.020.C. of the Paso Robles Municipal Code specifies the initial appointment of the Board shall consist of two-year terms for two members and four-year terms for three members.
3. On January 5, 2016 the City Council adopted Resolution 16-004 forming the Building Board of Appeals, adopting by-laws and appointing Nick Gilman (four-year term), Dave Muehlhausen (four-year term), Jerry Williams (four-year term), Bruce White (two-year term) and Carl Lockridge (two-year term) as Board members.
4. At the January 19, 2016 City Council meeting, the Council requested the Building Board of Appeals appointments be re-agendized so the Council could consider changing the appointment terms for the Board members.
5. At the January 19, 2016 City Council meeting, the Council requested the Paso Robles Municipal Code be amended to create two alternate positions for the Building Board of Appeals. This process will require an ordinance amendment that will be scheduled for a future City Council agenda.

Analysis and

Conclusion: Attachment 1 is the Building Board of Appeals appointment exhibit from City Council Resolution 16-004. The City Council may change the terms for any of the individual members so long as two members have two-year terms and three members have four-year terms.

Policy

Reference: 2013 California Building Code Volume 1, Paso Robles Municipal Code Title 17. City Council Resolution 16-004

Fiscal

Impact: None.

Options: The City Council may consider the following options:

- a) Adopt Resolution No. 16-XXX amending the terms of the Building Board of Appeals Members.
- b) Amend the foregoing option.
- c) Take no action.

Attachments

Attachment 1: Exhibit B of City Council Resolution 16-004

Attachment 2: Resolution No. 16-XXX establishing the Building Board of Appeals, Bylaws and Appointing five members

Attachment 3: California Building Code Section 113 Board of Appeals with Local Amendments

Attachment 1:	Exhibit B of City Council resolution 16-004 Initial Appointments of Members to the Building Board of Appeals
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JANUARY 5, 2016 APPOINTMENTS

Two Year Terms:

1. Bruce White
2. Carl Lockridge

Four Year Terms:

3. Nick Gilman
4. Dave Muehlhausen
5. Jerry Williams

RESOLUTION No. 16-XXX

**A RESOLUTION OF THE CITY COUNCIL
AMENDING THE TERMS OF THE BUILDING BOARD OF APPEALS**

WHEREAS, the City of El Paso de Robles adopted the California Building Code in conjunction with local Building Code Amendments; and,

WHEREAS, Section 113 of the California Building Code requires that a Board of Appeals exists to hear and decide appeals of orders, decisions or determinations of the Building Official; and,

WHEREAS, the California Building Code limits the authority of the Board of Appeals to the following (California Building Code Section 113.2.):

- a. The true intent of the code has been incorrectly interpreted,
- b. The provisions of the code do not fully apply; or,
- c. An equally good or better form of construction is proposed; and,

WHEREAS, the California Building Code specifically states that, “The board shall not have authority to waive requirements of this code.” (CBC Section 113.2.); and

WHEREAS, the California Building Code sets minimum qualifications for Board of Appeals members to be, “qualified by experience and training to pass on matters pertaining to building construction and are not employees of the jurisdiction.” (CBC Section 113.3.); and,

WHEREAS, the City of Paso Robles has adopted the following local amendments to Section 113 of the California Building Code under Section 17.04.020.C. of the Paso Robles Municipal Code, “Changes or Additions to the California Building Code”:

- a. Sets the number and qualifications of Board members. (Section 113.3.1.)
- b. Sets terms and eligibility criteria for Board member appointments. (Sections 113.4 and 113.5.)
- c. Requires rules and regulations for conducting business. (Section 113.6.)
- d. Sets the appeals process. (Section 113.7.)
- e. Requires an appeal hearing fee. (Section 113.8.)
- f. Sets the timing for appeal hearings and decisions. (Sections 113.9 and 113.10.); and,

WHEREAS, on January 4, 2016 the City Council interviewed 10 applicants for the Building Board of Appeals. The Council determined the top five scoring candidates should be appointed to the

Board.

WHEREAS, Section 17.04.020.C. of the Paso Robles Municipal Code specifies the initial appointment of the Board shall consist of two year terms for two members and four year terms for three members.

WHEREAS, on January 5, 2016 the City Council adopted a Resolution 16-004 forming the Building Board of Appeals, adopting by-laws and appointing Nick Gilman (four-year term), Dave Muehlhausen (four-year term), Jerry Williams (four-year term), Bruce White (two-year term) and Carl Lockridge (two-year term) as Board members.

WHEREAS, at the January 19, 2016 City Council meeting, the Council requested the Building Board of Appeals appointments be re-agendized so the Council could consider changing the appointment terms for the Board members.

NOW, THEREFORE, BE IT RESOLVED that the City Council for the City of El Paso de Robles does hereby resolve, determine and find as follows:

The Building Board of Appeals shall initially consist of the five members appointed hereto under Exhibit A.

PASSED AND ADOPTED by the City Council of the City of El Paso de Robles this 2nd day of February, 2016, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Steven W. Martin, Mayor

ATTEST:

Kristen L. Buxkemper, Deputy City Clerk

Exhibit A – Reappointment of Members to the Building Board of Appeals

February 2, 2016 REAPPOINTMENTS

Two Year Terms:

1. _____

2. _____

Four Year Terms:

3. _____

4. _____

5. _____

2013 California Building Code Section

**SECTION 113
BOARD OF APPEALS**

[A] 113.1 General. In order to hear and decide appeals of orders, decisions or determinations made by the building official relative to the application and interpretation of this code, there shall be and is hereby created a board of appeals. The board of appeals shall be appointed by the applicable governing authority and shall hold office at its pleasure. The board shall adopt rules of procedure for conducting its business.

(Local City Amendment)

113.1.1 In order to provide for interpretations of steps necessary to implement the Title 24 of the California Code of Regulations or the technical codes adopted by the Chapter pertaining to access or accommodations for the physically disabled, and those Chapters of Municipal Code where the Board is specifically noted as being the entity responsible for the hearing of appeals, there is hereby established a City of Paso Robles Housing Advisory and Disabled Access Board of Appeals, (hereinafter sometimes collectively referred to as "Board of Appeals" or "Board").

The Board shall serve as the "local appeals board" specified in sections 19957.5 of the California Health and Safety Code, in appeals relating to accommodations for the physically disabled.

2013 California Building Code Section

[A] 113.2 Limitations on authority. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this 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 this code.

(Local City Amendment)

113.2.1 The Board of Appeals shall function as the "Local Appeals Board" and "Housing Appeals Board" and "Disabled Appeals Board" as specified in Sections 17920.5 and 17920.6, respectively, of [Division 13](#), Part 1.5 of the California Health and Safety Code. The Board shall have no authority relative to interpretation of the administrative provisions of the codes adopted by the City, nor shall the Board be empowered to waive requirements of any code adopted by the City.

The authority of the Board shall consist of the ability to consider appeals filed pursuant to this Chapter and give reasonable interpretations of the Chapter and the technical codes. When required to do so, the Board will conduct hearings regarding appeals of notices and/or orders relative to unsafe buildings.

2013 California Building Code Section

[A] 113.3 Qualifications. The board of appeals shall consist of members who are qualified by experience and training to pass on matters pertaining to building construction and are not employees of the jurisdiction.

(Local City Amendment)

113.3.1 Board of Appeals. The Housing Advisory and Board of Appeals (hereinafter sometimes referred to as "Board of Housing Appeals") shall consist of five (5) members; the Disabled Access Board of Appeals shall consist of the five (5) members of the Board of Housing Appeals (two of the members of the board must work in construction as required by Health & Safety Code § 19957.5) and shall be supplemented by two (2) additional members, both of whom shall be physically disabled as defined in section 2-417, Title 24, Part 2 of the California Code of Regulations when the appeal pertains to disabled access.

Members selected to hear an appeal shall reflect an area of expertise reflective of the appeal being heard.

Members of the Board of Appeals shall be qualified by experience and training to pass judgment upon matters pertaining to building construction and/or disabled access, as appropriate. Members of the Board of Appeals shall be appointed by, and serve at the pleasure of the City Council. Each member of the Board shall comply with applicable provisions of the Political Reform Act of 1974, California Government Code Section 8100 et seq. The Building Official shall be an ex officio member of the Board and shall act as secretary to said Board, but shall have no vote upon any matter before the Board.

113.4 Eligibility.

Any individual meeting those criteria as set forth in sub-section 112.3.1 above shall be eligible to serve on the Board of Appeals.

Exception:

Employees of the City shall not be eligible to serve on the Board of Appeals.

113.5 Term.

Terms of initial appointment shall be for a term of two (2) years for two (2) members and four (4) years for three (3) members. Subsequent appointments shall be for a term of four (4) years.

Terms for initial appointment of disabled members for the Disabled Access Appeals shall be two (2) years for one member and four (4) years for the second. Subsequent appointments shall be for a term of four (4) years.

113.6 Rules and Regulations.

The Board of Appeals shall adopt reasonable rules and regulations, subject to approval by the City Council, for conducting its business. The Board Shall render all decisions in writing.

113.7 Appeals Procedure.

Any person aggrieved by a decision of the Building Official for the City pertaining to orders, decisions, or determinations relative to the application and interpretations of the Uniform Housing Code, Uniform Code for Abatement of Dangerous Buildings, Title 24 of the California Code of Regulations or the technical codes adopted by the Chapter pertaining to access or accommodations for the physically disabled, shall have the right to appeal the decision as provided for under this chapter.

Decisions and actions regarding the enforcement of the requirements of [Division 13](#), Part 5.5 of the California Health and Safety Code may be appealed by any person to the Appeals Board for Disabled Access as provided for under this chapter.

113.8 Appeal Hearing Fee.

A fee, as provided for under this sub-section, shall accompany an application for a hearing before any Housing Advisory or Board of Appeals. The purpose of the fee shall be to cover those costs incurred by the City to provide for the appeals process.

Appeal Fees shall be set by resolution, subject to review by City Council. Appeal fees will be reviewed periodically to ensure that the fees charged cover the costs associated with the appeals process.

113.9 Timing and form of appeal.

An appeal shall be filed with the Secretary of the Board of Appeals or Appeals Board for Disabled Access (as applicable) within fifteen (15) working days (holidays observed by the City are not working days) after the rendering of the decision affecting the aggrieved person. Grounds for the appeal shall be set forth in writing in a form to be supplied by the secretary in addition to any other supporting materials the appellant may wish to furnish, setting forth the reasons for the appeal.

Any written reports to be made to the Board shall be filed with the Secretary of the Board and shall be made available to the Board and to the public no less than five (5) working days prior to the date set for the hearing. Any City of Paso Robles Department Manager or designee shall have the right to be heard on any matter coming before the Board.

113.10 Hearing and decision.

The Secretary of the Board shall set the time and place for a hearing the appeal, and a notice of the time and place of the hearing shall be published in a newspaper of general circulation in the City of Paso Robles, and notice shall also be given to the appellant by mailing, postage prepaid, at the address provided by the appellant in the letter of appeal at least ten (10) working days before the hearing date.