


City of Calistoga

Staff Report

TO: Honorable Mayor and City Council
FROM: Brad Cannon, Building Official
VIA: Charlene Gallina, Planning and Building Director
DATE: July 21, 2009
SUBJECT: Municipal Code Amendment (CMC 2009-02) Board of Appeals

APPROVAL FOR FORWARDING:


 James C. McCann, City Manager

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 2 **ISSUE:** The introduction of an Ordinance, amending Title 15 California Building
 3 Standards Codes, specifically, Chapter 15.50 Board of Appeals of the Calistoga Municipal
 4 Code to clarify, streamline and improve program implementation.

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 6 **RECOMMENDATION:** Introduce an Ordinance and waive the first reading.

7
 8 **BACKGROUND/DISCUSSION:** With the adoption of Ordinance 646 and the 2007
 9 California Building Standards Codes on November 6, 2007, the Board of Appeals (Board)
 10 was reestablished. In the past, the Board has from time to time heard appeals of orders
 11 and decisions made by the Building Official and or Fire Chief. Chapter 15.50 defines the
 12 Board of Appeals duties, qualifications, and responsibilities.

13
 14 There are two main items staff is recommending be changed with adoption of an
 15 ordinance.

16
 17 First, it was staff's desire to have the Board better serve staff and Council by adding an
 18 advisory element when Ordinance 646 was originally adopted. Within the current Board's
 19 "Rules of Procedures", staff included provisions for the Board to do the following (see
 20 Attachment 3):

- 21
 22 5. Serve as an **advisory body** to staff on City building and fire matters, and on such
 23 other matters as may be requested by the City Council and the Planning
 24 Commission.
 25 6. Promote public interest in Health and Safety codes and encourage citizen
 26 participation in these related issues.

27 With that said, staff is recommending the name of the Board be changed to better reflect
28 this advisory function. The new title would be the “**Building Standards Advisory &**
29 **Appeals Board**”. It should be noted, that the Board has met multiple times and in recent
30 past and has assisted staff in the development of “Policy, Procedures, & Interpretations
31 (PPI’s). These PPI’s are used to better interpret and assist the public in meeting the
32 various building standards codes. Staff anticipates the Board playing a large part in
33 advising on many various topics, including future green building best practices.

34
35 Secondly, the California Building Code requires “**Appeals Action Ratification**” when
36 dealing with “**Unreasonable Hardship**” claims as they relate to accessibility of existing
37 buildings. Pursuant to CBC Section 109.1.5 (Attachment 2) and various Government, and
38 Health & Safety Codes, there should be a member qualified on access matters and
39 applications on the Board. Thus, staff is recommending amending Section 15.50.040
40 “**Qualifications**” to include a physically handicapped member who is a certified access
41 professional. Staff is recommending the removal of the “general industry or business
42 representative” as one of the required membership representatives and replacing it with a
43 “certified access professional”.

44
45 Attachment 1 is a draft Ordinance amending Chapter 15.50 to better reflect the current
46 duties, responsibilities and qualifications of the Board.

47
48 **FISCAL IMPACT:** The adoption of this Ordinance will create no direct fiscal impacts.

49
50 **ATTACHMENTS:**

- 51 1. Draft Ordinance
- 52 2. CBC Section 109.1.5
- 53 3. Board’s Rules of Procedure

ORDINANCE NO. XXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALISTOGA, COUNTY OF NAPA, STATE OF CALIFORNIA, AMENDING TITLE 15 CALIFORNIA BUILDING STANDARD CODES, SPECIFICALLY CHAPTER 15.50 (BOARD OF APPEALS) OF THE CALISTOGA MUNICIPAL CODE TO CLARIFY, STREAMLINE AND IMPROVE PROGRAM IMPLEMENTATION

1
2 **WHEREAS**, the City Council adopted on November 6, 2007 Ordinance No. 646
3 which established a new set of Building Standards Codes for the City Calistoga,
4 including the establishment of duties, responsibilities, and qualifications for the Board of
5 Appeals;

6
7 **WHEREAS**, in response to the current operation of the Board of Appeals, the
8 Building Official and Fire Chief recommends the need to further define the role and
9 function of the Board of Appeals consistent with the California Building Standard Codes
10 and the Health and Safety Codes to address policy, procedures interpretations and
11 provide accessibility expertise;

12
13 **WHEREAS**, a public notice of the City Council public hearing of July 21, 2009 for
14 an amendment to the City's Board of Appeals provisions was published in the local
15 newspaper and made available on the City's website;

16
17 **WHEREAS**, the City Council proposes an ordinance to amend Chapter 15.50
18 (Board of Appeals) to clarify, streamline, and improve program implementation;

19
20 **WHEREAS**, the City Council finds that this amendment continues to implement
21 the provisions of the California Building Standard Codes with regard to the required
22 duties and responsibilities of the Board of Appeals;

23
24 **WHEREAS**, the City Council finds that this action has been reviewed pursuant to
25 the California Environmental Quality Act (CEQA) and determined that this activity is
26 covered by the general rule that CEQA applies only to projects, which have the potential
27 for causing a significant effect on the environment, and where it can be seen with
28 certainty that there is no possibility that the action being contemplated, adoption of
29 amendments to the City of Calistoga's California Building Standard Codes, will have any
30 impact on the environment [Section 15061 (b)(3)]; and

31
32 **WHEREAS**, the City Council has reviewed and considered this amendment at its
33 regular meetings on _____ and _____, considered as one of its items of
34 business, this Ordinance to be adopted in accordance with Government Code Section
35 65090, this Ordinance to be adopted in accordance with Government Code Section
36 65850, to include the written and oral staff report, proposed findings and comments
37 received from the general public and interested agencies and parties.

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39 **NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of
40 Calistoga that:

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45 **SECTION ONE:**

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47 Based on the above findings, the City Council of the City of Calistoga adopts this
48 Ordinance to amend Title 15 California Building Standard Codes, specifically Chapter
49 15.50 Board of Appeals of the Calistoga Municipal Code to clarify, streamline and
50 improve program implementation.

51
52 **SECTION TWO:**

53
54 **Chapter 15.50**

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56 **BOARD OF APPEALS BUILDING STANDARDS ADVISORY & APPEALS BOARD**

57
58 **Sections:**

- 59 15.50.010 General.
60 15.50.020 Limitations on authority.
61 15.50.030 Membership.
62 15.50.040 Qualifications.
63 15.50.050 Terms of office.
64 15.50.060 Quorum.
65 15.50.070 Secretary of board.
66 15.50.080 Meetings.
67 15.50.090 Meeting procedures.
68 15.50.100 Conflict of interest.
69 15.50.110 Decisions.
70 15.50.120 Appeals to the City Council.

71
72 **15.50.010 General**

73 In order to hear and decide appeals of orders, ~~decisions or determinations and decisions~~
74 ~~or determinations~~ made by the Building and Fire Code Officials (Fire Chief), ~~and act as~~
75 ~~an advisory board for both the Building Division and Fire Department~~ relative to the
76 application and interpretation of these chapters, there shall be and is hereby created a
77 ~~board of appeals~~ Building Standards Advisory & Appeals Board, also known as the
78 "Board".

79
80 **15.50.020 Limitations on Authority**

81 An application for appeal shall be based on a claim that the true intent of this title or the
82 rules legally adopted thereunder have been incorrectly interpreted, the provision of this
83 title do not fully apply or an equally good or better form of construction is proposed. The
84 Board shall have no authority to waive requirements of this title.

85
86 **15.50.030 Membership.**

87 The membership of the board shall consist of five voting members having the
88 qualifications established by this chapter. Members shall be appointed by the Mayor
89 and confirmed by the City Council. Removal of a member may occur by a majority vote
90 of the City Council.

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92
93 **15.50.040 Qualifications.**

94 | The Board shall consist of members who are qualified by experience and training to
95 | pass on matters pertaining to building construction, accessibility and hazards of fire,
96 | explosions, hazardous conditions or fire protections systems and are not employees of
97 | the jurisdiction. Individuals from each of the following professions or disciplines shall be
98 | appointed to the Board:
99

- 100 | A. Registered design professional.
- 101 | B. Registered fire protection professional.
- 102 | C. Registered engineer professional (industrial/mechanical preferred).
- 103 | D. General contractor.
- 104 | E. Certified access professional.

105

106 | **15.50.050 Terms of office.**

107

Members shall be appointed for a staggered term of three years after the initial Board
108 | has been appointed and may not serve for more than two consecutive full terms. When
109 | a member is appointed to fill an open position due to the voluntary withdrawal or removal
110 | of a member, the appointed member's term shall coincide with the term of the departing
111 | member.

112

113 | **15.50.060 Quorum.**

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Three members of the Board shall constitute a quorum.

115

116 | **15.50.070 Secretary of board.**

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The Fire Code Official and/or Building Official, or appointed designee, shall act as
118 | secretary of the Board and shall keep a detailed record of all its proceedings.

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120 | **15.50.080 Meetings.**

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The Board shall meet from time to time as needed or as determined by the Fire Code
122 | Official and/or Building Official. Upon the receipt of a notice of appeal, the Board shall
123 | meet within 10 days of receipt of such appeal.

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125 | **15.50.090 Meeting Procedures.**

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The Board shall adopt rules of procedure for conducting its business.

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128 | **15.50.100 Conflict of interest.**

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Members with a material or financial interest in a matter before the Board shall declare
130 | so and refrain from participating.

131

132 | **15.50.110 Decisions.**

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Within five days of hearing an appeal, the Board shall issue a written decision and file
134 | such decision with the City Clerk's office and the Fire Code Official and/or the Building
135 | Official. A copy of the Board's decision shall be sent by certified to the appellant. A
136 | copy of the decision shall be posted in the office of the Fire Code Official and/or Building
137 | Official.

138

139 | **15.50.120 Appeals to the City Council.**

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Appeals of any Board decision shall be governed by Chapter 1.20 CMC.

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142 | **SECTION THREE:**

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144 If any section or portion of this ordinance is for any reason held to be invalid and
145 or unconstitutional by a court or competent jurisdiction, such decision shall not affect the
146 validity of the remaining portions of this ordinance.

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148 **SECTION FOUR:**

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150 **THIS ORDINANCE** shall take effect thirty (30) days after its passage and before
151 expiration of fifteen (15) days after its passage, shall be published in accordance with
152 law in a newspaper of general circulation published and circulated in the City of
153 Calistoga.

154

155 **THIS ORDINANCE** was introduced with the first reading waived at the City of
156 Calistoga City Council meeting of ___ day of _____, **2009** and was passed and
157 adopted at a regular meeting of the Calistoga City Council on ___ day of
158 _____, **2009**, by the following vote:

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AYES:

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NOES:

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ABSENT:

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ABSTAIN:

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JACK GINGLES, Mayor

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ATTEST:

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SUSAN SNEDDON, City Clerk

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