

**Chapter 6
Building**

Article 6-9

~~BUILDING SAFETY~~ CODES BOARD OF APPEALS

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6-9-1 Organization

A. Membership; Term of Office. The Town of Oro Valley Building Safety ~~CODES~~ Board of Appeals (**HEREINAFTER “BOARD”**) shall be composed of ~~a total~~ **AT LEAST five (5) TO A MAXIMUM OF SEVEN (7)** members who shall be residents of Pima County, with preference given to Oro Valley residents; but not employees of the Town. The members shall be appointed by the Mayor and Council, and hold office at its pleasure. The members shall be qualified by experience and training to pass upon matters addressed by the Board as more specifically described hereunder **AND SHOULD INCLUDE WHERE POSSIBLE ALL OF THE FOLLOWING:**

1. Registered design professional with architectural experience, a builder, a superintendent of building construction, or such individual with comparable experience.
2. Registered design professional with structural engineering experience, or such individual with comparable experience.
3. Registered design professional with mechanical and plumbing engineering experience, a mechanical contractor, or such individual with comparable experience.
4. Registered design professional with electrical engineering experience, an electrical contractor, or such individual with comparable experience.
5. Registered design professional with fire protection engineering experience, a fire protection contractor, or such individual with comparable experience.
6. The term of office shall be for a period of two (2) years each ending on ~~July 31~~ **DECEMBER 31ST** of even numbered years. Vacancies ~~for any reason~~ shall be

filled by appointment by the Council for the remainder of the unexpired term. The term of all members shall extend until their successors are appointed. ~~If a member misses three (3) consecutive regular, or five (5) unexcused meetings within one (1) year, the Board may request that the Council appoint a new person to complete the term. In addition, the Board shall recommend an individual to serve as the representative of the consuming public.~~

B. **Officers.** The Board shall at the first regular meeting of each calendar year elect a Chairman and Vice-Chairman from among its members who shall serve for one (1) year.

1. The Chairman shall preside at all meetings and exercise all the usual rights, duties, and prerogatives of the head of any similar organization. The Chairman may designate members of the Board to make personal inspections when necessary and, unless otherwise directed by a majority of the Board, shall appoint such sub-committees as may be ~~found~~ necessary.

2. The Vice-Chairman shall perform the duties of the Chairman in the absence of the Chairman. If both Chairman and Vice-Chairman are absent from a meeting, the senior member of the Board shall preside. Vacancies ~~created by any cause~~ **IN THE CHAIR OR VICE-CHAIR** shall be filled for the unexpired term by a new election.

~~3.—The Presiding Officer, subject to these rules, shall decide all points of order unless otherwise directed by a majority of the members in attendance on motion duly made and approved.~~

C. **Secretary.** The Building **OFFICIAL** ~~Safety Administrator~~ shall act as Secretary to the Board. The Secretary shall provide ~~only~~ administrative support to the Board but will not be a member of the Board.

~~1.—Duties. It shall be the duty of the Secretary, or designee, to conduct all official correspondence of the Board, send out all notices required by law; to keep the minutes of the Board's proceedings; to perform all the customary duties of the office; to be the custodian of the records of the Board; to supervise the clerical work and technical preparations necessary to the disposition of business before the Board; and to perform all other duties required by law, ordinance, or these Rules of Procedure.~~

~~2.—Agenda. The Secretary shall prepare an agenda for each Board meeting, listing the matters of business in the following order:~~

~~a.—Call to order; recording of members present and absent.~~

~~b.—Minutes; submitted for approval and subject to changes as directed.~~

~~c.—Continued Hearings.~~

~~d.—New Hearings.~~

~~e.—Old Business; matters pending Board action or further report.~~

~~f.—Other Business; new business not part of a hearing.~~

~~g.—Adjournment~~

~~3.—Docket. The Secretary shall maintain a docket and minute book posted to date. In the docket book, the Secretary shall enter the number of the case, the name of the applicant, short description of appeal, street address and/or legal description of the premises in question, and the decision of the Board. All continuances, postponements, dates of sending notices, and other action shall be noted on the docket. The minutes for each case shall be kept on file in the office of the Town Clerk. The minutes shall reflect the decision relating to each case acted on together with the vote of each member on divided votes, those absent so marked, together with all other official actions of the Board.~~

~~D.—Town Attorney. The Town Attorney, or designee, shall attend all meetings of the Board and shall serve as legal counsel for the Board. The Town Attorney shall advise the Board on its jurisdiction, and give aid in interrogating witnesses. The Town Attorney shall also give legal advice to the Board which shall be received and entered in the minutes before disposition of any question or law or matter requiring legal interpretation.~~

6-9-2 Meetings

A. **Regular Meetings.** ~~The Town of Oro Valley Building Safety Board of Appeals may hold regular meetings, when necessary, at the Oro Valley Town Hall on the third (3rd) Tuesday of each calendar month and WHICH shall be duly noticed, in accordance with State law, as to the exact date and time. If there are not applications, hearings, or other agenda items to consider, the meeting may be omitted although the Board shall meet at least once annually. If it is a necessary to change the meeting, a notice of such change shall be posted at the official Town posting areas. All meetings shall be recorded and accurate minutes shall be approved by the Board.~~

~~Upon receipt of a Notice of Appeal, the Board shall fix a reasonable time for hearing the appeal and give notice thereof to the parties of interest and to the public.~~

~~B.—Special Meetings. Special meetings for good cause may be held by the Board on call of its Chairman or of a quorum of members, which call shall be filed with the~~

Secretary, or as may be scheduled by a majority of the members at any previous meeting. Notice to the public shall comply with the Arizona Open Meeting Law.

~~C. **Public Meetings.** All meetings and hearings of the Board, except Executive Sessions, shall be open to the public. Any action calling for a formal vote shall take place only at a public meeting.~~

~~D.B. **Site Inspections.** The Secretary shall conduct a site inspection for the Board members on all abatements and other matters deemed appropriate by the Chairman. The Board members who are unable to attend the group site inspection may visit the site individually. The notices of such inspections shall be as provided by law.~~

~~E. **Quorum and Voting.** Three Board members shall constitute a quorum. The affirmative vote of a majority of the members voting shall be required for passage of any matter before the Board. The minutes of the meetings shall reflect the matter before the Board. The minutes of the meetings shall reflect the “ayes” and “nays” cast on a particular measure and shall reflect the vote of each member present or if absent, or if failing to vote, shall indicate that fact. If a member declares a conflict of interest relative to a particular issue, the member will abstain both from voting and from the deliberations of the matter in question.~~

~~If a quorum is not present at a regular or special meeting, such meeting will be continued to a specific time. If hearings are pending, the continuance will be limited to one week or to the earliest date that a quorum can be obtained.~~

6-9-3 Official Records RESERVED

~~A. **Definitions.** The official records shall include the Town of Oro Valley Building Safety Board of Appeals Rules of Procedure, minutes of the Board, together with all findings, decisions, and other official actions and records.~~

~~B. **Files; Retention.** All matters before the Board shall be filed in the Town Building Safety division of the Community Development department in accordance with the department’s general filing system. The Secretary shall keep all official records as provided by the State’s Building Safety Records Retention Schedule. The Secretary shall keep all documents filed with, or issued by, the Board.~~

6-9-4 Powers and Duties

A. The Board has the authority to hear and decide appeals of orders, decisions, or determinations made by the Building **OFFICIAL** Safety Administrator relative to the application and interpretation of the technical codes and to determine the suitability of materials and methods or types of construction alternate to those allowed by the provisions of the technical codes enforced by the Town. No such alternate shall be permitted unless at least equivalent to the requirement or requirements ~~concerned~~

CONTAINED in such codes and ordinances of the Town in regard to suitability, strength, effectiveness, fire resistance, durability, safety, ~~and~~ **OR** sanitation. **THE TECHNICAL CODES SHALL BE DEFINED AS THE CURRENTLY ADOPTED EDITIONS OF THE RESIDENTIAL, BUILDING, ELECTRICAL, MECHANICAL, PLUMBING, FUEL GAS, FIRE, ENERGY CONSERVATION, PROPERTY MAINTENANCE AND POOL & SPA CODES.**

B. The Board has the authority to provide for reasonable interpretations of the provisions of the technical codes enforced by the Town; to conduct such investigations, including but not limited to, tests of equivalency as the Board may deem proper and desirable; and to submit such recommendations and reports to the Mayor and Council as the Board deems necessary.

C. The Board shall have no authority relative to interpretation of the administrative provisions of the ~~Administrative Code~~ or the technical codes, nor shall the Board be empowered to waive requirements of ~~either the Administrative Code or~~ technical codes.

D. The Board has and shall exercise all power and jurisdiction reasonably implied by or necessarily inferred from the sources of express power identified herein. Such powers include, but are not limited to, power to determine whether a person, requested decision, subject matter, or issue falls within its jurisdiction; to determine the necessary form, extent, and detail of evidence to be received; to determine the extent and detail of its written findings and decisions or other legal actions taken; and to hear and determine appeals. **QUESTIONS OF JURISDICTION SHALL BE REFERRED TO THE TOWN ATTORNEY FOR FINAL DETERMINATION.**

6-9-5 Application and Appeals

A. Applications and/or appeals to the Board may be filed by any person aggrieved or affected by a decision or an interpretation by the Building **OFFICIAL Safety Administrator** in enforcing the various technical codes adopted by the Town or to request a variance denied by the Building **OFFICIAL Safety Administrator**.

B. Applications and appeals must be filed within thirty (30) days from the date the Building **OFFICIAL Safety Administrator** decides not to grant the permit requested or makes a decision from which the appeal is taken. Any communication purporting to be an application or an appeal shall be deemed a mere notice of intention to file and shall not be deemed a filing to comply with the requirements of timely filing.

C. Applications and appeals shall be made on forms provided by the ~~Board~~ **TOWN** through the Building **OFFICIAL Safety Administrator** **OR THE TOWN CLERK** and shall specify the nature of the matter. Copies of such forms are attached hereto, which by this reference are incorporated as part of ~~these Rules of Procedure~~ **THIS ORDINANCE.**

D. Each case shall be numbered serially and shall be the number of the last two digits of the **CURRENT** year ~~number~~ plus the number of the case filed for that calendar year. Example for the third case filed in the year ~~1992: 92-3.~~ **2012: 12-3.**

E. Materials and applications for the Board must be received at least twenty (20) calendar days prior to the next Board meeting. A case may be heard out of order upon motion of a Board member.

F. Failure to supply the required information within the time indicated ~~may~~ **SHALL** be considered by the Board as a failure to comply with ~~these Rules of Procedure~~ **THIS ORDINANCE** and the case ~~may~~ **SHALL** be dismissed for failure of timely filing.

G. An appeal shall stay all proceedings in the matter appealed from unless the officer from whom the appeal is taken certifies to the Board, that by reason of the fact stated in the certificate, the stay could cause imminent peril to life or property. In such case, proceedings shall not be stayed, except by a restraining order granted by the Board or by a court of record on application and notice to the officer from whom the appeal is taken.

6-9-6 Hearings

A. The Secretary **OR DESIGNEE** shall send notices of a hearing to the applicants as well as **AND** parties of interest. ~~Said n~~ Notices shall be mailed not less than five (5) days prior to the hearing date. Notices of a hearing shall be advertised once in the local newspaper of general circulation not less than seven (7) days prior to the hearing date and posted as required by law.

B. The applicant and any person that may be affected by the decision may appear on their own behalf or be represented by counsel.

C. If no appearance is made at the hearing by the applicant, the Board may continue the hearing or dispose of the matter on the record before it and hear those who have appeared in response to the notice of hearing.

D. Hearings on cases shall normally follow this order: Building **OFFICIAL Safety Administrator** report; Advice from and questions to Town Attorney; Jurisdiction determination; Hearing of the Applicant; Hearing of those in support of Applicant; Hearing of protests; Rebuttals as permitted by the Board; and Closing Hearing.

E. In determining jurisdiction, the opinion of the Town Attorney ~~may or may not~~ **SHALL** be recorded in the case. ~~Whenever it appears of record that the Board may lack jurisdiction, the Chairman shall so advise interested parties present. If there is objection to the Town Attorney's opinion that jurisdiction is lacking, the Board may hear argument on the jurisdictional issues and may require the filing of written statements or briefs thereon. The Board may proceed with the hearing and reception of evidence in any event,~~

~~and may reserve its determination of the jurisdictional issue until after the hearing is closed, and make a decision on the merits as if it had jurisdiction.~~ If there is no objection to the Town Attorney's opinion that jurisdiction is lacking, the Board may make an immediate determination and close the hearing upon find**ING** that it lacks jurisdiction. If the Board determines by motion that it lacks jurisdiction, the Secretary shall record the motion as a decision to deny the appeal.

F. Orderly procedure requires that each side shall proceed without interruption by the other, that all arguments and pleadings shall be addressed to the Board, and that there be no questioning or argument between individuals.

G. During the hearing, the Chair**man**, Board members and members of the Staff may ask questions and make appropriate comments pertinent to the case; however, no member should debate or argue an issue with the applicant.

H. The Chair**man** and Board members may direct any question to the applicant or any person speaking in order to bring out all relevant facts, circumstances, and conditions affecting the case and may call for questions from members of the Staff.

I. All supporting evidence for and against each case shall be presented to the assembled Board. The applicant shall be responsible for the presentation of all information supporting the case.

J. The burden of proof ~~for satisfying the findings made by the Board shall rest with the prevailing party.~~ **SHALL BE THE RESPONSIBILITY OF THE APPLICANT.**

K. The Board may take a case under advisement for later consideration and determination, or may defer action whenever it concludes that additional evidence is needed or further study is required.

L. Cases may be postponed by prior arrangement with the Secretary.

6-9-7 Findings and Decisions

A. The Board shall decide any application or appeal immediately after the hearing or within a reasonable time thereafter at a Special meeting called for that purpose, but in no event shall the Board keep an appeal under consideration more than ~~five (5)~~ **SEVEN (7) CALENDAR** days after the meeting in which the hearing was conducted. After such notice and hearing, the decision of the Board shall be filed with the ~~Community Development~~ **AND INFRASTRUCTURE SERVICES** ~~Department.~~ ~~as elsewhere provided in these Rules of Procedure by the Secretary of the Board.~~ The Board shall render its decision and all findings of fact in writing, which shall be final, and shall transmit a copy to the Building **OFFICIAL** ~~Inspector involved~~, and a copy to the applicant.

~~B.~~ A majority of legal votes cast by those members present and voting, a quorum being present, shall be required in order to carry all motions, except as provided for herein. **A MAJORITY OF VOTES CAST BY THOSE MEMBERS PRESENT SHALL BE REQUIRED IN ORDER TO CARRY ALL MOTIONS.**

~~C.~~ A member may refrain from voting whenever there is a personal or monetary interest, or if it is believed that any conflict of interest exists, in the subject property. A member may refrain from voting whenever any applicant, or agent, has sought to influence the vote of the member, other than in the public hearing, on such case.

~~D.~~**C.** Alternate materials or alternate methods or types of construction requested by applicants or appellants shall not be granted unless the Board shall findS in writing upon sufficient evidence that such alternate is at least equivalent to the requirements of the technical codes concerned in suitability, strength, effectiveness, fire resistance, durability, safety, and sanitation.

~~E.~~**D.** The interpretation of any technical code provisions made subject of an application or appeal shall not be decided unless the Board shall findS in writing, upon sufficient evidence, that the provision in question is in fact ambiguous, and in what regard, and why the proposed interpretation will be reasonable.

~~F.~~**E.** The Board may prescribe any reasonable conditions or limitations in connection with the granting of any appeal, or in connection with its decision in any Order to Show Cause, which it may deem necessary to fully carry out its duties and to implement the provisions and intent of the technical code in question. At the same time, the Board may set forth the effect of a failure to comply with any of said conditions or limitations, including but not limited to declaring the grant of appeal or application void upon such failure.

~~G.~~**F.** No informal requests for advice or moot or hypothetical questions will be considered by the Board. Any advice, opinion, or information given by any Board member or the Secretary, or any other official or employee of the Town shall not be binding on the Board.

~~H.~~**G.** No action of the Board shall set a precedent. Each case shall be decided upon its merits and upon the circumstances attendant thereto.

~~I.~~**H.** Any person aggrieved of any decision of the Board may file an action concerning the same in the Superior Court of Pima County. The complaint or petition therein shall allege that the decision was arbitrary, capricious, or otherwise unreasonable. Such action shall be commenced within thirty (30) days following delivery of the Board's decision to the office of the Building **OFFICIAL AND THE APPLICANT** Safety Administrator and not afterward.

~~6-9-8~~ Rules RESERVED

~~A.— Amendments, if any, to the Town of Oro Valley Building Safety Board of Appeals Rules of Procedure may be recommended by the Board and approved by Town Council. Any such amendment shall be proposed or submitted in writing at a meeting of the Board, and recorded in the minutes of such meeting or meetings. Action to recommend approval of such amendments may not be taken until the meeting following the proposal or submission in writing. Amendments adopted as above shall become effective at the next regular meeting of the Board.~~

~~B.— Roberts Rules of Order shall govern actions of the Board where they are not covered by these Rules of Procedure.~~