

ADOPTED

BUILDING CODE ADVISORY BOARD
Rules of Order and Procedure

1. DUTIES

Advise the building official on the adoption of ordinances affecting buildings and building regulations and other matters;

Hear and decide appeals of:

- A. A written correction notice issued by the building official or designee thereof pursuant to section 18-33(c) of the City of Arvada City Code;
- B. A written disapproval of a request for alternate material, design, or method of construction pursuant to section 18-33(f) of the City of Arvada Code;
- C. An emergency suspension of a contractor's license imposed pursuant to section 18-38(c)
- D. A decision to deny applicant a contractor's license or not renew a license made pursuant to section 18-71 except when such decision is based on illegible or incomplete application;
- E. For a case brought under section 18-3 7, hear the case and decide whether there has been a violation of this code or the technical codes, and should a violation or violations be found, determine the most appropriate penalty in the case; and
- F. Hold hearings or other proceedings as set forth in chapter 18 of Arvada Code.

2. MEETINGS

A. Regular Board Meetings

The Board shall meet in regular session when convened by the Chief Building Official on the 1st Thursday of each month. All other meetings will be posted in City Hall and on the City's website at least 24 hours prior to the meeting.

B. Executive Session

The Building Code Advisory Board may meet in executive session under the following rules of procedure:

1. an executive session may be convened on a majority vote of a quorum present at either a regular or special meeting;
2. attendance at the executive session shall be limited to the members of the Board and staff members required for advice and information;
3. no formal action shall be taken on any matter under discussion; and
4. the only items which may be discussed are those dealing with:

- (a) conferences with the Board's attorney for the purpose of receiving legal advice on specific legal issues;
- (b) matters required to be kept confidential by federal or state law;
- (c) details of security arrangements or investigations;
- (d) personnel matters; or
- (e) Consideration of documents protected by the Open Records Act.

C. Decorum and Order

The Chair shall preserve decorum and decide all questions of order subject to appeal of the Board. If a member transgresses the rules of the Board, the Chair shall, or any other member may, call the member to order, in which case the member shall be seated, unless permitted to explain.

D. Quorum

Four members of the Board in office at the time shall be a quorum for the transaction of business at all Board meetings, but in the absence of a quorum a lesser number may adjourn any meeting to a later time or date, and in the absence of all members, the recording secretary may adjourn any meeting for not longer than two weeks.

E. Canceling Meetings

In the event a determination has been made by staff that there are no items scheduled on a Building Code Advisory Board agenda due in part to withdrawn applications or postponements, prior to the hearing, the building official may cancel the meeting at their discretion. The recording secretary shall notify all Board members of the cancellation.

2. **BOARD OFFICERS AND MEMBERS**

A. Chair

The Chair shall call the meeting to order at the hour appointed for the Board meeting, and conduct the meeting to its conclusion. During the absence or disability of the Chair (or when there is a vacancy in the office of Chair), the Vice-Chair shall perform the Chair's duties. During the absence or disability of the Chair and Vice-Chair (or when there a vacancy in both offices), the Secretary shall perform the Chair's duties. If none of the officers are present, then the members present shall select a person among the present Board members to fulfill the duties of the Chair for the meeting.

B. Vice-Chair

The Vice-Chair shall serve as Chair under the conditions described above in

paragraph 2A.

C. Secretary

The Secretary shall serve notice of appeal meetings and sign the minutes. Additionally, the Secretary shall serve as Chair under the conditions described above in paragraph 2A.

D. Election of Officers

The Board shall elect from among its members a Chair, Vice-Chair, and Secretary. To accomplish this, an election shall be held at the first regular meeting in June of each year, or, if no regular meetings are scheduled then at the next scheduled meeting. The election of officers shall be the last items of business. When a vacancy occurs in the office of Chair, Vice-Chair, or Secretary, an election shall be held as the last item of business at the next regular meeting following such occurrence to fill the vacancy in any office, that vacancy shall be filled during the same election.

The Chair shall invite nomination of candidates for the office of Chair. When all members present have had an opportunity to nominate a candidate and after at least one candidate has been nominated, the Chair shall close nominations. When there is more than one nominee, the Chair shall invite members of the Board to present brief statements regarding the candidates. The Chair shall then call for a vote on each candidate in the order in which the nominations were received. The first candidate who receives a majority of votes shall be declared the winner.

The Vice-Chair and Secretary shall be elected in the same manner as the Chair.

Newly elected officers shall assume their duties at the next regularly scheduled meeting following the election.

E. Oath of Office

New Board members shall be sworn in at the first regular meeting held during the new member's term.

F. Removal

All members of the Board shall serve at the pleasure of City Council and may be removed at any time after a vote by City Council pursuant to Arvada City Code Section 2-78.

3. **OTHER CITY PERSONNEL**

A. City Staff

The Recording Secretary and other City Staff members shall be under the control and direction of the Chair during Board meetings.

B. Chief Building Official

The Chief Building Official, or their representative and/or staff, shall attend all meetings of the Board, unless excused by the Board. The building official may serve as secretary to the board, or designate another employee to serve as secretary. The Chief Building Official shall keep the Board fully advised as to the cases being presented. The Chief Building Official may make recommendations to the Board and may take part in discussions on all matters concerning the welfare of the City, but shall have no vote in the meetings of the Board.

C. The Fire Official

The fire code official, or their representative and/or staff from the fire district having jurisdiction over the affected property shall be an ex officio non-voting member of the board.

D. City Attorney

The City Attorney, or their representative and/or staff, shall attend all meetings of the Board, unless excused by the Board. The City Attorney shall advise the Board on legal matters pertaining to the case being discussed, and shall make recommendations to the Board and may take part in discussions, but shall have no vote in the meetings of the Board.

E. Recording Secretary

A member of the City Staff, as appointed by the Building Official shall be the Recording Secretary of the Board, who shall keep minutes of the meeting and perform such other and further duties in the meeting as may be ordered by the Chair or Board members.

F. Officers and Employees to Attend

Other employees of the City, when requested by the Chair, shall attend any regular or special meeting and confer with the Board on all matters relating to the City.

4. **PRIVILEGES OF BOARD MEMBERS**

A. Seating Arrangement

Board members shall occupy the dais area in the Council Chambers. The Chair shall occupy the center position, the Vice-Chair shall occupy the position immediately to the right of the Chair, and the Secretary shall occupy the position immediately to the left of the Chair. The remaining members of the Board shall occupy positions assigned to them by the Chair, but two or more of those remaining members may exchange positions by joining in a request to the Chair to that effect.

B. Right of Flooring

When recognized by the Chair, a member shall confine him or herself to the

questions under debate, avoid personalities, and refrain from impugning the motives of any other member's argument or vote.

C. Right of Appeal

Any Board member may appeal to the Board from a ruling of the Chair. If the appeal is seconded, the Board member making the appeal may briefly state his or her reasons for the same, and the Chair may briefly state his or her ruling; but there shall be no debate on the appeal and no other Board member or member of the public may participate in the discussion. The Chair shall then put the question, "shall the decision of the Chair be sustained?" If a majority of the Board members present vote "yes," the ruling of the Chair is sustained; otherwise, it is overruled.

D. Limitation of Debate

No member shall be allowed to speak unless recognized by the Chair. The Chair shall indicate when he or she feels that nothing is being accomplished by further debate.

E. Making Motions

No motions presented by any member shall require a second except that for appeal from the decision of the Chair. The Chair shall have the same rights and privileges of making motions as any other member. The Chair shall first call for a motion to approve from a Board Member who supports the matter and will make a record on why the matter should be approved. If no Board member makes a motion to approve, the Chair shall then ask for a motion to deny. All motions shall be decided by a majority vote of those Board members present, unless otherwise noted.

F. Voting

A vote taken by recording "yes" or "no" votes by use of voting lights, with the "yes" or "no" votes being read into the permanent record by the Chair, shall be taken upon all motions presented to the Board, and on the election of any officer. Every motion shall require the affirmative votes of four members of the Board for passage. Any motion for approval failing to receive four votes shall result in denial of the motion.

Each member who is present shall vote on all questions except where the member is not allowed to vote by reasons contained in Article III , Chapter 2, Arvada City Code, "Rules of Behavior and Standards of Conduct," unless the member is excused for good reason by the majority vote of the remaining members present. With regard to public hearings, any member who did not attend the entire hearing, and who has not heard an official recording of the portion of the hearing that was not attended, or who has not read or has not heard a reading of a verbatim transcript of the same, shall not vote. Any member refusing to vote, except when required to not vote by this paragraph, shall be guilty of misconduct in office.

A roll-call vote by "yes" or "no" entered in to the minutes of the Board proceeding

shall be an alternate method of taking the vote.

G. Dissent and Protest

Any member shall have the right to express dissent from or protest against any resolution of the Board, and have the reason thereof entered into the records. Such dissent or protest must be filed in writing, in respectful language, and presented to the Board not later than the next regular meeting following the date of passage of the resolution objected to.

H. Excusal from Attendance

No member shall be excused from attendance at a Board meeting except up on roll call and then only by a vote of the majority of the members present. If the majority of members present do not vote to excuse the member from attendance, it shall be considered an unexcused absence.

1. Members shall notify the Chair or City staff at least 48 hours before a meeting for an absence to be considered as an excused absence.
2. In the event of an emergency, members shall notify the Chair or City staff as soon as possible; absences due to an emergency will be considered for excusal without the 48 hour notice requirement. If the emergency prevented the member from contacting anyone prior to the meeting, the Board may revisit an unexcused absence and vote to determine if the absence should have been excused at the next scheduled regular meeting.

I. Attendance Required

A written report signed by the Chair and the Secretary shall be sent to City Council concerning any member of the Board who has three unexcused absences from Board meetings in a one year period, for Council determination as to whether this should be cause for removal of that member from the Board. Such report shall be sent to Council within three days following such member's third unexcused absence.

J. Excusal During Meeting

No member may leave the Council Chambers while in regular session without the permission of the Chair.

5. **BOARD PROCEDURE**

A. Delivery of Agendas, staff report and related materials

On the Friday prior to any schedule BCAB meeting, the Chief Building Official shall have delivered to each BCAB member an agenda showing the order of business, copies of communications, such staff reports as may have been prepared, with supporting documents, and other items relating to the business to be conducted at the meeting.

B. Order of Business

The business of all regular meetings of the Board shall be transacted in the following order, unless the Board, by a vote of the majority of members present, shall suspend the rules and change the order:

1. Call to order
2. Pledge of Allegiance
3. Roll call of members
4. Approval of minutes
5. Explanation of procedures
6. Advisory on recommendations to the City Council
7. Public hearing of cases in order number
8. Hearings on administrative appeals pursuant to the IPMC
9. Other business
10. Adjournment

No public hearing shall be set for a regular meeting at any time other than 6:15 p.m., and the Board shall not proceed to consideration of any public hearing prior to the time set for such public hearing.

Only Board members and City Staff may submit other matters for consideration under other business. At each meeting the Chair shall ask if there are objections or corrections to be made to the summary of minutes of the preceding meeting as published. If no objection, the summary of minutes shall be approved.

C. Filing with the Chief Building Official

Every application for administrative review, and document to come before the Board for consideration must be filed with the Chief Building Official at least 30 days prior to the meeting at which it will be heard.

C. Call To Order

The Chairperson shall take the chair at the hour appointed for the BCAB to meet and shall immediately call the members to order.

D. Procedure in Absence of Rule

In the absence of a rule to govern appointed procedure, reference shall be had to Robert's Rules of Order Revised.

E. Anonymous and Ex Parte Communication

Unsigned or anonymous communications shall not be introduced at a Board meeting. Ex parte communication between applicants or parties in favor or against an application and Board members are prohibited.

F. Reading of Application

Applications shall be read in full or by title only where copies are available to the Board and those in attendance.

6. **ADVISORY ON RECOMMENDATION TO CITY COUNCIL**

Advisory meetings will be called by the Building Official to review proposed ordinances for building code adoption. A presentation by the Building Official and other staff will be completed. The board and staff members will discuss the proposed ordinances for building code adoption and the board will be asked for recommendations.

7. **PUBLIC HEARINGS**

Public hearings shall be conducted in the following order:

1. Announce the case (Case Number, Applicant's Name and Address, and description of the Request);
2. Open the public hearing;
3. Presentation of Appeal/Complaint

All Applicants shall be allowed a maximum of 20 minutes in total to present their case.

All persons desiring to be heard by the Board shall state their name and address for the record, and shall attest by sworn oath that all evidence they present shall be the truth.

4. Presentation of Opposition to the Appeal/Complaint;
 - A. All parties who wish to speak against the application shall be allowed a maximum of 20 minutes in total to present the opposition. All persons desiring to be heard by the Board shall state their name and address for the record, and shall attest by sworn oath all evidence they present shall be the truth.

5. Rebuttal;

Applicant shall be allowed a five minute rebuttal after presentation of the opposition.

- A. Invite additional comments from City Staff;
- B. Close the public comment period;
- C. Invite questions from members of the Board;
- D. Close the hearing;

- E. Invite members of the Board to discuss the case;
- F. Entertain a motion for action on the application;
- G. Call for the Vote; and
- H. Announce the vote and the result of the question.

7. SHOW CAUSE HEARING

- A. Upon request by the Chief Building Official and review by the Board, and upon a finding by the Board that there is probable cause to believe that a violation or violations of the Arvada City Code or the technical codes adopted has occurred, the Board may issue a show cause notice to the licensee. The Board shall set a time and place for a hearing of the matter and shall give the licensee or permit holder timely notice of the date and time established for a show cause hearing at which time the licensee or permit holder will be required to show cause as to why their licensee permit should not be denied, revoked or suspended.
- B. At the hearing, the Board shall hear such testimony and consider such evidence as is relevant to the issue of whether the licensee violated any provision of this code and if so, what penalty is appropriate for such violation or violations.
- C. The Board shall take notice of the Arvada City Code, including all technical codes adopted by reference and as may be amended. The Board may require that any relevant allegation or factual assertion that is capable of being proven by the submission of a certified copy of the pertinent public record shall be proven by the submission of such a record, if such submission will expedite the hearing.
- D. Following presentation of such evidence as the Board deems relevant to the issues before the Board, the Board shall deliberate on the record, make a determination about the issues, and shall issue an order as set forth below.
- E. At the conclusion of the hearing, the Board may make findings of fact from the statements and evidence offered as to whether a violation or violations of this Code or the technical codes occurred and issue a verbal order and penalty determination as necessary, or may take the matter under advisement and issue findings in the form of a written order.
- F. Should the Board take the matter under advisement, it shall within 21 calendar days of the date of the hearing issue a written order containing its findings of fact. Should a violation or violations be substantiated through a written order, the Board shall also issue a determination about the penalty that should be imposed on the licensee pursuant to section 18-37. The written order shall be sent to the licensee by first class mail.

8. HEARINGS ON ADMINISTRATIVE APPEALS

- A. Hearings on administrative appeals pursuant to the IPMC are not public hearings for the purposes of taking public comments.

B. Standard of Review

1. For appeals as to notices by the Building Inspection division regarding alleged violations:
 - a. The Board is to determine whether the Notice correctly interpreted the code provision(s); whether the provision of the code applied in that circumstance; or whether the provisions of the code were satisfied by some other means.
2. For appeals as to administrative fee assessments:
 - a. The Board is to determine whether the assessment for the administrative fee should apply or be waived.
 - b. The Board is to determine if there are compelling reasons that the applicant was unable to come into compliance within the allotted time prior to assessment by considering the following:
 - i. Whether the applicant received proper notice; or
 - ii. Whether the applicant was afforded enough time to come into compliance; or
 - iii. Whether the administrative fee was applied uniformly.

C. Procedure for Administrative Hearings

1. Administrative appeal will be announced;
2. The applicant and any witnesses on their behalf will be sworn in;
3. The applicant will be given a chance to explain their reasons for appeal and submit any evidence to support their claim;
4. The appropriate City staff member will be given an opportunity to submit any information relevant for the Board's consideration as to the applicant's appeal;
5. The applicant will next be given a chance to rebut any presentation by the appropriate City staff member;
6. Close the testimony;
7. Invite questions from members of the Board;
8. Invite members of the Board to discuss the case; and
9. Entertain a motion for action on the application.

9. EVIDENCE

- A. Strict Colorado Rules of Evidence shall not apply in hearings under this article, but rather any evidence may be received which is relevant and possesses probative value commonly accepted by reasonable and prudent men in the conduct of their affairs. Every party to the proceeding may present such party's case or defense by oral and documentary evidence, to submit rebuttal evidence, and to conduct such cross examination as may be required for a full and true disclosure of the facts. The Chair may receive all or part of the evidence in written form if the interests of the parties will not be prejudiced substantially, and if the hearing will be expedited thereby.
- B. The rules of evidence and procedure shall conform when practicable to those in state civil nonjury cases, but when necessary to ascertain facts affecting the substantial rights of the parties to the proceeding, the Chair shall receive and the Board shall consider evidence not admissible under the Colorado Rules of Evidence if such evidence possesses probative value.
- C. The Chair shall give effect to the rules of privilege required by state law, may exclude incompetent, irrelevant, and unduly repetitious evidence, and may receive documentary evidence in the form of a copy.
- D. The Chair may take notice of general, technical or scientific facts within his knowledge, not in evidence, so long as such facts and the reliance thereon is made known to the parties.
- E. The Chair may take notice of the laws, codes, ordinances, statutes and regulations of the city, state, and of the United States.
- F. The City shall be entitled to a rebuttable presumption of good faith and validity concerning administrative actions or determinations of the City, which may be the subject of the hearing.
- G. No ex parte material or representation of any kind or any other communication outside the hearing shall be considered by the hearing officer unless it is fully disclosed on the record and an opportunity is given to the other party for comment thereon at the hearing.

10. MISCELLANEOUS

- A. Privilege of Floor

Only members of the Board and officers named in the rules, and persons invited by the Chair of the Board, or by vote of the Board, shall be admitted within the bar of the Council Chambers, and the City Manager shall direct the Chief of Police to cause this rule to be rigidly enforced.

B. Permission Required to Address the Board

Persons other than members of the Board and City Staff shall not be permitted to address the Board, except when speaking for or against an application being heard by the Board. Such persons shall be recognized by the Chair. Any Board member may ask permission of the Chair to introduce any person other than a member of the Board. If permission is not granted, the decision of the Chair may be appealed in the manner prescribed in paragraph No.18.

C. Suspension of Rules

Any provision of these rules not governed by the Arvada City Charter or Arvada City Code may be temporarily suspended at the meeting of the Board by a majority vote of all yeases and noes and entered upon the record. Any rule may be suspended by general consent if presented by the Chair and if there are no objection by any member.

D. Amendment of Rules

These rules may be amended or new rules may be adopted by a majority vote of all members of the board. Any such alterations or amendments shall be submitted in writing at the preceding regular meeting and shall be placed on the calendar under the order of other business. This requirement shall be waived only by unanimous consent with the recorded vote of all members.

Approved this 16th day of June, 2020

Cheryl Cheney

Chair

ATTEST:

Dave Rhodes

Secretary