

INDEPENDENT BOARD OF APPEALS (BUILDING CODE)

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BILL NO. 2321

INTRODUCED BY COUNCIL

ORDINANCE NO. 2153

**AN ORDINANCE ESTABLISHING AN INDEPENDENT BOARD TO HEAR APPEALS OF DECISIONS BY CITY BUILDING OFFICIAL REGARDING INTERPRETATIONS OF THE BUILDING CODE; AND PROVIDING OTHER MATTERS PROPERLY RELATED THERETO.**

**WHEREAS** SMC 15.01.0100 provides that the City Council shall act as the board of appeals contemplated in the Building Code to hear and decide appeals of orders, decisions or determinations made by the building official relative to the application and interpretation of the Building Code; and

**WHEREAS** the City Council believes that interpretations of the Building Code are more appropriately rendered by an independent board of appeals consisting of professionals to be selected by this Council who have education and experience in the architecture, engineering and construction fields;

**WHEREAS** NRS 278.270 through 278.310 provides the City with the authority to establish a board to hear appeals regarding inability to obtain a building permit or decisions of any administrative officer or agency based on or made in the course of the administration or enforcement of any regulation relating to the soundness of structures;

**WHEREAS** in appointing such a board, the City Council believes that it is desirable to attempt to coordinate its appointments with appointments made by the City of Reno to their respective boards of appeals in order to maximize the level of talent, experience and consistency of persons who serve on both boards of appeals.

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF SPARKS DOES ORDAIN:**

**Section 1. Section 15.01.0100 is hereby amended to read as follows**

**15.01.0100 Chapter 1 amended—Administration.**

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Chapter 1 of the building code is amended as follows:

"103. Violations.

It shall be unlawful for any person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy or maintain any building or structure in the city, or cause or permit the same to be done in violation of any provision of this code.

In the event of a violation of the provisions of this code, the building official may issue to the party in violation a citation to appear before the Municipal Court of the City of Sparks, or, in the alternative, refer notice of such violation to the Office of the City Attorney for commencement of action for the abatement, removal and enjoinder of such violation as a public nuisance, or criminal action, in the manner provided by law.

Any person, firm or corporation violating any of the provisions of this code shall be deemed guilty of a misdemeanor, and each such person shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provisions of this code is committed, continued or permitted, and upon conviction of any such violation, such person shall be punishable by a fine of not more than \$1,000.00, or by imprisonment for not more than 6 months, or by both such fine and imprisonment."

"105.1. General.

- A. 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, ~~the Sparks City Council shall act as the~~ *there shall be and is hereby created a board of appeals. In accordance with NRS 278.270 to exercise those powers enumerated in NRS 278.300(1)(a) only with respect to this code. The Sparks City Council shall establish, by resolution, rules of procedure for conducting the board's business. At the pleasure of the council, a committee may be established consisting of members who are qualified by experience and training to assist the council in such action. The committee shall be composed of an engineer, architect, general contractor, fire professional and one whom should represent the public at large.*

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- B. *Subject to the availability of applications, the board of appeals shall include (i) two persons each of whom is either a registered professional with architectural experience or a builder or superintendent of building construction with at least ten years experience (five of which shall have been in responsible charge of work); (ii) one person who is a registered professional with structural and/or civil engineering experience; (iii) one person who is either a registered professional with mechanical engineering experience or a mechanical/plumbing contractor with at least ten years of experience (five of which shall have been in responsible charge of work); and (iv) one person who is either a registered professional with electrical engineering experience or an electrical contractor with at least ten years experience (five of which shall have been in responsible charge of work). The term "registered professional" means an individual who is registered or licensed to practice the respective building related profession as required by the laws of Nevada. Persons appointed to the board of appeals serve at the pleasure of the Sparks City Council, but unless otherwise removed, shall serve terms of two years and may be reappointed for up to three terms. Board members whose terms have expired shall remain on the board until successors have been appointed. ~~The building official shall be an ex officio member of and shall act as secretary to said board but shall have no vote upon any matter before the board.~~*
- C. *The term "registered professional" means an individual who is registered or licensed to practice the respective building related profession as required by the laws of Nevada.*
- D. *Persons appointed to the board of appeals serve without compensation and at the pleasure of the Sparks City Council, but unless otherwise removed, shall serve terms of two years and may be reappointed for up to three terms. Board members whose terms have expired shall remain on the board until successors have been appointed and qualified. Terms shall be staggered so that no more than two persons are appointed at a time. The building official shall be an ex officio member of and shall act as secretary to said board but shall have no vote upon any matter before the board.*
- G.E. **The building official shall make recommendations to the City Council for all appointments to the board and shall first discuss the recommendations with the building official of the City of Reno to encourage the selection and retention of the same persons to serve on both boards of appeals."**

"105.2. Limitations of Authority: ; *appeals.*

- A. ~~The Sparks City Council or any committee appointed by the Sparks City Council shall have no authority relative to interpretation of the administrative provisions of this code nor shall the same be empowered to waive requirements of this code. 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."~~
- B. *Following a hearing in accordance with the rules established by this Council, an appellant may, as provided in NRS 278.310(3)(b), appeal the decision of the board of appeals directly to the district court in and for the County of Washoe in accordance with the following procedure.*

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1. *Following the hearing and decision of the board, the building official shall prepare a written decision of the Board, which shall be addressed to the Appellant, and shall be signed by the Chair of the board.*

2. *The written decision shall be filed with the City Clerk, and a copy of the decision, together with a notice that the decision has been filed with the City Clerk, shall be served on the Appellant by certified mail or by personal delivery.*

3. *The decision of the board of appeals shall be a final decision for purposes of judicial review. The appellant may, but is not required to, file a petition for reconsideration to the board of appeals within ten days after the notice of decision is filed with the City Clerk. The petition for reconsideration shall be filed with the City Clerk and a copy served on the building official. A hearing by the board of appeals shall be promptly scheduled and must be heard within 30 days from the date that the petition is filed. If a petition for reconsideration is filed, the period for filing a petition for judicial review does not commence until after the petition for reconsideration is heard and a written decision is prepared, filed and served in accordance with subsections 1 and 2 above.*

4. *The appellant may file a petition for judicial review within 25 days after the date of notice of the decision with the City Clerk.*

5. *Unless otherwise ordered by the district court, the procedures set forth in NRS 233B.130, 233B.131, 233B.133, 233B.140 and 233B.150 shall be used as guidelines for the conduct and determination of the judicial review, except that the time for filing a petition for judicial review is 25 days rather than the 30 days provided in NRS 233B.130(2)(c).*

"106.2. Work Exempt from Permit.

A building permit shall not be required for the following:

1. One-story detached accessory buildings used as tool and storage sheds, playhouses and similar uses, provided the projected roof area does not exceed 120 square feet (11.15 m<sup>2</sup>).
2. Fences not over 6 feet (1829 mm) high.  
EXCEPTION: A permit for fences 6 (1829 mm) feet or less in height shall be obtained from the Planning Department. A site plan showing location, height and materials used is required to obtain a fence permit.
3. Oil derricks.
4. Movable cases, counters and partitions not over 5 feet 9 inches (1753 mm) high.
5. Retaining walls which are not over 4 feet (1219 m) in height measured from the bottom of the footing to the top of the wall, unless supporting a surcharge or impounding Class I, II or III-A liquids.
6. Water tanks supported directly upon grade if the capacity does not exceed 5000 gallons (18,927 L) and the ratio of height to diameter or width does not exceed two to one.

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7. Platforms, walks, driveways, planters and similar types of flatwork which are not more than 30 inches (762 mm) above grade and not over any basement or story below.
8. Painting, papering and similar finish work.
9. Temporary motion picture, television and theater stage sets and scenery.
10. Window awnings supported by an exterior wall of Group R, Division 3, and Group M Occupancies when projecting not more than 54 inches (1372 mm).
11. Prefabricated swimming pools accessory to a Group R, Division 3 Occupancy in which the pool walls are entirely above the adjacent grade and if the capacity does not exceed 5000 gallons (18,927 L).

Unless otherwise exempted, separate plumbing, electrical and mechanical permits will be required for the above exempted items.

Exemption from the permit requirements of this code shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of this jurisdiction."

"106.4.1. Issuance.

The application, plans, specifications, computations and other data filed by an applicant for permit shall be reviewed by the building official. Such plans may be reviewed by other departments of this jurisdiction to verify compliance with any applicable laws under their jurisdiction. If the building official finds that the work described in an application for a permit and the plans, specifications and other data filed therewith conform to the requirements of this code and other pertinent laws and ordinances, and that the fees specified in Section 107 have been paid, he shall issue a permit therefor to the applicant.

When the building official issues the permit where plans are required, he shall endorse in writing or stamp the plans and specifications "APPROVED." Such approved plans and specifications shall not be changed, modified or altered without authorizations from the building official, and all work regulated by this code shall be done in accordance with the approved plans.

The building official may issue a permit for the grading and footing/foundation before the entire plans and specifications for the whole building or structure have been submitted or approved, provided adequate information and detailed statements have been filed complying with all pertinent requirements of this code. The holder of such permit shall proceed at his own risk without assurance that the permit for the entire building or structure will be granted.

The building official may require that a comprehensive permit, including permits for specialty contractors be taken out by a general contractor on all construction covered by adopted construction codes. Before such permit is issued, the names, addresses, city business license numbers and state contractor license numbers for the general contractor as well as all the subcontractors shall be required by the building official. Permits requiring a contractor pursuant to the Nevada State Contractor's Board regulations shall be signed by the card holder or his authorized representative. An authorized representative shall have a letter of authorization from the card holder on company letterhead or notarized signature.

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No building permit shall be issued until the applicant has complied with the dedication requirements set forth in Section 17.12.075 of this code with respect to the property to be built upon."

"106.4.4. Expiration.

Every permit issued by the building official under the provisions of this code shall expire by limitation and become null and void if the building or work authorized by such permit is not commenced within 180 days from the date of such permit, if the building or work authorized by such permit is suspended or abandoned at any time after the work is commenced or there has been no inspection requests for a period of 180 days. Before such work can be recommenced, a new permit shall be first obtained to do so, and the fee therefor shall be one half the amount required for a new permit for such work, provided no changes have been made or will be made in the original plans and specifications for such work; and provided further that such suspension or abandonment has not exceeded one year. In order to renew action on a permit after expiration, the permittee shall pay a new full permit fee.

Any permittee holding an unexpired permit may apply for an extension of the time within which work may commence under that permit when the permittee is unable to commence work within the time required by this section for good and satisfactory reasons. The building official may extend the time for action by the permittee for a period not exceeding 180 days upon written request by the permittee showing the circumstances beyond the control of the permittee have prevented action from being taken. No permit shall be extended more than once."

"107.2. Permit Fees.

The fee for each permit shall be as set forth in Table No. 1-A.

The determination of value or valuation under any of the provisions of this code shall be made by the building official from calculations based on the March 1989 Marshall & Swift valuation service formulas using average construction. The value to be used in computing the building permit and building plan review fees shall be the total value of all construction work for which the permit is issued as well as all finish work, painting, roofing, electrical, plumbing, heating, air conditioning, elevators, fire-extinguishing systems and any other permanent equipment.

EXCEPTION:

1. Fees for projects where a unit costs is not feasible shall be based on total construction costs, including, but not limited to, materials, labor and contractors profit. In the case of an owner providing labor, the value of such labor shall be based on a fair wage and reasonable time to construct the project.
2. When actual construction cost exceeds calculated valuation due to better than average construction the actual construction cost shall be used.
3. In lieu of Marshal & Swift, the Building Valuation Data table from the Building Standards trade magazine published by the International Conference of Building Officials, may be used for simplicity provided the value does not exceed that specified in Section 107.2."

"107.3. Plan Review Fees.

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When submittal documents are required by Section 106.3.2, a plan review fee shall be paid when the building permit is issued. If the permit is withdrawn or denied prior to issuing a permit, the plan review fee shall be paid within 15 days of said action. Said plan review fee shall be 65 percent of the building permit fee as shown in Table No. 1-A.

The plan review fees specified in this subsection are separate fees from the permit fees specified in Section 107.2 and are in addition to the permit fees.

When submittal documents are incomplete or changed so as to require additional plan review or when the project involves deferred submittal items as defined in Section 106.3.4.2, an additional plan review fee shall be charged at the rate shown in Table No.1-A."

"107.4. Expiration of Plan Review.

Applications for which no permit is issued within 180 days following the date of application shall expire by limitation, and plans and other data submitted for review may thereafter be returned to the applicant or destroyed by the building official. The building official may extend the time for action by the applicant for a period not exceeding 180 days upon request by the applicant showing that circumstances beyond the control of the applicant have prevented action from being taken. No application shall be extended more than once. In order to renew action on an application after expiration, the applicant shall resubmit plans and pay a new plan review fee."

"107.6. Fee Refunds.

The Sparks City Council may authorize the refunding of any fee paid hereunder which was erroneously paid or collected.

EXCEPTION: Refunds for fees of \$1,000.00 or less may be authorized by the building official.

Refunds shall not be more than 70% of the permit fee paid when no work has been done under a permit issued in accordance with this code.

Refunds shall not be more than 70% of the plan review fee paid when an application for a permit for which a plan review fee has been paid is withdrawn before any plan reviewing is done.

The city council or building official may not authorize refunding of any fee paid except on written application filed by the original permittee not later than 180 days after the date of fee payment."

"107.7. Waiver of Fees.

Upon written application for waiver to the building official, the city council may waive all or part of the fees required by Section 107.6 and fees required by other adopted codes for plumbing, electrical and mechanical work for the following agencies and organizations:

1. The Reno-Sparks Convention Authority;
2. Charitable, non-profit organizations;
3. Governmental entities.

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This section does not apply to fees that may be collected by the building division as part of the overall permit fee, shall not be waived under this section."

"107.8. Permit Fee Increases.

Building permit and inspection fees are set by resolution of the City Council. Schedules of these fees are available from the City Clerk and are posted wherever permits are obtained and fees paid.

"108.1. General.

All construction or work for which a permit is required shall be subject to inspection by the building official and all such construction or work shall remain accessible and exposed for inspection purposes until approved by the building official. In addition, certain types of construction shall have continuous inspection as specified in Section 1701.5.

Approval as a result of an inspection shall not be construed to be an approval of a violation of the provisions of this code or of other ordinances of the jurisdiction. Inspections presuming to give authority to violate or cancel the provisions of this code or of other ordinances of the jurisdiction shall not be valid.

It shall be the duty of the permit applicant to cause the work to remain accessible and exposed for inspection purposes. Neither the building official nor the jurisdiction shall be liable for expense entailed in the removal or replacement of any material required to allow inspection.

A survey of the lot shall be submitted to the building official to verify that the location of the structure and the drainage of the site are in accordance with the approved plans."

"108.2. Inspection Record Card.

Inspections shall not be requested until the permit holder or an agent of the permit holder shall have posted or otherwise made available an inspection record card such as to allow the building official to conveniently make the required entries thereon regarding inspection of the work. This card shall be maintained available by the permit holder until final approval has been granted by all concerned agencies."

"108.3. Inspection Requests.

It shall be the duty of the person doing the work authorized by a permit to notify the building official that such work is ready for inspection. The building official may require that every request for inspection be filed at least one working day before such inspection is desired. Such request may be in writing or by telephone at the option of the building official. Inspection requests shall be called directly to the inspector, as indicated on the wallet card provided at permit issuance, between the hours of 7:00 to 8:00 AM Monday - Friday. It shall be the duty of the person requesting any inspections required by this code to provide access to and means for inspection of such work."

"108.5.2. Foundation inspection.

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To be made after excavations for footings are complete and any required reinforcing steel is in place. For concrete foundations, any required forms shall be in place prior to inspection. All materials for the foundation shall be on the job, except where concrete is ready mixed in accordance with U.B.C. Standard No. 19-3, the concrete need not be on the job. Where the foundation is to be constructed of approved treated wood, additional inspections may be required by the building official. Certification of set backs shall be provided by a Nevada licensed engineer or surveyor."

"108.5.4.1. Insulation Inspection.

To be made after frame inspection has been approved."

"108.5.6. Final inspection.

To be made after finish grading and the building is completed and ready for occupancy. Certification of drainage shall be provided by a Nevada licensed engineer or surveyor."

**SECTION 2:** All ordinances or parts of ordinances in conflict herewith are hereby repealed.

**SECTION 3:** The City Clerk is instructed and authorized to publish the title to this ordinance as provided by law.

**SECTION 4:** This ordinance shall become effective upon passage, approval and publication.

**SECTION 5:** The provisions of this ordinance shall be liberally construed to effectively carry out its purposes in the interest of the public health, safety, welfare and convenience.

**SECTION 6:** If any subsection, phrase, sentence or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions.

**SECTION 7:** Prior to enactment of the preceding provisions, the Council had considered and does hereby determine that this ordinance is exempt from NRS Chapter 237 as it is adopted under authority contained in NRS Chapter 278.

**PASSED AND ADOPTED** this 9th day of September, 2002, by the following vote of the City Council:

**AYES:** Mayer, Salerno, Martini, Carrigan, Schmitt

**NAYS:** None

**ABSTAIN:** None

**ABSENT:** None

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APPROVED this 9th day of September, 2002, by:

  
TONY ARMSTRONG, Mayor

ATTEST:  
  
DEBORINE J. DOLAN, City Clerk



APPROVED AS TO FORM AND LEGALITY:

  
CHESTER H. ADAMS, City Attorney

## **RULES OF PROCEDURE**

**for appeals to the**

### **SPARKS BUILDING CODE BOARD OF APPEALS**

#### **Rule 1. Applicability**

These rules apply to proceedings before the Sparks Building Code Board of Appeals established under SMC 15.105.1.

#### **Rule 2. Definitions:** The following words have the following meanings:

**Appellant** means the person who is appealing the decision of the building official.

**Board** means the Sparks Building Code Board of Appeals.

**Building official** means the person appointed as the building official under the Code.

**Chair** means the chairperson of the Board.

**Code** means the Uniform Building Code or International Building Code, published by the International Conference of Building Officials, which currently has been adopted, as amended, and is in effect at the time of the appeal in the City of Sparks.

#### **Rule 3. Notice of right to appeal.**

Decisions, orders, and determinations by the building official which are eligible for appeal to the Board must be accompanied by written notice of the right to appeal whether as a part of the text of the decision or on a separate form. The notice of right to appeal must include the time limits for filing appeal, where to obtain forms or information, and where the appeal must be filed. The time limits on filing appeals do not start until this written notice of right to appeal has been given to the person to whom the decision is directed.

#### **Rule 4. Time to appeal.**

**§4.01.** The Appellant must file a written appeal of the decision within thirty (30) calendar days from the date that the decision was communicated in writing (including the notice of right to appeal as set forth in Rule 3) except that if the decision of the building official is to vacate a building because it is in such a condition as to make it immediately dangerous to the life, limb and property or safety of the public or adjacent owners, such appeal must be filed within ten (10) days from the date that the decision was communicated in writing. If the building official declines to put the decision in writing, the decision is deemed communicated on the day that the building official last declines to render the decision in writing. If the thirty day or ten day deadline falls on a weekend or holiday observed by the City, then the deadline is extended to the next business day. The appeal is deemed filed when actually delivered to the place indicated on the notice of right to appeal or, if mailed, in accordance with NRS 238.100.

**§4.02.** Except for appeals or cases referred to the Board by the City Council, the Board does not have jurisdiction to hear appeals which have not been timely filed.

#### **Rule 5. Form of Appeal.**

The appeal must be in writing and must include the following information:

- (i) a heading indicating that it is an appeal to the Board;
- (ii) name, address and phone number of Appellant and the attorney or other representative of Appellant;
- (iii) name of building official;
- (iv) the date of and a brief statement in ordinary language of the specific decision, order or determination being appealed, and the;
- (v) a statement explaining why the decision is being appealed.
- (vi) a statement of any material facts claimed to support the contentions of the Appellant
- (viii) a brief statement in ordinary and concise language of the relief sought and reason why it is claimed the protested order or action should be reversed, modified or set aside.
- (ix) a signature of the Appellant, and date signed
- (x) a jurat signed by a notary public that the Appellant was duly sworn and

swears under penalty of perjury that the foregoing statements of fact are true and complete

The Appellant must be provided by the building official with a form, which the Appellant may use for the appeal.

**Rule 6. Delivery to building official; determination of jurisdiction.**

**§6.01** The Appellant shall mail or deliver the appeal to the building official at the address indicated in the notice of right to appeal.

**§6.02** The building official shall determine whether the Board has jurisdiction to hear the appeal and shall notify the Appellant of the decision. The decision of the building official as to jurisdiction shall be a final decision for purposes of judicial review or judicial intervention.

**Rule 7. Scheduling of hearing before Board; Notice of Hearing.**

**§7.01** If the building official determines that the Board has jurisdiction, the building official shall contact the individual members of the Board to arrange for a hearing date and location. The building official shall prepare a written notice of hearing and deliver or mail to Appellant and members of the Board. Unless a different time is agreed upon by Appellant, the hearing must occur not earlier than five days and not later than ten days from the date of the notice of hearing.

**§7.02** The building official shall act as secretary to the Board in this matter and shall make all preparations for the hearing.

**§7.03** The building official shall prepare a notice of hearing which must indicate:

- (i) the date, time, place, of the hearing, and a statement that the hearing may be continued from time to time;
- (ii) the date and general nature of the allegations in the appeal;
- (iii) that the hearing is being conducted by the Board established under the Code (giving specific code section number establishing the Board of Appeals);
- (v) that Appellant is urged to attend and to bring witnesses and present evidence and may examine and cross examine witnesses and make arguments (written or oral) to the Board;

- (vi) that Appellant has the burden of proof in this proceeding and if the Appellant does not attend the hearing, there may be insufficient evidence upon which to decide the case, and the case could be decided against Appellant;
- (vii) that Appellant is entitled to copies of all documents and references used by the building official;
- (viii) that Appellant may be represented by counsel;
- (ix) that the hearing is an open meeting under Nevada's open meeting law;

A copy of these rules must be attached to the Notice.

**Rule 8. Scope of hearing on appeal.**

Unless otherwise agreed, only those matters specifically raised in the written Appeal given to the building official may be considered at the appeal. If a new matter comes up and the Board desires to consider it, the Board shall first offer to the Appellant and the building official to continue the hearing to give them an opportunity to review the matter and prepare for a hearing. If both the Appellant and building official agree to proceed at the present hearing, the Board may hear the new matter.

**Rule 9. Stay pending appeal.**

The Board does not have the power to stay decisions of the building official pending appeal. The building official may voluntarily agree to a stay.

**Rule 10. Subpoenas.**

The Board does not have subpoena powers. Subpoenas must be issued by the City Council.

**Rule 11. Hearing statement; other pleadings; evidence.**

**§11.01** At least five days before the scheduled hearing, the building official shall prepare a hearing statement and deliver that hearing statement to the Appellant and each Board member. The hearing statement shall include:

- (i) a copy of the Appeal, and a statement whether the appeal was timely filed, and if not, giving the relevant dates;

- (ii) the date, and nature of the transaction (building permit, code enforcement, condemnation, decision regarding alternate methods, etc) and a brief statement of the specific order being appealed, including the relevant Code sections applied or interpreted by the building official;
- (iii) a listing and copies of all documents, references and materials (including personal experience) and evidence used by the building official in making its decision;
- (iv) a listing and copies of all correspondence between Appellant and the building official, or between the building official any any other party relating to the decision being appealed.
- (iv) a brief statement why the the building official believes that the decision was correct and should be affirmed.

**§11.02** Unless otherwise ordered by the Chair, no written pleadings are required other than the appeal and the hearing statement.

**§11.03** If Appellant desires to introduce any evidence before the Board, he/she shall first produce a copy to the building official at least five days before the hearing.

**Rule 12. Rights of parties.**

Each party shall have the following rights:

- (i) to call and examine witnesses on any matter relevant to the issues of the hearing;
- (ii) to introduce documentary and physical evidence;
- (iii) to cross-examine opposing witnesses on any matter relevant to the issues of the hearing;
- (iv) to impeach any witness regardless of which party first called the witness to testify;
- (i) to make statements to the Board and challenge or rebut any evidence presented to the Board or in the Hearing Statement; and
- (ii) to be represented by anyone who is lawfully permitted to do so.

**Rule 13. Presiding officer; Order of hearing.**

**§13.01** The Chair, or his/her designee, shall be the presiding officer over the entire proceeding, including the hearing. The presiding officer shall have the authority to administer oaths to witnesses, issue rulings on issues of evidence and procedure, order the issuance of subpoenas, order the hearing to be postponed, and issue sanctions for noncompliance with these rules or conduct which is disruptive to the proceeding.

**§13.02** Unless otherwise ordered by the Chair, or approved by a majority of the Board members present at the hearing, the following order shall be followed:

- (i) The Chair shall call the case and ask the parties if there will be any witnesses, and shall decide at that time if witnesses are going to be allowed to testify during the hearing. The Chair shall decide if any witnesses are to be excluded from the hearing until after they testify.
- (ii) The building official and Appellant shall be sworn together with any witnesses.
- (iii) The building official shall open the proceedings with a discussion of the hearing statement.
- (iv) The Appellant shall be permitted, but not required, to give a statement to the Board.
- (v) The Board may ask questions of the building official or Appellant, hear any testimony or any evidence it desires to hear, then shall deliberate and decide.

**Rule 14. Standard of review; burdens; informality.**

The Board shall review the actions of the building official *de novo*. The burden of proof and persuasion is on the Appellant. Factual disputes shall be decided only on a preponderance of evidence. In the discretion of the Chair, the proceedings may be informal. The Board may affirm, reverse or remand the decision of the building official.

**Rule 15. Evidence.**

**§15.01 Rules.** Hearings need not be conducted according to the rules relating to evidence or witnesses in civil proceedings.



**§15.02 Oral Evidence.** Oral evidence shall be taken only on oath or affirmation under penalty of perjury.

**§15.03 Hearsay evidence.** Hearsay evidence (as defined in NRS 51.035) may be used for the purpose of supplementing or explaining any direct evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions in a Nevada court of law.

**§15.04 Admissibility of evidence.** Except as otherwise provided in these rules, any relevant evidence shall be admitted if it is the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions in courts of competent jurisdiction in this state.

**§15.05 Exclusion of Evidence.** Irrelevant and unduly repetitions evidence shall be excluded.

**§15.06 Official notice of facts.**

a. In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of

- (i) any fact which may be judicially noticed by the courts of this state;
- (ii) any official records of the the building official or the City;
- (iii) of the Code, and any publications information supplied by the International Conference of Building Officials
- (iv) any relevant statute, ordinance, regulation or rule, including those of the Board.

b. Any party present at the hearing shall be given a reasonable opportunity, if requested, to refute the officially noticed matters by evidence or by written or oral presentation of authority, the manner of such refutation to be determined by the Chair.

**§15.07 Inspection of the premises.** The Board may inspect any building or premises involved in the appeal during the course of the hearing, provided that (i) notice of such inspection shall be given to the parties before the inspection is made, (ii) the parties are given an opportunity to be present during the inspection, and (iii) the Board shall state for the record upon completion of the examination the material facts observed and the conclusions drawn therefrom. Each party then shall have the right to rebut or explain the matters so stated by the Board.

**Rule 16. Ex Parte communications.** No member of the Board shall have any ex parte communications regarding the facts or opinions of the case with any party or any person known to be a witness or potential witness from the time that the appeal is filed until after the decision is reached and served.

**Rule 17. Record of hearing.** The building official shall be responsible for tape recording the entire hearing, including any deliberations of the Board. Either party, at its own expense, may record the hearing or any part of it by video recording, stenographer or court reporter. The tapes kept by the building official, together with the evidence adduced at the hearing shall be retained by the building official for two years unless a longer period is ordered by the Chair.

**Rule 18. Required vote.** A decision to reverse or modify a decision of the building official shall be made only upon an affirmative vote of four of the Board members.

**Rule 19. Reasonable dispatch.** the Board and its representatives shall proceed with reasonable dispatch to conclude any matter before it. Due regard shall be shown for the convenience and necessity of any parties or their representatives.

**Rule 20. Continuances.** Continuances may be granted by the Chair.

**Rule 21. Written decision; notice.**

§21.01 The building official shall prepare a written decision of the Board's decision, which may be in letter form and shall be addressed to Appellant.

§21.02 The written decision shall be to the satisfaction of and signed by the Chair and shall be filed with the City Clerk, and a copy of the decision, together with notice of filing with the City Clerk, shall be served on the Appellant by certified mail or by personal delivery.

Approved

By David Weckner  
City Attorney

# Affidavit of Publication

STATE OF NEVADA,  
County of Washoe - SS.

Veon Martin

being duly sworn, deposes and says that she is the Record Clerk of the SPARKS TRIBUNE, a daily newspaper, published in Sparks, Washoe County, Nevada; that she has charge of and knows the advertising appearing in said newspaper, and the

Bill No. 2321

Introduced By Council

of which copy is hereunto attached, was first published in said newspaper in its issued dated

11th September, 20 02

and was published in each of the following issues thereafter

None

the date of the last publication being in the issue of

11th September, 20 02

*Veon Martin*

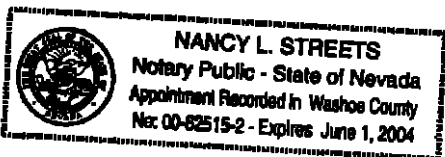
Subscribed and sworn to before me this, the

September 02

12th day of September, 20 02

*Nancy Streets*

Notary Public in and for the County of Washoe,  
State of Nevada.



**BILL NO. 2321  
INTRODUCED BY COUNCIL**

**ORD. NO. 2153  
ESTABLISHING  
APPEALS BOARD**

**AN ORDINANCE ESTABLISHING AN INDEPENDENT BOARD TO HEAR APPEALS OF DECISIONS BY CITY BUILDING OFFICIAL REGARDING INTERPRETATIONS OF THE BUILDING CODE; AND PROVIDING OTHER MATTERS PROPERLY RELATED THERETO.**

**AYES: MAYER, SALERNO,  
MARTINI, CARRIGAN, SCHMITT  
NAYS: NONE  
ABSTAIN: NONE**

**ORDINANCE NO. 2153 WAS APPROVED BY THE CITY COUNCIL ON THE 9TH DAY OF SEPTEMBER, 2002.**

**S/TONY ARMSTRONG  
MAYOR**

**ATTEST:**

**S/DEBORINE J. DOLAN  
CITY CLERK & CLERK  
OF THE CITY COUNCIL  
Pub.: 9-11,2002**

**CITY OF SPARKS  
OFFICE OF THE CITY CLERK**

**SEP 13 2002**

# Affidavit of Publication

STATE OF NEVADA,  
County of Washoe - SS.

Veon Martin

being duly sworn, deposes and says that she is the Record Clerk of the DAILY SPARKS TRIBUNE, a daily newspaper, published in Sparks, Washoe County, Nevada; that she has charge of and knows the advertising appearing in said newspaper, and the

✓ Notice Introduced

By Council

Bill No. 2321

of which copy is hereunto attached, was first published in said newspaper in its issued dated

28th August, 2002

and was published in each of the following issues thereafter

None

the date of the last publication being in the issue of

28th August, 2002

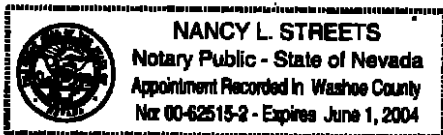
*Veon Martin*

Subscribed and sworn to before me this, the

29th day of August, 2002

*Nancy Streets*

Notary Public in and for the County of Washoe,  
State of Nevada.



## NOTICE

### INTRODUCED BY COUNCIL

NOTICE IS HEREBY GIVEN that the City Council of the City of Sparks, Nevada, at their regular meeting of August 26, 2002, introduced Bill No. 2321, the title of which is as follows:

**BILL NO. 2321  
ESTABLISHING APPEALS BOARD**

**AN ORDINANCE ESTABLISHING AN INDEPENDENT BOARD TO HEAR APPEALS OF DECISIONS BY CITY BUILDING OFFICIAL REGARDING INTERPRETATIONS OF THE BUILDING CODE; AND PROVIDING OTHER MATTERS PROPERLY RELATED THERETO.**

A copy of the proposed ordinance is available for public inspection in the Office of the City Clerk at Sparks City Hall, 431 Prater Way, Sparks, Nevada.

The proposed ordinance for Bill No. 2321 will be acted upon at a regular meeting of the Sparks City Council on Monday, September 9, 2002 at the 3:15 p.m. session to be held in the Council Chambers of the Legislative Building at the Sparks City Hall Complex, 745 4th Street, Sparks, Nevada.

BY ORDER OF THE SPARKS CITY COUNCIL, dated this 26th day of August, 2002.

**S/DEBORINE J. DOLAN  
CITY CLERK & CLERK OF  
THE CITY COUNCIL  
Pub.: 8-26, 2002**

CITY OF SPARKS  
OFFICE OF THE CITY CLERK

SEP 3 2002


**City of Sparks  
City Council Agenda Item**

**Meeting Date:** September 9, 2002

**Subject:** 2nd Reading of Ordinance \_\_\_\_\_, an ordinance establishing an independent board to hear appeals of decisions by the City Building Official regarding interpretations of the building code.

**Petitioner:** Curt Weagel, Building Official.

**Recommendation:** Second Reading

**Financial Impact:** Less than \$1,000 

**Business Impact** (per NRS Chapter 237):

- A Business Impact Statement is attached.
- A Business Impact Statement is not required because
  - this is not a rule;
  - this is a rule but does not impose a direct and significant economic burden on a business, or directly restrict the formation, operation or expansion of a business;
  - this is a rule but we do not have the authority under federal or state law or under a contract into which we have entered to consider less stringent measures;
  - this is a rule but emergency action is necessary to protect the public health and safety (requires unanimous vote of Council and cannot be in effect more than six months).

**Background/Analysis/Alternatives**

Chapter 1 of the Uniform Building Code (UBC), adopted as part of Title 15 of our municipal code, establishes a board of appeals so that builders and citizens can appeal technical interpretations of the code by our building official. Presently, under SMC 15.01.0100, our City Council serves as the board of appeals pursuant to Chapter 1 Section 105.1 of the UBC. Since the appeals involve technical interpretations, it is proposed that we staff our board of appeals with professionals who have a variety of technical qualifications and experience. Under the proposed ordinance, our board of appeals would include (subject to applicant availability):

CITY OF SPARKS  
OFFICE OF THE CITY CLERK

AUG 13 2002

- Two licensed architects, or builders with at least ten years experience
- One structural or civil engineer,
- One mechanical engineer, or a mechanical/plumbing contractor with 10 years experience, and
- One electrical engineer, or an electrical contractor with 10 years experience.

After the initial term each board member would serve at the pleasure of the City Council for a term of two years and may be reappointed for up to three terms.

For many months I have been meeting with the building officials of Washoe County and the City of Reno in an effort to establish a region wide board of appeals. However the three jurisdictions have not been able to reach an agreement to resolve all issues related to standards of appeals. During the past few months, I have been working with the building official of City of Reno, Mike Mitchell, on a proposal to coordinate the appointments to our respective boards of appeals in order to promote consistency and continuity in technical building code interpretations in both cities. We have

**Agenda Report:** \_\_\_\_\_ of Ordinance \_\_\_\_\_, an ordinance establishing an independent board to hear appeals of decisions by the City Building Official regarding interpretations of the building code.

7.1(2)  
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**Council Meeting Date August 26, 2002**

**Page 2**

agreed on the above listed qualifications and we are confident that we will be able to recommend a list of names of qualified candidates who could serve on both boards. Thus, this ordinance requires that building officials of Sparks and Reno would confer and recommend the appointment of same persons to their respective boards. Mr. Mitchell will propose a similar provision to the Reno City Council. Further, Mr. Mitchell and I have agreed on a uniform set of rules of procedure for our respective boards to follow, furthering procedural predictability and continuity for builders who appear before both of our boards. I will be proposing those rules to this Council under a separate resolution to be adopted at the same time as this ordinance.

Also, this ordinance clarifies the types of decisions that may be appealed to the board of appeals, and adopts the language in the 2000 International Building Code. The same language will be proposed to guide the Reno board of appeals.

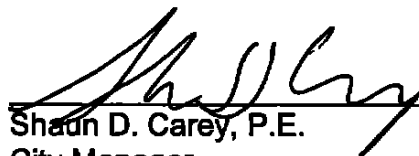
We have been working together for the past several months, and if this ordinance is adopted, Mr. Mitchell and I will solicit and screen applications and propose the same candidates to serve on both the Sparks and Reno boards. We expect to be able to submit the names in the next couple of months.

Respectfully Submitted:

Approved:



\_\_\_\_\_  
Curtis L. Weagel,  
Building Official  
Community Development



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Shaun D. Carey, P.E.  
City Manager

**I N T E R**  

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**O F F I C E**

**MEMO**

**To:** Curt Weagel, Building Official  
**From:** Debi Dolan, City Clerk   
**Subject:** Ordinance No. 2153  
**Date:** September 18, 2002

On September 9, 2002, the Sparks City Council approved Ordinance No. 2153 establishing an independent Board to hear appeals of decisions by City Building Official regarding interpretations of the Building Code. I am attaching a copy of the fully executed Ordinance for your records.

Iza  
Attachment

Copy:

Chet Adams, City Attorney  
Ordinance No. 2153  
A.I.7.1