

ORDINANCE 1176

AN ORDINANCE OF THE CITY OF TRACY AMENDING SECTIONS 9.02.050, 9.06.050 AND CHAPTER 9.44, BOARD OF APPEALS, AND DELETING SECTION 9.44.050, OF THE TRACY MUNICIPAL CODE

WHEREAS, the City long ago established a Building Board of Appeals, as required by the California Building Codes and Fire Code.

WHEREAS, though established, and members appointed, the Building Board of Appeals has never had a matter appealed to it. There is some administrative burden for both City staff and Board members in maintaining an ongoing board, with required re-appointments and annual disclosure statements.

WHEREAS, City staff is recommending that the ordinance creating the Building Board of Appeals be revised to provide for appointment only at the time of an appeal, when the Board is needed. The City Clerk would maintain a list of potentially interested and qualified candidates.

NOW, THEREFORE, the Tracy City Council hereby ordains as follows:

SECTION 1: Section 9.02.050, Building Board of Appeals, of the Tracy Municipal Code is renamed "Board of Appeals."

SECTION 2: Section 9.06.050, Appeals [for Fire Protection and Prevention] of the Tracy Municipal Code, is amended to read as follows:

"9.06.050 Appeals.

Any person aggrieved by any decision or action of the Chief, may appeal to the Board of Appeals, by filing a written notice of appeal with the City Clerk within 30 from the date the decision or action was taken."

SECTION 3. Chapter 9.44, Building Board of Appeals, of the Tracy Municipal Code is renamed and amended to read as follows:

"BOARD OF APPEALS

9.44.010 - Name and purpose.

The Board of Appeals is created in order to hear appeals by persons aggrieved by any administrative decisions in the City's application of the Uniform Housing, Building, Mechanical, Electrical, Plumbing, Abatement of Dangerous Buildings, Residential, Green Building Standards, Historical Building Code, Energy Code, Existing Building Code and Fire Codes, or regulations adopted under them. (See TMC Chapter 9; and TMC §§9.02.050 and 9.06.050.) It will also serve as the appeal board when determinations are made regarding special conditions for persons with disabilities, under California Building Code section 1.9.1.5 or California Health and Safety Code section 19957.5.

9.44.020 - Definitions.

In this chapter, unless otherwise apparent from the context:

"Board" means the Board of Appeals.

"Building Official" means the Chief Building Official or his or her designee.

"Member" means a member of the Board of Appeals.

9.44.030 - Organization and membership.

(a) Time of appointment; Term. The Board will be appointed promptly whenever the city receives an appeal requiring a hearing by the Board. The Board shall be comprised of five members appointed by the Mayor with the advice and consent of the Council. Members shall serve only until the matter appealed has been concluded and the Board's participation is no longer required.

(b) Qualifications. The Board will be appointed from a list of potentially interested and qualified candidates maintained by the City Clerk. The Board shall consist of members who are qualified by experience and training to pass on matters pertaining to building construction (such as licensed contractors, engineers and architects). When the appeal concerns the Fire Code, at least two of the members shall be qualified by experience with the Fire Code. When the appeal concerns access for persons with disabilities, at least two members shall be disabled individuals.

A member may not be an employee or elected officer of the City, but may be a member of another City board or commission. A member need not be a resident of the City. A member may not have any interest in property which is the subject of the appeal to the Board.

(c) Officers; Procedures. Once appointed, the Board shall meet to elect a chair and vice-chair, and to set the time and place of its meetings. The Board shall function in accordance with the standard commission by-laws which apply to other city commissions and boards.

(d) Secretary; Ex officio members. The Chief Building Official shall be the ex officio Secretary of the Board but shall not vote. When an appeal is heard regarding the Fire Code, the Fire Chief or his or her designee shall sit as an ex officio member."

9.44.040 - Powers and duties.

(a) Functions. The functions of the Board shall be as follows:

(1) To hear appeals of administrative decisions regarding the use of alternative materials, interpretations pertaining to the enforcement of any of the Codes and related regulations listed in TMC Section 9.44.010; and

(2) To hear appeals of administrative decisions in the application of the Uniform Housing Code, the Uniform Code for the Abatement of Dangerous

Buildings, and related sections of this Code in actions declaring certain building structures or conditions therein substandard, unsanitary, or hazardous and requiring their consideration, rehabilitation, reconstruction, correction, or abatement as applicable.

- (b) Limitation on appeals. An application for appeal must be based on a claim that:
- (1) the true intent of the applicable code or the related regulations has been incorrectly interpreted;
 - (2) the provisions of the applicable code do not fully apply;
 - (3) an equally good or better form of construction is proposed.

The Board does not have the authority to waive requirements of the code. (California Building Code Section 113.2.)

(c) Conduct of appeals.

(1) The Board shall exercise its powers in such a manner that substantial justice is done most nearly in accord with the intent and purpose of this Code.

(2) The Board shall follow fair procedural rules, including giving adequate notice of hearings to all parties, providing hearings open to the public, assuring that the hearing is commenced within 60 days after the date of the filing of the petition for an appeal, recording minutes of its proceedings, and providing copies of minutes for inspection as a public record.

(d) Procedure of petitions for hearing of appeals. Upon the filing of a petition and appointment of the Board under Section 9.44.030, the secretary shall set the matter on the Board's agenda for consideration. The secretary shall give written notice of at least seven days to the applicant or petitioner, specifying the time and place of the hearing. At the hearing, the petitioner shall be given an opportunity to be heard and present any evidence to support the request. If necessary, the hearing may be continued.

(e) Decisions. In rendering its decision, the Board has no authority to waive requirements of any code. (California Building Code Section 113.2.) No later than 10 days after the close of the hearing(s) the Board shall formally report its decision in writing, including its findings of fact and reasons for the decision. The report shall either approve, approve with modifications or deny the appeal, and shall specify any conditions or limitations imposed. A copy of the report shall be forwarded to the petitioner or his or her representative at the address shown on the petition within 10 days after the decision. The secretary shall provide a copy of the report to the administrative office whose decision was appealed, and shall maintain a copy in the Board's permanent records.

(f) Appeals to the Council. The decision of the Board in granting or denying an appeal shall become final and effective unless timely appealed to the City Council under section 1.12.020. Upon the receipt of a written appeal filed with the Council, the

secretary of the Board shall transmit to the Council the Board's complete record of the case.

Within 10 days after the council adopts a resolution ordering that an appeal be granted or denied, or modified subject to conditions, the secretary shall mail a copy of the resolution to the appellant, and one copy shall be attached to the Board's file of the case."

SECTION 3. Section 9.44.050, Bylaws, of Chapter 9.44 (Building Board of Appeals) of Title 9 (Building Regulations) of the Tracy Municipal Code is deleted.

SECTION 4. Because of the unique circumstances, the Board of Appeals is not subject to Council Resolution 2004-152 (or any successor resolution) Establishing the Council Selection Process and Defining Residence Requirements, for Appointee Bodies.

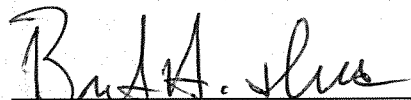
SECTION 5. This Ordinance shall take effect 30 days after its final passage and adoption.

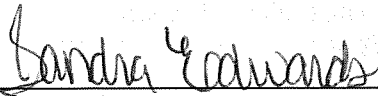
SECTION 6. This Ordinance shall be published once in the Tri-Valley Herald, a newspaper of general circulation, within 15 days from and after its final passage and adoption.

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The foregoing Ordinance 1176 was introduced at a regular meeting of the Tracy City Council on the 16th day of October, 2012, and finally adopted on the 20th day of November, 2012, by the following vote:

AYES: COUNCIL MEMBERS: ABERCROMBIE, ELLIOTT, MACIEL, RICKMAN, IVES
NOES: COUNCIL MEMBERS: NONE
ABSENT: COUNCIL MEMBERS: NONE
ABSTAIN: COUNCIL MEMBERS: NONE


MAYOR

ATTEST:

CITY CLERK