

RULES AND REGULATIONS OF
THE CITY OF CHEYENNE
BUILDING CODE BOARD OF APPEALS
Cheyenne, Wyoming


2010 AUG 18 AM 11 08

I hereby certify that the attached is a true and correct copy of the Rules and Regulations of the City of Cheyenne Building Code Board of Appeals, reflecting amendments to various sections. These Rules and Regulations supersede and replace those chapters and sections presently on file in the office of the County Clerk of Laramie County, Wyoming. The amendments were adopted pursuant to the authority granted to the City of Cheyenne Building Code Board of Appeals by Wyo. Stat. §§ 16-3-101 through 16-3-115, and Cheyenne City Code Chapter 15.04.

Prior to adoption by the City of Cheyenne Building Code Board of Appeals, the amendments were made available for public inspection and public notice was provided as required.

The effective date of the attached amended Rules and Regulations is immediately upon filing with the County Clerk of Laramie County, Wyoming.

DATED this 17th day of August, 2010.




Randy Byers, Chair
City of Cheyenne Building Code
Board of Appeals

STATE OF WYOMING)
) ss.
COUNTY OF LARAMIE)

The foregoing instrument was signed before me, a notary public, this 17th day of August, 2010.

(S E A L)





Notary Public
My Commission expires: 4/27/2011

**RULES AND REGULATIONS
OF THE
CITY OF CHEYENNE BUILDING CODE BOARD OF APPEALS**

CHAPTER I

AUTHORITY, OBJECTIVES AND DEFINITIONS

Section 1. **Authority.** These rules are promulgated as authorized by Cheyenne City Code Chapter 15.04 and Wyoming Statute § 16-3-101 et seq.

Section 2. **Purposes.** The purposes of the City of Cheyenne Building Code Board of Appeals (Board) are set forth in Title 15, Cheyenne City Code, pertaining to buildings, including amendments and supplements thereto, and those powers and duties delegated to the Board by the Governing Body of the City of Cheyenne, Wyoming, in accordance with applicable enabling laws. The specific purpose of the Board is to hear and decide appeals from orders, decisions or determinations made by the City's Chief Building Official relative to the application and interpretation of the codes adopted by Title 15, Cheyenne City Code.

Section 3. **Definitions.** In addition to those definitions found in Wyo. Stat. § 16-3-101, the following terms are defined as follows:

- a. "Board" means the City of Cheyenne Building Code Board of Appeals.
- b. "Chief Building Official" means the City of Cheyenne building official, also referred to as code official, for the building safety department.
- c. "Independent Hearing Officer" means an attorney admitted to practice in the state of Wyoming who is qualified to preside over contested case hearings conducted by the Board and who is employed by the City of Cheyenne for this purpose pursuant to a written contract executed by the Mayor.

CHAPTER II

MEMBERSHIP

Section 1. **Membership.** The Board shall consist of nine (9) members whose qualifications and manner of appointment are specified in Cheyenne City Code.

Section 2. Vacancies. Vacancies on the Board shall be filled by the Mayor, with consent of City Council, for the unexpired term of the vacancy. After such vacancy occurs, the Board chair or Chief Building Official shall notify the Mayor of the vacancy.

Section 3. Removal of Board Member. A Board member may be removed by the governing body for inefficiency, misconduct, frequent absences from Board meetings, malfeasance, or failure to refrain from voting where a conflict of interest exists.

Section 4. Compensation of Board Members; Expenses. Members appointed to the Board shall serve without pay. The reasonable and necessary expenses of the Board and clerical assistance shall be provided by the City.

CHAPTER III

NOMINATION AND ELECTION OF OFFICERS

Section 1. Election of Officers. Officers shall be elected at the annual meeting of the Board which shall be held in January of each year. All officers are eligible for re-election for subsequent terms.

Section 2. Nomination of Officers. Any member of the Board may be nominated for an office by any other Board member. A nominee may be elected to an office by a motion to elect, a second to the motion, and a voice vote, show of hands, or written ballot.

Section 3. Election. A nominee receiving a majority vote of those present and voting shall be declared elected and shall serve for a term of one (1) year or until his or her successor is duly elected.

Section 4. Vacancies. Vacancies in unexpired terms of office shall be filled at the next regular meeting by election procedures set forth in this Chapter.

CHAPTER IV

OFFICERS AND THEIR DUTIES

Section 1. Officers. The officers of the Board shall be a chair and vice-chair. The City Clerk, or authorized designee, shall act as clerk to the Board.

Section 2. Duties of Chair. The chair shall preside at all meetings of the Board. The chair's general duties are to:

- a. Open and call to order all regular and special meetings;
- b. Establish whether a quorum is present;
- c. Announce business to be conducted;

- d. Recognize members entitled to the floor;
- e. State and put to vote all questions which are regularly moved, or necessarily arise in the course of proceedings, and announce the result of the vote;
- f. Inform the group present on any point of order raised or customary and usual practices of the Board pertinent to pending business; and
- g. Authenticate, by signature, when necessary, all acts, orders and proceedings of the Board.

Section 3. Duties of Vice-Chair. Upon request, the vice-chair may assist the chair in any way. In the absence of the chair, the vice-chair shall preside and act as chair.

Section 4. Duties of Clerk. The duties of the clerk of the Board are to:

- a. Keep records and minutes of each meeting;
- b. Keep the roll of the members and to call roll when it is required;
- c. Notify officers and members of meeting dates, times and places;
- d. Provide public notice of meetings of the Board as required by law;
- e. Furnish members with all necessary documentation for their review;
- f. Record the number of votes for and against each question put to a vote, and indicate in the Board's meeting minutes any absences or disqualifications from voting when a question is put to a vote; and
- g. Provide other clerical services as requested.

CHAPTER V

MEETINGS

Section 1. Regular Meeting. The Board will meet the first Wednesday of every month when there is pending business before the Board. Meeting dates and times may be established or changed by the chair and by the Chief Building Official.

Section 2. Quorum. A simple majority of appointed members shall constitute a quorum for the purposes of conducting official business of the Board.

- a. For the purpose of establishing a quorum, a member shall not be counted if he or she has disclosed any conflict of interest with respect to the outcome of an issue before the Board. Such member shall, however, be allowed to vote and shall be counted for the purposes of establishing a quorum for other issues for consideration by the Board. Any member declaring a conflict of interest shall vacate the meeting room during discussion and voting upon the item involving the conflict.
- b. In order for the Board to conduct business, a quorum must be present. For approval of any business, the affirmative vote of a majority of the members of the Board in attendance is required. The chair shall vote as a member of the Board.

- c. The adoption or amendment of Board rules and regulations requires the affirmative vote of a majority of the appointed members of the Board.

Section 3. Special Meetings. Regular and special meetings of the Board shall be called by the chair. Special meetings may also be called by majority of Board members. The notice of any special meeting shall specify the purpose(s) of the meeting. No other business may be considered at a special meeting. The chair shall request the Clerk to provide notice to all members of the Board by oral or written notice not less than three business (3) days in advance of a special meeting. The notice shall contain the date, time, place and subject to be discussed and otherwise comply with the Open Meetings law.

Section 4. Open Meetings. All meetings and hearings at which official action is taken shall be open to the public.

CHAPTER VI

ORDER OF BUSINESS

Section 1. Order of Business. The order of business at regular Board meetings shall be:

- a. Call meeting to order.
- b. Roll call.
- c. Approval of minutes of previous meeting.
- d. Unfinished business.
- e. New business.
- f. Adjournment.

CHAPTER VII

TRANSACTION OF BUSINESS

Section 1. Conflict of Interest. A member of the Board who has any conflict of interest with respect to the outcome of any question put to a vote shall notify the Board chair of such conflict and disqualify himself or herself from discussing or voting on the matter.

Section 2. Conflict of Interest Challenges. A member of the Board who fails to notify the Board chair of a conflict of interest may be challenged by any other Board member and the Board shall thereafter determine whether the member is eligible to vote on the matter.

CHAPTER VIII

APPEALS; GENERAL PROVISIONS

Section 1. Authority. These rules and regulations are promulgated by authority of Chapter 15.04 of the Cheyenne City Code.

Section 2. Purpose. These rules and regulations are intended to set forth clear and comprehensive procedures for the resolution of appeals before the Board.

Section 3. Hearings Before the Board. The Board shall hear appeals of orders, decisions or determinations made by the City's Chief Building Official, and appeals from orders, decisions, and determinations made by other boards or commissions of the City of Cheyenne as provided by City Code. Proceedings shall be conducted pursuant to the Wyoming Administrative Procedure Act and these rules and regulations.

- a. Unless otherwise precluded by law, any appeal is subject to informal disposition pursuant to W.S. § 16-3-107(n).

Section 4. Stay pending appeal. No order, notice, decision or determination issued by the City's Chief Building Official shall be stayed during the pendency of an appeal except upon such terms and conditions as may be set forth in a written order of the Board which shall be entered only upon a written application which shall be filed with the Clerk and served on all parties. In other matters, any aggrieved party may file an application for stay of an order pending appeal and review by the Board.

CHAPTER IX

CONTESTED CASE PROCEEDINGS; GENERALLY

Section 1. General Course of Contested Case Proceedings. Unless otherwise provided by law, proceedings before the Board are governed by the Wyoming Administrative Procedure Act, applicable sections of the Wyoming Rules of Civil Procedure and these rules.

Section 2. Appeal Process.

- a. An aggrieved party must file its appeal with the City Clerk within twenty (20) days after service or receipt of a notice, order, decision or determination made by the Chief Building Official or an order, decision, or determination made by any other agency, board or commission of the City of Cheyenne which is subject to review by the Board. An appeal under the City of Cheyenne Road, Street and Site Planning Design Standards shall be filed within thirty (30) days.

- b. All papers, pleadings, motions and orders must be filed with the City Clerk. They must include:
 - i. A caption identifying the parties to the contested case proceeding and a brief title of the document being filed; and
 - ii. The name, mailing address and telephone number of the person who prepared the document.
- c. The appeal must contain the following information:
 - i. A statement of the party's interest.
 - ii. A short and concise statement of the relevant facts.
 - iii. The relief sought.
 - iv. The signature of the aggrieved party or his legal representative.
 - v. The city clerk may provide one or more standard forms which may be used by an aggrieved party to initiate and process an appeal. However, it is the responsibility of the aggrieved party to insure that its pleadings comply with applicable provisions of City Code, these rules and regulations, the Administrative Procedure Act, and other applicable state and local laws.
- d. Only those matters or issues specifically raised by the appellant shall be considered in the hearing.
- e. The parties must file all original documents, pleadings and motions with the City Clerk and serve all parties in accordance with the Wyoming Administrative Procedure Act and the Wyoming Rules of Civil Procedure.
- f. If a party is represented by legal counsel, service of contested case documents, pleadings and motions must be made upon that party's attorney or other representative of record.

Section 3. Time and Place of Hearing. If a valid appeal has been timely filed, the Board shall, within ten (10) days after the filing of the appeal, fix a date, time and place for a contested case hearing. The contested case hearing shall be conducted no less than twenty (20) days, nor more than sixty (60) days after the date of filing of an appeal. Written notice of the time and place of the hearing shall be given at least ten (10) days prior to the date of the hearing to each party, unless all parties agree in writing to waive the ten day notice period. In the event of an application for a stay of an order pending review, the Board shall conduct a hearing on said application as soon as practicable. The Board may, at its discretion, direct that an independent hearing officer preside over a hearing on an application for a stay and to provide legal advice to the Board regarding the same.

Section 4. Computation of Time. The computation of any period of time prescribed or allowed by these rules or any applicable statutes shall be in accordance with the provisions of the Wyoming Rules of Civil Procedure.

Section 5. Discovery. Discovery shall be available to the parties in accordance with the provisions of the Wyoming Administrative Procedure Act and the Wyoming Rules of Civil Procedure.

Section 6. Subpoenas. Subpoenas may be issued as provided in the Wyoming Administrative Procedure Act and the Wyoming Rules of Civil Procedure.

Section 7. Continuances of Extensions of Time. A request for a continuance of any scheduled hearing must be in writing, must be filed in the office of the city clerk, and served on all parties. Continuances will be sparingly granted, only upon a substantial showing of good cause, or when necessary to assure fairness and to avoid manifest injustice.

CHAPTER X

COURSE OF THE EVIDENTIARY HEARING AND DECISION

Section 1. Course of Proceedings. All issues and matters set out in the appeal shall be presented to the Board. A party may be represented by an attorney licensed to practice law in this state or otherwise associated at the hearing with an attorney licensed to practice in this state.

Section 2. Hearing Officer. The Board shall appoint an independent hearing officer to conduct the hearings. The hearing officer shall exercise all powers relating to the conduct of hearings until it is submitted to the Board for decision. The hearing officer shall provide legal advice as requested by the members of the Board with respect to any issue or other matter which arises in connection with contested case proceedings. The hearing officer may conduct such pre-hearing conferences as may be necessary to expedite the conduct of contested case proceedings before the Board.

Section 3. Order of Procedure. Hearings should be conducted in accordance with the following order of procedure:

- a. The hearing officer shall announce that the hearing is convened upon the call of the docket number and title of the matter and case to be heard; incorporate all pleadings into the record and note for the record all subpoenas issued and all appearances of record.
- b. All persons testifying at the hearing shall be administered the standard oath or affirmation.
- c. Opening statements may be made.
- d. The hearing officer shall determine the order of proof and the allocation of the burden of proof.
- e. Subject to the hearing officer's authority to control the examination of witnesses, each party shall have the right to cross-examine any witness presented by any other party. Individual members of the Board may examine any witness presented by any party.
- f. Closing statements may be made. Rebuttal statements may be permitted by the hearing officer. The time for oral argument may be limited by the hearing officer.
- g. After all proceedings have been concluded, the hearing officer shall dismiss all witnesses and declare the hearing closed.

Section 4. Evidence.

- a. The taking of evidence shall be governed by the Wyoming Administrative Procedure Act.
- b. A record of the proceedings will be made by audio recording. Either party may obtain the services of a court reporter, if so desired.

Section 5. Inspection. The Board may inspect any building or premises involved in the appeal during the course of the hearing, provided that: notice of inspection shall be given to the parties before the inspection is made, the parties are given an opportunity to be present during the inspection, and the hearing officer shall state for the record, upon completion of the inspection, the material facts observed and the conclusions drawn therefrom. Each party then shall have a right to rebut or explain the matters so stated by the hearing officer.

Section 6. Briefs. If a party desires to submit a written brief, a request shall be made to the hearing officer. If approved, the hearing officer will establish a briefing schedule. Briefs shall be filed and served in accordance with the Wyoming Administrative Procedure Act and the Wyoming Rules of Civil Procedure.

Section 7. Final Decision.

- a. Any final decision entered by the Board shall be in writing and served upon all parties.
- b. The final decision shall include findings of fact and conclusions of law on all material issues in the contested case.
- c. When a contested case is heard before the Board, a member who was not present and did not hear the evidence shall not vote on or take part in the decision.
- d. Deliberations shall be conducted in public.

Section 8. Appeals to District Court. Appeals from Board decisions shall be taken in accordance with the Wyoming Administrative Procedure Act, the Wyoming Rules of Civil Procedure, and the Wyoming Rules of Appellate Procedure.

CHAPTER XI

GENERAL PROVISIONS

Section 1. Severability. If any portion of these rules and regulations is found to be invalid or unenforceable, the remainder shall remain in effect.

Section 2. Effective Date. These rules and regulations, as amended, are effective upon approval and filing in the office of the Laramie County Clerk and in the office of the City Clerk.

Section 3. Assistance of the City Attorney. The City Attorney shall provide legal advice and representation to the Board with respect to all matters other than those situations in which the City Attorney would be precluded from providing such advice or representation under the Rules of Professional Conduct for Attorneys at Law adopted by the Wyoming Supreme Court. In the event of a conflict of interest, the City shall provide legal services for the Board in such manner as may be approved by the Mayor and City Clerk.

08/09/2010