

**RESOLUTION 2016-04**

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, ESTABLISHING THE FOUNTAIN HILLS BUILDING SAFETY BOARD OF APPEALS; ADOPTING BYLAWS FOR ITS GOVERNANCE; AND DECLARING AN EMERGENCY.

**WHEREAS**, the Mayor and Council of the Town of Fountain Hills (the "Town Council") has determined that it is in the best interests of the citizens of the Town of Fountain Hills (the "Town") to establish the Fountain Hills Building Safety Board of Appeals (the "Board") to hear appeals pursuant to the Town's adopted building safety codes; and

**WHEREAS**, the Town Council desires to adopt the Bylaws for the Board.

**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA**, as follows:

SECTION 1. The recitals above are hereby incorporated as if fully set forth herein.

SECTION 2. The Fountain Hills Building Safety Board of Appeals is hereby established as an unscheduled board pursuant to Subsection 9.1(A) of the Town Council Rules of Procedure, Amended and Restated February 6, 2014.

SECTION 3. The Bylaws for the Fountain Hills Building Safety Board of Appeals are hereby approved in substantially the form and substance attached hereto as Exhibit A and incorporated herein by reference.

SECTION 4. The immediate operation of the provisions hereof is necessary for the preservation of the public peace, health and safety and an emergency is hereby declared to exist, and this Resolution shall be in full force and effect from and after its passage by the Town Council and it is hereby exempt from the referendum provisions of the constitution and laws of the State of Arizona.

SECTION 5. The Mayor, the Town Manager, the Town Clerk and the Town Attorney are hereby authorized and directed take all steps necessary to carry out the purpose and intent of this Resolution.

[SIGNATURES ON FOLLOWING PAGE]

**PASSED AND ADOPTED** by the Mayor and Council of the Town of Fountain Hills, Arizona, February 18, 2016.

**FOR THE TOWN OF FOUNTAIN HILLS:**

**ATTESTED TO:**

  
\_\_\_\_\_  
Linda M. Kavanagh, Mayor

  
\_\_\_\_\_  
Bevelyn J. Bender, Town Clerk

**REVIEWED BY:**

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Grady E. Miller, Town Manager

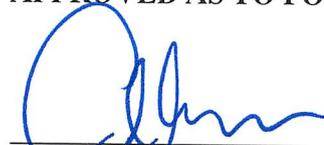
  
\_\_\_\_\_  
Andrew J. McGuire, Town Attorney

EXHIBIT A  
TO  
RESOLUTION 2016-04

[Bylaws]

See following pages.

**BYLAWS  
BUILDING SAFETY BOARD OF APPEALS  
TOWN OF FOUNTAIN HILLS, ARIZONA**

1. **Creation; Purpose.**

A Building Safety Board of Appeals is hereby created, consisting of five members, and up to three alternate members, who are qualified by experience and training to pass judgment upon matters pertaining to building and construction. The purpose of the Building Safety Board of Appeals (the "Board") shall be to hear appeals from determinations made by the Chief Building Official and the Fire Marshal; to provide for reasonable interpretations of the provisions of the Fountain Hills Town Code, Chapter 7 – Buildings and Building Regulations ("Chapter 7"); and to determine the suitability of alternate materials and methods of construction.

2. **Membership.**

- A. The members of the Board shall be appointed by the Mayor with the approval of the Town Council for terms of three years each. No member shall serve more than two complete consecutive terms; provided, however, members may be reappointed after a lapse of three years from the end of their last term. Continued absence of any member from meetings of the Board shall, at the discretion of the Town Council, render any such member liable for immediate removal from office by the Town Council in accordance with the Town Council Rules of Procedure, amended and restated February 6, 2014 (the "Town Council Rules of Procedure"). Any member absent for three consecutive meetings without being excused shall be considered as having abandoned the position and the member's seat will be considered vacant. Appointments to fill unexpired terms shall be made in the same manner as the process used to appoint the vacated member. Members of the Board shall serve without pay.
- B. The Chief Building Official and Fire Marshall shall be ex officio members of the Board, but shall have no vote on any matter before the Board. The Chief Building Official, Fire Marshall or designee shall serve as Secretary to the Board.

3. **Qualifications.**

- A. The Board shall include one member for each of the following qualifications:
1. Architectural design professional licensed by the State of Arizona or a general contractor registered by the State of Arizona.
  2. Structural design professional licensed by the State of Arizona.
  3. Mechanical/plumbing design professional licensed by the State of Arizona or a mechanical/plumbing contractor registered by the State of Arizona.
  4. Electrical design professional licensed by the State of Arizona or an electrical contractor registered by the State of Arizona.

5. Fire protection design professional licensed by the State of Arizona or a fire protection contractor registered by the State of Arizona.
  - B. Members shall have had at least five years of recent experience in their respective trade or profession. No member shall be a current employee of the Town of Fountain Hills. Members shall comply with the ethics provisions of the Town Council Rules of Procedure.
4. **Procedures.**
- A. The Board shall annually select one of its members to serve as Chair and one member to serve as Vice Chair.
  - B. An appeal of a determination of the Chief Building Official or the Fire Marshal shall be filed within 30 calendar days from the date of the determination.
  - C. The Board shall have the authority to overturn, uphold, or modify a determination of the Chief Building Official or the Fire Marshal, and shall have the same authority as the official in so doing. The Board shall be authorized to approve an alternate material or method of construction to that required by Chapter 7, provided the Board finds that the proposed design is satisfactory, complies with the intent of the requirements of Chapter 7, and the material, method, or work to be provided meets the intended purpose and is at least the equivalent to that prescribed in Chapter 7 in quality, strength, effectiveness, fire resistance, durability, and safety.
  - D. Appeals shall generally be heard according to the following process:
    1. The Chief Building Official, Fire Marshal or designee, as appropriate, shall brief the Board on the key elements of the appeal, including the applicable code requirements and other pertinent information.
    2. The appellant may present further information explaining the facts and reasons for the appeal.
    3. Appropriate Town staff may add additional information.
    4. The Board shall deliberate the case and may hear additional testimony relevant to the appeal prior to reaching a decision.
  - E. The Board shall reach a decision without unreasonable or unnecessary delay. The Board shall render all decisions and findings in writing, signed by the Chair or Vice Chair. The Chief Building Official shall forward a notice of decision to the appellant by certified mail or personal delivery. Said notice of decision shall state the determination, reasons for the decision, conditions related to the granting of the determination as established by the Board, and whether or not the appeal meets the requirements of these bylaws. The decision of the Board shall be final and shall not be appealable to the Town Council.

5. **Meetings.**

- A. The Board shall meet upon notice of the Chief Building Official or Fire Marshal, at the request of the Chair or Vice Chair, within 30 calendar days after the receipt by the Chief Building Official or the Fire Marshal of an appeal. Meetings and hearings of the Board shall be public and in the presence of a quorum. Meetings shall conform to the requirements of the Arizona Open Meeting Laws. Appellants and their representatives shall be given an opportunity to be heard.
- B. Minutes of meetings shall be made, and after approval at a subsequent meeting, shall be signed by the Chair or Vice Chair and retained on file in the Building Safety Division.

6. **Quorum and Voting.**

- A. Three members of the Board shall constitute a quorum. In varying the application of any provision of Chapter 7 or in modifying an order of the Chief Building Official or the Fire Marshal, the affirmative vote of three members shall be required. Absent three concurring votes to overturn the Chief Building Official's decision or Fire Marshal's decision, the decision shall be deemed confirmed. Members shall be present to vote.
- B. Board members shall not discuss or vote on any agenda item concerning a job or project in which they are engaged as a contractor, material dealer, or consultant, or in the preparation of drawings or specifications on any job or project in which they have any personal or financial interest.

7. **Court Review.**

Any person aggrieved by the decision of the Board, whether or not a previous party to the decision, or any municipal officer or official department of the Town may, at any time within 30 calendar days after the filing of the Board's decision in the office of the Chief Building Official, file an appeal in writing with the Superior Court of Maricopa County by following the methods of appeal or review procedures as set forth by applicable law.

8. **Enforcement.**

The Chief Building Official is authorized to enforce decisions of the Board or, upon successful review, of the Superior Court.

9. **Fees.**

The fee for each appeal to the Building Safety Board of Appeals shall be as set forth in the schedule of fees and charges for the Development Services Department, Building Safety Division. Said fee shall be paid with the filing of the appeal and shall be refunded only if the Development Services Director determines that the appeal cannot proceed.