

TITLE 4

BOARDS, COMMISSIONS, AND COMMITTEES

CHAPTER 480

BUILDING CODE APPEALS BOARD CODE

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I. GENERAL PROVISIONS

480.005 Title

This Chapter, LCC 480.005 to LCC 480.900, shall be known and may be cited as the “Linn County Building Code Appeals Board Code” or simply as the “Building Code Appeals Board Code.”

480.010 Repeal

Ordinance No. 83-001, dated February 2, 1983 is hereby repealed.

[Adopted 83-522 §1.4 eff 1/25/84]

480.020 Definitions

As used in this Chapter:

(A) **“Appeals Board”** means the Linn County Building Code Appeals Board.

(B) **“Board of Commissioners”** means the Linn County Board of County Commissioners.

(C) **“Building Code”** includes LCC Chapters 810 (Specialty Codes), 820 (Dangerous Building Code), 850 (Fill and Excavation Code), and 870 (Floodplain Management Code).

(D) **“Building Official”** means the Linn County Building Official.

(E) **“Planning Department”** means the Linn County Planning and Building Department.

(F) **“Director”** means the Linn County Planning and Building Director.

[Adopted 99-058 §4 3/3/99]

[480.030 Application; adopted 83-522 §1.3 eff 1/25/84; amd 85-167 §2 eff 5/1/85; repealed 99-058 §4 3/3/99]

480.090 Enforcement of the order of the Building Official or the Appeals Board

After any decision of the Appeals Board made pursuant to this Chapter becomes final, the person to whom any such order is directed shall comply with decision.

[Adopted 85-164 §1 eff 5/1/85; amd 99-058 §4 3/3/99]

II. APPEALS BOARD

480.100 Establishment of Appeals Board

There is hereby established a Linn County Building Code Appeals Board hereinafter referred to as the Appeals Board. The Appeals Board is subject to LCC Chapter 400 (Board, Commission, and Committee Code) unless expressly provided

otherwise in this Chapter. The Building Code Appeals Board is a special committee as that term is used in LCC Chapter 400 (Boards, Commissions, and Committees Code).

[Adopted 83-522 §1.1 eff 1/25/84; amd 99-058 §4 3/3/99]

480.110 Authorization for the Appeals Board

The establishment of a local jurisdiction Building Code Board of Appeals is authorized by:

(A) Section 105.1 of the State of Oregon Structural Specialty Code;

(B) Section 110 of the State of Oregon Mechanical Specialty Code, pursuant to ORS 455.010 to 455.895, and 456.915 to 456.950;

(C) The Oregon One and Two Family Dwelling Specialty Code (“Dwelling Code”), as adopted by OAR-918-480-0000 to 918-480-0010, except as modified by LCC Chapter 810 (Specialty Code);

(D) The Linn County Fill and Excavation Code at LCC 850.200;

(E) The Linn County Dangerous Building Code at LCC 825.240; and

(F) The Linn County Floodplain Management Code at LCC 940.600.

[Adopted 83-522 §1.2 eff 1/25/84; amd 85-167 § 1 eff 5/1/85; amd 99-058 §4 3/3/99]

480.120 Purpose for the Appeals Board

The purpose of the Appeals Board shall be to conduct hearings and issue findings and decisions on appeals from decisions of the Linn County Building Official or Linn County Planning Director based upon:

(A) LCC Chapter 810 (Building Code);

(B) LCC Chapter 820 (Linn County Dangerous Buildings Code);

(C) LCC Chapter 850 (Linn County Fill and Excavation Code); and

(D) LCC Chapter 870 (Linn County Floodplain Management Code)

[Adopted 99-058 §4 3/3/99]

480.130 Membership of Appeals Board

(A) The Appeals Board shall consist of five (5) voting members to be appointed by the Board of Commissioners. Members of the Appeals Board shall be qualified by experience and train-

ing in the fields of construction, engineering, building design, and similar occupations so that they are qualified to pass upon matters related to building construction. One member may be a fire marshal who has jurisdiction in Linn County. No more than two (2) of the members shall be engaged in the same kind of business, trade or profession.

(B) The appointment of the Appeals Board is set forth in this subsection.

(1) The Building Official shall obtain a list of names of qualified persons who are willing to be appointed to the Appeals Board. At least one person shall be from:

(a) the Home Builders Association,
(b) the Fire Defense Board, and
(c) the Board of Architect Examiners, or the Board of Engineering Examiners.

(2) Within three work days of receipt of a notice of intent to appeal filed under LCC Chapters 815 (Building Code) or 825 (Dangerous Building Code), the Building Official shall contact the persons on the list and obtain five volunteers to serve on the Appeals Board for the purpose of hearing the appeal. The Building Official shall submit those names to the Board of Commissioners.

(3) At the work session of the Board of Commissioners next following receipt of the names of the persons from the Building Official, the Board of Commissioners shall order the appointment of those persons to the Appeals Board. The order appointing the persons to the Appeals Board shall provide that the appointment shall terminate when the Board makes a final decision on the matter appealed.

[Adopted 83-522 §2.1 eff 1/25/84; amd 99-058 §4 3/3/99]

480.140 Ex-officio members

The Building Official and the Director shall serve as ex-officio non-voting members of the Appeals Board.

[Adopted 83-522 §2.2 eff 1/25/84; amd 99-058 §4 3/3/99]

480.150 Terms of office

(A) The members appointed by the Board of Commissioners shall serve on the Appeals Board

until that Board makes a final decision of the matter appealed.

(B) When a final decision has been made in writing and signed, the term of office of the persons appointed to the Appeals Board shall expire.

(C) The term of office of the voting members of the Appeals Board shall be four (4) years except that the following procedure shall be used for initial appointments. In the order appointing the initial members, the Board of Commissioners shall designate one (1) member for a one (1) year term; one (1) member for a two (2) year term; one (1) member for a three (3) year term; and two (2) members for four (4) year terms. Appointments to fill vacancies shall be for the remainder of the unexpired term.

[Adopted 83-522 §2.3 eff 1/25/84; amd 99-058 §9 3/3/99]

[480.130 Removal for cause; adopted 83-522 §2.4 eff 1/25/84; repealed 99-058 §9 3/3/99]

480.160 Presiding officers

The chairperson of the Appeals Board shall be selected pursuant to LCC 400.220. At its first meeting, the Appeals Board shall elect a vice-chairperson from among the voting members.

[Adopted 83-522 §2.5 eff 1/25/84; amd 99-058 §4 3/3/99]

[480.165 Compensation; adopted 83-522 §2.4 eff 1/25/84; repealed 99-058 §9 3/3/99]

480.170 Staff

Employees of the Planning Department shall provide staff support services as required by the Appeals Board. The Building Official shall along with other duties specified in this Chapter, act as secretary, serve the notices required by LCC 480.220, and cause an accurate record of Appeals Board proceedings to be kept.

[Adopted 83-522 §2.7 eff 1/25/84]

480.180 Quorum for meetings

The quorum shall set pursuant to LCC 400.280.

[Adopted 83-522 §3.1 eff 1/25/84; amd 99-058 §4 3/3/99]

[480.190 By-laws; adopted 83-522 §2.4 eff 1/25/84; repealed 99-058 §9 3/3/99]

- [480.220 Meetings; adopted 83-522 §2.4 eff 1/25/84; repealed 99-058 §9 3/3/99]
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III. APPELLATE PROCEDURES

480.400 Public hearing on appeal

(A) *Generally.* The public hearing and decision making process shall be conducted as rapidly as possible in order that affected building activity will be delayed to the minimum practicable extent.

(B) The initial appellate hearing shall be conducted not more than ten (10) days from receipt of the notice of intent to appeal.

(C) *Who may appeal.* Any person having a grievance as to a decision of the Building Official made under any of the Chapters cited in this subsection may appeal such decision to the Appeals Board:

- (1) LCC Chapter 810 (Building Code).
- (2) LCC Chapter 820 (Dangerous Buildings Code).

(3) LCC Chapter 850 (Fill and Excavation Code),

(4) LCC Chapter 870 (Floodplain Management Code).

[Adopted 85-164 §1 eff 5/1/85; amd 99-058 §9 eff 3/3/99]

480.410 Notice of intent to appeal

(A) *Contents.* A written notice of appeal must contain:

(1) The name of the appellant(s) (the person(s) appealing the decision of the Building Official);

(2) A brief statement specifying with particularity the nature of the decision being appealed from.

(3) A brief statement setting forth the legal interest of each of the appellants in the building or the land involved in the notice and order;

(4) The specific decision of the Building Official being protested A brief statement in ordinary and concise language of, together with any material facts claimed to support the contentions of the appellant.

(5) A brief statement in ordinary and concise language of the relief sought and the reasons why it is claimed the protested order or action should be reversed, modified or otherwise set aside.

(6) The signatures of all parties named as appellants and their official mailing addresses.

(7) The verification (by declaration under penalty of perjury) of at least one appellant as to the truth of the matters stated in the appeal.

(B) *Place to file.* The appellant shall file the notice of intent to appeal with the Building Official.

(C) *Appeal fee.* The appellant shall pay at the time of filing the notice of intent to appeal the fee for such appeal as established by order of the Board in its annual fee order. The Appeals Board shall not hear an appeal if the appellant fails to pay the filing fee at the time the notice is filed.

[Adopted 85-164 §1 eff 5/1/85; amd 99-058 §9 eff 3/3/99]

480.420 Time lines for filing appeal

(A) Except as provided in subsection (B) of this section, the appeal shall be filed within

(1) fourteen (14) days filed from the date of the written decision to be appealed

(2) twenty-eight (28) calendar County from the date of the service of such order or action of the Building Official.

(B) If the building or structure is in such condition as to make it immediately dangerous to the life, limb, property or safety of the public or adjacent property and is ordered vacated and is posted in accordance with LCC 825.130, an appeal shall be filed within fourteen (14) calendar County from the date of the service of the notice and order of the Building Official.

[Adopted 85-164 §1 eff 5/1/85; amd 99-058 §9 eff 3/3/99]

480.430 Scheduling the appellate hearing; notice thereof

(A) *Scheduling the appellate hearing.* As soon as practicable after receiving the written appeal the Appeals Board shall fix a date, time, and place for the hearing of the appeal by the Appeals Board. Such date shall be not less than fourteen (14) working days nor more than sixty (60) calendar days from the date the appeal was filed with the Building Official.

(B) *Notice of the appellate hearing.*

(1) Written notice of the time and place of the hearing shall be given at least ten (10) working days prior to the date of the hearing to each appellant and each member of the Appeals Board by the secretary of the Appeals Board. Notice to the appellant shall be given either by causing a copy of such notice to be delivered personally or by mailing a copy thereof, postage prepaid, addressed to the address of the appellant shown on the notice of intent to appeal. A copy of the appellant’s notice of intent to appeal shall also be provided to each of the members of the Appeals Board.

(2) The notice to appellant shall be substantially in the following form, but may include other information:

“You are hereby notified that a hearing will be held before the Building Code Appeals Board at _____ on the _____ day of _____ 19____, at the hour _____ upon _____ the notice and order served upon you. You may be present at the hearing. You may be, but need not be, represented by counsel. You may present any relevant evidence or testimony and will be given full opportunity to cross-examine all witnesses testifying against you. You may request the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by filing an affidavit therefor with (the Building Code Appeals Board or name of hearing examiner). [A brief description of the construction project and of the action being appealed.] Further information may be obtained from the Linn County Building Official located in the Linn County Courthouse or by calling 1.541.967.3816 .”

(3) Actual notice given the appellant at least two (2) calendar days before the hearing shall suffice, in the event the mailed notice has not been delivered.

(4) Notice shall also be sent by first class mail to any other party who has requested notification, which notice shall be mailed not less than five (5) working days in advance of the hearing.

[Adopted 85-164 §1 eff 5/1/85; amd 99-058 §9 eff 3/3/99]

480.440 Effect of failure to appeal

Failure of any person to file an appeal in accordance with the provisions of LCC 820.140 shall constitute a waiver of that person’s right to an appellate hearing and adjudication of the notice and order or any portion thereof.

[Adopted 85-164 §1 eff 5/1/85; amd 99-058 §9 eff 3/3/99]

480.450 Scope of hearing on appeal

Only those matters or issues specifically raised by the appellant shall be considered in the hearing of the appeal.

[Adopted 85-164 §1 eff 5/1/85; amd 99-058 §9 eff 3/3/99]

480.460 Staying of order under appeal

Except for vacation orders made pursuant to LCC 820.120, enforcement of any notice and order of the Building Official issued under this

Chapter shall be stayed during the pendency of an appeal therefrom which is properly and timely filed.

[Adopted 85-164 §1 eff 5/1/85; amd 99-058 §9 eff 3/3/99]

480.470 Staff investigation and report

(A) The Building Official shall prepare a staff report on the appeal to provide necessary information to the Appeals Board. The report shall contain:

- (1) a summary of the construction project,
- (2) a factual recitation of the particular decision being appealed; and
- (3) The basis for the Building Official's decision.

(B) A copy of the report shall be given personally or mailed to the appellant and each member of the Appeals Board at least three (3) working days prior to the hearing.

[Adopted 85-164 §1 eff 5/1/85; amd 99-058 §9 eff 3/3/99]

480.480 Subpoenas

(A) *Filing of affidavit.* The Appeals Board may issue and cause the service of a subpoena for the attendance of witnesses or the production of other evidence at a hearing upon the request of a member of the Appeals Board or upon the written demand of any party. The issuance and service of such subpoena shall be obtained upon the filing of an affidavit therefor which states the name and address of the proposed witness; specifies the exact things sought to be produced and the materiality thereof in detail to the issues involved; and states that the witness has the desired things in his or her possession or under his or her control. A subpoena need not be issued when the affidavit is defective in any particular.

(B) *Penalties.* Any person who refuses without lawful excuse to attend any hearing or to produce material evidence in his or her possession or under his or her control as required by any subpoena served upon such person as provided for herein shall be guilty of a Class A infraction.

[Adopted 85-164 §1 eff 5/1/85; amd 99-058 §9 eff 3/3/99]

480.490 Presiding officer

The chairperson of the Appeals Board shall be the presiding officer at all hearings. In the absence of the chairperson, the vice-chairperson shall act as presiding officer. The presiding officer shall have authority to:

- (A) Regulate the course and decorum of the hearing.
- (B) Dispose of procedural requests or similar matters.
- (C) Rule on relevancy of evidence and testimony.
- (D) Set time limits for presentations.
- (E) Take such other actions as necessary to facilitate conduct of the hearing.

[Adopted 85-164 §1 eff 5/1/85; amd 99-058 §9 eff 3/3/99]

480.500 Hearings; generally

(A) *Rules.* Hearings need not be conducted according to the technical rules relating to evidence and witnesses.

(B) *Evidence.*

(1) Except as provided in paragraph (2) of this subsection, only the Building Official and the appellant shall be allowed to present evidence or call witnesses on their behalf.

(2) The presiding officer may permit persons other than the Building Official and appellant to present evidence, if;

(a) A request to present evidence has been made at or prior to the hearing, or

(b) The Appeals Board is dissatisfied with the evidence presented by the appellant or Building Official, and needs independent evidence by witnesses called by the Appeals Board to resolve an issue.

(3) All evidence submitted at the hearing shall be directly relevant to the matter being appealed and 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. Irrelevant and unduly repetitious evidence shall not be admitted.

(4) Oral evidence shall be taken only on oath or affirmation.

(5) Hearsay evidence 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 courts of competent jurisdiction in this State.

(6) Official notice.

(a) 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; or
- ii official records, rules and regulations of the Appeals Board; or
- iii official records, codes, rules and regulations of the County.

(b) Parties present at the hearing shall be informed of the matters to be noticed, and these matters shall be noted in the record, referred to therein, or appended thereto.

(c) Parties present at the hearing shall be given a reasonable opportunity, on request, 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 Appeals Board or hearing examiner.

(C) *Rights of parties.* Each party shall have these rights, among others:

(1) To call and examine witnesses on any matter relevant to the issues of the hearing;

(2) To introduce documentary and physical evidence;

(3) To cross-examine opposing witnesses on any matter relevant to the issues of the hearing;

(4) To impeach any witness regardless of which party first called him or her to testify;

(5) To rebut the evidence against him or her;

(6) To represent oneself or to be represented by anyone who is lawfully permitted to do so.

(D) *Inspection of the premises.* The Appeals Board may inspect any building or premises involved in the appeal during the course of the hearing, provided that:

(1) Notice of such inspection shall be given to the parties before the inspection is made,

(2) The parties are given an opportunity to be present during the inspection, and

(3) The Appeals Board 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 Appeals Board or hearing examiner.

[Adopted 85-164 §1 eff 5/1/85; amd 99-058 §9 eff 3/3/99]

480.510 Conduct of hearing; order

(A) The Appeals Board shall follow the order of proceedings set forth in this section in conducting a hearing on appeal.

(1) The presiding officer shall state the case and call the hearing to order.

(2) Any objections on jurisdictional grounds shall be noted for the permanent hearing record.

(3) Disqualification of any Appeals Board member shall be determined. Members shall announce any present or potential conflicts of interest or ex parte contacts.

(4) The staff report shall be presented and received in evidence. The staff report shall be the primary evidence to support the Building Official's decision. Staff may also present additional evidence whenever allowed by the presiding officer during the proceedings.

(5) The appellant shall present all evidence and call witnesses in support of the appellant's position.

(6) Persons other than the Building Official and the appellant shall present evidence if the requirements of LCC 480.500 (B) (2) have been met.

(7) Rebuttal evidence may be presented by the Building Official.

(8) The appellant may be allowed sur-rebuttal.

(9) The presiding officer may limit rebuttal and sur-rebuttal to avoid repetition and redundancy. Rebuttal and sur-rebuttal shall be restricted to evidence that rebuts new testimony.

(10) The appellant and Building Official may each offer argument in support of their positions. The appellant shall open and close argument.

(11) At the conclusion of arguments, the presiding officer shall declare the hearing closed.

(12) The Appeals Board may continue the hearing for submission of further evidence, which shall be restricted to specific issues or for other good cause shown. The Appeals Board may continue a hearing by either:

(a) Oral announcement at the hearing, giving a public announcement of the time and place of continuation of the hearing, or

(b) By notice as provided in the manner described in LCC 480.430 (B) (1).

(13) The appellant and Building Official are encouraged to submit proposed findings of fact, in writing, in support of their positions. Such findings shall be submitted prior to the Appeals Board deliberations toward final decision, unless requested by the Appeals Board at some later time.

(14) The hearing shall be closed to public testimony.

(15) After the hearing has been closed, no further evidence shall be received except in response to specific questions directed to the staff or one of the parties to clarify earlier evidence. The opportunity for brief rebuttal to such further evidence shall be afforded the adverse party.

(16) A record of the entire proceedings may be made by tape recording, or by any other means of permanent recording determined to be appropriate by the Appeals Board.

(17) In any proceedings under this Chapter, the Appeals Board, any Appeals Board

member, or the hearing examiner has the power to administer oaths and affirmations and to certify to official acts.

(18) The Appeals 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.

[Adopted 85-164 §1 eff 5/1/85; amd 99-058 §9 eff 3/3/99]

480.520 Method and form of decision

(A) After the hearing is closed, the Appeals Board shall deliberate the appeal. Such deliberations shall take place at an open public meeting.

(B) No member the Appeals Board who did not hear the evidence and testimony or has not read the entire record of the proceedings may vote on or take part in the decision.

(C) The Appeals Board may make its decision and state its findings at the time and place of the hearing, or it may continue its deliberations to a subsequent meeting, the time and place of which must then be announced. The subsequent meeting shall be for the purpose of continued deliberation.

(D) No new evidence or testimony shall be accepted, unless the Appeals Board determines that the hearing must be reopened to consider the new evidence or testimony and gives notice of the reopening of the hearing.

(E) The final decision of the Appeals Board shall be to either:

(1) Approve the appeal;

(2) Deny the appeal; or

(3) Approve the appeal with modifications or amendments.

(F) The Appeals Board shall make a decision on an appeal no later than thirty (30) days calendar days from the date of the initial hearing, unless the appellant waives the time requirement, or unless the Appeals Board determines that the hearing should be reopened as specified in LCC 480.510 (A) (12).

(G) In the event a final decision has not been rendered by the Appeals Board within thirty (30) calendar days of the initial hearing, the appellant

may treat the appeal as denied, and may appeal the case as provided in LCC 480.600.

(H) The decision shall be in writing and shall contain findings of fact, a determination of the issues presented, and the requirements to be complied with.

(I) A copy of the decision shall be delivered personally or sent by certified mail, postage prepaid, return receipt requested to the appellant and applicant, if not the appellant. The Building Official shall give a copy of the decision to the State Building Codes Division Administrator and to any other party who has requested notification, within fifteen (15) calendar days of the date of the decision.

(J) The effective date of the decision shall be as stated therein.

[Adopted 85-164 §1 eff 5/1/85; amd 99-058 §9 eff 3/3/99]

480.600 Appeal of the Appeals Board decision

(A) For purposes of this section, “**party**” means a person who has appeared on the record of an appeal before the Appeals Board by submitting evidence or testimony on the matter.

(B) The rights of any party to the appeal a decision of the Appeals Board is as follows; a party:

(1) May appeal a decision made under
(a) LCC Chapter 815 (Specialty Code) to the appropriate State of Oregon Building Code Advisory Board in accordance with ORS 455.690.

(b) LCC Chapter 850 (Fill and Excavation Code) as provided in LCC 850.600.

(c) LCC Chapter 870 (Floodplain Management Code) to the Board of Commissioners in accordance with LCC Chapter 921 (Administration of the Land Development Code).

(2) May not appeal a decision of the Appeals Board made under LCC Chapter 825 (Dangerous Buildings Code).

[Adopted 83-522 §5.6 eff 1/25/84; amd 99-058 §9 eff 3/3/99]

Statutory References and Other Authorities:
ORS 203; 456.800; LCC Chapters 400, 815, 825, 850, and 870

Legislative History of Chapter 480 (formerly codified at Chapter 10.40):

Adopted by 83-552 eff 1/25/83

Repeals 83-001 adopted 2/2/83

Amendments to 83-552:

#1 85-167 eff 5/1/85

#2 95-177 eff 5/10/95 (renumbering)

#3 99-058 §9 eff 3/3/99

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