

ORDINANCE NO. 2021-03

AN ORDINANCE OF THE BOARD OF TRUSTEES OF THE TOWN OF PAONIA, COLORADO, ESTABLISHING A BUILDING CODE BOARD OF APPEALS

RECITALS:

WHEREAS, the Town of Paonia (the “Town”), in the County of Delta and State of Colorado, is a municipal corporation duly organized and existing under the laws of the State of Colorado; and

WHEREAS, the Town pursuant to C.R.S. 31-4-101, the Town has certain legislative powers; and

WHEREAS, pursuant to C.R.S. § 31-23-301, the Town has the power to regulate buildings and other structures for the purposes of promoting health, safety, and the general welfare of the community; and

WHEREAS, the Town has adopted by reference codes and standards relating to the regulation of new construction, alteration, and repair of all new and existing structures within the Town, along with all plumbing, mechanical and installations therein or in connection therewith; and

WHEREAS, each of these codes utilize an appeals board to hear and determine appeals of decisions of the building official or claims that the true intent of the code have been incorrectly interpreted; and

WHEREAS, pursuant to Sec. 2-2-90 of the Town Municipal Code, the Board of Trustees has the authority to create and appoint members to board and commissions; and

WHEREAS, pursuant to Sec. 2-8-10 and Sec. 16-15-10 of the Town Municipal Code, the Town has an established Zoning Board of Adjustment which addresses appeals of any administrative officer or agency made in enforcement of the Town Municipal Code pertinent to zoning; and

WHEREAS, the Town Board of Trustees finds and determines that it is both necessary and desirable that a Building Code Board of Appeals be created; and

WHEREAS, the Board determines that the existing Board of Adjustment shall sit and serve as the Building Code Board of Appeals whenever such board is required;

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF PAONIA, COLORADO, AS FOLLOWS:

Section 1. Legislative Findings.

The recitals to this Ordinance are adopted as findings of the Board of Trustees in support of the enactment of this Ordinance.

Section 2. Additions to the Town Code.

(A) The following Article 11 is added to Chapter 18 Town Code as follows:

Chapter 18, Article 11 – Building Code Board of Appeals:

Sec. 18-11-10. Appeal Procedures.

- (a) There is hereby created the Building Code Board of Appeals. Unless otherwise conflicted, the five (5) members of the Zoning Board of Adjustment shall serve as the members of the Building Code Board of Appeals. The Board of Appeals shall consist of five (5) members, who are qualified by experience and training to pass upon matters pertaining to building construction. In evaluating the qualifications and experience of the five (5) members, the qualifications in Appendix B of the version of the IBC adopted by the Town shall serve as guidance in selecting members to the Board of Appeals.
- (b) The purpose of the Board of Appeals is to hear and decide appeals of orders, decisions, or determinations made by the building official relative to the application and interpretation of the building codes, and amendments thereto, as adopted from time to time by reference within this Chapter 18. Zoning appeals pursuant to Chapter 16 shall be heard in accordance with Chapter 16.
- (c) The Board of Appeals may adopt reasonable rules and regulations not inconsistent with this ordinance for conducting its business, meetings, and deliberations.
- (d) Appeals to the Board of Appeals may be taken by any person aggrieved by his or her inability to obtain a building permit based upon the decision of the building official. Appeals to the Board of Appeals must be made in writing and filed with the Town Clerk no later than 4:30 p.m. of the seventh day following the action or decision from which the appeal is taken. In the event the seventh day falls on a Saturday, Sunday or holiday, the next regular business day of the Town shall be deemed the seventh day. The day of the action or decision shall not be included in the seven-day calculation.
- (e) An appeal to the Board of Appeals stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken, certifies to the Board of Adjustment after the notice of appeal has been filed with him or her that, by reason of facts stated in the certificate, a stay, in his or her opinion, would cause imminent peril to life and property, in which

case proceedings shall not be stayed other than by a restraining order which may be granted by the Board of Adjustment or a court of record on application, on notice to the officer from whom the appeal is taken and on whom due cause is shown.

Sec. 18-11-20. Hearings.

- (a) All hearings of the Board of Appeals shall be held within thirty (30) days of the filing of the appeal.
- (b) At hearings, all witnesses shall be sworn-in and the Chairperson will utilize such procedures as the Board of Appeals finds will ensure fairness and efficiency. The Board of Appeals shall not be required to observe formal rules of evidence but may consider any testimony or other evidence the Board finds reasonably reliable and calculated to aid the Board of Appeals in reaching an accurate determination of the issue involved. Rulings on questions of procedure, admissibility of evidence, and exhibits will be made by the Chairperson and will stand unless objected to by a member of the Board of Appeals, in which event the question will be decided by a majority vote of the members of the Board present.
- (c) The Board of Appeals shall have the authority to review any written final decisions of the building official regarding the suitability of alternate materials, methods of construction, or regarding the technical application and interpretation of the building codes adopted by reference, and any amendments thereto, within this Chapter 18. The Board of Appeals shall also be authorized to issue advisory opinions and policies regarding such matters at the request of the building official. The Board of Appeals shall not have the authority to waive requirements of any such code, nor shall the Board of Appeals have the authority to recommend decreasing public safety or fire-resistive standards set forth in any section of such codes. A decision of the Board shall not be considered a precedent for future decisions of the building official. The Board of Appeals shall act in each instance based upon the facts presented in the appeal.
- (d) In the event of a conflict between any building codes adopted by the Town and this Chapter 18, Article 11, the Town Code shall take precedent. Notwithstanding the foregoing, for any matter which the Town Code is silent, the Board of Appeals shall take into account direction and guidance from the relevant building code(s).

Sec. 18-11-30. Fees.

For all applications, a fee shall be assessed to cover the administrative costs of conducting the hearing. The amount of the fee shall be established by resolution of the Board of Trustees. In the event the Board of Appeals finds in favor of the applicant, any fees initially assessed to the applicant shall be waived.

Sec. 18-11-40. Decisions.

The decision of a majority of the members of the Board of Appeals shall be final on the date it is made and signed by the Board of Appeals. Any further appeal shall be in accordance with C.R.C.P. Rule 106(a)(4).

Section 3. Amendment to the Town Code.

The following provision of Chapter 18, Article 4 Section 30(b) is hereby repealed.

Section 4. Severability.

If any provision, clause, sentence or paragraph of this Ordinance or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the other provisions of this Ordinance which can be given effect without the invalid provision or application, and, to this end, the provisions of this Ordinance are declared to be severable.

Section 5. Repeal of Prior Ordinances.

All other ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 6. Ordinance Effect.

Existing ordinances or parts of ordinances covering the same matters as embraced in this Ordinance are hereby repealed and any and all ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed, provided, however, that the repeal of any ordinance or parts of ordinances of the Town shall not revive any other section of any ordinance or ordinances hereto before repealed or superseded and further provided that this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the taking effect of this Ordinance.

Section 7. Effective Date.

This Ordinance shall take effect thirty days after adoption and publication.

INTRODUCED, READ, AND REFERRED to public hearing before the Board of Trustees of the Town of Paonia, Colorado, on the ___ day of March 2021.

TOWN OF PAONIA, COLORADO, A MUNICIPAL CORPORATION

By: _____
Mary Bachran, Mayor

ATTEST:

CORINNE FERGUSON, Town Clerk

HEARD AND FINALLY ADOPTED by the Board of Trustees of the Town of Paonia, Colorado, this _____ day of _____, 2021.

TOWN OF PAONIA, COLORADO, A MUNICIPAL CORPORATION

By: _____
Mary Bachran, Mayor

ATTEST:

Corinne Ferguson, Town Administrator/Clerk