

RESOLUTION NO # 201806-2

HEBGEN BASIN FIRE DISTRICT
BOARD OF APPEALS
RULES OF PROCEDURE FOR APPEALS

WHEREAS, the Board of Trustees for the Hebgen Basin Fire District, a rural fire district formed and governed under the laws of the State of Montana, adopted the International Fire Code (2012 Edition) (Fire Code) on April 12, 2016 as set forth in its Resolution 01042016;

WHEREAS, the adoption of the Fire Code by the Hebgen Basin Fire District is authorized under Montana law; and

WHEREAS, the District's adoption of the Fire Code provides for the establishment of a Board of Appeals to hear appeals from "order[s], decisions and determinations of the fire code official ... [and allows the Board to] adopt rules of procedure for conducting its business."

NOW THEREFORE, after consideration in a duly noticed meeting the Board of Trustees for the Hebgen Basin Fire District, that the Board adopts the following rules of procedure for the governance of appeals under the Fire Code.

1.1 Definitions:

- A. "Appeal" is the process by which a person may appeal an order, decision or determination of the Fire Code Official relative to the application and interpretation of the Fire Code. An Appeal shall be based on a claim that the intent of the Fire Code has been incorrectly interpreted, the provisions of the Fire Code do not fully apply, or an equivalent method of protection or safety is proposed. The Board shall have no authority to waive requirements of the Fire Code in an Appeal.
- B. "Appeal Notice" is the written document by which an Appeal is initiated and submitted by a person. An Appeal Notice shall generally state the grounds upon which the Appeal is made, based on the definition of an Appeal herein and shall state the name, address and phone number where the person who filed the Appeal Notice may be contacted.
- C. "Board" is the Board of Appeals as determined by Resolution of the Hebgen Basin Fire District.
- D. "Chair" is the chairperson of the Board as appointed by the Board. The Chair may be appointed for the period of one year and may appoint another Chair under circumstances where he or she cannot act.
- E. "Fire Chief" is the duly appointed fire chief of the Hebgen Basin Fire District.
- F. "Fire Code" means any regulations, law or code promulgated by act of the Hebgen Basin Fire District to be implemented, administered or enforced by the Fire Code Official.
- G. "Fire Code Official" is the person appointed by the Fire Chief, or the Fire Chief if no other person has been appointed, who is responsible for the implementation, administration and enforcement of the provisions of the Fire Code.
- H. "Person (person)" is an individual person or any legally formed corporate entity.

1.2 Unless otherwise set forth in applicable law, an Appeal Notice, addressed to the Board, shall be delivered to the Fire Chief within 30 days from the date of issuance of any written notice, order, decision or determination of the Fire Code Official.

1.3 Upon receipt of an Appeal Notice, the Fire Chief shall immediately schedule a hearing before the Board and notify the Chair of the Appeal. The hearing shall be scheduled no later than 45 days from receipt of the Appeal Notice.

1.4 Adjudication of Appeal

- A. No later than 15 days from Board's receipt of the Appeal Notice, the Chair shall conduct a conference with the person who filed the Appeal and the Fire Code Official (parties) in order to define issues, determine witnesses, and agree upon stipulations.
- B. The Chair may continue the date for any appeal hearing with good cause, upon oral request or in writing, for a reasonable period of time, in order to secure all the evidence that is necessary and to be fair to the parties. If any party fails to appear at a hearing, and good cause justifying continuance is not shown, the Board may decide the issues and make a determination on the best evidence available. A hearing may be continued for good cause upon application to the Board before the hearing is concluded.
- C. If the Appeal does not involve a disputed issues of material fact, parties may jointly stipulate in writing to waive proceedings and may directly have the matter proceed to review by a court or tribunal upon an agreed statement of facts and a statement of the legal issues or contentions of the parties upon which the court, together with the additions it may consider necessary, may make its decision.
- D. During the hearing, privileges shall be given effect and the admissibility of evidence will be based on that evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs whether or not the evidence is admissible in a trial in the courts of Montana. Irrelevant, immaterial, or unduly repetitious evidence may be excluded.
- E. Any part of the evidence may be received in written form, and all testimony of parties and witnesses must be made under oath. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it is not sufficient in itself to support a finding unless it is admissible over objection in civil actions.
- F. Public comment must be considered at the close of the evidence.
- G. A record of proceedings must include:
 - i. the Appeal Notice and decision of the Fire Code Official appealed from;
 - ii. the evidence offered or considered and any objections and rulings thereon;
 - iii. all other matters placed in the record;
 - iv. a recording of the hearing and the statement of findings of fact including a statement of the elements of the record. A party may obtain, at that party's cost a transcription of the recording.
- H. At the conclusion of the hearing the Chair shall prepare written findings of fact and conclusions of law for the Board based upon the decision of the Board at the

hearing. The written findings and conclusions shall include a statement of the contents of the record of proceedings.

- I. The findings of fact and conclusions of law must be presented to members of the Board who must indicate their acceptance or rejection consistent with their individual decision at the conclusion of the hearing. Findings and conclusions should then be signed by the Chair and become final no later than 14 days from the conclusion of the hearing.
- J. The final written decision of the Board shall then be provided to the parties and made available to the public.

1.5 The decision of the Board as set forth in writing in the findings of fact and conclusions of law may be appealed to an appropriate court or tribunal in accordance with applicable law.

1.6 The Board is not an "agency" under Sec. 2-4-102(2)(b), MCA and an Appeal is not a "contested case" under Sec. 2-4-102(4), MCA and therefore any further review of the Board's decision of the Appeal is not subject to the Montana Administrative Procedures Act.