ORDINANCE NO. 2006-041

Adopted by the Sacramento City Council

July 18, 2006

AMENDS SECTION 2.40.030 OF THE SACRAMENTO CITY CODE, AND REPEALING AND RE-ENACTING CHAPTER 2.48 OF THE SACRAMENTO CITY CODE TO CREATE THE BUILDING AND FIRE CODE ADVISORY AND APPEALS BOARD

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1.

Section 2.40.030 of the Sacramento City Code is amended to read as follows:

2.40.030 Applicability.

The provisions of this article shall apply to persons recommended to the Mayor by the personnel and public employees committee as appointees for positions on the City Council and the following boards and commissions:

Administration, investment and fiscal management board of the Sacramento city retirement system;

Building and fire code advisory and appeals board;

Civil service board;

Design review and preservation board;

Electrical code advisory and appeals board;

Housing code advisory and appeals board;

Mechanical and plumbing code advisory and appeals board;

Old Sacramento variance appeals board;

Planning commission;

Retirement hearing commission;

Sacramento city public facilities financing corporation;

Board of plumbing examiners.

SECTION 2.

Chapter 2.48 of the Sacramento City Code is hereby repealed in its entirety.

SECTION 3.

Chapter 2.48 is added to the Sacramento City Code, to read as follows:

Chapter 2.48

BUILDING AND FIRE CODE ADVISORY AND APPEALS BOARD

2.48.010 Board established.

The City of Sacramento Building and Fire Code Advisory and Appeals Board is hereby established.

2.48.020 Definitions.

As used in this chapter, the following words and phrases shall have the meaning given them in this section, unless the context clearly requires otherwise:

"City" means the City of Sacramento.

"City Council" means the City Council of the City of Sacramento.

"Board" means the Building and Fire Code Advisory and Appeals Board.

"Mayor" means the Mayor of the City of Sacramento.

2.48.030 Powers and duties of Board.

A. The Board is established for the purpose of determining the suitability of alternate materials and methods of construction and providing reasonable interpretations of the following codes, as they are currently written or as they may be amended in the future:

1. 2001 California Building Code;

2. 2001 California Fire Code.

The Board's powers and duties shall extend to any code or codes duly adopted by the California Building Standards Commission that supersedes the 2001 California Building and Fire Codes.

B. The Board may approve the use of any material, alternate design or method of construction not specifically prescribed by the applicable codes enumerated in this section, provided the Board finds that the proposed design is satisfactory and complies with the provisions of the applicable codes and that the material, method or work offered is, for the purpose intended, at least the equivalent of that prescribed in the applicable

codes in suitability, strength, effectiveness, fire resistance, durability, safety, and sanitation. The Board shall require that sufficient evidence or proof be submitted to substantiate any claims that may be made regarding its use.

C. The Board shall have no authority relative to interpretation of the administrative provisions of these codes nor shall the Board be empowered to waive requirements of these codes. Any cost for tests or research required by the Board to substantiate the claim of any appellant shall be the sole responsibility of the appellant.

2.48.040 Board Membership.

The Board shall consist of five members appointed by the Mayor with the approval of the City Council, subject to the following requirements:

A. One member shall be a real estate developer who has completed at least two projects in California in the five years preceding appointment; each project must have a total valuation in excess of five million dollars.

B. One member shall be a California licensed general building contractor who has been a primary general contractor on construction projects in the City during the two years immediately preceding appointment;

C. One member shall be a California registered architect who has been licensed and has practiced in California for at least three years immediately preceding appointment;

D. One member shall be a California registered structural engineer who has been licensed and has practiced in California for at least three years immediately preceding appointment;

E. One member shall be a California licensed fire protection engineer who has been licensed and has practiced in California for at least three years immediately preceding appointment.

2.48.050 Term of Office.

Members of the Board shall serve a term of three years. In order to establish staggered terms, the initial appointments of members shall include two members for a one-year term, two members for a two-year term, and one member for a three-year term, as determined by the City Clerk based on the drawing of lots. No member shall serve more than two consecutive terms. In the event a vacancy occurs during the term of any member, the Mayor shall appoint, with the approval of the City Council, a successor to serve the unexpired term, subject to the requirements set forth in Section 2.48.040. A member shall hold office until his or her successor has been appointed. A successor appointed to complete an unexpired term shall be eligible to serve up to two consecutive terms in addition to the unexpired term.

2.48.060 Conflict of Interest and Financial Disclosure Statements.

The provisions of Article III of Chapter 2.16 of this Code governing conflicts of interest of board and commission members shall apply to members of the Board. In addition, all appointees to the Board shall be required to file statements disclosing financial interests pursuant to a conflict of interest code adopted for the Board.

2.48.070 Chairperson and Organization of the Board.

At its first meeting, and annually thereafter, the Board shall elect a Board chairperson and a vice-chairperson, each of whom shall hold office at the pleasure of the Board. During any absence of the chairperson from a meeting of the Board, the vice-chairperson shall be the acting chairperson until the chairperson returns. When there is a vacancy in the office of chairperson or vice chairperson, the Board shall fill that office from among its members. Staff support to the Board shall be provided by one or more city employees designated by the City Manager.

2.48.080 Board Meetings.

The Board shall establish a time and place for regular meetings to be held not less than once each month. The meetings shall be noticed and held in accordance with the provisions of the Ralph M. Brown Act (Government Code section 54950 et seq). The Board shall have the authority to notice and hold special meetings in the manner specified by the Ralph M. Brown Act.

2.48.090 Rules and Regulations.

The Board shall adopt reasonable rules and regulations for conducting its business and shall render all decisions and findings in writing to the appellant with a copy to the Building Official.

2.48.100 Quorum; Voting.

The quorum required for the Board to conduct business shall be three members. The affirmative vote of a majority of the members present and eligible to vote shall be necessary to approve any item.

2.48.110 Review by Building Official.

A. The Building Official shall establish policies and procedures that provide for Building Official review of staff-level decisions regarding the use of any material, alternate design or method of construction not specifically prescribed in the California Building Code or the California Fire Code. These policies and procedures shall require the Building Official to provide a written decision within ten calendar days of the filing of a completed request for Building Official review. A copy of the decision shall be

delivered to the appellant personally or sent to him or her by certified mail, postage prepaid, return receipt requested. Requests for Building Official review shall be submitted on a form prescribed by the Building Official. Any person aggrieved by the Building Official's decision may appeal therefrom to the Board as provided in Section 2.48.120(A).

B. At any time within ten calendar days of the filing of a completed request for Building Official review, the Building Official may refer the request to the Board for determination. In such a case, a hearing before the Board shall be scheduled and conducted as set forth in Section 2.48.130.

C. In the event the Building Official does not issue a written decision or refer a request to the Board within ten calendar days of the filing of a completed request for Building Official review, the staff-level decision shall become a final decision from which any aggrieved person may appeal to the Board as provided in Section 2.48.120(A). The staff-level decision shall be deemed final on the eleventh calendar day following the filing of the completed request for review; provided, however, if the eleventh calendar day falls on a Saturday, Sunday, or legal holiday, the decision shall be deemed made on the next following business day.

2.48.120 Appeals to Board.

A. Any person aggrieved by the decision of the Building Official issued pursuant to Section 2.48.110(A) or a staff-level decision that becomes a final decision pursuant to Section 2.48.110(C) may appeal therefrom to the Board at any time within ten calendar days after receiving notice of the Building Official's decision or after the staff-level decision becomes final pursuant to Section 2.48.110(C). Such an appeal is taken by filing notice of appeal with the Building Official on a form provided by, and available from, the Building Official and payment of a fee as established by resolution of the City Council. All supporting documents must be submitted with the form at the time the appeal is filed. Upon receipt of any appeal file and the appeal fee pursuant to this section, a hearing before the Board shall be scheduled and conducted as set forth in Section 2.48.130

B. Notwithstanding Subsection (A), no person shall be allowed to appeal a staff-level decision regarding the use of any material, alternate design or method of construction not specifically prescribed in the California Building Code or the California Fire Code to the Board unless (1) the person submitted a completed request for Building Official review as required by Section 2.48.110(A) and (2) the Building Official failed to either provide a written decision or refer the request to the Board within ten calendar days of the filing of the completed request for review.

C. Failure to properly file a written appeal as required under Subsection (A) will constitute a waiver of all right to an appeal hearing before the Board, and the decision of the Building Official or the staff-level decision will be final. Failure to properly and timely appeal pursuant to Subsection (A) also shall constitute a failure to exhaust

administrative remedies and a bar to any judicial action pertaining to the staff-level decision or decision of the Building Official.

D. Notwithstanding any other provision of this Chapter, the Board does not have jurisdiction to hear appeals of decisions relating to access for physically handicapped persons to public facilities and accommodations. Any staff-level decision that becomes a final decision pursuant to Section 2.48.110(C) or decision of the Building Official relating to access for physically handicapped persons to public facilities and accommodations shall be appealed to the Joint City/County Disabilities Appeals Board pursuant to Chapter 2.52 of the Sacramento City Code rather than the Board.

2.48.130 Hearings.

In the event the Building Official refers a request to the Board pursuant to Section 2.48.110(B), or upon receipt of any appeal filed and the appeal fee pursuant to Section 2.48.120, the Building Official calendar it for hearing as follows:

A. If the Building Official refers the request to the Board, or if the appeal is received by the Building Official, not later than fifteen calendar days prior to the next regular meeting of the Board, it shall be calendared for hearing at said meeting.

B. If the Building Official refers the request to the Board, or if the appeal is received by the Building Official, on a date less than fifteen calendar days prior to the next regular meeting of the Board, it shall be calendared for hearing at the next subsequent meeting of the Board.

The Building Official shall not later than ten calendar days prior to the hearing give notice of the time, place, and subject matter of the hearing to the person filing the appeal and each member of the Board. The hearing shall be conducted according to the rules and regulations adopted by the Board. The Board shall render all decisions and findings in writing. A copy of the decision shall be delivered to the appellant personally or sent to him or her by certified mail, postage prepaid, return receipt requested.

2.48.140 Appeals to City Council.

A. Any person aggrieved by the decision rendered by the Board in an appeal hearing held pursuant to Section 2.48.130, may appeal the decision to the City Council in accordance with Chapter 1.24. The appeal shall be made by filing a written notice thereof with the City Clerk not later than ten calendar days after receiving notice of the decision of the Board. The City Council shall hold a hearing on the appeal and its decision thereon shall be final. Instead of hearing the appeal, the City Council may refer the matter to a hearing examiner pursuant to Chapter 1.24, in which case the hearing examiner's decision shall be final.

B. Failure to properly file a written appeal of the decision of the Board within ten

calendar days of the decision will constitute a waiver of all right to an appeal hearing before the City Council, and the Board's decision will be final. Failure to properly and timely appeal the Board's decision also shall constitute a failure to exhaust administrative remedies and a bar to any judicial action pertaining to the Board's decision.

2.48.150 Compensation.

Pursuant to City Charter Section 29, the Compensation Commission shall establish the compensation members of the Board receive for attending Board meetings.

2.48.160 General Requirements.

Unless specifically provided otherwise in this chapter, the general requirements set forth in Chapter 2.40 of this code, governing the appointment of board and commission members, attendance at board and commission meetings, voting, term limits and removal, shall apply to the Board. A member is subject to removal for good cause, neglect of duty or misconduct as provided in City Charter Section 232.

Adopted by the City of Sacramento City Council on July 18, 2006 by the following vote:

Ayes: Councilmembers Cohn, Fong, Hammond, McCarty, Pannell, Sheedy, Tretheway, Waters, and Mayor Fargo.

Noes: None.

Abstain: None.

Absent: None.

Heather Fargo
Mayor, Heather Fargo

Attest:

Shirley Concolino
Shirley Concolino, City Clerk

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Effective August 18, 2006