

## REPORT TO THE CITY COUNCIL

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**DATE:** May 5, 2020

**TITLE:** An Ordinance Amending the Desert Hot Springs Municipal Code in Order to Establish a Board to Hear Appeals Involving California Building Code Issues

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**Reviewed by:** Jennifer Mizrahi, City Attorney

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### RECOMMENDATION

Introduce and read by title only: "An Ordinance of the City Council of the City of Desert Hot Springs, California 1) Adding Chapter 2.72 "Appeals Board" to Title 2 "Administration and Personnel;" 2) Amending Section 4.16.085 "Public Nuisance Hearing;" 3) Amending Various Sections of Chapter 4.16.110 "Procedures for Appeal of a Notice of Public Nuisance and Order to Abate" of Title 4 "Public Nuisances;" and 4) Adding Section 15.03.040 to Chapter 15.03 "Administration" of Title 15 "Buildings and Construction" of the Desert Hot Springs Municipal Code in order to establish a board to hear appeals involving California Building Code issues.

### BACKGROUND

The City of Desert Hot Springs ("City") recently adopted the 2019 Edition of the California Building Code ("CBC"). Section 1.8.8.1 of the CBC requires every county and city to establish a process to hear appeals of cases involving the CBC. The appeals may be heard by the legislative body or a separate appeals board.

Currently, the City does not have a process to hear appeals regarding the CBC. The proposed ordinance will establish that process.

### DISCUSSION

The proposed ordinance will create an appeals board pursuant to Chapter 2.24 of the Desert Hot Springs Municipal Code. In other words, the appeals board will be created in the same manner as all other boards and commissions with minor exceptions. Since appointments are generally made in January of odd-numbered years, this proposed ordinance clarifies that there is an important need to appoint members to the appeals boards as soon as practicable. Further, in order to appoint as many qualified individuals as possible, membership is not limited to City residents.

The proposed ordinance will add Section 15.03.040 to establish the administrative procedures to review CBC issues. In particular, only the decisions by the Building Official regarding an interpretation of the CBC and related regulations may be appealed within 14 days of that decision. The appellant must fill out a form and pay a fee.

Once the form is accepted and the fees paid, the appeal will first be heard by an administrative hearing officer. The hearing officer will be a third party selected by the City Manager. The hearing officer's decision may be appealed within 14 days to the appeals board.

The appeals board will consist of five members knowledgeable in the building code, regulations and ordinances. The appeals board role is limited to determining whether there was substantial evidence to support the hearing officer's decision, or whether the hearing officer made any errors of law. New evidence will generally not be submitted.

If the appeals board upholds the hearing officer's decision, the appellant then, and only then, has the option of appealing to the superior court.

The proposed ordinance includes minor changes to various sections in Title 4 to allow code compliance cases to be appealed to the appeals board if the issues involve building code matters.

**FISCAL IMPACT**

None.

**EXHIBITS**

1) Draft Ordinance