

AGENDA OF THE UTAH STATE BUILDING BOARD

Wednesday, October 3, 2007
Utah State Capitol Complex
Room W125
Salt Lake City, Utah
8:00am

- (Action) 1. **Five Year Notice of Review and Statement of Continuation for Rule R23-12, Building Code Appeals Process**

Notice of Special Accommodation During Public Meetings - In compliance with the Americans with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aids and services) during this meeting should notify Shannon Elliott 538-3261 (TDD 538-3260) at least three days prior to the meeting.

This information and all other Utah State Building Board information is available on DFCM web site at <http://buildingboard.utah.gov>



Utah State Building Board

Jon M. Huntsman, Jr.
Governor

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MEMORANDUM

To: Utah State Building Board
From: David G. Buxton *DGB*
Date: October 3, 2007
Subject: **Five Year Notice of Review and Statement of Continuation for Rule R23-12, Building Code Appeals Process**

The Utah Rulemaking Act, Utah Code Ann. Section 63-46a-9 requires each agency to review its rules within five years of each rule's original enactment, and then within five-year intervals. To comply with the review requirement, the agency must submit a "Five-Year Notice of Review and Statement of Continuation" for each of its rules. Otherwise, the rules will expire, become unenforceable, and will be removed from the Utah Administrative Code. The attached Rule R23-12, Building Code Appeals Process, is due for review and therefore, the "Five Year Notice of Review and Statement of Continuation" must be filed with the Division of Administrative Rules on or before October 10, 2007.

Recommendation:

DFCM recommends the Board authorize the filing of the "Five Year Notice of Review and Statement of Continuation" for Rule R23-12 at their scheduled Board meeting on October 3, 2007. At this time, the Division is not recommending any amendments to Rule R23-12. However, the Division will present amendments to this rule at a future Board meeting for consideration and approval if needed or requested by the Board.

Background:

Rule R23-12, under the authority of the Board, sets forth the standards and procedures for the appeal of decisions made by the Building Official in regard to the application and interpretation of building codes (see attached Rule R23-12, Building Code Appeals Process).

DGB:ASB:sle

Attachments

R23. Administrative Services, Facilities Construction and Management.

R23-12. Building Code Appeals Process.

R23-12-1. Purpose and Authority.

(1) In accordance with Subsection 58-56-8(2), this rule establishes procedures for the appeal of decisions made by the Building Official in regards to the application and interpretation of building codes.

(2) The statutory provisions governing the application and enforcement of building codes with state facilities are contained in Title 58, Chapter 56 and in Section 63A-5-206.

(3) The State Building Board's authority to adopt rules for the Division are contained in Subsection 63A-5-103(1)(e).

R23-12-2. Definitions.

(1) Except as otherwise stated in this rule, terms used in this rule are defined in Section 63A-5-206.

(2) The following additional terms are defined for this rule.

(a) "Appeals Board" means Appeals Board convened by the Director pursuant to Section R23-12-4.

(b) "Building Code" has the same meaning as "code" as defined in Section 58-56-3.

(c) "Building Official" means the person designated by the Director or the Delegated Agency as the case may be to be responsible for the enforcement of building codes.

(d) "Day" means calendar day.

(e) "Delegated Agency" means a state entity to which the State Building Board has delegated the responsibility of administering the construction of facilities on state property when the delegated responsibility includes the role of Compliance Agency.

(f) "Director" means the Director of the Division, including, unless otherwise stated, his duly authorized designee.

(g) "Division" means the Division of Facilities Construction and Management established pursuant to Section 63A-5-201.

(h) "State Agency" means the State of Utah and any department, commission, board, council, agency, institution, officer, fund, division, office, committee, authority, laboratory, library, unit, bureau, panel, or other administrative unit of the State of Utah.

(i) "State Project" means the construction of a Facility on property owned by a State Agency.

R23-12-3. Applicability.

(1) The appeal of decisions of the Building Official for State Projects administered by the Division or a Delegated Agency shall be conducted in accordance with this rule.

(2) Other entities authorized by Subsection 63A-5-206(6) to act as Compliance Agency for a State Project are responsible for providing an appeals process. The appeals process provided for in this rule shall apply if the entity does not provide an appeals process or it fails to hear an appeal duly filed with that entity.

R23-12-4. Designation of Appeals Board.

(1) The Director shall identify a pool of individuals who are knowledgeable of various aspects of the buildings codes and who are willing to serve on the Appeals Board when requested.

(2) When an appeal is duly filed with the Director, the Director shall appoint either three or five individuals, depending on the nature of the appeal, to act as the Appeals Board for that specific appeal. In selecting the members of the Appeals Board, the Director shall consider the portions of the building code that are in dispute.

(3) Each member or the Appeals Board shall certify that he or she does not have a conflict of interest in regards to the matter being heard.

(4) The Director shall designate one of the members to act as presiding officer of the Appeals Board.

(5) The Division shall provide administrative support to the Appeals Board and shall maintain a record of matters submitted to the Appeals Board and the resolution thereof.

R23-12-5. Authority of Appeals Board.

(1) The Appeals Board shall resolve disputes regarding the application or interpretation of the building code as it relates to a specific State Project.

(2) The Appeals Board shall not have the authority to waive requirements of the building codes or to interpret the administrative provisions of the building codes.

(3) Decisions of the Appeals Board shall be by majority vote.

(4) Decisions of the Appeals Board are final.

R23-12-6. Initial Actions for Decisions Prior to Construction.

(1) If the issue being appealed arises prior to its construction, the architect, engineer or contractor, as the case may be, shall submit a written request for interpretation to the Building Official which shall include:

(a) the basis for the requestor's interpretation of the code, and

(b) other decisions related to the application of the code that have an impact on the interpretation in question.

(2) Within 21 days of receipt of the written request, the Building Official shall provide a written decision. If the Building Official does not agree with the requested interpretation, the decision shall include the basis for his interpretation of the code.

R23-12-7. Initial Actions for Inspection Exceptions during Construction.

(1) If the issue being appealed is an inspection exception regarding work constructed, the contractor shall, within 10 days of receiving the inspection report, submit a request in writing to the Building Official for reconsideration of the inspector's exception.

(2) Within 10 days of receipt of the written request, the Building Official shall provide a written decision either

reaffirming the inspector's findings or stating how the inspector's exception is modified.

R23-12-8. Appeal of Delegated Agency's Decision.

For State Projects administered by a Delegated Agency, the following procedure shall be followed before an appeal may be heard by the Appeals Board.

(1) Within 10 days of receipt of the decision of the Building Official representing the Delegated Agency, the entity requesting the appeal shall submit the following to the Division's Building Official:

(a) a copy of the documentation required by Section R23-12-6 or R23-12-7, and

(b) a written statement explaining the basis for the appeal.

(2) Within 10 days of receipt of the appeal, the Division's Building Official shall provide a written decision either reaffirming the Delegated Agency's findings or stating how the Delegated Agency's findings are modified.

R23-12-9. Filing of Appeal and Appeals Board Action.

(1) Within 21 days of receipt of the written decision provided for in Section R23-12-6, R23-12-7, or R23-12-8, the entity appealing the decision shall submit the following documents to the Director:

(a) a letter stating that the entity is appealing a decision regarding the building code including an explanation of the basis for the appeal;

(b) a copy of the documentation required by Sections R23-12-6, R23-12-7 and R23-12-8 as applicable;

(c) other information supporting the appeal.

(2) If the Building Official did not provide a written decision, the entity shall submit an affidavit to this effect in lieu of the written decision.

(3) The Director shall convene an Appeals Board within 21 days after an appeal is duly filed.

(4) Both the entity appealing the decision and the Building Official shall be given an opportunity to present their position.

(5) A written decision of the Appeals Board shall be issued within 7 days after the appeal is heard.

R23-12-10. Time Extensions.

Upon a showing of good cause, the time periods provided for in this rule may be extended by the Director prior to the convening of the Appeals Board or by the presiding officer upon or after the convening of the Appeals Board.

R23-12-11. Forms.

The Division may establish forms to be used in the filing of an appeal.

R23-12-12. Costs of Appeal.

Each party is responsible for its own costs in the appeal process except that the Division may assess the party that loses the appeal for any costs incurred by the Appeals Board in

evaluating the appeal.

KEY: appeals, building codes, construction

Date of Enactment or Last Substantive Amendment: October 10, 2002

Authorizing, and Implemented or Interpreted Law: 58-56-8(2); 63A-5-206

NOTE: The Word version of this form is made available as a working document for the convenience of rule filing agencies. To file a rule, an agency must use the division's online rule filing application, eRules. Questions? Call 801-538-3218.

State of Utah

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION			
DAR file no:		Date filed:	
Utah Admin. Code ref. (R no.):		Time filed:	
R23-12			
1.	Agency:	Dept. of Administrative Services, Div. of Facilities Construction and Management	
	Room no.:	4110	
	Building:	State Office Building	
	Street address 1:		
	Street address 2:		
	City, state, zip:	Salt Lake City, Utah 84114-1201	
	Mailing address 1:		
	Mailing address 2:		
	City, state, zip:		
Contact person(s):			
	Name:	Phone:	Fax:
	Debbie Merrill	801-538-3240	801-538-3313
	Alan Bachman	801-538-3105	801-538-3313
			E-mail:
			debramerrill@utah.gov
			abachman@utah.gov
(Interested persons may inspect this administrative rule at the above address or at DAR between 8:00 a.m. and 5:00 p.m. on business days.)			
2.	Title of rule or section (catchline):		
	Building Code Appeals Process		
3.	A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require the rule:		
	This rule is enacted under the authority of Subsection 63A-5-103(1)(e) and Section 63A-5-206. In accordance with Subsection 58-56-8(2), Rule 23-12 establishes procedures for the appeal of decisions made by the Building Official in regard to the application and interpretation of building codes.		
4.	A summary of written comments received during and since the last five-year review of the rule from interested persons supporting or opposing the rule:		
	The Division of Facilities Construction and Management (DFCM) and the Utah Building Board have not received written comments, either in support or opposition to Rule R23-12.		
5.	A reasoned justification for continuation of the rule, including reasons why the agency disagrees with comments in opposition to the rule, if any:		
	Continuation of Rule R23-12 is necessary to provide the procedures for the appeal of decisions made by the Building Official in regard to the application and interpretation of building codes. Therefore, this rule should be continued.		
6.	Indexing information -- keywords (maximum of four, in lower case, except for acronyms (e.g., "NASA") or proper nouns (e.g., "Medicaid")):		

appeals	building codes
construction	
7. Attach an RTF document containing the text of this rule (filename):	R023-012.rtf
<p>To the agency: Information requested on this form is required by Section 63-46a-9. Incomplete forms may be returned to the agency for completion, possibly delaying the effective date.</p>	
<p>AGENCY AUTHORIZATION</p>	
Agency head or designee, and title:	D. Gregg Buxton
Date (mm/dd/yyyy):	