Council Agenda Report

Council Meeting
06-08-26
Item 6.A.

To: Mayor Silverstein and the Honorable Members of the City Council

Prepared by: Yolanda Bundy, Community Development Director

Approved by: Joseph D. Irvin, City Manager

Date prepared: May 14, 2026 Meeting date: June 8, 2026

Subject: Building Board of Appeals — Authorization to Advertise Recruitment and Direction on Member Qualification Standards

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RECOMMENDED ACTION: Staff requests City Council direction on the following matters:

1) Board Continuity: Retain or Reconstitute
   Direct staff to either: (a) retain existing members who confirm willingness to serve following staff outreach; or (b) conduct an open public recruitment for some or all seats on the Building Board of Appeals, consistent with Council Policy No. 48 — Opportunity to Serve.

2) Qualification Standards: Retain Current Standard or Adopt a City Policy
   Provide direction on whether to: (a) retain the current Malibu Municipal Code (MMC) Section 15.04.050(A) standard; or (b) adopt a City Council Policy defining the experience and training that would qualify an individual to pass upon matters pertaining to building construction — an administrative action that can be implemented immediately upon Council direction and is not subject to the AB 130 residential building code moratorium (October 1, 2025 – June 1, 2031).

3) Geographic Eligibility: Residency, Malibu Practice, or No Requirement
   Provide direction on whether applicants must: (a) be City of Malibu residents; (b) have worked or practiced professionally within Malibu for a minimum of ten (10) years; or (c) be qualified by experience and training with no geographic requirement, consistent with the current code.

4) Recruitment Outreach
   If recruitment is authorized, direct staff to prepare and publish a Building Board of Appeals Member Application and Recruitment Announcement.

FISCAL IMPACT:
The recruitment process for the Building Board of Appeals will be conducted by existing staff, consistent with the City's standard board and commission recruitment practices. Anticipated costs include public notice publication, printing, and staff time associated with application processing and preparation of appointment materials. These costs are within the Community Development Department's adopted FY 2025-26 operating budget. No additional appropriation is required. No compensation is paid to members of City boards, commissions, or committees.

STRATEGIC PLAN IMPLEMENTATION:
This item relates to the City's adopted strategic planning framework as follows:

Goal 1: Support Community Rebuilding and Long-Term Recovery -- The Building Board of Appeals is a code-required component of the City's building regulatory framework. Ensuring the Council understands the Board's defined and limited role supports transparent governance of the permitting and appeals process as the City manages an elevated volume of fire rebuild applications.

Goal 4: Enhance Organizational Excellence and Accountability — Ensuring the Board is made up of members whose qualifications match the Board's technical scope of authority supports protecting the integrity of construction within the City and also reflects the City's commitment to transparent, merit-based appointment processes.

BACKGROUND:
On May 11, 2026, the City Council was presented with an educational item providing background on the Building Board of Appeals (BBoA). Following discussion, the Council directed staff to return with a follow-up item addressing the current state of the Board and options for filling any vacancies and/or replacing the current members of the BBoA. This report is presented in response to that direction.

The Building Board of Appeals is a body established by, and required under, the California Building Standards Code (Title 24 of the California Code of Regulations), California Building Code Sections 1.8.8.1 and 1.8.8.3, and implemented locally through Malibu Municipal Code Section 15.04.050. The Board's authority is defined and limited by Section 105.1.2 of the Los Angeles County Building Code, Title 26, as adopted by the City without local amendment.

The Board consists of five (5) members appointed by the City Council. The Building Official serves as ex-officio member and Board Secretary. Members are appointed by the City Council and serve at its pleasure with no fixed term expiration. The Board convenes only upon the filing of a formal written appeal of a specific Building Official decision, together with the required filing fee.

The current appointed membership is as follows:

Member Name	Appointed/Reaffirmed	Role	Status
Marissa Coughlan	February 10, 2025	At-Large	Appointed — term indefinite
Joseph M. Girard	February 10, 2025	At-Large	Appointed — term indefinite
Scott Halley	February 10, 2025	At-Large	Appointed — term indefinite
Lynn Heacox	February 10, 2025	At-Large	Appointed — term indefinite
Lisa Niles	February 10, 2025	At-Large	Appointed — term indefinite
Alternate Seat #1	—	Alternate	VACANT
Alternate Seat #2	—	Alternate	VACANT

Members most recently had their appointment reaffirmed by the City Council on February 10, 2025. The Board has not convened since members were originally appointed, as no formal written appeals of Building Official decisions have been filed with the City. At the May 11, 2026 the Council requested a report on the current membership of the Board, asking Staff to reach out and contact the current BBoA members, determine if they were available and still wished to remain on the Board. The Council also wanted to consider whether to open a recruitment to replace current members and/or vacancies on the BBoA to ensure it was constituted of active members with relevant professional qualifications suited to the Board's technical scope, particularly in the context of the City's ongoing fire rebuild activities.

DISCUSSION:

A. Purpose and Scope of the Building Board of Appeals

The Building Board of Appeals serves four statutory functions under MMC Section 15.04.050 and Title 26 Section 105.1.2:

- Hear and decide formal written appeals of any action taken by the Building Official, including decisions on alternate materials, alternative methods, and modifications;

- Determine the suitability of alternate materials and types of construction against the seven-part equivalency standard (quality, strength, effectiveness, fire resistance, durability, safety, and sanitation);

- Provide reasonable interpretations of the Building Code as applied to specific appeals (the Board may not interpret administrative portions of the code except as provided in Section 102 — Unsafe Buildings); and

- Recommend new legislation to the City Council consistent with its technical scope.

The Board does not replace the Planning Commission or City Council, does not have jurisdiction over zoning, land use, or Coastal Act matters, and is expressly prohibited from waiving any code requirement. The Board is a post-determination appellate body: it convenes only when a property owner, design professional, or contractor has received a written Building Official decision and formally appeals that decision in writing.

B. Board Continuity — Retain or Reconstitute

Staff has initiated outreach to the five currently serving members to determine their continued interest in and availability for service. Results of that outreach will be presented at the June 8, 2026 meeting. Council options are:

- Retain existing members — retain all members who confirm continued availability and willingness to serve, and fill only vacant seats through recruitment;

- Full open recruitment — remove the current members and conduct an open public recruitment for all five seats ; or

- Hybrid approach — retain some members who are available and wish to continue serving while simultaneously opening recruitment for any seats determined to be vacated through the outreach process or which the Council wishes to remove due to inability to reach the current member or a desire of the Council to replace any member.

No specific professional qualifications are required of current members—it is left for the Council to decide who best will serve in the role given their background and qualifications and is not rigidly limited to particular professions (or a particular mix of professions and background) as is required in some other jurisdictions. The City has historically received few applications for these positions. The current members of the BBoA, who were appointed in 1997 and reaffirmed February 10, 2025, serve at the pleasure of the City Council and may be replaced or reappointed at any time (after proper notice has been provided)

C. Qualification Standards — Policy Options for Council Direction

The current qualification standard in MMC Section 15.04.050 requires members be "qualified by experience and training to pass upon matters pertaining to building construction." No specific license, discipline, or experience duration is prescribed. AB 130 — Effect on Building Code Amendments (H&S Code §§17958, 17958.5, 17958.7, 18941.5)

While the Council could change this section of Malibu's implementation of the building code to make more specific requirements, it is recommended that the City instead proceed with a policy document specifying preferred qualifications for BBoA members rather than formally amending the City's building code if further direction and specificity is desired. A policy would provide more flexibility if the City receives few applicants for the positions and avoids potential conflict with the current moratorium on changes to the building code.

Traditionally, cities could make amendments to the building code so long as the amendments were more restrictive, and reasonably necessary, because of local climatic, geological, or topographical conditions. However, AB 130, which became effective June 30, 2025, halted state and local agencies from making changes to the provisions of the building code applicable to residential units for the next six years beginning October 1, 2025, and ending June 1, 2031 per Health and Safety Code § 17958(b). There are a few exceptions to the AB 130 moratorium, but they do not directly relate to the type of amendment considered here. Adopting an amendment that runs afoul of the moratorium could lead to a number of problems, including making decisions of the BBoA subject to challenge for violating the moratorium's requirements.

The closest exception comes from Health and Safety Code Section 17958(b)(1) which provides that a city can make changes or modifications to residential building standards if "[t]he changes or modifications are *substantially equivalent* to changes or modifications that were previously filed by the governing body of the city or county and were in effect as of September 30, 2025." (Emphasis added.) The California Building Standards Commission ("CBSC") has interpreted this amendment to apply to "local amendment[s] applicable to residential units being carried forward from a previously filed ordinance (i.e., an ordinance amending the 2022 edition of Title 24) with no material change in regulatory effect to the existing standards."

There are also carve outs for administrative changes—but only if they "exclusively result" in the following:

a) Reductions in time for a local agency to issue a post-entitlement permit.

b) Alterations to a local agency's post-entitlement fee schedule.

c) Modernization of, or adoption of, new permitting platforms and software utilized by the local agency.

d) Reductions in cost of internal operation for a local agency.

e) Establishment, alteration, or removal of local programs related to enforcement of building code violations or complaints alleging building code violations.

A City Council Policy is an administrative governance action — not a building code amendment — and is not subject to AB 130. Some options for policies the Council could adopt include the following:

- **Option A** — Retain the current MMC standard. No change required. Council retains discretion to weigh professional background during application review and interviews. Consistent with comparable jurisdictions, including Newport Beach, Hermosa Beach, and Santa Barbara, all of which use the same broad standard.

- **Option B** — Adopt a City Council Policy establishing preferred disciplines and expertise. A Council Policy is an administrative document — not a building code amendment — and is not subject to AB 130. The Policy would guide but not legally restrict the Council's appointment authority, consistent with the current MMC standard. Recruitment can proceed immediately under the MMC standard while the Policy formalizes the Council's discipline preferences.

- **Option C** — Initiate an amendment to MMC Section 15.04.050 to codify specific discipline and experience requirements. This is a legislative action requiring public notice, hearing, and ordinance adoption. As discussed above, based on current staff analysis, this approach appears subject to the AB 130 residential building code moratorium through June 1, 2031.

D. Professional Disciplines and Expertise — Objective Overview

The following overview identifies the professional disciplines most aligned with the Building Board of Appeals' statutory functions. This information is provided objectively for Council consideration in evaluating qualification preferences. No recommendation is made as to the best composition of disciplines/backgrounds/experience.

Discipline	Alignment with BBoA Functions	Example Credentials
Building Code / Building Official	Core function: evaluating whether a Building Official decision correctly applied the adopted code. Direct code expertise enables accurate, legally defensible appellate review on any appeal type.	ICC Certified Building Official (CBO); ICC Certified Plans Examiner; CALBO member; California-licensed Building Official with active

		experience
Structural Engineering	Structural appeals are among the most technically demanding: foundation disputes, retaining wall design, seismic design, hillside structural systems. Malibu's terrain makes structural appeals frequent and consequential.	California PE (Civil) or SE (Structural); SEAOC member; minimum 5 years residential or hillside structural design relevant to Malibu conditions
Geotechnical Engineering	Malibu's geology — landslide zones, expansive soils, coastal bluff, steep hillsides — means geotechnical standards are regularly at issue in Building Official determinations on foundations, grading, and site stability.	California PE (Geotechnical or Civil with geotech experience); minimum 5 years practice in hillside or coastal Southern California
Architecture	Alternate materials and methods determinations, assembly equivalency evaluations, and code interpretation appeals frequently require architectural design judgment about material performance and code intent.	California-licensed Architect (AIA); minimum 5 years residential or WUI construction experience; Malibu or coastal project experience preferred
General Contracting	Practical knowledge of how materials and methods actually perform in the field informs equivalency evaluations. A contractor on the board evaluates whether an alternate method is achievable in practice, not just on paper.	California CSLB Class B General Contractor; active or recent experience with code-compliant construction in Malibu or WUI/coastal environments; Chapter 7A wildfire construction knowledge preferred
Construction Law	The board conducts quasi-judicial proceedings: evaluating evidence, applying a legal standard, and producing a written decision subject to judicial review. Legal expertise supports procedural integrity and protects the City.	California-licensed attorney; active practice in construction law, building code, administrative law, or land use; quasi-judicial proceeding experience preferred
Fire Protection Engineering	Post-fire WUI rebuilds raise fire-resistance questions: assembly equivalency, sprinkler system design, Chapter 7A compliance, and alternate fire-resistant materials. This expertise directly	California PE (Fire Protection); NICET-certified fire protection engineer; California CSLB C-16 licensed fire protection contractor

	supports the Board's equivalency determination authority.	

A multi-disciplinary board brings complementary expertise to each appeal. A structural dispute benefits from both an engineer who evaluates the calculations and the building official who evaluates the code application. An alternate materials request benefits from an architect who assesses equivalency and a contractor who evaluates practical buildability. Diverse expertise supports more complete deliberation, reduces the risk of single-perspective error, and produces written decisions with stronger legal defensibility. The Board's authority is specifically designed to complement — not replace — the Building Official; a board composed of professionals across multiple disciplines reflects that complementary role most effectively.

E. Geographic Eligibility — Residency or Malibu Practice

The current MMC standard imposes no residency requirement. Members need only be qualified by experience and training and must not be City employees. Given Malibu's population of approximately 12,000 and the specialized disciplines appropriate for this Board, the Council may wish to consider the following options:

- No geographic requirement (current standard) — the broadest applicant pool. Appropriate for a technical board whose function is expert code review rather than community representation. Newport Beach and Hermosa Beach impose no residency requirement on their boards of appeals. This approach maximizes access to qualified professionals regardless of where they live.

- City of Malibu residency required — limits the applicant pool to City residents. Given Malibu's small population and the specialized disciplines appropriate for this Board, this restriction may significantly reduce the number of qualified applicants available across all needed disciplines simultaneously.

- Malibu professional practice — 10-year minimum preferred — applicants need not reside in Malibu but have worked or practiced professionally within the City for a minimum of ten (10) years. This approach connects Board members to Malibu's specific regulatory environment — its geology, coastal conditions, WUI characteristics, Local Coastal Program, and permitting history — without restricting the applicant pool to residents only. It ensures that Board members have first-hand experience with the types of projects and disputes that arise in Malibu specifically. This option is not currently codified in any comparable jurisdiction reviewed and would represent a Malibu-specific standard.

F. Jurisdiction Comparison — Qualification Standards

The following table, consistent with the comparison presented in the May 11, 2026 Staff Report, provides reference for Council consideration:

Jurisdiction	Members	Code-Required Qualifications	Terms
Los Angeles County (Title 26 §105.1.1)	5	1 practicing architect; 1 licensed general contractor; 1 attorney; 2 structural engineers — each with minimum 10 years of experience. Members compensated per meeting attended.	At pleasure of Board of Supervisors
City of South Pasadena (Ch. 9 §105.1)	5	1 practicing architect; 1 competent builder; 1 attorney; 2 civil or structural engineers — each with minimum 10 years of experience.	At pleasure of City Council
City of Santa Barbara (SBMC §15)	Up to 7	Qualified by experience and training. Hears both building code and fire code appeals. Minimum 2 members with disabilities required for accessibility appeals. Established 1983; active meeting schedule.	4-year terms
City of Newport Beach (NBMC §15.80.010)	7	Qualified by experience and training in building construction, building service equipment, fire protection and fire protection equipment. Building Official and Fire Marshal serve as non-voting ex-officio members. No City employees may serve.	4-year staggered terms
City of Hermosa Beach (HBMC §15.04.020)	5	Qualified by experience and training to pass upon matters pertaining to building construction. No residency requirement. Building Official serves as ex-officio non-voting member.	No term limit; at pleasure of City Council
City of Malibu — Current (MMC §15.04.050)	5	Qualified by experience and training to pass upon matters pertaining to building construction. No specific professional license, discipline, or years of experience required. Members must not be City officers or employees.	Indefinite; at pleasure of City Council

Staff notes that jurisdictions with the most specific qualification requirements — LA County and South Pasadena — mirror the disciplines most directly relevant to the Board's core functions: structural engineering (appeals involving structural systems), architecture (alternate materials and construction methods), general contracting (practical code application), and law (procedural and interpretive matters). Council may wish to consider whether Malibu's ongoing fire rebuild workload, which generates precisely these types of technical disputes, warrants adopting a more specific standard.

G. Proposed Recruitment Process

The Member Application will be consistent with the City's standard board and commission application form and will additionally request: (1) the applicant's professional license number and issuing authority, if applicable; (2) a brief description of the applicant's experience with California building codes, construction, or related technical disciplines; and (3) a statement of interest describing how the applicant's background relates to the Board's statutory functions.

Outreach will be directed to professional associations, including the American Institute of Architects (AIA Los Angeles / Channel Islands), the Structural Engineers Association of California (SEAOC), the California Building Officials Association (CALBO), the California Contractors State License Board, and the Los Angeles County Bar Association Construction Law Section, in addition to the City's standard public notice channels.

H. Recruitment and Appointment Requirements

All recruitment and appointment activities shall be conducted consistent with City policies and applicable laws. The following requirements apply:

- Individuals may serve on only one City board, commission, or committee at any given time;
- No compensation is paid for service on any City board, commission, or committee;
- Active City Councilmembers may not be appointed as a member of any City board, commission, or committee;
- Members are appointed by the City Council and serve at its pleasure; and
- Vacancies shall be publicly advertised and a minimum application period observed prior to appointment.

Note on Existing Members: Current members were originally appointed in 1997 and reaffirmed by City Council on February 10, 2025. Nothing in this recruitment precludes existing members from reapplying through the open recruitment process. The City Council retains full authority to retain, replace, or supplement existing membership upon conclusion of the recruitment period. Any changes to membership will be made by City Council action.

SUMMARY

The Building Board of Appeals is a code-required appellate body whose role is particularly relevant in the context of the City's ongoing fire rebuild effort. At its May 11, 2026 meeting, the City Council directed staff to return with a follow-up item to address the Board's recruitment and qualification standards. Staff recommends authorizing an

open public recruitment, directing outreach to qualified building construction professionals, and providing direction on whether to initiate a concurrent amendment to MMC Section 15.04.050 to codify more specific discipline and experience requirements.

Reconstituting the Board with actively practicing, professionally qualified members ensures that when an appeal is filed — by a property owner, licensed design professional, or contractor — the Board is prepared to convene promptly and resolve the matter based on expert technical review consistent with the adopted California Building Code.

ATTACHMENTS

1. Malibu Municipal Code Section 15.04.050(A) (Building Board of Appeals)
2. Council Policy No. 48 — Opportunity to Serve (adopted February 25, 2013)
3. California Building Code Sections 1.8.8.1 and 1.8.8.3 (State Mandate) and County of Los Angeles Building Code Section 105.1.2

BUILDING BOARD OF APPEALS
MALIBU MUNICIPAL CODE SECTIONS

MMC Section 15.04.020 - Definitions.
"Board of appeals" means the board of appeals established by Section 105 of the Malibu building code.

MMC 15.04.050 - Amendments to Building Code
Notwithstanding the provisions of Section 15.04.010 of this chapter, Title 26 of the Los Angeles County Code is hereby amended to read as follows:

A. Section 105.1.1 is hereby amended to read as follows:

105.1.1 General. Unless otherwise provided for below, in order to conduct the hearings provided for in this code and also to determine the suitability of alternate materials and types of construction and to provide for reasonable interpretations of the provisions of this code, there shall be a building board of appeals consisting of five members who are qualified by experience and training to pass upon matters pertaining to building construction. The building official shall be an *ex officio*-member and shall act as secretary to the board. The members of the building board of appeals shall be appointed by the City Council and shall hold office at its pleasure. The building board of appeals shall adopt reasonable rules and regulations for conducting its investigations. The board shall establish that the approval for alternate materials and the modifications granted for individual cases are in conformity with the intent and purpose of this code and that such alternate material, modification or method of work offered is at least the equivalent of that prescribed in this code in quality, strength, effectiveness, fire resistance, durability, safety and sanitation and does not lessen any fire-protection requirements or any degree of structural integrity. The building board of appeals shall document all decisions and findings in writing to the building official with a duplicate copy to the applicant, and the board may recommend to the City Council such new legislation as is consistent therewith.

Attachment 1

City of Malibu

City Council Policy

Policy #48

Title: Opportunity to Serve

Purpose: To give all residents the opportunity to serve the community through active participation on the City's commissions, committees and boards.

Policy Statement:

When making appointments to any of the City's commissions, committees and boards, the City Council shall allow as many residents as possible the opportunity to serve by limiting an individual's service to one commission, committee or board at a time.

Implementation:

Members of the City Council make appointments for individuals to serve the Malibu community through participation on the City's commissions, committees and boards. Term of service for each appointment is determined by the Malibu Municipal Code or City Council Resolution that created and established each advisory body.

In order to give all residents the opportunity to serve, an individual shall be limited to serving on only one commission, committee or board at a time. Should a Councilmember wish to appoint an individual who is currently serving as a member of another commission, committee or board, that individual would be required to resign their current position prior to being considered for the new appointment.

Date Adopted:

February 25, 2013

Board of Appeals

California Building Code Section 1.8.8 Appeals Board

Section 1.8.8 Appeals Board
California Building Code 2025 (Vol 1 & 2) > Chapter 1 Administration > Section 1.8 Department of Housing and Community Development > Section 1.8.8 Appeals Board

1.8.8.1 General
Every city, county, or city and county shall establish a process to hear and decide appeals of orders, decisions and determinations made by the enforcing agency relative to the application and interpretation of this code and other regulations governing construction, use, maintenance and change of occupancy. The governing body of any city, county, or city and county may establish a local appeals board and a housing appeals board to serve this purpose. Members of the appeals board(s) shall not be employees of the enforcing agency and shall be knowledgeable in the applicable building codes, regulations and ordinances as determined by the governing body of the city, county, or city and county.

Where no such appeals boards or agencies have been established, the governing body of the city, county, or city and county shall serve as the local appeals board or housing appeals board as specified in California Health and Safety Code Sections 17920.5 and 17920.6.

1.8.8.2 Definitions
The following terms shall for the purposes of this section have the meaning shown.

Housing Appeals Board
The board or agency of a city, county, or city and county which is authorized by the governing body of the city, county, or city and county to hear appeals regarding the requirements of the city, county, or city and county relating to the use, maintenance and change of occupancy of buildings and structures, including requirements governing alteration, additions, repair, demolition and moving. In any area in which there is no such board or agency, "Housing appeals board" means the local appeals board having jurisdiction over the area.

Local Appeals Board
The board or agency of a city, county, or city and county which is authorized by the governing body of the city, county, or city and county to hear appeals regarding the building requirements of the city, county, or city and county. In any area in which there is no such board or agency, "Local appeals board" means the governing body of the city, county, or city and county having jurisdiction over the area.

1.8.8.3 Appeals
Except as otherwise provided in law, any person, firm or corporation adversely affected by a decision, order or determination by a city, county, or city and county relating to the application of building standards published in the California Building Standards Code, or any other applicable rule or regulation adopted by the Department of Housing and Community Development, or any lawfully enacted ordinance by a city, county, or city and county, may appeal the issue for resolution to the local appeals board or housing appeals board as appropriate.

The local appeals board shall hear appeals relating to new building construction and the housing appeals board shall hear appeals relating to existing buildings.

105.1.2 Scope of Authority

Except as provided below, the Building Board of Appeals shall have the authority to hear appeals regarding any action of the Building Official, including actions taken by the Building Official in connection with Section 104.2.7 or Section 104.2.8. The Building Board of Appeals shall also be authorized to recommend to the Board of Supervisors such new legislation as it deems appropriate.

The Building Board of Appeals shall have no authority relative to interpretation of the administrative portions of this Code, other than Section 102, nor shall the Board be empowered to waive requirements of this Code. The Building Board of Appeals shall document all decisions and findings in writing to the Building Official with a duplicate copy to the applicant.