

**CHAPTER 2-02
BUILDING AND FIRE CODE BOARD OF APPEALS**

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2-02-001-0001 GENERAL

A. In order to hear and decide appeals of orders, decisions or determinations made by the building official relative to the application and interpretation of this code, there shall be and is hereby created a board of appeals. The Board of Appeals shall be appointed by the City Council and shall hold office at its pleasure.

B. Authority.

1. An application for an appeal shall be based on a claim that the true intent of the applicable code or the rules legally adopted thereunder have been incorrectly interpreted; the provisions of the applicable code do not fully apply or an equally good or better form of construction is proposed. The Board has no authority relative to interpretation of the administrative provisions of the applicable code nor shall the board be empowered to waive its requirements.

C. Application.

1. The application for appeal shall be filed on a form obtained from the code official within ten (10) days after the notice was served, and shall be accompanied by a non-refundable fee as established in the City's fee schedule. (Ord. 2011-31, 01/03/2012)

2-02-001-0002 MEMBERSHIP OF BOARD

A. The Board of Appeals shall consist of seven (7) individuals, serving three (3) year staggered terms, appointed by the Council who are qualified by experience and training

to pass upon matters pertaining to building construction and pertinent matters of the Fire Code, Chapter 5-02.

B. The Building Official and Fire Marshal shall be ex officio members of said Board but shall have no vote on any matter before the Board.

C. A quorum shall consist of four (4) voting members of the Board.

D. Citizen members of the Board may be removed by the Mayor and Council for inefficiency, neglect of duty or malfeasance in office or in accordance with the Board and Commission Members' Rules and Operations Manual adopted by resolution of the City Council. (Ord. 2011-31, 01/03/2012; Ord. 2014-28, Amended, 11/18/2014; Ord. 2016-30, Amended, 07/05/2016)

2-02-001-0003 OFFICERS

The Board shall annually select one of its voting members to serve as Chairperson and one voting member to serve as Vice-Chair. (Ord. 2011-31, 01/03/2012)

2-02-001-0004 SECRETARY

The Community Development Director shall designate a qualified clerk to serve as secretary of the Board. The secretary shall file a detailed record of all proceedings in the office of the City Clerk. (Ord. 2011-31, 01/03/2012)

2-02-001-0005 LEGAL COUNSEL

The City Attorney's Office shall make available legal counsel to the Board to provide members with general legal advice concerning matters before them for consideration. (Ord. 2011-31, 01/03/2012)

2-02-001-0006 MEETINGS/HEARINGS

All hearings before the board shall be open to the public. The appellant, the appellant's representative, the code official(s) and any person whose interest are affected shall be given an opportunity to be heard.

A. The Board shall meet upon notice from the Chairperson or Vice-Chairperson within twenty (20) days of the filing of an appeal.

B. A member shall not hear an appeal in which that member has a personal, professional or financial interest.

C. Hearing Procedures:

1. The Board shall adopt and make available to the public through the ex-officio building official procedures under which a hearing will be conducted. The procedures shall not require strict compliance with strict rules of evidence, but shall mandate that only relevant information be received. (Ord. 2011-31, 01/03/2012)

2-02-001-0007 RULES AND PROCEDURES

Official business shall be conducted pursuant to the Board of Appeals' adopted hearing procedures and the Board and Commission Members' Rules and Operations Manual adopted by Resolution No. 2014-37 of the City Council and in accordance with meeting procedures, if any, adopted by the Commission insofar as they are not in conflict with the Board and Commission Members' Rules and Operations Manual. In the event of any such conflict, the provisions of the Board and Commission Members' Rules and Operations Manual shall prevail. (Ord. 2011-31, 01/03/2012; Ord. 2014-28, Amended, 11/18/2014)

2-02-001-0008 STAY OF APPEAL

During the pendency of the request to the Board, the decision appealed will be stayed unless the fire marshal or building officer determines that a stay would create or allow the continuance of a substantial hazard threatening the lives or property of persons other than the appellant. (Ord. 2011-31, 01/03/2012)

2-02-001-0009 BOARD DECISION

- A. The Board shall affirm, modify or reverse the decision of the code official by affirmative votes of the majority present, but not less than three, shall be required.
- B. The decision of the Board shall be by written decision issued no later than 30 (thirty) days following the last hearing. Certified copies shall be furnished by the appellant and to the code official. (Ord. 2011-31, 01/03/2012)