

CITY OF FLAGSTAFF STAFF SUMMARY REPORT

To: The Honorable Mayor and Council

From: Michael Scheu, Building Official
Community Development
213-2620

Date: December 6, 2011

Meeting Date: December 20, 2011: First Reading
January 3, 2011: Second Reading




TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF AMENDING TITLE 2, BOARDS AND COMMISSIONS, BY ADDING CHAPTER 2-02, BUILDING AND FIRE CODE BOARD OF APPEALS; AND REPEALING RESOLUTIONS NOS. 1565 AND 2001-42 RELATED TO THE CREATION OF THE BUILDING AND FIRE CODE BOARD OF APPEALS AND THE TERM LIMITS OF ITS MEMBERS.

RECOMMENDED ACTION:

December 20, 2011: Read Ordinance N. 2011-31 for the first time by title only.
January 3, 2011: Adopt Ordinance No. 2011-31

ACTION SUMMARY:

- Policy Decision or Reason for Action: Adoption of this Ordinance will bring the Building and Fire Code Board of Appeals within Title 2 of City Code which in turn will make access to the Board more accessible for the public and staff.
 - Decision Points: No subsidiary decisions must be made prior to considering this matter.
- Financial Impact: None
- Connection to Council Goal: Effective governance
- Has there been a previous Council decision on this topic?: In 1988 the City Council adopted Resolution No. 1565, which created a Board of Building and Fire Code of Appeals. However, since the board was never codified in the Flagstaff City Code, nor referenced in the International Building Codes, those individuals seeking to appeal a decision of the building official are not able to readily find the rules governing its creation, powers and procedures.
- Options:
 1. Approve adding the Building and Fire Code Board of Appeals to Title 2 of City Code,
 2. Leave the Building and Fire Code Board of Appeals within the International Codes.


 Division Director (Acknowledgment that all reviews have
 been completed and required approvals initialed below.)

ADDITIONAL INFORMATION:

Background/History:

The Building & Fire Code Board of Appeals was formed due to a requirement in the Building Codes to have a mechanism for a citizen to appeal an interpretation of a code. The proposed Ordinance will include the Building & Fire Code Board of Appeals in Title 2 of the City Code along with all the recognized Boards and Commissions of the City.

Key Considerations: This Ordinance more clearly defines the Building and Fire Code Board of Appeals in regards to membership, alternate members in the case of a disqualified or absent regular member, length of terms and the stay of an appeal.

Community Benefits and Considerations: The community benefits by having a Building & Fire Code Board of Appeals as a means for the public and the contracting community to have a means whereby they can dispute a code interpretation by an inspector or the Building Official.

Community Involvement: The Building & Fire Code Board of Appeals are volunteers that are professionals that have experience in various areas in the construction and design fields of the building industry.

Financial Implications: None

Options and Alternatives: See Options on Page 1.

Attachments: No

INITIALS	RESPONSIBILITY	DATE	INITIALS	RESPONSIBILITY	DATE
	BIDS/PURCHASES			FINANCE/BUDGET	
	GRANTS			CONTRACTS	
JES	LEGAL	12/13/2011		IGAS	
	REAL ESTATE				

DATE OF COUNCIL APPROVAL: _____

ORDINANCE NO. 2011-31

AN ORDINANCE AMENDING TITLE 2, BOARDS AND COMMISSIONS, BY ADDING CHAPTER 2-02, BUILDING AND FIRE CODE BOARD OF APPEALS; AMENDING TITLE 4, BUILDING REGULATIONS, CHAPTER 4-01, ADMINISTRATIVE ENACTMENTS, SECTION 4-01-001-0005, AMENDMENTS, ADDITIONS, AND DELETIONS, BY ADDING A PROVISION RELATED TO THE BUILDING AND FIRE CODE BOARD OF APPEALS; AMENDING TITLE 5, FIRE CODE, CHAPTER 5-02, FIRE CODE, SECTION 5-02-001, FIRE CODE, SUBSECTION 5-02-001-0005, AMENDMENTS, BY ADDING A PROVISION RELATED TO THE BUILDING AND FIRE CODE BOARD OF APPEALS; AND REPEALING RESOLUTIONS NOS. 1565 AND 2001-42 RELATED TO THE CREATION AND TERM LIMITS OF THE BUILDING AND FIRE CODE BOARD OF APPEALS.

WHEREAS, the City of Flagstaff has previously adopted the International Building Code, 2006 Edition, the International Residential Code, 2006 Edition, the International Plumbing Code, 2006 Edition, national Electrical Code, 2011 Edition, the International Mechanical Code, 2006 Edition, the International Fuel Gas Code, 2006 Edition, the International Existing Building Code, 2006 Edition and the International Energy Conservation Code, 2006 Edition, all of which have been codified in Title 4, Building Regulations, of the Flagstaff City Code (the "International Building Codes"); and

WHEREAS, each of the International Building Codes contains a section devoted to the creation, powers and duties of a Board of Appeals, invested with the authority to hear and decide appeals of orders, decisions and determinations of the City official charged with enforcing the respective International Building Code; and

WHEREAS, in order to create an efficient and expeditious means of processing and adjudicating appeals of decisions from the City's building officials it is necessary to consolidate those provisions of the International Building Codes related to a Board of Appeals and relocate them in a location readily accessible to staff and the public; and

WHEREAS, to ensure the public health, safety and welfare as affected by building construction and to secure safety to life and property from all hazards incident to the occupancy of buildings, structures and premises it is necessary to create a Building and Fire Code Board of Appeals invested with the authority to heard and decide appeals of orders and decisions of the City's building officials, and amend those sections of the International Building Codes governing the creation and authority of a Board of Appeals;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

SECTION 1. Flagstaff City Code, Title 2, Boards and Commissions, is hereby amended by adding the following chapter:

CHAPTER 2-02 BUILDING AND FIRE CODE BOARD OF APPEALS**Section 2-01-001-0001 General**

- A. In order to hear and decide appeals of orders, decisions or determinations made by the building official relative 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.

Section 2-02-001-0002 Membership of Board.

- A. The Board of Appeals shall consist of five individuals 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. In addition to the five regular members, the City Council shall appoint two alternate members who shall be called by the Board Chairperson or Vice-Chair to hear appeals during the absence or disqualification of a member.
1. Alternate members shall be appointed to five year terms, or until a successor has been appointed
 2. An alternate members shall be counted toward a quorum in the absence of a quorum of regular members.
 3. Alternate members acting in the absence of a regular member shall be accorded full discussion, deliberation, and voting rights.
- C. The City Council shall appoint two regular members and one alternate to five-year terms; two regular members to four -year terms, and one regular member and one alternate to three-year terms. After the initial appointment all terms thereafter will be for five years.

- D. 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.
- E. A quorum shall be more than fifty percent (50%) of the voting membership of the Board.
- F. 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' Handbook adopted by resolution of the City Council.

Section 2-01-001-0003 Officers

The Board shall annually select one of its voting members to serve as Chairperson and one voting member to serve as Vice-Chair.

Section 2-01-001-0004 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.

Section 2-01-001-0005 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.

Section 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.

Section 2-02-001-0007 Rules and Procedures

- A. The Board shall adopt hearing procedures not inconsistent with State law, the Flagstaff City Charter, and the City of Flagstaff Board and Commission Members' Handbook.

- B. All other rules of procedure shall be established by the members so long as said rules are consistent with State law, the City Charter, the Board and Commission Members' Handbook, and this chapter.
- C. Official business shall be conducted pursuant to the Board of Appeals' adopted hearing procedures and the Board and Commission Members' Handbook adopted by Resolution No. 2005-117 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' Handbook. In the event of any such conflict, the provisions of the Board and Commission Members' Handbook shall prevail.

Section 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.

Section 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.

SECTION 2. Resolution No. 1565, a resolution creating a Board of Building and Fire Codes Appeals, and Resolution No. 2001-42, a resolution amending the term limits of the Building and Fire Code Board of Appeals, is hereby repealed.

SECTION 3: Title 4, Building Regulations, Chapter 4-01, Administrative Amendments, Section 4-01-001-0005, Amendments, Additions and Deletions, is amended by adding the following provision:

Amend Section 112 IRC, Section 112 IBC, Section 112 IPC, Section 112 NEC, Section 112 IMC, Section 112 IFGC, Section 112 IEBC and Section 112 IECC as follows:

The Building and Fire Code Board of Appeals created in Chapter 2-02 of the Flagstaff City Code shall hear and decide appeals of orders, decisions or determinations made by the building official relative to the application and interpretation of this code.

SECTION 4: Title 5, Fire Code, Chapter 5-02, Fire Code, Section 5-02-001, Fire Code, Subsection 5-02-001-0005, Amendments, is amended by adding the following provision:

Amend Section 108, Board of Appeals, as follows:

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The Building and Fire Code Board of Appeals created in Chapter 2-02 of the Flagstaff City Code shall hear and decide appeals of orders, decisions or determinations made by the fire official relative to the application and interpretation of this code.

SECTION 5: That the City Clerk be authorized to correct typographical and grammatical errors, as well as errors of wording and punctuation, as necessary; and that the City Clerk be authorized to make formatting changes needed for purposes of clarity and form, if required, to be consistent with Flagstaff City Code.

PASSED AND ADOPTED by the City Council and approved by the Mayor of the City of Flagstaff this _____ day of _____, 2011.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:



CITY ATTORNEY