

PUBLIC SAFETY COMMITTEE

11-057-0

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING SECTION 10-5 OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO THE BUILDING APPEAL BOARD.

CITY PROPOSAL:

The city of Duluth does ordain:

Section 1. That Section 10-5 of the Duluth City Code, 1959, as amended, be amended to read as follows:

Sec. 10-5. Building appeal board.

(a) There is hereby established a building appeal board, which shall hear and determine appeals under the state building and fire codes and Duluth Housing Code. Such board shall consist of 12 members who shall be appointed by the mayor, subject to the approval of the city council and who shall serve without compensation. The Duluth fire chief and building official shall be appointed as ex officio members of the board. The building official shall have no vote on any matter before the board and shall act as secretary of the board. One member of the board shall work in the area of finance; one member shall be a registered architect; one member shall be a registered engineer working in the area of building construction design; one member shall be engaged in the business of residential building construction; one member shall be engaged in the business of commercial building construction; one member shall work in the area of building materials supply; one member shall be a member of a building trade union; one member shall be a realtor or real estate manager; and two members shall be appointed from the general citizenry of the city of Duluth. Of the first persons appointed for membership on the board, four shall be appointed for three years, four shall be appointed for two years, and three shall be appointed for one year. Thereafter, all appointments shall be

for a term of three years, except that vacancies caused by death, resignation or otherwise may be filled for the remaining unexpired term;

(b) Within 30 days after the initial appointments, the board shall meet and elect a chairman and vice chairman. Thereafter, the board shall meet at stated intervals fixed by resolution of the board, or at the call of the chairman or of any three members of the board. The board may adopt reasonable rules and regulations for conducting its investigations and hearings;

(c) The board shall have jurisdiction to perform the following functions:

(1) To hear appeals from decisions made by the building official interpreting the State Building Code where such interpretation involves points not clearly covered by said Code, the appropriateness of alternate methods of construction, or the appropriateness of the use of alternate materials;

(2) To hear appeals from decisions made by the building official in enforcing or interpreting the Duluth Housing Code, Chapter 29A, of the Duluth City Code;

(3) To hear appeals from decisions of the fire chief which arise under Chapter 21 of the Duluth City Code;

(4) To hear appeals from an order of the building official which applies Article II or III of Chapter 10 of Duluth City Code, as amended, or its successor, which includes orders for demolition or other decisions under Article II or III of Chapter 10, Duluth City Code;

(d) Any person owner or occupant who wishes to appeal a decision of the building official or fire marshal shall serve written notice of appeal upon the building official within 15 days after receiving notice of such decision, ~~which appeal shall be~~

~~accompanied by a fee of \$120 and pay the appeal fee. The appeal fee shall be set in accordance with Section 31-6(a) of this Code.~~ The notice of appeal shall contain a complete statement of the matter in controversy and relief requested. If the appeal is from a refusal to grant a permit authorizing the use of an alternate material or method of construction, the notice of appeal shall contain a guarantee of payment of all expenses of any tests made or ordered by the board. If the appeal is from a decision of the fire chief, the building official shall forward a copy of the notice of appeal to the fire chief. The building official shall notify the appellant of the time and place of the hearing. If the appellant withdraws his or her appeal in writing prior to the date and time set therefore, the building official shall refund the aforesaid fee. At the hearing, the board shall hear all relevant evidence and arguments. After due deliberation, the board shall render its decision in writing and notify the appellant of its decision by ~~certified~~ U.S. mail, electronic means or personal service. Decisions involving the State Building Code shall be mailed to the state building inspector within 15 days after they are rendered. The building official shall keep an indexed record of decisions of the board. If the board grants an appellant an extension of time to do an act, then, at the next meeting after expiration of that period of time, the matter shall be set on the meeting agenda for the board's review and action;

(e) In making its decisions, the board shall use the following criteria:

(1) Building code appeals. The board shall approve alternate materials or methods of construction only if reasonable proof is presented that such material or method is at least equivalent to State Building Code standards in quality, strength,

effectiveness, durability, fire resistance and safety;

(2) Housing code appeals and appeals of demolition or other orders. The board may remedy any error it has found the building official has made in the interpretation of the housing code or of Article II or III of Chapter 10, Duluth City Code, or their successors. The board may also grant such relief as it deems reasonable from strict compliance with each provision of these parts of Duluth City Code, but no relief shall be granted unless it is found that:

(A) There is substantial compliance with the provisions of the Code;

(B) No detriment to public health or safety will result from granting such relief;

(C) The intent of the Code is not compromised;

(D) The relief granted will not result in increased cost expense to the city;

(3) Variances from the minimum requirements of the fire code may be recommended to the state fire marshal only if:

(A) There is substantial compliance with the provisions of the fire code;

(B) The safety of the building occupants and general public will not be jeopardized;

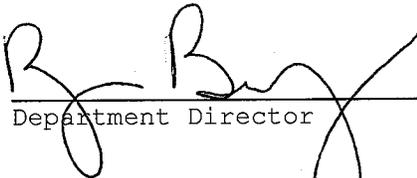
(C) Undue hardship will result to the applicant if relief is not granted;

(f) Any person owner or occupant aggrieved by a decision of the board which involves a housing code matter, except a demolition matter under Section 10-3 of this Code, or its successor, may appeal such decision to the city council by filing a notice of appeal with the building official within 15 days after receiving notice of the board's decision. Such notice of appeal shall be addressed to the

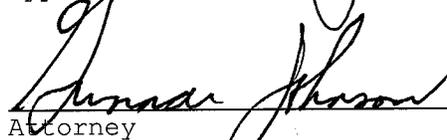
city council and shall state the grounds upon which the appeal is taken. The filing of a notice of appeal shall stay all proceedings in furtherance of the decision appealed from. The building official shall file all appeal notices with the city council. The city council shall hear the appeal within 30 days after the notice of appeal is filed and shall affirm, modify or reverse the decision of the board. The board's decision on demolition orders or any matter arising under Section 10-3 of this Code, or its successor, shall be appealed to the appellate courts in the manner set out in law and the rules of civil procedure pursuant to Minnesota Statutes Section 606.01.

Section 2. That this ordinance shall take effect 30 days after its passage and publication.

Approved:

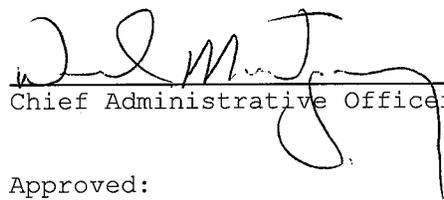
  
\_\_\_\_\_  
Department Director

Approved as to form:

  
\_\_\_\_\_  
Attorney

BS/ATTY    TLZ:dma    11/04/2011

Approved for presentation to council:

  
\_\_\_\_\_  
Chief Administrative Officer

Approved:

  
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Auditor

STATEMENT OF PURPOSE: The purpose of this ordinance amendment is to eliminate the fee amount set forth for the appeal fee. This fee amount will be established in the fee resolution adopted annually by the City Council. Also, changes are made so that the code is consistent with the State Building Code and statutes.