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ORDINANCE NO: 15962

AN ORDINANCE AMENDING TITLE 2 (ADMINISTRATION AND PERSONNEL) OF THE EL PASO CITY CODE, BY REVISING CHAPTER 2.30 (BUILDING BOARD OF APPEALS), TO INCORPORATE THE RESPONSIBILITIES OF THE ELECTRICAL BOARD OF APPEALS (CODIFIED CURRENTLY AS CHAPTER 2.34), TO INCORPORATE THE RESPONSIBILITIES OF THE PLUMBING / HVAC BOARD (CODIFIED CURRENTLY AS CHAPTER 2.32), AND TO MAKE SIGNIFICANT CHANGES TO THE BOARD.

WHEREAS, The City Council of the City of El Paso established the Building Board of Appeals, the Electrical Board of Appeals, and the Plumbing / HVAC Board of Appeals to hear and decide appeals of decisions by the Director for Building Permits and Inspections and the Fire Chief, and to grant variances to the requirements of the codes; and

WHEREAS, the City Council has proposed amending the current appeals system to create a viable Building Board of Appeals; and

WHEREAS, the City Council created the Building and Zoning Advisory Committee (BZAC) to, in part, undertake a major revision to the Building Codes of the City, including the Building and Construction Administrative Code; and

WHEREAS, the Department of Building Permits and Inspections, the Building and Zoning Advisory Committee, the Development Coordinating Committee, and the City Plan Commission have favorably recommended consolidating the Building Board of Appeals, the Electrical Board of Appeals, and the Plumbing / HVAC Board of Appeals,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

1. That Title 2 (ADMINISTRATION AND PERSONNEL), shall be and hereby is amended by revising Chapter 2.30 (Building Board of Appeals) to read as follows:

CHAPTER 2.30

BUILDING BOARD OF APPEALS

2.30.010 Purpose.

The purpose of this Chapter is to provide for reasonable due process of law through appeal of determinations by City officials and requests for modifications from the code requirements for specific projects, without further appeal to the City Council.

2.30.020 Appointment.
There is established a board of appeals to be called the Building Board of Appeals. The Board shall consist of nine regular members and nine alternate members. Members shall conform to the categories listed in Section 2.30.030. Each City Council Representative and the Mayor shall nominate one regular member and one alternate member to the Board, all of whom shall be appointed by the City Council. Priority for consideration of each nominee in each category shall be based on the date and time the nomination is received by the City Clerk for posting on the City Council agenda. Vacancies shall be filled by City Council appointment in the same manner in which initial appointments are made.

2.30.030 Membership and Terms.
A. The Board shall consist of one registered architect, one general commercial contractor, one registered professional civil or structural engineer, one member of the fire prevention industry, one home builder registered with the Texas Residential Construction Commission, one master electrician, one master plumber, one HVAC contractor, and one registered professional electrical or mechanical engineer. All members shall be actively engaged in their discipline in the City of El Paso at the time of their appointment. Alternate members to the Board shall have the same requirements as the Board members.

B. The terms of office for regular members and alternate members shall be two years and shall be staggered as follows: The terms of all new Board members shall begin on the first day of January, 2005. The terms for the four (4) regular members nominated by the City Representatives from Districts #2, 4, 5 and the Mayor, and the five (5) alternate members nominated by the City Representatives from Districts #1,3,6,7, and 8 shall expire on the last day of December in odd-numbered years. The terms for the five (5) regular members nominated by the City Representatives from Districts #1, 3, 6, 7 and 8, and the four (4) alternate members nominated by the City Representatives from Districts #2, 4, 5 and the Mayor shall expire on the last day of December in even-numbered years. Terms shall be limited as described in Section 2.04.050. Hold-over of members as established in Section 2.04.040 shall not apply to this Board.

2.30.040 Quorum and voting.
The number of members of the Board required to constitute a quorum shall be equal to a majority of the number of currently appointed regular members. In varying the application of any provision of the code or in modifying an order of any administrative official, affirmative votes of a majority of at least fifty-one percent of the members present but not less than three (3) affirmative votes shall be required. A Board member shall not discuss or vote on any case in which that member has a personal interest or in any manner that would constitute a violation of the City Ethics Ordinance. A Board member shall not participate in ex parte communication with any individual concerning any issue that is being heard by the Board.

2.30.050 Secretary of the board.

The Building Official or their designee shall act as secretary of the Building Board of Appeals and shall serve without the right to vote and shall not be counted for purposes of constituting a quorum. The Secretary of the Board shall make a record of its proceedings and procedures, and shall set forth the reasons for the decisions, the vote of each member participating therein, the absence of a member, and any failure of a member to vote. Such record of meeting minutes shall be filed with the City Clerk as required in Section 2.04.020.

2.30.060 Powers.

A. The Building Board of Appeals is authorized to grant variances and to hear appeals from decisions issued by:

1. The Building Official in connection with administration or enforcement of Chapter 18.02 (Building and Construction Administrative Code), 18.08 (Building Code), 18.10 (Residential Code), International Energy Conservation Code, 18.16 (Electrical Code), 18.20 (Plumbing Code), 18.12 (Mechanical Code), and 18.14 (Fuel Gas Code
2. The Fire Official in connection with administration or enforcement of Chapter 9.52 (Fire Protection Code).

B. The Building Board of Appeals is authorized to impose reasonable conditions or safeguards as necessary to ensure that the purpose and intent of this code are satisfied. The granting of a variance pursuant to this section shall not be construed as a waiver of any other requirement of the code. The power of the Board to modify the code regulations shall not be interpreted to allow the Board to modify any fees required to be paid in accordance with the code.

C. The Building Board of Appeals may:

1. Make recommendations to the Building Official with respect to changes in the code.
2. Make recommendations to the Building Official regarding the appropriateness of materials, methods, or equipment for use in the city.
3. Recommend standards for safety, protection of life and property, and workmanship for residential and commercial construction in the City.

2.30.070 Appeals and variances.

A. The owner of a property, building, structure or service system, or duly authorized agent of such, may appeal a decision of any of the following City officials - the Building Official and the Fire Official - as established under Section 2.30.060 above, whenever any one of the following circumstances exists:

1. When the City official rejects or refuses to approve the design or method of construction proposed to be used in the construction or alteration of a building, structure or service system; or
2. When the City official rejects the material proposed to be used in the construction or alteration of a building, structure or service system; or
3. When the City official refuses to extend a permit; or

4. When the City official refuses to issue a permit or suspends a permit or revokes a permit; or
5. When the City official refuses to issue a license, suspends a license, or revokes a license.

B. In considering an appeal of a decision of a City official, the Building Board of Appeals shall have the same authority to decide the issue as the official making the decision being appealed.

C. The Building Board of Appeals is authorized to hear and grant appeals to utilize structures that do not comply with the provision of the codes for a limited period of time. The procedures for appealing for such temporary exceptions are as follows:

1. An application for appeal shall be signed by the owner of the subject property.
2. Applications shall be accompanied by sufficient documentation confirming the validity of the proposed construction of a permanent facility including the time period for start and completion of construction.
3. Application shall be accompanied by a plot plan drawn to scale indicating the location of proposed temporary structures, property lines, setbacks and off-street parking.
4. Application shall be accompanied by drawings or other documentation describing the construction of the proposed temporary facility.

D. The Building Board of Appeals, upon appeal by the owner of a property, building, structure or service system, or duly authorized agent of such, and after a hearing, may vary the application of any provision of the code to any particular case when, in its opinion, the enforcement thereof would do manifest injustice and would be contrary to the spirit and purpose of the code or public interest.

E. In considering a request for variance of the code requirements, the Building Board of Appeals shall consider the following where appropriate:

1. That sufficient technical, architectural, engineering or fire prevention cause(s) exists to warrant the granting of a variance.
2. That special conditions and circumstances exist which are unique to the site, building, structure or service system and are not applicable to others.
3. That the special conditions and circumstances do not result from the action or inaction of the applicant.
4. That granting the variance requested does not confer on the applicant any special privilege that has been previously denied by the Board to other similarly situated sites, buildings structures or service systems.
5. That the variance requested is the minimum variance that will make possible the reasonable use of the site, building, structure or service system.
6. That granting the variance will be in harmony with the general intent and purpose of the code and will not be detrimental to the public health, safety and welfare.

F. In granting a variance, the Building Board of Appeals may prescribe a reasonable time limit within which the action for which the variance is required shall be commenced

or completed or both. In addition, the Building Board of Appeals may prescribe reasonable conditions and safeguards in conformity with the intent of the code.

G. An appeal may not be filed until after the appropriate City official has rendered a decision in writing. Notice of appeal shall be filed in writing with the Secretary within thirty (30) days after the decision is rendered by the City official. The appropriate fee shall accompany such notice of appeal.

H. The Building Board of Appeals, upon the request of the Secretary, and after a hearing, may revoke a variance for failure to comply with conditions, safeguards, time limits or similar conditions established by the Board in the written approval of the variance.

2.30.080 Procedures of the Board.

A. The Building Board of Appeals may establish rules and regulations for its own procedures that are not inconsistent with the provisions of the code. The Board shall meet on call of the Chairman or the Secretary of the Board. The Board shall meet within fifteen (15) calendar days after the date the completed application for appeal is received by the secretary.

B. The Building Board of Appeals shall reach a decision without unreasonable or unnecessary delay. A copy of the decision shall be delivered by certified mail or personal delivery to the applicant. The decision of the Building Board of Appeals shall be final and shall not be appealed to the City Council but may be appealed to a court of competent jurisdiction.

2.30.090 Fees.

The fee for each appeal to the Building Board of Appeals shall be $100.00.

2. That Title 2.32 (PLUMBING AND HVAC BOARD OF APPEALS), shall be and hereby is repealed in its entirety

3. That Title 2.34 (ELECTRICAL BOARD OF APPEALS), shall be and hereby is repealed in its entirety.

4. Except as amended herein, Title 2 (ADMINSTRATION AND PERSONNEL) of the El Paso Municipal Code shall remain in full force and effect.

[SIGNATURES ON NEXT PAGE.]

PASSED AND APPROVED this 14th day of December, 2004.

CITY OF EL PASO

Joe Wardy
Mayor

ATTEST:

Diana Nuñez - Deputy City Clerk

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Lisa Hayes
Assistant City Attorney

APPROVED AS TO CONTENT:

R. Alan Shubert, P.E., Director
Building Permits and Inspections Dept.

ODRINANCE NO. 15992

Document Name:BPI/6/ORDINANCE AMENDING CHAPTER 2.34
Document #: 5693

DEC 2 7 2004
CITY OF EL PASO
BUILDING SERVICES