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ORDINANCE NO. 016492

AN ORDINANCE AMENDING TITLE 2 (ADMINISTRATION AND PERSONNEL), CHAPTER 2.30 (BUILDING BOARD OF APPEALS) OF THE EL PASO CITY CODE TO RENAME THE BOARD AS THE CONSTRUCTION BOARD OF APPEALS; TO EXPAND THE DUTIES OF THE BOARD TO INCLUDE THE ABILITY TO HEAR REQUESTS FOR VARIANCES AND APPEALS INVOLVING STAFF INTERPRETATIONS OF THE EL PASO CITY CODE CHAPTERS ON GRADING, STORMWATER MANAGEMENT, OUTDOOR LIGHTING, LANDSCAPING, AND FLOOD DAMAGE PREVENTION, AND TO NAME THE MEMBERS OF THE BUILDING BOARD OF APPEALS AS THE MEMBERS OF THE CONSTRUCTION BOARD OF APPEALS.

WHEREAS, the City wishes to streamline the procedures for individuals requesting appeals or variances from the City's technical codes;

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

Section 1. That Title 2 (Administration and Personnel), Chapter 2.30 (Building Board of Appeals), of the El Paso City Code shall be amended to change the name of the Board established in Chapter 2.30 to the Construction Board of Appeals. The Construction Board of Appeals shall be the successor board for the Building Board of Appeals with expanded duties.

Section 2. That Title 2 (Administration and Personnel), Chapter 2.30 (Construction Board of Appeals shall be amended to read as follows:

Section 2.30.010, Purpose.

The purpose of this chapter is to provide for reasonable due process of law through the appeal of orders, decisions or determinations made by city officials relative to the application and interpretations of identified technical code requirements for specific projects, without further appeal to the City Council.

Section 2.30.020, Appointment.

There is established a board of appeals to be called the Construction Board of Appeals. The Board shall consist of nine regular 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 to the Board, all of who 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

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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.

Section 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.

B. The terms of office for regular members shall be two years and shall be staggered as follows: The terms of all Board members shall begin on the first day of September, 2006. The terms for the four regular members nominated by the city representatives from Districts #2, 4, 6 and 8 shall expire on the last day of August in odd-numbered years. The terms for the regular members nominated by the city representatives from Districts #1, 3, 5, and 7 and the mayor shall expire on the last day of August in even-numbered years. Terms shall be limited as described in Section 2.04.050.

Section 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 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.

Section 2.30.050, Secretary of the Board.

The Director for Development Services or his/her designee shall act as secretary of the Construction 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.

Section 2.30.060, Powers.

A. The Construction Board of Appeals is authorized to hear appeals from decisions issued by:

1. The Building Official in connection with administrative or enforcement of Chapter 18.02 (Building and Construction Administrative Code); Chapter 18.08 (Building Code); Chapter 18.10 (Residential Code); Chapter 18.12 (Mechanical Code); Chapter 18.16 (Electrical Code); Chapter 18.18 (Outdoor Lighting Code); Chapter 18.20 (Plumbing Code); Chapter 18.24 (Gas Code); Chapter 18.28 (Existing Building Code); and Chapter 20.65 (Landscaping) or its successor chapter;
2. The Fire Official in connection with administration or enforcement of Chapter 9.52 (Fire Protection Code);
3. The Storm Water Administrator in connection with administration or enforcement of Chapter 15.20 (Stormwater Management);
4. The Flood Plain Administrator in connection with administration of Chapter 18.60 (Flood Damage Prevention).

B. An application for appeal shall be based on a claim that the intent of an identified code or the rules legally adopted hereunder have been incorrectly interpreted, the provisions of the code do not fully apply, or an equivalent method of protection or safety is proposed. The Construction 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 Construction Board of Appeals consideration of an appeal 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 Construction Board of Appeals may:

1. Make recommendations to the Director for Development Services, the Building Official, the Flood Plain Administrator, the Storm Water Administrator, and the Fire Official with respect to changes in the code;
2. Make recommendations to the Director for Development Services, the Building Official, the Flood Plain Administrator, the Storm Water Administrator, and the Fire Official regarding the appropriateness of materials, methods, or equipment for use in the city; and

3. Recommend standards for safety of life and property, and workmanship for grading, stormwater management, flood prevention, fire prevention and residential and commercial construction in the City.

Section 2.30.070, Appeals.

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, the Storm Water Administrator, and the Fire Official – as established under Section 2.30.060, 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;
   2. When the city official rejects the material proposed to be used in the construction or alteration of a building, structure or service system;
   3. When the city official refuses to extend a permit;
   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 Construction Board of Appeals shall have the same authority to decide the issue as the official making the decision being appealed.

C. The Construction Board of Appeals is authorized to hear and grant appeals to utilize structures that do not comply with the provision of an identified technical code 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 temporary structures, property lines, setbacks and off-street parking;
   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; and
   4. Application shall be accompanied by drawings or other documentation describing the construction of the proposed temporary facility.

D. Except for requests for variance under Chapter 18.60, the Construction 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 an appeal, other than for a variance from Chapter 18.60 (Flood Damage Prevention), the Construction 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 an appeal;
   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 appeal requested does not confer on the applicant any special privilege that has been previously denied by the Board to other similarly situated sites, building structures or service systems;
   5. That the appeal will make possible the reasonable use of the site, building, structure or service system; and
   6. That granting an appeal will be in harmony with the general intent and purpose of the identified code and will not be detrimental to the public health, safety and welfare.

F. In granting an appeal, the Construction Board of Appeals may prescribe a reasonable time limit within which the action for which the appeal is required shall be commenced or completed or both. In addition, the Construction Board of Appeals may prescribe reasonable conditions and safeguards in conformity with the intent of the code.

G. In granting a variance from Chapter 18.60 (Flood Damage Prevention), the Construction Board of Appeals shall follow the procedures as identified in Chapter 18.60.

H. 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.

I. The Construction 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 appeal.

Section 2.30.080, Procedures of the Board.

A. The Construction 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 calendar days after the date the completed application for appeal is received by the secretary.

B. The Construction 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 Construction 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.

Section 2.30.090, Fees.

The application for each appeal must be signed and be accompanied by payment of a nonrefundable application fee established by appropriate resolution of the City Council.

Section 3. Members appointed to the Building Board of Appeals upon the effective date of this ordinance shall be considered the members of the Construction Board of Appeals. The terms of office will correspond with the terms of office described in Section 2.30.030, B. of this ordinance. Any time served as a member of the Building Board of Appeals will not be counted as time served as a member of the Construction Board of Appeals for purposes of Section 2.04.040, Holding over prohibited, and Section 2.04.050, Term limitations, of the El Paso City Code.

Section 4. Except as expressly herein amended, Title 2 (Administration and Personnel), of the El Paso City Code shall remain in full force and effect.

ADOPTED this 7th **day of** November**, 2006.**

CITY OF EL PASO

John F. Cook

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Theresa Cullen-Garney
Deputy City Attorney

APPROVED AS TO CONTENT:

R. Alan Shubert, P.E., Director
Development Services Department

APPROVED AS TO CONTENT:

Ellen Smyth, P.E., Director
Environmental Services

APPROVED AS TO CONTENT:

Roberto Rivera
Fire Chief