

Postponed Indefinitely 3/13/12

Submitted by: ASSEMBLY MEMBER TROMBLEY
Prepared by: Assembly Counsel Office
Reviewed by:
For reading: February 14, 2012

**ANCHORAGE, ALASKA
AO NO. 2012-19**

1 AN ORDINANCE OF THE ANCHORAGE MUNICIPAL ASSEMBLY AMENDING
2 ANCHORAGE MUNICIPAL CODE SECTIONS 4.40.030 AND 23.10.103.4 TO PROVIDE
3 FOR THREE-MEMBER BUILDING BOARD HEARING PANELS, REFUNDABLE FILING
4 DEPOSITS, DISCRETIONARY DE NOVO REVIEW OF HEARING PANEL DECISIONS BY
5 THE BOARD OF BUILDING REGULATION EXAMINERS AND APPEALS, AND TO
6 EXPAND THE AUTHORITY AND JURISDICTION OF THE BUILDING BOARD TO ALLOW
7 THE BUILDING BOARD TO GRANT VARIANCES FROM STRICT APPLICATION OF THE
8 BUILDING CODE.

9
10 THE ANCHORAGE ASSEMBLY ORDAINS:

11
12 **Section 1.** Anchorage Municipal Code Section 4.40.030 is hereby amended to read as
13 follows (*language indicating no amendment is included for context only*):

14
15 **4.40.030 Board of building regulation examiners and appeals.**

- 16
17 A. There is established a board of building regulation examiners and appeals with
18 powers and duties more particularly set forth in Title 23. The board may also be
19 called the building board.
20
21 B. The board shall consist of a pool of no less than 11 and up to 15 members, as
22 more particularly described in Section 23.10.103.4.[3.]
23
24 C. This board shall terminate on October 14, 2012, unless affirmatively continued
25 by the assembly in accordance with Section 4.05.150.
26

27 (AO No. 50-75; AO No. 98-86, § 1, 6-2-98; AO No. 2011-64(S-1), § 3, 6-28-11)

28
29 **Section 2.** Anchorage Municipal Code Section 23.10.103.4. is hereby amended to read as
30 follows (*language indicating no amendment is included for context*):

31
32 **23.10.103.4 Power and Duties of the Building Board of Examiners and Appeals.**

33
34 **23.10.103.4.1 General.** The Building Board of Examiners and Appeals (Building
35 Board) has the power and duty: 1) to hear appeals from decisions of administrative
36 officials and other enforcement orders; 2) to grant variances from strict application of
37 the Building Code; 3) to hear requests for interpretation of building code regulations; 4)
38 to conduct hearings on matters brought before it pursuant to the Abatement of
39 Dangerous Buildings under chapter 23.70; and 5) in its discretion, to offer comment or
40 recommendation concerning amendments to building code and regulations in
41 Anchorage Municipal Code Title 23.

1 A. **Appeal panels.** In order to hear and decide appeals from decisions of
2 administrative officials and other enforcement [OF] orders, the Building Board
3 shall establish three-member hearing panels from its pool of [DECISIONS OR
4 DETERMINATIONS MADE BY THE BUILDING OFFICIAL RELATIVE TO THE APPLICATION AND
5 INTERPRETATIONS OF THE TECHNICAL CODE, THERE SHALL BE AND IS HEREBY CREATED
6 A BOARD OF APPEALS CONSISTING OF] members qualified by experience and
7 training to pass upon matters pertaining to building construction and building
8 service equipment, and not employees of the Municipality.
9

10 1. Up to five hearing panels shall be established each year to hear appeals
11 from decisions of administrative officials and other enforcement orders.
12 The secretary to the board and the board chair shall assign members to
13 a specific panel, and may request members to take the place of regular
14 assigned panel members when an assigned panel member becomes
15 unavailable, or to provide technical familiarity.
16

17 2. At least two members of the panel hearing an appeal will be actively
18 engaged in disciplines, trades, or professions relevant to the appeal. In
19 the discretion of the Building Board, the decision of a three-member
20 panel on an appeal from the decision of an administrative official or other
21 enforcement order may be accepted for *de novo* review by the Building
22 Board.
23

24 3. The building official shall be an ex officio member and shall act as
25 secretary to the board but shall not vote upon any matter before the
26 board. [THE BOARD OF APPEALS SHALL BE APPOINTED BY THE GOVERNING
27 BODY AND SHALL HOLD OFFICE AT ITS PLEASURE.]
28

29 4. The board shall follow [ADOPT] rules of procedure[s] for conducting
30 business. [AND shall RENDER] All decisions and findings in an appeal shall
31 be rendered in writing to the appellant, with a duplicate copy to the
32 building official.
33

34 B. **Variance standards.** In order to grant a variance from strict application of the
35 Building Code, the Building Board must find that strict application of the building
36 code would create an exceptional or undue hardship substantially meeting
37 these standards:
38

39 1. The variance, if granted, is in keeping with the intent of he Building Code
40 and does not adversely affect the health, safety and welfare of the
41 people of Anchorage.
42

- 1 2. Undue hardship, including but not limited to financial hardship, would
2 result from strict compliance with specific requirements, the specific
3 requirements are unnecessary to protect the health, safety, and welfare
4 of the people of Anchorage, and the variance will protect health, safety,
5 and welfare to the same or higher degree than the specific requirement
6 in regulation.
7

8 **23.10.103.4.2 Limitations of authority.** An application for appeal shall be based on
9 a claim that the true intent of this code, or the rules legally adopted thereunder, have
10 been incorrectly interpreted, the provisions of this code do not fully apply, or an equally
11 good or better form of construction is proposed. The board shall have no authority to
12 waive requirements of this code except by variance meeting the standards within the
13 Building Board's jurisdiction.
14

15 **23.10.103.4.3 Board of Building Regulation Examiners and Appeals (Building**
16 **Board) Members and Quorum[ESTABLISHED].**
17

- 18 A. The [THERE IS ESTABLISHED A] Board of Building Regulation Examiners and
19 Appeals (hereinafter "Building Board"), as described in Section 4.40.030, and
20 this title shall consist [ING] of no less than eleven (11) and up to fifteen (15)
21 members appointed by the mayor, subject to confirmation by the Assembly,
22 qualified by experience or training to pass on matters pertaining to building
23 construction, as follows:
24
- 25 1. Two (2) members shall be Architects registered in the State of Alaska.
 - 26
 - 27 2. Two (2) members shall be Professional Engineers registered as Civil
28 Engineers in the State of Alaska.
 - 29
 - 30 3. One (1) member shall be a Professional Engineer, registered as a
31 Mechanical Engineer in the State of Alaska.
 - 32
 - 33 4. One (1) member shall be a Professional Engineer, registered as an
34 Electrical Engineer in the State of Alaska.
 - 35
 - 36 5. Two (2) members shall be licensed General Contractors actively
37 engaged in general building construction and/or home building.
 - 38
 - 39 6. One (1) member shall be a licensed Electrical Contractor actively
40 engaged in the electrical trade.
41

- 1 7. One (1) member shall be a licensed Plumbing Contractor actively
2 engaged in the plumbing trade.
- 3
- 4 8. One (1) member shall be a licensed Mechanical Contractor actively
5 engaged in the mechanical trade.
- 6
- 7 9. Up to four (4) additional members, qualified by experience or training and
8 actively engaged in any of the above listed disciplines, trades, or
9 professions.

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11 [B.] [SIX (6) MEMBERS OF THE BUILDING BOARD SHALL CONSTITUTE A QUORUM FOR THE
12 TRANSACTION OF ANY BUSINESS. FOR AFFIRMATIVE ACTION ON QUASI-JUDICIAL
13 MATTERS BY THE BUILDING BOARD, THERE SHALL BE A CONCURRING VOTE OF SIX (6)
14 MEMBERS.]

15

16 B [c]. A Building Board three-member hearing panel shall hear and decide appeals
17 from decisions [ACTIONS] of administrative officials and other enforcement
18 orders relating to code regulations under Title 23. A person with the right to
19 appeal has thirty (30) days from the date of the action of an administrative
20 official to file an appeal with the secretary to the building board, unless a longer
21 time period is stated in writing by the building official. If no appeal is filed within
22 this time period, the action of the administrative official is deemed final and
23 binding and not subject to any further appeal.

24

25 C. In its sole discretion, the Building Board may accept for de novo hearing an
26 appeal, in whole or in part, from the decision of a three-member hearing panel.
27 Application by a party for de novo hearing by the Building Board sitting as an
28 appeal board must be filed with the secretary to the building board within 5
29 business days from publication of hearing panel's decision. If the appeal is
30 accepted by the Building Board, members of the panel from which the appeal is
31 taken shall not hear the appeal.

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33 D. Hearing panel quorum and voting.

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- 35 1. Quorum. A quorum for a hearing panel shall be three panel members.
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- 37 2. Voting. The granting of any appeal or part thereof by a hearing panel
38 shall require the concurring vote of two members of the panel. Any
39 appeal or part thereof which is not granted by the panel shall be
40 considered denied.

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42 E. Building Board quorum and voting.

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1. Quorum. Six (6) members of the Building Board shall constitute a quorum for the transaction of business by the Building Board. In exercising discretion on an application for appeal of a hearing panel decision, members of that hearing panel shall not participate in the decision on whether the Building Board shall exercise its discretion to hear the appeal.
2. Voting. For affirmative action by the Building Board, including affirmative action on quasi-judicial matters, there shall be a concurring vote of six (6) members.

23.10.103.4.4 Secretary to building board. The building official or designee shall be an ex-officio member without vote and shall act as secretary to the Board, shall prepare all correspondence, send out all required notices within 5 business days, keep minutes of all meetings, and maintain a file on each case coming before the Building Board.

23.10.103.4.4.1 Supplementing the hearing packet. When the Building Board panel requires data and documents not in the current possession of the Building Official, the secretary to the building board shall act timely on the request to ensure the hearing packet is supplemented with the requested information prior to hearing. If the Notice of Appeal identifies municipal data, documents, or other municipal information required for the hearing, the secretary shall request the supplemental information within 5 days of receipt of the Notice of Appeal. Failure to request or receive supplemental municipal information timely shall be a valid reason to reschedule the hearing to a time when the supplemental municipal information is available.

23.10.103.4.5 Appeal deposit [FILING FEE]. No appeal application may be accepted unless a filing deposit of \$100.00 is received by the secretary at the time of filing. The filing deposit shall be refunded regardless of outcome if the appeal is resolved prior to hearing, or if the appellant or the appellant's agent appears before the hearing panel at the time and place scheduled for the hearing and actively participates in the proceeding after providing requested data and access by the building official. If the appeal is not resolved prior to hearing and the appellant or the appellant's agent fails to appear or to actively participate in the proceeding after providing requested data and access by the building official, the deposit shall be forfeited. If application is made to the Building Board to hear an appeal *de novo* after decision by a hearing panel, the deposit will be retained during consideration by the Building Board, and the deposit refund prerequisites to appear and actively participate, after providing requested data and access by the building official, shall continue. [THE COST OF FILING AN APPEAL TO THE BUILDING BOARD IS \$500.00 AND SHALL ACCOMPANY THE FILING OF THE

1 APPEAL. THE SECRETARY TO THE BUILDING BOARD MAY WAIVE THE FEE IF THE APPELLANT
2 DEMONSTRATES FINANCIAL HARDSHIP OR INDIGENCE.]
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4 (AO No. 2011-4(S), § 1, 5-24-11)
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6 **Section 3.** This ordinance shall become effective on the ____ calendar days after passage
7 and approval by the Assembly.
8

9 PASSED AND APPROVED by the Anchorage Assembly this _____ day of
10 _____, 2012.
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12
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14
15 _____
16 Chair

17 ATTEST:
18
19

20 _____
21 Municipal Clerk