

See AO 2012-31(S)

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Reviewed by:
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**ANCHORAGE, ALASKA
AO NO. 2012-31**

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 MODIFICATIONS FROM STRICT APPLICATION OF
8 THE 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 modifications from strict application
37 of the Building Code; 3) to hear requests for interpretation of building code regulations;
38 4) 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

1 recommendation concerning amendments to building code and regulations in
2 Anchorage Municipal Code Title 23.

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

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

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

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

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

36
37 B. **Modification Standards.** In order to grant a modification from strict application
38 of the Building Code, the Building Board must find there is a special individual
39 reason making the strict letter of this code impracticable and the modification, if
40 granted, will meet each of the following standards:
41

- 1 1. The modification is in keeping with the intent and purpose of the Building
2 Code.
- 3
- 4 2. The modification does not lessen health, life and fire safety for the
5 people of Anchorage, or structural requirements in code.
- 6
- 7 3. Strict application of the building code would create an exceptional or
8 undue hardship, including but not limited to financial hardship, and the
9 modification will protect health, safety, and welfare to the same or higher
10 degree than the specific requirement in regulation.
- 11

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

18

19 **23.10.103.4.3 Members, voting, and hearings before the Board of Building**
20 **Regulation Examiners and Appeals (Building Board)** [ESTABLISHED].

21

22 A. The [THERE IS ESTABLISHED A] Board of Building Regulation Examiners and
23 Appeals (hereinafter "Building Board"), as described in Section 4.40.030, and
24 this title shall consist [ING] of no less than eleven (11) and up to fifteen (15)
25 members appointed by the mayor, subject to confirmation by the Assembly,
26 qualified by experience or training to pass on matters pertaining to building
27 construction, as follows:

- 28
- 29 1. Two (2) members shall be Architects registered in the State of Alaska.
- 30
- 31 2. Two (2) members shall be Professional Engineers registered as Civil
32 Engineers in the State of Alaska.
- 33
- 34 3. One (1) member shall be a Professional Engineer, registered as a
35 Mechanical Engineer in the State of Alaska.
- 36
- 37 4. One (1) member shall be a Professional Engineer, registered as an
38 Electrical Engineer in the State of Alaska.
- 39
- 40 5. Two (2) members shall be licensed General Contractors actively
41 engaged in general building construction and/or home building.
- 42

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

13

14 B. Building Board quorum and voting.

- 15
- 16 1. Quorum. The majority of the members of the Building Board shall
17 constitute a quorum.
- 18
- 19 2. Voting. Action by the Building Board, including affirmative action on
20 quasi-judicial matters, requires a majority vote.

21

22 [SIX (6) MEMBERS OF THE BUILDING BOARD SHALL CONSTITUTE A QUORUM FOR
23 THE TRANSACTION OF ANY BUSINESS. FOR AFFIRMATIVE ACTION ON QUASI-
24 JUDICIAL MATTERS BY THE BUILDING BOARD, THERE SHALL BE A CONCURRING
25 VOTE OF SIX (6) MEMBERS.]

- 26
- 27 C. A Building Board three-member hearing panel shall hear and decide appeals
28 from decisions [ACTIONS] of administrative officials and other enforcement
29 orders relating to code regulations under Title 23. A person with the right to
30 appeal has thirty (30) days from the date of the action of an administrative
31 official to file an appeal with the secretary to the building board, unless a longer
32 time period is stated in writing by the building official. If no appeal is filed within
33 this time period, the action of the administrative official is deemed final and
34 binding and not subject to any further appeal.

35

36 D. Hearing panel quorum and voting.

- 37
- 38 1. Quorum. A quorum for a hearing panel shall be three panel members.
- 39
- 40 2. Voting. The granting of any appeal or part thereof by a hearing panel
41 shall require the concurring vote of two members of the panel. Any

1 appeal or part thereof which is not granted by the panel shall be
2 considered denied.

3
4 E. Discretionary *de novo* re-hearing: In its sole discretion, the Building Board may
5 accept an appeal decided by a three-member hearing panel, in whole or in part,
6 for *de novo* re-hearing by the full Building Board.

7
8 1. Application for *de novo* re-hearing by the full board may be made by any
9 party or by any member of the Building Board.

10
11 2. Application for *de novo* re-hearing by the full Building Board must be filed
12 with the secretary to the board within 5 business days from publication of
13 the hearing panel's decision.

14
15 3. On the question of whether the Building Board shall exercise its
16 discretion to re-hear a matter as a full board, members of the hearing
17 panel shall not participate in the vote.

18
19 4. If *de novo* re-hearing is accepted by the Building Board, members of the
20 hearing panel first hearing the appeal may participate in the re-hearing
21 as members of the full board.

22
23 **23.10.103.4.4 Secretary to building board.** The building official or designee shall be
24 an ex-officio member without vote and shall act as secretary to the Board, shall
25 prepare all correspondence, send out all required notices within 5 business days, keep
26 minutes of all meetings, and maintain a file on each case coming before the Building
27 Board.

28
29 **23.10.103.4.4.1 Supplementing the hearing packet.** When the Building Board
30 panel requires data and documents not in the current possession of the Building
31 Official, the secretary to the building board shall act timely on the request to ensure the
32 hearing packet is supplemented with the requested information prior to hearing. If the
33 Notice of Appeal identifies municipal data, documents, or other municipal information
34 required for the hearing, the secretary shall request the supplemental information
35 within 5 days of receipt of the Notice of Appeal. Failure to request or receive
36 supplemental municipal information timely shall be a valid reason to reschedule the
37 hearing to a time when the supplemental municipal information is available.

38
39 **23.10.103.4.5 Appeal deposit [FILING FEE].** No appeal application may be
40 accepted unless a filing deposit of \$100.00 is received by the secretary at the time of
41 filing. The filing deposit shall be refunded regardless of outcome if the appeal is
42 resolved prior to hearing, or if the appellant or the appellant's agent appears before the

1 hearing panel at the time and place scheduled for the hearing and actively participates
2 in the proceeding after providing requested data and access by the building official. If
3 the appeal is not resolved prior to hearing and the appellant or the appellant's agent
4 fails to appear or to actively participate in the proceeding after providing requested
5 data and access by the building official, the deposit shall be forfeited. If application is
6 made to the Building Board to hear an appeal *de novo* after decision by a hearing
7 panel, the deposit will be retained during consideration by the Building Board, and the
8 deposit refund prerequisites to appear and actively participate, after providing
9 requested data and access by the building official, shall continue. [THE COST OF FILING
10 AN APPEAL TO THE BUILDING BOARD IS \$500.00 AND SHALL ACCOMPANY THE FILING OF THE
11 APPEAL. THE SECRETARY TO THE BUILDING BOARD MAY WAIVE THE FEE IF THE APPELLANT
12 DEMONSTRATES FINANCIAL HARDSHIP OR INDIGENCE.]

13
14 (AO No. 2011-4(S), § 1, 5-24-11)

15
16 **Section 3.** This ordinance shall become effective on the ____ calendar days after passage
17 and approval by the Assembly.

18
19 PASSED AND APPROVED by the Anchorage Assembly this _____ day of
20 _____, 2012.

21
22
23
24
25 _____
Chair

26 ATTEST:

27
28
29
30 _____
31 Municipal Clerk