

ORDINANCE NO. 9635

AN ORDINANCE OF THE CITY OF LAWRENCE, KANSAS, REPEALING EXISTING CHAPTER 5, ARTICLE 16 AND ENACTING, IN ITS PLACE, CHAPTER 5, ARTICLE 16 OF THE CODE OF THE CITY OF LAWRENCE, KANSAS, 2018 EDITION, AND AMENDMENTS THERETO, PERTAINING TO THE BUILDING CODE BOARD OF APPEALS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LAWRENCE, KANSAS:

SECTION 1. Existing Chapter 5, Article 16, of the Code of the City of Lawrence, Kansas, 2018 Edition, and amendments thereto, is hereby repealed in its entirety, it being the intent of the Governing Body that Section 2 of this Ordinance supersede it.

SECTION 2. The Code of the City of Lawrence, Kansas, 2018 Edition, and amendments thereto, is hereby amended by adding Chapter 5, Article 16, which reads as follows:

ARTICLE 16. BUILDING CODE BOARD OF APPEALS

5-1601

PURPOSE.

The Governing Body finds that, in order to safeguard the health, safety, and welfare of the residents of the City of Lawrence, Kansas, and to establish and to maintain high standards of integrity, skill, and practice in the various construction fields it is necessary to regulate those fields. As part of that regulation, it is fundamentally fair and necessary that there be an appeals process. For that purpose, the Governing Body hereby establishes the Building Code Board of Appeals.

5-1602

BUILDING CODE BOARD OF APPEALS; ESTABLISHMENT; TERMS OF OFFICE; TERM LIMITS; ELECTION OF CHAIR AND VICE-CHAIR.

(a) There is hereby established the Building Code Board of Appeals ("Board"). The Board shall be composed of not more than eleven (11) voting members. Members shall be appointed by the Mayor with approval of the Governing Body. All members of the Board shall serve without compensation. The Board will be composed of:

- (1) One Kansas-licensed professional engineer (PE), who specializes in structural engineering;
- (2) Two Kansas-licensed professional architects;
- (3) One Kansas-licensed professional engineer (PE), who specializes in mechanical or electrical engineering, or both;
- (4) One City-licensed Class A or Class B Contractor, or a building construction superintendent of a business entity or association having such a license, where such person has at least ten years' experience working in the construction field and at least five years' experience working as a supervisor in the construction field;

- (5) One City-licensed Class C Contractor, or a building construction superintendent of a business entity or association having such a license, where such person has at least eight years' experience working in the construction field and at least four years' experience working as a supervisor in the construction field;
 - (6) One City-licensed electrical contractor, or a licensed master or journeyman employee of a business entity or association having such license, where such person has at least five years' experience in the electrical trades;
 - (7) One City-licensed mechanical contractor, or a licensed master or journeyman employee of a business entity or association having such license, where such person has at least five years' experience in the mechanical trades;
 - (8) One City-licensed plumbing contractor or a licensed master or journeyman employee of a business entity or association having such license, where such person has at least five years' experience in the plumbing trades;
 - (9) One person, who shall have at least five-years' experience in the fire protection field (a licensed fire protection engineer, NICET Level III certified technician, or a fire protection systems installer is preferred);
 - (10) One person who shall be a member of the public at-large.
- (b) Members of the Board shall serve three-year terms, except when appointed to complete an unexpired term. As established by the bylaws, the terms of the Board members shall be staggered so that no more than four members' terms shall expire in any one year.
 - (c) Board members shall serve no more than two consecutive full three-year terms. Appointment to complete an unexpired term shall not count toward the term limit. Any person who has reached the term limit shall not be eligible for re-appointment until he or she has been off the board for a period of at least one year.
 - (d) Annually, at its first meeting of the year, the Board shall elect a Chair and a Vice-Chair. The Chair shall preside over meetings of the Board. The Vice-Chair shall preside over meetings of the Board in the absence of the Chair. In the absence of the Chair and Vice-Chair, the members of the Board shall elect a Chair Pro Tem, who shall preside as the temporary Chair.

5-1603

BYLAWS AND MEETINGS.

The Board shall adopt bylaws governing the procedures to be used by the Board. The bylaws shall establish specific duties and responsibilities of the Chair and Vice Chair, the time and place for meetings, rules of order, and other rules governing

procedures and operations of the Board, including procedures for amending the bylaws.

6-1604

SECRETARY.

The Building Official, or his or her designee, shall serve as City liaison to the Board and shall act as Secretary. The Secretary shall, in consultation with the Chair, as necessary, be responsible for preparation of an agenda for each meeting of the Board. The Secretary shall also be responsible for recording the minutes of each meeting and for forwarding the approved minutes to the Governing Body.

6-1605

OPEN MEETINGS AND OPEN RECORDS.

All meetings of the Board shall be held in compliance with the Kansas Open Meetings Act and its records shall be subject to the Kansas Open Records Act.

5-1606

CONFLICTS OF INTEREST.

All Board members shall, by abstention, refrain from participating in the decision-making process, including discussing and voting, on any item for which he or she, his or her employer, or the entity for which he or she is representing appears before the Board, if such member has a Conflict of Interest under state law or under local law or resolution.

5-1607

BOARD DUTIES.

In addition to those duties that may be assigned to it by the Governing Body, the Board shall have the following duties:

- (a) To hear and to decide appeals from decisions made by the Building Official or the Fire Code Official, relative to building construction and enforcement of the Building Code, Existing Building Code, Residential Code, Energy Conservation Code, Electrical Code, Mechanical Code, Plumbing Code, Fuel Gas Code, and Fire Code, all as adopted by the City.
- (b) To hear and to decide appeals from decisions made by the Code Official, relative to the enforcement of the Property Maintenance Code, the Long-term Residential Rental Property Code, and the Short-term Residential Rental Property Code, all as adopted by the City.
- (c) To hear and to decide appeals from decisions made by the Building Official, relative to the Contractor Licensing Regulations, as adopted by the City.
- (d) To make various recommendations to the Governing Body regarding adoption of or amendments to the City's Building Code, Existing Building Code, Residential Code Energy Conservation Code, Electrical Code, Mechanical Code, Plumbing Code, Fuel Gas Code, Fire Code, and other Codes related to the regulation of building construction and maintenance.

5-1608

BURDEN OF PROOF; STANDARD OF REVIEW; LIMITATIONS; WRITTEN FINDINGS.

- (a) Unless the Code from which the appeal is brought provides otherwise, in appearing before the Board, the appellant shall bear the burden of proof to establish by a preponderance of the evidence -- *i.e.*, that it is more probably

true than not true -- that the decision of the Building Official, Fire Code Official, or Code Official, from which the appeal is brought, is erroneous or that the penalty is excessive, inappropriate, or unreasonable.

- (b) In reviewing an appeal from a determination of the Building Official, the Fire Code Official, or the Code Official, the Board shall review all of the evidence presented by the appellant and the City. If, by a majority vote of the voting Board members, the Board concludes that the determination is erroneous or that the penalty is excessive, inappropriate, or unreasonable, then the Board shall reverse the determination, modify the determination, remand the determination to the appropriate official, with instructions, for reconsideration, or take whatever other action may be necessary, within the bounds of its authority, to remediate the error. If, by a majority vote of the voting Board members, the Board concludes that the determination is not erroneous or that the penalty is not excessive, inappropriate, or unreasonable, then the Board shall affirm the determination.
- (c) If, in reviewing an appeal, it appears that the provisions of the City Code do not definitively cover a method of construction, construction material, or other subject regulated by the City Code, as amended, then the Board may interpret the provisions of the City Code in a manner consistent with the intent of the City Code in order to prevent manifest injustice. However, in doing so, the Board shall **not** have the authority to interpret the administration of the City Code, nor shall the Board be empowered to waive specific requirements of the City Code.
- (d) The Board shall prepare written findings and conclusions regarding any decision it makes on appeal. The date of adoption of the written findings and conclusions shall be the date of the Board's final order.

5-1609

FINAL DECISION.

On appeal, the decision of the Board shall be a final order. Any person, including the City, aggrieved by a final order of the Board shall have the right, in accordance with state law, to appeal that final order to the District Court of Douglas County, Kansas.

SECTION 3. If any section, sentence, clause, or phrase of this ordinance is found to be unconstitutional or is otherwise held invalid by any court of competent jurisdiction, it shall not affect the validity of any remaining parts of this ordinance.

SECTION 4. After passage, approval, and publication, as provided by law, this ordinance shall be in full force and effect commencing July 1, 2019.

PASSED by the Governing Body of the City of Lawrence, Kansas, this ____ day of _____, 2019.

APPROVED:

Lisa Larsen
Mayor

ATTEST:

Sherri Riedemann
City Clerk

APPROVED AS TO FORM:

Toni R. Wheeler
City Attorney