

(Published in the Topeka Metro News September 17, 2008)

ORDINANCE NO. 19155

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending City of Topeka Code § 26-138 concerning the board of building and fire appeals and specifically repealing said original section.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TOPEKA, KANSAS:

Section 1. That section 26-138, Board of building and fire appeals, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Board of building and fire appeals.

(1) There is hereby created a board of building and fire appeals consisting of seven members appointed by the mayor and confirmed by the council. The members of the board shall ~~include two engineers, two architects licensed by the state board of technical professions, a general contractor and a person regularly employed in the building trades~~ be currently licensed or engaged in or have substantial past experience in the following fields or professions: licensed professional engineer, licensed architect, licensed commercial contractor, or other experienced professional working in a field related to building construction. The board shall always consist of at least two (2) engineers, two (2) architects, and one (1) contractor. Members shall serve a two-year term. Members shall not serve beyond the end of their appointed terms. Upon expiration of a term the position shall remain vacant until a successor is appointed. The city attorney, fire marshal and development services director or their designees shall serve as nonvoting ex officio members of the board. The development services director or his or her designee shall serve also as secretary of the board. Copies of current adopted codes will be made available to board members.

29 (2) The board of building and fire appeals shall adopt reasonable rules and
30 regulations for conducting its investigations and shall render all decisions and findings in
31 writing to the development services director and the fire chief with a duplicate copy to
32 the appellant.

33 (3) The board of building and fire appeals shall determine the suitability of
34 alternate materials, methods and type of construction and provide for reasonable
35 interpretations of the provisions of the Commercial and Residential Building Codes,
36 Building Conservation Code, the Fire Code and Life Safety Code, as adopted by the
37 council. The board shall be empowered to hear and determine interpretations of the
38 codes and to permit variances from the code provisions in certain cases or situations in
39 accordance with the purposes and intents of the code. A variance shall not be granted
40 except in those situations, as determined by the board, that will not endanger life or
41 limb, health, property or public welfare. Where a variance is sought with respect to a
42 structure registered, or eligible for registration, with either the National Register of
43 Historic Places or the Register of Historic Kansas Places, or listed with the Kansas
44 State Inventory of Historical Sites, the board shall specifically consider the structure's
45 historic significance in reaching its decision, exerting an affirmative effort to preserve the
46 structure's quality in effecting any necessary changes. Pursuant to this goal, the board
47 shall request the opinion of the Director of the Historic Preservation Department of the
48 State Historical Society.

49 (4) An exception or variance relating to the commercial and residential
50 building codes and building conservation code, may be vetoed by the development
51 services director. An exception or variance relating to the Fire Code and Life Safety

Code may be vetoed by the fire chief. Requests for exceptions or variances which have been denied and matters vetoed may be appealed to the council by filing within ten days of the effective date of the denial or veto, in writing, with the city clerk, a request for a hearing before the council. Within five days of the receipt of this request for a hearing, the council shall give notice of a public hearing to be held in not less than five days nor more than ten days after service of the notice on the person requesting the hearing.

(5) The board of building and fire appeals may request other boards and commissions of the city, including the electrical, mechanical or plumbing boards to provide technical assistance and recommendations. In addition, the board of building and fire appeals shall require substantiating data or tests to determine the suitability and feasibility of allowing the variance requested by the applicant.

(6) The person requesting the variance relating to the Commercial or Residential Building Codes or the Building Conservation Code adopted by the council shall at such person's expense conduct tests and have these tests verified showing that the variance requested will not endanger life or limb, health, property or public welfare. Such tests shall have been conducted before the hearing unless the board asks for additional testing pertaining to relevant circumstances that may affect the decision made by the board.

(7) A filing fee of \$100.00 shall be paid in advance by any party appealing to the board.

Section 2. That original section 26-138 of The Code of the City of Topeka, Kansas, is hereby specifically repealed.

Section 3. This ordinance shall take effect and be in force from and after its passage, approval and publication in the official City newspaper.

PASSED AND APPROVED by the City Council September 9, 2008.

CITY OF TOPEKA, KANSAS

William W. Buntin, Mayor

ATTEST:

Brenda Younger, City Clerk