

CITY COUNCIL MEETING

AGENDA ITEM XIV



Subject: Code of Appeals

The Legislative Committee reviewed the Code of Appeals draft prepared by Attorney Fitzgerald. At the committee meeting Planner Dick Lewis commented that this draft makes things much plainer and understandable. Planner Lewis recommend that this be adopted and incorporated as a new Section B.

Motion: *"I recommend that the City Council adopt the draft prepared by Attorney Fitzgerald on Code of Appeals and label it Section B."*

Mayor calls for a second and the vote.

SECTION 168 MEANS OF APPEAL

A. Application for Appeal.

Any person directly affected by a decision of the Code Enforcement Officer or a notice or order issued under this code shall have the right to appeal to the Board of Appeals, provided that a written application for appeal is filed within 20 days after the day the decision, notice or order was served. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply, or the requirements of this code are adequately satisfied by other means.

B. Standard of Review.

The Board may overturn a decision of the Code Enforcement Officer only if one or more of the criteria stated above (incorrect interpretation, inapplicability of code or adequate alternative) are demonstrated by the applicant by a preponderance of the evidence and arguments. The Board shall specifically state in its decision which criteria supports that decision.

C. Membership of Board.

The Board of Appeals shall consist of a minimum of three members who are qualified by experience and training to pass on matters generally relating to construction, and/or the proper application of building, property maintenance or fire codes and who are not employees of the jurisdiction. The Code Enforcement Officer shall be an ex-officio member but shall have no vote on any matter before the board. The board shall be appointed by the City Council, and shall serve staggered and overlapping terms.

C-1 Alternate members.

The City Council may appoint two or more alternate members who shall be called by the board chairman to hear appeals during the absence or disqualification of a member. Alternate members shall possess the qualifications required for board membership.

C-2 Chair.

The board shall select one of its members to serve as chair.

C-3 Disqualification of member.

A member shall not hear an appeal in which that member has a personal, professional or financial interest.

C-4 Secretary.

The City Manager shall designate a qualified person to serve as secretary to the board. The secretary shall file a record of all proceedings in the office of the City Manager.

D. Notice of Meeting.

The board shall meet upon notice from the chairman, within 20 days of the filing of an appeal, or at stated periodic meetings.

E. Open Hearing.

All hearings before the board shall be open to the public. The appellant, the appellant's representative, the Code Enforcement Officer and any person whose interests are affected shall be given an opportunity to be heard. A quorum shall consist of not less than two members of the Board.

E-1 Procedure.

The board shall adopt and make available to the public through the secretary procedures under which a hearing will be conducted. The procedures shall not require compliance with strict rules of evidence, but shall mandate that only relevant information be received.

F. Postponed Hearing.

When the full board is not present to hear an appeal, either the appellant or the appellant's representative shall have the right to request a postponement of the hearing.

G. Board Decision.

The board shall modify or reverse the decision of the Code Enforcement Officer only by a concurring vote of a majority of the total number of appointed board members.

G-1 Records and copies.

The decision of the board shall be recorded. Copies shall be furnished to the appellant and to the Code Enforcement Officer.

G-2 Administration.

The Code Enforcement Officer shall take immediate action in accordance with the decision of the board.

H. Court Review.

Any person, whether or not a previous party of the appeal, shall have the right to apply to the appropriate court for a writ of certiorari to correct errors of law. Application for review shall be made in the manner and time required by law following the filing of the decision in the office of the City Manager.