

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE REPEALING CHAPTER 33, CREATING A NEW CHAPTER 33, AMENDING SUBDIVISION 4 OF SECTION 32.07, SUBDIVISION 1 OF SECTION 32.13, SECTION 38.10, AND SECTION 55.08 OF ORDINANCES, RELATING TO THE CREATION OF A BOARD OF APPEALS TO HEAR CODE VIOLATION APPEALS.

THE COMMON COUNCIL OF THE CITY OF ROCHESTER DO ORDAIN:

Section 1. Section 7. Chapter 33 of the Rochester Code of Ordinances is hereby repealed.

Section 2. Chapter 33 of the Rochester Code of Ordinances is hereby created to read as follows:

Chapter 33  
BOARD OF APPEALS

33.01. Establishment. There is hereby established a City of Rochester Board of Appeals ("Board"). The purpose of this Board is to hear and decide appeals of orders, decisions, or determinations made by the building official, fire chief, and/or their designee relative to the application and interpretation of the Building Code, Housing Code and/or Fire Code. The appeals will generally be from code interpretations, such as modifications resulting from practical difficulties; alternative materials, design, and methods of construction and equipment; and performance-based fire and safety design. Appeals are not allowed for legislative decisions made by the Rochester City Council, such as the contents of the ordinances.

33.02. Definitions. As used in this chapter, the following terms shall have the meaning ascribed to them:

- A. "Building Code" means the Minnesota State Building Code as adopted in chapter 50.
- B. "Housing Code" means the Housing Code of the City of Rochester as adopted in chapter 32 through 38.
- C. "Fire Code" means the Minnesota State Fire Code as adopted in chapter 55.
- D. "Code" means either the Building Code, Housing Code, or Fire Code.

33.03. Board. The Board shall consist of five members that are appointed by the mayor and confirmed by the Council. Board members shall be Rochester residents and not employees of the City.

33.04. Term. Upon creation of the Board, two members will be appointed for a term of three years, two members shall be appointed for a term of two years, and one member shall be appointed for a term of one year. Thereafter each member shall be appointed for three year terms. Each term of office shall expire on December 31<sup>st</sup> of the year the term is scheduled to expire. All members shall serve until their successors have been appointed and qualified.

33.05. Qualifications. The Board shall consist of members who are qualified by experience and training to pass on matters pertaining to building construction and rental properties. Desirable qualifications for membership include registered design professionals in architecture and engineering, and licensed contractors.

33.06. Compensation. Members shall serve without remuneration or compensation, but may be compensated for any approved expenses incurred in the performance of their duties in accordance with the guidelines established by the Council.

33.07. Organization. The Board shall annually select one of its members to serve as chair and a vice-chair. The chair, or if absent, the vice-chair shall preside over meetings of the Board. The building official, fire chief and/or their designee shall be responsible for preparing meeting minutes.

33.08. Rules and Procedures. The Board shall adopt a set of rules to govern its own meetings and procedures which shall not be inconsistent with the provisions of the city charter and this ordinance. The rules may be amended from time to time.

33.09. Meetings. Subdivision 1. The Board shall meet at such times that there is business to transact. Written meeting notice shall be given to members by the staff whose determination is being appealed. The notice shall set forth the purpose of the meeting, and no other matters shall be considered at such meeting without the unanimous consent of all members present. The failure to notify any member who is absent from the city or is from disability unable to receive notice shall in no way invalidate the proceedings at such meeting if a quorum is present.

Subd. 2. The staff assigned to prepare minutes record the vote of each member upon each question.

Subd. 3. All meetings of the Board shall be open to the public.

33.10. Quorum. Three members of the Board shall constitute a quorum to transact all business.

33.11. Legal Counsel. The city attorney or designee shall attend all meetings and furnish legal counsel to the Board. The city attorney or designee shall provide members with general legal advice concerning matters before them for consideration and shall aid in the preparation of any findings or other documentation of the Board's actions.

33.12. Appeal Application. Any owner of property affected by any order or other determination made under chapters 32 through 38, 50, and 55 may make an appeal to the Board. Such appeal shall be filed on a form provided by the building official or fire chief within 10 days from the date of the adverse determination. The payment of a fee in the amount of \$75.00 shall accompany the submission of the appeal to cover administrative and handling costs.

33.13. Date of Meeting. Upon receipt of the completed appeals form, the building official or fire chief shall schedule a hearing before the Board within 10 business days. The chair of the Board may postpone the date of the hearing for a reasonable time beyond such period if a good and sufficient reason exists for such postponement.

33.14. Notice of Meeting. The building official or fire chief shall provide notice of the time and place of the hearing at least five days prior to the date of the hearing to the appellant by mail or email, whichever is requested by the property owner on the application.

33.15. Proceedings. The appellant, the appellant's representative, the building official and/or fire chief and any person whose interests are affected shall be given an opportunity to be heard.

33.16. Decisions of the Board. Subdivision 1. After such hearing, the Board shall affirm, modify, or reverse the decision of the building official or fire chief by a majority vote of its members. The Board shall have no authority to waive requirements of the Code.

Subd. 2. The Board may remedy any issue or error it has found with an interpretation or order related to the Code and grant such relief as it deems reasonable from strict compliance which may include additional requirements, but no relief shall be granted unless it is found that:

A. There is substantial compliance with the provisions of the Code;

- B. No detriment to public health or safety will result from granting such relief;
- C. The intent of the Code is not compromised; and
- D. The relief granted will not result in increased cost or expense to the City.

33.17. Appeal from Board Decisions. Any person aggrieved by a final decision of the Board may appeal as follows:

- A. For a Building Code issue, the person may appeal to the Commissioner of Administration in accordance with Minn. Stat. §326B.139.
- B. For a Fire Code issue, the person may appeal to the Minnesota State Fire Marshal in accordance with Minn. Stat. §299F.011.
- C. For a Housing Code issue, the person may appeal to a court of competent jurisdiction.

Section 3. Subdivision 4 of Section 32.07 of the Rochester Code of Ordinances is hereby amended to read as follows:

Subd. 4. "Board" means the Board of Appeals created by Chapter 33.

Section 4. Subdivision 1 of Section 32.13 of the Rochester Code of Ordinances is hereby amended to read as follows:

Subdivision 1. Whenever the director of building safety finds that an emergency exists which requires immediate action to protect the public health or and safety, the director may, without notice or hearing, issue to the owner of property an order reciting the existence of such an emergency and requiring the owner to take such action as the director deems necessary to meet the emergency. Notwithstanding the other provisions of the housing code, such order shall be effective immediately and any person to whom such order is directed shall comply therewith immediately, but upon petition to the director of building safety shall be afforded a hearing in the manner prescribed in chapter 33 of this code. After such hearing, the board shall continue such order in effect, or modify it, or revoke it.

Section 5. Section 38.10 of the Rochester Code of Ordinances is hereby amended to read as follows:

38.10. Appeals. Any applicant whose application for registration certificate has been rejected by the Director, may request and shall be granted a hearing in the matter before the Board of Appeals under the procedures found in Chapter 33 of this Code.

Section 6. Section 55.08 of the Rochester Code of Ordinances is hereby amended to read as follows:

Subdivision 1. All requests for appeals shall be made to the Fire Chief within the time designated in the correction order and will be forwarded to the Board of Appeals for a hearing as provided in Chapter 33.

Subd. 2. An application for appeal shall be based on a claim that the intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply, or an equivalent method of protection or safety is proposed. The Board does not have the authority to waive requirements of the Fire Code.

Subd. 3. Any person may appeal an order issued to them on issues regulated by the Rochester Fire Code. This appeal shall be forwarded to the Board of Appeals established by chapter 33.

Section 7. This ordinance is effective as of the date of its publication.

PASSED AND ADOPTED BY THE COMMON COUNCIL OF THE CITY OF  
ROCHESTER, MINNESOTA, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018.

ATTEST: \_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
PRESIDENT OF SAID COMMON COUNCIL

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2018.

\_\_\_\_\_  
MAYOR OF SAID CITY

(Seal of the City of  
Rochester, Minnesota)