



## ORDINANCE

### COMBINING THE BUILDING CODE BOARD OF APPEALS AND THE BOARD OF FIRE PREVENTION CODE APPEALS INTO ONE BOARD OF BUILDING AND FIRE CODES APPEALS

### *CITY OF NASHUA*

*In the Year Two Thousand and Sixteen*

*The City of Nashua ordains* that the Nashua Revised Ordinances as amended, are hereby further amended as follows:

1. In Part I “Administrative Legislation”, Chapter 5 “Administration of Government”, Article XV “City Clerk”, Section 5-62 “Records”, delete the struck-through language and add the new underlined language as shown:

**“§ 5-62. Records.**

...

E. A copy of all minutes of all public bodies and their subcommittees in the City of Nashua subject to NH RSA Chapter 91-A (the “Right-to-Know Law”) shall be stored, and public access provided, as follows:

...

(6) ~~Building Code/Board of Appeals~~ Board of Building and Fire Codes Appeals, Business and Industrial Development Authority, Conservation Commission, Historic District Commission, Land Conservation Committee, Nashua Transit Advisory Committee, Planning Board, and Zoning Board of Adjustment minutes shall be managed by the Community Development Division.”

2. In Part II “General Legislation”, Chapter 105 “Building Construction”, Article I “General Provisions”, Section 105-5 “Appeals”, delete the struck-through language and add the new underlined language as shown:

**“§ 105-5. Appeals.**

- A. Any person shall have the right to appeal to the Board of Building and Fire Codes Appeals within 20 days from the receipt of a written decision of the Building or Fire Official (also known as the “Code Official”). An application for appeal shall be based on the claim that the true intent of ~~this chapter or the codes or rules~~ legally adopted thereunder have been incorrectly interpreted, the provisions of ~~this chapter~~ do not fully apply, or an equivalent form of construction can be used, or that the decision appealed from results in manifest injustice and is contrary to spirit and purpose of the Building or Fire Code and the public interest.
- B. Application for appeals and actions upon the same shall be accordance with the rules of procedure adopted by the Board of Building and Fire Codes Appeals.
- C. Said Board of Building and Fire Codes Appeals shall be established in accordance with the statutes of the State of New Hampshire and ~~this chapter~~ the ordinances of the City and shall consist of five members and three alternate members who are qualified by experience and training to rule on matters pertaining to building construction and fire prevention. Each member shall be a professional engineer, architect, builder, superintendent of building construction, master plumber, master electrician, gas fitter, fire inspector, fire investigator, or any other such person qualified by education or experience, in the opinion of the Building Official, Fire Official, and the Mayor, to serve as a member of the Board. Each member shall be a resident of the City. The members shall be ~~nominated~~ appointed by the Mayor, subject to confirmation and confirmed by the Board of Aldermen. Members and alternates as of the effective date of this chapter shall continue for their appointed terms. Each member shall hold office for three years or until a replacement is appointed.
- D. The statutes of the State of New Hampshire and the provisions of this section shall take precedence, concerning appeals, over any conflicting provision in any referenced code adopted by ~~this chapter~~ the City.
- E. Said Board of Building and Fire Codes Appeals has no authority to waive the requirements of the State Building Code or the State Fire Code.”

3. In Part II “General Legislation”, Chapter 156 “Fire Prevention”, Article IV “Fire Prevention Code”, Section 156-8 “Amendments”, delete the struck-through language and add the new underlined language as shown:

**“156-8. Amendments.**

The following sections of the Fire Prevention Code adopted in this article are hereby amended as follows:

...

- B. Section 1-5, Application, is amended by the addition of the following Section 1-5.10:

**1-5.10** The authority having jurisdiction shall have authority to promulgate rules or standards for situations not specifically addressed in this code. All promulgated rules prior to being effective shall be approved by the Board of ~~Fire Prevention Code~~ Building and Fire Codes Appeals.

...

- D. Section 1-7.1 is amended to read as follows:

**1-7.1 Board of ~~Fire Prevention Code~~ Building and Fire Codes Appeals.** There is hereby established a Board of ~~Fire Prevention Code~~ Building and Fire Codes Appeals. The Board of ~~Fire Prevention Code~~ Building and Fire Codes Appeals shall consist of ~~three~~ five members and ~~one~~ three alternate members who are qualified by experience and training to rule on matters pertaining to building construction and fire prevention. Each member shall be a professional engineer, architect, builder, superintendent of building construction, master plumber, master electrician, gas fitter, fire inspector, fire investigator, or any other such person qualified by education or experience, in the opinion of the Building Official, Fire Official, and the Mayor, to serve as a member of the Board. Each member shall be a resident of the City. The Board of ~~Fire Prevention Code~~ Building and Fire Codes Appeals members shall be appointed by the Mayor and confirmed by the Board of Aldermen. Each member shall hold office for three years or until a replacement is appointed. The Board of ~~Fire Prevention Code~~ Building and Fire Codes Appeals shall adopt reasonable rules and regulations for conducting its hearings and such shall be made a public record rules of procedure relative to application for appeals and actions upon the same.

- E. Section 1-7.2 is amended to read as follows:

**1-7.2 Appeals.** Appeals to the Board of ~~Fire Prevention Code~~ Building and Fire Codes Appeals are taken by any person aggrieved by any decision on interpretation by the Fire Official made under the provisions concerning the ~~Fire Prevention Code~~, Life Safety Code, ordinances concerning fire safety or any decision or interpretation of the Fire Official related to the above.

- F. Section 1-7.3 is amended to read as follows:

**1-7.3 Application.** An application for appeal must be submitted to the Board of ~~Fire Prevention Code~~ Building and Fire Codes Appeals within ~~30~~ 20 days of the notice or order of the Fire Official, ~~together with a fee of \$25.~~

4. In Part II “General Legislation”, Chapter 156 “Fire Prevention”, Article VI “Fire-Suppression Systems”, Section 156-19 “Appeals”, delete the struck-through language and add the new underlined language as shown:

**“156-19. Appeals.**

~~Any person aggrieved by any decision or interpretation of the Fire Official pursuant to the enforcement of this article may make appeal to the Board of Fire Prevention Code Appeals. An application for such appeal shall be submitted to the board of fire prevention appeals within seven days of the date of notice or order of the Fire Official, together with a fee of \$25.~~

- A. Any person shall have the right to appeal to the Board of Building and Fire Codes Appeals within 20 days from the receipt of a written decision of the Building or Fire Official (also known as the “Code Official”). An application for appeal shall be based on the claim that the true intent of the codes or rules legally adopted have been incorrectly interpreted, the provisions do not fully apply, an equivalent form of construction can be used, or that the decision appealed from results in manifest injustice and is contrary to spirit and purpose of the Building or Fire Code and the public interest.
- B. Application for appeals and actions upon the same shall be accordance with the rules of procedure adopted by the Board of Building and Fire Codes Appeals.
- C. Said Board of Building and Fire Codes Appeals shall be established in accordance with the statutes of the State of New Hampshire and the ordinances of the City and shall consist of five members and three alternate members who are qualified by experience and training to rule on matters pertaining to building construction and fire prevention. Each member shall be a professional engineer, architect, builder, superintendent of building construction, master plumber, master electrician, gas fitter, fire inspector, fire investigator, or any other such person qualified by education or experience, in the opinion of the Building Official, Fire Official, and the Mayor, to serve as a member of the Board. Each member shall be a resident of the City. The members shall be appointed by the Mayor and confirmed by the Board of Aldermen. Each member shall hold office for three years or until a replacement is appointed.
- D. The statutes of the State of New Hampshire and the provisions of this section shall take precedence, concerning appeals, over any conflicting provision in any referenced code adopted by the City.
- E. Said Board of Building and Fire Codes Appeals has no authority to waive the requirements of the State Building Code or the State Fire Code.”

**ORDINANCE**

**O-16-026**

All members of the existing Building Code Board of Appeals and Board of Fire Prevention Code Appeals must be appointed and confirmed to this new Board of Building and Fire Codes Appeals and designated as a member or alternate member.

All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

This legislation shall take effect upon passage.

**LEGISLATIVE YEAR 2016**

**ORDINANCE:** O-16-026

**PURPOSE:** Combining the Building Code Board of Appeals and the Board of Fire Prevention Code Appeals into one Board of Building and Fire Codes Appeals

**ENDORSERS:** Alderman Michael B. O'Brien, Sr.

**COMMITTEE  
ASSIGNMENT:**

**FISCAL NOTE:** None.

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**ANALYSIS**


This legislation combines the existing Building Code Board of Appeals and the Board of Fire Prevention Code Appeals into one Board of Building and Fire Codes Appeals.

State statute (RSA 674:34) implies that one board of appeals shall hear and decide appeals of decisions made by both building officials and fire officials relative to the application and interpretation of the state building code or state fire code.

The legislation provides that all members of the existing Building Code Board of Appeals and Board of Fire Prevention Code Appeals must be appointed and confirmed to this new Board of Building and Fire Codes Appeals and designated as a member or alternate member.

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**Approved as to form:** Office of Corporation Counsel

**By:** 

**Date:** November 16, 2016