

Introduced by: Council Member Hoffman
1st Reading: June 3rd, 2019
2nd Reading: June 17th, 2019

ORDINANCE NO. 2019-8119

AN ORDINANCE OF THE CITY OF JACKSONVILLE BEACH, FLORIDA, ENACTING AND ESTABLISHING A DECISION MAKING AND ADMINISTRATIVE BODY TO BE KNOWN AS THE BUILDING AND FIRE CODE BOARD OF APPEALS FOR THE INCORPORATED AREA OF THE CITY OF JACKSONVILLE BEACH, FLORIDA, BY AMENDING CHAPTER 10. FIRE AND LIFE SAFETY, ADDING ARTICLE V. BUILDING AND FIRE CODE BOARD OF APPEALS; PROVIDING FOR FINDINGS AND INTENT; PROVIDING DEFINITIONS; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES OR PARTS OF ORDINANCES; PROVIDING FOR SEVERANCE OF INVALID PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 166.041, F.S., provides for procedures for the adoption of ordinances and resolutions by municipalities; and

WHEREAS, Section 633.208, F.S., provides that each municipality with firesafety responsibilities is required to enforce the Florida Fire Prevention Code; and

WHEREAS, such enforcement requires inspection of each new building subject to the Florida Fire Prevention Code and includes periodic inspections of each existing building subject to the Florida Fire Prevention Code; and

WHEREAS, the Florida Fire Prevention Code contains several provisions and requirements that may interrelate with the Florida Building Code; and

WHEREAS, in the event that a dispute arises regarding the enforcement of the Florida Fire Prevention Code as related to the enforcement of the Florida Building Code, the City shall resolve the dispute by the procedures set forth in chapters 633 and 553, F.S., as required by section 633.104, F.S.; and

WHEREAS, Section 633.104, F.S., provides that it is the intent of the legislature that there be no conflicts in the interpretation and enforcement of the Florida Fire Prevention Code and the Florida Building Code; and

WHEREAS, in the event of a conflict between the Florida Fire Prevention Code and the Florida Building Code, the procedures set forth in Section 553.73(11)(a)-(f), F.S., relating to

conflicts in the application of the Florida Fire Prevention Code and the Florida Building Code to a specific project, as applicable, shall be followed; and

WHEREAS, Section 633.104, F.S., provides that the State Fire Marshal may issue, and if requested in writing by a substantially affected person or by a local enforcing agency, i.e., an authority having jurisdiction, the State Fire Marshal shall issue declaratory statements to interpret the Florida Fire Prevention Code; and

WHEREAS, to request an interpretation of the Florida Fire Prevention Code from the State Fire Marshal, a substantially affected person must proceed through the local appeal process and receive an adverse ruling from the local appeals board; and

WHEREAS, the Building and Fire Code Board of Appeals plays a vital role in the community by serving as a local administrative body to hear such appeals; and

WHEREAS, the Building and Fire Code Board of Appeals hears appeals to any final decision made by the Building Official and Fire Official and settles any conflicts on application of the minimum requirements of the Florida Building Code or Florida Fire Prevention Code; and

WHEREAS, the Building and Fire Code Board of Appeals further hears appeals to rule on matters relating to the City of Jacksonville Beach, Chapter 10 fire codes and its enforcement as required by National Fire Protection Association's Standard, NFPA 1, Fire Prevention Code; and

WHEREAS, the National Fire Protection Association's Standard, NFPA 1, Fire Prevention Code, 1.10.1 requires that a Board of Appeals be established to rule on matters relating to all fire codes and their enforcement; and

WHEREAS, the City of Jacksonville Beach finds it is the best interest of the public health, safety, and welfare to create such Building and Fire Code Board of Appeals containing representatives of the professional design and construction industries and former fire professionals;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF JACKSONVILLE BEACH, FLORIDA:

SECTION 1. That Article V, Sections 10-5.01 through 10-5.08 is hereby created as follows¹:

ARTICLE V. – BUILDING AND FIRE CODE BOARD OF APPEALS

¹ (~~strikethrough~~ text indicates deletions, underline text indicates additions).

Sec 10-5.01 Creation.

- (a) Creation. There is hereby created and established a Board to be known and designated as the “Building and Fire Code Board of Appeals.”

Sec 10-5.02 Powers and duties.

- (a) The Board of Appeals shall provide reasonable interpretation of the provisions of Chapter 10. Article III. Fire Prevention and Life Safety of the code for the City of Jacksonville Beach and the Florida Fire Prevention Code as adopted thereby and issue rulings on appeals of the decision of the Fire Official of the city.
- (b) The rulings by the Board of Appeals shall be consistent with the letter and intent of the code as adopted in Chapter 10. Article III. Fire Prevention and Life Safety of the code for the City of Jacksonville Beach and the Florida Fire Prevention Code.
- (c) The Board shall hear appeals from decisions by the Fire Official and Building Official, acting in concert to resolve conflicts between the Florida Building Code and Florida Fire Prevention Code.
- (d) In the event that the Fire Official and Building Official are unable to agree on a resolution of a conflict between the Florida Building Code and Florida Fire Prevention Code, the Board shall resolve the conflict in favor of the code which offers the greatest degree of life safety or in favor of alternatives which would provide an equivalent degree of life safety and an equivalent method of construction.
- (e) If the decision of the Fire Official and the Building Official is to apply the provisions of either the Building Code or the Fire Prevention Code, the Board may not alter the decision unless the Board determines that the application of such code is not reasonable.
- (f) If the decision of the Fire Official and the Building Official is to adopt an alternative to the codes, the Board shall give due regard to such decision and may modify that decision if the Board adopts a better alternative, taking into consideration all relevant circumstances.
- (g) In any case in which the Board adopts alternatives to the decision rendered by the Fire Official and the Building Official, such alternatives shall provide an equivalent degree of life safety and an equivalent method of construction as the decision rendered by the Fire Official and the Building Official.
- (h) The Board of Appeals shall not have the authority to waive the requirements of the Florida Building Code, Chapter 10. Article III. Fire Prevention and Life Safety of the code for the City of Jacksonville Beach, or the Florida Fire

Prevention Code.

- (i) The Board of Appeals decisions shall not be precedent setting.

Sec 10-5.03 Means of Appeal.

- (a) A substantially affected party with standing may appeal a decision of the Fire Official or Building Official when it is claimed that one or more of the following conditions exist:
1. The true intent of the Florida Building Code, Chapter 10. Article III. Fire Prevention and Life Safety of the code for the City of Jacksonville Beach, or the Florida Fire Prevention Code has been incorrectly interpreted.
 2. The provisions of the Florida Building Code, Chapter 10. Article III. Fire Prevention and Life Safety of the code for the City of Jacksonville Beach, or the Florida Fire Prevention Code do not fully apply.
 3. A decision is unreasonable or arbitrary as it applies to alternatives or new materials.
- (b) An appeal shall be submitted to the City in writing within thirty (30) calendar days of notification of violation. The appeal shall outline all of the following:
1. The provision(s) of the Florida Building Code, Chapter 10. Article III. Fire Prevention and Life Safety of the code for the City of Jacksonville Beach, or the Florida Fire Prevention Code from which relief is sought.
 2. A statement indicating which provisions of Sec. 10-5.03(a) apply.
 3. Justification as to the applicability of the provision(s) cited in Sec. 10-5.03(a).
 4. A requested remedy.
 5. Justification for the requested remedy stating specifically how the Florida Building Code, Chapter 10. Article III. Fire Prevention and Life Safety of the code for the City of Jacksonville Beach, or the Florida Fire Prevention Code is complied with, public safety is secured, and fire fighter safety is secured.

Sec 10-5.04 Creation; Composition; Term of Office.

- (b) Composition. Such Board of Appeals shall be composed of five (5) members, to be appointed by the city council. The city council shall also appoint two (2) alternate members, a first alternate and a second alternate. The alternate members shall vote only in the absence of regular members. The first alternate member shall have priority to vote in the absence of the first regular member's absence.

- (c) Qualifications. Members of the Board of Appeals shall be a resident of the city for two (2) years prior to appointment, and a qualified elector. No member of the city council, city employee, or agent of the city shall serve on the Board of Appeals. To the greatest extent possible, members of the Board of Appeals shall be composed of members with expertise in engineering or architectural design, general contracting, fire protection contracting, fire department operations, fire code or building code enforcement.
- (d) Ex-officio member. The city's fire official shall be an ex-officio member of the Board of Appeals and entitled to participate in all discussion. The ex officio member shall not be entitled to a vote.
- (e) Terms. The term of office of each member, both full and alternate members, shall be three (3) years. When a person is appointed to fill the term of a departing member, the appointed member term will end on the date the departing members term would naturally end.

Sec 10-5.05 Removal from office.

- (a) In the event that any member is no longer a qualified elector or is convicted of a felony, or an offense involving moral turpitude while in office, the city council shall terminate the appointment of such person as a member of the Board of Appeals, and appoint a new member.
- (b) If any member of the Board of Appeals fails to attend the annual meeting without cause, the chairman of the Board of Appeals shall notify the city council, who shall declare the member's office vacant, and appoint a new member.

Sec 10-5.06 Vacancy.

- (a) Whenever a vacancy occurs on the Board of Appeals, the full time member's position shall be served by an alternate member until a permanent member can be appointed by the city council. The city council shall appoint the new member within thirty (30) days of the vacancy.

Sec 10-5.07 Officers; quorum; rules of procedure.

- (a) Chairman and vice-chairman. At an annual organizational meeting, the members of the Board of Appeals shall elect one (1) of their members as chairman and one (1) as vice-chairman. The chairman shall be in charge of all proceedings before the Board of Appeals, shall decide all points of order on procedure, and shall take

such action as shall be necessary to preserve the order and integrity of all proceedings. In the absence of the chairman, the vice-chairman shall act as chairman and shall have all powers of the chairman. The chairman and vice-chairman shall serve a term of one (1) year. No member shall serve as chairman for more than two (2) consecutive terms.

- (b) Secretary. The City Clerk or his/her designated representative shall serve as secretary for the Board of Appeals. The secretary shall keep minutes of all proceedings, which minutes shall be a summary of all proceedings before the Board of Appeals, which shall include the vote of all members upon every question, and be attested to by the secretary. The minutes shall also indicate whether a member is absent or disqualified from voting. The minutes shall be approved by a majority of the Board of Appeals members voting. In addition, the secretary shall maintain all records of Board of Appeals meetings, hearings, proceedings, and the correspondence of the Board of Appeals, as public records.
- (c) Staff. The City Clerk or his/her designated representative shall be the professional staff for the Board of Appeals. Agendas and reports items will be produced by the City Clerk or his/her designated representative with input from the Fire Official and/or Building Official as the may be required.
- (d) Quorum and voting. No meeting of the Board of Appeals shall be called to order, nor may any business be transacted by the Board of Appeals without a quorum consisting of at least three (3) members of the Board of Appeals being present. All actions shall require a simple majority of the members then present and voting. Members of the Board of Appeals are required to vote on all matters before the Board of Appeals, unless they are absent or disqualified.
- (e) Disqualification. If a member of the Board of Appeals determines that they have private or personal interests in an issue that comes before the Board of Appeals, they may disqualify themselves from participation in that issue. A member of the Board of Appeals may be disqualified from participation on an issue by a majority vote of the Board of Appeals, on the same grounds.
- (f) Rules of procedure. The Board of Appeals shall, by a majority vote of the entire membership, adopt rules of procedure for the transaction of business and shall keep a record of meetings, resolutions, findings and determinations. The Board of Appeals may provide for transcription of such hearings and proceedings, or portions of hearings and proceedings, as may be necessary.

Sec 10-5.08 Meetings.

- (a) General. The Board of Appeals shall meet at least annually and shall meet as needed for the purpose of interpreting the provisions of the fire code and to consider and rule on any properly filed appeal from a decision of the Fire Official and/or Building Official.

- (b) Continuance. If a matter is postponed due to lack of a quorum, the chairman shall continue the meeting as a special meeting to be held within seven (7) days thereafter. In case of delays caused by other reasons, the public hearing shall be rescheduled to the next Board of Appeals meeting. The secretary shall notify all members of the date of the continued public hearing and also shall notify all parties.
- (c) Open to public. All meetings and public hearings of the Board of Appeals shall be open to the public.
- (d) Notice. Public hearings shall be set for a time certain after due public notice.
- (e) Compensation. Members of the Board of Appeals may receive such travel and other expenses while on official business for the board of appeals as are made available by the city council for these purposes.

SECTION 2. That all ordinances or parts of ordinances in conflict with this ordinance are, to the extent that the same may conflict, hereby repealed.

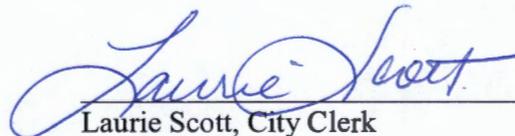
SECTION 3. In the event that any section, subsection, sentence, clause, phrase, word term or provision of this Ordinance shall be held by a court of competent jurisdiction to be partially or wholly invalid, unconstitutional or unenforceable, any such invalidity, unconstitutionality, illegality, or unenforceability shall not affect any of the other or remaining terms, provisions, clauses, sentences, or sections of this Ordinance, and this Ordinance shall be read and/or applied as if the invalid, unconstitutional, illegal, or unenforceable section, subsection, sentence, clause, phrase, word, term or provision did not exist.

SECTION 4. That this ordinance shall take effect upon its adoption by the City Council.

AUTHENTICATED THIS 17th DAY OF June, A.D., 2019.



William C. Latham, Mayor



Laurie Scott, City Clerk