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ORDINANCE NO. _____

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF HIAWATHA, IOWA, 1996, BY AMENDING CHAPTER 159 BOARD OF APPEALS

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HIAWATHA, IOWA:

SECTION 1. Chapter 159 Board of Appeals of the Code of Ordinances of the City of Hiawatha, Iowa, 1996, is hereby amended as follows:

CHAPTER 159

BOARD OF APPEALS

159.01 Established

159.02 Membership

159.03 Ex-Officio Members

159.04 Appointment and Compensation

159.05 Quorum

159.06 Meetings

159.07 Appeals Process

159.08 Licensure Suspension, Revocation & Renewal

159.09 Recommendations to Council

159.10 Vote

159.11 Chairperson

159.12 Tests

159.13 Variances

159.14 Failure to Act

159.15 Finality of Decision and Necessary Vote

159.01 ESTABLISHED. There is hereby established a Board of Appeals, hereinafter called the Board, for the purpose of making a determination of any appeal arising from any act of the administrative authority in the determination of the suitability of alternate materials and methods of installation or construction and provide reasonable interpretations, and variances from the Building (Chapter 155), Electrical (Chapter 157), Fire (Chapter 160), Housing (Chapter 163), Mechanical (Chapter 158), or Plumbing (Chapter 156), or Property Maintenance (Chapter 164) Codes, provided that the granting of such variation would not increase the hazard to life or property. ~~The Board will also have authority to license pipe layers pursuant to Chapter 130 of this Code of Ordinances.~~

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159.02 MEMBERSHIP. Said Board shall ~~initially~~ consist of at least seven (7) members. One member of the Board shall be a building contractor registered with the City Building Department; one shall be a licensed electrical contractor or a licensed electrician; one shall be a licensed mechanical contractor or licensed mechanical journeyman; one shall be a licensed master plumber or a licensed journeyman plumber; and three shall be private citizens. All of the Board members shall have a place of business or residence located in the City and be qualified by experience and training to pass upon matters pertaining to Building, Electrical, Fire, Mechanical and Plumbing construction, provided such qualified candidates are available.

159.03 EX-OFFICIO MEMBERS. The Building Official or authorized representative shall be an ex-officio member without a vote and shall act as a Secretary of the Board. A "Fire Prevention Official," as designated by the Fire Chief, shall be an ex-officio member without a vote and shall provide technical expertise and interpretation in fire related and/or life safety appeals brought before the Board.

159.04 APPOINTMENT AND COMPENSATION. The Board shall be appointed by the Mayor subject to approval of the Council. Appointment of members shall be for staggered terms of three (3) years, with the terms of not more than two (2) members to expire December 31 of any one year. All members shall serve without compensation.

159.05 QUORUM. A majority of the full membership of the Board shall constitute a quorum. Ex-officio members shall not be included in calculation of a quorum.

159.06 MEETINGS. The Board shall hold a regular meeting on the third Monday of each month unless there are no licensing, appeals or business on file for a hearing. All requests for hearings shall be submitted in writing to the Building Official by noon on the Monday preceding the regular meeting. A ~~nominal~~ fee ~~of fifty dollars ($50.00)~~ shall be charged in appeals matters ~~relating to Building, Electrical, Fire, Mechanical, Plumbing, or Property Maintenance Codes~~in accordance with the City Council fee schedule resolution. The Board shall adopt rules and regulations for conducting its investigations and shall render all decisions and findings in writing to the Building Official for appropriate distribution and filing.

159.07 APPEALS PROCESS.

1. Any person aggrieved by a written notice of the City issued in connection with any alleged violation of the Building, Electrical, Fire, Mechanical, Plumbing, or Property Maintenance Codes, of any applicable rule or regulation issued pursuant to

the aforementioned Codes, may apply in writing to the Board for a reconsideration of such notice or order provided that such application is made within thirty (30) calendar days after the date of postmark of notice or proof of service.

2. Upon receipt of any appeal filed pursuant to this section, the matter shall be presented at the next regular or special meeting of the Board.

3. As soon as practicable after receiving a written appeal, the Board shall hold a public meeting to consider the appeal. The applicant shall be advised in writing of the time and place of such meeting at least seven (7) days prior to the date of the meeting. At such meeting, the applicant shall be given an opportunity to be heard and to show cause why such notice or order should be modified, extended, withdrawn or variance granted. The Board may, in its discretion, hold a public hearing on any matter brought before the Board.

4. The Board, by a majority vote of the full membership of the Board, may sustain, modify or withdraw the notice or order. In granting an extension or variance of any notice or order, the Board shall observe the following conditions:

A. The Board, by a majority vote of the full membership of the Board, may sustain, modify or withdraw the notice or order. In granting an extension or variance of any notice or order, the Board shall observe the following conditions:

(1) That there are practical difficulties or unnecessary hardships in carrying out the strict letter of any notice or order.

(2) That such an extension is in harmony with the general purpose and intent of the applicable Code in securing the public health, safety and general welfare.

B. The Board may grant a variance in a specific case and from a specific provision of the applicable Code subject to appropriate conditions and provided the Board makes specific findings of fact based on evidence relating to the following:

(1) That there are practical difficulties or unnecessary hardships in carrying out the strict letter of any notice or order.

(2) That the effect of the application of the provisions would be arbitrary in the specific case.

(3) That an extension would not constitute an appropriate remedy for these practical difficulties or unnecessary hardships in this arbitrary effect.

(4) That such a variance is in harmony with the general purpose and intent of the applicable Code in securing the public health, safety and general welfare.

5. Failure of any person to file an appeal in accordance with the provisions of this section shall constitute a waiver of the right to an administrative hearing and adjudication of the notice and order or to any portion thereof.

6. Enforcement of any notice or order issued under this Code shall be stayed during the duration of an appeal of the order, which is properly and timely filed.

159.08 LICENSURE SUSPENSION, REVOCATION, AND RENEWAL.

1. Suspension or Revocation. Prior to suspension or revocation of a license, at least fifteen (15) days' notice shall be given to the holder whose license is in question by certified mail addressed to holder's last known mailing address as shown on license records in the City's Community Development Department. Failure to receive such notice shall not constitute a defense. Said notice shall indicate time and place of the hearing and the general grounds for the contemplated suspension or revocation. The notice shall also advise the holder of his or her rights to appear at said hearing in person, or by counsel, for the purpose of presenting his or her defense.

2. Renewal of Revoked License. A person whose license has been revoked shall not apply for a new license within six (6) months after the revocation of the aforesaid. Said application shall be accompanied by a fee in accordance with the City Council fee resolution. ~~of $50.00.~~ The suspension or revocation of a license shall not entitle the holder to a refund of any part of the license for which he or she may have paid.

159.09 RECOMMENDATIONS TO THE COUNCIL. The Board shall make recommendations from time to time to the Council for appropriate legislation with respect to rental licensing

~~of Pipe Layer contractors~~, or with respect to the Building, Electrical, Fire, Mechanical, Plumbing, and Property Maintenance Codes.

159.10 VOTE. All decisions or recommendations of the Board shall require a majority vote of the full membership of the Board.

159.11 CHAIRPERSON. The Board shall elect annually one of its members as Chairperson. The Chairperson shall preside at all meetings of the Board or designate an acting Chairperson to preside in his or her place.

~~**159.12 TESTS.** All tests shall be given on times and dates to be determined by the Board.~~

159.12~~3~~ VARIANCES. Alternative materials and methods and other variances from the Building, Electrical, Fire, Mechanical, Plumbing, and Property Maintenance Codes granted by the Board shall be effective only for the specific case presented in appeal and only for one year following approval.

159.13~~4~~ FAILURE TO ACT. In case an appellant or applicant does not exercise his or her rights, or fails to begin construction or operations or occupancy in accordance with any appeal, variance or permit granted by the Board within one year~~-~~, such variance or permit shall be null and void.

159.14~~5~~ FINALITY OF DECISION AND NECESSARY VOTE. All decisions and findings of the Board on any license or appeal for a variance, after a public hearing, shall in all instances be the final administrative decision and shall be subject to judicial review as provided by law. The concurring vote of the majority of the full membership of the Board shall be necessary to reverse an order, requirement, decision or determination of the Building Official, or decide in favor of the applicant on any matter upon which it is required to pass under this Code or to effect a variance in such Code.

SECTION 2. SEVERABILITY CLAUSE. If any section, provision or part of this ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

SECTION 3. WHEN EFFECTIVE. This ordinance shall be in effect from and after its final passage, approval and publication as provided by law.

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PASSED AND APPROVED this 2nd day of May, 2018.

_____
Bill Bennett, Mayor

ATTEST:

_____
Kelly Kornegor, City Clerk

I, Kelly Kornegor, City Clerk of the City of Hiawatha, Iowa, do hereby certify that the foregoing ORDINANCE was PASSED and APPROVED by the City Council of the City of Hiawatha, Iowa, on the 2nd day of May, 2018, and was posted as Ordinance No. _____ on the _____ day of May, 2018.

_____
Kelly Kornegor, City Clerk