

ORDINANCE NO. 2477

INTRODUCED BY: ALLEN-THOMAS, CHACON, DOUGLAS, FORD, HURST, HUSEMAN, KIM, MADERA, NOBLE

AN ORDINANCE REPEALING AND REPLACING SECTION 5-21 OF THE COMMERCE CITY REVISED MUNICIPAL CODE TO UPDATE AND MODERNIZE PROVISIONS DEFINING THE BOARD OF BUILDING CODE APPEALS (BBCA)

WHEREAS, the purpose of this and related ordinances is to update the city's building code, adopt changes made in the various 2021 editions of the International Codes, apply city-specific revisions to the adopted codes, and to simplify, consolidate, and clarify the city's building code support functions such as appeals, violations, contractor licenses, fees and third-party services;

WHEREAS, Section 5-21, entitled "Board of Appeals," has been replaced with nationally recognized provisions from the appendix of the 2021 International Building Code with city-centric amendments. The BBCA hears and decides appeals of orders made by the city's building official. Similarly to the existing provisions, the new language denotes when and how an appeal can be made as well as the board's qualifications and authority; and

WHEREAS, the new provisions allow for a standing BBCA rather than an ad hoc board to provide appellants with speedy hearings heard by established and experienced board members.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COMMERCE CITY, COLORADO, AS FOLLOWS:

SECTION 1. Findings. The recitals to this ordinance are incorporated as findings of the City Council. This ordinance is found to be necessary for the preservation of the public health, safety, and welfare and in the public interest.

SECTION 2. Amendments. Section 5-21 of the Commerce City Revised Municipal Code is hereby repealed and replaced as set forth in Exhibit A.

SECTION 3. Repealer. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof are hereby repealed to the extent of such inconsistency.

SECTION 4. Effective Date. This ordinance shall be effective as provided in the City Charter.

INTRODUCED, PASSED ON FIRST READING AND PUBLIC NOTICE ORDERED THIS 17TH DAY OF APRIL, 2023.

PASSED ON SECOND AND FINAL READING AND PUBLIC NOTICE ORDERED THIS 15TH DAY OF MAY, 2023.

CITY OF COMMERCE CITY, COLORADO

Benjamin A. Huseman, Mayor

ATTEST

Dylan A. Gibson, City Clerk

Exhibit A to Ordinance 2477

Sec. 5-21. - Board of appeals.

- (a) *Scope.* A board of appeals shall be established for the purpose of hearing applications for modification of the requirements of the City of Commerce City Building Code (C3BC) and to hear and decide appeals of orders, decisions or determinations made by the building official relative to the application and interpretation of the technical provisions of the C3BC. The board shall be established and operated in accordance with this article and shall be authorized to hear evidence from appellants and the building official pertaining to the application and intent of the C3BC for the purposes of issuing orders pursuant to these provisions.
- (b) *Application for appeal.* Any person shall have the right to appeal a decision of the building official to the board. An application for appeal shall be based on a claim that the intent of the C3BC or the rules legally adopted hereunder have been incorrectly interpreted, the provisions of the C3BC do not fully apply or an equally good or better form of construction is proposed. The application shall be made in writing no more than 21 days after the notice was served.
 - (1) *Limitations on authority.* The board shall not have the authority to waive requirements of the C3BC, interpret its administration or set precedent.
 - (2) *Stays of enforcement.* Appeals of notice and orders, other than notices of Imminent Danger, as defined in Chapter 2 of the International Building Code, shall stay the enforcement of the notice and order until the appeal is heard by the board.
- (c) *Membership of the board.* The board shall consist of five voting members appointed by city council.
 - (1) *Qualifications.* Board members shall be selected on the basis of their ability to render fair and competent decisions regarding application of the C3BC and shall, to the extent possible, represent different occupational or professional fields relating to the construction industry. At least one member should be an experienced builder or contractor and at least one member should be a registered design professional. Employees or officials of the locality shall not serve as members of the board.
 - (2) *Alternate members.* The city council shall appoint two alternate board members who shall be called by the board chairperson to hear appeals during the absence or disqualification of a member. Alternate members shall possess the qualifications required for board membership.
 - (3) *Vacancies.* Vacancies shall be filled in the same manner in which original appointments are to be made.
 - (4) *Chairperson.* The board shall annually select one of its members to serve as

chairperson.

- (5) *Secretary.* The building official shall designate a qualified clerk to serve as secretary to the board. The secretary shall file a detailed record of all proceedings, which shall set forth the reason for the board's decision, the vote of each member, the absence of a member and any failure of a member to vote.
 - (6) *Conflict of interest.* A member with any personal, professional or financial interest in a matter before the board shall declare such interest and refrain from participating in discussions, deliberations and voting on such matters.
- (d) *Rules and procedures.* The board shall establish policies and procedures necessary to carry out its duties consistent with the provisions of the C3BC and applicable city and state law.
- (e) *Evidence in hearings.* The rules of evidence shall not apply to hearings before the board. Only relevant information may be presented to the board. The board may use the rules of evidence as a guide to manage and ensure the presentation of only relevant evidence during a hearing.
- (f) *Notice of meeting.* The board shall meet upon notice from the chairperson or their designee, within 10 days of the filing of an appeal or at stated periodic intervals provided that such hearing dates are not be more than 30 days from the date the appeal was received by the building official.
- (1) *Open hearing.* All hearings before the board shall be open to the public. The appellant, the appellant's representative, the building official and any person whose interests are affected by the matter before the board shall be given an opportunity to be heard.
 - (2) *Quorum.* Three members of the board shall constitute a quorum.
 - (3) *Postponed hearing.* When five members are not present to hear an appeal, the appellant or the appellant's representative and the building official shall have the right to request a postponement of the hearing.
- (g) *Board decision.* The board shall only uphold or reverse the decision of the building official by a majority vote.
- (1) *Decisions.* The decision of the board shall be in writing and shall indicate the vote upon the decision. Every decision shall be filed with the office of the building official as expeditiously as possible, but no longer than within ten days (10) after the conclusion of the hearing, and shall be open to the public for inspection. A certified copy shall be furnished to the appellant or the appellant's representative and to the building official.
 - (2) *Administration.* The building official shall take immediate action in accordance with the decision of the board.

- (h) *Court review.* Decisions of the board shall be considered a final order and may only be reviewed under Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

****END OF EXHIBIT A****