

ORDINANCE NO. 2021-20

AN ORDINANCE OF THE CITY OF IOWA COLONY, TEXAS, PROVIDING FOR A BUILDING CODES BOARD OF APPEALS, AMENDING THE UNIFIED DEVELOPMENT CODE, INTERNATIONAL BUILDING CODE, INTERNATIONAL RESIDENTIAL BUILDING CODE, INTERNATIONAL ELECTRICAL CODE, INTERNATIONAL ENERGY CONSERVATION CODE, INTERNATIONAL FUEL GAS CODE, INTERNATIONAL MECHANICAL CODE, INTERNATIONAL SWIMMING POOL/SPA CODE, INTERNATIONAL PLUMBING CODE, INTERNATIONAL FIRE CODE, INTERNATIONAL PROPERTY MAINTENANCE CODE, AND THE AMUSEMENT RIDE ORDINANCE (ORD. 2014-20, PART X); WITH RELATED PROVISIONS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF IOWA COLONY, TEXAS:

PART I. UNIFIED DEVELOPMENT CODE

A. Section 1.1.5.2 of the Unified Development Code is hereby amended as follows:

“Section 1.1.5.2. Authority for Deciding Applications

(a) The Zoning Board of Adjustment shall finally decide the following types of applications:

- (1) An application for a special exception;
- (2) An application for a change in the status of a non-conformity; and
- (3) An application for a zoning variance;

(b) The Zoning Board of Adjustment shall finally decide appeals on the following matters:

(1) An appeal of a City Official’s decision on a zoning matter and not on a matter for which any Building Code or ordinance authorizes the Building Codes Board of Appeals to hear the appeal;

(2) An appeal of a City official’s interpretation of the requirements of this UDC, unless the appeal is to be heard by the Building Codes Board of Appeals under any ordinance of law, or unless a separate appeals process is otherwise defined within this UDC.”

B. Section 1.3.1.1 of the Unified Development Code is hereby amended as follows:

“Section 1.3.1.1. Purpose, Applicability, and Effect

(a) The purpose of an appeal is to contest an initial decision on an application based upon alleged misapplication of the criteria for approval of the application. An appeal shall not be used as a means of amending, varying or otherwise modifying the standards of this Code that apply to the development application.

(b) Unless otherwise provided by this Code, any final administrative decision on an application by a City official, including a determination by the responsible official that a proposed development is exempt from one or more applications, may be appealed to the board or commission designated in the regulations establishing the procedure by which the decision was made. For administrative decisions on applications appeal shall be to the Zoning Board of Adjustment, except to the extent that any ordinance or code authorizes the Building Codes Board of Appeals to hear that appeal. Final decisions on an application by a board or commission may be appealed to the City Council only if expressly provided for in the regulations establishing the procedure by which the decision was made.

(c) The granting of an appeal supersedes the decision from which appeal was taken, and results in approval, conditional approval or denial of the application for which approval was sought.

(d) The Unified Development Code does not apply to appeals to the Building Codes Board of Adjustment, and those appeals are governed by the Building Codes."

PART II. VARIOUS BUILDING CODES

A. DEFINITIONS

1. "Building Code," "Building Codes," "this code," or "these codes," whether singular or plural, herein shall mean the International Building Code, International Residential Building Code, International Electrical Code, International Energy Conservation Code, International Fuel Gas Code, International Mechanical Code, International Swimming Pool/Spa Code, International Plumbing Code, International Fire Code, International Property Maintenance Code, the Amusement Ride Ordinance (Ord. 2014-20, Part X), and any other ordinances or codes under which the Building Official makes decisions, but not the Zoning Ordinance.

2. "Building Official" herein includes not only the Building Official, but also the Fire Marshall, and the designees of the Building Official or Fire Marshall.

3. Any reference herein to this Ordinance shall also refer to all Codes adopted or amended by this Ordinance.

B. AMENDMENT OF BUILDING CODES

1. This ordinance amends the Building Codes by replacing Sections 112.1, 112.2, and 112.3 and Appendix B of the International Building Code and any other provisions, by whatever number, concerning appeals from decisions of the Building Official in any Building Codes. This ordinance shall be part of the Building Codes.

2. Subject to this amendment, the Building Codes shall remain in full force and effect, as previously or hereafter amended.

C. BUILDING CODES BOARD OF APPEALS

1. The Board

a. **Establishment of Board.** The Building Codes Board of Appeals ("BCBOA," "board of appeals," or "board" is hereby established.

b. **Membership.** The city council shall appoint the members of the board, as provided in the Home Rule Charter. The board shall have at least three members and as many alternate members as the council chooses to appoint. The council shall specify whether each appointment is of a regular member or an alternate.

c. **Ex Officio Member.** The building official shall be an ex officio member of the board but shall have no vote on any matter before the board.

d. **Length of Term.** Each member shall serve a two year term, coincident with the term of the mayor, and until the member's successor is duly installed, but regardless of any provision, a member is subject to removal at will at any time by the city council.

e. **Alternate Members.** The board chairperson shall call alternate members to hear appeals during the absence or disqualification of one or more members. All provisions of this ordinance applicable to members shall also apply to alternate members. Any reference to a number or fraction of members shall mean the regular members and alternate members participating in the matter, unless otherwise specified.

f. **Qualifications.** The city council shall be the sole judge of the qualifications of the members of the board. The council may consider a prospective member's education, training, and experience in the subject matters of the Building Codes and any other qualifications the Council believes are pertinent.

g. **Chairperson.** The board shall annually select one of its members to serve as chairperson.

h. **Secretary.** The chairman or his/her designee shall make a detailed record of all proceedings and deliver it to the city secretary, who shall preserve it as provided by law.

i. **No Compensation of Members.** The members shall not be compensated.

2. Authority Of Board

a. Authority to Hear Certain Appeals. The board is hereby authorized to hear and decide appeals of orders, decisions or determinations made by the building official relative to the application and interpretation of this code.

b. Not Zoning Appeals. However, appeals from decisions of the Building Official under the Zoning Ordinance are heard by the Zoning Board of Adjustment and Appeals under the Zoning Ordinance and the Unified Development Code, not by the Building Codes Board of Appeals under this ordinance.

c. Limitations on Authority. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted hereunder have been incorrectly interpreted, that the provisions of this code do not fully apply, or that an equally good or better form of construction is proposed. The board shall have no authority to waive requirements of this code.

d. Purpose and Scope of Appeals. The purpose of an appeal is to contest an initial decision of the Building Official based upon alleged misapplication of the criteria for that decision. An appeal shall not be used as a means of amending, varying, or otherwise modifying the standards of this code that apply to the decision.

e. Disqualification of Member. A member shall not hear an appeal in which that member has a personal, professional, or financial interest.

3. Procedures

a. Requirements for Appeal

i. The applicant and any interested person may appeal a final decision of the building official within the authority of the board

ii. The appeal must be filed with the building official within 20 days after notice of the building official's decision being appealed was served.

iii. The appeal shall contain a written statement of the reasons why the decision is erroneous. The appeal must be accompanied by a copy of the application or request on which the initial decision was rendered. The appeal may include any other documents that support the position of the appellant.

iv. The appeal must be accompanied by the fee established by the City Council. Unless the Fee Ordinance of the City provides a different fee, the fee for an appeal under this ordinance shall be \$250.00.

b. Documents to Board. Upon receipt of an appeal, the building official shall compile all documents constituting the record of the decision on appeal and transmit the record to the board.

c. Appeal Creates a Stay.

i. Receipt of a complete, written appeal of a decision stays all proceedings of the City in furtherance of the decision from which the appeal is taken, including without limitation acceptance, processing, or issuance of any applications that are dependent on the decision being appealed, and any development activities authorized by initial approval of the application.

ii. The stay shall be lifted only if the building official certifies in writing to the board that a stay would probably cause imminent peril to life or property.

iii. Thereafter, the stay may be reinstated only by order of the board or a court of record, on application, after notice to the responsible official, for due cause shown.

d. Criteria for Deciding Appeal. In deciding the appeal, the board shall apply the same criteria that govern the initial decision being appealed under the provisions of this code.

e. Time to Decide Appeal. The board must decide an appeal within thirty days after the date of filing an appeal that the Building Official certifies is administratively complete, including the payment of the applicable fee for the appeal. The thirty days run from the date of filing the complete application, not from the date the Building Official certifies completeness. The appellant may waive the thirty day requirement.

f. Postponed Hearing. When a quorum is not present to hear an appeal, either the appellant or the appellant's representative shall have the right to request a postponement of the hearing.

g. Vote Required. Modifying or reversing a decision of the Building Official requires a concurring vote of two-thirds of the number of regular members of the board.

h. Written Decision. The decision of the board shall be in writing. Certified copies shall be furnished to the appellant and to the building official.

i. Action on Decision Of Board. The building official shall take immediate action in accordance with the decision of the board.

j. Time Periods Running form Decision of Board. For purposes of determining expiration or extension periods under this code or other applicable law, the date of the board's decision on an appeal is the date on which the application is deemed approved or denied.

k. Notice of Meetings. The board shall meet upon notice from the chairperson or at stated periodic meetings.

l. Open Meetings And Hearings. The meetings and hearings of the board shall be subject to the Texas Open Meetings Act. The appellant, the appellant's representative, the building official, and any person whose interests are affected shall be given an opportunity to be heard.

m. Quorum. A majority of the number of regular members shall constitute a quorum. In the absence of one or more regular members, alternate members participating in the matter shall count toward a quorum.

n. **Other Rules and Procedures.** The board is authorized to establish policies and procedures necessary to carry out its duties, consistently with this ordinance. The procedures for hearings shall not require compliance with strict rules of evidence, but shall mandate that only relevant information be received.

PART III. GENERAL

A. **Conflicts in Terms.** In the event of a conflict of terms between this ordinance and any other ordinance or other law, the more restrictive provision shall govern and control.

B. **Effect of Ordinance.** This ordinance shall not be construed to relieve or lessen the responsibility of any person owning, operating, or controlling any building or structure for any damages to persons or property caused by defects, nor shall the City Council, the City, its agents or representatives assume any such liability by reason of these regulations or the inspections authorized by this Code or any permits or certificates issued under this code.

C. **References to Ordinance.** Any reference herein to this Ordinance shall also refer to all Codes adopted or amended by this Ordinance.

D. **Nonwaiver.** The failure or omission of the City, upon one or more occasions, to enforce any right, obligation, or remedy under this Ordinance or any other law concerning utilities shall never be construed as a waiver of the City's right to strictly enforce such right, obligation, or remedy, and the City may resume such strict enforcement without advance notice.

E. **Nonwaiver of Immunity.** Nothing in this Ordinance or in any other law concerning utilities shall ever be construed as a full or partial waiver of governmental immunity, official immunity, or any other immunity of the City or its officers, agents, employees, or representatives.

F. **Nonliability.** Neither the City, nor its officers, employees, agents, or representatives shall be liable to any person, other than the City, for any act, omission, or condition in any way concerning this ordinance or the subject matter hereof.

G. **Severability.** In the event any clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Iowa Colony Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there is one or more parts.

H. **Effective Date.** This ordinance shall take effect as of the date of its passage and adoption.

PASSED AND APPROVED ON THE FIRST READING ON APRIL 19, 2021.

PASSED, APPROVED, AND ADOPTED ON THE SECOND READING ON THIS 17th day of MAY, 2021.



MICHAEL BYRUM-BRATSEN,
MAYOR

ATTEST:



KAYLEEN ROSSER,
CITY SECRETARY



Iowa Colony/Building Codes Board of Appeal (4-17-21)