

TEMPE CODE

CHAPTER 8. BUILDINGS AND BUILDING REGULATIONS

ARTICLE I. TEMPE BUILDING SAFETY ADMINISTRATIVE CODE

SECTION 8-110. BOARD OF APPEALS*

***Editor's note**—Ord. No. 2014.22 consolidated the building code advisory board of appeals, the electrical code advisory board of appeals and the plumbing and mechanical code advisory board of appeals into the single technical code advisory board of appeals. See §§ 110.3 et seq.

110.1. General. In order to hear and decide appeals of orders, decisions or determinations made by the building official relative to the application and interpretation of this chapter and the technical codes, there shall be and is hereby created a board of appeals.

110.2. Limitations on authority. An application for appeal shall be based on a claim that the true intent of the technical codes or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of the technical codes do not fully apply or an equal or better form of construction is proposed. The board of appeals shall have no authority to waive requirements of the technical codes.

110.3. Created, composition.

110.3.1. Technical code advisory board of appeals. There shall be and is hereby created a technical code advisory board of appeals, consisting of nine members who are qualified by experience and training to pass upon matters pertaining to the technical provisions of the technical codes. For purposes of this division, the technical provisions shall mean all provisions of the technical codes except the administrative provisions.

One member shall be an architect, registered in the state; one member shall be a structural engineer, registered in the state, an International Code Council (ICC) certified commercial building inspector, or an ICC certified building plans examiner; one member shall be a building contractor or home builder; one member shall be an electrical engineer, registered in the state, an ICC certified commercial electrical inspector, or an ICC certified electrical plans inspector; one member shall be an electrical contractor or an electrician; one member shall be a mechanical engineer, an ICC certified commercial mechanical inspector, an ICC certified mechanical plans examiner, an ICC certified commercial plumbing inspector, or an ICC certified plumbing plans examiner; one member shall be a plumber or plumbing contractor; one member shall be a mechanical contractor; and one member shall be a representative of the fire medical rescue department or a fire protection consultant. The community development director or a designated employee of the community development department shall be an ex officio and non-voting member and shall act as secretary to the board.

110.3.2. Repealed.

110.3.3. Repealed.

110.4. Appointment, terms and vacancies. Appointments and terms of members shall be in accordance with article VI of the charter. In the event of the unexcused absence of a member from

three consecutive meetings, the position shall be deemed vacant. Vacancies shall be filled in accordance with article VI of the charter for the unexpired term of any member unable or ineligible to serve. A member whose term expires may serve until a successor has been appointed. The city council may remove any member for cause.

110.5. Officers. The board shall elect a chairman and vice-chairman from among its members, neither of whom shall be an ex officio member. The chairman and vice-chairman shall each serve for a one-year period or until their successors are elected.

110.6. Meetings. The board shall hold one regular meeting every three months when there is pending business. Special meetings may be called by the community development director or at the request of the chairman or any five members. The affirmative vote of five members shall be required for passage of any matter before the board.

110.7. Powers, duties, responsibilities.

1. The board, on request or on its own motion, may interpret the technical provisions of the technical codes in special cases when it appears that the provisions of the code are inadequate and do not cover the point in question, and may recommend to the city council such new legislation as is consistent therewith.
2. The board may grant a variance to the technical provisions of the technical codes when it can be established that a manifest injustice would be done. A variance shall not be granted by the board unless it is found that:
 - a. Special circumstances or conditions apply to the request; and
 - b. Granting the variance is necessary for the preservation and enjoyment of substantial property rights; and
 - c. Granting the variance will not be materially detrimental to persons residing or working in the premises, to adjacent or surrounding property or to the public in general; and
 - d. Granting the variance will be in harmony with the purposes sought to be attained by the technical codes.

Each case shall be evaluated on its individual merits and shall not be construed to set a precedent for deviating from the requirements of the technical codes. The findings of the board shall be binding upon all parties except as provided under Section 110.9.

3. The board may approve the use of the alternate materials or methods of construction, provided the alternate materials or method is, for the purpose intended, at least the equivalent of that prescribed by the building code in suitability, strength, effectiveness, fire resistance, durability, safety and sanitation.
4. The board may adopt such rules and regulations necessary for the discharge of its duties, provided said rules are not in conflict with the charter or this code.

5. The board is empowered to call upon the city attorney's office for legal counsel and upon any other office or board to aid and assist the board in its deliberations.

110.8. Appeal from decision of the community development director.

1. Any person dissatisfied with a decision of the community development director applying to the technical provisions of the technical codes or to an alternate material or method of construction may request a hearing before the board by filing an appeal with the community development director on a form provided therefore. Such appeal shall be heard at the next regular meeting of the board unless such appeal is filed within 21 days preceding the next regular board meeting, in which case such appeal shall be heard at the next succeeding regular or special board meeting.
2. All hearings shall be open to the public and any person whose interest may be affected by the decision shall be given an opportunity to be heard.
3. The board shall render all its decisions on appeals in writing to the appellant with a copy to the community development director.

110.9. Appeal from decision of the board.

1. If the board's decision is not concurred with by the appellant or the community development director, the appellant or the community development director may then appeal the decision to the city council within 21 days after the board's submission of such decision to the appellant and community development director. The appeal shall be in writing and shall be filed with the city clerk.
2. The city council's decision on the matter shall be predicated on the same findings as set forth in Section 110.7 and shall be final.

110.10. Appeal filing, fees.

1. Appeals shall be filed in the office of the community development department on a form provided therefore. A fee shall be paid at the time of filing of an appeal, in accordance with the schedule established by city council (see Appendix A).
2. No part of the fees required herein shall be refundable after an application is filed and the fee paid.

(Ord. No. 2011.33, 9-22-11; Ord. No. O2014.14, 3-20-14; Ord. No. O2014.22, 6-12-14)