

**ORDINANCE 2016-026**

**PASSED: AUGUST 22, 2016**

**CREATING A CONSOLIDATED BUILDING RELATED BOARD OF APPEALS (CHAPTER 22)**

**WHEREAS**, the City of DeKalb is a home rule municipality which has previously adopted certain building and mechanical codes as outlined in Chapters 24, 25, 26 and 29 of the City Code; and,

**WHEREAS**, said Chapters contemplate the creation and maintenance of various boards of appeals relating to discrete areas of building-related regulation; and,

**WHEREAS**, the City has determined that it is necessary and advantageous to create a consolidated building-related Board of Appeals as contemplated herein;

**THEREFORE BE IT ORDAINED** by the Mayor and City Council of the City of DeKalb, DeKalb County, Illinois, as follows:

**Section 1. Ordinances Repealed or Amended:**

- 1) **Section 24.02:** City Code Section 24.02 shall be amended with the deletion of subsections 112.0 through 112.7.
- 2) **Section 25.05:** City Code Section 25.05 shall be amended with the deletion of subsections (b) through (e), and the replacement of subsection (a) as follows: "a) Delete Article 80.15 A, B, C, D, E, F, H of the National Electric Code 2002 and refer to the Consolidated Building Board of Appeals."
- 3) **Section 26.06:** City Code Section 26.06 shall be deleted in its entirety.
- 4) **Section 29.08:** City Code Section 29.08 shall be deleted in its entirety.

**Section 2. Ordinances Created:**

City Code Section 22 is hereby created as follows:

**22.1 Consolidated Building Related Board of Appeals:**

- a) **Creation:** There is hereby created a consolidated building board of appeals for the City of DeKalb, referred to hereafter as the "Building Code Board of Appeals", which Board shall have the function of serving as a board of appeals with respect to matters arising under the City's then-currently adopted building and mechanical codes, including but not limited to the building code, electrical code, plumbing code and mechanical code (hereafter "City Building Codes"). Where any City Building Code contemplates a review process before a board of appeals or similar body,

such reference shall be deemed to refer to this Section 22.01 and the Building Code Board of Appeals created herein. Where any City Building Code is in conflict with the provisions of this Section 22.01, this Section shall prevail.

- b) Membership: The Building Code Board of Appeals shall consist of nine members. Each member shall serve for a six year term, and shall be appointed by the Mayor of the City of DeKalb with the advice and consent of the City Council. The initial appointments to the Board (and any subsequent appointments made to fill a vacancy) may be made for a shorter term as determined appropriate by the Mayor, to create a rotation of positions and terms on the Board.
- 1) One member shall be selected as the Chair of the Building Code Board of Appeals by the vote of the remaining members. The Chair shall preside over meetings of the Board and shall exercise the authority of the Chair pursuant to Robert's Rules of Order and City Code of Ordinances. The City Manager shall designate a City staff member who shall serve as secretary for the Board and shall take minutes of its meetings.
  - 2) Of the members of the Board, the following specializations shall be required:
    - i One member shall be a licensed plumber.
    - ii. One member shall be a licensed electrician.
    - iii. One member shall be a licensed heating/ventilation/air-conditioning/mechanical device installer or designer.
    - iv. One member shall be a licensed architect or structural engineer.
    - v. One member shall be a commercial builder or remodeler.
    - vi. The balance of members shall be appointed with consideration of their respective areas of knowledge or expertise.
  - 3) All members of the Board shall either reside within the corporate limits of the City of DeKalb or provide their services within the City of DeKalb. A minimum of five members of the Board shall be residents of the City of DeKalb.
  - 4) Where a member performs a service which would require a license issued by the City of DeKalb if performed within the City, such member shall be required to obtain and maintain such a license issued by the City.

- 5) All members of the Board shall serve without compensation, and may be removed pursuant to the laws applicable to removal of appointed officers.
- c) Jurisdiction: The Board shall have jurisdiction over any appeal right arising under the provision of any City Building Code which entitles a petitioner to bring a hearing or conflict before an appointed board of appeals convened by the City, provided that such appeal is made to the Board, in writing, within the limitations period specified in the applicable section of the City Building Codes. The Board shall not have jurisdiction to hear matters which do not have a specified right of appeal arising under the City Building Codes. In addition, the Board may hear such other conflicts as shall be referred to the Board by the direct action of the City Council of the City of DeKalb through resolution.
- 1) Conflict of Interest: Any member of the Board who has a direct or indirect personal, professional or pecuniary interest in any matter or whose business or company is involved in the design or construction of any matter shall not participate in the conduct of a hearing relating to that matter. In the case of such a recusal, the Mayor may appoint an alternate member to serve on the Board solely for the purpose of participating in the hearing on the matter at issue; such temporary appointments shall not require the advice or consent of the City Council and may be made by letter issued by the Mayor.
  - 2) Rules of Procedure: In the case of any appeal heard by the Board, the Board shall be authorized to adopt rules of procedure governing its actions and conduct and the conduct of parties appearing before it. The Board shall, by its rules, be authorized to subpoena the presence of witnesses or the production of documents before it. The Board shall be authorized to make determinations of appropriate standards applicable under the City Building Codes, but shall not be authorized to impose any fines, penalties or sanctions. Where a violation of the City Building Codes is identified, the Board may, at its discretion, refer such matter to the Chief Building Official and/or City Attorney for consideration of citation and/or prosecution. The Rules of Procedure shall not require strict compliance with evidentiary rules applicable to Court proceedings; the Board may consider evidence relevant to the matter presented. During the interim between the filing of an appeal and the date of first hearing on the appeal, the Chair of the Board may adopt rules of procedure and shall disseminate such rules in writing to the parties. Such rules are subject to modification or amendment by the Board at any properly convened meeting thereof.

- i. All appeals filed with the Board shall be in writing and submitted under oath. Appeals shall be filed initially with the Chief Building Official of the City, either in person or via certified first class mail, postage prepaid, return receipt requested. The date and time of actual receipt by the Chief Building Official shall be treated as the date of filing of the appeal. Unless a shorter time period is specified within the City Building Codes, all appeals shall be filed within thirty (30) days of the date of issuance of the decision or action being appealed. The Chief Building Official shall provide copies of the Appeal to the Board as soon as practical thereafter, and the Chair of the Board shall issue a notice and call for a regular or special meeting to hear the appeal. Said meeting shall be conducted within thirty (30) days of the date of filing of the appeal. All parties shall be afforded not less than five (5) days written notice of the date and time of the hearing, which hearing may be continued from time to time thereafter without written notice. The Community Development Director may adopt a form for use in the filing of appeals before the Board; if adopted, use of such form shall be jurisdictional and mandatory to bring a matter before the Board.
- 3) Response of the Chief Building Official: The Board shall afford the Chief Building Official of the City, or a designee thereof, the opportunity to respond to the appeal in writing, verbally at the hearing, or both, at the discretion of the Chief Building Official.
- 4) Conduct of Hearings: In the event any party seeks to bring an appeal before the Board, said party shall be responsible for compliance with the Rules of Procedure adopted by the Board. Additionally, the Board shall be authorized to hire a court reporter to prepare a certified transcript of proceedings before the Board, the cost of which to be borne by the party bringing the appeal before the Board.
- 5) Decisions of the Board: The Board may affirm, reverse or modify the decisions of the Chief Building Official which have been properly appealed to the Board.
  - i. Final decisions of the Board shall be issued in writing and shall denote the specific vote of the Board to decide the appeal, with a roll call vote taken of the members of the Board. The Board may also attach findings of fact and/or recommendations to its decision where such actions are deemed appropriate.
  - ii. Upon issuance of a final decision that contradicts the determination of the Chief Building Official, the Chief

Building Official and the appellant shall either comply with such decision, or shall appeal the decision as provided below.

- iii. Relief from the Chief Building Official's determination may be granted only where the Board determines that:
  - A) The Chief Building Official did not correctly interpret the City Building Codes; or
  - B) Specific reasons, that are unique and individual to the single project at issue before the Board, make application of the strict letter of the Building Code impractical, and the proposed modification or relief is in compliance with the intent and purpose of the Building Code, and such modification or relief does not lessen health, accessibility, life and fire safety or structural requirements of the structure nor does it contradict any mandate of a superior governmental authority; or
  - C) any alternative material, design or method of construction and equipment complies with the intent of the Building Code and the material, method or work offered is, for the purpose intended, at least the equivalent of that prescribed in the Building Code in quality, strength, effectiveness, fire resistance, durability, accessibility and safety.

The Building Code Board of Appeal may not waive the requirements of the Building Code.

- 6) Administrative Review: Final decisions of the Board shall be appealable as final decisions of an administrative body pursuant to the Illinois Administrative Review Law, 735 ILCS 5/3-101, *et. seq.*
- 7) Plumbing Appeals: The Board shall not be authorized to alter or waive mandatory provisions of the Illinois State Plumbing Code. The Board shall not consider appeals relating to such mandatory provisions. The Board shall have jurisdiction to consider appeals relating to local amendments of the Plumbing Code which have been adopted by the City of DeKalb.

- 8) Energy Code Appeals: The Board is not authorized to waive mandatory provisions of the Illinois State Energy Code. The Board shall consider appeals relating to such mandatory provisions, per C109.1 and R109.1 of the State of Illinois Energy Conservation Code.
- d) Open Meetings: Meetings of the Board shall be conducted as open meetings of a public body pursuant to applicable law. The Board may establish a regular meeting schedule, subject to modification by the Board from time to time, and may schedule such special meetings as shall be required to fulfill its obligations.
- e) Other Powers and Duties:
  - 1) Advisory Body: The Board shall serve as an advisory body to the City Council of the City of DeKalb and to the Chief Building Official and Community Development Director in making recommendations and suggesting policies applicable to the City Building Codes or updates thereto. Any such recommendations shall be adopted by written resolution, and such resolution shall denote the results of the roll-call vote utilized to adopt the same.
  - 2) Appeal of Denial of City-Issued Contractor's License: Where any provision of the City Building Codes contemplates the issuance of a contractor's license by the City and a license is denied to any person, said applicant may file a written appeal with the Board within five (5) days of the date of denial, and the Board shall have jurisdiction to consider such appeal as a hearing under subsection (c) above.


**Section 3.** All ordinances or portions thereof in conflict with this ordinance, including the prior versions of the ordinances included above, are hereby repealed.

**Section 4.** Should any provision of this Ordinance be declared invalid by a court of competent jurisdiction, the remaining provisions will remain in full force and affect the same as if the invalid provision had not been a part of this Ordinance.

**Section 5.** This Ordinance shall be in full force and effect after passage and publication pursuant to law. Publication date: August 23, 2016. Effective date: September 1, 2016.

**PASSED BY THE CITY COUNCIL** of the City of DeKalb, Illinois, at a Regular meeting thereof held on the day of August 22, 2016, and approved by me as Mayor on the same day. Passed by a roll call vote of 8-0. Aye: Jacobson, Finucane, Marquardt, Snow, Noreiko, Baker, Faivre, Rey.

**ATTEST:**

The seal of the City of DeKalb, Illinois, is circular with the text "CITY OF DE KALB" at the top and "STATE OF ILLINOIS" at the bottom. In the center is a shield with a scale of justice and a plow. The seal is partially obscured by the signatures of the City Clerk and Mayor.

*Jennifer Jeep Johnson*  
**JENNIFER JEEP JOHNSON**, City Clerk

*John A. Rey*  
**JOHN A. REY**, Mayor