

**BYLAWS OF THE
RAPID CITY BUILDING BOARD OF APPEALS**

Article I. Name of the Board

The name of this organization shall be the Rapid City Building Board of Appeals, hereinafter referred to as “the Board.”

Article II. Authorization

This Board is established pursuant to Rapid City Municipal Code 15.04.110.

Article III. Purpose

The purpose of the Board is to promote the health, safety and the general welfare of the community by adopting and enforcing rules and regulations and reviewing decisions of the Building Official concerning building and construction found in Title 15 of the Rapid City Municipal Code.

Article IV. Responsibilities and Powers of the Board

The duties of the Board shall be to exercise the powers found in RCMC 15.04.110, 15.04.120, and 15.04.130. At the time of adoption of these bylaws, these powers are as follows:

Section 1. The Board shall have oversight over the following codes:

1. International Building Code;
2. International Residential Code;
3. International Property Maintenance Code;
4. International Existing Building Code;
5. National Electrical Code as adopted by the State of South Dakota;
6. Rapid City Gas Code;
7. International Fuel Gas Code;
8. Uniform Plumbing Code as adopted by the State of South Dakota; and
9. International Mechanical Code.

Section 2. The Board may adopt and enforce rules and regulations as may be thought proper and necessary for the performance of its work.

Section 3. The Board shall have the authority to review and, by affirmative vote of a majority of the members present at any public hearing, sustain, reverse, change or modify any decision of the Building Official relating to questions concerning methods of building, use of processes and devices, strength and character of construction, application of the ordinances in Title 15, and such other questions of like kind and character as may

arise between the Building Official and the individual(s) aggrieved by the decision of the Building Official, except as otherwise provided in the pertinent ordinance section.

Section 4. The Board shall have the authority to review decisions of the Building Official concerning modifications to the code and the suitability of alternate materials, design, and methods of construction and equipment concerning all adopted construction codes found in section A above except the Plumbing Code and the Electrical Code. City Amendments to the Plumbing and Electrical Code can be appealed to the Building Board of Appeals.

1. The Building Board of Appeals is empowered to authorize a modification from the strict application of this code when:
 - a. A special individual reason makes the strict letter of this code impractical (“strict application of this title will result in unnecessary hardship”); and
 - b. Modification is in compliance with the intent and purpose of this code;
 - c. Modification does not lessen any health, accessibility, life and fire safety, or structural requirements;
2. The Building Board of Appeals is empowered to authorize alternate materials, design, and methods of construction when:
 - a. The proposed design is satisfactory and complies with the provisions of this code;
 - b. The material, method or work offered is, for the purpose intended, at least the equivalent of that prescribed in this code in suitability, strength, effectiveness, fire resistance, durability, safety and sanitation; and
 - c. Sufficient evidence or proof has been submitted to substantiate claims related to the application.

Section 5. If the application for any license required by Chapter 15 is denied, or if an issued license is cancelled, suspended, or revoked by the Building Official, the affected applicant or licensee may appeal the determination to the Board.

Section 6. The Board is authorized and empowered to review from time to time all provisions of the building, electrical, mechanical, plumbing, and housing codes adopted by the City; to conduct public hearings thereon, and to recommend to the Common Council modifications, revisions, changes, and new proposals pertaining thereto for their consideration and legislative action.

Article V. Appeals to the Board

Section 1. Notices of Appeal.

- A. Appeals to the Board brought under Article IV shall be commenced within 22 calendar days from the date of the Building Official's decision~~may be taken by any person aggrieved by any decision of the Building Official. Any party may appear at the hearing in person or by agent or by attorney.~~
- B. Such appeal shall be taken ~~within 22 calendar days of the decision of the Building Official~~ by filing with the Building Official a notice of appeal specifying all grounds for objections to the Building Official's decision and by paying a filing fee established by resolution of the city council. The Board may deny appeals which do not specify the grounds for objections to the Building Official's decision, or the Board may continue such appeals until such grounds are provided in writing by the appellant.
- C. The individual filing the appeal has the burden of establishing that the decision of the Building Official should be reversed, changed, or modified.

Section 2. Scheduling a Hearing.

- A. The Building Board of Appeals shall schedule a hearing within 22 calendar days from the date of appeal for the hearing of the appeal, giving public notice in the local newspaper 7 days prior to the hearing. The applicant and other persons interested in the case shall be notified as to the time and date of the hearing.
- B. If a hearing is not conducted or continued within the 22 day time frame, the applicant will be deemed to have won approval of the appeal. Health and safety issues as determined by the Building Official are not deemed approved in this instance.
- C. In advance of the hearing date, the Building Official shall promptly transmit to the Board all the papers constituting the record upon which the action appealed was taken.

Section 3. Hearing Procedure.

- A. The Board shall hear all arguments and review all evidence submitted by the applicant, the Building Official, and any other person(s) interested in the case. Any party may appear at the hearing in person or by agent or by attorney.
- B. If an appellant or his/her authorized representative is not present at the hearing, the Board may move the item to the end of the agenda to allow the

appellant additional time to appear and/or may continue the appeal to the next meeting.

- C. Discussions before the Board shall be civil. Any inappropriate behavior by a Board member, the applicant, the Building Official, or any other person in attendance may result in the Board preventing that individual from speaking.
- D. The Board may set a time limit upon arguments and statements from the applicant, the Building Official, and any other person(s) interested in the case, as it determines.
- E. The Board may affirm, modify or reverse the decision upon which an appeal was filed; may approve or disapprove requests for consideration of alternate materials and methods of construction; and may grant modifications to ~~this~~ the code as discussed in ~~this chapter~~ RCMC Title 15.
- F. The Board shall act only upon the concurring vote of a majority of its members present and voting. "Majority" shall mean more than 50 percent of the members present and voting. Voting shall be by oral question and answer.

Section 4. Board Decision.

- A. Every decision of the Building Board of Appeals shall indicate the vote upon the decision and be recorded in the minutes, which shall be kept on file in the office of the Building Official.
- B. All decisions of the Board are final with the exception that an appeal regarding a determination on a license may be appealed to the City Council. ~~Anyone aggrieved by a Board decision regarding its determination on a license may~~ An appeal to the City Council shall be commenced by notifying the Building Official in writing of his or her intent to appeal and providing the reasons for the appeal. Such notice of appeal of the Board's decision must be received within 45 days of the Board's decision.
- C. A decision of the Board that concerns the Plumbing Code may be appealed to the South Dakota Plumbing Commission.
- D. A decision of the Board that concerns the Electrical Code may be appealed to the South Dakota Electrical Commission.
- E. A decision of the Building Board of Appeals, which in effect may modify the provisions of the applicable code, shall not be considered a precedent for future decisions of the Building Official. The Building Board of Appeals shall act in each individual instance in which the granting of a permit would change the application or provisions of any of the above-designated codes.

- F. The details of any action granting modifications and use of alternative materials, design, and methods of construction shall be recorded and entered in the files of the permits and inspection division of the Community Planning and Development Department.

Article VI. Officers

Section 1. The officers of the Board shall consist of a Chair and a Vice-Chair.

Section 2. The Chair shall preside at all meetings and hearings of the Board and shall have duties normally conferred by parliamentary usage on such officers. The Chair shall direct any staff employed by the Board, and shall be responsible for all official communications made by the Board.

Section 3. In the absence, disability or under the direction of the Chair, the Vice-Chair shall be vested with all the powers and perform all the duties of the Chair, and shall have such additional powers and perform such additional duties as shall be ordered by the Board.

Section 4. In the event that a meeting is held where no officer is in attendance, the Board members in attendance shall elect a member to serve as Chair pro tem for that meeting only.

Article VII. Election of Officers

Section 1. An annual organizational meeting shall be held at the first regular meeting in April after the appointment of new members and/or alternates.

Section 2. At this meeting, nominations shall be taken for Chair.

Section 3. A candidate for Chair receiving a majority vote of the entire membership of the Board shall be declared elected and shall serve for one year or until his or her successor shall take office. In the event that only one Board member is nominated for an open Officer position, an open election shall be held. In the event that more than one Board member is nominated for any office, an election by secret ballot shall be held.

Section 4. The election of Vice-Chair shall occur after the election of Chair and the same manner, as described in Sections 2 and 3.

Section 5. Any officer can be removed from office by a 75 percent vote of all voting members at a regular Board meeting provided said officer is notified of the proposed removal 15 days before the meeting. In the event of the removal or resignation of the Chair, the Vice-Chair shall assume the Chair's responsibilities for the remainder of the term. In the event the Vice-Chair's position is vacated, the office shall be filled at the next regular meeting by the regular election procedure and shall be for the remainder of the term.

Article VIII. Membership

Section 1. The Board shall be qualified by experience and training to pass upon technical matters pertaining to building construction. The Board shall be appointed from the following groups:

1. One member and one alternate shall be a building contractor;
2. One member and one alternate shall be an electrical contractor or license holder with a minimum of 6 years of experience;
3. One member and one alternate shall be a plumbing contractor or license holder with a minimum of 6 years of experience;
4. One member and one alternate shall be a mechanical contractor or license holder with a minimum of 6 years of experience; and
5. One member and one alternate shall be a registered engineer.

Section 2. Alternates may participate in hearings and vote only when the member from the same profession is absent or excused. Alternates are not required to attend regular meetings.

Section 3. The members shall be appointed by the Mayor and approved by the Common Council. Members shall serve until their successors are qualified and appointed.

Section 4. The terms of the members shall be for three years, and vacancies shall be filled for the unexpired term only. The terms of all members shall begin March 2 and shall terminate on March 1 of the appropriate year. The initial terms of Board members shall be staggered in accordance with the following schedule:

1. March 1, 2017 – Initial terms for registered engineer and alternate expire.
2. March 1, 2018 – Initial terms for mechanical contractor and alternate, and building contractor and alternate expire.
3. March 1, 2019 - Initial terms for plumbing contractor and alternate, and electrical contractor and alternate expire.

Section 5. The Mayor with the confirmation of the Common Council shall after public hearing have authority to remove any member of the Commission for cause which cause shall be stated in writing and made a part of the record of the hearing.

Section 6. The Board may recommend removal of a Board member to the Common Council if the Board member has three unexcused absences from three consecutive

regular meetings. The Board must make a determination as to whether or not an absence is “unexcused.” If a member fails to attend a meeting and does not provide advance notice to the Building Official or to the appropriate alternate at least 48 hours before the meeting, the Board will consider the absence to be unexcused. While alternates are not required to attend regular meetings, alternates may have an unexcused absence if they are notified by the Building Official of their need to attend the meeting and do not provide advance notice to the Building Official at least 48 hours before the meeting that they will not attend.

Section 7. Resignations of members of the Board shall be in writing and shall take effect upon receipt by the Mayor.

Article IX. Meetings

Section 1. The Board shall meet on the second Tuesday of each month or as needed to conduct hearings on pending appeals. No meeting shall be held if there are no appeals for the Board to consider and if the Board has no other business to attend to.

Section 2. The Board may allow a time for open comments to the Board. However, the Board will not take action on anything which is not on the agenda for that meeting, and instead it may place such items or speakers on the agenda for the next regularly-scheduled meeting.

Section 3. The Board shall electronically record the hearing and keep minutes of its proceedings showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact. The Board shall maintain all documents reviewed or introduced as evidence at meetings and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Board. The Board shall keep a record of the proceeding on file at Building Services. All such records shall be open to the public.

Section 4. Public notice of the time and place of a hearing for an appeal to the Board shall be given once at least seven days in advance by publication in a legal newspaper of the City.

Section 5. A Board member may join the meeting by telephonic participation and be included in the determination of a quorum; if a member participates telephonically, each vote shall be taken by roll call.

Section 6. Special meetings may be called by the Chair. It shall be the duty of the Chair to call a special meeting when requested to do so by a majority of members of the Board. If a special meeting contains a public hearing on any appeal, notice shall be given in accordance with Section 3.

Section 7. All meetings or portions of meetings at which official action is taken shall be open to the general public. However, the Board may meet in executive session in accordance with South Dakota law.

Section 8. Unless otherwise specified, Robert's Rules of Order shall govern the proceedings at the meetings of this Board.

Article X. Amendment of Bylaws

These Bylaws may be amended at any regular meeting of the Board, provided that the proposed amendment has been introduced in writing at least two weeks prior to a regular meeting of the Board. Amendment of the Bylaws shall require the affirmative vote of a majority of the members of the Board.

Adopted this _____ day of _____, 2018.

BUILDING BOARD OF APPEALS

Chair

ATTEST

Vice-Chair