15.04.110 Building Board of Appeals—Creation.

A. A board is hereby created by the city to be known as the Building Board of Appeals.

B. The Building Board of Appeals 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;
8. Uniform Plumbing Code as adopted by the State of South Dakota; and

C. Members of the Board shall be appointed by the Mayor and approved by the Common Council for terms of 3 years. The Board of Building Appeals shall be composed of 5 members who shall be qualified by experience and training to pass upon technical matters pertaining to building construction and who shall be appointed to the Board from the following groups:

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

D. No employee of any governmental entity, including the city, may serve as a voting or nonvoting, ex officio member of the Board. Members shall serve until their successors are qualified and appointed.
E. 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.

F. The term of each Board member appointed and currently serving shall be continued until expiration of the original term, or until the members shall have resigned or been removed for cause. Each member appointed to the Board, including alternate members, shall be appointed for a term of 3 years to expire March 1 of the third year. The initial terms shall be staggered in accordance with the following schedule:

   1. March 1, 2014 – Initial terms for registered engineer and alternate expire.
   2. March 1, 2015 – Initial terms for mechanical contractor and alternate, and building contractor and alternate expire.
   3. March 1, 2016 - Initial terms for plumbing contractor and alternate, and electrical contractor and alternate expire.

G. Three members of the Board shall constitute a quorum for the transaction of business.

(Ord. 5959 (part), 2013: Ord. 5889 (part), 2013)

15.04.120 Building Board of Appeals–Authority.

The Building Board of Appeals shall have the following powers and authorizations:

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

B. The Building Board of Appeals 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 these ordinances, 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 this section.

C. If the application for any license required under this chapter 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 Building Board of Appeals.

D. The Building Board of Appeals 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 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.

E. Appeals of decisions made by the Building Official within the Plumbing Code concerning modifications to the code and the suitability of alternate materials, design, and methods of construction and equipment shall be made to the South Dakota Plumbing Commission. Appeals of decisions made by the Building Official within the Electrical Code concerning modifications to the code and the suitability of alternate materials, design, and methods of construction and equipment shall be made to the South Dakota Electrical Commission. City amendments to the Plumbing and Electrical Code can be appealed to the Building Board of Appeals.

F. The Board is hereby 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.

(Ord. 6225 (part), 2018: Ord. 5959 (part), 2013: Ord. 5889 (part), 2013)

15.04.130 Building Board of Appeals–Appeals.

A. Any appeal brought under § 15.04.120 shall be commenced within 22 calendar days from the date of said decision by filing with the Building Official a notice of appeal specifying all grounds for objections. Appellants shall pay a filing fee established by resolution of the City Council. The individual filing the appeal has the burden of establishing that the decision of the Building Official should be reversed, changed, or modified.

B. 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. If a hearing is not held or continued within 22 calendar days of the date of appeal, then the appeal will be deemed to be granted,
except that any determination of the Building Official that concerns health and safety issues is not deemed granted for failure to meet this timeline. The appellant and other persons interested in the case shall be notified as to the time and date of the hearing.

C. The Board shall hear all arguments and review all evidence submitted by the appellant, the Building Official, and any other person(s) interested in the case, and shall render its opinion. The Board shall electronically record the hearing, keep minutes of its proceedings, maintain all documents reviewed or introduced as evidence at meetings, and keep a record of the proceeding on file at Building Services.

D. If an appeal before the Board concerns a particular trade, and if neither the Board member nor the alternate from this particular trade is in attendance at the meeting at which the appeal is considered, then an appellant can elect to continue the appeal until the next Board meeting.

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 code as discussed in this chapter. The Board shall act only upon the concurring vote of a majority of its members present and voting. MAJORITY shall mean more than 50% of the members present and voting. The decision of the Board shall be final except that an appeal regarding a determination on a license may be appealed to the City Council. 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.

F. 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.

G. All decisions of the Board are final with the following exceptions:

1. An appeal regarding a determination on a license may be appealed to the City Council.

2. A decision of the Board that concerns the Plumbing Code may be appealed to the South Dakota Plumbing Commission.

3. A decision of the Board that concerns the Electrical Code may be appealed to the South Dakota Electrical Commission.

H. 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 Development Department.

(Ord. 6277 (part), 2019: Ord. 6225 (part), 2018: Ord. 5959 (part), 2013: Ord. 5889 (part), 2013)