



## Excerpt from the City of West University Place Code of Ordinances

### CHAPTER 18: BUILDINGS AND DEVELOPMENT

#### ARTICLE 1. IN GENERAL

##### **Sec. 18-1. - Definitions.**

Unless the context requires a different meaning, the following terms, when used in this chapter, have the meanings indicated below:

*Demolish* and *demolition* include removal of a structure and all activity in preparation for removal, including, but not limited to:

- (1) Installing temporary fencing or other temporary facilities;
- (2) Clearing of vegetation or obstacles;
- (3) Removal or salvage of parts of the structure; and
- (4) Deployment of equipment, etc.

*Grade raising* means work to raise a substantial area up to a level two inches or more above its level on April 9, 1990. A "substantial area" is any area or areas on a single site aggregating 500 square feet or more in any given 12-month period.

*Large portable building* means a portable building with a gross floor area of 120 square feet or more.

*Portable building* means a trailer home, a mobile home, a HUD-code manufactured home, a manufactured home, any industrialized housing, an industrialized building or any other building or enclosure, other than a motor vehicle in operating condition, which is purposefully designed or constructed so that either:

- (1) It can be moved as one unit; or
- (2) It can be moved in parts, any one or more of which encloses 1,200 cubic feet or more.

Terms defined in V.T.C.A., Occupations Code § 1201.008 and V.T.C.A., Transportation Code § 623.121(c) have the same meanings in this section.

*Portable building district* means a district expressly established by the zoning ordinance which meets all of the following criteria:

- (1) The construction of portable buildings is expressly referenced and authorized in such district, either with or without a special exception; \
- (2) Transitional features between portable buildings and other residential buildings are required; and
- (3) Other restrictions on height, densities and other matters are prescribed or provided for.

In case there is no such district established at the time that a person seeks to locate a portable building in the city, such person may apply for the establishment of the district in the manner prescribed in article 14 of the zoning ordinance and subject to all limitations imposed upon amendments to the zoning ordinance.

*Portable storage unit* means a shipping container, a storage container or similar box-like enclosure designed or constructed to:

- (1) Protect goods from the weather; and
- (2) Be moveable as a unit with (or without) goods enclosed.

(Code 2003, § 6.101; Ord. No. 1843, § 1(app. A), 2-26-2007; Ord. No. 1848, § 1(app. A), 7-9-2007)

## **Sec. 18-2. - Permits.**

- (a) *Permits, when required.* Except to the extent expressly authorized by an effective permit issued by the building official, it shall be unlawful for any person to:
  - (1) Erect, move, improve, remove, construct, enlarge, repair, convert, demolish or alter any structure;
  - (2) Engage in any grade raising;
  - (3) Engage in any pre-development activity; or
  - (4) Cause or allow any such activity at a place the person owns or controls.
- (b) *When effective.* A permit is effective only if it has been duly issued in accordance with this Code and has not:
  - (1) Expired;
  - (2) Been revoked; or
  - (3) Been suspended.
- (c) *Certain defenses.* It is an affirmative defense to prosecution under this section that:
  - (1) The work in question consists of nothing more than ordinary maintenance activities on private property, such as painting or wall papering;
  - (2) In the case of roof repair or replacement, the area of roof affected is less than 200 square feet;
  - (3) In the case of a fence, the work consists of repairs affecting not more than ten feet of the fence on the owner's property, and there is no change in location, height or materials;
  - (4) The work involves only an alarm system on private property for which a permit is neither allowed nor required by the Private Security Act, V.T.C.A., Occupations Code § 1702.001 et seq., provided that the provisions of this Code applicable to alarm systems are followed;
  - (5) The work includes nothing more than replacing worn-out or obsolete items on private property (other than a roof, a fence or an alarm system), and there is no structural alteration, no new wiring,

no work involving concealed plumbing or gas facilities and no potentially dangerous conditions;

- (6) Another ordinance specifically provides that no permit is required for the activity in question; or
- (7) In the case of development, the work in question involves an area on private property not larger than ten square feet, and any structures involved are readily moveable at a cost not exceeding \$300.00.

(Code 2003, § 6.102)

### **Sec. 18-3. - Registration of contractors.**

- (a) *When required.* It shall be unlawful for any person to perform any work for which a permit is required under this chapter (or to offer to perform it) in exchange for money or other substantial consideration, unless such person is registered as a contractor as required by this chapter. It is an affirmative defense that one or more of the following four sets of circumstances is present:
  - (1) The work in question is completely authorized by one or more licenses issued by or under the authority of the city (for example, an electrician's license).
  - (2) The work in question is completely authorized by a license issued by the state (for example, a plumber's license), and the license is registered with the city.
  - (3) The work in question is performed by the owner of the site in question without the involvement of any contractors.
  - (4) The person is a regular employee of a contractor who is registered as required by this subsection and the person does the work (or offers to do it) strictly as a servant or agent of the registered contractor.
- (b) *Application.* A person desiring to register as a contractor with the building official must:
  - (1) Fill out and file with the building official the standard contractor's registration form prescribed by the building official (which shall include names, addresses, telephone numbers, driver's license numbers, business structure information, proof of insurance required by this section and other relevant data);
  - (2) Submit a new registration form on or before the tenth day following the day that any of the information in current form changes; and
  - (3) Submit, prior to expiration, proof that each insurance policy in the current registration is duly extended or replaced upon expiration.
- (c) *Insurance coverage.* Registrants are required to have and maintain public liability insurance with a combined single limit per occurrence no less than \$300,000.00 (or with separate limits each no less than this amount), or higher limits if required by applicable state law.
- (d) *Insurance criteria.* All insurance policies must meet all of the criteria regularly required for contractors on city construction jobs (city form C-

101, or other standard form, as it may be amended from time to time), except:

- (1) The city need not be named as an additional insured; and
- (2) There need not be a waiver of subrogation.

The building official may require that registrants submit a properly signed city form, or other documents, as proof of insurance.

(e) *Expiration, etc.* A contractor's registration becomes ineffective if:

- (1) It is not renewed prior to the time that any of the insurance policies mentioned in the registration is reduced, canceled or allowed to expire; or
- (2) It is suspended.

(f) *Suspension.* The building official may suspend a registration for failure to maintain required insurance coverage, subject to the same procedures applicable to the revocation of permits. If requested by the building official, and after notice to the registrant and an opportunity for a hearing, the BSC may suspend a registration, if:

(1) The BSC determines that the registrant is responsible for three or more building violations within any 12-month period. "Building violations" include all violations of this Code arising out of, or relating to, building or development activity. Violations of the standard codes schedule and violations of chapters 6, 18, 26, 30, 42, 46, 54, 62, 70 and 82, for example, can be "building violations," and this list is not exclusive.

(2) The BSC determines that the registrant is responsible for any aggravated violation.

a. A building violation is aggravated if:

1. It is committed knowingly or intentionally after a specific warning or admonishment; or
2. It is committed knowingly or intentionally and clearly causes harm to a person or property.

b. Registrants are responsible for all of the following:

1. Building violations committed by the registrant's officers, agents, employees or subcontractors; and
2. Building violations occurring in connection with activities under a permit for which the registrant is a permittee.

c. Registrants are not responsible for violations if the registrant demonstrates, as an affirmative defense and by clear and convincing evidence, that the registrant could not reasonably prevent them.

(g) *Nature of suspension; proof.* Suspension is a noncriminal administrative remedy, and registrants are responsible for the indicated violations regardless of whether criminal convictions are, or could be, obtained. However, evidence of a criminal conviction may be used to prove that an indicated violation occurred. The burden is on the building official to prove violations by clear and convincing evidence. Exception: The registrant has the burden on defensive issues.

(h) *Length of suspension; effect, etc.*

- (1) The suspension period shall be set in proportion to the severity of the violations involved, but an initial suspension may not exceed 90 days. Any subsequent suspension of the same registrant shall be in effect until reinstated. When a registration is suspended, neither the registrant nor any "alter ego entity" is eligible for new permits.
- (2) The term "alter ego entity" includes:
  - a. Any proprietorship, joint venture or partnership that includes the registrant;
  - b. Any person under common ownership, management or control with the registrant; and
  - c. Any other person acting in concert with the registrant.

Any current permits held by a suspended registrant may be revoked or suspended by separate proceedings.

(i) *Reinstatement after suspension.* Upon application by a person with a suspended registration, the BSC may reinstate the registration if either of the following sets of circumstances is present:

- (1) The applicant demonstrates clearly that the violations causing the revocation or suspension did not, in fact, occur, or that the applicant was not actually responsible for the violations.
- (2) The applicant has taken effective corrective action and has made all changes necessary to prevent similar violations from occurring in the future. Reinstatement shall be conditioned upon compliance with the then-current application requirements and payment of required fees.

(Code 2003, § 6.103)

**Sec. 18-4. - Permit applications.**

(a) *Who must apply.*

- (1) An application for a permit, whether original or renewal, must be made to the building official by the general contractor.
- (2) Exceptions:
  - a. If there is no general contractor, the application must be made by the owner, lessee or other person controlling the site who is acting as the general contractor; and
  - b. Applications for permits under specific ordinances requiring a specially licensed or regulated person to perform the work (e.g., plumber, electrician, HVAC, street facilities, etc.) must be made by the licensed person.

(b) *Contents.* The building official shall prescribe the content of applications and permits, including all matters reasonably necessary to carry out the intent of this chapter and to assist in enforcement. The building official may require that the application include plans and specifications and may require that they be previously submitted to and checked by city staff.

Plans and specifications prepared by an architect, engineer or other designer must be signed by that person, or by another person with similar qualifications. The architect's and engineer's plans must also be sealed. (Note: Some ordinances require specific plans, specifications and certifications; see, e.g., the standard codes schedule requiring engineering plans for foundations.) The building official may promulgate a short form application for small scale projects, and the short form need not include all of the items required for applications generally. Applications must be accompanied by the applicable fees. The building official may require that applications be verified.

(c) *Master permits.* The building official must require a master permit in the following circumstances:

(1) All the work is proposed to be done by a prime contractor and its subcontractors. In this case, the prime contractor must apply for a master permit to cover all the work, even if there are separate, subordinate permits for part of the work.

(2) There are two or more permits in effect for the same premises at the same time. In this case, one person must apply for a master permit to cover all the work. The applicant may be a contractor or the owner, lessee or other person controlling the site who is acting as the general contractor. The applicant for a master permit must affirm that the applicant will direct all activities under the master permit and each subordinate permit. Each holder of a master permit is deemed to be a permittee not only on the master permit, but also on each subordinate permit, regardless of what the permits themselves say. Each holder of a master permit is responsible for, and strictly liable for, any violations of this Code arising out of, or relating to, the master permit or any of the subordinate permits, or any activities under those permits.

(d) *Sketch plats.* For all major development, the building official must require the filing and approval of a sketch plat before a permit for construction is issued. The procedures for review and approval of sketch plats are as prescribed in chapter 74 and the zoning ordinance. Exception: A sketch plat is not required for single-family detached use in the SF-1, SF-2 or SF-3 district.

(Code 2003, § 6.104)

#### **Sec. 18-5. - Permits, issuance or denial.**

(a) *Who issues.* The issuing official for permits under this chapter is the building official.

(b) *Time for action.* The issuing official shall act upon each complete permit application within a reasonable time. If an applicant who believes a reasonable time has expired files a written request for a decision, the issuing official shall provide the decision within seven days thereafter.

(c) *Standards for issuance.* The issuing official shall approve the application and issue the permit if the official:



- (1) Believes the application is complete, including all required forms, signatures, fees, plans, specifications, surveys, certificates, information and related matters;
  - (2) Believes the applicant neither gave materially false or misleading information nor omitted any material information necessary to avoid misleading the city;
  - (3) Believes that no similar type of permit issued to the same applicant was revoked for violation of a city ordinance within the preceding 180 days (unless the applicant has demonstrated that changes have been made to prevent another violation);
  - (4) With reference to the application and the proposed activity, the issuing official does not detect any significant noncompliance with:
    - a. The chapter of this Code that authorizes the permit;
    - b. Any other applicable chapters of this Code, including, for example, chapters 26 (electricity, etc.), 34 (food, etc.), 62 (plumbing, gas, etc.), 82 (urban forest, etc.) and 86 (subdivisions);
    - c. The zoning ordinance; or
    - d. Any other applicable regulations; and
  - (5) The permit contains or incorporates all conditions required by applicable regulations (for example, tree disposition conditions in a permit for development or pre-development activity under chapter 82).
- (d) *Conditions.* The issuing official may insert special conditions into a permit, if reasonably necessary to meet a standard for issuance.
- (e) *Denial.* If the standards for issuance are not met, the issuing official shall deny the permit and notify the applicant.
- (f) *Finality; review.* Decisions of the issuing official which are subject to review by a hearing board (see below), or by another official, do not become final until reviewed.

(Code 2003, § 6.105)

#### **Sec. 18-6. - Permits, revocation and suspension.**

- (a) *Who may act.* The issuing official may revoke or suspend permits. The issuing official for permits under this chapter is the building official.
- (b) *Notice; response.* Before revoking or suspending a permit, the issuing official shall make a reasonable attempt to:
  - (1) Contact at least one of the permittees;
  - (2) Describe the allegations; and
  - (3) Provide the permittee(s) an opportunity to respond. This may be done informally.
- (c) *Temporary stop orders.* The issuing official may issue a temporary "stop" order if the official determines that:
  - (1) Activity under a permit violates applicable regulations;
  - (2) Immediate action is necessary to protect life or property; and

(3) It is not prudent to delay action.

A stop order may only be valid for five days, and it is immediately reviewable by the hearing board. The issuing official shall take all reasonable steps to arrange an emergency review by the board, if review is requested. It shall be unlawful for any person with knowledge of the stop order to continue activity under a permit in violation of the order.

(d) *Circumstances for revocation or suspension.* The issuing official may revoke or suspend a permit if the official determines that any of the following circumstances is present:

(1) Activity covered by the permit violates applicable regulations, or any condition of the permit, regardless of whether the violation was shown in an application or otherwise known to the city.

(2) Activity under a permit is abandoned or ceased for 60 days or more, except for causes beyond the permittee's control under circumstances where the permittee is diligently attempting to resume the activity.

(3) The permit should not have been issued under the criteria in effect at that time, based upon either information known at the time or information later acquired.

(4) Any fee or charge is unpaid, or any check or instrument of payment is returned unpaid.

(5) A change in applicable regulations requires the action.

(6) City representatives are denied access to any activity site covered by the permit.

(e) *Decision; notice.* If the issuing official revokes or suspends a permit, the official shall notify at least one permittee. Notice may be given by delivery, by facsimile transmission, by posting at the activity site, by mail or by any other method reasonably calculated to come to the attention of the permittee. Notice by mail shall be sent to the permittee's last address known to the issuing official, and it is deemed to be received on the third day following the date of mailing.

(f) *Finality; review.* Decisions of the issuing official which are subject to review by a hearing board (see section 18-7), or by another official, do not become final until reviewed.

(Code 2003, § 6.106)

### **Sec. 18-7. - Review of decisions.**

(a) *Application.* When the issuing officer takes action on an application for a permit, or on a permit, an applicant or permittee who is directly and adversely affected may request a review. The application must:

(1) Be in writing;

(2) Identify the parts of this Code or other applicable regulations which are involved;



- (3) State the action desired and the reasons why the action should be taken;
- (4) Respond to the decision of the issuing official, covering each reason cited by the issuing official;
- (5) Include any applicable fee for the cost of the review; and
- (6) Be filed with the issuing official.

If the application is filed more than 30 days following the action sought to be reviewed, the applicant or permittee must demonstrate good cause for the delay; otherwise the review may be dismissed by the hearing board.

- (b) *Referral to hearing board.* The issuing official shall refer all review applications to the appropriate hearing board. The appropriate hearing board for actions of the building official is the BSC. Exception: for actions based on the zoning ordinance, the hearing board is the ZBA. An application may have to be referred to more than one hearing board. The issuing official is authorized to make all necessary arrangements for the review proceedings.
- (c) *Interim orders.* A review application does not automatically change or supersede a decision of the issuing official, but the issuing official or the hearing board may issue an interim order to apply while review is pending. Interim orders may be issued conditionally. They may postpone the time for compliance with any requirement the applicant may be challenging, but only if all of the following circumstances are present:
  - (1) Postponement is necessary to prevent substantial economic loss or other hardship;
  - (2) Postponement neither causes a significant threat to life, property or health nor disrupts orderly enforcement of applicable regulations;
  - (3) The applicant or permittee takes all reasonable and feasible steps to comply with the challenged requirement, or with substitute requirements specified by the order;
  - (4) The applicant or permittee provides all required insurance; and
  - (5) The applicant or permittee provides adequate security and documents to assure compliance with the challenged requirement if it is upheld.
- (d) *Proceedings of the hearing board.* The hearing board shall hear applications for review. The hearing board shall prescribe rules consistent with the nature of the proceedings. The rules shall, to the extent practicable, ensure that each party may present evidence, cross-examine witnesses and be represented by legal counsel.
- (e) *Decisions.* The hearing board may reverse, affirm or remand the decision of the issuing official, except as otherwise prescribed by state law. The decision of the hearing board shall be in writing and shall become the city's final decision when 30 days elapse after it is signed, if no re-hearing is pending, unless otherwise prescribed by state law.

(Code 2003, § 6.107)

### **Sec. 18-8. - Permit transfers.**

A permit is personal to the permittees, provided that it may be transferred pursuant to this section. A permittee may be added or dropped by signing and filing the appropriate form promulgated by the building official. This would not excuse any obligations or violations occurring before the transfer. Transfer applications shall be filed in the same place and at the same time as original applications, and the prescribed transfer fee shall be payable. Transfers shall be reviewed, issued and subject to appeal in the same manner as original applications.

(Code 2003, § 6.108)

### **Sec. 18-9. - Certificates of occupancy.**

- (a) *Generally.* A certificate of occupancy is a type of permit. All of the provisions of this chapter pertaining to permits apply with respect to certificates of occupancy, including, without limitation, the provisions relating to temporary or conditional permits and appeals to the BSC.
- (b) *When required.* Unless a certificate of occupancy authorizing the conduct in question is in effect (and not revoked, canceled or suspended), it shall be unlawful for any person to:
- (1) Occupy any new structure;
  - (2) Change the occupancy of any structure, whether by changing ownership, changing tenancy or otherwise (Exception: this paragraph does not apply to single-family detached dwellings);
  - (3) Change the use of any structure; or
  - (4) Otherwise change any place or activity in such a way that there would be a change in the number of off-street parking spaces required by the zoning ordinance.
- (c) *Application; contents.* To obtain a certificate of occupancy, a person must apply to the building official. A certificate of occupancy, to be valid, must name a specific person as the holder of the certificate. The certificate shall only authorize that person and that person's spouse, dependents, invitees and licensees to use or occupy the property described.
- (d) *Conditions for issuance.* The building official shall not issue a certificate of occupancy unless it appears that there has been substantial compliance with:
- (1) Permit requirements and conditions (e.g., installation of trees, sidewalks, or other equipment or facilities);
  - (2) Requirements for site clean-up; and
  - (3) All other applicable regulations.
- (e) *Supporting certificates.* The building official may require the filing of sworn supporting certificates touching upon the matters in this section as a condition of issuing a certificate. The supporting certificates may be required of the proposed certificate holder as well as architects, engineers, contractors and others involved in the work (any or all).

- (f) *Posting.* A certificate of occupancy for any nonresidential building shall be continuously posted at a place to which the public has free access (during normal business hours) and such that it is visible from the principal entrance to such building.

(Code 2003, § 6.109)

**Sec. 18-10. - Permit term, renewal.**

- (a) *Term.* Each permit shall be effective for a term beginning upon its issuance and ending at noon on the appropriate day indicated below, unless it is sooner revoked, canceled or suspended:

Type of Permit	Day When Term Ends
Building moving	60th day following day of issuance
Demolition	60th day following day of issuance
Remodeling or additions smaller than 485 sq. ft. of gross floor area	180th day following day of issuance
Swimming pools, spas and accessory structures	180th day following day of issuance
Mechanical, electrical or plumbing	180th day following day of issuance, unless associated with a master permit with a term ending later, in which case the term ends with the term of the master permit.
Fence	90th day following day of issuance
Driveway or sidewalk	90th day following day of issuance
Tree permits	90th day following day of issuance
Occupancy certificates	Indefinite term: valid until revoked, canceled or suspended, unless a specific temporary term is included in the permit
All other types	360th day following day of issuance

- (b) *Renewal.* Each permit shall be subject to renewal as of its expiration by the filing of a renewal application with the building official. To be effective, renewal applications must be filed on or before the fifth day preceding the day of expiration of the permit to be renewed and must be accompanied by all required and supporting materials called for by the application form, which shall be promulgated by the building official.
- (c) *Partial renewal.* When part of the activity of an original permit has been completed, the renewal permit may be limited to that part of the activity that remains to be completed, but only if such a limitation is feasible, not likely to interfere with enforcement procedures and approved by the building official.
- (d) *Temporary, conditional permits.* The building official may issue temporary or conditional permits if the building official determines that:

- (1) Appeal or enforcement proceedings are pending or contemplated;
- (2) The permit helps to reconcile two or more applicable regulations;
- (3) In the case of a project including major development, it appears that the work has been completed in compliance with applicable regulations, and the permittee is diligently pursuing the preparation of an "as built" site plan; or
- (4) The permit helps achieve compliance with an applicable regulation.

The building official may cause a notice of such a temporary or conditional occupancy permit to be recorded in the real property records of the county.

(Code 2003, § 6.110; Ord. No. 1748, § 1(6.110(d)), 8-11-2003; Ord. No. 1896, § 1, 5-11-2009)

### **Sec. 18-11. - Posting of permits.**

- (a) *Required.* It shall be unlawful for any permittee to fail or refuse to keep the permit continuously posted at all times required by this Code. In addition to all other posting requirements, any permit authorizing any type of work shall be posted continuously beginning when work commences under the permit and continuing until the earlier of the following:
  - (1) Completion of the work; or
  - (2) Expiration or revocation of the permit.
- (b) *Where to post.* The permit shall be posted at a place to which the public has free access at the principal entrance to the work area in such a manner that a person entering the work area can see the permit and read it.
- (c) *Presumption.* It is presumed that there is no applicable permit or document in existence if:
  - (1) This chapter requires that the permit or document be posted at a certain place at a certain time; and
  - (2) It is not so posted.

(Code 2003, § 6.111)

### **Sec. 18-12. - Miscellaneous provisions.**

- (a) *Location.* A permit is valid only at the location for which it is issued.
- (b) *Maintenance.* It shall be unlawful for any person owning or controlling any property to fail or to refuse to maintain, in good working order, any equipment, facilities or structures required to obtain a permit or to comply with this chapter with respect to such property. This obligation applies not only to original permittees but also to each owner and person in control of the site thereafter.
- (c) *Forgery, etc.* It shall be unlawful for any person to counterfeit, forge, change, deface or alter a permit.

- (d) *Cancellation by surrender.* A permit may be canceled at the written request of the permittees upon surrender of the permit itself to the building official. No fees are refunded.
- (e) *Permittees must comply; rulings, etc.* Permit applicants and permittees remain fully responsible at all times for complete compliance with all applicable regulations, notwithstanding the issuance of a permit and notwithstanding any other action or inaction on behalf of the city. The city does not represent, guarantee or warrant that any of the activities mentioned in a permit complies with any applicable regulations, regardless of whether plans are checked, written documents are reviewed or oral discussion is had. Neither the building official nor any other officer, agent or employee of the city has any power or authority to change or vary any applicable regulations or to waive compliance. A person who desires a ruling, interpretation or variance for any applicable regulations must seek and obtain it from the appropriate hearing board. Only the hearing board has the power to make an authoritative ruling or interpretation or to issue variances, and this power is limited.
- (f) *No vested right, etc.* A permit is only a conditional license to carry on the authorized activity, and only if the activity is done in compliance with applicable regulations. No permit shall ever be or represent a vested right or property right of any kind, and all permits are subject to amendment, cancellation, revocation or suspension at any time, with or without notice.
- (g) *Plans, deviations, etc.* All activities under a permit shall comply with all plans, specifications and information submitted to or imposed by the building official in connection with the permit. It shall be an affirmative defense to prosecution under this subsection that:
- (1) The building official was notified of a deviation at the earliest practicable time; and
  - (2) The building official subsequently approved the deviation.
- (h) *Compliance with conditions.* It shall be unlawful for any person who applies for such a permit to fail or to refuse to comply with a condition of the permit. Any occupancy permit for the building site in question may be withheld until the condition is complied with.
- (i) *No personal liabilities.* No officer, agent or employee of the city shall ever be personally liable for any damage that may accrue to any person or property as a result of any act required or permitted in the discharge of his duties under this chapter.
- (j) *Not a bar.* A permit is not a bar to any proceedings to enforce any applicable regulations.

(Code 2003, § 6.112)

### **Sec. 18-13. - Interpretation of multiple ordinances.**

Where provisions of this chapter, provisions of any standard code adopted by this Code and provisions of other ordinances apply to a given circumstance, all such provisions shall apply and shall be given effect, unless they are in direct

conflict, where it is not possible to comply with one without violating another. In case of such a direct conflict, the more specific provision shall control.

(Code 2003, § 6.113)

**Sec. 18-14. - Responsibility not shifted to city.**

This Code does not lessen the responsibility of any party owning, operating or controlling any premises, apparatus, devices, appliances, fixtures, or equipment for any damages to persons or property caused by any defect therein or any use thereof. None of such responsibility shall be shifted to the city because of regulations, inspections, certifications or any other regulatory measures. The city, by regulating or attempting to regulate, neither assumes any such responsibility nor makes any guarantee or representation to any party with respect to such regulatory activity or the subjects thereof.

(Code 2003, § 6.114)

**Sec. 18-15. - Building official, generally.**

- (a) *Office created.* The office of building official is hereby created. The building official shall be appointed by the city manager. To act in the absence or disability of the building official, the city manager shall appoint an acting building official. The building official (or acting building official) may designate persons who may exercise functions of the building official under the general direction and control of the building official (or acting building official), and such designations may be revoked or amended by the building official (or acting building official) at any time.
- (b) *Qualifications.* To be eligible for appointment, the candidate for building official must have experience as an architect, structural engineer, building inspector or superintendent of building construction. The candidate must be otherwise capable of performing the essential duties of the position.
- (c) *Duties.* The building official shall devote full time to the duties of the office and shall perform the duties required by applicable regulations. The building official may, as a discretionary matter, examine premises and make inspections to see that applicable regulations are complied with. Such inspections shall be made on behalf of the city, only, and not for the benefit of any other person or entity. The building official shall enforce all provisions of this chapter and shall, when requested by proper authority, or when the public interest so requires, make investigations in connection with matters referred to in this chapter and render written reports on the same. To carry out such duties, the building official may issue such notices or orders as may be necessary. Such actions are generally reviewable by the BSC, as provided for in this chapter.
- (d) *Inspections and certificates.* Inspections may be made by the building official or his duly appointed assistant. The building official may accept affidavits of inspectors, design professionals and other qualified persons, after investigation of their qualifications and reliability. No certificate or



permit shall be issued on the strength of such an affidavit unless the affidavit is formally signed, verified and filed with the building official.

- (e) *Recordkeeping.* The building official shall keep comprehensive records of applications, of permits issued, of certificates issued, of inspections made, of reports rendered, and of notices or orders issued. The building official shall retain on file copies of required plans and all documents relating to building work for the time required by the city's general records retention policies.
- (f) *Reports.* The building official shall make written reports to the immediate superior once each month, or more often if requested, including statements of permits and certificates issued and orders promulgated.
- (g) *Cooperation.* The building official may request and shall receive, so far as may be necessary in the discharge of the building official's duties, the assistance and cooperation of other officials of the city.

(Code 2003, § 6.201)

### **Sec. 18-16. - Building and Standards Commission (BSC).**

- (a) *Creation.* There is hereby created the Building and Standards Commission, or "BSC". The BSC is the successor to the general appeals board ("GAB"), and it shall perform all of the duties and functions of the GAB. Except as otherwise provided in this chapter, chapter 2 of this Code shall govern the BSC.
- (b) *Composition.* The BSC consists of five regular members plus four alternate members, all appointed by the city council. The alternate members shall serve in the absence of one or more regular members when requested to do so by the mayor or city manager. Each member of the BSC shall be appointed to one of the following specific positions: positions 1 through 5, for regular members and positions, and A through D for alternate members.
- (c) *Removal.* The city council may remove a member of the BSC in the manner provided in V.T.C.A., Local Government Code ch. 54

(Code 2003, § 6.202)

### **Sec. 18-17. - BSC jurisdiction, powers, duties.**

- (a) *Types of jurisdiction.* The BSC has four types of jurisdiction, each more fully described in this chapter:
  - (1) Reviews of administration actions;
  - (2) Quasijudicial enforcement;
  - (3) Variances; and
  - (4) Advisory opinions.
- (b) *Consolidation.* The BSC may consolidate related matters for common notice and hearing, even though they may arise under separate jurisdictions. For example, an appeal from the building official's decision might be consolidated with a request for an advisory opinion and a

request for a variance. However, the BSC must observe all notice and procedural requirements and shall separately state the decision reached on each separate matter.

- (c) *Interpretation; advice; limitations.* The BSC has final authority to interpret the ordinances with respect to which it is authorized to act. The BSC may advise the building official and make recommendations to the city council or other city officials as to any matters related to the BSC. The BSC shall have no power to make any contract, lease or other agreement on behalf of the city, or to employ any person to be an employee of or to be paid by the city or to incur any debt or liability whatsoever on behalf of the city. The BSC has only those specific powers granted by ordinance of the city or by state law.
- (d) *Rules.* The BSC shall adopt such rules covering meetings of the board and other matters related to its organization and functions as it deems proper.

(Code 2003, § 6.203)

#### **Sec. 18-18. - Appeals to BSC from administrative actions.**

The BSC shall hear and determine appeals from all actions of the building official, except for actions arising under the zoning ordinance (which are subject to the jurisdiction of the ZBA). In addition, the BSC shall hear and determine appeals from other administrative actions where an ordinance authorizes the BSC (or the GAB) to do so (for example, such appeals are authorized with respect to the fire official and the fire code; see chapter 30 of this Code). In any such appellate proceeding, the BSC may affirm, reverse, modify or remand the decision appealed from, and the BSC may take whatever action the building official (or other official) should have taken.

(Code 2003, § 6.204)

#### **Sec. 18-19. - Quasi-judicial enforcement.**

The BSC has exclusive authority with respect to quasijudicial enforcement of health and safety ordinances, to the full extent prescribed by section V.T.C.A., Local Government Code § 54.031 et seq. The city hereby adopts and implements subchapter C of chapter 54 of the Texas Local Government Code (sections 54.031 et seq., relating to quasijudicial enforcement of health and safety ordinances) ("subchapter C"). The procedures and remedies prescribed by subchapter C shall be in addition to, and not in lieu of, all others prescribed by this Code or the laws of the state. subchapter C shall apply to and govern those proceedings expressly commenced under subchapter C by the filing of an appropriate written pleading with the BSC. The building official is hereby designated as the appropriate official of the city to present cases to the BSC under subchapter C. The city attorney may assist the building official and may designate other attorneys to assist the building official. Only the BSC, and not another board or commission, may exercise authority under subchapter C.

**Sec. 18-20. - Variances.**

- (a) *Generally.* The BSC has limited authority to issue variances from ordinances subject to its appellate authority or quasijudicial enforcement authority.
- (b) *Applications.* Any person who is restricted or regulated by a provision of the ordinance in question may apply for a variance. However, the application must either be signed by the owner of the property involved or must be accompanied by written proof that the person who does sign has specific authority from the owner to apply for the variance sought. Applications for variance must be made upon forms prescribed by the building official, must be complete, must be signed under oath, must be accompanied by the fee prescribed by the city and must be filed with the building official. The application must include the following:
- (1) The particular requirement, cited by section and paragraph number, from which a variance is sought.
  - (2) The nature of the hardship imposed by the requirement.
  - (3) Any proposed condition, alternative method or procedure to be followed in lieu of the requirement.
  - (4) The effect of the requested variance, upon the city as a whole and upon nearby residents and properties.
  - (5) The estimated cost, in dollars, of complying with the requirement.
  - (6) Other items required by the building official or the BSC.
- (c) *Handling; notice.* The building official shall transmit applications to the BSC, which has sole authority to issue variances. If the building official determines that an application would possibly have a significant effect upon other properties or persons, the building official shall attempt to provide notice to such persons prior to the time when the BSC will consider the variance. Such notice may be given by publication, posting or mail, as the building official may determine.
- (d) *Permissive factors.* In considering a variance, the BSC may take the following into account:
- (1) Whether the variance will assist in the protection or preservation of historic structure or in the protection or preservation of old stock housing (as such housing then exists or as it may be proposed to be remodeled or expanded).
  - (2) Whether the application involves remedial work necessary to bring a structure into compliance with applicable ordinances.
  - (3) Whether there are other similar circumstances in existence.
- (e) *Mandatory factors.* In considering a variance, the BSC shall take the following into account:
- (1) Whether the applicant has made an earnest, good faith effort to comply with the requirement.

- (2) Whether the applicant brought the matter to the attention of the city on his own motion, without intervention or enforcement action by any city official.
  - (3) Whether alternative methods or procedures will achieve the same, or substantially the same, result as literal compliance with the requirement.
- (f) *Required findings.* The BSC may not issue a variance unless it affirmatively finds all of the following:
- (1) The imposition of the requirement imposes an exceptional hardship upon the applicant. It is the general intent of this section that financial cost, alone, would not ordinarily constitute an exceptional hardship.
  - (2) No reasonable and feasible method or procedure is currently available to comply with the requirement.
  - (3) The imposition of the requirement is unjustified because of good and sufficient cause demonstrated to the BSC.
  - (4) The variance will not introduce or increase any threat to public health or safety.
  - (5) The variance is consistent with the purpose and intent of the ordinance in question.
  - (6) The variance will not cause a nuisance and will not unreasonably interfere with the use of nearby property.
  - (7) The variance will not cause a fraud to be worked upon the public or any individual.
  - (8) The variance will not cause an increase in public expenditures or budgets.
  - (9) The variance will not create an irreconcilable conflict with any other ordinance, law, rule or regulation.
- (g) *Form of variances; conditions; recordation.* No variance is effective unless it is in writing and signed by the duly authorized officers of the BSC. The BSC may impose restrictions or conditions upon any variance and may require that notice of a variance be recorded in the real property records of the county, at the expense of the applicant.
- (h) *Effect of variance.* Variances do not create any property right or vested right. Variances remain subject to the regulatory control of the city. When a variance has been issued, the building official may not deny a permit because of noncompliance with the requirement affected by the variance, provided that all conditions are complied with. It shall be an affirmative defense, in any proceeding to enforce the requirement, that a variance was issued to authorize the conduct in question, that the variance has not been modified or revoked and that all applicable conditions have been fully observed and complied with.
- (i) *Revocation; modification.* The BSC may revoke or modify any variance previously issued, provided that a good faith attempt is first made to notify the person who applied for the variance.

(Code 2003, § 6.206; Ord. No. 1798, § 1(ex. A), 5-23-2005; Ord. No. 1872, § 1(ex. A), 4-28-2008)

**Sec. 18-21. - Advisory opinions.**

The BSC may issue advisory opinions relating to any ordinance subject to its appellate authority or quasijudicial enforcement authority, pursuant to such limitations and rules as it may prescribe.

(Code 2003, § 6.207)

**Sec. 18-22. - Enforcement of chapter provisions; permittee responsibility.**

- (a) *Certain actions.* In addition to imposing those penalties by this Code, the city may also enforce the provisions of this chapter in any manner as prescribed or allowed by state law or the zoning ordinance. No enforcement action is a bar to any other, and the city may pursue some or all in any given case.
- (b) *Strict liability; duty of permittees.* It is the intent of this Code to impose strict liability upon all persons or entities violating this chapter. Each permittee has a duty to prevent violations of this Code arising out of, or relating to, the permit or activities under that person's permit.

(Code 2003, § 6.301)

**Sec. 18-23. - Right of entry.**

- (a) *Request.* The building official (or an authorized deputy) may request the owner, occupant or person in control of any structure or premises to allow entry for inspection or enforcement purposes.
- (b) *Identification.* When requesting entry, city officials should identify themselves and present proper credentials, with a photograph.
- (c) *Warrant.* In the event entry is denied, or if no consent to enter is obtained, the building official may seek the issuance of a search warrant under the provisions of this Code or state law. For this purpose, the building official is designated as the code enforcement official.

(Code 2003, § 6.302)

**Sec. 18-24. - City activity.**

In a proceeding to enforce this chapter, it is an affirmative defense that the activities involved are those of the city itself or of city officers, agents or employees (excluding independent contractors) in the course of their official duties.

(Code 2003, § 6.303)

Secs. 18-25—18-51. - Reserved.

