

TOWN OF ADDISON, TEXAS

ORDINANCE NO. 009-038

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS AMENDING VARIOUS PROVISIONS OF THE CODE OF ORDINANCES OF THE TOWN, INCLUDING SECTION 18-54 (RELATING TO THE INTERNATIONAL BUILDING CODE), SECTION 18-124 (RELATING TO THE INTERNATIONAL PROPERTY MAINTENANCE CODE), SECTION 18-165 (RELATING TO THE ICC ELECTRICAL CODE), SECTION 18-313 (RELATING TO THE INTERNATIONAL MAINTENANCE CODE), SECTION 18-363 (RELATING TO THE INTERNATIONAL PLUMBING CODE, THE INTERNATIONAL FUEL GAS CODE, AND THE INTERNATIONAL PRIVATE SEWAGE DISPOSAL CODE), SECTION 18-425 (RELATING TO THE INTERNATIONAL RESIDENTIAL CODE), SECTION 18-614 (RELATING TO FENCES), SECTION 18-652 (RELATING TO SATELLITE EARTH STATIONS), SECTION 18-725 (RELATING TO SWIMMING POOLS AND SPAS), AND SECTION 18-730 (RELATING TO SOLAR ENERGY SYSTEMS), AND ADDING TO THE SAID CODE OF ORDINANCES SECTION 38-52.1 (RELATING TO THE INTERNATIONAL FIRE CODE), AND PROVIDING BY SUCH AMENDMENTS AND ADDITION FOR THE ESTABLISHMENT AND/OR APPOINTMENT OF A BOARD OF APPEALS COMPRISED OF THE TOWN'S ZONING BOARD OF ADJUSTMENT IN CONNECTION WITH SUCH CODES AND OTHER ORDINANCE PROVISIONS; PROVIDING FOR THE AUTHORITY OF, THE APPEAL PROCESSES OF, AND OTHER MATTERS RELATED TO, SUCH BOARDS OF APPEALS; PROVIDING FOR OTHER AMENDMENTS RELATED TO SUCH CODES AS SET FORTH HEREIN; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:

Section 1. Amendment. The Code of Ordinances (the "Code") of the Town of Addison, Texas is hereby amended as follows:

A. Section 18-54 of the Code is amended in its entirety to read as follows:

**Sec. 18-54. Board of Appeals.**

The International Building Code is amended by amending Section 112 thereof in its entirety to read as follows:

SECTION 112  
BOARD OF APPEALS

*112.1. General.* There is hereby created a board of appeals (the "board of appeals"), consisting of the members of the board of adjustment appointed by the city council pursuant to Appendix A, Article XXIV of the Code of Ordinances of the Town of Addison. Accordingly, the number of members of the board of appeals shall be equal to the number of members of the said board of adjustment, and alternate members of the said board of adjustment shall be alternate members of the board of appeals who may serve in the absence of one or more regular members when requested to do so by the City Manager or the City Manager's designee, including the director of development services of the Town.

Appointment to (including the filling of a vacancy), removal from, and the terms (including term limits) of the members of the board of appeals shall be the same as for members of the board of adjustment. Four (4) members of the board of appeals (including, in the absence of one or more regular members, alternate members) shall constitute a quorum for the conduct of business of the board of appeals, and any action of the board of appeals shall require at least four (4) affirmative votes to be adopted or passed.

*112.2 Limitations on authority.* The board of appeals shall have no authority to waive requirements of this code.

*112.3 Powers of the board of appeals.* The board of appeals has all of the following powers and authority:

112.3.1 To hear and decide appeals of orders, decisions or determinations made by the building official to the application and interpretation of the code.

112.3.2 To hear requests for the use of a material or method of construction not prescribed by the code and to authorize the use when, in the board of appeals' judgement, the material or method of construction is at least equivalent to that prescribed.

112.3.3 To hear complaints from the building official arising against any person, firm, or corporation licensed by the Town under or related to chapter 18 of the Code of Ordinances of the Town, and shall have the power after hearing, to revoke or suspend said license for the following reasons:

- (a) Chronic violation of the code;
- (b) Misrepresentation of material facts in obtaining said license or renewal thereof;

(c) Chronic failure to secure permits, inspections, or approvals as required by the code; or

(d) Use of said license to obtain a permit for another person, firm or corporation.

*112.3.4 Rules and procedures.* The board of appeals is authorized to establish policies and procedures necessary to carry out its duties.

*112.3.5 Chairperson.* The board of appeals shall annually select one of its members to serve as chairperson.

*112.3.6 Disqualification of member.* A member of the of board of appeals shall not hear an appeal in which that member has a personal interest, professional or financial interest or in any other instance which would be in violation of law.

*112.3.7 Secretary.* The City Manager or the City Manager's designee, including the director of development services, shall designate a qualified clerk to serve as secretary to the board of appeals. The secretary shall file a detailed record of all proceedings in the office of the City Secretary.

*112.4 Appeal process.*

*112.4.1 Application.* The application for appeal shall be filed on a form obtained from the building official within 20 days after the notice was served.

*112.4.2 Notice of meeting.* The board of appeals shall meet upon notice from the chairperson or the City Manager or the City Manager's designee, including the director of development services.

*112.4.3 Open hearing.* Except as allowed by State law, all meetings of the board of appeals and hearings before the board of appeals shall be open to the public. At a hearing of the board of appeals pursuant to this appeal process, the appellant, the appellant's representative, the building official and any person whose interests are affected shall be given an opportunity to be heard.

*112.4.4 Procedure.* The board of appeals shall adopt and make available to the public through the secretary procedures under which a hearing will be conducted. The procedures shall not require compliance with strict rules of evidence, but shall provide that only relevant information be received.

*112.4.5 Postponed hearing.* A hearing by the board of appeals shall not be conducted when a quorum of the board of appeals is not present to hear the appeal.

*112.4.6 Board decision.* Any action to shall reverse a decision of the building official shall require the number of votes of the board of appeals as set forth in Section 112.1, above.

*112.4.7 Resolution.* The decision of the board of appeals shall be by resolution or by motion recorded in the minutes of the board of appeals. Certified copies of the same shall be furnished to the appellant and to the building official.

*112.4.8 Administration.* The building official shall take immediate action in accordance with the decision of the board of appeals.

B. Section 18-124 of the Code is amended in its entirety to read as follows:

**Sec. 18-124. Building/Fire Code Board of Appeals.**

The International Property Maintenance Code is amended by amending Section 111 thereof in its entirety to read as follows:

SECTION 111  
MEANS OF APPEAL

*Section 111.1 Application for Appeal.* Any person directly affected by a decision of the code official or a notice or order issued under this code shall have the right to appeal to the board of appeals, provided that a written application for appeal is filed within 20 days after the day the decision, notice or order was served. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply, or the requirements of this code are adequately satisfied by other means.

*Section 111.2 Board of Appeals.* The board of appeals, being denominated as the Building/Fire Code Board of Appeals, shall consist of the members of the board of adjustment appointed by the city council pursuant to Appendix A, Article XXIV of the Code of Ordinances of the Town of Addison. The provisions applicable to the board of appeals as set forth and described in Section 112 of the International Building Code adopted by the town, including, without limitation, general provisions, limitations of power, powers of the board, and appeal process, shall be applicable to and govern appeals and the said board of appeals for purposes of this code.

C. Section 18-165 of the Code is amended in its entirety to read as follows:

**Sec. 18-165. Building/Fire Code Board of Appeals.**

The ICC Electrical Code is amended by amending Chapter 11 thereof in its entirety to read as follows:

*Chapter 11. Building/Fire Code Board of Appeals.* For purposes of this code, appeals shall be to the board of appeals, being denominated as the Building/Fire Code Board of Appeals, which shall consist of the members of the board of adjustment appointed by the city council pursuant to Appendix A, Article XXIV of the Code of Ordinances of the Town of Addison. The provisions applicable to the board of appeals as set forth and described in Section 112 of the International Building Code adopted by the town, including, without limitation, general provisions, limitations of power, powers of the board, and appeal process, shall be applicable to and govern appeals and the said board of appeals for purposes of this code.

D. Section 18-313 of the Code is amended in its entirety to read as follows:

**Sec. 18-313. Building/Fire Code Board of Appeals.**

The International Mechanical Code is amended by amending Section 109 thereof in its entirety to read as follows:

*Section 109. Building/Fire Code Board of Appeals.* For purposes of this code, appeals shall be to the board of appeals, being denominated as the Building/Fire Code Board of Appeals, which shall consist of the members of the board of adjustment appointed by the city council pursuant to Appendix A, Article XXIV of the Code of Ordinances of the Town of Addison. The provisions applicable to the board of appeals as set forth and described in Section 112 of the International Building Code adopted by the town, including, without limitation, general provisions, limitations of power, powers of the board, and appeal process, shall be applicable to and govern appeals and the said board of appeals for purposes of this code.

E. Section 18-363 of the Code is amended in its entirety to read as follows:

**Sec. 18-363. Building/Fire Code Board of Appeals.**

The International Plumbing Code, International Fuel Gas Code and International Private Sewage Disposal Code are amended by amending Section 109 in each of the said codes in its entirety to read as follows:

*Section 109. Building/Fire Code Board of Appeals.* For purposes of this code, appeals shall be to the board of appeals, being denominated as the Building/Fire Code Board of Appeals, which shall consist of the members of the board of adjustment appointed by the city council pursuant to Appendix A, Article XXIV of the Code of Ordinances of the Town of Addison. The provisions applicable to the board of appeals as set forth and described in Section 112 of the International Building Code adopted by the town, including, without limitation, general provisions, limitations of power, powers of the board, and appeal process, shall be applicable to and govern appeals and the said board of appeals for purposes of this code.

F. Section 18-425 of the Code is amended in its entirety to read as follows:

**Sec. 18-425. Building/Fire Code Board of Appeals.**

The International Residential Code is amended by amending Section R112 in its entirety as follows, and by amending Section 112.2 thereof by adding Section 112.2.1 and Section 112.2.2 as set forth below:

*R112. Building/Fire Code Board of Appeals.* For purposes of this code, appeals shall be to the board of appeals, being denominated as the Building/Fire Code Board of Appeals, which shall consist of the members of the board of adjustment appointed by the city council pursuant to Appendix A, Article XXIV of the Code of Ordinances of the Town of Addison. The provisions applicable to the board of appeals as set forth and described in Section 112 of the International Building Code adopted by the town, including, without limitation, general provisions, limitations of power, powers of the board, and appeal process, shall be applicable to and govern appeals and the said board of appeals for purposes of this code.

*112.2.1 Determination of substantial improvement in areas prone to flooding.* When the building official provides a finding required in Section R105.3.1.1, the board of appeals shall determine whether the value of the proposed work constitutes a substantial improvement. A substantial improvement means any repair, reconstruction, rehabilitation, addition or improvement of a building or structure, the cost of which equals or exceeds 50 percent of the market value of the building or structure before the improvement or repair is started. If the building or structure has sustained substantial damage, all repairs are considered substantial improvement regardless of the actual repair work performed. The term does not include:

1. Improvements of a building or structure required to correct existing health, sanitary or safety code violations identified by the building official and which are the minimum necessary to assure safe living conditions; or

2. Any alteration of an historic building or structure, provided that the alteration will not preclude the continued designation as an historic building or structure. For the purpose of this exclusion, an historic building is:

- 2.1. Listed or preliminarily determined to be eligible for listing in the National Register of Historic Places; or

- 2.2. Determined by the Secretary of the U.S. Department of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined to qualify as an historic district; or

2.3. Designated as historic under a state or local historic preservation program that is approved by the Department of Interior.

*112.2.2 Criteria for issuance of a variance for areas prone to flooding.* A variance shall only be issued upon:

1. A showing of good and sufficient cause that the unique characteristics of the size, configuration or topography of the site render the elevation standards in Section R324 inappropriate.
2. A determination that failure to grant the variance would result in exceptional hardship by rendering the lot undevelopable.
3. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, nor create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
4. A determination that the variance is the minimum necessary to afford relief, considering the flood hazard.
5. Submission to the applicant of written notice specifying the difference between the design flood elevation and the elevation to which the building is to be built, stating that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced floor elevation, and stating that construction below the design flood elevation increases risks to life and property.

G. Section 18-614 of the Code is amended in its entirety to read as follows:

**Sec. 18-614. Building/Fire Code Board of Appeals.**

In order to determine the suitability of alternate materials and methods of construction, and to provide for reasonable interpretation of and exceptions to, the provisions of this article, there shall be and is hereby created a board of appeals. The said board of appeals, being denominated as the Building/Fire Code Board of Appeals, shall consist of the members of the board of adjustment appointed by the city council pursuant to Appendix A, Article XXIV of the Code of Ordinances of the Town of Addison. The provisions applicable to the board of appeals as set forth and described in Section 112 of the International Building Code adopted by the town, including, without limitation, general provisions, powers of the board, and appeal process, but save and except Section 112.2 of the said International Building Code, shall be applicable to and govern appeals and the said board of appeals for purposes of this article.

H. Section 18-653 of the Code is amended in its entirety to read as follows:

**Sec. 18-653. Building/Fire Code Board of Appeals.**

Any person aggrieved by the application of this article may appeal its effect to a board of appeals, being denominated as the Building/Fire Code Board of Appeals, which shall consist of the members of the board of adjustment appointed by the city council pursuant to Appendix A, Article XXIV of the Code of Ordinances of the Town of Addison. The provisions applicable to the board of appeals as set forth and described in Section 112 of the International Building Code adopted by the town, including, without limitation, general provisions, powers of the board, and appeal process, but save and except Section 112.2 of the said International Building Code, shall be applicable to and govern appeals and the said board of appeals for purposes of this article.

Upon a clear and convincing showing by an appellant that the regulations set forth in this article either prohibit or unreasonably limit reception by the satellite earth station of satellite delivered signals, the board of appeals may grant an exception from the terms of this article and authorize the issuance of a building permit so as to avoid unnecessary hardship and so that the spirit of this article shall be observed and substantial justice done.

I. Section 18-725 of the Code is amended in its entirety to read as follows:

**Sec. 18-725. Building/Fire Code Board of Appeals.**

For purposes of this article, appeals shall be to the board of appeals, being denominated as the Building/Fire Code Board of Appeals, which shall consist of the members of the board of adjustment appointed by the city council pursuant to Appendix A, Article XXIV of the Code of Ordinances of the Town of Addison. The provisions applicable to the board of appeals as set forth and described in Section 112 of the International Building Code adopted by the town, including, without limitation, general provisions, limitations of power, powers of the board, and appeal process, shall be applicable to and govern appeals and the said board of appeals for purposes of this article.

J. Section 18-730 of the Code is amended in its entirety to read as follows:

**Sec. 18-730. Building/Fire Code Board of Appeals.**

Any person aggrieved by the application of this article may appeal its effect to a board of appeals, being denominated as the Building/Fire Code Board of Appeals, which shall consist of the members of the board of adjustment appointed by the city council pursuant to Appendix A, Article XXIV of the Code of Ordinances of the Town of Addison. The provisions applicable to the board of appeals as set forth and described in Section 112 of the International Building Code adopted by the town, including, without limitation, general provisions, powers of the board, and appeal process, but save and except Section 112.2 of the said International Building Code, shall be applicable to and govern appeals and the said board of appeals for purposes of this article.



Upon a clear and convincing showing by an appellant that the regulations set forth in this article either prohibit or unreasonably limit the use of ground-mounted or roof-mounted solar energy systems, the board of appeals may grant an exception from the terms of this article and authorize the issuance of a building permit so as to avoid unnecessary hardship and so that the spirit of this article shall be observed and substantial justice done.

K. Section 38-31 of the Code is amended (additions are underlined; deletions are ~~struck through~~), and a new and Section 38-52.1 is added to the Code, to read as follows:

**Sec. 38-31. Adoption.**

There is hereby adopted by the Town of Addison, for the purpose of prescribing regulations governing the safety of life and property from fire and related conditions, that certain code known as the International Fire Code (for purposes of this Chapter 38, "code"), including ~~all~~ appendices B, C, D, E, F, and G thereto, in particular the 2006 edition thereof, published by the International Code Council, Inc., hereinafter known as the "Fire Code" or the "Code", and the whole thereof except for such portions as are modified herein, and the same are incorporated as fully as if set out at length herein. From the date on which this ordinance shall take effect, the provisions herein shall be controlling within the corporate limits of the Town of Addison, Texas.

**Sec. 38-52.1. Building/Fire Code Board of Appeals.**

The Fire Code is amended by amending Section 108 in its entirety to read as follows:

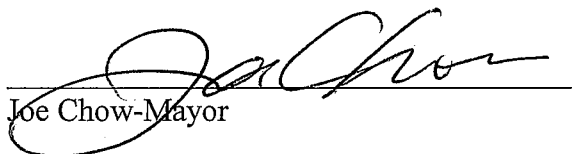
*Section 108. Building/Fire Code Board of Appeals.* For purposes of this code, appeals shall be to the board of appeals, being denominated as the Building/Fire Code Board of Appeals, which shall consist of the members of the board of adjustment appointed by the city council pursuant to Appendix A, Article XXIV of the Code of Ordinances of the Town of Addison. The provisions applicable to the board of appeals as set forth and described in Section 112 of the International Building Code adopted by the town, including, without limitation, general provisions, limitations of power, powers of the board, and appeal process, shall be applicable to and govern appeals and the said board of appeals for purposes of this code.

Section 2. Savings. All other ordinances and parts of ordinances of the Town of Addison in conflict with this Ordinance shall be, and the same are hereby repealed, but the repeal of such ordinances or parts of ordinances shall not affect any right, property or claim which was or is vested in the Town of Addison, Texas, or any act done, or right accruing or accrued, or established, or any suit, action or proceeding had or commenced before the time when this Ordinance shall take effect; nor shall said repeals, amendments or changes affect any offense committed, or any penalty or forfeiture incurred, or any suit or prosecution pending at the time when this Ordinance shall take effect under any of the ordinances or sections thereof so repealed, and for such purposes such ordinances or parts of ordinances shall remain in effect.

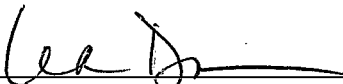
Section 3. Severability. The sections, paragraphs, sentences, phrases, clauses and words of this Ordinance are severable, and if any section, paragraph, sentence, phrase, clause or word in this Ordinance or application thereof to any person or circumstance is held invalid, void, illegal or unconstitutional by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Ordinance, and the City Council hereby declares that it would have passed such remaining portions of this Ordinance despite such invalidity, voidness, illegality or unconstitutionality, which remaining portions shall remain in full force and effect.

Section 4. Effective Date. This Ordinance shall take effect immediately upon passage and approval and it is so ordained.

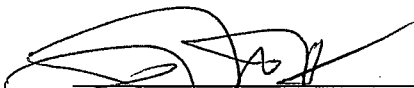
**PASSED AND APPROVED** by the City Council of the Town of Addison, Texas this the 27th day of October, 2009.

  
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Joe Chow-Mayor

ATTEST:

  
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Lea Dunn-City Secretary

APPROVED AS TO FORM:

  
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John Hill-City Attorney