

**LEGISLATIVE #**

**130978A**

ORDINANCE NO. 130978

An ordinance of the City of Gainesville, Florida, amending Section 10-14. Fire safety board of adjustment of the Code of Ordinances; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an immediate effective date.

WHEREAS, Section 633.202, Florida Statutes, directs the State Fire Marshal to adopt by rule a Florida Fire Prevention Code that shall contain or incorporate by reference all firesafety laws and rules that pertain to and govern the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and the enforcement of such firesafety laws and rules; and

WHEREAS, Section 633.208, Florida Statutes, states that the Florida Fire Prevention Code, which shall operate in conjunction with the Florida Building Code, shall be deemed adopted by each municipality with firesafety responsibilities and shall act as a minimum code, whereby a municipality with firesafety responsibilities may adopt more stringent firesafety standards; and

WHEREAS, Subsection 553.73(11), Florida Statutes, states that any decision made by the local fire official in the enforcement of the Florida Fire Prevention Code may be appealed to a local administrative board designated by the municipality and, together with the Florida Fire Prevention Code as defined in Rule 69A-60.002, Florida Administrative Code, provides standards for the establishment and operation of a Fire Safety Board of Adjustment; and

WHEREAS, Section 10-14 of the City of Gainesville Code of Ordinances establishes and outlines the duties of the City of Gainesville Fire Safety Board of Adjustment, which include hearing appeals regarding the application of the Florida Fire Prevention Code and the fire code

1 provisions of the City of Gainesville Code of Ordinances as well as hearing appeals regarding  
2 any conflicts between the fire code and the building code; and

3 **WHEREAS**, the purpose of this ordinance is to update and clarify Section 10-14 of the  
4 Code of Ordinances in order to be consistent with state law and the administrative rules of the  
5 State Fire Marshal; and

6 **WHEREAS**, at least ten (10) days’ notice has been given once by publication in a  
7 newspaper of general circulation notifying the public of this proposed ordinance and of public  
8 hearings in the City Hall Auditorium located on the first floor of City Hall in the City of  
9 Gainesville; and

10 **WHEREAS**, public hearings were held pursuant to the notice described above at which  
11 hearings the parties in interest and all others had an opportunity to be and were, in fact, heard.

12 **NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE**  
13 **CITY OF GAINESVILLE, FLORIDA:**

14 **Section 1.** Section 10-14. – *Fire safety board of adjustment.* is amended as follows.

15 **Sec. 10-14. – Fire safety Firesafety board of adjustment.**

16 (a) ~~Fire safety~~ Firesafety board of adjustment, ~~to serve as appeals board.~~ The fire safety  
17 firesafety board of adjustment, ~~consisting of five members who, to the greatest extent~~  
18 ~~possible are qualified by training and experience in building construction and fire safety~~  
19 ~~standards,~~ is hereby authorized to hear appeals regarding application of the fire code and/or  
20 conflicts between the fire code and the building code, ~~and to vary the application of any~~  
21 ~~provision of this code and the building code when this code and the building code are in~~  
22 ~~conflict.~~ The board shall consist of five (5) members appointed by the city commission who

1 are qualified, to the greatest extent possible, by training and experience in building  
2 construction and firesafety standards. ~~is appointed by the city commission.~~ Each member  
3 shall be appointed for overlapping terms ~~a term~~ of three (3) years and shall hold office until  
4 ~~his/her~~ a successor has been appointed and qualified. Vacancies shall be filled for the  
5 unexpired term of any member whose office becomes vacant. ~~Terms shall expire November~~  
6 ~~first of such year the term expires.~~

7 (b) Quorum. A quorum shall consist of four (4) members. A majority vote of the quorum  
8 present shall be required for the transaction of all business; however, a smaller number may  
9 adjourn a meeting.

10 (c) Meetings. The board shall meet at least quarterly and at such additional times as deemed  
11 necessary for the proper performance of its duties.

12 (d)(b) Chair. ~~A majority of the~~ The board shall annually elect a chair who shall serve in that  
13 capacity for a one (1) ~~two~~-year term.

14 (e) ~~Meetings.~~ ~~The board shall meet at least quarterly but may, by rule, increase the frequency of~~  
15 ~~meetings.~~

16 (e)(d) Secretary. The fire official, or his/her authorized representative, shall act as secretary of  
17 the board, ~~as regards the aforementioned appeals.~~

18 (f)(e) Decisions.

19 (1) Every decision of the board shall be final and binding on all persons, subject, however,  
20 to the authority of the state fire marshal or the florida building commission pursuant to  
21 Sections 633.104, 553.76, and 553.77, Florida Statutes, ~~pursuant to F.S. § 633.161~~ and

1 to such remedy as any aggrieved party might have at law or in equity. All decisions of  
2 the local building official and local fire official and all decisions of the board shall be in  
3 writing and decisions by the board shall indicate the vote upon the decision. Every  
4 decision shall be promptly filed in the office of the fire official and shall be open to  
5 public inspection; a certified copy shall be sent to appellant and a copy shall be kept in  
6 the office of the fire official, ~~for two weeks after filing.~~ Decisions of general application  
7 shall be indexed by building and fire code sections and shall be available for inspection  
8 by the public during normal business hours.

9 (2) The board shall, in every case, reach a decision without unreasonable ~~unreasonably~~ or  
10 unnecessary delay. The fire official and building official shall immediately take action  
11 in accordance with such decision.

12 ~~(3) If a decision of the board reverses or modifies a refusal, order, or disallowance of the~~  
13 ~~fire official or varies the application of any provision of this code, the fire official shall~~  
14 ~~immediately take action in accordance with such decision.~~

15 (g)(f) Appeal. Basis for decisions. An affected property owner or an affected property owner's  
16 duly authorized agent shall submit, in writing on such form as prescribed by the City, any  
17 notice of appeal within 30 days after the decision to be appealed is rendered.

18 ~~(1) Fire code only. Whenever it is claimed that the provisions of this code do not apply, or~~  
19 ~~the fire official shall reject an alternate material or method of construction, or when it is~~  
20 ~~claimed that the true intent and meaning of this code has been misinterpreted, the owner~~  
21 ~~or his/her duly authorized agent may appeal the decision of the fire official to the board.~~

1 Notice of appeal shall be in writing stating the reasons why relief is sought and what  
2 decision the person feels should be forthcoming. Appeal must be filed within 15 days  
3 after the decision is rendered by the fire official in such form as prescribed by the board.

4 ~~(2) Fire code/building code conflict. If the applicable minimum building code conflicts~~  
5 ~~with the applicable minimum fire safety code, the conflict shall be resolved by~~  
6 ~~agreement between the building code enforcement official and the fire code~~  
7 ~~enforcement official in favor of the requirement of the code which offers the greatest~~  
8 ~~degree of life safety or alternatives which would provide an equivalent degree of life~~  
9 ~~safety and an equivalent method of construction. Any decision made by the fire official~~  
10 ~~and the building official may be appealed to the board. Notice of appeal shall be in~~  
11 ~~writing and filed within 15 days after the decision to be appealed is rendered. If the~~  
12 ~~decision of the fire official and the building official is to apply the provisions of either~~  
13 ~~the applicable minimum building code or the applicable minimum fire safety code, the~~  
14 ~~board may not alter the decision unless the board determines that the application of such~~  
15 ~~code is not reasonable. If the decision of the fire official and the building official is to~~  
16 ~~adopt an alternative to the codes, the board shall give due regard to the decision~~  
17 ~~rendered by the officials and may modify that decision if the administrative board~~  
18 ~~adopts a better alternative, taking into consideration all relevant circumstances. In any~~  
19 ~~case in which the board adopts alternatives to the decision rendered by the fire official~~  
20 ~~and the building official, such alternatives shall provide an equivalent method of~~  
21 ~~construction as the decision rendered by the officials.~~

22 If the building official and the fire official are unable to agree on a resolution of the

1 ~~conflict between the building code and the fire code, the board shall resolve the~~  
2 ~~conflict in favor of the code which offers the greatest degree of life safety or~~  
3 ~~alternatives which would provide an equivalent degree of life safety and an equivalent~~  
4 ~~method of construction.~~

5 (1) Application of fire code. An affected property owner or an affected property owner's  
6 duly authorized agent may appeal a decision of the fire official to the firesafety board of  
7 adjustment when such person claims that any of the following conditions exist:

- 8 a. The true intent of the fire code has been incorrectly interpreted;  
9 b. The provisions of the fire code do not fully apply; or  
10 c. The fire official's decision is unreasonable or arbitrary as it applies to alternatives  
11 or new materials.

12 In deciding whether to affirm, reverse, or modify the decision of the fire official as it  
13 relates to one of the above claims, the firesafety board of adjustment:

- 14 a. Shall ensure that the intent of the fire code is complied with and public safety is  
15 secured;  
16 b. Shall not have authority to waive the requirements of the fire code;  
17 c. May allow alternatives to specific requirements of the fire code if the use of  
18 alternative systems, methods, or devices provides equivalent or superior quality,  
19 strength, fire resistance, effectiveness, durability, and safety; and  
20 d. May allow modifications to any of the provisions of the fire code if there are  
21 practical difficulties in the way of carrying out the provisions of the fire code,  
22 provided that the intent of the fire code is complied with and public safety secured.

1 (2) Conflict between fire code and building code. In the event of a conflict between the fire  
2 code and the building code as applied to a specific project, the conflict shall be resolved  
3 by agreement between the fire official and the building official in favor of the  
4 applicable code provision that offers the greatest degree of lifesafety or alternatives that  
5 would provide at least an equivalent degree of lifesafety and an equivalent method of  
6 construction.

7 a. If the fire official and the building official agree on a resolution of the conflict  
8 between the fire code and the building code, an affected property owner or an  
9 affected property owner's duly authorized agent may appeal the decision to the  
10 firesafety board of adjustment. The firesafety board of adjustment may alter the  
11 decision of the fire official and the building official only if the board determines  
12 that the decision is not reasonable. In such a case, the board shall resolve the  
13 conflict between the fire code and the building code in favor of the applicable code  
14 provision that offers the greatest degree of lifesafety or alternatives that would  
15 provide at least an equivalent degree of lifesafety and an equivalent method of  
16 construction.

17 b. If the fire official and the building official are unable to agree on a resolution of the  
18 conflict between the fire code and the building code, the firesafety board of  
19 adjustment shall resolve the conflict in favor of the code that offers the greatest  
20 degree of lifesafety or alternatives that would provide at least an equivalent degree  
21 of lifesafety and an equivalent method of construction.

22 **Section 2.** It is the intention of the City Commission that the provisions of Section 1 of



1 this ordinance shall become and be made a part of the Code of Ordinances of the City of  
2 Gainesville, Florida, and that the sections and paragraphs of this ordinance may be renumbered  
3 or relettered in order to accomplish such intentions.

4 **Section 3.** If any word, phrase, clause, paragraph, section or provision of this ordinance  
5 or the application hereof to any person or circumstance is held invalid or unconstitutional, such  
6 finding shall not affect the other provisions or applications of this ordinance that can be given  
7 effect without the invalid or unconstitutional provision or application, and to this end the  
8 provisions of this ordinance are declared severable.

9 **Section 4.** All ordinances or parts of ordinances in conflict herewith are to the extent of  
10 such conflict hereby repealed.

11 **Section 5.** This ordinance shall become effective immediately upon adoption.

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13 **PASSED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

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\_\_\_\_\_  
EDWARD B. BRADDY  
MAYOR

Attest:

Approved as to form and legality:

\_\_\_\_\_  
KURT M. LANNON  
CLERK OF THE COMMISSION

\_\_\_\_\_  
NICOLLE M. SHALLEY  
CITY ATTORNEY

27 This ordinance passed on first reading this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

28

29 This ordinance passed on second reading this \_\_\_\_\_ day of \_\_\_\_\_, 2014.