

LEGISLATIVE #

130978B

**RULES OF THE FIRESAFETY BOARD OF ADJUSTMENT
CITY OF GAINESVILLE, FLORIDA**

Approved by the Firesafety Board of Adjustment on April 29, 2014.

Approved by the City Commission and thereby effective on September 18, 2014.

**ARTICLE I
Objectives
General Governing Rules**

Objectives. The objectives and purposes of the Firesafety Board of Adjustment are those powers and duties designated to the board by the Charter Laws and Code of Ordinances of the City of Gainesville.

General Governing Rules. The Firesafety Board of Adjustment shall be governed by the provisions of Chapter 633, Florida Statutes, empowering the City of Gainesville to establish an Administrative Review Board, Chapter 6 of the City of Gainesville Code of Ordinances relating to building regulations, Chapter 10 of the City of Gainesville Code of Ordinances relating to fire prevention and protection, and the rules of procedure set forth herein as adopted by the board and approved by the City Commission of the City of Gainesville.

**ARTICLE II
Membership**

Section 1 Number of Members/Quorum. The Firesafety Board of Adjustment shall consist of five (5) members appointed by the City Commission. A quorum shall consist of four (4) members. A majority vote of the quorum present shall be required for the transaction of all business; but a smaller number may adjourn a meeting.

Section 2 Membership Qualifications. Members of the Firesafety Board of Adjustment shall be qualified, to the greatest extent possible, by training and experience in building construction and firesafety standards.

Section 3 Term. Each member shall be appointed for overlapping terms of three (3) years and shall hold office until a successor has been appointed and qualified.

Section 4 Attendance. Any member of the Firesafety Board of Adjustment shall be automatically removed from office if the board member fails to attend four (4) or more consecutive meetings or if the board member's overall attendance record is less than 66 2/3 percent for the six (6) most recent board meetings at which voting occurred. Board members may be granted one excused absence per calendar year for a medical reason or professional/educational obligation. Board members shall notify the board secretary of an excused absence prior to the meeting, if practicable. As used in this section, attendance means presence at a meeting for a duration of at least

50 percent of the entire meeting time as verified by the board secretary on the attendance record.

Section 5 Vacancy. Vacancies shall be filled by appointment of the City Commission for the unexpired term of any member whose office becomes vacant.

ARTICLE III Officers and Their Duties

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

Section 2 Chair. The Chair shall preside at all meetings and hearings of the board and shall decide all points of order and procedure in accordance with parliamentary procedure. The Chair shall have the privilege of discussing all matters before the board and voting thereon.

Section 3 Vice-Chair. The Vice-Chair shall act for the Chair in the Chair's absence. In the absence of the Chair and Vice-Chair, the quorum present shall select a Chair for the meeting.

ARTICLE IV Election of Officers

Section 1 The board shall annually elect officers to serve for a one (1) year term at the pleasure of the board or until a successor shall take office.

Section 2 Nomination for the positions of Chair and Vice-Chair shall be made from the floor at a meeting held prior to the expiration of the term of the Chair and Vice-Chair, and the elections shall follow immediately thereafter.

Section 3 Vacancies in office shall be filled immediately by regular election procedure.

ARTICLE V Secretary

Section 1 The fire official, or his/her authorized representative, shall act as secretary of the board.

Section 2 The Secretary shall provide notice of each meeting to the Clerk of the Commission at least seven (7) days prior to the meeting. The Secretary shall prepare agendas and make, or cause to be made, the minutes of each meeting showing the vote of each member on every question. The Secretary shall verify the attendance of board members at each meeting and shall file the attendance record with the Clerk of the

Commission as soon as practicable. The Secretary shall serve as recorder and custodian of all board records and attend to correspondence of the board and to such other duties as may be necessary.

ARTICLE VI Meetings

Section 1 Regular Meetings. The Firesafety Board of Adjustment shall meet at least once every quarter and at such additional times as deemed necessary for proper performance of its duties.

Section 2 Special Meetings. Special meetings may be called by the Chair upon the written request of three (3) members.

Section 3 Voting. Voting shall be by roll call, and a record of the vote shall be kept as a part of the minutes.

ARTICLE VII Order of Business

Section 1 The order of business at regular meetings shall be:

- a. Roll Call
- b. Approval of Agenda
- c. Approval of Minutes of Previous Meeting
- d. Requests to Address the Board
- e. Unfinished Business
- f. New Business
- g. Board Comment
- h. Adjournment.

ARTICLE VIII Basis for Decisions

Section 1 Application of Fire Code.

An affected property owner or an affected property owner's duly authorized agent may appeal a decision of the fire official to the Firesafety Board of Adjustment when such person claims that any of the following conditions exist:

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

In deciding whether to affirm, reverse, or modify the decision of the fire official as it relates to one of the above claims, the Firesafety Board of Adjustment:

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

Section 2 Conflict between Fire Code and Building Code.

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

- a. If the fire official and the building official agree on a resolution of the conflict between the fire code and the building code, an affected property owner or an affected property owner's duly authorized agent may appeal the decision to the Firesafety Board of Adjustment. The Firesafety Board of Adjustment may alter the decision of the fire official and the building official only if the board determines that the decision is not reasonable. In such a case, the board shall resolve the conflict between the fire code and the building code in favor of the applicable code provision that offers the greatest degree of lifesafety or alternatives that would provide at least an equivalent degree of lifesafety and an equivalent method of construction.
- b. If the fire official and the building official are unable to agree on a resolution of the conflict between the fire code and the building code, the Firesafety Board of Adjustment shall resolve the conflict in favor of the code that offers the greatest degree of lifesafety or alternatives that would provide at least an equivalent degree of lifesafety and an equivalent method of construction.

ARTICLE IX
Hearings

Section 1 Petitions. An appeal of a decision of the appropriate official(s) as explained in Article VIII shall be submitted in writing to the secretary to the Firesafety Board of Adjustment within 30 calendar days of such decision. The Firesafety Board of Adjustment shall meet on a petition within 30 calendar days of the filing of such petition.

Section 2 Order of Presentation.

<i>Procedural Order</i>	<i>Time Limit (minutes)</i>
a. Introduction	3
b. Disclosure of ex-parte communications	3
c. Petitioner presentation*	20
d. Staff (e.g., fire official) presentation*	10
e. Petitioner rebuttal*	5
f. Staff rebuttal*	5
g. Public comment	5 (per person)
h. Deliberation and vote of the board	

* Witnesses may be presented during parts c-f and are subject to cross-examination. Cross-examination is limited to 10 minutes per witness.

The time limits set forth above may be modified by the board. A request for an extension of time should be considered by the board to assure all parties have a full and fair opportunity to participate without undue repetition and delay.

Section 3 Ex-Parte Communications. The members of the Firesafety Board of Adjustment shall disclose any ex-parte communications that may have occurred. The petitioner may examine each board member about these communications.

- a. Written communications – If a board member receives a written ex-parte communication relating to a matter coming before the board, the member should transmit the item to the board secretary for inclusion in the official records. These communications shall be made available to the parties as soon as practicable before the hearing.
- b. Oral communications – As soon as it becomes apparent that an inadvertent oral communication pertains to a matter coming before the board, the board member should explain to the person that the communication is improper, and that he or she is required to end the communication on that subject. At the time the item comes up for discussion at the board meeting, the board member should report any attempted ex-parte communication.

Section 4 Examination/Cross-Examination of Witnesses. After the conclusion of any witness’s presentation or direct examination, the witness may be cross-examined by another party or staff. The inquiry under cross-examination shall be limited to matters raised in the direct examination of the witness being examined. No re-direct shall be allowed unless requested by a party and approved by the board. If re-direct is allowed, it shall be limited to questions of the witness on issues raised in the cross-examination. This provision shall not limit a board member from questioning any person on matters relevant to the petition before the board.

Section 5 Continuances. The Firesafety Board of Adjustment may, at any time during the hearing, request further information from any party and may continue the hearing to a time certain to be publicly announced at the time such continuance is decided upon.

Section 6 Board Deliberation and Vote. The Firesafety Board of Adjustment shall deliberate, if necessary, and reach a decision by voting on a motion. In reaching its decision, the board may only consider the competent substantial evidence presented at the hearing and included in the official record.

Section 7 Order. The Firesafety Board of Adjustment shall reach a decision without unreasonable or unnecessary delay and shall orally issue an order at the conclusion of a hearing. All decisions shall also be reduced to writing and shall specify any applicable conditions, requirements, or limitations. The board secretary shall provide a certified copy of the written order to the petitioner.

Section 8 Final Decisions. All decisions of the Firesafety Board of Adjustment shall be final and binding on all persons, subject, however, to the authority of the State Fire Marshal or the Florida Building Commission and any remedy a party may have at law or in equity.