

ORDINANCE NO. 5036

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, AMENDING THE MESQUITE CITY CODE BY REVISING CHAPTER 5, ARTICLE XIII (APPEALS OF ADMINISTRATIVE DECISIONS TO BUILDING STANDARDS BOARD) FOR THE PURPOSE OF CLARIFYING THAT ALL “TYPES” OF APPEALS IDENTIFIED IN SAID ARTICLE ARE ALL CONSIDERED “ADMINISTRATIVE DECISIONS” AND MAKING OTHER GENERAL UPDATES AND REVISIONS TO CLARIFY PROCESSES AND PROCEDURES; PROVIDING A CONFLICTS RESOLUTION CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

**WHEREAS**, the Building Standards Board (may also be referred to as “**BSB**”) hears and decides appeals of administrative interpretations or decisions made by an administrative official, including the Building Official and Fire Code Official, in the application, enforcement, or interpretation of the Building Codes or Fire Codes as adopted by the City; and

**WHEREAS**, Mesquite City Code, Chapter 5, Article XIII (Appeals of Administrative Decisions To Building Standards Board) is in need of revisions for the purpose of clarifying that all “types” of appeals identified in said Article are all considered “administrative decisions;” and

**WHEREAS**, it is the intent of the City Council of the City of Mesquite, Texas (“**City Council**”), to protect the public health, safety, and welfare; and

**WHEREAS**, the City of Mesquite, Texas (“**City**”), is a home-rule municipality acting under its Charter adopted, and amended, by the electorate pursuant to Article 11, [Section 5](#) of the Texas Constitution and [Chapter 9](#) of the Texas Local Government Code; and

**WHEREAS**, a home-rule municipality has full power of local self-government, pursuant to Texas Local Government Code, Title 2, Subtitle D, Chapter 51, [Section 51.072\(a\)](#); and

**WHEREAS**, the City shall have the power to enact and enforce ordinances necessary to protect health, life, and property, and to prevent and summarily abate and remove all nuisances, and to preserve and enforce good government, order, and security of the City and its inhabitants, pursuant to Article III, [Section 2](#) of the Mesquite City Charter; and

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**WHEREAS**, a home-rule municipality may enforce ordinances necessary to protect health, life, and property, and to preserve the good government, order, and security of the municipality and its inhabitants, pursuant to Texas Local Government Code, Title 2, Subtitle D, Chapter 54, [Section 54.004](#), as amended; and

**WHEREAS**, upon full review and consideration of all matters attendant and related thereto, the City Council is of the opinion this ordinance should be approved and adopted.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:**

**SECTION 1. Recitals Incorporated.**

The City Council hereby finds and determines the recitals made in the preamble of this ordinance are true and correct, and hereby incorporates such recitals here in the body of this ordinance as if copied in their entirety.

**SECTION 2. Mesquite City Code Text Amendment.**

**Amending Chapter 5 – Buildings and Construction.**

That Mesquite City Code, Chapter 5, Article XIII – Appeals of Administrative Decisions To Building Standards Board is hereby revised as identified in **EXHIBIT A** attached hereto and made a part hereof, and in all other respects, the remaining Chapters of the Mesquite City Code shall remain in full force and effect.

**SECTION 3. Conflicts Resolution Clause.**

In the event of an irreconcilable conflict between the provisions of another previously adopted ordinance of the City of Mesquite and the provisions of this Ordinance, the provisions of this Ordinance shall be controlling.

**SECTION 4. Severability Clause.**

Should any word, sentence, paragraph, subdivision, clause, phrase, or section of this ordinance be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance and the Mesquite City Code, as hereby or previously amended, which shall remain in full force and effect.

**SECTION 5. Effective Date.**

This shall take effect and be in force from and after the passage thereof, in accordance with Mesquite City Charter, Article IV, [Section 24](#), and it is accordingly so ordained.

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**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, ON THE 17th DAY OF JULY 2023.**

DocuSigned by:

*Daniel Aleman Jr.*

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**Daniel Alemán, Jr.**  
**Mayor**

**ATTEST:**

DocuSigned by:

*Sonja Land*

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**Sonja Land**  
**City Secretary**

**APPROVED AS TO LEGAL FORM:**

DocuSigned by:

*David Paschall*

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**David L. Paschall**  
**City Attorney**

**EXHIBIT A**

**To Ordinance No. 5036**

**MARK-UP VERSION**

Mesquite City Code

Chapter 5. Buildings and Construction,  
Article XIII – Appeals of Administrative Decisions to Building Standards Board

## MESQUITE CITY CODE

\* \* \*

### Chapter 5 – BUILDINGS AND CONSTRUCTION

\* \* \*

[Editor’s Note: Make the following revisions with additions identified in green font and underlined and deletions identified in ~~red font with strikethrough~~.]

#### ARTICLE XIII. - APPEALS OF ADMINISTRATIVE DECISIONS TO BUILDING STANDARDS BOARD.

##### Sec. 5-1301. In general.

(a) Purpose. An applicant, permittee, contractor, or other interested party may appeal a~~an~~ administrative decision as provided in this Article made by a City administrative official, including but not limited to, the Building Official and the Fire Code Official, ~~as herein identified in this article~~. The appeal provides for a review of the administrative decision by the Building Standards Board for the purpose of ~~the Board to determine~~ determining whether the administrative official correctly applied and/or interpreted the Building Codes or Fire Codes, and the accompanying regulations.

(b) Applicability. This Article shall apply to the following types of administrative decisions:

- (1) Appeals of matters related to a contractor’s registration; and
- (2) Appeals of matters related to use of alternate materials and alternative construction methods; and
- (3) Appeals of all other administrative decisions as herein defined in this Article.

(Ord. No. 4894, § 7(Exh. F), 9-7-21)

##### Cross references –

“Administrative decision” defined; Section 5-1302.

Chapter 5 – Buildings and Construction

Chapter 6 – Fire Prevention and Protection

##### Sec. 5-1302. Definitions. ~~Authority.~~

The following words, terms, and phrases when used in this Article shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Administrative decision shall mean a decision, determination, order, or requirement made by an administrative official of the City, including but not limited to the Building Official and Fire Code Official, in the application, administration, enforcement or interpretation of the Building Codes or Fire Codes as adopted by the City, not including the Mesquite Zoning Ordinance. Administrative decisions include, but are not limited to, decisions made concerning contractor registration and use of alternate materials and alternate construction methods.

Appellant means a person or body that appeals an administrative decision in accordance with Sec. 5-1304 (Persons authorized to make an appeal).

Board shall mean the Building Standards Board.

Building Official means the Building Official, or his or her authorized designee, of the City of Mesquite, Texas.

Fire Code Official means the Fire Code Official, or his or her authorized designee, of the City of Mesquite, Texas.

### **Sec. 5-1303. Authority.**

Unless stated otherwise in this Article, the ~~The~~ Building Standards Board has authority to hear and decide all appeals related to administrative decisions as herein defined in this Article. ~~the following types of appeals and related matters:~~

- ~~(1) — Appeals of Administrative Decisions. Hear and decide appeals that allege error in an order, requirement, decision, or determination made by an administrative official (sometimes herein referred to collectively as an "administrative decision") including the Building Official and Fire Code Official, in the application, enforcement or interpretation of the Building Codes or Fire Codes as adopted by the City, not including the Mesquite Zoning Ordinance.~~
- ~~(2) — Contractor Registration.~~
  - ~~a. — Appeal of revocation of contractor's registration by Building Official; and Appeal of denial of reinstatement of Contractor's registration by Building Official.~~
    - ~~1. — Hear and decide appeals that allege error in a revocation of a contractor's registration by the Building Official.~~
    - ~~2. — Hear and decide appeals that allege error in a denial of reinstatement of contractor's registration by the Building Official.~~
  - ~~b. — Reviewing for potential reinstatement of a contractor's registration after revocation by Building Official. Review a contractor's registration, for purposes of reinstatement, after revocation by the Building Official.~~
- ~~(3) — Use of Alternate Materials and Alternative Construction Methods.~~
  - ~~a. — Review the request to use alternate materials and alternative construction methods for purposes of determining as to whether the alternate material or alternative construction method equally meets the applicable code's standards.~~
  - ~~b. — When the Building Official or other administrative official rejects the use of alternate materials and alternative construction methods, a person may request to appeal the administrative decision to the Building Standards Board. The Board reviews for purposes of determining as to whether the alternate material or alternative construction method equally meets the applicable code's standards.~~

#### **Cross references –**

"Administrative decision" defined; Sec. 5-1302.

Deadline for Board consideration; Sec. 5-1310 – Action by the Building Standards Board, sub-section (d).

Certain regulations regarding building products, materials, or aesthetic methods prohibited, Chapter 5, Article I, Division 1, Sec. 5-4.

Building Code, Chapter 5, Article II-A; Existing Building Code, Chapter 5, Article II-B;

Plumbing Code, Chapter 5, Article VI; Mechanical Code, Chapter 5, Article VII;

Electrical Code, Chapter 5, Article VIII; Swimming Pool and Spa Code, Chapter 5, Article IX;

Fuel Gas Code, Chapter 5, Article X; Residential Code, Chapter 5, Article XI;

Energy Conservation Code, Chapter 5, Article XII; Fire Code, Chapter 6, Article II.

Property Maintenance Code, Chapter 7, Article I.

Building Standards Board fees, Mesquite City Code, Appendix D – Comprehensive Fee Schedule, Section 12-120.

#### **State Law references—**

Governmental action affecting residential and commercial construction, V.T.C.A. Government Code, § 3000.001 et seq.

Building and Rehabilitation Codes, V.T.C.A. Local Government Code, Chapter 214, Subchapter G, § 214.211 et seq.

**Sec. 5-1304. Persons authorized to make an appeal.**

In accordance with this Article, any of the following persons or bodies may appeal to the Board:

- (1) An applicant, permittee, contractor, or other interested party aggrieved by the administrative decision, ~~including enforcement and interpretation, revocation, or other matters;~~ or
- (2) Any officer, department, board, or commission of the City affected by the administrative decision, ~~including enforcement and interpretation, revocation, or other matters.~~

(Ord. No. 4894, § 7(Exh. F), 9-7-21)

**Sec. 5-1305. Initiating an appeal and deadline.**

- (a) *Notice of appeal.* The appellant must file ~~with the Board, and the official from whom the appeal is taken,~~ a notice of appeal with the Building Inspection Division ~~specifying the grounds for the appeal.~~
- (b) *Fee.* Unless otherwise herein authorized, a notice of appeal must be accompanied by the required fee(s) as set in Appendix D – Comprehensive Fee Schedule, Article XII, [Section 12-120](#) (Building Standards Board fees). There are no fee requirements if a notice of appeal is filed by any officer, department, board, or commission of the City.
- (c) *Content of notice of appeal.* A notice of appeal shall be filed in writing and on forms as may be provided by the Building Official. A notice of appeal shall at minimum ~~identify~~ contain all of the following:
  - (1) The name, address, and telephone number of the appellant.
  - (2) The name of the original applicant (if the appellant is not the original applicant).
  - (3) The name or title of the administrative official that issued the administrative decision.
  - (4) The administrative decision being appealed.
  - (5) The date of the administrative decision.
  - (6) A description of the appellant's ~~status standing~~ as a person authorized to make an appeal. See Sec. 5-1304 (Persons authorized to make an appeal).
  - (7) The reasons the appellant believes the administrative decision is in error and does not comply with the requirements of this City Code, ~~or is no longer valid because the violations have been corrected.~~ See Sec. 5-1311 (Appellant burden).
  - (8) How the ~~Building Official's or Fire Code Official's order, decision, revocation, or determination~~ administrative decision should be modified or reversed, in whole or in part.
- (d) *Deadline.*
  - (1) The appeal must be accepted and officially filed not later than the thirtieth (30th) day after the date the decision is made, provided that if the thirtieth (30th) day falls on a Saturday, Sunday or City holiday, the time for filing the appeal shall be extended to the end of the next business day. The date the administrative decision ~~(or Board's decision for reconsideration)~~ is made shall be considered Day Zero (0).

(2) A notice of appeal that is considered accepted but not officially filed, in accordance with Sec. 5-1306 subsection (c), must be corrected on or before the above-mentioned deadline in order for the notice of appeal to proceed for the Board's decision.

(Ord. No. 4894, § 7(Exh. F), 9-7-21)

Cross reference— Acceptance and official filing of notice of appeal, Sec. 5-1306.

**Sec. 5-1306. Acceptance and official filing of notice of appeal.**

(a) In general. A completed notice of appeal must be both accepted and officially filed, in accordance with this section, in order to proceed for the Board's decision.

(b) Acceptance of notice of appeal.

(1) A notice of appeal is considered accepted ~~and officially filed~~ upon the Building Inspection Division's receipt before 5:00 p.m. on a business day during normal office hours.

(2) ~~(b)~~ Any notice of appeal received on or after 5:00 p.m. on a business day or on Saturday, Sunday, or City holidays shall not be considered officially accepted ~~and filed~~ until the next business day following the date the ~~information~~ notice of appeal was received or entered.

(c) Official filing of a completed notice of appeal. An incomplete notice of appeal shall not be considered officially filed. A notice of appeal shall not ~~be considered accepted and officially filed~~ proceed for the Board's decision unless it is complete as follows:

(1) it shall be is accompanied by the required fee(s) as set in the City of Mesquite Comprehensive Fee Schedule, or the fee shall be paid in accordance with the terms of any City-issued invoice if applicable. ~~If the fee is not paid, upon the filing of the notice of appeal or in accordance with the terms of any City-issued invoice, the appeal shall not proceed decision; and.~~

(2) it shall have all the contents in accordance with Sec. 5-1305 subsection (c) (Content of notice of appeal).

(Ord. No. 4894, § 7(Exh. F), 9-7-21)

**Cross references—**

Initiating an appeal and deadline, Sec. 5-1305.

Building Standards Board fees, Mesquite City Code, Appendix D – Comprehensive Fee Schedule, [Section 12-120](#).

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**Mesquite City Code. Ch. 5, Article XIII – Appeals of Administrative Decisions to Building Standards Board**

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**Sec. 5-1307. Action by Building Official.**

The Building Official shall take the following actions upon the City's acceptance and the official filing of the notice of appeal:

- (1) ~~Upon receipt of a notice of appeal, the~~ The administrative official from whom the appeal is taken shall be immediately notified. The administrative official shall immediately transmit to the Board all the papers constituting the record of the action that is appealed.
- (2) The Building Official and/or the Fire Code Official shall review and produce the records of the action(s), including a summary of the record, for transmission and presentation to the Board.
- (3) The Building Official shall schedule the appeal in accordance with Section 5-1307 (Scheduling of public hearing).
- (4) The Building Official shall provide notice in accordance with Section 5-1308 (Notice of public hearing for appeal).

(Ord. No. 4894, § 7(Exh. F), 9-7-21)

**Sec. 5-1308. Scheduling of public hearing.**

- (a) A public hearing on an accepted and officially filed appeal shall be scheduled for the first available regular Building Standards Board meeting for which notice of the public hearing can be timely provided.
- (b) A public hearing at the Building Standards Board meeting shall not be scheduled within ten (10) days of an officially filed appeal. The public hearing may be scheduled on the eleventh (11th) day or thereafter. The date the appeal is considered officially filed is considered Day Zero (0).

(Ord. No. 4894, § 7(Exh. F), 9-7-21)

**Sec. 5-1309. Notice of public hearing for an appeal.**

The Building Official shall provide notice of the public hearing regarding any appeal pursuant to this Article as follows:

- (1) *Public notice pursuant to the Open Meetings Act.* All public hearings shall be held at public meetings of the Board. The public notice for meetings shall comply with the Texas Open Meetings Act.
- (2) *Other notice.* The Building Official shall give notice of a public hearing by mailing notice to the appellant at the appellant's address provided in the notice of appeal and the administrative official regarding an appeal not later than the tenth (10th) day before the date of the public hearing, unless otherwise provided. The date of the public hearing shall be considered Day Zero (0).

(Ord. No. 4894, § 7(Exh. F), 9-7-21)

**State Law references—**

V.T.C.A., Government Code, Open Meetings Act, Notice of Meeting, § 551.041.

V.T.C.A., Government Code, Open Meetings Act, Time and Accessibility of Notice, § 551.043.

**Sec. 5-1310. Action by the Building Standards Board.**

- (a) *Preliminary issues prior to opening a public hearing.* Before opening a hearing, the Board shall decide preliminary issues raised by the parties or City staff, including, but not limited to, requests to postpone the public hearing. The Board shall also decide whether the appellant has standing (which include issues of timeliness, jurisdiction, or ripeness) to appeal.
- (b) *Actions.* The Board must determine the appeal based upon the hearing, properly submitted records and comments, and render a decision to:
- (1) Affirm, in whole; or
  - (2) Modify the administrative official's administrative decision ~~order, requirement, decision, or determination~~ from which an appeal is taken and make the otherwise correct administrative decision ~~order, requirement, decision, or determination~~, and for that purpose the Board has the same authority as the administrative official; or
  - (3) Reverse, in whole.
- (c) *Postponement, continuance, or adjournment without decision.* The Board may also, including but not limited to:
- (1) Postpone holding the public hearing and consideration of the appeal to a later date so long as the appeal is decided not later than the sixtieth (60th) day after the date the appeal is ~~accepted and considered~~ considered officially filed; or
  - (2) Continue an opened public hearing and consideration of the appeal to a later date so long as the appeal is decided not later than the sixtieth (60th) day after the date the appeal is ~~accepted and considered~~ considered officially filed.
- (d) *Deadline for Board consideration.* In the event an appeal is not considered by the Building Standards Board by the sixty-first (61<sup>st</sup>) day after the appeal is considered officially filed, the appeal shall be scheduled for the next regular Board of Adjustment meeting for which all legal notices may be properly issued, unless the Appellant consents in writing to a later scheduled Building Standards Board meeting. However, in no event shall the appeal be considered by the Building Standards Board or the Board of Adjustment more than one hundred eighty (180) days after the appeal is considered officially filed. The date the notice of appeal is considered officially filed is considered day Zero (0). If the appeal is scheduled for consideration by the Board of Adjustment, it shall hear and decide the appeal, and shall carry out all duties in this Article of the Building Standards Board for all purposes for said appeal.

(Ord. No. 4894, § 7(Exh. F), 9-7-21)

Cross references— Vote required; Sec. 5-1313.

Authority; Sec. 5-1303.

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**Sec. 5-1311.**      **Appellant burden.**

Generally, unless stated otherwise in this Article, to prevail on an appeal the Appellant has the burden for establishing the following: ~~The appellant is responsible for establishing the administrative official's administrative decision is:~~

- (1) The administrative decision is contrary to the applicable law or regulations, or
- (2) The administrative decision incorrectly interprets or applies the applicable law or regulations; or
- (3) The administrative decision is in error because the provisions of the code, law, or rule do not fully apply; ~~or~~
- ~~(4) no longer valid because the violations have been corrected, and there are no other grounds for the registration to remain revoked; or~~
- ~~(5) being applied in an overly broad manner because an equal or better form of materials or construction method is being proposed.~~

**Sec. 5-1312.**      **Approval standards to affirm, modify, or reverse an administrative decision.**

The Board shall make the following applicable findings in order to affirm an administrative decision, or to grant an appeal modifying or reversing an administrative decision:

**(a) Appeal of the Building Official's revocation of a contractor's registration.**

- (1) To affirm the Building Official's revocation of a contractor's registration. In order to affirm the Building Official's revocation of the contractor's registration, the Board must find the Appellant failed to meet the Appellant's burden in Sec. 5-1311 (Appellant burden).
- (2) To grant an appeal reversing the Building Official's revocation of a contractor's registration. In order to grant an appeal reversing the Building Official's revocation of the contractor's registration, the Board must:
  - a. Find the Appellant met the applicable appellant's burden as required by Sec. 5-1311 (Appellant burden); and
  - b. Find the Building Official's administrative decision is erroneous; and
  - c. Provide a statement of grounds in support of the finding; and
  - d. State what the Board determines to be the correct interpretation of the matter at issue in the appeal.

**(b) Appeal of the Building Official's denial to reinstate a Contractor's registration.**

- (1) To affirm the Building Official's denial to reinstate a contractor's registration. In order to affirm the Building Official's denial to reinstate the contractor's registration, the Board must find the Appellant has failed to correct the violations that resulted in the original revocation of registration.
- (2) To grant an appeal reversing the Building Official's denial to reinstate a contractor's registration. In order to reinstate the contractor's registration the Board must:

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a. Make a finding that either:

1. The City staff's administrative decision to revoke the registration was originally in error and the contractor's registration should be reinstated; or
2. The revocation is no longer valid because
  - (i) the violations have been corrected, and
  - (ii) there are no other grounds for the registration to remain revoked, and
  - (iii) the contractor's registration should be reinstated; and

b. Provide a statement of grounds in support of the finding; and

c. State the Board's action is to reinstate the contractor's registration.

(c) Appeal of the Building or Fire Code Official's denial of the use of alternate materials or alternative construction methods.

- (1) To affirm the Building Official's denial to use alternate materials or alternate construction methods. In order to affirm the Building Official's denial to use alternate materials or alternate construction methods, the Board must find the Appellant failed to prove an equal or better form of materials or construction method is being proposed that meets or exceeds the applicable Building or Fire Code's standards.
- (2) To grant an appeal reversing the Building Official's denial to use alternate materials or alternate construction methods. In order to grant the use of an alternate material or alternative construction method, the Board must make a finding that:
  - a. The alternate material or alternative construction method equally meets or exceeds the applicable Building or Fire Code's standards; and
  - b. Provide a statement of grounds in support of the finding, considering the alternate/alternative's adequacy, stability, strength, sanitation, and safety for the public's health and welfare.

(d) Appeals of all other administrative decisions as herein defined in this Article.

- (1) To affirm the administrative decision. In order to affirm the administrative decision, the Board must find the Appellant failed to meet the Appellant's burden in Sec. 5-1311 (Appellant burden).
- (2) To grant an appeal modifying or reversing the administrative decision. In order to grant an appeal modifying or reversing the administrative decision the Board must:
  - a. Find the Appellant met the applicable appellant's burden as required by Sec. 5-1311 (Appellant burden); and
  - b. Find the City staff's administrative decision is erroneous; and
  - c. Provide a statement of grounds in support of the finding; and
  - d. State what the Board determines to be the correct interpretation of the matter at issue in the appeal.

Cross reference – "Administrative decision" defined; Section 5-1302.

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- ~~(a) — Appeal of administrative decision. In order to grant an appeal modifying or reversing an administrative decision, in whole or in part, the Board must:~~
- ~~(3) — find the City staff's administrative decision is erroneous; and~~
  - ~~(4) — provide a statement of grounds in support of the finding; and~~
  - ~~(5) — state what the Board determines to be the correct interpretation of the matter at issue in the appeal.~~
- ~~(b) — Contractor registration.~~
- ~~(1) — Appeal of revocation of Contractor's registration by Building Official; and Appeal of denial of reinstatement of Contractor's registration by Building Official. In order to grant an appeal modifying or reversing an administrative decision, in whole or in part, the Board must:~~
    - ~~(a) — Find the City staff's administrative decision is erroneous; and~~
    - ~~(b) — Provide a statement of grounds in support of the finding; and~~
    - ~~(c) — State what the Board determines to be the correct interpretation of the matter at issue in the appeal.~~
  - ~~(2) — Reviewing for potential reinstatement of a contractor's registration after revocation. In order to reinstate a contractor's registration, the Board must:~~
    - ~~a. — Make a finding that either:~~
      - ~~1. — the City staff's administrative decision to revoke the registration was originally in error and the contractor's registration should be reinstated; or~~
      - ~~2. — the revocation is no longer valid because~~
        - ~~(i) — the violations have been corrected, and~~
        - ~~(ii) — there are no other grounds for the registration to remain revoked, and~~
        - ~~(iii) — the contractor's registration should be reinstated; and~~
    - ~~b. Provide a statement of grounds in support of the finding; and~~
    - ~~c. State the Board's action is to reinstate the contractor's registration.~~
- ~~(c) — Review of use of alternate materials or alternative construction methods. In order to grant an alternate material or alternative construction method, the Board must make a finding that:~~
- ~~(1) — the alternate material or alternative construction method equally meets or exceeds the applicable code's standards; and~~
  - ~~(2) — provide a statement of grounds in support of the finding, considering the alternate/alternative's adequacy, stability, strength, sanitation, and safety for the public's health and welfare.~~

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**Sec. 5-1313.**      **Vote required.**

The following vote requirements shall apply to the actions of the Building Standards Board:

- (a) *Motion to affirm, in whole, the administrative decision.* The concurring vote of a simple majority of the Board's ATTENDING MEMBERS present and voting is required to affirm, in whole, an administrative decision.
- (1) *Motion to Affirm – Carries.* When a motion to affirm the administrative decision (in whole) is made, seconded, and receives a simple majority vote, the motion carries and the administrative decision is upheld and affirmed.
- (2) *Motion to Affirm – Fails.* When a motion to affirm the administrative decision (in whole) is made, seconded, and fails to receive a simple majority vote, the motion fails and the administrative decision is neither affirmed or reversed and another motion must be made (e.g., "motion to reverse," "motion to modify," or "motion to postpone," etc.) to dispose of the appeal.
- (b) *Motion to modify the administrative decision.* The concurring vote of two-thirds ( $\frac{2}{3}$ ) of the Board's ATTENDING MEMBERS present and voting is required to modify an administrative decision.
- (1) *Motion to Modify – Carries.* When a motion to modify the administrative decision is made, seconded, and receives a two-thirds ( $\frac{2}{3}$ ) vote, the motion carries and the administrative decision is modified as stated in the motion.
- (2) *Motion to Modify – Fails.* When a motion to modify the administrative decision is made, seconded, and fails to receive a two-thirds ( $\frac{2}{3}$ ) vote, the motion fails and the administrative decision is not modified and another motion must be made (e.g., "motion to affirm," "motion to reverse," or "motion to postpone," etc.) to dispose of the appeal.
- (c) *Motion to reverse, in whole, the administrative decision.* The concurring vote of two-thirds ( $\frac{2}{3}$ ) of the Board's ATTENDING MEMBERS present and voting is required to reverse, in whole, an administrative decision.
- (1) *Motion to Reverse – Carries.* When a motion to reverse the administrative decision (in whole) is made, seconded, and receives a two-thirds ( $\frac{2}{3}$ ) vote, the motion carries and the administrative decision is reversed.
- (2) *Motion to Reverse – Fails.* When a motion to reverse the administrative decision (in whole) is made, seconded, and fails to receive a two-thirds ( $\frac{2}{3}$ ) vote, the motion fails, and the appeal is deemed denied and shall constitute final action on the matter. When the appeal is deemed denied, the administrative decision is upheld and affirmed (in whole).
- (d) *All other motions.* A simple majority vote of the Board's ATTENDING MEMBERS present and voting is required to approve any motion other than a motion to modify or a motion to reverse.

Cross reference – "ATTENDING MEMBER" defined in Chapter 20, Article I, [Sec. 20-5 \(Definitions\)](#).

- ~~(a) Motion to affirm, in whole, the administrative decision. The concurring vote of a simple majority of a QUORUM, of the Building Standards Board present and voting, is required to affirm in whole, an administrative decision of an administrative official.~~
- ~~(b) Motion to modify the administrative decision. The concurring vote of two-thirds ( $\frac{2}{3}$ ) (a "super-majority") of a QUORUM, of the Building Standards Board present and voting, is required to modify an administrative decision of an administrative official.~~

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- ~~(c) Motion to reverse, in whole, the administrative decision. The concurring vote of two-thirds (2/3) (a "super-majority") of a QUORUM, of the Building Standards Board present and voting, is required to reverse in whole, an administrative decision of an administrative official.~~
- ~~(d) All other motions. A simple majority vote of the Building Standards Board is be required to approve any motion other than a motion to modify or a motion to reverse.~~

(Ord. No. 4894, § 7(Exh. F), 9-7-21)

**Sec. 5-1314.**      **Decision and notice of Board decision.**

- (a) *Decision.* The Building Standards Board decision shall be final with respect to the matter presented in the appeal, only open to reconsideration by the **Building Standards** Board based upon application from the City Attorney's Office, in accordance with the same process and procedures of this Article; and contending that the Board's findings are inconsistent with or violate the law.
- (b) *Delivery and filing of Board decision.*
- (1) The City will promptly e-mail, and personally deliver or mail by first class certified mail return receipt requested (CMRRR), a copy of the Board's final decision and order, if applicable, to all parties to the appeal.
  - (2) The Board must also file a copy of the final decision and order, if applicable, in the City Secretary's Office.

**Secs. 5-1315 ~~5-1314~~—5-1400. - Reserved.**

**EXHIBIT B**

**To Ordinance No. 5036**

**CLEAN VERSION**

Mesquite City Code

Chapter 5. Buildings and Construction,  
Article XIII – Appeals of Administrative Decisions to Building Standards Board



## MESQUITE CITY CODE

\* \* \*

### Chapter 5 – BUILDINGS AND CONSTRUCTION

\* \* \*

#### ARTICLE XIII. - APPEALS OF ADMINISTRATIVE DECISIONS TO BUILDING STANDARDS BOARD.

##### Sec. 5-1301. In general.

- (a) *Purpose.* An applicant, permittee, contractor, or other interested party may appeal an administrative decision as provided in this Article made by a City administrative official, including but not limited to, the Building Official and the Fire Code Official. The appeal provides for a review of the administrative decision by the Building Standards Board for the purpose of determining whether the administrative official correctly applied and/or interpreted the Building Codes or Fire Codes, and the accompanying regulations.
- (b) *Applicability.* This Article shall apply to the following types of administrative decisions:
  - (1) Appeals of matters related to a contractor’s registration; and
  - (2) Appeals of matters related to use of alternate materials and alternative construction methods; and
  - (3) Appeals of all other administrative decisions as herein defined in this Article.

(Ord. No. 4894, § 7(Exh. F), 9-7-21)

##### Cross references –

“Administrative decision” defined; Section 5-1302.  
 Chapter 5 – Buildings and Construction  
 Chapter 6 – Fire Prevention and Protection

##### Sec. 5-1302. Definitions.

The following words, terms, and phrases when used in this Article shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Administrative decision* shall mean a decision, determination, order, or requirement made by an administrative official of the City, including but not limited to the Building Official and Fire Code Official, in the application, administration, enforcement or interpretation of the Building Codes or Fire Codes as adopted by the City, not including the Mesquite Zoning Ordinance. Administrative decisions include, but are not limited to, decisions made concerning contractor registration and use of alternate materials and alternate construction methods.

*Appellant* means a person or body that appeals an administrative decision in accordance with Sec. 5-1304 (Persons authorized to make an appeal).

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*Board* shall mean the Building Standards Board.

*Building Official* means the Building Official, or his or her authorized designee, of the City of Mesquite, Texas.

*Fire Code Official* means the Fire Code Official, or his or her authorized designee, of the City of Mesquite, Texas.

**Sec. 5-1303. Authority.**

Unless stated otherwise in this Article, the Building Standards Board has authority to hear and decide all appeals related to administrative decisions as herein defined in this Article.

**Cross references –**

“Administrative decision” defined; Sec. 5-1302.

Deadline for Board consideration; Sec. 5-1310 – Action by the Building Standards Board, sub-section (d).

Certain regulations regarding building products, materials, or aesthetic methods prohibited, Chapter 5, Article I, Division 1, [Sec. 5-4](#).

Building Code, Chapter 5, [Article II-A](#); Existing Building Code, Chapter 5, [Article II-B](#);

Plumbing Code, Chapter 5, [Article VI](#); Mechanical Code, Chapter 5, [Article VII](#);

Electrical Code, Chapter 5, [Article VIII](#); Swimming Pool and Spa Code, Chapter 5, [Article IX](#);

Fuel Gas Code, Chapter 5, [Article X](#); Residential Code, Chapter 5, [Article XI](#);

Energy Conservation Code, Chapter 5, [Article XII](#); Fire Code, Chapter 6, [Article II](#).

Property Maintenance Code, Chapter 7, [Article I](#).

Building Standards Board fees, Mesquite City Code, Appendix D – Comprehensive Fee Schedule, [Section 12-120](#).

**State Law references—**

Governmental action affecting residential and commercial construction, V.T.C.A. Government Code, [§ 3000.001](#) et seq.

Building and Rehabilitation Codes, V.T.C.A. Local Government Code, Chapter 214, Subchapter G, [§ 214.211](#) et seq.

**Sec. 5-1304. Persons authorized to make an appeal.**

In accordance with this Article, any of the following persons or bodies may appeal to the Board:

- (1) An applicant, permittee, contractor, or other interested party aggrieved by the administrative decision;  
or
- (2) Any officer, department, board, or commission of the City affected by the administrative decision.

(Ord. No. 4894, § 7(Exh. F), 9-7-21)

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**Sec. 5-1305. Initiating an appeal and deadline.**

- (a) *Notice of appeal.* The appellant must file a notice of appeal with the Building Inspection Division.
- (b) *Fee.* Unless otherwise herein authorized, a notice of appeal must be accompanied by the required fee(s) as set in Appendix D – Comprehensive Fee Schedule, Article XII, [Section 12-120](#) (Building Standards Board fees). There are no fee requirements if a notice of appeal is filed by any officer, department, board, or commission of the City.
- (c) *Content of notice of appeal.* A notice of appeal shall be filed in writing and on forms as may be provided by the Building Official. A notice of appeal shall at minimum contain all of the following:
  - (1) The name, address, and telephone number of the appellant.
  - (2) The name of the original applicant (if the appellant is not the original applicant).
  - (3) The name or title of the administrative official that issued the administrative decision.
  - (4) The administrative decision being appealed.
  - (5) The date of the administrative decision.
  - (6) A description of the appellant’s standing as a person authorized to make an appeal. See Sec. 5-1304 (Persons authorized to make an appeal).
  - (7) The reasons the appellant believes the administrative decision is in error and does not comply with the requirements of this City Code, or is no longer valid because the violations have been corrected. See Sec. 5-1311 (Appellant burden).
  - (8) How the administrative decision should be modified or reversed, in whole or in part.
- (d) *Deadline.*
  - (3) The appeal must be accepted and officially filed not later than the thirtieth (30<sup>th</sup>) day after the date the decision is made, provided that if the thirtieth (30<sup>th</sup>) day falls on a Saturday, Sunday or City holiday, the time for filing the appeal shall be extended to the end of the next business day. The date the administrative decision is made shall be considered Day Zero (0).
  - (4) A notice of appeal that is considered accepted but not officially filed, in accordance with Sec. 5-1306 subsection ©, must be corrected on or before the above-mentioned deadline in order for the notice of appeal to proceed for the Board’s decision.

(Ord. No. 4894, § 7(Exh. F), 9-7-21)

**Cross reference—** Acceptance and official filing of notice of appeal, Sec. 5-1306.

**Sec. 5-1306. Acceptance and official filing of notice of appeal.**

- (a) *In general.* A completed notice of appeal must be both accepted and officially filed, in accordance with this section, in order to proceed for the Board's decision.
- (b) *Acceptance of notice of appeal.*
  - (1) A notice of appeal is considered accepted upon the Building Inspection Division's receipt before 5:00 p.m. on a business day during normal office hours.
  - (2) Any notice of appeal received on or after 5:00 p.m. on a business day or on Saturday, Sunday, or City holidays shall not be considered officially accepted until the next business day following the date the notice of appeal was received or entered.
- (c) *Official filing of a completed notice of appeal.* An incomplete notice of appeal shall not be considered officially filed. A notice of appeal shall not proceed for the Board's decision unless it is complete as follows:
  - (1) it shall be accompanied by the required fee(s) as set in the City of Mesquite Comprehensive Fee Schedule, or the fee shall be paid in accordance with the terms of any City-issued invoice if applicable; and
  - (2) it shall have all the contents in accordance with Sec. 5-1305 subsection © (Content of notice of appeal).

(Ord. No. 4894, § 7(Exh. F), 9-7-21)

**Cross references—**

Initiating an appeal and deadline, Sec. 5-1305.

Building Standards Board fees, Mesquite City Code, Appendix D – Comprehensive Fee Schedule, [Section 12-120](#).

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**Sec. 5-1307. Action by Building Official.**

The Building Official shall take the following actions upon the City's acceptance and the official filing of the notice of appeal:

- (1) The administrative official from whom the appeal is taken shall be immediately notified. The administrative official shall immediately transmit to the Board all the papers constituting the record of the action that is appealed.
- (2) The Building Official and/or the Fire Code Official shall review and produce the records of the action(s), including a summary of the record, for transmission and presentation to the Board.
- (3) The Building Official shall schedule the appeal in accordance with Section 5-1307 (Scheduling of public hearing).
- (4) The Building Official shall provide notice in accordance with Section 5-1308 (Notice of public hearing for appeal).

(Ord. No. 4894, § 7(Exh. F), 9-7-21)

**Sec. 5-1308. Scheduling of public hearing.**

- (a) A public hearing on an accepted and officially filed appeal shall be scheduled for the first available regular Building Standards Board meeting for which notice of the public hearing can be timely provided.
- (b) A public hearing at the Building Standards Board meeting shall not be scheduled within ten (10) days of an officially filed appeal. The public hearing may be scheduled on the eleventh (11th) day or thereafter. The date the appeal is considered officially filed is considered Day Zero (0).

(Ord. No. 4894, § 7(Exh. F), 9-7-21)

**Sec. 5-1309. Notice of public hearing for an appeal.**

The Building Official shall provide notice of the public hearing regarding any appeal pursuant to this Article as follows:

- (1) *Public notice pursuant to the Open Meetings Act.* All public hearings shall be held at public meetings of the Board. The public notice for meetings shall comply with the Texas Open Meetings Act.
- (2) *Other notice.* The Building Official shall give notice of a public hearing by mailing notice to the appellant at the appellant's address provided in the notice of appeal and the administrative official regarding an appeal not later than the tenth (10th) day before the date of the public hearing, unless otherwise provided. The date of the public hearing shall be considered Day Zero (0).

(Ord. No. 4894, § 7(Exh. F), 9-7-21)

**State Law references—**

V.T.C.A., Government Code, Open Meetings Act, Notice of Meeting, § 551.041.

V.T.C.A., Government Code, Open Meetings Act, Time and Accessibility of Notice, § 551.043.

**Sec. 5-1310. Action by the Building Standards Board.**

- (a) *Preliminary issues prior to opening a public hearing.* Before opening a hearing, the Board shall decide preliminary issues raised by the parties or City staff, including, but not limited to, requests to postpone the public hearing. The Board shall also decide whether the appellant has standing (which include issues of timeliness, jurisdiction, or ripeness) to appeal.
- (b) *Actions.* The Board must determine the appeal based upon the hearing, properly submitted records and comments, and render a decision to:
  - (1) Affirm, in whole; or
  - (2) Modify the administrative official's administrative decision from which an appeal is taken and make the otherwise correct administrative decision, and for that purpose the Board has the same authority as the administrative official; or
  - (3) Reverse, in whole.
- (c) *Postponement, continuance, or adjournment without decision.* The Board may also, including but not limited to:
  - (1) Postpone holding the public hearing and consideration of the appeal to a later date so long as the appeal is decided not later than the sixtieth (60th) day after the date the appeal is considered officially filed; or
  - (2) Continue an opened public hearing and consideration of the appeal to a later date so long as the appeal is decided not later than the sixtieth (60th) day after the date the appeal is considered officially filed.
- (d) *Deadline for Board consideration.* In the event an appeal is not considered by the Building Standards Board by the sixty-first (61<sup>st</sup>) day after the appeal is considered officially filed, the appeal shall be scheduled for the next regular Board of Adjustment meeting for which all legal notices may be properly issued, unless the Appellant consents in writing to a later scheduled Building Standards Board meeting. However, in no event shall the appeal be considered by the Building Standards Board or the Board of Adjustment more than one hundred eighty (180) days after the appeal is considered officially filed. The date the notice of appeal is considered officially filed is considered day Zero (0). If the appeal is scheduled for consideration by the Board of Adjustment, it shall hear and decide the appeal, and shall carry out all duties in this Article of the Building Standards Board for all purposes for said appeal.

(Ord. No. 4894, § 7(Exh. F), 9-7-21)

**Cross references**— Vote required; Sec. 5-1313.

Authority; Sec. 5-1303.

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**Sec. 5-1311. Appellant burden.**

Generally, unless stated otherwise in this Article, to prevail on an appeal the Appellant has the burden for establishing the following:

- (1) The administrative decision is contrary to the applicable law or regulations, or
- (2) The administrative decision incorrectly interprets or applies the applicable law or regulations; or
- (3) The administrative decision is in error because the provisions of the code, law, or rule do not fully apply.

**Sec. 5-1312. Approval standards to affirm, modify, or reverse an administrative decision.**

The Board shall make the following applicable findings in order to affirm an administrative decision, or to grant an appeal modifying or reversing an administrative decision:

**(a) *Appeal of the Building Official's revocation of a contractor's registration.***

- (1) *To affirm the Building Official's revocation of a contractor's registration.* In order to affirm the Building Official's revocation of the contractor's registration, the Board must find the Appellant failed to meet the Appellant's burden in Sec. 5-1311 (Appellant burden).
- (2) *To grant an appeal reversing the Building Official's revocation of a contractor's registration.* In order to grant an appeal reversing the Building Official's revocation of the contractor's registration, the Board must:
  - a. Find the Appellant met the applicable appellant's burden as required by Sec. 5-1311 (Appellant burden); and
  - b. Find the Building Official's administrative decision is erroneous; and
  - c. Provide a statement of grounds in support of the finding; and
  - d. State what the Board determines to be the correct interpretation of the matter at issue in the appeal.

**(b) *Appeal of the Building Official's denial to reinstate a Contractor's registration.***

- (1) *To affirm the Building Official's denial to reinstate a contractor's registration.* In order to affirm the Building Official's denial to reinstate the contractor's registration, the Board must find the Appellant has failed to correct the violations that resulted in the original revocation of registration.
- (2) *To grant an appeal reversing the Building Official's denial to reinstate a contractor's registration.* In order to reinstate the contractor's registration the Board must:
  - a. Make a finding that either:
    1. The City staff's administrative decision to revoke the registration was originally in error and the contractor's registration should be reinstated; or

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2. The revocation is no longer valid because
    - (i) the violations have been corrected, and
    - (ii) there are no other grounds for the registration to remain revoked, and
    - (iii) the contractor's registration should be reinstated; and
  - b. Provide a statement of grounds in support of the finding; and
  - c. State the Board's action is to reinstate the contractor's registration.
- (c) *Appeal of the Building or Fire Code Official's denial of the use of alternate materials or alternative construction methods.*
- (1) *To affirm the Building Official's denial to use alternate materials or alternate construction methods.* In order to affirm the Building Official's denial to use alternate materials or alternate construction methods, the Board must find the Appellant failed to prove an equal or better form of materials or construction method is being proposed that meets or exceeds the applicable Building or Fire Code's standards.
  - (2) *To grant an appeal reversing the Building Official's denial to use alternate materials or alternate construction methods.* In order to grant the use of an alternate material or alternative construction method, the Board must make a finding that:
    - a. The alternate material or alternative construction method equally meets or exceeds the applicable Building or Fire Code's standards; and
    - b. Provide a statement of grounds in support of the finding, considering the alternate/alternative's adequacy, stability, strength, sanitation, and safety for the public's health and welfare.
- (d) *Appeals of all other administrative decisions as herein defined in this Article.*
- (1) *To affirm the administrative decision.* In order to affirm the administrative decision, the Board must find the Appellant failed to meet the Appellant's burden in Sec. 5-1311 (Appellant burden).
  - (2) *To grant an appeal modifying or reversing the administrative decision.* In order to grant an appeal modifying or reversing the administrative decision the Board must:
    - a. Find the Appellant met the applicable appellant's burden as required by Sec. 5-1311 (Appellant burden); and
    - b. Find the City staff's administrative decision is erroneous; and
    - c. Provide a statement of grounds in support of the finding; and
    - d. State what the Board determines to be the correct interpretation of the matter at issue in the appeal.

**Cross reference** – "Administrative decision" defined; Section 5-1302.



**Sec. 5-1313. Vote required.**

The following vote requirements shall apply to the actions of the Building Standards Board:

- (a) *Motion to affirm, in whole, the administrative decision.* The concurring vote of a simple majority of the Board's ATTENDING MEMBERS present and voting is required to affirm, in whole, an administrative decision.
  - (1) *Motion to Affirm – Carries.* When a motion to affirm the administrative decision (in whole) is made, seconded, and receives a simple majority vote, the motion carries and the administrative decision is upheld and affirmed.
  - (2) *Motion to Affirm – Fails.* When a motion to affirm the administrative decision (in whole) is made, seconded, and fails to receive a simple majority vote, the motion fails and the administrative decision is neither affirmed or reversed and another motion must be made (e.g., "motion to reverse," "motion to modify," or "motion to postpone," etc.) to dispose of the appeal.
- (b) *Motion to modify the administrative decision.* The concurring vote of two-thirds ( $\frac{2}{3}$ ) of the Board's ATTENDING MEMBERS present and voting is required to modify an administrative decision.
  - (1) *Motion to Modify – Carries.* When a motion to modify the administrative decision is made, seconded, and receives a two-thirds ( $\frac{2}{3}$ ) vote, the motion carries and the administrative decision is modified as stated in the motion.
  - (2) *Motion to Modify – Fails.* When a motion to modify the administrative decision is made, seconded, and fails to receive a two-thirds ( $\frac{2}{3}$ ) vote, the motion fails and the administrative decision is not modified and another motion must be made (e.g., "motion to affirm," "motion to reverse," or "motion to postpone," etc.) to dispose of the appeal.
- (c) *Motion to reverse, in whole, the administrative decision.* The concurring vote of two-thirds ( $\frac{2}{3}$ ) of the Board's ATTENDING MEMBERS present and voting is required to reverse, in whole, an administrative decision.
  - (1) *Motion to Reverse – Carries.* When a motion to reverse the administrative decision (in whole) is made, seconded, and receives a two-thirds ( $\frac{2}{3}$ ) vote, the motion carries and the administrative decision is reversed.
  - (2) *Motion to Reverse – Fails.* When a motion to reverse the administrative decision (in whole) is made, seconded, and fails to receive a two-thirds ( $\frac{2}{3}$ ) vote, the motion fails, and the appeal is deemed denied and shall constitute final action on the matter. When the appeal is deemed denied, the administrative decision is upheld and affirmed (in whole).
- (d) *All other motions.* A simple majority vote of the Board's ATTENDING MEMBERS present and voting is required to approve any motion other than a motion to modify or a motion to reverse.

**Cross reference** – "ATTENDING MEMBER" defined in Chapter 20, Article I, [Sec. 20-5 \(Definitions\)](#).

(Ord. No. 4894, § 7(Exh. F), 9-7-21)

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**Sec. 5-1314. Decision and notice of Board decision.**

- (a) *Decision.* The Building Standards Board decision shall be final with respect to the matter presented in the appeal, only open to reconsideration by the Board based upon application from the City Attorney's Office, in accordance with the same process and procedures of this Article and contending that the Board's findings are inconsistent with or violate the law.
- (b) *Delivery and filing of Board decision.*
  - (1) The City will promptly e-mail, and personally deliver or mail by first class certified mail return receipt requested (CMRRR), a copy of the Board's final decision and order, if applicable, to all parties to the appeal.
  - (2) The Board must also file a copy of the final decision and order, if applicable, in the City Secretary's Office.

**Secs. 5-1315—5-1400. - Reserved.**