

State of South Carolina )  
County of York )  
City of Tega Cay )

Ordinance Number 371 – Establishing the Building  
Codes Appeals Board

**WHEREAS**, on December 18, 2006 the City Council of the City of Tega Cay did enact Ordinance 300 thereby establishing a City of Tega Cay building inspection department; and

**WHEREAS**, the City of Tega Cay building department has been created pursuant to the Administrative Chapters of the International Building Codes (IBC); and

**WHEREAS**, the IBC mandates that the City of Tega Cay must create, empower and appoint members to a Building Codes Appeals Board; and

**WHEREAS**, the IBC does establish the authority and limited scope of the BCAB.

**THEREFORE BE IT ORDAINED** that the City Council of the City of Tega Cay duly assembled does hereby enact Ordinance No. 371, an ordinance which creates, empowers and provides for the appointment of members to the City of Tega Cay Building Codes Appeals Board as set forth as follows.

*Section 1 - Appointment and Terms*

(A) Pursuant to the authority of the Administrative Chapters of the International Building Codes and to Ordinance No. 300, Establishing a City Building Inspection Department and a Building Codes Appeals Board, officially adopted by the Tega Cay City Council on December 18, 2006, there shall be a Building Codes Appeals Board consisting of not less than three nor more than nine members, appointed by the City Council, and each member shall reside within the City limits and be at least 18 years of age. When selecting prospective board members from the collection of applicants, City Council will give preference to applicants with demonstrated technical expertise in the building trades and codes. No member may hold an elected public office in the City. All members shall serve without compensation, but may be reimbursed for actual expenses in connection with their official duties.

B) Members may be removed by the appointing authority for failure to attend three consecutive meetings without excuse or for failure to attend 30 percent of the called meetings during any 12-month period or for other good cause related to the performance of duties after written notice from the Mayor of the reasons for removal and after a public hearing before the City Council.

(C) Building Codes Appeals Board members shall be appointed for three-year, staggered terms, but members may continue to serve until their successors have been appointed. Initial term assignments can be modified to initiate the future staggering of terms. Members may be reappointed to successive terms without limitations.

(D) The building official shall be an ex officio member of the Board, but shall have no vote on any matter before the Board.

## *Section 2 - Officers*

- (A) The Board shall elect a Chairperson and a Vice-Chairperson from its members. The officers' terms shall be one year, with eligibility for re-election. The Board shall appoint a member of the staff of the City of Tega Cay to serve as Secretary. The Secretary's term shall be one year, with eligibility for re-appointment.
- (B) The chairperson, or any member temporarily acting as chairperson, may administer oaths to witnesses coming before the Board and compel the attendance of witnesses by subpoena.
- (C) The chairperson or vice-chairperson may take part in all deliberations and vote on all issues.
- (D) The Board shall adopt rules of procedure for the transaction of business.

## *Section 3 - Meetings*

- (A) The Building Codes Appeals Board shall establish a regular meeting schedule and shall meet frequently enough so that it can process applications in an expeditious manner. Recognizing that inordinate delays in acting upon appeals may impose unnecessary costs on the appellant, the City shall make every reasonable effort to process appeals as expeditiously as possible, consistent with the need to ensure that all development conforms to the requirements of this ordinance.
- (B) Minutes shall be kept of all Board proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact. The Board shall keep records of its examination and other official actions, and such records shall be a public record.
- (C) A recording shall be made of all hearings, and such recordings shall be kept for at least two years. A transcript need not be made of the meeting minutes.
- (D) Whenever practicable, all documentary and other types of physical evidence presented at a hearing shall be made a part of the record of the proceedings and shall be kept by the City for at least two years.
- (E) All meetings of the Board shall be open to the public, and the agenda for each Board meeting shall be made available in advance of the meeting duly advertised according to the Code of Laws of South Carolina.

## *Section 4 - Quorum and Voting*

- (A) A quorum for the Building Codes Appeals Board shall consist of at least two-thirds of its members. A quorum is necessary for the Board to take official action.
- (B) An affirmative vote of two-thirds of the members present and voting is required to pass any matter before the Building Codes Appeals Board.

(C) Once a member is physically present at a Board meeting, the member's presence shall be counted as part of a quorum present.

(D) No board member shall act in a case in which the member has a personal interest.

(E) A member shall not participate in any activities, discussions or decisions in a manner that would constitute a violation of the South Carolina Ethics, Government, Accountability, and Campaign Reform act of 1991, as amended.

(F) A roll call vote shall be taken upon the request of any Board member.

#### *Section 5 - Limitations on Authority*

The Building Codes Appeals Board shall have no authority to waive any requirements of the legally adopted international building codes. An application for appeal to the Board shall only be based on one of the following claims:

(A) The true intent of the applicable building code has been incorrectly interpreted, or

(B) The provisions of the applicable building code do not fully apply, or

(C) An equally good or better method of construction is proposed.

#### *Section 6 – Appeals*

(A) An appeal from any final order or decision of the building official may be taken to the Building Codes Appeals Board by any person aggrieved. An appeal is taken by filing with the building official and the Board a written notice of appeal specifying the grounds therefore. An appeal shall be accepted only if it meets the requirements of one of the three criteria identified in Section 5 above. A notice of appeal shall be considered filed when it is delivered to the building official and all required fees are satisfactorily paid. The date and time of filing shall be entered on the notice.

(B) An appeal must be made within 30 days after the date of the decision or order appealed from.

(C) Whenever an appeal is filed, the building official shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken.

(D) An appeal stays all actions by the building official seeking enforcement of or compliance with the order or decision appealed from, unless the building official certifies to the Board that (because of facts stated in the application) a stay would, in his opinion, cause imminent peril to life or property. In that case, proceedings shall not be stayed except by order of the Board or a court of record, issued on application of the party seeking the stay, for due cause shown, after the notice to the building official.

(E) The Board may in conformity with this ordinance reverse, affirm (in whole or part) or modify the order, requirement, decision or determination appealed from and make such order, requirement, decision or determination that in its opinion ought to be made in the case before it. To this end, the Board shall have all the powers of the officer from whom the appeal is taken.

(F) Every decision of the Board shall be final, subject, however, to such remedy as any aggrieved party may have at law or in equity.

(G) All final decisions and orders of the Board must be in writing and be permanently filed in the office of the Board as a public record. All findings of fact and conclusions of law must be separately stated in final decisions or orders of the Board, which must be delivered to the parties of interest by certified mail.

*Section 7 – Burden of Proof*

When an appeal is taken to the Building Codes Appeals Board in accordance with Section 6 above, the building official shall have the initial burden of presenting to the Board sufficient evidence and argument to justify the order or decision appealed from. The burden of presenting evidence and argument to the contrary then shifts to the appellant, who shall also have the burden of persuasion.

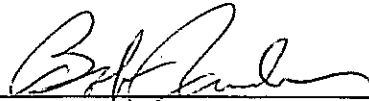
**FIRST READING:**            December 15, 2008

**SECOND READING:**       January 14, 2009


Enacted this 14<sup>th</sup> day of January, 2009, by a majority vote of the duly elected City Council of the City of Tega Cay.

**(Signatures on following page.)**

SIGNED:



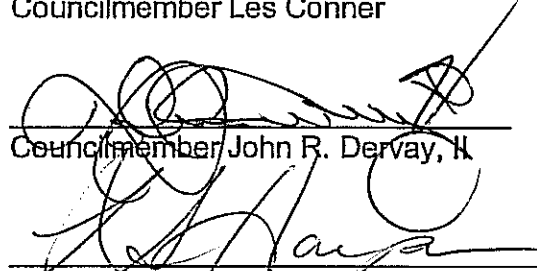
Mayor Bob Runde



Mayor Pro Tempore George Sheppard



Councilmember Les Conner

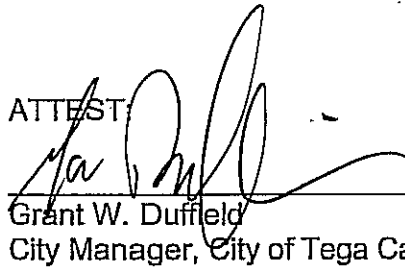


Councilmember John R. Dervay, II



Councilmember Larry S. Harper

ATTEST:



Grant W. Duffield  
City Manager, City of Tega Cay