

## ORDINANCE 2016-27

**AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF SURPRISE, ARIZONA, AMENDING SECTIONS 2-295, 2-301 THROUGH 2-303 OF THE SURPRISE MUNICIPAL CODE RELATING TO THE DUTIES, RESPONSIBILITIES, AND APPEAL PROCESS OF THE PLANNING AND ZONING COMMISSION, BOARD OF ADJUSTMENT AND THE BOARD OF CONSTRUCTION REVIEW; RENUMBERING SECTION 2-303-TOURISM ADVISORY COMMISSION TO SECTION 2-305; INCLUDING SEVERABILITY; ESTABLISHING AN EFFECTIVE DATE; AND REPEALING CONFLICTING ORDINANCES.**

**WHEREAS**, the City desires to create the opportunity to assign the duties of the Board of Adjustment and the Board of Construction Review to the Planning and Zoning Commission during times like the present when there are insufficient cases to ask for volunteers to serve on these boards;

**WHEREAS**, the City desires to retain the separate responsibilities of each board because they have different statutory processes and because in the future, require increased caseloads may make it advantageous to create separate boards again;

**WHEREAS**, the City also desires to allow appeals from the Board of Adjustment to the City Council prior to being heard by the Superior Court as allowed in A.R.S. 9-462.06 J.

**NOW, THEREFORE, BE IT ORDAINED** by the Mayor and Council of the City of Surprise, Arizona, as follows:

**Section 1.** Chapter 2, Article VII. Boards, Committees and Commissions, Sections 2-295, 2-301 through 2-303 and renumbering section 2-303-tourism advisory commission to section 2-305 of the Surprise Municipal Code is hereby amended as described on attached Exhibit A, and incorporated by this reference.

**Section 2.** For the efficient and cost effective operation of the city, the city council hereby directs pursuant to new Sections 2-295, 2-301 through 2-303, that the Planning and Zoning Commission will sit as the Board of Adjustment and/or the Board of Construction Review to commence at the effective date of this Ordinance.

**Section 3.** If any section, subsection, sentence, clause, phrase or portion of this Ordinance or any part of these amendments to the municipal code adopted herein is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portions thereof.

**Section 4.** This ordinance will become effective at the time and manner prescribed by law and shall be codified at that time.

**Section 5.** All ordinances, resolutions or codes in conflict with the provisions of this Ordinance or the Code adopted herein are repealed upon the effective date of this Ordinance.

**PASSED AND ADOPTED** this 4 day of October, 2016.

\_\_\_\_\_  
Sharon R. Wolcott, Mayor

Attest:

Approved as to form:

\_\_\_\_\_  
Sherry Aguilar, City Clerk

\_\_\_\_\_  
Robert Wingo, City Attorney

## EXHIBIT A

### **Sec. 2-295. - Bylaws.**

All public bodies of the city will operate under the following set of bylaws except as otherwise stated in this Code or in the resolution or ordinance creating the body:

- (1) *Offices.* The principal office of every public body will be the Surprise City Hall.
- (2) *Number.* Each body will consist of seven persons.
- (3) *Member qualifications, generally.*
  - a. Each member of the body must be a resident of the city and must remain so during the term of appointment.
  - b. Persons may serve on no more than two public bodies concurrently, ~~but~~AND NEITHER BODY may ~~not serve on a body that~~ reviews, considers, or is made MAKE recommendations TO THE OTHER BODY ~~by, a body on which the same member serves.~~ For example, a member. ~~of the planning and zoning commission cannot also serve on the board of adjustment and construction review.~~ MAY SERVE ON BOTH THE ARTS COMMISSION AND THE PLANNING COMMISSION, BECAUSE NEITHER COMMISSION “REVIEWS, CONSIDERS OR MAKES RECOMMENDATIONS TO THE OTHER” COMMISSION.
  - c. Individuals related by marriage, blood, or adoption, may not serve on the same public body.
  - d. Employees may not serve as members of any public body.
  - e. No city council member may serve as a member of any city public body other than city council.

**The remainder of this section is unchanged.**

### **Sec. 2-301. - Planning and zoning commission.**

(a) *Mission.* To promote the health, safety, and beauty of the community, and secure growth and development within the city in conformance with the General Plan. WHERE NECESSARY FOR THE EFFICIENT AND COST EFFECTIVE OPERATION OF THE CITY, THE CITY COUNCIL MAY DIRECT THAT THE PLANNING AND ZONING COMMISSION MAY ALSO SIT AS THE BOARD OF ADJUSTMENT AND/OR THE BOARD OF CONSTRUCTION REVIEW.

(b) *Bylaws.* Unless otherwise delineated within this section, the bylaws contained in [section 2-295](#) apply.

(c) *Composition.* Members will represent a cross section of stakeholders in the community, including different professions or occupations, so as to constitute as much as possible equal representation for all areas within the city.

(d) *Powers, duties and responsibilities.* The commission will:

- (1) Recommend to city council a General Plan, specific plans, and amendments thereto;
- (2) Review, decide, and make recommendations to city council on matters as set forth in the development code, or as otherwise set forth in this Code.
- (3) Review and make recommendations to city council regarding design guidelines;
- (4) Review development applications for consistency with applicable zoning and design standards, consistent with the development code.
- (5) Review and make recommendations to city council regarding the classification of parcels of land from one zoning district to another, the adoption or modification of the zoning map, and text amendments to the development code.
- (6) Review and make recommendations to city council regarding regulations and restrictions concerning the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land.
- (7) Make recommendations to city council on policy matters regarding the interpretation, enforcement, and administration of the development code.
- (8) Make recommendations in all matters pertaining to the use of United States Department of Housing and Urban Development grant funding programs and other community support grant funding programs.

(e) All regular meetings of the planning and zoning commission will be televised when reasonably feasible.

(f) APPEALS. WHEN SITTING AS EITHER THE BOARD OF ADJUSTMENT OR THE BOARD OF CONSTRUCTION REVIEW, ONLY DECISIONS OF THE PLANNING AND ZONING COMMISSION MAY BE APPEALED AS SET FORTH IN SECTION 2-303 OR 2-304 AS APPROPRIATE.

**Sec. 2-302. - Board of adjustment. and construction review.**

(a) *Mission.* To hear and decide requests for variances from zoning regulations, and appeals of decisions of the administrative authority. APPEALS OF ZONING ADMINISTRATOR DECISIONS AND SUCH OTHER POWERS AS MAY BE GRANTED BY CITY COUNCIL.

(b) *Bylaws.* Unless otherwise delineated within this section, the bylaws contained in [section 2-295](#) apply.

~~(c) *Composition.* The board will consist of seven members. At least two members must be a homebuilder or contractor (building, plumbing, mechanical, electrical or fire protection), but do not have to be residents of the City of Surprise. The remaining five members will represent a cross section of stakeholders in the community, including different professions or occupations, so as to constitute as much as possible equal representation for all areas within the city. FOR THE EFFICIENT AND COST EFFECTIVE OPERATION OF THE CITY, THE CITY COUNCIL MAY DIRECT THAT THE PLANNING AND ZONING COMMISSION MAY SIT AS THE BOARD OF ADJUSTMENT.~~

~~(d) *Powers, duties and responsibilities.*~~

~~(1) When acting in its role as a board of adjustment, as provided by the Arizona Revised Statutes, the board will hear and decide requests for variances from zoning regulations, appeals of zoning administrator decisions, and such other powers as may be granted by city council.~~

~~(2) When acting in its role as a construction review board, the board will hear and decide appeals of orders, decisions or determinations made by the building official concerning the application, interpretation, and enforcement of the adopted technical codes. The board is authorized to approve an alternate material or method of construction to that required by the relevant adopted codes, provided the board finds that the proposed design is satisfactory, complies with the intent of the requirements of the codes, and the material, method, or work to be provided meets the intended purpose and is at least the equivalent to that prescribed in the codes in quality, strength, effectiveness, fire resistance, durability, and safety. The board has no authority to waive or amend the requirements of any technical code adopted by the city.~~

~~(3) The board may adopt all rules and procedures necessary or convenient for the conduct of its business.~~

~~(e) *Appeals to the board.*~~

~~(1) APPEALS TO THE BOARD MAY BE TAKEN IN THE SAME MANNER AS SET FORTH IN STATE LAW, EXCEPT AS MODIFIED BY THE PROVISIONS OF THIS SECTION 2-302.~~

~~(2) Appeals to the board may be takenMADE by any person, or by any officer, department, board, or commission of the city affected by the decision being appealed. Such appeal must be taken within 30 (THIRTY)calendar days of the date of the determination being appealed by filing with the city CLERK manager a notice of appeal specifying the grounds for the appeal. The city~~

CLERKmanager will determine if the request is within the authority of the board and respond to the request in writing within ten working days.

(1) (3) If the appeal is taken, the ~~administrative authority~~ ZONING ADMINISTRATOR will forthwith transfer to the board all of the documents and exhibits constituting the record upon which the appealed action is taken. The board will hear the appeal at the next regularly scheduled meeting, but not later than 60 SIXTY calendar days from the notice of appeal. The board will render all decisions and findings in writing to the appellant with a duplicate copy to the ~~administrative authority~~ ZONING ADMINISTRATOR.

(2) (4) The board is authorized to overturn, uphold, or modify a determination of the ~~administrative authority~~ ZONING ADMINISTRATOR, and has the same authority as the official in so doing.

(f) CITY COUNCIL REVIEW. ANY PERSON AGGRIEVED BY THE DECISION OF THE BOARD, OR THE PLANNING COMMISSION SITTING AS THE BOARD, MAY APPEAL THE DECISION OF THE BOARD TO CITY COUNCIL WITHIN 15 CALENDAR DAYS AFTER THE BOARD HAS RENDERED ITS DECISION. THE AGGRIEVED PERSON, OR ANY MUNICIPAL OFFICER OR OFFICIAL DEPARTMENT OF THE CITY, OR MEMBER OF CITY COUNCIL, MAY FILE AN APPEAL WHETHER OR NOT THEY WERE A PREVIOUS PARTY TO THE DECISION. APPEALS SHALL BE FILED IN WRITING WITH THE OFFICE OF THE CITY CLERK AND SHALL SPECIFY THE GROUNDS FOR THE APPEAL.

(fg) *Court review.* Any person aggrieved by the decision of the ~~board~~ CITY COUNCIL, MAY APPEAL THE DECISION OF THE CITY COUNCIL TO SUPERIOR COURT WITHIN 30 (THIRTY) DAYS AS PROVIDED BY STATE LAW. THE AGGRIEVED PERSON, OR ANY MUNICIPAL OFFICER, OFFICIAL DEPARTMENT OF THE CITY, OR MEMBER OF THE CITY COUNCIL, MAY FILE AN APPEAL whether or not a THEY WERE A previous party to the decision., or any municipal officer or official department of the city may, at any time within 30 calendar days after the filing of the board's CITY COUNCIL'S decision in the office of the city clerk, file an appeal in writing with the Maricopa County Superior Court by following the methods of appeal or review procedures in Arizona as set forth by the applicable statutes of the State of Arizona.

(gh) *Enforcement.* The city is authorized to enforce decisions of the board or, upon successful review, of THE CITY COUNCIL OR the Superior Court.

Sec. 2-3035. –Tourism advisory commission

**All code sections under tourism advisory commission remain the same only renumbered to Sec. 2-305**

**Sec. 2-3032. - BOARD OF CONSTRUCTION REVIEW.**

(A) *MISSION.* TO HEAR AND DECIDE REQUEST FOR APPEALS OF DECISIONS OF ADMINISTRATIVE AUTHORITY REGARDING MATTERS PERTAINING TO ENFORCEMENT, APPLICATION AND INTERPRETATION OF CONSTRUCTION CODES.

(B) *BYLAWS.* UNLESS OTHERWISE DELINEATED WITHIN THIS SECTION, THE BYLAWS CONTAINED IN SECTION 2-295 APPLY.

(C) *COMPOSITION.* THE BOARD WILL CONSIST OF 7 (SEVEN) MEMBERS. FOR THE EFFICIENT AND COST EFFECTIVE OPERATION OF THE CITY, THE CITY COUNCIL MAY DIRECT THAT THE PLANNING AND ZONING COMMISSION MAY SIT AS THE BOARD OF CONSTRUCTION REVIEW.

(D) *POWERS, DUTIES AND RESPONSIBILITIES.*

(1) THE BOARD WILL HEAR AND DECIDE APPEALS OF DECISIONS OF ADMINISTRATIVE AUTHORITY REGARDING MATTERS PERTAINING TO ENFORCEMENT, APPLICATION AND INTERPRETATION OF CONSTRUCTION CODES.

(2) THE COMMISSION SHALL BE AUTHORIZED TO APPROVE AN ALTERNATIVE MATERIAL OR METHOD OF CONSTRUCTION TO THAT REQUIRED BY CONSTRUCTION CODES, PROVIDED THE COMMISSION FINDS THAT THE PROPOSED DESIGN IS SATISFACTORY, COMPLIES WITH THE INTENT OF THE REQUIREMENTS OF THE CODES, AND THE MATERIAL, METHOD, OR WORK TO BE PROVIDED MEETS THE INTENDED PURPOSE AND IS AT LEAST THE EQUIVALENT TO THAT PRESCRIBED IN THE CODES IN QUALITY, STRENGTH, EFFECTIVENESS, FIRE RESISTANCE, DURABILITY, AND SAFETY. THE BOARD HAS NO AUTHORITY TO WAIVE OR AMEND THE REQUIREMENTS OF ANY TECHNICAL CODE ADOPTED BY THE CITY.

(E) APPEALS TO THE BOARD. APPEALS TO THE BOARD MAY BE TAKEN IN THE SAME MANNER AS SET FORTH IN THE APPLICABLE TECHNICAL CODE IN THE FORM ADOPTED BY THE CITY, EXCEPT AS MODIFIED BY THE PROVISIONS OF THIS SECTION 2-303.

(1) APPEALS TO THE BOARD SHALL BE TAKEN WITHIN THIRTY CALENDAR DAYS OF THE DATE OF DETERMINATION BY FILLING WITH THE CITY CLERK A NOTICE OF APPEAL SPECIFYING THE GROUNDS FOR THE APPEAL. THE BUILDING OFFICIAL SHALL DETERMINE IF THE REQUEST IS WITHIN THE AUTHORITY OF THE BOARD AND RESPOND TO THE REQUEST IN WRITING WITHIN TEN WORKING DAYS. IF THE APPEAL IS

TAKEN, THE BUILDING OFFICIAL SHALL FORTHWITH TRANSFER TO THE BOARD ALL OF THE DOCUMENTS AND EXHIBITS CONSTITUTING THE RECORD UPON WHICH THE APPEALED ACTION IS TAKEN.

- (2) THE BOARD SHALL HEAR THE APPEAL AT THE NEXT REGULARLY SCHEDULED MEETING, OR NOT LATER THAN FORTY-FIVE CALENDAR DAYS FROM THE NOTICE OF APPEAL.
- (3) THE BOARD SHALL RENDER ALL DECISIONS AND FINDINGS IN WRITING TO THE APPELLANT WITH A DUPLICATE COPY TO THE ADMINISTRATIVE AUTHORITY.
- (4) THE BOARD, OR THE PLANNING AND ZONING COMMISSION SITTING AS THE BOARD OF CONSTRUCTION REVIEW, IS AUTHORIZED TO OVERTURN, UPHOLD, OR MODIFY A DETERMINATION OF THE BUILDING OFFICIAL, AND HAS THE SAME AUTHORITY AS THE OFFICIAL IN SO DOING. THE BOARD SHALL BE AUTHORIZED TO APPROVE AN ALTERNATIVE MATERIAL OR METHOD OF CONSTRUCTION TO THAT REQUIRED BY TECHNICAL CODES OF THE CITY, PROVIDED THE BOARD FINDS THAT THE DESIGN IS SATISFACTORY, COMPLIES WITH THE INTENT OF THE REQUIREMENTS OF THE CODES, AND THE MATERIAL, METHOD, OR WORK TO BE PROVIDED MEETS THE INTENDED PURPOSE AND IS AT LEAST THE EQUIVALENT TO THAT PRESCRIBED IN THE CODES IN QUALITY, STRENGTH, EFFECTIVENESS, FIRE RESISTANCE, DURABILITY, AND SAFETY.
- (5) DECISIONS OF THE BOARD SHALL BE FINAL.

Sec. 2-304. – Audit Committee

Sec. 2-306—2-334. - Reserved