

**CITY OF LA VISTA  
MAYOR AND CITY COUNCIL REPORT  
APRIL 7, 2009 AGENDA**

<b>Subject:</b>	<b>Type:</b>	<b>Submitted By:</b>
AMEND CITY CODE — BUILDING BOARD OF APPEALS	RESOLUTION ◆ ORDINANCE (2) RECEIVE/FILE	ANN BIRCH COMMUNITY DEVELOPMENT DIRECTOR

**SYNOPSIS**

A public hearing has been scheduled and ordinances prepared to designate that the Board of Adjustment shall also serve as the Building Board of Appeals, in Chapter 32, Boards, Commissions, and Committees, of the City Code, and in Chapter 150, Building Regulations, of the City Code, Section (D) regarding the Uniform Code for the Abatement of Dangerous Buildings.

**FISCAL IMPACT**

N/A.

**RECOMMENDATION**

Approve.

**BACKGROUND**

Chapter 32, Boards, Commissions, and Committees, of the City Code, states that one of the duties of the Board of Adjustment, among other duties, is to “hear and decide appeals where it is alleged there is an error in any order, requirement, or decision or determination made by a city official based on or made in the enforcement of any zoning regulation or any regulation relating to the location or soundness of structures.” Based on this duty, the city has utilized the Board of Adjustment for appeals under the building codes as adopted in Chapter 150 of the City Code, Building Regulations. Within these building regulations, however, a Board of Appeals is identified for purposes of hearing and deciding any appeals of orders, decisions or determinations made by the building official relative to the application, interpretation, and enforcement of the building regulations. In the near future we will be proposing to update the various International Code Council (ICC) standardized codes which comprise our building regulations to the 2006 Editions, and the sections of those codes which reference a Board of Appeals will be amended. For now we are proposing only to amend Section 205 of the Uniform Code for the Abatement of Dangerous Buildings which refers to the Board of Appeals.

Two ordinances have been prepared; one to amend Chapter 32, Boards, Commissions and Committees, and one to amend Chapter 150, Building Regulations. Both ordinances are intended to specifically state that the Board of Adjustment shall also act as the Board of Appeals for purposes of the building regulations.

ORDINANCE NO. \_\_\_\_

AN ORDINANCE TO AMEND SECTION 32.03 OF THE LA VISTA MUNICIPAL CODE RELATING TO THE BOARD OF ADJUSTMENT AND BOARD OF APPEALS; TO REPEAL SECTION 32.03 AS PREVIOUSLY ENACTED; TO PROVIDE FOR SEVERABILITY; AND TO PROVIDE FOR THE EFFECTIVE DATE HEREOF.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, SARPY COUNTY, NEBRASKA:

SECTION 1. Amendment of Section 32.03. Section 32.03 of the La Vista Municipal Code is hereby amended to read as follows:

**§ 32.03 BOARD OF ADJUSTMENT & BOARD OF APPEALS.**

(A) The Mayor shall appoint, with the consent of the City Council, a Board of Adjustment which shall consist of five regular members plus one additional member designated as an alternate who shall attend and serve only when one of the regular members is unable to attend for any reason. Each member of the Board shall serve a term of three years, unless reappointed, and shall be removable only for cause by the Mayor, with the consent of the City Council, upon written charges and after a public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. One member only of the Board of Adjustment shall be appointed from the membership of the Planning Commission, and the loss of membership on the Planning Commission by such member shall also result in his or her immediate loss of membership on the Board of Adjustment and the appointment of another Planning Commissioner to the Board of Adjustment. After the effective date of this section, the first vacancy occurring on the Board of Adjustment shall be filled by the appointment of a person who resides in the extraterritorial zoning jurisdiction of the city at such time as more than 200 persons reside within such area. Thereafter, at all times, at least one member of the Board of Adjustment shall reside outside the corporate boundaries of the city but within its extraterritorial zoning jurisdiction. (Neb. RS 19-908)

(B) The members of the Board shall serve without compensation and may be required, in the discretion of the Mayor and City Council, to give a bond in a sum set by resolution of the Mayor and City Council and conditioned upon the faithful performance of their duties. The Board shall conduct an organizational meeting in January of each year and elect from its membership a Chairperson and a Secretary. It shall be the duty of the Secretary to keep complete and accurate minutes of all Board members, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the City Clerk and shall be public record. All meetings of the Board shall be open to the public and shall be held at such times as the Chairperson may, in his or her discretion, call a meeting, and at such other times as the Board may determine. Special meetings may also be held upon the call of any three members of the Board. A majority of the Board shall constitute a quorum for the purpose of doing business. The Board shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to Neb. RS 19-901 to 19-914.

(C) It shall be the duty of the Board:

(1) To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by a city official based on or made in the enforcement of any zoning regulation or any regulation relating to the location or soundness of structures;

(2) To hear and decide, in accordance with the provisions of the zoning regulations, requests for interpretation of any map; and

(3) Where by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of the enactment of the zoning regulations, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any zoning regulation would result in peculiar and exceptional practical difficulties to or exceptional and undue hardships upon the owner of such property, to authorize, upon an appeal relating to the property, a variance from such strict application so as to relieve such difficulties or hardship, if such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of any ordinance or resolution.

(D) (1) No variance shall be authorized by the Board unless it finds that:

(a) The strict application of the zoning regulation would produce undue hardship;

(b) Such hardship is not shared generally by other properties in the same zoning district and the same vicinity;

(c) The authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance; and

(d) The granting of such variance is based upon reason of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit or caprice.

(2) No variance shall be authorized unless the Board finds that the condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the zoning regulations.

(E) In exercising the above-mentioned powers, the Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all powers of the officer from whom the appeal is taken. The concurring vote of four members of the Board shall be necessary to reverse any order, requirement, decision or determination of any such city official or to decide in favor of the applicant on any matter upon which it is required to pass under any such regulation or to effect any variance in such regulation. (Neb. RS 19-910)

(F) The Board shall be responsible for making such reports and performing such other duties as the Mayor and City Council may designate. Neither the Mayor nor any member of the City Council shall serve as a member of the Board of Adjustment. No member of the Board of Adjustment shall serve in the capacity of both Chairperson and Secretary of the Board.

(G) The Board shall also act as the Board of Appeals for purposes of the building regulations contained in Chapter 150 of this Code in order to hear and decide appeals of orders, decisions, or determinations made by the building official relative to the application and interpretation of said building regulations. If at any time there is any conflict, inconsistency or ambiguity between or among the provisions of Section 32.03(A) or (B) above and Chapter 150, or any code thereunder, as adopted or amended from time to time, the provisions of Section 32.03(A) or (B) shall govern and control.

SECTION 2. Repeal of Section 32.03 as Previously Enacted. Section 32.03, of the La Vista Municipal Code as previously enacted is hereby repealed.

SECTION 3. Severability Clause. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this ordinance. The Mayor and City Council of the City of La Vista hereby declare that it would have passed this ordinance and each section, subsection, sentence clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

SECTION 4. Effective Date. This ordinance shall be in full force and effect from and after passage, approval and publication in pamphlet form as provided by law.

PASSED AND APPROVED THIS 7TH DAY OF APRIL 2009.

CITY OF LA VISTA

\_\_\_\_\_  
Douglas Kindig, Mayor

ATTEST:

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Pamela A. Buethe, CMC  
City Clerk

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ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE TO AMEND SECTION 150.01(D) OF THE LA VISTA MUNICIPAL CODE RELATING TO STANDARD CODES AND REGULATION OF BUILDINGS; TO REPEAL SECTION 150.01(D) AS PREVIOUSLY ENACTED; TO PROVIDE FOR SEVERABILITY; AND TO PROVIDE FOR THE EFFECTIVE DATE HEREOF.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, SARPY COUNTY, NEBRASKA:

SECTION 1. Amendment of Section 150.01(D). Section 150.01(D) of the La Vista Municipal Code is hereby amended by deleting Section 150.01(D) and replacing it in its entirety with the following:

**"§ 150.01(D)(1)** *Uniform Code for the Abatement of Dangerous Buildings adopted by reference.* Two copies of certain documents in book form, being marked and designated as the *Uniform Code for the Abatement of Dangerous Buildings*, 1985 Edition, ("**UCADB**") are on file in the Office of the City Clerk of the City of La Vista. **With the exception of Section 205 of said UCADB, the UCADB** is hereby adopted; and each and all of the regulations, provisions, conditions and terms of such adopted **UCADB**, and all amendments, revisions or editions thereto **in Section 150.01(D)(2) below or** on file or hereafter placed on file in the Office of the City Clerk of the City of La Vista, are hereby referred to, adopted and made a part hereof as if fully set out herein.

**§ 150.01(D)(2)** *Additional requirements, rules and regulations adopted.*

**(a) Board of Appeals (adopted in lieu of Section 205 of the UCADB).** In order to provide for reasonable interpretation of the provisions of the UCADB and to hear appeals provided for hereunder, there is hereby created a Board of Appeals consisting of five members and one alternate who are qualified by experience and training to pass upon matters pertaining to building construction and who are not employees of the City.

Members appointed to the Board of Adjustment pursuant to Code Section 32.03 also shall be the members of the Board of Appeals. Adoption of this Section 150.01(D)(2) shall constitute appointment of the initial Board of Appeals comprised of the existing members of the Board of Adjustment. Terms of office of members of the Board of Appeals shall correspond to and be the same as the respective terms of office of said members on the Board of Adjustment; provided, however, that the initial term of office of each member of the first Board of Appeals of the City after this Section 150.01(D)(2) is adopted shall be equal to said member's remaining term on the Board of Adjustment.

All actions taken with respect to any individual's membership on the Board of Adjustment also shall be deemed to be a corresponding action and have the same effect with respect to said individual's membership on the Board of Appeals. The Chairperson and Secretary of the Board of Adjustment from time to time shall serve in the same capacities with respect to the Board of Appeals. Procedural rules applicable to proceedings of the Board of Adjustment also shall constitute procedural rules of the Board of Appeals, unless otherwise expressly provided by the Board of Appeals, UCADB or other applicable laws, rules or regulations.

Appeals to the Board of Appeals shall be processed in accordance with the provisions contained in Section 501 of the UCADB. The building official shall be responsible for assisting the Board of Appeals and providing it with necessary information."

SECTION 2. Repeal of Section 150.01(D) as Previously Enacted. Section 150.01(D), of the La Vista Municipal Code as previously enacted is hereby repealed.

SECTION 3. Severability Clause. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this ordinance. The Mayor and City Council of the City of La Vista hereby declare that it would have passed this ordinance and each section, subsection, sentence clause or phrase thereof, irrespective of the fact that any

one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

**SECTION 4. Effective Date.** This ordinance shall be in full force and effect from and after passage, approval and publication in pamphlet form as provided by law.

PASSED AND APPROVED THIS 7TH DAY OF APRIL 2009.

CITY OF LA VISTA

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Douglas Kindig, Mayor

ATTEST:

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Pamela A. Buethe, CMC  
City Clerk

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