

ORDINANCE NO. 2009-02

**AN ORDINANCE AMENDING CITY CODE SECTION 910
REGARDING APPEALS AND VARIANCES TO THE FIRE CODE**

The City of Minnetonka Ordains:

Section 1. Existing city code sections 910.025 and 910.030, attached as Exhibit A, are repealed.

Section 2. The following new provisions are added to city code section 910:

Section 910.025. Order of Fire Marshal.

The fire marshal may issue an order to any person who violates the Minnesota state fire code or any of the city's fire regulations set forth in the city code. The person to whom the order is directed must comply with it no later than the deadline for compliance specified in the order unless an appeal is filed in accordance with section 910.030 of this code.

Section 910.030. Appeal of Order; Variance Application.

A person may appeal an order of the fire marshal, or apply for a variance from the order, by filing a written notice of appeal or a written variance application with the city clerk within 30 days after the date of the issuance of the order.

Section 910.031. Hearing.

A hearing must be held within 30 days after receipt by the city clerk of a timely appeal or variance application. The hearing must be held before a city-appointed hearing officer who may not be a member of the city staff. The Minnesota rules of evidence need not be strictly followed, and the records of the fire marshal must be considered without further foundation. The hearing examiner must prepare a report containing written findings, conclusions, and a recommendation to the city council on the appropriate disposition of the appeal or variance application. The hearing officer's report must be made within 15 days after the hearing and must be served upon the person who filed the appeal or variance application, the fire marshal, and the city clerk.

Section 910.032. City Council Action.

The report of the hearing examiner must be referred to the city council within 30 days after issuance of the report. The person filing the appeal or variance application must

The ~~stricken~~ language is deleted; the underlined language is inserted.

be notified of the hearing at least seven days before the date when the city council will consider the hearing examiner's report. The person filing the appeal or variance application and the fire marshal must be given the opportunity to summarize their positions before the city council. The city council may either affirm, modify, or overturn the hearing examiner's recommendation.

Section 910.033. Standards of Review.

In reviewing a variance application submitted under section 910.030, the hearing officer and the city council must take into consideration the benefit to be obtained by complying with the fire marshal's order and the effect on affordable housing, provided that the spirit of the code is complied with and public safety is secure. In addition, a variance from the minimum requirements in the state fire code may be granted only if there is substantial compliance with the provisions of the state fire code, the safety of the public and occupants of buildings will not be jeopardized, and undue hardship will result to the applicant unless the requested variance is granted.

Section 3. A violation of this ordinance is subject to the penalties and provisions of Chapter XIII of the city code.

Section 4. This ordinance is effective 30 days after publication.

Adopted by the city council of the City of Minnetonka, Minnesota, on February 9, 2009.

Terry Schneider, Mayor

ATTEST:

David E. Maeda, City Clerk

ACTION ON THIS ORDINANCE:

Date of introduction: January 26, 2009

Date of adoption: February 9, 2009
Motion for adoption: Allendorf
Seconded by: Wagner
Voted in favor of: Allendorf, Ellingson, Greves, Hiller, Schneider, Wagner, Wiersum
Voted against:
Abstained:
Absent:
Ordinance adopted.

Date of publication:

CERTIFIED COPY:

I certify that the foregoing is a correct copy of an ordinance adopted by the city council of the City of Minnetonka, Minnesota, at a meeting held on February 9, 2009.

David E. Maeda, City Clerk

Exhibit A

Repealed ordinance sections

910.025. Appeals.

An aggrieved party may appeal the application or interpretation of the city fire code by the fire chief or fire marshal to a board of appeals appointed by the city council.

910.030. New Materials, Processes or Occupancies.

The city manager, the fire chief and the fire marshal will act as a committee to adopt standards for new materials, processes or occupancies in addition to those listed in the city fire code. The committee must hold a public hearing before adopting any additional standards and must publish notice of the hearing in the official newspaper at least 10 days in advance. The committee must also make reasonable attempts to notify the people most likely to be affected. Once adopted, the new standards must be posted in a conspicuous place in the fire marshal's office, and copies must be distributed upon request to interested parties.