



**CITY OF PONTIAC**  
**OFFICE OF THE EMERGENCY MANAGER**  
**LOUIS H. SCHIMMEL**

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**Dated: January 13, 2012**

**ORDER NO. S-134**

**RE: Construction Code Board of Appeals Ordinance**

**TO: Sherikia Hawkins, City Clerk**  
**Michael Wilson, Building Official**  
**Charles W. Smith, Wade Trim**

The **Local Government and School District Fiscal Accountability Act (Public Act 4 of 2011)** in **Section 17(1)** empowers an Emergency Manager to issue the orders the Manager considers necessary to accomplish the purposes of the Act and any such orders are binding on the local officials or employees to whom they are issued. **Section 19(1)** provides that an Emergency Manager may take on one or more additional actions with respect to a local government in receivership: **(dd)** [e]xercise solely, for and on behalf of the local government, all other authority and responsibilities of the chief administrative officer and the governing body concerning the adoption, amendment, and enforcement of ordinances...; and **19(2)** ...the authority of the chief administrative officer and governing body to exercise power for and on behalf of the local government under law, charter, and ordinance shall be suspended and vested in the Emergency Manager.

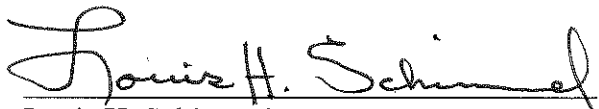
**It is hereby ordered:**

1. That the attached Ordinance No. 2238, amending Chapter 22, Article I, Division 2 of the Code of Ordinances to provide for provisions for the Construction Code Board of Appeals, is adopted.
3. That the City Clerk shall take all actions required under the law to reflect the attached ordinance changes on the City books and records, including publication of the adopted ordinance.

**The Order shall have immediate effect.**

Copies of the documents referenced in this Order are to be maintained in the offices of the City Clerk and the Law Department and may be reviewed and/or copies may be obtained upon submission of a written request consistent with the requirements of the Michigan Freedom of Information Act and subject to any exemptions contained in that state statute and subject to any exemptions allowed under that statute (**Public Act 442 of 1976, MCL 15.231, et. seq.**).

This Order is necessary in order to carry out the duties and responsibilities required of the Emergency Manager as set forth in the **Local Government and School District Fiscal Accountability Act (Public Act 4 of 2011)** and the contract between the State of Michigan and the Emergency Manager.

A handwritten signature in black ink that reads "Louis H. Schimmel". The signature is written in a cursive style with a horizontal line underneath the name.

Louis H. Schimmel  
City of Pontiac  
Emergency Manager

cc: State of Michigan Department of Treasury  
Mayor Leon B. Jukowski  
Pontiac City Council

**An ordinance to amend Chapter 22, Article I, Division 2 of the Pontiac Code of Ordinances, to provide for provisions for the Construction Code Board of Appeals.**

The City of Pontiac ordains:

**Section 1. Amendments.**

Chapter 22, Article I, Division 2 of the Code of Ordinances shall be amended to read as follows:

**Sec. 22-11. - Created; purpose.**

There is hereby created a construction code board of appeals to hear appeals from decisions of the building code official as described in the Stille-Derossett-Hale Single Construction Code Act, being Act 230 of 1972 (MCL 125.1514 et seq.).

**Sec. 22-12. - Composition; terms; vacancies.**

The construction code board of appeals shall consist of five members, appointed by the mayor of the City of Pontiac, as follows: one for five years, one for four years, one for three years, one for two years, and one for one year. Thereafter, each new member shall serve for five years or until a successor has been appointed.

**Sec. 22-13. - Qualifications.**

A member of the board of appeals shall be qualified by experience or training to perform the duties of members of the board of appeals. A person may serve on the board of appeals of more than 1 governmental subdivision.

**Sec. 22-14. - Alternate members.**

The mayor of the City of Pontiac shall appoint two alternate members who shall be called by the board chairman to hear appeals during the absence or disqualification of a member. Alternate members shall possess the qualifications required for board membership, and shall be appointed for five years or until a successor has been appointed.

**Sec. 22-15. - Chairman.**

The board shall annually select one of its members to serve as chairman.

**Sec. 22-16. - Disqualification of a member.**

A member shall not hear an appeal in which that member has any personal, professional or financial interest.

**Sec. 22-17. - Secretary.**

The city clerk shall designate a qualified clerk to serve as secretary to the board. The secretary shall file a detailed record of all proceedings in the office of the city clerk.

**Sec. 22-18. - Compensation of members.**

Members of the construction code board of appeals shall receive such compensation per meeting as determined by the city council upon adoption of the annual budget, yet no compensation shall exceed fifty dollars per meeting.

**Sec. 22-19. - Notice of meeting.**

The board shall meet upon notice from the building code official, within ten days of the filing of an appeal, or at stated periodic meetings.

**Sec. 22-20. - Open hearings.**

The business, which the board of appeals may perform, shall be conducted at a public meeting of the board of appeals held in compliance with Act No. 267 of the Public Acts of 1976. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976. The appellant, the appellant's representative, the building official and any person whose interests are affected shall be given an opportunity to be heard.

**Sec. 22-21. - Procedure.**

- a. The board shall adopt and make available to the public, through the secretary, procedures under which a hearing will be conducted. The procedures shall not require compliance with strict rules of evidence but shall mandate that only relevant information be received.
- b. After a public hearing, the board of appeals may grant a specific variance to a substantive requirement of the code if the literal application of the substantive requirement would result in an exceptional, practical difficulty to the applicant, and if both of the following requirements are satisfied:
  - i. The performance of the particular item or part of the building or structure with respect to which the variance is granted and shall be adequate for its intended use and shall not substantially deviate from performance required by the code of that particular item or part for the health, safety, and welfare of the people of the state.
  - ii. The specific condition justifying the variance shall be neither so general nor recurrent in nature as to make an amendment of the code with respect to the condition reasonably practical or desirable.
- c. The board of appeals may attach in writing any condition in connection with the granting of a variance that in its judgment is necessary to protect the health, safety, and welfare of the people of the state. The breach of a condition shall automatically invalidate the variance and any permit, license, and certificate granted on the basis of it. In no case shall more than minimum variance from the code be granted than is necessary to alleviate the exceptional, practical difficulty.
- d. The board of appeals shall hear the appeal and render and file its decision with a statement of reasons for the decision with the enforcing agency from whom the appeal was taken not more than 30 days after submission of the appeal. Failure by the board of appeals to hear an appeal and file a decision within the time limit is a denial of the appeal for purposes of authorizing the institution of an appeal to the State Construction Code

Commission for those areas in which the Commission has authority. A copy of the decision and statement of the reasons for the decision shall be delivered or mailed, before filing, to the party taking the appeal.

**Sec. 22-22. - Postponed hearings.**

When four members are not present to hear an appeal, either the appellant or the appellant's representative shall have the right to request a postponement of the hearing.

**Sec. 22-23. - Board decision.**

The board shall modify or reverse the decision of the building official by a concurring vote of three members.

**Sec. 22-24. – Resolution; record of decisions.**

- a. The decision of the board shall be by resolution. Certified copies shall be furnished to the appellant and to the building code official.
- b. A record of decisions made by the board of appeals, properly indexed, and any other writing prepared, owned, used, in the possession of, or retained by the board of appeals in the performance of an official function shall be made available to the public in compliance with Act. No. 442 of the Public Acts of 1976.

**Sec. 22-25. - Administration.**

The building code official shall take immediate action in accordance with the decision of the board. The city clerk shall maintain all official records of the board of appeals.

**Sec. 22-26. - Appeal to State Construction Code Commission.**

An interested person, or the interested person's authorized agent, may appeal a decision of a board of appeals to the State Construction Code Commission within 10 business days after filing of the decision with the city clerk or, in the case of an appeal because of failure of the board of appeals to act within the prescribed time, at any time before filing the decision.

**Sec. 22-27. - Application; fees.**

Any person shall have the right to appeal a decision of the building code official or the hearing officer to the construction code board of appeals. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply, or an equivalent form of construction, alteration, prevention, installation, and/or repair, is to be proposed. The application shall be filed on a form obtained from building code official within 20 days after the notice was served.

No application shall be processed until the required application fee is paid. Such application fee shall be set by city council resolution upon adoption of the annual budget or by Order of the Emergency Manager.

**Section 2. Severability.**

If any section, clause, or provision of this Ordinance shall be declared to be unconstitutional, void, illegal, or ineffective by any Court of competent jurisdiction, such section, clause, or provision declared to be unconstitutional, void, or illegal shall thereby cease to be a part of this Ordinance, but the remainder of this Ordinance shall stand and be in full force and effect.

**Section 3. Repealer.**

All Ordinances or parts of Ordinances in conflict herewith are hereby repealed only to the extent necessary to give this Ordinance full force and effect.

**Section 4. Emergency Declaration**

This Ordinance is hereby determined to be immediately necessary for the preservation of the public health, safety, and welfare and shall be in full force and effect from the time of its adoption and publication as required by law.