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◻ALSO ADMITTED IN OKLAHOMA

MEMO

TO: Sunfish Lake Mayor and Councilmembers
FROM: Timothy J. Kuntz, City Attorney
DATE: October 29, 2014
RE: Appointment of Mike Andrejka as Building Official and Approval of Contract between A to Z Home Inspection LLC and the City of Sunfish Lake for Building Official Services – November 5, 2014 City Council Meeting, Agenda Item 8(b)

Section 1. Background. Minnesota Statutes § 326B.133 requires that the City designate a Building Official to administer the Building Code. On August 27, 2014, David Neameyer submitted his resignation as the Sunfish Lake Building Official and recommended that the Council appoint Mike Andrejka as the interim Building Official for the City of Sunfish Lake for a period of 60 days. At the September 2, 2014 Council meeting, the Council appointed Mike Andrejka as the interim Building Official for the City of Sunfish Lake for a period of 60 days. At the October 7, 2014 Council meeting, the Council approved a Letter Agreement between Mike Andrejka and the City of Sunfish Lake relating to Interim Building Official Services. The Letter Agreement was for the time period from August 27, 2014 through November 5, 2014.

At this time the Council is being asked to consider the attached Contract between the City and A to Z Home Inspection, LLC (Mike Andrejka) for Building Official Services.

At the November 5, 2014 Council meeting, the Council will consider the following:

- a. Contract between the City and A to Z Home Inspection, LLC (Mike Andrejka) for Building Official Services;
- b. The Contract appoints Mike Andrejka (Chief Manager of A to Z Home Inspection, LLC) as Building Official.

Section 2. Contract for Building Official Services. The salient terms of the contract with A to Z Home Inspection LLC (A to Z) are as follows:

Compensation:

As payment for Building Official services, Mike Andrejka will receive the following compensation from the City:

- 80% of the permit fees collected for building, plumbing and mechanical permits.
- 100% of the plan review fees collected for building, plumbing, and mechanical permits, if applicable.
- When double permit fees are charged because someone began work prior to obtaining a permit, Neameyer shall be paid 80% of the double permit fees.
- \$47.00 per hour payable by the City to Mike Andrejka for additional plan review required by changes, additions or revisions to plans. In such instance, Mike Andrejka shall not begin to perform services until the applicant has first paid the City the charge of \$47.00 per hour for the time estimated by Mike Andrejka to perform such services.
- \$47.00 per hour payable by the City to Mike Andrejka for site inspections conducted at the request of a landowner prior to issuance of a permit. In such instance, Mike Andrejka shall not begin to perform services until the applicant has first paid the City the charge of \$47.00 per hour for the time estimated by Mike Andrejka to perform such services.
- \$47.00 per hour payable by the City to Mike Andrejka for site inspections conducted in anticipation of a permit where the permit has not later been issued. In such instance, Mike Andrejka shall only be paid if the City has also collected from the landowner the charge of \$47.00 per hour for the time spent by Mike Andrejka to perform such services.

There is no charge to the City for time spent by Mike Andrejka with regard to the following:

- Investigation of complaints when the investigation is initiated by Mike Andrejka or requested by the Council or City staff.
- Inspections of buildings or properties when requested by the Council or City staff.
- Written reports on the conditions of buildings or properties when requested by the Council or City staff.
- Enforcement of the Building Code by means of letters, warnings, orders, citations, or formal complaints.
- Preparation for court appearances, attendance at court proceedings and court testimony.
- Responding to telephone calls, messages and other correspondence dealing with the requirements or interpretation of the Building Code.
- Monthly reports to the Council.
- Attendance at monthly Council meetings.
- Attendance at special Council meetings if requested by the Council.

Termination:

The Contract can be terminated by either party with or without cause upon 30 days advanced written notice to the other party.

The Contract continues until terminated by one of the parties.

Independent Contractor:

Nothing contained in the Contract creates an employer-employee relationship between the City and A to Z or the City and Mike Andrejka. At all times, A to Z shall act as an independent contractor and shall exercise independent supervision and control over the means and manner by which it performs the services and duties under the Contract.

As an independent contractor, A to Z shall not receive any pension, fringe benefits, vacation, sick/personal leave, disability benefits, health, medical or dental insurance, holiday pay or other fringe benefits. There will be no contributions made by the City to the Public Employee's Retirement Association (PERA) for any employee of A to Z. Mike Andrejka is the Chief Manager and employee of A to Z and is not an employee of the City. Mike Andrejka shall not receive from the City any pension, fringe benefits, vacation, sick/personal leave, disability benefits, health, medical or dental insurance, holiday pay or other fringe benefits. There will be no contributions made by the City to the Public Employee's Retirement Association (PERA) for Mike Andrejka.

Section 3. Council Action. The Council is asked to consider the attached *Resolution Appointing Mike Andrejka As The Building Official For The City Of Sunfish Lake And Approving A Contract Between A to Z Home Inspection LLC And The City Of Sunfish Lake Relating To Building Official Services.*

Attachments

**CITY OF SUNFISH LAKE
DAKOTA COUNTY, MINNESOTA**

RESOLUTION NO. 14-__

**RESOLUTION APPOINTING MIKE ANDREJKA AS THE BUILDING OFFICIAL FOR
THE CITY OF SUNFISH LAKE AND APPROVING A CONTRACT BETWEEN A TO Z
HOME INSPECTION LLC AND THE CITY OF SUNFISH LAKE RELATING TO
BUILDING OFFICIAL SERVICES**

WHEREAS, Minnesota Statutes § 326B.133 requires that the City designate a Building Official to administer the Minnesota State Building Code.

WHEREAS, under Chapter 1001 through 1004 of the Sunfish Lake City Code, the Building Official has the responsibility of enforcing and administering the Minnesota State Building Code.

WHEREAS, the City finds that Mike Andrejka, Chief Manager and employee of A to Z Home Inspection LLC, has the requisite qualifications, skills, background and experience to fulfill the position of Building Official.

WHEREAS, subject to the terms of the attached Contract between A to Z Home Inspection LLC and the City of Sunfish Lake Relating to Building Official Services, the City desires to appoint Mike Andrejka as the Building Official for the City of Sunfish Lake and enter into the attached Contract between A to Z Homes Inspection LLC and the City of Sunfish Lake Relating to Building Official Services.

WHEREAS, Mike Andrejka desires to accept the appointment of Building Official for the City of Sunfish Lake and A to Z Home Inspection LLC desires to enter into the attached Contract between A to Z Home Inspection LLC and the City of Sunfish Lake Relating to Building Official Services.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SUNFISH LAKE:

- 1.) Subject to the terms of the attached Contract between A to Z Home Inspection LLC and the City of Sunfish Lake Relating to Building Official Services, the Council hereby appoints Mike Andrejka as the Building Official for the City of Sunfish Lake in his capacity as Chief Manager and employee of A to Z Home Inspection LLC.
- 2.) The Council hereby approves the attached Contract between A to Z Home Inspection LLC and the City of Sunfish Lake Relating to Building Official Services and the Council authorizes the Mayor and Clerk to execute the Contract between A to Z Home Inspection LLC and the City of Sunfish Lake Relating to Building Official Services on behalf of the City.

Passed this 5th day of November, 2014.

Molly Park, Mayor

ATTEST:

Catherine Iago, City Clerk

CITY OF SUNFISH LAKE
DAKOTA COUNTY, MINNESOTA

CONTRACT BETWEEN A TO Z HOME INSPECTION LLC AND THE CITY OF
SUNFISH LAKE RELATING TO BUILDING OFFICIAL SERVICES

This Independent Contractor Services Contract ("Contract") is made and entered into this 5th day November, 2014 by and between A to Z Home Inspection LLC, a Minnesota limited liability company ("A to Z") and the City of Sunfish Lake, a Minnesota municipal corporation ("City"). This Contract shall also be deemed in effect retroactively to September 2, 2014. Subject to the terms and conditions hereafter stated and based on the representations, warranties, covenants, agreements and recitals of the parties herein contained, the parties do hereby agree as follows:

WHEREAS, the City regulates the construction, reconstruction, repair, remodeling, alteration and demolition of structures as defined by the Minnesota State Building Code (the "Building Code").

WHEREAS, under Chapter 1001 through 1004 of the Sunfish Lake City Code, the Building Official has the responsibility of enforcing and administering the Building Code.

WHEREAS, the City requires that the Building Official administer and enforce the Building Code within the limits of the City.

WHEREAS, A to Z is willing to perform the duties and responsibilities of the Building Official as an independent contractor through its employee Mike Andrejka.

WHEREAS, A to Z, through its employee Mike Andrejka, is certified to administer and enforce the provisions and regulations set forth by the Building Code.

Section 1. Designation as Building Official. Minnesota Statutes § 326B.133 requires that the City designate a Building Official to administer the Building Code. During the term of this Contract, Mike Andrejka, in his capacity as Chief Manager and employee of A to Z, shall be the designated Building Official for the City. A to Z, through Mike Andrejka, agrees to administer and enforce the provisions of the Building Code and to perform other related duties as directed by the Sunfish Lake City Council ("Council"). The parties understand that as the "designated Building Official", A to Z, through Mike Andrejka, is obligated to perform its duties and responsibilities to the best of its abilities under the laws of the Building Code. If a conflict arises between the request of the Council or City staff and the legal duties required by the Building Code, the Building Code shall control the actions of the Building Official.

During the term of this Contract, A to Z agrees to employ Mike Andrejka and provide for Mike Andrejka to perform the duties of Building Official for the City of Sunfish Lake as outlined in Section 2.

Section 2. Duties of Building Official. A to Z, through Mike Andrejka, shall perform all of the duties and responsibilities of a Building Official and A to Z, through Mike Andrejka, shall perform and comply with the obligations and conditions of a Building Official as set forth in Minnesota Statutes § 326B.133 and Minnesota Rule 1300.0110, as amended from time to time. A copy of the current version of Minnesota Statutes § 326B.133 and a copy of the current version of Minnesota Rule 1300.0110 are attached hereto for reference and hereby incorporated by reference.

The duties of A to Z include the following:

- a. Administration and enforcement of the Building Code.
- b. Facilitate the issuance of building, plumbing, and mechanical permits for the City.
- c. Perform plan review of construction documents and plans to ensure compliance with the Building Code.
- d. Perform required inspections and review specialized inspection reports as required by the Building Code or as deemed necessary by the Building Official.
- e. Perform investigations, inspections, and prepare reports and letters sent on behalf of the City and the Building Inspection Department.
- f. Attend monthly Council meetings and submit reports as deemed necessary and pertinent by the Council.
- g. Attend special Council meetings as requested by the Council.

Permits and reviews for the following are excluded from this Contract and are the responsibility of others:

- Minnesota Fire Code
- Fire Suppression Systems
- Minnesota Electrical Code
- Minnesota Elevator Code
- MPCA/SSTS regulations

Section 3. Access to City Information. The City will provide A to Z access to pertinent information, records, systems and data available to the City in order to allow A to Z to perform its duties. The City will provide application forms, forms for certificates of occupancy and other forms to process the applications.

Section 4. A to Z Responsible for Transportation and Communication. A to Z shall provide all tools, transportation, and communication devices necessary to perform its duties under this Contract.

Section 5. Location and Time of Performance. A to Z shall perform its duties at such locations and at such times as he reasonably deems appropriate to diligently and in good faith meet its obligations under this Contract.

Section 6. Access to Building Official Information. A to Z shall provide the City with access to any books, documents, papers, and records which are directly related to its duties. The City may audit, examine and review all such documents. The obligation of A to Z to provide the City access to such books, documents, papers, and records shall extend up to three (3) years after termination of this Contract.

Section 7. Documents Property of City. All plans, diagrams, reports, and documents received by A to Z or created by A to Z in connection with the performance of its duties under this Contract shall become the property of the City.

Section 8. Compliance with General Records Retention Schedule for Minnesota Cities. A to Z shall comply with the General Records Retention Schedule for Minnesota Cities (No. 11-060), as updated from time to time by the Minnesota Records Disposition Panel and available on the Minnesota Clerks and Finance Officers Association website.

Section 9. Compliance with Minnesota Government Data Practices Act. A to Z shall comply with Minnesota Statutes Chapter 13, the Minnesota Government Data Practices Act (“Act”).

A to Z acknowledges and agrees that the City shall be entitled to disclose data related to this Contract as required by law. Information supplied by A to Z to the City is subject to the Act. Such information shall become public data unless it falls into one of the exceptions of the Act. A to Z shall notify the City of any data that it believes should be classified as non-public data under the Act.

Section 10. No Authority to Enter Into Contracts on Behalf of City. A to Z does not have the authority to enter into contracts on the City’s behalf.

Section 11. Status of Independent Contractor. This Contract does not create a partnership relationship between A to Z and the City or between the City and Mike Andrejka.

Nothing contained in this Contract shall be deemed to create an employer-employee relationship between the City and A to Z or the City and Mike Andrejka. At all times, A to Z shall act as an independent contractor and shall exercise independent supervision and control over the means and manner by which it performs the services and duties under this Contract.

A to Z shall be responsible for the performance and completion of the services under this Contract and shall be solely responsible for the setting of work hours and schedules necessary to complete the services set forth herein. The City does not provide training or instruction for A to Z.

The services under this Contract shall be performed at the location selected by A to Z. The City does not provide a location or facilities at which the services under this Contract can be performed.

As an independent contractor, A to Z shall not receive any pension, fringe benefits, vacation, sick/personal leave, disability benefits, health, medical or dental insurance, holiday pay or other fringe benefits. There will be no contributions made by the City to the Public Employee's Retirement Association (PERA) for any employee of A to Z. Mike Andrejka is the Chief Manager and employee of A to Z and is not an employee of the City. Mike Andrejka shall not receive from the City any pension, fringe benefits, vacation, sick/personal leave, disability benefits, health, medical or dental insurance, holiday pay or other fringe benefits. There will be no contributions made by the City to the Public Employee's Retirement Association (PERA) for Mike Andrejka.

The City does not provide office space, equipment, supplies, tools, or materials necessary to perform the services under this Contract.

The City shall provide to A to Z an IRS Form 1099 with respect to consideration paid to A to Z for services under this Contract. A to Z is responsible to pay all state and federal taxes on the amounts it receives from the City.

The City is not obligated to reimburse A to Z for any travel expenses.

The City is not obligated to carry worker's compensation insurance on A to Z.

Section 12. Subcontracts. A to Z shall not enter into subcontracts for any of the services to be provided under this Contract without the prior consent of the Council.

Section 13. Assignment of Duties. If because of sickness or vacation A to Z will not be able to perform its duties under this Contract, then A to Z may for such limited periods, assign its duties to another person certified under Minnesota law to administer and enforce the Building Code, provided the Council first approves such person.

Section 14. Liability; Indemnification. The City acknowledges and agrees that Mike Andrejka, Chief Manager of A to Z, is a Building Official within the meaning of Minnesota Rule 1300.0110, subpart 9. The City agrees to defend and indemnify A to Z and Mike Andrejka subject to the provisions of Minnesota Rule 1300.0110, subpart 9. Without limiting the foregoing obligation of the City, the City agrees, subject to the limitations set forth in Minnesota Statutes § 466.04, to defend and indemnify A to Z and Mike Andrejka for all damages claimed or levied against A to Z or Mike Andrejka provided that A to Z or Mike Andrejka were acting for the City in good faith and without malice in the discharge of the duties required by the Building Code, this Contract, or other pertinent laws or ordinances related thereto.

Section 15. Payment for Building Official Services for Files Previously Opened by David Neameyer. David Neameyer was the previous Building Official. David Neameyer resigned on August 27, 2014 and on September 2, 2014 the City appointed A to Z, acting through Mike Andrejka as the Interim Building Official, retroactive to August 27, 2014. A to Z began to administer some of the permit files that had been opened by David Neameyer before David Neameyer's resignation. With consent of the City, David Neameyer and A to Z arrived at an arrangement such that if a permit file was opened before David Neameyer's resignation which

required inspections during the interim period, the City would pay David Neameyer pursuant to the contract that the City had with David Neameyer; David Neameyer in turn then made arrangements with A to Z for A to Z to make inspections and A to Z and David Neameyer mutually arrived at a compensation agreement whereby David Neameyer paid A to Z for the inspection time and administration time for these files. With respect to these particular files, the City paid David Neameyer and David Neameyer is paying A to Z. The City and A to Z do hereby ratify and reaffirm this arrangement.

Section 16. Payment for Building Official Services During Interim Period for New Files Opened. A to Z, through Mike Andrejka, has acted as Interim Building Official for the time period from August 27, 2014 to November 5, 2014. During that time A to Z has opened new files. With respect to the new permit files opened during the interim time period, the work that A to Z through Mike Andrejka performed during the interim period on these new files will be rolled over into the contract terms under Section 17 hereof and compensation for these new files will be part of the contract compensation formula whereby the Building Official receives 80% of the permit fees collected for building, plumbing and mechanical permits and 100% of the plan review fees collected for building, plumbing, and mechanical permits, if applicable. There will not be separate per hour payments in this particular situation.

Section 17. Payment for Building Official Services. For the services provided by A to Z, the City agrees to make payments as set forth below, except as otherwise provided in Section 15.

All work shall be billed on a quarterly basis and shall be due and payable within 30 days of receipt of such bill. The first billable quarter shall consist of September, October and November, 2014.

As payment for the Building Official services and other services provided under this Contract, A to Z shall receive the following compensation from the City:

- 80% of the permit fees collected for building, plumbing and mechanical permits.
- 100% of the plan review fees collected for building, plumbing, and mechanical permits, if applicable.
- When double permit fees are charged because someone began work prior to obtaining a permit, A to Z shall be paid 80% of the double permit fees.
- A per hour amount payable by the City to A to Z equal to the per hour amount pursuant to City Code Chapter 1004 that the City charges the applicant for additional plan review required by changes, additions or revisions to plans. In such instance, A to Z shall not begin to perform services until the applicant has first paid the City the charges per hour for the time estimated by A to Z to perform such services.
- A per hour amount payable by the City to A to Z equal to the per hour amount pursuant to City Code Chapter 1004 that the City charges the applicant for site inspections

conducted at the request of a landowner prior to issuance of a permit. In such instance, A to Z shall not begin to perform services until the applicant has first paid the City the per hour amount for the time estimated by A to Z to perform such services.

- A per hour amount payable by the City to A to Z equal to the per hour amount pursuant to City Code Chapter 1004 that the City charges the applicant for site inspections conducted in anticipation of a permit where the permit has not later been issued. In such instance, A to Z shall only be paid if the City has also collected from the landowner the per hour amount for the time spent by A to Z to perform such services.

There is no charge to the City for time spent by A to Z with regard to the following:

- Investigation of complaints when the investigation is initiated by A to Z or requested by the Council or City staff.
- Inspections of buildings or properties when requested by the Council or City staff.
- Written reports on the conditions of buildings or properties when requested by the Council or City staff.
- Enforcement of the Building Code by means of letters, warnings, orders, citations, or formal complaints.
- Preparation for court appearances, attendance at court proceedings and court testimony.
- Responding to telephone calls, messages and other correspondence dealing with the requirements or interpretation of the Building Code.
- Monthly reports to the Council.
- Attendance at monthly Council meetings.
- Attendance at special Council meetings if requested by the Council.

Section 18. Assignment. Neither party shall assign this Contract or any interest arising herein without consent of the other party.

Section 19. Term of Contract. The term of this Contract shall run from August 27, 2014 until terminated pursuant to Section 20.

Section 20. Termination. This Contract may be terminated by either party with or without cause upon thirty (30) days advance written notice to the other party. Such termination shall not affect the rights and obligations of the parties accrued prior to the termination date. Sections 8, 16 and 21 shall survive the termination of this Contract.

Section 21. Release of City. A to Z hereby releases and discharges the City from all present and future claims, actions, causes of actions, losses and damages for personal injury to A to Z or its agents or for property damage to the personal property of A to Z or its agents arising out of, resulting from or in any way related to the services, actions and activities of A to Z and its agents acting on behalf of the City or in the performance of duties or obligations under this Contract.

Section 22. Worker's Compensation. As an independent contractor, A to Z acknowledges that the City has no obligation to provide worker's compensation insurance for A to Z or its employees. A to Z currently does not provide any worker's compensation insurance for Mike

Andrejka. In the event A to Z hires any other employee, A to Z shall comply with the requirements of Minnesota state law to provide worker's compensation insurance and A to Z shall provide evidence to the City of worker's compensation insurance. Thereafter, A to Z shall provide evidence of ongoing worker's compensation insurance by providing the City a certificate of insurance on an annual basis in January of each year.

Section 23. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Minnesota.

Section 24. Venue. Any legal dispute between the parties arising out of this Contract or its breach shall be venued in Dakota County, Minnesota.

Section 25. Entire Agreement. This Contract, in conjunction with City Code Sections 1001 through 1004, contains the entire understanding of the parties with respect to the matters contained herein, and supersedes all other written and oral agreements between the parties with respect to such matters.

Section 26. Binding Effect. This Contract is binding upon the parties.

Section 27. Amendments. Any modifications or amendments to this Contract must be in writing and signed by both parties.

Section 28. Severability. If any provision of this Contract shall be held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 29. Prevailing Party; Attorneys Fees. If a lawsuit regarding the terms of this Contract arises, the prevailing party shall be entitled to collect its attorney's fees and related costs.

Section 30. Counterparts. This Contract may be executed in counterparts, any one of which shall be deemed to be an original, but such counterparts when taken together, shall constitute one agreement.

Section 31. No Interest by City Official. A to Z represents and warrants that no member of the Council, nor any officer, official or employee of the City has or shall have any interest, direct or indirect, in this Contract or the proceeds thereof.

Section 32. Financial Arrangements in the Event of Termination. In the event this Contract is terminated and at the time of termination A to Z has already been paid by the City for permits opened before termination, but there is a need for inspections and permit administration on such files after termination, then in that particular situation, A to Z agrees to make financial arrangements with the successor building official selected by the City so that the successor building official is paid by A to Z for those inspections and those administrative tasks that still need to be performed.

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IN WITNESS WHEREOF, the parties have executed this Contract on the day and year first set forth above.

CITY OF SUNFISH LAKE

By: _____
Molly Park, Mayor

ATTEST:

Catherine Iago, City Clerk

A TO Z HOME INSPECTION LLC

By: _____
Mike Andrejka
Its: Chief Manager

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326B.133 BUILDING OFFICIALS.

Subdivision 1. **Designation.** Each municipality shall designate a building official to administer the code. A municipality may designate no more than one building official responsible for code administration defined by each certification category created by statute or rule. Two or more municipalities may combine in the designation of a building official for the purpose of administering the provisions of the code within their communities. In those municipalities for which no building officials have been designated, the state building official may use whichever state employees are necessary to perform the duties of the building official until the municipality makes a temporary or permanent designation. All costs incurred by virtue of these services rendered by state employees must be borne by the involved municipality and receipts arising from these services must be paid to the commissioner.

Subd. 2. **Qualifications.** A building official, to be eligible for designation, must be certified and have the experience in design, construction, and supervision which the commissioner deems necessary and must be generally informed on the quality and strength of building materials, accepted building construction requirements, and the nature of equipment and needs conducive to the safety, comfort, and convenience of building occupants. No person may be designated as a building official for a municipality unless the commissioner determines that the official is qualified as provided in subdivision 3.

Subd. 2a. **Application; renewal; fees; expiration.** (a) An applicant for certification shall submit a completed application on a form approved by the commissioner to the department. The commissioner shall review applications for compliance with the requirements established by rule.

(b) Application for initial certification or renewal certification as a building official, building official-limited, or accessibility specialist shall be according to this section and sections 326B.092 to 326B.095.

(c) Fees shall be paid to the department according to section 326B.092.

(d) Unless revoked or suspended under this chapter, all certifications issued or renewed under this section expire two years from the date of original issuance and every two years thereafter.

Subd. 3. **Certification criteria.** The commissioner shall by rule establish certification criteria as proof of qualification pursuant to subdivision 2. The commissioner may:

(1) develop and administer written and practical examinations to determine if a person is qualified pursuant to subdivision 2 to be a building official;

(2) accept documentation of successful completion of testing programs developed and administered by nationally recognized testing agencies, as proof of qualification pursuant to subdivision 2; or

(3) determine qualifications by satisfactory completion of clause (2) and a mandatory training program developed or approved by the commissioner.

Upon a determination of qualification under clause (1), (2), or (3), the commissioner shall issue a certificate to the building official stating that the official is certified. The commissioner or a designee may establish categories of certification that will recognize the varying complexities of code enforcement in the municipalities within the state. The commissioner shall provide educational programs designed to train and assist building officials in carrying out their responsibilities.

Subd. 3a. **Certification categories.** (a) If a municipality has adopted or adopts the State Building Code, the responsibilities for code administration and enforcement are under the authority of its designated building official or the certified building official-limited.

(b) Certified building official. This certification is identified as "certified building official" on the certificate card. This certification is granted to an individual who has met the certified building official requirements established by rule and passed the written examination prepared by the state. A person with this certification may serve as the designated building official for any municipality. For the purposes of calculating fees under section 326B.092, certification as a building official is a master license.

(c) Certified building official-limited. This certification is identified as "certified building official-limited" on the certification card. This certification is granted to an individual who has met the certified building official-limited requirements established by rule and passed the written examination prepared by the state. An individual with this certification may perform code administration for one- and two-family dwellings, their accessory structures, and "exempt classes of buildings" as provided in Minnesota Rules, part 1800.5000, of the Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience, and Interior Design, and "facilities for persons with physical disabilities" that are governed by the State Building Code. Subject to the limitations of the building official-limited certification, an individual with this certification may serve as the designated building official for any municipality. Code administration for all other buildings must be performed by a certified building official as defined in paragraph (b). A certified building official-limited may conduct inspections for other structures regulated by the State Building Code under the direction of a designated certified building official or the state building official.

Subject to all other certification requirements, as of January 1, 2012, valid Class I certifications shall be included in the certified building official-limited category upon the next immediate renewal. For the purposes of calculating fees under section 326B.092, certification as a building official-limited is a journeyman license.

(d) Accessibility specialist. This certification is identified as accessibility specialist on the certification card. This certification is granted to an individual who has met the "accessibility specialist" requirements established by rule and passed the written examination prepared by the state. An individual with this classification is limited to the administration of those provisions of the State Building Code that provide access for persons with disabilities. For the purposes of calculating fees under section 326B.092, certification as an accessibility specialist is a journeyman license.

Subd. 4. **Duties.** Building officials shall, in the municipality for which they are designated, be responsible for all aspects of code administration for which they are certified, including the issuance of all building permits and the inspection of all manufactured home installations. The commissioner may direct a municipality with a building official to perform services for another municipality, and in that event the municipality being served shall pay the municipality rendering the services the reasonable costs of the services. The costs may be subject to approval by the commissioner.

Subd. 5. **Grounds.** The commissioner may use any enforcement provision in section 326B.082 against an applicant or individual holding a certificate, if the applicant or individual:

- (1) violates a provision of sections 326B.101 to 326B.194 or a rule adopted under those sections; or
- (2) engages in fraud, deceit, or misrepresentation while performing the duties of a certified building official.

Nothing in this subdivision limits or otherwise affects the authority of a municipality to dismiss or suspend a building official at its discretion, except as otherwise provided for by law.

Subd. 6. **Action against unlicensed persons.** The commissioner may take any administrative action provided under section 326B.082, against an individual required to be certified under subdivision 3, based upon conduct that would provide grounds for action against a certificate holder under this section.

Subd. 7. **Vacancies.** In the event that a designated building official position is vacant within a municipality, that municipality shall designate a certified building official to fill the vacancy as soon as possible. The commissioner must be notified of any vacancy or designation in writing within 15 days. If the municipality fails to designate a certified building official within 15 days of the occurrence of the vacancy, the state building official may provide state employees to serve that function as provided in subdivision 1 until the municipality makes a temporary or permanent designation. Municipalities must not issue permits without a designated certified building official.

Subd. 8. **Continuing education requirements; extension of time.** (a) This subdivision establishes the number of continuing education units required within each two-year certification period.

A certified building official shall accumulate 16 continuing education units in any education program that is approved under Minnesota Rules, part 1301.1000.

A certified building official-limited shall, in each year of the initial two-year certification period, accumulate eight continuing education units in any education program that is approved under Minnesota Rules, part 1301.1000. Continuing education units shall be reported annually during the initial two-year certification period by the method established in rule. A certified building official-limited shall accumulate 16 continuing education units for each two-year certification period thereafter in any education program that is approved under Minnesota Rules, part 1301.1000.

An accessibility specialist must accumulate four continuing education units in any of the programs described in Minnesota Rules, part 1301.1000, subpart 1 or 2. The four units must be for courses relating to building accessibility, plan review, field inspection, or building code administration.

Continuing education programs may be approved as established in rule.

(b) Subject to sections 326B.101 to 326B.194, the commissioner may by rule establish or approve continuing education programs for certified building officials dealing with matters of building code administration, inspection, and enforcement.

Each person certified as a building official for the state must satisfactorily complete applicable educational programs established or approved by the commissioner to renew certification.

(c) The state building official may grant an extension of time to comply with continuing education requirements if the certificate holder requesting the extension of time shows cause for the extension. The request for the extension must be in writing. For purposes of this section, the certificate holder's current certification effective dates shall remain the same. The extension does not relieve the certificate holder from complying with the continuing education requirements for the next two-year period.

Subd. 9. [Repealed, 2010 c 347 art 3 s 75]

Subd. 10. [Repealed, 2010 c 347 art 3 s 75]

Subd. 11. **Failure to renew.** An individual who has failed to make a timely application for renewal of a certificate is not certified and must not serve as the designated building official for any municipality, or a certified building official, a certified building official-limited, or an accessibility specialist until a renewed certificate has been issued by the commissioner.

History: 1984 c 544 s 70; 1984 c 578 s 1; 1984 c 655 art 2 s 13 subd 1; 1Sp1985 c 17 s 6; 1986 c 444; 1988 c 613 s 16; 1995 c 254 art 2 s 8-11; 1998 c 359 s 11,12; 1Sp2001 c 10 art 2 s 30; 2002 c 220 art 10 s 30,31; 2007 c 135 art 2 s 3; 2007 c 140 art 4 s 12,61; art 13 s 4; 2008 c 337 s 63; 2010 c 280 s 15; 2010 c 347 art 3 s 12-17,75,76; 2010 c 385 s 6

1300.0110 DUTIES AND POWERS OF BUILDING OFFICIAL.

Subpart 1. **General.** The building official shall enforce the code. The building official may render interpretations of the code and adopt policies and procedures in order to clarify its application. The interpretations, policies, and procedures shall be in conformance with the intent and purpose of the code. The policies and procedures shall not have the effect of waiving requirements specifically provided for in the code.

Subp. 2. **Deputies.** According to the prescribed procedures of the municipality and with the concurrence of the appointing authority, the building official may designate a deputy building official and related technical officers, inspectors, plan examiners, and other employees. The employees have the powers delegated by the building official.

Subp. 3. **Applications and permits.** The building official shall receive applications, review construction documents, and issue permits for the erection, alteration, demolition, moving, and repair of buildings and structures, including all other equipment and systems regulated by the code. The building official shall inspect the premises for which the permits have been issued and enforce compliance with the code.

Subp. 4. **Notices and orders.** The building official shall issue all necessary notices and orders to ensure compliance with the code. Notices and orders shall be in writing unless waived by the permit applicant, contractor, owner, or owner's agent. Notices and orders shall be based on the edition of the code under which the permit has been issued.

Subp. 5. **Inspections.** The building official shall make all of the required inspections or accept reports of inspection by approved agencies or individuals. Results of inspections shall be documented on the job site inspection card and in the official records of the municipality, including type of inspection, date of inspection, identification of the responsible individual making the inspection, and comments regarding approval or disapproval of the inspection. The building official may engage expert opinion necessary to report upon unusual technical issues that arise.

Subp. 6. **Identification.** The building official and deputies shall carry proper identification when inspecting structures or premises in the performance of duties under the code.

Subp. 7. **Right of entry.** If it is necessary to make an inspection to enforce the code or if the building official has reasonable cause to believe that there exists in a structure or upon a premises a condition contrary to or in violation of the code that makes the structure or premises unsafe, dangerous, or hazardous, the building official or designee may enter the structure or premises at reasonable times to inspect or to perform the duties imposed by the code, provided that if the structure or premises is occupied, credentials must be presented to the occupant and entry requested. If the structure or premises is unoccupied, the building official shall first make a reasonable effort to locate the owner or other person having charge

or control of the structure or premises and request entry. If entry is refused, the building official shall have recourse to the remedies provided by law to secure entry.

Subp. 8. Department records. The building official shall be responsible for official records of applications received, plans, specifications, surveys, plot plans, plan reviews, permits and certificates issued, reports of inspections, and notices and orders issued. The records shall be retained for the period required for the retention of public records under Minnesota Statutes, section 138.17. Department records shall be maintained by the municipality and readily available for review according to Minnesota Statutes, section 13.37.

Subp. 9. Liability. The building official, member of the Board of Appeals, or employee charged with the enforcement of the code, while acting for the jurisdiction in good faith and without malice in the discharge of the duties required by the code or other pertinent laws or ordinances, is not rendered personally liable and is relieved from personal liability for any damage accruing to persons or property as a result of any act or by reason of an act or omission in the discharge of official duties. Any suit instituted against an officer or employee because of an act performed by that officer or employee in the lawful discharge of duties and under the code shall be defended by the legal representative of the jurisdiction until the final termination of the proceedings. The building official or any subordinate is not liable for cost in any action, suit, or proceeding that is instituted in pursuance of the code.

Subp. 10. Approved materials and equipment. Materials, equipment, and devices approved by the building official shall be constructed and installed in the approved manner.

Subp. 11. Used material and equipment. The use of used materials that meet the requirements of the code for new materials is permitted. Used equipment and devices shall not be reused unless approved by the building official.

Subp. 12. Modifications. If there are practical difficulties involved in carrying out the provisions of the code, the building official may grant modifications for individual cases, upon application by the owner or owner's representative, provided the building official finds that special individual reason makes the strict letter of the code impractical, the modification is in compliance with the intent and purpose of the code, and the modification does not lessen health, life, and fire safety or structural requirements. The details of action granting modifications shall be recorded and entered in the files of the Department of Building Safety.

Subp. 13. Alternative materials, design, and methods of construction and equipment. The code is not intended to prevent the installation of any material or to prohibit any design or method of construction not specifically prescribed by the code, provided that any alternative has been approved. An alternative material, design, or method of construction shall be approved where the building official finds that the proposed design is satisfactory and complies with the intent of the code, and that the material, method, or

work offered is, for the purpose intended, at least the equivalent of that prescribed in the code in quality, strength, effectiveness, fire resistance, durability, and safety. The details of any action granting approval of an alternate shall be recorded and entered in the files of the Department of Building Safety.

Subp. 14. **Performance-based fire and life safety design.** The code official may approve performance-based fire and life safety designs if the code official finds that the proposed design has been conducted by an approved method. Approved performance-based designs are evidence of compliance with the intent of the code. Approvals under this subpart are subject to the approval of the building code official whenever the design involves matters regulated by the building code.

A. Design goals, objectives, and performance criteria shall be approved by the code official before submission of a performance-based design report, calculations, or analysis results. As a minimum, an approved performance-based design shall address the following objectives:

- (1) life safety of occupants;
- (2) firefighter safety;
- (3) property protection;
- (4) continuity of operations; and
- (5) safeguarding of the environment.

B. To determine the acceptability of a performance-based design, the code official may require the owner or agent to provide, without charge to the jurisdiction, a technical opinion and report. The code official may require the technical opinion and report to be prepared by, and bear the stamp of, a licensed design professional.

C. Performance-based designs shall be prepared by, and bear the stamp of, a licensed design professional competent in the area of work. The design professional shall provide written confirmation to the code official before a certificate of occupancy is issued that the performance-based design has been properly implemented, the operation or use of the building is within the limitations of the design, and adequate controls are in place to maintain compliance with the conditions of the design throughout the life of the building.

Subp. 15. **Tests.** If there is insufficient evidence of compliance with the code, or evidence that a material or method does not conform to the requirements of the code, or in order to substantiate claims for alternative materials or methods, the building official shall have the authority to require tests as evidence of compliance to be made at no expense to the municipality. Test methods shall be as specified in the code or by other recognized test standards. In the absence of recognized and accepted test methods, the building official shall

approve the testing procedures. Tests shall be performed by an approved agency. Reports of the tests shall be retained by the building official.

Statutory Authority: *MS s 16B.59; 16B.61; 16B.64; 326B.101; 326B.106; 326B.13*

History: *27 SR 1471; 32 SR 5; L 2007 c 140 art 4 s 61; art 13 s 4*

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