

[A] APPENDIX C

BOARD OF APPEALS

The provisions contained in this appendix are not mandatory unless specifically referenced in the adopting ordinance.

User Notes:

About this appendix: Appendix C provides criteria for Board of Appeals members. Also provided are procedures by which the Board of Appeals should conduct its business.

Code development reminder: Code change proposals to this appendix will be considered by the Administrative Code Development Committee during the 2022 (Group B) Code Development Cycle. See explanation on page iv.

[A] SECTION C101 GENERAL

[A] **C101.1 Scope.** A board of appeals shall be established within the jurisdiction for the purpose of hearing applications for modification of the requirements of this code pursuant to the provisions of Section 113 (Means of Appeals). The board shall be established and operated in accordance with this section, and shall be authorized to hear evidence from appellants and the code official pertaining to the application and intent of this code for the purpose of issuing orders pursuant to these provisions.

[A] **C101.2 Application for appeal.** Any person shall have the right to appeal a decision of the code official to the board. An application for appeal shall be based on a claim that the intent of this code or the rules legally adopted hereunder have been incorrectly interpreted, the provisions of this code do not fully apply or an equally good or better form of construction is proposed. The application shall be filed on a form obtained from the code official within 20 days after the notice was served.

[A] **C101.2.1 Limitation of authority.** The board shall not have authority to waive requirements of this code or interpret the administration of this code.

[A] **C101.2.2 Stays of enforcement.** Appeals of notice and orders, other than Imminent Danger notices, shall stay the enforcement of the notice and order until the appeal is heard by the board.

[A] **C101.3 Membership of board.** The board shall consist of five voting members appointed by the chief appointing authority of the jurisdiction. Each member shall serve for [NUMBER OF YEARS] years or until a successor has been appointed. The board member's terms shall be staggered at intervals, so as to provide continuity. The code official shall be an ex officio member of said board but shall not vote on any matter before the board.

[A] **C101.3.1 Qualifications.** The board shall consist of five individuals who are qualified by experience and training to pass on matters pertaining to building construction and are not employees of the jurisdiction.

[A] **C101.3.2 Alternate members.** The chief appointing authority is authorized to appoint two alternate members who shall be called by the board chairperson 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 the same term or until a successor has been appointed.

[A] **C101.3.3 Vacancies.** Vacancies shall be filled for an unexpired term in the same manner in which original appointments are required to be made.

[A] **C101.3.4 Chairperson.** The board shall annually select one of its members to serve as chairperson.

[A] **C101.3.5 Secretary.** The chief appointing authority shall designate a qualified clerk to serve as secretary to the board. The secretary shall file a detailed record of all proceedings, which shall set forth the reasons for the board's decision, the vote of each member, the absence of a member and any failure of a member to vote.

[A] **C101.3.6 Conflict of interest.** A member with any personal, professional or financial interest in a matter before the board shall declare such interest and refrain from participating in discussions, deliberations and voting on such matters.

[A] **C101.3.7 Compensation of members.** Compensation of members shall be determined by law.

[A] **C101.3.8 Removal from the board.** A member shall be removed from the board prior to the end of their term only for cause. Any member with continued absence from regular meeting of the board may be removed at the discretion of the chief appointing authority.

[A] **C101.4 Rules and procedures.** The board shall establish policies and procedures necessary to carry out its duties consistent with the provisions of this code and applicable state law. The procedures shall not require compliance with strict rules of evidence, but shall mandate that only relevant information be presented.

[A] **C101.5 Notice of meeting.** The board shall meet upon notice from the chairperson within 10 days of the filing of an appeal or at stated periodic intervals.

[A] **C101.5.1 Open hearing.** All hearings before the board shall be open to the public. The appellant, the appellant's representative, the code official and any person whose interests are affected shall be given an opportunity to be heard.

[A] **C101.5.2 Quorum.** Three members of the board shall constitute a quorum.

[A] **C101.5.3 Postponed hearing.** When five 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.

[A] **C101.6 Legal counsel.** The jurisdiction shall furnish legal counsel to the board to provide members with general legal advice concerning matters before them for consideration. Members shall be represented by legal counsel at the jurisdiction's expense in all matters arising from service within the scope of their duties.

[A] **C101.7 Board decision.** The board shall only modify or reverse the decision of the code official by a concurring vote of three or more members.

[A] **C101.7.1 Resolution.** The decision of the board shall be by resolution. Every decision shall be promptly filed in writing in the office of the code official within three days and shall be open to the public for inspection. A certified copy shall be furnished to the appellant or the appellant's representative and to the code official.

[A] **C101.7.2 Administration.** The code official shall take immediate action in accordance with the decision of the board.

[A] **C101.8 Court review.** Any person, whether or not a previous party of the appeal, shall have the right to apply to the appropriate court for a writ of certiorari to correct errors of law. Application for review shall be made in the manner and time required by law following the filing of the decision in the office of the chief administrative officer.