

## APPENDIX A

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

# BOARD OF APPEALS

## SECTION A101 GENERAL

**A101.1 Scope.** A board of appeals shall be established within the jurisdiction for the purpose of hearing applications for modification of the requirements of the *Fire Code of New York State* pursuant to the provisions of Section 108. The board shall be established and operated in accordance with this section, and shall be authorized to hear evidence from appellants and the fire code official pertaining to the application and intent of this code for the purpose of issuing orders pursuant to these provisions.

**A101.2 Membership.** The membership of the board shall consist of five voting members having the qualifications established by this section. Members shall be nominated by the fire code official or the chief administrative officer of the jurisdiction, subject to confirmation by a majority vote of the governing body. Members shall serve without remuneration or compensation, and shall be removed from office prior to the end of their appointed terms only for cause.

**A101.2.1 Design professional.** One member shall be a practicing design professional registered in the practice of engineering or architecture in the state in which the board is established.

**A101.2.2 Fire protection engineering professional.** One member shall be a qualified engineer, technologist, technician or safety professional trained in fire protection engineering, fire science or fire technology. Qualified representatives in this category shall include fire protection contractors and certified technicians engaged in fire protection system design.

**A101.2.3 Industrial safety professional.** One member shall be a registered industrial or chemical engineer, certified hygienist, certified safety professional, certified hazardous materials manager or comparably qualified specialist experienced in chemical process safety or industrial safety.

**A101.2.4 General contractor.** One member shall be a contractor regularly engaged in the construction, alteration, maintenance, repair or remodeling of buildings or building services and systems regulated by the code.

**A101.2.5 General industry or business representative.** One member shall be a representative of business or industry not represented by a member from one of the other categories of board members described above.

**A101.3 Terms of office.** Members shall be appointed for terms of four years. No member shall be reappointed to serve more than two consecutive full terms.

**A101.3.1 Initial appointments.** Of the members first appointed, two shall be appointed for a term of 1 year, two for a term of 2 years, one for a term of 3 years.

**A101.3.2 Vacancies.** Vacancies shall be filled for an unexpired term in the manner in which original appointments are required to be made. Members appointed to fill a vacancy in an unexpired term shall be eligible for reappointment to two full terms.

**A101.3.3 Removal from office.** Members shall be removed from office prior to the end of their terms only for cause. Continued absence of any member from regular meetings of the board shall, at the discretion of the applicable governing body, render any such member liable to immediate removal from office.

**A101.4 Quorum.** Three members of the board shall constitute a quorum. In varying the application of any provisions of this code or in modifying an order of the fire code official, affirmative votes of the majority present, but not less than three, shall be required.

**A101.5 Secretary of board.** The fire code official shall act as secretary of the board and shall keep a detailed record of all its proceedings, which shall set forth the reasons for its decisions, the vote of each member, the absence of a member and any failure of a member to vote.

**A101.6 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.

**A101.7 Meetings.** The board shall meet at regular intervals, to be determined by the chairman. In any event, the board shall meet within 10 days after notice of appeal has been received.

**A101.8 Conflict of interest.** Members with a material 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.

**A101.9 Decisions.** Every decision shall be promptly filed in writing in the office of the fire code official and shall be open to public inspection. A certified copy shall be sent by mail or otherwise to the appellant, and a copy shall be kept publicly posted in the office of the fire code official for 2 weeks after filing.

**A101.10 Procedures.** The board shall be operated in accordance with the Administrative Procedures Act of the state in which it is established or shall establish rules and regulations for its own procedure not inconsistent with the provisions of this code and applicable state law.

**NEW YORK STATE CODE**

**2nd DRAFT**

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