Part VII—Appendices

APPENDIX A
BOARD OF APPEALS

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

User note:

About this appendix: *Appendix A contains optional criteria that, when adopted, provide jurisdictions with detailed appeals, board member qualifications and administrative procedures to supplement the basic requirements found in Section 111 of this code.*

SECTION A101
GENERAL

[S] A101.1 Scope. A board of appeals shall be established as needed within the jurisdiction for ((~~the purpose of hearing applications for modification of the requirements of this code pursuant to the provisions of Section 111~~)) appeals of Fire Department decisions or actions pertaining to the application and interpretation of the Fire Code. 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.~~))

The board of appeals's recommendations are advisory only, and are not binding on the Seattle Fire Department. If the Fire Chief declines the board of appeals's recommendations, the Fire Chief will state the reasons why in writing. A copy of this statement shall be provided to the applicant, the members of the Fire Code Advisory Board, the Mayor's Office and the City Councilmember who chairs the City Council's Public Safety Committee.

The board of appeals is only established for specific issues and is dissolved once the appeal process is complete for each such issue.

[S] ((~~A101.2 Application for appeal.~~ ~~Any person shall have the right to appeal a decision of the *fire 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 *fire code official* within 20 days after the notice was served.~~

~~**A101.2.1 Limitation of authority.** The board shall not have authority to waive requirements of this code or interpret the administration of this code.~~

~~**A101.2.2 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.~~))

[S] A101.2 Membership. The membership of the board shall consist of five Fire Code Advisory Board members, three of whom have the qualifications established by this section. Members shall be selected by the Chair of the Fire Code Advisory Board. The Fire Code Advisory Board Chair, at his/her discretion, may appoint or substitute additional Board members to hear a given appeal if he/she believes particular expertise is needed for particular appeals. The board of appeals shall select a chair.

[S] 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 (architect, chemical engineer or mechanical engineer position on the Fire Code Advisory Board).

[S] A101.2.2 General public. One member shall be from the general public position on the Fire Code Advisory Board.

[S] A101.2.3 General industry or business representative. One member shall be a representative of business or industry (building owners and manager association, fire insurance industry, Port of Seattle, services industry, marine industry, manufacturing/warehousing industry, fire protection industry, labor representative, major institutions, or research/lab industry position on the Fire Code Advisory Board).

[S] ((~~A101.3 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 *fire code official* shall be an ex officio member of said board but shall not vote on any matter before the board.~~

~~**A101.3.1 Qualifications.** The board shall consist of members who are qualified by experience and training to pass on matters pertaining to hazards of fire, explosions, hazardous conditions or *fire protection systems*, and are not employees of the jurisdiction.~~

~~**A101.3.2 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.~~

~~**A101.3.3 Vacancies.** Vacancies shall be filled for an unexpired term in the same manner in which original appointments are required to be made.~~

~~**A101.3.4 Chairperson.** The board shall annually select one of its members to serve as chairperson.~~

~~**A101.3.5 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.~~))

[S] ((~~A101.3.6~~)) A101.3 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.

[S] ((~~A101.3.7 Compensation of members.~~ ~~Compensation of members shall be determined by law.~~

~~**A101.3.8 Removal from the board.** A member shall be removed from the board prior to the end of their terms only for cause. Any member with continued absence from regular meetings of the board may be removed at the discretion of the chief appointing authority.~~))

[S] ((~~A101.4 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.~~))

[S] A101.4 Procedures. The board shall be operated in accordance with the procedures and timelines detailed in Sections A101.4.1 through A101.4.3.6.

[S] A101.4.1 Preliminary steps to request review by the Board of Appeals. Before requesting a review by the board of appeals, the applicant shall first explore resolution of the compliance problem by proposing modified Code requirements (Section 104.8) or alternative materials and methods (Section 104.9). Prior to requesting review, the applicant shall also discuss the particular compliance situation in depth with the following representatives of the Seattle Fire Department:

1. The appropriate inspector from the Fire Marshal's Office (FMO), the Fire Prevention Division of the Seattle Fire Department.
2. The FMO inspector's supervisor, if the matter cannot be resolved with the inspector.
3. The Fire Marshal, if the matter cannot be resolved with the supervisor.
4. If necessary, the Fire Chief, where agreement cannot be reached with the Fire Marshal.

After discussing the issue as detailed above, the applicant may then submit a written request for review by the board of appeals, addressed to the Fire Chief and sent to the Fire Marshal's attention, concisely stating the issues involved, the factual background, and the relevant section(s) of this code. The Fire Code Advisory Chair will determine if the applicant's request is within the scope of this code in consultation with the applicant and the Fire Marshal.

[S] A101.4.2 The appeal process. After the preliminary steps shown above have been pursued, and the applicant has submitted a written request for review by the board of appeals, the next steps in the appeals process, to be completed within the timelines detailed in Section A101.4.3, are as follows:

1. The Seattle Fire Department Technical Code Coordinator will notify the applicant when and where board of appeals meeting will occur.
2. Written statements and exhibits will be submitted to the Technical Code Coordinator from both the applicant and the Fire Department prior to the board of appeals meeting. These statements should include any relevant exhibits such as plans, as well as a list of any expert witnesses. The applicant and Fire Department must submit one copy of their respective statements and attachments for each board of appeals member, with an additional copy for the other party. The Technical Code Coordinator will deliver the copies to the respective parties.
3. The board of appeals will select its own chairperson. The applicant will make its presentation first, followed by the Fire Department. The applicant and the Fire Department should each be limited to 30 minutes for oral presentation, including questions from the board of appeals, unless the board of appeals Chair determines at the beginning of the meeting that more time is warranted. In any event, each party will be provided equal time to make its presentation to the board of appeals. Each party's oral presentation should address the factual background, the issues and the Seattle Fire Code sections involved. Each party may include design professionals or other persons in its presentation to the board of appeals.

4. The board of appeals may visit the site(s) involved in the compliance dispute, at the request of either the Fire Department or the applicant, or on the board of appeals's own initiative. The applicant shall make the site(s) available to the board of appeals for site visit(s). The site visit(s) will be scheduled through the Technical Code Development Director. No such site visit(s) will be made without a representative of both the Fire Department and the applicant present.
5. The board of appeals shall make its written recommendations concerning the particular compliance situation to the Fire Chief. A copy of the board of appeals's recommendations will also be provided to the applicant, the Fire Code Advisory Board (FCAB) Chair, and the other members of FCAB. A statement in the following form, signed by the appropriate officer, shall accompany each report:

   This report has been submitted to ballot of the board of appeals which consists of five members, of whom ____ have voted affirmatively, ____ negatively, and ____ have not voted.
6. The board of appeals's recommendations are advisory only, and are not binding on the Seattle Fire Department. If the Fire Chief declines the board of appeals's recommendations, the Fire Chief will state the reasons why in writing. A copy of this statement shall be provided to the applicant, the members of the FCAB, the Mayor's Office and the City Councilmember who chairs the City Council's Public Safety Committee. In every case, the Fire Marshal shall be available to meet with the applicant after the conclusion of the board of appeals review.

[S] A101.4.3 Timelines for the appeal processes. Timelines for the appeals processes shall be in accordance with Sections A101.4.3.1 through A101.4.3.6.

[S] A101.4.3.1 Written request for review. The applicant shall submit a written request for a board of appeals review to the Fire Chief within 10 *business days* after the Chief has notified the applicant of the Chief's decision on the applicant's particular compliance dispute.

[S] A101.4.3.2 Notifying FCAB of a request for review. The Fire Marshal, acting on behalf of the Fire Chief, will make a reasonable effort to notify the Fire Code Advisory Board Chair within three *business days* (Monday through Friday, holidays excepted) of receiving an applicant's written request for a review by the board of appeals. The Fire Marshal shall provide a copy of the applicant's written request to the FCAB Chair at this time.

A101.4.3.3 Selecting members of the board of appeals. The members of the board of appeals will be selected within five *business days* of the time that the FCAB Chair receives the applicant's written request for review from the Fire Marshal.

A101.4.3.4 Scheduling the meeting. The board of appeals will meet to review the applicant's compliance dispute within 15 *business days* from its selection by the FCAB Chair. The Technical Code Development Director will contact the FCAB Chair, the members of the board of appeals, the Seattle Fire Department and the applicant to schedule a place and time for the board of appeals's meeting(s).

A101.4.3.5 Written statements and exhibits. The applicant and the Seattle Fire Department will each submit a concise written statement of the issue(s), facts and relevant section(s) of this code involved to the Technical Code Development Director at least seven *business days* before the date of the first board of appeals meeting to consider the compliance dispute. The Technical Code Development Director will have these copies delivered at least three *business days* before the first board of appeals meeting.

A101.4.3.6 The board of appeals's recommendations. Within five *business days* of its final meeting or site visit regarding the compliance dispute, the board of appeals shall make its written recommendations concerning the particular compliance situation to the Fire Chief. A copy of the board of appeals's recommendations will also be provided to the applicant, the FCAB Chair, and the other members of FCAB. The board of appeals's review and advisory recommendations should be completed within 60 calendar days from the time that the Fire Chief notifies the applicant of the Chief's pre-appeal decision, although more time may be taken if both the applicant and the Fire Marshal agree to an extension of time.

[S] ((~~A101.5 Notice of meetings.~~ ~~The board shall meet upon notice from the chairperson within 10 days of the filing of an appeal or at stated periodic intervals.~~

~~A101.5.1 Open hearing.~~ ~~All hearings before the board shall be open to the public. The appellant, the appellant's representative, the *fire code official* and any person whose interests are affected shall be given an opportunity to be heard.~~

~~A101.5.2 Quorum.~~ ~~Three members of the board shall constitute a quorum.~~

~~A101.5.3 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.~~))

[S] ((~~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.~~))

[S] ((~~**A101.7 Board decision.** The board shall only modify or reverse the decision of the *fire code official* by a concurring vote of three or more members.~~

~~**A101.7.1 Resolution.** The decision of the board shall be by resolution. Every decision shall be promptly filed in writing in the office of the *fire 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 *fire code official*.~~

~~**A101.7.2 Administration.** The *fire code official* shall take immediate action in accordance with the decision of the board.~~))

[S] ((~~**A101.8 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.~~))