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4101:7-4-01 Local boards of building appeals certification.

Before hearing and deciding the adjudication hearings referred to in section 109 of rule 4101:1-1-01 of the Administrative Code, local board of building appeals shall be certified by the board of building standards in accordance with this rule.

The list of certified local boards of building appeals shall be made available upon request and shall be posted on the board's website at <http://www.com.ohio.gov/dico/BBS.aspx> <http://www.com.ohio.gov/dico/bbs/>.

- (A) Application for certification, local board of building appeals. Certification, direct or by contractual agreement, shall be upon application to and on a form prescribed by the board of building standards. Upon receipt of an application, the board of building standard's certification committee shall review the application and make a recommendation to the board of building standards. The committee may ask for additional information to be submitted by the applicant prior to making a recommendation to the board. If the committee requests additional information from the applicant, failure to submit the requested information within ninety days from the date of the request may be cause for disapproval of the application by the board. After receiving a recommendation from the committee, a certification hearing on the application shall be conducted by the board of building standards. An authorized representative of the municipality or county seeking certification may be required to attend to give testimony to respond to any questions from the board. The board shall give all interested persons appearing at such certification hearing an opportunity to be heard. All persons desiring to be heard at the certification hearing shall first be duly sworn or affirmed and a record of the proceeding shall be made by the board.

The application shall be submitted, at least two weeks prior to a certification hearing, as an original and six copies with the following information:

- (1) A copy of the charter provision, ordinance or resolution establishing the local board of building appeals and providing for the appointments in accordance with paragraph (C) of this rule;

Note: Certified building departments applying for contractual agreement with a certified board of another political subdivision shall submit a copy of the ordinance or resolution from each party authorizing the contract along with a copy of the contract.

- (2) The name and resume of each member, including the date of appointment, term of office, professional qualifications and experience necessary for membership.

- (B) Local board of building appeals certification, public hearing. Upon receipt of a complete application, a public hearing on the application shall be conducted by the board of building standards. An authorized representative of the municipality, township, or county seeking certification may be present at the public hearing to give testimony or respond to any questions from the board. The board shall give all interested persons appearing at such public hearing an opportunity to be heard and explain their positions. A record of the proceeding shall be made by the board.

- (1) Local board of building appeals certification, approval or denial. If the application is denied in whole or in part by the board of building standards, the appropriate official in municipalities, board of township trustees in townships, or the board of county commissioners in counties requesting certification shall be notified in writing of such denial and the reason therefore and to their rights of appeal pursuant to sections 3781.10, 3781.101, and Chapter 119. of the Revised Code. The board of building standards upon review of the application shall certify a local board of building appeals if:

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- (a) The applicant political subdivision has a building department certified pursuant to division (E) of section 3781.10 of the Revised Code and that certification is not by contract with another political subdivision;
- (b) The board is established pursuant to municipal charter, ordinance or resolution; and
- (c) The board membership meets the requirements of paragraph (C) of this rule.

(2) The board of building standards upon review of the application shall certify a local board of building appeals per contract with another certified board if:

- (a) Both political subdivisions have authorized the contractual arrangement by ordinance or resolution and the contract properly executed reflects that arrangement; and
- (b) The political subdivision applying for the contract has a building department certified pursuant to section 3781.10 of the Revised Code.

Exception: Building departments certified by contract with the county building department in accordance with section 3781.10 of the Revised Code shall have the same board of appeals as that county.

(C) Composition and terms, local boards of building appeals. The certified municipal and county boards of building appeals shall consist of five members who are qualified as follows:

- (1) One attorney, admitted to the Ohio bar;
- (2) One architect, registered in Ohio;
- (3) One structural engineer, registered in Ohio;
- (4) One mechanical engineer, registered in Ohio;

Note: each of these four members shall have recognized ability, broad training and experience in problems and practice incidental to the construction and equipment of buildings and structures.

- (5) One member representing organized labor, knowledgeable in the construction and equipment of buildings and structures.

Exception: Municipal boards may have more than five members and need not have an attorney member if the municipal charter so provided prior to October 13, 1983.

(D) Appointment. Members shall be appointed for five year terms except that original appointments shall be for terms of one, two, three, four and five years.

(E) Term. A member shall hold office from date of appointment until the end of the appointed term; however, the member shall continue in office following the term expiration date until a successor takes office or until sixty days have elapsed, whichever occurs first.

(F) Vacancies. Any member appointed to fill a vacancy occurring before the expiration of a term shall hold office for the remainder of that term.

(G) Reporting. Vacancies and new appointments shall be reported to the board of building standards within thirty

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days. Notification of new appointments shall include resumes, date of appointment, term of office, qualifications and experience necessary for membership. An annual report shall be submitted to the board of building standards to provide the information required on the form provided by the board of building standards.

- (H) Local board of building appeals certification, revocation. In accordance with division (E) of section 3781.20 of the Revised Code, a certification may be revoked upon receipt by the board of building standards of a written complaint from any person affected by the exercise of the authority granted under such certification, or by the board on its own motion.
- (1) Complaint process. When a written complaint against a local board of building appeals has been received by the board, investigated, and found justified:
- (a) The board shall decide whether the information submitted warrants causing an investigation to be initiated or sending a notice of opportunity for hearing as outlined in paragraph (H)(1)(d) of this rule;
 - (b) If a formal investigation is warranted, the subject of the investigation shall be notified that an investigation has been initiated by the board;
 - (c) Upon completion of the investigation, findings shall be reported to the board.
 - (d) The board may dismiss the complaint, table the matter for future action, or initiate action to revoke the certification. If the board issues an order to revoke the certification it shall:
 - (i) Notify the jurisdiction of the charges by certified mail, return receipt requested. The jurisdiction shall be informed that a hearing, if desired, must be requested within thirty days from the date of the mailing to request a hearing before the board. The order shall inform the jurisdiction that counsel may represent the certificate holder at the hearing. Failure by the jurisdiction to request a hearing within thirty days from the date of the mailing of the notification may cause the board, after a hearing, to uphold an order revoking certification;
 - (ii) Schedule a hearing to be held seven to fifteen days after receipt of the request, unless another date is mutually agreed upon by both parties. The board may continue or postpone the hearing upon application by the party or upon its own motion;
 - (iii) The board may appoint a hearing officer to conduct a hearing.
 - (iv) A hearing will be conducted during which parties and witnesses can be examined and offer testimony, in a manner that prevents unnecessary delay, and that ensures the development of a clear and adequate record.

The hearing shall be conducted pursuant to the provisions of sections 3781.10, 3781.101, and 119.09 of the Revised Code;
 - (v) If a hearing officer has been appointed, then within thirty days after the hearing, the hearing officer shall submit a written report of the findings of fact and recommendations to the board for its consideration.
 - (e) Following the hearing, the board may dismiss the complaint or, when substantiated by the evidence, revoke the certification. When an order is upheld to revoke the certification, the jurisdiction affected

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shall be sent a certified copy of the board's action and informed by certified mail, return receipt requested, that the jurisdiction may appeal the order within fifteen days to the court of common pleas in Franklin county pursuant to sections 3781.10, 3781.101, and 119.12 of the Revised Code.

- (2) Local board of building appeals certification, hearings and appeals. Hearings shall be held by the board of building standards and appeals shall be permitted on any proceedings for certification as provided in section 119.07 of the Revised Code and in paragraphs (H)(1)(a) to (H)(1)(e) of this rule.
- (3) Grounds for revocation. The board of building standards on its own motion or upon receipt of a written complaint from any person affected by the local board of building appeals shall cause to be conducted such investigation to determine whether there is an allegation implying one or more of the following:
 - (a) The presence of fraud;
 - (b) Failure to adhere to applicable procedures set forth in Chapters 119. and 3781. of the Revised Code or rules made thereunder;
 - (c) Failure to render decisions within thirty days of the hearing;
 - (d) Granting of variances to provisions of rules of the board not adopted pursuant to Chapters 3781. and 3791. of the Revised Code but mandated by other chapters of the Revised Code;
 - (e) Failure to notify organizations representing people with disabilities pursuant to section 3781.19 of the Revised Code;
 - (f) Failure to permit an appeal for a de novo hearing before the state board of appeals or a direct appeal to the court of common pleas pursuant to section 3781.19 of the Revised Code.
- (4) Revocation. In the event of the revocation of a certification, the jurisdiction shall no longer hold out to the public or any jurisdiction that the jurisdiction is certified to hear and decide the adjudication hearings referred to in section 110 of rule 4101:1-1-01 of the Administrative Code within the jurisdiction or holds the board certification which has been revoked.