

RULES OF PROCEDURE
CITY OF MASSILLON BOARD OF BUILDING APPEALS.

Section 1. General Powers.

- A. *Enacting Authority.* The Board of Building Appeals (the "Board") of the City of Massillon, Ohio (the "City") is established under the applicable laws of the State of Ohio, City of Massillon Codified Ordinance Chapter 142, and the International Property Maintenance Code (ed. 2024)("IPMC") as adopted by City Council Ordinance 103-2024, as amended by Ordinance 10-2025.
- B. *Governance.* The Massillon Building Code, Ohio Revised Code ("RC") Chapters 3781 and 3791, as well as the rules promulgated under them, and these Rules of Procedure shall govern the Board.
- C. *Conflict of Law.* These Rules of Procedure shall supersede all previously adopted rules and procedures. Whenever a conflict exists between these Rules of Procedure and the applicable laws of the State of Ohio or ordinance of the City, the applicable State laws and City ordinances shall prevail.

Section 2. Leadership and Governance.

- A. *Term.* The term of the Board shall be for two (2) full calendar years, beginning on January 1 and ending on December 31 ("Board Term"). RC 3781.20 and Codified Ordinance 142 govern the eligibility of each Board member.
- B. *Board Leadership.* The Board shall consist of five members. Such Board shall include the City Engineer, a representative from the Bureau of Fire Prevention, a member from the Board of Realtors, a member from the Contractors' Association and an interested voting citizen. No member shall act on any matter in which he has a financial interest. The City Engineer shall serve as Chairman and the representative from the Bureau of Fire Prevention shall serve as Vice-Chairman. The Building Inspector, and/or his or her representatives shall attend all meetings of the Board and shall provide such information, services and assistance as it may require.
- C. *Duties of the Chair.* The Chair has the following duties and responsibilities:
 - 1. To preside over all regularly scheduled and special Board meetings.
 - 2. To decide all points of procedure, unless otherwise set forth herein.
 - 3. To sign final written decisions issued by the Board.
- D. *Duties of the Vice-Chair.* The Vice-Chair shall assume all of the duties of the Chair in his or her absence or incapacity.
- E. *Secretary.* Pursuant to codified ordinances the Secretary shall administer all duties and responsibilities necessary to ensure the administrative and procedural operation of the Board ("Secretary"). The Secretary is the point of contact between the Board and the public and the Code Enforcement Department and Building Department.
- F. *Absence of Board Leadership.* In the absence or incapacity of the Chair and the Vice-Chair at a meeting, a member shall present a motion to elect a temporary Vice-Chair who shall preside over the meeting. The motion to elect temporary Board leadership shall require a second and the Board must adopt the motion by a majority of the Board members present at the meeting.
- G. *Public Officials.* Board members are public officials and are bound by certain provisions of the Ohio law, including, but not limited to, Ohio Revised Code Sections 102.03, 102.04, and 2921.42.

Section 3. Appeals.

- A. *Appeal Forms.* All persons must submit appeals for the Board's consideration on forms, and in the manner, prescribed by the Board.
- B. *Completeness.* An appeal must include all information, documents, and fees requested by the appeal form. The Secretary shall determine the completeness of all appeals to the Board.
- C. *Parties to an Appeal.* For the purposes of these rules, the following persons are parties to an appeal:
 - 1. *Appellant.* Any reference herein to the term "appellant" includes an appellant, an appellant's attorney, or any other duly authorized agent or representative.
 - 2. *Party of Record.* Any reference herein to the term "party of record" means any concerned person or entity with standing under Ohio law to participate in the proceeding.
 - 3. *Government Official.* Any reference herein to the term "government official" includes any functionary or authorized representative of any department, office, or institution of a political subdivision of the State of Ohio.
- D. *Withdrawal.* An appellant may request to withdraw an appeal at any time before the Board votes on the merits of an appeal, except that when a motion is pending to determine the outcome of the appeal, the motion must first be withdrawn by the movant and seconded before the appeal may be withdrawn.
- E. *Postponements.* An appellant may submit to the Secretary a written request to postpone a scheduled hearing, but the appellant must make the request at least one business day before the scheduled hearing date. The Secretary has authority to grant one request to postpone, and he or she shall promptly notify all persons entitled to notice of the appeal about the postponement.
 - 1. *Exception.* The Secretary shall have no authority to grant a request to postpone a hearing that concerns appeals from the enforcement of Massillon Building Code Section 1307.02, Ohio Building Code Section 109.4, or any other similar, related, or associated provision alleging unsafe or unsanitary conditions constituting a serious hazard.
- F. *Continuances.* An appellant may request to continue a scheduled hearing by submitting a written request to the Board or by appearing at the scheduled hearing and making an oral request to the Board. The Board may continue the hearing if it determines the appellant has demonstrated good cause that the hearing should be continued.

Section 4. Meetings.

- A. *Open to Public.* All Board meetings shall be open to the public, except as provided by Ohio law. All votes taken by the Board must be taken in open session, recorded by the Secretary, and included in the Board's written decision.
- B. *Notice of Public Meeting.* The Secretary shall provide notice of all regularly scheduled and special meetings pursuant to the Massillon Municipal Code.
- C. *Regular Meetings.* The Board shall conduct regularly scheduled meetings on the third Tuesday of each calendar month, unless that Tuesday is a City-recognized holiday. In cases of a City-recognized holiday, the meeting shall take place on the Tuesday following the holiday. The Board is not required to hold a regularly scheduled meeting if no official business is scheduled before the Board.
- D. *Special Meetings.* The Chair may, at his or her discretion, convene a special Board meeting. Notice of the time, place, and purpose of all special Board meetings shall be provided to all Board members by telephone or e-mail at least 24 hours before the special meeting. Special Board meetings shall be open to

the public unless otherwise permitted by law. If a special meeting is open to the public, the Secretary shall post notice of the time, place, and purpose of the special meeting for public viewing at the Engineering Department, the office of the Clerk of Council, and on the City's website.

- E. *Agenda.* The Secretary shall prepare an agenda for each regularly scheduled Board meeting, providing a list of appeals to be heard and business to be discussed ("Agenda"). The Agenda must be published at least seven calendar days before the regular meeting date. The Secretary must distribute the Agenda to the Board and make all associated case materials available to the Board at least five calendar days before the regularly scheduled meeting. Items not listed on the Agenda shall not be considered by the Board, unless a majority of the Board members present vote to consider the item.
- F. *Quorum.* A quorum for any meeting, or to undertake any official business, is three Board members. The Secretary shall make a reasonable effort to notify all persons who were entitled to notice of an appeal of the failure to obtain a quorum before the hearing date. Failure to obtain a quorum shall have the effect of postponing a hearing until the next regularly scheduled meeting of the Board, unless the Chair otherwise convenes a special meeting.
- G. *Attendance.* Any Board member who is unable to attend a meeting shall notify the Secretary at least 24 hours before the meeting. The Secretary shall make a reasonable effort to fill the temporary vacancy with an alternate Board member of the same appointment.
- H. *Voting.*
 - 1. *Voting Rights.* All Board members are voting members. Any Board member, including the Chair, may make a motion or second a motion.
 - 2. *Official Board Action.* The Board must adopt all official actions by a majority vote of the Board members participating in the vote at a meeting, unless a greater number of votes are expressly required by law or these rules.
 - 3. *Roll Call Vote.* All votes shall be taken by a roll call vote.
 - 4. *Majority Vote.* As used in these rules, the phrase "majority vote of Board members" shall mean an affirmative vote by a simple majority of the Board members participating in a vote.
 - 5. *Abstentions.* A Board member may abstain from voting on an item. For the purposes of these rules, an abstaining member counts toward satisfying quorum, but is not considered to have participated in the vote.
 - 6. *Tie Vote.* In the event of a tie vote on a motion, the motion shall be deemed to have failed.
 - 7. *Record of Vote.* The Secretary shall record each Board member's vote on every motion.
 - 8. *Conflicts of Interest.* No Board member shall engage in the following conduct:
 - a. Taking any official action, including participating in and voting upon, or in any other manner use or attempt to use his or her position to secure the approval of Board services, supplies, property, investments, or other contracts or acquisitions in which he or she, a family member, or anyone with whom he or she has an ongoing business relationship, has an interest.
 - b. Use his or her position to obtain financial gain or benefit for himself or herself, a family member, or anyone with whom he or she has a business or employment relationship.
 - 9. *Duty to Disclose Conflicts of Interest.* Any Board member who may encounter possible conflicts of interest shall disclose to the Chair his or her possible conflict at least 24 hours in advance of a scheduled meeting. If the Chair has an issue of a possible conflict, he or she shall refer the conflict to the Vice-Chair.

10. *Conflict Determination.* In the event that a Board member has an issue of a possible conflict, the Chair is encouraged to consult the City Law Department, but the Chair is responsible for making the ultimate conflict determination. However, in those cases where the Chair refers an issue of a possible conflict to the Vice-Chair, the Vice-Chair shall determine whether the Chair has a conflict of interest.
11. *Recusals.* In the event of a conflict of interest, the conflicted member shall remove himself or herself from the meeting room during that portion of the meeting involving the item from which that member is conflicted. A member who recuses himself or herself from consideration of an item due to a conflict of interest does not count toward satisfying quorum.

Section 5. Meeting Procedures.

A. General Rules.

1. *Order of Appeals.* Items shall be considered in the order set forth on the Agenda. The Chair may exercise his or her discretion to call items out of the order provided by the Agenda.
2. *Appearances.* Any person may appear in person at a meeting or may be represented by an attorney or by a duly authorized agent. All persons wishing to appear before the Board shall sign in on a form furnished by the Board and located at the meeting room's entrance. The Board shall have the right to exclude testimony of anyone who has failed to sign in at the meeting.
 - i. *Appellant's Failure to Appear.* If an appellant fails to appear before the Board and has not requested to postpone or to continue the hearing as provided in Section 3 above, then the Board, in its discretion, may take one of the following actions:
 - a. Postpone the hearing until the next regularly scheduled Board meeting; or
 - b. Dismiss the appeal based on the appellant's failure to prosecute the appeal; or
 - c. Rule on the merits of the appeal, provided that each Board member participating in such a vote acknowledges on the record that he or she has reviewed all materials in the record, including any written arguments, evidence, or testimony.
3. *Written Arguments and Evidentiary Submissions at the Hearing.* The Board may consider written motions, memoranda, or other written argument or evidence presented to the Board at the hearing by an appellant, government official, or a party of record.
 - i. *Preclusion of Evidence.* The Chair, in his or her discretion, may preclude any written documents or evidence presented at the hearing. The Chair must state his or her reasons for precluding the new evidence, and the Secretary must accept a copy of the precluded evidence into the record as a proffer.
 - ii. *Motions to Overrule an Evidentiary Ruling.* The Board may overrule the Chair's evidentiary ruling by a majority vote. Any member may present a motion to accept fully the evidence into the record, to adjourn the hearing to evaluate the evidence in private deliberation, or to continue the hearing.
4. *Burden of Proof.* An appellant bears the ultimate burden of proof by the preponderance of the evidence.
5. *Decorum.* The Chair has the duty to maintain decorum at all times during a meeting. All persons appearing before the Board must clearly state their first and last name and their personal address or business address for the record before speaking. All speakers must not speak over other parties. The Chair retains the right to expel from a meeting any person exhibiting a lack of decorum or causing disruptive or combative behavior.

6. *Sworn Testimony.* All persons providing testimony at a meeting shall be sworn by the Secretary at the beginning of the meeting or prior to testifying.
 7. *Attorneys.* Attorneys shall not be sworn, unless he or she is acting as a witness or providing testimony rather than serving as an advocate and providing argument.
 8. *Government Officials.* Government officials shall not be sworn, unless he or she is acting as a witness in the proceeding.
 9. *Ex Parte Communication.* Board members must not engage in conversation with any interested party, or members of the public, about appeals and similar subjects related to matters that will be the subject of deliberation and judicial discretion outside of a scheduled hearing.
 10. *Criminal Offenses against Public Administration.* Board members are public officials whose duties and actions are protected from threats of violence and intimidation, among others. Board members must report immediately to the City Law Department any instances or attempts of bribery, intimidation, retaliation or obstruction of official business by an appellant or any other party.
 11. *Parliamentary Rules.* The Board shall follow rules and procedures set forth herein in the conduct of its meetings. Where these rules and procedures are silent, Roberts' Rules of Order may be applied by the Chair.
- B. *Hearing Procedure.* The Chair shall preside over all hearings as follows; however, the Board may interrupt any speaker to ask questions or to make any comments:
1. *Call Item.* The Chair shall call the agenda item.
 2. *Comments from Government Officials.* The Chair shall call upon any government officials to present their position, arguments, contentions and evidence in support of their position.
 3. *Argument by the Appellant.* The Chair shall call the appellant to present its position, arguments, contentions, and to offer and examine witnesses and present evidence in support of its position. The Chair, in his or her discretion, may limit or restrict the appellant's presentation to those matters that are relevant to the appeal.
 4. *Cross Examination of the Appellant.* In those cases where an attorney is representing a party of record, the Chair shall permit the attorney for the party of record to cross-examine the appellant's position, arguments, contentions, and evidence in support of its position immediately following the testimony proffered by the appellant or its witness. In those cases where there is more than one party of record, the Chair shall permit the attorney for each party of record an opportunity to cross-examine the appellant or its witnesses.
 5. *Presentation by a Party of Record.* If there is a party of record, the Chair shall call the party of record to present its position, arguments, contentions, and to offer and examine witnesses and present evidence in support of its position.
 6. *Multiple Parties of Record.* In those cases where there is more than one party of record, the Chair shall permit each party of record to present its position, arguments, contentions, and to offer and examine witnesses and present evidence in support of each position.
 7. *Cross Examination of a Party of Record.* If the Appellant is represented by an attorney, the Chair shall permit the appellant's attorney to cross-examine all opposition witnesses purporting to refute the appellant's position, arguments, and contentions.
 8. *Rebuttal.* The Chair shall call the appellant to rebut or refute any position, argument, or contention in opposition to its position.

9. *Closing Statements.* The Chair shall offer the appellant and party of record an opportunity to present closing statements. A party of record shall present first, followed by the appellant.
10. *Board Action.* The Chair shall entertain a motion to deliberate, a motion for a determination of the outcome of the appeal, a motion to continue the hearing, or such other action permitted by applicable law.

Section 6. Decisions.

The Secretary shall reduce the Board's decision to writing for the Chair's review and signature within 10 days of the hearing date at which the Board issued its final appealable decision. Any Board member may request to review a written decision before it is issued, but is not required to review a decision before the decision is signed by the Chair. The Secretary may transmit to the appellant and any party of record the Board's final written decision by email or mail.