SECTION 1: ORGANIZATION

1.1 Purpose

The function of the Housing Appeals Board ("the Board") is to hear appeals from any decision or order of the housing code administrator ("administrator"). An owner may appeal an order issued by the administrator pursuant to the following codes set forth in the Durham City Code: Housing Code, Unsafe Buildings, Nonresidential Building Code and Removal of Trash and Undergrowth from Property Codes. The Board also hears requests from the administrator to adopt ordinances authorizing the administrator to proceed with requests to repair, improve or vacate and close a dwelling or nonresidential building and demolition and removal of a dwelling or nonresidential building, when owner fails to comply with administrator’s order. The Board shall hear any other matters delegated to the Board under State law and local law and ordinance.

1.2 Membership/Participation

The Board has 5 regular members and 3 alternate members ("alternates") appointed by Council, collectively termed “members” in these Rules. The Council appoints regular members and alternates to the Board. Cases are heard at public hearing by 5 members (or as few as 4 if 5 are not present), who vote on all cases. A quorum of 4 members is necessary to take official action. The 5 regular members are seated first at hearings. Alternates are seated when regular members are absent, tardy, excused early from the hearing, or not eligible to vote due to a conflict of interest. A member who is not present at the call to order is considered tardy. Nonseated members do not participate in discussions, ask questions, or vote in hearings. However, both regular members and alternates are seated and may vote at work sessions and during the consideration of business other than cases at public hearings. Each member shall be entitled to compensation only in the instances set forth in the city code and in the amount set by council.

1.3 Alternates

a. Alternates prepare themselves for hearings in the same manner as regular members and are subject to the same attendance policies as regular members. The order in which they are called to sit is determined through a pre-arranged schedule prepared by the Clerk. Alternate members are selected for seating on a rotating basis.
b. Alternates who were present for the initial hearing and presentation of evidence in a case will be seated at subsequent hearings of that case prior to members/alternates who were not present.

1.4 Term

The terms of Board members are 3 years. A member’s term may be continued beyond 3 years if a successor member has not been appointed. A Board member may serve no more than two consecutive terms.

1.5 Vacancies

Vacancies are filled by the city council. If the departing member resigns or is removed mid-term, the appointee serves the balance of replaced member’s term.

1.6 Removal

Members may be removed from the Board by the city council for cause, which includes violation of SECTION 2: CONDUCT OF MEMBERS. It is requested that, prior to taking action, the council notify a member being considered for removal of the reasons for removal and give such member an opportunity to respond.

1.7 Officers/Term

a. The officers of the Board consist of a Chair and Vice Chair. The Chair presides at all hearings/meetings, excuses members from hearings as provided in these Rules, makes other decisions provided for in these Rules, and determines all issues, or a process for deciding such issues, not governed by these Rules. The Vice Chair serves as Chair in the Chair’s absence or incapacity.
b. Officers must be regular members (not alternates) of the Board. They are elected by majority vote of all members present at the first meeting at the beginning of each calendar year and take office immediately. They serve a term of 1 year or until their successors are elected. Officers are eligible for re-election.

c. A vacancy in the office of the Chair is filled by the Vice Chair for the balance of the Chair's term. The Board shall elect a Vice Chair at its earliest possible meeting.

1.8 Materials

The Clerk of the Board (an employee of Neighborhood Improvement Services ("NIS") or any other NIS Director designee) shall provide to every new Board member the current ordinances applicable to the Housing Code and a notebook containing the Board's Rules of Procedure and the last annual report of the Board. The NIS Director or designee shall provide an orientation for each member and alternate member of the Board after appointment.

1.9 Clerk/Staff to the Board

The Clerk of the Board shall be an employee of the Neighborhood Improvement Services ("NIS") Department. Requests from a board member to NIS staff during a meeting that could interfere with the Board's activities should be made through the Chair.

1.10 Rules of Procedure

The Board, by majority vote, shall adopt Rules of Procedure. These Rules may be amended by majority vote provided that the general substance of such amendment is presented in writing at a meeting preceding the meeting at which the amendment is adopted. The Rules may be suspended for good cause by a vote of 4/5 of a majority of members eligible to vote on the matter being considered.

1.11 Annual Report

The Neighborhood Improvement Services Department shall prepare a report of the Board’s activities for the past fiscal year (July 1 - June 30) and shall submit it to the Board in July of each year. The report shall include a summary of the number of cases of each type heard (appeals or request to adopt ordinances authorizing repair or demolition of dwellings or any other types of cases Board is empowered to hear), their disposition, the number of hearings and meetings held by the Board, members' attendance, the composition of the Board, the officers for the year, the date new members began their terms, and any other matters the Board requests
the staff to include. This report shall be approved by a majority of the Board and shall be presented to council by September.

SECTION 2: CONDUCT OF MEMBERS

Members must observe the following rules concerning their conduct. Failure to do so shall be reported by the Chair to the city council. If there is a question concerning whether a member has or has not followed these rules, the matter shall be determined by a majority vote of all members of the Board.

2.1 Attendance

Section 2.1a Attendance

a. Board members, including alternates, must faithfully attend meetings and perform their duties. The Board Clerk shall keep a record of attendance. When a Board member has missed three (3) of the hearings/meetings held within any twelve (12) month period, the Chair and the city council shall be notified.

b. The “designated alternate” has a special obligation to remain throughout a day’s hearings. If all three alternates are present at a meeting, the Chair may choose to excuse an alternate after the roll call if it is clear that they will not be needed to fill in for members who must leave early, or who have a conflict of interest, or who otherwise cannot hear a case.

c. Board members may request to be excused by the Chair from a meeting or hearing when an important conflict exists. In such cases, the member shall inform the Board at the beginning of the meeting/hearing. Frequent requests to be excused are not encouraged. The Chair may refuse to excuse a member (including alternate members) when the member’s absence would leave fewer than 4 members to hear a case or where circumstances otherwise warrant the member’s remaining.

2.2 Reporting Absences

Members, including alternate members, who are unable to attend a meeting, must give the Clerk at least 2 business days’ advance notice (by Monday morning of a Wednesday meeting) and indicate the general reason for being absent. Earlier notification is encouraged. At the meeting/hearing, the Clerk will inform the Board of the absence and the member’s reasons.

2.3 Taxes
All members must be current in payment of their local property taxes at the time of their appointment and throughout their term.

2.4 Ethics Policy

Members shall observe applicable state statutory requirements and any city code provisions or city resolutions regarding ethics.

2.5 Conduct Outside of Hearings

a. Board members shall not discuss any case with, or receive any information from, any parties or other interested persons outside the public hearing on a case. This does not include information received or solicited from the Chair, the City Attorney’s office, or the staff or Clerk to the Board. In addition, it does not include site visits to the properties which are on the Board’s agenda, as long as Board members do not discuss the merits of the case or matter with persons at the site.

b. Board members shall not express opinions concerning a case before that case is heard, except for opinions regarding procedural or scheduling issues.

c. Board members shall keep in mind that they serve as impartial, quasi-judicial decision-makers, and shall avoid the appearance of impropriety.

2.6 Disqualification from Hearing or Voting

a. **Conflict of Interest/Bias.** A Board member shall not participate in a vote when a member has an impermissible conflict of interest. Impermissible conflicts include, but are not limited to:
   - a member having a fixed opinion prior to hearing the matter that is not susceptible to change;
   - undisclosed ex parte communications;
   - a close familial, business, or other associational relationship with an affected person or entity;
   - or a financial interest in the outcome of the matter.

If an objection is raised to a member’s participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

A member with a potential conflict of interest or bias in a hearing matter shall, preferably at least two business days prior to the day of the meeting, consult with the Chair and, if necessary, with the Neighborhood Improvement Services Director and/or Board attorney regarding the potential conflict. The member may excuse himself on account of the
potential conflict, or may ask the Chair to make a determination. The Chair shall announce any recusals prior to the hearing affected by such recusals.

b. **Disclosure of facts or prior knowledge.** Prior to or during a hearing, Board members should disclose pertinent facts they are aware of through site visits or through other prior knowledge if such facts or knowledge may affect a member’s opinion regarding the case. Other than this type of disclosure, a member seated for a hearing should not testify in a hearing.

c. **Testifying.** If a member is personally or financially involved in the subject property or property, and wishes to testify or be heard in the matter, (s)he should consult with the Chair, recuse him/herself from voting before the hearing (see “a” above). (A member with such an interest would, of course, have to recuse him/herself whether or not the member testifies.)
d. **Voting.** No Board member shall vote in any final determination of the merits of a case unless that member was present for the hearing of the case or has reviewed the taped recording of the hearing and all evidence submitted. This prohibition shall not apply to procedural issues, extensions, continuances, decisions to appeal, or other similar issues.

**SECTION 3: MEETINGS, NOTICE, AGENDA**

3.1 **Public Hearings**

The Board shall regularly hold public hearings for the disposition of cases on the third Wednesday of each month at 5:30 p.m. in City Hall (101 City Hall Plaza) or other designated location on file with the City Clerk. Hearings may be rescheduled by the Chair if a scheduled public hearing cannot be held because of a holiday, weather, lack of a quorum or other unusual circumstance. The Board may hold additional public hearings if necessitated by a heavy caseload. Such hearings must be approved by the Chair with at least two weeks advance notice given to members. A special public hearing may be called without two weeks' notice if the Chair determines that a case is urgent and/or unusual circumstances require its immediate resolution.

3.2 **Other Meetings**

The Board may hold other meetings as necessary for training, work sessions, or the conduct of business. Such meetings shall be set by the Chair, with at least two weeks' notice given to members, unless the meeting is a special meeting regarding matters that need immediate resolution in which case at least 48 hours advance notice shall be given. For all meetings, a written or oral agenda for the meeting shall be given to each member.

3.3 **Public Access/Hearing Tapes**

a. All meetings, hearings, records, and minutes of the Board shall be open to the public. Meetings shall also be advertised in accordance with the open meetings law.

b. Any interested party may get a duplicate tape of a hearing by providing the materials necessary to the Clerk, and such copy shall generally be provided within 4 working days of the request.

3.4 **Mailing of Agenda/Staff Report**

a. An agenda for each meeting and hearing, consisting of a listing of cases and other business, and the order in which they will be heard, shall be prepared
by the Clerk and shall be mailed or otherwise served (e.g., e-mail, fax) no less than 4 days prior to the hearing, except for special meetings/hearings, to all members, to owners who have filed an appeal of administrator's order or whose property is before the Board for adoption of an ordinance and to interested persons who requested an agenda. For meetings in which cases will not be heard, the agenda will be delivered or orally transmitted, as appropriate, no less than 2 days prior to the meeting.

b. At the same time the agenda is mailed, the Clerk shall mail staff reports to all Board members and to persons who have requested a staff report for a particular case.

3.5 Setting of Agenda/Order of Business (As amended 12/05)

a. Cases: An appeal from any order of the administrator or an administrator's request for Board to adopt an Ordinance shall be placed on the agenda after proper filing of the appeal or request for hearing. An appeal from an order of the administrator or a request for Board to adopt an Ordinance to enforce an order of the administrator and any other similar matter shall be treated as a quasi-judicial case.

b. Other general matters: Any matter for general discussion, such as amendments to the Rules of Procedure or recommendations to the council on revisions to the Housing Code is not an adjudicative matter and thus not treated as a quasi-judicial hearing.

c. Items may be added to the agenda at a meeting/hearing by approval of a majority of the Board.

d. The Clerk shall place any other matters on the agenda after verification with the Chair.

e. The order of business at public hearings shall be as follows, unless varied by majority vote:

   a. Call to Order
   b. Roll Call (includes requests for members to identify conflicts or early departures)
   c. Adjustments to the Agenda
   d. Explanation of Quasi-Judicial Procedure for Cases by Chair
   e. Swearing In of Witnesses
   f. Hearing and Determination of Each Case
   g. Other general matters (if any)
   h. Old Business
SECTION 4: HEARING PROCESS; WRITTEN DECISIONS; TRANSMITTAL

4.1 Quorum/Voting

Four (4) members constitute a quorum for public hearings and meetings. No more than 5 members are seated for a public hearing. A vote to authorize adoption of an ordinance to repair or demolish a dwelling or nonresidential building must receive 4 concurring votes. Likewise, in an appeal challenging the administrative Order or decision, a motion seeking to reverse or otherwise modify the Order must receive 4 concurring votes.

4.2 Parliamentary Procedures

Consideration of cases and other business shall be in accordance with the Board’s Rules of Parliamentary Procedures, Section 5, which are adopted and incorporated into these Rules.

4.3 Process for Determining Cases

a. A vote on a request for adoption of ordinance authorizing administrator to proceed with enforcement of administrator’s Order to repair or demolish or an appeal seeking reversal of administrator’s Finding of Fact and Order shall be in the form of a motion to approve the request. Four members (4 of 5 members hearing the case) must approve the request, or the request is considered denied.

b. If the administrator or appellant withdraws a request, the case is removed from the agenda.

c. Cases continued by the Board for lack of information or for necessary actions to be taken by the administrator or appellant shall be continued to a date certain. If the administrator or appellant does not submit the information or take the actions by the continuance date, the Board shall either continue the case again or dismiss the case. The Board shall not grant multiple continuances without good cause.

d. A written explanation of the quasi-judicial nature of the hearing that explains, among other things, the right to ask questions and to object to evidence shall be available to all persons attending the hearing.
e. The Chair, prior to the swearing in of witnesses, shall briefly explain the nature of a quasi-judicial hearing.

f. Board members with a conflict of interest or bias who do not become aware of the conflict until the time of the hearing should excuse themselves prior to the start of the hearing. At the same time, all members, including alternates, who have special knowledge about a case, should disclose it so that the parties may address such information in their cases.

g. Evidence shall be presented as follows: 1) staff report; 2) administrator or appellant’s evidence; 3) opponent’s evidence; 4) rebuttal (if requested).

h. The Chair shall rule on any objections or requests from participants in the hearing regarding the procedure of the hearing or evidence presented.

i. The Chair must recognize speakers and Board members before they may be heard.

j. The Chair shall allow every speaker to be heard, but may limit and/or cut off evidence or testimony that is irrelevant, repetitive, incompetent, or hearsay.

k. The Chair shall allow direct and cross-examination and presentation of rebuttal evidence if such are requested.

l. The Board may limit the length of a public hearing or set a time for adjournment by majority vote.

m. After all evidence has been presented; the Chair may ask the parties if there is additional relevant information that has not been presented that would make a continuance in order.

### 4.4 Written Decisions; Findings; Transmittal and Filing

a. A written decision shall be issued for every case. When the Board authorizes the administrator to proceed with repair or demolition of a dwelling or nonresidential building, it shall issue a decision referenced as an Ordinance. The Chair and the Board Clerk shall sign each Ordinance. The Ordinance shall contain the legal description of the property, a statement of the administrator’s findings regarding the property, that the owner has been served with proper notice pursuant to the city code and that the owner had adequate time to repair or otherwise remedy the conditions or appeal the administrator’s Order and has failed to comply.

b. Any ordinance or order issued by Board that authorizes the city to remedy conditions on property shall indicate that the amount of the cost to remedy
such conditions shall be a lien against the real property upon which the cost was incurred and any other real property as authorized by city code or applicable state law.

c. The written decision for each case shall be hand delivered, or sent by first class mail, certified mail, with return receipt requested, to the owner, or appellant (if case involved an appeal) and to any person on the opposing side who has filed a written request with the Clerk or with the Chair of the Board. A copy of any written decision shall also be delivered to the administrator. Other persons may, by request, receive a copy by first class mail. The Clerk shall maintain a file of all decisions. A decision shall be considered “filed” at the time it is placed in the Clerk’s file. The Clerk shall also transmit a copy of every decision involving a public hearing to the City Clerk’s office.

A written decision involving the adoption of an ordinance shall be recorded in the Durham County Office of Register of Deeds as required by city code.

4.5 Reconsideration/Reopening

Except as may be specifically provided by ordinance, substantive decisions on the merits of a request cannot be reconsidered and decided cases cannot be reopened following the approval of a written decision.

SECTION 5: PARLIAMENTARY PROCEDURES
(Changed from Attachment A to Section 5 in September, 2002)

The Housing Appeals Board shall observe the following parliamentary procedures. Seated members may suspend these procedures by a 4/5 vote. Deviations from these procedures shall not be grounds for voiding a vote unless the deviation is called to the attention of the Chair at the same meeting it occurs and members by majority vote agree that as a result of the deviation a previous vote should be voided.

5.1 Authority of Chair

If a situation is not covered by these Rules, the Chair shall determine the appropriate procedure, which may be changed by a majority vote of seated members.

5.2 Motions
a. Formal decisions including but not limited to approval of Rules of Procedure, all actions concerning cases, selection of officers and recommendations concerning ordinance changes shall be made by motion, which must be seconded, except as provided below. The mover may withdraw the motion at any time before it is voted on. Only one substantive motion and friendly amendment to such motion may be considered at a time.

b. Motions may be made to adopt an ordinance or to approve a request. If the request is for adoption of an ordinance or to approve a request, a vote to grant the request must be approved by at least four (4) seated Board members. Other votes, such as procedural matters, need only be approved by a majority of those voting if a quorum is present, unless otherwise specified in these Rules.

c. Motions to continue are encouraged if additional information would be useful in determining the case or if there are other reasons a continuance is advisable. A motion to continue may be made at any time and takes precedence over substantive motions/amendments on the table. It requires a simple majority of seated members for approval. When the matter is reopened after continuance, any substantive motions on the table at the prior meeting will still be on the table. A motion to adjourn is not in order if there are motions/amendments pending on a case that has not been continued.

5.3 Voting/Consideration of Cases

a. For a vote to occur the Chair may call for a vote or a member may call the question and the Chair must agree.

b. Before a vote, motions as they may have been amended shall, upon request, be restated by the Chair, the Clerk, or a member who proposed either the motion or amendments to such motion, unless the motion was made immediately prior to the vote. The restatement shall include all conditions that are proposed.

c. Voting on cases shall be by roll call. Votes on other matters may be taken by ayes and nays, by a show of hands, or in any other reasonable fashion determined by the Chair.
History of Rules of Procedure

The Housing Appeals Board Rules of Procedure was originally adopted September 15, 1990 to be effective on this same date.

Revisions:

February 16, 2005
June 17, 2015