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A RESOLUTION OF THE BOARD OF ADJUSTMENT OF THE CITY OF WEST DES MOINES ADOPTING PROCEDURES FOR THE CONDUCT OF HEARINGS ON LAND USE MATTERS AND OTHER BUSINESS.

WHEREAS, the Code of Iowa, Section 414.7 and the City Code enables the Board of Adjustment to develop procedural rules for the conduct of appeal hearings so that all interested parties will have knowledge of the procedures to be followed; and

WHEREAS, the Board of Adjustment serves as the body appointed by the City Council to hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of any ordinance, to hear and decide special exceptions to the terms of the ordinance and to authorize specific cases where special variance from terms of the ordinance as will be contrary to the public interest; and

WHEREAS, pursuant to the requirements of the Code of Iowa and the City of West Des Moines Municipal Code, the Board of Adjustment desires to specify procedural rules to govern the conduct of hearings on variances to the applicable zoning regulations of the City Code and/or other items that are lawfully referred to it by the City Council.

BE IT RESOLVED that the following procedural rules shall, insofar as consistent with applicable state laws and City ordinances, govern the conduct of all business, including but not limited to variance hearings, before the Board of Adjustment of the City of West Des Moines:

1. MEETINGS, STUDY SESSIONS, AGENDAS AND STAFF REPORTS

1.1 Meetings

1.1 Meetings

Meetings of the Board of Adjustment shall be per the schedule as adopted on an annual basis or at such time as the Board may determine consistent with State statute, etc. If the scheduled meeting date falls on a City holiday, then the meeting will be rescheduled. All meetings of the Board will be called to order at 5:30 P.M unless advertised otherwise, canceled, rescheduled, or as specified per the annually adopted schedule. The Recording Secretary, or his or her designee, will post notice of any continued hearing or other unfinished business, as may be required by law.

1.2 Election of Officers

At the first meeting in April, the Board will hold elections for the position of Chairperson and Vice Chairperson. These positions are for a one year term. Upon completing the elections, the new Chairperson shall direct the meeting.

1.3 Special Meetings and Study Sessions

An emergency or special meeting may be called at any time by the Chairman of the Board of Adjustment, or by a majority of its membership for the purpose of a Study Session or to deal with non public hearing items. Written notice shall be delivered personally or by mail at least twenty-four (24) hours before the time of a special or emergency meeting to each member. The notice shall specify the time and place of the special meeting and the business to be transacted. No other business shall be considered at the meeting.

The Board of Adjustment may hold a study session as part of a regular, adjourned public hearing or special meeting. When a matter is set for a study session, public testimony may be barred or limited at the discretion of the Chairperson. Public notice for study sessions on specific matters for which public hearings are anticipated in the future will be given in the same manner as that required for public hearings, and a record of the study session shall be entered into the minutes of any such future public hearings so that the hearing records will indicate whether any information received at the study sessions was taken into consideration as evidence at the subsequent public hearing.

1.4 Adjourned Meetings

The Board of Adjustment may adjourn meetings to a time and place specified in the order of adjournment pursuant to the procedures set forth in the Code of Iowa.

Meetings are to be adjourned with a motion and a second and a vote by each member.

1.5 Open and Closed Sessions

Except as otherwise provided in this Resolution, all meetings of the Board of Adjustment shall be open and public, and all persons shall be permitted to attend. The Board may hold a closed session during a regular, public hearing, study session or special meeting, or at any time otherwise authorized by law, to consider or hear any matter which it is authorized by state law to hear or consider in closed session.

1.6 Notice of Meetings

Public notice shall be given for all meetings of the Board of Adjustment. Said notice shall give the time, date and place of each meeting and its tentative agenda. Notice of meetings shall be sent to the Board of Adjustment members and the local newspaper, as directed by the State Code.

1.7 Agendas

At least twenty-four (24) hours before a meeting, copies of the Board of Adjustment's tentative agenda shall be posted and made available at the Department of Community Development. In accordance with the Code of Iowa, the Board may not take action

on any item that did not appear on the posted tentative agenda unless an exception is provided under Iowa law. The Chairperson may rearrange the order of presentation of items appearing on the agenda as he or she may deem necessary or desirable for the conduct of the meeting. No person shall be entitled to rely upon the order in which hearing items appear on the posted agenda, and any hearing on any agenda may commence immediately upon the time the meeting is called to order.

1.8 Staff Reports

When staff reports exist, they shall be made public before or at the beginning of any hearing or meeting following the transmittal to Board members. Staff reports shall be prepared with recommendations and the basis for recommendations, and included in the hearing record on any application. The Board will hear and consider any appeal which is timely submitted.

2. PRESENTATION OF AGENDA ITEMS

2.1 Minutes and Recording

Hearings will generally be recorded by electronic device and preserved so long as is necessary to allow the Recording Secretary, or his or her designee, to prepare minutes of the hearing and to have them approved. When a matter is contested and a request is made in writing to the Director of Community Development before the date of the hearing, the contested matter will be recorded by electronic device and duly preserved.

2.2 Order of Presentation of Public Hearing items

Unless the Chairperson in his or her discretion shall direct otherwise, the order for presentation shall be as follows:

- (a) Meeting/roll call/hearing opened
- (b) Presentation by the applicant or appellant
- (c) Presentations by persons in favor of or in opposition to the requested action
- (d) Public discussion/hearing closed
- (e) Presentation of staff report, including any environmental analysis or recommendation
- (f) Questions of applicant or appellant by members of the Board of Adjustment
- (g) Questions of staff by members of the Board of Adjustment
- (h) Action by the Board of Adjustment

Public discussion/hearing may be reopened at any time during the meeting to permit additional testimony and evidence, either to permit reconsideration of an action or for any other reason at the discretion of the Chairperson.

2.3 Rules of Evidence

Hearings and meetings before the Board of Adjustment need not be conducted according to formal rules of evidence. Any relevant testimony may be considered if it is the sort of testimony upon which responsible persons are accustomed to rely in the conduct of serious affairs. The Chairperson may exclude irrelevant or redundant testimony and may make such other rulings as may be necessary for the orderly conduct of the proceedings while ensuring basic fairness and full consideration of the issues involved. Evidentiary objections shall be deemed waived unless made in a timely fashion before the Board of Adjustment.

2.4 Burden of Proof

The burden of proof of any legal prerequisites to the granting of the relief or action sought shall be upon the party requesting such relief or action.

2.5 Oral Evidence, Time Limits, and Number of Speakers

Any person desiring to speak must first be recognized by the Chairperson. All comments must be made clearly and audibly, and all speakers must first state their full names and addresses and the names of any persons in whose behalf they are appearing. In order to expedite the conduct of hearings, the Chairperson may reasonably limit the amount of time which a person may use to address the Board. The Chairperson may also limit the number of speakers or amount of testimony upon a particular issue in order to avoid repetitious and cumulative comments. Except when necessary for immediate clarification of a particular point, no person shall be allowed to speak a second time until all others wishing to speak have had an opportunity to do so, and then only at the discretion of the Chairperson.

2.6 Questioning of Speakers

Any person other than a Board member desiring to direct a question to a speaker or staff member shall submit the question to the Chairperson, who shall determine whether the question is relevant to the subject of the hearing and whether or not it should be answered by the speaker or staff member. Direct questioning of speakers or staff members may be allowed in extraordinary circumstances, at the discretion of the Chairperson.

3. MOTIONS

3.1 Motions - Second

Action upon an order, resolution, or any other action of the Board of Adjustment may be proposed by any member by a motion. The Chairperson may make a motion only after all other members of the Board present have had an opportunity to make a motion on the question. Before a motion can be considered or debated it must be seconded, at which time it shall be on the floor and must be considered. If not seconded, the motion is lost for lack of a second and shall be so declared by the Chairperson.

3.2 Amendment of Motion or Substitute Motion

A motion on the floor may be amended at any time before adoption or rejection. When an amendment is offered, the Board will debate and take action on the amendment before acting on the original motion. If the amendment is not adopted, the original motion will then be considered. If the amendment is adopted, the original motion as amended will then be considered.

3.3 Withdrawal of Motion or Second

A motion may be withdrawn by the maker at any time before adoption or rejection, with consent of the second. A second to a motion may be withdrawn by the seconding member at any time before adoption or rejection of the motion. The motion will then be lost for lack of a second and so declared by the Chairperson unless seconded by another person.

3.4 Tabling a Motion

At any time after a motion has been seconded, any member may move to table a motion. The motion shall contain the date and time at which the tabled motion would be reconsidered by the Board. If the tabling motion is adopted by a majority vote of the voting members present, the original motion will remain on the floor but may not again be considered at the meeting at which it was made. The original motion will be considered and voted upon at a meeting of the Board, specified in the motion, unless again tabled at that time. If not considered at such meeting, it will be deemed lost. If the tabling motion is not adopted by a majority of the voting members present, consideration of the original motion will continue.

3.5 Discussion, Closure, and Question

After a motion has been seconded, any member may discuss or comment on the subject of the motion. The Chairperson will recognize members of the Board of Adjustment with the desire to speak, beginning with the motion's maker, and will protect each speaker from disturbance or interference. When no member wishes to discuss or comment further, the Chairperson will call for a vote on the motion. Any

member of the Board may at any time, move to close the debate and "call for the question". Upon a second for the motion to "Call for the Question", the motion to close the debate shall be voted upon. If the vote is affirmative (3/5) the "question" shall be voted upon. If the vote is against (less than 3/5), the debate shall continue.

3.6 Motions for Reconsideration

Motions for reconsideration of a matter may be made only by a member who voted with the prevailing majority on the matter to be reconsidered. Any member of the Board of Adjustment may second a motion to reconsider. Motions to reconsider shall be made at the same meeting as the original motion. If the matter to be reconsidered was considered at a public hearing, the public hearing will be reopened before additional evidence may be heard.

4. DECISION-MAKING

4.1 Voting

Approval of any motion brought before the Board of Adjustment shall require a concurring vote from at least three of its five members, unless otherwise specified by law.

4.1.1 Quorum

A quorum to open a meeting shall be considered a majority of the Board of Adjustment members (three (3) members). In circumstances where a quorum to open a meeting has been established, but for reasons such as a conflict of interest on the part of member(s) present arises, where the voting members is limited to less than three (3) member, the item will be continued to the next meeting. Should a concurring vote not be possible due to the abstentions of three or more members, the request shall be considered denied.

4.1.2 Abstentions Due to Conflicts of Interest

If it is determined by any member of the Board of Adjustment that he or she has a conflict of interest on an agenda item, said member shall so declare the nature of their conflict prior to commencement of discussion of the agenda item. Upon declaration of their conflict of interest they shall excuse themselves from the dais. They shall have the right to address the Board from the floor. Abstentions due to conflicts of interest shall not count as votes for the purpose of determining whether there has been an affirmative vote of a majority of the members present, but shall be counted for the purpose of determining whether a quorum is present. The vote of member(s) who abstain due to conflict of interest shall be registered as an abstention.

4.1.3 Roll Call

Voting upon a motion may, at the discretion of the Chairperson, and shall, upon the request of any member, be by roll call. When voting is not by roll call, the Chairperson may, in the absence of objection by any member of the Board of Adjustment, declare an item to be unanimously approved.

4.1.4 Motions Include Staff Recommendations

A motion to adopt or approve staff recommendations or simply to approve the action under consideration shall, unless otherwise particularly specified, be deemed to include adoption of all proposed findings and execution of all actions recommended in both the written staff report on file on the matter and any oral staff report presented during the hearing.

4.1.5 Absentees

A Board of Adjustment member who is absent from any portion of a hearing conducted by the Board may vote on the matter at the time it is acted upon provided that he or she has listened to a tape recording of the entire portion of the hearing from which he or she was absent, provided that a tape recording exists, and if she or he has examined all of the exhibits presented during the portion of the hearing from which he or she was absent and states for the record before voting that the member deems himself or herself to be as familiar with the record and with the evidence presented at the hearing as he or she would have been had he or she personally attended the entire hearing.

4.1.6 Tie Votes

Any tie vote shall constitute a denial of the motion and may be reconsidered by a motion offered by any member who voted on the matter. If there is no action by an affirmative vote, the result is denial. If the matter involves an appeal and an affirmative vote does not occur, the result is that the decision appealed stands as decided by the decision-maker from which the appeal was taken.

4.1.7 Passing on a Vote/Abstentions Not Due to a Conflict of Interest

Any member of the Board of Adjustment who has not declared a conflict of interest, but casts a pass vote or abstains from voting shall have that vote registered as a no vote.

4.1.8 Ex parte communication

The outside communication regarding a project to be reviewed by the Board is discouraged. Whereas, the majority of the actions of the Board of Adjustment are quasi-judicial in nature, the parties involved are entitled to

the same fairness, impartiality and independence of judgment as one expects in a court of law.

Any member of the Board of Adjustment who has been contacted by an applicant, appellant or interested party, shall so note at the beginning of the hearing on that item and should state what issues were raised and discussed on the request.

4.2 Resolutions

The Board of Adjustment shall adopt a resolution of facts and findings for approval or denial on all applications unless the request is withdrawn prior to the action by the Board.

Should the Board's decision be different than the resolution presented in the staff report, staff shall revise the resolution to comply with the Board's action for the adoption at the next meeting.

The Board of Adjustment members, upon the conclusion of a public hearing and its vote, shall adopt a Resolution of Findings for that specific case. Such resolutions shall be recorded with the County.

4.3 Consent Items

Items that require little or no discussion by the Board of Adjustment may be considered as consent items. The Board will act on these items in one motion at the beginning of the meeting. Approval by the Board of consent items means that the staff recommendation was approved along with the findings and conditions set forth in the staff report. Any member of the Board, the applicant, or members of the public may request that consent items be considered in their regular order on the agenda.

4.4 Continuances

Upon a showing of good cause and by request of the applicant, City staff, a member of the public, a member of the Board of Adjustment, or the Chairperson, at the time set for a hearing on a particular item, may order the hearing to be continued to a specified date and time. Upon the request of any member of the Board, motions for a continuance shall be made by roll call vote of all members present.

4.5 Effectiveness of the Board of Adjustment's Decision

Upon the closing of the public hearing and the Board's vote, the decision of the Board shall be made into effect. Any time constraints for appeals shall commence from the date of the action of the Board to either approval or deny an application. Any person aggrieved with a Board's decision shall file an application in a timely fashion, in accordance with State Code.

5. CONSTRUCTION AND EFFECT

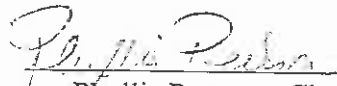
5.1 Construction

These procedural rules shall be construed and applied so as to ensure a full and fair hearing of relevant evidence which is offered on variances applicable to the Zoning regulations set forth in the City Code and to facilitate an orderly analysis of evidence and issues by the Board of Adjustment. Adoption and implementation of these rules is intended to be consistent with the provisions of the Code of Iowa.

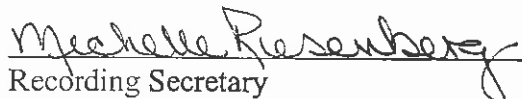
5.2 Chairperson's Rules of Order

When there is no provision of these rules of procedure applicable to the conduct of the meeting or hearing of the Board of Adjustment, the Chairperson shall devise appropriate rules and make final decisions on any points of order which may arise. The Chairperson's final decisions on points of order shall not be appealable.

PASSED AND ADOPTED this 13th day of November, 2002.



Phyllis Pearson, Chairperson



Recording Secretary