

**BYLAWS OF THE BOARD OF ADJUSTMENT  
CITY OF MESA, ARIZONA**

**I. ORGANIZATION**

**A. Officers**

The Board of Adjustment, organized as provided under the Zoning Ordinance of the City of Mesa, shall elect a Chairperson and Vice-Chairperson at its first meeting every July, or when vacancies occur.

**B. Duties**

The Chairperson, or when the Chair is vacant for any reason, the Vice-Chairperson, shall preside at meetings, shall decide all points of order or procedure, and shall have the power to administer oaths and to take evidence. The Vice-Chairperson shall perform all customary duties of the Chairperson whenever the Chairperson relinquishes the Chair, or when the Chairperson is absent.

**C. Secretary**

The Secretary of the Board shall be a member of the City Planning Division staff assigned by the Zoning Administrator.

**D. Legal Counsel**

The City Attorney, or designated representative, shall be the legal counsel for the Board of Adjustment.

**II. MEETINGS**

**A. Regular**

Regular meetings of the Board shall be held on the first Wednesday of each month at 5:30 p.m., or at a date and time approved and noticed by the Board.

**B. Study Sessions**

The Board members may meet prior to the regularly scheduled meeting for the purpose of reviewing the items on that day's agenda or to discuss other educational or administrative matters.

### **C. Quorum**

A quorum of the Board shall consist of four members. As required by the City Code, the concurring vote of four members of the Board shall be necessary to decide in favor of an applicant.

## **III. PUBLIC HEARINGS**

### **A. Hearing of Applications in Public Meeting**

- 1) The Chairperson will call the number of the application and the name of the applicant. Board members with a conflict of interest will declare the conflict and excuse themselves from participation.
- 2) The applicant or authorized representative may present any information or testimony he/she believes pertinent to the application. The applicant shall provide all his/her evidence at the hearing and shall not seek reconsideration due to the applicant's failure to provide evidence to the Board.
- 3) Any plot plans, maps, sketches or other instruments which, at the discretion of the Board, are deemed necessary to the proper presentation of an application, shall be submitted with the application and/or at the time of the presentation.
- 4) The Chairperson will call for statements from persons in support. Those appearing may either stand and be counted or make statements giving reasons for the support. Board members may address questions through the Chairperson to such persons in support as may appear. Those attending in opposition may then stand and be counted or make statements giving reasons for their opposition. Questions from Board members may be directed at this time.
- 5) All supporting evidence for or against each application shall be presented to the assembled Board.
- 6) Each side shall proceed without interruption by the other and all debate and pleadings shall be addressed to the Board. No discussion between individuals will be permitted.
- 7) The applicant or representative shall have an opportunity for a rebuttal or closing statement.
- 8) Staff will present a report and state the staff's recommendation.
- 9) The Board may agree to impose a time limit on discussion on any matter before it. A time limit may be formalized by a majority vote of the Board, or the Chairperson may announce time limits on any agenda item. Time limits shall be enforced unless the Chairperson or Board decides otherwise.

## **B. Decisions of the Board**

- 1) After a public hearing wherein City staff, the applicant, persons in favor and those in opposition of the subject application are given an opportunity to present their position, provide testimony and/or evidence in support of their position, and are provided an opportunity for rebuttal, the Chairperson will close the public hearing and provide an opportunity for the Board to discuss the subject application.. During the period of discussion by the Board, unless a Board Member request the Chairperson call a staff member, applicant, a person in support or in opposition for further questions; there will be no further presentations from staff, applicant, or persons in support or opposition of the subject application. In addition, during the period of discussion of the Board, no Board Member shall debate or argue an issue with a staff member, the applicant or persons in support or opposition of the subject application.
- 2) Voting shall be by electronic signal, paper ballot, or voice vote, on the call of the Chairperson. Each member participating shall vote “yes” or “no.” Upon decision of the Chairperson, whether before or after a voice vote, a roll call vote may be taken, and each member participating shall answer the roll call by voting “yes” or “no.”
- 3) The Chairperson will announce the decision of the Board, and it will not recognize further discussion of the application from the floor other than to answer questions regarding the Board’s decision and subsequent appeal process to the appropriate body.
- 4) In the event the applicant of any item on the agenda fails to appear, the Board on a motion and second from Board, may vote to continue that case to a future date certain or to withdraw the case. in addition, the Board, in its discretion, may hear testimony from persons present in favor or in opposition of the subject application.
- 5) The Board may take any application under advisement for later consideration. The Board may also defer action on any application whenever it concludes that additional evidence is needed or that alternate solutions need further study.
- 6) The minutes of every Board meeting shall be forwarded to the City Council for review and acknowledgement.
- 7) In the event that a motion is made by a Board Member and seconded by a different Board Member, but upon voting the motion fails to garner sufficient support for the motion to pass (a minimum of four (4) votes to approve a case; a simple majority of board members present if the motion is to deny the case), the Chair may acknowledge a subsequent motion by a Board Member, a second on the subsequent motion by a differing Board Member, and then call for a vote on the subsequent motion, all without requiring a motion for reconsideration of the request. Such a subsequent

motion shall be made immediately after the vote on the failed motion, and before the public hearing begins on next item on the same agenda of the same calendar date. In the event that no subsequent motion is made, or a subsequent motion is made but fails to be seconded, the vote on the previous failed motion shall be the determining vote on the outcome of the case.

#### **IV. MOTIONS FOR RECONSIDERATION**

A request for the Board to reconsider the decision on an application shall only occur at the same meeting that the Board rendered a decision on the application, or at the next regularly scheduled meeting of the Board, wherein all the Board Members who rendered the decision which is the subject of the request for reconsideration are present. Only a Board member that voted in favor of the decision which is the subject of the reconsideration may make a motion to reconsider a previous decision. A Motion for Reconsideration shall only be based on a Board Member's belief that: (i) there may have been a mistake in the law that was the subject of the decision being reconsidered, or (ii) a mistake was made in a Board Member's interpretation of the evidence. The concurring vote of four members of the Board who voted in favor of the decision that is being reconsidered shall be necessary to grant a motion for reconsideration. If a motion for reconsideration does not receive four or more votes in favor of the motion for reconsideration from the Board Members that rendered the votes in favor of the decision being reconsidered, the motion is denied and the previous decision on the application stands. If a motion for reconsideration receives at least four votes of the Board Members that rendered the initial decision, the case may re-discussed only by the Board Members that rendered the original decision at the current meeting and a new motion for a decision can be made by any Board Member that was present at the meeting wherein the case was initially heard or the case can be continued to a new meeting at a date certain. If the application is continued to a new date, only the Board Members who were present at the meeting wherein the initial case was heard can re-deliberate the case and render a decision. At the meeting wherein the case is re-discussed, there shall not be any presentations from staff or the applicant. The reconsideration shall consist for only a re-discussion of the case by the Board Members that were present at the meeting wherein the initial decision was rendered.

#### **V. LOBBYING**

The Board will not discuss a specific case with the applicant, the applicant's representative, or other parties in interest or opposition, prior to the public hearing when such case will be considered.

The submission of evidence and all written material shall be submitted by interested

parties to the City staff and not directly to Board members. If written material regarding a filed application is transmitted to a Board member by the applicant or a member of the public, the written material shall be forwarded to staff for review and incorporation into the staff report.

**VI. CONFLICT OF INTEREST**

As required by state statute (A.R.S. §§ 38-501 *et seq.*), a Board member who has, or whose relative has, a substantial interest in the decision before the Board shall make known such interest in the official records of the Board and shall refrain from participating in any manner in such decision.

**VII. APPEALS INVOLVING NON-CONFORMING DETACHED SIGNS FOR GROUP C-O-I DEVELOPMENTS**

Requests for additional detached signs in group C-O-I developments which display nonconforming detached signs should include the following information:

- 1) Evidence of the owner's unwillingness or inability to remove the nonconforming sign.
- 2) Evidence of aggregate sign height or aggregate sign area left unused due to the presence of a nonconforming sign.
- 3) Evidence that the majority of tenants do not benefit from the presence of the nonconforming sign.
- 4) Length of leasehold interest in the site
- 5) Evidence of pre-leasehold or pre-ownership due diligence to determine availability of signs for applicant.

**VIII. RULES AND AMENDMENTS**

Amendments to these Bylaws may be made by the Board upon the affirmative vote of four members. Amendments adopted shall become effective at the current meeting or next regular meeting of the Board based on the motion of adoption of the Bylaws.

A certified copy of these rules and of any amendments thereto shall be placed on record in the office of the City Clerk within ten days following the date of adoption.