

## 5-100 REVIEW AND ENFORCEMENT PROCEDURES

### **5-101 GENERAL REVIEW REQUIREMENTS**

**Ord. 2667/4-2-90**

The following review and approval shall be required for all uses and construction to determine that the proposed uses and structures comply with the requirements and provisions of this ordinance and to require compliance therewith.

#### **A. SITE PLAN**

A site plan, drawn to scale and showing the proposed development including all easements, property and setback lines, physical features, fire lanes and hydrants, buildings, utilities, parking and drives, adjacent streets with medians and drives, locations of refuse collection, and landscaping shall be attached to all applications for building permits and may be required with applications for Certificates of Occupancy if necessary to determine compliance with requirements. The Development Review Committee shall review site plans and approve those which are in compliance with all regulations of this ordinance and other applicable building laws. Site plans on land classified PD also require Commission and Council review and approval. See 4-200.

#### **B. BUILDING PERMITS**

All construction, erection, expansion, and alteration of primary or accessory structures shall require application for a building permit, review of building plans, and issuance of a building permit in accordance with the Mesquite Building Code.

#### **C. CERTIFICATES OF OCCUPANCY** (Ord. 4438 / 9-6-2016)

Except for single family residential and duplex uses, no building or land shall be used or changed in use or ownership until a Certificate of Occupancy shall have been issued by the Building Official stating that the building, land and authorized uses comply with the provisions of this ordinance and other applicable building laws.

- 1. Application** Application for a Certificate of Occupancy shall be made prior to occupancy and connection of utilities.
- 2. Nonconforming Situations** Prior to the issuance of a Certificate of Occupancy in a nonconforming situation, when there is uncertainty of the legal nonconforming status, a notarized affidavit may be required to verify that the use was legally in existence at the time of the ordinance adoption, amendment, or annexation which created the nonconformity. The affidavit should be accompanied by documentation showing relevant dates and should include a description of the use, the scope of operations, and structures and other improvements used at that time.
- 3. Records** A record of all Certificates of Occupancy shall be maintained by the Building Official and copies shall be furnished upon request to any person having an interest in the building or land.
- 4. Denial/Revocation** (Ord. 4438 / 9-6-2016)

Failure to comply initially or to continue to comply with the provisions of this ordinance, the site plan approval, or other applicable stipulations or building regulations, or the failure to conduct the authorized uses and only the authorized uses within the limits established by the Certificate of Occupancy, shall constitute a basis to deny or revoke approval of the Certificate of Occupancy, including denial or disconnection of utilities. See 5-103C.

  - a. Notice of Revocation:** The Director or Director's designee shall issue a written notice of intent to revoke a certificate of occupancy, which shall set forth the grounds upon which the notice is issued and inform the holder that the certificate of occupancy will be revoked at the end of ten (10) days after service of such notice unless a written request for hearing is filed with the Director within the ten (10) day period. If no request for hearing is filed within the ten (10) day period, the Director's decision to revoke the certificate of occupancy shall become final.

- b. *Hearing:* A hearing requested under this subparagraph (a) shall be scheduled before the Director not less than 10 days nor more than 30 days after the date a timely written request for a hearing was filed. At the hearing, the certificate holder will be allowed an opportunity to respond to the allegations and present any mitigating evidence or reasons why the proposed revocation is improper.
- c. *Appeal of Revocation:* If, after the hearing, the Director determines that the certificate of occupancy should be revoked, an appeal of the Director's decision may be made to the Board of Adjustment in accordance with Chapter 211 of the Texas Local Government Code.

**5-102 SPECIAL REVIEW REQUIREMENTS**

**Ord. 2667/4-2-90**

Additional review and approval procedures are required for those uses which are listed as Conditional Uses or Special Exceptions, for appeals of an administrative determination, for requests for variance, and for uses and development on tracts classified as Planned Development.

**A. APPEALS**

Appeals of an administrative decision and/or requests for interpretation of the ordinance shall require review by the Board of Adjustment in accordance with the procedures set out in 5-200.

**B. SPECIAL EXCEPTIONS**

Uses listed as Special Exceptions shall require review and approval by the Board of Adjustment in accordance with the procedures set out in 5-200.

**C. VARIANCES**

Requests for variance from the strict application of the requirements of this ordinance shall require review and approval by the Board of Adjustment in accordance with the procedures set out in 5-200.

**D. CONDITIONAL USE PERMITS**

Uses listed as Conditional Uses shall require amendment of the ordinance, including hearing and recommendation by the Commission, hearing by the Council, and adoption of an amending ordinance in accordance with the procedures for ordinance amendment set out in 5-300.

**E. PLANNED DEVELOPMENT USES**

Commission and Council review and approval is required for any development/site plan on property classified as PD in accordance with the requirements set out in 4-200.

**5-103 ENFORCEMENT AND PENALTY**

**Ord. 2667/4-2-90**

**A. CRIMINAL PROSECUTION**

A person or corporation who violates or fails to comply with any provision of this ordinance or who builds or alters any building, land, or use in violation of any plan submitted and approved hereunder, shall be guilty of a misdemeanor and each day or portion thereof during which the violation continues shall be a separate offense. Each offense shall be punishable by a fine of not more than \$2000. An owner of any structure or land where a violation exists, and any architect, builder, contractor, agent, or other person who commits or assists in the commission of the violation, shall be guilty of separate offenses.

**B. CIVIL ACTION**

The provisions of this ordinance may be enforced through civil court action as provided by State law.

**C. UTILITY DISCONNECTION**

Failure to comply with the provisions of this ordinance or other applicable building laws, shall constitute a basis to deny or disconnect City utilities and to require private utility companies to do likewise.

**D. ENFORCEMENT AUTHORITY**

The provisions of this ordinance may be enforced by the Building Official, the Health Official, the City Planner, or any other representative of the City.

## 5-200 APPEAL, VARIANCE AND SPECIAL EXCEPTION PROCEDURES

Appeals of an administrative determination and/or requests for interpretation of this ordinance, requests for variance, and requests for approval of a Special Exception require Board of Adjustment review and action and shall be processed as follows.

### **5-201 APPLICATION**

**Ord. 2667/4-2-90**

#### **A. INITIATION**

- 1. Appeals/  
Interpretation**  
(Ord. 4400/11-2-15)

An appeal alleging error in a determination of an administrative official and/or requesting interpretation of the provisions of this ordinance may be made by any person aggrieved by the decision of an administrative official, or by any officer, department, board, or bureau of the municipality affected by the decision. An appeal to the Board must be made within 10 days after notice of the decision of the official.
- 2. Variances/ Special  
Exceptions**

A request for variance or for approval of a Special Exception may be made by the owner of the property on which the variance or Special Exception is sought, or by an authorized agent, provided that the owner indicates his consent in writing.

#### **B. APPLICATION FORM**

Requests for Board action shall be submitted on application forms provided by the Planning Division and shall adequately set forth the description and justification of the request and/or specify the grounds for appeal, as is appropriate for the requested action.

#### **C. MAP/DRAWING**

The application shall include a map, site plan, plot plan, or other drawing, drawn to scale and/or dimensioned, which indicates the property in question and shows all structures and improvements and their relationship to each other, to the property boundaries, and to the proposed action.

#### **D. APPLICATION FEE**

The applicant shall submit with the application a fee in the amount set by the City Council for the purpose of defraying the administrative costs of processing the application. No fee or portion thereof shall be refundable after notices regarding the application have been issued.

### **5-202 PROCEDURES**

**Ord. 2667/4-2-90; Ord. 3923/12-17-07**

#### **A. STAY OF PROCEEDINGS**

An appeal stays all proceedings in furtherance of the action that is appealed unless the official from whom the appeal is taken certifies in writing to the Board those facts supporting the official's opinion that a stay would cause imminent peril to life or property. In such case, the proceedings may be stayed only by a restraining order granted by the Board or a court of record on application, after notice to the official, if due cause is shown.

#### **B. PUBLIC HEARING AND NOTIFICATION**

The Board shall hold a public hearing on all actions authorized by this ordinance. Notification of public hearings shall specify the time and place of the hearing, along with information regarding the location and nature of the requested action, and shall be provided as follows:

**Mailing** Before the tenth day before the date of the public hearing, written notice shall be sent to each owner of real property within 200 feet of the property which is the subject of the request, as such ownership is indicated by the most recently approved municipal tax roll. The notice may be served by its deposit, properly addressed with postage paid, in the United States mail.

**5-203 CRITERIA FOR REVIEW**

**Ord. 2667/4-2-90**

**A. CRITERIA FOR SPECIAL EXCEPTIONS**

Special exceptions may be granted as set out in this ordinance, when the Board determines that the exception will allow greater use and enjoyment of property without creating adverse impacts on adjacent properties and that it will be compatible with the surrounding neighborhood. The Board shall also consider any criteria set out in this ordinance for a specific Special Exception.

**B. CRITERIA FOR VARIANCES**

Variations from the terms of this ordinance which will not be contrary to the public interest may be granted where, due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship, so that the spirit of the ordinance is observed and substantial justice is done. The Board shall consider whether:

1. **Special Conditions** Special conditions and circumstances exist which are peculiar to the land or improvements thereto and which are not applicable to other lands or improvements thereto in the same district.
2. **Unnecessary Hardship** Literal interpretation of the provisions of the ordinance would result in unnecessary hardship to the owner of the property.
3. **Not Self-Imposed** The special conditions and circumstances are not self-imposed, i.e. do not result from the actions of the applicant or owner.

**C. SPECIAL EXCEPTIONS FOR THE HANDICAPPED**

**Ord. 4400/11-2-2015**

It is the express intent of the City Council to comply with the Federal Fair Housing Amendments Act of 1988, as amended, and to ensure that all handicapped persons have equal opportunity to use and enjoy a dwelling. This section allows a person to seek relief from the enforcement of any regulation contained in this chapter that would result in illegal discrimination against the handicapped. This section does not authorize the Board to grant a change in the use of a building or structure.

The Board shall grant a special exception to any regulation in this chapter if, after a public hearing, the Board finds that the exception is necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling. The term "handicapped person" means a person with a "handicap," as that term is defined in the Federal Fair Housing Amendments Act of 1988, as amended. The Board may impose reasonable conditions upon the granting of this special exception consistent with the purpose stated in this section.

**5-204 BOARD ACTION**

**Ord. 2667/4-2-90; Ord. 4136/3-21-2011**

**A. ACTION AUTHORIZED**

1. **Special Exceptions and Variances** The Board may deny or approve a request for Special Exception or Variance. The Board may impose reasonable conditions and limitations to an approval in order to further the purposes and intent of this ordinance.
2. **Appeals Interpretations** The Board may reverse or affirm, in whole or in part, or modify the administrative official's order, requirement, decision or determination from which an appeal is taken and make the correct order, requirement, decision or determination, and for that purpose the Board has the same authority as the administrative official.

**B. EFFECT OF DECISIONS** (Ord. 4400/11-2-15)

The Board's decision is final unless appealed to the district court within 10 days in accordance with Chapter 211 of the Texas Local Government Code.

**C. RESUBMISSION** (Ord. 3151/4-21-97)

The submission of an application previously determined by the Board shall not be permitted, unless the Board's determination is made "without prejudice". Except that, where extenuating circumstances exist, an applicant previously denied may appear before the Board to request that resubmittal of their application be permitted. Extenuating circumstances shall mean changed conditions or facts which will substantially alter the criteria for review of the application. This section shall not prohibit the submission of a new application which contains meaningful revisions for consideration. Meaningful revisions shall mean a substantial change in the size, location, or other physical characteristic of the subject of the application.

**D. LIMITATION ON APPROVAL**

The applicant shall file an application for a building permit or Certificate of Occupancy on or before the expiration of 180 days from the date of favorable Board action, unless an extended period is specifically granted by the Board. If the applicant fails to file such application within the time period, the request is automatically denied without prejudice and a new application must be made.

## 5-300 AMENDMENT AND CONDITIONAL USE PERMIT PROCEDURES

The City Council may from time to time, after receiving a final report thereon from the Planning and Zoning Commission, amend, supplement or change the regulations herein provided or the boundaries of the zoning districts, subject to compliance with the following amendment procedures. Approval of a Conditional Use permit constitutes an amendment and requires compliance with the following procedures.

### 5-301 APPLICATION

**Ord. 2667/4-2-90**

#### A. INITIATION

Consideration for a change of zoning classification, boundary, or regulation, and requests for approval of a Conditional Use permit may be initiated in the following manner:

1. **City** By direction of the Commission, City Council or City Planner.
2. **Property Owner** By application of the owner of the property on which a district boundary change is requested or by an authorized agent, provided that the owner indicates his consent in writing.
3. **Others** Persons having no ownership interest in the land and not having the owner's consent shall not be permitted to initiate an application to change the boundaries or classification on such land. Such parties may petition the Commission, in writing or by spokesperson, requesting that the Commission initiate an application. The Commission shall consider the time elapsed since the last zoning action on the property, any substantial changes in conditions in the area since the last zoning action, the relationship of current zoning and the requested action to the City's comprehensive plan/development policies, and other facts and reasons presented.

If the Commission determines that the potential for adverse impacts on surrounding property and for incompatibility of development due to changed conditions is greater than at other locations where similar uses abut or are in close proximity to each other, it may initiate an application in order to afford a full hearing on the matter. If the Commission declines to initiate an application, no similar non-owner petition shall be considered for a period of one year.

#### B. APPLICATION FORM AND MAP

A zoning change or Conditional Use permit request shall be submitted on an application form as provided by the Planning Division and shall state the specific zoning classification desired. A planimetric map, boundary survey, or other map, adequate to accurately identify and locate the property in question shall be submitted with the application form.

#### C. APPLICATION FEE (Ord. 4400/11-2-15)

The applicant shall submit with the application a fee in the amount set by the City Council for the purpose of defraying the administrative costs of processing. If an applicant causes his/her application to be continued or tabled, thus requiring new notification, the applicant shall be charged an additional fee of 30 percent of the original application fee. No fee or portion thereof shall be refunded after notices on the application have been issued.

### 5-302 PROCEDURES

**Ord. 2667/4-2-90**

#### A. COMMISSION PUBLIC HEARING AND NOTIFICATION

Prior to making its report to the City Council, the Commission shall hold at least one public hearing on each application.

1. ***Proposed Changes In District Classification or Boundaries/ Conditional Use Permits*** Before the 10th day before the date of the hearing, written notice of the time and place of such hearing shall be sent to each owner of real property within 200 feet of the property which is subject of the application, as such ownership is indicated by the most recently approved municipal tax roll. The notice may be served by its deposit, properly addressed with postage paid, in the United States mail.
2. ***Proposed Changes In Text (Ord. 4188/11-7-2011)*** Before the 15th day before the date of the hearing, notice of the time and place of the hearing on proposed changes in regulations and/or the text of the Zoning Ordinance shall be published in the official newspaper of the City or a newspaper of general circulation in the City.

**B. COMMISSION RECOMMENDATION**

The Commission, after holding the public hearing, shall prepare its recommendations on the proposed changes and forward the same to the City Council.

**C. APPEAL OF COMMISSION DENIAL**

When the recommendation of the Commission is for denial of the application, it shall be presumed that the applicant declines a hearing before the City Council unless written request is made to the City Secretary, appealing the Commission recommendation and requesting a Council hearing.

**D. COUNCIL PUBLIC HEARING AND NOTIFICATION**

The City Council shall hold at least one public hearing on each application. Before the 15th day before the date of the hearing, notice of the time and place of such hearing shall be published in the official newspaper of the City or a newspaper of general circulation in the City. (Ord. 4188/11-7-2011)

**5-303 CONDITIONAL USE PERMITS**

**Ord. 3032/5-1-95**

**A. PURPOSE AND SCOPE**

The purpose of the Conditional Use Permit process is to identify those uses which might be appropriate within a zoning district, but due to either their locational, functional, or operational nature, could have potentially negative impact upon surrounding properties or upon the City as a whole; and to provide a procedure whereby such uses might be permitted, where appropriate, by further restricting or conditioning them so as to eliminate the probable and potential negative impacts.

**B. REVIEW CRITERIA**

In reviewing a request for Conditional Use Permit approval, the City Council shall consider:

1. ***Existing Uses*** That the Conditional Use will not be injurious to the use and enjoyment of other property in the immediate area for purposes already permitted, nor substantially diminish and impair property values within the immediate vicinity.
2. ***Vacant Properties*** That the Conditional Use will not impede the normal and orderly development and improvement of surrounding vacant property for uses predominant in area
3. ***Services*** That adequate utilities, access roads, drainage, and other necessary facilities have been or are being provided. Conditional uses in residential districts shall generally require direct access to an arterial street.
4. ***Parking*** That adequate measures have been or will be taken to provide sufficient off-street parking and loading spaces to serve the proposed uses.
5. ***Performance Standards*** That adequate measures have been or will be taken to prevent or control offensive odor, fumes, dust, noise, and vibration, so that none of these will constitute a nuisance and to

control lighted signs and other lights in such a manner that no disturbance to neighboring properties will result.

**C. TERMINATION**

All Conditional Use Permits approved prior to the date of passage of this section and all Conditional Use Permits approved after the date of passage shall automatically terminate if the conditions set out below occur. Extension of the approval period may be requested at any time prior to termination or within 60 days after termination. When it is determined that no significant changes affecting the Conditional Use Permit have occurred, the City council may, after recommendation by the Planning & Zoning Commission, extend the approval. All approvals and extensions shall be valid for one year from the date of action, unless the City Council specifies a greater or lesser period.

1. ***Failure to Implement*** Approval of the Conditional Use Permit shall automatically terminate one year after the date of the ordinance granting the Conditional Use Permit, unless a building permit or a Certificate of Occupancy has been issued for the use.
2. ***Discontinuance*** Approval of the Conditional Use Permit shall automatically terminate if the use is abandoned or is discontinued for a period of six months or more.

**D. SPECIAL CONDITIONS (Ord. 3459, 10-15-01)**

The City Council may stipulate conditions and limitations on the approval of the Conditional Use Permit in the interest of public welfare and to assure that the intent of this ordinance is carried out.

1. ***Conditions*** The approval of a Conditional Use Permit may place stipulations or conditions on the operation, location, arrangement, or construction of a Conditional Use Permit in order to assure the protection of adjacent properties and uses in the vicinity, and to safeguard the welfare of the citizenry as a whole as it may be affected by the use.
2. ***Time Limits*** A time limit may be imposed as a condition of the approval of a Conditional Use Permit when the City Council determines that one of the following circumstances exist:
  - a. The use is presented by the applicant as a temporary or interim use or the use, due to its nature and operation, may be considered temporary or interim, so that removal of the use is reasonably to be expected after a period of time. Temporary or interim use may be indicated by leasing of land or building space, by minimal construction of property improvements, or by the lack of construction customized for the specific use.
  - b. The use is consistent with current uses in the area and on adjoining property; however, anticipated future changes in the area would cause the requested use to become incompatible after a period of time.

When no time limit is proposed by the applicant, but the Council finds that the use is not appropriate without such condition, then the Council shall inquire of the applicant if a time limit is an acceptable condition. If such condition is unacceptable to the applicant, the Council shall deny the application.

When a Conditional Use Permit is to expire due to an imposed time limit and the property owner wishes to continue the use, a new application shall be submitted requesting to continue the Conditional Use Permit. Such applications shall require the same procedures outlined herein for initial approval of a Conditional Use Permit.

**3.. Transferability**

A Conditional Use Permit shall be transferable between owners and businesses except as follows: Where the City Council finds that a use or uses defined and permitted under a Conditional Use Permit are sufficiently unusual in character or operation as to create the potential for variations in function or operation with possible negative impacts upon adjacent properties or on the citizenry as a whole, the City Council may specify in its approval that the Conditional Use permit is approved solely for the business represented by the applicant, and that the Conditional Use Permit shall not be transferable to a different person or business.

A different business applicant desiring to continue a non-transferable Conditional Use Permit shall submit a new application requesting to continue the Conditional Use Permit. Such applications shall require the same procedures outlined herein for initial approval of a Conditional Use Permit.

**5-304 CITY COUNCIL ACTION**

**Ord. 2667/4-2-90**

**A. ACTION AUTHORIZED**

The City Council may sustain or reverse the recommendation of the Commission by a simple majority vote, except when a three-quarter majority vote is required as noted below.

A favorable vote of three-fourths of all members of the City Council shall be required to approve any amendment when the proposed change is protested, as provided by State law, by the owners of 20% of the area covered by the proposed change or of the area immediately adjoining and extending 200 feet from the subject area.

**B. RESUBMISSION**

No application on the same request shall be permitted within one year of the Council hearing, or Commission hearing when a denial is not appealed, unless the Commission shall determine that extenuating circumstances exist.

A notation of "denied without prejudice" on the minutes of the prior action on an application shall be evidence of the existence of extenuating circumstances and resubmission shall be permitted.

**C. ORDINANCE PREPARATION AND ADOPTION**

Upon approval of the request by the Council, authorizing the preparation of an ordinance, the applicant shall, on or before the expiration of 90 days from the Council hearing/approval, unless an extended period is specifically granted by the Council, provide field notes and a map of a survey of the property on 8 1/2 X 11 sheets. Upon receipt of adequate field notes, an ordinance shall be prepared and scheduled for adoption. If an applicant fails to provide the required property description within the time period, the previous action by the Council is null and void, unless an extended period shall be granted by the Council.

## 5-400 BOARD AND COMMISSION ESTABLISHED

### 5-401 PLANNING AND ZONING COMMISSION

**Ord. 2667/4-2-90**

A Planning and Zoning Commission is hereby created and may also be called the Commission.

#### **A. PURPOSE AND SCOPE**

The Planning and Zoning Commission is created to accomplish the following purposes:

To create the best possible urban environment through adequate regulatory measures and through consistent, fair, equitable, and honest enforcement;

To insure the expansion of opportunities for all citizens of all economic and social levels, including opportunities for housing and education, employment and income, cultural and recreation, medical and professional;

To prevent conditions causing excessive densities or overcrowding, causing congestion and unsafe situations or pollution;

To progress toward the ultimate goal of sound, well-planned, well-designed, imaginative, economical and timely programs and activities, with the utmost use of new techniques, materials and processes.

All of the above mentioned purposes will help create an entirely new and wholesome environment for all citizens of the community.

#### **B. MEMBERSHIP**

- 1. Regular Members** The Commission shall be composed of 7 qualified electors of the City serving as members. Members of the Commission shall be appointed by the City Council and shall be identified by place numbers 1 through 7. All terms shall expire on the 30th day of September, with the terms of the odd-numbered places expiring in odd-numbered years, and the terms of the even-numbered places expiring in even-numbered years.
- 2. Alternate Members** Two alternate members shall be appointed by the City Council. The terms of alternate members shall expire 2 years from the date of their appointment.
- 3. Removal** Regular and alternate members of the Commission may be removed by the appointing body for cause.
- 4. Vacancies/  
Succession** Vacancies shall be filled by the City Council for the unexpired term. A Commission member may serve no more than 3 consecutive terms. An appointment of one year or more shall constitute a term.
- 5. Attendance** The term of any member, including an alternate member, who has not attended more than 80 percent of the regularly scheduled meetings, without prior approval of the Chairman in the event of inability to attend, in any 6 month period shall automatically expire.

### C. ORGANIZATION AND RULES

The Commission shall adopt rules to govern its proceedings in accordance with this ordinance.

1. **Meetings** Meetings of the Commission shall be held at the call of the Chairperson and at other times as determined by the Commission.
2. **Elections** The Commission shall hold an organizational meeting each year and shall elect a Chairperson, Vice-Chairperson, and Secretary from among the members. The Commission may elect such other officers as it deems necessary either from among the membership or from the staff representatives assigned to work with the Commission.
3. **Quorum** Four members of the Commission shall constitute a quorum to transact any business.  
Ord. 3908/11-5-07
4. **Votes Required to Act** The affirmative vote of at least 4 members shall be required to make any recommendation to the City Council, to approve any plat or site plans filed for approval, and to transact any other business before the Commission. Provided however, that administrative and procedural matters shall require only a simple majority of the members present.  
  
When fewer than all the members are present and all motions on an application fail to carry by 4 affirmative votes, consideration of the application shall automatically be continued to the next regular meeting. Provided however, that no application shall be continued under this rule beyond the next regular meeting. Failure of the Commission to secure 4 concurring votes on a motion at said next regular meeting shall be recorded in the minutes as a denial of the proposal under this rule.
5. **Minutes/ Records** The Commission shall keep minutes of its proceedings that indicate the vote of each member on each question or the fact that a member is absent or fails to vote. The Commission shall keep records of its proceedings and other official actions. The minutes and records shall be filed in the Planning Division office and are public records.
6. **Disqualification from Voting** A member shall disqualify himself from voting whenever he finds that he has a personal or a monetary interest in the property under appeal, or that he will be directly affected by the decision of the Commission.  
  
A member may disqualify himself from voting whenever any applicant, or his agent, has sought to influence the vote of the member on his application, other than in the public hearing.
7. **Training & Competency** As a condition of membership on the Commission, the members shall participate in such training and education as may be required by law or ordinance. From time to time, the Community Development Director shall provide additional training and education opportunities for the members of the Commission in order to maintain and improve their knowledge and competence in matters pertaining to the Commission.  
Ord. 3908/11-5-07

### D. DUTIES AND POWERS

The Commission is hereby charged with the duty and invested with the authority to:

1. **Comprehensive Plan** Formulate and recommend to the City Council for adoption a Comprehensive Plan for the orderly growth and development of the City and its environs, and from time to time recommend such changes in the Plan as it finds will facilitate the movement of people and goods, and the health, recreation, safety and general welfare of the citizens of the City.

2. **Zoning Plan** Formulate a zoning plan as may be deemed best to carry out the goals of the Comprehensive Plan; hold public hearings and make recommendations to the City Council relating to the creation, amendment, and implementation of zoning regulations and districts as provided in State law; all powers granted under said act are specifically adopted and made a part hereof.
3. **Platting** Exercise all powers of a Commission as to approval or disapproval of plans, plats, or replats, and vacation of plans, plats, or replats set out in State law.
4. **Zoning Changes** Initiate for consideration at public hearings, proposals for the original zoning of annexed areas or for the change of zoning district boundaries on an areawide basis. No fee shall be required for the filing of any such proposal in the name of the City.
5. **Planning Information** Keep informed with reference to the progress of City Planning in the United States and other countries and recommend improvements in the adopted plans of the City.

#### **5-402 BOARD OF ADJUSTMENT**

**Ord. 2667/4-2-90**

A Board of Adjustment is hereby created and may also be called the Board.

##### **A. PURPOSE AND SCOPE**

The Board of Adjustment is created and vested with power and authority to carry out the responsibilities as set out herein for the purpose of rendering full justice and equity to the general public in the application of the terms of this ordinance.

##### **B. MEMBERSHIP** (§ 1, 2, 3, 5: Ord. 3847/12-18-06)

1. **Regular Members** The Board shall consist of 5 regular members to be appointed by the City Council.
2. **Alternate Members** (Ord. 3107/9-16-96) The Council shall appoint at least 2, but no more than 4, alternate Board members to serve in the absence of regular members. An alternate member is subject to removal in the same manner as a regular member. When more than 2 alternates are appointed, the additional members shall be known as reserve alternates and shall not be subject to the attendance requirements set out below.
3. **Terms of Office** The regular, alternate and reserve alternate members shall be appointed for two-year terms and shall serve until their successors are appointed and qualified. The terms of three regular members, one alternate member and one reserve alternate member shall end on January 1<sup>st</sup> of each odd-numbered year and the terms of two regular members, one alternate member and one reserve alternate member shall end on January 1<sup>st</sup> of each even-numbered year.
4. **Removal** The Council may remove a member for cause on a written charge after public hearing, as provided by State law.
5. **Vacancies/ Succession** Vacancies shall be filled by the City Council for the unexpired term. A Board member may serve no more than 3 consecutive terms. An appointment of one year or more shall constitute a term. (Ord. 2884/6-21-93).
6. **Attendance** (Ord. 4059/9-8-2009) Any member, including any alternate member, who has not attended more than 75 percent of the regularly scheduled meetings, without prior approval of the Chairman in the event of inability to attend, in any 12-month period shall automatically resign and cease to hold office, and the Council shall fill the vacancy for the unexpired term.

### C. ORGANIZATION AND RULES

The Board shall adopt rules to govern its proceedings in accordance with this ordinance and the State law.

1. **Meetings** Meetings of the Board shall be held at the call of the Chairperson and at other times as determined by the Board. The Chairperson or the acting chairperson may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open to the public.
2. **Elections** The Board shall hold an organizational meeting each year and shall elect a Chairperson, Vice- Chairperson, and Secretary from among the members. The Board may elect such other officers as it deems necessary either from among the membership or staff representatives assigned to work with the Board.
3. **Quorum** Each case before the Board shall be heard by at least 4 members.
4. **Votes Required** The concurring vote of 4 members of the Board is necessary to:
  - a. Reverse an order, requirement, decision, or determination of an administrative official;
  - b. Approve a Special Exception on which the Board is required to act under this ordinance;
  - c. Authorize a variance from the terms of this ordinance;
  - d. Decide in favor of an applicant on any matter on which the Board is required to pass under this or any other ordinance requiring the Board to act.

Administrative and procedural matters shall require a simple majority vote of the members present.
5. **Minutes/ Records (Ord. 3847/12-18-06)** The Board shall keep minutes of its proceedings that indicate the vote of each member on each question or the fact that a member is absent or fails to vote. The minutes of each meeting shall include an enumeration of the reasons for which any variance is granted. The Board shall keep records of its proceedings and other official actions. The minutes and records shall be filed in the Board's office and are public records.
6. **Board Office (Ord. 4136/3-21-2011)** The Board's office shall be maintained in the Community Development Department under the direction of the Community Development Director or his designee. A decision of the Board shall be filed in the Board's office on the business day following the date the Board renders a final decision in open meeting.
7. **Disqualification from Voting** A member shall disqualify himself from voting whenever he finds that he has a personal or a monetary interest in the property under appeal, or that he will be directly affected by the decision of the Board.

A member may disqualify himself from voting whenever any applicant, or his agent, has sought to influence the vote of the member on the application, other than in the public hearing.
8. **Training and Competency (Ord. 3847/12-18-06)** As a condition of membership on the Board, the members shall participate in such training and education as may be required by law or ordinance. From time to time, the Community Development Director shall provide additional training and education opportunities for the members of the Board in order to maintain and improve their knowledge and competence in matters pertaining to the Board.

**D. DUTIES AND POWERS** (Ord. 3847/12-18-06)

Except as provided in this ordinance, the Board is hereby charged with the duty and invested with the authority to:

1. ***Interpretation*** Hear and decide appeals that allege error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this ordinance.
2. ***Special Exceptions*** Hear and decide special exceptions to the terms of the ordinance when the ordinance requires the Board to do so.
3. ***Variances*** Authorize in specific cases a variance from the terms of this ordinance if the variance is not contrary to the public interest, and, due to special conditions, the literal enforcement of the provisions of the ordinance would result in unnecessary hardship and so that the spirit of this ordinance is observed and substantial justice done. Variances as to permitted uses shall not be allowed.
4. ***Other*** Hear and decide upon other matters which may be delegated to the Board by this or any other ordinance of the City.