

PROVO CITY BOARD OF ADJUSTMENT
BYLAWS AND OPERATING POLICIES

ARTICLE I - GENERAL PROVISIONS

The Provo City Board of Adjustment, hereinafter referred to as "the Board," shall be governed by all of the following statutes, ordinances, and rules:

1.1 Applicable State Statutes and Local Ordinances and Rules.

To the extent that they remain in force and effect, as they are amended, or as they may be added to, the Provo City Board of Adjustment and its members and officers shall be governed by state statutes and local ordinances and policies including the following:

- a. State statutes applying generally to public boards, members and officials, including: Title 10, Chapter 3, Part 13 of the Utah Code dealing with disclosure requirements and Title 52, Chapter 4 of the Utah Code dealing with open and public meetings.
- b. State statutes governing the activities of Board of Adjustments in relation to planning and zoning, including: Title 10, Chapter 9, Municipal Land Use Development and Management Act.
- c. The Zoning Ordinance of Provo City as set forth in Title 14 of the Provo Municipal Code.
- d. The Land Use and Development Ordinance of Provo City as set forth in Title 15 of the Provo Municipal Code.
- e. The rules and policies of the Provo City Board of Adjustment as set forth herein.

1.2 Requirement of Familiarity with State Statutes and Local Ordinances and Rules Affecting the Board.

Upon taking office, all members of the Provo City Board of Adjustment shall familiarize themselves with the foregoing and, while in office, members shall maintain such knowledge, including knowledge of amendments and additions, and shall be strictly governed thereby in the conduct of Board of Adjustment affairs.

1.3 Rules of Board to be Available in Board Office.

A certified official copy of the rules of the Board of Adjustment, in current form, shall be available in the Board office as a public record. Additional copies shall be provided to members of the Board and made available to the public upon request, but the official copy in the office of the Board shall govern. No amendment to these rules and bylaws shall become effective until incorporated in the official copy.

1.4 Location of Board Office.

The office of the Provo City Board of Adjustment shall be located within the offices of the Community Development Department in the Provo City Center, 351 West Center Street, Provo, Utah, 84601.

ARTICLE II - MEMBERS

2.1 Number of Members, Appointment, Compensation, Etc.

The membership and appointment of the Board of Adjustment shall be governed by the provisions of Section 10.9, Part 7 of the Utah Code and the provisions of Chapter 14.05 of the Provo Municipal Code.

2.2 Causes for Removal from Board.

Causes for consideration of removal of members from the Provo City Board of Adjustment by the Mayor may include malfeasance, misfeasance, or nonfeasance generally, and in particular:

- a. Failure to maintain reasonable familiarity with state statutes and local ordinances and rules affecting the Board, or failure to be governed thereby, as required by Section 1.2, above.
- b. Failure to disclose conflict of interest for purposes of disqualification when a member has a personal or monetary interest in the matter involved, or will be directly affected by a decision of the Board, which the Mayor deems to be in violation of the provisions of part 10-3-13 of the Utah Code.

2.3 Resignations, Generally, and by Absence.

When members propose to resign, if reasonably feasible, they shall give notice of their intent to the Executive Director and to the Mayor of Provo City and make the date of resignation effective in such a manner as to allow time for appointment of replacements.

Failure to attend three consecutive regular meetings, or three of any seven consecutive meetings, without the recorded consent of the Chairman, shall be construed by the Chairman as grounds for resignation from the Board by absence. The Chairman may then recommend removal of the member to the Mayor.

2.4 Vacation of Office.

When a member dies or resigns (including resignation by absence), the Executive Director shall promptly indicate to the Mayor that a vacancy exists. When a member becomes incapacitated for office permanently or for what appears likely to be a protracted period, or moves from the jurisdiction, or becomes, for any other reason, no longer qualified for office and fails to resign, the Chairman shall cause any necessary investigation to be made and shall present the facts to the Executive Director and to the Mayor who may declare the office vacant and appoint a replacement.

ARTICLE III - OFFICERS, COMMITTEES, STAFF, DUTIES

3.1 Regular Election of Chairman, Vice Chairman; Provisions for Contingencies; Continuation of Service Until Successors Take Office.

Annually, as the last item of business at the regular meeting of the Board in the month of July, the Board shall elect a Chairman and Vice Chairman. If such regular meeting is canceled or a quorum is lacking, the election shall be held within 36 days thereafter at a regular or special meeting. If no quorum can be obtained within 36 days, the election shall be held at a regular or special meeting held as soon thereafter as a quorum can be obtained, provided that if no such election is held within 60 days of the dates when generally required, the Executive Director shall notify the Mayor, who shall appoint a Chairman and Vice Chairman to serve until the next regular election in the month of July. The prior Chairman and Vice Chairman shall remain in office until successors take office at the next regular or special meeting following an election or appointment. A chairman may not succeed him or herself as chairman of the Board. The chairman is a voting member of the Board.

3.1.1 Succession of Vice Chairman to Office of Chairman; Special Elections.

If the Chairman resigns office or no longer becomes a member of the Board, the Vice Chairman shall succeed in office for the remainder of the term. If the Vice Chairman resigns office, becomes no longer a member of the Board, or succeeds to the Chairman's office, a special election shall be held at the next regular meeting of the Board to select a Vice Chairman to complete the term, provided that if such regular meeting is one immediately preceding the regular election, the Board may permit the office of Vice Chairman to remain vacant until it is filled in the regular election.

3.2 Duties of Chairman and Vice Chairman; Appointment of Temporary Chairman to Preside at Meetings:

If present and able, the Chairman shall preside at all meetings and hearings. If the Chairman is absent or unable to preside, the Vice Chairman shall preside. If both are absent or unable to preside, the members present shall appoint a Temporary Chairman to preside. In accordance with these and other applicable rules, the presiding officer shall decide all points of procedure and order, unless otherwise directed by vote of a majority of the members in attendance. When necessary, in deciding points of order, Roberts Rules of Order, newly revised, shall be used by the Chairman as a point of reference.

The Chairman shall maintain order and decorum, and to that end, may order removal of disorderly or disruptive persons by an officer of the Provo Police Department.

3.2.2 Other Responsibilities and Duties of Chairman; Delegation to Vice Chairman.

The Chairman shall have further duties and responsibilities as indicated below. The Chairman may delegate duties generally to the Vice Chairman, or may authorize the Vice Chairman to perform specific duties during his absence or in case of his disability to perform necessary Board functions in a timely manner. The Vice Chairman shall perform all duties so delegated. In case of absence or incapacity of the Chairman, on approval by a majority of the Board, the Vice Chairman shall perform any or all duties of the Chairman whether or not delegated.

3.2.2.1 Managerial Responsibilities.

Subject to these rules and further instructions from the Board, the Chairman shall direct the official business of the Board, interface with the Executive Director in the conduct and affairs of the Board, request needed staff assistance from the Executive Director or the Mayor, and exercise general management direction of the affairs of the Board.

3.2.2.2 Assignment of Board Members to Inspection Duties; Appointment of Committees.

The Chairman may designate members of the Board to make personal inspections of property when necessary for proper consideration of agenda items. The Chairman may appoint such standing or ad hoc committees as may be found necessary to successfully and efficiently carry out the functions of the Board.

3.3 Position of Executive Director; Duties.

3.3.1 Executive Director.

The Executive Director to the Provo City Board of Adjustment shall be the Community Development Director of Provo City as duly appointed by the Mayor.

3.3.2 Duties of Executive Director.

The Executive Director, acting under the general direction of the Mayor of Provo City, is responsible for providing staff services to the Board within the provision of budget authority appropriated by the Provo Municipal Council and within the framework of the provisions of Titles 14 and 15 of the Provo Municipal Code.

3.4 Appointment of Secretary; Duties.

3.4.1 Appointment.

The Secretary to the Board shall be appointed by the Executive Director from the staff of the Community Development Department.

3.4.2 Duties of Secretary.

Subject to provisions of the Zoning Ordinance, these rules, and the direction of the Executive Director of the Board, the Secretary shall in general attend to all correspondence of the Board; send out or cause to be published all notices required; attend all meetings of the Board and all public hearings (except when excused by the Executive Director with temporary services arranged); compile all required records; maintain the necessary schedules, minutes, files, and indexes; and generally perform or supervise all clerical work of the Board.

ARTICLE IV - CONDUCT OF Board MEMBERS, STAFF

4.1 Representation of Applicants or Petitioners.

No member of the Board, or of its staff, shall represent applicants or petitioners on matters on which the Board is to make determinations or recommendations.

4.2 Conflict of Interest.

No member of the Board shall participate in any case in which they have financial or personal interest in the property or action concerned, or will be directly affected by the decision of the Board, or has or believe they have any other conflict of interest as defined or regulated under the provisions of Title 10, Chapter 3, Part 13 of the Utah Code. No member of the staff of the Board or of any agency serving the Board shall prepare or present arguments or reports, or attempt to influence the decisions of the Board, in any case in which he has similar interests and which would constitute a violation of the above-referenced Utah State statutes.

4.3 Disqualification on Grounds of Influence Other Than at Public Hearing.

A Board member may be disqualified from voting whenever any applicant, or their agent, has sought to influence the vote of the member on their application or petition, other than in the public hearing, through an “ex-parte contact.”

4.4 Expression of Bias, Prejudice, or Individual Opinion Prior to Hearing and Determination.

Board members may seek information from other Board members, the Executive Director, Counsel to the Board, staff serving the Board, or the staff of other departments or agencies advising the Board, but no member shall discuss the case with any other parties thereto prior to the public hearing, or express any bias, prejudice, or individual opinion on proper judgment of the case prior to its hearing and determination. Violation of this rule shall be deemed to constitute malfeasance and be grounds for dismissal from the Board.

4.5 Board Members Not to Vote Unless Present at Hearing.

No Board member shall vote on any matter deciding an application or petition except after attending the public hearing on the matter and listening to all testimony presented at said hearing.

4.6 Inquiry Regarding Conflicts of Interest, Ex-Parte Contacts and Bias.

It shall be the responsibility of the Chairman, Vice Chairman or presiding officer to inquire regarding potential conflicts of interest, ex-parte contacts and issues of bias, regarding the pending agenda item(s), at the beginning of a public hearing.

4.7 Decorum.

Board members shall avoid leaving their seats except during approved recesses of a public hearing. Members shall avoid conversation that is not plainly audible to all present in the meeting room. Members shall avoid addressing speakers on a first name or casual basis.

ARTICLE V - MEETINGS, HEARINGS, GENERALLY

5.1 Regular Meetings.

Regular meetings of the Board shall be held at 6:00 p.m. in the Municipal Council Chambers, City Center, on the third Thursday of each month; provided that such meetings may be held at any other convenient place if directed by the Chairman, after 15 days public notice in advance of the meeting, and upon findings that such other location would serve public convenience or necessity.

5.2 Study Meetings.

Study meetings of the Board may be held as are deemed appropriate by the Chairman, or Executive Director, provided public notice of the time and place of the meeting is provided at least 24 hours in advance of said meeting.

5.3 Special Meetings.

Special meetings for any purpose may be held at the call of the Chairman, the Mayor, or the Executive Director. Upon filing an application or petition for action by the Board, and upon payment of a "special meeting fee," an applicant or petitioner may request a special meeting to hear their request. Said meeting shall be called and scheduled by the Chairman at the greatest convenience of the Board. At least 15 days notice of the time and place of any special meeting shall be given in conformance with the provisions of state statutes and local ordinances. If no public hearings are scheduled for said special meetings, 24 hour notice will suffice.

Call of a special meeting at a specified time and place and for specified purposes during a regular meeting of the Board shall be notice thereof to members of the Board in attendance at said regular meeting, but other members shall receive written or telephonic notice of the special meeting.

5.4 Recess or Adjournment.

Any regular or special meeting may be recessed or adjourned from day to day, or to the time of any previously announced regular or special meeting, and such recess or adjournment to a time and place certain shall not require additional public notice.

5.5 Cancellation.

If no business is scheduled before the Board, or if it is apparent that a quorum of the Board will not be available, any meeting may be canceled by the Chairman by giving notice to all members at least 48 hours before the time set for such meeting.

5.6 Quorum.

A quorum of the Board shall consist of three members or alternate members. In all cases where there are only three members present, all members must cast a vote upon any action on an application or petition requiring action.

5.7 Agenda, Order of Business.

The Secretary, under direction of the Executive Director, shall prepare an agenda for each Board meeting. Order of the business shall be as specified by the Executive Director or by direction of the Board Chairman.

5.8 Length of Meetings

At eleven p.m. the Board of Adjustment will finish the item presently being considered, no additional items will be heard after that time unless there is a motion by a member of the Board requesting to continue the agenda. All items remaining to be heard will be forwarded to the next agenda for consideration.

5.9 Time Control

The chair may, at any time, institute measures to control the time for debate on any issue. Care should be taken to insure fairness in the hearing process. Those speaking in support and opposed should have substantially equal time. The chair may stop debate once he or she believes the issue has been adequately and fairly heard.

ARTICLE VI - PROCEDURES AT HEARING

6.1 Representation at Hearing.

At the hearing, any person may appear or be represented by authorized agents or attorneys. Such agents or attorneys shall present competent evidence of the extent of their authorization, if requested by any member of the Board.

6.2 Public Hearing Procedure.

The public hearing procedure shall be made available to the public and/or be displayed in the meeting room.

- a. The Executive Director, or such person as he may direct, describes the nature of the case and evidence available to the Board, including a summary of staff reports (which shall include recommended findings of fact, conclusions of law and a recommended decision).
- b. The applicant, petitioner or authorized agent outlines the nature of the request and presents supporting evidence including pictures, graphics, or other audio/visual material.

- c. A presentation is made by the Neighborhood Chairman, or an authorized representative, representing the geographic area of the application or petition.
- d. Persons in support of the application or petition provide testimony.
- e. Persons in opposition to the application or petition provide testimony.
- f. Rebuttal by the applicant, petitioner or authorized agent who spoke in favor.
- g. Closure of public hearing and discussion by the Board.
- h. Motion and vote by the Board on the application or petition.
- i. Appeals by applicant or affected party of the Board of Adjustment's decision must be made in District Court.

Any party may ask the Board of Adjustment to reconsider a decision if information becomes available that was not available during the course of the public hearing that may support a different outcome, or where a procedural irregularity in the original hearing could have prejudiced the outcome. The deadline for seeking reconsideration is at the Board of Adjustment meeting immediately following the meeting at which the subject decision was rendered. In order for a decision to be reconsidered, a commissioner who voted for the subject decision would have to move to reconsider and the motion would have to be seconded and passed by majority vote.

6.3 Conduct During Hearings.

During the hearing, each side shall proceed without interruption by the other. All testimony, statements and pleadings shall be addressed to the Chair. There shall be no questioning or arguing between individuals in the audience.

Any member of the Board, the Counsel to the Board, or the Board staff, upon recognition by the Chair, may direct any questions to the applicant, witnesses, or any person speaking from the audience, to bring out pertinent facts. The Chair or the Board members may call for pertinent facts from the staff or make appropriate comments pertinent to the case. No Board member shall debate or argue with persons in the audience.

ARTICLES VII - FINDINGS AND DECISIONS

7.1 Timing of Decisions.

After conclusion of the public hearing on any application or petition, the Board shall examine the evidence before it in relation to findings required, and make a decision.

With due consideration to the length of the agenda, the nature of the case, the complexity of the evidence, and the findings required, the Chair may elect, subject to being overruled by a vote of the majority of the Board, one of the following alternatives:

- a. To proceed immediately to determination and decision on conclusion of the hearing in a particular case; or
- b. To defer determination and decision until later in the same meeting; or
- c. To defer determination and decision until a specified special or regular meeting of the Board within the time limits specified by state statute or local ordinances.

7.2 Findings.

If a majority of the quorum of the Board members present concurs that the evidence supports favorable findings upon an application or petition before it, or that such findings could be made if conditions and safeguards are established, the decision shall be favorable to the applicant, provided that such conditions and safeguards as may be required for a favorable finding are specified in the decision. Such safeguards and requirements shall be binding upon the applicant or petitioner and his successor and interests.

If a majority of the quorum of the Board members present concurs that the evidence does not support a favorable action or recommendation by the Board, then findings shall be specified in the decision outlining those problems or deficiencies in the application or petition which warrant such action.

If the findings of fact and conclusions of law recommended by staff do not accurately reflect the Board's decision, the Board may amend such findings and conclusions at the hearing or may recess the hearing to a date and time certain to allow for preparation of revised findings and conclusions by staff.

7.3 Form and Procedure of Decisions.

All such decisions of the Board shall be made at a public meeting by motion, made and seconded, and by a voice vote. The motion shall be in the form of findings of fact and shall state the reason for the findings by the Board and a statement of any conditions or safeguards to be attached to the action. If there is any ambiguity on any vote or if the nature of the application or petition warrants, the Chair may conduct a roll call vote.

7.4 Notification.

Notice of the Board decision shall be given to the applicant or petitioner and to other interested parties who have requested such notice, by the Secretary of the Board as soon as reasonably

possible after the decision is reached, but within ten (10) days. Such notice shall be given on a "Report of Action" form approved by the Board and shall include a copy of the complete findings of fact and conclusions of law adopted by the Board in reaching its decision.

ARTICLE VIII - REQUEST TO WITHDRAW OR AMEND APPLICATIONS OR PETITIONS

8.1 Withdrawal.

Upon written request from the applicant, petitioner, or authorized agent, an application or petition may be withdrawn at any time before the Board makes a decision in the case.

8.2 Amendment.

Applicants, petitioners, or their authorized agents may amend applications or petitions in any lawful manner on written request delivered to the Executive Director or his agent not less than fourteen (14) days prior to the scheduled public hearing to assure that the amendment is properly evaluated and addressed in the staff report. Amendments received less than fourteen (14) days before the public hearing will not be evaluated and made part of the staff report. The staff shall orally report to the Board at the public hearing the nature of any amendments received less than fourteen (14) days before the hearing. The Board shall determine whether the nature of the amendment is such as to require referral for reexamination by Counsel or staff having made reports on the original application or petition. If such referral is found necessary, the Board may proceed with the hearing or may continue it to a time and place specified, but shall not decide the case until the Board has received sufficient information and analysis to make a finding that the amendment would not create a substantial difference in the effect of the application or petition.

8.3 Deferrals and Continuances.

On its own motion, or at the request of applicants, petitioners, or their authorized agents, the Board may defer the hearing of cases or provide for later continuance of cases on which hearings have begun. Such deferrals or continuances shall be permitted only for good cause, stated in the motion, and, unless time and place is stated, shall require new public notice, with fees paid by applicants or petitioners if deferrals or continuances are at their request or result from their actions.

ARTICLE IX - AMENDING OR WAIVING RULES

9.1 Amending Bylaws.

These Bylaws and Policies may be amended by a majority vote of the Board except where such amendment would be contrary to requirements or limitations set by state law or Provo City Ordinances. An amendment may be proposed at any regular meeting of the Board. Not less than five days prior to the meeting at which the amendment is to be voted upon, Board members shall be sent a copy of such proposed or adopted changes.

9.2 Waiving or Suspending Rules.

A rule of procedure may be suspended or waived at any meeting by unanimous vote of Board members present unless such rule is set by state law or by the Provo City Zoning Ordinance.