

**RESOLUTION NO. BZA2020MISC01**

**A RESOLUTION ESTABLISHING BYLAWS FOR THE CONDUCT OF BUSINESS BY THE BOARD OF ZONING APPEALS OF THE CITY OF DERBY, KANSAS.**

**BE IT RESOLVED** by the Board of Zoning Appeals (the “Board”) of the City of Derby, Kansas (“City”), that the business and affairs of the Board shall be transacted pursuant to the following bylaws:

**COMPOSITION, POWERS, DUTIES AND ORGANIZATION**

**Section 1. COMPOSITION; TERMS OF OFFICE.** The Board is constituted pursuant to of the Zoning Regulations of the City.

**Section 2. ATTENDANCE.** Regular attendance is an important responsibility of membership. Maintaining a quorum for voting purposes is especially important. When a Board member is absent for more than two consecutive regular meetings or three or more meetings during a calendar year, the Secretary will provide written notice to the City Manager, and the City Council may elect to remove the member pursuant to the provisions of Chapter 2.16, Article X of the City Code.

**Section 3. CONFLICTS OF INTEREST.** Members of the Board shall refrain from acting on any matter with respect to which they have, either directly or indirectly, any financial interest or conflict of interest. If a member has a conflict of interest on a matter before the Board, right after title of the item is called, that member should publicly announce the conflict and excuse himself/herself from the meeting room until the matter has been addressed by the remaining Board members. If there is a question of a real or perceived conflict of interest, the affected member should contact the City Planner and City Attorney for an interpretation of the situation prior to the meeting.

**Section 4. AUTHORITY, JURISDICTION AND DUTIES.** The Board shall discharge such duties, perform such functions and exercise such jurisdiction as are delegated to it from time to time by the Zoning Regulations of the City.

**Section 5. OFFICERS -- ELECTION AND DUTIES.** Officers shall be elected and shall perform such duties as are set forth in the Zoning Regulations of the City.

**Section 6. ORGANIZATION; RECORDS.** The City Planner shall be the *ex officio* Secretary of the Board and shall keep a record of all proceedings before the Board.

**MEETING PROCEDURE**

**Section 7. MEETING SCHEDULING AND PREPARATION.** The Secretary of the Board shall schedule meetings, ensure the availability of such equipment and materials as may be required by the Board, prepare and maintain a complete and accurate record of all proceedings

proceedings before the Board, and periodically report to the Planning Commission the nature of appeals or other matters pending before or adjudicated by the Board.

**Section 8. MEETINGS. A.** Meetings shall be held pursuant to a schedule established by the Board, upon the call of the Chairperson or in the Chairperson's absence by the Vice-Chairperson, or upon written request of three or more members. Notice of the date, time, place and purpose for the meeting shall be given to all members at least 24 hours before the meeting by mail, electronic mail, telephone or hand delivery, and as soon as practicable to any others who have requested notice of such meetings pursuant to the Kansas Open Meetings Act. No items other than those identified in such notification shall be considered at the meeting. Unless otherwise specified in the notice, all meetings shall be held in the Council Room of City Hall beginning at 5:30 p.m.

**B.** Pursuant to the Kansas Open Meetings Act, all meetings of the Board except for executive sessions are open to the public, unless remote participation procedures have been established by vote of the Board when a situation or condition limits or restricts the ability for Board members and/or the public to attend. Closed sessions may be held to deliberate a matter before the Board or as otherwise authorized by state law. The motion to recess to closed/executive session shall be placed in the minutes and shall include (a) a statement describing the subject to be discussed; (b) the statutory justification for closing the meeting; and (c) the time and place at which the open meeting will resume. No binding vote or action shall be taken in a closed session.

**C.** Once commenced, a meeting may be adjourned from time to time and place to place until conclusion without further notice to Board members or the public.

**D.** The Board may conduct a workshop session for a general discussion on one or more topics or for training. Workshop sessions shall be open to the public and no binding action shall be taken. Regular minutes are not required but a record of attendance and a brief summary of the subject(s) discussed shall be made.

**Section 9. QUORUM.** A quorum for the conduct of business shall be three members. In the absence of a quorum or at the impending loss of a quorum during a meeting, the presiding officer may adjourn the meeting to a specified date, time and place or table an agenda item.

**Section 10. AGENDA.** The Secretary shall direct preparation of an agenda of all matters to come before each meeting and delivery of the agenda to Board members by electronic mail, mail or other appropriate media no less than seven calendar days preceding such meeting. Copies of the agenda shall also be posted to the City of Derby Meeting Portal or such other repository as may be established from time to time and provided to each party having an item on the agenda and to any person requesting an agenda or notice of the date, time and place of meetings of the Board.

**Section 11. RECORDING OF MEETINGS.** The Secretary shall prepare and maintain complete records of all proceedings of the Board. Copies of the minutes, shall upon request to the Secretary be furnished to all persons or bodies. The Secretary may make such charges as are authorized by City resolution.

**Section 12. ABSTENTION.** Members of the Board have a duty to vote, but may abstain because of a conflict of interest or other conflict that appears to make voting on an issue improper. Any member who abstains must state, for the purpose of its inclusion in the minutes, the reason for the abstention. For all purposes other than matter where an affirmative vote by the Board is required by state law or where the abstention is due to a conflict of interest, an abstention counts as vote for the prevailing side.

**Section 13. ORDER OF BUSINESS. A.** The general order of business shall be as follows unless otherwise determined by the Board:

1. Roll call;
2. Consideration of minutes
3. Public hearings on appeals, variances, exceptions and other matters within the jurisdiction of the Board;
4. Reports from staff and announcements; and
5. Adjournment

**B.** Off-agenda items may be considered at the discretion of the presiding officer or upon majority vote of the members present and voting, but no binding action may be taken on an off-agenda item.

**Section 14. PARLIAMENTARY PROCEDURE. A.** All meetings of the Board shall be conducted in accordance with these bylaws or, in the absence of an applicable bylaw, in accordance with procedures established for conduct of business by the City Council.

**A.** Motions.

1. A second shall be required for all motions.
2. The presiding officer shall have the right to make motions and to second motions without vacating the chair.
3. Motions to "receive and file" shall not be debatable.
4. Substitute motions may be made for prime motions; provided, that substitute motions are voted on before the prime motion. Substitute motions shall be made only once and shall be debatable only if the prime motion was debatable. A substitute motion may be made without the consent of the maker of the prime motion.
5. Motions to reconsider any item shall be made by one of the members voting in favor of the item to be reconsidered. Motions to reconsider shall only be considered at the same meeting at which the item was decided.
6. The Board may suspend the rules provided that: (a) the motion to suspend the rules takes precedence over other prime motions; (b) the motion shall state the specific purpose and rule to be suspended; (c) no such motion shall be considered approved unless the length of time such suspensions will be in effect has been specified; (d) the motion shall be approved by a majority of the quorum; and (e) no suspension of the rules shall be considered permanent.

**B.** Participation from the floor may be limited as to time at the discretion of the presiding officer when in his or her opinion such participation is repetitious; contains statements derogatory to the character, integrity or actions of the Board or any member without support of such allegations; or when the number of matters to be considered or number of people requesting to be heard will not reasonably permit further participation. Any person speaking from the floor shall first be recognized by the presiding officer. Each member of the Board may speak to an issue as many times as may be desired, subject only to Board action to limit debate.

**Section 15. APPEARANCE BEFORE THE BOARD.** When a public forum or public hearing is held, applicants, individuals, or their representatives who feel that they will be affected by any action of the Board, may appear in person or remotely to offer testimony or other evidence in support of or in opposition to any matter before the Board, or may submit written or electronic communications for that purpose. The Board may at its discretion defer action items coming before the Board if the applicant or petitioner is not present in person or remotely and has not submitted written communication.

**Section 16. BOARD ACTION; VOTING. A.** In all matters, the Board shall act by motion, second and majority vote, in an open session, of those present and voting. Voting on each matter shall be by individual voice ballot, written ballot or show of hands; votes shall be tallied and the results determined by the Chairperson.

**B.** The presiding officer shall have a vote. If the presiding officer declines to vote, he or she shall be considered to have abstained from voting.

**C.** When a divided vote occurs, the presiding officer shall call for a roll-call vote. The Secretary shall enter into the minutes the result by name of all roll-call votes.

### **HEARING PROCEDURE**

**Section 17. INTENT AND PURPOSE. A.** The Board shall conduct fair and impartial hearings on all matters requiring a public hearing. All such hearings shall be held following required notice to all concerned parties and, if applicable, to the public. In such matters, the decision of the Board shall be based on application of pertinent ordinances, regulations and statutes to facts ascertained from relevant evidence presented at such hearing or otherwise received by the Board and placed into the record of proceedings, and shall in no case be arbitrary or capricious.

**B.** Board members are discouraged from communicating *ex parte*, whether written, electronic or oral, with any person who is a party to a matter which is currently pending before the Board or is reasonably anticipated to come before the Board in the future.

**C.** Board members should

1. remain impartial;
2. have no personal interest in the outcome other than that shared by the community-at-large;
3. treat parties and witnesses fairly and courteously; and
4. base each vote solely on (a) evidence presented at the hearing or received by *ex parte* communication duly reported to the Board during such hearing and (b) the law applicable to the application, appeal or other matter.

**D.** All relevant information ascertained by personal investigation of a Board member and relevant to any issue before the Board shall be disclosed to the Board in open session, prior to commencement of deliberations.

**E.** For the purposes of these bylaws, “*ex parte* communication” means any communication between a Board member or members and (1) a person who is a party to or otherwise interested in a matter which is pending before the Board or may later be the subject of an appeal or application to the Board, or (2) a person representing any such person, other than communication that occurs during the course of a scheduled hearing, notice of which has been given to all parties entitled thereto.

**Section 18. PROCEDURE FOR HEARINGS. A.** Appeals, variances, exceptions and similar matters within the jurisdiction of the Board are quasi-judicial proceedings and must be conducted in accordance with these bylaws. At the conclusion of a hearing, the Board shall render a written decision including a statement summarizing the evidence and findings of the Board in reaching its decision. The following order of proceedings shall be used for all such hearings:

1. Determination that a quorum is present;
2. Determination that proper notice has been given;
3. Report of all *ex parte* communications by or with Board members;
4. Introduction of application or appeal;
5. Presentation by applicant or appellant, which shall be limited to five minutes unless such time is extended by majority vote of the commission;
6. Questioning of applicant or appellant by Board and staff;
7. Public comments, each presenter shall be limited to five minutes unless such time is extended by majority vote of the commission;
8. Receipt of written communications or petitions;
9. Closing statement by applicant or appellant, which shall be limited to five minutes unless such time is extended by majority vote of the commission;
10. Closing statement by staff;
11. Board deliberations, which may be conducted in open or closed session;
12. Written decision, made by adoption of a resolution that includes the Board's findings of fact and conclusions.

**B.** Any witness may be cross-examined by a member of the Board, City staff, or the applicant or appellant, as the case may be. For the purposes of these bylaws, "witness" means any person presenting facts or opinions to the Board during the course of a public hearing.

**C.** No further public comment will be received after the hearing is closed; provided, that a Board member may question any witness at any time before a decision has been rendered.

**D.** The Board may, and upon request of an applicant, appellant or representative of the City shall, instruct the Secretary to make a video or audio recording of its proceedings; provided, that such equipment is reasonably available.

## AMENDMENT

**Section 19. AMENDMENTS. A.** The Board may, by a majority vote of the total membership thereof and upon approval by the Governing Body of the City, amend these Bylaws or any provision thereof at any time; provided, that no amendment in conflict with or in contravention of the laws of the State of Kansas or ordinances of the City of Derby, Kansas shall be so approved.

**B.** Notice of proposed amendments shall be furnished by the Secretary to all members of the Board and the Governing Body of the City not less than seven calendar days prior to the meeting at which such amendments are to be considered. A current copy of the Bylaws of the Board, and such amendments thereto as may from time to time be adopted, shall be maintained by the Secretary and filed with the City Clerk.


**BE IT FURTHER RESOLVED**, that the above and foregoing bylaws are hereby recommended for approval by the Governing Body of the City of Derby, Kansas and shall be effective upon such approval; and that all bylaws previously adopted by or for the use of the Board are hereby repealed and of no further force or effect.

  
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Patrick Baer, Vice-Chairman

ATTEST:

  
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Scott Knebel, Secretary

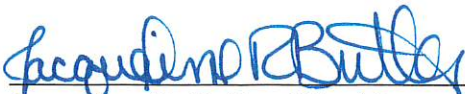
**APPROVED** by the City Council this 13<sup>th</sup> day of October, 2020.

  
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Randy White, Mayor

ATTEST:

  
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Lynn Ciarleglio, City Clerk

APPROVED AS TO FORM:

  
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Jacqueline R. Butler, City Attorney