

# **City of Schertz**

## **Board of Adjustment**

### **Amended and Restated** **Rules of Order and Procedure**

## Table of Contents

|                                               |   |
|-----------------------------------------------|---|
| Organization.....                             | 3 |
| Officers .....                                | 3 |
| Terms of Office and Removal from Office ..... | 3 |
| Duties and Powers .....                       | 4 |
| Meetings .....                                | 4 |
| BOA Actions.....                              | 5 |
| Disqualification from Voting .....            | 6 |
| Official Records.....                         | 6 |
| Application Procedures .....                  | 7 |
| Procedure of Meetings .....                   | 7 |
| Certification and Amendments .....            | 8 |

## **Organization**

- A. The Board of Adjustment (BOA) shall consist of five (5) regular and two (2) alternate members who shall be appointed by the City Council. Each regular and alternate member of the BOA shall be appointed for a term of two (2) years ending on November 30 or until his/her successor is appointed and takes office.
- B. Alternate members who serve in the absence of a regular member shall assume and exercise all responsibilities of the regular member.
- C. All members of the BOA shall be registered voters of the City of Schertz.
- D. The BOA shall exercise all powers and duties as prescribed by State law, the City Charter, or the City's Unified Development Code (UDC).
- E. All vacancies occurring on the BOA shall be filled by appointment of the City Council.

## **Officers**

- A. At the BOA's first meeting in December of each year, the members shall elect a Chair and Vice Chair. The position of Chair will be voted upon first followed by the vote for the Vice Chair. No member serving as Chair or Vice Chair shall succeed himself/herself as Chair or Vice Chair if he/she has served a full one (1) year term unless the nomination is affirmed by unanimous vote of all members present. With the written consent of the Mayor, the member of the BOA with the longest tenure shall assume the interim position of Chair in exigent situations such as the absence of both the Chair and Vice Chair until the situation is resolved by the City Council.
- B. At the BOA's first meeting in December of each year, the members shall also elect a Secretary and such other officers, as it deems necessary, either from its membership or from Staff representatives assigned by the City to provide staff support to the BOA.
- C. The BOA shall adopt its own rules of procedure, which rules of procedure are initially set forth in these Amended and Restated Rules of Order and Procedure. Further, the BOA shall keep a record of its proceedings in accordance with the requirements of State law, the City Charter, and the UDC. Copies of all actions by the BOA shall be sent to the City Council for information purposes. The BOA shall meet regularly and shall designate the time and place of its meetings.

## **Terms of Office and Removal from Office**

- A. The terms of three (3) regular members and one (1) alternate member of the BOA will expire on November 30 of each even-numbered year and the terms of two (2) regular members and one (1) alternate member of the BOA will expire on November 30 of each odd-numbered year.

- B. Members of the BOA may be appointed to succeed themselves, but no member shall be appointed for a term in excess of two (2) years. Alternates whose term has not expired may be appointed as regular members of the BOA upon application and approval by the City Council. Newly appointed members will be installed at the first regular BOA meeting after their appointments.
- C. The City Council may remove members of the BOA from office for malfeasance, conviction of a crime involving moral turpitude, or failure to attend seventy-five percent (75%) of the regular meetings of the BOA per fiscal year without good cause. Good cause shall include, but not be limited to, illness, temporary disability, absence from the City, or family emergency. All members of the BOA, including regular members and alternates, are required to notify the BOA Secretary and Chair of any proposed absences and shall provide the reason for absence. Failure to attend three (3) or more consecutive regular meetings for any reason shall constitute grounds for removal if approved by majority vote of the members of the BOA. Further, the City Council may remove a member of the BOA for cause, as determined by the City Council on a written charge after a public hearing.

#### **Duties and Powers**

- A. The Chair, or in his/her absence, the Vice-Chair, shall preside at all meetings and shall decide all points of order or procedure. All records of action by the BOA shall bear the signature of the Chair, or the Vice-Chair in the absence of the Chair.
- B. The Secretary shall be the custodian of the minutes and other official records of the BOA, shall be responsible for coordinating all correspondence to the BOA, and shall ensure that all required notices are given as required by State law, the City Charter, or the UDC.
- C. The Secretary shall provide a quarterly report to the BOA which shall include the number of meetings held, the cases presented to the BOA, and the decision of each case.
- D. Rules of Order  
Robert's Rules of Order, latest revisions, shall be the BOA's final authority on all questions of procedures and parliamentary law not covered by these Amended and Restated Rules of Order and Procedure.
- E. Suspension of Rules  
Any provisions of these rules not governed by State law or City Ordinance may be temporarily suspended by a favorable vote of two-thirds (2/3) vote of all of the regular members of the BOA, which vote shall be entered upon the minutes.

#### **Meetings**

- A. Quorum  
All cases before the BOA must be heard by a minimum of seventy-five percent (75%) of the regular members of the BOA (at least four (4) regular members). One or more

properly seated alternate member(s) of the BOA may take the place of one or more of these four (4) required regular members.

**B. Agenda**

The Secretary shall cause to be prepared an agenda for each meeting of the BOA. There shall be attached to each agenda a report of matters pending.

**C. Regular Meetings**

The BOA shall establish a schedule of regular meetings. Regular meetings may be cancelled by the Chair or by staff representatives acting on behalf of the Director of Development Services when due cause is shown that a meeting is not necessary. Lack of items to be considered by the BOA shall constitute a due cause for cancellation of a meeting.

**D. Special Meetings**

Special meetings may be held upon the following:

1. On the call of the Chair
2. On request of two (2) or more regular members of the BOA
3. On request of the City Manager or the City Council
4. Upon majority vote of the members of the BOA at a regularly scheduled meeting
5. On request of the City Manager or a staff representative acting on behalf of the Director of Development Services

Each member of the BOA shall be notified before the scheduled special meeting. Said notice shall contain the date, time, and place of the meeting and shall contain information regarding matters to be considered by the BOA.

**E. Public Meetings**

All meetings shall be open to the public and shall be held in compliance with the provisions of the Texas Open Meetings Act, other State law, the City Charter, and the UDC. Any party in interest may appear on his/her own behalf or be represented by counsel or other authorized agent.

**F. Attendance**

All regular and alternate members of the BOA are required to attend at least seventy-five percent (75%) of the meetings of the BOA each 12-month period commencing December 1 except when the absence is excused for good cause shown. Good cause shall include, but not be limited to, illness, temporary disability, absence from the City, or family emergency.

**BOA Actions**

A. A motion may be made by any member of the BOA.

B. Each member of the BOA shall have one (1) vote and shall vote yes, no, or abstain on each item presented.

C. The Chair, or in his/her absence, the Vice-Chair, is a voting member and shall vote on each motion presented.

- D. A motion to approve any of the following types of matters before the BOA shall require the concurring vote of at least seventy-five percent (75%) of the members (at least four (4) members):
1. Reverse an order, requirement, decision, or determination of an administrative official;
  2. Decide in favor of an applicant on a matter on which the BOA is required to pass under a zoning ordinance; or
  3. Authorize a variation from the terms of a zoning ordinance.

When only four (4) members are present and a motion on one of these matters fails to secure the concurring vote of all four (4) members that are present, the motion shall fail.

- E. A motion on other matters properly before the BOA shall require the concurring vote of a simple majority of the members of the BOA.

### **Disqualification from Voting**

A member of the BOA shall disqualify himself/herself from voting whenever he/she finds the following conditions exist:

- A. A personal or monetary interest in the property under appeal.
- B. He/she will be directly affected by the decision of the BOA.
- C. Whenever any applicant or his/her agent has sought to influence the vote of the member on the requested application, other than at the public meeting of the BOA.

### **Official Records**

- A. Definition  
The official records shall include these rules and regulations and the minutes of the BOA together with all findings, decisions, and other official actions.
- B. Recording of the Vote  
The minutes of the BOA's proceedings shall show the vote of each member on each decision of the BOA, or if absent or abstaining, shall indicate that fact.
- C. Files – Retention  
All appeals and other matters coming before the BOA shall be filed in the City's records. Original papers of all requests shall be retained along with other special matter as required to meet the City's records disposition and retention schedules.
- D. Public Record  
The official records, appeals of BOA decisions, and other matters presented to the BOA in regular or special meetings shall be on file in the City Secretary's office and shall be available in accordance with the Texas Public Information Act.

## **Application Procedures**

### **A. Written Request Required**

Every proposal submitted to the BOA for consideration shall be made in writing to the appropriate City department on the appropriate application forms provided by the City. The proposal shall be filed on said forms, shall be accompanied by all required fees, and must be determined to be a complete application prior to being accepted for filing.

### **B. Withdrawal of Proposal**

When any applicant desires to withdraw an application, he/she may do so by filing a written request to that effect with the appropriate City department. Such request shall be effective upon the date of its official receipt provided, however, that no such request shall be valid after notices have been mailed except with the approval of the BOA. Withdrawal of an application at any stage of its processing shall terminate all consideration of that application by the City, and the case file thereon shall be closed. Any fees paid shall not be refunded. The matter may be reconsidered on re-commencement of the application process.

## **Procedure of Meetings**

### **A. Order of Business**

The Chair shall call the BOA to order, and the Secretary shall record the regular and alternate members absent and present. In the absence of a regular member, an alternate member shall be seated. The minutes of any previous meeting shall be submitted for approval. The Chair shall publicly advise those present of the procedures and any special procedures to be followed in the meeting. The Secretary shall publicly advise the BOA of any communications received pertaining to any matter before the BOA. The BOA shall then hear and act upon those proposals scheduled for consideration and action, together with such matters of business and reports as the BOA or Secretary finds that require BOA consideration.

### **B. Public Hearing Opening Comments**

The Chair shall explain the reason for public hearing and read the agenda item. The Chair shall include the following items in the opening remarks:

1. Public hearing is for the purpose of receiving comments from interested persons.
2. No more comments will be considered after this hearing, unless the BOA schedules a subsequent hearing.
3. BOA will take all comments into consideration in formulating its decision.

### **C. Procedure for Public Hearing**

1. Chair's opening remarks.
2. Briefing by staff representative who will explain each agenda item as it comes up to be heard, where the property in question is located, the number of letters sent out to property owners within 200 feet of the property in question, and the number of letters returned with their position on the item.
3. Presentation by the applicant.
4. Hearing of interested persons. Each person wishing to speak will come to the podium and give his/her name and address and shall be limited to no more than five minutes. Questions will be addressed to the BOA. No questioning and answers between individuals will be permitted except during cross-examination if

allowed by the BOA. During the hearing, no members shall discuss, debate, or argue an issue with staff or the applicant, nor indicate any probable vote.

5. Comments or questions from the BOA.
6. Additional input by staff is requested by the BOA.
7. Closing statement or rebuttal by applicant, if necessary.
8. Closing comments by Chair and repeat of opening comments.

**D. Motions**

A motion may be made by any regular member of the BOA or any alternate member sitting for an absent regular member.

**Certification and Amendments**

**A. Certified Copy**

A certified copy of these Rules of Order and Procedure and any subsequent amendments thereto shall be filed in the office of the City Secretary within ten (10) days following the date of adoption.

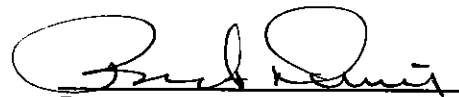
**B. Repealing Clause**

All previously adopted rules of order and procedure for the BOA are hereby expressly repealed to the extent of any conflict.

**C. Amendment Procedure**

Amendments to these Amended and Restated Rules of Order and Procedure may be made by the BOA at any meeting, with proper notice of such, upon the affirmative vote of four (4) out of five (5) members voting and present, provided such amendment is proposed at a preceding meeting and recorded in the minutes of such meeting. The recommendation will be presented to the City Council for approval and adoption. The approved amendment will become effective upon such approval by the City Council and filing with the City Secretary.

Approved by the City Council on the 23rd day of August, 2011, and filed in the Office of the City Secretary this the 24th day of August, 2011.

  
Brenda Dennis, City Secretary