

## CHAPTER 2

**BOARD OF ADJUSTMENT**

## SECTION:

- 2-2-1: Established
- 2-2-2: Membership; Appointment; Vacancy; Removal
- 2-2-3: Organization
- 2-2-4: Powers And Duties
- 2-2-5: Conflicts Of Interest; Ethics
- 2-2-6: Decisions
- 2-2-7: Appeal Fee

2-2-1:       **ESTABLISHED:** In order to provide for just and fair treatment in the administration of local zoning ordinances, and to ensure that substantial justice is done, there is hereby established a board of adjustment. (Ord. 02-03, 11-7-2002; amd. 2006 Code)

2-2-2:       **MEMBERSHIP; APPOINTMENT; VACANCY; REMOVAL:**

A.       **Membership; Appointment; Vacancy:** The board of adjustment shall consist of five (5) members.

1. The mayor shall appoint the members, with the advice and consent of the city council. The mayor may, if desirable, appoint two (2) alternate board members with the advice and consent of the city council.

a. The terms of the members of the board shall be five (5) years; provided, however, that appointments shall be made in such a manner that the term of one member expires each year. Members of the board of adjustment may serve a maximum of two (2) terms.

b. If the mayor appoints alternate members, the alternates shall be seated when the board of adjustment chairperson finds that a quorum of regular members is not available for a meeting. (Ord. 02-03, 11-7-2002)

2. The mayor, with the advice and consent of the city council, shall fill any vacancy. (Ord. 02-03, 11-7-2002; amd. Ord. 2006-08, 9-19-2006)

a. The person appointed shall serve for the unexpired term of the member or alternate member whose office is vacant.

b. At the conclusion of the interim appointment, the mayor, with the advice and consent of the city council, shall make a permanent appointment. (Ord. 02-03, 11-7-2002)

3. The city manager shall appoint a secretary and make staff available to the board of adjustment. (Ord. 02-03, 11-7-2002; amd. Ord. 2006-08, 9-19-2006)

B. Removal: The mayor may remove any member of the board of adjustment for cause if written charges are filed with the administration against the member.

1. The mayor shall provide the member with a hearing before the city council if so requested by the board member, after which the council shall, by majority vote, sustain or reverse the removal.

2. The mayor shall make a decision in writing and include findings concerning the member and the charges. (Ord. 02-03, 11-7-2002)

**2-2-3: ORGANIZATION:**

A. Rules, Bylaws And Officers: The board of adjustment shall establish its rules and bylaws in conformance with the requirements of any ordinance or regulation enacted by the city council or by state law.

1. At its first meeting of the calendar year, the board of adjustment shall elect a chairperson and vice chairperson.

2. The board of adjustment shall adopt bylaws for its procedures and operation and shall ensure that the bylaws comply with any ordinance adopted by the city council.

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a. The terms of the members of the board shall be five (5) years; provided, however, that appointments shall be made in such a manner that the term of one member expires each year. Members of the board of adjustment may serve a maximum of two (2) terms.

b. If the mayor appoints alternate members, the alternates shall be seated when the board of adjustment chairperson finds that a quorum of regular members is not available for a meeting.

2. One member of the board of adjustment shall be a member of the planning commission<sup>1</sup>.

3. The mayor, with the advice and consent of the city council, shall fill any vacancy.

a. The person appointed shall serve for the unexpired term of the member or alternate member whose office is vacant.

b. At the conclusion of the interim appointment, the mayor, with the advice and consent of the city council, shall make a permanent appointment.

4. The city manager shall appoint a secretary and make staff available to the board of adjustment.

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1. See subsection 2-1-2A of this title.

- B. Meetings: The board of adjustment shall meet on the second Thursday in January each year, and at times when complete applications for variances have been received. The board shall also meet at the call of the chairperson and at any other time as directed.
- C. Oaths; Attendance Of Witnesses: The meeting chair may administer oaths and compel the attendance of witnesses.
- D. Open Public Meetings: All meetings of the board of adjustment shall comply with city and state regulations associated with open public meetings.
- E. Records Maintained: The board of adjustment shall:
1. Keep minutes of its proceedings, showing the vote of each member, members absent, or members abstaining.
  2. Keep records of its reports and official actions.
  3. The board shall record summary minutes and maintain a record of meetings as recorded on a tape recorder.
  4. The board of adjustment shall file its records in the city office.
  5. All records in the office of the board of adjustment are public records.
- F. Voting: The concurring vote of three (3) members of the board of adjustment shall be necessary to reverse any order, requirement, decision or determination of any administrative official or agency, or to decide in favor of the appellant.
- G. Effective Date Of Decision: Decisions of the board of adjustment become effective at the meeting in which the decision is made, unless a different time is designated in the board's rules or at the time the decision is made.
- H. Notice Requirements For Hearings: Fifteen (15) days' notice must be given prior to the meeting of the board of adjustment. Notice may be waived by the board of adjustment for a reconvening date. (Ord. 02-03, 11-7-2002)

**2-2-4: POWERS AND DUTIES<sup>1</sup>:**

- A. Variances: The board of adjustment shall hear and decide variances from the terms of the zoning ordinance.
- B. Appeals: The board of adjustment shall hear and decide appeals of any order, requirement, decision or determination made by an administrative official.
- C. Findings Substantiated: The board of adjustment shall not approve any variance or appeal of an administrative decision unless it is able to substantiate the findings in this code. (Ord. 02-03, 11-7-2002)

**2-2-5: CONFLICTS OF INTEREST; ETHICS:** Members of the board of adjustment shall be subject to the municipal officers' and employees' ethics act, Utah Code Annotated section 10-3-1301 et seq., as amended, or any successor provision, and all applicable state law or ordinances of the city regarding conflicts of interest or ethics. A violation of such provisions shall be grounds for removal from office. (Ord. 02-03, 11-7-2002; amd. 2006 Code)

**2-2-6: DECISIONS:**

- A. Decision Following Public Hearing: The board shall, following a public hearing, approve the petition, conditionally approve the petition, or deny the petition before it.
- B. Voting: Refer to subsection 2-2-3F of this chapter. (Ord. 02-03, 11-7-2002; amd. 2006 Code)

**2-2-7: APPEAL FEE:** Any appeal filed with the board of adjustment by any person shall be accompanied with an appeal fee in such amount as established by resolution of the city council. No appeal shall be heard by the board of adjustment until such fee has been paid. (Ord. 02-03, 11-7-2002; amd. 2006 Code)

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1. See also section 10-3-6 of this code for appeals to the board of adjustment.