BYLAWS OF THE
EL PASO COUNTY BOARD OF ADJUSTMENT

These Bylaws of the El Paso County Board of Adjustment are adopted by the El Paso County Board of County Commissioners ("BoCC") pursuant to §§ 30-28-117 and 30-28-118, C.R.S. and §§ 2.2.3 and 5.5.2 of the El Paso County Land Development Code ("Code"). They supersede and replace all prior adopted bylaws.

ARTICLE I. PURPOSE AND AUTHORITY

The El Paso County Board of Adjustment ("BOA") shall be as described in §§ 30-28-117 and 30-28-118, C.R.S. The BoCC has provided general rules to govern the organization, procedure, and jurisdiction of the BOA, specifically through its zoning regulations set forth in the Code. In addition, the BOA is authorized to adopt rules and regulations governing its procedure pursuant to § 30-28-117(2), C.R.S., Robert's Rules of Order, and such additional authority and powers as are lawfully conferred upon it by the BoCC.

ARTICLE II. BOA MEMBERS

Section 1. The BoCC shall appoint members to the BOA on or before the annual meeting of the BOA, which shall be the ~~second~~ fourth Wednesday in May, or at such other times as may be necessary to fill vacancies caused by term limits, resignation, removal, death, capacity, or other reasons. When appointed, members shall be designated either as regular members ("Members") or associate members ("Associate Members").

Section 2. Each Member and Associate Member shall be a resident of El Paso County.

Section 3. The BoCC shall appoint four (4) persons, not more than two (2) of whom may at any time be members of the El Paso County Planning Commission, to serve as Members and shall appoint no fewer than three (3) and no more than seven (7) persons to serve as Associate Members.

Section 4. Members shall serve three-year terms. The term of at least one Member shall expire each year. Associate Members shall serve one-year terms. At the expiration of their terms, Members and Associate Members may apply for reappointment in accordance with BoCC rules and procedures. Unless otherwise provided, all Members and Associate Members shall serve without compensation. Any Member or Associate Member may be removed pursuant to Article VIII herein. Vacancies shall be filled in accordance with BoCC rules and procedures.

Section 5. At all meetings of the BOA, the Chair shall designate five voting members for the meeting, unless otherwise provided for under Article VI, Section 1, ("Voting Members"). Each Member present at the meeting shall be a Voting Member. The Chair shall at each meeting designate one from among the Associate Members present to serve as the fifth Voting Member for that meeting. The Chair shall make appointments on a rotating basis to ensure to the extent

Commented [LS1]: Minor edits were made throughout to make language more succinct or clear. Not all are identified, but explanations are provided for more substantial edits or those that change the meaning or effect of provisions.

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Commented [LS2]: This section was reworded to make it a little more succinct.

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Commented [LS3]: Most citations to authority were removed throughout the document as unnecessary and to avoid the need to revise if laws or regulations change.

Commented [LS4]: This section was revised to comply with the 2022 BoCC resolution regarding board and committee appointments.

possible that each Associate Member has a turn as a Voting Member. In addition, the Chair shall appoint Associate Members to take the place of Members who are unable to act due to absence, illness, interest in the matter before the BOA, or any other cause. The intent of this section is to ensure that five Voting Members, who have no personal or financial interest in the matter under consideration, consider and vote on each matter before the BOA.

Section 6. When a Voting Member is unable to vote on a matter due to a conflict of interest as addressed herein, the Chair shall for that matter substitute each conflicted Voting Member with a non-conflicted Associate Member in order to ensure a total of five (5) non-conflicted Voting Members for each matter. At the conclusion of the vote concerning that matter, the composition of Voting Members shall revert to what it was before the Chair made the substitutions.

ARTICLE III. DUTIES

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The duties of the BOA include:

- Election of a Chair, Vice-Chair, and Second Vice-Chair
- Adoption of rules regarding its procedure
- Consideration and approval or disapproval of variances
- Hearing and deciding upon appeals of administrative determinations
- Imposing reasonable conditions upon any approvals granted

ARTICLE IV. OFFICERS

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Section 1. At the annual meeting or at such other times as necessary to fill vacancies caused by term expiration, resignation, removal, death, or incapacity, the BOA shall elect officers unless the BOA votes to delay the election. The following officers shall be elected from among the four Members only:

Chair
Vice-Chair
Second Vice-Chair

Each Officer shall hold office for a term of one (1) year or until his or her successor is duly elected or until his or her death, incapacity, resignation, or removal. Officers may be elected to successive terms.

Section 2. Officers shall be elected by a simple majority vote of all Members and of all those Associate Members who have served on the BOA for at least six months, if any, at the time of the vote. All those voting must be actually present to vote, and no proxy voting is allowed.

Section 3. In the event a vacancy is created in any office, Section 2 shall be used to select a Member to serve the balance of the unexpired term.

ARTICLE V. POWER AND DUTIES – OFFICERS

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Section 1. **Chair**. The Chair's role is to see that all meetings and hearings are conducted in a smooth, orderly, and expeditious manner. The duties of the Chair include but are not limited to the following:

a. Preside at all meetings of the BOA and conduct meetings in accordance with these Bylaws, State laws, the Code, Robert's Rules of Order, and any other rules adopted by the BoCC.

Commented [LS5]: The document was edited to use "meeting" to refer to any noticed gathering of the BOA and "hearing" to refer to the presentation of evidence and vote on a particular agenda item, rather than use them interchangeably.

b. Call special meetings of the BOA, as needed, in accordance with these Bylaws, State laws, the Code, Robert's Rules of Order, and any other rules adopted by the BoCC.

c. Ensure that a record of the proceedings is kept, which shall be open to the public for inspection at all times. The official record is the digital recording.

d. The Chair may place reasonable time limitations on debate to preclude or limit public testimony including discussion by Members and Associate Members.

e. Sign the documents of the BOA.

f. See that all actions of the BOA are properly taken.

g. Cancel regular meetings for cause, including but not limited to lack of quorum, absence of an agenda, meeting date falling on a holiday, or hazardous weather conditions.

h. Compile and forward all questions and requests for information from Members and Associate Members generated outside a public meeting and directed to PCD staff, whether regarding a specific Application or Appeal, other BOA business, or other public business, to the PCD Director. The Chair shall direct Members and Associate Members to send such questions and requests for information only to him or her.

Commented [LS6]: This section was added at the suggestion of Member Jay Carlson after discussions with the Interim PCD Director at a recent public meeting.

Section 2. **Vice-Chair**. The Vice-Chair shall assume the duties of the Chair in his or her absence.

Section 3. **Second Vice-Chair**. The Second Vice-Chair shall assume the duties of the Chair in the absence of the Chair and Vice-Chair.

Section 4. **~~Recording Secretary~~Administrative Staff**. ~~The BOA shall have a Recording Secretary, who shall be appointed by~~ T~~t~~he Planning and Community Development Department ("PCD") ~~Executive Director or the Director's designee,~~shall provide administrative staff to be present at all meetings of the BOA and~~. The Recording Secretary~~ shall have the following duties:

a. Keep the minutes of the BOA public meetings.

b. Prepare resolutions of the BOA actions regarding Applications and Appeals.

c. Prepare and distribute the BOA public meeting agendas and copies of the minutes of previous meetings.

d. Prepare all official correspondence subject to these Bylaws at the direction of the BOA.

e. Prepare and send out all notices required by law and these Bylaws.

f. Maintain a file of each Appeal and Application which comes before the BOA.

g. Act as Custodian of Records for the BOA.

h. Sign and certify documents.

i. Perform other duties as requested by the BOA or County staff.

ARTICLE VI. QUORUM

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Section 1. A quorum for the transaction of business at any regular or special meeting of the BOA shall be four (4) Voting Members. The Chair may designate Associate Members to serve as Voting Members to obtain a quorum.

Section 2. In the absence of a quorum, the Chair, Vice-Chair, Second Vice-Chair, or presiding Member shall terminate any scheduled meeting or hearing.

Section 3. For a meeting or hearing that has not been convened due to a lack of quorum, the Chair, Vice-Chair, or Second Vice-Chair shall instruct PCD staff to reschedule or table the meeting or hearing to the date of the next regularly scheduled meeting of the BOA or otherwise continue the meeting or hearing to a date certain.

Section 4. A meeting rescheduled for lack of quorum or other inability to hold the meeting, including but not limited to building closures, shall comply with the Open Meetings Law pursuant to Article XII below.

ARTICLE VII. CONFLICT OF INTEREST

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Section 1. All Members and Associate Members have an obligation to carry out their duties for the benefit of the public; therefore, they shall promote public confidence by avoiding conflicts of interest, impropriety, and appearances of impropriety.

Section 2. All Members and Associate Members who have an immediate personal or financial interest in any matter considered by the BOA shall disclose the fact to the Chair at the earliest opportunity and shall not be present for or participate in discussion of the matter and shall not vote on the matter. In this case, the Chair shall utilize the procedure set forth in Article II, Section 6. If the Chair is the person conflicted, the Vice-Chair shall ensure these procedures are followed, and so on.

Section 3. In compliance with State law, no Member or Associate Member shall perform an official act which may have a direct economic benefit on a business or other undertaking in which such Member or Associate Member has a direct or substantial financial interest.

ARTICLE VIII. REMOVAL

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The BoCC shall have the authority to remove a Member or Associate Member without cause or for reasons including, without limitation, unsatisfactory or nonperformance of duty, misconduct, conflict of interest, or other activities deemed by the BoCC to be detrimental to the best interest of the County. A Member or Associate Member may be removed for cause by the BoCC upon written charges and after a public hearing.

ARTICLE IX. VOTE

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The following rules govern the procedures when voting:

a. Each Voting Member shall have one (1) vote.

b. All voting shall be by roll call. Votes in favor shall be “aye” and votes in opposition shall be “no.”

c. No abstentions are allowed.

d. Voting shall be required to transact business.

e. The affirmative vote of four (4) Voting Members shall be necessary to reverse any order, requirement, decision, or determination of the PCD Director or to approve any variance.

Commented [LS7]: The reference to resolving boundary line disputes was removed, as the BoCC has not delegated that authority to the BOA. The requirement that 4 votes are needed to take "any other action" (such as a continuance or a denial) on an appeal or application was also removed for the purpose of efficient conduct of business. It can be reinserted if desired.

ARTICLE X. MEETINGS

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Section 1. Annual Meeting. The annual meeting shall be held the ~~second~~ fourth Wednesday in May each year or at such other time as necessary. Election of Officers shall take place at this meeting unless otherwise needed.

Section 2. Regular Meetings. BOA meetings are held on the ~~second~~ fourth Wednesday of each month commencing at 9:00 a.m. or as needed, based on the Applications and Appeals submitted. The Chair may elect to cancel a meeting due to insufficient business. Notice of cancellation of a regular meeting due to insufficient business on the agenda shall be posted pursuant to Article XII below.

Section 3. Special meetings. Special meetings may be called by the Chair or a simple majority of Members provided that at least forty-eight (48) hours' notice of such meeting is given each Member and Associate Member, which notice shall include the date, time, and place of the meeting and the subject matter to be considered.

Section 4. The order of business at all regular meetings of the BOA shall be as follows:

a. Designation of Voting Members.

b. Approval of the Minutes of the previous meeting.

c. Unfinished business continued from previous meetings.

d. Hearing of Applications and Appeals filed since the last meeting.

Section 5. The BOA may adjourn a regular meeting if all Applications and Appeals cannot be disposed of on the date set for hearing.

Section 6. An Applicant or Appellant may appear before the BOA on his or her own behalf or be represented by legal counsel or an agent. The BOA shall not consider an Application or Appeal unless the Applicant or Appellant, or a representative, is present.

Section 7. When considering Applications and Appeals, the BOA shall first hear statements from PCD staff and then from the Applicant or Appellant, or his or her representative. After such statements, any interested party may speak in favor or against the Application or Appeal. The Applicant shall be given an opportunity for final rebuttal. The Chair may, in his or her

discretion, limit the statements made by parties in interest so as to prevent repetitive and cumulative evidence for examination.

Section 8. The final decision in favor of any Application or Appeal shall be in the form of a motion to adopt a resolution. In the interest of quasi-judicial economy, the BOA may adopt and utilize standard resolutions for this purpose.

Section 9. In the absence of any provisions of State law, the Code, or these Bylaws, Robert's Rules of Order shall govern the procedures of the BOA.

ARTICLE XI. RECORDS

Section 1. A file of all material and evidence constituting the record and decisions relating to each Application and Appeal shall be kept by PCD as a part of the records of the BOA.

Section 2. All records of the BOA shall be public records subject to inspection and reproduction pursuant to State law.

ARTICLE XII. OPEN MEETINGS LAW

Section 1. Pursuant to § 24-6-401, *et seq.*, C.R.S. (Colorado Open Meetings Law), the BOA shall, at the first regular meeting of each calendar year, designate the posting location of notice of public meetings and the official custodian of the minutes of public meetings.

Section 2. Unless otherwise designated, the posting location of the BOA's public meetings shall be the El Paso County website, and the ~~designated Recording Secretary~~ Planning and Community Development Department~~of the BOA~~ shall be the custodian of minutes and other records.

Section 3. Notice of the date, time, and place of the public hearing on all Applications shall be posted in a conspicuous place on the subject property site in accordance with the Code.

Section 4. Administrative staff from the Planning Community Development Department ~~The Recording Secretary of the BOA~~ shall be responsible for preparing and posting the agendas and compiling, keeping, and certifying when requested the records of the BOA meetings.

ARTICLE XIII. SEVERABILITY

If any section, subsection, sentence, clause, or phrase of these Bylaws is for any reason held by a court of competent jurisdiction to be invalid, such a decision shall not affect the validity of the remaining portions of these Bylaws.

Commented [LS8]: The previous Article XI, Procedure, was deleted as these are administrative procedures regarding the submission of appeals and applications better left to the discretion of PCD.

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Commented [LS9]: This section was amended to comport with current BoCC resolution and practice.

Commented [LS10]: This section was amended to remove the requirement that notice of appeals of administrative decisions be posted on the subject property.

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ARTICLE XIV. AMENDMENTS

These Bylaws may be amended by a simple majority vote of BOA Voting Members followed by approval of a majority of the BoCC, or solely by a majority vote of the BoCC.

Adopted and approved this _____ day of _____, 2022.

ATTEST: EL PASO COUNTY BOARD OF ADJUSTMENT

_____ By: _____

~~Recording Secretary~~ _____, Chair

Adopted, approved, and effective this _____ day of _____, 2022.

ATTEST: BOARD OF COUNTY COMMISSIONERS OF EL PASO COUNTY, COLORADO

_____ By: _____

Chuck Broerman Stan VanderWerf, Chair

County Clerk and Recorder

Commented [LS11]: Previous Section XV, Conduct of Business, was deleted as duplicative.

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