

EL PASO COUNTY  
BOARD OF ADJUSTMENT BYLAWS

TABLE OF CONTENTS

<u>TOPIC</u>	<u>PAGE NO.</u>
Article I – Purpose and Authority.....	1
Article II – BOA Members.....	1
Article III – Duties.....	2
Article IV – Officers.....	3
Article V – Powers and Duties of Officers.....	3
Article VI – Quorum.....	5
Article VII – Conflict of Interest.....	5
Article VIII – Removal.....	5
Article IX – Vote.....	6
Article X – Meetings.....	6
Article XI – Procedure (Appeals and Applications).....	7
Article XII – Records.....	7
Article XIII – Open Meetings Law.....	8
Article XIV – Severability.....	8
Article XV – Conduct of Business.....	8
Article XVI – Amendments.....	8

**EL PASO COUNTY  
BOARD OF ADJUSTMENT  
BYLAWS**

These Bylaws of the El Paso County Board of Adjustment (“Bylaws”) are adopted by El Paso County by and through the Board of County Commissioners of El Paso County, Colorado pursuant to the provisions of §§ 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 (“LDC”). The bylaws amended and adopted in 1999 by Resolution No. 99-222 are hereby repealed and replaced by these Bylaws.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 Board of County Commissioners of El Paso County, Colorado (“BOCC”) has provided general rules to govern the organization, procedure, and jurisdiction of the BOA, specifically through its zoning regulations set forth in the LDC. 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 Wednesday in May, or at such other times as may be necessary to fill vacancies caused by term limits, resignation, removal, death, incapacity, or other reasons. When appointed, members shall be designated either as regular members (hereinafter “Members”) or associate members (hereinafter “Associate Members”). §30-28-117(1) C.R.S.

Section 2. Each Member and Associate Member shall be a resident of El Paso County. LDC, Chapter 2, §2.2.3(a).

Section 3. Pursuant to §30-28-117(1) C.R.S., 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 with a maximum of two consecutive terms. The term of at least one Member shall expire each year. Associate Members shall serve one-year terms with a maximum of six consecutive terms. 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 for unexpired terms in the same manner as in the case of original appointment. §30-28-117(1) C.R.S.

Section 5. At all meetings of the BOA, the Chair shall designate five voting members for the meeting (hereinafter "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 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 Voting Members who are unable to act for any reason due to absence, illness, interest in any matter before the BOA, or any other cause. §30-28-117(1), C.R.S. The intent of this subsection 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 Voting Members are unable to vote on a matter because of a conflict of interest as addressed in Article II, Section 5 or Article VII herein, the Chair shall for that matter substitute each conflicted Voting Member with a non-conflicted member from among the Associate Members sufficient to ensure five, non-conflicted Voting Members for that matter. At the conclusion of the vote(s) concerning that matter, the composition of Voting Members shall revert to what it was before the Chair made the substitution(s).

### **ARTICLE III. DUTIES**

The BOA shall do the following, including, but not limited to:

Section 1. Elect a Chair, Vice-Chair, and a Second Vice-Chair. §30-28-117(2) and (4), C.R.S.

Section 2. Adopt rules and regulations. §30-28-117(2) and (4), C.R.S.

Section 3. Approve or disapprove Variances. §30-28 117(3), C.R.S., and LDC, Chapter 2, Section 2.2.3(B)(1), and Chapter 5, Section 5.5.2.(B)(2)(a)(b) and (c).

Section 4. Hear and Decide Appeals of Administrative Determinations. §30-28 117(3), C.R.S., and LDC, Chapter 2, Section 2.2.3(B)(2) and Chapter 5, Section 5.5.2.(B)(1).

Section 5. Impose Reasonable Conditions. §30-28 117(3), C.R.S., and LDC, Chapter 2, Section 2.2.3(B)(3), and Chapter 5, Section 5.5.2.(B)(2)(a), (C) and (D)(1).

#### **ARTICLE IV. OFFICERS**

Section 1. At the annual organizational meeting or at such other times as necessary to fill vacancies caused by term limits, 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 BOA Members only:

Chair  
Vice-Chair  
Second Vice-Chair

Each Officer shall hold office for a term of one (1) year or until his/her successor is duly elected or until his/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. POWERS AND DUTIES - OFFICERS**

Section 1. **Chair.** The Chair's role is to see that all meetings/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/hearings of the BOA and conduct meetings in accordance with these Bylaws, State laws, the LDC, Robert's Rules of Order, and any other rules adopted by the Board of County Commissioners.
- b. Call special meetings/hearings of the BOA, as needed, in accordance with these Bylaws, State laws, the LDC, Robert's Rules of Order, and any other rules adopted by the Board of County Commissioners.
- c. Ensure that a record of the proceedings is kept, which shall be open to the public for inspection at all times. §30-28-117(4), C.R.S. 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 BOA Members.

- e. Sign the documents of the BOA.
- f. See that all actions of the BOA are properly taken.
- g. Cancel regular meetings and hearings for cause including but not limited to absence of quorum, absence of an agenda, meeting/hearing date falling on a holiday, or hazardous weather conditions.

Section 2. **Vice-Chair.** The Vice-Chair shall assume the duties of the Chair in his/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. **Designated Recording Secretary.** The BOA shall have a Recording Secretary to the BOA, who shall be appointed by the Development Services Director or the Director's designee, to be present at all meetings/hearings of the BOA. The duties of the Recording Secretary are:

- a. Keep the minutes of the BOA public meetings/hearings.
- b. Prepare Resolutions of the BOA actions regarding Applications and/or Appeals.
- c. Prepare and distribute the BOA public meetings/hearings agenda, copies of the minutes of the previous meetings/hearings.
- 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**

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 Members shall terminate any scheduled meeting/hearing.

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

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

## **ARTICLE VII. CONFLICT OF INTEREST**

Section 1. All Members and Associate Members have an obligation to carry out their duties for the benefit of the public, and therefore, they shall promote public confidence by avoiding conflict of interest, impropriety, and the appearance 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. 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. §24-18-108.5 C.R.S.

## **ARTICLE VIII. REMOVAL**

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. §30-28-117(2), C.R.S.

#### **ARTICLE IX. VOTE**

- Section 1. The following governs the standards/procedures when voting:
- a. Each Voting Member shall have one (1) vote.
  - b. All voting shall be by voice vote or 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 DSD Director, to approve any variance, to resolve boundary line disputes, or to take any other action regarding an Appeal or Application.

#### **ARTICLE X. MEETINGS**

Section 1. Annual Meeting. The annual meeting shall be held the second Wednesday in May of the new calendar 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/hearings are held on the second Wednesday of each month commencing at 9:00 a.m., or as needed, based on 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 XIII 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 shall include the date, time and place of the meeting/hearing 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 Appeals and Applications 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 may appear before the BOA in 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 a representative is present.

Section 7. When considering Applications and Appeals, the BOA shall first hear statements made by the DSD, then the Applicant or his representative. After such statements have been made, any interested party may speak in favor or against the Application. 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 provision of the Colorado Revised Statutes, THE LDC, or these Bylaws, Robert's Rules of Order shall govern the procedures of the BOA.

#### **ARTICLE XI. PROCEDURE (APPEALS AND APPLICATIONS)**

Section 1. Procedure (Appeals and Applications) to the BOA may be taken by any person in accordance with §30-28-118, C.R.S. and the LDC, Chapter 2, Section 2.2.3, and Chapter 5, Section 5.5.2. Such Appeal or Application shall be filed with the DSD on an Application Form provided by DSD. The DSD will transmit the Appeal or Application to the BOA along with all available evidence upon which the action will be taken.

Section 2. The applicant shall provide the DSD with all information requested in the Application Form provided to the BOA, and any such additional information and data as may be required to fully advise the BOA with reference to the Application. No Application or Appeal will be considered by the BOA unless it is made upon the prescribed Application Form.

Section 3. The DSD shall notify the Applicant and adjoining property owners of the date and time scheduled for the hearing.

#### **ARTICLE XII. RECORDS**

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



Section 2. All records of the BOA shall be public records subject to inspection and reproduction under §24-72-202, et seq., C.R.S.

### **ARTICLE XIII. OPEN MEETINGS LAW**

Section 1. Pursuant to §24-6-401, et seq., C.R.S., as amended, (Colorado Sunshine Law, Open Meetings Law), the BOA shall at the first regular meeting of each calendar year designate/reaffirm the posting locations(s) of public meetings/hearings requiring public notice and the official custodian of the minutes of the public meetings/hearings.

Section 2. Unless otherwise designated, the posting location of the BOA's public meetings/hearings shall be the designated bulletin board located at the County Office Building, 27 E. Vermijo Avenue, Colorado Springs, Colorado, and the designated Recording Secretary of the BOA shall be custodian of the records/minutes.

Section 3. Posting of the notice of the date, time, and place of the meeting/hearing of all applicable petitions shall be posted in a conspicuous place on the subject property site in accordance with the LDC.

Section 4. The Recording Secretary of the BOA shall be responsible for preparing, recording, and certifying the agendas and the record for the BOA meetings/hearings. Documents requiring posting, in compliance with the Sunshine Act, will be forwarded to County Administration for posting.

### **ARTICLE XIV. 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.

### **ARTICLE XV. CONDUCT OF BUSINESS**

In order to ensure that the public meetings/hearings and debate run in a smooth, orderly, and expeditious manner, the BOA is to employ Robert's Rules of Order while conducting its meetings/hearings. In the absence of any provision of the Colorado Revised Statutes, the LDC, or these Bylaws, Robert's Rules of Order shall govern the procedures of the BOA.

### **ARTICLE XVI. AMENDMENTS**

These Bylaws may be amended by simple majority vote of the BOA Members, and thereafter by the approval of a majority of the BOCC, or by a majority vote of the BOCC.

Adopted and approved this 10<sup>th</sup> day of December, 2008.

ATTEST:

EL PASO COUNTY  
BOARD OF ADJUSTMENT

By: Serry Louderman By: Pamela R. Sheffield  
Recording Secretary Pamela R. Sheffield, Chair

Adopted, approved, and effective this 30<sup>th</sup> day of January, 2018.

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
OF EL PASO COUNTY, COLORADO

By: Adrian Balme By: Dennis Hisey  
County Clerk and Recorder Dennis Hisey, Chair