ARTICLES OF
RULES AND PROCEDURES

CITY OF SAN ANTONIO, TEXAS
BOARD OF ADJUSTMENT

CLIFF MORTON DEVELOPMENT AND BUSINESS SERVICES CENTER
SAN ANTONIO, TEXAS

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ARTICLE I: GENERAL PROVISIONS

Section A: These rules are supplementary to the provisions of Chapter 35: Unified Development Code of the City of San Antonio Code of Ordinances (herein referred to as the "UDC") as they relate to procedures of the Board of Adjustment (herein referred to as the "Board").

Section B: The City Attorney's Office shall be consulted in cases where the powers of the Board are not clearly defined.

Section C: The Office of the Board of Adjustment shall be located at the Cliff Morton Development and Business Services Center, 1901 South Alamo Street in San Antonio, Texas.

Section D: The records of Board proceedings are public records and, as such, are available for reference and review at the Cliff Morton Development and Business Services Center. Copies of the requested documents are available, subject to the fee provisions for copies established by the City of San Antonio City Council and subject to the Freedom of Information Act.

Section E: Unless specifically identified in these rules and procedures, the term "member" shall also apply to alternates serving in the absence of a regular Board member.

ARTICLE II: ORGANIZATION AND OFFICERS

Section A: Name of Organization and Authorization

The name of this official board of the City of San Antonio shall be the Board of Adjustment. The Board is created pursuant to Chapter 211 of the Texas Local Government Code. Section 211.008 of the Local Government Code gives the City Council authority to create and appoint a Board of Adjustment.

Section B: Members

The Board is comprised of eleven (11) members to be appointed for a term of two years. Six (6) alternate members are also appointed by the City Council to serve in the absence of one or more regular members when requested to do so. Alternate members serve for the same period as a regular member.

Section C: Officers

The Board shall elect a Chair, Vice-Chair and Pro-Tem from its regular membership by majority vote no later than January immediately following the City Council election. The Chair, and Vice-Chair and Pro-Tem will serve for an individual term of up to two (2) years. The Director of the

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Development Services Department, or a designated representative, will serve as Executive Secretary to the Board.

Responsibilities and Duties of Officers

a. The Chair shall preside over all meetings, decide all points of order, and dispense the business of the Board.
b. The Chair may administer oaths or compel the attendance of witnesses.
c. The Chair shall sign the minutes of each meeting of the Board, after the minutes have been approved by the Board.
d. In the absence of the Chair, the Vice-Chair shall perform all the duties and exercise all the powers of the Chair. In the absence of the Chair and Vice-Chair, the Pro-Tem shall perform all the duties and exercise all the powers of the Chair. In the absence of the Chair, Vice-Chair and Pro-Tem, an "Acting Chair" shall be elected by those Board members present at a hearing or voting for the purpose of conducting the meeting.

ARTICLE III: POWERS OF THE BOARD

Section A: Responsibilities, as authorized by Article I, Section A:

1. hear and decide appeals that allege an error in an order, requirement, decision or determination made by an administrative official or agency in the enforcement of applicable provisions of the City Code or an ordinance subject to provisions of Section 211.010. of the Texas Local Government Code; and

2. hear and decide special exceptions to the terms of the Unified Development Code, or a regulation in those specific instances where the Board is empowered to do so; and

3. authorize, upon appeal in specific cases, such variance from the terms of the Unified Development Code, if the variance is not contrary to the public interest and due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship and so that the spirit of the ordinance is observed and substantial justice done; and

4. hear and grant or deny requests for variances from the applicable terms of Chapter 28of the City Code; and

5. hear and make recommendations to the Director of the Development Services Department regarding requests for appeal of interpretations of applicable sections of Chapter 28 made by the Chief Electrical Inspector; and

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6. hear and decide appeals of decisions of the Director of the Development Services Department regarding applicable provisions of Chapter 28of the City Code; and

7. hear and decide any other matters authorized by the City Council through ordinance.

ARTICLE IV: RESPONSIBILITIES AND DUTIES OF BOARD MEMBERS

Section A: All members of the Board should attempt to study the information provided by city staff.

Section B: Members unable to attend a meeting should give seventy-two (72) hours notice to the Executive Secretary, Board Liaison, and Board Coordinator to ensure the attendance of at least 75% of the members at all meetings.

Section C: All members of the Board may question all witnesses to assist the Board in arriving at a correct, logical and fair decision.

Section D: Code of Ethics

All members of the Board are subject to the City of San Antonio Code of Ethics. In all cases before the Board where a member of the Board has a substantial interest and a conflict can be established, the member shall either refrain from any discussion or vote on the matter by submitting a written recusal notice, or shall alert the Executive Secretary, Board Liaison, and Board Coordinator in advance so that the issue can be addressed at least 72 hours prior to the meeting at which the conflict is at issue. Ethical questions presented to the Executive Secretary, Board Liaison, or Board Coordinator may be submitted to the City Attorney's Office for review and opinion.

Contacts with Applicants and the Public

Board members shall refer all inquiries to staff and shall refrain from discussing or corresponding on any matter currently, or scheduled to come before the Board, outside of formal meetings. Any Board member having contact with an applicant or member of the public regarding the application outside of a formal meeting must declare the content of such discussion during the public meeting.

ARTICLE V: BASIS FOR ACTION

Section A: Board members shall make the required determinations based on all of the following:

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1. Facts filed with the application.

2. Testimony presented at the public hearing.

3. The Development Services Department's technical report.

4. The Board's findings of fact.

Section B: Findings of Fact

Every decision of the Board shall be based upon findings of fact and every finding of fact shall be supported in the record of its proceedings. A mere finding or recitation of the enumerated conditions unaccompanied by findings of specific facts shall not be deemed findings of fact and shall not be deemed in compliance with the City Code or City Ordinance.

Section C: Hardship

1. The "unnecessary hardship" required to authorize a variance shall not be self-imposed, nor be financial only. It must relate to the very property for which the variance is sought and be a condition unique, oppressive and not common to other properties.

2. On an appeal based on hardship resulting from extreme changes in topography or unusual terrain features, based on the plot plan or survey submitted by the applicant.

3. There is no unnecessary hardship if the property is suitable and useable for the uses permitted in the district in which it lies although there may be a loss of profit or other economic disadvantage on account of such use.

ARTICLE VI: MEETINGS

Section A: All meetings and hearings of the Board are subject to the Texas Public Information Act. All meetings of the Board shall be open to the public. Any action calling for a formal vote shall take place only at a duly noticed public meeting or hearing.

The applicant may appear on his/her own behalf or may be represented by counsel or agent.

Section B: Quorum

Seventy-five percent (75%) of the full membership of the board shall constitute a quorum.

Section C: Work Sessions

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Work sessions with the Executive Secretary and other City Staff may be scheduled as needed at a time to be determined by the Board. A pre-briefing on all cases to be heard may be conducted at these work sessions. Work Sessions shall be for the purpose of assisting the members in making correct, logical and fair decisions and not for prejudging any case. Additional issues may be discussed at the work session if posted on the agenda.

Section D: Regular Meetings

A calendar of regular meeting dates shall be adopted by the Board. Said meetings will be conducted in the Board Room of the Cliff Morton Development and Business Services Center, which is located at 1901 South Alamo Street. The place, day and/or time of the meetings may be changed by majority vote of the Board at any regular meeting. Notice of such action shall be posted, in accordance with the Local Government Code and the UDC, on the City of San Antonio website and with the City Clerk's Office one time at least seventy-two (72) hours prior to the meeting date.

Section E: Special Meetings

The Chair, or the majority of the Board membership, may call a special meeting, as needed. A special meeting shall have a lawful purpose and members shall be given at least seventy-two (72) hours notice prior to the meeting.

Section F: Order of Business

The usual order of business shall be:

1. Call to Order and Roll call (1:00 PM – time certain)

2. Pledges of Allegiance to the Flags of the United States of America and the State of Texas

3. Opening statement

4. Role Call of Applicants (to ensure the applicant is present)

   (1) If the applicant or representative is not present when called, the Chair may, at their discretion, move a case to the end of the agenda.

   (2) The Chair may, at their discretion, move a case out of regular agenda order.

5. Public Hearing Commencement (Items "a-j" below, shall be conducted for each case)

a. Presentation of report and/or recommendation and results of notices mailed to property owners within two-hundred feet by Staff.

b. The Chair shall call on the applicant or his/her representative(s) to present the case and answer any questions.

c. The Chair shall then inquire if there are others who wish to address the Board whether in support or in opposition.

d. The applicant or his/her representative may then give a rebuttal to any opposition.

e. If new facts are presented during this rebuttal, opposition shall be given the opportunity for rebuttal.

f. Staff shall then have an opportunity for rebuttal and/or to provide additional information, clarification or address questions from the Board.

g. The Chair shall then declare that the public portion of the hearing is closed.

h. In order to achieve an unambiguous decision, motions shall be made in an affirmative manner.

i. Any motion by a member shall require a second. After a motion has been made and duly seconded, discussion of the motion may be held for a reasonable time. Discussion shall terminate whenever a member shall call for a vote upon the question or whenever the Chair shall so rule.

j. Vote on a motion.

6. Approval of Minutes

7. Other business as specifically posted on the Agenda

8. Director's Report

9. Adjournment

Section G: The Role of City Staff and Staff Reports

City Staff

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Staff of the City of San Antonio Development Services Department, herein referred to as "Staff", shall conduct all official correspondence of the Board; send out all official notices required by law; keep records of each examination or other official action of the Board and perform all other duties required by law and these Rules and Procedures.

Additionally, Staff shall provide reports on each case to be considered by the Board. Any recommendations made shall be in accordance with the City of San Antonio Unified Development Code and the Texas Local Government Code.

Section H: Action by the Board

The concurring vote of nine (9) members of the Board shall be necessary to reverse an order, requirement, decision or determination of an administrative official or agency; to decide in favor of an applicant on a matter upon which the Board is required to pass under any such ordinance or regulation; to authorize a variation from the terms of Chapter 35 or Chapter 28 of the City Code; or to recommend to the Director of the Development Services Department to uphold or modify the Chief Electrical Inspector's interpretation of Chapter 28 of the City Code. All other matters shall be decided by a majority vote, unless otherwise specified in the City Code, Texas Local Government Code, or City Ordinance.

Section I: Meeting Minutes

The Board, through its Secretary, shall keep minutes of all meetings that indicate the vote of each member on every question on which it is required to act, or the fact that a member is absent. The minutes shall be filed in the Office of the Development Services Department and are public records.

For the purposes of Texas Local Government Code Section 211.011, the date the decision is filed in the board's office shall be the date the Board takes action to approve the minutes for the meeting in which the decision that is being appealed took place.

Section J: Time Limitation for Speakers

1) Staff Presentation – there shall be no time limit for the staff presentation of the case and staff's recommendation of action; however staff's presentation should be as succinct as possible
2) Applicant/Representative Presentation – there shall be no time limit for the presentation of the case by the applicant/representative; however, presentations should be as succinct as possible and applicants/representatives must limit their presentation to one speaker unless that speaker's primary language is other than English, in which case a translator acceptable to the applicant/representative may

approach the podium to translate for the applicant/representative. The Chair, at their discretion, may allow additional speakers, and shall apply this fairly to all speakers.

3) Citizens signed up to speak – each speaker must approach the podium and give their name and address for the record. There shall be a time limitation of three minutes for each speaker in favor or in opposition to the request. Citizens signed up to speak may choose to allot their time to another speaker, however no speaker may be allowed to speak for more than nine minutes. Responses to specific questions from Board members which have been recognized by the Chair after the speaker has finished shall not be subject to such time limitation. The Chair may, at their discretion, limit all citizens signed up to speak to less than three minutes.
4) Rebuttal – the applicant/representative shall be limited to a three minute rebuttal of citizens that have spoken in opposition. Responses to specific questions from Board members which have been recognized by the Chair after the applicant/representative has finished shall not be subject to such time limitation.
5) The Chair, at their discretion, may allow for additional time for any speaker, and shall apply this fairly to all speakers.

ARTICLE VII: DECISIONS OF THE BOARD

Section A: Any one case shall not set a precedent for any future case. Each case shall be decided on its own merits; testimony at the public hearing and upon the circumstances of the case.

Section B: Releases and statements to the public and press in the name of the Board of Adjustment shall be made only by the Director of the Development Services Department or his/her designated representative.

Section C: Any question regarding parliamentary procedure not covered by these rules shall be decided according to the latest edition of Robert's Rules of Order.

ARTICLE VIII: WITHDRAWL OF APPEAL

Section A: Any appeal or application may be withdrawn by the applicant upon written notice to the Director of the Development Services Department, with any subsequent scheduling being subject to the time limitations set forth in the UDC.

ARTICLE IX: ATTENDANCE

Section A: If a Board member is excessively absent from regularly scheduled meetings, the Board may recommend to City Council, by majority vote, that member be removed from the Board. Any removal from the Board of Adjustment shall be subject to Section 211.008. of the Texas Local Government Code.

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ARTICLE X: AMENDMENT PROCEDURE

Section A: Amendments to these rules and procedures may be made by the Board at any meeting, upon the affirmative vote of nine (9) members, provided any such amendment is proposed at a preceding meeting and entered into the minutes of such meeting. By unanimous consent of the Board membership, amendments may be adopted at the meeting at which introduced but shall not become effective until the next regular meeting.

Section B: Staff shall review these Rules and Procedures annually and bring any recommended updates to the Board for consideration.

Section C: Amendments to the rules and procedures after September 1, 2019, shall require the approval of the City Council.

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