

CITY OF EDGEWATER
BOARD OF ADJUSTMENT AND APPEALS RULES OF PROCEDURE

ARTICLE I - Purposes and Authority

Section 1 – Appeals from Refusals of Building Permits.

As provided in §11.5 of the City Charter and § 16-24-10 of the Edgewater Municipal Code (“Code”), the Board of Adjustment and Appeals (“Board”) shall hear and determine appeals made by any person aggrieved by the inability to obtain a building permit, or by the decision of any administrative office or agency based upon or made in the course of the administration or enforcement of the provisions of Chapter 16 of the Code, concerning zoning.

Section 2 – Variance Applications

As provided in §11.5 of the City Charter, the Board shall have the power to make exceptions to the terms of the City zoning regulations in harmony with their general purpose and intent and to authorize variances from the strict application of the zoning regulations in such situations, subject to such limitations as may be set by ordinance.

ARTICLE II – Board Members, Tenure and Vacancies

Section 1 -Number and Term

The Board shall consist of five (5) members to be appointed by the Mayor. The members shall serve overlapping three-year terms. (Charter §11.4) To achieve overlapping terms as required by the City Charter, each member of the Board shall be assigned to one of the five defined Board terms.

Ref: “APPENDIX A” for term definitions.

Section 2 - Appointments to Board

The Mayor shall not make any appointment to the Board without posting and publishing notice of any vacancy thereon at least fourteen (14) days prior to the appointment and without considering the recommendations of the Board. (Charter §11.1(8))

Section 3 - Officers

The Board shall elect its own Chair and Vice-Chair. (Charter §11.1(6)(a))

Section 4 - Rules of Procedure

The Board shall adopt and operate in accordance with its own rules of procedure. Such rules shall not conflict with the City Charter or Code and shall not take effect until approved by the City Council. (Charter §11.1(6)(b))

Section 5 - Eligibility

The members of the Board shall be registered electors who are not elected officials, officers, or employees of the City and who have been residents of the City for at least one (1) year immediately preceding the date of their appointment. No person who has been or who is convicted of embezzlement, bribery, solicitation of bribery, perjury, subornation of perjury, or any offense involving fraud, shall be capable of holding a position on the Board. (Charter §§ 11.4 (2) and 11.1(9))

Section 6 - Removal

As set forth in §11.1(5) of the City Charter, members may be removed by the Mayor, after a charge in writing and the opportunity for a hearing before the Council, for inefficiency, neglect of duty, or malfeasance in office.

Section 7 - Vacancy

Should any vacancies occur among the Board by reason of death, resignation, disability or otherwise, notice thereof shall be given to the City Clerk as soon as practical. Vacancies that occur in any manner other than expiration of a term shall be filled for the remainder of the unexpired term.

Section 8 - Resignation

Any member wishing to resign shall provide written notice to the City Clerk. The City Clerk shall notify the Mayor as soon as practical.

ARTICLE III - Duties and Responsibilities of Officers, Assistants and Members

Section 1 - Officers and Assistants

A. Officers:

- 1) The Chair shall preside at all regular meetings, special meetings and public hearings of the Board. The Chair shall certify all written findings, orders, resolutions, and other official actions taken by the Board. The Chair, or their designee, shall assist the City Clerk in preparing the Board Agenda.
- 2) The Vice-Chair shall, in the absence of the Chair or in the case of the Chair's inability to act, have all the powers necessary to function as the Chair.
- 3) In the event both the Chair and the Vice-Chair are absent from a meeting, the clerk, or in the event there is not a clerk, a member of the Board shall call the Board to order and call the roll. If a quorum is present, the Board shall elect, by a majority vote of the members present, an Acting Chair who will preside over the meeting until the arrival of the Chair or Vice Chair, at which time the Acting

Chair shall relinquish the chair upon conclusion of the business immediately before the Board.

B. Assistants:

1) City Clerk:

- a) The City Clerk notifies Board members of the business to be brought before the Board, and serves public notice of all hearings and public meetings of the Board in accordance with the City Charter and Edgewater Municipal Code.
- b) The City Clerk records Board meetings, including all public hearings, for retention as a public record of those meetings. The City Clerk submits the minutes of prior Board meetings, including any findings or recommendations, to the Board for approval.
- c) The City Clerk keeps on file the official records of the Board.
- d) The City Clerk is authorized to perform the duties, functions and obligations required by these Rules of Procedure personally and/or through a designee, as the Clerk determines appropriate.

2) Community Development Department

- a) The City's Community Development staff prepares evidence and data regarding matters to come before the Board and submits this data and evidence to the Board in a timely and acceptable form.
- b) The City's Community Development staff serves as liaison between the Board and other City departments and boards, and as the coordinator between the Board and applicants appearing before the Board.

Section 2 - Election of Officers

- A. At its 4th Quarter Regular Meeting, or at the next successive regular Board meeting if such meeting is not conducted, the Board shall nominate and elect by a majority vote of the entire membership of the Board a Chair and Vice-Chair from within its members. The terms of such offices shall commence immediately upon the date of election and shall run until the next election. Officers shall be eligible for re-election to subsequent terms without limitation as to the number of consecutive terms served.
- B. If the Chair is vacated:
The Vice-Chair shall be named as the new Chair unless they refuse to assume the office of Chair. If the Vice-Chair so refuses, or if the office of Vice-Chair is also vacant, a new Chair shall be elected as soon as practical. All current Board members are eligible for nomination. The new Chair shall serve the remainder of the term.

C. If the Vice-Chair is vacated:

A new Vice-Chair shall be elected as soon as practical. All current Board members are eligible for nomination excluding the current Chair. The newly elected Vice-Chair shall serve the remainder of the term.

Section 3 - Compensation

All members of the Board shall serve without compensation.

ARTICLE IV - General Procedures

Section 1 - Meetings

A. Public Notice and Public Comment

- 1) All meetings shall be posted and published as required by the City Charter and applicable state and federal laws.
- 2) All meetings shall provide members of the public an opportunity to address the Board.
- 3) All meetings shall be open to the public, except that the Board may go into executive session for the purpose of considering matters permitted by the statutes, as from time to time amended, to be considered in executive session. No formal and legally binding action shall be taken at any such executive session.

B. Quorum

- 1) Three (3) members of the Board shall constitute a quorum for the transaction of any business. No official business of the Board shall be conducted without a quorum.
- 2) If a quorum is not present a member of the Board shall adjourn the meeting due to lack of a quorum.

C. Regular Meetings.

Regular meetings of the Board shall be conducted quarterly, in the City Council Chambers at City Hall and/or virtually, on the following dates at such times as designated and properly noticed in compliance with all applicable open meetings laws, unless such meeting is cancelled or rescheduled, as set forth below:

- 1st Quarter Meeting: 3rd Wednesday in January
- 2nd Quarter Meeting: 3rd Wednesday in April
- 3rd Quarter Meeting: 3rd Wednesday in July
- 4th Quarter Meeting: 3rd Wednesday in October

Any regular meeting may be canceled or rescheduled by the City staff, after consultation with the Chair, if there are no hearings, reports or other business to bring before the Board. In the event of rescheduling or canceling, City staff shall provide notice to each Board member. In the event of rescheduling, City staff will also post notice of such rescheduling on the City web site, as soon as practical.

D. Special Meetings.

Special meetings may be called by the Chair or by a majority vote of the entire membership of the Board. Notice of any special meeting of the Board shall be given to all members at least 48 hours in advance of such meeting.

E. Minutes.

The City Clerk shall keep the minutes of all Board meetings. The minutes shall become public record after proper certification as to their accuracy. The approved minutes of the Board shall be retained in the City Clerk's office. The adopted minutes shall become public record as required by law. (CRS Title 24, Article 72, Part 2)

Section 2 - Order of Business

The order of business shall be by Agenda. The Board Chair or their designee shall assist the City Clerk in preparing the Board Agenda prior to the preparation of Board Packets.

Section 3 - Matters of Business

All matters decided by the Board shall be introduced by motion. The City Attorney and the City's Community Development Department shall review all resolutions prior to being placed on the agenda.

Section 4 - Voting

- A. All members have the right to full participation of debate and voting at all meetings. Each member of Board shall be entitled to one vote on all matters that come before the Board. No proxy votes shall be allowed.
- B. Any Board member shall be permitted to explain their vote.
- C. A Board member may change their vote either:
 - 1) Before the result has been announced, but not thereafter, or
 - 2) Upon the proper reconsideration of the question.

- D. Any Board member absent from a public hearing shall not vote on matters regarding said public hearing, unless such Board member has reviewed the recording of tapes and any all documentary evidence related to the portion(s) of the public hearing they did not attend at which they were not present.
- E. Voting shall be by show of hands, voice (ayes and nays) or electronic as permitted by the City Charter. Members must be present to vote. For purposes of this section, a Board member is “present” if they are physically present in the meeting room or attending virtually or telephonically with the ability to clearly listen to and participate in the proceedings by voice.
- F. At least three (3) affirmative votes shall be necessary to reverse any order, requirement or decision of any administrative official, or to grant any variance. (Code § 16-24-10(6))
- G. All advisory actions must be approved by a majority vote of the members present.
- H. No Board member shall be permitted to abstain from voting unless they indicate a conflict of interest (or unless subsection D. above applies).
 - 1) As defined in § 21.11 by the City Charter, a “conflict of interest,” for purposes of this Section, means a pecuniary, property or commercial benefit of any Board member, or of any relative of such Board member, but does not include any matter involving the common public interest or any matter in which a similar benefit is conferred, or is available to all persons or property similarly situated.
 - 2) If a member of the Board intends to abstain from voting on the basis of conflict of interest, such intention shall be stated at the beginning of the hearing or at such time as such personal bias or conflict of interest is ascertained.
 - 3) If the Board determines that disqualification is necessary, the disqualified member shall not participate in the discussion and shall not vote on the matter.
 - 4) If the abstention of a member results in the loss of a quorum, no action will be taken.
 - a) If all members of the Board are present and abstentions result in the Board’s inability to take action, the Board shall inform the City Council that the Board was unable to take action.
 - b) If one or more members of the Board are absent, and abstentions result in the loss of a quorum, the hearing shall be opened and immediately continued to a date certain.
- I. In the case of a tie vote on any motion, the original motion is lost and the Chair shall reopen the discussion to solicit a second motion. If the Chair is unable to secure a second

motion, or if there is a tie vote on the second motion, the motion shall be considered defeated.

ARTICLE V - Rules of Order

Unless these Rules of Procedure specifically state otherwise, the City of Edgewater City Council Rules of Procedure and Procedural Guidelines shall govern the proceedings of the Board.

ARTICLE VI - Public Hearings

The Board shall conduct a public hearing on each variance application and appeal that is properly and timely filed.

In addition to these hearings, the Board may, at its discretion, hold public hearings when it decides that such hearings will be in the public's interest. Such hearings shall be posted and published as required by law. *[not sure of the intent nor the need for this language; the Board can solicit and hear public comment on any topic at any time, even in a directed way, such as, we want to receive public input on XYZ, and advertise the same. Such a meeting would more akin to an open house than "public hearing."]*

ARTICLE VIII - Amending the Rules of Procedure

These Rules of Procedure may be amended at any Board meeting provided that notice of the proposed amendment is given to each member in writing at least 48 hours prior to the meeting. The affirmative vote of a majority of the entire membership of the Board shall be required for the adoption of any proposed amendment to the Rules of Procedure. It shall be the responsibility of the Board to review these Rules of Procedure periodically, to ensure their compliance with the City Charter and Edgewater Municipal Code. Any adopted amendments shall not take effect until approved by the City Council.

APPENDIX A

Board of Adjustment and Appeals

Term Definitions

To achieve overlapping three-year terms as required by the City Charter, each member of the Board of Adjustment and Appeals shall be assigned to one of the following terms.

Ref: Charter § 11.4

Term #1 –12/01/2025, 12/01/2028, 12/01/2031, 12/01/2034, 12/01/2037, etc.

Term #2 –05/01/2024, 05/01/2027, 05/01/2030, 05/01/2033, 05/01/2036, etc.

Term #3 –05/01/2026, 05/01/2029, 05/01/2032, 05/01/2035, 05/01/2038, etc.

Term #4 –05/01/2025, 05/01/2028, 05/01/2031, 05/01/2034, 05/01/2037, etc.

Term #5 –12/01/2025, 12/01/2028, 05/01/2031, 05/01/2034, 05/01/2037, etc.

At no time shall a Board member's term be defined as anything other than that which is listed above. At no time shall a term have more than one Board member assigned to it.

To maintain this Term List as perpetually current, the City Clerk shall annually update the expiration dates set forth in this Appendix to remove each reference to a lapsed calendar year and to add another future expiration date to the term from which that reference is removed. These administrative updates to Appendix A shall not require the review or approval of the Board to become effective.