

RESOLUTION NO. 2017-11

**A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF SEDONA,
ARIZONA, AUTHORIZING AMENDMENTS TO THE BOARD OF ADJUSTMENT
OPERATING RULES AND PROCEDURES.**

WHEREAS, in adopting Ordinance 88-23, the Sedona City Council authorized the creation and amendment of Operating Rules and Procedures for the Board of Adjustment; and

WHEREAS, in adopting Ordinance 2016-11, the Sedona City Council dissolved the Board of Adjustment in favor of retaining the duties outlined in A.R.S. § 11-462.06 by the City Council; and

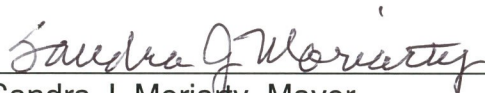
WHEREAS, Ordinance 2016-11 amended Section 304 of the Sedona Land Development Code and thereby delegated Board of Adjustment review to a hearing officer; and

WHEREAS, Ordinance 2016-11 did not identify procedures for a hearing officer to hear and decide matters as a representative of the Board of Adjustment; and

WHEREAS, the Operating Rules and Procedures created by authority of Ordinance 88-23 require updating to reflect current circumstances;

NOW THEREFORE BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF SEDONA, ARIZONA that the terms set forth in that document attached hereto as Exhibit A and entitled "Board of Adjustment Operating Rules and Procedures" are hereby approved and adopted.

PASSED AND ADOPTED this 23rd day of May, 2017 by the Mayor and Council of the City of Sedona, Arizona.




Sandra J. Moriarty, Mayor

ATTEST:



Susan L. Irvine, CMC, City Clerk

APPROVED AS TO FORM:



Robert L. Pickels, Jr., City Attorney

Exhibit A

CITY OF SEDONA BOARD OF ADJUSTMENTS OPERATING RULES AND PROCEDURES

BE IT RESOLVED that pursuant to City of Sedona Ordinance 88-23, the Board of Adjustment (hereinafter called Board) amends its Operating Rules and Procedures to read as follows, hereby repealing all previous Operating Rules and Procedures.

Article 1: Officers

The officers of the Board shall consist of the City Council.

- 1.1 The Mayor shall act as the Chair and shall preside at all Public Hearings and other meetings of the Board which shall be conducted in accordance with the Rules and Procedures for the City Council to the extent that they do not conflict with Arizona statutes regarding Board of Adjustment review procedures or any other provision identified within these Operating Rules and Procedures.

Article 2: Staff

The City shall provide staff resources to: Attend all Board and Hearing Officer meetings; Attend to official correspondence of the Board or its Hearing Officer; Mail all notices required by Law, Ordinance or these Operating Rules and Procedures; Maintain custodianship of the records of the Board or its Hearing Officer; Supervise clerical work and technical preparations necessary to the disposition of business before the Board or its Hearing Officer; Keep written minutes of all meetings; Perform all other duties required by (1) Law, (2) Ordinance, and (3) these rules.

Article 3: Legal Counsel

The Board or its Hearing Officer shall be advised by the City Attorney, or a designee, who shall act as its Legal Counsel and attend all its meetings unless excused by the Chair. In the event of a conflict of interest in representation, the Board or its Hearing Officer may obtain independent legal counsel as recommended by the City Attorney.

Article 4: Creation of Committees.

Committees may be created by the Chair, or by a majority vote of the Board to study and report on assigned Board matters. Meetings of committees shall be properly noticed and any action by the committee shall constitute a recommendation until ratified by the Board. Each committee shall be formed for a specific time period after which it shall dissolve, unless extended by the Chair or by a vote of the Board.

Article 5: Meetings

- 5.1 Meetings of the Board or its Hearing Officer shall be scheduled and held as needed for a timely and orderly disposition of properly filed Appeals.
- 5.2 Special meetings for good cause may be held by the Board on call of its Chair or of a quorum of members, which call shall be filed with the Department of Community Development. The manner of the call shall be recorded in the minutes of the special meeting, and at least twenty-four (24) hours' notice of the meeting shall be given to each member and the public.
- 5.3 The Board, by majority vote, or its Hearing Officer may meet officially at a given geographic site within the City of Sedona stipulated in a specific Appeal, if a circumstance so requires, and proper public notices are timely given.
- 5.4 The Board or its Hearing Officer may approve, conditionally approve, deny, or continue any item on its agenda. In the event an Applicant is not present, the Board may decide to continue the item until the Applicant is present.
- 5.5 In the event that any Board meeting or appeal hearing lasts more than three (3) hours, it may be continued to a time and place certain by a majority vote of the Members present or by declaration of the Hearing Officer, as applicable.
- 5.6 Any requests for continuance received after legal notice for Public Hearing has been given shall be acted on by the Board or its Hearing Officer during the noticed hearing.

Article 6: Quorum and Voting.

- 6.1 A minimum of four (4) Members shall constitute a quorum of the Board for all meetings. If a quorum cannot be obtained, the names of the Board Members present shall be recorded and the meeting shall be rescheduled.
- 6.2 Any vote may be taken by a voice vote or a show of hands. If the vote is not unanimous, a roll call vote shall be taken and each member's vote shall be recorded by the Secretary.
- 6.3 Any Motion for approval which fails to carry (including tie votes) shall be considered a denial of the proposal. However, any action may be reconsidered, during the hearing (before closing of the hearing on this matter) if a Motion to Reconsider, made by a Member who voted on the prevailing side, is passed. Any Motion for denial which fails to carry shall not be considered an approval of the proposal. When a Motion for denial fails, a positive motion or a Motion for Approval shall be made and considered for any official action. Official actions shall be accomplished only by an affirmative vote of a majority of Members present.

Article 7: Agenda (Order of Business).

The Chair shall request preparation of the Agenda for each meeting. Any Member, City Council member, or the Director of Community Development, may request items to be placed on the Agenda. The Agenda for regular meetings, except Executive Sessions, shall consist of the following:

- 7.1 Call to order, Pledge of Allegiance, and Roll Call.
- 7.2 Approval of Minutes of previous meeting(s).
- 7.3 Announcements and committee reports.
- 7.4 Consideration of Appeals.
- 7.5 Adjournment.

Article 8: Minutes and Records

Official written minutes of each meeting shall be kept in accordance with A.R.S. § 38-431 et seq.

Other official records, including Board or Hearing Officer findings, decisions, and other official actions, shall be maintained by the City as required by State Law.

Article 9: Files -Retention.

The City shall keep a permanent file of all plats, maps, charts, reports, resolutions, notices, correspondence, or other matters filed with or issued by the Board. Permanent records shall be stored in accordance with A.R.S. § 39-101.

Article 10: Procedure for Appeals

10.1 Application Required:

Every Appeal, whether for interpretation or variance, shall be filed in the Department of Community Development, in duplicate, on forms provided by the Director, and shall be complete in all respects before being accepted for filing. The Appeal shall bear the signature of the owner of the property affected or shall be accompanied by a letter from the owner approving the taking of the Appeal. An incomplete application or a communication purporting to be an application and not made in the form prescribed is null and void, and no action will be taken by the City.

10.2 Time Limits.

Every Appeal shall be filed within sixty (60) days after notice of adverse decision is given by the Department of Community Development. The Department shall schedule each Appeal for hearing within forty-five (45) days after the completed application is accepted for filing.

10.3 Submission of Evidence.

Evidence supporting the grant or denial of an Appeal shall be submitted only through the Department of Community Development or to the Board or its Hearing Officer in a public meeting.

10.4 Withdrawal of Appeal

Any Appeal may be withdrawn upon written notice the Department of Community Development.

10.5 Interpretation: Basis for Action

A. Before acting on an Appeal for Interpretation, the Board or its Hearing Officer shall consider:

1. A statement by the Appellant describing the way it is alleged the Ordinance should be interpreted, together with diagrams and charts illustrating both the erroneous and the proper application of the map or test provisions of the Ordinance,
2. A statement by the Director giving reasons for his/her interpretation of the Zoning Ordinance,
3. The facts and statements filed in the application,
4. The testimony presented at the Public Hearing,
5. The Staff's report on the Appeal, and
6. The Board or Hearing Officer's independent investigation of the language of the Ordinance and of related Ordinances bearing thereon.

B. The decision of the Board or its Hearing Officer shall take into account the following conditions:

1. That there is reasonable doubt or difference of interpretation as to specific intent of the regulations or map;
2. That the resulting interpretation will not grant a special privilege to one property inconsistent with other properties or uses similarly situated.

10.6 Variance: Special Information Required

In addition to information required pursuant to Article 404 of the Sedona Land Development Code, the following requirements apply in relevant cases:

A. When an application is based upon hardship resulting from sharp changes in topography or unusual terrain features, the plot Plan shall include topographic information related to known base points or surveys, and profiles of the particular problem involved, including relationship to topographic features of adjoining properties.

B. When an application is submitted for Variance from setback, side, or rear yard requirements, the Applicant shall provide the same information for the properties adjoining the common lot line as may be applicable to the appealed requirements.

Article 11: Hearings and Decisions.

Public Hearings

Hearings on all matters on which a decision of the Board is required by law shall be open to the public. The Applicant may appear in his/her own behalf or be represented by counselor agent.

11.1 Procedures for Hearing

- A. The Chair or Hearing Officer shall open and close each item agendaized for public hearing.
- B. The Staff, at the beginning of the Public Hearings, shall report to the Board or Hearing Officer whether any Appeals have been withdrawn prior to the Public Hearing.
- C. The Staff shall successively call each Appeal on the agenda and shall announce the name of the Applicant, the location of the property involved, and the nature of the request. The Staff shall publicly advise the Board or Hearing Officer of any communications received. All supporting evidence for or against each Appeal shall be presented to the assembled Board or Hearing Officer.
- D. The Chair or Hearing Officer shall first call upon Staff to present an overview of the request or decision being appealed, pertinent concerns and issues, and recommendations. The City Attorney may also be consulted or given an opportunity to address pertinent legal issues.
- E. The Chair or Hearing Officer shall next call upon the Applicant or his/her representative to present the case and all evidence supporting his/her plea. Any witnesses supporting the Applicant should make their presentation at this time.
- F. The Chair or Hearing Officer shall next inquire of the public if there others who wish to speak in favor of or in opposition to the Appeal.
- G. Following the presentation of Staff, Applicant, and Public, the Chair or Hearing Officer shall close the public input part of the hearing.
- H. Each speaker shall proceed without interruption and all presentations shall be addressed to the Board or Hearing Officer. No questioning between individuals will be permitted except by permission of the Chair or Hearing Officer. During the hearing no member nor the Hearing Officer shall debate or argue an issue with the Applicant, nor indicate his/her probable vote on the Appeal.

11.2 Information to be Presented

The Applicant shall be responsible for the presentation of all information supporting his/her Appeal. The Chair or Hearing Officer shall direct any question to the Applicant or any person speaking in order to bring out all relevant facts, circumstances and conditions affecting the Appeal, and then shall call for questions from other members of the Board, as necessary, and from the Staff.

11.3 Decisions

Upon conclusion of the presentations, the Chair or Hearing Officer shall close the Public Hearing and the Board or Hearing Officer shall then deliberate and render its decision within twenty-one (21) days from the date of the hearing. Each decision shall be by separate motion, or pronouncement if by Hearing Officer.

11.4 Disqualification

A member may disqualify himself or herself from voting whenever any Applicant, or his/her agent, has sought to influence the vote of the member on the Appeal outside of the Public Hearing.

11.5 Reapplication: Procedures

A request for Variance for relief previously sought, and for which a decision by the Board or Hearing Officer has been made, shall be processed in the same manner as any appeal made to the Board, except that in addition to all other requirements, the applicant shall show that there is a substantial change in the plans or conditions affecting the property.

11.6 Appeal to the Board

In cases heard and decided by a Hearing Officer, all rights to a subsequent hearing on appeal to the Board shall be preserved. No additional fee shall be required of an applicant upon appeal of a Hearing Officer decision. A Hearing Officer decision shall be considered a "decision of the Director" as that phrase relates to time limitations for appeals and variance applications in the Sedona Land Development Code (SLDC).

Following a Hearing Officer decision, any appeal to the Board may be taken by an applicant in the same manner and within the same time limitations as any new application for variance or appeal under the SLDC.

Appeals from a Hearing Officer decision to the Board shall be heard de novo.

Article 12: Certified Copy


A certified copy of these rules and any amendments thereto shall be placed on record in the office of the City Clerk within fourteen (14) days following their date of adoption by the Board.

ADOPTED AND APPROVED by City Council the 23rd day of May, 2017.



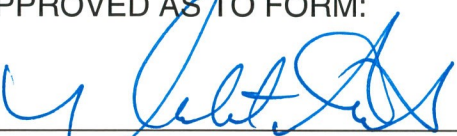
Sandy J. Moriarty, Mayor

ATTEST:



Susan L. Irvine, CMC, City Clerk

APPROVED AS TO FORM:



Robert L. Pickels, Jr., City Attorney