

CITY OF TUCSON, ARIZONA

***BOARD OF ADJUSTMENT  
RULES AND REGULATIONS***

Rules and Regulations

Adopted November 19, 1964  
Amended August 29, 1967  
Amended February 27, 1974  
Amended February 26, 1975  
Amended May 30, 1990  
Amended July 8, 1994  
Amended June 28, 1995  
Amended May 29, 1996  
Amended October 14, 1996  
Amended September 30, 1998  
Revision January 27, 1999  
Amended November 19, 2014

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# CITY OF TUCSON, ARIZONA

## **BOARD OF ADJUSTMENT RULES AND REGULATIONS**

\* \* \*

The Board of Adjustment rules and regulations are established according to Tucson Code Chapter 23B, Unified Development Code (UDC), Section 2.2.5. Three copies of these rules are filed with the Tucson City Clerk to be kept as a permanent public record. Copies of these rules and regulations are available from the Zoning Administrator. Standard copy fees will apply per UDC Section 4-01.0.0.

### **I. RESPONSIBILITIES AND AUTHORITY**

- A. Responsibilities. The Board of Adjustment (B/A) serves in the capacity of a "Board of Adjustment" as provided by the Arizona Revised Statutes.
- B. Duties. The Board of Adjustment is established to hear and decide requests for variances from provisions of the UDC, appeals of Zoning Administrator's interpretations, appeals by an applicant from Administrative Design Review decisions, appeals from Limited Notice Procedure decisions and other land use issues as provided by the UDC.
- C. Authority. Arizona Revised Statutes § 9-462.06 requires that the Mayor and Council establish a board of adjustment, which shall consist of not less than five nor more than seven members

### **II. COMPOSITION**

#### **A. Appointments and Vacancies.**

1. Appointments. The Board of Adjustment is composed of seven members appointed by the Mayor and Council. Each member of the City Council appoints one Board member who must be a resident of the appointing Council Member's ward. The Mayor appoints one member who must be a resident of the City.

2. Vacancies. Any position on the B/A that is vacated shall be filled by appointment as described in Section 2.2.5.A.1. An appointment to fill an unexpired term shall be for the unexpired portion of the term.

#### **B. Qualifications.**

- 1. All Board members must be residents of the City.
- 2. Members serve without compensation.

3. No member of the Board may hold any City, County, or State elective office or be a permanent employee of the City Of Tucson while a member of the Board.
4. Except during a duly noticed site inspection, study session or public hearing no member shall discuss the merits of a case with any member of the public or any other Board member. This prohibition is effective from the time an appeal or request for a variance is filed and until a final action or determination by the Board and the expiration of any period during which reconsideration may be requested. Communications regarding such pending cases may be directed to the Zoning Administrator or PDS staff.

C. Terms and Removal from Office.

1. Members serve four years with staggered terms. Vacancies are filled for unexpired terms. No member of the Board may hold any City, county, or state elective office or be a permanent employee of the City while a member of the Board.
2. The removal of a member of the Board shall be in accordance with Tucson Code, Chapter 10A, Article XIII. Board members may be removed with or without cause prior to the expiration of their term by the mayor or members of the city council who appointed them or by such mayor's or member of the city council's successor in office.
3. A member who misses more than four consecutive meetings for any reason or who fails to attend for any reason at least 40 percent of the meetings called in a calendar year is automatically and immediately removed.
4. Members of the Board shall be eligible for reappointment; but in no event may any individual serve more than a total of eight (8) continuous years on the same body. Once a member has served eight (8) years on a body, he may not be reappointed to that body until he has had a break in service of at least one (1) continuous year.

**III. ADMINISTRATIVE FUNCTIONS**

- A. Election of Officers. The Board elects a Chair and Vice-Chair from among its members at the first regular meeting every January for a term of one calendar year. The terms of the Chair and Vice Chair are one (1) year which shall commence in February of each year. (UDC § 2.2.5.B.1)

B. Officers Duties.

1. *Chair.* The Chair:
  - a. presides at all meetings and hearings;
  - b. decides all points of procedure or order unless otherwise directed by a majority of the members in attendance on motion duly made and approved;
  - c. administers oaths and takes evidence; prepares, with the assistance of staff an agenda for each meeting of the Board arranges with staff for the Board to make field inspections prior to hearing cases or when necessary from time to time and, unless otherwise directed by a majority of the Board; and
  - d. may appoint such committees as may be found necessary;
2. *Vice Chair.* The Vice-Chair performs the Chair's duties whenever the chair is absent.
3. *Temporary Chair.* In the absence of a Chair and Vice-Chair, the Board members present at a meeting shall elect a Temporary Chair to preside over the meeting. The Temporary Chair shall have the full duties of the Chair during the absence of the Chair and Vice-Chair.

C. Support of the Board.

1. *Planning & Development Services Department (PDSD).*
  - a. PSDS provides staff assistance to the Board as required.
  - b. PSDS is responsible for scheduling meetings, providing agendas and public notice of meetings, and maintaining public records of the Board's findings and decisions.
2. *Zoning Administrator.* The Zoning Administrator, or his designee, in conjunction with the Chair is responsible for scheduling materials on the Board agenda and acting as Secretary at Board meetings.
3. *Legal Counsel.* The City Attorney or a designated representative is the legal counsel for the Board. The counsel advises the Board on its jurisdiction and gives legal advice to the Board. Advice of counsel is received and entered in the minutes before resolution of any question or matter requiring legal interpretation or advice.

#### IV. POWERS AND DUTIES OF BOARD

##### A. Jurisdiction.

1. *Appeals.* The Board hears the following appeals. (UDC § 3.10.2)
  - a. Decisions by the Zoning Administrator, including interpretations of the UDC, notices of violations of the UDC, and determinations of violations of conditional uses consistent with Section 10.3.3;
  - b. Decisions by the PDSO Director on applications processed in accordance with the 50' Notice Procedure, Section 3.3.4;
  - c. Decisions by the PDSO Director on a Special Exception Land Use;
  - d. Review decisions where the PDSO Director has challenged the historic designation of a structure proposed for demolition;
  - e. Decisions of the Design Review Board (DRB) pertaining to applications in Neighborhood Preservation Zones as permitted in Section 5.10.3.I;
  - f. Decisions by the PDSO Director on Design Development Option applications;
  - g. Decisions by the PDSO Director on Minor and Major Project Design Review applications in the Rio Nuevo District; and,
  - h. Other determinations in accordance with the UDC
3. *Variances.* The Board hears and grants or denies requests for variances from the provisions of the Unified Development Code. (Source: UDC § 2.2.5.C.2)
4. *Hear special questions.* The Board hears and decides special questions and any other matter as requested by the Mayor and Council.
5. *Other duties.* Such other duties as required by the UDC. (Source: UDC § 2.2.5.H)

B. Powers Denied the Board.

1. *Grant use variances.* The Board may not make any changes in the uses permitted in any zoning classification. (Source: A.R.S. § 9-462.06.H.1); (Source: UDC § 2.2.5.C.2.b.2)
2. *Change UDC words, terms, or provisions.* The Board may not make any changes in the wording or terms or provisions of the Land Use Code. (Source: A.R.S. § 9-462.06.H.1); (Source: UDC § 2.2.5.C.2.b.2)
3. *Grant self-Imposed variances.* The Board may not grant a variance if the special circumstances or conditions applicable to the property were self imposed or created by the owner or one in possession of the property. (Source: A.R.S. § 9-462.06.H.2; UDC § 2.2.5.C.2.b.3)
4. *Grant a variance not publicly noticed.* The Board may not grant a variance to a substantially greater extent or degree than indicated in the public notice of the hearing.
5. *Delete or vary any use-specific standards applicable to a special exception land use as required by the UDC or as established as a condition by the decision-making body in granting the use, unless specifically allowed by the UDC.* (Source: UDC § 2.2.5.C.2.b.1)
6. *Grant a variance to the use-specific standards for Educational Uses.* The Board may not grant a variance to the use-specific standards required of Educational Uses as provided in UDC § 4.9.3.D. (Source: UDC § 2.2.5.C.2.b.5)
7. *Grant a variance to an administrative requirement.* The Board may not grant a variance to any administrative requirement of the UDC or to any requirement, which is not a specific development regulation or use-specific standards, required of a land use. (Source: UDC § 2.2.5.C.2.b.4)

V. **MEETINGS**

A. Meetings and Hearings.

Study Sessions. The Board conducts a study session at 12:00 p.m. and a regular meeting at 1:30 p.m. on the fourth Wednesday after the first Monday of each month, except where there are no agenda items. The purpose of a study session is to allow the Board to hear presentations by staff on agenda items prior to a public hearing. The Board is allowed to ask questions of staff but is not allowed to deliberate on, nor discuss the merits of, any matter set for public hearing.

1. **Recess/Adjournment.** The Board may recess or adjourn a meeting from one day to another day or to the next regular meeting.
  2. **Meeting dates.** Meetings held during October, November, and December may vary from regularly monthly scheduling due to holidays.
  3. **Public Attendance.** All meetings, including study sessions, are open to the public and conducted in a respectful manner.
- B. **Special Meetings.** The Chair or four members may call special meetings for any purpose except public hearings at a designated place. The notice of the special meeting must be given to the members and the general public not less than 24 hours prior to time set.
- C. **Executive Session.** The purpose of executive sessions is to obtain legal advice as permitted and as limited by State law, on matters before the Board. Such meetings are confidential and closed to the public. Notice of an executive session is given in accordance with State law and the notice is required to state the specific provisions of law authorizing the executive session. [A.R.S. §38-431.02(B)]
- D. **Quorum.** A quorum of the Board consists of four (4) members present at a meeting. (Source: UDC § 2.2.5.B.3)
- E. **Agenda.** The Zoning Administrator, or his designee, along with the Chair, prepares an agenda for each Board meeting, listing the matters of business in the following order:
- Call to order -- recording of members present and absent.
  - Continued hearings.
  - Reconsidered hearings.
  - New hearings.
  - Other business -- matters for Board action and not part of a hearing.
  - Adjournment.
- F. **Robert's Rules of Order.** Robert's Rules of Order will govern the actions of the Board not covered by these rules and regulations or by the Unified Development Code.
- G. **Rules for Other Matters.** Where the Mayor and Council have authorized the Board to act in matters other than zoning, these rules and regulations control where applicable.

- H. Conduct. The Chair, or other person presiding as Chair, may impose reasonable limitations on the number of speakers heard and may establish the nature and length of testimony by speakers.

## VI. APPLICATIONS TO THE BOARD

### A. Application Form.

1. *Form.* The applicant must request a variance, appeal, or other matter on the application form provided by the Zoning Administrator.
2. *Basis for Variance or Appeal.* The applicant must state the reason for the variance, appeal, or other matter and the reasons why the request should be granted on the application form, for example:
  - a. If a variance is requested, then facts should be stated upon which findings may be made by the Board to justify the granting of the variance, as set forth in A.R.S. § 462.06. and UDC § 3.10.3.K.
  - b. If an appeal is filed alleging an error in any decision, interpretation or other determination made by the Zoning Administrator, then facts should be stated in support of the appeal.
3. *Site Plan(s).* In all cases, the applicant must include site plans, which the Planning and Development Services Department reviewed for code compliance, with the application. In addition, the applicant must attach the PDSD's written code compliance comments to the application. Additionally, if applicable, the plans must have been reviewed by the appropriate Historic District Review Committee.
4. *Neighborhood Letters and Communications.* The applicant must file a copy of any letters or communications, which were, sent to neighbors/affected property owners offering to meet to discuss the proposed development before the case will be placed on the Board agenda for a public hearing.
5. *Verification of Neighborhood Meetings.* The applicant shall verify in the application to the Board that a neighborhood meeting has been held in the affected neighborhood. For the purpose of establishing this verification, the Board of Adjustment has determined that the meeting must be held within one mile of the property for which the applicant seeks action from the Board.
6. *Property Owner's Signature.* The signature of the owner of the property, which is the subject of a case, is required on the application form. A letter from the property owner acknowledging the filing of the application to the Board is an acceptable substitution.

7. *Identity of Applicant.* In every case, the applicant, be it the property owner of record, the contract purchaser, the present or prospective tenant, or the party aggrieved, will be identified in the proceedings and records.

B. Filing.

1. Zoning Interpretation and zoning certification appeals.

Appeals must be filed with the Zoning Administrator within 14 days of the effective date of the decision, or within the time provided by the individual procedure from which the decision is appealed. An appeal shall be scheduled for consideration by the B/A at the next regular meeting that is at least 35 days following the filing of the appeal. The Zoning Administrator may, for good cause, grant one extension to the second regular meeting after the filing of the appeal. The filing of an appeal stays the issuance of permits and approvals and all formal land use action on the development proposal subject to the appeal. (Source UDC § 3.10.2.B)

2. Administrative design review appeal.

- a. Minor design review. The applicant may appeal a PDSD director's decision of denial to the Board in accordance with UDC § 3.10.2 within (5) days of the date of the decision. [Source: UDC § 5.11.8.B.6]
- b. Full design review. The applicant, or in cases involving historic properties the advisory board or plans review subcommittee, may appeal the PDSD director's decision to the Board in accordance with UDC § 3.10.2 within fourteen (14) days of the date of the decision. [Source: UDC § 5.11.8.C.7]
- c. NPZ design review. A party of record may submit an appeal of the DRB's decision to the B/A in accordance with Sections 3.10.1 and 3.10.2, Board of Adjustment Appeals Procedure. A notice of intent to appeal must be received by PDSD within 14 days of the effective date of the DRB's decision. The complete appeals material must be filed within 30 days of the effective date of the decision. [Source UDC § 5.10.3.1]
- d. Land split appeals. The applicant may appeal the PDSD director's decision in accordance with UDC § 3.10.2. [Source: UDC § 3.10.2.A.8.]
- e. Special zoning review – 50' notice procedure appeals. A party of record may appeal the PDSD Director's decision to the Board of

Adjustment (B/A). Appeals must be filed in accordance with UDC § 3.10.1 and .2. A notice of intent to appeal must be received by the PDSO within five days of the effective date of the decision. The complete material must be filed within thirty (30) days of the date on the notice of decision. [Source: UDC § 3.3.4.I]

C. Complete and Incomplete Applications.

1. Complete Applications.

a. Applications deemed complete by staff and filed no later than the Zoning Administrator approved filing deadline are heard at the regular meeting of the next month and heard in numerical order except for continued and reconsidered cases.

b. The Zoning Administrator will forward to the Board the application, together with all plans, papers or any relevant material, including a report on the subject.

2. Incomplete Applications. The Board may refuse to hear a case upon failure to supply such information as called for upon the forms, and as reasonably required by the Zoning Administrator.

D. Fees.

1. The Applicant must pay the required fee at the time of filing file the application form with the Zoning Administrator.

2. The fees are found at § 4-01.3.1 of the Administrative Manual which is an Appendix to the City of Tucson Unified Development Code

E. Stay of Proceedings.

An appeal stays all proceedings in the matter appealed from, unless the Zoning Administrator certifies to the Board that, in his opinion by facts stated in the certificate, a stay could cause imminent peril to life or property. Upon such certification, proceedings will not be stayed, except by restraining order granted by the Board, or by a court of record on application and notice to the Zoning Administrator.

F. Refiling.

1. No matter which has been adversely acted upon by the Board will be considered again within one calendar year following the date of action, except as provided.

2. The Board may hear cases within a one-year period concerning the same property when:

- a. The case does not involve the same UDC section or does not allege the same misinterpretation or hardship as the previous case; or
  - b. The case does not contain the specific variance originally requested; or
  - c. Substantial change in the use of adjacent property has occurred since the previous case was heard; or
  - d. The previous case was closed without hearing because the applicant was not present at the time the case was scheduled for hearing.
3. The Board may not:
    - a. Reopen any case where a hearing has been held, except to correct an error.
    - b. Hear any case to determine the location of any district boundary line where the Board has previously determined the location of such boundary line.
  4. A case will be considered as heard and closed at such time as the Board approves or rejects an application or appeal by motion, or when it is otherwise closed by operation of these rules.

## VII. PROCEDURES

### A. Agenda

1. *Limit on number of cases heard.* No regular Board of Adjustment agenda will exceed fifteen (15) applications/cases without prior approval of the Board of Adjustment Chairperson.
2. *Taking a case out of order.* A case may be heard out of order upon motion and consent of a majority of the Board provided no case is heard prior to the legally advertised time

### B. Notice of Meetings and Public Hearings

1. *Publication, post and mailing of notice.* Notice of the time and place of a hearing is:
  - a. Published at least once, in a newspaper of general circulation published and circulated in the City of Tucson, not less than 15 calendar days nor more than 30 calendar days prior to the hearing date. [Source: A.R.S. § 9-462.06.F]

- b. Posted in a conspicuous place close to the property affected, not less than 15 calendar days nor more than 30 calendar days prior to the hearing date. [Source: UDC § 3.2.4.F]
- c. Mailed to the applicant, parties in interest, and other persons as may be required by the UDC, not less than 10 calendar days prior to the hearing date. [Source: UDC § 3.2.4.F]

2. *Parties in interest.* "Parties in interest" means:

- a. The applicant and all property owners within the distance specified in Table 3.2-1, whether or not the properties are within the corporate limits of the City;
- b. Any other persons the Director determines are affected by the application or has an interest in the matter;
- c. Pima County and other municipalities where the subject property being reviewed adjoins their boundaries;
- d. All persons who have registered their names and addresses with the municipality as being interested in receiving notice of UDC text amendments;
- e. Ward offices pursuant the PDSD policy; and,
- f. Neighborhood associations as provided for in Table 3.2-1.

3. *Adjournment to date and time certain.* Adjournment of a hearing to a time, date, and place certain is adequate notice to members and the public.

C. Hearings

1. Presentation of cases normally follows this order:

- a. Zoning Administrator's report.
- b. Jurisdiction determined (as and if requested by the Board)
- c. Applicant's/Appellants presentation
- d. Presentation, by others, in support of the request/appeal.
- e. Presentation, by others, in protest of the request/appeal
- f. Rebuttals as permitted by Board.
- g. Close of hearing.

2. *Jurisdiction determined.* Following the Zoning Administrator's report, the Board may request and note the opinion of the City Attorney as to the Board's jurisdiction in the case. Whenever it may appear that the

Board lacks jurisdiction, the Chair will advise the applicant and other interested parties on this point, and that the Board may:

- a. If there is objection to the City Attorney's opinion, hear arguments on the question of Jurisdiction and request briefs are filed on the point.
  - b. If there is no objection to the City Attorney's opinion, the Board makes an immediate determination and closes the hearing upon finding that it lacks jurisdiction.
  - c. If the Board determines by motion that it lacks jurisdiction, then the decision is recorded as a vote to deny the request.
3. *Applicant's Presentation.* The applicant and any other party that may be affected by the case may appear in person or by representative.
- a. If the Applicant fails to appear at the hearing, the Board may:
    - i) Continue the hearing;
    - ii) Dispose of the matter on the record by hearing those who have appeared in response to the notice of hearing; or
    - iii) When a case is opened for hearing and the applicant is not present, the Board may, prior to adjournment that day, recall any such cases. Such cases may be closed if an applicant is not present for the recall and no acceptable reason is given for failure to appear.
  - b. The applicant is responsible for the presentation of all information supporting the case.
  - c. All supporting evidence for and against each case is presented to the assembled Board. All materials submitted into evidence are entered into the record.
4. *Orderly Procedure.* Orderly procedure requires that each presentation proceed without interruption. All discussion is to be addressed to the Board and questioning or argument between individuals will not be permitted. Persons appearing before the Board may not question or cross examine other persons appearing, whether the case is an appeal or request for a variance.
5. *Board Questions and Debate.*
- a. During the hearing, the Chair, Board members and members of staff may ask questions and make appropriate comments pertinent to the case; however, no member should debate or argue an issue with the applicant.

- b. The Chair and Board members may direct any question to the applicant or any person speaking in order to bring out all relevant facts, circumstances and conditions affecting the case, and may call for questions from members of the staff.
  - c. The Board may take under advisement for later consideration, or may defer action whenever it concludes that additional evidence is needed or further study is required.
6. *Burden of Proof.* The applicant has the burden of proof for satisfying the Board's findings.

D. Continuances

1. *Vote required.* When a quorum is present, a motion on a request to continue a hearing carries by simple majority vote.
2. The hearing of a case may be continued by one of the following actions:
  - a. By request of the applicant and approval of the Board at the hearing.
  - b. By action initiated by the Board at the hearing.
  - c. By the applicant's arrangement with the Zoning Administrator at least seven (7) calendar days prior to the scheduled hearing date.
3. The continued hearing of a case is processed as follows:
  - a. Within seven (7) calendar days of the continuance date, the applicant must submit to staff the appropriate continuance fees. The fees are to be accompanied by the submittal of additional site plans if deemed necessary by staff.
  - b. Upon staff's receipt of the appropriate fees and plans, the continued case will be placed on the agenda for the next regular meeting.
  - c. The notice given a continued case is the same as required for the original hearing.
  - d. A continued case not brought back to the Board within three (3) months of the original hearing date is deemed withdrawn.
  - e. To be heard by the Board, a case once withdrawn must be processed as a new case.

E. Decisions

1. On variances, appeals, and other matters the motion made is to reflect the applicant's request.
2. A concurring vote of four (4) members is necessary to decide any matter the Board's powers and duties. If four (4) votes can not be achieved the motion fails.

EXAMPLES:

a. Variance: Motion to Grant

A motion made to grant a variance(s) must have four or more "yes" votes to pass. On a lesser number of yes votes, the motion fails and the variances(s) denied.

b. Appeals: Motion to Reverse

A motion made to reverse the action of either the Zoning Administrator or Planning Director must have four "yes" votes to pass. On a lesser number of yes votes, the motion fails and the action is affirmed.

3. When a quorum is present, a motion made to uphold the action of either the Zoning Administrator or Planning Director will pass on any number of "yes" votes, unless there are four "no" votes then the motion fails.
4. When a quorum is present all motions, unless otherwise specified by these rules, carry by simple majority vote. (Source: UDC § 2.2.5.B.3)  
  
This provision is not applicable on matters the Zoning Administrator has not made decisions on and has just submitted the matter to the Board, with or with no recommendation, or in which the Zoning Administrator has rendered a specific determination and an appeal to this determination has been sent to the Board, which will be governed by paragraphs E.2.b and E.3.
5. Actions on questions arising under separately listed powers and duties will be taken by separate motions of the Board.
6. Where only four (4) members are present, a quorum exists but a unanimous vote will be required the Board may offer an applicant the opportunity to continue the case at no additional cost.
7. No informal requests for advice need be granted by the Board. Advice, opinion or information given by any Board member or any

other official or employee of the City of Tucson is not binding on the Board.

8. *Conflict of Interest: Personal or Monetary.* A member may be voluntarily disqualified from voting whenever the member has a personal or monetary interest in the property concerned in the case, or has had *exparte* contact. Disqualification should also occur when the member will be directly affected by the decision of the Board or has, or in belief has, any conflict of interest under State statutes.
9. *Recusal:* If a board member recuses himself or herself the clerk shall take all remaining votes then again call for the abstaining members vote. Upon abstaining a second time the members vote will be recorded by the clerk as a "No" vote.

F. Findings

1. *VariANCES.* In acting on variances, the Board makes findings supporting its actions as set forth in UDC § 3.10.3.K.
2. *Appeals.* In ruling on appeals from actions taken by the Zoning Administrator, Planning & Development Services Director or Examiner, the Board makes findings supporting its rulings.

G. Conditions

1. In granting a variance, or extension, and in ruling on other matters, the Board may impose such reasonable conditions, as it may deem necessary to implement the purposes of the UDC.
2. A time limitation, a return for review at designated interval, or a temporary and revocable grant may be attached by the Board to any approval.
3. Upon failure to comply with the decisions or conditions of the Board of Adjustment or upon continued violation of the provisions of the Land Use Code, the Building Official may, after written notice has been given to the owner of the property, disconnect or order utility companies to disconnect utility services to the premises involved. This provision does not preclude the use of any other enforcement method as provided in the UDC.
4. Variances granted by the Board are null and void if a required building permit has not been obtained or if conditions imposed by the Board have not been fulfilled within 180 days from the date of the Board's approval. Two extensions of up to 180 days each may be granted by the PDSD Director for good cause.

5. Decisions of the Board, unless otherwise stated, apply to the property rather than to the individual and are valid only for the specific premises and use contained in the Board of Adjustment application. A variance or other right is not transferable to other property nor will it continue on the property under consideration where circumstances of that property have materially changed.
6. Except for the decision on an appeal to an action of the Zoning Administrator, no decision of the Board will set a precedent and each case will be decided on the merits and the circumstances of that case. In the case of Zoning Administrator appeals, the decision of the Board may be applied in similar circumstances as determined by the Zoning Administrator.

#### H. Appeal of Decisions

The decisions of the Board of Adjustment may be appealed to the Superior Court of Pima County by the filing of a complaint for special action within 30 calendar days after the Board has rendered its decision. (A.R.S. Section 9-462.06 (K))

#### I. Reconsiderations

The Board may entertain one request for reconsideration by the applicant or a party in interest.

1. A request for a motion to reconsider a Board decision may be made:
  - a. At the same meeting at which the decision was made and, if carried, the decision may be immediately reconsidered without further notice; or
  - b. Prior to the following regular meeting. The request must be in writing and filed with the Zoning Administrator within 14 calendar days after the Board has rendered its decision, and provide new evidence, which was not presented nor available at the initial hearing on the matter.
2. The Zoning Administrator will place a properly filed request for reconsideration on the agenda for the next regular meeting, as an "Other Business" item.
3. When a quorum is present, a motion on a request to reconsider a previous decision carries by simple majority vote.
4. If the Board grants a request for reconsideration, the Board will rehear the case at the following regular meeting, upon payment of the

rehearing fee. Notice given of a rehearing is the same as required for an original hearing.

5. If the Board denies a request for reconsideration, the Board enters on the record the basis of the request, the reasons why the request was denied, and the vote of the members.
6. The filing of a request for reconsideration stops the 30-calendar day period in which a petition to the Superior Court must be made. The appeal periods will then run from:
  - a. If the reconsideration request is approved, the date of the decision on the reconsidered matter.
  - b. If the reconsideration request is denied, the date the request is denied by the Board.

J. Suspension of Rules

1. The concurring vote of four Board members is necessary to carry a motion to suspend a rule at any meeting.
2. The Board may not suspend a rule that is provided in or required by the Arizona Revised Statutes, UDC, Administrative Manual, or the Technical Standards Manual.

K. Amendment to Rules

1. The concurring vote of four Board members is necessary to carry a motion to amend a rule.
2. When a member or staff propose an amendment to the rules to the Board at a regular meeting action on the amendment will be scheduled to be taken at the following regular meeting.
3. Members will be sent a written copy of the proposed amendment at least seven calendar days prior to the regular meeting at where action will be taken on the proposed amendment.

**QUICK REFERENCE VOTING GUIDE**

**REQUIRED BOARD VOTES TO CARRY MOTIONS TO:**

- GRANT VARIANCES ..... 4 "YES" VOTES.
- REVERSE ZA/PD ACTION ..... 4 "YES" VOTES.
- UPHOLD ZA/PD ACTION ..... 4 "YES" VOTES.
- CONTINUANCES ..... MAJORITY OF "YES" VOTES.
- RECONSIDERATION ..... MAJORITY OF "YES" VOTES.
- SUSPEND A RULE ..... 4 "YES" VOTES.
- AMEND A RULE ..... 4 "YES" VOTES.
- ALL OTHER MOTIONS ..... MAJORITY OF "YES" VOTES.

**ARIZONA REVISED STATUTE (2010)**

**TITLE 9. CITIES AND TOWNS  
CHAPTER 4. GENERAL POWERS  
ARTICLE 6.1. MUNICIPAL ZONING**

**9-462. Definitions; general provisions concerning evidence**

A. In this article, unless the context otherwise requires:

1. "**Board of adjustment**" means the official body designated by local ordinance to hear and decide applications for variances from the terms of the zoning ordinance and appeals from the decision of the zoning administrator.

\* \* \*

4. "Zoning administrator" means the official responsible for enforcement of the zoning ordinance.

\* \* \*

B. Formal rules of evidence or procedure which must be followed in court shall not be applied in zoning matters, except to the extent that a municipality may provide therefor.

\* \* \*

**9-462.06. Board of adjustment**

A. The legislative body shall, by ordinance, establish a **board of adjustment**, which shall consist of not less than five nor more than seven members appointed by the legislative body in accordance with provisions of the ordinance, except that the ordinance may establish the legislative body as the **board of adjustment**. The legislative body may, by ordinance, delegate to a hearing officer the authority to hear and decide on matters within the jurisdiction of the **board of adjustment** as provided by this section, except that the right of appeal from the decision of a hearing officer to the **board of adjustment** shall be preserved.00

B. The ordinance shall provide for public meetings of the board, for a chairperson with the power to administer oaths and take evidence, and that minutes of its proceedings showing the vote of each member and records of its examinations and other official actions be filed in the office of the board as a public record.

C. A **board of adjustment** shall hear and decide appeals from the decisions of the zoning administrator, shall exercise such other powers as may be granted by the ordinance and adopt all rules and procedures necessary or convenient for the conduct of its business.

D. Appeals to the **board of adjustment** may be taken by persons aggrieved or by any officer, department, board or bureau of the municipality affected by a decision of the zoning administrator, within a reasonable time, by filing with the zoning administrator and with the board a notice of appeal specifying the grounds thereof. The zoning administrator shall immediately transmit all records pertaining to the action appealed from to the board.

E. An appeal to the **board** stays all proceedings in the matter appealed from, unless the zoning administrator certifies to the board that, in the zoning administrator's opinion by the facts stated in the certificate, a stay would cause imminent peril to life or property. Upon such certification proceedings shall not be stayed, except by restraining order granted by the board or by a court of record on application and notice to the zoning administrator. Proceedings shall not be stayed if the appeal requests relief which has previously been denied by the board except pursuant to a special action in superior court as provided in subsection K of this section.

F. The board shall fix a reasonable time for hearing the appeal, and shall give notice of hearing by both publication in a newspaper of general circulation in accordance with section 9-462.04 and posting the notice in conspicuous places close to the property affected.

G. A **board of adjustment** shall:

1. Hear and decide appeals in which it is alleged there is an error in an order, requirement or decision made by the zoning administrator in the enforcement of a zoning ordinance adopted pursuant to this article.
2. Hear and decide appeals for variances from the terms of the zoning ordinance only if, because of special circumstances applicable to the property, including its size, shape, topography, location, or surroundings, the strict application of the zoning ordinance will deprive such property of privileges enjoyed by other property of the same classification in the same zoning district. Any variance granted is subject to such conditions as will assure that the **adjustment** authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located.
3. Reverse or affirm, wholly or partly, or modify the order, requirement or decision of the zoning administrator appealed from, and make such order, requirement, decision or determination as necessary.

H. A **board of adjustment** may not:

1. Make any changes in the uses permitted in any zoning classification or zoning district, or make any changes in the terms of the zoning ordinance provided the restriction in this paragraph shall not affect the authority to grant variances pursuant to this article.
2. Grant a variance if the special circumstances applicable to the property are self-imposed by the property owner.

I. If the legislative body is established as the **board of adjustment**, it shall exercise all of the functions and duties of the **board of adjustment** in the same manner and to the same effect as provided in this section.

J. In a municipality with a population of more than one hundred thousand persons according to the latest United States decennial census, the legislative body, by ordinance, may provide that a person aggrieved by a decision of the board or a taxpayer, officer or department of the municipality affected by a decision of the board

may file, at any time within fifteen days after the board has rendered its decision, an appeal with the clerk of the legislative body. The legislative body shall hear the appeal in accordance with procedures adopted by the legislative body and may affirm or reverse, in whole or in part, or modify the board's decision.

K. A person aggrieved by a decision of the legislative body or board or a taxpayer, officer or department of the municipality affected by a decision of the legislative body or board may, at any time within thirty days after the board, or the legislative body, if the board decision was appealed pursuant to subsection J of this section, has rendered its decision, file a complaint for special action in the superior court to review the legislative body or board decision. Filing the complaint does not stay proceedings on the decision sought to be reviewed, but the court may, on application, grant a stay and on final hearing may affirm or reverse, in whole or in part, or modify the decision reviewed.

**9-462.07. Extraterritorial jurisdiction**

\* \* \*

D. If a municipal governing body adopts zoning regulations for the area outside its corporate limits, it shall increase the membership of the **board of adjustment** by adding one or two additional members. Any such member shall be a resident of the area of extraterritorial jurisdiction outside the corporate limits and shall be appointed by the legislative body of the county wherein the unincorporated area is situated. Any such member shall have equal rights, privileges, and duties with other members of the board of zoning **adjustment** in all matters pertaining to the regulation of the unincorporated area in which they reside. The concurring vote of a majority of the members of the enlarged board is necessary to reverse any order, requirement, decision or determination of an administrative official charged with the enforcement of an ordinance.

\* \* \*

**CITY OF TUCSON  
CHAPTER 10A TUCSON CODE  
COMMUNITY AFFAIRS**

**ARTICLE XIII. TERMS AND CONDITIONS OF MEMBERSHIP ON BOARDS, COMMITTEES AND COMMISSIONS AND FILING OF RULES**

**Sec. 10A-133. Applicability.**

The provisions of this article shall apply to all boards, committees and commissions of the city, notwithstanding any other ordinance or resolution unless specifically exempted from the provisions hereof, or except when they conflict with the Charter, Arizona Revised Statutes, intergovernmental agreements, or corporate articles or bylaws of instrumentalities of the city. Where there is a conflict, the applicable provisions of the Charter, Arizona Revised Statutes, intergovernmental agreement, or corporate articles or bylaws shall prevail. (Ord. No. 7018, § 2, 9-6-88)

**Sec. 10A-134. Terms and removal.**

(a) The terms of members of a body shall be coterminous with the terms of office of the mayor or members of the city council who appointed them, or until their successors on the body are appointed, except such members may be removed with or without cause prior to the expiration of their term by the mayor or members of the city council who appointed them or by such mayor's or member of the city council's successor in office.

(b) Members of such bodies shall be eligible for reappointment; but in no event may any individual serve more than a total of eight (8) continuous years on the same body, except members of bodies whose terms are more than four (4) years may serve two (2) complete coterminous terms. Once a member has served eight (8) years on a body, he may not be reappointed to that body until he has had a break in service of at least one (1) continuous year. Whenever a body is dissolved and reconstituted, time previously spent in office shall count towards the eight-year limitation. The following technical code committees are exempt from the eight-year service limitation: the Citizens Sign Code Committee, the Uniform Building Code Committee, the Electrical Code Committee, the Uniform Fire Code Committee, the Light Pollution Code Committee, the Mechanical Code Committee, the Plumbing Code Committee, the Spa/Pool Code Committee.

(c) Appointees, except for advisory members and members of the technical code committees named herein, may not serve on more than one (1) body at a time.

(d) The terms of office of members of a body serving unspecified terms shall be four (4) years commencing December 31, 1988, subject to the eight-year continuous service limitation.

(e) A member of a body, except for advisory members, who misses four (4) consecutive meetings for any reason or who fails to attend for any reason at least forty (40) percent of the meetings called in a calendar year is automatically and immediately removed as a member of the body.

(f) No city employee may serve on a body except in a nonvoting, ex officio capacity.

(g) Except as provided in subsection (h), should the appointment of a member of a body authorized to be appointed by the mayor, a member of the council, or the city manager (hereafter referred to as the "appointing authority") fail to be made within thirty (30) days after the expiration of the term of the member or thirty (30) days after a vacancy occurs, the appointment may be made by the mayor and council.

(h) Prior to the expiration of the term of members of bodies referred to in subsection (g), or within thirty (30) days after a vacancy on such a body occurs, the appointing authority may request an extension of time from the mayor and council to make the appointment.

(Ord. No. 7018, § 2, 9-6-88; Ord. No. 7260, § 1, 8-7-89; Ord. No. 10064, § 1, 10-18-04)

**Sec. 10A-135. Effective date.**

(a) The term of office for those members of a body who will have served eight (8) or more years continuously on a body as of December 31, 1988, will end on December 31, 1988, regardless of whether the member is serving a specified or unspecified term.

(b) The term of office for those voting members of a body who are city employees will end on December 31, 1988.

(Ord. No. 7018, § 2, 9-6-88)

**Sec. 10A-136. Rules and regulations of commissions, boards, departments to be filed.**

Two (2) copies of all rules and regulations of general application and future effect of every commission, board or department of the city, affecting the rights or procedure available to the public, including amendments and repeals thereof, shall be filed with the city clerk. All such rules and regulations, including amendments or repeals thereof, not so filed shall be of no force or effect.

It is hereby made the duty of the chairman of each commission or board of the city or the head of each department of the city to file such copies of such rules and regulations and of all repeals and amendments thereof in true and correct form with the city clerk.

(Ord. No. 7018, § 2, 9-6-88)

\* \* \*

**Sec. 10A-139. Requirements for creation of boards, committees, and commissions.**

(a) *Boards established by ordinance or resolution.* All city boards, committees, and commissions (hereinafter collectively referred to in this section as "board") that serve an on-going advisory or quasi-judicial function shall be established by ordinance adopted by the mayor and council. All other city boards that are intended to serve for a limited time for the purpose of advising the mayor and council on a specific issue shall be established by a resolution adopted by the mayor and council.

(b) *Resolution contents.* Except as provided in subsection (c), the resolution referred to in subsection (a) shall contain the following provisions:

- (1) *Sunset clause.* Unless mandated by the resolution to have a longer term, the board shall automatically terminate twenty-four (24) months after the effective date of the resolution.
- (2) *Staff support.* Unless otherwise specified and budgeted, support for all boards shall be limited to complying with the requirements of the open meeting law.
- (3) *Strategic plan.* The mission, responsibilities, and functions of the board shall be specified and consistent with the city's strategic plan.
- (4) *Outside financial support.* The mayor and council shall approve any application for financial support outside of the city, and the county for joint City-Pima County Boards, before the board may apply for the same. Any such financial support shall include funds for administrative assistance.
- (5) *Annual report.* The board shall file an annual report with the city clerk summarizing the board's previous year's activities.

(c) *Exceptions.* The mayor and council may exempt a board from any of the provisions of subsection (b) by specifically designating the provision to be exempted in the resolution creating the board and specifying the alternative, if any, to the provision.

(Ord. No. 9943, § 1, 3-22-04)

**Editors Note:** It should be noted that § 2 of Ord. No. 9943 states that the provisions of § 10A-139 shall not apply to boards, committees, or commissions existing on the effective date of this ordinance (March 22, 2004).

**Secs. 10A-140--10A-144. Reserved.**

**CITY OF TUCSON  
CHAPTER 16 TUCSON CODE  
NEIGHBORHOOD PRESERVATION**

**ARTICLE IV. UNLAWFUL ACTS**

**Sec. 16-31. Excessive noise.**

(e) *Variances.* Persons wishing to continue activities which commenced prior to this article and which create noise in excess of the permitted levels may seek a variance from the **board of adjustment**. Such a variance may be granted if the board finds that strict application of this chapter would cause a hardship and that there is no reasonable and prudent alternative method of engaging in the activity.