

**RESOLUTION NO. 2013-09**

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, APPROVING THE TOWN OF FOUNTAIN HILLS BOARD OF ADJUSTMENT BYLAWS, AMENDED AND RESTATED FEBRUARY 21, 2013.

**BE IT RESOLVED** BY THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, as follows:

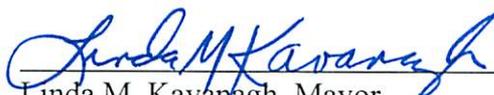
SECTION 1. The Town of Fountain Hills Board of Adjustment Bylaws, Amended and Restated February 21, 2013, are hereby approved in substantially the form attached hereto as Exhibit A and incorporated herein by reference.

SECTION 2. The Mayor, the Town Manager, the Town Clerk and the Town Attorney are hereby authorized and directed to execute all documents and take all steps necessary to carry out the purpose and intent of this Resolution.

**PASSED AND ADOPTED** by the Mayor and Council of the Town of Fountain Hills, Arizona, February 21, 2013.

**FOR THE TOWN OF FOUNTAIN HILLS:**

**ATTESTED TO:**

  
Linda M. Kavanagh, Mayor

  
Bevelyn J. Bender, Town Clerk

**REVIEWED BY:**

**APPROVED AS TO FORM:**

  
Kenneth W. Buchanan, Town Manager

  
Andrew J. McGuire, Town Attorney

EXHIBIT A  
TO  
RESOLUTION NO. 2013-09

[Board of Adjustment Bylaws, Amended and Restated February 21, 2013]

See following pages.

**THE TOWN OF FOUNTAIN HILLS  
BOARD OF ADJUSTMENT BYLAWS  
Amended and Restated February 21, 2013**

**I. ORGANIZATION**

A. Officers and Staff.

1. The Board shall elect a Chair and Vice-Chair annually from among its appointed members at the first meeting held following the first day of February each year.
  - a. The term of Chair and Vice-Chair shall be from the first day of February of the year of his/her appointment until the first day of February in the following year, regardless of the date upon which the Chair is elected. Any member serving as Chair or Vice-Chair shall be eligible for re-election.
  - b. The Vice-Chair shall act as Chair in the Chair's absence. In the absence of the Chair and Vice-Chair, the senior-most member, based upon years of membership, shall act as Chair Pro Tem. If two or more members have equal seniority on the Board, the Chair Pro Tem shall be selected by a majority vote of those Board members present at the meeting at which the Chair Pro Tem is required. If no majority vote is achieved, the Chair Pro Tem shall be selected by the Board's recording secretary.
  - c. Any vacancy for Chair or Vice-Chair as may occur for any reason shall be filled from the Board membership by majority vote of the Board at the next meeting where a quorum of the Board is present.
  - d. The Chair or Vice-Chair may be removed from Office at any time by a majority vote of the full Board.
2. The Chair shall (a) preside at all meetings and hearings of the Board; (b) perform any duties required by law, ordinance or these bylaws; (c) have the right to vote on all matters before the Board; (d) have the right to make or second motions; and (e) administer oaths, take evidence and rule on points of order during any board proceeding, after consultation with legal counsel assigned to the Board.
3. A representative of the Town staff shall serve the Board as the recording secretary for Board proceedings.

## II. MEETINGS

### A. Regular Meetings.

1. Regular meetings shall be held *as needed* on the third Tuesday of each month at 6:30 P.M. Whenever a legal holiday is the same day as scheduled for a meeting, such meeting shall be held on the next regular meeting date.
2. Regular meetings of the Board shall be open to the public and the minutes of the proceedings, showing the vote of each member and records of its examinations and other official action shall be filed in the Development Services Department as a public record. For any matter under consideration, any person may speak to the issue upon being recognized by the Chair and stating their name and address and the names of any persons on whose behalf they are appearing.
3. The Board may, by a single consent motion, approve any number of applications where the Board, staff, and applicant are in agreement and where, after call and invitation by the Chair to do so, no member of the Board or general public wishes to address any particular item designated for consent action by the Board. Should any member of the Board, Staff or public so request, the Board shall then withdraw it from the consent agenda for the purpose of public discussion and separate action.
4. Regular meetings of the Board shall be held in Council Chambers of Town Hall, 16705 E. Avenue of the Fountains, Fountain Hills, Arizona, 85268, unless space limitations prevent use of Council Chambers, at which point the meeting may be advertised for another Town facility.

### B. Special Meetings.

1. Special meetings for any purpose may be held on the call of the Chair or request of three or more members at least three business days before the special meeting. At least 24 hours notice shall be given to the general public by posting such notice and the Agenda for the Special meeting in accordance with Section 2-4-3 of the Town Code, as amended.
2. Special meetings of the Board shall be held in Council Chambers of Town Hall, 16705 E. Avenue of the Fountains, Fountain Hills, Arizona, 85268, unless space limitations prevent use of Council Chambers, at which point the meeting may be advertised for another Town facility.

- C. Executive Sessions. The Board may hold an executive session closed to the public during a regular or special meeting to receive legal advice from legal counsel assigned to the Board related to matters listed on the agenda for the Board for that meeting.

- D. Notice of Meetings and Hearings. Written notice of all meetings shall be made available to Board Members at least three days before the date of the meeting.
- E. Quorum. A majority of the members of the Board shall constitute a quorum for transacting business at any regular meeting. No action shall be taken at any regular meeting in the absence of a quorum, except to adjourn the meeting to a subsequent date. The affirmative vote of a quorum of the members shall be required for passage of any matter before the Board.
- F. Agenda. An agenda shall be prepared by Town Staff for each regular meeting or special meeting and executive session of the Board. The agenda shall include the various matters of business as scheduled for consideration by the Board.

### III. ORDER OF BUSINESS

#### A. Meeting Procedure.

- 1. The hearing may be informal and need not be conducted according to judicial rules of evidence; all relevant evidence will be considered.
  - a. The Chair may exclude irrelevant or redundant testimony and make certain other rulings as may be necessary for the orderly conduct of the proceedings, while ensuring basic fairness and a full airing of the issues involved. Evidentiary objections shall be waived unless made timely during the hearing.
  - b. Any documentary or physical evidence supporting the granting or denial of an application shall be submitted to the Development Services Department not later than seven days prior to the scheduled Board meeting. A list of witnesses to be called at the Board meeting shall be submitted to the Development Services Department not later than seven days before the scheduled Board meeting.
- 2. The Board may continue the hearing up to 21 days on any application or other matter for which the applicant fails to appear, unless the applicant has requested in writing that the Board act without the applicant's presence at the hearing; provided, however, the Board may hear those persons requesting to speak in response to the notice of hearing.
  - a. Witnesses shall be sworn by the Chair prior to the taking of testimony. Witnesses may be sworn as a group prior to the presentation of the staff report. Opposing parties shall be provided the opportunity to cross-examine witnesses.

- b. A member who is absent from any portion of a hearing conducted by the Board may vote on the matter at the time it is acted upon by the Board, provided that he or she (i) has listened to the tape recording made or reviewed the minutes of any portion of the hearing from which he or she was absent and (ii) states for the record prior to voting that he or she deems himself or herself to be familiar with the record. A member who misses only the presentation of the staff report may vote on the matter at the time it is acted upon by the Board.
3. In order to expedite the conduct of the hearing, the Chair may limit the amount of time that each person may use in addressing the Board. The Chair may also limit the total time allotted for speakers and testimony upon a particular issue in order to avoid repetitious and cumulative evidence. Any time limits shall be established at the beginning of the Board meeting, prior to the staff report or presentation of any evidence.
4. The burden of proof of all legal prerequisites to the granting of the relief or action sought shall be upon the party requesting such relief or action.

B. Voting.

1. After all evidence has been submitted to the Board, each case shall be heard, considered and acted upon in a public meeting.
2. In taking action on any application or other matter, the Board may approve or deny the application or may reverse, affirm, wholly or partially, or modify the order or decision of the Zoning Administrator appealed from, and make such order, request, decision or determination as necessary. In these actions, the Board shall be guided by the provisions of the Zoning Ordinance and Subdivision Ordinance.
3. By majority vote, the Board may defer action on any matter when it concludes that additional time for further study or input is necessary. If continued, any public hearing shall be continued to a certain date.
4. A majority vote of a quorum the Board members shall be required to take official action. When a motion in favor of any application or other matter fails to receive the required majority votes, it shall be entered into the minutes as a vote to deny the action being considered. In the event that there is no motion, or the motion dies for lack of a second, it shall be entered into the minutes as a denial of the application being considered. Nothing herein shall prevent any member from making a subsequent motion on any matter where a prior motion is not approved by the majority vote of a quorum.

5. A member shall abstain from voting or participating in any manner if such member has a conflict of interest in the case under consideration, as set forth in ARIZ. REV. STAT. § 38-501, *et seq.*, as amended.
6. Except for members with conflicts of interest, each member attending shall be entitled to one vote. The minutes of the proceedings shall indicate the vote of each member on every matter acted upon, and shall indicate any absence or failure to vote. No member shall be excused from voting except on matters involving the consideration of their own official conduct or such matters referred to in Section III(B)(5) of these Bylaws.
7. A motion to adopt or approve staff recommendations or simply to approve the action under consideration shall, unless otherwise particularly specified, be deemed to include adoption of all proposed findings and authorizations for execution of all actions recommended in the staff report on file in the matter.

#### IV. OFFICIAL RECORDS

- A. Retention of Files. The official records of the Board shall include these rules and regulations, minutes of meetings, resolutions and its adopted reports, which shall be deposited with the Development Services Department and which shall be available for public inspection during customary office hours. All applications and other matters coming before the Board shall be filed in the Development Services Department in accordance with that Department's general filing system. Original papers of all applications and other matters shall be retained for not less than ten years after the date of application. Thereafter, such matters may be archived, along with other special matters, as the recording secretary deems essential for permanent record.
- B. Recording of Meetings. All public meetings of the Board may be recorded by electronic device. Any person desiring to have a meeting recorded by an electronic device or by a stenographic reporter, at his/her own expense, may do so, provided that (1) he/she consult the Board's recording secretary to arrange facilities for such recording prior to the commencement of the meeting and (2) such recording does not otherwise disrupt the proceeding.

#### V. AMENDMENTS

The Board may recommend amendments to these bylaws by majority vote of all members of the Board at any meeting of the Board, provided that notice of said proposed amendment is given to each member in writing at least seven business days prior to the meeting at which the amendment will be considered. If recommended for approval by the Board, such amendment shall be forwarded to the Town Council for approval and, if so approved, shall be implemented at the next regular meeting of the Board.