CITY OF COMMERCE CITY
ZONING BOARD OF ADJUSTMENT
RULES OF PROCEDURE

A. Authority & Applicability of Rules.

The general organization, power, and duties of the Board of Adjustment ("Board") are established in Chapters 10 & 11 of the City Charter, and other ordinances of the City. The Board is authorized to establish these rules of procedure pursuant to Sections 10.4(h) and 11.1(b)(6) of the City Charter. In addition to the Charter, Ordinances, and Council Policies of the City of Commerce City and applicable state and federal law, these rules will govern all proceedings before the Board. If there is any conflict between these rules and the above-cited laws and policies, the laws and policies will prevail. These rules replace and supersede any previously adopted bylaws or rules of procedure.

B. Chairperson.

1. The Board will select a Chairperson and a Vice-chairperson at the first meeting after the regular appointment or reappointment of members by the City Council each year unless an alternate date for this selection is determined by the Board.

2. The Chairperson will preside at all meetings, will rule on all points of order or procedure and on the admissibility of evidence, unless, on motion duly made, the Chairperson is overruled by a majority vote of the members present. The Chairperson will sign required documents for proceedings of the Board over which the Chairperson presided.

3. In the absence of the Chairperson, the vice-chairperson will preside and act with the responsibilities of the Chairperson in (2) above. In the absence of the Chairperson and the vice-chairperson, the senior member of the Board (based on longevity of current appointment) will call the Board to order and call the roll of members. If a quorum is found to be present, the Board will choose, by a majority vote of those present, a temporary Chairperson of the meeting to act until the Chairperson or vice-chairperson appears.

C. Alternate Members.

1. Alternate members of the Board may attend the meetings of the Board, but will not vote or otherwise participate in a matter before the Board unless seated to take the place of an absent regular member.

2. If a regular member is absent at the time a meeting is called to order, alternate members will be seated in the place of the absent member or members based on a rotating schedule.

3. No regular or alternate member will vote on matters continued from a prior meeting at which any portion of a public hearing was conducted unless the member was either present and seated at the prior meeting or the member reviewed all record materials and the recording of the public hearing before being seated.

D. Meetings.

1. Regular meetings will be held on the second (2nd) Tuesday of each month if there are matters pending. If a regular meeting falls on Election Day or holiday, the regular meeting of that month will be held on the immediately following Wednesday.

2. Special meetings may be called by the Chairperson, by a majority of the members at a

regular meeting, or by a request of two regular members to the City Manager's designee.

3. All members will be notified of meetings at least twenty-four (24) hours prior to the session.

4. Meetings will begin at 5:30 p.m. unless a different time is provided in the notice.

5. Meetings will be conducted in a business-like and democratic manner.

6. Bob's Rules of Order for Colorado Local Governments will guide all meetings unless inconsistent with these rules.

7. No person will disrupt the orderly conduct of any Board meeting. Prohibited behavior includes without limitation disruptive shouting, making disruptive noises, creating or participating in physical disturbances, preventing the presentation of evidence or testimony, and preventing others from observing, entering, or leaving the meeting room.

8. Study sessions or workshops can be called at any time for educational purposes. No official record will be kept. No formal action or decisions can be made at any gathering other than at a regular or special public meeting held in compliance with Colorado Open Meetings Law.

9. Executive sessions may be held during any regular or special meeting in accordance with the Colorado Open Meetings Law.

E. <u>Motions and Voting</u>.

1. The Board will act by motion. All motions require a second.

2. A motion will be made and seconded prior to debate or discussion by the Board of any action.

3. The Chairperson will have the same rights and privileges of making motions and voting as any other member, except the Chairperson will not make or second motions relating to the approval or denial of any quasi-judicial case before the Board.

4. When a motion is before the Board, no other motion will be entertained except (in the descending order of precedence): (a) to adjourn; (b) to fix the hour of adjournment; (c) to lay on the table; (d) for the previous question; (e) to postpone to a certain date; (f) to refer; (g) to amend; (h) to substitute; and (i) to postpone indefinitely. All such motions (except motions to adjourn, amend, or substitute) will be voted upon without debate.

5. A roll call vote is required for every action except for routine procedural matters, in the discretion of the Chairperson. All votes will be entered upon the minutes of the Board proceedings. Members will not explain their votes during the roll call, but may do so after the roll is complete.

6. No member will participate in or vote on any matter in which the member has any direct or indirect financial, personal, or official interest (other than the common public interest) in of such a nature that it prevents or may prevent the member from acting impartially or raises the appearance of impropriety. Any member with such an interest or conflict will disclose the interest or conflict to the Board when it becomes known or apparent and before participating in any official action or hearing by the Board.

F. <u>Public Hearings</u>.

1. <u>Generally</u>.

a. The Board seeks to conduct all public hearings in an open and impartial manner that recognizes the rights of applicants and the concerns of all citizens having a legitimate interest in the proceeding. Public hearings will be conducted so as to allow an opportunity for the Board to give fair consideration to all issues presented at the public hearing.

b. Public hearings on related applications involving the same property may be consolidated in the discretion of the Chairperson with the consent of the applicant.

c. The Board will seek to obtain the consent and agreement of the applicant to the postponement or continuance of any matter.

d. If a matter has been continued after a public hearing has been closed and the Board has not requested or been provided additional information, the Board is not required to re-open the public hearing unless needed to obtain an explanation or clarification of information previously received (including an opportunity for response or rebuttal) or if the Board determines that re-opening the hearing would serve the interests of fairness and justice.

e. Public hearings must conform to requirements of Article III of the Land Development Code.

2. Testimony & Evidence.

a. Public hearings will be conducted in such manner to provide a reasonable opportunity for all interested parties to speak. Proponents and opponents of any application or petition (not including Staff or applicant or applicant's representatives) will be limited to three (3) minutes each unless the Board approves an extension of time, provided the Chairperson may limit testimony that tends to be repetitive, cumulative, speculative, or irrelevant.

b. Formal rules of evidence need not be followed, but the evidence should be of such nature that it would be commonly accepted by reasonable and prudent persons in the conduct of their affairs. The credibility of evidence submitted by all witnesses will be determined by the Board and considered in reaching a decision at the conclusion of the public hearing.

c. The record of proceedings will include, without further action by the Board: (i) a copy of any public notices; (ii) all application documents for the proposed application; (iii) copies of any Staff report; and (iv) any recording or minutes kept of the hearing. The Chairperson may accept the submission of other information and documents that are an appropriate part of the public hearing.

d. Testimony does not have to be given under oath or affirmation unless requested by any member, City Staff, the applicant, or person in interest, as determined by the Chairperson.

3. Order.

The order for each public hearing will be as follows:

a. The Chair will open the hearing and ask City Staff to announce the matter to be considered.

b. City Staff will present the application or other matter and offer the Staff's recommendation.

c. A presentation will be made by the applicant or a representative of the applicant.

d. Testimony will be heard from individuals attending the public hearing in-person. Individuals providing testimony will not direct questions to the Board, applicant, or Staff, but may

direct questions to the Chairperson, who will determine whether to direct the question to the applicant or Staff. The Chairperson may group testimony of persons with similar interests in his or her discretion.

e. Testimony will be heard from attending the public hearing virtually. Individuals providing testimony will not direct questions to the Board, applicant, or Staff, but may direct questions to the Chairperson, who will determine whether to direct the question to the applicant or Staff. The Chairperson may group testimony of persons with similar interests in his or her discretion.

f. The applicant will be given the opportunity for rebuttal if there is testimony in opposition.

g. All comments and testimony will be made from the podium and no comments or testimony will be presented from the audience. Comments and testimony are to be directed to the Board only. Dialogue and inquiries from the person at the podium to City Staff or the seated audience is not permitted. If the Chairperson desires a response from City Staff, the Chairperson will direct such inquiries to Staff.

h. City Staff may offer clarification or additional information at any time with the permission of the Chairperson.

i. Members of the Board may ask questions at any time of Staff, the applicant, or any other witness, proponent, or opponent, but will not express opinions until the hearing is concluded and a motion has been made.

j. Members of the Board will not present testimony based on personal knowledge unless the member is a witness and is not participating in the matter.

k. The Chairman will close the hearing and request a motion regarding the matter.

l. The motion, once made and seconded, may then be discussed by the members. Motions may include: (1) approval; (2) approval with conditions (LDC 21-3125(2)); (3) denial for specific reasons; and (4) continuance of the matter to a specified or unspecified date if appropriate (LDC 21-3115).

m. The motion will be voted upon unless another action is taken.

G. <u>Ex-Parte Contacts & Quasi-Judicial Matters</u>.

1. Quasi-judicial proceedings involve determinations as to rights, duties, or obligations of special individuals or properties and apply existing legal standards to facts developed at a hearing. This includes all applications that may come before the Board. In quasi-judicial proceedings, the Board must make decisions based solely on evidence in the record and existing law.

2. The Board will follow the procedures, criteria, and standards for the type of application under review as established in the City Charter and Article III of the Land Development Code and will base all decisions on findings of facts developed from the public hearing as related to the standards or criteria.

3. Quasi-judicial matters that the Board reviews are defined in Chapter 10 of the City Charter and in Article III of the City's Land Development Code, as it may be amended, and may generally include the following:

a. Zoning variances (Charter 10.6(a)(2); LDC 21-3222);

b. Height exceptions (LDC 21-3220);

c. Uses-by-permit (LDC 21-3221);

d. Appeals of refusals of building permits (Charter 10.6(a)(1); LDC 21-3200), floodplain development permits (LDC 21-3200, 3213), grading permits (LDC 21-3200, 3214), early grading permits (LDC 21-3200, 3219), temporary use permits (LDC 21-3200, 3217), and minor modifications to general standards or PUD zone documents (LDC 21-3200, 3215).

4. "Ex parte" contacts are communications regarding a matter pending before the Board between interested parties (including the public) and members outside of a public hearing. Ex parte contacts can occur through conversations, phone calls, e-mails, text messages, social media and internet posts, letters, and listening to communications. Ex parte communications affect the fairness of quasi-judicial proceedings and are prohibited because the remainder of the Board and any interested parties are not aware of the communications and do not have an opportunity to respond.

5. Members will take reasonable precautions to avoid and prevent ex-parte communication with any interested party, its representatives, and members of the public regarding quasi-judicial matters that are pending, or are likely to come before, the Board.

6. Members will refrain from any activity which could give the perception of an improper ex parte communication with an interested party or with any representative of any interested party regarding a quasi-judicial matter pending, or likely to come before, the Board.

7. Members should avoid visiting properties, other than a cursory drive-by visit to orient themselves to the properties, that are the subject of a matter pending before the Board.

8. If any member receives or engages ex parte communications regarding a matter which is before the Board, or visits a property that is the subject of a matter pending before the Board (other than a cursory drive-by visit), the member will disclose the fact and substance of the communication before the hearing is opened. After disclosure, the member may participate in the hearing and vote on any action if the Board concludes that the communication will not prevent that member from participating and voting thereon in an unbiased manner. If the member concludes that the ex parte communication may prevent him or her from voting in an unbiased manner, he or she will excuse himself or herself and will not participate in the discussion or vote in the proceeding.

9. If an interested party or member of the public approaches a member to discuss a pending quasi-judicial matter, members will advise the person that the member can only consider information presented at the public hearing and encourage the person to raise the comments in the public hearing.

H. Policy & Legislative Matters.

Policy-making and legislative matters deal with prospective permanent or general matters having broad application. In carrying out policy-making and legislative functions, the Board should seek broad public involvement and input in the process and keep its activities and deliberations open and inclusive.

I. Conduct.

In addition to those rules of conduct made applicable to members by law or City policy, the Board expects that its members will behave as follows:

1. Listen respectfully and not engage in side conversations.
2. Use appropriate language, humor, and comments.
3. Demonstrate respect for each other, Staff, and the public.
4. Be courteous and professional at all times.
5. Respect other's opinions and votes.
6. Deal directly with the person with whom you have a problem.
7. Honor confidentiality.
8. Do not interrupt.
9. Do not be redundant.
10. Treat all fairly.
11. Communication and ask questions for clarification.
12. Be aware of body language.
13. Praise publicly, criticize privately.

APPROVED BY THE ZONING BOARD OF ADJUSTMENT OF THE CITY OF COMMERCE CITY, COLORADO, AND EFFECTIVE ON _____, _____

_____
Chairperson