



MEMORANDUM

Date: May 26th, 2022
To: City of Madison Heights Zoning Board of Appeals
From: Matt Lonnerstater, AICP – City Planner
Subject: Draft ZBA Bylaws

The Michigan Zoning Enabling Act (*Public Act 110 of 2006, as amended*) states that a local Zoning Board of Appeals may set their own rules of procedure or “by-laws.” Additionally, Section 10.802 of the Madison Heights Zoning Ordinance (*Procedure of Zoning Board of Appeals*) states that, “*the board shall adopt its own rules or procedures and shall maintain a record of its proceedings which shall be a public record.*”

In addition to state and local ordinances, ZBA bylaws are also listed as a required element of the Michigan Economic Development Corporation’s (MEDC) *Redevelopment Ready Communities (RRC)* program, in which the City of Madison Heights participates. City staff was unable to locate any active ZBA bylaws on-record. As such, city staff proposes the attached Zoning Board of Appeals Bylaws to assist board members in running effective ZBA meetings and public hearings.

These draft bylaws aim to provide clarification on the following topics:

- Organizational framework of the ZBA;
- Membership;
- Attendance;
- Duties of officers;
- Meeting schedule and notification;
- In-meeting procedures; and
- Conflicts of Interest

Since the last draft (April, 2022), staff has modified Section 3 (*attendance; delinquency; removal of members; filling of vacancies*) of the draft bylaws to match the City’s Charter. Section 5.3 of the City Charter states that a board member may be removed by City Council, “*if such officer shall miss three (3) consecutive regular meetings of such board or commission, or five (5) meetings in any fiscal year of the city, unless such absences shall be excused by such board or commission and the reason therefor entered in the proceedings of such board or commission at the time of each absence.*” This language has been carried over into the bylaws.

The ZBA may adopt these bylaws, with any suggested changes, via an affirmative vote of at least five (5) members. After adoption, the ZBA may amend the bylaws at any time under the same procedure.

BYLAWS OF THE CITY OF MADISON HEIGHTS
ZONING BOARD OF APPEALS

ARTICLE I – NAME, PURPOSE, POWERS AND DUTIES

The name of the Board shall be the Madison Heights Zoning Board of Appeals (ZBA). The purpose, objectives, powers, and duties of the Board shall be those as prescribed in the Michigan Zoning Enabling Act, Public Act 110 of 2006, as amended, and the Zoning Ordinance of the City of Madison Heights.

ARTICLE II – MEMBERSHIP

Section 1. Selection and Composition

- A. The Zoning Board of Appeals shall be composed of nine (9) regular members, as appointed by City Council.
- B. The City Council may appoint not more than two (2) alternate members, with full voting rights, who may serve in the absence of regular members. An alternate member may be called on a rotating basis to sit as regular members of the Board in the absence of a regular member. An alternate member may also be called to serve in the place of a regular member for the purpose of reaching a decision on a case in which the regular member has abstained for reasons of conflict of interest. The alternate member having been appointed shall serve in the case until a final decision has been made.
- C. One (1) elected councilmember may serve on the Zoning Board of Appeals as an ex-officio regular member.
- D. One (1) member of the Zoning Board of Appeals shall serve on the Planning Commission as an ex-officio regular member.

Section 2. Terms of Office and Compensation of Members.

- A. Unless otherwise noted, the term of each regular ZBA member shall be three (3) years. The term of any ex-officio member shall expire upon the expiration of their term in office, or the expiration of their term upon the ZBA, whichever event is first.
- B. All members of the ZBA shall serve without compensation

Section 3. Attendance; Delinquency; Removal of Members; Filling of Vacancies

- A. With the exception of ex-officio members, ZBA members may be removed by City Council for insufficiency, delinquency, neglect of duty, or malfeasance. Removals from office shall

be in accordance with Sections 5.3 and 5.4 of the City Charter. In accordance with the City Charter, a ZBA member shall be considered delinquent upon the following:

- i. Unexcused absence from three (3) consecutive regular meetings; or
 - ii. Unexcused absence from five (5) meetings in any fiscal year.
- B. A member who is unable to attend a regular or special meeting shall contact the Secretary as far in advance of the scheduled meeting as possible to request an excused absence and so that that an alternate member may be contacted about participating in the meeting. Excused absences shall be granted by motion and approved with a majority vote at the meeting in which the member is not present. Alternate members do not need to be present at meetings unless they are standing in for the absence of a regular member.
- C. Vacancies occurring otherwise than through the expiration of a term shall be filled for the unexpired term by the City Council.
- D. Any member may resign at any time by giving written notice of such resignation to the Chair in accordance with the Ordinance. The Chair shall promptly notify the Secretary of the ZBA, who shall then notify the City Clerk of the resignation.

ARTICLE III – OFFICERS

Section 1. Annual Election

At the first regular meeting of each year, the members of the Zoning Board of Appeals shall elect a Chair and Vice-Chair to serve for one (1) year terms. Existing officers shall be eligible for re-election.

Section 2. Chair; Vice Chair

- A. The Chair shall preside over all meetings of the ZBA, appoint committees, act as the official spokesperson for the ZBA and perform such other duties as ordered by the ZBA or City Council.
- B. The Vice-Chair shall assume the responsibilities and perform the duties of the Chair if the Chair is absent or otherwise unavailable to perform their assigned duty. Ex-officio members shall not serve as Chair or Vice Chair.
- C. Should neither the Chair nor Vice Chair be present at a meeting, a temporary Chair shall be elected by a majority vote of the members present.
- D. In the event the office of Chair becomes vacant, the Vice Chair shall succeed to this office for the unexpired term, and the ZBA shall select a successor to the Vice Chair for the unexpired term.

Section 3. Secretary; Minutes

The City Manager shall designate an employee of the City to serve as Secretary of the ZBA. The Secretary shall provide required administrative, technical and clerical support for the ZBA. The Secretary shall prepare agendas, maintain an attendance record, and maintain a public record of the minutes of each meeting, which shall be filed in the office of the City Clerk.

Minutes shall, at minimum, include a record of attendance, complete restatement of all motions, the record of votes taken, and all conditions or recommendations made on actions taken.

ARTICLE IV – MEETING SCHEDULE AND NOTIFICATION

Section 1. Regular Meetings

- A. The business of the Zoning Board of Appeals shall be conducted at a public meeting held in compliance with the Open Meetings Act. Notice of public meetings shall be given in accordance with all applicable laws. The ZBA may establish reasonable rules and regulations to enable an orderly meeting to minimize the possibility of disruption of the meeting.
- B. The Zoning Board of Appeals shall hold no less than four (4) regular meetings per year. If a regular meeting date falls on a holiday or at a time when a majority of members would be unable to attend, the Board may reschedule the regular meeting to an appropriate date, time, and location.

Section 2. Meeting Schedule Notification

At or before its regular meeting in January, the Board shall adopt its regular meeting schedule for the year, including the time and place the meetings will be held. The meeting schedule shall be publicized through local media or a City publication and shall be posted at City Hall within ten (10) days of the regular meeting in January. Notification of the date, time and location of any special meeting or any change in the scheduling or location of a regular meeting shall be posted at City Hall at least eighteen (18) hours in advance of the meeting. Notification of all meetings of the ZBA shall comply with the Michigan Open Meetings Act, 1976 PA 267, as amended.

Section 3. Special Meetings

Special meetings of the ZBA may be called by action of the Board. Special meetings may also be called by the Secretary if so directed by the Chair, by any other member of the Board in writing, or at the request of the City Manager. Notice of a special meeting shall be provided to each member of the ZBA at least twenty-four (24) hours in advance of the meeting and shall include the purpose of the meeting. The notice shall also be posted at City Hall at least eighteen (18) hours in advance of the meeting.

Section 4. Notice of Public Hearing

All public hearings held by the ZBA shall be held as part of a regular or special meeting of the ZBA. The ZBA shall fix a reasonable time for the public hearing and shall give due notice thereof in accordance with the City of Madison Heights Zoning Ordinance and Michigan Zoning Enabling Act Public, Act 110 of 2006, as amended.

Section 5. Meeting Cancellation

The Secretary, with the approval of the Chair, may cancel a regular or special meeting of the ZBA if there is no business to conduct or if it is known that a quorum will not be present at the meeting. Notice of such cancellation shall be provided to each member of the Board and shall be posted at City Hall.

Section 6. Continuation of a Public Hearing

The ZBA may grant a continuation of a public hearing to a subsequent meeting if one of the following conditions is met: (1) A quorum is not present to vote on the item; or (2) the applicant affirmatively states on the record the desire to continue the appeal prior to the deliberation and vote.

The public hearing shall be continued to the next regular meeting of the ZBA unless an alternative time is agreed to by the ZBA and applicant. The Notice of Public Hearing shall be sent for the new meeting date in accordance Article IV, Section 4 of these Bylaws.

ARTICLE V – MEETING PROCEDURES

Section 1. Quorum

A quorum for the purposes of conducting any business at a ZBA meeting shall consist of at least fifty percent (50%) of the current membership of the Board.

Section 2. Voting

All proceedings, decisions, and resolutions of the ZBA shall be initiated by motion. To pass or deny any variance, appeal, or other official action required by the Zoning Ordinance, an affirmative vote of at least a majority of a present quorum of the ZBA is required. Voting shall be by a roll call vote. Except in the case of a conflict of interest, all ZBA members, including the Chair, shall vote on all matters. Voting by proxy shall not occur.

All motions to approve, approve with conditions, or disapprove any request shall state the basis of the motion and the findings upon which the motion is made.

Section 3. Parliamentary Procedure

Meetings shall generally be conducted in accordance with parliamentary procedures as defined in *Robert's Rules of Order*.

Section 4. Public Participation

All persons shall be provided the opportunity to address the Board on any issue of interest at each meeting. Such opportunity may be limited to prescribed times on the agenda and, to ensure that equal opportunity is provided to all persons present to address the Board, the Chair may limit the time each person is allowed to speak before the Board on any issue.

Section 5. Public Hearing Procedure

The order of procedure of a public hearing is recommended as follows:

1. The Chair shall state the name of the case and explain the particulars thereof in brief.
2. The City Planner or their designee shall present the official records, staff report, and staff recommendation in regards to the case.
3. The applicant and/or their representative shall be invited to present their case.
4. The Chair shall declare the public hearing open, and shall direct that all persons present in connection therewith identify themselves by name and address.
5. The Chair may invite final comments from the applicant, at the Chair's discretion.
6. The Chair shall declare the public hearing closed.
7. Discussion by the Board members.
8. Deliberation and Action by the Board.

Section 6. Public Records

All meetings, minutes, records, documents, correspondence and other materials of the Zoning Board of Appeals shall be open to public inspection in accordance with the Freedom of Information Act, except as may otherwise be provided by law.

Section 7. Public Records; Filing of Decision and Orders.

The decision of the Zoning Board of Appeals shall be final upon the approval of the meeting minutes. The approved meeting minutes shall serve as the official public record of the ZBA's actions. The Secretary shall maintain the approved meeting minutes and other public records of the ZBA as required.

Decisions and Orders of the ZBA shall be filed in the office of the City Clerk and shall be public record. Copies of final decisions and orders shall also be sent to the applicant and to other interested agencies and departments of the City Government.

ARTICLE VI – CONFLICT OF INTEREST

- A. Before considering an agenda item or casting a vote on a matter which a Zoning Board of Appeals member may reasonably be considered to have a conflict of interest, the member shall disclose the potential conflict of interest to the Board. The member shall abstain from

discussion and voting. If such abstention results in loss of quorum, the matter shall be postponed to the next regularly-scheduled meeting, and testimony shall not be heard without a quorum.

- B. When a conflict of interest is declared, the member declaring such conflict of interest shall abstain from participating in deliberations and shall leave the room. A conflict of interest is defined as, but not limited to, the following situations:
1. An immediate family member is involved in any request for which the Zoning Board of Appeals is asked to make a decision.
 2. The Zoning Board of Appeals member has a business or financial interest in the property involved in the request or has a business or financial interest in the applicant's company, agency or association.
 3. The Zoning Board of Appeals member owns or has a financial interest in the neighboring property.
 4. There is a reasonable appearance of a conflict of interest, as determined by the Zoning Board of Appeals member declaring such conflict.

ARTICLE VII – GIFTS

Gifts shall not be accepted by a member of the ZBA from anyone connected with an agenda item before the ZBA. As used here, gifts shall mean cash, any tangible item, or service.

ARTICLE VIII – AMENDMENT OF BYLAWS

These Bylaws may be amended at any regular meeting of the ZBA on an affirmative vote of at least five (5) members, provided that the proposed amendment has first been submitted to the ZBA in writing at the previous regular meeting.

Adopted by the City of Madison Heights Zoning Board of Appeals on this ____ day of _____.

ZBA Chairperson

ZBA Secretary