

**BYLAWS  
OF  
CITY OF ST. JOSEPH  
ZONING BOARD OF APPEALS**

Adopted, effective immediately, on February 21, 2013

**1. Name and Purpose.**

- A. The name shall be the City of St. Joseph Zoning Board of Appeals, hereafter known as the "ZBA" or the "Board".
- B. These Bylaws are adopted by the ZBA to facilitate the performance of its duties as outlined in in P.A. 110 of 2006, as amended, being the Michigan Zoning Enabling Act, (MCL 125.3101 *et seq.*)

**2. Membership.**

- A. **Members.** Members of the ZBA are appointed by the City Commission pursuant to the Zoning Ordinance of the City of St. Joseph, Article XV, Section 15.4, as amended. There shall be five (5) regular members and two (2) alternate members. The alternate member with the greatest amount of continuous current seniority on the ZBA shall be the first alternate. Each member shall represent and advocate what is best for the City of St. Joseph as a whole, putting aside personal or special interests.
- B. **Attendance.** If any member of the ZBA is absent from three (3) consecutive regularly scheduled meetings, that member shall be considered delinquent. Delinquency is grounds for the City Commission to remove a member from the ZBA for nonperformance of duty, or misconduct, after holding a public hearing on the matter. The ZBA secretary shall keep attendance records and shall notify the City Commission whenever any member of the ZBA is absent from three (3) consecutive regularly scheduled meetings so the City Commission can consider further action allowed under law or excuse the absences. Members present at a meeting shall be counted as present regardless of whether they are seated and eligible to vote on any agenda item. In the event City staff has advised an alternate member in advance of a specific meeting that a full board of five (5) members is expected to be present and eligible to vote on every agenda at that meeting and that alternate is not expected to be asked to replace a regular member, if the alternate is absent from that meeting the meeting shall be neither charged as an absence nor counted as a meeting present for the purpose of this section.
- C. **Voting.** For each matter before the ZBA, no more than five (5) members shall be seated and eligible to vote. All regular members of the ZBA present at a meeting shall vote on every matter unless a member of the ZBA has a conflict of interest as determined under these Bylaws. The

alternate members present may take part in all deliberations of the ZBA but shall not have a vote or make or second a motion unless a regular member is unable to vote because of absence or a conflict of interest. The first alternate member, if present and able to vote, shall have the priority to replace the first regular member that is absent or unable to vote. The second alternate member shall replace the first alternate member when that alternate member is eligible to vote but absent or unable to vote, or the second regular member that is absent or unable to vote.

- D. **Training.** Each member shall make a good faith effort to attend at least four hours per year of training in zoning during the member's current term of office.
- E. **Conflicts of interest.** Each member of the ZBA shall avoid conflicts of interest and the appearance of a conflict of interest or other impropriety.
1. As used here, a conflict of interest shall at a minimum include, but not necessarily be limited to: issuing, deliberating on, voting on, or reviewing an application or issue:
    - a. directly involving him or her;
    - b. concerning work on or the use of land owned by him or her or which is adjacent to land owned by him or her;
    - c. involving a corporation, company, partnership, or any other entity in which he or she is a part owner, or any other relationship where he or she may stand to have a financial gain or loss;
    - d. which may result in a pecuniary benefit to him or her;
    - e. concerning his or her relatives of the third degree of consanguinity or affinity (including spouse, children, step-children, grandchildren, parents, brothers, sisters, grandparents, parents in-law, grandparents in-law, etc.), or members of his or her household;
    - f. concerning a person with whom he or she has such a close personal relationship that the member is unable to have a fair and impartial opinion; or
    - g. where his or her employee or employer is an applicant or agent for an applicant, or has a direct interest in the outcome.
  2. When a member feels they may have a conflict of interest, the member shall immediately notify the Chair or the Zoning Administrator, and may consult with the City Attorney for further clarification. If a preliminary determination is made that a conflict exists, the member shall do all of the following:

- a. declare a conflict exists and describe the nature of the conflict at the next meeting of the ZBA, before the proceeding related to the agenda item begins;
- b. cease to participate in proceedings related to the agenda item or represent one's self before the ZBA, its staff, or others, for the item; and leave the room during the proceeding of the agenda item until that agenda item is concluded.
- c. If there remains a question of whether a conflict of interest exists, the question shall be put before the ZBA, which shall determine whether conflict of interest exists. A majority vote of the remaining members of the ZBA is required to find that no conflict exists. The remaining members of the ZBA may vote on this question and determine if a conflict exists even if the number of members eligible to vote on the question do not constitute a quorum; this is the only exception to Section 5.D and Section 5.F.
- d. The burden of establishing the conflict rests on the party claiming it.

### 3. Duties of all Members.

#### A. ***Ex Parte* Contact.**

1. Whenever possible, members shall avoid *Ex Parte* contact with or about an applicant, application or issue when an administrative decision is before the ZBA.
2. If inadvertent *Ex Parte* contact occurs, the member should fully disclose what was said and the nature of the contact to the ZBA at the next public meeting or hearing, so that every member and other interested parties are made aware of what was said.

B. **Site Inspections.** Site inspections are encouraged. All site inspections must be compliant with the Michigan Open Meetings Act (MCL 153261 *et seq.*) when a quorum of the ZBA is present, or when otherwise required under the Michigan Open Meetings Act. Site inspections may be done by the zoning administrator or other staff.

C. **Not Voting on the Same Issue Twice.** Any member of the ZBA shall avoid situations where they are voting on the same issue twice by sitting in judgment and voting on a decision which they had a part in making including, but not limited to, when the appeal is of an administrative or other decision by Planning Commission and the member of the ZBA sits both on the Planning Commission and ZBA.

**D. Accepting Gifts.**

1. Gifts shall not be accepted by a member of the ZBA or by those acting with or on behalf of a member of the ZBA from anyone connected with an agenda item before the ZBA.
2. As used here, gifts shall mean cash, any tangible item, or service, regardless of value; and food valued over \$25.00.

**E. Spokesperson.**

1. Free and open debate should take place on issues before the ZBA. Such debate shall only occur at meetings of the ZBA.
2. Once a vote is taken and an issue is decided by vote, the duty of each member of the ZBA is to represent the position reflected by the outcome of the vote and a member shall not advocate a contrary position. Minority reports and requests for reconsideration may take place only at an open meeting of the ZBA.
3. From time-to-time, or on a specific issue, the ZBA may appoint a spokesperson for the ZBA for all matters which occur outside of the meetings of the ZBA.

**F. Code of Conduct.** Each member, upon appointment, shall sign and abide by a code of conduct as established by the City Commission.

**4. Officers.**

**A. Selection.** At the first regular meeting in May of each year, or in the event there is no May meeting, at the first regular meeting held following the month of May of each year, the ZBA shall select from its membership a Chair and a Vice-Chair. All officers are eligible for reelection. If the office of the Chair becomes vacant, the Vice-Chair shall succeed to this office for the unexpired term and the ZBA shall select from its membership a Vice-Chair for the unexpired term. The ZBA may also designate another person who is not a member of the ZBA to be the Recording Secretary.

**B. Tenure.** The Chair and Vice-Chair shall take office immediately following their selection, if present, and shall hold office for a term of one (1) year or until their successors are selected and assume office.

**C. Chair's Duties.** The Chair retains his or her ability to discuss, make motions and vote on issues before the ZBA. The Chair:

1. Shall preside at all meetings with all powers under parliamentary procedure;

2. May appoint committees and officers of committees or choose to let the committees select their own officers;
3. May call special meetings pursuant to these Bylaws;
4. May act as an Ex-Officio member of all committees of the ZBA;
5. May review with staff the items to be on the agenda.
6. May act as the ZBA's chief spokesman and lobbyist to represent the ZBA at local, regional, and state government levels.
7. May represent the ZBA before the City Commission when warranted or requested; and
8. Shall perform such other duties as may be ordered by the ZBA.

D. **Vice-Chair's Duties.** The Vice-Chair shall:

1. Act in the capacity of Chair in the Chair's absence, with all the Chair's powers and duties;
2. Perform such other duties as may be ordered by the ZBA.

E. **Recording Secretary's Duties.** The Recording Secretary may be a member of City staff, and shall not be a member of the ZBA or any of its committees. The Recording Secretary shall:

1. Work with City staff and Chair to prepare an agenda for the ZBA meeting;
2. Take meeting minutes and prepare draft minutes for ZBA review and approval, and sign the minutes following approval;
3. Take attendance;
4. Keep public records of ZBA attendance, resolutions, transactions, findings and determinations; and
5. Perform such other duties as may be ordered by the ZBA.

5. **Meetings.**

- A. **Regular Meetings.** Meetings of the ZBA will be held the 3<sup>rd</sup> Thursday of every month at 4:30 p.m. at City Hall, 700 Broad Street, St. Joseph, Michigan 49085. When the regular meeting day falls on a legal holiday or as otherwise appropriate, the ZBA shall select a suitable alternate day in

the same month. An annual notice or regularly scheduled ZBA meetings shall comply with P.A. 267 of 1976, as amended (being the Michigan Open Meetings Act MCL 15.261 *et seq.*).

**B. Special Meetings.** Special meetings may be called in the following manner:

1. By the Chair.
2. By any two members of the ZBA.
3. Notice of special meetings shall be given by the Chair to members of the ZBA at least forty-eight (48) hours prior to such meeting and shall state the purpose, time, day, month, date, year and location of the meeting (the Chair may delegate this function to City staff). In addition notices shall comply with P.A. 267 of 1976, as amended, (being the Michigan Open Meetings Act MCL 15.261 *et seq.*)
4. Special meetings may be called only in the event of extraordinary circumstances, for example, a lack of quorum at a regularly scheduled meeting; for a joint meeting with another board; or if irreparable harm would result if a special meeting was not called.

**C. Recess.** The Chair, after the meeting has been in session for two hours (not including site inspections), may recess to evaluate the remaining items on its agenda. The ZBA shall then decide whether to finish that meeting's agenda, to continue the meeting on another day (fix the time at which to adjourn), or complete some agenda items and continue the meeting on another day to complete other agenda items or postpone certain agenda items to the next meeting. If applicable, such action shall include the time, day, month, year, and location the ZBA will reconvene. If more than eighteen (18) hours will pass before the reconvened ZBA, public notice shall be given to comply with P.A. 267 of 1976, as amended, (being the Michigan Open Meetings Act MCL 15.261 *et seq.*). Upon reconvening, a roll call of attendance shall be the first item of business before proceeding with the same agenda. The ZBA shall resume with the same meeting agenda, proceeding at the same point where they left off, without the additional business.

**D. Quorum.** Three (3) or more members present and eligible to vote shall constitute a quorum. A quorum is necessary for transaction of business. Whenever a quorum is not present at a regular or special meeting, those present shall adjourn the meeting to another day. Whenever a quorum is not present to vote on a particular agenda item, those present and qualified to vote shall move the particular agenda item to another meeting date. However, if a question of conflict exists, a vote may be taken by less than a quorum as described in sections 2.E.2.c and 5.F.

- E. **Finding of Fact.** All actions taken in an administrative capacity shall include the ZBA's evaluation of the relevant applicable factors required by the Zoning Ordinance, and shall report in full its finding and decision.
- F. **Voting.** Votes on approval or rejection of variance requests, interpretations or appeals shall be by roll call vote and shall be recorded by "yes" or "no". Votes on other issues, such as approval of minutes, referral of issues to the Planning Commission or adjournment of the meeting may be by voice vote except that upon request of any member a roll call vote shall be taken. Members must be present to cast a vote. Voting by proxy shall not occur. The affirmative vote of a majority of those present or a majority of a quorum, whichever is greater, shall be necessary for the adoption of motions, unless voting on the question of a conflict, in which case a vote of a majority of those present and eligible to vote, even if not a quorum, is necessary to determine that no conflict exists (see Section 2.E.2.c).
- G. **ZBA Action.** Action by the ZBA on any matter on which a hearing is held shall not be taken until the hearing has been concluded.
- H. **Parliamentary Procedure.** Parliamentary procedure in ZBA meetings shall be informal. However, if required to keep order, ZBA meetings shall then be governed by *Roberts Rules of Order Newly Revised*, (10<sup>th</sup> Edition, Perseus Publishing, New York, 2000 (ISBN 0-7382-037-6)) for issues not specifically covered by these Bylaws. Where these Bylaws conflict, or are different than *Robert's Rules of Order*, then these Bylaws control.
- I. **Public Participation.** All regular and special meetings, hearings, records, and accounts shall be open to the public.
1. All public comment on all agenda items shall be presented only during the portion of the meeting where provided in the printed agenda, which shall be prior to the ZBA acting on that item.
  2. The Chair may limit the amount of time allowed for each person wishing to make public comment at a ZBA meeting. The Chair may ask members of the audience to caucus with others sharing similar positions so they may select a single spokesperson. If a single spokesperson is selected, that individual shall be able to make public comment at the ZBA meeting with an extended time limit.
- J. **Order of Business.**
1. **Agenda.** City staff shall prepare an Agenda for each meeting and the order of business shall be as follows unless otherwise appropriate to modify:
    - (A) *Call to order and roll call.*

- (B) *Approval of Minutes.*
- (C) *Matters pertaining to citizens present at the meeting, in the following order:*
  - i. *Advertised Continuation of Public Hearings. The chair will declare such a public hearing open and state its purpose. The petitioner, or proponent of the action advertised will be heard first.*
  - ii. *Advertised Initial Public Hearings. The Chair will declare such a public hearing open and state its purpose. The petitioner, or proponent of the action advertised will be heard first.*
  - iii. *Persons requested by the ZBA to attend the meeting.*
  - iv. *Other public participation for items on this agenda.*
- (D) *Other business.*
- (E) *Comments.*
- (F) *Adjournment.*

2. **Order.** The order of the agenda may be changed at the Chair's discretion. All agenda changes shall be announced at the beginning of the meeting or prior to proceedings on that item.

3. **Delivery of Agenda.** The agenda and available accompanying materials received, reviewed, and accepted as complete shall be mailed, electronically mailed, or delivered to ZBA members so it may be received reasonably in advance of the regular meeting date. Materials received after delivery and prior to the meeting date shall be provided immediately prior to the meeting.

4. **Placement of Items on the Agenda.**

- (A) The St. Joseph City office of the Zoning Administrator shall be the office of record for the ZBA.
- (B) The Zoning Administrator shall receive and, within a reasonable time, review for completeness applications submitted to the ZBA as provided in the Zoning Ordinance. If incomplete, the application shall be returned to the applicant, along with an explanation of the deficiencies. If complete, the application shall be scheduled for



consideration at a ZBA meeting which occurs no less than twenty-four (24) days after the date of that determination.

6. **Record.**

A. **Minutes and Record.** The Zoning Administrator, Recording Secretary or other City staff, on behalf of the ZBA, shall keep, a record of ZBA meetings, which, shall at a minimum include an indication of the following:

1. Copy of the meeting posting pursuant to P.A. 267 of 1976, as amended, (being the Michigan Open Meetings Act, MCL 15.261 *et seq.*);
2. Copy of the minutes, and all its attachments which shall include a summary of the meeting;
3. Records of any action, support documents, maps, site plans, photographs, correspondence received, attached as an appendix to the minutes; and
4. Citizen comments.

Minutes shall be summary minutes, kept in adequate detail to describe the course of the conversation and the basis for any action. Minutes are not intended to be verbatim transcripts. Written statements shall not be transcribed into the record but should be kept with the file as with other documents.

B. **Retention.** ZBA records shall be preserved and kept on file according to statutory requirements and City policy or procedures not in conflict therewith, including:

1. Minutes, bonds, oaths of officials, zoning ordinances, master or comprehensive plans, other records of decisions, ZBA or department publications: Permanent.
2. Correspondence: Permanent.

7. **Mileage and Expenses.** Mileage and expenses shall be paid to members of the ZBA at rates and under policies established by the City Commission for attending ZBA meetings, ad hoc committee meetings, and other authorized meetings and trips to represent the City of St. Joseph, if those ZBA members bill the City of St. Joseph for the same and it is an authorized and budgeted expense.

8. **Zoning Responsibilities.** The ZBA shall bring to the attention of the Planning Commission situations where the ZBA determines under Section 15.4.10.E of the Zoning Ordinance that it appears there are general or recurrent conditions in the City that may not be addressed adequately in the existing Zoning Ordinance, and

which might be practicably addressed through formulation of an ordinance amendment.

9. **Adoption, Repeal, Amendments.**

- A. Upon adoption, these Bylaws shall become effective.
- B. The ZBA may suspend any one of these Bylaws for a duration of not more than one agenda item or meeting by a two-thirds (2/3) vote of the total membership.
- C. These Bylaws may be amended at any regular or special meeting by a two-thirds (2/3) vote of the total membership.