

**BYLAWS AND RULES OF PROCEDURE
OF
THE CITY OF WAHOO BOARD OF ADJUSTMENT**

CHAPTER 1 - BYLAWS

ARTICLE 1 - ESTABLISHMENT

- Section 1 - ESTABLISHMENT: The City of Wahoo Board of Adjustment (hereinafter called the "Board"), is duly established under Section 19-907 of the Laws of Nebraska and Article 33.03 of the Wahoo Municipal Code of the City of Wahoo, Nebraska.
- Section 2 - NAME: The legal name of the Board shall be the City of Wahoo, Nebraska Board of Adjustment and commonly known as the Wahoo Board of Adjustment.

ARTICLE 2 - COMPOSITION OF THE BOARD

- Section 1 - MEMBERSHIP: The board shall consist of five (5) regular members plus one (1) additional member designated as an alternate who shall attend and vote on the Board only when a regular member of the Board is unable to attend a meeting or when a regular member declares or is declared to have a conflict of interest in any case before the Board. Members of the Board shall be appointed by the Mayor, with the consent of the Wahoo City Council. One (1) member shall be appointed from the membership of the Wahoo Planning Commission and loss of membership on the Planning Commission shall result in immediate loss of membership on the Board and the appointment of another member of the Planning Commission to serve on the Board. At least one member of the Board shall reside outside of the corporate boundaries of the City but within its extraterritorial zoning jurisdiction. Neither the Mayor nor any member of the City Council shall serve as a member of the Board.
- Section 2 - COMPENSATION: All members of the Board shall serve without compensation, except for mileage and reasonable expenses in an amount fixed by the City Council and may be required, in the discretion of the Mayor and City Council, to give a bond in a sum set by resolution of the Mayor and City Council and conditioned upon the faithful performance of their duties.
- Section 3 - TERMS OF OFFICE: The term of each Board of Adjustment member shall be three (3) years, unless reappointed. All members shall hold office until their successors have been appointed.
- Section 4 - REMOVAL FROM THE BOARD: Any member of the Board may be removed as a member of the Board by the Mayor, with the consent of the City Council after a public hearing and upon written charges of inefficiency, neglect of duty, malfeasance, or any other good and sufficient cause, as determined by the appointing authority.
- Section 5 - VACANCIES: Vacancies occurring on the Board other than through expiration of terms of office shall be filled for the un-expired terms by residents appointed by the City

Council in accordance with Section 1 above.

ARTICLE 3 - OFFICERS AND STAFF

Section 1 - **BOARD OFFICERS:** At its first meeting of the calendar year, the Board shall elect, from its membership, a Chairperson, a Vice-Chairperson, and a Secretary, or appoint a person from outside its membership to serve as Recording Secretary to the Board. No member of the Board shall serve in the capacity of both Chairperson and Secretary of the Board.

Section 2 - **DUTIES OF OFFICERS:**

- A. Chairperson: The Chairperson shall preside over Board meetings and, on behalf of the Board, shall exercise general supervision over the affairs of the Board. The Chairperson, or in his/her absence the acting Chairperson, shall have the authority to:
1. administer oaths;
 2. compel the attendance of witnesses;
 3. make determinations of points of order and procedure;
 4. sign all official documents and communications of the Board;
 5. establish public hearing dates;
 6. have the City publish notice for public hearings in connection with any proper petition to the Board without the consent of the Board members.

In addition to the above, the Chairperson shall have the authority to retain a hearing officer to assist the Board in the conduct of public hearings and to advise the Board on issues which the Board requests the hearing officer to advise it regarding the Board's duties and responsibilities. It would be advisable that the hearing officer retained be an attorney at law.

- B. Vice-Chairperson: The Vice-Chairperson shall have the responsibilities and authorities of the Chairperson during the absence or disability of the Chairperson. The Vice-Chairperson shall have the authority to act as Chairperson in the event a conflict of an interest by the Chairperson.
- C. Secretary: The Secretary shall be responsible for keeping a complete and accurate record of all Board proceedings, including keeping of records and minutes and shall certify all official acts of the Board, including votes of each member on all matters for which a vote is required or, if absent or failing to vote, indicating such fact and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the City Clerk and shall be public record.

In the event of the absence or disability of both the Chairperson and Vice-Chairperson, the Secretary shall preside over the meeting, provided however, that the first and only item of business shall be the election of a Chairperson pro-tempore, or in the absence of a quorum, to announce that all business to come before the Board is continued to the next

meeting of the Board and to announce the date, time and location of the next meeting of the Board. In the absence of the Secretary, the Chairperson shall appoint a Secretary pro-tempore.

ARTICLE 4 - GENERAL RULE

Section 1 - RULES: In all matters not otherwise provided for by statute, the applicable Zoning Ordinance, or these Bylaws and Rules of Procedure, the most recent edition of Robert's rules of Order available to the Board, as interpreted by the presiding officer, shall govern the conduct of the Board's meetings.

ARTICLE 5 - AUTHORITY

Section 1 - POWERS AND DUTIES: In accordance with Nebraska Law and the City of Wahoo Zoning Ordinance, the Board shall have the following powers and duties and ONLY these powers and duties, all subject to the conditions and safeguards set forth in the applicable Zoning Regulations:

- A. Adopt Rules: The Board shall have the authority to adopt these uniform rules and procedures pertaining to investigations, applications, conduct of public hearings, findings of fact and Board actions.
- B. Appeals: The Board shall have the authority to hear and decide appeals where it is alleged that there is an error in any order, requirement, decision or determination made by a city official based on or made in the enforcement of any zoning regulation or any regulation relating to the location or soundness of structures.
- C. Map Interpretation: The Board shall have the authority to hear and decide requests for interpretation of any map contained in the Comprehensive Plan and the Official Zoning Map of the City.
- D. Variance: The Board shall have the authority to hear and authorize variances from the terms and requirements of the applicable City Zoning Regulations where by reason of exceptional narrowness, shallowness, or shape of a specific piece of property existing at the time of adoption of the Zoning Ordinance, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any requirement of the applicable City Zoning Regulations would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon the owner of such property, to authorize, upon an appeal relating to the property, a variance from such strict application so as to relieve such difficulties or hardship, if such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of Wahoo Zoning Ordinance.

The Board of Adjustment shall authorize no such variance, unless it finds that:

1. The strict application of the Zoning Ordinance would produce undue hardship;
2. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity;
3. The authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance; and
4. The granting of such variance is based upon reasons of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit or caprice. No variance shall be authorized unless the Board finds that the condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the Zoning Ordinance.

E. Enforcement: The Board shall have the authority to invoke any legal and authorized remedy for the enforcement of the City Zoning Ordinance and the decisions of the Board, including the authority to order the discontinuance and stay of work or construction on any premises when such work or construction is in violation of the requirements of the City Zoning Ordinance.

F. Authorization of Others: The Board shall have the authority to authorize the Building Inspector, the City Attorney, or other official or person to act on behalf of the Board in filing and pursuing litigation necessary to enforce the City Zoning Ordinance.

Section 2 - **POWER OF ADMINISTRATIVE OFFICIALS:** In exercising the above-mentioned powers and duties, the Board, in conformity with Nebraska law, these Bylaws and Rules of Procedure and the requirements and limitations set forth in the City Zoning Ordinance, may reverse or affirm, wholly or partially, or modify any order, requirement, decision or determination and to this end shall have all the powers of the officer or agency from whom the appeal is taken. The concurring vote of four (4) members of the Board shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under the Zoning Ordinance or to effect any variation in the Zoning Ordinance.

CHAPTER 2 – RULES OF PROCEDURE

ARTICLE 1 - MEETINGS

Section 1 - **NUMBER OF MEETINGS:** Meetings of the Board shall be held at the call of the Chairperson of the Board and at such other times as the Board determines it is necessary to conduct its affairs, responsibilities and duties. Special meetings of the Board may be called at any time by any three (3) of the regular Board members and notice of such special meetings shall be posted and/or published in accordance with Nebraska law and/or the City Zoning Ordinance.

All meetings of the Board shall be open to the public and conducted in accordance with the State of Nebraska Public Meetings and Disclosure laws. Executive sessions of the Board are prohibited unless such session shall deal exclusively with discussion of legal actions against or initiated by the Board. No action shall be taken by the Board during any executive session.

Any visitation by a quorum of the Board to any premises for which an application to the Board has been filed shall constitute a meeting of the Board and such visitation shall not be conducted unless and until proper notice of such meeting of the Board is provided. Any member of the Board, individually or members of the Board constituting less than a quorum of the Board may visit any such premises without public notice being provided.

Section 2 - RECORDS:

- A. The Board shall adopt rules for transaction of its business and shall keep a record of its motions, votes of each member on each motion and its other transactions, determinations and findings. The records of the Board shall be maintained in the City Clerk's Office of the City of Wahoo and shall be a public record.
- B. The Board, upon a request of either an applicant or the City, may provide a court reporter to transcribe oral testimony received at a public hearing. The cost of the court reporter shall be paid by the party requesting the presence of a court reporter at a public hearing.

Section 3 - QUORUM: A quorum of the Board shall be a majority of the regular Board members (3 members) to transact business of the Board, except for the following types of petitions which may come before the Board which shall require a consenting vote of a minimum of Two Thirds (2/3) of the Board – a minimum of four (4) voting members:

- A. Reverse any order, requirement, decision, or determination of the Administrative Official on appeal;
- B. To decide in favor of a petitioner on any matter upon which the Board is required to pass as set forth in the City Zoning Ordinance; and
- C. To approve any variance from the requirements of the City Zoning Ordinance.

No official business of the Board shall be transacted by the Board without a quorum (3 members) present and no public hearing shall be opened at any meeting of the Board unless a minimum of four (4) members are present.

Section 4 - CANCELLATION OF MEETINGS: Whenever it is ascertained that a quorum of the Board is or will not be present at any Board meeting, the Chairperson shall dispense with the meeting by opening the meeting and informing all in attendance that a meeting cannot be held due to lack of a quorum and that all petitions which were to have been presented to the Board shall be continued to the specific date, time and location for the next meeting of the Board.

Section 5 - ALTERNATE MEMBER: The alternate member of the Board may participate and enter

into discussion of any petition before the Board, but may not vote unless he/she is replacing a regular member of the Board due to absence of a regular member or a conflict of interest being declared by any regular Board member.

Section 6 - VOTING: The following rules shall apply to all actions of the Board which require adoption of a motion:

- A. Majority: No action of the Board shall be official unless such action is authorized by a vote of a majority of the members of the Board, provided that in deciding any appeal of an order, requirement, decision, or determination of the city official, in deciding in favor of the petitioner on any matter upon which the Board is required to pass under the requirements of the City Zoning Ordinance, or in deciding any variance from the requirements of the such Regulations, a minimum concurring vote of four (4) voting members shall be required.
- B. Voting Method: All votes of the Board shall be voice (roll call) vote duly recorded as to the vote cast by each voting member.
- C. Voting Required: Except in the case of a conflict of interest, as specified in Section 7 herein, all voting members of the Board present at each meeting of the Board shall vote on each matter for which a public hearing is held. An abstention from voting for any other reason shall be the same as casting a negative vote.
- D. Absentee Voting: Absentee or proxy voting by any Board member is prohibited. Members must be present to on any matter before the Board. In the event a member is absent for a part of public hearing, such member's eligibility to vote on the matter under consideration at such public hearing shall be determined by the Chairperson.

Section 7 - CONFLICT OF INTEREST: A Board member shall not participate in the discussion of any matter before the Board in which he/she has a direct or indirect ownership or financial interest nor shall such member vote on deciding such matter. A member shall declare, for the record, that he/she has such a conflict of interest prior to the discussion of any issue in which a conflict of interest exists and such member shall refrain from any discussion of the matter. Questions as to whether such a conflict of interest exists shall be determined by the Chairperson. When there is uncertainty as to the applicability of this Section, the member involved shall abstain from any discussion or vote on such matter. In all cases, the Secretary shall enter into the minutes of the Board the fact that a member (by name) declared or was declared by the Chairperson, to have a conflict of interest and abstained from all discussion and voting on the matter in which the conflict of interest exists.

Nothing in this Section shall prevent a member of the Board from presenting a petition before the Board on his/her own behalf, but members of the Board shall not appear before the Board representing or on the behalf of others.

Section 8 - EX PARTE COMMUNICATION: Any Board member who wishes to visit the premises for which an application to the board has been submitted may do so provided that any Board member who has any communication with an applicant after said applicant has

filed an application with the Board shall, prior to any discussion of the application at public hearing, publicly indicate that such communication occurred and shall indicate the items discussed in such communication.

Section 9 - **ORDER OF BUSINESS:** The order of business at meetings of the Board shall be as listed below, provided that such order of business may be changed by the Chairperson upon the consent of a majority of those members present.

1. Roll Call
2. Approval of Agenda
3. Approval of Minutes
4. Communications
5. Public Hearings (including any public hearings continued from prior meetings)
6. Old Business
7. New Business
8. Reports and Recommendations
9. Adjournment

ARTICLE 2 - PUBLIC NOTICE AND HEARINGS

Section 1 - **APPLICATION:** Each petition to the Board shall be on an application from prescribed by the Board and shall be accompanied by such information and exhibits as is specified on such application form together with payment of any applicable fees. Any communication purporting to be a petition that is not on the prescribed application form or does not contain all information requested on such form shall be considered incomplete and shall not be considered at public hearing and no fee shall be accepted.

Section 2 - **ELIGIBLE APPLICANTS:** Any person affected by the interpretation of any map contained in the City of Wahoo, Nebraska Official Zoning Map, any person requesting a variance from the requirements of the applicable City Zoning Regulations and any person, or their authorized representatives, aggrieved, or any officer, department, board or bureau affected by any decision of the City may make application to or appeal to the Board. Appeals shall be taken within a reasonable time, as provided by these Rules of Procedure. Such appeals shall be evidenced by the signature of each person appealing a decision of the city official or by signature of a person having power of attorney for such person(s). Such appeals shall be in the form of a letter, signed by the person making such appeal and such letter shall specify the grounds for the appeal. Applications for map interpretations, variances or appeals shall be accompanied by payment of any fee established for such applications or appeals by the City Council of Wahoo.

Section 3 - **ACTION BY ADMINISTRATIVE OFFICIAL:** The administrative official from whom an appeal is taken, when notified by the person making the appeal, shall notify the Board of the appeal, shall schedule a public hearing, shall cause public notice of the public hearing to be published and shall transmit all records regarding the appeal to the Board for its consideration.

Section 4 - **NOTICE OF PUBLIC HEARING:** Public notice of any petition filed with the Board which requires action of the Board at public hearing shall be given in by publication

thereof in a newspaper of general circulation in the City at least one (1) time ten (10) days prior to such hearing. Proof of such publication of each public hearing notice shall be obtained by the Board and maintained in the records of the Board. In addition to the publication of notice, a notice shall be posted in a conspicuous place on or near the property for which action is pending. Such notice shall not be less than eighteen inches in height and twenty-four inches in width with a white or yellow background and black letters not less than one and one-half (1-1/2) inches in height. Such posted notice shall be so placed upon such premises that it is easily visible from the street nearest the same and shall be posted at least ten (10) days prior to the date of such hearing.

At the option of the City Council, in place of the posted notice provided above, the owners or occupants of the real estate within three hundred feet of the property for which action is pending may be personally served with a written notice thereof at least ten (10) days prior to the date of the hearing, if they can be served with such notice within Saunders County. Where such notice cannot be served personally upon such owners or occupants in Saunders County, a written notice of such hearing shall be mailed by first class mail to such owners or occupants addressed to their last known address at least ten (10) days prior to such hearing.

If record owner(s) of property included in any petition to come before the Board are non-residents of the City, a written notice of such public hearing shall be mailed by certified mail (receipt requested) to the last known address of such owner(s) at least ten (10) calendar days prior to such public hearing. Determination of the last known address of such owner(s) shall be derived from the records of the Saunders County Treasurer.

Section 5 - CONTENTS OF NOTICE OF PUBLIC HEARING: Any notice of public hearing required by the City Zoning Regulations shall contain, at a minimum, the following information:

- A. A statement explaining the type of petition filed with the Board;
- B. The general location of the land included in such petition by address or other sufficiently identifiable geographic description regarding the location of such property;
- C. The legal description of the property included in the petition;
- D. The time, place and location of the public hearing to be conducted by the Board;
- E. A statement that the application associated with such petition may be examined in the Office of the City Clerk prior to the public hearing;
- F. A statement that all interested parties may offer oral comments at the public hearing and/or may file written comments with the board concerning the petition and that such comments shall be considered by the Board, provided such written comments are received by the Board prior to the public hearing date; and
- G. Any other statement as may be required by law.

Section 6 -

CONDUCT OF PUBLIC HEARINGS: The Board shall utilize an agenda prepared by city staff to determine the order of business at each meeting. Public hearings on petitions submitted to the Board shall be heard in the order that applications for such petitions were received and in accordance with the Order of Business prescribed in these Rules of Procedure, except that the Order of Business may be changed by the Chairperson, upon the consenting vote of those Board members present. Each public hearing shall be conducted in accordance with the following procedure:

- A. The Chairperson shall request proof of notification of public hearing from city staff. In the event such public hearing notice was not published and/or posted or mailed notices where not given at least ten (10) days prior, the Chairman shall continue such public hearing to the specified date, time and place and shall instruct city staff to publish, post or mail such notice, including the revised date, time and place of such public hearing.
- B. The Chairperson shall request verification from city staff that the application for the petition to be heard at public hearing is complete in all respects, as required by the applicable application form(s) and with regard to any application submission requirements set forth in the applicable City Zoning Regulations. If such application is incomplete, such petition shall be automatically continued to the next meeting of the Board and the Chairperson shall state the date, time and place of such next meeting and shall issue instructions to the petitioner that the application must be completed prior to the next Board meeting or the petition shall be removed from consideration by the Board until such time as it is complete.
- C. The Chairperson shall make a determination that the Board has the authority to act on the application filed with the Board.
- D. The Chairperson shall make a determination that the petitioner, his/her attorney or other authorized representative is present and desires to proceed with the public hearing or if the petitioner, his/her attorney or other authorized representative would like a continuance of the hearing or would like to withdraw the petition. If the petitioner, his/her attorney or other authorized representative is not present, such petition shall be automatically placed at the bottom of the Order of Business. If the petitioner, his/her attorney or other authorized representative is still not present when the public hearing for this petition is called again, such petition shall be automatically dismissed.
- E. If the public hearing is to proceed, the Chairperson shall call for a motion to open the public hearing and the Board shall hear testimony in the following order:
 - 1. Presentation of the petition request by the petitioner or his/her attorney or other authorized representative, not to exceed ten minutes each;
 - 2. Presentation of comments or recommendations by city staff or other technical staff, legal counsel, agency, or consultant serving the Board, or from which the Board has sought input or advice;

3. Reading of any written communications or comments received by the Board regarding the petition;
 4. Comments and questions by members of the Board;
 5. Comments and questions by any members of the public either in support of or in opposition to the petition, not to exceed five minutes each;
 6. Rebuttals or final statement by the petitioner or his/her attorney or other authorized representative as well as then from City staff or their representatives.
- F. After all public comments have been heard, the Chairperson shall call for a motion to close the public hearing and shall call for a motion for action on the petition. Additional public comment shall not be permitted after the closing of the public hearing, except at the discretion of the Chairperson. Board members may discuss the petition prior to any motion in order to clarify the issues pertaining to such petition. Any motion which is made and seconded is open for discussion by the Board members only, unless the Chairperson specifically invites additional comments by the petitioner or the public. The Chairperson shall have the authority to limit discussion by the Board or the public if such discussion is repetitious or irrelevant.

Section 7 - **VOTING:** Action on any matter requiring a public hearing by the Board must be made through passage of a motion. Failure of a motion due to lack of second or due to lack of the minimum required majority voting in favor or the motion shall not constitute any action by the Board. Each motion on any matter requiring a public hearing shall be decided by a roll call vote of all members present. All voting shall be in accordance with the requirements of Article 1, Section 6 of these Rules of Procedure. If a sufficient number of Board members are not present after any abstentions, action on the petition shall be continued to the next meeting of the Board, as determined by the Chairperson and the Chairperson shall verbally indicate to all persons present at the public hearing the date, time and place of such meeting. The votes cast by each member of the Board shall be recorded in the minutes of the Board.

Section 8 - **RULES OF CONDUCT:** The following rules of conduct shall apply to and at all public hearings conducted by the Board:

- A. **Representation:** A petitioner may appear in person, by agent or attorney and may present any supporting witnesses, evidence, statements and arguments in support of the petition. Persons in support of or in opposition to the petition may appear in person, by agent or attorney and may present witnesses, evidence, statements and arguments in favor of or in opposition to the petition. Any person interested in any petition before the Board shall have the right to be heard and such persons shall not be required to enter any written statement at the public hearing. A Board member and the city official may represent their own petition, but shall not under any circumstances represent others before the Board.
- B. **Board Participation:** Board members shall be provided adequate opportunity to

examine witnesses and question any evidence, statements and arguments presented in the interest of a fair and complete hearing.

- C. Comments Addressed to the Chairperson: All comments by the petitioner, his/her agent or attorney or the members of the public present at any public hearing shall be addressed to the Board through the Chairperson. Comments and arguments between the petitioner, his/her agent or attorney and other persons in attendance at the public hearing shall be prohibited by the Chairperson.
- D. Authority of the Chairperson: The Chairperson shall have the authority to prohibit repetitious or irrelevant testimony and comments and shall have the authority to limit the length of testimony by each person to a length of time deemed appropriate for a fair and complete hearing.
- E. Orderly Conduct: Every person appearing before the Board shall abide by the order and direction of the Chairperson. Discourteous, disorderly, or contemptuous conduct shall not be permitted by the Chairperson and the Chairperson shall have the authority to have any person guilty of such conduct removed from the hearing room.

ARTICLE 3 - DISPOSITION OF PETITIONS

Section 1 - **MOTIONS:** The final disposition of any petition duly filed and brought before the Board shall be in the form of a motion, properly seconded and adopted. Said motion shall specifically set forth one of the following forms of dispositions:

Section 2 - **DISMISSAL:** A petition may be dismissed from consideration by the Board in accordance with the following situations:

- A. Dismissal of Petitions: The Board may dismiss a petition after one (1) continuance if the petitioner or his/her authorized representative fails to appear to present the petition or if such petition has been improperly or incompletely filed and has not been modified after original consideration by the Board.
- B. Lack of Jurisdiction: The Board shall dismiss a petition if it finds that it has no authority of jurisdiction over the matter contained in the petition.
- C. Automatic Dismissal: Failure by the Board to approve a motion shall be automatically deemed a denial of said petition and shall be dismissed accordingly.

Section 3 - **WITHDRAWAL OF PETITIONS:** A petition filed with the Board may be withdrawn from consideration in accordance with the following situations and limitations:

- A. Withdrawal without Prejudice: Any petition may be withdrawn without prejudice, provided a written or verbal request from the petitioner or his/her agent or attorney is received by the Board at any time prior to any motion by the board for action on said petition.

- B. Withdrawal Not Permitted: No petition may be withdrawn after a motion has been made and seconded and a vote of the Board has been ordered by the Chairperson.

Section 4 - AMENDMENT OF PETITIONS: No petition shall be amended during any public hearing to increase the land area involved in the petition or to substantially change the petition without re-filing of a revised petition with re-notification of the public and notice of public hearing. Determination of whether a proposed amendment constitutes a substantial change shall be made by the Chairperson. Any petition may be amended to decrease the land area involved or to allow minor changes in the petition without such re-filing and re-notification.

Section 5 - CONTINUANCE OF PETITIONS: A petition filed with the Board for consideration at public hearing may be continued to the next meeting of the Board in accordance with the following:

- A. Request by Petitioner: A petitioner or his/her agent or attorney may request a continuance of a petition, either verbally or in writing at any time prior to action on a motion of the Board regarding such petition. After one continuance, unless the petitioner intends to completely withdraw the petition, the petitioner shall be required to show good and sufficient cause for such continuance and it shall be within the Chairperson's authority to grant or deny the continuance request.
- B. Motion by the Board: Any member of the board may at any time move to continue a petition before the Board. Such a motion when duly seconded and approved by a vote of the Board shall continue the petition to a date, time and place specified in the motion. The Board may include in such motion, such specific instructions for re-notification of the public and publishing of a public hearing notice if the Board determines such would be in the best interest of a fair and complete public hearing.
- C. Improper Notice: If the Chairperson shall find that proper notice of the public hearing has not been given, the Chairperson shall automatically continue the public hearing to the next meeting of the Board and the Chairperson shall instruct city staff to publish proper notice of the public hearing in accordance with the requirements of the City Zoning Regulations. The Chairperson shall also state the date, time and location of the next Board meeting at which the affected petition shall be heard.

Section 6 - APPROVAL OF PETITIONS: The Board may approve or appeal a petition presented before the Board in accordance with the requirements and limitations set forth in the applicable City Zoning Regulations. Such approval may take either of the following forms:

- A. Conditional Approval: A motion to approve a petition may be conditional upon the petitioner's compliance with a requirement or requirements imposed by the Board. Such conditions of approval shall be specifically stated in the motion to approve and recited to the petitioner. The Board may impose a time limit for the

fulfillment of any such condition or conditions, provided such time limits are consistent with any applicable section of the City Zoning Regulations. The petitioner shall be required to notify the City of the fulfillment of all such conditions. In the event any condition is not fulfilled or the time for compliance has expired, the Administrative Official shall issue a written request to the petitioner to show cause why the Board's conditional approval should not be revoked. The Board may investigate the matter and take such remedial action as it deems appropriate to assure the proper enforcement of its decisions and the requirements of the City Zoning Regulations.

- B. Unconditional Approval: If the Board has no conditions to impose upon a petition, the Board may approve the petition as presented.

Section 7 - **SPECIFIC REQUIREMENTS IN APPROVAL OF A VARIANCE:** In any action by the Board with regard to approval of a variance, such action shall be taken in accordance with the limitations of Nebraska law and the requirements and limitations of the applicable City Zoning Regulations and these Rules of Procedure. In any action to approve a variance, the Board shall make findings which shall be recorded in the minutes of the Board that:

- A. The strict application of any applicable provision of the applicable City Zoning Regulation would, in each specific variance petition, result in at least one of the following:
1. Peculiar and exceptional practical difficulties to or undue hardship upon the owner of the piece of property included in the petition due to exceptional narrowness, shallowness or shape of the piece of property in questions;
 2. Peculiar and exceptional practical difficulties to or undue hardship upon the owner of the piece of property included in the petition due to exception topographic conditions on the piece of property in questions;
 3. Peculiar and exceptional practical difficulties to or undue hardship upon the owner of the piece of property included in the petition due to other extraordinary and exceptional situation or condition of the piece of property in question.
- B. In authorizing any variance the Board shall also make findings, which shall be recorded in the minutes of the Board, that **EACH** of the following requirements for authorizing a variance can be met:
1. Such variance may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the applicable City Zoning Regulations;
 2. The strict application of the applicable requirements of the applicable City Zoning Regulations would produce an undue hardship upon the owner of the property included in the petition;

3. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity;
4. The authorization of such variance will not be of substantial detriment to adjacent property and the character of the zoning district will not be changed by such variance;
5. The authorization of a variance is based upon reasons of demonstrable and exceptional hardship stemming from characteristics of the property involved in the petition and not for reasons of convenience, profit or desire of the property owner;
6. The condition or situation of the property included in such petition or the intended use of such property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the applicable City Zoning Regulations.

Section 8 - **EXPIRATION OF APPROVAL:** Any petition approved by the Board, unless otherwise stipulated by the Board in its motion to approve such petition, shall expire and become null and void six (6) months after the date of such approval by the Board, unless the petitioner has substantially put into effect the use of the property for which the petition was approved or the petitioner can show just cause for not having implemented the approved petition.

Section 9 - **DISAPPROVAL OF PETITIONS:** Failure to approve a motion shall be deemed a denial by the Board. Alternatively, if the Board approves a motion to deny any petition presented to it, such motion shall be approved by a minimum of four (4) voting members and the Board shall state the reason(s) for such denial and such reason(s) shall be recorded in the minutes of the Board.

Section 10 - **REFILING OF PETITIONS:** No petition which has been denied by the Board shall again be brought before the Board for hearing within six (6) months from the date of such denial unless the Board finds that there is a substantial change in the petition or circumstances affecting the petition or there is additional evidence to be presented. In such case, the matter may again be submitted for the Board's consideration upon approval of a motion to permit such resubmission by the Board.

ARTICLE 4 - BOARD RECORDS

Section 1 - **RESPONSIBILITY:** It shall be the duty of the Board to maintain all its records and files, including official minutes of the Board. The Chairperson shall appoint the City Clerk to keep and maintain such records and files. All records of the Board shall be a public record and open to public inspection.

Section 2 - **MINUTES:** The Secretary, or Recording Secretary, of the Board shall prepare an accurate record of all public hearings and official actions of the Board and the minutes representing such record shall be made available to the public within ten (10) days

following any meeting of the Board. All decisions rendered by the Board shall be considered filed in the Office of the City Clerk at 9:00 a.m. the next regular business day for the purpose of appeals. Such minutes shall not, however, become official minutes of the Board until approved by the Board at its next meeting. The Board shall have the authority to require modifications to such minutes prior to approval to create a more accurate or detailed record of the Board's actions. Upon approval of the minutes by the Board, copies shall be made available to any interested party.

Section 3 - AUDIO OR VIDEO TAPE RECORDINGS: The Secretary, or Recording Secretary, of the Board may make taped or other mechanical recordings of the Board's proceedings. Such recordings, if made, shall remain on file in the office of the City Clerk at least until the official minutes for which the Board's proceedings were recorded have been prepared and approved by the Board.

Such recordings shall not be removed from the office of the City Clerk by any person other than by order of a court of competent jurisdiction. Interested persons may listen and/or watch such recordings in the office of the City Clerk and may transcribe any information on such recordings. Neither the petitioner nor any member of the public may themselves take audio or video recordings of the proceeding.

Section 4 - PETITION APPLICATIONS AND FILES: A file shall be maintained for each application filed with the Board. Such files shall contain, at a minimum, the completed application form, the proof of public notice and such other supporting materials and exhibits pertaining to such application submitted by the petitioner or any other person, together with a copy of the section of the Board's official minutes which indicate the Board's action regarding the application.

ARTICLE 5 - AMENDMENTS OF SUSPENSION OF BYLAWS AND RULES OF PROCEDURE

Section 1 - AMENDMENTS: These Bylaws and Rules of Procedure may be amended by the Board at any meeting of the Board upon the affirmative vote of three (3) members of the Board, provided however, that the proposed amendment(s) shall have been presented in writing to the full Board at the previous meeting of the Board.

Section 2 - SUSPENSION: The suspension of any rule or procedure set forth herein may be authorized by the Board at any meeting of the Board upon the affirmative vote of three (3) Board members, provided however, that no rule or procedure which is required to comply with the City Zoning Regulations or Nebraska law shall be suspended.

ARTICLE 6 - SEPARABILITY

If any section, clause, provision, or portion of these Bylaws and Rules of Procedure shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity or constitutionality of any other section, clause, provision or portion of these Bylaws and Rules of Procedure.

ARTICLE 7 - CERTIFICATE OF ADOPTION

The foregoing Bylaws and Rules of Procedure of the City of Wahoo, Nebraska Board of Adjustment are hereby adopted by affirmative vote of the Board on this 19th day of June, 2014.

Signature of Chairperson

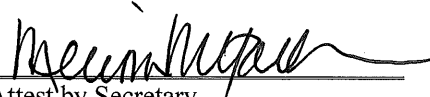
Attest by Secretary

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Signature of Chairperson



Attest by Secretary