

Resolution No. 2020-04

**A RESOLUTION ESTABLISHING BYLAWS FOR THE CONDUCT OF BUSINESS BY THE PLANNING COMMISSION OF THE CITY OF DERBY, KANSAS.**

**BE IT RESOLVED** by the Planning Commission of the City of Derby, Kansas:

**Section 1.** The Bylaws of the Planning Commission of the City of Derby, Kansas, should be and the same are hereby amended to read as follows:

**ARTICLE I - COMPOSITION AND DUTIES**

**SECTION 1 - COMPOSITION.** Pursuant to City ordinance and state law, the Derby City Planning Commission (hereinafter referred to as the "Commission") consists of ten members serving staggered three-year terms, of which at least two such members shall reside outside of the City but within three miles of the corporate limits of the City. Members are appointed annually by the Mayor with the consent of the City Council in April or May. New members take office at the next regular meeting of the Commission. Vacancies are filled by appointment for the unexpired term.

**SECTION 2 - ATTENDANCE.** Regular attendance is an important responsibility of membership. Maintaining a quorum for voting purposes is especially important. When a member absences himself or herself for more than three consecutive regular meetings or misses a total of six meetings during a calendar year, the Secretary will provide written notice to the City Manager, and the City Council may elect to remove the member pursuant to the provisions of Chapter 2.16 of the City Code.

**SECTION 3 - CONFLICTS OF INTEREST.** Members of the Commission shall be aware at all times of their responsibility to the citizenry of the City of Derby and to the residents of the surrounding Planning Area and shall refrain from any recommendation or action that would benefit individuals or special interest groups rather than serve the best interests of the entire Planning Area. In furtherance of this responsibility, members shall refrain from recommending or acting on any matter before the Commission in which they have, either directly or indirectly, any financial interest or use their influence or position to show favoritism that could lead to the development of a clientele at a later date.

If a member has a conflict of interest on a matter before the Commission, right after the Secretary reads the title of the agenda item in question, that member should publicly announce the conflict and excuse himself/herself from the meeting room until the matter has been addressed by the remaining Commission members. If there is a question or a real or perceived conflict of interest, the affected member should contact the City Planner and City Attorney for an interpretation of the situation prior to the meeting.

**SECTION 4 - AUTHORITY.** The Commission is vested with the duties and responsibilities prescribed in Kansas Statutes Annotated K.S.A. 12-741 *et seq.*

**SECTION 5 - DUTIES.** The duties of the Commission shall be:

1. Make or cause to be made, adopted and maintained an official Comprehensive Development Plan for the City and any unincorporated territory lying outside the City but within Sedgwick County which in the Commission's opinion forms the total community of which the City is a part, subject to the approval of the Governing Body by ordinance (K.S.A. 12-747);
2. Annually review or reconsider the Comprehensive Plan to determine if the Plan or any portion thereof has become obsolete and to report such status to the Governing Body or propose remedial amendments, extensions or additions to the plan (K.S.A. 12-747[d]);
3. Determine the conformance to the Comprehensive Plan of public improvements, facilities or utilities of a type embraced within the recommendations of the plan which are proposed for construction or authorization and to report upon such conformance or nonconformance within 60 days to the Governing Body unless conformance is otherwise determined by reviewing the City's capital improvement program (K.S.A. 12-748)
4. Prepare, adopt and maintain Zoning Regulations for the City; to recommend the approval of such regulations to the Governing Body; and to hold hearings and make recommendations on all amendments hereto and zoning applications including zoning cases in the MAPC Urban Area of Influence (K.S.A. 12-753 through 12-759 and 12-763);
5. Prepare, adopt and maintain Subdivision Regulations for the City and extraterritorial jurisdiction; to recommend the approval of such regulations by the Governing Body; and to process and approve plats and to transmit them to the Governing Body for the acceptance of dedications thereon (K.S.A. 12-749, 751(a), 752, and 764);
6. Prepare and approve plans for neighborhoods and special project areas;
7. Maintain planning reference files of plans, reports, maps ordinances, regulations and policies accessible to officials, developers and citizens;
8. Maintain cooperation and coordination with the Trustees of the surrounding townships, U.S.D. #260, the Wichita-Sedgwick County Metropolitan Area Planning Commission and Department and with such other county, regional and state planning entities as may be deemed appropriate;
9. Hold hearings, provide plans for and/or make recommendations on such other matters including annexations and vacations as may be periodically assigned to the Commission by the Governing Body; and

**SECTION 6 - COMPENSATION.** Members of the Commission shall serve without compensation for their services; however, members may receive reimbursement for their authorized out-of-pocket expenses including travel when related to the Commission's activities, as the Governing Body by policy may deem desirable.

## **ARTICLE II - OFFICERS, ELECTIONS AND DUTIES**

**SECTION 1 -- OFFICERS.** The officers of the Commission shall be a Chairperson, Vice-Chairperson and Secretary. The Chairperson and Vice Chairperson shall be members of the Commission. The City Planner shall be *ex officio* the Secretary. (K.S.A. 12-745).

**SECTION 2 -- ELECTIONS.** At the first regular Commission meeting in May of each year, the officers shall be nominated and those persons receiving the highest number of votes shall be deemed elected. Officers shall take office following the meeting and serve for one year or until a successor has been elected. Officers may serve for more than one term.

**SECTION 3 - DUTIES.** The duties of the officers shall be:

1. The Chairperson shall preside at all meetings of the Commission. In the absence of the Chairperson, the Vice-Chairperson shall preside. In the absence of both the Chairperson and the Vice-Chairperson, the Secretary shall preside to select a temporary Chairperson and the Secretary shall forthwith relinquish the chair after selection of a temporary Chairperson. The Chairperson shall sign all minutes and other official papers and documents to indicate that they have been approved by the Commission. The Chairperson shall represent the Commission at all meetings with other groups unless another member is designated to perform that function.
2. The Vice-Chairperson shall act in the manner and capacity as the Chairperson in the absence of the Chairperson.
3. The Secretary, or his/her designee, shall perform the following duties
  - a. Prepare the minutes of each Commission meeting and submit them to the Commission for approval;
  - b. Maintain an official file or record of the minutes as approved and signed by the Chairperson and the Secretary and post minutes to the City of Derby Meeting Portal or such other repository as may be established from time to time;
  - c. Attest to resolutions and certificates adopting the Comprehensive Plan and amendments thereto and maintain an official file of Comprehensive Plan documents and accompanying adoption materials and ordinances;

- d. Distribute to each Commission member all current material relating to the Comprehensive Plan and Zoning and Subdivision Regulations and maintain official copies of the same pursuant to City Code and state law; and
- e. Prepare and distribute agendas for each Commission meeting in coordination with the Chairperson. (See Article III, Section 7 on Agendas.)

### **ARTICLE III - MEETINGS**

**SECTION 1 - REGULAR MEETINGS.** Regular meetings of the Commission will be on the first and third Thursday of every month, unless changed by the Commission. All meetings shall be held in the Council Room of City Hall beginning at 6:30 p.m.; provided, however, that the Commission may vote to adopt another hour, date or place of meeting. The Commission may vote to establish procedures for remote participation when a situation or condition limits or restricts the ability for Commissioners and/or the public to attend a regular meeting. Any such change shall be given wide publicity for the convenience of persons having business before the Commission

**SECTION 2 - SPECIAL MEETINGS.** Special meetings may be called by the Chairperson or in the Chairperson's absence by the Vice-Chairperson or upon written request of any three members of the Commission. When a special meeting is called, reasonable notice as to date, time, place, manner and purpose for the meeting shall be given by the Chairperson. The announcement of a special meeting at a regular meeting shall constitute notice to those persons present. Commission members and the Governing Body shall be notified by the Chairperson including all persons designated to receive the agenda on a regular basis. (See Article III, Section 7 on Agendas.) No items other than those identified in the notice shall be considered at a special meeting.

**SECTION 3 - ADJOURNED MEETINGS.** If the business before the Commission is not completed, the Commission by motion may adjourn the meeting or a specific agenda item to a specified date, time and place until the matters on the original agenda or the specified item are acted upon. When such a motion is made known to those persons in attendance, no further notice need be given.

**SECTION 4 - OPEN MEETINGS AND CLOSED SESSIONS.** Pursuant to the Kansas Open Meetings Act, all meetings of the Commission except for executive sessions are open to the public, unless remote participation procedures have been established pursuant to Article III, Section 1 on Regular Meetings. Closed sessions, if deemed necessary, may be held to deliberate a rezoning application including a special use permit wherein such action is considered to be a quasi-judicial function or as otherwise authorized by state law. The motion to recess for a closed/executive session shall be placed in the minutes and include (a) a statement of describing the subjects to be discussed; (b) the statutory justification for closing the meeting; and (c) the time and place at which the open meeting will resume, all in accordance with the Kansas Open Meetings Act, K.S.A. 75-4317 *et seq.* In such closed sessions, no binding vote or action may be taken.

**SECTION 5 - WORKSHOP SESSIONS.** The Commission may meet at a regular or special meeting in a workshop session for a general discussion on one or more topics or for a training session. The Kansas Open Meetings Act applies and no binding action may be taken. Regular minutes are not required but a record of attendance and a brief summary of the subject(s) discussed should be made.

**SECTION 6 - QUORUM.** A quorum for the conduct of business shall be six members. In the absence of a quorum or at the impending loss of a quorum during a meeting, the presiding officer after consultation with those members present may adjourn the meeting to a specified date, time and place or table an agenda item. When such information is made known to those persons in attendance, no further notice need be given.

Member abstaining from voting may be counted when determining whether a quorum is present; however, members having a conflict of interest or who are disqualified from voting may not be counted as part of the quorum for the item where they have a conflict of interest or are otherwise disqualified from voting.

**SECTION 7 - AGENDAS.** The Secretary shall oversee the preparation of an agenda of all matters to come before the meeting and to have it mailed or delivered to the Commission members in advance of the meeting. Copies of the agenda shall be posted to the City of Derby Meeting Portal or such other repository as may be established from time to time and also shall be furnished to each party having an item on the agenda and to any person requesting an agenda or a notice of the date, time and place of a regular or special meeting of the Commission under the Kansas Open Meetings Act. Any member of the Commission may request that an item be placed on the agenda by advising the Secretary, or his/her designee, no later than noon on the eighth day preceding the next regular meeting. If the number of applications received for zoning or platting would create an unduly long Commission meeting, the Secretary may carry over such items on a first-come, first-served basis to the next Commission meeting unless already advertised for public hearing. (See Article IV, Section 1 on the Order of Business).

**SECTION 8 - RECORDING OF MEETINGS.** The Secretary shall keep complete records of all proceedings of the Commission and shall prepare and maintain permanent minutes to be kept in a file or record available for public view. Copies of the minutes shall be furnished to all persons or bodies making such a request to the Secretary. The Secretary may make such charges as are necessary to recover the cost of making such copies.

#### **ARTICLE IV - CONDUCT OF MEETINGS**

**SECTION 1 - ORDER OF BUSINESS.** The general order of business shall be as follows unless otherwise decided by the Commission:

- a. Roll Call
- b. Consideration of the minutes

- c. Public Forum
- d. Public hearings
- e. Plats
- f. Site plans
- g. Committee and staff reports
- h. Announcements
- i. Miscellaneous
- j. Adjournment

Off-agenda items may be added to and scheduled items may be removed from the agenda at the beginning of a regular meeting by motion approved by a majority of the Commission members present and voting. No items may be added to the agenda of a special meeting.

**SECTION 2 - APPEARANCE BEFORE THE COMMISSION.** When a public forum or public hearing is held, applicants, individuals or their representatives who feel that they will be affected by any action of the Commission may appear to present views and statements either for or against agenda items, and such participation may be remote when remote participation procedures have been established pursuant to Article III, Section 1 on Regular Meetings. Written communication may also be submitted to the Commission. The Commission may at its discretion defer items coming before the Commission if the applicant or petitioner is not present in person or remotely and/or has not submitted written communication.

**SECTION 3 - ACTIONS.** In all formal matters, the Commission shall act by motion unless a resolution is required by law or governmental regulations. All notices shall be given in accordance with state law. Substantive motions before the Commission shall be restated by the Chairperson before a vote is taken. Every motion on a substantive matter shall set forth reasons based on the discussion. Action shall be taken on each agenda item presented at the conclusion of discussion of that item.

**SECTION 4 - VOTING.** Unless otherwise provided by state law or by ordinance of the City, the Commission shall act by a majority vote of the members present and voting. A record of all proceedings of the Commission shall be kept. Voting shall be by individual voice ballot, written ballot or show of hand; shall be tallied and the results determined by the Chairperson. In the event of a tie or a divided vote, see Article IV, Sections 8 and 9 on Parliamentary Procedure.

**SECTION 5 - PARLIAMENTARY PROCEDURE.** All meetings of the Commission shall be conducted in accordance with these Bylaws and procedures adopted by the Commission, unless otherwise required by state law:

1. A second shall be required for all motions.
2. The presiding officer shall have the right to make motions and to second motions without vacating the chair.

3. Motions to "receive and file" shall not be debatable.
4. Substitute motions may be made for prime motions provided that substitute motions are voted on before the prime motion. Substitute motions shall be made only once and shall be debatable only if the prime motion was debatable. A substitute motion may be made without the consent of the maker of the prime motion.
5. Motions to reconsider any item shall be made by one of the members voting in favor of the item to be reconsidered. Motions to reconsider shall only be considered at the same meeting at which the item was decided.
6. The Commission may suspend the rules provided that: (a) the motion to suspend the rules takes precedence over other prime motions; (b) the motion shall state the specific purpose and rule to be suspended; (c) no such motion shall be considered approved unless the length of time such suspensions will be in effect has been specified; (d) the motion shall be approved by a majority of the quorum; and (e) no suspension of the rules shall be considered permanent.
7. Participation from the floor (audience) on any matter may be limited as to time at the discretion of the presiding officer when in his or her opinion such participation is repetitious; contains statements derogatory to the character, integrity or actions of the Commission or any member without support of such allegations; or when the course of business due to the number of matters to be considered and/or number of people requesting to be heard will not reasonably permit further participation. Those persons speaking on a given item from the floor should first be recognized and then address their remarks to the presiding officer. Each member of the Commission may speak to an issue as many times as may be desired.
8. The presiding officer shall have the right to vote. If the officer chooses not to vote, he or she shall automatically be considered to have abstained from voting. (See Article IV, Section 10 below on Parliamentary Procedure.)
9. When a divided vote occurs, the presiding officer shall call for a roll-call vote. The Secretary shall enter into the minutes the result by name of all roll-call votes.
10. Members of the Commission have a duty to vote, but may abstain because of a conflict of interest or other conflict that appears to make voting on an issue improper. Any member who abstains must state, for the purpose of its inclusion in the minutes, the reason for the abstention. For all purposes other than matters where an affirmative vote by the Commission is required by state law or where the abstention is due to a conflict of interest, an abstention counts as a vote for the prevailing side.

11. Subject to these provisions, the presiding officer shall decide all points of order and procedure, unless overruled by a majority of the total membership of the Commission.

## **ARTICLE V - HEARING PROCEDURES**

**SECTION 1 - INTENT AND PURPOSE.** It is the intent of the Commission to hold fair and impartial hearings on all matters requiring a public hearing at which adequate legal notice has been given to all concerned parties. The purpose of such hearings is to make it clear that decisions are based on the relevant evidence presented and that well organized hearings and procedures will lead to legally defensible decisions, which are not arbitrary, discriminatory or unreasonable. To ensure fairness, the hearing room should be able to accommodate all persons wishing to attend, unless remote participation procedures have been established pursuant to Article III, Section 1 on Regular Meetings, and to enable them to properly hear the proceeding.

*Ex parte* contacts, i.e., those contacts in the form of verbal or written communication outside of a hearing, are discouraged. Commission members should (a) come to a hearing favoring neither side; (b) have no personal interest in the outcome other than that shared by the community-at-large; (c) treat both sides fairly and impartially; and (d) base their decisions solely on the facts presented as evidence before the Commission. Any facts determined by personal investigation should be reported to the Commission at the hearing as *ex parte* information.

### **SECTION 2 - ORDER OF PROCEEDINGS FOR ZONING HEARINGS.**

Applications for rezoning amendments and special use permits that are site-specific land use decisions are considered quasi-judicial proceedings. The latter includes the procedural due process elements of notice and opportunity to be heard in a fair, open and impartial manner. At the end of the hearing, the Commission shall adopt a written report or place in the minutes a statement summarizing the evidence and stating the factors that it considered in arriving at its decision. The following order of proceedings shall be used for all such rezoning and special use hearings:

1. Determination that a quorum is present.
2. Determination that proper notice has been given.
3. Report of *ex parte* contacts with Commission members.
4. Introduction of application.
5. Presentation by applicant, which shall be limited to five minutes unless such time is extended by majority vote of the commission.
6. Commission and staff question applicant.



7. Public comments on proposed application. Each presenter shall be limited to five minutes unless such time is extended by majority vote of the commission.
8. Receipt of written communications or petitions.
9. Applicant presents closing comments, which shall be limited to five minutes unless such time is extended by majority vote of the commission.
10. Staff presents any closing comments.
11. Public portion of the hearing closed by the presiding officer.
12. Commission deliberations.
13. Review findings and factors on which recommendation is based.
14. Motion to recommend to the Governing Body the approval, disapproval or modification of the application or to table the agenda item to a specific date, time and place.

While no further public comments will be received after the hearing is closed, the Commission may question any participant at any time during the proceedings.

**SECTION 3 - LEGISLATIVE HEARINGS.** Hearings for the adoption of comprehensive plans and zoning and subdivision regulations and amendments thereto are considered legislative in nature. The order of proceedings for hearings in Article V, Section 2 above may be modified for a legislative hearing as to the role of the applicant and the findings and factors on which a decision is based. In any event, the Commission's recommendation to the Governing Body shall be in writing accompanied by a written summary of the hearing thereon.

## **ARTICLE VI - COMMITTEES**

**SECTION 1 - COMMITTEES AND LIAISON REPRESENTATIVES.** The Chairperson, with the consent of the Commission, may appoint standing and ad hoc committees and liaison representatives as may be needed to assist in the business of the Commission. The membership of such committee(s) and liaison representatives may consist of all Commission members or part Commission members or be all non-Commission members. All such committees and representatives shall be provided a formal charge and shall report to the Commission their findings and recommendations unless otherwise directed.

The Secretary shall serve as the Commission's liaison representative to the Board of Zoning Appeals. The Secretary shall periodically report to the Commission on the nature of pending appeal applications and the disposition thereof by the Board of Zoning Appeals.

All standing committees and liaison representatives shall be appointed at the next regular Commission meeting following the election of officers. They shall take office following the meeting of their appointment and serve for one year or until their successor has been appointed. Such committees may elect officers unless otherwise designated by the Chairperson and established such rules of procedure, as they deem desirable.

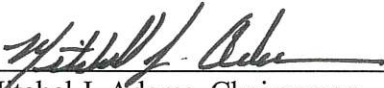
## **ARTICLE VII - AMENDMENTS TO BYLAWS**

**SECTION 1 - AMENDMENTS.** The Commission may, by a majority vote of the total membership thereof and upon approval by the Governing Body of the City, amend these Bylaws or any provision thereof, at any time when the same is not in conflict with or in contravention of the laws of the State of Kansas or ordinances of the City of Derby, Kansas.

Notices of the proposed amendments shall be furnished by the Secretary to all members of the Planning Commission and of the Governing Body not less than seven calendar days prior to the meeting at which such amendments are to be considered. A current copy of the Bylaws of the Commission, and such amendments thereto as may from time to time be adopted, shall be maintained by the Secretary and filed with the City Clerk.

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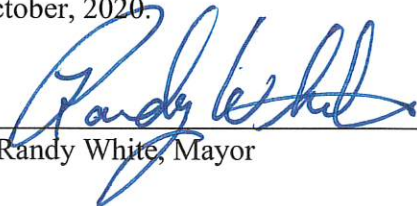
**Section 2.** The above and foregoing Bylaws are hereby adopted as the Bylaws of the Derby City Planning Commission and recommended for approval by the Governing Body of the City of Derby, Kansas. These Bylaws shall be effective and all previously adopted Bylaws of the Planning Commission shall be repealed, effective the 13th day of October, 2020, following approval thereof by the Governing Body of the City.

  
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Mitchel J. Adams, Chairperson

ATTEST:

  
\_\_\_\_\_  
Scott Knebel, Secretary

**APPROVED** by the City Council this 13<sup>th</sup> day of October, 2020.

  
\_\_\_\_\_  
Randy White, Mayor

ATTEST:

  
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Lynn Ciarleglio, City Clerk

APPROVED AS TO FORM:

  
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Jacqueline R. Butler, City Attorney