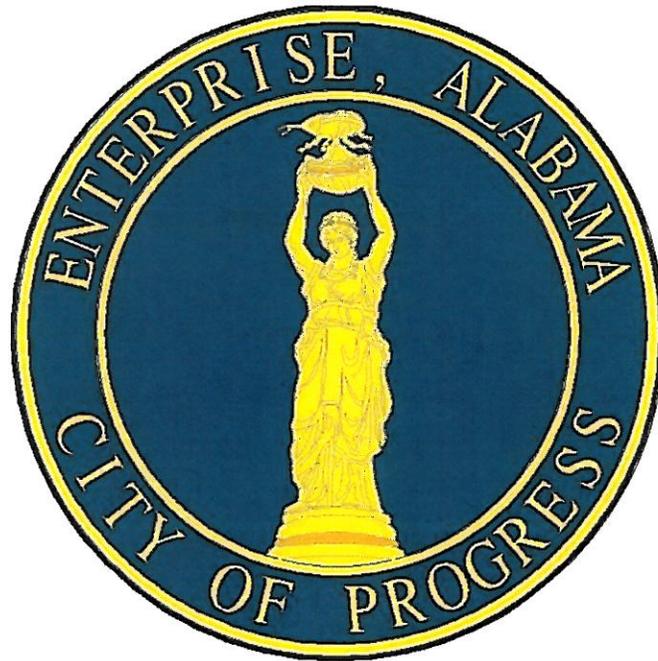


Enterprise Board of Adjustment
By-Laws



Written By:
Enterprise Board of Adjustment
City of Enterprise
May 12, 2010

ENTERPRISE BOARD OF ADJUSTMENT
BY-LAWS

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**ENTERPRISE BOARD OF ADJUSTMENT
BY-LAWS**

ARTICLE I. AUTHORITY AND SCOPE

Section 1. Authority and Name

These Bylaws have been prepared and adopted under the authority of, and in conformity with, Sections 11-52-80 and 11-52-81 of the Code of Alabama, 1975, as amended; and the Zoning Ordinance of the City of Enterprise, Alabama.

The entity created under the statutory authority cited above shall be designated as the Enterprise Board of Adjustment.

Section 2. Membership

The Board shall consist of five (5) Members and two (2) Supernumerary Members whose appointment and terms of office shall be as specified in Section 11-52-80(a) of the Code.

Members are expected to attend and participate in all meetings and hearings held by the Board unless some unavoidable circumstance makes attendance impossible. Members who find that they will be unable to attend a meeting should notify the Chairman. A Member who misses three (3) consecutive meetings without notifying the Chairman shall be required to explain the reasons for such absences. The Chairman may forward a request to the City Council to begin the process of removing a Member from the Board.

As per Alabama Code Section 11-52-80(a), appointed Members may be removable for cause by the appointing authority upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any Member whose term becomes vacant.

Supernumerary Members are encouraged to attend all meetings of the Board so that they will become familiar with the work of the Board and be available should they be needed. As far as possible, the Supernumerary Members should be called upon on an alternating basis when needed so that each of them has the same opportunity to serve. When called upon to serve the Board, a Supernumerary Member shall function and have all the rights and responsibilities of a Member.

Resignations from the Board shall be made in writing to the Chairman who will then forward a copy of the letter of resignation to the City

Council. It is the desire of the Board that the Council name a replacement as soon as possible.

Section 3. Purpose and Scope

Chairman, or acting Chairman, shall further have all powers as set out in Alabama Code Section 11-52-80.

The purposes of the Board are set forth in Section 11-52-80(d) of the Code of Alabama and the City of Enterprise Code of Ordinances as follows:

1. To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an Administrative Official in the enforcement of the Ordinance.
2. To hear and decide special exceptions as specified in the Ordinance.
3. To authorize upon appeal in specific cases such variance from the terms of the Ordinance will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of the Ordinate will result in unnecessary hardship.
4. Any other purpose provided by Alabama Law or The City Enterprise's Zoning Ordinances.

Article II. Organization and Operation

Section 1. Office and Personnel of the Board

The office of the Board shall be in the City Hall of The City of Enterprise. Originals and copies of all official documents, records, minutes, maps, and other materials relating to the decisions, actions and business of the Board shall be filed there. The City of Enterprise shall assign such personnel as it deems appropriate to create and maintain an appropriate filing system; handle all requests for access to the public records; and receive, record, and prepare all materials on matters which require consideration and action by the Board.

The Board shall also assign to one staff person the responsibilities of recording secretary. This person shall be responsible for recording and transacting the notes of all official Board meetings, and for preparing draft minutes for circulation to and approval by the Board Members.

Section 2. Officers and their Election

The officers of the Board shall be a Chairman and Vice-Chairman. These officers shall be Members of the Board, and shall have all the powers available to such Members, including the discussion of and voting upon all matters coming before the Board.

Officers shall be elected by the Members at the Annual Meeting and shall serve for a one year term of office with the option of being re-elected. The Chairman may appoint a Nominating Committee to recommend a slate of officers, and nominations may be made from the floor. A nominee receiving a majority vote shall be declared, elected and shall take office immediately.

Vacancies in offices shall be filled as they occur using the same procedure outlined above.

Section 3. Duties of Officers

The Chairman shall preside at all meetings and hearings of the Board, and shall have the duties normally conferred upon such office by parliamentary usage. The Chairman shall also have the power to call special meetings, appoint committees and perform such other duties as may be prescribed by these By-Laws

The Vice-Chairman shall act for the Chairman in the latter's absence, and in doing so shall have all the powers ascribed to that office.

Section 4. Committees

Upon resolution of the Members, the Chairman may appoint committees for whatever purpose and time period the Board directs. Such committees shall present their findings and recommendations to the Board; and when they have fulfilled their responsibilities they shall be discharged by notice from the Chairman. Supernumerary Members shall be eligible to serve upon committees.

Section 5. Meetings

Regular Meeting: Regular meetings of the Board shall be held on the second Wednesday of each month at 4:30 p.m. in the Council Chamber or Mayor's Conference Room in City Hall or at such other dates and times as the Board determines. All Members and Supernumerary Members shall receive notice of such meeting, plus an agenda, any materials relating to the items on the agenda, and the draft of the minutes of the previous meeting, not less than 48 hours prior to the time of the meeting. If there is a conflict with a public holiday or some other

event, the date and time of the meeting can be changed. If there is no business to come before the Board, a notice to this effect and cancelling the meeting shall be sent to the Members and Supernumerary Members by the Chairman not less than 48 hours prior to the time of the meeting.

Annual Meeting: The Board shall hold an Annual Meeting every year. The main business at the Annual meeting shall be the election of officers and the review and amendment as necessary of these By-Laws.

Special Meeting: Special meetings may be called by the Chairman as necessary. Special meetings shall also be called by the Chairman upon receipt of a written request signed by at least three (3) Members. All Members and Supernumerary Members shall be notified of special meeting at least 48 hours prior to the time at which they are to take place. These requirements can be waived, and special meetings set, by unanimous consent of all Members of the Board.

Executive Session: All meetings and hearings of the Board or its committees shall be open to the public. Upon passage of an appropriate resolution, the Board may go into executive session. Such sessions may only be called to discuss matters relating to personnel or to pending or potential litigation or any other permissible reason such as the good name and character of an individual or such other grounds as may be allowed pursuant to applicable law.

Section 6. Submission Procedures

To ensure that adequate information will be available to the Board, the following procedures shall be followed.

Appeals from Action of the Board of Adjustment: Any party aggrieved by final judgment or decision of the Board may, within fifteen (15) days thereafter appeal there from to the circuit court or court like jurisdiction, by filing with the Board and a the circuit court a written notice of appeal specifying the judgment or decision from which appeal is taken. In case of such appeal, the Board shall cause a transcript of the proceedings in the case to be certified to the court to which the appeal is taken and the cause in such court shall be tried *de novo*.

Variances: Any property owner may file an application for a variance from the requirements of the Ordinance where it is claimed that, by reason of exceptional narrowness, shallowness, or shape or by reason of other exceptional topographic conditions, or other extraordinary and exceptional situations or conditions of such piece of property existing at the time of the adoption of the Ordinance, the strict application and literal enforcement of the provisions of the Ordinance would result

in peculiar, exceptional, undue, and unnecessary hardship upon such owner.

It is the intent of the Ordinance that variances be used only to overcome some physical condition of a parcel of land, which poses a practical difficulty to its development and prevents its owner from using the property in conformance with the provisions of the Ordinance. Any variance granted shall be the minimum adjustment necessary for the reasonable use of the land.

An application for a variance shall be filed with the Building Official or Secretary of the Board at least thirty (30) days before the scheduled hearing date before the Board. The property owner or the authorized agent of the owner on a form made available by the Building Official shall file the application. At least five (5) days prior to the scheduled hearing of the Board, the Building Official shall give written notice of the application to all adjacent property owners. Such notice shall be deemed to be given when deposited in the United States mail, first class postage prepared, addressed to such property owners at their addresses as submitted with the application. Such notice shall state the name of the applicant, the location of the property, the nature of the variance requested and the applicable Sections of the Ordinance, and the time, date, and location of the hearing.

The applicant must prove that the variance will not be contrary to the public interest and that practical difficulty and unnecessary hardship will result if it is not granted. In particular, the applicant shall establish and substantiate that the variance, if granted, will conform to all the requirements and standards listed below:

- a. The granting of the variance will not permit the establishment of a use that is not otherwise permitted in the district in which the property is located.
- b. There must be proof of unique and special circumstances and conditions, fully described in the application, applicable to the land or building for which the variance is sought, which circumstances or conditions are peculiar to such land or buildings and do not apply generally to land or buildings in the vicinity, and which circumstances or conditions are such that the strict application of the provisions of the Ordinance would deprive the applicant of reasonable use of such land or buildings.
- c. There must be proof of unnecessary hardship. It must result from the application of the Ordinance. It must be suffered directly by the property in question, and evidence of other variances granted under similar circumstances shall not be considered. It is not

sufficient proof of hardship to show that greater value or profit would result if the variance were granted. Furthermore, the hardship claimed cannot be self-created; nor can it be established on this basis by one who purchases the property with or without knowledge of the restrictions.

- d. The granting of the variance will not impair an adequate supply of light and air to adjacent property, substantially increase congestion in the public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values within the adjacent neighborhood.
- e. The granting of the variance will not confer upon the applicant any special privilege that is denied by the Ordinance to other land, structures, or buildings in the same zoning district.
- f. The granting of the variance is necessary for the reasonable use of the land or building and the variance as requested is the minimum variance that will accomplish this purpose.
- g. The granting of the variance shall be in harmony with the general purpose and intent of the regulations imposed by the Ordinance on the district in which the property is located, and shall not be injurious to the neighborhood or otherwise detrimental to the public welfare.

The Board may prescribe any safeguards or conditions that it deems necessary to secure substantially the objectives of the regulations or provisions of the Ordinance to which the variance applies.

Special Exceptions: All uses permitted by special exception as listed in Article IV shall require the submission of an application to the Board of Adjustment. Such application shall be filed with the Building Official at least thirty (30) days before the scheduled hearing date before the Board of Adjustment. The application shall be filed by the property owner or the authorized agent of the owner on a form made available by the Building Official.

At least five (5) days prior to the scheduled hearing of the Board of Adjustment, the Building Official shall give written notice of the proposed special exception to all adjacent property owners. Such notice shall be deemed given when deposited in the United States mail, first class postage prepared, addressed to such property owners at their addresses as submitted with the application. Such notice shall state the name of the applicant, the location of the property, the proposed use, and the time, date and location of the Board's hearing.

The Board of Adjustment shall review the application for compliance with the Ordinance and all other applicable codes and Ordinances of the City. In particular the Board shall determine that satisfactory provisions have been made concerning the following, among other considerations of the Ordinance:

- a. Access to and from the property and the proposed structure and/or uses, with particular attention to vehicular and pedestrian safety and convenience, traffic flow and control, and emergency access.
- b. The location and accessibility of off-street parking and loading areas.
- c. The location and accessibility of refuse and service areas and their potentially adverse affects upon surrounding properties.
- d. The screening and buffering of potentially adverse views and activities from surrounding properties.
- e. Control of noise, glare, odor, surface water runoff, and other potentially disturbing impacts upon surrounding properties.
- f. The availability, location, and capacity of utilities.
- g. The location and scale of signs and lighting with particular reference to traffic safety, glare, and visual compatibility with surrounding properties.
- h. The bulk, density, and lot coverage of structures, and yards and open areas, with reference to their compatibility with the character of the surrounding area.

The Board may impose such conditions for approval that it deems necessary in the particular case to protect the public interest and the intent of the Comprehensive Plan and the Ordinance in relation to the items listed above and as may otherwise be reasonably necessary. Such conditions shall apply to the land, structure, and use for which the special exception is granted and not to a particular person. Violations of conditions lawfully attached to any special exception shall be deemed to be violations of the Ordinance.

The Board of adjustment may also grant special exceptions to allow the location and usage of a manufactured home for human habitation in any zoning district of the city permitting residences. Applicants for such special exception shall apply in writing showing justification and shall provide a list of all adjacent property owners showing mailing addresses as well as a scale drawing of the proposed site with the desired manufactured home location shown.

Such special exception may be granted only if all of the following conditions are met:

- a. Such manufactured homes must be for the use of the property owner or the property owner's family, to include in-laws, and are not to be rented or leased to any other person or persons.
- b. The property owner must first demonstrate extenuating circumstances such as family hardship, practical difficulty, economic reasons deemed to be acceptable by the Board of adjustment.
- c. Special exceptions may be granted for any period of one to five years. At the termination of the granted period, the property owner must either remove the manufactured home from this location, or apply for another special exception.
- d. Such special exceptions are not transferable. If there is a change of land ownership, the new property owner must apply for a new special exception if desired.
- e. Before granting or denying any such request the Board of adjustment, after conducting a public hearing, shall consider the justifications or circumstances involved as well as the objections or lack of objections of adjacent property owners, and the possible negative effects on neighborhood property values or qualities of life.

The Board of Adjustment may also grant special exceptions for business use of a manufactured home in a business zone upon showing of catastrophic circumstances created by Act of God or casualty damage. Such special exceptions will be valid for a period not exceeding one year and are not transferable.

Article III. Conduct of Meetings

At the regular monthly meetings of the Board, the order of business shall be as follows:

Roll call and establishment of a quorum shall consist of four Members.

Consideration of minutes of the previous meeting

Old Business (Consideration of items that have been carried over from previous meeting(s))

New Business (Consideration of an action on the items that are on the current agenda)

Citizens Communication (This allows the Chairman to recognize anyone who wishes to address the Board on a topic that is not on the agenda)

Adjournment

The overall order of business, or the order of consideration of items within the categories of business, can be changed upon passage of an appropriate motion or resolution by the Members present.

Section 2. The Agenda

Regular Meetings: For the regular monthly meetings of the Board the main portion agenda is new business. The items of new business shall be placed on the agenda in the chronological order in which they were received.

In some circumstances the Board may want to change the order in which items are addressed. For example, if the Board determines that because of the interest level of a large crowd in attendance on one or more issues before the Board, a Member may make a motion to re-order the agenda.

1. The item of interest can be moved to the top of the agenda, this has the advantage of addressing this item first, having the large crowd leave, and moving through the rest of the meeting in relative calm and rapid manor. The disadvantage is that all the people present for the relatively routine matter, have to sit through the lengthily and contentious arguments.
2. The item of interest can be moved to the end of agenda. The routine matters can then be dealt with, and the people present for them can leave. This alternative however, has the disadvantage of having a large group of people getting increasingly restive as a series of routine matters are addressed.

Any changes to the order of new or to overall order of business shall be made only upon approval by an appropriate motion by the Board.

Section 3. Order of Presentation

To ensure that all matters coming before the Board are treated in an equitable and business like manner, the following order of presentation shall be used as a guide.

1. A statement by the Chairman describing the matter to be addressed and the function and responsibilities of the Board in relation to it.
2. Presentation by staff of information concerning the item.
3. Presentation by the applicant or the applicant's representative(s).
4. An announcement by the Chairman that the meeting is now open for public comment. The Chairman shall have the discretion to ask first for all those in support and then for all those in opposition, or vice versa.
5. A statement from the Chairman that the public hearing is closed.
6. Discussion of the item among Board Members, culminating in a motion duly moved and seconded.
7. Discussion of the motion culminating in a vote on the motion.
8. Announcement by the Chairman explaining the Board's action; and, if appropriate, explaining what other action can or will be taken regarding the matter.

The Members of the Board may ask questions of the staff, the applicant(s) and of any person speaking for or against the item under discussion at any time during the hearing.

Section 4. Rules for Public Comment

The Chairman shall advise all parties interested in addressing the Board to direct their comments and questions to the Chairman, and to refrain from arguing or debating back and forth among the audience.

All persons wanting to make a statement to the Board shall first be recognized by the Chairman, then give their name and address and affiliation for the record, and then make their statement.

When large groups of people are present wanting to address an agenda item, the Chairman may (1) request that a group select one or two spokespersons to present their views, and (2) establish appropriate time limits for individuals to present their comments, such limits to apply equally for to all parties addressing the Board.

The Chairman shall make all reasonable efforts to ensure that everyone addressing the Board keeps their statements relevant to the item and to avoid being repetitive.

The Chairman imposes a three (3) minute limit on presentations.

The Chairman shall make all reasonable efforts to maintain order and decorum in the meeting, and shall have the right to terminate the hearing in the event that the proceedings become unruly and unmanageable.

Section 5. Motion and Resolutions

Motions and resolutions are the official record of the Board's actions. They should, therefore, state the findings and reasons supporting the action being taken; and any conditions attached to the decision should be clearly and precisely described.

Section 6. Voting

Once a motion has been made, seconded, and discussed it shall be decided by a vote of the Members present. In accordance with Section 11-52-80(b) of the Code, all votes shall be by a show of hands and the minutes of the meeting shall show the vote of each Member, and whether a Member was absent or failed to vote. The Chairman may require a formal roll call vote.

The concurring vote of (4) four 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 any such Ordinance or to effect any variation in such Ordinance.

Section 7. Adjourned/Recessed Meeting

The Board may adjourn/recess a regular meeting if all the business cannot be disposed of during the time allotted. In such case, the time and place at which the meeting will be continued shall be announced at the time of adjournment. Provided there is no change in the announced time and place of the adjourned meeting, no further notification shall be necessary.

Section 8. Deferral and Continuance

There may be times when the Board is not ready to make a decision and needs more time to consider an item of business. Reasons for such hesitation could include the need for additional information, the

presentation of information during the hearing which was not previously available and which raises new and significant issues to be considered, or the need to include other parties not currently represented in the discussions.

In these cases, the Chairman can entertain a motion to defer action, to table the item, or to continue the hearing. This motion should specify the reason(s) for deferral or continuance; and, most importantly, state the time and place when the matter will be brought up for further review and/or action. If it is not possible to determine the place and time of the deferred or continued meeting, the names, addresses, and phone numbers of all interested parties present should be obtained so that they can be notified when the time and place have been set.

Section 9. Re-Hearing

All decisions rendered by the Board shall be final and binding upon all parties. No appeal of an administrative decision or decision on an application for a variance or a special exception shall be reheard, and no further application shall be accepted once a decision has been rendered except less than one or more of the following conditions:

- a. New evidence or information pertinent to the request has been discovered which was not available to the applicant at the time of the original hearing.
- b. The decision resulted from an error in procedures required by the Ordinance or State law and made by the Board, the Building Official, or any other City Officials.
- c. The decision resulted from an error in substantive law under the provisions of the Ordinance or the Code of Alabama, 1975, as amended.

Where no error is alleged and no new evidence is available, a new or more effective presentation by the applicant shall not constitute grounds for rehearing a decision of the Board. Any applicant wishing a rehearing shall appear before the Board to present one or more of the qualifying conditions listed in this Section.

If the Board finds that one or more of the qualifying conditions exist, the applicant shall be permitted to submit a new application. This new application shall be heard at a subsequent Board meeting, and shall be subject to all regular advertising and procedural requirements. Allowing a new application does not obligate the Board to grant the request.

Section 10. Minutes

The minutes are the official record of the Board's deliberations and decisions. The minutes should be recorded so the discussion of each item and the actions taken in sufficient detail so that anyone can understand the nature of the discussion, the major issues and questions addressed; and, especially discern the relationship between the action and the preceding discussion. The action should be the logical culmination of all that has gone before.

To this end the Recording Secretary shall tape record the Board's proceedings. The tapes shall then be used to prepare a written set of draft minutes. The draft minutes shall be distributed to each Member and Supernumerary Member prior to the next meeting. At the next meeting the minutes shall be considered as an item of business, amended as necessary, and approved.

Following approval, one copy of the minutes shall be signed by the Chairman and the Secretary and filed as permanent and official record in the Board's office. The tape may be kept for ninety (90) days and may then be erased or re-used. However, if there is a high interest item or contentious item on the agenda, and/or if litigation is anticipated, the tape may be maintained so that it can be used for clarification of the record. This decision will be made by the Board at the meeting.

Section 11. Parliamentary Procedures

Decision making by the Board should be made using acceptable rules of parliamentary procedure (formal and informal). To this end the Board shall use the latest edition of **Robert Rules of Order** as the guide for its deliberations, motions, and resolutions. In addition, both the Chairman and Vice Chairman should be generally familiar with Robert's Rules, and a copy of the latest edition shall be available for use at every meeting.

A map of the City showing all streets and property boundaries and all zoning districts should also be available at all meetings of the Board.

Article IV Conduct of Members

Section 1. Conflict of Interest

Personal: Each Member and Supernumerary Member should review the material received prior to meeting with particular attention to the identification of the applicant(s) and others involved in items on the agenda. The purpose is to identify any personal conflict of interest, either actual or legal, such as:

1. Kinship, either by blood, marriage, or adoption.
2. Appointment as a trustee or administrator of an estate.
3. Appointment as an agent or broker.
4. Appointment as a consultant on a retainer.
5. A relationship as an employer or an employee.
6. A relationship as a mortgager or mortgagee.
7. A relationship as a tenant or landlord.

Property Related: Each Member and Supernumerary Member should review the materials received prior to a meeting with particular attention to the specific property and surrounding properties. A conflict of interest may arise if a Member or Supernumerary Member has any interest; whether directly or through a third party as identified above, in such properties.

Action Required: Any Member who becomes aware of a conflict shall address the Chairman when the item is brought up on the agenda, declare that a conflict exists, step down from the meeting and not participate further in any of the proceedings relating to that matter.

A Member who becomes aware of a conflict of interest during the presentation or discussion of a matter shall gain the attention of the Chairman, declare that a conflict of interest exists, step down from the meeting and not participate further in the proceedings relating to that item.

If a Member has declared that a conflict of interest exists, and further finds that as the discussion proceeds it is a particularly sensitive issue, that Member shall request a special privilege of the Chairman and withdraw from the place of the meeting until the Board has reached its decision on the matter.

These rules do not apply in those situations where a Board Member is an adjoining owner. In such a case the Member shall excuse himself from the Board, move to the audience and there, exercise his/her rights to present their views as an interested party. Such Member shall not, of course, vote on the matter.

Section 2. Ex Parte Contacts

Personal Contact: If a non Member initiates contact with a Member or Supernumerary Member in connection with a specific case that will be coming before the Board for action, the following actions should be taken:

First, attempt to dissuade the person from pursuing the discussion. Suggest that the proper place for them to make their comments is to the Board, either at the meeting or in writing, if this fails, listen noncommittally; do not agree or argue with the person's views. Under no circumstances give any indication of your views on the issue or how you might vote.

If you are asked to visit the site of an application, do so if you feel it is appropriate and you may gain some useful information about the request. But again, just observe and listen. Make no comments that could be interpreted as expressing your viewpoint about the request.

At the subsequent Board meeting report any such contacts for the record.

Technically, a Member is a Member only and can only act as a Member when the Board is in session.

Written Materials: Any written information transmitted to a Member of the Board should be forwarded directly to the Recording Secretary for incorporation into the file and the record. The presence of such material should be announced and read during the Board's hearing on the matter.

Information Contacts: These rules are not intended to prevent a Member from obtaining information relative to a matter coming before the Board either by visiting the site and/or talking to interested parties. In such situations the Member shall take pains to avoid giving any indication of his/her views to any interested party.

Article VI. Administration

Section 1. General Authority

The Board shall have and exercise all rights, powers, and authority presently or hereafter provided by law. The adoption of these Bylaws shall not constitute or be construed as a limitation or restriction in any matter whatsoever.

Section 2. Amendment and Revocation

These Bylaws may be revoked or amended at the meeting, following the meeting at which revocation or amendment is introduced and discussed. However, upon unanimous consent of the Members a revocation or amendment may be voted upon at the meeting in which it is introduced. In either case or Article, Section or portion thereof, can only be revoked or amended by the affirmative vote of (4) Members of the Board.

Section 3. Adoption

These Bylaws were adopted by the City of Enterprise, Board of Adjustment on May 12, 2010.


Chairman *Vice Chairman*


Secretary