**BY AUTHORITY**

ORDINANCE NO. COUNCIL BILL NO. _____

SERIES OF 2023 COMMITTEE OF REFERENCE:

**A BILL**

For an ordinance submitting to a vote of the qualified and registered electors of the City and County of Denver at the general municipal election on April 4, 2023, a proposed amendment to the Charter of the City and County of Denver concerning the Board of Adjustment.

**BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:**

**Section 1.** There is hereby submitted to the properly qualified and registered electors of the City and County of Denver for their approval or rejection at a special municipal election to be conducted at the same time and in conjunction with the general municipal election to be held in the City and County of Denver on April, 4, 2023 a proposed amendment to the Charter of the City and County of Denver, as follows:

**Effective upon publication and filing with the Secretary of State in accordance with the Constitution and laws of the State of Colorado, the following sections of the Charter of the City and County of Denver are amended to read as follows:**

**§ 3.2.9 - Zoning.**

~~(H) *Board of Adjustment; creation by Council.* The Council may provide for the appointment of a Board of Adjustment, and in the regulations and restrictions adopted pursuant to the authority of this amendment may provide that the said Board of Adjustment may, in appropriate cases and subject to appropriate conditions and safeguards make special exceptions to the terms of the ordinance in harmony with its general purpose and intent and in accordance with general or specific rules therein contained.~~

~~(I) *Board of Adjustment; appointments.* The Board of Adjustment shall consist of five (5) members, each member to be appointed for a term of five (5) years. The appointing authority may remove a member for cause, upon written charges and after public hearing. Vacancies shall~~

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~~be filled by the appointing authority for the unexpired term of any member whose term becomes vacant.~~

~~(J) *Board of Adjustment; powers.* The Board of Adjustment shall have the following powers:~~

~~(i) 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 this Section or of any ordinance adopted pursuant thereto.~~

~~(ii) To hear and decide special exceptions to the terms of the ordinance upon which such Board is required to pass under such ordinance.~~

~~(iii) To authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of the ordinance will result in unnecessary hardship and so that the spirit of the ordinance shall be observed and substantial justice done.~~

~~(iv) In exercising the above-mentioned powers, the Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken. The concurring vote of 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.~~

~~(K) *Board of Adjustment; procedures.* The Board shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to this Section. Meetings of the Board shall be held at the call of the Chairperson and at such other times as the Board may determine. Such Chairperson, or in his or her absence, the acting Chairperson may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings showing the vote of each member upon each question, 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 Board and shall be a public record.~~

~~(L) *Board of Adjustment; appeals to Board.* Appeals to the Board of Adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the municipality affected by any decision of an administrative officer. Such appeal shall be taken within a~~

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reasonable time, as provided by the rules of the Board by filing with the officer from whom the appeal is taken and with the Board of Adjustment a notice of appeal, specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken.

(M) *Board of Adjustment; effect of appeal.* An appeal stays all proceedings in furtherance of the action appealed from unless the officer from whom the appeal is taken certifies to the Board of Adjustment after the notice of appeal shall have been filed with the officer that by reason of facts stated in the certificate a stay would in his or her opinion cause imminent peril to life or property. In such cases proceedings shall not be stayed except by a restraining order, which may be granted by the Board of Adjustment or by a court of record on application on notice to the officer from whom the appeal is taken and on due cause shown.

(N) *Board of Adjustment, notice and hearing of appeals.* The Board of Adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.

(O) *Board of Adjustment; appeals to court.*

(i) Any person or persons jointly or severally aggrieved by any decision of the Board of Adjustment or any taxpayer, or any officer, department, board or bureau of the municipality may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within thirty days after the filing of the decision in the Office of the Board.

(ii) Upon the presentation of such petition the court may allow a writ of certiorari directed to the Board of Adjustment to review such decision of the Board of Adjustment, and shall prescribe therein the time wherein which a return thereto must be made and served upon the relator's attorney, which shall not be less than ten days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may on application, on notice to the Board and on due cause shown grant a restraining order.

(iii) The Board of Adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

(iv) If upon the hearing it shall appear to the court that testimony is necessary for the

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~~proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct, and report the same to the court with the referee's findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.~~

~~(v) Costs shall not be allowed against the Board unless it shall appear to the court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from.~~

(H) *Appeals, Variances, and Exceptions*. The Council shall provide by ordinance a process and criteria for:

(i) Appeals where it is alleged there is error in any order, decision or determination made by an administrative official in the administration and enforcement of this Section or of any ordinance adopted pursuant thereto.

(ii) Variances from the strict application of zoning regulations.

(iii) Exceptions to the terms of any ordinance adopted pursuant to this Section.

**Section 2.** The ballot shall contain the following title and submission clause:

**REFERRED QUESTION _____**

Shall the Charter of the City and County of Denver be amended concerning zoning; to clarify City Council's zoning power, to remove existing Charter language regarding the Board of Adjustment and require that the procedures for appeals, variances, and exceptions from the zoning code be addressed in city ordinance instead of in the Charter?

**Section 3.** The proper officials of the City and County of Denver as are charged with duties relating to the election shall, before the election, issue such calls, make such certifications and publications, give such notices, make such appointments, and do all such other acts and things in connection with the submission of this Charter amendment to the registered electors of the City and County of Denver at the election as are required by the Constitution and laws of the State of Colorado and the Charter and ordinances of the City and County of Denver.

**Section 4.** The ballots cast at such election shall be canvassed and the results ascertained, determined, and certified in accordance with the requirements of the Constitution

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and laws of the State of Colorado and the Charter and ordinances of the City and County of Denver.

**Section 5.** If any section, paragraph, clause, or other portion of this ordinance is held to be invalid or unenforceable for any reason, the validity of the remaining portions of this ordinance shall not be affected.

COMMITTEE APPROVAL DATE: _____, 2023.

MAYOR-COUNCIL DATE: _____, 2023.

PASSED BY THE COUNCIL _____ 2023

_____ - PRESIDENT

APPROVED: _____ - MAYOR _____ 2023

ATTEST: _____ - CLERK AND RECORDER,
EX-OFFICIO CLERK OF THE
CITY AND COUNTY OF DENVER

NOTICE PUBLISHED IN THE DAILY JOURNAL _____ 2023; _____2023

PREPARED BY: Jonathan Griffin, Assistant City Attorney DATE: _____

Pursuant to section 13-9, D.R.M.C., this proposed ordinance has been reviewed by the office of the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed ordinance. The proposed ordinance **is not** submitted to the City Council for approval pursuant to § 3.2.6 of the Charter.

Kristin Bronson, City Attorney

BY: _____, _____City Attorney

DATE: _____

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