

**CITY OF HIGHLAND HAVEN, TEXAS
ORDINANCE NO. 116**

AN ORDINANCE OF THE CITY OF HIGHLAND HAVEN, TEXAS, AUTHORIZING THE ESTABLISHMENT OF A BOARD OF ADJUSTMENT; PROVIDING FOR MEMBERSHIP; PROVIDING FOR DUTIES AND RESPONSIBILITIES, AS WELL AS RULES AND REGULATIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; AND ORDAINING OTHER PROVISIONS RELATED TO THE SUBJECT MATTER THEREOF.

Whereas, the City of Highland Haven, Texas (the “City”) has approved and adopted a zoning ordinance; and

Whereas, there are times when a resident or outside developer desire to undertake development or redevelopment within the City limits and the City’s ordinances prevent them from undertaking such development or redevelopment in a manner desired; and

Whereas, the City’s Board of Aldermen desire to create a Board of Adjustment to hear requests for variance to the ordinances of the City or grievances from administrative decisions of City officials all in accordance with 211.008-011, Texas Local Government Code.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF HIGHLAND HAVEN, TEXAS, THAT:

Section 1. Findings. The foregoing recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

Section 2. Establishment of the Board of Adjustment and attendant matters. The Board of Aldermen wish to establish a Board of Adjustment, including responsibilities and duties, as set forth below:

BOARD OF ADJUSTMENT

(1) Established

A Board of Adjustments (hereafter in this Section, the “Board”) is established in accordance with the provisions of § 211.008 -211.011 of the Texas Local Government Code, as may be amended, regarding the zoning of cities and with the powers and duties as provided in said code.

(2) **Membership and Procedure**

(a) **Regular Membership.** The Board shall be governed by five (5) members who shall be qualified electors of the City, each to be appointed or re-appointed by members of the Board of Aldermen. The members of the Board shall elect one of themselves to be the Chair of the Board.

(b) **Alternate Members.** The Board shall have two (2) alternate members appointed by the Board of Aldermen.

(c) **Vacancies.** Vacancies shall be filled by an alternate member for the unexpired term of a member whose term becomes vacant. Any member absent for two (2) regular consecutive meetings shall be deemed to have vacated such office unless such absences were:

1. due to sickness of the member or the member's family
2. with leave being first obtained from the Chairman. Vacancies of an alternate member shall be filled by appointment of the Board of Aldermen by majority vote.

(3) **Meetings, Quorum**

Meetings of the Board shall be held at the call of the chair and at such other times as the Board may determine. Four (4) members of the Board shall constitute a quorum for the conduct of business. However, 75% of the membership of the board must hear, and a concurring vote of 75% of the membership is necessary to:

- (a) reverse an order, requirement, decision, or determination of an administrative official;
- (b) decide in favor of an applicant on a matter on which the Board is required to pass under a zoning ordinance; or
- (c) authorize a variation from the terms of a zoning ordinance.

(4) **Duties and Powers**

The Board of Adjustment shall have the powers and duties as indicated in this section, and by Section 211.008, Texas Local Government Code, as now or hereafter amended.

(5) **Hearings**

The hearings of the Board of Adjustment shall be open to the public and notice shall be posted as required under the Sec. 551.041, et seq., Texas Government Code and shall be public, provided that upon the advice and consent of the City Attorney, the Board may go into executive session pursuant to Sec. 551.071, Tex. Gov't. Code.

(6) Rules and Regulations

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 such minutes shall be filed in the office of the City Secretary and shall be a public record. The Board of Adjustment shall act by resolution in which four members must concur. The Board may adopt rules in accordance and consistent with this ordinance as necessary and required. A copy of any such rules shall be furnished to any person requesting same. All rules and regulations shall operate uniformly in all cases and all resolutions and orders shall be in accordance therewith.

(7) Authority

(a) The Board of Adjustment shall have the authority, subject to the standards established in Section 211.009 of the Texas Local Government Code, as amended, and those established herein, to exercise the following powers and perform the following duties:

1. Hear and decide an appeal that alleges error in an order, requirement, decision, or determination made by an administrative official in the enforcement of this ordinance; and
2. Hear and decide special exceptions to the terms of this ordinance when it requires the Board to do so; and
3. Inquire into, on its own motion or upon cause presented by interested persons, the abatement, vacation, demolition, removal, expansion, extension, resumption, repair, reconstruction, or other action, of a nonconformity.
4. Authorize in specific cases a variance from the terms of this ordinance if the variance is not contrary to the public interest and due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship, and so that the spirit of this ordinance is observed, and substantial justice is done.
5. In exercising its authority under "1" above, the Board may reverse or affirm, in whole or in part, or modify the administrative official's order, requirement, decision, or determination from which an appeal is taken and make the correct order, requirement, decision, or determination, and for that purpose the Board has the same authority as the administrative official.
6. The Board shall decide appeals within a reasonable time. Any party to the appeal may appear in person or by agent or attorney at any hearing. The Board may, upon the concurring vote of four (4) members, reverse or affirm, in whole or in part, or modify the

administrative official's order, requirement or decision, and make the correct order, requirement, decision, or determination on the matter appealed from and shall make such order, requirement, decision, or determination as in its opinion ought to be made, and to that end, shall have all powers of the officer or department from whom the appeal is taken.

(8) **Appeals**

1. An appeal may be taken from the decision of an administrative official by an applicant for the permit on which the decision is rendered, by any person or persons directly aggrieved by the decision or by any officer, department, board, or bureau of the municipality affected by the decision.

2. The appellant must file with the Board and the official against whom the appeal is taken a written notice of appeal specifying the grounds for the appeal within fifteen (15) days after the decision has been rendered. The official against whom the appeal is taken shall immediately forthwith transmit to the Board all papers constituting the record of the action that is appealed.

3. An appeal stays all proceedings in furtherance of the action that is appealed unless the official from whom the appeal is taken certifies in writing to the Board facts supporting the official's opinion that a stay would cause imminent peril to life or property. In that case, the proceedings may be stayed only by a restraining order granted by the Board or a court of record on application, after notice to the official, if due cause is shown.

4. The Board shall set a reasonable time for the appeal hearing and shall give public notice of the hearing and due notice to the parties in interest. The appellant party may appear at the appeal hearing in person or by agent or attorney.

(9) **Judicial Review**

Any person or persons, jointly or severally, aggrieved by a decision of the Board of Adjustment, or any taxpayer, or any officer, department, or Board of the City may present to a court of record a petition, duly verified, setting forth that such decision of the Board is illegal, in whole or in part, and specifying the grounds of the illegality. Such petition must be presented within ten (10) days after the date the decision is filed in the Board's office.

If a decision of denial has been rendered by the Board of Adjustment, there shall be a **six (6) month holding period** before any new application may be filed for consideration by the Board of Adjustment for the same request.

(10) Limitations on Authority of Board

- (a) The Board may not grant a variance authorizing a use other than those permitted in the district for which the variance is sought.
- (b) The Board shall have no power to grant or modify specific use permits authorized the Zoning Ordinance.
- (c) Although action may be affected by the Board, a variance or special exception for any parcel of property or portion thereof upon which a Site Plan, Preliminary Plat, Final Plat, or Zoning Amendment, where required, has not been finally acted upon by both the Planning and Zoning Commission and, where required, by the Board of Aldermen, will not be deemed to be granted until said final action has been completed. All administrative remedies available to the applicant shall have been exhausted prior to a hearing by the Board. The Board shall have no power to grant a zoning amendment.

(11) Variances

- (a) In order to grant a variance from zoning regulations, the Board must make written findings that the variance creates undue hardship, using the following criteria:
 - a. That literal enforcement of the controls will create an unnecessary hardship or practical difficulty in the development of the affected property; and
 - b. That the situation causing the hardship or difficulty is neither self-imposed nor generally affecting all or most properties in the same zoning district; and
 - c. That the relief sought will not injure the permitted use of adjacent conforming property; and
 - d. That the granting of a variance will be in harmony with the spirit and purpose of these regulations.
- (b) A variance shall not be granted to relieve a self-created or personal hardship, nor shall it be based solely on economic gain or loss, nor shall it permit any person a privilege in developing a parcel of land not permitted by this Ordinance to other parcels of land in the particular zoning district. No variance may be granted which results in undue hardship on another parcel of land.
- (c) The applicant bears the burden of proof in establishing the facts justifying a variance.
- (d) Any variance authorized by the Board, either under the provisions of the Zoning Ordinance, or under the authority granted to the Board under the Statutes of the State, shall authorize the issuance of a building permit, Certificate of Occupancy or other relief as the case may be for a period of ninety (90) days from the date of the favorable action

on the part of the Board, unless said Board in its minutes shall, at the same time, grant a longer period.

(e) If a building permit or a certificate of occupancy shall not have been applied for or issued within a ninety-day period or as the Board may specifically grant, the variance shall be deemed waived; and all rights thereunder terminated. The Board may grant one or more extensions to this time period upon the applicant's request and if due cause is shown.

(12) Special Exceptions

(a) The Board shall have the authority to hear and allow special exceptions for buildings and only when the use is conforming.

(b) In granting a special exception, the Board shall not authorize uses that are not allowed under the terms of this ordinance for the respective district.

(c) A proof of hardship is not required for granting a special exception.

(d) The granting of an allowed Special Exceptions by the Board is subject to full and complete compliance with any and all conditions listed, together with such other conditions as the Board may impose for protection of public health or safety.

(e) Any special exception authorized by the Board, either under the provisions of the Zoning Ordinance, or under the authority granted to the Board under the Statutes of the State, shall authorize the issuance of a building permit, Certificate of Occupancy or other relief as the case may be for a period of ninety (90) days from the date of the favorable action on the part of the Board, unless said Board in its minutes shall, at the same time, grant a longer period.

(f) If a building permit or a certificate of occupancy shall not have been applied for or issued within a ninety-day period or as the Board may specifically grant, the special exception shall be deemed waived; and all rights thereunder terminated. The Board may grant one or more extensions to this time period upon the applicant's request and if due cause is shown.

(13) Procedures

(a) Application and Fee - An application for granting a variance or special exception by the Board, other than an appeal, shall be in writing using forms provided by the City and shall be accompanied by a fee. The application for a special exception shall be the same as for a zoning variance.

(b) Notice and Hearing - The Board shall hold a public hearing no later than 45 days after the date the application for action or an appeal from a zoning administration decision is filed on each such application or appeal. Notice of a public hearing shall be provided to all property owners within two hundred (200) feet of the affected property ten (10) days prior to the public hearing, and also published in the official local newspaper.

Section 3. Repeal of Conflicting Ordinances. All parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict only. In the event of a conflict or inconsistency between this Ordinance and any other code or ordinance of the City, the terms and provisions of the most restrictive ordinance shall govern.

Section 4. Effective Date. This Ordinance shall be published in the official newspaper of the City, as required by law, and shall become effective after publication as provided by law.

Section 5. Severability. It is hereby declared to be the intention of the Board of Aldermen that the sections, paragraphs, sentences, clauses and phrases of this ordinance are severable and, if any phrase, sentence, paragraph or section of this ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance, since the same would have been enacted by the Board of Aldermen without the incorporation in this ordinance of any such invalid phrase, clause, sentence, paragraph or section. If any provision of this Ordinance shall be adjudged by a court of competent jurisdiction to be invalid, the invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provision, and to this end the provisions of this Ordinance are declared to be severable.

Section 6. Open Meetings. It is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, *Chpt. 551, Tex. Gov't. Code*.

PASSED AND APPROVED ON the ____ day of _____, 2021.

ATTEST:

CITY OF HIGHLAND HAVEN, TEXAS

Lezley Baum

Lezley Baum, Administrative Assistant

Olan Kelley

Olan Kelley, Mayor