

Division 2. Zoning Board of Adjustment and Appeals*

Sec. 1.02.031 Created; appointment of members; terms

(a) This division creates the zoning board of adjustment and appeals (“board”) appointed by the city council. The board shall consist of five (5) members and two (2) alternate members. All of the members and alternate members shall be residents of the city at the time they are appointed and during their term in office.

(b) Members and alternate members shall serve two-year staggered terms with four (4) members being appointed in January of even-numbered years and three (3) members being appointed in January of odd-numbered years.

(c) The initial board shall consist of three (3) regular members appointed to two-year terms and two (2) regular members appointed to a one-year term; and one alternate member appointed to a two-year term and an alternate member appointed to a one-year term. After the initial one-year terms have expired, all members, both regular and alternate, shall be appointed to two-year terms.

(d) Unless otherwise approved by the city council, members of the commission shall serve a maximum of three (3) consecutive terms. After a member serves his or her three (3) maximum consecutive terms, such ex-member cannot immediately reapply for the planning and zoning commission; however, such ex-member can apply immediately for positions to other boards or commissions that may have vacancies or reappointments. An appointment to fill a vacancy shall be for the unexpired term. A member serving to fill an unexpired term shall be eligible for reappointment to serve two (2) full two-year terms.

(e) Should an alternate member be appointed to serve as a board member, such appointment shall be for two (2) full two-year terms regardless of time served as an alternate member.

(f) When there will be an absence of one or more members at a scheduled board meeting, alternate members may serve when requested to do so by the city manager or his/her designee.

(g) Members and alternate members may only be removed for cause as found by the city council, on a written charge after a public hearing.

Sec. 1.02.032 Qualifications of members

(a) When appointing members, the city council shall make every reasonable and practical attempt to appoint board members and alternate board members from different geographical locations within the corporate limits of the city and from different interest groups. The council shall avoid appointing a board that has a concentration of members from the same or similar economic, business, racial or vocational interests, but instead shall endeavor to the extent reasonably practical to diversify the membership of the board to the end that the entire community is represented thereon.

(b) If a city resident member of the board ceases to reside in the city and his or her relocation reduces the number of city residents, that person shall give notice of such fact and may be deemed to have resigned, upon approval by the city council, from the board as of the date his or her residence changed, and, if approved by council, the city council shall appoint a resident

board member to fill the remainder of the resigning member's term. A quorum of the board shall be required to open meetings, conduct business and take action on any agenda items.

(c) The city council may take into consideration an applicant's history on delinquency in payment of any city taxes, utility bills, citations, municipal court judgments and assessments and so forth in qualifying the applicant.

(d) Notwithstanding any city ad hoc committees or except where duplicate appointments are authorized by ordinance, city charter or by state law, a person may not be appointed as a member of the zoning board of adjustment and appeals if he or she is currently serving on the planning and zoning commission, historic preservation commission, parks and recreation commission, library commission, economic development corporation board of directors, local government corporation or any other permanent city board or commission.

Sec. 1.02.033 Officers; rules; meetings; quorum; record; conflict of interest

(a) All cases before the board must be heard by at least 75% of the members. The concurring vote of 75% of the members of the board is necessary to:

(1) Reverse an order, requirement, decision or determination of an administrative official;

(2) Decide in favor of an applicant on a matter on which the board is required to pass under a zoning ordinance or issue; or

(3) Authorize a variation from the terms of a zoning ordinance or issue.

In all other cases, a simple majority of the members present at an official meeting is necessary to approve a matter.

(b) The board shall have a chairperson and a vice-chairperson elected from its membership to serve for a one-year term. Officers shall be elected annually by the board.

(c) The chairperson shall preside over the board and shall have the right to vote on all items before the board. The vice-chairperson shall fulfill the duties of the chairperson when the chairperson is not available for any reason.

(d) The city manager or his or her designee shall be an ex officio member of the board.

(e) The board, by majority vote, may adopt rules or bylaws in accordance with this division and the requirements of the Local Government Code as necessary for the orderly conduct of its business, subject to approval by the city council.

(f) The board shall meet upon the call of the presiding officer and at other times as determined by the board rules. The presiding officer or acting presiding officer may administer oaths and compel attendance of witnesses. All meetings of the board shall comply with the Texas Open Meetings Act.

(g) The board shall keep minutes of its proceedings and indicate the vote of each member on each question or the fact that a member is absent or abstains. The board shall keep records of its examinations and other official actions. The minutes and records shall be filed with the city

secretary and its records are public records.

(h) A board member shall be required to complete any state-mandated training, to include but not limited to Open Meetings Act training, within ninety (90) days after appointment. Any training expenses incurred by the member may be eligible for reimbursement by the city subject to the city's travel and training policy.

(i) A board member having any potential conflict of interest on any policy, decision, or determination before the board shall disclose to each of the other members the nature of his potential conflict and shall abstain from voting on such policy, decision or determination. In the event that the board member recognizes a conflict or clear potential for conflict of interest, he or she shall recuse him or herself from discussion and action on the topic involving such conflict. The disclosure shall be recorded in the board's minutes. Intentional or knowing failure to disclose a conflict of interest shall be governed under the general penalty section as set forth in [section 1.01.009](#) of this code.

(j) When there will be an absence of one or more members at a scheduled board meeting, alternate members may serve when requested to do so by the mayor, city manager or his or her designee, or presiding officer or acting presiding officer.

Sec. 1.02.034 Powers and duties

The board shall have the following powers and duties:

- (1) To hear and decide appeals where the applicant alleges that there is an error in any order, requirement, decision or determination made by city staff or the city council in the enforcement of the city's zoning regulations and ordinances;
- (2) To hear and decide requests for special exceptions to the city's zoning regulations and ordinances;
- (3) To hear and decide judicial variances; and
- (4) To decide such other matters as may be assigned by the city council from time to time.

Sec. 1.02.035 Appeals

(a) Any of the following persons may appeal to the board a decision made by an administrative official:

- (1) A person aggrieved by the decision.
- (2) Any officer, department, board, commission or bureau of the city affected by the decision.
- (3) Only the city manager shall have the right to request an administrative exception.

(b) Appeal of a board decision. Appeal of any decision of the board shall be taken to a state court of competent jurisdiction by filing a verified petition stating that the decision of the board is illegal in whole or in part and specifying the grounds of the illegality. The petition must be filed

within ten (10) days after the date that the board's decision is filed with the city secretary.
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