

ORDINANCE NO. 12-001

AN ORDINANCE OF THE CITY OF SOMERVILLE, TEXAS ESTABLISHING THE BOARD OF ADJUSTMENT AND THE BOARD OF ADJUSTMENTS AND APPEALS; PROVIDING FOR APPOINTMENT OF MEMBERS; PROVIDING FOR THE TERMS OF THE MEMBERS OF THE BOARD OF ADJUSTMENTS; ESTABLISHING STANDARDS AND REQUIREMENTS FOR HEARINGS, APPEALS, FINDINGS AND ORDERS; PROVIDING FOR OPEN MEETINGS AND MAKING PROVISION FOR RELATED MATTERS.

Whereas, the City Council of the City of Somerville, Texas (the “City”) desires to create and establish requirements and minimum criteria for a Board of Adjustment that are compatible with City goals and comply with the statutory requirements of *Chapt. 211, Tex. Loc. Gov’t Code*, as appropriate; and

Whereas, unique circumstances may exist on properties within the jurisdiction of the City which require evaluation from the Board of Adjustment with authority to protect the spirit of the City Ordinance without causing a manifest injustice in the application of the Ordinance to circumstances unique to a specific property;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SOMERVILLE, TEXAS:

Section 1. **Findings of Fact.** The above and foregoing recitals are hereby found to be true and correct and are incorporated herein as findings of fact. The City Council hereby further finds and determines that the rules, regulations, terms, conditions, provisions and requirements of this Ordinance are reasonable and necessary to protect the public health, safety and quality of life.

Section 2. **Creation of a Board of Adjustment.** The City Council hereby establishes a Board of Adjustment and adopts regulations for the Board of Adjustment to read as set forth in Exhibit “A” attached to and incorporated in this Ordinance as though fully transcribed herein for all purposes.

Section 3. **Amendment of Ordinances.** Ordinance No. 08-002 has been repealed in its entirety. 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 this Ordinance shall govern.

Section 4. **Effective Date.** This Ordinance shall be in force and effect from and after its passage on the date shown below.

Section 5. **Severability.** It is hereby declared to be the intention of the City Council 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 City Council without the incorporation of 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 this meeting was open to the public, and public notice of the time, place and purpose of said meeting was given, all as required by the Open Meetings Act, *Chapter 551, Texas Government Code*.

PASSED AND APPROVED on first reading this _____ day of _____, 2012.

_____ Ayes _____ Noes _____ Abstentions

ATTEST:

CITY OF SOMERVILLE, TEXAS

Rose Rosser, City Secretary

Don Murray, Mayor

Exhibit "A"

BOARD OF ADJUSTMENT

A. ORGANIZATION

(1) Establishment

A Board of Adjustment is hereby established in accordance with the provisions of *Article 211.008, Tex. Loc. Gov't. Code* to sit as the Board of Adjustment and to sit as the Board of Adjustments and Appeals for City ordinances and for other appeals so required by ordinance. The word "Board" when used in this Section shall mean the Board of Adjustment and Board of Adjustments and Appeals where appropriate.

(2) Regular Membership

The Board shall consist of five (5) citizens, each to be nominated by the Mayor and appointed or re-appointed by the City Council. Each member of the Board shall be removable by the City Council for cause on a written charge after a public hearing. Vacancies shall be filled for the unexpired term of the member whose term becomes vacant. The Board shall elect its own chair, who shall serve for a period of one (1) year or until his or her successor is elected.

(3) Alternative Members

The Board shall also consist of not more than two (2) alternate members, who will serve in the absence of one or more regular members when requested to do so by the Mayor or City Administrator. Alternate members shall be appointed in the same manner as regular members; shall serve for the same period as a regular member; and are subject to removal in the same manner as a regular member. Vacancies among the alternate members shall be filled in the same manner as vacancies among the regular members.

(4) Term

Board members shall serve two (2) year terms, automatically extended for two (2) years in absence of appointment of a new member at the expiration. Thereafter, board members shall serve until their successor is appointed.

(5) Meetings; Quorum

Meetings of the Board shall be held at the call of the Board chair and at such other

times as the Board may determine. When sitting as the Board of Adjustment, a quorum shall constitute four (4) voting members. When sitting as the Board of Adjustments and Appeals, a quorum shall constitute three (3) voting members. A motion to approve any matter before the Board or to recommend approval of any request requiring City Council action shall require a majority vote of the quorum Members present, except the following matters, which shall require a concurring vote of 75 percent of the members of the Board to:

- (a) reverse an order, requirement, decision, or determination of an administrative official made in enforcement of Chapter 211, Tex. Local Government Code (“Chapter 211”) or an ordinance adopted under Chapter 211;
- (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 or special exception from the terms of a zoning ordinance.

(6) Hearings

The hearings of the Board of Adjustment shall be public, provided that upon the advice and consent of the City Attorney, the Board may go into executive session pursuant to *Chapt. 551, Tex. Gov't. Code*.

(7) 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 immediately filed in the office of the Board and shall be a public record. The Board shall adopt rules in accordance and consistent with this Ordinance as necessary and required. A copy of any such rules shall be furnished to all Board members and to persons or applicants with cases before the Board. All rules and regulations shall operate uniformly in all cases and all resolutions and orders shall be in accordance therewith.

B. APPEALS

(1) Procedure

Any person aggrieved by a decision of an administrative officer in the enforcement of *Chapt. 211, Tex. Loc. Gov't. Code*, the City’s zoning regulations, or the building codes, or any officer, department, board or bureau of the City affected by any such decision by an administrative officer, may appeal such decision to the Board. Such appeal shall be made by filing with the office of the City Secretary, who shall forward the filing to the Board members, and the

officer whose action is being appealed, a notice of appeal specifying each of the grounds thereof. The officer from which the appeal is taken shall promptly transmit to the Board all of the papers constituting the record upon which the action appealed from is taken, including the applicable codes.

(2) Stay of Proceedings

An appeal shall stay all proceedings in furtherance of the action appealed from, unless the officers whose decision is appealed shall certify to the Board 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 which case proceedings shall not be stayed other than by restraining order granted for just cause by the Board, or by a court of record, on application and after notice to the officer from whom the appeal is taken.

(3) Notice of Hearing on Appeal

The Board shall fix a reasonable time for the hearing of the appeal or other matter referred to it, and shall give public notice of the hearing and due notice to the parties in interest.

(4) Decision by Board

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. With respect to matters described in Section A(5)(a)-(c), 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 based upon an ordinance of the City, and to that end, shall have all powers of the officer or department from whom the appeal is taken. Failure to receive four (4) concurring votes at an appeal hearing on a matter described in Section A(5)(a)-(c) shall sustain the decision of the officer appealed from. With respect to all other matters, the Board may, upon the concurring vote of three (3) 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 based upon an ordinance of the City, and to that end, shall have all powers of the officer or department from whom the appeal is taken. Failure to receive three (3) concurring votes at an appeal hearing on a matter other those described in Section A(5)(a)-(c) shall sustain the decision of the officer appealed from.

C. POWERS AND DUTIES OF BOARD

- (1) Appeals Based on Error. The Board shall have the power 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 *Chapt. 211, Tex. Loc. Gov't. Code*, the City's zoning regulations, or the building codes.

- (2) Types of Special Exceptions

The Board shall have the power to hear and decide special exceptions to the terms of the City's zoning regulations and other ordinances so granting authority to decide special exceptions when the ordinances require the Board to do so. Such special exceptions shall be as follows:

- (a) To permit a public utility or public service use or structure in any district as necessary to house equipment, pumps, switching gear, and similar devices only, required for the provision of the utility service or a public utility or public service building of a ground area and of a height at variance with those provided for in the district in which such public utility or public service building is permitted to be located, when found reasonably necessary for the provision of utility service and the public health, convenience, safety or general welfare.
- (b) Authorize a special exception from the parking and loading requirements in any of the districts whenever the character or use of the building is such as to make unnecessary the full provision of parking or loading facilities, and where the topography or unusual shape of the lot and regulations would impose an unreasonable hardship upon the use of the lot, as contrasted with merely granting an advantage or a convenience.

- (3) Special Exceptions Considerations

The Board shall have the power to authorize upon appeal in specific cases such special exception from the terms of the City zoning regulations and other ordinances as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of these Ordinances will result in unnecessary hardship, and so that the spirit of the Ordinances shall be observed and substantial justice done, including the following:

- (a) Permit a Special Exception in the yard requirements of any district where there are unusual and practical difficulties or unnecessary hardship in the carrying out of these provisions due to an irregular shape of the lot, topography or other conditions; provided that such special exception will not significantly affect any adjoining property or the general welfare.
- (b) Authorize upon appeal, whenever a property owner can show that a strict

application of the terms of the City zoning regulations and other ordinances relating to the construction or alterations of a building or structure or the use of land will impose unusual and practical difficulties or particular hardship, such special exceptions from the strict application of the terms of the Ordinances as are in harmony with its general purpose and intent, but only when the Board is satisfied that a granting of such special exception will not merely serve as a convenience to the applicant, but will alleviate some demonstrable and unusual hardship or difficulty resulting from an unusual condition of the property itself and so great as to warrant a special exception as established by the Ordinances, and at the same time, the surrounding property will be properly protected; provided that the Board shall not in any event permit a use on any property that is not permitted within the Zoning category for which such property is zoned.

(4) Changes

The Board shall have no authority to change any provision of the City's zoning regulations and other ordinances; it has authority to hear as set forth herein and its jurisdiction is limited to hardship and borderline cases which may arise from time to time.

(5) Limitations on Authority

The Board shall have authority to evaluate whether the condition variance requested or special exception is a unique and special condition to the property in question; ensure the burden is not self-imposed by the applicant; determine that the literal enforcement of the Ordinance would result in an unnecessary hardship; determine if the hardship will prevent the reasonable use of the property, be contrary to public policy, and is in the spirit of the Ordinance. For appeals from decisions or interpretations of staff, the Board shall similarly evaluate the circumstances and unless an actual error in the interpretation of the code exists or the conditions for a variance as set forth in this section exists, the Board shall uphold the decision of the staff.

(6) Board of Adjustments and Appeals

(a) The Board shall hear and decide matters of dangerous buildings pursuant the *Chapt. 214, Tex. Loc. Gov't Code*, and the applicable City ordinance. A hearing shall be held pursuant to the rules and regulations of the Board and City ordinance after which the Board shall issue a written order directing no action, repairs, demolition, or other action deemed appropriate by the Board within a set time frame. The order shall be in writing directed to the proper parties with ownership interests in the property at issue. Such decision may be appealed to the City Council.

- (b) The Board shall sit as the board of appeals referenced in the building codes adopted by the City, and shall hear and decide appeals from the an order, requirement, decision, or determination of the building official or other administrative official made in enforcement of the City's building codes. This ordinance shall control in the event of a conflict with provisions of the building codes governing the board of appeals.