

ORDINANCE NO. 185 D

AN ORDINANCE OF THE CITY OF MANOR, TEXAS, AMENDING ORDINANCE NO. 185, ZONING REGULATIONS; AMENDING ARTICLE IV, SECTION 72, SO AS TO AMEND THE REQUIREMENTS FOR THE BOARD OF ADJUSTMENTS INCLUDING REQUIRING FIVE MEMBERS BE APPOINTED; PROVIDING FOR OPEN MEETINGS CLAUSES; AND PROVIDING FOR RELATED MATTERS.

Whereas, the City Council of the City of Manor, Texas, (the "City") a general-law municipality, currently provides that the City Council shall be and act as the Board of Adjustments as provided §211.008 (g), *Tex. Loc. Gov't Code*;

Whereas, given the growth of the City and the desire of citizens to volunteer, the City is now able to constitute a board of five members; and,

Whereas, establishing requirements and minimum criteria for the board that are compatible with City goals and comply with the statutory requirements of *Chapter 211, Tex. Loc. Gov't Code* is appropriate;

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

Section 1. Amend Section 72 Board of Adjustments. That Ordinance No. 185, Zoning Regulations, Section 72 of Article IV, "Board of Adjustments", be amended to in its entirety to read as follows:

Section 72. Board of Adjustments. (a) Established. A Board of Adjustments (hereafter in this Section, the "Board") is established in accordance with the provisions of § 211.008 of the *Texas Local Government Code*, regarding the zoning of cities and with the powers and duties as provided in said code.

(b) Organization and Procedure.

(i) Establishment. A Board of Adjustment is hereby established in accordance with the provisions of §211.008, *Tex. Loc. Gov't. Code*.

(ii) Regular Membership. The Board shall consist of five citizens, each to be appointed or re-appointed by the mayor and confirmed by the City Council. Each member of the Board shall be removable for cause by the City Council upon written charges and 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.

(iii) **Alternate Members.** The Board shall also consist of not more than four alternate members, who will serve in the absence of one or more regular members when requested to do so by the Mayor or City Manager. 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.

(iv) **Meetings.** Meetings of the Board shall be held at the call of the chair and at such other times as the Board may determine. The Board chair shall have a vote on all matters.

(v) **Hearings.** The hearings of the Board of Adjustment shall be posted as provided in to *Chapt. 551, Tex. Gov't. 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 *Chapt. 551, Tex. Gov't. Code*.

(vi) **Quorum.** Four members of the regular board or a combination of members of the present regular board members and alternate members of a minimum of four members shall constitute a quorum.

(vii) **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 of Adjustments shall act by resolution in which four members must concur. 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. All rules and regulations shall operate uniformly in all cases and all resolutions and orders shall be in accordance therewith.

(c) **Conflict.** If a discrepancy between the requirements, standards or procedures of *Chapter 211, Tex. Loc. Gov't Code* and this section exist, *Chapter 211, Tex. Loc. Gov't Code*, shall control.

(d) **Appeals.**

(i) **Procedure.** Any person aggrieved by a decision of an administrative officer in the enforcement of *Chapter 211 of the Texas Local Government Code*, or this Ordinance, 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 Board and the officer whose action is being appealed, a notice of appeal specifying the grounds thereof. The appeal must be filed within 10 business days of the decision for which complaint is made. The officer from which the appeal is taken shall forthwith transmit to the Board all of the papers constituting the record upon which the action appealed from is taken.

(ii) Stay of Proceedings. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the officer 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, after notice to the officer from whom the appeal is taken.

(iii) 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.

(iv) 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. The Board may accept evidence from all parties it determines are appropriate to make a determination. The concurring vote of 4 members of the Board 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 this Ordinance; or,
- (C) authorize a variation from or special exception to the terms of this Ordinance.

(v) Findings of the Board. In the absence of specifically made and filed findings of the Board, the minutes including the formal vote therein of the Board shall constitute the formal findings of the Board.

(e) Powers and Duties of the Board.

(i) 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 *Chapter 211 of the Texas Local Government Code*. The Board may 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 only the same powers of the officer or department from whom the appeal is taken.

(ii) Special Exceptions. The Board shall have the power to hear and decide special exceptions to the terms of this Ordinance when this Ordinance requires the Board to do so. Such special exceptions shall be limited to the following, as well as any other specifically enumerated rights to grant special exceptions:

- (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 for 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.

(f) Variances. The Board shall have the power to authorize upon appeal in specific cases such variance from the terms of this Ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of this Ordinance will result in unnecessary hardship, and so that the spirit of this Ordinance shall be observed and substantial justice done, including the following:

(i) Yard and Setback. Permit a variance 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 variance will not significantly affect any adjoining property or the general welfare.

(ii) Structures. Authorize upon appeal, whenever a property owner can show that a strict application of the terms of this Ordinance relating to the construction or alteration of a building or structure or the use of land will impose unusual and practical difficulties or particular hardship, such variances from the strict application of the terms of this Ordinance as are in harmony with its general purpose and intent, but only when the Board is satisfied that a granting of such variance will not merely serve as a convenience to the applicant, but will alleviate some demonstrable and unusual hardship or difficulty so great as to warrant a variance as established by this Ordinance, 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.

(g) Changes. The Board shall have no authority to change any provision of this Ordinance and its jurisdiction is limited to unique circumstances demonstrating hardship and borderline cases which may arise from time to time.

Section 2. Effective Date. This ordinance shall take effect immediately from and after its passage.

Section 3. 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, *Chapt. 551, Tex. Gov't. Code.*

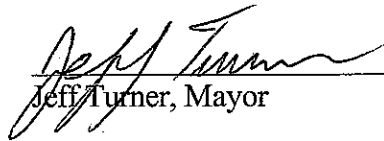
PASSED AND APPROVED on this 18th day of May, 2005.

ATTEST:

THE CITY OF MANOR, TEXAS



Phil Tate, City Secretary



Jeff Turner, Mayor