

**7.5 RIGHT TO PROCEED PRESERVED:**

Nothing contained in this Section 7 is intended to alter any rights that may have accrued to proceed under prior regulations, pursuant to Texas Local Government Code Section 43.002, or Sections 245.001 to 245.006.

**Section 8: PLANNING & ZONING COMMISSION**

**8.1. GENERAL:**

The Planning and Zoning Commission (also referred to as the "Commission") shall function according to the following criteria that establish membership and operating procedures.

**8.2. POWERS AND DUTIES:**

- A. The Commission shall have all the rights, powers, privileges and authority authorized and granted by the City Council and through the Statutes of the State of Texas authorizing and granting cities the power of zoning and subdivision regulation as found in Chapters 211 and 212 of the Texas Local Government Code, as amended from time to time.
- B. The Commission shall be an advisory body and adjunct to the City Council, and shall make recommendations regarding amendments to the Comprehensive Plan, changes of zoning, zoning ordinance amendments, and zoning to be given to newly annexed areas, and shall consider approval of plats of subdivisions as may be submitted to it for review and other planning related matters. The Commission shall conduct an annual review of the City's Comprehensive Plan and shall be prepared to make recommendations to the City Council as deemed necessary to keep the City's Comprehensive Plan current with changing conditions and trends and with the planning needs of the City. The Commission shall also serve in an advisory capacity on any planning related item(s) in the City and perform other duties as provided for by the City Charter.

**8.3 CREATED; MEMBERSHIP; OFFICERS; RULES & BYLAWS:**

- A. There is created, in accordance with Chapter 211 of the Texas Local Government Code, the "Planning and Zoning Commission," hereafter sometimes referred to as the "Commission," which shall consist of five (5) people residing within the City limits.
- B. Members shall be appointed by the City Council of the City of Tomball.
- C. All appointments to the Commission shall serve as a member of the Commission for a term of office of three (3) years. Members may be reappointed with no limitation on the number of terms one member may serve. Upon adoption of this Ordinance, the City Council appoints the City Planning Commission members to serve as the Planning and Zoning Commission.

- D. Any vacancy(s) on the Commission shall be filled via appointment by a simple majority vote of the City Council.
- E. Members of the Planning and Zoning Commission may be removed from office at any time by a simple majority vote of the full City Council either upon its own motion or upon recommendation of the Commission. Failure to attend three (3) consecutive scheduled meetings shall be deemed as neglect and cause for removal from office, unless such absences were due to unusual circumstances beyond the member's control such as sickness of the member or someone within the member's immediate family, or if the Commission or Council approves the absence(s) as excused. A vote to remove a Commission member shall be placed on the appropriate agenda as a regular item, and shall be voted upon accordingly.
- F. The members of the Commission shall regularly attend meetings and public hearings of the Commission, shall serve without compensation, and shall not hold any other office within, or serve as an employee of, the City while serving on the Commission. The Commission shall meet a minimum of once per month at a time established by the City Council. If there have been no applications filed for review by the Commission, the City Secretary shall notify the Chairman and no meeting shall be required for that month.
- G. The Commission shall elect a Chairperson and a Vice-Chairperson from among the Commission membership, and each officer shall hold office for one (1) year or until replaced by a simple majority vote of the full Commission. The City Manager's designee shall serve as Secretary to the Commission, and shall keep minutes of all meetings held by the Commission as well as the full record of all recommendations made by the Commission to the City Council.
- H. The Commission shall have the power to make rules, regulations and bylaws for its own governance, which shall conform with those set forth by the City Council, and such rules, regulations and bylaws shall be subject to approval by the City Council. Such rules and bylaws shall include, among other items, provisions for the following:
  - 1. Regular and special meetings, open to the public;
  - 2. A record of its proceedings, to be open for inspection by the public;
  - 3. Reporting to the City Council and the public, from time to time and annually; and
  - 4. Reviewing the Comprehensive Plan on a regular basis.

#### 8.4. PARLIAMENTARY PROCEDURE; QUORUM; VOTING:

The Commission will follow the parliamentary procedure adopted by the City Council, and procedures shall not be in conflict with the laws applicable to the Commission on the following:

- A. QUORUM - A quorum shall consist of a majority of the membership of the Commission, and any issue to be voted upon shall be resolved by a majority of those members present.



- B. VOTING - All Commission members, including the Chairperson, shall be entitled to one vote each upon any question, a quorum being present. Voting procedures shall be in accordance with the parliamentary procedures adopted by the City Council.
- C. CONFLICT OF INTEREST - If any member has a conflict of interest regarding any item on the Commission's agenda, that member may remove himself or herself from the room and shall refrain from discussing and/or voting only on the item for which a conflict exists. Refer to Chapter 171 of the Texas Local Government Code and any applicable City ethics policies or regulations.

#### 8.5 MEETINGS; PUBLIC RECORD:

- A. The Planning and Zoning Commission shall meet in the Municipal Building or in some other specified location as may be designated by the presiding Chairperson and at such intervals as may be necessary to orderly and properly transact the business of the Commission but not less than once each month.
- B. Meetings shall be conducted in accordance with the Open Meetings Law (refer to Chapter 551 of the Texas Government Code).

#### 8.6 PROCEDURE ON ZONING HEARINGS:

The procedure and process for zoning changes or amendments shall be in accordance with Section 10 of this Zoning Ordinance.

#### 8.7 JOINT MEETINGS WITH THE CITY COUNCIL:

Whenever the City Council and the Commission are required by the laws of the State of Texas to conduct public hearings in matters pertaining to planning, zoning or subdividing property, and at other times when it is in the best interest of the City to do so, the City Council and the Commission are hereby authorized, after published notice as required by law, to hold joint meetings and to conduct joint public hearings.

### **Section 9: BOARD OF ADJUSTMENTS (BOA)**

#### 9.1 CREATION:

There is hereby created a Board of Adjustments, hereafter sometimes referred to as the "Board," for the purpose, in appropriate cases and subject to appropriate conditions and safeguards, of making special exceptions and variances to the terms of this Ordinance that are consistent with the general purpose and intent of this Ordinance. The Board shall be composed of members who are resident citizens of the City of Tomball.

**9.2 MEMBERS; TERMS OF OFFICE:**

- A. The Board of Adjustments shall consist of five (5) regular members, who shall be appointed by a simple majority vote of the full City Council, and shall operate in accordance with Sections 211.008 through 211.011 of the Texas Local Government Code, as amended.
- B. The City Council shall provide for the appointment of up to four (4) alternate members to serve in the absence of one or more of the regular Board members on an alternating basis such that all alternate members have equal opportunities to serve on the Board. The Planning Director shall determine which alternate will serve if an alternate is needed.
- C. Regular Board members and alternate members shall serve for a term of two (2) years, and expiration of terms shall be staggered so that an overlapping of terms occurs (for example, in any two-year period, the terms of two regular members and at least one alternate member shall expire during one of those years, and the terms of three regular members and at least one alternate member shall expire during the second year).
- D. Any vacancy(s) on the Board (both regular and alternate members) shall be filled for the unexpired term(s) via appointment by a simple majority vote of the full City Council for the remainder of the term(s).
- E. Members of the Board may be removed from office for cause, and after a public hearing, by a simple majority vote of the full City Council. Failure to attend three (3) consecutive scheduled meetings shall be deemed as neglect and cause for removal from office, unless such absences were due to unusual circumstances beyond the member's control such as sickness of the member or someone within the member's immediate family. Absences may be excused by the Board or by the Council.
- F. The members of the Board (and alternate members, as needed) shall regularly attend meetings and public hearings of the Board, shall serve without compensation, and shall not hold any other office or position with the City while serving on the Board.
- G. The Board of Adjustments shall elect a Chairperson and a Vice-Chairperson from among its membership, and each officer shall hold office for two (2) years or until replaced by a simple majority vote of the full Board. The City Manager's designee shall serve as Secretary to the Board of Adjustments, and shall keep minutes of all meetings held by the Board. The Secretary shall also set up and maintain a separate file for each application for hearing by the Board, and shall record therein the names and addresses of all persons/entities to whom notices are mailed, including the date of mailing and the person by whom such notices were delivered to the Post Office. All records and files herein provided for shall be official records of the City of Tomball. The Secretary shall also immediately notify in writing the City Council, Planning and Zoning Commission, and the City Building Official of each decision rendered by the Board in the conduct of its duties.
- H. The Board of Adjustments shall have the power to make the rules, regulations and bylaws for its own government, which shall conform as nearly as possible to those governing the

City Council and the provisions of this Section. The Board's rules, regulations and bylaws shall be subject to approval by City Council.

**9.3 MEETINGS:**

- A. Meetings of the Board of Adjustments shall be held at the call of the Chairperson or Planning Director and at such other times as the Board may determine. All meetings of the Board shall be open to the public, and minutes shall be kept of all proceedings at Board meetings. Four (4) members of the Board shall constitute a quorum for the conduct of business.

**9.4 AUTHORITY OF BOARD OF ADJUSTMENTS:**

- A. The Board of Adjustments shall have the authority, subject to the standards established in Sections 211.008 through 211.011 of the Texas Local Government Code and those established herein, to exercise powers and to perform duties including the following:
  - 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;
  - 2. Authorize, in specific cases, a variance or special exception (see Section 9) from the terms of this Ordinance if the variance is not contrary to the public interest and if, 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; and
  - 3. Make interpretations on zoning district boundaries shown on the Zoning Map where uncertainty exists because physical features on the ground differ from those on the Zoning Map or where the rules in Section 4 of this Ordinance (Zoning District Boundaries) do not apply or are ambiguous.
- B. In exercising its authority under Subsection A.1 above, the Board of Adjustments 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 City Manager or his/her designee.
- C. The concurring vote of at least four (4) members of the Board of Adjustments 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 review under this Zoning Ordinance;
  - 3. Authorize a variance from a provision of this Zoning Ordinance; or

4. Hear and decide special exceptions to a provision of this Zoning Ordinance (see Section 9.7).

#### 9.5 LIMITATIONS ON AUTHORITY OF BOARD OF ADJUSTMENTS:

- A. The Board of Adjustments may not grant a variance authorizing a use other than those permitted in the district for which the variance is sought, except as specifically provided for in this Ordinance.
- B. The Board of Adjustments shall have no power to grant or modify Conditional Use Provisions authorized under Section 37 of these regulations.
- C. The Board of Adjustments shall have no power to grant a zoning amendment. In the event that a request for a zoning amendment is pending before the Planning and Zoning Commission or the City Council, the Board shall neither hear nor grant any variances with respect to the subject property until final disposition of the zoning amendment by the Commission and the City Council.
- D. The Board of Adjustments shall not grant a variance for any parcel of property or portion thereof upon which a required site plan (refer to Section 12), or any plat is pending on the agenda of the Planning and Zoning Commission and/or the City Council. All administrative and procedural remedies available to the applicant shall have been exhausted prior to hearing by the Board of Adjustments.

#### 9.6 VARIANCES:

- A. **Variances Defined:** A variance is the authority to depart from the application of areas, side yard, setback, height, and similar regulations to prevent unnecessary hardships.
- B. **Granting Authority:** The Board of Adjustments may authorize a variance from these regulations when, in its opinion, undue hardship will result from requiring compliance. Variances may be granted only when in harmony with the general purpose and intent of this Ordinance so that the public health, safety and welfare may be secured and that substantial justice may be done.
  1. In granting a variance, the Board shall prescribe only conditions that it deems necessary for, or desirable to, the public interest.
  2. In making the findings outlined below, the Board shall take into account:
    - a. The nature of the proposed use of the land involved,
    - b. Existing uses of land in the vicinity,
    - c. The number of persons who will reside or work within the proposed use, and
    - d. The probable effect such variance will have upon traffic conditions and upon the public health, safety, convenience and welfare of the community.

**C. Conditions Required for Variance:** No variance shall be granted without first having given public notice and having held a public hearing on the variance request in accordance with Section 9.9.C of this Ordinance and unless the Board of Adjustments finds:

1. That there are special circumstances or conditions affecting the land involved such that the application of the provisions of this Ordinance would deprive the applicant of the reasonable use of his/her land; and
2. That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant; and
3. That the granting of the variance will not be detrimental to the public health, safety or welfare, or injurious to other property within the area; and
4. That the granting of the variance will not have the effect of preventing the orderly use of other land within the area in accordance with the provisions of this Ordinance.
5. The granting of an individual variance will not set a precedent.

Such findings of the Board of Adjustments, together with the specific facts upon which such findings are based, shall be incorporated into the official minutes of the Board of Adjustments meeting at which such variance is granted.

**D. Findings of Undue Hardship:** In order to grant a variance, the Board of Adjustments must make findings that an undue hardship exists, using the following criteria:

1. That literal enforcement of the controls will create an unnecessary hardship or practical difficulty in the development of the affected property; and
2. 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
3. That the relief sought will not injure the permitted use of adjacent conforming property; and
4. That the granting of a variance will be in harmony with the spirit and purpose of these regulations.
5. Financial hardship alone is not an “undue hardship” if the property can be used, meeting the requirements of the zoning district it is located in.

**E. Self-Inflicted Hardship:** A variance shall not

1. Be granted to relieve a self-created or personal hardship,
2. Be based solely upon economic gain or loss,
3. Permit or allow any person a privilege or advantage in developing a parcel of land not permitted or allowed by this Ordinance to other parcels of land in the same particular zoning district.

4. Result in undue hardship upon another parcel of land.

#### **9.7 SPECIAL EXCEPTIONS:**

- A. **Special Exceptions Defined:** A special exception is a type of variance, but is differentiated from a variance as the term is used in this Ordinance by the following:
  1. A special exception does not require a finding of a hardship.
  2. Approval of a special exception by the Board of Adjustments is specifically provided for and defined in this ordinance.
  3. A special exception applies to nonconforming uses and structures, off-street parking requirements and landscaping requirements.
- B. **Requests for a Special Exception:** The Board of Adjustments may grant a special exception to the provisions of Sections 7, 39 and/or 40 upon written request of the property owner.
- C. **Standards for a Special Exception:** The Board may also grant a special exception in accordance with the following circumstances and/or standards:
  1. Change from one nonconforming use to another, re-construction of a nonconforming structure that has been totally destroyed, or resumption of a nonconforming use previously abandoned, only upon finding that the failure to grant the special exception deprives the property owner of substantially all use or economic value of the land.
  2. For existing single-family and Duplex (Two Family) structures that were legally constructed prior to the effective date of this Ordinance, the Board of Adjustments may authorize a special exception for any structure that was constructed over a setback line established by this Ordinance.
- D. **Conditions:** In granting special exceptions under this Subsection, the Board may impose such conditions as are necessary to protect adjacent property owners and to ensure the public health, safety and general welfare, including but not limited to conditions specifying the period during which the nonconforming use may continue to operate or exist before being brought into conformance with the provisions of this Ordinance.

#### **9.8 APPEALS TO THE BOARD OF ADJUSTMENTS:**

- A. **Authority:** In addition to the authorization of variances and special exceptions from the terms of this Ordinance, the Board of Adjustments shall have the authority to 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. The Board of Adjustments may reverse or affirm, in whole or in part, or may 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 of Adjustments has the same authority as the City Manager or their designee.

- B. **Who May Appeal:** Any of the following persons may appeal to the Board of Adjustments a decision made by an administrative official:
1. A person directly aggrieved by the decision; or
  2. Any officer, department, board, or bureau of the City affected by the decision.
- C. **Procedure for Appeal:** The appellant must file with the Board of Adjustments and the official from whom the appeal is taken a written Notice of Appeal specifying the grounds for the appeal. The Notice of Appeal shall be filed within fifteen (15) calendar days after the decision has been rendered. Upon receiving the Notice, the official from whom the appeal is taken shall immediately transmit to the Board of Adjustments all papers constituting the record of action that is appealed. 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 of Adjustments 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 of Adjustments or a court of appropriate jurisdiction on application, after notice to the official, if due cause is shown. The appellant party may appear at the appeal hearing in person or by agent or attorney. The Board shall decide the appeal within thirty (30) calendar days after the written request (i.e., Notice of Appeal) was received. 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 may make the correct order, requirement, decision or determination.

#### 9.9 PROCEDURES:

- A. **Application and Fee:** An application for a variance, special exception or appeal to the Board of Adjustments shall be made in writing using forms prescribed by the City, and shall be accompanied by an application fee in accordance with the Council adopted fee schedule, a required plan (see Section 12), and any other additional information as may be requested in order to properly review the application. There is no filing fee for an appeal filed by any officer, department, board, or bureau of the City affected by the decision.
- B. **Review and Report by the City:** The City Manager, or his/her designee, shall visit the site where the proposed variance or special exception will apply and the surrounding area, and shall report his/her findings to the Board of Adjustments.
- C. **Notice and Public Hearing:** The Board of Adjustments shall hold a public hearing for consideration of the variance or special exception request no later than sixty (60) calendar days after the date the application for action, or an appeal, is filed. Notice shall be published in the official local newspaper before the fifteenth (15<sup>th</sup>) calendar day prior to the public hearing. Written notice of the public hearing for a variance or exception shall also

be sent to all owners of property, as indicated by the most recently approved City tax roll, that is located within the area of application and within two hundred feet (200) of any property affected thereby, said written notice to be sent before the tenth (10<sup>th</sup>) calendar day prior to the date such hearing is held. Such notice shall be served by using the last known address as listed on the most recently approved tax roll and depositing the notice, postage paid, in the regular United States mail.

- D. **Action by the Board of Adjustments:** The Board of Adjustments shall not grant a variance unless it finds, based upon compelling evidence provided by the applicant, that each of the conditions in Section 9.6 has been satisfied. The Board of Adjustments may impose such conditions, limitations and safeguards as it deems appropriate upon the granting of any variance or special exception as are necessary to protect the public health, safety, convenience and welfare. Violation of any such condition, limitation or safeguard shall constitute a violation of this Ordinance.
- E. **Burden of Proof:** The applicant bears the burden of proof in establishing the facts that may justify a variance, a special exception, an appeal, or any other action in his/her favor by the Board.
- F. **Waiting Period:** No appeal to the Board for the same or a related variance or special exception on the same piece of property shall be allowed for a waiting period of 180 calendar days following an unfavorable ruling by the Board unless other property in the immediate vicinity has, within the 180 calendar day waiting period, been changed or acted upon by the Board or the City Council so as to alter the facts and conditions upon which the previous unfavorable Board action was based. Such changes of circumstances shall permit the re-hearing of a variance or special exception request by the Board, but such circumstances shall in no way have any force in law to compel the Board, after a hearing on the matter, to grant a subsequent variance or special exception request. Any subsequent variance or special exception request shall be considered entirely on its own merits and on the specific circumstances related to the subject property.
- G. **Timeliness of Application for Building Permit or Certificate of Occupancy:** Upon a favorable Board action on a variance or special exception request, the applicant shall apply for a building permit or a certificate of occupancy, as applicable to his/her particular situation, within 180 calendar days following the date of Board action, unless the Board specifies a longer time period in the minutes of its action. If the applicant fails to apply for a building permit or certificate of occupancy, as applicable, within the 180 calendar day time frame, then the variance or special exception shall be deemed to have expired, and all rights thereunder shall be terminated. Such termination shall be without prejudice to a subsequent appeal, and such subsequent appeal shall be subject to the same regulations and requirements for hearing as herein specified for the original variance or special exception request.

**9.10 FINALITY OF DECISIONS; JUDICIAL REVIEW:**

**Final & Binding; Petition:** All decisions of the Board of Adjustments are final and binding and may not be appealed to the City Council. However, any person aggrieved by a decision of the Board of Adjustments may present a verified petition to a court of appropriate jurisdiction that states that the 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) calendar days after the date the Board's decision is filed in the office of the Secretary to the Board. Subject to the provisions of Chapter 211.011 of the Texas Local Government Code, only a court appropriate jurisdiction may reverse, affirm or modify a decision of the Board of Adjustments.

**Section 10: AMENDMENTS TO ZONING ORDINANCE & DISTRICTS,  
ADMINISTRATIVE PROCEDURES, & ENFORCEMENT**

**10.1 DECLARATION OF POLICY AND REVIEW CRITERIA:**

- A. The City declares the enactment of these regulations governing the use and development of land, buildings, and structures as a measure necessary to the orderly development of the community. Therefore, no change shall be made in these regulations or in the boundaries of the zoning districts except:
  - 1. To correct any error in the regulations or map;
  - 2. To recognize changed or changing conditions or circumstances in a particular locality;
  - 3. To recognize changes in technology, the style of living, or manner of conducting business; or
  - 4. To change the property to uses in accordance with the City's adopted Comprehensive Plan.
- B. In making a determination regarding a requested zoning change, the Planning and Zoning Commission and the City Council shall consider the following factors:
  - 1. Whether the uses permitted by the proposed change will be appropriate in the immediate area concerned, and their relationship to the general area and to the City as a whole;
  - 2. Whether the proposed change is in accord with any existing or proposed plans for providing public schools, streets, water supply, sanitary sewers, and other utilities to the area;
  - 3. The amount of vacant land currently classified for similar development in the vicinity and elsewhere in the City, and any special circumstances which may make a substantial part of such vacant land unavailable for development;