

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MELISSA, TEXAS, AMENDING MELISSA'S CODE OF ORDINANCES, ORDINANCE NO. 92-04, AS AMENDED, CHAPTER 12 (PLANNING AND ZONING), ARTICLE 12.200 (ZONING BOARD OF ADJUSTMENT); MODIFYING CERTAIN PROVISIONS GOVERNING THE BOARD OF ADJUSTMENT; ADDRESSING THE BOARD'S POWERS AND DUTIES AND BOARD MEMBERS' QUALIFICATIONS, APPOINTMENT, TERMS, OFFICERS, MEETINGS AND OTHER MATTERS; PROVIDING A SAVINGS/REPEALING CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.**

WHEREAS, the City Council of the City of Melissa, Texas finds that it would be beneficial to the citizens of the City of Melissa, Texas, to amend Melissa's Code of Ordinances, Ordinance No. 92-04, as amended ("Code of Ordinances"), Chapter 12 (Planning and Zoning), Article 12.200 (Zoning Board of Adjustment), to modify certain provisions governing the Board of Adjustment, as set forth below.

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

**SECTION 1: Findings Incorporated.** The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

**SECTION 2: Amendment to the Code of Ordinances, Chapter 12 (Planning and Zoning), Article 12.200 (Zoning Board of Adjustment).** Article 12.200 (Zoning Board of Adjustment) is amended as follows<sup>1</sup>:

**"CHAPTER 12 – PLANNING AND ZONING**

...

**ARTICLE 12.200 – BOARD OF ADJUSTMENT**

**§ 12.201 – Establishment of the Board of Adjustment**

There is hereby created and established within Melissa a Board of Adjustment ("BOA"). The BOA may, in appropriate cases and subject to appropriate conditions and safeguards, hear and determine appeals of administrative decisions, petitions for variances, and requests for special exceptions to the terms of Melissa's Comprehensive Zoning Ordinance, as it exists or may be amended, that are consistent with the general purposes and intent of said Ordinance and in accordance with any applicable rules contained in this Ordinance or in rules and regulations

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<sup>1</sup> Additions are underlined; deletions are evidenced by ~~strikethrough~~.

adopted by the BOA and approved by the City Council.

### **§ 12.202 – Number of Members/Alternate Members; Qualifications**

- (a) The BOA shall be composed of five (5) members appointed by the City Council. The City Council is entitled to appoint as many alternate members as it deems necessary and appropriate. Alternate members shall serve in the absence of one or more regular members when requested. An alternate member serves on the same terms and conditions as a regular member.
- (b) The qualifications for appointment to the BOA shall be as stated in Section 9.05 of the City Charter. In addition, candidates for appointment to the BOA must have resided continuously in Melissa for 12 months immediately preceding the date the appointment is made.

### **§ 12.203 – Term of Office**

Members shall be designated as place numbers one (1) through five (5). The term of office shall be for two (2) years. Place numbers one (1), three (3) and five (5) shall be appointed to two (2) year terms ending on September 30th in odd-numbered years. Place numbers two (2) and four (4) shall be appointed to two (2) year terms ending on September 30th in even-numbered years. The BOA shall serve without compensation.

### **§ 12.204 – Vacancies**

Any vacancy occurring during the unexpired term of a member shall be filled by the City Council for the remainder of the unexpired term .

### **§ 12.205 – Officers**

- (a) The Board shall have, at a minimum, a Chair, Vice Chair and Secretary whose terms shall be one (1) year. These positions will be appointed by a majority vote of the City Council and are subject to change without notice. All officers shall be subject to removal from office at any time by a majority vote of the City Council. A vacancy in the office of any officer shall be filled for the remaining term by a majority vote of the City Council.
- (b) The Chair shall be the presiding officer of the BOA with the following authority:
  - (1) Shall preside over all meetings of the BOA;
  - (2) Shall vote on all matters coming before the BOA;

- (3) Shall have the authority, upon reasonable notice to the members of the BOA, to call a special meeting of the BOA when in the Chair's judgment such a meeting is required; and
- (4) Shall report annually to the City Council concerning the BOA's activities and proposals.

- (c) The Vice Chair shall assist the Chair in directing the affairs of the BOA. In the absence or the inability to act of the Chair, the Vice Chair shall exercise the powers of the Chair.
- (d) The Secretary shall keep the minutes of all meetings of the BOA, and in the Secretary's absence, the Chair shall designate another member to act as Secretary. The Secretary may accept the assistance of City personnel in taking and transcribing minutes, when available, but shall sign before presenting the same to the BOA for approval.

#### **§ 12.206 – Meetings/Attendance/Adherence to City Council Policies relating to Boards and Commissions**

The BOA shall meet monthly, if necessary, and/or at such other times as the BOA or City Council deem necessary and appropriate. The BOA shall keep minutes of its proceedings, which shall be of public record, and shall submit a written report of such proceedings to the City Council not more than three (3) weeks following each such meeting. Board members are required to be in compliance with policies defined by the City Council for board members that are in existence or as modified in the future.

#### **§ 12.207 – Removal from Office**

Members of the BOA may be removed for cause, by an affirmative vote of a majority of the full membership of the City Council, on a written charge after a public hearing.

#### **§ 12.208 – Quorum/Voting**

Four (4) members of the BOA shall constitute a quorum for the transaction of business. The Chair shall be considered a voting member of the BOA. Each case before the BOA must be heard by at least four (4) members.

#### **§ 12.209 – Powers and Authority**

- (a) The BOA may:
  - (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 the Comprehensive Zoning Ordinance or Section

211.010, Texas Local Government Code, as it exists or may be amended. In exercising the BOA's authority herein, the BOA 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 BOA has the same authority as the administrative official;

- (2) Hear and decide special exceptions to the terms of a zoning ordinance when the ordinance requires the BOA to do so;
- (3) Authorize in specific cases a variance from the terms of a zoning 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 the ordinance is observed and substantial justice is done;
- (4) Hear and decide other matters authorized by an ordinance adopted under Chapter 211, Subchapter A of the Texas Local Government Code.
- (5) Permit the reconstruction, extension or enlargement of a building occupied by non-conforming uses, on the lot or tract occupied by such building, provided such reconstruction does not prevent the return of such property to a conforming use; and
- (6) Authorize, in specific cases, a variance of height, yard, area, exterior structure, lot coverage, off-street parking and loading requirements from the terms of a zoning 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 the ordinance is observed and substantial justice is done. 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 ordinance to other parcels of land in the same zoning district. No variance may be granted if it results in an unnecessary hardship, as herein defined, on another parcel of land.

In order to grant a variance, the BOA must determine that:

- (i) The requested variance does not violate the intent of the Comprehensive Zoning Ordinance or its amendments;
- (ii) Special conditions of restricted area, shape, topography, or physical features exist that are peculiar to the subject parcel

of land and are not applicable to other parcels of land in the same zoning district;

- (iii) The hardship is in no way the result of the applicant's own actions; and
- (iv) The interpretation of the provisions in the Comprehensive Zoning Ordinance or its amendments would deprive the applicant of rights commonly enjoyed by other properties, in the same zoning district, that comply with the same provisions.

No variance may authorize a use other than those uses permitted in the zoning district for which the variance is sought. Also, an application or request for variance shall not be heard or granted with regard to any parcel of property or portion thereof upon which a Preliminary Site Plan, Site Plan, Preliminary Plat or Final Plat, when required by the Comprehensive Zoning Ordinance, and any amendments thereto, or the Subdivision Ordinance, and any amendments thereto, for any parcel of property or portion thereof, has not been finally acted upon by both the Planning and Zoning Commission and, where required, by the City Council. The administrative procedures and requirements of the Comprehensive Zoning Ordinance, and any amendments thereto, and the Subdivision Ordinance, and any amendments thereto, with regard to both the Planning and Zoning Commission and City Council consideration and action, on Preliminary Site Plans, Site Plans, Preliminary Plats, and Final Plats, must be exhausted prior to requesting a variance.

- (b) The concurring vote of four (4) members of the BOA 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 BOA is required to pass under a zoning ordinance; or
  - (3) Authorize a variation from the terms of a zoning ordinance.
- (c) Should any person on the BOA have a conflict of interest, pursuant to any state laws and/or Melissa ordinances regulating conflicts of interest of municipal officers, with an agenda item then before the BOA, he/she shall openly declare same before discussion proceeds, and he/she is thereby prohibited from discussing the item or voting on the question, and is not

considered as present and voting for the purposes of the tally.

- (d) Should any person on the BOA choose to abstain from voting on any question before the BOA, where no conflict of interest exists, the person's vote shall be recorded as a negative vote in the official minutes of the meeting.
- (e) All powers and duties prescribed and delegated herein are delegated to the BOA as a unit and all action hereunder shall be of the BOA acting as a whole. No action of an individual member is authorized except through the BOA.

#### **§ 12.210 – Appeal of BOA's Decision**

The BOA's decision is final unless appealed to district court within ten (10) days after the BOA's decision is filed in the office of the BOA. Such appeal must be made in accordance with Chapter 211 of the Texas Local Government Code. The BOA's decision is filed in the office of the BOA when the BOA votes and makes its decision in open session.

#### **§ 12.211 – Rules of Procedure**

The BOA shall have the power to develop and revise rules of procedure for its own governance. Any and all rules of procedure adopted by the BOA, if any, shall be forwarded in writing to the City Manager who shall submit them to the City Council with the City Manager's recommendations. The City Council may amend, adopt or reject any such rules of procedure. If any rules should be rejected, the BOA may modify them and submit such modified rules to the City Council. The rules of procedure shall include provisions for:

- (a) Establishment of meeting dates;
- (b) Establishment of an appointment to certain committees made up of BOA members and other lay persons to assist the BOA in the conduct of its responsibilities; and
- (c) BOA members' attendance requirements, not inconsistent with this Ordinance.

#### **§ 12.212 – Power to Obligate and Finance**

The BOA shall have no power to obligate Melissa in any manner whatsoever. The BOA's finances, if applicable, shall be handled in the same manner as any division of the City government.

#### **§ 12.213 – Ex Parte Communication**

No member of the BOA shall hold a meeting or communicate with an applicant or member of the public regarding a pending application or appeal outside of a public hearing.”

**SECTION 3: Savings/Repealing.** The Code of Ordinances shall remain in full force and effect, save and except as amended by this or any other ordinance. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

**SECTION 4: Severability.** Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional and/or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, sentence, clause and phrase thereof regardless of whether any one or more sections, subsections, sentences, clauses and/or phrases may be declared unconstitutional and/or invalid.

**SECTION 5: Effective Date.** This Ordinance shall become effective immediately after its adoption.

**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MELISSA, TEXAS** on this 11th day of March, 2025.

  
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Jay Northcut, Mayor

ATTESTED TO AND  
CORRECTLY RECORDED BY:

  
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Hope Baskin, City Secretary

