

## ORDINANCE NO. 10-04

AN ORDINANCE OF THE CITY OF SOUTH PADRE ISLAND, TEXAS, AMENDING SEC. 20-16 OF CHAPTER 20 OF THE CODE OF ORDINANCES OF THE CITY OF SOUTH PADRE ISLAND BY PROVIDING FOR THE ESTABLISHMENT OF BOARD OF ADJUSTMENT, APPOINTMENT AND FUNCTIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR A PENALTY OF UP TO TWO THOUSAND DOLLARS (\$2,000.00) FOR EACH VIOLATION, AND PROVIDING FOR PUBLICATION IN CAPTION FORM.

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE TOWN OF SOUTH PADRE ISLAND, TEXAS THAT:

**Section 1.** That Sec. 20-16 of Chapter 20 of the Code of Ordinance be amended to read as follows:

- (a) **Creation of Board of Adjustment.** There is hereby created a board of adjustment consisting of five (5) members and three (3) alternate members to be appointed by the City Council. All members, including alternates, must be residents of the City of South Padre Island. Said board shall have all powers vested by the Texas Local Government Code Ch. 211.
- (b) **Terms, Removal of Members.** All members of the board shall be appointed for two year terms and shall serve until their successors are appointed and qualified and shall be removable for cause by the City Council upon written charges and after public hearing.
- (c) **Vacancies.** Vacancies in the regular membership of the board of adjustment shall be filled by the city council. Vacancies of the alternate board of adjustment member(s) shall be appointed at large by the city council, and determined by majority vote, for the unexpired term of vacancy. The alternate members serve for the same period and are subject to removal the same as regular members.
- (d) **Minimum of four (4) Members at Hearings.** The alternate members of the board of adjustment shall serve in the absence of one (1) or more regular members when requested by the Mayor or City Manager so that all cases heard by the board of adjustment will always be heard by a minimum of four (4) members, in conformity with state law requiring that seventy-five (75) percent of the members of the board hear each case. Alternates may participate in meetings on a rotating basis subject to availability.
- (e) **Minutes/Records.** 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 shall keep records of its examinations and other official action, all of which shall be immediately filed in the office of the City Secretary and shall be a public record.
- (f) **Meetings and Rules.** The board shall have monthly meetings or at the call of the chairman or in his absence the acting chairman, and at such other times as the board may determine. All

board meetings shall be open to the public. The board may adopt rules consistent with this chapter or state law to govern its proceedings.

(g) **Powers of Board.** The board of adjustment shall have the following powers and duties which must be exercised in accordance with this chapter and state law:

- 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 the Zoning Ordinance.
- To authorize upon appeal in specific cases, and subject to appropriate conditions and safeguards, such variances from the terms of this chapter as will not be contrary to the public interest, where owing to special conditions, a literal enforcement of the provisions of this chapter will result in unnecessary hardship, and so that the spirit of the chapter shall be observed and substantial justice done. A variance may not be granted to relieve a self-created or personal hardship, nor for financial reasons. In exercising its authority, 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 make the correct order, requirement, decision, or determination, and for that purpose the board has the same authority as the administrative official. The concurrent vote of seventy-five (75) percent of the members of the board is necessary to reverse an order, requirement, decision, or determination of an administrative official; decide in favor of an applicant on a matter on which the board is required to pass under the zoning ordinance; or authorize a variation from the terms of a zoning ordinance.

(h) **Compensation of Members.** None

(i) **Notice of Hearings.** Public notice of hearings before the board of adjustment shall be given for each separate appeal thereby by publication one (1) time in a paper of general circulation in the city, stating the time and place of such hearing which shall not be earlier than ten (10) days from the first date of such publication, and in addition thereto, the board of adjustment shall mail notice of such hearing to the petitioner and to the owners of property lying within two hundred (200) feet of any point of the lot or portion thereof on which a variation, or exception, is desired and to all other persons deemed by the board of adjustment to be affected thereby. Such owners and persons shall be determined according to the current tax rolls of the city.

## **Sec. 20-16.1 VARIANCES AND APPEALS, SPECIAL EXCEPTIONS**

**Sec. 20-16.1.** Generally.

(a) **Notice of Hearings.** Public notice of hearings before the board of adjustment shall be given for each separate appeal thereby by mailing notice of such hearing to the petitioner and to the owners of property lying within two hundred (200) feet of any point of the lot or portion thereof on which a variation, or exception, is desired and to all other persons deemed by the board of adjustment to be affected thereby. Such owners and persons shall be determined according to the current tax rolls of the city.

(b) **Powers Strictly Construed.** Nothing herein contained shall be construed to empower the board of adjustment to change the terms of the Zoning Ordinance, to effect changes in the official map or to add to the specific uses permitted in any district.

(c) **Findings of Fact.** Every decision of the board of adjustment shall be based upon findings of fact and every finding of fact shall be supported in the record of its proceedings. The enumerated

conditions required to exist on any matter upon which the board is required to pass under this article or to affect any variance in this chapter shall be construed as limitations on the power of the board to act. A mere finding or recitation of the enumerated conditions unaccompanied by findings of specific facts shall not be deemed findings of fact and shall not be deemed in compliance with this article.

(d) **Recommendation From Other Public Agencies.** The board of adjustment shall receive and consider recommendations from public and semipublic agencies before rendering a decision in any case before the board. To this end, the board shall, in addition to the other requirements of this chapter, notify all agencies deemed to have an interest in the case.

(e) **Postponement of a Case.**

(1) Prior to the city publishing the board of adjustment case in the newspaper, an applicant may request in writing for the city to postpone the case. In such cases, the applicant shall have six (6) months from the date of the written request for postponement to reactivate the case. After expiration of the six-month period the fees paid shall be non-refundable and the applicant will have to submit a new application with new fees for further consideration of the request.

(2) If a written request for postponement is submitted by the applicant after the city has published the case in the newspaper, the fees paid shall be non-refundable and the hearing will not be rescheduled until the postponement fee has been paid by the applicant. In such cases, the applicant shall have six (6) months from the date of the written request for postponement to reactivate the case; after expiration of the six-month period, the applicant will have to submit a new application with new fees for further consideration of the request.

(3) If a written request for postponement is submitted by the applicant after the agenda has been posted (seventy-two (72) hours prior to the public hearing), the postponement will be considered by the board of adjustment. If approved by the board, the fees paid shall be non-refundable and the hearing will not be rescheduled until the postponement fee has been paid by the applicant. In such cases, the applicant shall have six (6) months from the date of the board's decision to grant the postponement, to reactivate the case; after expiration of the six-month period, the applicant will have to submit a new application with new fees for further consideration of the request.

#### Sec. 20-16.2. Appeals to Board of Adjustment.

(a) **Applicability.**

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

- A person aggrieved by the decision; or
- Any officer, department, board, or bureau of the city affected by the decision.

(b) **Initiation.**

(1) **Application.** Such appeal shall be taken by filing with the Planning Department and with the board of adjustment, within the time provided by this chapter, a notice of appeal specifying the particular grounds upon which the appeal is taken and the payment of the fee. Upon receipt of a notice of appeal, the Planning Department shall transmit to the board of adjustment all of the original documents and materials, or true copies thereof, constituting the record upon which the order or decision appealed from was based.

(2) **Automatic Stay.** An appeal from an order of the Public Works Director or Planning Director to the board of adjustment shall stay all proceedings unless the Town Planner certifies that, by reason of the facts stated in the certificate, a stay in his opinion would cause imminent peril to life or property. When such a certificate is filed, proceedings shall not be stayed except by a restraining order granted by the board of adjustment or a court of proper jurisdiction.

(3) **Time Limit for Appeal.** The board of adjustment shall set a reasonable time for the appeal hearing and shall give public notice of the hearing and due notice to the parties in interest. Appeals to the zoning board of adjustment from any order, requirement, decision or determination made by an administrative official in the enforcement of this chapter shall be made within thirty (30) days after such order, requirement, decision or determination by filing with the director of the department of development services and with the board of adjustment a notice of appeal.

(b) **Completeness Review.** The Planning Director shall review the notice of appeal for completeness within five (5) working days. The appellate agency for purposes of completeness shall be the board of adjustment.

(c) **Decision.**

(1) **Appearance.** A party may appear at the appeal hearing in person or by agent or attorney.

(2) **Hearing.** The board of adjustment shall consider the appeal at a quasi-judicial public hearing pursuant to Texas Local Government Code § 211.009(b), 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 make the correct order, requirement, decision, or determination, and for that purpose the board has the same authority as the administrative official. Pursuant to Texas Local Government Code § 211.009(b), the concurring vote of seventy-five (75) percent of the members of the board is necessary to reverse an order, requirement, decision, or determination of an administrative official.

(3) **Time Limit for Decision.** The board shall decide the appeal within a reasonable time.

(e) **Appeal from Board of Adjustment.** An appeal from a board of adjustment decision shall be filed pursuant to Texas Local Government Code § 211.011(b) with the District Court or County Court at Law.

**Section 2.** Any violation of this Ordinance may be punished by a fine not to exceed Two Thousand Dollars (\$2,000.00) for each offense or for each day such offense shall continue and the penalty provisions of Section 21-2 of the Code of Ordinances is hereby adopted and incorporated for all purposes.

**Section 3.** If for any reason any section, paragraph, subdivision, clause, phrase, word, or provision of this Ordinance shall be held invalid or unconstitutional by final judgment of a court of competent jurisdiction, it shall not affect any other section, paragraph, subdivision, clause, phrase, word, or provision of this Ordinance for it is the definite intent of this City Council that every section, paragraph, subdivision, clause, phrase, word, or provision hereof be given full force and effect for its purpose.


**Section 4.** All other ordinances or portions of ordinances that may be in conflict with the provisions of this ordinance are hereby repealed.

**Section 5.** This Ordinance shall become effective when published in summary form or by publishing its caption.

PASSED, APPROVED, AND ADOPTED on First Reading, this 20<sup>th</sup> day of January 2010.

PASSED, APPROVED, AND ADOPTED on Second Reading, this 3<sup>rd</sup> day of February, 2010.

**ATTEST:**

  
\_\_\_\_\_  
SUSAN HILL, CITY SECRETARY

**CITY OF SOUTH PADRE ISLAND,  
TEXAS**

  
\_\_\_\_\_  
ROBERT N. PINKERTON, JR. MAYOR

