

AN ORDINANCE OF THE CITY OF MELISSA, TEXAS, CREATING THE BOARD OF ADJUSTMENT; PROVIDING FOR THE APPOINTMENT/REMOVAL OF ITS MEMBERS AND THE METHOD OF FILLING VACANCIES; PROVIDING FOR THE ADOPTION OF BYLAWS; PROVIDING FOR POWERS AND AUTHORITIES; PROVIDING FOR VOTING AND PROCEDURES; PROVIDING FOR AN APPEAL PROCESS; AND PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE.

WHEREAS, the City Council of the City of Melissa, Texas ("City Council"), has investigated and determined that it will be advantageous and beneficial to the City of Melissa, Texas ("Melissa") and its citizens to create the Board of Adjustment as set forth below.

NOW, THEREFORE, BE IT RESOLVED 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: Establishment of the Board of Adjustment. There is hereby created and established within Melissa the Board of Adjustment ("BOA") and the BOA may, in appropriate cases and subject to appropriate conditions and safeguards, make 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 adopted by the BOA and approved by the City Council.

SECTION 3: Number of Members/Alternate Members. The BOA shall be composed of five (5) members appointed by the City Council. The City Council may provide for the appointment of alternate BOA members to serve in the absence of one or more regular members when requested to do so by the Mayor or City Administrator. An alternate member serves for the same period as a regular member and is subject to removal in the same manner as a regular member. A vacancy among the alternate members is filled in the same manner as a vacancy among the regular members.

SECTION 4: Term of Office. The term of office of each member shall be two (2) years; provided, however, at the time of appointment of the initial members of the BOA, the City shall

draw by lot to determine two (2) members who shall serve a one (1) year term and three (3) members who shall serve a two (2) year term. The BOA shall serve without compensation.

SECTION 5: Vacancies. When vacancies occur on the BOA, the City Council shall appoint, by majority vote, a replacement to serve the remainder of that term. The Chairman shall notify the City Council when a seat on the BOA becomes vacant during a term.

SECTION 6: Officers. The Board shall have, at a minimum, a Chair and Secretary whose terms shall be one (1) year. These positions will be appointed through the means decided by the City Council and are subject to change without notice.

SECTION 7: 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 and/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.

SECTION 8: 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.

SECTION 9: Quorum/Voting. Four (4) members of the BOA shall constitute a quorum for the transaction of business. The Chairman shall be considered a voting member of the Board of Adjustment. Each case before the BOA must be heard by at least four (4) members.

SECTION 10: 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 this Ordinance or Section 211.007, Texas Local Government Code ("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 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 make a finding of hardship and 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.

SECTION 11: Appeal of BOA's Decision. Any person or persons, jointly or severally, aggrieved by any decision of the BOA, or any taxpayer, or any officer, department or board of the municipality, may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within ten (10) days after the filing of the decision in the Office of the BOA and not thereafter. The date of filing of the decision in the Office of the BOA shall be the date the BOA announces its decision either orally or in writing to the applicant.

SECTION 12: Bylaws. The BOA shall have the power to develop and revise Bylaws for its own governance which shall be subject to approval by the City Council. The Bylaws 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.

SECTION 13: 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.

SECTION 14: Savings/Repealing Clause. 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 15: Severability. Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional 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. Melissa hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional or invalid.

SECTION 16: Effective Date. This Ordinance shall become effective immediately upon its passage and adoption.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF
MELISSA, TEXAS on this 8 day of April, 2008.



David E. Dorman, Mayor

ATTESTED AND CORRECTLY
CORRECTLY RECORDED:



Linda Bannister, City Secretary

