

act on the application until it has been resubmitted to the zoning commission for action. The application shall then be treated as an original application for rezoning, and all fees required by this chapter shall be paid by the applicant.

(h) *Notice of council hearing.* Upon receipt of the report and recommendations of the zoning commission and the applicant's application to the city council, the city council shall hold a public hearing and act on the matter with reasonable and deliberate speed. At least 11 days in advance of the council hearing, the city administrator or his designated agent shall notify the owners of all property within 750 feet of the subject property inside the city limits, and within 200 feet of the subject property outside the city limits, of the matter which is pending before the city council. The city administrator or his designated agent shall also publish notice of the council hearing at least 16 days in advance of the hearing date, as required by law.

(i) *Effect of protest.* If the zoning commission recommends against a change in zoning or if there is a protest against a change in the zoning district classification of any property signed by the owners of 20 percent or more, either of the area of the lots included in such proposed change, or of the lots or tracts of land immediately adjoining the same and extending 200 feet therefrom, such amendment shall not become effective except by the favorable vote of three-fourths of all the members of the city council.

(j) *Requirements for additional information.* Before taking final action on any rezoning application, either the zoning commission or the city council may require the applicant to present, at the applicant's expense, engineering reports, data or other information which either the commission or the city council may reasonably require in order to make an appropriate determination on the application. Such information shall be furnished to the city administrator or his designated agent when requested by either the commission or the city council.

(Ord. No. 929, § 21, 1-20-2005)

Sec. 78-22. Zoning of newly annexed territory.

Prior to any action by the city council on an application for annexation, the zoning commission shall hold a public hearing and make a recommendation to the city council concerning the zoning of the property which is the subject of the application for annexation. In connection with such proceedings, the city shall provide notice to the public and to adjacent property owners in the same manner as for a zoning change, except that the city itself shall be regarded as the applicant and no fee shall be due from the owner of the subject property. The city council shall adopt an ordinance providing for the permanent zoning of the subject property effective simultaneously with the property's annexation.

(Ord. No. 929, § 22, 1-20-2005)

Sec. 78-23. Board of adjustment.

(a) *Creation of board of adjustment.* There is hereby created a zoning board of adjustment consisting of five members and six alternate members to be appointed by the city council. Said board shall be controlled by and have all powers vested by Local Government Code § 211.008 et seq.. The city administrator shall also serve ex-officio as a non-voting member of the board.

(b) *Terms of members and alternates.* The five members of the board shall serve for overlapping two year terms; provided, however, that initially, three members of the board shall be appointed for terms of two years and two members shall be appointed for terms of only one year. The terms of the alternate members shall be two years.

(c) *Removal of members and alternates.* Members and alternate members shall be removable for cause by the city council upon written charges and after public hearing.

(d) *Vacancies.* Vacancies in the regular or alternate membership of the board shall be filled by the city council for the unexpired term of vacancy.

(e) *Chair and vice-chair.* The board shall elect a chair and a vice-chair from its own membership. They shall serve for a two-year term.

(f) *Quorum.* The alternate members of the board shall serve in the absence of one or more regular members when requested by the city administrator or his designated agent so that all cases heard by the board will always be heard by a minimum of five members.

(g) *Minutes and records.* The city administrator or his designated agent shall keep minutes of the board's 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 the board's examinations and other official action, all of which shall immediately be filed in the office of the city administrator or his designated agent and shall be a public record.

(h) *Meetings.* The board shall meet at the call of the chair, or, in the chair's absence, the acting chair, and at such times as the board shall determine. All board meetings shall be open to the public.

(i) *Conflict of interest.* Members of the board shall observe the requirements of Local Government Code, ch. 171 et seq., and shall disqualify themselves from voting on any matter where they are prohibited from voting under such statute. In any case where the question of a member's interest is raised, the chair shall rule on whether the member should be disqualified.

(j) *Powers of board.* The board shall have the following powers: To hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by an administrative official in the enforcement of this chapter. In exercising this power, the board may, in conformity with the provisions of this chapter, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision or determination as ought to be made. To this end, the board shall have all the powers of the officer from whom the appeal is taken. To hear and decide special exceptions to the terms of this chapter in those specific instances where required by this chapter. To authorize upon appeal in specific cases, 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 this chapter will be observed and substantial justice done.

(k) *Limitations on power to grant variances.* No variance shall be granted on property that is not properly platted. However, the board may waive this requirement for platting of property that cannot meet all the requirements of the city subdivision ordinance. In addition no variance shall be granted unless:

- (1) Such variance will not be contrary to public interest.
- (2) Such variance will not authorize the operation of a use other than one which is specifically authorized for the district in which the subject property is located.
- (3) Such variance will not substantially or permanently injure the appropriate use of adjacent or nearby conforming property in the same district.
- (4) Such variance will not alter the essential character of the subject property or of the district in which it is located.
- (5) Such variance will be in harmony with the spirit and purpose of this chapter.
- (6) The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property and are not merely financial, and are not due to or the result of general conditions in the district in which the property is located.
- (7) The variance will not substantially weaken the general purposes of this chapter or the regulations herein established for the specific district.
- (8) The variance will not adversely affect the public health, safety or welfare.

(l) *Powers strictly construed.* Nothing herein contained shall be construed to empower the board to change the terms of this chapter, to effect changes in the official map or to add to the specific purposes permitted in any district. The powers of the board shall be so construed that this chapter and the official map are strictly enforced.

(m) *Findings of fact.* Every decision of the board shall be based upon findings of fact and every finding of fact shall be supported in the record of the board's proceedings. The enumerated conditions required to exist on any matter upon which the board is required to pass under this chapter or to effect 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 chapter.

(n) *Vote necessary to act.* The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision or determination of an administrative Official, to grant a variance or special exception, or to decide in favor of the applicant on any matter upon which the board is required to pass under this chapter.

(o) *Procedures for appeals.* Any person aggrieved or affected may appeal to the board from any order, requirement, decision or determination of an administrative official of the city in the enforcement of this chapter. Such appeal shall be taken by filing with the city administrator or his designated agent, within 30 days, a notice of appeal specifying the particular grounds

upon which the appeal is taken. A nonrefundable fee in the amount established by city council from time to time shall be deposited with the city administrator or his designated agent for each appeal. Upon receipt of a notice of appeal, the city administrator or his designated agent shall transmit to the board all of the original documents and materials, or true copies thereof, constituting the record upon which the action appealed from was based.

(p) *Notice of hearings.* Public notice of hearings before the board shall be given for each separate variance, special exception, or appeal thereto by publication one time in a newspaper of general circulation in the city, stating the time and place of such hearing. This hearing shall not be earlier than ten days from the date of such publication. The board shall mail notice of the hearing to the petitioner and to the owners of all property within 750 feet of the subject property inside the city limits and within 200 feet of the subject property outside the city limits, and to all other persons deemed by the board to be affected by the matter at least ten days before the date of such hearing. The owners and other persons to be notified shall be determined according to the current tax rolls of the city, The county or the adjacent city as appropriate.

(q) *Time limitation for variances.* Where a variance is granted by the board and a building or structure is not started pursuant to such variance within 90 days of the hearing thereon, or completed within two years of such hearing, such variance becomes null and void and of no force or effect.

(r) *Recommendation from other public agencies.* The board shall receive and consider recommendations from public and semi-public 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.

(Ord. No. 929, § 23, 1-20-2005)

Sec. 78-24. Business district construction review board.

(a) The design and construction of all new commercial structures and commercial structures which are renovated such that the exterior of the structure is more than 50 percent replaced, altered or remodeled or 50 percent of the facade of a structure is replaced, altered or remodeled shall reflect the forms, style, and materials that will be complimentary to the existing city atmosphere, in order to meet the following objectives:

- (1) Promote orderly and harmonious development of the city;
- (2) Encourage the attainment of the most desirable use of land and improvements;
- (3) Enhance the desirability of living conditions in the city;
- (4) Promote high aesthetic quality of development in the city;
- (5) Preserve and enhance historic sites, structures and areas.