

ORDINANCE NO. 409

AN ORDINANCE OF THE TOWN OF LAKESIDE, TEXAS, AMENDING THE ZONING CODE, CHAPTER 151 OF THE CODE OF ORDINANCES OF LAKESIDE, BY AMENDING SECTION 151.035 (ZONING BOARD OF ADJUSTMENT) TO GRANT MEMBERS OF THE GOVERNING BODY THE AUTHORITY TO ACT AS THE TOWN'S ZONING BOARD OF ADJUSTMENT; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR ENGROSSMENT AND ENROLLMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Texas Local Government Code § 211.008(g) provides that the governing body of a Type A general-law municipality by ordinance may grant the members of the governing body the authority to act as the town's board of adjustment; and

WHEREAS, due to various past difficulties filling positions and timely meeting quorum requirements needed for the successful operation of the Zoning Board of Adjustment as well as the convenience and other benefits of electing to proceed as allowed by § 211.008(g), the Town deems it necessary and proper that the governing body should henceforth serve as the Zoning Board of Adjustment.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE TOWN OF LAKESIDE, TEXAS:

**SECTION 1**

That Section 151.035 is hereby amended as set forth in Exhibit A hereto.

**SECTION 2**

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the Town of Lakeside, and this ordinance shall not operate to repeal or affect the Code of Ordinances of the Town of Lakeside or any other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such Code of Ordinances or any other ordinances are hereby repealed.

**SECTION 3**

It is hereby declared to be the intention of the Town Council that the phrases, clauses, sentences, paragraphs, and sections of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgement or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the Town Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

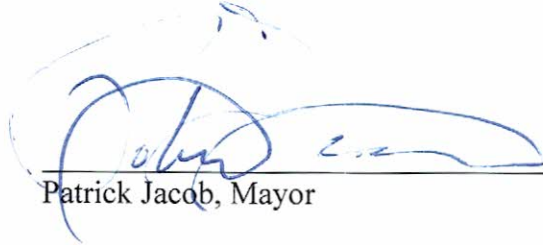
**SECTION 4**

The Town Secretary of the Town of Lakeside is hereby directed to engross and enroll this ordinance by copying the caption and the effective date clause in the minutes of the Town Council and filing the ordinance in the ordinance records of the Town.

**SECTION 5**

This ordinance shall be in full force and effect from and after its passage and it is so ordained.

PASSED AND APPROVED by the Town Council of the Town of Lakeside on this 9th day of May, 2019.



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Patrick Jacob, Mayor


ATTEST:



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Norman Craven, Town Administrator/Secretary

APPROVED:



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Ken East, City Attorney

**§ 151.035 ZONING BOARD OF ADJUSTMENT.**

(A) *Governing Body Shall Act as the Zoning Board of Adjustment.* The Zoning Board of Adjustment shall consist of six members to include all five members of the City Council plus the Mayor. All cases to be heard by the Zoning Board of Adjustment must be heard by a minimum number of five members.

(B) *Terms of office.* The members of the governing body shall serve as members of the Zoning Board of Adjustment concurrent with their terms of office as Council Members or Mayor.

(C) *Procedure.* The Mayor shall serve as the presiding officer of the Board, and the Mayor Pro Tempore shall serve as acting presiding officer in the Mayor's absence.

(1) The Board may hold an organizational meeting as it deems necessary.

(2) Meetings shall be held at the call of the presiding officer and at such other times as the Board may determine.

(3) All meetings shall be open to the public.

(4) The Zoning Board of Adjustment 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 actions, all of which shall be public record and be immediately filed in the office of the Board.

(5) The Zoning Board of Adjustment shall adopt rules necessary to the conduct of its affairs and in keeping with the provisions of this chapter and state statutes.

(7) A quorum for the conduct of business shall consist of five members of the Board.

(8) The members of the Board shall regularly attend meetings and public hearings of the commission and shall serve without compensation.

(9) The presiding officer or acting presiding officer shall preside at all meetings and may administer oaths and compel the attendance of witnesses and shall have the same subpoena powers as the municipal court.

(D) *Powers of the Board.* The Zoning Board of Adjustment shall have the powers and exercise the duties of a Board of Adjustment in accordance with Tex. Local Gov't Code, § 211.008. The Board's jurisdiction shall extend to and include the hearing and deciding of the following types of appeals and applications, and to that end shall have the necessary authority to ensure continuing compliance with its decision. The Zoning Board of Adjustment shall have the following powers and duties:

(1) *Interpretation.* To render an interpretation of the zoning regulations or the manner of their application where it is alleged there is error in any order, requirement, decision, or determination made by the administrative official in the administration of this chapter. In reaching its decisions the Board shall establish firm guidelines for future administrative action on like matters.

(2) *Special exceptions.* To hear and decide upon those applications for special exceptions when the same is authorized under this chapter subject to Board approval. A special exception shall not be granted by the Zoning Board of Adjustment unless it finds:

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- (a) That the use is specifically permitted under this chapter; and
- (b) That the locations of proposed activities and improvements are clearly defined on the site plan filed by the applicant; and
- (c) That the exception will be wholly compatible with the use and permitted development of adjacent properties.

(3) *Variances.* To authorize upon appeal in specific cases such variance from the height, yard area, coverage, and parking regulations set forth in this chapter as may be necessary to secure appropriate development of a parcel of land which differs from other parcels in the district by being of such restricted area, shape, or slope that it cannot be appropriately developed without such modification. A variance from the terms of this chapter shall not be granted by the Zoning Board of Adjustment unless and until it finds that:

(a) Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same district.

(b) That literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this chapter.

(c) That the special conditions and circumstances do not result from the actions of the applicant.

(d) That granting the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, structures or buildings in the same district.

(e) The Board shall further make a finding that the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of the land, building or structure.

(f) The Zoning Board of Adjustment shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this chapter, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

(g) Under no circumstances shall the Board grant a variance to allow a use not permissible under the terms of this chapter in the district involved, or any use expressly or by implication prohibited by the terms of this chapter in said district.

(4) *Nonconforming uses.*

(a) The Board may permit the reconstruction, extension, or enlargement of a building occupied by a non-conforming use on the lot or tract occupied by the building, and the addition of off-street parking or off-street loading to a non-conforming use.

(b) The Board may require the discontinuance of non-conforming uses of land or buildings under any plan whereby the full value of the buildings and facilities can be amortized within a definite period of time, taking into consideration the general character of the neighborhood and the necessity of all property to conform to the regulations of this chapter. All actions to discontinue a non-conforming use of land or structure shall be taken with due regard to the property rights of the persons affected, when considered in light of the public welfare and the character of the area surrounding the designated non-conforming use and the conservation and preservation of the property.

(c) The Board shall, from time to time, on its own motion or upon cause presented by interested property owners, inquire into the existence, continuation, or maintenance of any nonconforming use within the town.

(E) *Appeals to the Zoning Board of Adjustment.*

(1) *Interpretation.* Appeals to the Zoning Board of Adjustment concerning interpretation or administration of this chapter may be taken by any person aggrieved or by any officer, agency, department or commission of the town affected by any decision of the administrative official. Such appeals shall be taken within ten business days or such lesser period as may be provided by the rules of the Board, by filing with the administrative official from whom the appeal is taken, and with the Zoning Board of Adjustment a notice of appeal specifying the grounds for appeal. The administrative official shall forthwith transmit to the Board all papers constituting the record upon which the action appealed from was taken.

(2) *Stay of proceedings.* An appeal stays all proceedings in furtherance of the action appealed from, unless the administrative official from whom the appeal is taken certifies to the Zoning Board of Adjustment after the notice of appeal is filed with him that, by reason of facts stated in the certificate, a stay would, in his or her opinion, cause imminent peril to life and property. In such case, proceedings shall not be stayed other than by a restraining order which may be granted by the Zoning Board of Adjustment or by a court of record on application, and on due cause shown.

(3) *Special exception application.* An application for a special exception to use or develop property as specifically authorized in district use regulations or in this section may be filed by any person owning the affected property or by any tenant upon written authorization of the owner. Such application shall be filed with the Board, and a copy thereof with the administrative official.

(4) *Form of appeal or application.* The appeal or application shall be in such form and contain such information as the Board may require under its rules of procedure. An incomplete appeal or application shall be deemed only to give notice of intent to appeal or apply to the Board and shall not be reviewed or scheduled for hearing until brought to completion.

(5) *Notice of hearing.* Official written notice of public hearing on every application for a variance or special exception or for an interpretation of regulations applying solely to an individual property shall be sent to all owners of property, or to the person rendering the same for town taxes, affected by such application, located within 200 feet of any property affected thereby, within not less than ten days before such hearing is held. Such notice shall be served by using the last known address as listed on the town tax roll and depositing the notice, postage paid, in the United States mail. Notice of hearings on requests for interpretation of regulations applying to more than one property and ownership shall be given by means of a general notice as provided below. In addition, a list of items on the agenda to be heard by the Board shall be posted at a public place in Town Hall at least 72 hours before the hearing on said items, and a list of agenda items shall be published in a newspaper of general circulation in the Town of Lakeside at least 24 hours before the hearing at which action will be considered.

(F) *Hearing and decision.*

(1) *Generally.* The Board shall fix a reasonable time for the hearing of appeal, give public notice thereof as well as due notice to the parties in interest, and decide the same within a reasonable time. At the hearing, any party may appear in person or by agent or attorney. Evidence supporting the grant or denial of an appeal shall be submitted only through the administrative official or to the Board in public meeting. An appeal or application may be

withdrawn upon written notice of the administrative official, but no appeal shall be withdrawn after posting of hearing notice and prior to Board action thereon without formal consent of the Board.

(2) *Decision and voting.*

(a) Every decision of the Board shall be based upon findings of fact and every finding of fact shall be supported in the record of proceedings. The enumerated conditions required to exist on any matter upon which the Board is authorized to pass under this chapter shall be construed as limitations on the power of the Board to act.

(b) Nothing herein contained shall be construed to empower the Board to change the terms of this chapter, or to effect changes in the zoning districts. The powers of the Board shall be so applied that the terms of this chapter will be strictly enforced.

(c) In exercising the above-mentioned powers, the Zoning Board of Adjustment may, so long as such action is in conformity with the provisions of Tex. Local Gov't Code, §§ 211.008 through 211.013, modify in whole or in part any order, requirement, decision or determination appealed from and may make such order, requirements, decision or determination as ought to be made, and to that end shall have the powers of the administrative official from whom the appeal is taken.

(d) The concurring vote of five members of the Board shall be necessary to reverse any order, requirement, decision or determination of the administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under this chapter, or to effect any variation in the application of this chapter.

(3) *Disqualification from voting.*

(a) A member shall disqualify himself from voting whenever he or she finds that he or she has a personal or monetary interest in the property under appeal, or that he or she will be directly affected by the decision of the Board.

(b) A member may disqualify himself or herself from voting whenever any applicant, or his or her agent, has sought to influence the vote of the member on the appeal, other than in the public hearing.

(4) *Approval of request.*

(a) In approving any request, the Board of Adjustment may designate such conditions in connection therewith in order to secure substantially the objectives of the regulations or provisions to which such variance is granted and to provide adequately for the maintenance of the integrity and character of the zone in which such permit is granted.

(b) When necessary, the Board of Adjustment may require guarantees, in such form as it deems proper, to ensure conditions designated in connection therewith are being or will be complied with.

(c) Unless a building permit or certificate of occupancy is obtained, appeal shall expire 60 days after the Board's decision unless a greater time is requested in the application and is authorized by the Board. Any approval may be granted one emergency extension of 60 days on written request filed with the Board before expiration of the original approval.

(5) *Denial of request.* No appeal or application that has been denied shall be further considered by the Board under a subsequent request obtained by filing new plans and obtaining of a new decision from the administrative official unless:

(a) The new plans materially change the nature of the request; or

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(b) The permitted development of other nearby property in the same zone has been substantially altered or changed by a ruling of the Board, so as to support an allegation of changed conditions.

(6) *Appeals of Zoning Board of Adjustment action.* Any person or persons, or any board, taxpayer, department, commission or agency of the town aggrieved by any decision of the Zoning Board of Adjustment may seek review by a court of record a petition duly certified, setting forth that such decision is illegal in whole or in part, specifying the grounds of such illegality. Shall petition shall be presented to the court within ten days after the filing of the decision complained of in the office of the Board of Adjustment, and not thereafter.

(G) *Authorized special exception.* The following privately owned or privately operated uses may be permitted as special exceptions by the Board of Adjustment in the districts indicated below, subject to full and complete compliance with any and all conditions listed, together with such other conditions as the Board may impose for protection of the public health or safety:

<i>Special Exception</i>	<i>District Where Permitted</i>
<p>Shared of the same off-street parking areas by two or more uses as follows:</p> <p>a. When two or more uses, according to such approved plan, share the same off-street parking area, each may be considered as having provided such shared space individually.</p> <p>b. The land uses and common parking facility must be located in close proximity to one another.</p> <p>c. The land uses must be located not farther from the shared parking than a distance of 300 feet, measured by a straight line from the nearest point of the land on which the use is served is located to the nearest point of the separated off-street parking space.</p>	C and authorized nonresidential uses located in residential districts
<p>Off-site parking when the following applies:</p> <p>a. Must be located not farther from the use served than a distance of 300 feet, measured by a straight line from the nearest point of the land on which the use is served is located to the nearest point of the separated off-street parking space.</p> <p>b. A written agreement shall be drawn to the satisfaction of the Town Attorney and executed by all parties concerned assuring the continued availability of the off-site parking facilities for the use they are intended to service.</p>	C and authorized nonresidential uses located in residential districts
Additional height for parking lot light poles	C and authorized nonresidential uses located in residential districts
<i>Special Exception</i>	<i>District Where Permitted</i>
Exceed Illumination of 20 foot-candle for public and semi-public facilities	C and authorized nonresidential uses



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	located in residential districts
Permit laser source lights, searchlights, floodlights, up-lighting of displays and buildings, and mercury vapor lights	C and authorized nonresidential uses located in residential districts
Reduction of required parking spaces between 11% and 50%	C and authorized nonresidential uses located in residential districts
Antenna facilities which do not meet the requirements of § 151.030	
Additional height over 60 feet	C and authorized nonresidential uses located in residential districts
Additional height of accessory building exceeding 12 feet	R1, R2, and MH Districts

(H) *Fees.* There shall be a fee assessed for each request for a variance to this chapter, in accordance with the Town of Lakeside fee schedule. Costs shall not be allowed against the Board unless it shall appear to the court that the Board acted with gross negligence or in bad faith, or with malice in making the decision appealed.  
(Ord. 312, passed 6-22-2010)