

**AN ORDINANCE TO AMEND CHAPTER 9 OF THE MOBILE CITY CODE
TO ADD A NEW ARTICLE ENTITLED "BOARD OF ADJUSTMENT"**

Sponsored by Mayor Stimpson

BE IT ORDAINED by the City Council of the City of Mobile that Chapter 9 of the Mobile City Code is hereby amended to add a new Article III entitled "Board of Adjustment" as follows:

ARTICLE III. - BOARD OF ADJUSTMENT

SECTION ONE. Establishment and Continuance

A Board of Adjustment (hereinafter referred to as the "Board") having been previously established by Ordinances adopted in accordance with Section 11-52-80 of the Code of Alabama, the Board is hereby continued in existence. Members currently serving on the Board shall serve out their current terms and are eligible for reappointment.

SECTION TWO. Membership

1. **Regular Members.** The Board shall consist of seven regular members, each to be appointed by the City Council for a term of three years. All regular members are eligible for reappointment.

2. **Supernumerary Members.** In addition to the seven regular members of the Board, the City Council will also appoint two supernumerary members to serve on the Board at the call of the Board's chairman only in the absence of regular members and while so serving shall have and exercise the power and authority of regular members. Supernumerary members shall be appointed to serve for three-year terms and are eligible for reappointment.

3. **Qualifications.** All members of the Board, including supernumerary members, shall be bona fide residents and qualified electors of the City of Mobile.

4. Board members shall receive no compensation for service.

5. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant.

6. Appointed members, including supernumerary members, may be removed by the City Council for cause upon written charges and after public hearing.

SECTION THREE. Rules of Procedure

1. The Board shall adopt rules of procedure that are consistent with the requirements of section 11-52-80 of the Code of Alabama, this Ordinance, and the procedures set forth in Article 5 of the Unified Development Code. The rules adopted by the Board will be published on the City's website.

2. Meetings of the Board shall be held at the call of the chairman, or in his or her absence the acting chairman, and at such other times as the Board may determine; provided, however, that the Board shall meet regularly once a month on a day determined by the Board.

3. All meetings of the Board shall be open to the public.

4. The chairman, or in his or her absence, the acting chairman, may administer oaths and compel the attendance of witnesses.

5. 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 examination and of other official actions all of which shall immediately be filed in the office of the Board and the office of the Director of the City's Planning Department, and shall be a public record.

SECTION FOUR. Officers

The Board shall elect from its regular members a chairman, a vice-chairman, a secretary, and such other officers as the Board deems necessary and appropriate.

SECTION FIVE. Powers and Duties

The Board shall have the following powers:

1. **Administrative Appeals.** 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 Title 11, Chapter 52, Article 4 of the Code of Alabama or the Unified Development Code, Chapter 64 of the City Code.

(a) Appeals to the Board may be taken by any person aggrieved or by any officer, department, or board of the City affected by any decision of the administrative officer. Such appeal shall be initiated and heard by the Board in accordance with the requirements and procedures set forth in section 64-5-9 of the Unified Development Code and the Board's rules of procedure.

(b) In exercising its powers of administrative review, the Board may reverse, affirm, or modify the order, requirement, decision, or determination appealed from and may enter the appropriate order, requirement, decision, or determination and, to that end, shall have all the powers of the officer from whom the appeal is taken.

(c) An appeal stays all proceedings in furtherance of the action appealed from unless the officer from whom the appeal is taken certifies to the Board after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would in his opinion cause imminent peril to life or property. Such proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board or by a court of record on application on notice to the officer from whom the appeal is taken and on due cause shown.

2. **Special Exceptions.** To hear and decide requests for special exceptions expressly allowed by the Unified Development Code, subject to the approval criteria, conditions, and requirements therein contained.

(a) A request for special exception shall be initiated and heard by the Board in accordance with the requirements and procedures set forth in section 64-5-11 of the Unified Development Code and the Board's rules of procedure.

(b) A request for special exception shall be subject to the approval criteria, conditions, and requirements set forth in the Unified Development Code.

3. **Variations.** To authorize upon appeal in specific cases such variance from the terms of the Unified Development Code as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the Code will result in unnecessary hardship and so that the spirit of the ordinance shall be observed and substantial justice done.

(a) A variance request shall be initiated and heard by the Board in accordance with the requirements and procedures set forth in section 64-5-10 of the Unified Development Code and the Board's rules of procedure.

(b) A variance request shall be subject to the approval criteria, conditions, and requirements set forth in the Unified Development Code.

(c) No variance shall be authorized:

(1) Where economic loss is the sole basis for the requested variance; or

(2) Where the variance is otherwise unlawful.

(d) In granting any variance, the Board may impose conditions and safeguards reasonable and necessary to bring the project or site into compliance with the standards set forth in the Unified Development Code.

4. Decision.

(a) In exercising its powers, the Board may, in conformity with the provisions of Title 11, Chapter 52, Article 4 of the Code of Alabama and the approval criteria, conditions, and requirements of the Unified Development Code, 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 and, to that end shall have all the powers of the officer from the appeal is taken.

(b) The concurring vote of five members of the Board shall be necessary to reverse any order, requirement, decision, or determination of an administrative official or to decide in favor of the applicant on a matter upon which the Board is required to pass or to authorize any variance.

5. Counsel.

The Board may appoint an attorney who shall serve at the pleasure of the Board to attend all Board meetings and provide legal advice to the Board. Any representation agreement shall be subject to final approval by the City Council as to the term of the appointment and the rate of compensation. No attorney who represents the City or any of its agencies, whether as in-house or outside counsel, shall be eligible to serve as Board counsel.

SECTION SIX. Appeals

(a) In accordance with Code of Alabama section 11-52-81, any party aggrieved by any final judgment or decision of the Board may within 15 days thereafter appeal therefrom to the circuit court by filing with the Board a written notice of appeal specifying the judgment or decision from which the appeal is taken.

(b) In case of such appeal the Board shall cause a transcript of the proceedings in the action to be certified to the court to which the appeal is taken, and the action in such court shall be tried de novo.

SECTION SEVEN. Ordinance Intended to be Supplemental

The provisions of this Ordinance are supplemental and intended to continue the Board in existence with all the powers and authority that it has previously exercised. This Ordinance shall not be construed to repeal any other ordinance or law except to the extent of any conflict.

SECTION EIGHT. Effective Date

This Ordinance shall take effect after its adoption and publication as required by law on the effective date of the Unified Development Code as provided therein in

section 64-9-4.

APPROVED: JAN 17 2023



CITY CLERK