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**ORDINANCE NO. 016888**

**AN ORDINANCE AMENDING TITLE 2 (ADMINISTRATION AND PERSONNEL), CHAPTER 2.16 (ZONING BOARD OF ADJUSTMENT), OF THE EL PASO CITY CODE, IN ITS ENTIRETY, TO UPDATE AND CLARIFY THE CODE; TO DELETE OBSOLETE SPECIAL EXCEPTIONS; TO ADD CONDITIONS TO OTHER SPECIAL EXCEPTIONS; AND TO AMEND THE ADMINISTRATIVE PROCESS.**

**WHEREAS**, Texas Local Government Code, Chapter 211, grants municipalities authority to provide for the appointment of a board of adjustment to make special exceptions to the terms of the zoning ordinance that are consistent with the general purpose and intent of the ordinance and in accordance with any applicable rules contained in the ordinance; and

**WHEREAS**, by Ordinance No. 012681, enacted January 9, 1996, the City Council authorized the Zoning Board of Adjustment to grant certain Special Exceptions in the event specific conditions have been met; and

**WHEREAS**, Title 2 (Administration and Personnel), Chapter 2.16 (Zoning Board of Adjustment), of the El Paso City Code, sets out the Appointment and terms, Powers, Variances, Appeals, Special Exceptions, and Administration of the Zoning Board of Adjustment; and

**WHEREAS**, Chapter 2.16 needs to be updated to reflect the proper State Statute provisions, to substitute gender neutral language, and to clarify other provisions within the ordinance; and

**WHEREAS**, Chapter 2.16 needs to be amended to delete obsolete special exceptions and to add conditions to other special exceptions so that the allowable exceptions will be in harmony with the spirit and purposes of Titles 2 and 20; and

**WHEREAS**, Chapter 2.16 needs to be updated to reflect the current department names and to streamline the application process; and

**WHEREAS**, the Zoning Board of Adjustment and the City Plan Commission, after public hearing, have reviewed and recommended the adoption of changes to the current code, to update and clarify the code, and to add conditions to certain special exceptions so that the allowable exceptions will be in harmony with the spirit and purposes of Titles 2 and 20, including the preservation of the essential character of the district in which the property is located; and

**WHEREAS**, the El Paso City Council, having considered the recommendations and held a public hearing at which the public was allowed to comment on the proposed

amendment, finds that the adoption of the amendment as submitted will further protect and provide for the public health, safety, morals and general welfare of the community, and will be in harmony with the spirit and purposes of Titles 2 and 20 of the El Paso City Code.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:**

**SECTION 1.** That the above findings are adopted and incorporated herein as if fully set out.

**SECTION 2.** That Title 2 (Administration and Personnel), Chapter 2.16 (Zoning Board of Adjustment), be deleted in its entirety and replaced with the following:

Chapter 2.16 ZONING BOARD OF ADJUSTMENT

2.16.010 Appointment and terms.

2.16.020 Powers.

2.16.030 Variances.

2.16.040 Appeals.

2.16.050 Special exceptions.

2.16.060 Administration.

**2.16.010 Appointment and terms.**

A. Appointment and Terms. There shall be a zoning board of adjustment consisting of nine members and nine alternates. The nine members will be appointed by the mayor and city council; the nine alternates will be appointed by the mayor and the city council. The alternate members shall sit in the absence of regular members when requested to do so by the chair of the board. The first alternate selected to replace an absent regular member shall be the alternate nominated by the same city council representative, or the mayor, who nominated the absent regular member. If both the member and alternate nominated by that city council representative or the mayor are absent, any other alternate may be selected. All cases before the board shall be heard and decided by at least seven members.

B. Term of Office. The term of office for members and alternates shall be staggered. Terms of office shall be two years. (Ord. 12750 § 1, 1996; Ord. 12550 § 1, 1995; prior code § 25-70(1))

**2.16.020 Powers.**

A. The board shall have the powers granted by, and be controlled by, Texas Local Government Code, Chapter 211.

B. The concurring vote of seven members of the board shall be necessary to reverse any order, requirement, decision or determination of any administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under Title 2, or Title 20 of this code, or to effect any variation in requirements of Title 20.

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C. Where, as part of its power to issue permits, the board imposes conditions, the permits are valid only when all conditions are met.

D. The board is empowered and encouraged to recommend to the city council any changes to the special exceptions or Title 20 which it believes are necessary or useful to the welfare of the community. (Ord. 12550 § 2, 1995; prior code § 25-70(2--5))

### **2.16.030 Variances.**

The board of adjustment may 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. (Ord. 13616 § 1, 1998; Ord. 10724 § 1, 1991; prior code § 25-71)

### **2.16.040 Appeals.**

The board is empowered 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 20. In exercising these powers the board may, in conformity with the state act and 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, and to that end shall have all the powers of the officer from whom the appeal is taken. (Prior code § 25-72)

### **2.16.050 Special exceptions.**

The zoning board of adjustment, in specific cases, may, after notice and a public hearing, make special exceptions to the zoning code only as provided in Titles 2 and 20 of this code. More than one special exception may be made for a lot so long as the total of the exceptions granted do not exceed the maximum exception which could have been obtained if all the requests for exceptions were combined into one request. The board shall not grant a special exception unless it makes, and records in its minutes, specific findings that:

1. The exceptions will be in harmony with the spirit and purposes of Titles 2 and 20, including the preservation of the essential character of the district in which the property is located; and
2. The public convenience and welfare will be substantially served; and
3. The use of neighboring property will not be substantially injured; and
4. Include any conditions and safeguards which the board deems appropriate, such as site arrangement, landscaping and hours of operation.

The board may authorize the following special exceptions:

A. The special exceptions identified in this chapter and in the district regulations established in Title 20 of the city code.

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**B. Two or more nonconforming lots.** Permit the modification of setback requirements as the board deems necessary to secure an appropriate development of a lot; provided, however, that:

1. The lot is in a legally recorded and developed subdivision of at least ten years; and,
2. There are two or more lots that do not conform to Title 20 located within the same block on the same side of the street or within the block directly across and abutting the street; and,
3. The modifications are in the same nature as the existing nonconforming lots and do not permit construction less conforming than the least conforming of the nonconforming lots; and,
4. If the subject lot is located at the intersection of two streets (a corner lot), then nonconforming lots within the same block on the same side of either intersecting street or directly across and abutting either intersecting street, but not lots located diagonally from the subject lot, may be used in determining the nonconforming lot restrictions of this special exception.

**C. Rear yard setback, single-family residence.** Permit an extension of a single-family residential structure into the required rear yard, which shall be measured to the rear property line, not to the centerline of the alley, if one exists; provided, however, that:

1. The residence has been in existence and owner occupied for one continuous year, and has a valid certificate of occupancy; and,
2. The total of all extensions granted shall not project into the required rear yard for a depth in excess of three-fifths of the required yard, except that a minimum ten foot rear yard setback shall be required; and,
3. The total width of all extensions granted shall not exceed one-third of the average width of the site; and,
4. The minimum side and side street yards shall not be reduced; and,
5. The total floor area of all detached accessory structure(s) existing or later constructed on the site shall not exceed one hundred eighty square feet; and,
6. Unless otherwise provided in this section, all remaining areas of the required rear yard shall be permanent open space; and,
7. The extension shall not permit the creation of an additional dwelling unit.

**D. Rear yard setback, duplex.** Permit an extension of a duplex residential structure into the required rear yard, which shall be measured to the rear property line, not to the centerline of the alley, if one exists; provided, however, that:

1. The duplex has been in existence and owner occupied for one continuous year and has a valid certificate of occupancy; and,
2. The total of all extensions granted shall not project into the required rear yard for a depth in excess of three-fifths of the required yard, except that a minimum ten foot rear yard setback shall be required; and,

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3. The total of all extensions granted shall not exceed one-third of the average width of the site, and the total of all extensions for either unit of the duplex shall not exceed two-thirds of the average width of that unit; and,
4. The minimum side and side street yards shall not be reduced; and,
5. The total floor area of all detached accessory structure(s) existing or later constructed on the site shall not exceed one hundred square feet; and,
6. Unless otherwise provided in this section, all remaining areas of the required rear yard shall be permanent open space; and,
7. The extension shall not permit the creation of an additional dwelling unit.

**E. Yard requirements for public schools.** Modify the yard requirement for public schools where the following conditions are met:

1. The applicant is a governmental body to whom the Legislature has delegated the Constitutional duty to “establish ... an efficient system of public free schools” and has conferred upon its trustees “exclusive power to manage and govern the public free schools of the district,” and
2. The proposed modification is for one or more of the following purposes:
  - a. To construct, remodel, revitalize, upgrade or add to existing school facilities in order to preserve a school campus in an existing neighborhood,
  - b. To make the best utilization of available school campus land for the academic and physical educational needs of students,
  - c. To conform with existing structures on the school campus,
  - d. To prevent or reduce the need for portable buildings on the school campus,
  - e. To prevent or reduce the need to transport students out of their neighborhood school due to the lack of sufficient facilities,
  - f. To avoid or reduce the need for the school district to condemn adjacent properties,
  - g. In all of the above cases, before granting a special exception, the board shall:
    - i. Obtain written verification from authorized representatives of the school district that the above required condition or conditions are met and that the granting of the special exception will not be detrimental to the health, safety or welfare of the students and personnel of the school. This verification is presumed to be valid as to the students and personnel, and
    - ii. Find that the granting of the special exception is not detrimental to the public health, safety or welfare of the general public, particularly the neighborhood in the vicinity of the school.

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**F. Side street yard setback.** Modify district side street yard requirements where the following conditions are met:

1. The proposed modification does not exceed fifty percent of the required side street yard requirement; and,
2. The minimum front and rear setbacks shall not be reduced; and,
3. The zoning board of adjustment has received the written approval, based on traffic safety considerations, of the traffic engineer; and,
4. The proposed modification does not permit the creation of an additional dwelling unit.

**G. Builder error.** Permit the encroachment of the principal building or structure into the required yard setbacks in all districts, caused by an error in construction; provided, however, that:

1. The permitted encroachment into any front yard setback shall not exceed ten percent of the required setback, or one foot whichever is greater; and,
2. The permitted encroachment into any side yard or side street yard setback shall not exceed ten percent of the required setback or one foot whichever is greater; and,
3. The permitted encroachment into any rear yard setback shall not exceed fifteen percent of the required setback or one foot whichever is greater; and,
4. The owner shall demonstrate through testimony or documentation that the error causing the encroachment was inadvertent and not intentional; and,
5. The number of properties requesting encroachment permission under this section which involve the same builder, contractor, or owner shall not exceed three in any twelve-month period.

**H. Lot size.** Permit the construction of a single-family residence in a residential (R) district on a lot that does not meet the required minimum lot width, minimum lot depth, or minimum lot area; provided, however, that:

1. The lot is in a legally recorded and developed subdivision of at least ten years; and,
2. A minimum of one of the required amounts, lot width, lot depth or lot area, meets the required minimum amount; and,
3. The lot width, lot depth or lot area amounts which do not meet the required minimum amounts are not less than ninety percent of the respective required minimum amount; and,
4. The residential structure conforms to the yard setbacks of the zone in which it is located; and,
5. The maximum number of lots for which this exception may be granted in any subdivision shall be five percent of the total number of lots in the subdivision or one lot, whichever is greater.

**I. Authorize the reduction of off-street parking** requirements; provided, however, that:

1. The owner shall demonstrate through testimony or documentation that the required number of off-street parking spaces cannot be reasonably accommodated on the property involved; and,
2. The zoning board of adjustment has received the written approval, based on traffic safety considerations, of the traffic engineer; and,
3. The reduction authorized shall not modify the number of required off-street parking spaces by more than fifteen percent.

**J. Condemnation or eminent domain.** Authorize the reduction of zoning restrictions as to lot area, yards or setbacks as applied to a structure that is to be relocated on any lot, a

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portion of which was acquired under the threat of condemnation or in an eminent domain action; provided, however, that the following conditions are met:

1. The proposed configuration of the lot, including setbacks, yards, location of structures, landscaping and other proposed buffers prevents adverse impact on adjacent property, and
2. The board receives a recommendation from the zoning administrator or any department required to provide relevant input, and
3. The use of the structure or structures does not extend into an area that was previously used to accommodate off-street parking, unless the applicant demonstrates that the parking provided adequately serves the need generated by the use, and
4. The board imposes those conditions reasonably necessary to protect the health, safety and welfare of the surrounding property owners and the general public.

**K. Carport over a driveway.** Permit the encroachment into the required front yard setback for a lot in a residential (R) district beyond other allowed modifications for a carport covering a driveway; provided, however, that:

1. The residence has been in existence and owner occupied for one continuous year, and has a valid certificate of occupancy; and,
2. The zoning board of adjustment has received the written approval of the structural design from the building permits and inspection division of the development services department; and,
3. The carport shall be constructed of the same material, architectural design, and color scheme as the residential structure, open on three sides, and attached to the main structure; and,
4. The area of the carport shall not exceed one-fifth of the first-floor area of the dwelling, nor shall the carport rise above the highest point of the roof of the dwelling; and,
5. Elevation drawings of the proposed structure shall be submitted; and,
6. For a duplex, the total of all extensions granted shall not exceed one-third the average width of the site, and the total of all extensions for either unit of the duplex shall not exceed two-thirds of the average width of that unit; and,
7. Unless otherwise provided in this chapter, all remaining areas of the required front yard shall be permanent open space; and,
8. There is no other reasonable alternative to provide a carport in the front yard of the subject property without exceeding the encroachments allowed in Title 20 of this code; and,
9. The extension shall not permit the creation of an additional dwelling unit nor shall it constitute an extension of the living area of the dwelling.

**L. In existence 15 years or more.** Permit the encroachment into the required yard setbacks for structures; provided, however, that the applicant can prove the following conditions:

1. The encroachment into the required yard setback has been in existence for more than fifteen years; and,
2. Neither the applicant nor current property owner is responsible for the construction of

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the encroachment; and,

3. Neither the applicant nor the current property owner owned the property at the time the encroaching structure was constructed or built; and,

4. The encroachment, if into the required front yard setback, does not exceed fifty percent of the required front yard setback; and,

5. The encroachment does not violate any other provision of the Municipal Code.

**M. Front yard setback.** Permit an extension of a single-family residential structure into the required front yard, which shall be measured to the property line; provided, however, that:

1. The residential structure has been in existence and owner occupied for one continuous year, and has a valid certificate of occupancy; and,

2. The total length of all extensions granted shall not project into the required front yard a depth in excess of ten feet; and,

3. The total width of all extensions granted shall not exceed one-third of the average width of the site; and,

4. The minimum side and side street yards shall not be reduced; and,

5. A minimum of a ten foot front setback from the property line shall be maintained; and,

6. If the proposed modification is for an enclosed garage, a minimum twenty foot driveway shall be required; and,

7. Unless otherwise provided in this section, all remaining areas of the required front yard shall be permanent open space; and,

8. The extension shall not permit the creation of an additional dwelling unit.

(Ord. 16516 §§ 1—5, 2006; Ord. 15479 §§ 1—3, 2003; Ord. 14752, 2001; Ord. 14019, 1999; Ord. 13716, 1998; Ord. 13616 § 2, 1998; Ord. 13465, 1998; Ord. 13416 § 1, 1997; Ord. 13341, 1997; Ord. 13152 § 2, 1997; Ord. 13062 § 1, 1997; Ord. 12815 §§ 1, 2, 1996; Ord. 12681, 1996; Ord. 10820 § 1, 1991; Ord. 10615 § 1, 1991; Ord. 9728 § 1, 1989; Ord. 8349, 1985; prior code § 25-73)

### **2.16.060 Administration.**

A. All applications to the board will be in writing on forms provided by the development services department and with documents as required and shall be accompanied by the fee as set by city council to help defray the cost of publication, the giving of notice, and general expense in connection with the application. Before acceptance, all applications submitted shall be complete in all details.

B. The owners of property within three hundred feet of the subject property shall be provided written notice of the appeal or application for a special exception or variance ten days prior to the hearing of the board.

C. The board authorization is for twelve months unless otherwise directed by the board at the time the authorization is approved.

D. Extension of the time to apply for a building permit may be requested from the board during the one-year period. Extension of time may not be requested when demolition of non-permitted structure(s) is required. The request for an extension shall be acted upon

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by the board at the regular meeting, but no notice and hearing shall be required. If a board authorization expires, a new application accompanied by a new fee is required.

E. Applications for special exceptions may be granted, denied or granted with conditions by the board.

F. Reapplication. The board will not consider an appeal or application that is the same or very similar to one that has been denied, for a period of twelve months unless the board finds that a substantial change in conditions has occurred.

G. Revocation. The board of adjustment shall have authority to revoke a variance or special exception if it finds development and/or operation is not in accordance with the conditions under which a variance or special exception was permitted.

H. Appeals of board decisions. Appeals from the zoning board of adjustment lie directly to the district court. (Ord. 15661 § 1, 2004; Ord. 15479 § 4, 2003; Ord. 15226 § 1, 2002; Ord. 13152 § 3, 1997; Ord. 12112 § 1, 1994; Ord. 10934 § 1, 1992; Ord. 10930 § 1, 1992; Ord. 10100 § 1, 1990; Ord. 10060 § 1, 1990; prior code § 25-74)


**SECTION 3:** That this ordinance shall take effect immediately upon its passage.

**SECTION 4: Severability.** In the event any clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstances shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of El Paso, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

**SECTION 6:** Except as herein amended, Title 2 (Administration and Personnel) of the El Paso Municipal Code shall remain in full force and effect.

**PASSED AND APPROVED** this 13<sup>th</sup> day of May, 2008.


THE CITY OF EL PASO

  
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John F. Cook  
Mayor

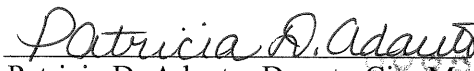
ATTEST:

  
\_\_\_\_\_  
Richarda Momsen  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Cynthia Osborn  
Assistant City Attorney

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Patricia D. Adauto, Deputy City Manager  
Development & Infrastructure Services

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