

## ORDINANCE NO. 23-01-05-02

**AN ORDINANCE OF THE CITY COUNCIL OF LAGO VISTA, TEXAS, AMENDING SECTIONS 11.20 AND 11.30 OF CHAPTER 14 OF THE LAGO VISTA CODE OF ORDINANCES TO SPECIFICALLY RECOGNIZE THE ABILITY OF THE BOARD OF ADJUSTMENT TO CONSIDER ANY OF THE GROUNDS INCLUDED IN SECTION 211.009(B-1) OF THE TEXAS LOCAL GOVERNMENT CODE IN MAKING THE DETERMINATION WHETHER THE STRICT APPLICATION OF A ZONING ORDINANCE PROVISION WOULD RESULT IN AN UNNECESSARY HARDSHIP; AND PROVIDING FOR RELATED MATTERS.**

**WHEREAS**, the City of Lago Vista, Texas is a Home Rule City; and

**WHEREAS**, the City Council of the City of Lago Vista has previously specified the findings required for the Board of Adjustment to approve a zoning variance in Section 11.20 of Chapter 14, the Zoning Ordinance; and

**WHEREAS**, the City Council of the City of Lago Vista has also previously provided guidance to the Board of Adjustment by including language in Section 11.30 of Chapter 14, the Zoning Ordinance, that specifies what is described as their “interpretive role” in making the required determinations; and

**WHEREAS**, Section 211.009(b-1) of the *Texas Local Government Code* now includes enumerated discretionary authority that the Board of Adjustment may exercise in the determination of whether the basis of a specific variance application is an “unnecessary hardship;” and

**WHEREAS**, the staff and members of the Planning and Zoning Commission believe that it is in the best interest of the residents and property owners of the City if local ordinances are as consistent as possible with state statutes so that the Board of Adjustment can more effectively rely on the guidance of Texas courts in making decisions involving zoning variance requests; and

**WHEREAS**, the Planning and Zoning Commission of the City of Lago Vista has undertaken a review of those regulations which included input from the Board of Adjustment and conducted multiple public hearings concerning those regulations at their meetings between November 11, 2021, and December 8, 2022; and

**WHEREAS**, the Planning and Zoning Commission of the City of Lago Vista has forwarded a recommendation to the City Council to amend those requirements contained within Sections 11.20 and 11.30 of Chapter 14 of the Lago Vista Code of Ordinances as described below; and

**WHEREAS**, the City Council at its public hearing to consider this ordinance amendment held on January 5, 2023, reviewed the recommendation, and found the changes to be warranted.

**WHEREAS**, the City Council desires to amend the Lago Vista Code of Ordinances as described below.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LAGO VISTA, TEXAS, THAT:

**SECTION 1. FINDINGS OF FACT.** All of the above and foregoing recitals are hereby found to be true and correct legislative findings of the City and are incorporated herein as findings of fact.

**SECTION 2. AMENDMENT.** The City Council of the City of Lago Vista, Texas, does hereby amend Sections 11.20 and 11.30 of the Zoning Ordinance found in Chapter 14 of the Lago Vista Code of Ordinances as shown in Exhibit "A."

**SECTION 3. REPEALER.** All ordinances, orders or resolutions heretofore passed and adopted by the City Council of the City of Lago Vista, Texas, are hereby repealed to the extent said ordinances, orders or resolutions or parts thereof are in conflict herewith.

**SECTION 4. SEVERABILITY CLAUSE.** If any section, subsection, article, paragraph, sentence, clause, phrase, or word in this Ordinance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Ordinance, and the City Council hereby declares it would have passed such remaining portions of this Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

**SECTION 5. EFFECTIVE DATE.** This Ordinance shall take effect immediately upon its passage and publication in accordance with the provisions of the *Texas Local Government Code*.

**SECTION 6. OPEN MEETINGS.** It is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the *Texas Government Code*.

**AND, IT IS SO ORDERED.**

**PASSED AND APPROVED** this 5th day of January 2023.

Ed Tidwell  
Ed Tidwell, Mayor

ATTEST:

Lucy Aldrich  
Lucy Aldrich, City Secretary



On a motion by Councilmember Prince, seconded by Councilmember Marion, the above and foregoing ordinance was passed and approved.

**EXHIBIT "A"**

**CHAPTER 14**

**ZONING**

**11.20 Conditions Required for Variance**

No variance shall be granted unless the Board of Adjustment finds:

- (a) That approval of the variance is not contrary to the public interest (see Section 2.10 above).
- (b) Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship. A hardship shall:
  - (1) Not be self-imposed or personal in nature;
  - (2) Not be purely financial or pecuniary; and
  - (3) Must relate to a unique aspect of the property for which the variance is sought, such as irregularity of shape or topography, and not common or generally characteristic of the area.
- (c) That the variance will be no greater than the minimum required to alleviate the difficulty or hardship for which the variance is requested; and
- (d) That the spirit of the ordinance is observed, and substantial justice is done.

**11.30 Interpretive Role**

The Board of Adjustment may consider the items enumerated in Section 211.009(b-1) of the Texas Local Government Code or any successor statute thereto in considering a variance. However, the consideration of the Texas Local Government Code does not supplant, supersede, or eliminate the mandatory findings of each of the enumerated requirements in Section 11.20 above which should be strictly adhered to and in a consistent manner. That includes but is not limited to the requirement that the unnecessary hardship must be based on special conditions related to a unique, uncommon, or unusual aspect of the property in question. It also specifically limits relief to the minimum required to alleviate the unnecessary hardship, to the exclusion of potential reasonable alternatives.

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- (c) That the variance will be no greater than the minimum required to alleviate the difficulty or hardship for which the variance is requested; and
- (d) That the spirit of the ordinance is observed, and substantial justice is done.

### **11.30 Interpretive Roles**

- (a) ~~Variances to provisions to this chapter should be granted sparingly.~~
- (b) ~~Granting of a variance must be predicated on a finding that the applicant's request for variance arises from unusual conditions or circumstances, such as exceptional irregularity of shape or topography, which are peculiar to the parcel of land involved and not shared generally by other parcels in the neighborhood, or because no other reasonable alternative is available.~~

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