

**ORDINANCE NO. 07022019-01**

**AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF POTEET, TEXAS, REPEALING AND REPLACING SECTION 1 AND SECTION 2 OF ORDINANCE NO. 10032017-01; FOR THE PURPOSE OF DISBANDING THE PLANNING AND ZONING COMMISSION; INCORPORATING RECITALS; PROVIDING REPEALING, SAVINGS, AND SEVERABILITY CLAUSES; PROVIDING FOR PUBLICATION; AND SETTING AN EFFECTIVE DATE.**

**WHEREAS**, the City Council determined that it was in the best interest of the City to repeal Section 1 and Section 2 of Ordinance No 10032017-01 as it pertains to Planning and Zoning Commission and transfer the Planning and Zoning Commission’s duties back to the City Council; and,

**WHEREAS**, the City Council of the City of Poteet, Texas (hereinafter “City Council”) took action on July 2<sup>nd</sup>, 2019 to eliminate the Planning and Zoning Commission that had been previously established pursuant to Ordinance No 10032017-01, and transfer the duties of the commission back to the City Council; and

**WHEREAS**, the City Council, as a General Law City, may serve as the Planning and Zoning Commission pursuant to Chapter 211.007(e) of the Tex. Loc. Gov’t Code; and

**WHEREAS**, any reference to the P&Z in this ordinance or in Texas Local Government Code, Chapter 211, means the City Council.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF POTEET, TEXAS:**

**SECTION 1. REPEAL.** Ordinance No 10032017-01 of the City of Poteet, Texas Section 1, “General” and Section 2, “Zoning Authority and Procedures” are hereby repealed and replaced as follows:

“Section 1. As a general law city, the City Council shall henceforth act as the Planning and Zoning Commission.

Section 2. Intentionally Omitted”

**SECTION 2.** Ordinance No 10032017-01 of the City of Poteet, Texas Section 3, “Board of Adjustment” shall remain unchanged and as set forth below:

**“BOARD OF ADJUSTMENT**

**Board of Adjustment established; organization; appeals.**

The board of adjustment is established in accordance with the provisions of V.T.C.A., Local Government Code § 211.008 et seq., regarding the zoning of cities and with the powers and duties as provided in said statutes.

(1) Organization.

- a. **Membership.** As a general law city, the City Council may act as the zoning board of adjustment; or the board shall consist of five members and four alternates to be appointed by the City Council. Alternate members of the board of adjustment shall serve in the absence of one or more regular members when requested, so that all cases heard by the board of adjustment will always be heard by a minimum of four members. Regular members and alternate members of the board of adjustment shall serve for a period of two years and until their successors are appointed and qualified. Members of the board may be removed for just cause by City Council upon a written charge and after public hearing. Vacancies shall be filled by appointment of the City Council by a majority vote for the unexpired term. The board shall elect its own chairperson, who shall serve for a period of one year or until a successor is elected. Such chairperson or the acting chairperson shall administer oaths and compel attendance of witnesses.

- b. **Meetings.** Meetings of the board shall be open to the public in accordance with the Texas Open Meetings Act and held at the call of the chairperson and at such times as the board may determine. Any person may appear in person or by an authorized agent. The concurring vote of 75 percent or four members of the board shall be necessary to reverse any order, requirement, decision or determination of any administrative official, to grant a variance, or to decide in favor of the applicant on any matter upon which the board is required to act under this Code.
- c. **Rules.** A designated board member or City staff member shall keep minutes of board proceedings, showing the vote of each member 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 immediately filed in the office of the board and shall be a public record.

(2) Appeals.

- a. **Application.** An application for granting a variance by the board, other than an appeal, shall be on a form provided by the city and shall be accompanied by the required fee.
- b. **Appeals.** An appeal may be taken by any person aggrieved, or by any officer, department, board, or commission of the City affected by any decision of the chief building official or other administrative officer. Such appeal shall be taken within 15 days after the date of the decision of the chief building official or other administrative officer has been rendered, by filing with the officer with whom the appeal is taken and with the board a notice of appeal specifying the ground thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all papers constituting the record from which the appeal is taken.
- c. **Stay of proceedings.** An appeal stays all proceedings in furtherance of the action appealed from unless the official certifies in writing to the board that facts supporting the official's opinion that a stay would cause imminent peril to life or property. In that case, the proceedings shall not be stayed except by a restraining order, which may be granted by the board or by a court after notice to the official if due cause is shown.
- d. **Notice and hearing.** The board shall fix a reasonable time for the hearing of an appeal and shall give notice thereof by depositing such notice in the mail addressed to the applicant and to the owners of real property lying within 200 feet of the property, according to the current tax rolls of the city, and by publishing notice of such hearing in a newspaper of general circulation in the City. Both the mailed and published notice shall be given at least ten days prior to the date of the hearing.
- e. **Decision by board.** The board shall decide the appeal within 90 days after placement on its agenda, after which time the request shall be deemed approved. The board may reverse or affirm in whole or in part or modify the order, requirement, decision, or determination from which an appeal is taken and make the correct order, requirement, decision or determination.

**Powers and duties of board of adjustment.**

- (1) **Jurisdiction.** The board shall have the following powers and shall have the power to impose reasonable conditions to ensure compliance and protect adjacent property, and to hear and decide the following special exceptions:
  - a. To permit a public utility or public service or structure in any district, or a public utility or public service building of a ground area and of a height at variance with those provided for in the district in which such public utility or public service building is permitted to be located, when found reasonably necessary for the public health, convenience, safety, or general welfare to the extent provided by law.
  - b. To permit the reconstruction of a nonconforming building or a building containing a nonconforming use damaged by explosion, fire, act of God, or other casualty in excess of 50 percent, but less than the total, of its fair market value, where the board finds a compelling necessity requiring a continuance of the nonconforming use or structure.

c. To approve and permit alternate building materials in nonresidential zoning districts requiring masonry construction of exterior walls, if such alternate is in general conformance with and does not conflict with adjacent properties.

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

(2) **Limitations.** The board shall have no authority to grant a zoning amendment or to grant or modify specific use permits or planned development districts or to change any provisions of this Code. In the event that a request for a zoning amendment is pending before the commission or city council, the board shall neither hear nor grant any variances with respect to the property until final disposition of the zoning amendment. The board shall not grant a variance for any parcel of property or portion thereof upon which a site plan, preliminary plat or final plat (where required) is pending before the planning and zoning commission or the city council. All administrative remedies shall have been exhausted prior to hearing by the board.

(3) **Appeals.** No appeal to the board of adjustment shall be allowed on the same piece of property, on the same or similar question prior to the expiration of one year from the date of a ruling of the board of adjustment on any appeal to such body, unless other property in the same zoning area shall have within such one-year period been altered or changed by ruling of the board of adjustment, in which case such appeals of circumstances shall permit the allowance of an appeal.

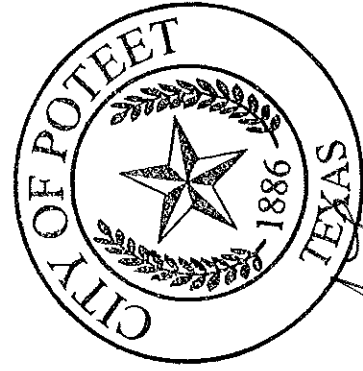
(4) **Judicial review.** Any person or persons, jointly or severally, aggrieved by a decision of the board, or any taxpayer, or any officer, department, or board of the city may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition must be presented within ten days after the decision is filed.”

**SECTION 4.** All Ordinances or parts thereof, which are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict and the provisions of this Ordinance shall be and remain controlling as to the matters resolved herein.

**SECTION 5.** It is officially found and determined that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, was given, all as required by Chapter 551, Texas Government Code.

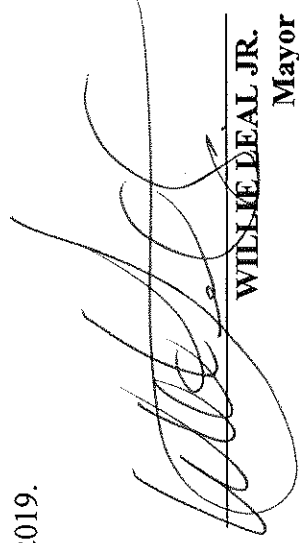
**SECTION 6.** This Ordinance shall take effect immediately after its passage, approval and publication according to law.

**PASSED, APPROVED AND ADOPTED** this 2<sup>nd</sup> day of July 2019.



**ATTEST:**

  
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**ABIGAYLE FRAUTSCHI**  
City Secretary

  
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**WILLIE DEAL JR.**  
Mayor