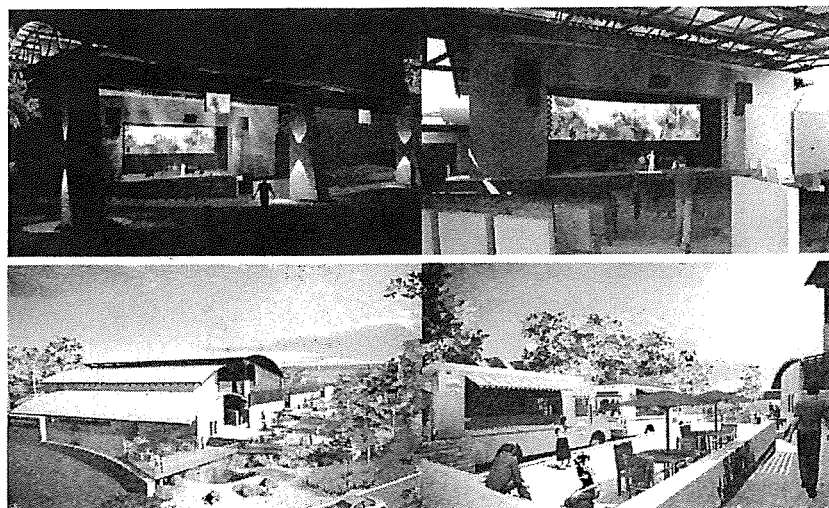


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164[CLICK HERE TO GIVE](#)

## ARTIST RENDERINGS OF THE AMPHITHEATRE

---

[CLICK HERE TO GIVE](#)

## AMPHITHEATRE FEATURES

---

- 1000 seat capacity
- covered stage & audience
- hillside seating for 500-800
- 22,000 sq. foot venue
- state-of-the-art lighting
- audio system designed to reduce noise pollution while maintaining dynamic experiences
- family movie nights, ballets, musicals and other artistic city outlets
- concourse plaza for gathering, with permanent restrooms, where food trucks can serve food & beverages
- backstage area with men's/women's green rooms and dressing facilities
- abundant and convenient on-site parking
- dual loading dock for easy ingress - egress

[CLICK HERE TO GIVE](#)

## HOW TO GIVE

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165

Exhibit 2-3

Verizon

3:26 PM

theaustinamp.com

39%

EMAIL US

UPCOMING EVENTS



			ABOUT US	OUR FACILITY	DIRECTIONS	CONTACT US
AUG 28	LARRY GATLIN AND THE GATLIN BROTHERS	LEARN MORE +	PASSES			
AUG 29	MARCOS WITT	LEARN MORE +	PASSES			
SEP 4	PHILLIPS, CRAIG & DEAN	LEARN MORE +	PASSES			
SEP 18	LINCOLN BREWSTER	LEARN MORE +	PASSES			
SEP 20	NICOLE C. MULLEN	LEARN MORE +	PASSES			

G1  
164

Verizon

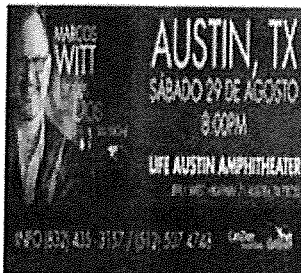
3:20 PM

trinitytickets.com

41%

Home Artist Promoters Guide Questions Contact Us Trinity Blog My Account  
Event listing

## Marcos Witt Sigués Siendo Dios 8/29/15



Share with your friends

Share on Facebook

Share on Twitter

Preview Video



### Purchase Tickets

Marcos Witt Sigués Siendo Dios 8/29/15 Live Austin Amphitheater, 8901 West Highway 71, Austin, 78735  
Sat, Aug 29, 2015 08:00 PM

[Click To Show Additional Ticket Details](#)

Available Tickets	Price	Qty*
Orquesta (Orchestra Pit)	\$49.68	0
Seccion Intermedia (Mezzanine)	\$34.16	0
Loma/Césped/Lawn (No Asientos/No Seats)	\$17.08	0

[Register Now](#)

### Description

- Doors Open: 7:00 PM
- Las entradas se enviarán por correo
- Tickets will be mailed

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167

Verizon

3:20 PM

41%

tickets.liveshowticketing.com



# LIVE SHOW TICKETING

Your Solution for Concerts & Events

Have Questions or Need Help?  
Call us at 210-468-5592  
or email us at  
info@liveshowticketing.com

Home » Details » Lincoln Brewster

## Lincoln Brewster

Friday, September 18, 2015 07:30 pm • Austin, TX

EVENT INFO

### Step One: Choose Your Items

Live Austin  
8801 West Highway 71  
Austin, TX 78735

Reserved VIP • Early Admission at 5:15pm

0 - +

\$49.50

VIP ticket includes early admission at 5:15pm, best seats, and a Meet & Greet

General Admission Covered Amphitheater Seating

0 - +

\$28.50

First come first serve seating under covered area

General Admission Lawn

0 - +

\$18.50

Bunkers and lawn chair seating permitted. This is an uncovered area

TOTAL

Items \$0.00  
Taxes \$0.00



G1  
148



# LIVE SHOW TICKETING

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[info@liveshowticketing.com](mailto:info@liveshowticketing.com)

Items → Packages → Hardware & Application

## Building 429

### EVENT INFO

Friday, July 24, 2015 07:00 pm • Austin, TX

### Step One: Choose Your Items

LiveAustin  
8901 West Highway 71  
Austin, TX 78735

ITEM NAME	QUANTITY	UNIT PRICE	TOTAL PRICE
Reserved VIP - Early Admission at 5:15pm VIP ticket includes early admission at 5:15pm, best seats, and a Meet & Greet	<input type="text" value="0"/> - +	\$40.00	
General Admission Covered Amphitheater Seating First come first serve seating under covered area	<input type="text" value="0"/> - +	\$28.50	
General Admission Lawn Blankets and lawn chair seating permitted. This is an uncovered area	<input type="text" value="0"/> - +	\$18.50	

TOTAL	
Items	\$0.00
Fees	\$0.00
Total	\$0.00

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169



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Call us at 210-468-5592  
or email us at  
info@liveshowticketing.com

Items → Details → Review & Approve

## Larry Gatlin & The Gatlin Brothers

EVENT INFO

Friday, August 28, 2015 07:30 pm • Austin, TX

### Step One: Choose Your Items

ITEM TYPE	QUANTITY	EACH	SUBTOTAL
Orchestra Seating	<input type="text" value="0"/> - +	\$28.50	\$0.00
Covered Amphitheater Seating	<input type="text" value="0"/> - +	\$23.50	\$0.00
Lawn Seating	<input type="text" value="0"/> - +	\$12.50	\$0.00

#### TOTAL

Items:	\$0.00
Fees:	\$0.00
Total:	\$0.00

Continue

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170



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Have Questions or Need Help?  
Call us at 210-468-5592  
or email us at  
info@liveshowticketing.com

Items → Details → Review & Approve

**Phillips, Craig & Dean**

EVENT INFO

Friday, September 4, 2015 07:30 pm • Austin, TX

## Step One: Choose Your Items

ITEM TYPE	QUANTITY	EACH	SUBTOTAL
Orchestra Seating	SOLD OUT	\$28.50	\$0.00
Covered Amphitheater Seating	<input type="text" value="0"/> - +	\$23.50	\$0.00
Lawn Seating	<input type="text" value="0"/> - +	\$12.50	\$0.00

### TOTAL

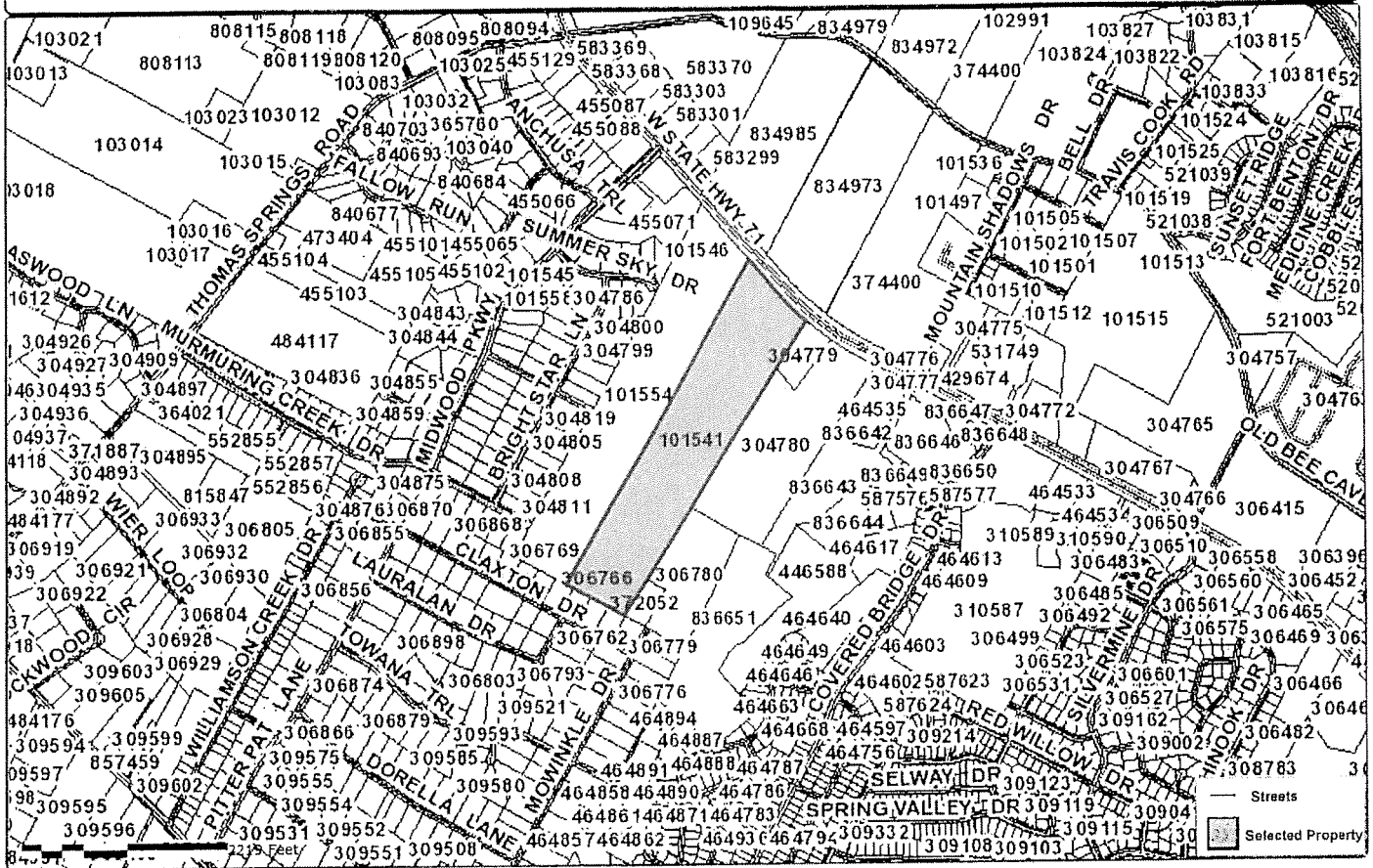
Items: \$0.00  
Fees: \$0.00  
Total: \$0.00

Continue

# EXHIBIT 3

FILE

## Travis CAD - Map of Property ID 101541 for Year 2015



### Property Details

#### Account

Property ID: 101541  
 Geo ID: 0101480301  
 Type: Real  
 Legal Description: ABS 569 SUR 94 MCCLURE H ACR 53.28

#### Location

Situs Address: 8901 W STATE HY 71 TX 78735  
 Neighborhood: EXEMPT COMMERCIAL PPTY  
 Mapsco: 611K  
 Jurisdictions: 01, 68, 03, 0A, 2J, 02

#### Owner

Owner Name: PROMISELAND CHURCH WEST THE  
 Mailing Address: % PATRICK R ROGERS, 2600 VIA FORTUNA STE 130, AUSTIN, TX 78746-7982

#### Property

Appraised Value: N/A

<http://propaccess.traviscad.org/Map/View/Map/1/101541/2015>

powered by  
**PropertyACCESS**  
 www.trueautomation.com

Map Disclaimer: This tax map was compiled solely for the use of TCAD. Areas depicted by these digital products are approximate, and are not necessarily accurate to mapping, surveying or engineering standards. Conclusions drawn from this information are the responsibility of the user. The TCAD makes no claims, promises or guarantees about the accuracy, completeness or adequacy of this information and expressly disclaims liability for any errors and omissions. The mapped data does not constitute a legal document.

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EXHIBIT 3

AUSTINTEXAS.GOV AIRPORT LIBRARY AUSTIN ENERGY AUSTIN WATER CONVENTION CENTER VISITORS BUREAU OPEN GOVERNMENT

austintexas.gov  
the official website of the City of Austin

Zoning Profile Report

Address Search

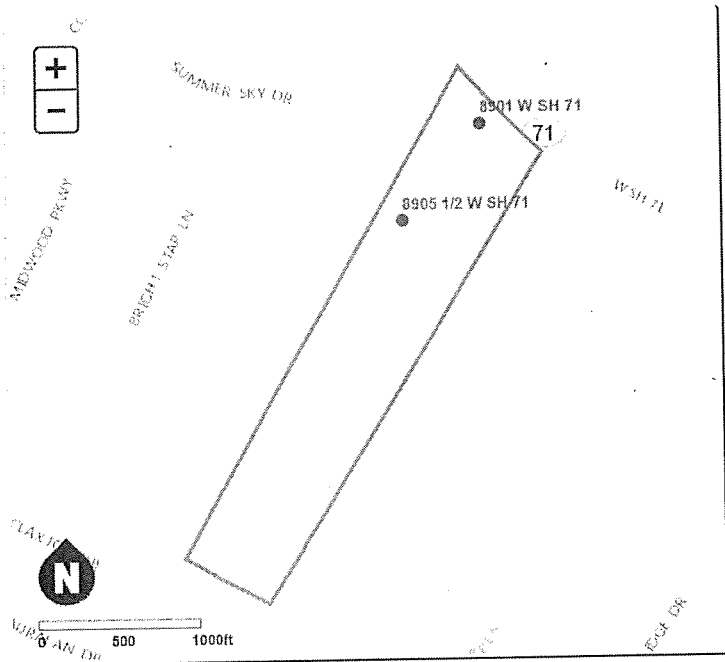
Questions? Click here for help and contact information.

Disclaimer

The Information on this website has been produced by the City of Austin as a working staff map and is not warranted for any other use. No warranty is made by the City regarding its accuracy and completeness.

For official verification of the zoning of a property, please order a Zoning Verification Letter at 512-974-6370.

Location:	(3,063,882.25, 10,063,366.67)
Grid:	A20 A21
Future Land Use (FLUM):	Rural Residential Null
Regulating Plan:	
Zoning:	RR-NP
Zoning Case:	C14-2008-0125
Zoning Ordinance (Mostly after 2000):	20081211-097
Zoning Overlays:	NEIGHBORHOOD PLANNING AREA ■ WEST OAK HILL ■ Oak Hill Combined NPA BARTON SPRINGS ZONE



Zoning Guide

The Guide to Zoning provides a quick explanation of the above Zoning codes, however, the Development Assistance Center provides general zoning assistance and can advise you on the type of development allowed on a property. General information on the Neighborhood Planning Areas is available from Neighborhood Planning. Visit Zoning for the description of each Base Zoning District.



City of Austin  
Law Department

301 W. 2<sup>nd</sup> Street, P.O. Box 1088  
Austin, Texas 78767-1088  
(512) 974-2268

EXHIBIT 4

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Writer's Direct Line  
512-974-2974

Writer's Fax Line  
512-974-6490

June 13, 2013

Robert Kleeman  
Munsch Hardt Kopf & Harr  
401 Congress Avenue, Ste. 3050  
Austin, TX 78701

**Re: Promiseland West—Appeals of Building Permit for Amphitheater**

Dear Mr. Kleeman:

In support of the Director of Planning & Development Review ("PDRD") and the Building Official, I am writing in response to the two appeals you filed to the above-referenced building permit issued for an amphitheater previously approved in connection with the Promiseland West site plan.

After reviewing your submittals and the prior record in this case, the Director has determined that the appeals are untimely and do not fall within the subject matter jurisdiction of either the Board of Adjustment ("BOA") or the Building & Fire Code Board of Appeals ("BFCBA"). Following is a summary of the reasons for the Director's decision.

**I. BOA Appeal**

**A. *Prior Zoning Determinations***

Though styled as an appeal of the May 2013 building permit,<sup>1</sup> the bulk of your BOA appeal challenges prior administrative determinations and staff-level communications made in connection with the amphitheater between 2007 and 2011. The allegations at pages 1-9 focus on the Director's 2008 zoning use determination and the 2011 site plan approval and related restrictive covenant, along with various staff emails from 2007-2008.

---

<sup>1</sup> Since your appeals allege error in issuance of the building permit, it is assumed for purposes of this letter that you are challenging BP No. 2013-047496-BP, which is attached hereto for reference. The document included and cited in both appeals, however, is the separately issued plan review.

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Appeal of these prior determinations is untimely under City Code § 25-1-182 (*Initiating an Appeal*) for reasons explained in my letters to you on October 27 and December 30, 2011, both of which are attached to your appeal. Additionally, on March 21, 2013, the Travis County District Court (Livingston, J.) granted a plea to the jurisdiction filed by the City in response to litigation brought by your client challenging these same determinations. As you are aware, that case remains pending on your client's appeal to the Third Court.

### **B. *Building Permit***

A copy of the building permit, issued on May 10, 2013, is attached hereto for reference, but was not included with your appeal as required under City Code § 25-1-183(3) (*Information Required in Notice of Appeal*). The only error alleged in connection with the permit is a notation on the City's website listing the structural "Sub Type" as: "Amusement, Soc. & Rec. Bldgs."

That notation does not appear on the actual building permit, nor does it constitute a "use determination" under Section 25-1-197 (*Use Determination*) or in any way authorize new uses not allowed under the City's zoning regulations, as previously construed by the Director. Rather, the sub-type notation references occupancy categories for which the structure is approved under the 2009 International Building Code, as adopted in City Code § 25-12-1 (*Building Code*). From a construction standpoint, structures are frequently rated for occupancy types under the Building Code that may not be allowed under applicable zoning regulations.

Your appeal does not challenge the Building Official's designation of the appropriate occupancy rating under the Building Code. Moreover, since the Building Code is not a zoning ordinance, issues related to structural requirements are not within the BOA's subject matter jurisdiction. See Texas Local Gov't Code § 211.009(1) (authorizing BOA appeals for determinations made under zoning enabling statute or local zoning ordinances); City Code Section § 2-1-111 (F) (authorizing BOA appeals for determinations made under Chapter 25-2 (*Zoning*)).

## **II. BFCBA Appeal**

Your appeal to the BFCBA focuses on the same zoning determinations covered in your BOA appeal. In addition to being time-barred, zoning determinations are beyond the jurisdiction of the BFCBA, which is limited to "appeals of orders, decisions, or determinations made by the building official *relating to the application and interpretations of*

Robert Kleeman  
June 13, 2013  
Page 3

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*the Building Code and Fire Code.” See City Code Section §2-1-121(C) (Building and Fire Code Board of Appeals) (emphasis added).*

The appeal does not allege that the building permit violates the Building Code or the Fire Code, neither of which is mentioned. Like the BOA appeal, it also fails to include a copy of the actual building permit and instead focuses on notations appearing on the city website in connection with the separately issued *plan review* (No. 2013-002081PR), which is not an appealable decision. See City Code § 25-11-93 (*Appeal*) (granting a right of appeal for a decision by the building official to “grant or deny a *permit* to the [BFCBA]”) (emphasis added).

---

Based on the reasons explained above, the Director has determined that your appeals are untimely and beyond the jurisdiction of either the BOA or the BFCBA. As always, please do not hesitate to contact me if you have questions or concerns regarding this matter.

Sincerely,



Brent D. Lloyd  
Assistant City Attorney

cc Sue Edwards  
Greg Guernsey  
Leon Barba



SNEED, VINE & PERRY  
A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW  
ESTABLISHED 1926

900 CONGRESS AVENUE, SUITE 300  
AUSTIN, TEXAS 78701

TELEPHONE (512) 476-6955

Writer's Direct Dial:  
(512) 494-3135

EXHIBIT 5

FACSIMILE (512) 476-1825

Writer's e-mail address:  
rkleeman@sneedvine.com

July 2, 2013

**By Hand Delivery**

Board of Adjustment  
c/o Susan Walker  
505 Barton Springs Road  
Room 530  
Austin, Texas 78704

Re: Appeal of Decision by Greg Guernsey to Not forward May 28, 2013 Appeal to the Board of Adjustment For the Issuance of a Building Permit for an Outdoor Amphitheater, 8901 West State Highway 71, Case Number 2013-002081PR ("Permit")

Dear Chairman Jack and Members of the Austin Board of Adjustment:

This firm represents the Hill Country Estates Home Owners Association ("HCE") and the Covered Bridge Property Owners Association, Inc. ("CB") with respect to their appeal of the issuance of the Building Permit. CB and HCE meet the requirements of an interested party, as defined by the City Code.

On May 10, 2013, the City of Austin issued a building permit for an amphitheater to be constructed on 53 acres located at 8901 West State Highway 71, Austin, Texas 78736 (the "Property"). The Permit was issued in conjunction with City case number 2013-002081 PR.

On May 28, 2013 a representative of CB and HCE delivered to City staff an appeal to the Board of Adjustment and an appeal to the Building & Fire Code Board of Appeals regarding the May 8, 2013 approval of a permit and the issuance of the May 10, 2013 building permit for the outdoor amphitheater which is the first building permit issued for the amphitheater.<sup>1</sup> In addition to the appeal, the CB/HCE representative also delivered a standing letter and the appropriate filing fee for an appeal to the Board of Adjustment. A copy of a confirming email sent to Leon Barba on May 28, 2013, who took delivery of the appeal related documents, is enclosed. Also enclosed are copies of the May 28, 2013 appeal, the standing letter, and the filing fee check. The May 28, 2013 CB/HCE appeal is incorporated into this letter and into this appeal for all purposes.

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<sup>1</sup> This letter and the accompanying appeal application do not pertain to the CB/HCE appeal to the Building & Fire Code Board of Appeals.

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On June 14, 2013, Assistant City Attorney Brent Lloyd sent a letter dated June 13, 2013 to me regarding the May 28, 2013 appeal to the Board of Adjustment. In his June 13, 2013 letter, Mr. Lloyd wrote:

"After reviewing your submittals and the prior record in this case, the Director of Planning and Development Review has determined that the appeals are untimely and do not fall within the subject matter jurisdiction of either the Board of Adjustment or the Building & Fire Code Board of Appeals."

The balance of Mr. Lloyd's letter summarizes "the reasons for the Director's decision." According to Mr. Lloyd's June 13, 2013 letter, these are all decisions that Mr. Guernsey made after Mr. Guernsey received and reviewed the May 28, 2013 CB/HCE appeal.

CB and HCE are appealing the decisions described in the June 13, 2013 Brent Lloyd letter. The decisions being appealed are described in the Appeal Application. A copy of the June 13, 2013 Brent Lloyd letter is enclosed with the Appeal Application.

Pursuant to Section 211.010(a)(1), Texas Local Government Code ("TLGC"), HCE and CB file this appeal of Director Guernsey's decision to not forward the CB/HCE May 28, 2013 appeal to the Austin Board of Adjustment. Pursuant to Section 211.009(a)(1), the Board of Adjustment has the authority to "hear and decide an appeal that alleges error in an order, requirement, decision, or determination made by an administrative official in the enforcement of [Subchapter A of Chapter 211 of TLGC] or an ordinance adopted under [Subchapter A of Chapter 211 of TLGC]."

The present CB/HCE appeal to the Board of Adjustment alleges that Director Guernsey made one or more errors in his decision to not forward the May 28, 2013 CB/HCE appeal to the Board of Adjustment. The present CB/HCE appeal alleges that Director Guernsey's decision is erroneous under Subchapter A, Chapter 211, TLGC and under Chapter 25-2 of the Austin Land Development Code.

CB, HCE, and their members are aggrieved parties because their substantive and procedural rights under Section 211.010(a)(1) TLGC and under the City Code have been denied them by Mr. Guernsey's decision to pass judgment on the May 28, 2013 appeal and his decision to not forward the May 28, 2013 appeal to the Board of Adjustment. In other words, Mr. Guernsey has made a determination in the enforcement of Subchapter A, Chapter 211, TLGC and under Chapter 25-2 of the Austin Land Development Code. Section 211.009(a)(1), TLGC establishes the Board of Adjustment's authority to hear and decide an appeal alleging an error by an administrative official in the enforcement of Subchapter A of Chapter 211, TLGC and Chapter 25-2 of the Austin Land Development Code, which was adopted pursuant to Subchapter A of Chapter 211, TLGC.

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HCE and CB are registered neighborhood associations and meet the requirements of Section 25-1-131(A) & (C) LDC to be Interested Parties by communicating their respective concerns regarding the proposed development described in the Building Permit. The enclosed May 28, 2013 appeal materials includes copies of email correspondences to City staff requesting recognition of Interested Party status with respect to the Building Permit application and the refusal of City Staff to do so. Mr. Frank Goodloe is treasurer of CB and Margaret Butler is the President of the HCE. Both HCE and CB are registered neighborhood associations with the City of Austin. All materials establishing the standing of CB and HCE in the May 28, 2013 appeal are incorporated into this letter for all purposes.


Importantly, the reasons given in the June 13, 2013 Brent Lloyd letter for Mr. Guernsey not forwarding the May 28, 2013 appeal to the Board of Adjustment do not include any assertion that CB or HCE are not interested parties, as defined by Section 25-1-131. Mr. Guernsey's reasons do not include his finding that the May 28, 2013 appeal was filed more than 20 days after the issuance of the May 10, 2013 building permit.

The contact information for Margaret Butler is (512) 699-6692 and her mailing address is 7100 Bright Star Lane, Austin, Texas 78736. The contact information for Frank Goodloe is (512) 906-1931 and his mailing address is 6705 Covered Bridge, Unit 10, Austin, Texas 78736.

Please let me know if there are any questions.

Sincerely,

SNEED, VINE & PERRY, P.C.

By:   
Robert Kleeman

RJK:dm  
Enclosures

or other reproduction of this message is strictly prohibited.  
\*\*\*\*\*

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**From:** Kleeman, Robert [<mailto:rkleeman@munsch.com>]  
**Sent:** Tuesday, May 28, 2013 3:19 PM  
**To:** [Leon.Barba@austintexas.gov](mailto:Leon.Barba@austintexas.gov)  
**Subject:** Appeals Regarding Building Permit for Outdoor Amphitheater 8901 West SH 71 [MH-MHDocs.FID894290]

Leon:

Thanks for receiving the appeal to the Board of Adjustment and the appeal to the Building and Fire Code Commission today. For your convenience, I have attached PDFs of the two appeals, the standing letter for the Board of Adjustment appeal and the filing fee check that I left you.

Please let me know if there is any additional information required to complete the appeal application.

**Brent D. Lloyd**  
Assistant City Attorney  
(512) 974-2974

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**From:** Robert Kleeman [mailto:rkleeman@sneedvine.com]  
**Sent:** Tuesday, June 11, 2013 9:15 AM  
**To:** Barba, Leon; Edwards, Sue; Lloyd, Brent  
**Subject:** FW: Appeals Regarding Building Permit for Outdoor Amphitheater 8901 West SH 71 [MH-MHDocs.FID894290]

Dear Mr. Barba:

I represent the Covered Bridge Property Owners Association and the Hill Country Estates Homeowners Association regarding their appeals of the issuance of a building permit for an outdoor amphitheater on RR zoned property located at the above referenced address. I am following up with you regarding the appeals to the Board of Adjustment and the Building and Fire Code Commission that I delivered to you on May 28, 2013. Copies of those appeals and the check for the payment of filing fee for the Board of Adjustment appeal are attached.

Has my clients' Board of Adjustment appeal been forwarded to the Board of Adjustment as required by Section 211.010(b) of the Texas Local Government Code? If not, please let me know when you anticipate that my clients' appeal and "all papers constituting the record" of the of the building permit being appealed will be forwarded to the Board of Adjustment. If you do not intend to forward my clients' appeal and the record of the building permit to the Board of Adjustment, please notify as soon as such a decision is made.

Likewise, I have the same questions regarding my clients' appeal to the Building and Fire Code Commission.

Since our meeting on May 28, 2013, I have changed law firms. I sent you my new contact information by email on June 8, 2013. I resent my V-Card yesterday morning. Out of an abundance of caution, I have also attached my V-Card to this email

Please confirm your receipt of this email.

Robert Kleeman  
Sneed, Vine & Perry, P.C.  
900 Congress Avenue, Suite 300  
Austin, Texas 78701  
(512) 476-6955 – main  
(512) 494-3135 - direct  
(512) 476-1825 – fax

\*\*\*\*\*

This communication may be protected by the attorney/client privilege and may contain confidential information intended only for the person to whom it is addressed. If it has been sent to you in error, please reply to the sender that you have received the message in error and delete this message. If you are not the intended recipient, any dissemination, distribution, copying

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EXHIBIT 5 -1  
CITY OF AUSTIN  
APPLICATION TO BOARD OF ADJUSTMENT  
INTERPRETATIONS  
PART I: APPLICANT'S STATEMENT  
(Please type)

STREET ADDRESS: 8901 West State Highway 71, Austin, Texas 78736.

LEGAL DESCRIPTION: 53.11 acres as described in a Restrictive Covenant recorded in Document No. 2011146026, Official Public Records of Travis County, Texas ("Property")

---

Lot (s) \_\_\_\_\_ Block \_\_\_\_\_ Outlot \_\_\_\_\_ Division \_\_\_\_\_

ZONING DISTRICT: RR

We, Margaret Butler, on behalf of myself and as Authorized Agent for Kim Butler and as Authorized Agent for Hill Country Estates Home Owners Association and Frank Goodloe, on behalf of myself and as Authorized Agent for Covered Bridge Property Owners Association, Inc., affirm that on July 2, 2013, we hereby apply for an interpretation hearing before the Board of Adjustment.

The Director of Planning and Development Review Department interpretations regarding his decision to not forward to the Board of Adjustment the appeal submitted by Hill Country Estates Home Owners Association ("HCE") and the Covered Bridge Property Owners Association ("CB") regarding the issuance of a building permit in connection with City Case No. 2013-002081-PR for the Property ("Permit")<sup>1</sup>:

1. The Director of Planning and Development Review ("Director") has determined that the Board of Adjustment has no subject matter jurisdiction under either Section 211.009(a) (1), Texas Local Government Code or Section 2-1-111, City Code to hear an appeal that alleges that a building permit was issued in error.
2. The Director has the authority under Subchapter A, Chapter 211, Texas Local Government Code and the City Code to determine the subject matter jurisdiction of Board of Adjustment.

---

<sup>1</sup> City staff describes the Permit has building permit having City case No. 2013-047496-BP. CB and HCE are appealing the issuance of the permit in connection with City Case No. 2013-002081-PR. Even if the City has assigned a new case number to the issued permit, it is the same permit that is appealed.

3. The Director has determined that the Board of Adjustment has no subject matter jurisdiction under Section 211.009(a)(1), Texas Local Government Code or Section 2-111(F), City Code to hear the May 28, 2013 CB/HCE appeal filed pursuant to Section 211.010(a)(1) that alleges the Permit was issued in error.

4. The Director has the discretionary authority under Section 211.010(b), Texas Local Government Code to not forward to the Board of Adjustment the May 28, 2013 CB/HCE appeal filed pursuant to Section 211.010(a)(1), Texas Local Government Code.

5. The Director has determined that the May 28, 2013 CB/HCE appeal is untimely with respect to the Permit issued on May 8, 2013.

6. The Director has determined that "under the prior record in this case," CB and HCE had the right to file only one appeal to the Board of Adjustment regarding the proposed outdoor amphitheater project on the Property. In other words, since late January 2009, CB and HCE have had no right under Section 211.010(a)(1), Texas Local Government Code to appeal any decision relating to the outdoor amphitheater, including the May 8, 2013 issuance of the Permit.

7. The Director has determined that CB and HCE may not file any appeal to the Board of Adjustment regarding the issuance of the Permit.

We feel the correct interpretations are:

1. The Board of Adjustment has subject matter jurisdiction under Section 211.009(a)(1), Texas Local Government Code and Section 2-111(F), City Code to hear and decide an appeal that alleges an error in the decision to issue a building permit if the alleged error relates to zoning regulations applicable to the subject property and the permit.

2. The Board of Adjustment has subject matter jurisdiction under Section 211.009(a)(1), Texas Local Government Code to hear and decide an appeal that alleges an error in the decision to issue any permit if the alleged error relates to the zoning regulations applicable to the subject property.

3. The Director does not have the authority to refuse the filing of an appeal made by an aggrieved person under Section 211.010(a)(1), Texas Local Government Code if the aggrieved person has substantially completed the applicable application form and submitted same within 20 days of the administrative decision being appealed.

4. An aggrieved person, who is not the permit applicant, may appeal a permit approval, including a permit that incorporates an earlier interpretation by City staff, if the error alleged relates to zoning regulations applicable to the permit and the subject property.

5. All appeals that are timely and complete pursuant to the City Code and are filed by an aggrieved person pursuant to Section 211.010(a) (1), Texas Local Government Code, must be forwarded to the Board of Adjustment.

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6. The Director does not have the authority under Subchapter A of Chapter 211, Texas Local Government Code or the City Code to determine the subject matter jurisdiction of the Board of Adjustment over an appeal.

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**NOTE:** The board must determine the existence of, sufficiency of and weight of evidence supporting the findings described below. Therefore, you must complete each of the applicable findings statements as part of your application. Failure to do so may result in your application being rejected as incomplete. Please attach any additional support documents.



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1. There is a reasonable doubt of difference of interpretation as to the specific intent of the regulations or map in that:

This is an appeal of decisions made by the Director of PDRD on June 14, 2013 regarding an appeal to the Board of Adjustment filed on May 28, 2013 by CB and HCE. Specifically, this is an appeal of the Director of PDRD's determinations of his authority to enforce Subchapter A, Chapter 211, Texas Local Government Code and Chapter 25-2, City Code.

A. Background Facts. On May 28, 2013, CB and HCE filed an appeal with Leon Barba appealing the issuance of the Permit on May 8, 2013. The appeal alleged an error in the issuance of the Permit because the activities described in the permit application are not authorized under the present zoning applicable to the Property. A copy of the May 28, 2013 CB/HCE Appeal is attached and made a part of this appeal for all purposes.

On June 14, 2013, Assistant City Attorney Brent Lloyd transmitted a letter to legal counsel for CB and HCE in support of the decision of the Director of PDRD to deny the May 28, 2013 CB/HCE appeal filed with the Board of Adjustment. In the letter dated June 13, 2013, Mr. Lloyd wrote:

"After reviewing your submittals and the prior record in this case, the Director has determined that the appeals are untimely and do not fall within the subject matter jurisdiction of either the Board of Adjustment ("BOA") or the Building & Fire Code Board of Appeals ("BFCBA")."

CB and HCE understand one of the purposes of Mr. Lloyd's June 13, 2013 letter is to inform CB and HCE that the Director of PDRD will not forward the May 28, 2013 CB/HCE appeal of the issuance of the Permit to the Board of Adjustment. The determinations described in Brent Lloyd's June 13, 2013 letter are referred to as the "Determinations" or "Mr. Guernsey's Determinations." A copy of the June 13, 2013 Brent Lloyd letter is enclosed and is made a part of this appeal for all purposes.

#### B. Differences in Interpretations of Applicable Law

1. Subject Matter Jurisdiction of the Board of Adjustment. There is a reasonable doubt of difference of interpretation as to whether the subject matter jurisdiction granted to the Board of Adjustment under Section 211.009(a)(1), Texas Local Government Code ("TLGC") includes appeals regarding the issuance of a building permit.

The first determination being appealed is Mr. Guernsey's Determination that the Board of Adjustment does not have subject matter jurisdiction to consider an appeal of the issuance of a building permit.

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Section 2-1-111(F)(5), Austin City Code states that the Board of Adjustment shall "perform other duties prescribed by ordinance or state law." Pursuant to Section 211.009(a)(1), TLGC, the Board of Adjustment has the authority to:

"hear and decide an appeal that alleges error in an order, requirement, decision, or determination made by an administrative official in the enforcement of [Subchapter A of Chapter 211 of TLGC] or an ordinance adopted under [Subchapter A of Chapter 211 of TLGC]."

Section 211.009(a)(1), TLGC is a statutorily mandated subject matter jurisdiction for boards of adjustments in the state of Texas. The City Council has not limited the scope of the authority of the Board of Adjustment because Section 2-1-111(F)(5), Austin City Code conforms the subject matter jurisdiction of the Board of Adjustment to Section 211.009(a)(1), TLGC. Therefore, Mr. Guernsey does not have the authority to limit the Board of Adjustment's subject matter jurisdiction under Section 211.009(a)(1), TLGC. As to the subject matter jurisdiction of the Board of Adjustment to hear and consider an appeal of a building permit, the Texas Supreme Court has ruled that building permits are within the subject matter jurisdiction of a board of adjustment under Section 211.009(a)(1) TLGC. *Ballantyne v. Champion Builders, Inc.*, 144 S.W. 3d 417, 425 (Tex. 2004).

Mr. Guernsey's determination that appeals of the approval of a building permit are outside the subject matter jurisdiction of the Board of Adjustment conflict with the plain language of Section 211.009(a)(1), TLGC and the ruling of the Texas Supreme Court in *Ballantyne*.

2. The May 28, 2013 Appeal is Untimely. In the June 13, 2013 Lloyd letter focuses on the portions of the May 28, 2013 appeal that describe the errors in previous decisions to approve permits with respect to the Property. The June 13, 2013 letter states that "appeal of these prior determinations is untimely under City Code Section 25-1-182 for reasons explained in my letters to you on specifically refers to letters from Mr. Lloyd dated October 27 and December 30, 2011, both of which are attached to your appeal."

Mr. Lloyd's letter does not challenge the fact that the May 28, 2013 CB/HCE appeal was filed within 20 days of the issuance of the Permit. Mr. Lloyd's letter also ignores the plain fact that the May 28, 2013 CB/HCE appeal alleges an error in the decision to issue the Permit in May 2013. The Director of PDRD and Mr. Lloyd maintain that an administrative decision in 2008 can control and preclude an appeal under Section 211.010(a)(1), TLGC more than four years later. While the May 28, 2013 CB/HCE appeal includes some facts that overlap the facts relating to the October 2011 appeal, the May 28, 2013 CB/HCE alleges errors in the issuance of new and totally different permit and alleges new facts.

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Further, it does not matter whether the Director of PDRD believes he has permanently determined all issues relating to the permitting of the outdoor amphitheater on the Property. Section 211.010(a)(1), TLGC grants an aggrieved person, including

CB and HCE, the right to appeal a decision or determination of an administrative official to the Board of Adjustment. Each and every decision may be appealed. Section 211.009(a)(1), TLGC authorizes the Board of Adjustment (not the director of PDRD) to decide whether it will hear the appeal.

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The clear purpose of Sections 211.009 and 211.010, TLGC is to provide the public an avenue to appeal administrative actions that an aggrieved person feels is wrong. Each property and each permit application is different. Community values and standards change over time. Every administrative decision should be subject to appeal, and if deemed appropriate by the Board of Adjustment, reviewed by the Board of Adjustment.

3. The Director of PDRD Has No Authority to Decide Which Appeals are forwarded to the Board of Adjustment. Mr. Guernsey's Determinations necessarily include his interpretation that the Director of PDRD has the discretionary authority to ignore the mandate of the third sentence of Section 211.010(b), TLGC. This sentence mandates that "...the official from whom the appeal is taken shall immediately transmit to the board all the papers constituting the record of the action that is appealed."

The right of appeal under Section 211.010, TLGC also includes the right to have the appeal presented to the Board of Adjustment and to have the opportunity to be heard by the Board of Adjustment.

CB and HCE contend that this is a non-discretionary obligation under state law. The Director of PDRD does not have the ability or authority to thwart appeal rights of CB and HCE under Section 211.010(a)(1) TLGC by arbitrarily deciding which of his decisions can be appealed.

4. The Director of PDRD Has No Authority Under State Law or the Chapter 25-2 to Determine the Subject Matter Jurisdiction of the Board of Adjustment. There is no mention in Chapter 211, TLGC or in the City Code that the Director of PDRD or the administrative official whose decision is being appealed has the authority to decide the subject matter jurisdiction of the Board of Adjustment. The Director of PDRD has granted himself a power that neither state law nor the City Code provides to him.

Subject matter jurisdiction is determined by state law and may be expanded by the City Council. Section 211.009(a), TLGC provides: "The board of adjustment may: (1) hear and decide an appeal that alleges error in an order, requirement, decision, or determination made by an administrative official in the enforcement of this subchapter or an ordinance adopted under this subchapter" (emphasis added).

The word "may" means the Board of Adjustment decides whether it will hear an appeal and the Board of Adjustment will decide whether the appealing party has standing. These powers of the Board of Adjustment are also reflected in Section 2-1-111(F), City Code. The Board of Adjustment should have had the opportunity to decide whether it wanted to hear the May 28, 2013 CB/HCE appeal. As a policy matter, the

Board of Adjustment should never be precluded from reviewing an appeal filed by an aggrieved party pursuant to Section 211.009(a)(1) seeks to present to this Board.

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Under Sections 211.009 and 2.11.010, TLGC, the May 28, 2013 CB/HCE appeal should be forwarded to the Board of Adjustment. The director of PDRD can raise his subject matter jurisdiction objections at the hearing when the Board of Adjustment decides whether it will hear and consider the appeal. If the Director of PDRD is allowed to decide which of his or his staff's decisions are even forwarded to the Board of Adjustment, then the right of appeal granted by Section 211.009(a) (1) TLGC is completely nullified.

5. An appeal of use provisions could clearly permit a use which is in character with the uses enumerated for the various zones and with the objectives of the zone in question because:

This appeal does not pertain to use provisions under Chapter 25-2 of the Land Development Code. This is an appeal of certain determinations and decisions made by the Director of PDRD regarding his enforcement of Subchapter A, Chapter 211, TLGC. Therefore, this question is not applicable to the present appeal.

6. The interpretation will not grant a special privilege to one property inconsistent with other properties or uses similarly situated in that:

This appeal does not pertain to the granting of special privileges to one property. Therefore, this question is not applicable to the present appeal.

APPLICANT/AGGRIEVED PARTY CERTIFICATE — I affirm that my statements contained in the complete application are true and correct to the best of my knowledge and belief.

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Signed \_\_\_\_\_ Printed \_\_\_\_\_

Mailing Address \_\_\_\_\_

City, State & Zip \_\_\_\_\_ Phone \_\_\_\_\_

OWNER'S CERTIFICATE — I affirm that my statements contained in the complete application are true and correct to the best of my knowledge and belief.

Signed \_\_\_\_\_ Printed \_\_\_\_\_

Mailing Address \_\_\_\_\_

City, State & Zip \_\_\_\_\_ Phone \_\_\_\_\_

REQUESTS FOR INTERPRETATION  
(Appeal of an Administrative Decision)

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REQUIRED ITEMS FOR A COMPLETE APPLICATION:

The following items are required in order to file an application for interpretation to the Board of Adjustment.

- A completed application with all information provided. Additional information may be provided as an addendum to the application.
- Standing to Appeal Status: A letter stating that the appellant meets the requirements as an Interested Party as listed in Section 25-1-131(A) and (B) of the Land Development Code. The letter must also include all information required under 25-1-132(C).
- Site Plan/Plot Plan drawn to scale, showing present and proposed construction and location of existing structures on adjacent lots.
- Payment of application fee of \$360.00 for residential zoning or \$660 for commercial zoning. Checks should be made payable to the City of Austin.

**An appeal of an administrative decision must be filed by the 20<sup>th</sup> day after the decision is made (Section 25-1-182). Applications which do not include all the required items listed above will not be accepted for filing.**

**If you have questions on this process contact Susan Walker at 974-2202.**

**To access the Land Development Code: sign on to: [www.ci.austin.us.tx/development](http://www.ci.austin.us.tx/development)**

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**APPLICANT/AGGRIEVED PARTY CERTIFICATE** – I affirm that my statements contained in the complete application are true and correct to the best of my knowledge and belief.

Signed Margaret G. Butler Printed Margaret G. Butler

Mailing Address 7100 Bright Star Lane

City, State & Zip Austin, Tx. 78736 Phone 512.699.6692

**OWNER'S CERTIFICATE** – I affirm that my statements contained in the complete application are true and correct to the best of my knowledge and belief.

Signed \_\_\_\_\_ Printed \_\_\_\_\_

Mailing Address \_\_\_\_\_

City, State & Zip \_\_\_\_\_ Phone \_\_\_\_\_

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**APPLICANT/AGGRIEVED PARTY CERTIFICATE** – I affirm that my statements contained in the complete application are true and correct to the best of my knowledge and belief.

Signed

*Frank W. Goodloe*

Printed

FRANK W. GOODLOE

Mailing Address

6705 COVERED BRIDGE DR UNIT 10

City, State & Zip

AUSTIN, TX.

78736-3311

Phone

512-906-1931

**OWNER'S CERTIFICATE** – I affirm that my statements contained in the complete application are true and correct to the best of my knowledge and belief.

Signed

Printed

Mailing Address

City, State & Zip

Phone



EXHIBIT 6



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NUMBER 13-13-00395-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

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HILL COUNTRY ESTATES  
HOMEOWNERS ASSOCIATION  
AND COVERED BRIDGE PROPERTY  
OWNERS ASSOCIATION, INC.,

Appellants,

v.

GREG GUERNSEY AND  
THE CITY OF AUSTIN,

Appellees.

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On appeal from the 250th District Court  
of Travis County, Texas.

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**MEMORANDUM OPINION**

**Before Justices Garza, Benavides, and Perkes  
Memorandum Opinion by Justice Benavides**

By six issues, which we consolidate into one, appellants, Hill Country Estates Homeowners Association ("Hill Country") and Covered Bridge Property Owners

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Association, Inc. ("Covered Bridge") appeal the trial court's granting of a plea to the jurisdiction filed by appellees, the City of Austin ("Austin" or "the City") and Greg Guernsey, the City's Planning and Development Review Department's Director. We affirm in part and reverse and remand in part.

## I. BACKGROUND<sup>1</sup>

The Texas Local Government Code provides that a municipality may regulate zoning within its city limits and outlines various procedures that a municipality must follow in its regulation. See *generally* TEX. LOC. GOV'T CODE ANN. §§ 211.001–.017 (West, Westlaw through 2013 3d C.S.). In Austin, zoning uses are regulated by the Land Development Code (LDC). See AUSTIN, TEX., LAND DEV. CODE, Title 25 (2015), available at <https://www.municode.com/library/tx/austin>. The LDC gives the director of the Planning and Development Review Department the authority to "determine the appropriate use classification for an existing or proposed use or activity." *Id.* § 25-2-2(A).

In 2007, PromiseLand Church West, Inc. ("the Church") sought to develop a 53-acre project on Highway 71 in Austin to build a chapel, multipurpose building, and an outdoor amphitheater. The area of land for the project is designated "rural residential," which "may be applied to a use in an area for which rural characteristics are desired or an area whose terrain or public service capacity require low density." *Id.* § 25-2-54. Religious assembly use is a civic use that is: "regular organized religious worship or

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<sup>1</sup> This appeal was transferred from the Third Court of Appeals pursuant to a docket equalization order issued by the Texas Supreme Court. See TEX. GOV'T CODE ANN. § 73.001 (West, Westlaw through 2013 3d C.S.).

religious education in a permanent or temporary building. The use excludes private primary or secondary educational facilities, community recreational facilities, day care facilities, and parking facilities. A property tax exemption is prima facie evidence of religious assembly use." *Id.* § 25-2-6(B)(41).

Hill Country and Covered Bridge are residential neighborhood associations in the area surrounding the Church's construction site, and both opposed the Church's request to build an outdoor amphitheater. Hill Country and Covered Bridge relied on statements made in the press that the Church's proposed amphitheater would be used for outdoor entertainment events, including live music performances, concerts, ballets, graduations, and theatrical performances. Hill Country and Covered Bridge opposed the Church's amphitheater proposal on grounds that such uses did not comport with the religious assembly use definition.

On December 17, 2008, Carl Conley, a licensed professional engineer who represented the Church, wrote to Guernsey, the City's planning and development review director, about the concerns over the proposed amphitheater. The letter stated the following:

Thank you for meeting with me today to discuss whether an outdoor amphitheater is considered an accessory use<sup>2</sup> to an overall religious assembly use under RR or SF-1 zoning.

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<sup>2</sup> An accessory use is a use that:

- (1) Is incidental to and customarily associated with a principal use;
- (2) Unless otherwise provided, is located on the same site as the principal use; and
- (3) May include parking for the principal use.

AUSTIN, TEX., LAND DEV. CODE, § 25-2-891 (2015).

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The attached Conceptual Site Plan shows the overall project, including the primary church buildings and the outdoor Amphitheater. The church buildings include a typical indoor auditorium for 3500 seats. This indoor facility will be used for various religious assembly activities including worship services, weddings, funerals and education and musical presentations. This facility would also be available for non-religious non-profit civic uses such as neighborhood meetings, boy scout/girl scout meetings, school graduations, public meetings, etc. Again, these uses would be for non-profit activities. Like most churches, they may charge a nominal fee to the users to cover setup, clean up, utilities, and administrative and other operational expenses. There may be some activities that would include a fee that would be used to provide benefit to an individual or group that had a special emergency need (i.e. a family whose house burned down) or for some charitable organizations. All of these are typical of the use of a church facility. The church would not typically provide a venue for commercial "for profit" organizations.

The amphitheater would be used for the exact same type activities as the indoor auditorium but in an outdoor setting. This would be on a "weather permitting" basis while taking advantage of the natural environmental surroundings. As we discussed, the use of the amphitheater (along with any other use on the property) would be subject to all of the City's ordinances, including sound levels at the property boundaries. The church would also entertain the concept of a voluntary restrictive covenant that would help identify/clarify specific uses that are not [permitted] under the proposed religious assembly use.

The church has met with the adjoining neighborhood representatives and [has] offered to restrict uses of the amphitheater, including dates, times and incorporate sound attenuation design techniques, in order to assure the compatibility with the adjoining residential uses. PromiseLand Church will continue to work with the neighbors even after any permits are issued to work toward being a good neighbor in the surrounding community.

Please let me know if you need anything else to help you in your determination as to whether the amphitheater is an accessory use to the primary use of religious assembly.

Thanks for your consideration on this very important issue for this church.

On December 23, 2008, Guernsey responded to Conley with the following email:

I have reviewed your letter and attachment. Since the worship building and the outdoor amphitheater are both being primarily used for religious assembly uses, I don't see a problem with these two facilities co-locating on

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the property. I understand that the educational and musical presentations will be limited in scope and will be subordinate to the primary religious assembly use. I also understand the church will be compliant with all applicable City Codes and ordinances, including the noise ordinance.

If the primary use of one or both of the facilities does change from a religious assembly use to an outdoor entertainment or an indoor entertainment use, a zoning change may be required.

On July 6, 2011, the Church applied for a site plan permit to begin construction on the project, including the amphitheater, and the City approved the application on October 12, 2011. The application noted that the construction site was "subject to [a] Restrictive Covenant . . . which addresses land use restrictions, shared parking and traffic management." The restrictive covenant entered into by the Church and the City on October 2, 2011 provided for the following restrictions and limitations for the church buildings and outdoor amphitheater:

- A. Religious Assembly Use will be permitted (as defined in the Austin Land Development Code), including such uses as:
  - 1. Worship services;
  - 2. Musical or theatrical performances;
  - 3. Weddings; and
  - 4. Funerals
- B. Customary and incidental accessory uses will be permitted, including such uses as:
  - 1. Educational presentations;
  - 2. Neighborhood meetings;
  - 3. School graduations;
  - 4. Public meetings; and
  - 5. Other civic or non-profit group meetings
- C. Religious Assembly Use may include occasional charitable events (including concerts and performances) for the benefit of an individual or family in need or for a charitable organization or charitable cause.

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- D. Except for occasional charitable events under Paragraph C, above, ticketed events may charge only nominal fees to cover utilities, maintenance, and other administrative and operational expenses.
- E. The buildings and outdoor amphitheater will not be used for commercial, for-profit events.
- F. The outdoor amphitheater is subject to all applicable City ordinances.
- G. The restrictions in this Article I are imposed as conditions to Site Plan No. 2011-0185C and apply to the extent that an outdoor amphitheater remains part of the principal religious assembly use.
- H. The restrictions in this Article I shall be interpreted consistent with all applicable local, state, and federal laws, including but not limited to constitutional requirements.

On October 21, 2011, representatives from Hill Country filed an administrative appeal with the City regarding the City's use determination of the Church site. Specifically, the appeal challenges the City's interpretation of "religious assembly use" to include the Church's proposed outdoor amphitheater. On October 27, 2011, an attorney for the City rejected Hill Country's appeal and stated that the appeal was untimely because it was not filed within twenty days from the City's use determination by Guernsey on December 23, 2008.

On December 12, 2011, counsel for Hill Country sent written correspondence to the City contesting the City's October 27, 2011 letter. Hill Country argued that its appeal did not relate to Guernsey's December 23, 2008 email, but rather to the City's use interpretations and determinations made in the October 2, 2011 restrictive covenant. Hill Country requested that the City forward its appeal to the Board of Adjustment.

On December 30, 2011, the City responded to Hill Country's letter and reasserted that Hill Country's appeal was time-barred. Particularly, the City noted that the language

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in the restrictive covenant merely clarified Guernsey's December 23, 2008 use determination, did not contradict it, and did not permit non-religious assembly use, unless such use was "accessory to the principal use of religious assembly." The City further noted that "to the extent an accessory use of the amphitheater exceeded that scope, enforcement would be appropriate regardless of whether the applicant had violated a term of the covenant." Finally, the City maintained its position that absent "clearer requirements" from the code of ordinances, it would treat Guernsey's December 23, 2008 email as an "appealable decision."

Hill Country and Covered Bridge eventually filed suit against Guernsey, in his official capacity, and the City seeking: (1) declaratory and injunctive relief against Guernsey for his ultra vires acts; (2) mandamus to require Guernsey to forward Hill Country's appeal to the Board of Adjustment; (3) declaratory and injunctive relief against the City for violation of Hill Country and Covered Bridge's due process rights; and (4) declaratory and injunctive relief against the City declaring that its ordinances regulating land use determinations and appeal are impermissibly vague and thereby void.

Guernsey and the City filed a plea to the jurisdiction and asserted that the trial court lacked subject-matter jurisdiction because: (1) Hill Country and Covered Bridge lack standing; (2) the trial court's subject-matter jurisdiction in this case is conferred only upon judicial review of a decision by the Board of Adjustment; (3) Guernsey's complained-of actions are discretionary acts protected by governmental immunity; (4) Hill Country and Covered Bridge's claims are moot and not ripe for review; and (5) Hill Country has no property interest to assert a due process claim. The trial court granted Guernsey and the City's plea, and this appeal followed.

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## II. PLEA TO THE JURISDICTION

By one consolidated issue, Hill Country and Covered Bridge assert that the trial court erred in granting Guernsey and the City's plea to the jurisdiction.

### A. Standard of Review

A plea to the jurisdiction is a dilatory plea, the purpose of which is to defeat a cause of action without regard to whether the claims asserted have merit. *Bland Ind. Sch. Dist. v. Blue*, 34 S.W.3d 547, 555 (Tex. 2000). Subject-matter jurisdiction is essential to a court's power to decide a case. *Id.* 554–55. Whether a court has jurisdiction is a question of law that is reviewed de novo. *City of Elsa v. Gonzalez*, 325 S.W.3d 622, 625 (Tex. 2010); *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004). When reviewing a trial court's ruling on a challenge to its jurisdiction, we consider the plaintiff's pleadings and factual assertions, as well as any evidence in the record that is relevant to the jurisdictional issue. *City of Elsa*, 325 S.W.3d at 625.

We construe the pleadings liberally in favor of the plaintiffs and look to the pleaders' intent. *Miranda*, 133 S.W.3d at 226. If the pleadings do not contain sufficient facts to affirmatively demonstrate the trial court's jurisdiction but do not affirmatively demonstrate incurable defects in jurisdiction, the issue is one of pleading sufficiency, and the plaintiffs should be afforded the opportunity to amend. *Id.* at 226–27. If the pleadings affirmatively negate the existence of jurisdiction, then a plea to the jurisdiction may be granted without allowing the plaintiffs an opportunity to amend. *Id.* at 227.

If a plea to the jurisdiction challenges the existence of jurisdictional facts, we consider relevant evidence submitted by the parties when necessary to resolve the jurisdictional issues raised, as the trial court is required to do. *Id.* at 227. If the evidence



creates a fact question regarding the jurisdictional issue, then the trial court cannot grant the plea to the jurisdiction, and the fact issue will be resolved by the fact finder. *Id.* at 227–28. However, if the relevant evidence is undisputed or fails to raise a fact question on the jurisdictional issue, the trial court rules on the plea as a matter of law. *Id.* at 228.

### **B. Hill Country and Covered Bridge's Claims**

Hill Country and Covered Bridge allege the following in their First Amended Petition and Application for Temporary Injunction: (1) Guernsey's actions, including making the "religious assembly use" determination and denying Hill Country's request for appeal, are without legal authority, ultra vires, and/or void; (2) Guernsey and the City violated Hill Country and Covered Bridge's due process rights of notice and opportunity to be heard regarding the religious assembly use determination, the Site Plan, the terms of the restrictive covenant, and the denial of Hill Country's request for appeal and public hearing before the Board of Adjustment; and (3) the City's ordinances or code provisions are vague. Hill Country and Covered Bridge further allege that Guernsey and the City's actions will increase "traffic, noise, and disturbance relating to the construction and use of the outdoor [amphitheater] to the detriment of the [Hill Country and Covered Bridge] neighborhoods." Finally, Hill Country and Covered Bridge also sought mandamus relief against Guernsey to "require him to follow the law and perform his non-discretionary duties," including forwarding Hill Country's appeal.<sup>3</sup>

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<sup>3</sup> The remainder of the mandamus arguments relate to Hill Country and Covered Bridge's ultra vires claims against Guernsey.

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## **C. Discussion**

### **a. Ultra Vires Claims Against Guernsey**

We first examine whether Hill Country and Covered Bridge's ultra vires claims against Guernsey properly invoke the subject-matter jurisdiction of the trial court.<sup>4</sup>

Absent waiver by the Legislature, sovereign and governmental immunity generally deprive courts of subject-matter jurisdiction over suits against the State, its agencies, or officers or employees acting within their official capacity. See *Texans Uniting for Reform & Freedom v. Saenz*, 319 S.W.3d 914, 920 (Tex. App.—Austin 2010, pet. denied) (internal citation omitted). One exception to immunity, however, is an ultra vires action. To fall within this exception, a suit must not complain of a government officer's exercise of discretion, but rather must allege, and ultimately prove, that the officer acted without legal authority or failed to perform a purely ministerial act. *City of El Paso v. Heinrich*, 284 S.W.3d 366, 372 (Tex. 2009). An act is ministerial when the law clearly spells out the duty to be performed by the official with sufficient certainty that nothing is left to the exercise of discretion. *Anderson v. City of Seven Points*, 806 S.W.2d 791, 792 (Tex. 1991). Thus, ultra vires suits do not seek to alter government policy but rather to enforce existing policy. *Heinrich*, 284 S.W.2d at 372.

#### **1. Use Determination of the Church Project**

Hill Country and Covered Bridge's ultra vires claims are two-fold. The first deals with Guernsey's use determination providing that the Church's outdoor amphitheater

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<sup>4</sup> Hill Country and Covered Bridge sought injunctive relief relating to Guernsey's use determinations and his refusal to forward Hill Country's appeal to the Board of Adjustment. After reviewing the pleadings, we find that these issues are identical to those addressed in this section, so we will address them as one.

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constituted a “religious assembly” and his decision allowing the construction to move forward, including approving the site plan and entering into the restrictive covenant. The City argues that the authority to make such use determinations is delegated to Guernsey by the LDC. We agree.

Section 25-2-2(A) of the land development code states that “the director of the Planning and Development Review Department shall determine the appropriate use classification for an existing or proposed use activity.” AUSTIN, TEX., LAND DEV. CODE § 25-2-2(A). Here, with respect to each complained-of activity—Guernsey’s email, the restrictive covenant, approval of the site application, or any other activity determined to be a use classification—Guernsey had the statutory discretion to make such determinations and/or take such actions. *See id.* Therefore, we hold that this claim is barred by immunity. *See Saenz*, 319 S.W.3d at 920.

## **2. Forwarding Hill Country’s Appeal to the Board of Adjustment**

Next, Hill Country and Covered Bridge’s second set of ultra vires claims relate to Guernsey’s failure to forward an appeal of his actions to the City of Austin Board of Adjustment. We first look to the relevant portions of the LDC and the Texas Local Government Code relating to appeals from administrative decisions.<sup>5</sup>

Section 25-1-182 of the LDC states that an “interested party” may initiate an appeal by filing a notice of appeal with the responsible director or building official, as applicable, not later than: (1) the 14th day after the date of the decision of a board or commission;

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<sup>5</sup> *See also* TEX. LOC. GOV’T CODE ANN. § 211.010 (West, Westlaw through 2013 3d C.S.) (setting forth the broader, general parameters of the appeals process to the board of adjustment).

6/20/2013

or (2) the 20th day after an administrative decision. AUSTIN, TEX., LAND DEV. CODE § 25-1-182. When the responsible director receives the notice of appeal, he "shall promptly notify the presiding officer of the body to which the appeal is made and, if the applicant is not the appellant, the applicant." *Id.* § 25-1-185. The LDC explains that a person has standing to appeal a decision if: (1) the person is an interested party; and (2) a provision of this title identifies the decision as one that may be appealed by that person. *Id.* § 25-1-181(A)(1)-(2). Furthermore, the "body holding a public hearing on an appeal shall determine whether a person has standing to appeal the decision." *Id.* § 25-1-181(B).

If the appellant has standing, the appellant must establish that the decision being appealed is contrary to applicable law or regulations. *Id.* § 25-1-190. The body hearing an appeal may exercise the power of the official or body whose decision is appealed, and a decision may be upheld, modified, or reversed. *Id.* § 25-1-192. Finally, (1) a person aggrieved by a decision of the board; (2) a taxpayer; or (3) an officer, department, board or bureau of the municipality may file a verified petition for judicial review in district court, county court, or county court-at-law within ten days after the date the decision is filed in the board's office. See TEX. LOC. GOV'T CODE ANN. § 211.011 (West, Westlaw through 2013 3d C.S.). In its petition for judicial review, the petitioner must state that the board of adjustment's decision is illegal "in whole or in part" and specify the grounds of the illegality. *Id.* § 211.011(a). The trial court may then grant a writ of certiorari directed to the board to review the board's decision. *Id.* The trial court may reverse or affirm, in whole or in part, or modify the decision that is appealed. *Id.* § 211.011(f).

Hill Country alleged that it filed an appeal on October 21, 2011 to be heard by the Board of Adjustment complaining about Guernsey's use determination related to the

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Church project. We note that Covered Bridge neither joined Hill Country's appeal nor did it file a separate appeal related to the Church's proposed project. As a result, Covered Bridge lacks a justiciable controversy in this declaratory action related to Guernsey's purported ultra vires actions of failing to forward the appeal to the Board of Adjustment. See *Bonham State Bank v. Beadle*, 907 S.W.2d 465, 467 (Tex. 1995) ("A declaratory judgment is appropriate only if a justiciable controversy exists as to the rights and status of the parties and the controversy will be resolved by the declaration sought."). To constitute a justiciable controversy, there must exist a real and substantial controversy involving genuine conflict of tangible interests and not merely a theoretical dispute. *Id.* Absent a justiciable interest, Covered Bridge lacks standing to bring the second ultra vires action because no real controversy exists between Covered Bridge and Guernsey or the City on this particular issue. See *Tex. Ass'n of Bus. v. Air Control Bd.*, 852 S.W.2d 440, 446 (Tex. 1993). Therefore, we hold that the trial court did not err in granting the plea to the jurisdiction solely as it relates to Covered Bridge on the issue of Guernsey's ultra vires actions of not forwarding Hill Country's appeal.

On October 27, 2011, through a letter from the City's Law Department, Guernsey's department rejected Hill Country's notice of appeal, stating that it was filed more than twenty days after Guernsey's use determination on December 23, 2008, and was thus untimely. On December 12, 2011, Hill Country disputed Guernsey's interpretations of which action it was appealing and requested the City to forward its appeal to the City's Board of Adjustment. Again, on December 30, 2011, the City reaffirmed its position from the October 27, 2011 letter and barred Hill Country's appeal.

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After construing the pleadings liberally in Hill Country's favor, we conclude that Hill Country sufficiently pleaded jurisdictional facts to invoke the trial court's subject matter jurisdiction on the alleged ultra vires action that Guernsey failed to forward Hill Country's appeal to the Board of Adjustment. Hill Country has appropriately cited the controlling provisions related to administrative appeals procedures and the ministerial duties that respectively belong to Guernsey and the Board of Adjustment. Hill Country further alleged that Guernsey failed to comply with the controlling provisions and failed to perform the purely ministerial act of forwarding its appeal to the Board of Adjustment.

In their plea to the jurisdiction, neither Guernsey nor the City specifically address how the trial court lacks jurisdiction over this particular alleged ultra vires action other than to assert that Hill Country lacked standing to bring the administrative appeal at its inception. While this argument may ultimately prove to be true, our concern today is limited to the issue of whether the trial court possessed subject-matter jurisdiction to hear Hill Country's ultra vires claims that Guernsey failed to forward its administrative appeal. The issue of standing to bring this particular appeal before the Board of Adjustment must first be determined by the Board of Adjustment before it can be decided by the trial court. See AUSTIN, TEX., LAND DEV. CODE § 25-1-181(B). Based upon Hill Country's undisputed allegations, it has not had an opportunity to make its administrative appeal because of Guernsey's failure to forward it to the Board of Adjustment. As a result, these ultra vires allegations are not those for which Guernsey is afforded immunity. See *Heinrich*, 284 S.W.3d at 372. We hold that the trial court erred in granting Guernsey and the City's plea to the jurisdiction on Hill Country's ultra vires claims against Guernsey for failure to

forward its appeal to the Board of Adjustment.<sup>6</sup>

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**b. Due Process Claims**

Hill Country next alleged that if Guernsey's actions related to its appeal are held to be valid or did not exceed the City's ordinances, the City violated its due process rights under the local government code to notice and the opportunity to be heard. Earlier, we held that the trial court had jurisdiction to hear Hill Country's ultra vires claims related to Guernsey's failure to forward the administrative appeal. However, any due process claims by Hill Country are unripe at this stage of the proceeding. Ripeness, like standing, is a threshold issue that implicates subject matter jurisdiction. *Patterson v. Planned Parenthood of Houston & S.E. Tex., Inc.*, 971 S.W.2d 439, 442 (Tex. 1998). Standing focuses on the question of who may bring an action, while ripeness asks whether the facts have developed sufficiently so that an injury has occurred or is likely to occur, rather than being contingent or remote. *Id.* The very nature of Hill Country's due process allegations depend upon a contingency—i.e., “if Guernsey's actions . . . are held to be valid.” The trial court may agree with Hill Country that Guernsey's actions were ultra vires, and it would render this point moot. Therefore, because this claim is unripe, the trial court did not err in dismissing it for lack of jurisdiction.

---

<sup>6</sup> In its prayer for relief, Hill Country asks this court to “order a writ of mandamus” directing Guernsey to forward its administrative appeal to the City of Austin Board of Adjustment. Original proceedings, including petitions for writs of mandamus, are governed by the procedures set forth in the Texas Rules of Appellate Procedure. See generally TEX. R. APP. P. 52.1–52.11. Hill Country, however, has failed to comply with these procedures for us to properly consider such requested relief. Accordingly, we decline to address Hill Country's request for mandamus relief.

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**c. Vagueness Challenge**

Next, Hill Country and Covered Bridge assert a vagueness challenge to the City's LDC as it relates to their "rights to notice, participation, and/or appeal relating to the land use determinations" made by Guernsey on the Church project. Because Hill Country and Covered Bridge's vagueness challenge centers on Guernsey's use determination, the LDC provides for administrative remedies by appeal to the Board of Adjustment. See AUSTIN, TEX., LAND DEV. CODE § 25-1-182. After obtaining a review from the Board of Adjustment, the aggrieved party may then seek judicial review. See TEX. LOC. GOV'T CODE ANN. § 211.011. Simply put, administrative remedies must first be exhausted before a party may seek judicial review of a determination made by an administrative official. See *Buffalo Equities, Ltd. v. City of Austin*, No. 03-05-00356-CV, 2008 WL 1990295 at \*4 (Tex. App.—Austin May 9, 2008, no pet.) (mem. op.) (internal citations omitted). Failure to exhaust all available administrative relief before seeking judicial relief deprives a court of jurisdiction. See *Larry Koch, Inc. v. Tex. Natural Conserv. Comm'n*, 52 S.W.3d 833, 839 (Tex. App.—Austin 2001, pet. denied) (citing *Lindsay v. Sterling*, 690 S.W.2d 560, 563 (Tex. 1985)). Accordingly, the trial court lacks jurisdiction to hear Hill Country and Covered Bridge's vagueness challenge because neither party exhausted its administrative remedies before filing suit on this claim.

**d. Summary**

In summary, the trial court did not err in granting Guernsey and the City's plea to the jurisdiction on the following claims: (1) Hill Country and Covered Bridge's ultra vires claims against Guernsey related to his use determination; (2) Covered Bridge's ultra vires claims based upon Guernsey's failure to forward Hill Country's appeal to the Board of



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Adjustment; (3) Hill Country and Covered Bridge's due process claims; and (4) Hill Country and Covered Bridge's vagueness challenge. The trial court erred in granting Guernsey and the City's plea to the jurisdiction with regard to Hill Country's ultra vires claims based upon Guernsey's failure to forward Hill Country's appeal to the Board of Adjustment. Therefore, Hill Country and Covered Bridge's issue on appeal is overruled in part and sustained in part.

### III. CONCLUSION

We affirm the trial court's judgment in part and reverse and remand to the trial court to hear Hill Country's ultra vires action based upon Guernsey's failure to forward Hill Country's appeal to the Board of Adjustment.

GINA M. BENAVIDES,  
Justice

Delivered and filed the  
7th day of May, 2015.

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March 20, 2014

## EXHIBIT 7

LifeAustin  
c/o Randy Phillips, Lead Pastor  
8901 West State Hwy 71  
Austin, Texas 78735

via Certified Mail, Return Receipt Requested  
and First Class Mail

Re: Outdoor Amphitheater

Dear Pastor Phillips:

Your neighbors in the Covered Bridge and Hill Country Estates neighborhoods are writing to inform you that we are continuing to fight and defend our legal rights to have our appeals concerning your proposed outdoor amphitheater heard by the Austin Board of Adjustment.

We are also writing to inform you it is our understanding that under Chapter 211 of the Texas Local Government Code and the City Code, the Austin Board of Adjustment as well as the director of the Planning Department has the authority to suspend and revoke any permit it determines was issued in error. If your church proceeds with the construction of the outdoor amphitheater, then you do so at your own risk of having permits revoked by the City of Austin.

We have opposed the proposed outdoor amphitheater planned for your property since first learning of it in 2007. Representatives of our neighborhoods and your church met on a several occasions in 2007-2008 to discuss your Dream City project.

During the meetings we expressed our opposition to the outdoor amphitheater but we offered to work with your church on all other issues. At the end of the last meeting, representatives of your church promised to keep our neighborhoods informed with respect to permit applications. We never heard from you again.

We were shocked and dismayed to learn in July 2011 that your church had obtained a secret ruling from a City of Austin employee that the City claims authorized your church to build the outdoor amphitheater in the second most restrictive residential zoning district in the City.

We have filed multiple appeals to the Austin Board of Adjustment challenging the legality of the secret decision. City staff has refused to forward our appeals to the Board of Adjustment. We were left with no alternative but to sue the City and the one City employee who made the secret decision authorizing the outdoor amphitheater.

The lawsuit is about the legality of the City of Austin approving the outdoor amphitheater without a single public hearing and the legality of City staff refusing to forward our appeals to the Board of Adjustment.

The neighborhoods have never sued nor threatened to sue your church.

Our neighborhoods have pursued every available legal remedy to protect our homes from the devastating impact of what would be the largest outdoor amphitheater in the City of Austin.

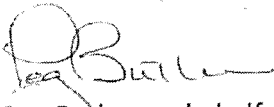
Our lawsuit is currently pending before the Court of Appeals. Our attorneys just completed the last brief to the Court of Appeals. If your church proceeds with the construction of the outdoor amphitheater, then you do so at your own risk of having permits revoked by the City of Austin.

In closing, we know that there are many activities that your church would like to legally conduct but that are prohibited under current zoning ordinances. Our neighborhoods remain willing to work with you to obtain the appropriate zoning for your campus if your church abandons the outdoor amphitheater.

Sincerely,



Michael Yuan, vice president, on behalf of the  
Covered Bridge Property Owners Association, Inc.



Peg Butler, on behalf of the  
Hill Country Estates Homeowners Association

Cc: David Estes, Executive Pastor, LifeAustin  
Steve Metcalf, attorney, LifeAustin

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April 14, 2014

EXHIBIT 8

G1  
211

Mr. Michael Yuan  
Covered Bridge Property Owners Association  
P.O. Box 92649  
Austin, Texas 78709

- Ms. Peg Butler  
Hill County Estates Homeowners Association  
7100 Bright Star Ln.  
Austin, Texas 78736

Dear Mr. Yuan, Ms. Butler, and members of your property owners' associations:

Thank you for your letter received April 1, 2014. LifeAustin understands the concerns addressed in your letter. As we have expressed since the planning stages of our campus development, LifeAustin wants to foster goodwill with its neighbors and reassure them that the development of LifeAustin's campus will not adversely impact the surrounding neighbors. LifeAustin has taken community concerns into consideration at every step of the process and has invested considerable resources into planning, designing, and developing its campus in an aesthetically pleasing, environmentally sensitive, and socially responsible manner.

LifeAustin understands that some of the members of the Covered Bridge Property Owners' Association and Hill Country Estates Homeowners' Association have opposed the development of any outdoor worship space (sometimes referred to as the amphitheater) on LifeAustin's fifty-three acre campus since the inception of the project. LifeAustin has met with and listened to its neighbors, including your respective homeowners' associations, regarding the development of its campus. LifeAustin undertook several efforts in the planning and design stages of the project to address the associations' concerns about potential noise and traffic associated with the amphitheater, and to solicit input regarding the development from the associations' members and other property owners surrounding the campus.

LifeAustin has incorporated many features into the planning, design, and construction of its campus, including the amphitheater, to minimize any potentially adverse impacts, and LifeAustin has expended considerable resources in attempting to reasonably accommodate its neighbors in the course of the development. We remain committed to doing so during the remaining development of our site. LifeAustin intends to continue seeking positive and productive dialogue with its neighbors, and welcomes all opportunities to do so.

G1  
212

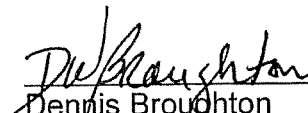
The letter suggests that your boards remain opposed to any development of an outdoor worship space of any nature under any circumstances. However, many neighbors, including members of your respective associations, have come to embrace the development of LifeAustin's campus, and some have become members of our congregation. Others have accepted our standing invitation to join us for special events.

Additionally, LifeAustin submits that the characterizations in your letter dated March 20, 2014 of "secret meetings" and a "secret ruling" from City of Austin Planning and Development Director Greg Guernsey are factually inaccurate. The land use determination of the LifeAustin campus, including the amphitheater, as a "religious use" allowed on residentially-zoned land was an ordinary land use determination made by the City of Austin Development Director acting in the ordinary course of business and pursuant to the scope and authority of the Austin City Code. LifeAustin understands that the associations have sued the City of Austin and its Planning and Development Director, Greg Guernsey, over that land use determination, and LifeAustin has faith in the courts of the State of Texas to properly resolve the pending legal issues. However, LifeAustin is committed to proceeding with its development in a timely manner, as sensitively as possible, and respectfully maintains that the associations' concerns about adverse impacts are misplaced.

In summary, regardless of the outcome of the pending appeal of the associations' lawsuit, LifeAustin will continue to strive to be a good neighbor, and to respectfully and responsibly serve its members and the community. LifeAustin welcomes all of the members of your respective associations, as it does all of its neighbors, to join us in our regular worship services and special events. We hope to demonstrate we are a good neighbor, as we develop what is intended to be a valuable community resource and asset for the benefit of many. We invite you to work with us to that achieve that objective.

Respectfully,  
LifeAustin Church, Inc.

By:

  
Dennis Broughton  
Site Development Team

# EXHIBIT 9

## Service Request Summary Report

15-00195136

Printed Date : Aug 17, 2015 9:53:12 AM

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**Type:** Loud Commercial Music  
**Area:** POLICE PATROL SECTORS - DAVID  
**Group:** Economic Development Department  
**Jurisdiction:** City of Austin  
**Input By:** Spot311 Interface  
**Method** Spot311 Interface  
**Received:**  
**Location:** 8901 W SH 71, AUSTIN, TX  
**Location** 8901 W SH 71; XY: 3064139.3488515234, 10063747.415538847; LatLng: 30.25192144217055,  
**Details:** -97.90218239513062  
**SR** Life Austin AMPHITHEATER music amplified event. Howling loud music, guitar and vocal. Sounds like 6th street  
**Comments:** came here to quiet residential neighborhood. Hear inside our back bedroom blocks away. Just starting now... Not main act yet. Will get louder, based on first concert.

Flex Notes	
Flex Note Question	Flex Note Answer
Where is the music coming from?	Venue
Is the music coming from an indoor or outdoor venue?	Outdoor
Which day of the week is the music causing a disturbance?	Saturday
During which timeframe is the music causing a disturbance?	
If citizen is bilingual, please indicate language.	
Information is collected for tracking purposes. The citizen may be contacted if additional information is needed.	
To the call taker: Does the caller want to report this issue to APD?	No

Participants				
Participant Type	Participant Name	Address	Email	Phones/Extension
Citizen	Armentrout, Daloma		dalomala@earthlink.net	HOME 512-571-7777
COA Employee				

Activities				
Activities	Assigned Staff	Due Date	Completed Date	Outcome
Review Request		Aug 17, 2015 6:00:00 PM		

Details
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G1  
24

## Service Request Summary Report

15-00248436

Printed Date : Oct 20, 2015 8:33:09 AM

**Type:** Loud Commercial Music  
**Area:** POLICE PATROL SECTORS - DAVID  
**Group:** Economic Development Department  
**Jurisdiction:** City of Austin  
**Input By:** Spot311 Interface  
**Method Received:** Spot311 Interface  
**Location:** 8901 W SH 71, AUSTIN, TX 78736  
**Location Details:** 8901 W SH 71; XY: 3064572.257740162, 10064195.456214363; LatLng: 30.253127057596867, -97.9007806123566  
**SR Comments:** Amplified concert at lifeaustin amphitheater. Loud whoops n applause, drums n piano, otherwise a nice moonlit night in October. These people are disturbing the peace, in our homes and yards. Why? Why rob our peace? What have we done to them to receive such treatment?

**SR #:** 15-00248436  
**Priority:** Standard  
**Status:** Closed  
**Status Date:** Oct 19, 2015 6:03:05 PM  
**Created Date:** Oct 17, 2015 7:53:13 PM  
**Overdue on:** Oct 19, 2015 7:53:13 PM

Flex Notes	
Flex Note Question	Flex Note Answer
Where is the music coming from?	Venue
Is the music coming from an indoor or outdoor venue?	Outdoor
Which day of the week is the music causing a disturbance?	Saturday
During which timeframe is the music causing a disturbance?	
If citizen is bilingual, please indicate language.	
Information is collected for tracking purposes. The citizen may be contacted if additional information is needed.	
To the call taker: Does the caller want to report this issue to APD?	No

Activities				
Activities	Assigned Staff	Due Date	Completed Date	Outcome
Review Request		Oct 19, 2015 6:00:00 PM		Overdue Activity Created
Details				
Activities				
Activities	Assigned Staff	Due Date	Completed Date	Outcome
CLOSE OF SR	Loud Music Staff		Oct 19, 2015 6:03:04 PM	Completed - Close SR
Details				

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215

# Service Request Summary Report

15-00248427

Printed Date : Oct 20, 2015 8:33:09 AM

**Type:** Loud Commercial Music  
**Area:** POLICE PATROL SECTORS - DAVID  
**Group:** Economic Development Department  
**Jurisdiction:** City of Austin  
**Input By:** Spot311 Interface  
**Method Received:** Spot311 Interface  
**Location:** 8901 W SH 71, AUSTIN, TX 78736  
**Location Details:** 8901 W SH 71; XY: 3064103.7459669216, 10063937.095678205; LatLng: 30.252444999999948, -97.902282000000001

**SR #:** 15-00248427  
**Priority:** Standard  
**Status:** Closed  
**Status Date:** Oct 19, 2015 6:02:57 PM  
**Created Date:** Oct 17, 2015 7:35:08 PM  
**Overdue on:** Oct 19, 2015 7:35:08 PM

**SR Comments:** Loud music, can hear in my house

Flex Notes	
Flex Note Question	Flex Note Answer
Where is the music coming from?	Venue
Is the music coming from an indoor or outdoor venue?	Outdoor
Which day of the week is the music causing a disturbance?	Saturday
During which timeframe is the music causing a disturbance?	
If citizen is bilingual; please indicate language.	
Information is collected for tracking purposes. The citizen may be contacted if additional information is needed.	
To the call taker: Does the caller want to report this issue to APD?	No

Activities				
Activities	Assigned Staff	Due Date	Completed Date	Outcome
Review Request		Oct 19, 2015 6:00:00 PM		Overdue Activity Created
Details				
Activities	Assigned Staff	Due Date	Completed Date	Outcome
CLOSE OF SR	Loud Music Staff		Oct 19, 2015 6:02:56 PM	Completed - Close SR
Details				



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216

## Service Request Summary Report

15-00248279

Printed Date : Oct 20, 2015 8:33:09 AM

<b>Type:</b> Loud Commercial Music	<b>SR #:</b> 15-00248279
<b>Area:</b> POLICE PATROL SECTORS - DAVID	<b>Priority:</b> Standard
<b>Group:</b> Economic Development Department	<b>Status:</b> Closed
<b>Jurisdiction:</b> City of Austin	<b>Status Date:</b> Oct 19, 2015 6:02:37 PM
<b>Input By:</b> Spot311 Interface	<b>Created Date:</b> Oct 17, 2015 4:10:09 PM
<b>Method:</b> Spot311 Interface	<b>Overdue on:</b> Oct 19, 2015 4:10:09 PM
<b>Received:</b>	
<b>Location:</b> 8901 W SH 71, AUSTIN, TX 78736	
<b>Location Details:</b> 8901 W SH 71; XY: 3064133.001749979, 10063927.913163159; LatLng: 30.252417999999487, -97.902190000000002	
<b>SR Comments:</b> Stupid loud music	

### Flex Notes

Flex Note Question	Flex Note Answer
Where is the music coming from?	Venue
Is the music coming from an indoor or outdoor venue?	Outdoor
Which day of the week is the music causing a disturbance?	Saturday
During which timeframe is the music causing a disturbance?	
If citizen is bilingual, please indicate language.	
Information is collected for tracking purposes. The citizen may be contacted if additional information is needed.	
To the call taker: Does the caller want to report this issue to APD?	No

### Activities

Activities	Assigned Staff	Due Date	Completed Date	Outcome
Review Request		Oct 19, 2015 6:00:00 PM		Overdue Activity Created

### Details

### Activities

Activities	Assigned Staff	Due Date	Completed Date	Outcome
CLOSE OF SR	Loud Music Staff		Oct 19, 2015 6:02:36 PM	Completed - Close SR

### Details

# Service Request Summary Report

15-00239011

Printed Date : Oct 20, 2015 8:33:09 AM

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217

**Type:** Loud Commercial Music  
**Area:** POLICE PATROL SECTORS - DAVID  
**Group:** Economic Development Department  
**Jurisdiction:** City of Austin  
**Input By:** Spot311 Interface  
**Method Received:** Spot311 Interface  
**Location:** 8901 W SH 71, AUSTIN, TX 78736  
**Location Details:** 8901 W SH 71; XY: 3064509.459013169, 10064146.290545022; LatLng: 30.25299567973601, -97.90098286421551  
**SR Comments:** Another loud concert, Life Austin Amphitheater acting unneighborly by blasting their high powered music through multiple neighborhoods, disturbing our evening peace. How is this worship, creating noise and stress in our community? Professional amphitheater sound penetrating our homes. How is this NOT commercial, intentional disturbance? Our use and enjoyment of property is diminished.

**SR #:** 15-00239011  
**Priority:** Standard  
**Status:** Closed  
**Status Date:** Oct 8, 2015 6:10:26 PM  
**Created Date:** Oct 6, 2015 3:30:20 PM  
**Overdue on:** Oct 8, 2015 3:30:20 PM

## Flex Notes

### Flex Note Question

Where is the music coming from?  
Is the music coming from an indoor or outdoor venue?  
Which day of the week is the music causing a disturbance?  
During which timeframe is the music causing a disturbance?  
If citizen is bilingual, please indicate language.  
Information is collected for tracking purposes. The citizen may be contacted if additional information is needed.  
To the call taker: Does the caller want to report this issue to APD?

### Flex Note Answer

Venue  
Outdoor  
Sunday  
  
  
No

## Activities

Activities	Assigned Staff	Due Date	Completed Date	Outcome
Review Request		Oct 8, 2015 6:00:00 PM		Overdue Activity Created
Details				
Activities	Assigned Staff	Due Date	Completed Date	Outcome
CLOSE OF SR	Loud Music Staff		Oct 8, 2015 6:10:25 PM	Completed - Close SR
Details				

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218

## Service Request Summary Report

15-00237329

Printed Date : Oct 20, 2015 8:33:09 AM

**Type:** Loud Commercial Music  
**Area:** POLICE PATROL SECTORS - DAVID  
**Group:** Economic Development Department  
**Jurisdiction:** City of Austin  
**Input By:** Spot311 Interface  
**Method:** Spot311 Interface  
**Received:**  
**Location:** 8901 W SH 71, AUSTIN, TX 78736  
**Location Details:** 8901 W SH 71; XY: 3064202.67014408, 10063657.86045338; LatLng: 30.251671456032998, -97.90198809437317  
**SR Comments:** This is absurd. I have to turn the tv on full blast in my living room to avoid hearing the roaring concert happening in the Life Austin amphitheater over 1000 feet away from my house. Please make it stop!

**SR #:** 15-00237329  
**Priority:** Standard  
**Status:** Closed  
**Status Date:** Oct 6, 2015 6:08:10 PM  
**Created Date:** Oct 4, 2015 7:59:11 PM  
**Overdue on:** Oct 6, 2015 7:59:11 PM

### Flex Notes

#### Flex Note Question

Where is the music coming from?  
 Is the music coming from an indoor or outdoor venue?  
 Which day of the week is the music causing a disturbance?  
 During which timeframe is the music causing a disturbance?  
 If citizen is bilingual, please indicate language.  
 Information is collected for tracking purposes. The citizen may be contacted if additional information is needed.

#### Flex Note Answer

Venue  
 Outdoor  
 Sunday

To the call taker: Does the caller want to report this issue to APD?

No

### Activities

Activities	Assigned Staff	Due Date	Completed Date	Outcome
Review Request		Oct 6, 2015 6:00:00 PM		Overdue Activity Created

### Details

#### Activities

Activities	Assigned Staff	Due Date	Completed Date	Outcome
CLOSE OF SR	Loud Music Staff		Oct 6, 2015 6:08:09 PM	Completed - Close SR

### Details

# Service Request Summary Report

15-00225068

Printed Date : Oct 1, 2015 9:05:47 AM

G1  
219

**Type:** Loud Commercial Music

**SR #:** 15-00225068

**Area:** POLICE PATROL SECTORS - DAVID

**Priority:** Standard

**Group:** Economic Development Department

**Status:** Closed

**Jurisdiction:** City of Austin

**Status Date:** Sep 22, 2015 6:07:36 PM

**Input By:** Spot311 Interface

**Created Date:** Sep 20, 2015 5:07:58 PM

**Method** Spot311 Interface

**Overdue on:** Sep 22, 2015 5:07:58 PM

**Received:**

**Location:** 8901 W SH 71, AUSTIN, TX 78736

**Location Details:** 8901 W SH 71; XY: 3064103.974279168, 10063579.871570827; LatLng: 30.251462999999949, -97.902306

**SR Comments:** Very loud, can hear in my home, peace disrupting music

Flex Notes	
Flex Note Question	Flex Note Answer
Where is the music coming from?	Venue
Is the music coming from an indoor or outdoor venue?	Outdoor
Which day of the week is the music causing a disturbance?	Sunday
During which timeframe is the music causing a disturbance?	
If citizen is bilingual, please indicate language.	
Information is collected for tracking purposes. The citizen may be contacted if additional information is needed.	
To the call taker: Does the caller want to report this issue to APD?	No

Activities				
Activities	Assigned Staff	Due Date	Completed Date	Outcome
Review Request		Sep 22, 2015 6:00:00 PM		Overdue Activity Created
Details				
Activities				
Activities	Assigned Staff	Due Date	Completed Date	Outcome
CLOSE OF SR	Loud Music Staff		Sep 22, 2015 6:07:36 PM	Completed - Close SR
Details				

# Service Request Summary Report

15-00225046

Printed Date : Oct 1, 2015 9:05:47 AM

G1  
220

**Type:** Loud Commercial Music  
**Area:** POLICE PATROL SECTORS - DAVID  
**Group:** Economic Development Department  
**Jurisdiction:** City of Austin  
**Input By:** Spot311 Interface  
**Method Received:** Spot311 Interface  
**Location:** 8901 W SH 71, AUSTIN, TX 78736  
**Location Details:** 8901 W SH 71; XY: 3064402.5587414997, 10064328.609750979; LatLng: 30.253503289584096, -97.90130873192635

**SR #:** 15-00225046  
**Priority:** Standard  
**Status:** Closed  
**Status Date:** Sep 22, 2015 6:08:35 PM  
**Created Date:** Sep 20, 2015 4:28:42 PM  
**Overdue on:** Sep 22, 2015 4:28:42 PM

**SR Comments:** Life Austin Amphitheater fired up loudly on quiet Sunday afternoon. Disturbing rest inside our home, drum beat, voices echoing through back bedroom of house far from their venue. Beyond annoying. Robbing us of peace. Does their joy have to disturb us? How is that worship? Or simple neighborly kindness?

## Flex Notes

### Flex Note Question

Where is the music coming from?  
Is the music coming from an indoor or outdoor venue?  
Which day of the week is the music causing a disturbance?  
During which timeframe is the music causing a disturbance?  
If citizen is bilingual, please indicate language.  
Information is collected for tracking purposes. The citizen may be contacted if additional information is needed.  
To the call taker: Does the caller want to report this issue to APD?

### Flex Note Answer

Venue  
Outdoor  
Sunday

## Activities

Activities	Assigned Staff	Due Date	Completed Date	Outcome
Review Request		Sep 22, 2015 6:00:00 PM		Overdue Activity Created

### Details

## Activities

Activities	Assigned Staff	Due Date	Completed Date	Outcome
CLOSE OF SR	Loud Music Staff		Sep 22, 2015 6:08:34 PM	Completed - Close SR

### Details

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221

# **Service Request Summary Report** **15-00225044**

Printed Date : Oct 1, 2015 9:05:47 AM

<b>Type:</b> Loud Commercial Music	<b>SR #:</b> 15-00225044
<b>Area:</b> POLICE PATROL SECTORS - DAVID	<b>Priority:</b> Standard
<b>Group:</b> Economic Development Department	<b>Status:</b> Closed
<b>Jurisdiction:</b> City of Austin	<b>Status Date:</b> Sep 22, 2015 6:08:31 PM
<b>Input By:</b> Spot311 Interface	<b>Created Date:</b> Sep 20, 2015 4:25:39 PM
<b>Method:</b> Spot311 Interface	<b>Overdue on:</b> Sep 22, 2015 4:25:39 PM
<b>Received:</b>	
<b>Location:</b> 8901 W SH 71, AUSTIN, TX 78736	
<b>Location Details:</b> 8901 W SH 71; XY: 3064115.256017483, 10063619.951832676; LatLng: 30.25157250022284, -97.9022675039476	
<b>SR Comments:</b> Very loud music coming from Life Austin amphitheater. They know how to keep the noise level to a point where it won't bother the neighbors but are choosing not too. Ridiculous in a rural residential neighborhood	

Flex Notes	
Flex Note Question	Flex Note Answer
Where is the music coming from?	Venue
Is the music coming from an indoor or outdoor venue?	Outdoor
Which day of the week is the music causing a disturbance?	Sunday
During which timeframe is the music causing a disturbance?	
If citizen is bilingual, please indicate language.	
Information is collected for tracking purposes. The citizen may be contacted if additional information is needed.	
To the call taker: Does the caller want to report this issue to APD?	No

Activities				
Activities	Assigned Staff	Due Date	Completed Date	Outcome
Review Request		Sep 22, 2015 6:00:00 PM		Overdue Activity Created
Details				
Activities				
Activities	Assigned Staff	Due Date	Completed Date	Outcome
CLOSE OF SR	Loud Music Staff		Sep 22, 2015 6:08:30 PM	Completed - Close SR
Details				

G1  
222

# Service Request Summary Report

15-00212596

Printed Date : Oct 1, 2015 9:05:47 AM

<b>Type:</b> Loud Commercial Music	<b>SR #:</b> 15-00212596
<b>Area:</b> POLICE PATROL SECTORS - DAVID	<b>Priority:</b> Standard
<b>Group:</b> Economic Development Department	<b>Status:</b> Closed
<b>Jurisdiction:</b> City of Austin	<b>Status Date:</b> Sep 8, 2015 6:06:19 PM
<b>Input By:</b> Spot311 Interface	<b>Created Date:</b> Sep 5, 2015 12:09:21 PM
<b>Method Received:</b> Spot311 Interface	<b>Overdue on:</b> Sep 7, 2015 12:09:21 PM
<b>Location:</b> 8901 W SH 71, AUSTIN, TX 78736	
<b>Location Details:</b> 8901 W SH 71; XY: 3063947.031900146, 10064226.205375053; LatLng: 30.253249159358752, -97.90275821450479	
<b>SR Comments:</b> LifeAustin Amphitheater. Loud enough to penetrate homes. Worship doesn't require disturbing neighbors inside their homes. Amphitheater turned down volume when TV crew arrived. So they CAN turn it down instead of blasting us with professional outdoor sound system until 10 or 11, 3 nights a week. If they are ethical leaders and good neighbors, they will add more sound walls and turn it down.	

Flex Notes	
Flex Note Question	Flex Note Answer
Where is the music coming from?	Venue
Is the music coming from an indoor or outdoor venue?	Outdoor
Which day of the week is the music causing a disturbance?	Friday
During which timeframe is the music causing a disturbance?	
If citizen is bilingual, please indicate language.	
Information is collected for tracking purposes. The citizen may be contacted if additional information is needed.	
To the call taker: Does the caller want to report this issue to APD?	No

Activities				
Activities	Assigned Staff	Due Date	Completed Date	Outcome
Review Request		Sep 8, 2015 6:00:00 PM		Overdue Activity Created
Details				
Activities	Assigned Staff	Due Date	Completed Date	Outcome
CLOSE OF SR	Loud Music Staff		Sep 8, 2015 6:06:18 PM	Completed - Close SR
Details				

# Service Request Summary Report

15-00212137

Printed Date : Oct 1, 2015 9:05:47 AM

G/223

**Type:** Loud Commercial Music  
**Area:** POLICE PATROL SECTORS - DAVID  
**Group:** Economic Development Department  
**Jurisdiction:** City of Austin  
**Input By:** Spot311 Interface  
**Method Received:** Spot311 Interface  
**Location:** 8901 W SH 71, AUSTIN, TX 78736

**SR #:** 15-00212137  
**Priority:** Standard  
**Status:** Closed  
**Status Date:** Sep 6, 2015 6:02:31 PM  
**Created Date:** Sep 4, 2015 5:11:01 PM  
**Overdue on:** Sep 6, 2015 5:11:01 PM

**Location Details:** 8901 W SH 71; XY: 3063977.9636854804, 10063641.164900301; LatLng: 30.251639062043225, -97.90270075475627

**SR Comments:** Loud music can already be heard from Life Austin church at 5pm. I can hear it inside my home over the tv.

## Flex Notes

### Flex Note Question

Where is the music coming from?

Is the music coming from an indoor or outdoor venue?

Which day of the week is the music causing a disturbance?

During which timeframe is the music causing a disturbance?

If citizen is bilingual, please indicate language.

Information is collected for tracking purposes. The citizen may be contacted if additional information is needed.

To the call taker: Does the caller want to report this issue to APD?

### Flex Note Answer

Venue

Outdoor

Friday

No

## Activities

Activities	Assigned Staff	Due Date	Completed Date	Outcome
Review Request		Sep 6, 2015 6:00:00 PM		Overdue Activity Created

### Details

## Activities

Activities	Assigned Staff	Due Date	Completed Date	Outcome
CLOSE OF SR	Loud Music Staff		Sep 6, 2015 6:02:30 PM	Completed - Close SR

### Details



# Service Request Summary Report

15-00211437

Printed Date : Oct 1, 2015 9:05:47 AM

G1  
224

**Type:** Loud Commercial Music  
**Area:** POLICE PATROL SECTORS - DAVID  
**Group:** Economic Development Department  
**Jurisdiction:** City of Austin  
**Input By:** Spot311 Interface  
**Method:** Spot311 Interface  
**Received:**  
**Location:** 8901 W SH 71, AUSTIN, TX 78736  
**Location Details:** 8901 W SH 71; XY: 3063836.490357109, 10063969.451782247; LatLng: 30.2525499999999488, -97.903126

**SR #:** 15-00211437  
**Priority:** Standard  
**Status:** Closed  
**Status Date:** Sep 5, 2015 6:15:43 PM  
**Created Date:** Sep 3, 2015 8:54:06 PM  
**Overdue on:** Sep 5, 2015 8:54:06 PM

**SR Comments:** Insanely loud music, disturbing the peace, preventing me from enjoying my property, frightening all of my pets worse than fireworks

## Flex Notes

### Flex Note Question

Where is the music coming from?  
Is the music coming from an indoor or outdoor venue?  
Which day of the week is the music causing a disturbance?  
During which timeframe is the music causing a disturbance?  
If citizen is bilingual, please indicate language.  
Information is collected for tracking purposes. The citizen may be contacted if additional information is needed.  
To the call taker: Does the caller want to report this issue to APD?

### Flex Note Answer

Venue  
Outdoor  
Thursday

No

## Activities

Activities	Assigned Staff	Due Date	Completed Date	Outcome
Review Request		Sep 5, 2015 6:00:00 PM		Overdue Activity Created
<b>Details</b>				
<b>Activities</b>	<b>Assigned Staff</b>	<b>Due Date</b>	<b>Completed Date</b>	<b>Outcome</b>
CLOSE OF SR	Loud Music Staff		Sep 5, 2015 6:15:43 PM	Completed - Close SR
<b>Details</b>				

# Service Request Summary Report

15-00211332

Printed Date : Oct 1, 2015 9:05:47 AM

61  
225

**Type:** Loud Commercial Music  
**Area:** POLICE PATROL SECTORS - DAVID  
**Group:** Economic Development Department  
**Jurisdiction:** City of Austin  
**Input By:** Spot311 Interface  
**Method Received:** Spot311 Interface  
**Location:** 8901 W SH 71, AUSTIN, TX 78736  
**Location Details:** 8901 W SH 71; XY: 3064124.173393526, 10064133.118342197; LatLng: 30.25298262643135, -97.90220375158174  
**SR Comments:** Life Austin amphitheater loud enough to hear inside home almost to Thomas Springs. Inside. Many blocks away. Unannounced concert outside?

**SR #:** 15-00211332  
**Priority:** Standard  
**Status:** Closed  
**Status Date:** Sep 5, 2015 6:16:15 PM  
**Created Date:** Sep 3, 2015 6:57:15 PM  
**Overdue on:** Sep 5, 2015 6:57:15 PM

## Flex Notes

### Flex Note Question

Where is the music coming from?  
 Is the music coming from an indoor or outdoor venue?  
 Which day of the week is the music causing a disturbance?  
 During which timeframe is the music causing a disturbance?

If citizen is bilingual, please indicate language.  
 Information is collected for tracking purposes. The citizen may be contacted if additional information is needed.

To the call taker: Does the caller want to report this issue to APD? No

### Flex Note Answer

Venue  
 Outdoor  
 Thursday

## Activities

Activities	Assigned Staff	Due Date	Completed Date	Outcome
Review Request		Sep 5, 2015 6:00:00 PM		Overdue Activity Created

### Details

## Activities

Activities	Assigned Staff	Due Date	Completed Date	Outcome
CLOSE OF SR	Loud Music Staff		Sep 5, 2015 6:16:14 PM	Completed - Close SR

### Details

# Service Request Summary Report

15-00211301

Printed Date : Oct 1, 2015 9:05:47 AM

61  
224

**Type:** Loud Commercial Music  
**Area:** POLICE PATROL SECTORS - DAVID  
**Group:** Economic Development Department  
**Jurisdiction:** City of Austin  
**Input By:** Spot311 Interface  
**Method:** Spot311 Interface  
**Received:**  
**Location:** 8901 W SH 71, AUSTIN, TX 78736  
**Location Details:** 8901 W SH 71; XY: 3064296.671999717, 10063895.477143535; LatLng: 30.2523189999999464, -97.901674000000001

**SR #:** 15-00211301

**Priority:** Standard

**Status:** Closed

**Status Date:** Sep 5, 2015 6:16:19 PM

**Created Date:** Sep 3, 2015 6:32:08 PM

**Overdue on:** Sep 5, 2015 6:32:08 PM

**SR Comments:** More disruptive load and annoying music from LifeAustin's illegal Amphitheater. The owner/pastor of the venue is charging admission and is for profit. How many days a week must the neighbors suffer from his greed and contempt.

Flex Notes	
Flex Note Question	Flex Note Answer
Where is the music coming from?	Music Festival or Event
Is the music coming from an indoor or outdoor venue?	Outdoor
Which day of the week is the music causing a disturbance?	Thursday
During which timeframe is the music causing a disturbance?	
If citizen is bilingual, please indicate language.	
Information is collected for tracking purposes. The citizen may be contacted if additional information is needed.	
To the call taker: Does the caller want to report this issue to APD?	No

Activities				
Activities	Assigned Staff	Due Date	Completed Date	Outcome
Review Request		Sep 5, 2015 6:00:00 PM		Overdue Activity Created
Details				
Activities	Assigned Staff	Due Date	Completed Date	Outcome
CLOSE OF SR	Loud Music Staff		Sep 5, 2015 6:16:18 PM	Completed - Close SR
Details				

# **Service Request Summary Report** **15-00207059**

Printed Date : Oct 1, 2015 9:05:47 AM

61  
227

**Type:** Loud Commercial Music  
**Area:** POLICE PATROL SECTORS - DAVID  
**Group:** Economic Development Department  
**Jurisdiction:** City of Austin  
**Input By:** Spot311 Interface  
**Method Received:** Spot311 Interface  
**Location:** 8901 W SH 71, AUSTIN, TX 78736  
**Location Details:** 8901 W SH 71; XY: 3064041.1666691783, 10063640.9096163; LatLng: 30.251634563264275, -97.90250064809553

**SR #:** 15-00207059  
**Priority:** Standard  
**Status:** Closed  
**Status Date:** Aug 31, 2015 6:06:26 PM  
**Created Date:** Aug 29, 2015 9:02:04 PM  
**Overdue on:** Aug 31, 2015 9:02:04 PM

**SR Comments:** Loud music from Life Austin Ampitheater is disturbing me from inside my home.

Flex Notes	
Flex Note Question	Flex Note Answer
Where is the music coming from?	Venue
Is the music coming from an indoor or outdoor venue?	Outdoor
Which day of the week is the music causing a disturbance?	Saturday
During which timeframe is the music causing a disturbance?	
If citizen is bilingual, please indicate language.	
Information is collected for tracking purposes. The citizen may be contacted if additional information is needed.	
To the call taker: Does the caller want to report this issue to APD?	No

Activities				
Activities	Assigned Staff	Due Date	Completed Date	Outcome
Review Request		Aug 31, 2015 6:00:00 PM		Overdue Activity Created
Details				
Activities	Assigned Staff	Due Date	Completed Date	Outcome
CLOSE OF SR	Loud Music Staff		Aug 31, 2015 6:06:26 PM	Completed - Close SR
Details				

61  
228

# **Service Request Summary Report** **15-00207052**

Printed Date : Oct 1, 2015 9:05:47 AM

<b>Type:</b> Loud Commercial Music	<b>SR #:</b> 15-00207052
<b>Area:</b> POLICE PATROL SECTORS - DAVID	<b>Priority:</b> Standard
<b>Group:</b> Economic Development Department	<b>Status:</b> Closed
<b>Jurisdiction:</b> City of Austin	<b>Status Date:</b> Aug 31, 2015 6:06:18 PM
<b>Input By:</b> Spot311 Interface	<b>Created Date:</b> Aug 29, 2015 8:50:01 PM
<b>Method:</b> Spot311 Interface	<b>Overdue on:</b> Aug 31, 2015 8:50:01 PM
<b>Received:</b>	
<b>Location:</b> 8901 W SH 71, AUSTIN, TX 78736	
<b>Location Details:</b> 8901 W SH 71; XY: 3064226.416709211, 10063832.945939519; LatLng: 30.252151327832564, -97.90190078451619	
<b>SR Comments:</b> A very loud outdoor concert is happening at the Life Austin Outdoor Amphitheater. I can hear it in my home. It should not be audible beyond their property line, and I know that many others in my neighborhood are bothered by this as well.	

Flex Notes	
Flex Note Question	Flex Note Answer
Where is the music coming from?	Venue
Is the music coming from an indoor or outdoor venue?	Outdoor
Which day of the week is the music causing a disturbance?	Saturday
During which timeframe is the music causing a disturbance?	
If citizen is bilingual, please indicate language.	
Information is collected for tracking purposes. The citizen may be contacted if additional information is needed.	
To the call taker: Does the caller want to report this issue to APD?	No

Activities				
Activities	Assigned Staff	Due Date	Completed Date	Outcome
Review Request		Aug 31, 2015 6:00:00 PM		Overdue Activity Created
Details				
Activities				
Activities	Assigned Staff	Due Date	Completed Date	Outcome
CLOSE OF SR	Loud Music Staff		Aug 31, 2015 6:06:18 PM	Completed - Close SR
Details				

# Service Request Summary Report

15-00207051

Printed Date : Oct 1, 2015 9:05:47 AM

61  
229

**Type:** Loud Commercial Music  
**Area:** POLICE PATROL SECTORS - DAVID  
**Group:** Economic Development Department  
**Jurisdiction:** City of Austin  
**Input By:** Spot311 Interface  
**Method Received:** Spot311 Interface  
**Location:** 8901 W SH 71, AUSTIN, TX 78736  
**Location Details:** 8901 W SH 71; XY: 3064056.232633181, 10063905.258644613; LatLng: 30.252360336744808, -97.90243464954554

**SR Comments:** An unbelievably loud concert from Randy Phillips' outdoor music venue. This really is ridiculous and happens two (and this week three) times per week. I can hear it in the house over the TV set. Please do something to help us - Life Austin will keep having concerts until you stop them. Thank you

**SR #:** 15-00207051  
**Priority:** Standard  
**Status:** Closed  
**Status Date:** Aug 31, 2015 6:06:14 PM  
**Created Date:** Aug 29, 2015 8:43:58 PM  
**Overdue on:** Aug 31, 2015 8:43:58 PM

## Flex Notes

### Flex Note Question

Where is the music coming from?

Is the music coming from an indoor or outdoor venue?

Which day of the week is the music causing a disturbance?

During which timeframe is the music causing a disturbance?

If citizen is bilingual, please indicate language.

Information is collected for tracking purposes. The citizen may be contacted if additional information is needed.

To the call taker: Does the caller want to report this issue to APD?

### Flex Note Answer

Venue

Outdoor

Saturday

No

## Activities

Activities	Assigned Staff	Due Date	Completed Date	Outcome
Review Request		Aug 31, 2015 6:00:00 PM		Overdue Activity Created

## Details

## Activities

Activities	Assigned Staff	Due Date	Completed Date	Outcome
CLOSE OF SR	Loud Music Staff		Aug 31, 2015 6:06:13 PM	Completed - Close SR

## Details

# **Service Request Summary Report** **15-00207030**

Printed Date : Oct 1, 2015 9:05:47 AM

**G1**  
**230**

**Type:** Loud Commercial Music  
**Area:** POLICE PATROL SECTORS - DAVID  
**Group:** Economic Development Department  
**Jurisdiction:** City of Austin  
**Input By:** Spot311 Interface  
**Method:** Spot311 Interface  
**Received:**

**SR #:** 15-00207030  
**Priority:** Standard  
**Status:** Closed  
**Status Date:** Aug 31, 2015 6:05:05 PM  
**Created Date:** Aug 29, 2015 8:22:55 PM  
**Overdue on:** Aug 31, 2015 8:22:55 PM

**Location:** 8901 W SH 71, AUSTIN, TX 78736

**Location Details:** 8901 W SH 71; XY: 3064212.6834640396, 10063974.07237727; LatLng: 30.252540100667577, -97.90193450073656

**SR Comments:** Loud concert next door to my neighborhood! This is outrageous. The third outdoor concert this week alone! It has to stop!

Flex Notes	
Flex Note Question	Flex Note Answer
Where is the music coming from?	Venue
Is the music coming from an indoor or outdoor venue?	Outdoor
Which day of the week is the music causing a disturbance?	Saturday
During which timeframe is the music causing a disturbance?	
If citizen is bilingual, please indicate language.	
Information is collected for tracking purposes. The citizen may be contacted if additional information is needed.	
To the call taker: Does the caller want to report this issue to APD?	No

Activities				
Activities	Assigned Staff	Due Date	Completed Date	Outcome
Review Request		Aug 31, 2015 6:00:00 PM		Overdue Activity Created
Details				
Activities				
Activities	Assigned Staff	Due Date	Completed Date	Outcome
CLOSE OF SR	Loud Music Staff		Aug 31, 2015 6:05:04 PM	Completed - Close SR
Details				

G1  
231

## Service Request Summary Report

15-00207025

Printed Date : Oct 1, 2015 9:05:47 AM

<b>Type:</b> Loud Commercial Music	<b>SR #:</b> 15-00207025
<b>Area:</b> POLICE PATROL SECTORS - DAVID	<b>Priority:</b> Standard
<b>Group:</b> Economic Development Department	<b>Status:</b> Closed
<b>Jurisdiction:</b> City of Austin	<b>Status Date:</b> Aug 31, 2015 6:04:47 PM
<b>Input By:</b> Spot311 Interface	<b>Created Date:</b> Aug 29, 2015 8:16:48 PM
<b>Method:</b> Spot311 Interface	<b>Overdue on:</b> Aug 31, 2015 8:16:48 PM
<b>Received:</b>	
<b>Location:</b> 8901 W SH 71, AUSTIN, TX 78736	
<b>Location Details:</b> 8901 W SH 71; XY: 3064095.2029840816, 10063706.63806134; LatLng: 30.2518119999999468, -97.902325000000002	

**SR Comments:** More irritating noise from life austin concerts can be heard inside house.

### Flex Notes

#### Flex Note Question

Where is the music coming from?

Is the music coming from an indoor or outdoor venue?

Which day of the week is the music causing a disturbance?

During which timeframe is the music causing a disturbance?

If citizen is bilingual, please indicate language.

Information is collected for tracking purposes. The citizen may be contacted if additional information is needed.

To the call taker: Does the caller want to report this issue to APD?

#### Flex Note Answer

Music Festival or Event

Outdoor

Saturday

No

### Activities

Activities	Assigned Staff	Due Date	Completed Date	Outcome
Review Request		Aug 31, 2015 6:00:00 PM		Overdue Activity Created

### Details

#### Activities

Activities	Assigned Staff	Due Date	Completed Date	Outcome
CLOSE OF SR	Loud Music Staff		Aug 31, 2015 6:04:46 PM	Completed - Close SR

### Details



61  
232

# Service Request Summary Report

15-00206437

Printed Date : Oct 1, 2015 9:05:47 AM

**Type:** Loud Commercial Music  
**Area:** POLICE PATROL SECTORS - DAVID  
**Group:** Economic Development Department  
**Jurisdiction:** City of Austin  
**Input By:** Spot311 Interface  
**Method** Spot311 Interface  
**Received:**  
**Location:** 8901 W SH 71, AUSTIN, TX 78736  
**Location** 8901 W SH 71; XY: 3064136.0663980665, 10064203.116132788; LatLng: 30.253174331289724,  
**Details:** -97.90216124859772

**SR #:** 15-00206437  
**Priority:** Standard  
**Status:** Closed  
**Status Date:** Aug 30, 2015 6:14:43 PM  
**Created Date:** Aug 28, 2015 9:22:48 PM  
**Overdue on:** Aug 30, 2015 9:22:48 PM

**SR** Howling loud life Austin amphitheater. Hear in back bedroom many blocks away. Too loud outside to enjoy  
**Comments:** moon and evening in yard.

Flex Notes	
Flex Note Question	Flex Note Answer
Where is the music coming from?	Venue
Is the music coming from an indoor or outdoor venue?	Outdoor
Which day of the week is the music causing a disturbance?	Friday
During which timeframe is the music causing a disturbance?	
If citizen is bilingual, please indicate language.	
Information is collected for tracking purposes. The citizen may be contacted if additional information is needed.	
To the call taker: Does the caller want to report this issue to APD?	No

Activities				
Activities	Assigned Staff	Due Date	Completed Date	Outcome
Review Request		Aug 30, 2015 6:00:00 PM		Overdue Activity Created
Details				
Activities				
Activities	Assigned Staff	Due Date	Completed Date	Outcome
CLOSE OF SR	Loud Music Staff		Aug 30, 2015 6:14:43 PM	Completed - Close SR
Details				

61  
233

## Service Request Summary Report

15-00202056

Printed Date : Oct 1, 2015 9:05:47 AM

**Type:** Loud Commercial Music  
**Area:** POLICE PATROL SECTORS - DAVID  
**Group:** Economic Development Department  
**Jurisdiction:** City of Austin  
**Input By:** Davis, Brandi  
**Method** Phone  
**Received:**  
**Location:** 8901 W SH 71, AUSTIN, TX 78736  
**Location Details:**

**SR #:** 15-00202056  
**Priority:** Standard  
**Status:** Closed  
**Status Date:** Aug 25, 2015 6:02:36 PM  
**Created Date:** Aug 23, 2015 9:20:16 PM  
**Overdue on:** Aug 25, 2015 9:20:16 PM

**SR Comments:** church with amptheatre ( church is called live austin ) / started around 8pm and still going / playing thriller and now playing hip hop music and ballads ect - not church music

### Flex Notes

#### Flex Note Question

Where is the music coming from?  
 Is the music coming from an indoor or outdoor venue?  
 Which day of the week is the music causing a disturbance?  
 During which timeframe is the music causing a disturbance?  
 If citizen is bilingual, please indicate language.

Information is collected for tracking purposes. The citizen may be contacted if additional information is needed.

#### Flex Note Answer

Venue  
 Outdoor  
 Sunday  
 8pm to 10pm

### Activities

Activities	Assigned Staff	Due Date	Completed Date	Outcome
Review Request		Aug 25, 2015 6:00:00 PM		Overdue Activity Created

#### Details

### Activities

Activities	Assigned Staff	Due Date	Completed Date	Outcome
CLOSE OF SR	Loud Music Staff		Aug 25, 2015 6:02:35 PM	Completed - Close SR

#### Details

61  
234

# Service Request Summary Report

15-00195221

Printed Date : Aug 17, 2015 9:53:12 AM

**Type:** Loud Commercial Music  
**Area:** POLICE PATROL SECTORS - DAVID  
**Group:** Economic Development Department  
**Jurisdiction:** City of Austin  
**Input By:** Spot311 Interface  
**Method:** Spot311 Interface  
**Received:**  
**Location:** 8836 W SH 71, AUSTIN, TX  
**Location Details:** 8835 1/2 W SH 71; XY: 3063679.873662987, 10062894.864480644; LatLng: 30.24960543346275, -97.9036962400107

**SR #:** 15-00195221  
**Priority:** Standard  
**Status:** Open  
**Status Date:** Aug 15, 2015 9:35:00 PM  
**Created Date:** Aug 15, 2015 9:35:00 PM  
**Overdue on:** Aug 17, 2015 9:35:00 PM

**SR Comments:** Very loud and disruptive outdoor music. Loud enough to scare our dogs from indoors.

## Flex Notes

### Flex Note Question

Where is the music coming from?

Is the music coming from an indoor or outdoor venue?

Which day of the week is the music causing a disturbance?

During which timeframe is the music causing a disturbance?

If citizen is bilingual, please indicate language.

Information is collected for tracking purposes. The citizen may be contacted if additional information is needed.

To the call taker: Does the caller want to report this issue to APD?

### Flex Note Answer

Venue

Outdoor

Saturday

No

## Participants

Participant Type	Participant Name	Address	Email	Phones/Extension
Citizen	Matquis, Natalie		green_gal78@yahoo.com	HOME 512-423-0835
COA Employee				

## Activities

Activities	Assigned Staff	Due Date	Completed Date	Outcome
Review Request		Aug 17, 2015 6:00:00 PM		

## Details

GI  
235

## Service Request Summary Report

15-00195206

Printed Date : Aug 17, 2015 9:53:12 AM

**Type:** Loud Commercial Music  
**Area:** POLICE PATROL SECTORS - DAVID  
**Group:** Economic Development Department  
**Jurisdiction:** City of Austin  
**Input By:** Spot311 Interface  
**Method Received:** Spot311 Interface  
**Location:** 8901 W SH 71, AUSTIN, TX

**SR #:** 15-00195206  
**Priority:** Standard  
**Status:** Open  
**Status Date:** Aug 15, 2015 9:14:53 PM  
**Created Date:** Aug 15, 2015 9:14:53 PM  
**Overdue on:** Aug 17, 2015 9:14:53 PM

**Location Details:** 8901 W SH 71; XY: 3064080.102150591, 10064287.857840886; LatLng: 30.253410643490483, -97.90233259036214

**SR Comments:** Very loud music and concert from huge outdoor music venue. Can hear it all in house.

### Flex Notes

#### Flex Note Question

Where is the music coming from?  
Is the music coming from an indoor or outdoor venue?  
Which day of the week is the music causing a disturbance?  
During which timeframe is the music causing a disturbance?  
If citizen is bilingual, please indicate language.  
Information is collected for tracking purposes. The citizen may be contacted if additional information is needed.  
To the call taker: Does the caller want to report this issue to APD?

#### Flex Note Answer

Venue  
Saturday

No

### Participants

Participant Type	Participant Name	Address	Email	Phones/Extension
Citizen	Sealy, Earl		proud.texas@yahoo.com	
COA Employee				

### Activities

Activities	Assigned Staff	Due Date	Completed Date	Outcome
Review Request		Aug 17, 2015 6:00:00 PM		
<b>Details</b>				

61  
234

# **Service Request Summary Report** 15-00195193

Printed Date : Aug 17, 2015 9:53:12 AM

<b>Type:</b> Loud Commercial Music	<b>SR #:</b> 15-00195193
<b>Area:</b> POLICE PATROL SECTORS - DAVID	<b>Priority:</b> Standard
<b>Group:</b> Economic Development Department	<b>Status:</b> Open
<b>Jurisdiction:</b> City of Austin	<b>Status Date:</b> Aug 15, 2015 8:54:49 PM
<b>Input By:</b> Spot311 Interface	<b>Created Date:</b> Aug 15, 2015 8:54:49 PM
<b>Method:</b> Spot311 Interface	<b>Overdue on:</b> Aug 17, 2015 8:54:49 PM
<b>Received:</b>	
<b>Location:</b> 8901 W SH 71, AUSTIN, TX	
<b>Location Details:</b> 8901 W SH 71; XY: 3064456.8399453997, 10064192.062100919; LatLng: 30.253124665974667, -97.90114630888765	
<b>SR Comments:</b> Outdoor concert is very loud. Can hear music and crowd in house.	

## **Flex Notes**

### **Flex Note Question**

Where is the music coming from?  
Is the music coming from an indoor or outdoor venue?  
Which day of the week is the music causing a disturbance?  
During which timeframe is the music causing a disturbance?  
If citizen is bilingual, please indicate language.  
Information is collected for tracking purposes. The citizen may be contacted if additional information is needed.  
To the call taker: Does the caller want to report this issue to APD?

### **Flex Note Answer**

Venue  
Outdoor  
Saturday

No

## **Participants**

Participant Type	Participant Name	Address	Email	Phones/Extension
Citizen	Bortz, Lisa		lisabortz@ymail.com	
COA Employee				

## **Activities**

Activities	Assigned Staff	Due Date	Completed Date	Outcome
Review Request		Aug 17, 2015 6:00:00 PM		
<b>Details</b>				

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# Service Request Summary Report

15-00195189

Printed Date : Aug 17, 2015 9:53:12 AM

**Type:** Loud Commercial Music  
**Area:** POLICE PATROL SECTORS - DAVID  
**Group:** Economic Development Department  
**Jurisdiction:** City of Austin  
**Input By:** Spot311 Interface  
**Method:** Spot311 Interface  
**Received:**  
**Location:** 8901 W SH 71, AUSTIN, TX  
**Location Details:** 8901 W SH 71; XY: 3064181.913985597, 10064266.339116745; LatLng: 30.253345372299368, -97.90201169953613  
**SR Comments:** Very loud music, audience clapping and yelling at 1500 seat Life Austin Amphitheater. Can hear all of it in my house over the TV set. Very annoying and intrusive

**SR #:** 15-00195189  
**Priority:** Standard  
**Status:** Open  
**Status Date:** Aug 15, 2015 8:49:48 PM  
**Created Date:** Aug 15, 2015 8:49:48 PM  
**Overdue on:** Aug 17, 2015 8:49:48 PM

## Flex Notes

### Flex Note Question

Where is the music coming from?  
Is the music coming from an indoor or outdoor venue?  
Which day of the week is the music causing a disturbance?  
During which timeframe is the music causing a disturbance?  
If citizen is bilingual, please indicate language.  
Information is collected for tracking purposes. The citizen may be contacted if additional information is needed.  
To the call taker: Does the caller want to report this issue to APD?

### Flex Note Answer

Venue  
Outdoor  
Saturday  
No

## Participants

Participant Type	Participant Name	Address	Email	Phones/Extension
Citizen	Jones, Paula		pjones78746@yahoo.com	
COA Employee				

## Activities

Activities	Assigned Staff	Due Date	Completed Date	Outcome
Review Request		Aug 17, 2015 6:00:00 PM		
Details				



# ZONING USE SUMMARY TABLE (LAND DEVELOPMENT CODE)

P = Permitted Use C = Conditional Use Permit -- = Not Permitted

COMMERCIAL USES continued		LA	RR	SF-1	SF-2	SF-3	SF-4A	SF-4B	SF-5	SF-6	MF-1	MF-2	MF-3	MF-4	MF-5	MF-6	MH	NO	LO	GO	CR	LR	GR	L	CBD	DMU	WLO	CS	CS-1	CH	IP	MI	LI	R&D	DR	AV	AG	PUD	P		
Kennels																																									
Laundry Services																																									
Liquor Sales																																									
Marina																																									
Medical Offices -- exceeding 5000 sq. ft. gross floor area																																									
Medical Offices -- not exceeding 5000 sq. ft. gross floor area																																									
Monument Retail Sales																																									
Off-Site Accessory Parking <sup>14</sup>																																									
Outdoor Entertainment																																									
Outdoor Sports and Recreation																																									
Pawn Shop Services																																									
Pedicab Storage and Dispatch																																									
Personal Improvement Services																																									
Personal Services																																									
Pet Services																																									
Plant Nursery																																									
Printing and Publishing																																									
Professional Office																																									
Recreational Equipment Maint. & Stor.																																									
Recreational Equipment Sales																																									
Research Assembly Services																																									
Research Services																																									
Research Testing Services																																									
Research Warehousing Services																																									
Restaurant (General)																																									
Restaurant (Limited)																																									
Scrap and Salvage																																									
Service Station																																									
Software Development																																									
Special Use Historic		C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C		
Stables																																									
Theater																																									
Vehicle Storage																																									
Veterinary Services																																									
INDUSTRIAL USES		LA	RR	SF-1	SF-2	SF-3	SF-4A	SF-4B	SF-5	SF-6	MF-1	MF-2	MF-3	MF-4	MF-5	MF-6	MH	NO	LO	GO	CR	LR	GR	L	CBD	DMU	WLO	CS	CS-1	CH	IP	MI	LI	R&D	DR	AV	AG	PUD	P		
Basic Industry																																									
Custom Manufacturing																																									
General Warehousing and Distribution																																									
Light Manufacturing																																									
Limited Warehousing and Distribution																																									
Recycling Center																																</									

1-Refers to 25-2-602 (13-2-225); 2-Refers to 25-2-622 (13-2-226); 3-Refers to Subchapter B, Art. 2, Div 5; 4-Refers to 25-2-624 (13-2-227); 5-Refers to 25-2-803 (13-2-233); 6-Subject to 25-2-805 (13-2-224); 7-Subject to 25-2-839 (13-2-235 & 13-2-273); 8-Refers to 25-2-842; 9-Refers to 25-2-863; 10-Subject to 25-2-177 & 25-2-650; 11-Subject to 25-2-587 (D); 12-Subject to 25-2-816; 13-Permitted in MU and V combining districts, subject to 25-2, Subchapter E, Art. 4, Subsec. 4.2.1.C; 14-Refers to 25-6-501; 15-Refers to 25-2-817; 16-Refers to 25-2-811.  
PC - Permitted in the district, but under some circumstances may be conditional; CP - Conditional in the district, but under some circumstances may be permitted



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P = Permitted Use    C = Conditional Use Permit    -- = Not Permitted

1-Refers to 25-2-602 (13-2-225); 2-Refers to 25-2-622 (13-2-226); 3-Refers to Subchapter B, Art. 2, Div 5; 4 Refers to 25-2-624 (13-2-227); 5-Refers to 25-2-803 (13-2-233); 6-Subject to 25-2-805 (13-2-224); 7-Subject to 25-2-839 (13-2-235 & 13-2-273); 8-Refers to 25-2-842; 9-Refers to 25-2-863; 10-Subject to 25-2-177 & 25-2-650; 11-Subject to 25-2-587 (D); 12-Subject to 25-2-816; 13-Permitted in MU and V combining districts, subject to 25-2, Subchapter E, Art. 4, Subsec. 4.2.1.C; 14-Refers to 25-6-501; 15-Refers to 25-2-817; 16-Refers to 25-2-811.

PC - Permitted in the district, but under some circumstances may be conditional; CP - Conditional in the district, but under some circumstances may be permitted

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## EXHIBIT 11

1

CAUSE NO. D-1-GN-12-000878

HILL COUNTRY ESTATES                    § IN THE DISTRICT COURT OF  
HOMEOWNERS ASSOCIATION,            §  
AND COVERED BRIDGE                §  
PROPERTY OWNERS                    §  
ASSOCIATION, INC.,                §  
                 Plaintiffs,            § TRAVIS COUNTY, TEXAS  
VS.                                    §  
                                         §  
GREG GUERNSEY, THE CITY OF       §  
AUSTIN,                               §  
                 Defendants.        § 250TH JUDICIAL DISTRICT

-----  
ORAL DEPOSITION OF

GREG GUERNSEY

FEBRUARY 20, 2013  
-----

ORAL DEPOSITION OF GREG GUERNSEY, produced as a witness at the instance of the Plaintiffs, and duly sworn, was taken in the above-styled and numbered cause on February 20, 2013, from 10:11 a.m. to 5:45 p.m., before Pamela Nichols, CSR in and for the State of Texas, reported by machine shorthand, at City Hall, 301 West Second Street, 4th Floor, Austin, Texas, pursuant

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1 to the Texas Rules of Civil Procedure and the provisions  
2 stated on the record or attached hereto.

3  
4 A P P E A R A N C E S

5  
6 FOR THE PLAINTIFFS:

7 Mr. Eric J. Taube  
8 HOHMANN, TAUBE & SUMMERS, L.L.P.  
9 100 Congress Avenue  
10 18th Floor  
11 Austin, Texas 78701  
12 Telephone: (512) 472-5997  
13 E-mail: erict@hts-law.com

14  
15 FOR THE DEFENDANTS:

16 Ms. Chris Edwards  
17 Assistant City Attorney  
18 CITY OF AUSTIN  
19 Law Department  
20 301 West 2nd Street  
21 Austin, Texas 78701  
22 Telephone: (512) 974-2419  
23 E-mail: chris.edwards@ci.austin.tx.us

24  
25 ALSO PRESENT:

Robert J. Kleeman, Plaintiffs' Representative

1 Q. Which ones? All or some?

2 A. All of those, yes.

3 Q. Okay. We're obviously going to go into that  
4 in some detail here in a minute. But as a general  
5 proposition, from the period of time from, let's say  
6 2005 up and through the present time, who has the  
7 ability at the City to make land use determinations?

8 A. The authority actually may be delegated on my  
9 behalf.

10 Q. As a director?

11 A. As a director, all the way down to frontline  
12 staff. With every, I guess you could say every building  
13 permit, every site plan that would come in for review  
14 and possible approval, there's a use determination  
15 that's made with every application.

16 Q. Okay.

17 A. And so if someone, for instance, said, I'm  
18 going to build a fast-food restaurant, basically a  
19 restaurant limited or restaurant general, there is a  
20 determination made by staff at some level on any given  
21 day at any given time to approve a building permit or a  
22 site plan or something along that line.

23 Q. And when you say frontline staff, can you  
24 describe for me what that includes?

25 A. For instance, a site plan case manager would

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1 be responsible for doing a review of a site plan for  
2 zoning compliance. They would look at the use, perhaps  
3 heights and setbacks, impervious cover, those types of  
4 things. Or if there was someone who was reviewing a --  
5 even a residential building permit, to make sure that if  
6 a building is a duplex and the plans appear to be a  
7 duplex, they would make that decision and issue a permit  
8 for approval of a duplex.

9 Q. Can you define for me, Mr. Guernsey, what a  
10 land use determination is?

11 A. A land use determination is really reviewing  
12 an application that may come before me or any of my  
13 staff or a -- which could either be an actual  
14 application or a simple, I guess you could say request.  
15 It could take the form of a letter. It can take the  
16 form of a conversation, conference that could occur  
17 either at my level or other levels, determine whether a  
18 land use fits one of the definitions that are found in  
19 the Land Development Code.

20 And there's actually a section, I think,  
21 of the Code that, under 25-2 probably, that addresses  
22 that better.

23 Q. Okay. We'll go through that in a second.

24 Can anyone make a land use determination  
25 request? In other words, do I have to be the property

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1           A.    Are you asking about a structure or are you  
2 asking about a use?

3           Q.    I'm actually asking about a structure,  
4 regardless of use.  Is an outdoor amphitheater usually  
5 and customarily associated with a church?

6           A.    It could be.

7           Q.    An outdoor amphitheater?

8           A.    Could be.

9           Q.    Tell me one other instance where there is an  
10 outdoor amphitheater in the city of Austin associated  
11 with a church.

12          A.    I could not name one off the top of my head.

13          Q.    And when you say an outdoor amphitheater could  
14 be customarily associated with a church, what's your  
15 basis for that?  How could it be?

16          A.    It depends on what the use of the structure is.

17          Q.    So it's your testimony that a land use is  
18 dependent upon who's using it as opposed to what's on it?

19          A.    Who is using it?

20          Q.    Sure.

21          A.    Versus?

22          Q.    What's on it.

23          A.    It depends on the --  A use determination  
24 really goes back to what is the use of that property.  I  
25 don't know if it really makes a difference on who that

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1 party is so long as the use is consistent. So whether  
2 you used it or I used that building, it really goes to  
3 if you were operating the use as a used car lot, and  
4 there may be instances where we have theaters or car  
5 lots or structures that may have been used as a car lot  
6 that may have been once a theater or once a  
7 amphitheater, whatever, it really depends on what that  
8 use is, not necessarily what the structure is.

9 Q. But you would agree with me, would you not,  
10 Mr. Guernsey, that in your experience, the totality of  
11 your experience with the City of Austin, there is not a  
12 single amphitheater, outdoor amphitheater, that is  
13 currently being used as an accessory to a church or a  
14 synagogue or a mosque or any other house of worship,  
15 right?

16 A. How are you defining "amphitheater"?

17 Q. How about something that is an outdoor open  
18 structure with seating?

19 A. I believe there are structures probably in  
20 Austin somewhere that have either outdoor prayer gardens  
21 or -- I know the church -- my church actually has a  
22 couple of benches outside where people can sit and  
23 people can talk. There are other -- probably other  
24 venues that are out there where there may be a place  
25 where people can congregate outside.

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1 Q. Does your church have outdoor lighting for  
2 stadium seating?

3 A. No, it does not.

4 Q. Are you aware of any other church that has  
5 outdoor lighting for stadium seating?

6 A. Not to my knowledge.

7 Q. Are you aware of any church or synagogue or  
8 mosque or any other house of worship in the city of  
9 Austin that has an outdoor structure that is designed to  
10 seat 1,000 people?

11 A. No.

12 Q. And a prayer garden, describe for me what a  
13 prayer garden is. Let's make sure you and I are talking  
14 about the same thing.

15 A. Well, there are -- if there's a place where  
16 people go to either meditate, basically those areas  
17 where people may go out and congregate for may be a  
18 special ceremony.

19 Q. In your definition of prayer garden,  
20 Mr. Guernsey, would that include outdoor amplification  
21 systems?

22 A. There may be in certain circumstances  
23 amplified sound.

24 Q. Well, I'm not talking about somebody bringing  
25 out an amplifier into that area. I'm talking about



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1 something where it is part of the structure or design  
2 for amplified sound. Are you aware of any of those?

3 A. Not specifically.

4 Q. Mr. Guernsey, if you look at 25-1-21 on the  
5 "Definitions" section, and specifically I'd like you to  
6 take a look at the definition under subparagraph 21,  
7 "Conditional Use." You got it?

8 A. Yes.

9 Q. Okay. A conditional use in the Code is  
10 defined as -- it "means a use that is allowed on a  
11 discretionary and conditional basis in accordance with  
12 the conditional use process established by Chapter 25-5  
13 (Site Plans)."

14 Have I read that correctly?

15 A. Yes.

16 Q. Okay. Conditional use is for community  
17 recreation?

18 A. Could you clarify that?

19 Q. Let me ask it this way: In order to have a  
20 conditional use approved by the City, do you have to  
21 request a conditional use permit?

22 A. For a use that's identified as a conditional  
23 use, yes, in that circumstance.

24 Q. Take a look at the definition, if you would,  
25 in Paragraph 37 of "Enclosed."

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1 Q. But you would agree with me that for the  
2 purpose of looking at this definition of "use," use has  
3 nothing to do with the nature of the person doing it;  
4 it's the activity that governs "use" by definition.  
5 Correct?

6 A. As defined by "use" under this particular  
7 section, not necessarily under use determinations.

8 Q. A structure under 109 is defined to "Mean a  
9 building of any kind, or a piece of work artificially  
10 built-up or composed of parts joined together in a  
11 definite manner," correct?

12 A. Yes.

13 Q. Take a look, if you would, please, at Section  
14 25-1-501. It's entitled "Initiation of Amendment."

15 A. (Witness complies.)

16 Q. Are you with me?

17 A. Yes, 25-1-501, "Initiation of Amendment."

18 Q. It says that "Other than the city council, or  
19 [sic] the planning commission" -- excuse me -- "only the  
20 Planning Commission may initiate an amendment to the  
21 regulations in this title."

22 Have I read that correctly?

23 A. Yes.

24 Q. You would agree with me, would you not,  
25 Mr. Guernsey, that as the director, you don't have the

1 authority to unilaterally amend the code, do you?

2 A. That's correct.

3 Q. And you would agree with me, would you not,  
4 that a land use determination is an interpretation of  
5 the Land Development Code, not an amendment to the Code,  
6 correct?

7 A. Correct.

8 Q. Mr. Guernsey, if there are provisions in the  
9 Land Development Code that conflict --

10 Let me ask you this: Have you -- in your  
11 experience, have you run into provisions of the Land  
12 Development Code that appear to conflict with each  
13 other?

14 A. I'm sure I have.

15 Q. I was pretty certain of that, too.

16 Would you agree with me that if you were  
17 interpreting conflicting provisions, that a more  
18 restrictive provision governs over a more general  
19 provision?

20 A. Generally, yes.

21 Q. Are there instances where that is not the case  
22 that you can think of?

23 A. I think it would -- yes, there may be  
24 instances where you'd have to look at what the matter is  
25 before you.

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G1  
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1 determination to everybody who can make them in the  
2 future to make sure that they're acting consistently  
3 with what you've done with regard to a particular type  
4 of situation?

5 A. I guess it depends on that -- that situation  
6 that you're speaking of. If it's specific to a  
7 particular property, then that may be the answer is yes.  
8 If it's a more general one, that may be a little bit  
9 more difficult to do.

10 Q. Well, I guess is there a process by which the  
11 City accumulates land use determinations and advises  
12 those people that are making them of the way the City  
13 has determined a particular land use is applicable,  
14 nonapplicable, available or not available?

15 A. And I guess there's -- yes. My understanding  
16 is that Jerry Rusthoven would have, I guess you could  
17 say is the keeper of those use determinations that may  
18 have been done in the past.

19 Q. Okay. Is there some attempt by Mr. Rusthoven  
20 or by you to make sure that the rest of the rank-and-  
21 file use determiners get that information?

22 A. As I said before, I think that kind of depends  
23 on the circumstance that's before them.

24 Q. Well, let me use the Promiseland West as an  
25 example. Okay? The City has taken a position that

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1 there was a land use determination made in 2008,  
2 correct?

3 A. Correct.

4 Q. That land use determination, again allegedly,  
5 was made by virtue of a private conversation between you  
6 and Mr. Conley; is that correct?

7 A. There was a meeting, actually, I think that  
8 took place in probably November, with staff and  
9 Mr. Conley and I think representatives of the church.  
10 And then there was a follow-up exchange of e-mails, and  
11 there may have been -- I don't know if there were or  
12 were not -- telephone conversations. I probably don't  
13 have records even back that far, but there was probably  
14 a conversation that we had, certainly by e-mail.

15 Q. Isn't it correct -- I'd be happy for you to  
16 look at the pleadings filed in this case. Mr. Guernsey,  
17 isn't it correct that the City has taken the position  
18 that the land use determination was made by virtue of  
19 your e-mail to Mr. Conley in December of 2008; that's  
20 the determination?

21 A. There is a determination that was based on a  
22 response to, I believe a letter that was transmitted by  
23 e-mail, I think with an exhibit, to me from --

24 Q. We'll clearly go over all that. I just want  
25 to make sure that we've placed it.

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1 that's not something that's a permanent use, but it's a  
2 temporary use that would be there -- usually limited by  
3 30 days at the most.

4 Q. Mr. Guernsey, if the City has made a land use  
5 determination that the City then later determines was  
6 made in error, what would be the process for altering  
7 the land use determination that was made in error from  
8 the City? How would you go about doing that?

9 A. I guess what we were discussing before, if  
10 there was a use and it was prohibited, and then was  
11 found that it's permitted? I guess, depending on the  
12 circumstance, the individual would come in with a permit  
13 and we would approve it.

14 Q. How about the reverse circumstance where a  
15 land use was permitted, in other words, determined to be  
16 permitted, and then the City later determined that that  
17 was -- determination was made in error?

18 A. I guess it would be probably treated as a  
19 nonconforming use, because at the time a determination  
20 may have been made it might be considered a use that was  
21 meeting all applicable codes. I guess someone could  
22 also take the City to court over the issue.

23 Q. Take the City to court because the --

24 A. If someone --

25 Q. -- the determination was made in error?

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1 Q. And I'm not sure what a columbarium is. Are  
2 you? I think I know, but --

3 A. I think I know, too. I'd have to go back and  
4 actually look up the definition. I think the state  
5 definition has actually changed. But no, I would agree  
6 that it's not an amphitheater.

7 Q. Okay. So none of the accessory uses for  
8 principal civic use would be applicable to the  
9 amphitheater, would it?

10 A. As an accessory, no. As a principal, yes, in  
11 this case.

12 Q. An amphitheater, are you aware of a bunch of  
13 churches, synagogues, mosques or places of worship that  
14 are outdoor amphitheaters in the city of Austin?

15 A. The particular case that was presented to me,  
16 and I would have to go back to look through some of the  
17 documents which may be in here or that you have --

18 Q. Yeah, we will.

19 A. -- I think it was described that the  
20 activities that would take place in one building, the  
21 main building, would also be the same that would take  
22 place in this particular building, the amphitheater  
23 building.

24 Q. So disc golf?

25 A. I'm not sure what you mean.

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1 The property in question where the Promiseland West  
2 Church is, that's a -- that's got an RR zoning  
3 classification, does it not?

4 A. It does today. I don't know if it did in '05.  
5 I believe in '08 it had an RR classification. It may  
6 have been Interim RR. I would actually have to probably  
7 go back and look at the file. But the uses that are  
8 permitted in an interim zoning classification versus a  
9 permanent zoning classification would be the same.

10 Q. And under that classification, things like  
11 indoor entertainment and indoor sports and recreation  
12 are prohibited, correct?

13 A. Yes.

14 Q. So is outdoor entertainment?

15 A. Yes.

16 Q. Outdoor sports and recreation?

17 A. Yes.

18 Q. Personal improvement services?

19 A. Yes.

20 Q. Personal services?

21 A. Yes.

22 Q. And theater services, correct?

23 A. Theater, yes.

24 Q. If you look at the last page of Exhibit No. 4  
25 with regard to an RR classification for civic uses,



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1 correct?

2 A. Yes, Page 3 of 3?

3 Q. Yes, sir.

4 Community -- excuse me -- club or lodge  
5 activities would require a conditional use permit,  
6 correct?

7 A. For the principal use, that's correct.

8 Q. And again, didn't we go over the fact that  
9 principal and accessory uses have to be the same unless  
10 otherwise specifically provided for by the Code?

11 A. As I said before, accessory uses are different  
12 than the principal use.

13 Q. I understand that they're different, but  
14 didn't we agree that --

15 A. And there are provisions under the Code which  
16 allowed for accessory uses.

17 Q. Right. But they have to be the same -- they  
18 have the same restrictions unless otherwise provided,  
19 correct?

20 A. As it pertains to an accessory use, correct.

21 Q. Do you see anything under the civic use  
22 category, Mr. Guernsey, that talks about outdoor  
23 entertainment as being a permitted use?

24 A. I don't see outdoor entertainment as being a  
25 listed use under RR on this page.

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1 recreational community, club, lodge, recreational area,  
2 private primary education, those are things that are  
3 other than religious assembly, correct?

4 A. Yes, sir.

5 Q. So, by definition, those kinds of activities  
6 are not covered under the religious assembly category;  
7 is that right?

8 A. Those uses, correct.

9 Q. Are they all principal uses?

10 A. As they are listed, it's my understanding it  
11 would be principal use.

12 (Exhibit No. 13 marked.)

13 Q. (By Mr. Taube) I'm going to hand you what's  
14 been marked for identification as deposition Exhibit  
15 No. 13. There's a couple of things that are part of 13,  
16 but let me start with what's designated as Pages 002726  
17 and 2727. They're at the very back of that exhibit.

18 A. Yes.

19 Q. Now, this a letter dated December 17, 2008 to  
20 you from Mr. Conley. We've talked about this letter a  
21 couple of times earlier in this deposition, correct?

22 A. Yes.

23 Q. Okay. And I want to go over what the letter  
24 says, what you did, and some of the things that are  
25 indicated. So let me start with the top. It says,

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1 "Thank you for meeting with me today to discuss whether  
2 an outdoor amphitheater is considered an accessory use  
3 to an overall religious assembly use under RR or SF-1  
4 zoning."

5 Do you recall the meeting with Mr. Conley  
6 on December 17th?

7 A. As evidenced by this letter, I assume I did  
8 meet with him on December 17th.

9 Q. Other than as reflected in the letter, do you  
10 have a recollection of a meeting with Mr. Conley about  
11 this issue on the 17th?

12 A. Yes.

13 Q. You do?

14 Who else was in the meeting besides you  
15 and Mr. Conley?

16 A. I don't recall.

17 Q. Mr. Rusthoven?

18 A. I don't believe so.

19 Q. Any other members of the City staff that you  
20 can recall?

21 A. No.

22 Q. Who else was there on behalf of the  
23 Promiseland West Church besides Mr. Conley?

24 A. I believe it was just Mr. Conley.

25 Q. So you think there were other people there but

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1 you don't know who they are today?

2 A. I can't say for sure. I know there was a  
3 prior meeting where we had other people.

4 Q. Okay. Well, let's talk about the prior  
5 meeting. When did the prior meeting with Mr. Conley on  
6 this issue occur?

7 A. I believe that was in the prior month..

8 Q. And where was the meeting?

9 A. I don't recall the exact location of the  
10 meeting.

11 Q. Who was in it?

12 A. I think probably my assistant city manager..

13 Q. Who was that at the time?

14 A. I believe it was Laura Huffman at the time.

15 Q. Okay.

16 A. And possibly Pat Murphy, and I'm sure the  
17 pastor, although I can't recall his name. There may  
18 have been one or two other staff there.

19 Q. Mr. Conley?

20 A. Yeah, and Mr. Conley.

21 Q. And what was the purpose? How did the meeting  
22 get -- how did it get set up?

23 A. I don't recall the particulars of that. It  
24 may have been called by my ACM or it may have been just  
25 requested by Mr. Conley or the pastor.

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1 Q. What was the purpose of the meeting; do you  
2 recall?

3 A. I think it was to talk about the proposed  
4 religious assembly use.

5 Q. What were you told in that meeting about the  
6 outdoor amphitheater?

7 A. I don't recall the particulars of it, but I'm  
8 sure we discussed the use of the property in general.

9 Q. Okay. Are you speculating or are you  
10 recalling?

11 A. I'm recalling that we had a general discussion  
12 of the property.

13 Q. Okay. During the course of the meeting was  
14 there any suggestion that community involvement for the  
15 prospective use and development of that property be  
16 solicited?

17 A. I -- normally -- and I cannot say absolutely,  
18 but normally we would say it's always wise to talk to  
19 adjacent property owners about any use that would be  
20 coming.

21 Q. In the letter that's part of Exhibit 13 from  
22 Mr. Conley, he suggests that they had met with adjoining  
23 neighborhood representatives and had offered to restrict  
24 uses of the amphitheater. Did you have any discussions  
25 with him about that?

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1 A. I'm sure I did.

2 Q. Do you recall what he told you?

3 A. Oh, I think there was a willingness,  
4 certainly, to further restrict the property.

5 Q. Did he tell you who they were talking to?

6 A. I do not recall.

7 Q. Did Mr. Conley or did you otherwise determine  
8 that the neighborhood associations were definitely  
9 interested in what was going on with this property?

10 A. I don't think that -- or the specifics came up  
11 in regards to that.

12 Q. Okay. That wasn't my question.

13 A. I'm sorry.

14 Q. Did you come to understand that the  
15 neighborhood associations were interested in what was  
16 being proposed as an out --

17 A. As a result of this particular discussion?

18 Q. In general. I mean --

19 A. In general, I mean, no --

20 Q. Let's go back.

21 A. Sorry.

22 Q. This discussion was precipitated for the  
23 purpose of talking about plans for the property,  
24 correct?

25 A. Yes.

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1 Q. Okay. And in particular, to determine whether  
2 or not a religious use classification was going to be  
3 permissible?

4 A. Yes.

5 Q. And whether or not an outdoor amphitheater was  
6 part of a religious use that was permissible under the  
7 zoning classification?

8 A. I'm sure it was discussed.

9 Q. Okay. And is it your understanding from that  
10 discussion, or otherwise, that the neighborhood  
11 associations would be very interested in that  
12 determination?

13 A. Not at that particular time.

14 Q. Okay. You didn't think that the neighborhood  
15 associations were going to be interested in --

16 A. No, I don't think --

17 Q. Excuse me, let me finish my question.

18 A. Sorry.

19 Q. You didn't think that the neighborhood  
20 associations were going to be interested in the  
21 construction of 1,000-seat-plus outdoor amphitheater in  
22 the middle of their neighborhoods?

23 A. I believe it was discussed. I believe there  
24 probably would be a concern. I think the meeting more  
25 pertained to what would be required to go construct the

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1 church.

2 Q. The church or the church and an outdoor  
3 amphitheater?

4 A. The discussion was the campus, as there was a  
5 -- an exhibit, which I don't see here, I think it was  
6 like a conceptual map that kind of showed the layout of  
7 the property.

8 Q. So you knew at the time of this meeting that  
9 what was being contemplated was a campus, not a church  
10 building, correct?

11 A. I don't know what you use for a campus  
12 definition, but there were --

13 Q. You used it, I didn't. So --

14 MS. EDWARDS: Objection.

15 Q. (By Mr. Taube) -- what did you use when you  
16 said "campus"?

17 A. Well, there would be buildings, parking,  
18 various types of buildings.

19 Q. You knew that the contemplated development was  
20 a campus, yes?

21 MS. EDWARDS: Objection, form.

22 A. The proposed layout was that conceptual plan.

23 Q. (By Mr. Taube) And that campus included an  
24 outdoor amphitheater?

25 A. It had an amphitheater building.



1 Q. When you say "amphitheater building," what do  
2 you mean?

3 A. A building that -- it's an amp- -- well, I  
4 don't know how to explain. There's an amphitheater  
5 building that would be on the property and that --

6 Q. Not an enclosed structure.

7 A. There are enclosed structures on the property,  
8 but the amphitheater building, what I recall, was a  
9 religious assembly use that would be used in the manners  
10 of the other buildings on the property.

11 MR. TAUBE: Objection, nonresponsive.

12 Q. (By Mr. Taube) You understood, Mr. Guernsey,  
13 that the amphitheater would be an open-air theater, not  
14 an enclosed building, correct?

15 A. Not an enclosed structure.

16 Q. Was there any discussion, Mr. Guernsey, either  
17 in November or December of 2008 with Promiseland West  
18 about including the neighborhood association in the  
19 planning and utilization of the property or use of the  
20 property?

21 A. I don't believe there was a lot of discussion  
22 about neighborhoods other than saying it's probably  
23 important to talk to them. At that time, I don't think  
24 they had a detailed site plan that had been prepared.

25 Q. Mr. Guernsey, how long did the meeting last in

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1 would be approval -- well, approvals later on.

2           They state in here that the -- where is  
3 it? It says in here the amphitheater building would be  
4 used for the exact same type of activities as the indoor  
5 or auditorium but in an outdoor setting. And so the  
6 amphitheater building was actually the same use as the  
7 auditorium building, which is the sanctuary building.

8           Q. Didn't we just make a -- see a determination  
9 made by the City previously that just because the same  
10 activities that occur indoor doesn't mean they're  
11 permitted outdoor?

12          A. There's no distinction for religious assembly  
13 use like there is for outdoor entertainment or indoor  
14 entertainment, or outdoor sports and recreation or  
15 indoor sports and recreation. That distinction is not  
16 made. There's not an outdoor religious assembly or  
17 indoor religious assembly use.

18          Q. What's the definition for religious assembly,  
19 Mr. Guernsey?

20          A. "Religious assembly use is a regular organized  
21 religious worship or religious education in a permanent  
22 or temporary building. The uses exclude private primary  
23 or secondary educational facilities, community  
24 recreational facilities, daycare facilities, parking  
25 facilities. And a property tax exemption is prima facie

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1 evidence of a religious assembly use." And I just read  
2 that from the Code.

3 Q. In a building, correct?

4 A. It says that organized religious worship or  
5 education in a permanent or temporary building. It  
6 doesn't exclusively say that it has to be indoors or  
7 outdoors with respect to indoor or outdoor or sports and  
8 recreation or indoor or outdoor entertainment. Those  
9 are distinctions that are made under the Code.

10 Q. Is there some definition for a building that  
11 you're utilizing?

12 A. Well, this is a building. The amphitheater is  
13 a building.

14 Q. I'm asking you if you have a definition for a  
15 building that you're utilizing in making a determination  
16 that religious assembly doesn't have to be inside, that  
17 it can be outside. What's the definition that you're  
18 using of a building, Mr. Guernsey?

19 A. Roof supported by walls. But I believe  
20 religious assembly activities could take place outdoors.

21 Q. Mr. Guernsey, is the outdoor amphitheater,  
22 does it have a roof supported by walls?

23 A. The amphitheater building does, to my  
24 knowledge.

25 Q. Have you seen some plans or specifications

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1 MS. EDWARDS: Objection, form.

2 Q. (By Mr. Taube) On what?

3 A. Well, religious activities certainly take  
4 place outdoors where they're on church property.  
5 Weddings, you know, Sunday School events that might take  
6 place, Easter sunrise service, the prayer garden I spoke  
7 of earlier, those are typically not indoors. I'm not  
8 sure -- I guess I don't understand your question.

9 Q. The issue that I thought you were making a  
10 determination on is whether or not an outdoor  
11 amphitheater was a -- was considered an accessory use to  
12 religious assembly. And in order to constitute an  
13 accessory use to a religious assembly, didn't you have  
14 to determine that it had to meet the definition of  
15 religious assembly? Right?

16 A. I determined it was a religious assembly use,  
17 and it was a principal use since, as described by  
18 Mr. Conley, the activity that would be taking place  
19 indoors in the auditorium building would be the same as  
20 taking place in the auditorium building.

21 MR. TAUBE: Objection, nonresponsive.

22 Q. (By Mr. Taube) My question, Mr. Guernsey --

23 A. I'm sorry.

24 Q. -- very specifically is, in Mr. Conley's  
25 letter, the first paragraph says, "Thank you for meeting

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1 Q. Yes.

2 A. And we spoke to a building inside or outside?

3 Q. We spoke to a building.

4 A. An activity being inside or outside?

5 Q. Yes, sir.

6 A. Okay. The following uses are listed as  
7 accessory uses. Not all of these accessory uses may be  
8 inside or outside. Some of these, a refreshment stand,  
9 may be inside or outside as it relates to a civic use.

10 Q. Mr. Guernsey, section 25 --

11 MS. EDWARDS: I'm sorry, we really do  
12 need to take a break.

13 MR. TAUBE: Can I finish my questions on  
14 this topic?

15 MS. EDWARDS: How much longer? I need a  
16 break.

17 MR. TAUBE: Go ahead.

18 (Break from 2:55 p.m. to 3:03 p.m.)

19 Q. (By Mr. Taube) The meeting that occurred in  
20 November of 2008, that was requested by Ms. Huffman,  
21 wasn't it?

22 A. I can't say for sure.

23 Q. How did it get communicated to you that there  
24 was going to be a meeting that required your presence?

25 A. Usually it's by an Outlook invitation.

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1 Q. Do you recall specifically whether you talked  
2 to Ms. Huffman about who had told her they needed to  
3 have a meeting with you on this issue?

4 A. No, not in particular. Usually I would just  
5 be invited to the meeting.

6 Q. Had you had any prior communications from the  
7 church prior to the meeting that you had with  
8 Ms. Huffman?

9 A. No.

10 Q. And can anybody send you an Outlook invitation  
11 and get a meeting scheduled just because they want it?

12 A. People ask.

13 Q. Okay. But normally somebody would have to ask  
14 you for a meeting and you would have to agree, correct?

15 A. Correct.

16 Q. In this particular case, this meeting was  
17 requested by Ms. Huffman, wasn't it?

18 A. I can't say for sure.

19 Q. Is that what you believe?

20 A. I believe, since she was present. And I want  
21 to say it's Ms. Huffman. I don't think Sue had started  
22 yet.

23 Q. And did you have any discussions with  
24 Ms. Huffman prior to the meeting about the nature of the  
25 meeting?

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1 A. No.

2 Q. Were you told that there had been a prior  
3 communication to the church that an outdoor amphitheater  
4 wasn't permitted under a religious assembly  
5 classification?

6 A. Not that I'm aware.

7 Q. No one ever told you that?

8 A. No.

9 Q. Did you -- and is it your testimony that you  
10 didn't ask why you had to go to a meeting with  
11 Ms. Huffman and a church -- Well, strike that.

12 Pretty unusual, isn't it, for Ms. Huffman  
13 to request a meeting with you and a landowner. I mean,  
14 that doesn't happen every day, does it?

15 A. Not every day. It's not uncommon. Even today  
16 Sue Edwards, my manager, would sometimes schedule a  
17 meeting and I would sit in, perhaps with other staff,  
18 Chuck Lesniak, for instance, who is the current  
19 environmental officer, may sit down for some preliminary  
20 meeting on a project.

21 Q. But it's a meeting with Ms. Huffman present,  
22 okay, would have been requested by Ms. Huffman, wouldn't  
23 it?

24 A. I believe so. Like I said, I can't say for  
25 sure. I've answered that a couple of times now, so --

1 used for a religious assembly use in my response.

2 MR. TAUBE: Objection, nonresponsive.

3 Q. (By Mr. Taube) Mr. Conley tells you that this  
4 facility, the indoor facility, would be available for  
5 non-religious non-profit civic uses; yes or no?

6 MS. EDWARDS: Objection, form.

7 A. Yes, if you take the letter out of context.

8 Q. (By Mr. Taube) Well, I just read the letter.  
9 How can I take it out of context?

10 A. I think you have to look at the entire letter  
11 in order to address his question and look at my entire  
12 response to the answer to his letter.

13 Q. Well, his question was whether or not an  
14 outdoor amphitheater is an accessory use, right? That's  
15 the specific question that he asks you, and you don't  
16 response to that, do you, or do you tell him no?

17 A. I respond by saying that it is a religious  
18 assembly use, is part of the primary use for both the  
19 building as he describes it, the indoor auditorium, and  
20 the amphitheater building.

21 Q. So, Mr. Guernsey, is the response to  
22 Mr. Conley's question whether an outdoor amphitheater is  
23 considered an accessory use, the answer to that question  
24 is no?

25 A. Correct.



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1 Q. And it's your testimony that notwithstanding  
2 the fact that Mr. Conley says that there are specific  
3 non-religious uses that would be made of this facility,  
4 that that's still a religious assembly use; is that  
5 right?

6 A. Based on his letter and my response, yes.

7 Q. And is it your testimony, Mr. Guernsey, that  
8 because there is a primary use for religious assembly,  
9 that the fact that there are non-religious non-profit  
10 civic uses being made of that facility doesn't matter?

11 MS. EDWARDS: Objection, form.

12 A. Could you clarify?

13 Q. (By Mr. Taube) Your testimony is that  
14 because -- and let's just look at your e-mail. It says,  
15 "Since the worship building and the outdoor amphitheater  
16 are being primarily used for religious assembly uses, I  
17 don't see a problem with these two facilities  
18 co-locating on the property."

19 A. Yes.

20 Q. So the fact that Mr. Conley's statement that  
21 the facility would be used or available for  
22 non-religious uses means that the non-religious uses are  
23 irrelevant so long as they are subordinate to or, in  
24 your words, not the primary use for the building?

25 A. They're incidental, in that religious assembly

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1 uses throughout Austin provide their facility for use by  
2 other non-profits, you know, for other activities,  
3 whether it's, as he mentions in here specifically, Boy  
4 Scout/Girl Scout meetings, could be a neighborhood  
5 meeting. You know, there are numerous things that  
6 happen within a religious assembly use that may not  
7 solely be around worship.

8 Q. So your testimony is that any use which is  
9 incidental is irrelevant?

10 A. I'm not saying it's irrelevant. What I'm  
11 saying is the primary use still must be the religious  
12 assembly use for worship. It still would have to be  
13 considered a tax exempt property based on the  
14 definition. It couldn't be those things like a daycare  
15 or secondary educational facility or primary educational  
16 facility. But there are activities which a church does,  
17 whether storing food or clothing for the homeless and  
18 handing that out, having Boy Scout/Girl Scout meetings,  
19 which I think is very common. Those are things that a  
20 church would normally allow and use as part of their  
21 facility which may not be directly going in for a Sunday  
22 or Wednesday or Saturday worship.

23 Q. The church would only have outdoor concerts?

24 A. I'm aware of in -- no, but I'm aware that  
25 there are benefits that take place on -- you know, in

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1 services?

2 A. I do not know. They are -- I assume when  
3 somebody dies or gets married, it might be held in that  
4 same facility; I don't know.

5 Q. How many days does the Promiseland West Church  
6 plan to use the outdoor amphitheater for wedding  
7 ceremonies?

8 A. I don't know.

9 Q. How many days a week does the Promiseland West  
10 Church plan on using the outdoor amphitheater for  
11 concerts?

12 A. I don't know. Right now I'm not aware that  
13 they have an outdoor amplification permit. So unless  
14 they're acoustic, I'm not sure.

15 Q. How many days a week does the Promiseland West  
16 Church plan on holding civic neighborhood meetings in  
17 the outdoor amphitheater?

18 A. I don't know.

19 Q. How many days a week does the Promiseland West  
20 Church plan on utilizing the outdoor amphitheater for  
21 public meetings or graduations?

22 A. I don't know.

23 Q. And it's your testimony that religious  
24 assembly is a principal use outdoors; is that correct?

25 A. The religious assembly as defined by the Code,

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1 which I read earlier, is an activity that can take place  
2 in a building or could take place out of a building, and  
3 that our Code does not distinguish between indoor or  
4 outdoor religious assembly use.

5 Q. Again, Section 25-2-6(B)(41) defines  
6 religious --

7 A. Wait, 25-2?

8 Q. 25-2-6 -- you were just looking at it -- sub  
9 (B)(41), definition for religious assembly?

10 A. Okay.

11 Q. "... is a regular organized religious worship  
12 or religious education in a permanent or temporary  
13 building," correct?

14 A. Correct.

15 Q. And it's your understanding that a building is  
16 -- can be indoors or outdoors; is that right?

17 A. Building; roof, walls, floor. And the  
18 amphitheater building, as far as I know, is a building.

19 Q. A building can be either open-air or closed;  
20 is that your testimony?

21 A. I'm not sure. By open-air, it's not enclosed  
22 but it is a building.

23 Q. Is the -- for example, is The Backyard, is  
24 that a building?

25 A. I've never been to The Backyard. I'm not sure

1 A. Okay. I see --

2 Q. They're on 2516 as an interested party,  
3 correct?

4 A. Right.

5 Q. And the Hill Country --

6 A. William Dabbert?

7 Q. William Dabbert.

8 MS. EDWARDS: I'm sorry, I don't see  
9 where that's on 2516.

10 MR. TAUBE: Bottom left-hand column.

11 MS. EDWARDS: Oh, thank you, uh-huh.

12 Q. (By Mr. Taube) And then the Hill Country  
13 Estates Homeowners Association, Charlisa Bentley.

14 A. Bentley. Yes, I see that.

15 Q. So no question that my clients are interested  
16 parties as it relates to that site plan application,  
17 right?

18 A. Right. I'm assuming these came from the site  
19 plan files and that they are accurate, and I have no  
20 reason to believe otherwise.

21 Q. It didn't come from me. It comes from your  
22 documents.

23 A. Right. And it is the second site plan we're  
24 talking about, too.

25 Q. And are you familiar with the Board of

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1 Adjustment rules?

2 A. Generally. I don't have them committed to  
3 memory.

4 Q. Well, I'll help you.

5 (Exhibit No. 21 marked.)

6 Q. (By Mr. Taube) I'm going to hand you what's  
7 been marked for identification as deposition Exhibit  
8 No. 21. Mr. Guernsey, can you confirm that those are  
9 the "Rules of Procedure for the Board of Adjustment and  
10 Sign Review Board"?

11 A. Yes, as adopted, I guess November 24th, 2008,  
12 they appear to be -- they appear to be correct.

13 Q. Take a look at Exhibit 21, the Board of  
14 Adjustment rules, under the heading of "Standing"  
15 (C) (5).

16 A. (C) (5). (Witness complies.) Okay.

17 Q. It's correct, is it not, Mr. Guernsey that --  
18 Well, first let me ask you this: The Board of  
19 Adjustment Rule Article 1 -- excuse me, (C) (1).

20 A. (C) (1)?

21 Q. Yes, sir. It talks about "Standing." It  
22 says, "Appeals to the Board of Adjustment may be filed  
23 by the agent or owner of property ... or by any  
24 aggrieved or by any city officer -- or any person  
25 aggrieved, or by any City officer, department, board."

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G1  
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1                   So it doesn't have an interested party  
2 definition like we just looked at with regard to the  
3 City Code, even though my clients, you've already  
4 agreed, are interested parties, correct?

5           A.     It does not reference one on this section.

6           Q.     And you would also agree with me, would you  
7 not, Mr. Guernsey, that the determination as to who has  
8 standing to appeal is made under (C)(5) by the Board of  
9 Adjustment, not by somebody else. It says, "If the  
10 Board, on hearing the evidence regarding the applicant's  
11 standing, dismisses the appeal for lack of standing, the  
12 Board's action shall constitute a final order."

13                   In other words, it's the Board that's  
14 making that decision, not somebody else, correct?

15           A.     If there was something before them, they have  
16 that ability, yes.

17           Q.     Now, the Board of Adjustment Rules state --  
18 Well, first, is there a city form for an appeal of an  
19 administrative decision that is not an interpretation?

20           A.     Say that again.

21           Q.     Is there a form for an appeal of an  
22 administrative decision, for example by you, a land use  
23 decision?

24           A.     There is a, I guess you could say an  
25 interpretation form that the Board of Adjustment has.

GI  
2/19

1 Q. Could the approval of the restrictive covenant  
2 be appealed as an administrative land use decision?

3 A. I would need time to think about that.

4 Q. Well, why is it something that you hesitate on?

5 A. Because it's not necessarily -- a restrictive  
6 covenant of this type is not necessarily one that is  
7 required by the City. It can be certainly offered by an  
8 applicant. A site plan application, I guess that issue  
9 could come up.

10 Q. Is it your testimony that your December 2008  
11 e-mail did not take the offer of a restrictive covenant  
12 as part of the consideration for your decision?

13 A. I don't think that my response to Mr. Conley  
14 accepted or rejected that offer. And I would -- let me  
15 go back and I'll look at my e-mail. I don't think I  
16 spoke to that. (Witness reviews document.)

17 I did not address it in my response back  
18 to Mr. Conley on December 23rd, 2008.

19 Q. So it is it your testimony, Mr. Guernsey, that  
20 the restrictive covenant was unnecessary?

21 A. It was not necessary for my response back to  
22 Mr. Conley back in 2008.

23 Q. Was it --

24 A. It --

25 Q. Go ahead.



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1           A.    And I think it was something that was asked  
2   for by staff, obviously, in 2011 and they offered it and  
3   we accepted it.

4           Q.    Is it your understanding that the restrictive  
5   covenant and your determination of land use in December  
6   of 2008 are the same?

7           A.    Is that one of these exhibits that we've  
8   already had, the covenant?

9           Q.    Not yet.

10                   I'm asking you if it was the same, if it  
11   was the same -- In other words, is the covenant and  
12   your determination of religious assembly based upon the  
13   anticipated use of the property, is it one in the same?

14                   MS. EDWARDS:  Objection, form.

15           A.    Yes, generally.

16           Q.    (By Mr. Taube)  What's not the same?

17           A.    I would have to go back, you know, five --

18                   Two or three years ago versus, you know,  
19   five years ago is a big difference in time, and I guess  
20   I would like the opportunity to see what the covenant is  
21   and see what Carl had offered to look at.

22           Q.    Sure.

23                   (Exhibit No. 22 marked.)

24           Q.    (By Mr. Taube)  Mr. Guernsey, I'm going to  
25   hand you what's been marked for identification as

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1 Q. So it's your position and your testimony that  
2 a large-scale music event could be religious assembly so  
3 long as it has some, what, religious purpose, religious  
4 affiliation? What are the conditions upon which it  
5 might comply?

6 A. Well, you know, I could -- there could be an  
7 event that would occur on the property where you had  
8 some large choir that was signing Christmas carols or  
9 something along that line where it would be a larger  
10 event where the congregation would show up, others might  
11 be invited to join the congregation, whether they're  
12 members of the church or not.

13 Q. How about a secular rock concert for the  
14 purpose of raising money for the church; is that a  
15 religious assembly use?

16 A. It possibly could be. I'm not sure of the --  
17 I've never gone to a, I guess a religious rock event,  
18 but there could be some -- something that would be a  
19 fundraiser for a charity that the church works on or the  
20 youth group could be certainly having some event along  
21 that line.

22 Q. Is it your testimony, Mr. Guernsey, that so  
23 long as the event that occurs at this outdoor  
24 amphitheater is somehow related to financing or funding  
25 for the church, that it falls under religious assembly?

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1 So just as an example: How about a car bashing, okay,  
2 or a car race that raises money for the church; is that  
3 a religious assembly use, sir?

4 A. I guess I would -- well, I would need more  
5 information. I would go back to what the definition is  
6 of religious assembly use. Is it still tax exempt?  
7 It's not one of those things that's listed as a use  
8 that's affiliated with a primary or secondary  
9 educational facility, it's a daycare that is connected,  
10 tied to the church in some manner. I guess that there  
11 could be some charity event, somebody donates a vehicle  
12 to the church, like in public radio, and I don't know  
13 how that would interact. I know churches sometimes have  
14 raffles for items, if it was a raffle thing that you get  
15 a take a whack at a car to raise money for the church or  
16 for a charity or something.

17 Q. Let's say the band AC/DC decided to get  
18 together and put on a promotional fundraising event for  
19 the Promiseland West Church. Okay? Would that -- and  
20 sell tickets to the public. Would that event be covered  
21 under religious assembly?

22 A. I think I'd still go back to the definition,  
23 and if you said it was the Gatlin Brothers singing  
24 gospel tunes versus AC/DC, I think it gets hazing  
25 through that whole thing.

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1 Q. So does it matter what the content of the  
2 music is as opposed to the performance or the people  
3 that are doing it?

4 A. I think it has to do with, really, what is the  
5 religious activity or the benefit to that religious  
6 assembly use that's really there.

7 Q. Who makes that decision? You?

8 A. Partly me, partly the Travis County Appraisal  
9 District.

10 Q. How does the Travis County Appraisal District  
11 determine whether the Gatlin Brothers are performing a  
12 religious concert or not?

13 MS. EDWARDS: Objection, form.

14 A. As I said, if they are still deemed to be a  
15 tax exempt and sanctioned by the Appraisal District as a  
16 tax exempt entity, the definition still brings me back  
17 to being a religious assembly use.

18 Q. (By Mr. Taube) So it's your testimony, sir,  
19 that as long as the Promiseland West Church maintains  
20 its tax-exempt status, regardless of the nature of  
21 events that occur in that outdoor amphitheater, so long  
22 as it has some relationship to the church, like a  
23 fundraising event, it is permitted. Is that fair?

24 A. Generally, yes.

25 Q. Mr. Guernsey, take a look, if you would,

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1 please, at Exhibit No. 11, and specifically at Page  
2 No. 2.

3 A. (Witness complies.)

4 Q. There is a listing of things that are -- well,  
5 it's a carryover. It says, "The buildings and outdoor  
6 amphitheater located or to be located on the Property  
7 will be subject to the following limitations." Then it  
8 goes "A. Religious Assembly Use will be permitted (as  
9 defined in the Austin Land Development Code), including  
10 such uses as: Worship services; musical or theatrical  
11 performances; weddings; and funerals."

12 Have I read that correctly?

13 A. Yes.

14 Q. So music and theatrical performances under  
15 this restrictive covenant, regardless of whether it is  
16 of a secular or religious nature, would come under  
17 religious assembly use?

18 A. There's a tie under part A back to the  
19 religious assembly use. If it had no affiliation with a  
20 religious assembly use and it was just simply bands  
21 every weekend charging a cover charge to get in, similar  
22 to The Backyard, then it probably would not be a  
23 religious assembly use any longer.

24 Q. Mr. Guernsey, if you look at C, it says,  
25 "Religious Assembly Use may include occasional

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1 charitable events (including concerts and performances)  
2 for the benefit of an individual or family in need or  
3 for a charitable organization or charitable cause."

4 I read that correctly?

5 A. Yes.

6 Q. Who determines what "occasional" is?

7 A. I think that goes back to looking at, again,  
8 the definition that I had to work with. You know, you  
9 spoke several times of the frequency of that. They may  
10 be putting their tax exemption in jeopardy if it -- if  
11 it was something that actually started, no longer doing  
12 a worship service, they were actually putting on  
13 performances in lieu of doing worship in that facility,  
14 that would be a -- raise a little concern of whether or  
15 not they're really doing a religious assembly use.

16 MR. TAUBE: Objection, nonresponsive.

17 Q. (By Mr. Taube) My question, Mr. Guernsey, is,  
18 who determines what "occasional" is for the purpose of  
19 enforcing this Restrictive Covenant?

20 A. It would probably end up being the Code  
21 Compliance Department.

22 Q. So does that include you?

23 A. They may consult me, but the Code Compliance  
24 Department is the enforcement arm of the City of Austin.  
25 And there may be also questions, although I don't know

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1 how that would work, by the Appraisal District.

2 Q. How's it being monitored?

3 MS. EDWARDS: Excuse me. Let's go off  
4 the record for just a minute.

5 MR. TAUBE: Sure.

6 (Discussion off the record.)

7 Q. (By Mr. Taube) Who's monitoring whether it's  
8 occasional or not? Who gets to monitor that? Is it  
9 Code Enforcement?

10 A. Code Enforcement, if they receive a complaint,  
11 would go out and investigate.

12 Q. But not otherwise?

13 A. But not otherwise unless there's some other  
14 permit requirement in the city that may have a  
15 limitation, such as an outdoor music venue permit, which  
16 is an annual permit. Then APD may come out and enforce.

17 Q. So if I'm a neighbor, Mr. Guernsey, and I say,  
18 you know what, more than once a month is more than  
19 occasional, and this happened twice a month, and I make  
20 a complaint to Code Enforcement, how does Code  
21 Enforcement determine whether or not they're complying  
22 with the restrictive covenant or not?

23 MS. EDWARDS: Objection, form.

24 A. I'm not sure what -- how they would go out and  
25 enforce that. Normally, we try to work with all

G1  
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1 property owners to make sure that it's not an issue.

2 Q. (By Mr. Taube) And to the extent that a Code  
3 Enforcement officer determined that it violated the  
4 restrictive covenant, what would they do?

5 A. I think their typical process, and I'm not  
6 intimately involved, but that they usually give a  
7 warning to the property owner, and then they may follow  
8 up in taking an action, like brining them into municipal  
9 court.

10 Q. Like what, red tag? What is the action?

11 A. A notice of violation, I think is what they  
12 use.

13 Q. Mr. Guernsey, if you look at G, Exhibit  
14 No. 11, G on the second page, it says --

15 A. On the second page?

16 Q. Yes, sir.

17 A. Okay.

18 Q. It says, "The restrictions in this Article I  
19 are imposed as conditions to Site Plan No. 2011-0185C  
20 and apply to the extent that an outdoor amphitheater  
21 remains part of the principal religious assembly use."

22 You see that?

23 A. Yes.

24 Q. So if the site plan expires, does this  
25 restrictive covenant go away as well?



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1           A.   Well, a covenant would have to be terminated,  
2           and my guess is there is a section in here that speaks  
3           to the termination of this.  So even if the --

4           Q.   I didn't see any.

5           A.   Oh, I'm sorry.  On page -- usually it's at the  
6           end.

7           Q.   Yeah, there's something in D that says this  
8           may be modified, amended or terminated only by joint  
9           action of both the director and owners of the property.  
10          So, in other words, unless the owners of the property  
11          agree that this restrictive covenant goes away, it  
12          doesn't, right?

13          A.   Right.  These conditions would remain on the  
14          property.  And a restrictive covenant by its nature is  
15          generally being something more restrictive, not less  
16          restrictive.

17          Q.   Even though it says that these restrictions  
18          are imposed to the extent that an outdoor amphitheater  
19          remains part of the.  Excuse me -- that are conditions  
20          to Site Plan No. 2011-0185C, correct?

21          A.   Correct.

22          Q.   Mr. Guernsey, I had asked you previously  
23          whether or not you were aware of whether City staff was  
24          aware of the public statements made by Promiseland West  
25          Church in connection with the intended use of the

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1 property in connection with its consideration of the  
2 site plan that was approved. Do you remember that?

3 A. Yes.

4 Q. Take a look, if you would, please, at Exhibit  
5 No. 17.

6 A. Seventeen.

7 Q. And specifically, Mr. Guernsey, at Page 2714.

8 A. (Witness complies.) Okay.

9 Q. Under U-1.

10 A. U-1, okay.

11 Q. And U-2.

12 A. (Witness complies.) Okay.

13 Q. It says, "The engineer's response letter  
14 states that the amphitheater is intended for religious  
15 assembly use only, however, the owner was quoted saying  
16 many non-religious events will take place in the  
17 amphitheater, including 'graduation ceremonies,  
18 recitals, ballets, family movie nights, jazz concerts,  
19 and other events.'"

20 Did I read that correctly?

21 A. Yes. And it also says "Austin Chronicle  
22 article."

23 Q. It says the Austin Chronicle quotes the owner  
24 as saying. Quotes the owner as saying. So is it your  
25 understanding that the City looked into the veracity of

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1 the owner's statements and limitations on the use of  
2 this and ignored what was reflected in Ms. Graham's  
3 comments to Site Plan Application 0185C?

4 A. Well, these are reiterations of comments from  
5 the site plan that expired, the previous site plan.  
6 That's what it states at the top here. So I think she  
7 was bringing those comments to light in this  
8 application. So I guess I'm not quite understanding the  
9 question.

10 Q. The question is, is it your understanding that  
11 the City ignored the public statements of the, quote,  
12 "owner" that specified that the outdoor amphitheater  
13 would be used for "many non-religious events, including  
14 graduation ceremonies, recitals, ballets, family movie  
15 nights, jazz concerts, and other events"?

16 A. I don't think it was ignored because it's  
17 stated actually in this document and was brought to the  
18 property owner, the applicant's agent's attention.

19 Q. And the response to bringing it to that  
20 attention was the restrictive covenant?

21 A. I think it's the approval of the site plan  
22 with its conditions and restrictive covenant.

23 Q. Which includes a restrictive covenant that  
24 says, occasional charitable events, concerts and  
25 performances, which by your definition could include an

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1 AC/DC concert for the benefit of the church, are  
2 permitted; is that right?

3 A. That's possible.

4 MR. TAUBE: I think I'm out of time for  
5 today. I'm going to reserve the right to request  
6 additional time from this witness in the future.

7 MS. EDWARDS: Is he out of time, Pamela?

8 THE REPORTER: I show four more minutes.

9 MS. EDWARDS: Are you going to reserve  
10 that --

11 MR. TAUBE: I'll reserve my right for the  
12 four minutes and my right for additional time based upon  
13 the responses or non-responses that I've received.

14 MS. EDWARDS: Okay. Are you passing the  
15 witness?

16 MR. TAUBE: I am for today.

17 MS. EDWARDS: I only have a few questions  
18 for Mr. Guernsey.

19 FURTHER EXAMINATION

20 BY MS. EDWARDS:

21 Q. Mr. Guernsey, is there a provision in the Land  
22 Development Code that gives the director, in that case  
23 you, the discretion to make use determinations?

24 A. Yes.

25 Q. Can you tell us what provision that is?

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CAUSE NO. D-1-GN-12-000878

HILL COUNTRY ESTATES § IN THE DISTRICT COURT OF  
HOMEOWNERS ASSOCIATION, §  
AND COVERED BRIDGE §  
PROPERTY OWNERS §  
ASSOCIATION, INC., §

Plaintiffs, § TRAVIS COUNTY, TEXAS

VS. §

GREG GUERNSEY, THE CITY OF §  
AUSTIN, §

Defendants. § 250TH JUDICIAL DISTRICT

## REPORTER'S CERTIFICATION

## DEPOSITION OF GREG GUERNSEY

February 20, 2013

I, PAMELA NICHOLS, Certified Shorthand Reporter in  
and for the State of Texas, hereby certify to the  
following:

That the witness, GREG GUERNSEY, was duly sworn by  
the officer and that the transcript of the oral  
deposition is a true record of the testimony given by  
the witness;

That the deposition transcript was submitted on

\_\_\_\_\_ to the witness or to the attorney

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1 for the witness for examination, signature and return to  
2 U.S. Legal Support, 8200 I.H. 10 West, Suite 810,  
3 Fountainhead One, San Antonio, Texas, 78230, by  
4 \_\_\_\_\_;

5 That the amount of time used by each party at the  
6 deposition is as follows:

7 Mr. Eric J. Taube, 06 HOURS:00 MINUTE(S)

8 Ms. Chris Edwards - 00 HOURS:17 MINUTE(S)

9 That pursuant to information given to the  
10 deposition officer at the time said testimony was taken,  
11 the following includes counsel for all parties of  
12 record:

13 Mr. Eric J. Taube, Attorney for Plaintiffs

14 Ms. Chris Edwards, Attorney for Defendants

15 I further certify that I am neither counsel  
16 for, nor related to, nor employed by any of the parties  
17 or attorneys in the action in which this proceeding was  
18 taken, and further that I am not financially or  
19 otherwise interested in the outcome of the action.

20 Further certification requirements pursuant to Rule  
21 203 of TRCP will be certified to after they have  
22 occurred.

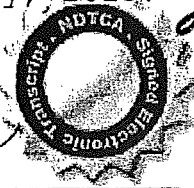
23

24

25

1 Certified to by me this 27th of February, 2013.

2  
3 *Pamela Nichols*



4  
5 PAMELA NICHOLS, Texas CSR 1475

6 Expiration Date: 12/31/2014

7 U.S. Legal Support

8 8200 I.H. 10 West, Suite 810

9 San Antonio, Texas 78230

10 (210) 734-7127

11 Firm Registration No. 341



## EXHIBIT 12-1

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### PLANNING COMMISSION

### REGULAR MEETING

### CODES AND ORDINANCES SUBCOMMITTEE MINUTES Tuesday, September 18, 2012

The Planning Commission Codes and Ordinances Subcommittee convened in a regular meeting on Tuesday, September 18, 2012, at 301 W. 2<sup>nd</sup> Street, City Hall, Room #1027, in Austin, Texas.

Commissioner Anderson called the meeting to order at 6:03 p.m.

#### Subcommittee Members in Attendance:

Danette Chimenti - Chair

Dave Anderson

Stephen Oliver

Jean Stevens

Myron Smith

#### City Staff in Attendance:

Greg Dutton, Senior Planner, Planning and Development Review

Alyson McGee, Senior Planner, Planning and Development Review

Carol Haywood, Manager – Comprehensive Planning, Planning and Development Review

Erica Leak, Planner Principal, Planning and Development Review

John McDonald, Planner Principal, Planning and Development Review

Greg Guernsey, Director – Planning and Development Review

#### Others in Attendance:

Kelly Wright, Coats/Rose

Amanda Morrow, Armbrust & Brown

Ron Thrower, Thrower Design

Annie Armbrust, Real Estate Council of Austin

Emily Chenevert, Austin Board of Realtors

Jan Long, EROC Contact Team/EROC Working Group

Nuria Zaragoza, CANPAC

#### 1. CITIZEN COMMUNICATION: GENERAL

- a. None

#### 2. APPROVAL OF MINUTES

- a. None

#### 3. APPOINT SUBCOMMITTEE CHAIR

- a. Commissioner Chimenti was nominated by Commissioner Stevens as the Chair and appointed without objection. Vote: 5-0.



#### 4. POTENTIAL CODE AMENDMENTS: Proposed for Initiation and Discussion

*Potential amendments to the code are offered for discussion and possible recommendation for initiation. If initiated, Staff will research the proposal and report back to the subcommittee.*

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- a. **Subdivision** – A staff presentation on potential amendments to the subdivision code to promote neighborhood connectivity and improve accessibility. City Staff: Carol Haywood, Planning and Development Review Department, 974-7685  
[Carol.Haywood@AustinTexas.gov](mailto:Carol.Haywood@AustinTexas.gov) (Discussion and/or Possible Action)

Carol Haywood explained that part of a Community Transformation grant that was accepted by City Council is an examination of the city's existing subdivision code. The Center for Transportation Research is currently examining said code, and will have a report done at the end of September. Ms. Haywood explained that any revisions to the existing subdivision code would be influenced by the Imagine Austin comprehensive plan's themes of "compact and connected" and by the priority programs in Imagine Austin, as they relate to health. Complete streets would also likely be a part of any new subdivision code revision. The commissioners agreed that the revision was a good idea, but asked that this item be brought back at the next (October) subcommittee meeting, with a more specific outline of possible grant-related deadlines and requirements, and how the revision of the subdivision code would dovetail with the larger land development code rewrite coming in the near future.

No action was taken.

- b. **Rainey Street Subdistrict Density and Height Regulations** – Consider an ordinance amending Title 25 of the City Code to modify Rainey Street Subdistrict density and height regulations. City Staff: Alyson McGee, Planning and Development Review Department, 974-7801, [Alyson.McGee@AustinTexas.gov](mailto:Alyson.McGee@AustinTexas.gov) (Discussion and/or Possible Action)

Alyson McGee explained that existing Rainey Street subdistrict regulations provide incentives for relocation of historically significant structures inside the subdistrict; the proposed code amendment would allow the same structures to be relocated outside the subdistrict in order to increase the chances that redevelopment projects will pursue relocate them (instead of demolishing them). The proposed code amendment would allow a development to qualify for five points for every historically significant structure moved off-site to a site deemed appropriate by the Historic Landmark Commission.

A motion was made to initiate the code amendment by Commissioner Anderson, seconded by Commissioner Stevens, on a 5-0 vote.

- c. **Land Uses in DMU Zoning** – Consider an ordinance amending Title 25 of the City Code to allow Electronic Testing and Electronic Prototype Assembly within the DMU zoning district. City Staff: Greg Dutton, Planning and Development Review Department, 974-3509, [Greg.Dutton@AustinTexas.gov](mailto:Greg.Dutton@AustinTexas.gov) (Discussion and/or Possible Action)

Greg Dutton explained that this code amendment had mistakenly been placed on the agenda; this code amendment had already been initiated and is in process.

No action was taken.

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- d. **Public Assembly Permit** – Consider an ordinance amending Title 25 of the City Code to allow schools, churches, and other entities with residential zoning to conduct public assembly events. City Staff: Greg Dutton, Planning and Development Review Department, 974-3509, [Greg.Dutton@AustinTexas.gov](mailto:Greg.Dutton@AustinTexas.gov) (Discussion and/or Possible Action)

Greg Dutton explained that the city's current code does not allow institutions such as churches and schools, that have certain residential zoning, to apply for a temporary use permit that would be needed to conduct temporary outdoor events, such as fund-raising events or festivals. The proposed code amendment would allow staff to explore how to best address the issue.

A motion was made to initiate the code amendment by Commissioner Stevens, seconded by Commissioner Anderson, on a 5-0 vote.

- e. **Waterfront Overlay Boundary** – Consider an ordinance amending Title 25 of the City Code to modify the boundary of the Waterfront Overlay District – Auditorium Shores and Butler Shores Subdistricts. City Staff: Greg Dutton, Planning and Development Review Department, 974-3509, [Greg.Dutton@AustinTexas.gov](mailto:Greg.Dutton@AustinTexas.gov) (Discussion and/or Possible Action)

Greg Dutton explained that a citizen with property currently in the Auditorium Shores subdistrict had request that the Waterfront Overlay boundaries be amended so that their property would fall into the Butler Shores subdistrict. They made this request so that the uses allowed on the property could be expanded to include uses currently prohibited in the Auditorium Shores subdistrict. Commissioners requested that the Waterfront Planning Advisory Board take specific action or make a clear motion on this item before coming back to the Codes and Ordinances Subcommittee for initiation.

A motion was made to send the proposed code amendment to the Waterfront Planning Advisory Board by Commissioner Oliver, seconded by Commissioner Stevens, on a 5-0 vote.

- f. **Unfinished Space Exemption** – Consider an ordinance amending Title 25 of the City Code to describe how unfinished space is calculated and exempted from gross floor area calculations. City Staff: Greg Dutton, Planning and Development Review Department, 974-3509, [Greg.Dutton@AustinTexas.gov](mailto:Greg.Dutton@AustinTexas.gov) (Discussion and/or Possible Action)

Ms. Zaragoza explained that she felt that unfinished attic spaces were being used as bedrooms or habitable spaces, which has been a problem around the University. Her request is to examine how unfinished spaces are exempted from gross floor area calculations (specifically attics) and see if there is a better way to define what is exempted.

A motion was made to initiate the code amendment by Commissioner Stevens, seconded by Commissioner Oliver, on a 5-0 vote.

- g. **McMansion** – Consider an ordinance amending Title 25 of the City Code relating to Subchapter F: Residential Design and Compatibility Standards (McMansion) regulations within the City's zoning jurisdiction. City Staff: John McDonald, Planning and

Development Review Department, 974-2728, [John.McDonald@AustinTexas.gov](mailto:John.McDonald@AustinTexas.gov)  
(Discussion and/or Possible Action)

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John McDonald requested a postponement of this item to allow staff more time to research the topic. Commissioner Chimenti explained that while tweaks to the McMansion ordinance could be explored, there was no desire to revisit the topic in its entirety. Commissioners suggested working with AIA and RDCC in any discussions.

No action was taken.

- h. **Definition of Bedroom** – Consider an ordinance amending Title 25 of the City Code clarifying the definition of bedroom in City Code. City Staff: John McDonald, Planning and Development Review Department, 974-2728, [John.McDonald@AustinTexas.gov](mailto:John.McDonald@AustinTexas.gov)  
(Discussion and/or Possible Action)

Ms. Zaragoza explained that she felt that rooms and spaces which are not meant to be used as bedrooms (such as a study or game room) are ultimately being used as bedrooms, violating existing city code, and has been a problem around the University. Her request is to examine how a bedroom is defined in the city code and see if there is a better or different way to define them.

A motion was made to initiate the code amendment by Commissioner Anderson, seconded by Commissioner Smith, on a 5-0 vote.

## 5. REGULAR AGENDA

- a. **Briefing on East Riverside Corridor Regulating Plan** - Consider an ordinance amending Title 25 of the City Code to implement the East Riverside Corridor Regulating Plan. City Staff: Erica Leak, Planning and Development Review Department, 974-2856, [Erica.Leak@AustinTexas.gov](mailto:Erica.Leak@AustinTexas.gov) (Discussion and/or Possible Action)

Erica Leak presented an overview of the East Riverside Master Plan and Regulating Plan, the latter of which is scheduled for adoption later this year. Ms. Leak explained that the regulating plan will implement the Riverside Corridor Master Plan, with an emphasis on urban form and proposals for a revised compatibility standard for properties in the study area. A new “ERC” zoning district will be applied to properties inside the ER planning area, and a new development bonus is also being proposed by the regulating plan. Ms. Leak also explained that the ER Master Plan and Regulating Plan fit well with the recently adopted Imagine Austin Comprehensive Plan, which calls for East Riverside to be an activity corridor. Ms. Leak indicated that she would return at the October subcommittee meeting to take any other questions.

No action was taken.

- b. **Old Enfield** – Consider an ordinance Conduct a public hearing and consider an ordinance amending City Code Title 25 to designate the Planning Commission as the Land Use Commission for the Old Enfield neighborhood planning area. City Staff: Greg Dutton,

Planning and Development Review Department, 974-3509, [Greg.Dutton@AustinTexas.gov](mailto:Greg.Dutton@AustinTexas.gov)  
(Discussion and/or Possible Action)

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Greg Guernsey explained that this code amendment addresses the desire for the Old Enfield neighborhood planning area to be under the purview of the Planning Commission (as opposed to Zoning and Platting). Because the Old Enfield neighborhood planning area does not have a neighborhood plan it would normally go to ZAP for zoning and land use-related matters. However, Old Enfield is surrounded by areas that do have complete neighborhood plans (Old West Austin, Central West Austin Combined, Central Austin Combined, and Downtown), and being under the same development pressures and dealing with the same issues as surrounding areas, it was deemed appropriate to designate PC as the reviewing body for Old Enfield.

A motion was made to recommend the proposed code amendment to the full Planning Commission by Commissioner Oliver, seconded by Commissioner Stevens, on a 4-0 vote (Commissioner Anderson absent).

- c. **Special Exceptions** - Consider an ordinance amending Chapter 25-2-476, relating to the granting of special exceptions. City Staff: Greg Dutton, Planning and Development Review Department, 974-3509, [Greg.Dutton@AustinTexas.gov](mailto:Greg.Dutton@AustinTexas.gov) (Discussion and/or Possible Action)

Greg Guernsey explained that this code amendment tweaks an existing ordinance that was adopted in 2011 to allow the Board of Adjustment to grant special exceptions. The 2011 ordinance allows residents with long-standing code violations, that pose no threat to health or safety, to apply for a special exception with the Board of Adjustment so that Code Compliance can concentrate on more egregious violations. The tweak that the current code amendment makes is changing language stating that the BOA “may” grant a special exception to it “shall” grant said exception, if all the criteria are met.

A motion was made to recommend the proposed code amendment to the full Planning Commission by Commissioner Stevens, seconded by Commissioner Smith, on a 4-0 vote (Commissioner Anderson absent).

## 6. OTHER BUSINESS

- a. **Update on current code amendments and process** - City Staff: Greg Dutton, Planning and Development Review Department, 974-3509, [Greg.Dutton@AustinTexas.gov](mailto:Greg.Dutton@AustinTexas.gov)

Greg Dutton reviewed the current code amendment process and went over a list of code amendment cases that are in process. The Commissioners requested that a simple update on the status of ongoing cases be presented at future meetings.

## 7. FUTURE AGENDA ITEMS

- a. None

## ADJOURNMENT

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Commissioner Chimenti adjourned the meeting without objection at 9:03 p.m.

The City of Austin is committed to compliance with the American with Disabilities Act. Reasonable modifications and equal access to communications will be provided upon request. Meeting locations are planned with wheelchair access. If requiring Sign Language Interpreters or alternative formats, please give notice at least 4 days before the meeting date. Please call Greg Dutton at Planning and Development Review Department, at 512-974-3509, for additional information; TTY users route through Relay Texas at 711.

For more information on the Planning Commission Codes and Ordinances Subcommittee, please contact Greg Dutton at (512) 974-3509 or at [greg.dutton@austintexas.gov](mailto:greg.dutton@austintexas.gov)

## EXHIBIT 12-2

## ORDINANCE AMENDMENT REVIEW SHEET

C20-2012-016  
651  
301

**Amendment:** C20-2012-016 Temporary Outdoor Public Assembly

**Description:** Consider an amendment to an ordinance amending chapter 25-2-921 of the City Code relating to temporary outdoor public assembly, to allow religious and educational institutions to hold temporary outdoor public assemblies.

**Proposed Language:** See attached draft ordinance.

**Staff Recommendation:** Staff recommends this amendment.

**Background:** Initiated by Planning Commission on September 25, 2012

Under the current code, certain temporary outdoor events are only allowed in certain zoning districts, depending on the number of attendees at said events. These events can include public, religious, patriotic, or historic assembly or exhibit, including a festival, benefit, fund raising even, or similar use. Temporary outdoor public assembly events held by churches and schools, which often have residential zoning, are currently prohibited or restricted in conducting temporary outdoor events if their zoning is residential. The proposed code amendment would allow properties whose principal use is religious, educational, or community recreation, to apply for a temporary use permit to hold a temporary outdoor public assembly event.

**Board and Commission Actions**

**Planning Commission Subcommittee on Codes and Ordinances** – Voted to send this item to full Planning Commission on January 15, 2013. Vote: 4-0.

**Planning Commission** – A public hearing at Planning Commission has been set for January 22, 2013.

**Council Action**

**City Council** – A public hearing at City Council has been set for February 28, 2013.

**Ordinance Number:** NA

**City Staff:** Greg Dutton

**Phone:** 974-3509

**Email:** greg.dutton@austintexas.gov

(1) GE  
2 B02

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AMENDING SECTION 25-2-921 OF THE CITY CODE  
RELATING TO TEMPORARY USES.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

**PART 1.** City Code Section 25-2-921 (*Temporary Uses Described*) is amended to reflect the following:

(A) The following may be permitted by the building official as temporary uses under this division:

(1) model homes or apartments and related real estate services, if the use is located within the residential development to which the use pertains;

(2) a circus, carnival, rodeo, fair, or similar activity, if the use is located at least 200 feet from a dwelling and located in a CS or less restrictive zoning district;

(3) an outdoor art or craft show or exhibit, if the use is located in an LR or less restrictive zoning district;

(4) Christmas tree sales;

(5) an on-site construction field office, if the use is located in a portable structure and conducted for not more than 6 months;

(6) seasonal retail sale of agricultural or horticultural products, if the use is located at least 200 feet from a dwelling and located in an LR or less restrictive zoning district;

(7) seasonal day care, if the use is conducted for not more than eight hours a day and not more than 30 days a year; and

(8) temporary day care, if the use is conducted for not more than eight hours a day and not more than 12 hours a week.

(B) A sales office for a new subdivision may be permitted as a temporary use under this division if the sales office is located within the subdivision and at least 200 feet from existing dwellings outside the subdivision.

(1) A sales office for a new subdivision may not be operated after:

1 (a) the expiration of four years from the date the first construction permit issued  
2 in the subdivision; or

3 (b) the date by which 95 percent of the lots are sold.

4 (2) The board of adjustment may grant an extension of the deadlines described in  
5 this subsection.

6 (C) An outdoor public, religious, patriotic, or historic assembly or exhibit, including a  
7 festival, benefit, fund raising event, or similar use that typically attracts a mass audience may  
8 be permitted as a temporary use under this division if:

9 (1) for a gathering of not more than 50 persons, the use is located in an SF-4 or less  
10 restrictive zoning district, or the use is located on a property whose principal developed use  
11 is religious assembly, private primary educational facilities, private secondary educational  
12 facilities, public primary educational facilities, public secondary educational facilities, or  
13 public community recreation;

14 (2) for a gathering of more than 50 persons, the use is located in an LO or less  
15 restrictive zoning district, or the use is located on a property whose principal developed use  
16 is religious assembly, private primary educational facilities, private secondary educational  
17 facilities, public primary educational facilities, public secondary educational facilities, or  
18 public community recreation;

19 (3) for an exhibit, the use is located in a GR or less restrictive zoning district.

20 (D) A single dwelling located in a mobile structure on a construction site may be  
21 permitted as a temporary use under this division if the building official determines that the  
22 dwelling is required to provide security against nighttime theft or vandalism. The building  
23 official may allow the use for a period of up to 6 months and, if requested by the applicant,  
24 may extend that period for an additional 6 months. An applicant may appeal to the board of  
25 adjustment a denial of the use by the building official.

26 (E) An outdoor special sale, including a swap meet, flea market, parking lot sale, or  
27 similar activity may be permitted as a temporary use under this division if the use is located  
28 in a commercial or industrial zoning district. An outdoor special sale may be conducted on  
29 not more than three days in the same week and not more than five days in the same month.

30 (F) Within the Central Business District (CBD) or Downtown Mixed Use (DMU)  
31 zoning districts, retail services may be permitted as a temporary use in accordance with the  
32 requirements of this subsection.

33 (1) The retail use must:



1 (a) be located within an enclosed fire area, as defined by the Building Code, that  
2 does not require structural changes to accommodate the use; and

3 (b) have an approved certificate of occupancy or temporary certificate of  
4 occupancy.

5 (2) The retail use may not exceed 12,000 square feet in area unless an approved  
6 sprinkler system has been installed in accordance with the Fire Code;

7 (3) The following uses and activities may not be permitted as a temporary retail use  
8 under this subsection:

9 (a) personal services;

10 (b) food preparation or the sale or consumption of alcoholic beverages;

11 (c) a portable toilet serving the retail use, whether located inside or outside of the  
12 use; or

13 (d) storage of hazardous materials as defined by the Fire Code.

14 (4) A permit for a temporary retail use under this subsection may be issued for up to  
15 45 days and renewed once, for a total operating period not to exceed 90 days.

16 (G) The building official may permit other temporary uses that are similar to those  
17 described in this section.

18 *Source: Section 13-2-321; Ord. 990225-70; Ord. 031211-11; Ord. 20111103-075.*

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21 **PART 3.** This ordinance takes effect on \_\_\_\_\_, 2012.  
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1 PASSED AND APPROVED

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CL 305  
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\_\_\_\_\_, 2012

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Lee Leffingwell  
Mayor

APPROVED: \_\_\_\_\_  
Karen M. Kennard  
City Attorney

ATTEST: \_\_\_\_\_  
Shirley A. Gentry  
City Clerk



## City of Austin

P.O. Box 1088, Austin, TX 78767  
[www.cityofaustin.org/housing](http://www.cityofaustin.org/housing)

G7  
G1  
306

### **Neighborhood Housing and Community Development Department**

1000 East 11<sup>th</sup> Street Austin Texas 78702

DATE: January 9, 2013

TO: Greg Dutton,  
Planning Development Review Department

FROM: Javier V. Delgado, Project Coordinator, AHFC

RE: AIS Determination for AN ORDINANCE AMENDING SECTION 25-2-921 OF  
THE CITY CODE RELATING TO TEMPORARY USES.

Mr. Dutton:

Upon review of the proposed ordinance regarding Public Assembly as a temporary uses, Neighborhood Housing & Community Development has determined NO IMPACT on affordable housing of affordable housing production. An Affordable Impact Statement review is not required. Please contact me if you have any questions.

Regards,

Javier V. Delgado  
Project Coordinator  
City of Austin- Neighborhood Housing & Community Development

# EDUCATIONAL IMPACT STATEMENT

CITY OF AUSTIN CODE AMENDMENT

Austin Independent  
School District



6/30/13

EA/A

Prepared for the City of Austin



CODE AMENDMENT NAME: Public Assembly

CASE #: C20-2012-016

☐ POTENTIAL IMPACT ON SCHOOL(S)

☒ NO IMPACT ON SCHOOL(S)

## CODE AMENDMENT SUMMARY

Amend Section 25-2-921 (C) (1) and (2) (*Temporary Uses Described*) of the Austin City Code. This amendment would allow for gatherings in certain zoning districts if the temporary use is located on a property whose principal developed use is religious assembly, private primary educational facilities, private secondary educational facilities, public primary educational facilities, or public secondary educational facilities.

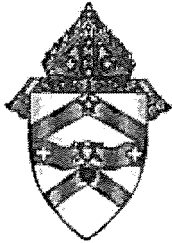
## IMPACT ON SCHOOLS

The proposed code amendment change will not have an impact on AISD schools.

Date Prepared: 01/09/2013

Director's Signature:

*Paul Turner*



## Diocese of Austin

Chancellor

Pastoral Center  
6225 East Highway 290 · Austin, TX 78723-1025  
(512) 949-2400 · Fax (512) 949-2524  
www.austindiocese.org

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308

January 9, 2013

Mr. Jerry Rusthoven  
City of Austin  
Planning and Review  
505 Barton Springs Rd.  
Austin, TX 78704

*Re: Proposed Amendments to Temporary Outdoor Use Permit*

Dear Mr. Rusthoven:

Thank you addressing my questions. I wish to express the Catholic Diocese's support for the current proposal to amend the City's ordinance with respect to outdoor temporary uses.

Because churches are permissible uses in all zoning classifications and because many churches annually host a bazaar, jamaica, or festival on their property, the proposed amendment will allow those churches with property in more restrictive zoning classifications to continue in their long-standing traditions without violating the city ordinance. The bazaars, jamaicas, or festivals are typically neighborhood events that promote the community and the church within the community.

I pray that God continue to bless you and those who work within the City's offices and as public officials. Thank you.

Sincerely,

Deacon Ron Walker  
Chancellor

cc: Most Reverend Joe S. Vásquez  
Rev. Msgr. Michael J. Sis

## EXHIBIT 12-3

## ORDINANCE AMENDMENT REVIEW SHEET

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**Amendment:** C20-2012-016 Temporary Outdoor Public Assembly

**Description:** Consider an amendment to an ordinance amending chapter 25-2-921 of the City Code relating to temporary outdoor public assembly, to allow religious and educational institutions to hold temporary outdoor public assemblies.

**Proposed Language:** See attached draft ordinance.

**Staff Recommendation:** Staff recommends this amendment.

**Background:** Initiated by Planning Commission on September 25, 2012

Under the current code, certain temporary outdoor events are only allowed in certain zoning districts, depending on the number of attendees at said events. These events can include public, religious, patriotic, or historic assembly or exhibit, including a festival, benefit, fund raising even, or similar use. Temporary outdoor public assembly events held by churches and schools, which often have residential zoning, are currently prohibited or restricted in conducting temporary outdoor events if their zoning is residential. The proposed code amendment would allow properties whose principal use is religious, educational, or community recreation, to apply for a temporary use permit to hold a temporary outdoor public assembly event, up to four events per property, per year.

**Board and Commission Actions**

**Planning Commission Subcommittee on Codes and Ordinances** – Voted to send this item to full Planning Commission on January 15, 2013. Vote: 4-0.

Voted to send this item to full Planning Commission on February 19, 2013, with the following amendment: Cap the number of temporary permits for this type of event at four per year per property. Vote: 6-0.

**Planning Commission** – A public hearing was held at Planning Commission on January 22, 2013, with a motion to postpone and send the item back to Codes and Ordinances Subcommittee for further discussion. Vote: 8-0.

A public hearing has been set for March 12, 2013.

**Council Action**

**City Council** – A public hearing at City Council has been set for March 21, 2013.

**Ordinance Number:** NA

**City Staff:** Greg Dutton

**Phone:** 974-3509

**Email:** greg.dutton@austintexas.gov

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ORDINANCE NO. \_\_\_\_\_

1 AN ORDINANCE AMENDING SECTION 25-2-921 OF THE CITY CODE  
2 RELATING TO TEMPORARY USES.

3  
4 BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

5  
6 PART 1. Subsection (C) of City Code Section 25-2-921 (*Temporary Uses Described*) is  
7 amended as follows:

8 (C) An outdoor public, religious, patriotic, or historic assembly or exhibit,  
9 including a festival, benefit, fund raising event, or similar use that typically attracts a  
10 mass audience may be permitted as a temporary use under this division if:

11 (1) the use is located on a property whose principal developed use is  
12 religious assembly, private primary educational facilities, private secondary  
13 educational facilities, public primary educational facilities, or public secondary  
14 educational facilities or community recreation (public), and the number of  
15 events does not exceed four per year per property;

16 (2) [(4)]for a gathering of not more than 50 persons, the use is located in an SF-  
17 4 or less restrictive zoning district;

18 (3) [(2)]for a gathering of more than 50 persons, the use is located in an LO or  
19 less restrictive zoning district; or

20 (4) [(3)]for an exhibit, the use is located in a GR or less restrictive zoning  
21 district.

22 PART 2. This ordinance takes effect on \_\_\_\_\_, 2013.

23 PASSED AND APPROVED

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26 §  
27 \_\_\_\_\_, 2013 § \_\_\_\_\_  
28 Lee Leffingwell  
29 Mayor

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32 APPROVED: \_\_\_\_\_  
33 Karen M. Kennard  
34 City Attorney

ATTEST: \_\_\_\_\_  
Janette Goodall  
City Clerk

## EXHIBIT 12-4

C20-2012-016

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311

### ORDINANCE AMENDMENT REVIEW SHEET

**Amendment:** C20-2012-016 Temporary Outdoor Public Assembly

**Description:** Consider an amendment to an ordinance amending chapter 25-2-921 of the City Code relating to temporary outdoor public assembly, to allow religious and educational institutions to hold temporary outdoor public assemblies.

**Proposed Language:** See attached draft ordinance.

**Staff Recommendation:** Staff recommends this amendment.

**Background:** Initiated by Planning Commission on September 25, 2012

Under the current code, certain temporary outdoor events are only allowed in certain zoning districts, depending on the number of attendees at said events. These events can include public, religious, patriotic, or historic assembly or exhibit, including a festival, benefit, fund raising even, or similar use. Temporary outdoor public assembly events held by churches and schools, which often have residential zoning, are currently prohibited or restricted in conducting temporary outdoor events if their zoning is residential. The proposed code amendment would allow properties whose principal use is religious, educational, or community recreation, to apply for a temporary use permit to hold a temporary outdoor public assembly event, up to four events per property, per year.

#### **Board and Commission Actions**

**Planning Commission Subcommittee on Codes and Ordinances** – Voted to send this item to full Planning Commission on January 15, 2013. Vote: 4-0.

Voted to send this item to full Planning Commission on February 19, 2013, with the following amendment: Cap the number of temporary permits for this type of event at four per year per property. Vote: 6-0.

**Planning Commission** – A public hearing was held at Planning Commission on January 22, 2013, with a motion to postpone and send the item back to Codes and Ordinances Subcommittee for further discussion. Vote: 8-0.

A public hearing was held at Planning Commission on March 26, 2013, with a motion to recommend the item to City Council. Vote: 8-0.

#### **Council Action**

**City Council** – A public hearing at City Council has been set for March 21, 2013.

**Ordinance Number:** NA

**City Staff:** Greg Dutton

**Phone:** 974-3509

**Email:** greg.dutton@austintexas.gov



## EXHIBIT 12-5

## ORDINANCE AMENDMENT REVIEW SHEET

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312

**Amendment:** C20-2012-016 Temporary Outdoor Public Assembly

**Description:** Consider an amendment to an ordinance amending chapter 25-2-921 of the City Code relating to temporary outdoor public assembly, to allow religious and educational institutions to hold temporary outdoor public assemblies.

**Proposed Language:** See attached draft ordinance.

**Staff Recommendation:** Staff recommends this amendment.

**Background:** Initiated by Planning Commission on September 25, 2012

Under the current code, certain temporary outdoor events are only allowed in certain zoning districts, depending on the number of attendees at said events. These events can include public, religious, patriotic, or historic assembly or exhibit, including a festival, benefit, fund raising even, or similar use. Temporary outdoor public assembly events held by churches and schools, which often have residential zoning, are currently prohibited or restricted in conducting temporary outdoor events if their zoning is residential. The proposed code amendment would allow properties whose principal use is religious, educational, or community recreation, to apply for a temporary use permit to hold a temporary outdoor public assembly event, up to four events per property, per year, for a duration of two days maximum per event.

**Board and Commission Actions**

**Planning Commission Subcommittee on Codes and Ordinances**

January 15, 2013: Recommended the item to full Planning Commission. Vote: 4-0.

February 19, 2013: Unanimously recommended this item to full Planning Commission on, with the following amendment: Cap the number of temporary permits for this type of event at four per year per property. Vote: 6-0.

**Planning Commission**

January 22, 2013: A motion to postpone and send the item back to Codes and Ordinances Subcommittee for further discussion. Vote: 8-0.

March 26, 2013: Approved on an 8-0 vote.

**Council Action**

April 25, 2013: Approved on first reading on a 6-0 vote, with

September 24, 2013: Second/third reading of the item has been set.

**Ordinance Number:** NA

C20-2012-016

**City Staff:** Greg Dutton

**Phone:** 974-3509

**Email:** greg.dutton@austintexas.gov

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313

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## EXHIBIT 12-6

## ORDINANCE AMENDMENT REVIEW SHEET

**Amendment:** C20-2012-016 Temporary Outdoor Public Assembly

**Description:** Consider an amendment to an ordinance amending chapter 25-2-921 of the City Code relating to temporary outdoor public assembly, to allow religious and educational institutions to hold temporary outdoor public assemblies.

**Proposed Language:** See attached draft ordinance.

**Staff Recommendation:** Staff recommends this amendment.

**Background:** Initiated by Planning Commission on September 25, 2012

Under the current code, certain temporary outdoor events are only allowed in certain zoning districts, depending on the number of attendees at said events. These events can include public, religious, patriotic, or historic assembly or exhibit, including a festival, benefit, fund raising even, or similar use. Temporary outdoor public assembly events held by churches and schools, which often have residential zoning, are currently prohibited or restricted in conducting temporary outdoor events if their zoning is residential. The proposed code amendment would allow properties whose principal use is religious, educational, or community recreation, to apply for a temporary use permit to hold a temporary outdoor public assembly event, up to four events per property, per year, for a duration of two days maximum per event.

**Board and Commission Actions**

**Planning Commission Subcommittee on Codes and Ordinances**

January 15, 2013: Recommended the item to full Planning Commission. Vote: 4-0.

February 19, 2013: Unanimously recommended this item to full Planning Commission on, with the following amendment: Cap the number of temporary permits for this type of event at four per year per property. Vote: 6-0.

**Planning Commission**

January 22, 2013: A motion to postpone and send the item back to Codes and Ordinances Subcommittee for further discussion. Vote: 8-0.

March 26, 2013: Approved on an 8-0 vote.

**Council Action**

April 25, 2013: Approved on first reading on a 6-0 vote, with

September 24, 2013: Second/third reading of the item has been set.

**Ordinance Number:** NA

**City Staff:** Greg Dutton

**Phone:** 974-3509

**Email:** greg.dutton@austintexas.gov

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EXHIBIT 13-1

ORDINANCE NO. \_\_\_\_\_

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314

AN ORDINANCE AMENDING SECTION 25-2-921 OF THE CITY CODE  
RELATING TO TEMPORARY USES.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

**PART 1.** Subsection (C) of City Code Section 25-2-921 (*Temporary Uses Described*) is amended as follows:

(C) An outdoor public, religious, patriotic, or historic assembly or exhibit, including a festival, benefit, fund raising event, or similar use that typically attracts a mass audience may be permitted as a temporary use under this division if:

(1) the use is located on a property with a principal developed use of religious assembly, private primary educational facilities, private secondary educational facilities, public primary educational facilities, or public secondary educational facilities or community recreation (public) and the number of events per property does not exceed four per year, at no more than two days per event;

(2) ~~[(1)]~~ for a gathering of not more than 50 persons, the use is located in an SF-4 or less restrictive zoning district;

(3) ~~[(2)]~~ for a gathering of more than 50 persons, the use is located in an LO or less restrictive zoning district; or

(4) ~~[(3)]~~ for an exhibit, the use is located in a GR or less restrictive zoning district.

**PART 2.** This ordinance takes effect on \_\_\_\_\_, 2013.

**PASSED AND APPROVED**

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\_\_\_\_\_, 2013

\_\_\_\_\_  
Lee Leffingwell  
Mayor

**APPROVED:** \_\_\_\_\_  
Karen M. Kennard  
City Attorney

**ATTEST:** \_\_\_\_\_  
Janette Goodall  
City Clerk

EXHIBIT 13-2

ORDINANCE NO.

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318

AN ORDINANCE AMENDING SECTION 25-2-921 OF THE CITY CODE  
RELATING TO TEMPORARY USES.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

**PART 1.** Subsection (C) of City Code Section 25-2-921 (Temporary Uses Described) is amended as follows:

(C) An outdoor public, religious, patriotic, or historic assembly or exhibit, including a festival, benefit, fund raising event, or similar use that typically attracts a mass audience may be permitted as a temporary use under this division if:

(1) the use is located on a property with a principal developed use of religious assembly, private primary educational facilities, private secondary educational facilities, public primary educational facilities, or public secondary educational facilities or community recreation (public) and the number of events per property does not exceed four per year, at no more than two days per event;

(2) [(1)] for a gathering of not more than 50 persons, the use is located in an SF-4 or less restrictive zoning district;

(3) [(2)] for a gathering of more than 50 persons, the use is located in an LO or less restrictive zoning district; or

(4) [(3)] for an exhibit, the use is located in a GR or less restrictive zoning district.

(D) This provision does not apply to religious services held on property with a principal developed use of religious assembly. A permit is not required for religious services.

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**PART 2.** This ordinance takes effect on \_\_\_\_\_, 2013.

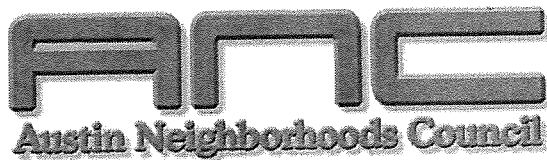
**PASSED AND APPROVED**

\_\_\_\_\_, 2013      §  
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                                 \_\_\_\_\_  
                                 Lee Leffingwell  
                                 Mayor

**APPROVED:** \_\_\_\_\_  
                         Karen M. Kennard  
                         City Attorney

**ATTEST:** \_\_\_\_\_  
                         Jannette S. Goodall  
                         City Clerk





## EXHIBIT 14

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AUSTIN NEIGHBORHOODS COUNCIL (ANC) EXECUTIVE COMMITTEE RESOLUTION REQUESTING A PUBLIC HEARING OR VETTING FOR SUBSECTION D, RELIGIOUS SERVICE, BY THE PLANNING COMMISSION'S SUBCOMMITTEE, CODES AND ORDINANCES, AND THE CITY COUNCIL ON THE ORDINANCE RELATING TO TEMPORARY USES:

WHEREAS, the Austin Zoning Code defines Religious Assembly as "regular organized religious worship or religious education in a permanent or temporary building;

WHEREAS, Section 25-2-921 (C) of the Austin Zoning Code prohibits outdoor public, patriotic, historic and religious assembly in zoning districts LA, RR, SF-1, SF-2, and SF-3;

WHEREAS, Section 25-2-921(C) authorizes the building official to issue temporary use permits for outdoor public, patriotic, historic and religious assembly (including, festivals, benefits, and fund raising events) in SF-4 and less restrictive zoning districts;

WHEREAS, in September 2012, City Staff presented a request to the Codes and Ordinances Committee of the Planning Commission to initiate an amendment to Section 25-2-921(C) to "allow institutions such as churches and schools, that have certain residential zoning, to apply for a temporary use permit that would be needed to conduct temporary outdoor events, such as fund-raising events or festivals;"

WHEREAS, the Planning Commission recommended an ordinance amending Section 25-2-921(C) that would authorize the building official to issue temporary use permits for outdoor public, patriotic, historic and religious assembly on property with a principal use of religious assembly, primary and secondary educational facilities and community recreation (public), including property in LA, RR, SF-1, SF-2, and SF-3 zoning districts;

WHEREAS, the Planning Commission recommended that the number of temporary use permits that could be issued per property with a principal use of religious assembly, education and community recreation, should be limited to a set number of days per year;

WHEREAS, since the City Council approved the proposed ordinance on first reading on April 25, 2013, City Staff has inserted new subsection D into the proposed ordinance that would authorize "religious services" to occur outdoors in any zoning district without any sort of permit from the City and without any limitations;

WHEREAS, the term “religious services” is undefined by City Code;

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WHEREAS, the new subsection D constitutes a significant change to the proposed ordinance and there have been no public hearings on the new subsection D;

WHEREAS, distinguishing a “religious service” from a “non-religious service” would impose an impossible burden on Code Enforcement; and

WHEREAS, the new subsection D in the proposed ordinance will adversely affect every neighborhood in the City of Austin;

NOW THEREFORE, BE IT RESOLVED,

**The Austin Neighborhoods Council Executive Committee has great concerns and asks the Austin City Council to call a public hearing regarding subsection D and to hold a Public Hearing, with at least a 30 day notice, before action is taken on the Austin zoning code regarding the Temporary Use Permits.**

Presented to the ANC Executive Committee, November 13, 2013

Adopted by the ANC Executive Committee, November 13, 2013

Sponsor Contact: Mike Connor, Covered Bridge Neighborhood Representative

## EXHIBIT 15



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### MEMORANDUM

**To:** Mayor and Council

**From:** Gregory I. Guernsey, AICP, Director  
Planning and Development Review Department

**Date:** November 18, 2013

**Subject:** Item 72 – Code Amendment - Temporary Use Permits for Public Assembly  
November 21, 2013 Council Agenda

Item 72 on the November 21, 2013 Council agenda is a code amendment posted for second and third reading that would allow properties that are primarily used for certain civic uses to obtain temporary use permits for public assembly. Staff is withdrawing its request for approval of this code amendment.

Last year, responding to a citizen complaint, the Code Compliance Department cited the Delores Catholic Church in Montopolis for having an outdoor festival without a temporary use permit. Furthermore, the Church was informed that because the church is zoned single-family, it would be unable to pull a temporary use permit. A member of the church, Mr. Gavino Fernandez, spoke to both the Planning Commission and the City Council at citizen communications about the issue.

At the request of city staff, the Planning Commission agreed to initiate a code amendment on September 25, 2012, to address the issue. The relevant section of current Code reads as follows:

*(C) An outdoor public, religious, patriotic, or historic assembly or exhibit, including a festival, benefit, fund raising event, or similar use that typically attracts a mass audience may be permitted as a temporary use under this division if:*

- (1) for a gathering of not more than 50 persons, the use is located in an SF-4 or less restrictive zoning district;*
- (2) for a gathering of more than 50 persons, the use is located in an LO or less restrictive zoning district; or*
- (3) for an exhibit, the use is located in a GR or less restrictive zoning district.*

Staff proposed adding a new section to the above code that would allow churches, schools, and community recreation centers to be issued a temporary use permit, regardless of zoning:

- (4) the use is located on a property with a principal developed use of religious assembly, private primary educational facilities, private secondary educational facilities, public primary educational facilities, or public secondary educational facilities or community recreation (public);*

At the April 25, 2013 City Council meeting this ordinance passed on first reading. This would require that every church, school and recreation center pull a temporary use permit for any outdoor fundraiser, festival, fair, carnival etc. regardless of the number of attendees. Based upon testimony at first reading, staff was asked to meet with a group of concerned citizens to consider additional proposed amendments. At that meeting several ideas were proposed: limit events to four times a year; prohibit the pulling of an outdoor sound permit in conjunction with a temporary use permit; cap the hours during which an event could be held; and future temporary use permits if two or more violations occurred.

While considering these options, Planning and Development Review (PDR) staff consulted with the Fire Department, Code Compliance Department, Austin Community College, Austin Independent School District and the Catholic Diocese of Austin. It became apparent that even amending the Code to *allow* a temporary use permit for these uses would be problematic: the Fire Department would need to review and inspect each event; Code Compliance would have to investigate the events, most of which occur on weekends, to ensure the permit had been issued; a tracking mechanism would also have to be put into place to ensure the number of allowable annual events were not exceeded. Some facilities, especially high schools, have far more than four events per year. None of the entities we spoke with felt it was necessary for these types of events to pull temporary use permits.

Upon further consideration, PDR staff is of the opinion that school and church fairs and festivals are integral, customary, and incidental to the primary use. In other words, a part of being an elementary school is having a fall carnival, just as much as recess or outside gym class. Likewise, a church having an outdoor festival is a common practice that has been done for a very long time. Having the festival does not temporarily change the use of the property – it is still being used as a church – just as a youth group meeting outside would be. These types of events have long occurred in Austin and until now have not been a problem. To our knowledge, only a single individual has issued complaints against two Catholic churches regarding outdoor festivals. There does not, however, seem to be a community-wide concern with these types of events occurring as they always have in the past.

While the current Code does mention “religious assembly...fundraiser and benefits” as needing temporary use permits, the staff believes this is intended for different circumstances. Examples might include a traveling preacher setting up a large tent for a revival on a vacant lot; or a school using a piece of property *other* than the school grounds for an event; or an event hosted on church or school property that is not related to either use. An example of the latter would be if a church leased its property out for a rock concert. Staff is in agreement that these events are a temporary change of use and therefore a permit is required.

For the type of fair, festival, and carnivals that have been occurring for many decades and are important fundraisers for churches and schools, PDR staff does not believe a temporary use permit should be required and therefore is withdrawing its request that this Code amendment be approved.

If you have any questions please feel free to contact me at (512) 974-2387 or Jerry Rusthoven at (512) 974-3207.

CC: Marc A. Ott, City Manager  
Sue Edwards, Assistant City Manager  
Carl Smart, Director Code Compliance Department  
Chief Rhoda Mae Kerr, Austin Fire Department  
Jerry Rusthoven, Division Manager, Planning and Development Review Department

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323

REVISED 04/10		TICKET NUMBER	
Austin Citation <input type="checkbox"/> TR <input type="checkbox"/> CM		13 661515	
<input checked="" type="checkbox"/> D.L.# <input type="checkbox"/> COM DL # 03914196 <input type="checkbox"/> LD #		STATE TX	DL TYPE A B C M
LAST NAME Ruiz		FIRST NAME Albert	MIDDLE INITIAL
RESIDENCE ADDRESS 1111 Montopolis Dr.			
CITY Austin	STATE TX	ZIP CODE 78741	RES PHONE (AC)
DATE OF BIRTH 3-31-46	White <input type="checkbox"/> Black <input type="checkbox"/> Hispanic <input checked="" type="checkbox"/> Asian <input type="checkbox"/> Native Amer. <input type="checkbox"/> Middle Eastern <input type="checkbox"/> Other <input type="checkbox"/>	SEX M F	HEIGHT 5'6"
EYES BRO		BUSINESS PHONE (AC)	
EMPLOYER OR SCHOOL		BUSINESS ADDRESS	
BUSINESS PHONE (AC)			
DECEASED YES <input type="checkbox"/>	SCHOOL ZONE? YES <input type="checkbox"/>	WORKERS IN CONTROL ZONE? YES <input type="checkbox"/>	HAZ MATERIAL? YES <input type="checkbox"/>
COMMERCIAL VEH? YES <input type="checkbox"/>			
VEH COLOR	VEH YEAR	VEHICLE MAKE	VEHICLE MODEL
VEH TYPE	VEH MAKE	VEH MODEL	VEH YEAR
VIOLATION DATE 5-18-13	VIOL TIME 8:20 AM <input type="checkbox"/> PM <input checked="" type="checkbox"/>	CONDITIONS Dry light <input checked="" type="checkbox"/> Dark <input type="checkbox"/> City <input type="checkbox"/> Wet <input type="checkbox"/>	NAME OF PARK OR SCHOOL
VIOLATION & LOCATION 1111 Montopolis Dr.		COUNTY DIRECTION	
VIOLATION (A) No temporary use permit		VIOL CODE 64321	
VIOLATION (B) 291079		VIOL CODE	
VIOLATION (C)		VIOL CODE	
REASON FOR STOP 311 Complaint			
RK _____ PS _____ VS _____ RFS _____ Cell phone <input type="checkbox"/> STEP <input type="checkbox"/> CAD _____			
ALLEGED SPEED:	SPEED LIMIT:	<input type="checkbox"/> RADAR <input type="checkbox"/> LASER <input type="checkbox"/> PACED <input type="checkbox"/> AIRCRAFT <input type="checkbox"/> VISUAL	COLLISION? YES <input type="checkbox"/> BLUE FORM? <input type="checkbox"/>
OFFICER: VAD COORS	EMP# 11195	OFFICER:	EMP#
If Non-Peace Officer Sign Here:			
APPEARANCE DATE AT COURT / FECHA PARA PRESENTARSE 06-18-2013		READ CITATION FOR ADDITIONAL INFORMATION AND OPERATING HOURS	
I HAVE RECEIVED THIS WRITTEN NOTICE TO APPEAR AND I WILL APPEAR AT THE CITY OF AUSTIN MUNICIPAL COURT ON OR BEFORE THE DATE AND TIME DESIGNATED ABOVE IN ORDER TO ENTER A PLEA OF GUILTY, NOT GUILTY OR NO CONTEST TO EACH VIOLATION LISTED ON THIS TICKET. SU FIRMA ES LA PROMESA QUE SE PRESENTARA EN LA CORTE MUNICIPAL PARA INFORMACION LLAME A (512) 974-4800.			
SIGNATURE/SU FIRMA [Signature]			
READ INSTRUCTIONS ON THE BACK OF CITATION CAREFULLY			

DEFENDANT COPY

EXHIBIT 16-1

GJ 324



## GENERAL INFORMATION

This matter is now before the Court. Call (512) 974-4800 for information or visit our website at : [www.cityofaustin.org/court](http://www.cityofaustin.org/court).

### 2<sup>nd</sup> Conviction of No Vehicle Liability Insurance

A second or subsequent conviction of an offense under the Texas Motor Vehicle Safety Responsibility Act will result in the suspension of your driver's license and motor vehicle registration unless you file and maintain evidence of financial responsibility with the Department of Public Safety for two years from the date of conviction. The department may waive the requirement to file evidence of financial responsibility if you file satisfactory evidence with the department showing that at the time this citation was issued, the vehicle was covered by a motor vehicle liability insurance policy or that you were otherwise exempt from the requirements to provide evidence of financial responsibility.

### NOTICE OF POTENTIAL SURCHARGE

A conviction of an offense under a traffic law of this state or a political subdivision of this state may result in the assessment on your driver's license of a surcharge under the Driver Responsibility Program.

#### Failure to Respond

Failure to respond on or before the appearance date on the front of your ticket may result in:

1. A higher fine amount. You will be subject to paying the Standard Fine if you do not respond on or before your appearance date.
2. An ARREST WARRANT (additional \$50 fee) issued against you.
3. A request to the Texas DPS for denial of driver's license renewal and a \$30.00 fee may be added.
4. A request to the Texas Department of Transportation to withhold your vehicle registration renewal.
5. Referral to a collection agency with a possible 30% fee added to the amount owed.

#### ADMONISHMENT

If you are convicted of a misdemeanor offense involving violence where you are or were a spouse, intimate partner, parent, or guardian of the victim or are or were involved in another, similar relationship with the victim, it may be unlawful for you to possess or purchase a firearm, including a handgun or long gun, or ammunition, pursuant to federal law under 18 U.S.C. Section 922(g)(9) or Section 46.04(b), Texas Penal Code. If you have any questions whether these laws make it illegal for you to possess or purchase a firearm, you should consult an attorney.

#### SPECIAL INSTRUCTIONS FOR JUVENILES AND MINORS

If you are under 17 years of age you will be notified by mail when to appear with your parent or guardian. You must appear before a judge.  
**DO NOT MAIL FINE PAYMENT.**

**Address Notification:** You and your parent or guardian are required by law to provide to the court in writing your current address and residence. If your place of residence changes, you have 7 days to notify the court in writing of your new address and residence. Failure to keep the court informed of your new residence may result in Failure to Appear and Failure to Notify charges filed against both you and your parent or guardian. The obligation of keeping the court informed of your current address and residence is required until your case is finalized/terminated.

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City of Austin

Municipal Court

Evelyn McKee  
Presiding Judge

Rebecca Stark  
Clerk of the Court

EXHIBIT 16-2

Address: 700 E. 7<sup>th</sup> St., Austin, TX 78701  
Mail: P.O. Box 2135, Austin, TX 78768  
Phone: (512) 974-4800  
Internet: [www.austintexas.gov/court](http://www.austintexas.gov/court)  
E-mail: [court@austintexas.gov](mailto:court@austintexas.gov)

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June 20, 2013


Albert Ruiz  
1111 Montopolis DR  
Austin, TX. 787413325

NOTICE OF CANCELLATION

RE: Cause No. - 7923874  
Ticket No. - 13661515

Dear: Albert Ruiz

Please disregard the notice requiring your appearance on Thursday, the 18th day of July, 2013 at 3:30 PM in Courtroom #3, located on the third floor. The case has been reset and your appearance is not required at this time. You will be notified by mail of your new Court date as soon as the case is rescheduled on the docket.

  
Clerk of the Court



The City of Austin is committed to compliance with the American with Disabilities Act  
Reasonable modifications and equal access to communications will be provided upon request

Canceled  
felal/b

# City of Austin Municipal Court

EXHIBIT 16-3

700 East 7<sup>th</sup> Street

P.O. Box 2135 Austin, Texas 78768

Phone: (512) 974-4800

State of Texas vs.

Cause No. (s):

Albert Ruiz

7923874

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## ORDERS OF THE COURT

This Order applies to 1 cases (s) with fines totaling \$ \_\_\_\_\_

Hearing as to Indigency: Finding: [ ] Indigent [ ] Not Indigent

EXTENSION TO PAY: \$ \_\_\_\_\_ Today; \$ \_\_\_\_\_ by (date) \_\_\_\_\_  
\$ \_\_\_\_\_ every week/month beginning (date) \_\_\_\_\_ and due on or before the  
same day of each succeeding week/month until paid in full.

COMMUNITY SERVICE: Defendant is ordered to perform \_\_\_\_\_ hours of community service at \_\_\_\_\_

- ☐ All community service hours must be completed by (date) \_\_\_\_\_
- ☐ The Defendant shall perform \_\_\_\_\_ hours of community service by \_\_\_\_\_; then, \_\_\_\_\_ hours  
per week/month beginning (date) \_\_\_\_\_ and such proof is due every week/month thereafter on or  
before the same day of each succeeding week/month until total hours are completed. Turn in proof at  
Municipal Court,

And the court having further found that the working of more than 16 hours of community service per week (will) (will not) work a hardship on the  
Defendant.

SET APPEARANCE AND NOTIFY DEFENDANT/ATTORNEY FOR: ENAD DOCKET

Appearance set for \_\_\_\_\_ AM PM on (date) \_\_\_\_\_ Courtroom # \_\_\_\_\_

Bond: \$ \_\_\_\_\_ by (date) \_\_\_\_\_ Personal Bond \_\_\_\_\_

REVOKE DEFERRAL / DEFENSIVE DRIVING: \_\_\_\_\_ and enter judgment.

EXTENSION TO COMPLETE DEFERRAL or DEFENSIVE DRIVING BY (date) \_\_\_\_\_;  
TO TURN IN PROOF BY (date) \_\_\_\_\_.

JURY WAIVER: I waive my right to trial by jury in the above-referenced cause numbers.

Date \_\_\_\_\_ Signature of Defendant \_\_\_\_\_

Order Notes: Agree to dismiss if ordinance passes on 10/24/13  
Agenda no. 65 (214) 10/24/13

Date: 10-23-13

[Signature]  
Judge of the Municipal Court



State of Texas vs.

Ruiz

Cause No. 7923874

Offense: Zoning - No Temp. Use Perm

**Jury Waiver:** I waive my right to trial by jury and plead Not Guilty to the Court.

Date: Signature:

**NOTICE:** Renewal of Defendant's driver's license may be suspended for failure to appear at court and/or failure to pay a judgment in the case. In order to clear any such suspension Defendant is required to pay the Clerk a \$30 administrative fee in addition to any judgment in the case.On this, the \_\_\_\_\_  
at the required time of this court, came the described cause to be heard and the Defendant:☐ Having been informed of his right to trial entered his/her appearance and waived said right to trial by pleading

(Guilty), (No Contest).

☐ Was present in court and, having waived a jury, announced ready for trial, and entered a plea of not guilty in open court.

And after hearing the evidence and argument, and after due consideration of the same, the court finds the Defendant

(Guilty), (Not Guilty),

of the offense in the complaint in this case.

It is therefore ordered and adjudged by the court that the State of Texas for the benefit of the City of Austin, Texas, do have and recover of the Defendant the sum of \$ \_\_\_\_\_ as the fine assessed and costs in this case; plus \$25 if not paid in full in 30 days; plus the following administrative fees as applicable: \$50 capias pro fine warrant fee; \$30 driver license denial fee and 30% collection fee.

The Court finds that the period which will satisfy the fine and costs is 24 or \_\_\_\_\_ hours.

Judge, Municipal Court, City of Austin, Texas

**Hearing as to Indigency:**Finding: ☐ Indigent ☐ Not Indigent \_\_\_\_\_

Plea of No Contest: I, hereby enter my appearance for the offense charged in the above-referenced cause, waive my right to a trial by Jury or Judge, plead no contest to the offense alleged by the citation and/or complaint in this cause, and agree to satisfy the penalty assessed by the Court.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Atty/Parent: \_\_\_\_\_ Date: \_\_\_\_\_

Address: \_\_\_\_\_

**FURTHER ORDERS:**☐ DSC Mandatory☐ Deferred Disposition

Proof of completion by: \_\_\_\_\_

☐ Post Fee, bond, or make payment of \$ \_\_\_\_\_ by \_\_\_\_\_☐ Extension to pay \$ \_\_\_\_\_ monthly/weekly  
until balance is paid, start payment \_\_\_\_\_☐ Community Service: \_\_\_\_\_ hours to be done at any place on the  
adult - youth list of CSR providers or at any other non-profit agency  
doing non-religious, non-political work.

Turn in proof of \_\_\_\_\_ hours by \_\_\_\_\_

then turn in proof of \_\_\_\_\_ hours per month / week until

all hours are done beginning \_\_\_\_\_

☐ Jail Credit: \_\_\_\_\_☐ Total layout credit/Time Served:☐ Concurrent☐ Consecutive**Address Notification for Minors:**

You and your parent, or guardian are required by law to provide the court in writing your current address and residence. If your place of residence changes, you have 7 days to notify the court in writing of your new address and residence. Failure to keep the court informed of your new residence may result in Failure to Appear and Failure to Notify charges filed against you, your parent or guardian. The obligation of keeping the court informed of your current address and residence is required until your case is finalized/terminated

**State's Motion to Dismiss:**

Date: 11/25/13 IE NPO NPO2 IEO IEO2 PB

Other: \_\_\_\_\_

Assistant City Attorney: *Rolink***Order of Dismissal**On this 11/25/13, the motion of the STATE  
is hereby granted and the charge in this cause is ordered DISMISSED.

Judge - Municipal Court, City of Austin, Texas

EXHIBIT 17

SNEED, VINE & PERRY  
A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW  
ESTABLISHED 1926

900 CONGRESS AVENUE, SUITE 300  
AUSTIN, TEXAS 78701

TELEPHONE (512) 476-6955

Writer's Direct Dial:  
(512) 494-3135

RECEIVED

DEC 06 2013

CITY OF AUSTIN

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FACSIMILE (512) 476-1825

Writer's e-mail address:  
rkleeman@sneedvine.com

December 6, 2013

By Hand Delivery

Board of Adjustment  
c/o Susan Walker  
505 Barton Springs Road  
Room 530  
Austin, Texas 78704

Re: Appeal of Decisions by City Staff to Declare Outdoor Activities Regulated by Section 25-2-921(C) to be Allowed Uses on Property having Schools and Religious Assembly as Principal Uses Regardless of the Zoning of the Property ("Land Use Determination").

Dear Chairman Jack and Members of the Austin Board of Adjustment:

This firm represents the Hill Country Estates Home Owners Association ("HCE") and the Covered Bridge Property Owners Association, Inc. ("CB") with respect to the Land Use Determination.

HCE and CB are registered neighborhood associations and meet the requirements of Section 25-1-131(A) & (C) LDC to be Interested Parties. Since January 2013, officers of CB and HCE have communicated their respective concerns to the Planning Commission and City Council at public hearings regarding Code Amendment C20-2012-016 that would have amended Section 25-2-921(C) of the Austin Zoning Code ("Code Amendment"). Communications also include a meeting with City staff in October 2013 to discuss changes to the Code Amendment requested by CB and HCE.

On November 18, 2013, City Staff sent to the Mayor and City Council a memorandum explaining why City staff was withdrawing its request for the Code Amendment. The memorandum, a copy of which is attached to the appeal application, explains that City Staff decided to reinterpret Section 25-2-921(C) and other code sections so that the Code Amendment was no longer necessary. In other words, the change to the Zoning Code that Staff had requested the Council to make were accomplished by administrative decisions or actions.

The November 18, 2013 memorandum does not indicate that anyone requested the specific interpretations made in the memorandum and City Staff did not mail notices of the to CB or HCE regarding the new interpretations as required by Section 25-1-197(E)(3)(a).

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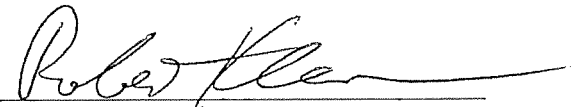
Pursuant to Section 2-1-111(F)(2) of the City Code and Section 211.010(a)(1), Texas Local Government Code, HCE and CB file their appeal of the administrative actions and decisions announced in the November 18, 2013 memorandum. The CB/HCE appeal to the Board of Adjustment alleges that Director Guernsey made one or more errors in his decision that outdoor fairs, festivals, exhibit, carnivals and similar events held at educational and religious assembly facilities are allowed uses and, therefore, are not subject to Section 25-2-921(C) of the Austin Zoning Code. The CB/HCE appeal also alleges that Director Guernsey made an error in his decision that outdoor religious assembly is an allowed use that is not subject to Section 25-2-921(C).

Mr. Frank Goodloe is treasurer of CB and Margaret Butler is the President of HCE. Both HCE and CB are registered neighborhood associations with the City of Austin. The contact information for Margaret Butler is (512) 699-6692 and her mailing address is 7100 Bright Star Lane, Austin, Texas 78736. The contact information for Frank Goodloe is (512) 906-1931 and his mailing address is 6705 Covered Bridge, Unit 10, Austin, Texas 78736.

Please let me know if there are any questions.

Sincerely,

SNEED, VINE & PERRY, P.C.

By:   
Robert Kleeman

RJK:dm

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DEC 06 2013

CITY OF AUSTIN

CITY OF AUSTIN  
APPLICATION TO BOARD OF ADJUSTMENT  
INTERPRETATIONS

PART I: APPLICANT'S STATEMENT

(Please type)

STREET ADDRESS: Not applicable.

LEGAL DESCRIPTION: Not Applicable

\_\_\_\_\_  
Lot (s) \_\_\_\_\_ Block \_\_\_\_\_ Outlot \_\_\_\_\_ Division \_\_\_\_\_

ZONING DISTRICT: Not applicable

We, Margaret Butler, on behalf of myself, and as Authorized Agent for Hill Country Estates Home Owners Association and Frank Goodloe, on behalf of myself, and as Authorized Agent for Covered Bridge Property Owners Association, Inc., affirm that on December 6, 2013, we hereby apply for an interpretation hearing before the Board of Adjustment.

The Planning and Development Review Department interpretations are:

1. Outdoor fairs, carnivals and festivals are integral, customary, and incidental to the primary use of religious assembly.<sup>1</sup> That is, outdoor fairs, carnivals and festivals are allowed uses in all zoning districts with a principal use of religious assembly.
2. Outdoor fairs, carnivals and festivals are integral, customary, and incidental to the primary use of primary and secondary educational facilities. That is, outdoor fairs, carnivals and festivals are allowed uses in all zoning districts with the principal uses of primary and secondary educational facilities.
3. Outdoor religious assembly use is permitted in all zoning districts on property that has a principal developed use of religious assembly.<sup>2</sup>

<sup>1</sup> Quote is from page 2 of November 18, 2013 memorandum from Greg Guernsey to the Mayor and Council. A copy of this memorandum is attached.

<sup>2</sup> See the fourth paragraph on page 2 of November 18, 2013 Guernsey memorandum. See also subsection (D) of the Staff proposed amendment to Section 25-2-921(C) before Staff withdrew the Code Amendment.

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We feel the correct interpretations are:

1. Outdoor public, historic, patriotic and religious assembly uses, including a festival, benefit, fund raising event or similar use that attracts a mass audience are prohibited activities unless the building official issues a temporary use permit pursuant to Section 25-2-921(C) of the Land Development Code ("LDC").
2. Sections 25-2-6(41) and 25-2-921(C) of the LDC prohibit outdoor religious assembly in zoning districts LA through SF-3.
3. A festival, benefit, fund raising event or similar use held on property used for religious assembly or educational facilities fall within the categories of community recreation public and community recreation private.
4. Section 25-2-921(A)(2) and not 25-2-921(C) of the LDC regulates "carnivals."

**NOTE:** The board must determine the existence of, sufficiency of and weight of evidence supporting the findings described below. Therefore, you must complete each of the applicable findings statements as part of your application. Failure to do so may result in your application being rejected as incomplete. Please attach any additional support documents.

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1. There is a reasonable doubt of difference of interpretation as to the specific intent of the regulations or map in that:

Outdoor fairs, carnivals and festivals are not allowed uses with the principal uses of religious assembly and primary and secondary educational facilities<sup>3</sup>

Prior to the November 18, 2013, Staff had requested an amendment to Section 25-2-921(C) of the LDC that, if adopted by the Council, would have authorized the Building Official to issue Temporary Use Permits for outdoor religious, public, patriotic and historic assembly as well as outdoor exhibits, including a festival, benefit, fund raising event if the temporary use was located on property with a principal developed use of religious assembly, educational facilities and community recreation (public) regardless of the zoning of the property.<sup>4</sup> A copy of the last version of the proposed ordinance and the Ordinance Amendment Review Sheet for Code Amendment C20-2012-016 in support of agenda item 59 on the City Council meeting agenda for November 7, 2013 are attached.

In a November 18, 2013 memorandum to the Mayor and City Council ("November 18<sup>th</sup> Memorandum"), Mr. Guernsey wrote that Staff was withdrawing its proposed amendment to Section 25-2-921(C) of the LDC because Staff had made a new interpretation of the zoning code with respect to outdoor fairs, festivals and carnivals held at churches and school facilities. Mr. Guernsey argues that outdoor fairs, festivals and carnivals held at churches and schools are a common practice. Mr. Guernsey also writes: "These types of events have long occurred in Austin and until now have not been a problem." Without explicitly classifying "fairs, festivals and carnivals" as principal or accessory uses, Guernsey describes these activities as "integral, customary and incidental to the primary uses of religious assembly and primary and secondary educational facilities. In sum, Mr. Guernsey's argument is that outdoor "fairs, festivals and carnivals" activities at religious assembly facilities and at educational facilities have taken place for so long with little complaint, that Staff can now ignore the same provision of the LDC that Staff had requested the Council amend for more than a year.

The reasons given by Mr. Guernsey for this sudden change in interpretations cannot be reconciled with the plain language of the City Code. As discussed below, the LDC explicitly prohibits outdoor religious and public assembly and outdoor exhibits, including, outdoor fairs, festivals and carnivals unless a temporary use permit is issued. Further, Mr. Guernsey's equating of outdoor recess and outside gym class to outdoor fairs, festivals or carnivals is misplaced because the first set of activities are allowed uses while the latter activities are explicitly prohibited by the LDC. Outdoor recess, outside gym class and any other outdoor educational activity are part of an education curriculum. Section 25-2-921(C) does not require a temporary use permit for outdoor educational activities at schools because these are allowed educational activities. The November 18<sup>th</sup> Memorandum does not venture to argue

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<sup>3</sup> Since the November 18<sup>th</sup> Memorandum addresses only outdoor activities, this appeal does not concern or address indoor fairs, festivals or carnivals.

<sup>4</sup> Code Amendment C20-2012-016.

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that outdoor fairs, festivals and carnivals are part of an educational curriculum or that such activities constitute religious worship or religious education.

The plain language of the LDC is clear and unambiguous: Section 25-2-921(C) of the LDC requires a temporary use permit for outdoor religious assembly, public assembly or an outdoor exhibit, including a festival, benefit, fund raising event, or similar use that typically attracts a mass audience, except the Building Official has no authority to issue a temporary use permit for these types of outdoor activities in the LA, RR, SF-1, SF-2 and SF-3 zoning districts.

The significance of the authority provided and not provided to the Building Official by Section 25-2-921(C) of the LDC is made clear by Section 9-2-1(15) of the City Code which defines a Temporary Use Permit as:

"a permit issued by the Planning and Development Review Department under Chapter 25-2, Article 6 (*Temporary Uses*) to authorize a temporary activity not otherwise allowed as a principal or accessory use in a base zoning district." (Emphasis added)

Importantly, Mr. Guernsey does not contend that outdoor fairs, festivals and carnivals at schools and churches are uses that have not been previously classified within a zoning category or land use definition. After all, Staff had sought an amendment to Section 25-2-921(C) because Staff was interpreting Section 25-2-921(C) exactly as the appellants do in this appeal. Instead, he argues that the lack of enforcement of the LDC provisions prohibiting these activities allows staff to now ignore these provisions. Under the circumstances, City Staff have no authority under Section 25-2-2 of the LDC to reclassify the outdoor activities described in the November 18, 2013 Memorandum.

#### Outdoor Religious Assembly is Prohibited as a Principal and Accessory Use

The fourth paragraph on page 2 of the November 18<sup>th</sup> Memorandum appears to be an interpretation of Religious Assembly as a use allowed outdoors: staff believes that Section 25-2-921(C) is intended to regulate traveling preachers "...setting up a large tent for a revival on a vacant lot..." By this example of the type of outdoor religious assembly activity that Section 25-2-921(C) of the LDC might apply to, Mr. Guernsey excludes lots and properties with buildings used for religious assembly from being subject to Section 25-2-921(C) of the LDC.

Mr. Guernsey's example of the type of outdoor religious assembly use that Section 25-2-921(C) might apply must be considered in the context of the proposed amendment to Section 25-2-921 that Staff had presented to the Council in early November 2013. In the now withdrawn code amendment, Staff had included the following as subsection (D):

"This provision does not apply to religious services held on property with a principal developed use of religious assembly. A permit is not required for religious services."

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If adopted, the proposed subsection (D) would have made outdoor "religious services" an allowed activity in all zoning districts.<sup>5</sup> The traveling preacher example is entirely consistent with the above language that Staff had requested the City Council to approve.

Again, the plain language of the LDC is clear and unambiguous regarding outdoor religious assembly activities. Section 25-2-6(B)(41) defines Religious Assembly as follows:

RELIGIOUS ASSEMBLY use is regular organized religious worship or religious education in a permanent or temporary building. The use excludes private primary or secondary educational facilities, community recreational facilities, day care facilities, and parking facilities. A property tax exemption is prima facie evidence of religious assembly use.

The part of the definition of Religious Assembly that requires the activity to be "in a permanent or temporary building" is entirely consistent with the Section 25-2-921(C) requirement for a temporary use permit for outdoor religious assembly in all zoning districts except in those district where outdoor religious assembly can never be permitted (LA through SF-3). See Section 25-2-921(C)(1). Additionally, the definition of Religious Assembly explicitly excludes community recreational facilities.

As previously discussed, Section 9-2-1(15) of the City Code states that temporary use permits authorize a temporary activity not otherwise allowed as a principal or accessory use in a base zoning district. Staff's previously proposed subsection (D) to Section 25-2-921 evidences that prior to the November 18<sup>th</sup> Memorandum Staff concurred with our position that outdoor religious assembly is not allowed unless a temporary use permit is issued pursuant to Section 25-2-921(C).

#### Prohibited Principal Use Cannot Be an Accessory Use

To the extent that outdoor fairs, carnivals and festivals are prohibited as principal religious assembly and educational facility uses, outdoor fairs, carnivals and festivals are prohibited as accessory uses and activities. Section 25-2-892 of the LDC states: "The regulations applicable to a principal use apply to an accessory use, except as otherwise provided in this division."<sup>6</sup> As previously discussed, these outdoor activities cannot be principal uses because they are explicitly prohibited as reflected in Section 25-2-921(C). Therefore, a prohibited principal use cannot be an accessory use unless another section of Article 6 authorizes the activity as an accessory use.

Religious Assembly and educational facilities are classified as civic uses. Section 25-2-897 of the LDC identifies the accessory uses for a principal civic use. This

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<sup>5</sup> The LDC does not define the term "religious service". How the term "religious service" differs from the term "religious worship" found in the definition of Religious Assembly was never explained.

<sup>6</sup> Article 6 of Chapter C of Chapter 25-2 does not have any divisions.



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section does not describe any activity similar to those activities described in Section 25-2-921(C) or in the November 18<sup>th</sup> Memorandum.

#### Community Recreation

The outdoor fairs, carnivals and festivals described in the November 18<sup>th</sup> Memorandum fall easily within the definition of "community recreation (private)." Section 25-2-6(B)(6) of the LDC defines private community recreation as "the use of a site for the provision of an indoor or outdoor recreational facility for use by residents or guests of a residential development, planned unit development, church, private primary or secondary educational facility, club or lodge, or non-profit organization." As noted above, community recreation facilities cannot be an allowed activity under Religious Assembly.

According to the zoning use summary table found in Section 25-2-491(C) of the LDC, community recreation (private) is a conditional use in all residential, multifamily and office zoning districts. A conditional use is allowed only upon the approval of a conditional use site plan approved by a Land Use Commission. As to Religious Assembly, Staff cannot, by interpretation, make a use or activity that is explicitly a conditional use into an allowed use. Only the City Council has the authority to amend the zoning code.

#### Carnivals

The November 18<sup>th</sup> Memorandum uses the term "carnival" even though that term does not appear in Section 25-2-921(C) of the LDC. The LDC does not define the term "carnival" but the term does appear in Section 25-2-921(A)(2). Section 4-3-21 of the City Code defines "carnival" as "the operation or exhibition of a ride, game of skill, or chance game booth not permanently located in an amusement park, side show, concession stand, or other feature ordinarily operated or exhibited at a traveling or itinerant carnival show." Section 4-3-23 of the City Code requires an operating permit to be issued for a carnival. To the extent any of the zoning code interpretations found in the November 18<sup>th</sup> Memorandum are upheld by the Board of Adjustment, the term "carnival" should be deleted.

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2. An appeal of use provisions could clearly permit a use which is in character with the uses enumerated for the various zones and with the objectives of the zone in question because:

The new interpretations of the Austin Zoning Code in the November 18 Memorandum would permit outdoor activities and uses that are not in character with the uses enumerated in the various zoning districts or the objectives of the zoning code. As discussed in the previous section, the use interpretations found in the November 18 Memorandum do not entail uses that had never been classified before or addressed in the LDC. To the contrary, the LDC explicitly prohibits these outdoor activities in Section 25-2-921(C). Our interpretation is supported by the other provisions in the City Code discussed in the prior section.

The outdoor activities described in the November 18<sup>th</sup> Memorandum are clearly in the nature of community recreation which is a conditional use in all residential, multifamily and office zoning districts. The process and criteria for the approval of a conditional use permit (Article 3 of Chapter 25-5) demonstrate that conditional uses are not necessarily in character with the allowed uses in a base zoning district. According to the November 18 Memorandum, Staff now says these outdoor community recreation type uses (conditional uses in most zoning districts) are permitted uses without any public involvement or public hearings.

The safeguards and public hearing processes of conditional uses must be maintained to protect neighborhoods.

3. The interpretation will not grant a special privilege to one property inconsistent with other properties or uses similarly situated in that:

Because the interpretations being appealed do not pertain to a specific parcel of land, this question is not applicable.

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APPLICANT/AGGRIEVED PARTY CERTIFICATE — I affirm that my statements contained in the complete application are true and correct to the best of my knowledge and belief.

Signed \_\_\_\_\_ Printed \_\_\_\_\_

Mailing Address \_\_\_\_\_

City, State & Zip \_\_\_\_\_ Phone \_\_\_\_\_

OWNER'S CERTIFICATE — I affirm that my statements contained in the complete application are true and correct to the best of my knowledge and belief.

Signed \_\_\_\_\_ Printed \_\_\_\_\_

Mailing Address \_\_\_\_\_

City, State & Zip \_\_\_\_\_ Phone \_\_\_\_\_

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REQUESTS FOR INTERPRETATION  
(Appeal of an Administrative Decision)

REQUIRED ITEMS FOR A COMPLETE APPLICATION:

The following items are required in order to file an application for interpretation to the Board of Adjustment.

- A completed application with all information provided. Additional information may be provided as an addendum to the application.
- Standing to Appeal Status: A letter stating that the appellant meets the requirements as an Interested Party as listed in Section 25-1-131(A) and (B) of the Land Development Code. The letter must also include all information required under 25-1-132(C).
- Site Plan/Plot Plan drawn to scale, showing present and proposed construction and location of existing structures on adjacent lots.
- Payment of application fee of \$360.00 for residential zoning or \$660 for commercial zoning. Checks should be made payable to the City of Austin.

**An appeal of an administrative decision must be filed by the 20<sup>th</sup> day after the decision is made (Section 25-1-182). Applications which do not include all the required items listed above will not be accepted for filing.**

**If you have questions on this process contact Susan Walker at 974-2202.**

**To access the Land Development Code: sign on to: [www.ci.austin.us.tx/development](http://www.ci.austin.us.tx/development)**

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340

APPLICANT/AGGRIEVED PARTY CERTIFICATE — I affirm that my statements contained in the complete application are true and correct to the best of my knowledge and belief.

Signed Margaret G. Butler Printed Margaret G. Butler

Mailing Address 7100 Bright Star Ln.

City, State & Zip Austin, Tx. 78736 Phone (512) 699-6692

OWNER'S CERTIFICATE — I affirm that my statements contained in the complete application are true and correct to the best of my knowledge and belief.

Signed \_\_\_\_\_ Printed \_\_\_\_\_

Mailing Address \_\_\_\_\_

City, State & Zip \_\_\_\_\_ Phone \_\_\_\_\_

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341

APPLICANT/AGGRIEVED PARTY CERTIFICATE — I affirm that my statements contained in the complete application are true and correct to the best of my knowledge and belief.

Signed Frank W. Goodloe Printed FRANK W. GOODLOE

Mailing Address 6705 COVERED BRIDGE DR. UNIT 10

City, State & Zip AUSTIN, TX. 78736 Phone 512-906-4931

OWNER'S CERTIFICATE — I affirm that my statements contained in the complete application are true and correct to the best of my knowledge and belief.

Signed \_\_\_\_\_ Printed \_\_\_\_\_

Mailing Address \_\_\_\_\_

City, State & Zip \_\_\_\_\_ Phone \_\_\_\_\_

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ORDINANCE NO.

AN ORDINANCE AMENDING SECTION 25-2-921 OF THE CITY CODE  
RELATING TO TEMPORARY USES.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. Subsection (C) of City Code Section 25-2-921 (Temporary Uses Described) is amended as follows:

(C) An outdoor public, religious, patriotic, or historic assembly or exhibit, including a festival, benefit, fund raising event, or similar use that typically attracts a mass audience may be permitted as a temporary use under this division if:

(1) the use is located on a property with a principal developed use of religious assembly, private primary educational facilities, private secondary educational facilities, public primary educational facilities, or public secondary educational facilities or community recreation (public) and the number of events per property does not exceed four per year, at no more than two days per event;

(2) [(4)] for a gathering of not more than 50 persons, the use is located in an SF-4 or less restrictive zoning district;

(3) [(2)] for a gathering of more than 50 persons, the use is located in an LO or less restrictive zoning district; or

(4) [(3)] for an exhibit, the use is located in a GR or less restrictive zoning district.

(D) This provision does not apply to religious services held on property with a principal developed use of religious assembly. A permit is not required for religious services.

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**PART 2.** This ordinance takes effect on \_\_\_\_\_, 2013.

**PASSED AND APPROVED**

\_\_\_\_\_, 2013

§  
§  
§

Lee Leffingwell  
Mayor

**APPROVED:**

Karen M. Kennard  
City Attorney

**ATTEST:**

Jannette S. Goodall  
City Clerk



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AUSTIN CITY COUNCIL				
AGENDA				
Recommendation for Council Action				
Austin City Council	Item ID	28859	Agenda Number	72.
Meeting Date:	11/21/2013	Department:	Planning and Development Review	
Subject				
Approve second and third readings of an ordinance amending City Code Section 25-2-921 to allow properties that are primarily used for certain civic uses to obtain temporary use permits for public assembly. THE PUBLIC HEARING FOR THIS ITEM WAS HELD AND CLOSED ON APRIL 25, 2013.				
Amount and Source of Funding				
Fiscal Note				
Purchasing Language:				
Prior Council Action:	April 25, 2013: Council conducted a public hearing and approved on first reading.			
For More Information:	Greg Dutton, 512-974-3509.			
Boards and Commission Action:	March 12, 2013 - Approved by Planning Commission on a 8-0 vote with Commissioner Anderson absent.			
MBE / WBE:				
Related Items:				
Additional Backup Information				
<p>This amendment has the following proposed changes:</p> <p>Certain properties are currently prohibited from applying for temporary permits for outdoor events, depending on the zoning of the property. The proposed amendment would allow a property whose principal developed use is religious assembly, private primary educational facilities, private secondary educational facilities, public primary educational facilities, public secondary educational facilities, or public community recreation, to apply for a temporary use permit for outdoor assembly, regardless of zoning district. The number of events would be limited to four per year per property, at no more than two days per event.</p> <p>Staff recommends approval of this amendment.</p>				

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345**ORDINANCE AMENDMENT REVIEW SHEET**

**Amendment:** C20-2012-016 Temporary Outdoor Public Assembly

**Description:** Consider an amendment to an ordinance amending chapter 25-2-921 of the City Code relating to temporary outdoor public assembly, to allow religious and educational institutions to hold temporary outdoor public assemblies.

**Proposed Language:** See attached draft ordinance.

**Staff Recommendation:** Staff recommends this amendment.

**Background:** Initiated by Planning Commission on September 25, 2012

Under the current code, certain temporary outdoor events are only allowed in certain zoning districts, depending on the number of attendees at said events. These events can include public, religious, patriotic, or historic assembly or exhibit, including a festival, benefit, fund raising even, or similar use. Temporary outdoor public assembly events held by churches and schools, which often have residential zoning, are currently prohibited or restricted in conducting temporary outdoor events if their zoning is residential. The proposed code amendment would allow properties whose principal use is religious, educational, or community recreation, to apply for a temporary use permit to hold a temporary outdoor public assembly event, up to four events per property, per year, for a duration of two days maximum per event.

**Board and Commission Actions**

**Planning Commission Subcommittee on Codes and Ordinances**

January 15, 2013: Recommended the item to full Planning Commission. Vote: 4-0.

February 19, 2013: Unanimously recommended this item to full Planning Commission on, with the following amendment: Cap the number of temporary permits for this type of event at four per year per property. Vote: 6-0.

**Planning Commission**

January 22, 2013: A motion to postpone and send the item back to Codes and Ordinances Subcommittee for further discussion. Vote: 8-0.

March 26, 2013: Approved on an 8-0 vote.

**Council Action**

April 25, 2013: Approved on first reading on a 6-0 vote, with

September 24, 2013: Second/third reading of the item has been set.

**Ordinance Number:** NA

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C20-2012-016

City Staff: Greg Dutton

Phone: 974-3509

Email: greg.dutton@austintexas.gov

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## MEMORANDUM

**To:** Mayor and Council

**From:** Gregory I. Guernsey, AICP, Director  
Planning and Development Review Department

**Date:** November 18, 2013

**Subject:** Item 72 – Code Amendment - Temporary Use Permits for Public Assembly  
November 21, 2013 Council Agenda

Item 72 on the November 21, 2013 Council agenda is a code amendment posted for second and third reading that would allow properties that are primarily used for certain civic uses to obtain temporary use permits for public assembly. Staff is withdrawing its request for approval of this code amendment.

Last year, responding to a citizen complaint, the Code Compliance Department cited the Delores Catholic Church in Montopolis for having an outdoor festival without a temporary use permit. Furthermore, the Church was informed that because the church is zoned single-family, it would be unable to pull a temporary use permit. A member of the church, Mr. Gavino Fernandez, spoke to both the Planning Commission and the City Council at citizen communications about the issue.

At the request of city staff, the Planning Commission agreed to initiate a code amendment on September 25, 2012, to address the issue. The relevant section of current Code reads as follows:

- (C) An outdoor public, religious, patriotic, or historic assembly or exhibit, including a festival, benefit, fund raising event, or similar use that typically attracts a mass audience may be permitted as a temporary use under this division if:*
- (1) for a gathering of not more than 50 persons, the use is located in an SF-4 or less restrictive zoning district;*
  - (2) for a gathering of more than 50 persons, the use is located in an LO or less restrictive zoning district; or*
  - (3) for an exhibit, the use is located in a GR or less restrictive zoning district.*

Staff proposed adding a new section to the above code that would allow churches, schools, and community recreation centers to be issued a temporary use permit, regardless of zoning:

- (4) the use is located on a property with a principal developed use of religious assembly, private primary educational facilities, private secondary educational facilities, public primary educational facilities, or public secondary educational facilities or community recreation (public);*

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At the April 25, 2013 City Council meeting this ordinance passed on first reading. This would require that every church, school and recreation center pull a temporary use permit for any outdoor fundraiser, festival, fair, carnival etc. regardless of the number of attendees. Based upon testimony at first reading, staff was asked to meet with a group of concerned citizens to consider additional proposed amendments. At that meeting several ideas were proposed: limit events to four times a year; prohibit the pulling of an outdoor sound permit in conjunction with a temporary use permit; cap the hours during which an event could be held; and future temporary use permits if two or more violations occurred.

While considering these options, Planning and Development Review (PDR) staff consulted with the Fire Department, Code Compliance Department, Austin Community College, Austin Independent School District and the Catholic Diocese of Austin. It became apparent that even amending the Code to *allow* a temporary use permit for these uses would be problematic: the Fire Department would need to review and inspect each event; Code Compliance would have to investigate the events, most of which occur on weekends, to ensure the permit had been issued; a tracking mechanism would also have to be put into place to ensure the number of allowable annual events were not exceeded. Some facilities, especially high schools, have far more than four events per year. None of the entities we spoke with felt it was necessary for these types of events to pull temporary use permits.

Upon further consideration, PDR staff is of the opinion that school and church fairs and festivals are integral, customary, and incidental to the primary use. In other words, a part of being an elementary school is having a fall carnival, just as much as recess or outside gym class. Likewise, a church having an outdoor festival is a common practice that has been done for a very long time. Having the festival does not temporarily change the use of the property – it is still being used as a church – just as a youth group meeting outside would be. These types of events have long occurred in Austin and until now have not been a problem. To our knowledge, only a single individual has issued complaints against two Catholic churches regarding outdoor festivals. There does not, however, seem to be a community-wide concern with these types of events occurring as they always have in the past.

While the current Code does mention “religious assembly...fundraiser and benefits” as needing temporary use permits, the staff believes this is intended for different circumstances. Examples might include a traveling preacher setting up a large tent for a revival on a vacant lot; or a school using a piece of property *other* than the school grounds for an event; or an event hosted on church or school property that is not related to either use. An example of the latter would be if a church leased its property out for a rock concert. Staff is in agreement that these events are a temporary change of use and therefore a permit is required.

For the type of fair, festival, and carnivals that have been occurring for many decades and are important fundraisers for churches and schools, PDR staff does not believe a temporary use permit should be required and therefore is withdrawing its request that this Code amendment be approved.

If you have any questions please feel free to contact me at (512) 974-2387 or Jerry Rusthoven at (512) 974-3207.

CC: Marc A. Ott, City Manager  
Sue Edwards, Assistant City Manager  
Carl Smart, Director Code Compliance Department  
Chief Rhoda Mae Kerr, Austin Fire Department  
Jerry Rusthoven, Division Manager, Planning and Development Review Department

## EXHIBIT 18

Robert Kleeman

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**From:** Lloyd, Brent <Brent.Lloyd@austintexas.gov>  
**Sent:** Thursday, January 09, 2014 1:48 PM  
**To:** Robert Kleeman  
**Subject:** Board of Adjustment Appeal

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Robert –

I hope you enjoyed the holidays and that your new year is off to a good start.

I'm writing in regards to your Board of Adjustment ("BOA") appeal, dated December 6, 2013, which challenges statements made in a memo from Director Greg Guernsey to the City Council in support of his decision to withdraw his department's recommendation for a code amendment previously proposed by his staff. The amendment would have authorized the issuance of Temporary Use Permits ("TUPs") for fairs, festivals, and similar activities occurring at schools and churches.

PDRD has determined that Director Guernsey's memo is not an "administrative decision" and is therefore not within the BOA's jurisdiction to review. Since I understand that you are likely to question this determination, please accept following explanation in support of the department's position:

- The BOA's appellate jurisdiction under state law is limited to actual decisions made in the enforcement of a zoning ordinance and does not extend to recommendations made by staff in the context of a legislative process. See Texas Local Gov't Code, Sec. 211.009 (authorizing the BOA to hear appeals of an "**order, requirement, decision, or determination** made by an administrative official in the **enforcement** of [a zoning ordinance]") (emphasis added).
- Director Guernsey's memo did not order, require, decide, or enforce anything, nor did it constitute a "Land Use Determination" as that term is used in City Code Section 25-1-197. Rather, the memo merely set forth his recommendation that Council not adopt new permitting requirements for schools and churches. The 2012 code enforcement incident that he mentions as background for this recommendation had been resolved long before the memo was issued.
- The positions outlined in the memo are not new. As Director Guernsey states, fairs and festivals at schools and churches "have long occurred in Austin" without requiring TUPs, subject to the limitations outlined in his memo. His recommendation not to amend City Code to begin requiring TUPs for these activities was just that – a recommendation – and did not constitute an administrative decision.

Please do not hesitate to contact me if you wish to discuss this matter further.

Thanks,

*Brent D. Lloyd*  
Assistant City Attorney  
City of Austin Law Department  
P.O. Box 1088  
Austin, TX 78767-1088  
(512) 974-2974

## EXHIBIT 19

Robert Kleeman

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**From:** Martha Salinas <martha\_salinas@yahoo.com>  
**Sent:** Sunday, May 18, 2014 12:49 PM  
**To:** Smart, Carl  
**Cc:** Ott, Marc; Guernsey, Greg; Acevedo, Art; peacefulresidents@earthlink.net; president@ancweb.org; Robert Kleeman  
**Subject:** Re: Dolores Church Concert and Festival

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Mr. Smart:

Although I believe the Code does not allow such activities, but I do understand that is now the City's legal and official stance. I will remind you that City Attorney Brent Lloyd stated that the Church still must secure all the proper permits and must abide by the sound decibel level.

Thank you,

Martha

> On May 18, 2014, at 10:06 AM, "Smart, Carl" <[Carl.Smart@austintexas.gov](mailto:Carl.Smart@austintexas.gov)> wrote:  
>

> Ms. Salinas,

> Thank you for your email regarding the outdoor event at Delores Catholic Church. I have conferred with Greg Guernsey and we agree that the church is allowed to hold such an event on their property in conformance with the codes. As Mr. Guernsey ruled earlier, the church does not need a TUP to hold this event.

>

> If there are further problems, please feel free to contact us. Again, thank you for your communication.

>

> Carl Smart

> Austin Code Compliance.

> (Sent from my iPhone)

>

>> On May 17, 2014, at 11:28 AM, "Martha Salinas" <[martha\\_salinas@yahoo.com](mailto:martha_salinas@yahoo.com)> wrote:

>>

>> The Dolores church is setting up for their carnival and concert for tomorrow. Will they be cited for having a carnival and concert without permits and for having it on a residential zoned property?

>>

>> Also should the City not cite the church for not having a TUP it will set precedent that such activities are legal.

>>

>> Thank you,

>>

>> Martha

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## EXHIBIT 20-1

**From:** Lloyd, Brent [REDACTED]  
**Sent:** Friday, August 21, 2015 7:29 PM  
**To:** Robert Kleeman  
**Subject:** Life Austin - Interpretation of City Sound Regulations

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Hi Robert –

This email responds to your letter, dated August 10, regarding the applicability of Chapter 9-2 (*Noise and Amplified Sound*) to events at Life Austin's outdoor amphitheater. As explained below, staff's decision not to require a sound permit is consistent with past practices for non-commercial properties and with the applicable provisions of city code.

### **City Code § 9-2-11 (Permit Required)**

You argue that this section, which is copied below for reference, basically requires a permit from the City for any use of sound equipment—regardless of the context. Because of how broadly Chapter 9-2 defines “sound equipment,” that interpretation would essentially require City approval to operate any device that produces audible sound. Casting such a wide net would not be consistent with the intent of the ordinance.

Therefore, staff has generally interpreted the phrase “audible to the public” as limiting the permit requirement to situations where amplified sound can be heard beyond the property line, by those within the city limits. Additionally, as discussed below, the separate code section governing use of sound equipment on residential property (Section 9-2-5) does not expressly require a permit. For that reason, it cannot be said that obtaining a permit for such events is “prescribed by this article” within the meaning of Section 9-2-11's permitting requirement.

In practical terms, staff's interpretation has meant that sound permits have not generally been required for events held at residentially zoned fraternity and sorority houses or at single-family homes. Where decibel or hours limitations are exceeded, the code enforcement process provides an appropriate remedy for violations.

### **City Code § 9-2-5 (Restriction on Use of Sound Equipment in A Residential Area)**

This code section, which is also copied below for reference, governs the use of sound equipment occurring on “residential property.” Staff has consistently interpreted this to mean events held on property zoned as residential. Unlike the separate requirements governing amplified music at commercial venues, this code section does not expressly require a permit and, according to staff, has never been interpreted to require one.

Your letter suggests that this provision is inapplicable to Life Austin because its property does not contain a residential use. In support of that interpretation, you argue that the language in Subsections (B)-(C) limiting decibels & hours restrictions to “sound audible

beyond the property line of a residence" would make no sense unless the property where sound equipment is used contains a residence.

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In staff's view, however, the phrase "property line of a residence" can refer to the property line of residential structures adjacent to the property where sound equipment is used. Therefore, that phrase does not have the effect of limiting Section 9-2-5 to sites which contain a residential use. It's worth noting as well that many other requirements of City Code are specifically limited to sites "zoned and used" as residential. This suggests that Council would have used the phrase "zoned and used" had it intended to limit Section 9-2-5 in that manner.

### **Stubbs & Austin 360 Amphitheater**

Your letter suggests that Life Austin is being treated differently than Stubbs or Austin 360 because those venues are both required to obtain sound permits. These venues are different than Life Austin, however, for the following reasons:

Stubb's is a commercial property, zoned for entertainment uses, and is thus subject to permitting requirements of Chapter 9-2 which apply to commercial venues. Austin360 is, I believe, allowed to operate as a commercial music venue under Local Government Code § 43.002 because the use was begun or planned prior to annexation.

---

I hope this response helps to clarify staff's interpretation of the sound ordinance. Please do not hesitate to contact us if you have further questions or concerns.

Thanks,

Brent

***Brent D. Lloyd***

Assistant City Attorney  
City of Austin Law Department  
P.O. Box 1088  
Austin, TX 78767-1088  
(512) 974-2974

### **CITED CODE SECTIONS**

#### **§ 9-2-11 - PERMIT REQUIRED.**

A person must obtain a permit to:

- (1) operate sound equipment audible to the public as prescribed by this article, Chapter 8-1, Article 4 (Restrictions on Amplified Sound), and Section 14-8-34 (Permit Required for the Use of Sound Equipment); or

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- (2) deliver, finish, place, or pour concrete between 7:00 p.m. and 6:00 a.m. in the Central Business District (CBD) base zoning district at property located within 600 feet of a residence, church, hospital, hotel, or motel.

**§ 9-2-5 - RESTRICTION ON USE OF SOUND EQUIPMENT IN A RESIDENTIAL AREA.**

- (A) This section applies to property zoned as residential under Section 25-2-32(B) (Zoning Districts and Map Codes).
- (B) A person may not use sound equipment that produces sound audible beyond the property line of a residence in a residential area between 10:00 p.m. and 10:00 a.m.
- (C) A person may not use sound equipment audible beyond the property line of a residence in a residential area that produces sound in excess of 75 decibels.

## EXHIBIT 20-2

Kleeman, Robert

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**From:** Kleeman, Robert  
**Sent:** Wednesday, December 07, 2011 2:36 PM  
**To:** Sandra Baldrige; William A. A. Dabbert; Eli del Angel  
**Cc:** Vandelinder, David; Kim Butler; D Armentrout  
**Subject:** FW: Sound Ordinance; Outdoor Amphitheater; SP-2011-0185C  
 FYI

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**From:** Lloyd, Brent [mailto:Brent.Lloyd@austintexas.gov]  
**Sent:** Wednesday, December 07, 2011 12:03 PM  
**To:** Kleeman, Robert  
**Cc:** Guernsey, Greg; Pitts, Don; Murray, David  
**Subject:** RE: Sound Ordinance; Outdoor Amphitheater; SP-2011-0185C

Robert –

Just wanted to follow-up with you regarding your questions to Greg. We finally got to touch base on this yesterday and both agree as to the following:

1. **Can a sound permit be issued for a structure in an RR zoned district? Can a sound permit ever be issued for an RR zoned property?**

Yes, the site would be eligible to request a sound amplification permit subject to all applicable requirements in Chapter 9-2. There is no blanket restriction against issuing sound amplification permits within residentially zoned areas.

However, as we've previously discussed, any permit would require an impact plan consistent with Chapter 9-2, Division 3 (*Outdoor Music Permits*). An impact plan may include site-specific limitations on outdoor music, including decibel levels and hours of operation, as well as conditions to help mitigate impacts on adjoining residential areas.

Additionally, a permit would be subject to any general limits on hours of operation that are applicable under Section 9-2-14 (*Restrictions on Permits Impacting Residential Properties*) (copied below). In applying this provision, the department measures applicable distances from the location of the sound equipment to the property line of the nearest property that is zoned and used as residential.

2. **What if the structure is considered a Religious Assembly use? How is religious assembly classified under the sound ordinance when the zoning is residential?**

Religious assembly is a civic use per Section 25-2-6(41) (*Religious Assembly Use*). That means the restrictions in Subsections (B) & (C) of Section 9-2-5 (*Restrictions on the Use of Sound Equipment in a Residential Area*) don't apply, since they are triggered only when a residence is located on the property.

However, as stated above, a sound amplification permit would be subject to the restrictions in Section 9-2-14 and any specific conditions included in an event impact plan. Both are intended to afford some protections to adjoining residential areas.

12/7/2011

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3. **If a sound permit is not issued, what are the applicable sound regulations?**

The use of sound equipment for outdoor music requires a permit issued Chapter 9-2, Division 3, Subpart B (*Live Music Permits*). See Section 9-2-35 (*Applicability*) (copied below). It would be a code violation to use sound equipment for outdoor music without obtaining the proper permit.

4. **When in the process is the applicant required to apply for a sound permit? When the building permit application is filed? Prior to building permit issuance? If at the building permit stage, what is the process for your department to be notified?**

The two permits are separate, and it's up to the applicant when to request a sound amplification permit. Issuance of a building permit does not authorize the use of sound equipment.

5. **If the sound permit is not required for the issuance of building permit, does the building inspection department issue a building permit that includes wiring for an amplified sound system?**

I am not aware of any prohibition against including wiring that may or may not be used. However, I will pose this question to the Building Official since the issue relates to administration of city technical codes.

6. **Is there any action that the two adjoining neighborhoods can do under the City Code to protect themselves?**

Assuming the applicant obtained a live music permit, the event impact plan would include protections to help mitigate impacts. Property owners would be free to consider installing additional mitigation, such as sound barriers, subject to applicable zoning and technical code restrictions.

7. **If a sound permit is applied for, do interested parties have standing to appeal the granting of such a permit? Interested parties that are not the applicant?**

Yes, all live music permits have a right of appeal except 24-hour permits that may only be issued once a month. The applicable requirements are codified in Subpart D (*Review, Notification, and Appeal*), which includes provisions for interested parties (other than an applicant) to appeal the director's decision on a permit application.

8. **Have any rules been adopted or proposed relating to the sound ordinance?**

No.

I hope this information is helpful. Please don't hesitate to contact me or Greg if you have further questions regarding the requirements of city code.

Thanks,

**Brent D. Lloyd**  
Assistant City Attorney  
(512) 974-2974

**CITED CODE SECTIONS:**

**§ 9-2-14 RESTRICTIONS ON PERMITS IMPACTING RESIDENTIAL PROPERTIES.**

(A) The limitations in this section apply to all permits for the use\* sound equipment

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authorized under this chapter.

(B) The accountable official may not issue a permit for use of sound equipment within 100 feet of property zoned and used as residential, except as authorized under Section 9-2-21 (*Permit for Concrete Installation During Non-Peak Hour Periods*), Chapter 8-1, Article 4 (*Restrictions on Amplified Sound*), or Section 14-8-34 (*Permit Required for the Use of Sound Equipment*).

(C) The accountable official may issue a permit for use of sound equipment, as authorized by this chapter, for property that is:

(1) beyond 100 feet but within 600 feet of property that is zoned and used as residential, between:

(a) 10:00 a.m. and 8:00 p.m. on Sunday through Thursday; or

(b) 10:00 a.m. and 10:00 p.m. on Friday or Saturday; and

(2) beyond 600 feet of property that is zoned and used as residential, between 10:00 a.m. and 2:00 a.m.

#### § 9-2-35 APPLICABILITY.

A live music permit is required under this subpart to use sound equipment for outdoor music that involves the amplification of sound from instruments, vocal and instrument microphones, turntables, and digital or analog devices used as part of a performance requiring human operation from song to song.

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**From:** Guernsey, Greg  
**Sent:** Monday, November 14, 2011 4:45 PM  
**To:** Lloyd, Brent  
**Subject:** FW: Sound Ordinance; Outdoor Amphitheater; SP-2011-0185C

FYI

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**From:** Pitts, Don  
**Sent:** Monday, November 14, 2011 3:57 PM  
**To:** Guernsey, Greg  
**Cc:** Sandoval, Marie  
**Subject:** FW: Sound Ordinance; Outdoor Amphitheater; SP-2011-0185C

please advise on the zoning questions.

thank you

---

**From:** Kleeman, Robert [mailto:rkleeman@munsch.com]

12/7/2011

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**Sent:** Monday, November 14, 2011 3:54 PM  
**To:** Pitts, Don  
**Subject:** FW: Sound Ordinance; Outdoor Amphitheater; SP-2011-0185C

**Robert Kleeman**  
**MUNSCH HARDT**  
**KOPF & HARR, P.C.**  
**DALLAS | HOUSTON | AUSTIN**

Frost Bank Tower  
401 Congress Avenue, Suite 3050  
Austin, Texas 78701-4071  
Direct 512.391.6115  
Fax 512.482.8932  
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**From:** Kleeman, Robert  
**Sent:** Monday, November 14, 2011 1:18 PM  
**To:** Dan.Pitts@austintexas.gov; David.Murray@austintexas.gov  
**Subject:** Sound Ordinance; Outdoor Amphitheater; SP-2011-0185C

The Mayor's office suggested that I contact you regarding how the City's sound ordinance will operate with respect to the improvements described in the above referenced site development permit.

The property is zoned RR. The proposed project is represented to be a Religious Assembly use which is more broadly classified as a Civic Use. This site plan includes an amphitheater with 1,000 covered seats and hill side seating behind the covered seating. Estimates of projected total attendance capacity have been as high as 3,500. I live in a neighborhood near this project.

My questions are:

1. Can a sound permit be issued for a structure in an RR zoned district? Can a sound permit ever be issued for an RR zoned property
2. What if the structure is considered a Religious Assembly use? How is religious assembly classified under the sound ordinance when the zoning is residential?
3. If a sound permit is not issued, what are the applicable sound regulations?

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4. When in the process is the applicant required to apply for a sound permit? When the building permit application is filed? Prior to building permit issuance? If at the building permit stage, what is the process for your department to be notified?
5. If the sound permit is not required for the issuance of building permit, does the building inspection department issue a building permit that includes wiring for an amplified sound system?
6. Is there any action that the two adjoining neighborhoods can do under the City Code to protect themselves?
7. If a sound permit is applied for, do interested parties have standing to appeal the granting of such a permit? Interested parties that are not the applicant?
8. Have any rules been adopted or proposed relating to the sound ordinance?

I will greatly appreciate your timely response.

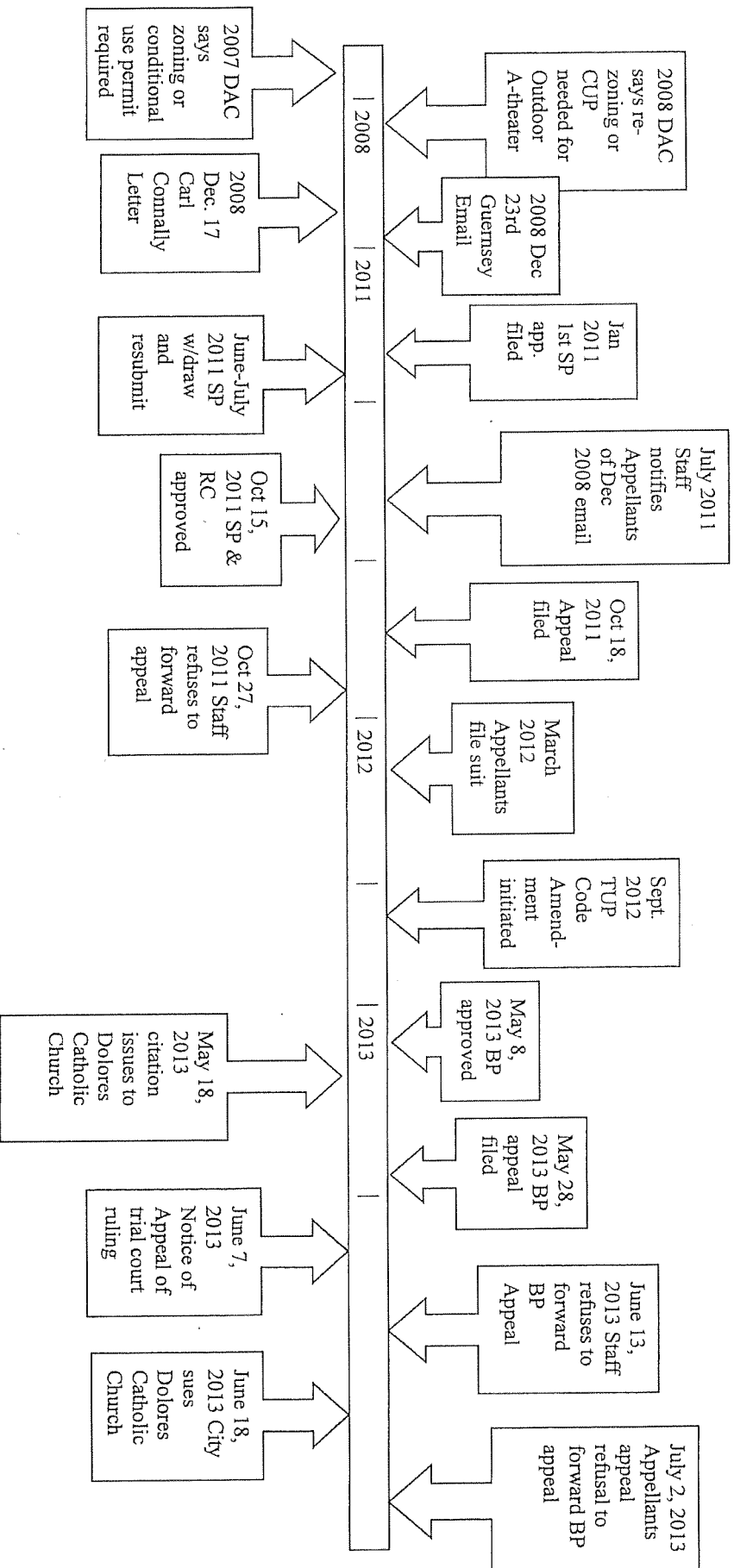
Let me know if you have any questions.



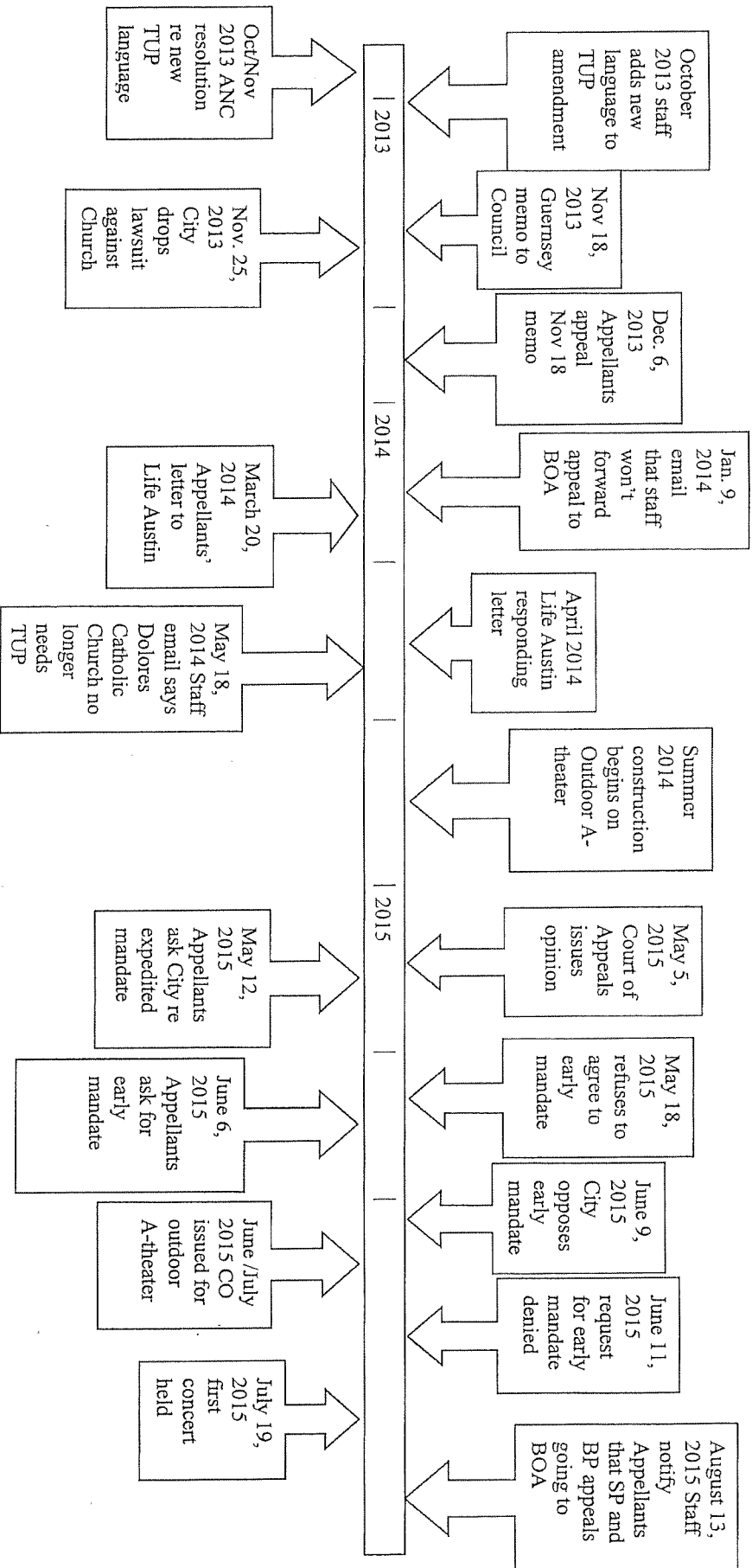
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## EXHIBIT 21

# Timeline



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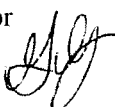




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## MEMORANDUM

To: Vincent Harding, Chair and  
Members of the Board of Adjustment

From: Gregory I. Guernsey, AICP, Director  
Planning and Zoning Department 

Date: October 26, 2015

Subject: Case No.: C15-2015-0147  
Project: LifeAustin Church (formerly known as PromiseLand West)  
Location: 8901 State Highway 71 West  
Appellants: Kim Butler and the Hill Country Estates Home Owners Association, and  
Frank Goodloe and the Covered Bridge Property Owners Association.

The affected parties have agreed to a postponement this appeal request to a special called Board of Adjustment (BOA) meeting scheduled to take place on Wednesday December 9 2015.

The appellants have filed several appeals requesting an interpretation of whether the City's determination that an outdoor amphitheater within a residential zoning district to authorize certain outdoor activities as a religious assembly use under the Austin City Code is correct. In addition, several other appeals have been filed associated with the issuance of the building permit, timeliness of appeals, not forwarding appeals to the BOA, the authority to Director of the Planning and Development Review Department (PDRD) to make a use determination, the ability of PDRD director to enter a contract (public restrictive covenant) with a landowner and grant vesting rights to uses on a property.

Staff disagrees with these appeals regarding the determination of the use of the subject property and subsequent issuance of development permits for a religious assembly use as defined by the Austin City Code. The Code defines a religious assembly use as "...regular organized religious worship or religious education in a permanent or temporary building. The use excludes private primary or secondary educational facilities, community recreational facilities, day care facilities, and parking facilities. A property tax exemption is prima facie evidence of religious assembly use." Additional information regarding this appeal will be provided by Staff in advance of the December BOA meeting.

With respect to the litigation, the Court ruled in our favor on 3 of their 4 claims, and only 1 claim remains which is that appeals be forwarded to the BOA.