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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*



*FJ
304*

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. 2nd 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 (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 (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 (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 (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 (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 (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
(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
(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 (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
(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 (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

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

EXHIBIT 12-2

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.

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

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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. City Code Section 25-2-921 (*Temporary Uses Described*) is amended to reflect
7 the following:

8 (A) The following may be permitted by the building official as temporary uses under
9 this division:

10 (1) model homes or apartments and related real estate services, if the use is located
11 within the residential development to which the use pertains;

12 (2) a circus, carnival, rodeo, fair, or similar activity, if the use is located at least 200
13 feet from a dwelling and located in a CS or less restrictive zoning district;

14 (3) an outdoor art or craft show or exhibit, if the use is located in an LR or less
15 restrictive zoning district;

16 (4) Christmas tree sales;

17 (5) an on-site construction field office, if the use is located in a portable structure
18 and conducted for not more than 6 months;

19 (6) seasonal retail sale of agricultural or horticultural products, if the use is located
20 at least 200 feet from a dwelling and located in an LR or less restrictive zoning district;

21 (7) seasonal day care, if the use is conducted for not more than eight hours a day
22 and not more than 30 days a year; and

23 (8) temporary day care, if the use is conducted for not more than eight hours a day
24 and not more than 12 hours a week.

25 (B) A sales office for a new subdivision may be permitted as a temporary use under
26 this division if the sales office is located within the subdivision and at least 200 feet from
27 existing dwellings outside the subdivision.

28 (1) A sales office for a new subdivision may not be operated after:

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(a) the expiration of four years from the date the first construction permit issued in the subdivision; or

(b) the date by which 95 percent of the lots are sold.

(2) The board of adjustment may grant an extension of the deadlines described in this subsection.

(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, or the 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, public secondary educational facilities, or public community recreation;

(2) for a gathering of more than 50 persons, the use is located in an LO or less restrictive zoning district, or the 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, public secondary educational facilities, or public community recreation;

(3) for an exhibit, the use is located in a GR or less restrictive zoning district.

(D) A single dwelling located in a mobile structure on a construction site may be permitted as a temporary use under this division if the building official determines that the dwelling is required to provide security against nighttime theft or vandalism. The building official may allow the use for a period of up to 6 months and, if requested by the applicant, may extend that period for an additional 6 months. An applicant may appeal to the board of adjustment a denial of the use by the building official.

(E) An outdoor special sale, including a swap meet, flea market, parking lot sale, or similar activity may be permitted as a temporary use under this division if the use is located in a commercial or industrial zoning district. An outdoor special sale may be conducted on not more than three days in the same week and not more than five days in the same month.

(F) Within the Central Business District (CBD) or Downtown Mixed Use (DMU) zoning districts, retail services may be permitted as a temporary use in accordance with the requirements of this subsection.

(1) The retail use must:

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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.*

19
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21 **PART 3.** This ordinance takes effect on _____, 2012.
22

PASSED AND APPROVED

EX
3/5

_____, 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 1058, Austin, TX 78767
www.cityofaustin.org/housing

Neighborhood Housing and Community Development Department 1000 East 11th 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

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EDUCATIONAL IMPACT STATEMENT

CITY OF AUSTIN CODE AMENDMENT

Austin Independent
School District



Prepared for the City of Austin



CODE AMENDMENT NAME: Public Assembly

CASE #: C20-2012-016

[Handwritten signature]

☐ 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

Pastoral Center
6225 East Highway 290 • Austin, TX 78723-1025
(512) 949-2400 • Fax (512) 949-2524
www.austindiocese.org

Chancellor

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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,

A handwritten signature in black ink, appearing to read "RWL".

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. _____

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 whose principal developed use is 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 does not exceed four per year per property;

(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

_____, 2013 §
 §
 § Lee Leffingwell
 Mayor

APPROVED: _____
Karen M. Kennard
City Attorney

ATTEST: _____
Janette Goodall
City Clerk

EXHIBIT 12-4

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 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

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EXHIBIT 12-5

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

C20-2012-016

FJ
323

City Staff: Greg Dutton

Phone: 974-3509

Email: greg.dutton@austintexas.gov

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324

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

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Planning Commission

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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

FJ
35

EXHIBIT 13-1

ORDINANCE NO. _____

F1
326

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
10 attracts a mass audience may be permitted as a temporary use under this
11 division if:

12 (1) the use is located on a property with a principal developed use of
13 religious assembly, private primary educational facilities, private
14 secondary educational facilities, public primary educational facilities, or
15 public secondary educational facilities or community recreation (public)
16 and the number of events per property does not exceed four per year, at
17 no more than two days per event;

18 (2) ~~[(1)]~~ for a gathering of not more than 50 persons, the use is located in an SF-
19 4 or less restrictive zoning district;

20 (3) ~~[(2)]~~ for a gathering of more than 50 persons, the use is located in an LO or
21 less restrictive zoning district; or

22 (4) ~~[(3)]~~ for an exhibit, the use is located in a GR or less restrictive zoning
23 district.

24 PART 2. This ordinance takes effect on _____, 2013.

PASSED AND APPROVED

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327

_____, 2013

§
§
§

Lee Leffingwell
Mayor

APPROVED:

Karen M. Kennard
City Attorney

ATTEST:

Janette Goodall
City Clerk

EXHIBIT 13-2

ORDINANCE NO.

FJ
328

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

§
§
§

Lee Leffingwell
Mayor

APPROVED:

Karen M. Kennard
City Attorney

ATTEST:

Jannette S. Goodall
City Clerk



EXHIBIT 14

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330

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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332

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

REVISED 6/78		TICKET NUMBER	
Austin Citation <input type="checkbox"/> TR <input type="checkbox"/> CM		13 661515	
<input checked="" type="checkbox"/> DL# <input type="checkbox"/> COM DL# 03914/96 <input type="checkbox"/> LD#		STATE TX	DL TYPE: A B C M
LAST NAME Ruiz	FIRST NAME Albert	MIDDLE INITIAL	
RESIDENCE ADDRESS 111 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	HEIGHT 5'10"
WEIGHT 180	EYES BRO		
EMPLOYER OR SCHOOL	BUSINESS ADDRESS	BUSINESS PHONE (AC)	
OCCUPATION Priest	SCHOOL CODE	VEHICLES IN CONVEYANCE	VEHICLE TYPE
YES <input type="checkbox"/>	YES <input type="checkbox"/>	YES <input type="checkbox"/>	YES <input type="checkbox"/>
VEH COLOR	VEH YEAR	VEH MAKE	VEH TYPE
VIOLATION DATE 5-18-13	VIOL TIME AM 8 PM 9	CONDITIONS Dry Light Dark Wet	NAME OF PARK OR SCHOOL
VIOLATION DESCRIPTION 1111 Montopolis Dr.		COUNTY	DIRECTION
VIOLATION (A) No temporary use permit		VIOL CODE 64321	
VIOLATION (B) 2nd		VIOL CODE	
VIOLATION (C)		VIOL CODE	
REASON FOR STOP 311 Complaint			
RK	PS	VS	RFB
Cell phone <input type="checkbox"/>	STEP <input type="checkbox"/>	CAD	
ALLIED SPEED	SPEED LIMIT	<input type="checkbox"/> RADAR <input type="checkbox"/> LASER <input type="checkbox"/> FACED <input type="checkbox"/> AIRCRAFT <input type="checkbox"/> VISUAL	COLLISION? YES <input type="checkbox"/> BLUE FORM? <input type="checkbox"/>
OFFICER: Paco Costa	EMP# 11195	OFFICER:	EMP#
If Non-Person Officer Sign Here.			
APPEARANCE DATE AT COURT / FECHA PARA PRESENTARSE 5-20-13		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) 974-4600. THIS IS NOT A PLEA OF GUILTY, ONLY A PROMISE TO APPEAR.			
SIGNATURE/SU FIRMA: [Signature]			
READ INSTRUCTIONS ON THE BACK OF CITATION CAREFULLY			

DEFENDANT COPY

EXHIBIT 16-1

334

GENERAL INFORMATION

This matter is now before the Court. Call (512) 974-4800 for information or visit our website at : www.cityofaustin.org/court.

2nd 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 45.04(b), Texas Penal Code. If you have any questions whether those 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. 7th St., Austin, TX 78701
Mail P.O. Box 2135, Austin, TX 78768
Phone (512) 974-4800
Internet: www.austintexas.gov/court
E-mail: court@austintexas.gov

F1
336

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
6/25/13

City of Austin Municipal Court

EXHIBIT 16-3

700 East 7th Street

P.O. Box 2135 Austin, Texas 78768

Phone: (512) 974-4800

State of Texas vs.

Cause No. (s):

Albert Ruiz

7923874

F-1
337

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

700 E. 7th Street

City of Austin Municipal Court
P.O. Box 2135 Austin, Texas 78768-2135

EXHIBIT 16-4

(512) 974-4800

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 layover 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 PH

Other: _____

Assistant City Attorney: Poli

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:
rldceman@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

RECEIVED

DEC 06 2013

CITY OF AUSTIN

CITY OF AUSTIN
APPLICATION TO BOARD OF ADJUSTMENT
INTERPRETATIONS

PART I: APPLICANT'S STATEMENT

(Please type)

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341

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.¹ 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.²

¹ 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.

² 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 facilities³

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.⁴ 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 18th 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 18th Memorandum does not venture to argue

³ Since the November 18th Memorandum addresses only outdoor activities, this appeal does not concern or address indoor fairs, festivals or carnivals.

⁴ 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 18th 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.⁵ 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 18th 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."⁶ 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

⁵ 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.

⁶ 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 18th Memorandum.

Community Recreation

The outdoor fairs, carnivals and festivals described in the November 18th 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 18th 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 18th 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 18th 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 Margaret C Butler Printed Margaret C 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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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 512-906-1931

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 _____

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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) ~~[(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

§
§
§

Lee Leffingwell
Mayor

APPROVED:

Karen M. Kennard
City Attorney

ATTEST:

Jannette S. Goodall
City Clerk

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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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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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

From: Martha Salinas <[REDACTED]>
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> 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@ymail.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

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From: Lloyd, Brent [REDACTED]
Sent: Friday, August 21, 2015 7:29 PM
To: Robert Kleeman
Subject: Life Austin - Interpretation of City Sound Regulations

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

- (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.

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§ 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

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.

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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.

From: Guernsey, Greg
Sent: Monday, November 14, 2011 4:45 PM
To: Lloyd, Brent
Subject: FW: Sound Ordinance; Outdoor Amphitheater; SP-2011-0185C

FYI

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

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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?

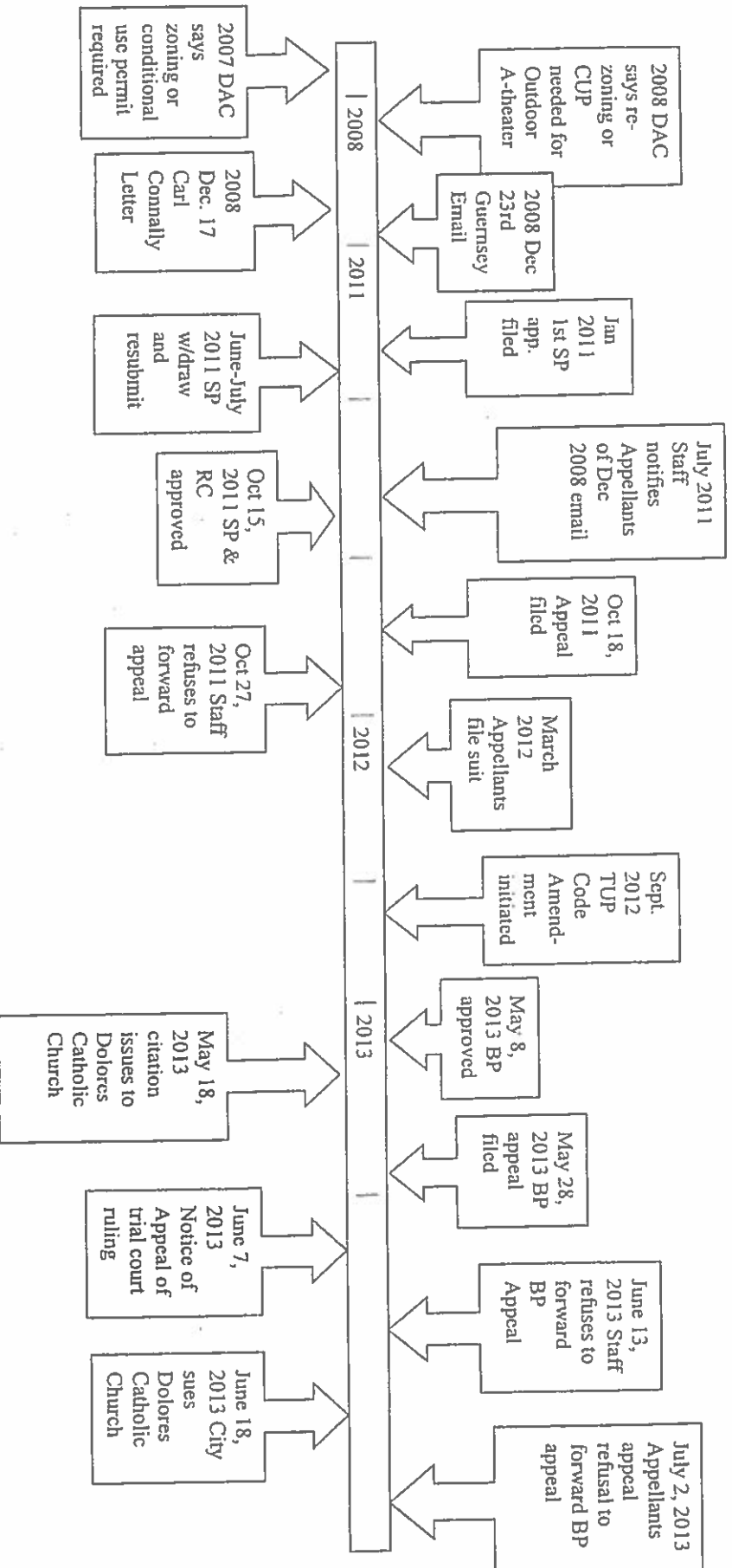
I will greatly appreciate your timely response.

Let me know if you have any questions.

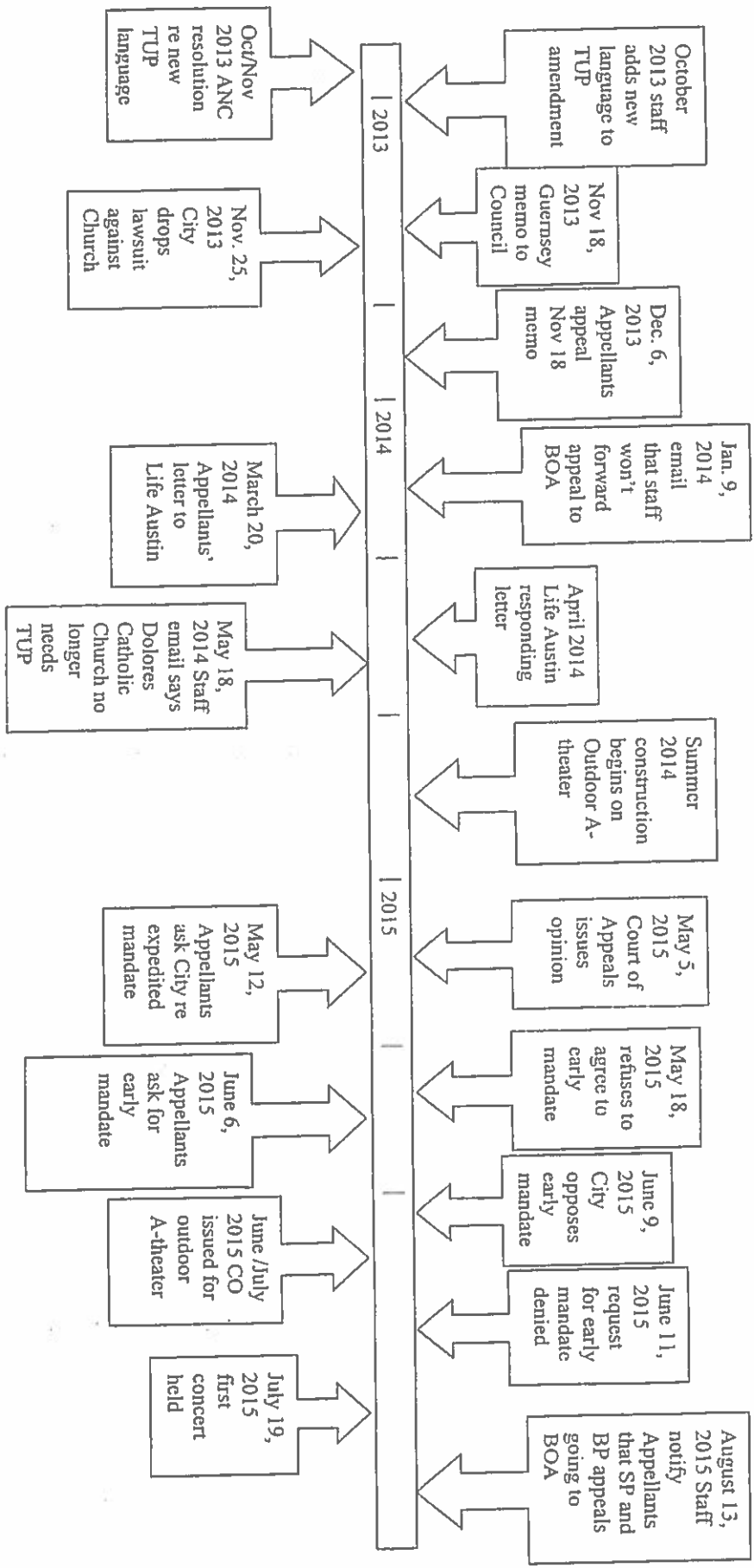
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EXHIBIT 21

Timeline



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III



Staff response
to
appeal (Slip in sheet)


(is there a 2nd pg?)
TD1 sheet



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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.



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MEMORANDUM

To: William Burkhardt, Chair and
Members of the Board of Adjustment

From: Gregory I. Guernsey, AICP, Director
Planning and Zoning Department *GG*

Date: November 23, 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.

This is a response to an appeal of a zoning use determination and related development permits approved by Mr. Gregory Guernsey, Director of Planning & Zoning Department, who was the previous Director of the Planning & Development Review Department.

Consistent with the City's Land Development Code, the director is authorized to determine how to classify a proposed land use or activity within the various "use classifications" defined by the Code. The director makes a use determination make based on the characteristics of the proposed use and the similarities, if any, of the use to other defined land uses.

How a land use is classified can effect whether it is prohibited, allowed, or conditional within a particular zoning district. The main issue in this case is whether the outdoor amphitheater located at LifeAustin Church is appropriately considered part of the overall "religious assembly" use, which is allowed under the site's Rural Residence (RR) zoning district, or is more appropriately regarded as "outdoor entertainment," which is not allowed or a community recreation use which is allowed with a conditional use permit.

This response addresses the Appellants' appeal of the use determination, as well as related development permits and associated conditions on use of the amphitheater building. However, this response does not address other non-zoning issues raised by the Appellants, such as sound amplification permits that are currently handled by another City Department, other alleged code violations or other appeals recently filed by adjacent property owners.

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BACKGROUND

A. Zoning Use Determinations

A zoning use determination is usually requested by a property owner or a representative of a property owner seeking confirmation or a determination of how a proposed use is defined in the Code and whether it is permitted, prohibited, or allowed conditionally on their property.

In most cases, how to classify a land use is clear under Code and there is little room for interpretation. Uses like auto sales, medical office or pet stores all fit clearly into specific uses categories defined in the Land Development Code. Some land uses, however, may not be perfectly defined or may conceivably fall within more than one category. Where that's the case, the director must classify a proposed use based on its similarities to other land uses that are more specifically defined in Code.

Use determinations are important to a property owner because they become the basis for the design of a site plan that will locate future improvements on a property (such as buildings, parking, landscaping, drainage and water quality facilities, etc.) and/or the design of a building on a site. As mentioned above, a use determination can also effect whether or not a particular use is allowed on a property.

Use determinations are usually done informally by various City staff concurrent with the review of a site plan, site plan exemption, or a building permit application. In some cases, however, an applicant may request that a more formal use determination be made prior to submittal of a development application. This type of formal, pre-application use determination is often requested if a proposed use straddles the line between different use categories, such that an applicant wants some certainty as to the department's position before designing the project.

The City Council adopted a code amendment in April 2012 that requires public notice for certain use determinations was adopted by ordinance in April 2012.¹ However, since the use determination for the amphitheater building at LifeAustin Church was made in 2008, prior to adoption of the 2012 ordinance, no public notice was required for that determination. In addition, while State law does require notice for a rezone or an amendment to the text of municipal zoning regulations, it has never—either now or in 2008—required public notice for a zoning use determination.

The Board of Adjustment (BOA) has legal authority to hear appeals of use determinations and to uphold, reverse, or modify a determination by the director. Over the years, the BOA has heard numerous use determination appeals.

¹ See Ordinance No. 20120426-122, accessible electronically at:
<http://www.austintexas.gov/edims/document.cfm?id=169593>

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B. The 2008 LifeAustin Use Determination and Related Approvals

On December 17, 2008, Mr. Carl Conley, the agent for PromiseLand West Church, sent Director Greg Guernsey a request for a use determination. In his request, Mr. Conley described the uses proposed on the property, including a 3,500-seat indoor multi-use building, chapel, and associated amphitheater building with a smaller 1,000-seat capacity. Mr. Conley's letter states that the activities in the larger indoor building that is used as the sanctuary would be "...the exact same type of activities...." that would take place in the amphitheater.

On December 23, 2008, Director Guernsey responded with a determination that the proposed amphitheater building and associated structure were "religious assembly" uses and thereby permitted within the Rural Residential (RR) zoning district. Director Guernsey's determination also set forth several conditions delineating the limitations of what could be considered "religious assembly" uses of the amphitheater building.

Beginning in 2011, PromiseLand West's successor entity, LifeAustin Church, began obtaining development approvals for construction of an indoor multi-use (sanctuary) building, outdoor amphitheater building, chapel, and related development on the property. As discussed more fully below, approval of the site plan was conditioned on recording a restrictive covenant, previously offered by the church, to tie-down some of the restrictions necessary to ensure that use of the amphitheater building would be consistent with a religious assembly use.

It should be noted that, in 2013, the City Council amended the Land Development Code to require that any outdoor amphitheater associated with a residential or civic use obtain a conditional use permit from the Land Use Commission. At the time LifeAustin submitted its site plan application for the amphitheater building, however, that ordinance was not in effect, so approval of the amphitheater building was solely administrative.

RESPONSE TO LIFEAUSTIN'S APPEAL

Under the BOA's Rules of Procedure, the BOA must find that "there is reasonable doubt or difference of interpretation" in order to overturn a decision by the director in a use determination or code interpretation appeal. As explained below, there is no basis for finding reasonable doubt or difference of interpretation with respect to the use determination or related development approvals.

1. Staff disagrees that "there is reasonable doubt or difference of interpretation" as to the specific intent of the regulations regarding "Religious Assembly" use.

The several appeals now before the BOA address the initial 2008 use determination as well as the site plan, restrictive covenant, and associated development approvals for the outdoor amphitheater. Fundamentally, however, the appeals boil down to a disagreement with the Director Guernsey's determination that the outdoor amphitheater is part of a "religious assembly" land use and not an outdoor entertainment or community recreation use.

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The Director disagrees with the Appellants' position that an amphitheater associated with the indoor multi-use (including sanctuary) building of the size and scale of LifeAustin Church can be considered anything but religious assembly, provided that the uses occurring in the amphitheater are consistent with the activities customarily occurring within the indoor multi-use building or other primary structure devoted to worship-related activities. Under City Code § 25-2-6(41), "religious assembly" is classified as a "civic" use and is specifically defined:

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.

Since all of the uses proposed for the amphitheater would be religious assembly if they occurred within the indoor multi-use (sanctuary) building or chapel, there is simply no basis under this definition for not treating the amphitheater as part of the religious assembly uses.

A religious assembly use may include many different activities, including musical and theatrical performances for the membership of the church; musical performances by youth groups, holiday celebrations, and theatrical reenactments of religious events; exhibit, benefits, fund raising events for the benefit of the congregation, the poor or homeless, or in response to a disaster are not uncommon, such as the recent Halloween floods or wildfires. In addition, many churches host boy/cub scout and girl scout troops, provide language classes, host or promote public meetings/lectures on life/financial counseling, health or on social topics such as human trafficking.

A religious assembly use is a permitted land use in a Rural Residence (RR) zoning district. The LifeAustin Church is a religious assembly use that is a permanent use not a temporary use as described in Section 25-2-921(C) of the Code and not similar a temporary church revival that may take place in a shopping center parking lot, or other temporary uses described in that section which includes Christmas tree sales, swap meets, carnivals, a new subdivision sales office or temporary construction trailers.

As stated previously, the LifeAustin Church buildings, including the amphitheater, are buildings used for religious assembly uses. The church acknowledged in 2008 by stating the same activities that take place in the large indoor building will be the same as the amphitheater building. It was not stated on the original letter from Mr. Conley, nor the site plan or building permit that the buildings on the property would be used community recreational facilities used as defined under City's the zoning regulations. An example of an outdoor community recreational (private) use is the Hyde Park Baptist Church Quarries Multi-Use Facility (4400 Mesa Woods) that includes facilities for basketball, tennis, baseball, softball, volleyball and basketball.

The amphitheater building is a permanent building that is enclosed by a roof and walls and required a building permit. The amphitheater building contains permanent

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bathrooms, offices, storage areas and associated permanent seating. It is not occupied by a temporary use as described in City Code § 25-2-921(C). The Appellants' reference to City Code § 9-1-2(5) appears to be an incorrect reference; however, if this is meant to reference to Chapter 9-2 (*Noise and Amplified Sound*), then this section is not applicable because it is devoted solely noise regulations and not zoning use regulations.

Appellants over-emphasize the significance of the occupancy classifications for the amphitheater and incorrectly suggest that it is inconsistent with religious assembly use. They point out that, although the building permit describes the amphitheater as a religious assembly use, the "Sub-Type" lists the building type as "C-318 Amusement, Social & Recreation Bldgs." These are not inconsistencies, however, because the "sub-type" addresses the U.S. Census Bureau building permit survey classification of the structure. It has nothing to do with use of the property from a zoning standpoint. Different uses may be permitted in the same building type; for instance, a school amphitheater building vs. a church amphitheater building.

2. Staff disagrees there is reasonable doubt or difference of interpretation as to the specific intent of the regulations relating to the procedures for filing of an appeal of the administrative decision.

As stated previously, the use determination for the amphitheater building at PromiseLand West Church was issued in 2008 via a communication sent directly to the applicant's representative. When the subsequent appeals were filed challenging the site plan, building permit, and other development approvals, the Director determined that the appeals were not filed within the 20-day appeal deadline established by City Code § 25-1-182(2) because each of the appeals was effectively a challenge to the 2008 use determination.

The Director did consult with the Law Department before making this decision and did not rush to judgement. Nor did the Director in any way attempt to conceal the 2008 use determination, since it was common practice at the time and allowed by ordinance to issue a use determination directly to the requestor without a public notice requirement. In association with their 2011 site plan, the Church offered a restrictive covenant to limit their property. The Director accepted the restrictive covenant as originally suggested by the church in 2008 and saw covenant as an additional tool to enforce the use limitations previously described with the use determination.

This memorandum does not address issues related to the subsequent litigation that occurred between the City and some of the Appellants in this case. It is the Director's understanding, however, that the litigation did not address the substance of the "religious assembly" land use issue or decide the question of whether or not the Appellants met the 20-day deadline for appealing under City Code § 25-1-182(2).

3. Staff believes the use determination would clearly permit the use which is in character with the uses enumerated for the various zones and the objectives of the zone in question because:

LifeAustin Church is a permanent and not a temporary religious assembly use. A religious assembly use is a permitted land use in a Rural Residence (RR) zoning district and which requires a minimum lot size of 1 acre, a maximum building coverage of 20% and maximum impervious cover of 25%. According to the original approved site plan, the church site is over 53 acres, with a building coverage of less than 3% and overall gross impervious cover less than 14%. In addition, the buildings on the property comply with the 35 foot height limitation and compatibility standards heights and setbacks. The PromiseLand West Church is meets the objectives for its zone and would be in character with other civic uses permitted in other RR and less restrictive residential zoning districts (ex. SF-1, SF-2, SF-3, etc.).

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Although the size of the church buildings is fairly large compared to most church structures, they would not be out of scale at any location within the City because of the commensurately large size of the 53-acre LifeAustin property. Given the LifeAustin's larger indoor multi-use (sanctuary) building seats 3,500, the 1,000 seat amphitheater size is not unreasonable. At the time the use determination and the date site plan was submitted, the size of churches buildings, including the amphitheater building were subject to administrative approval and no special amphitheater regulations applied to the site. At that time, Staff would have approved a church of a similar scale but of a smaller size elsewhere in the City (ex. 5.3 acre site with church building of 350 seats and amphitheater of 100 seats; or 0.53 acre site with church building of 35 seats and amphitheater of 10 seats), if the zoning district permitted use and buildings complied with heights, setbacks and compatibility standards..

4. Staff believes the previous interpretation does not grant a special privilege to one property inconsistent with other properties similarly situated.

The site plan and building permits were issued for a religious assembly use in permanent buildings (including the amphitheater building) and not for a temporary use set forth in Section 25-2-921 (C). This religious assembly land use was identified on the approved site plan and the building permits and were consistent with the 2008 use determination that stated activities in the larger indoor building that is used as the sanctuary would be "...the exact same type of activities...." that would take place in the amphitheater.

The Code definition of a religious assembly use, as quoted above, also includes the following language: "*A property tax exemption is prima facie evidence of religious assembly use.*" The PromiseLand West/LifeAustin Church qualified for a property tax exemption in 2008 and 2011, as well as today, as determined by the Travis County Appraisal District. Since the church does not operate a private primary or secondary educational facility, a community recreation facility or day care, this portion of the Code definition has added importance since it establishes "prima facie evidence" of the religious assembly use under the Code. The term "prima facie" generally means at first appearance and would signify that upon initial examination sufficient, corroborating evidence appears to support a case. Therefore, the tax exemption supports the religious assembly use determination.

The site plan and building permits do not grant a special privilege under City Code § 25-2-921 (C) for an outdoor religious assembly use, since these are not temporary uses.

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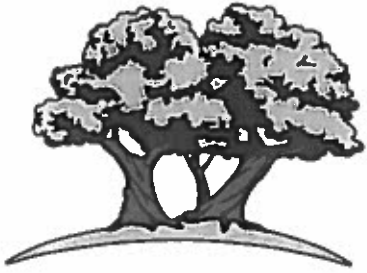
Although it is not uncommon for a religious assembly use to allow the use of outside areas for events such as weddings, a sunrise service, a religious celebration, an Easter Egg hunt or Halloween Trunk or Treat. Some religious assembly uses also offer prayer or resurrection gardens that are open to the public.

CONCLUSION

In closing, the use determination that allowed approval of the LifeAustin Church site plan and associated building permits was based on information provided by the church or their representatives that their buildings would be used for a religious assembly uses. The City approvals were limited to permit religious assembly uses and the use determinations, the issuance of permits and the processing of appeal requests that followed were based on the Code in effect at that time. It is clear that not all religious assembly activities are limited only to the interior of buildings, and only religious worship and religious education take place on tax exempt church property.

The City does not have the discretion to deny a development application based on the scale of a project if it complies with the Code, nor does it ability to deny applications based on the likelihood the future Code violations. City Council has changed the Code to require notice of use determinations and Land Use Commission approval of certain amphitheaters in the future, but these regulations do not apply to this BOA use determination appeal.

Public
responses
(slip in sheet)



OAK HILL ASSOCIATION OF NEIGHBORHOODS

Resolution in support of Hill Country Estates, Westview Estates, and Covered Bridge

May 13, 2015

WHEREAS, in 2008 OHAN passed a resolution (hereinafter "the 2008 Resolution") urging PromiseLand West Church (now "LifeAustin Church", hereinafter "the Church") to give full weight to the various options suggested by Hill Country Estates, Westview Estates, and Covered Bridge (the three neighborhoods in closest proximity to the Church's then-proposed development on Highway 71, hereinafter "the Neighborhoods"); and

WHEREAS, the 2008 Resolution further supported the Neighborhoods' position (a) in opposition to the proposed outdoor amphitheater as a host site for events with amplified sound, and (b) in trying to reduce the adverse impact on their residents' lives by the Church's proposed development; and

WHEREAS, in 2011, the site development permit was issued in error and Hill Country Estates Homeowners Association filed an appeal to the Board of Adjustment regarding the administrative approval of a site development permit for the construction of a large outdoor amphitheater on land zoned Rural Residential ("BOA Appeal"); and

WHEREAS, Hill Country Estates have never had their appeal heard, the BOA Appeal has never been forwarded to the Board of Adjustment and there has never been any public hearing regarding the approval of the site development permit for the construction of the large outdoor amphitheater; and

WHEREAS, City staff decided that Hill Country Estates did not have standing to appeal the administrative approval of the site development permit for the outdoor amphitheater and refused to forward the BOA Appeal to the Board of Adjustment, as required by state law and the City Code; and

WHEREAS, in 2012, Hill Country Estates and Covered Bridge filed suit against the City and Greg Guernsey regarding the administrative approval of the outdoor amphitheater and the refusal to forward the BOA Appeal to the Board of Adjustment ("Lawsuit"); and

WHEREAS, the City filed a motion to dismiss the Lawsuit on the grounds that Hill Country Estates and Covered Bridge did not have standing to challenge the administrative approval of the outdoor amphitheater; and

WHEREAS, after the trial court ruled in favor of the City to dismiss the Lawsuit, Hill Country Estates and Covered Bridge appealed the trial court ruling; and

WHEREAS, on May 7, 2015, the Court of Appeals ruled that the Board of Adjustment must decide on whether Hill Country Estates has standing to have the BOA Appeal heard by the Board of Adjustment; and

WHEREAS, the Church recently applied to the City of Austin for an Outdoor Music Venue sound permit (City Case # SO-2015-0174) to allow amplified sound at events held at the outdoor amphitheater; and

WHEREAS, at the request of Hill Country Estates and Covered Bridge, representatives from the Neighborhoods and the Church met recently regarding the sound permit application and the proposed use of the outdoor amphitheater.

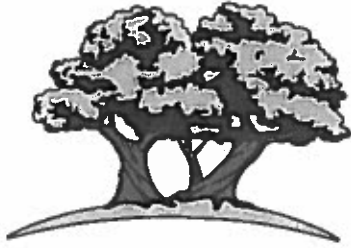
NOW, THEREFORE, BE IT RESOLVED that OHAN urges the City to forward the BOA Appeal to the Board of Adjustment prior to the approval of any sound permit for the outdoor amphitheater; and

BE IT FURTHER RESOLVED that OHAN opposes the issuance of the Outdoor Music Venue sound permit (City Case # SO-2015-0174) and OHAN urges the City to revoke the site development permit as to the outdoor amphitheater.

Adopted the 13th day of May, 2015.

/s/ Darryl W. Pruett
Darryl Pruett, OHAN President

F1/379



OAK HILL ASSOCIATION OF NEIGHBORHOODS

Neighbors in service to southwest Travis County

P.O. Box 90906, Austin, TX 78709-0906

ohan.org

Resolution in support of Hill Country Estates, Westview Estates, and Covered Bridge

September 10, 2014

WHEREAS, PromiseLand West Church (hereinafter "the Church") has purchased and partially developed a tract of land located at 8901 West SH 71 ("Church Property"); and

WHEREAS the Church Property is zoned rural residential (RR); and

WHEREAS, Hill Country Estates, Westview Estates, and Covered Bridge (all being members of OHAN, hereinafter "the Neighborhoods") are the three neighborhoods in closest proximity to the development (the "Dream City" development); and

WHEREAS, the Church's master plan calls for various structures including a Worship and family ministries building, parking facilities, and a large outdoor amphitheater with amplified sound capabilities; and

WHEREAS, since 2007 the Church has promoted the outdoor amphitheater as a venue for concerts, ballets and other forms of non-religious assembly and entertainment; and

WHEREAS, the Neighborhoods have not opposed the construction of enclosed buildings for worship services or religious education but the Neighborhoods have opposed the construction of the outdoor amphitheater since 2007; and

WHEREAS, in August 2008, OHAN adopted a resolution in full support of the Neighborhoods' efforts to reduce adverse impacts of the proposed Dream City development, including the outdoor amphitheater; and

WHEREAS, in October 2011 the Church obtained a site development permit that included a large outdoor amphitheater ("Development Permit"); and

WHEREAS, the Church has rebranded itself and the Dream City project as "Austin Life;" and

WHEREAS, in October 2011, City staff required the Church to record a restrictive covenant that, among other things, purported to expand the definition of religious assembly to include the very activities that the Church had been promoting for the outdoor amphitheater; and

WHEREAS, the Hill Country Estates and Covered Bridge associations timely filed an appeal to the Austin Board of Adjustment ("ABOA") challenging the legality of the administrative approval of the outdoor amphitheater under the City's Land Development Code ("Appeal"); and

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WHEREAS, City staff refused to forward the Appeal to the ABOA and ABOA has never held a public hearing on the Appeal; and

WHEREAS, in 2012, the Hill Country Estates and Covered Bridge associations filed a lawsuit against the City of Austin and Greg Guernsey, asserting among other claims, that the administrative approval of the outdoor amphitheater violated the City's zoning regulations and the refusal to forward the Appeal to the ABOA violates state law; and

WHEREAS, after the City approved the initial building permit for the outdoor amphitheater in 2013, the Hill Country Estates and Covered Bridge associations timely filed an appeal to the ABOA challenging the legality of the initial building permit under the City's Land Development Code; and

WHEREAS, the Church has filed an application with the City for a one year extension of the Development Permit that includes the outdoor amphitheater (SP-2011-185C(XT)); and

WHEREAS, the one year extension to the Development Permit has been administratively granted; and

WHEREAS, the Hill Country Estates and Covered Bridge associations have filed an appeal to the granting of the one year extension of the Development Permit to the Planning Commission ("Extension Appeal"); and

WHEREAS, Section 25-1-416 of the City Code authorizes the revocation of a released site plan if it is determined that site plan was released in error or the development does not comply with Title 25 of the City Code.

NOW, THEREFORE, BE IT RESOLVED, that OHAN continues to fully support the Neighborhoods in their efforts to stop the adverse impacts on their residents' lives by the outdoor amphitheater; and

BE IT FURTHER RESOLVED that OHAN supports the Extension Appeal; and

BE IT FURTHER RESOLVED that OHAN urges the Austin Planning Commission to consider and determine whether the Development Permit and Restrictive Covenant comply with Title 25 of the City Code before taking any action regarding the Extension Appeal; and

BE IT FURTHER RESOLVED that if the Extension Appeal is brought to the City Council for a hearing, OHAN urges the Austin City Council to consider and determine whether the Development Permit and Restrictive Covenant comply with the Title 25 of the City Code before taking any action regarding the Extension Appeal.

Passed by unanimous consent on September 10, 2014.

Jim Schissler, President
Oak Hill Association of Neighborhoods

F1
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Resolution in support of Hill Country Estates, Westview Estates, and Covered Bridge

August 6, 2008

WHEREAS, PromiseLand West Church (hereinafter "the Church") has purchased a tract of land on Highway 71 for its proposed "DreamCity" development; and

WHEREAS the Church's tract is currently zoned RR (rural residential); and

WHEREAS, Hill Country Estates, Westview Estates, and Covered Bridge (all being members of OHAN, hereinafter "the Neighborhoods") are the three neighborhoods in closest proximity to the DreamCity development; and

WHEREAS, the Church currently has approximately 800 members and hopes to grow to over several thousand members; and

WHEREAS, the proposed DreamCity master plan calls for various structures including a Phase One Worship and family ministries building, a future main worship center, parking facilities, secondary family ministry structures, and an outdoor amphitheatre with amplified sound capabilities; and

WHEREAS, the Church's DreamCity development calls for one avenue of public ingress and egress directly onto Highway 71; and

WHEREAS, representatives from the Neighborhoods and the Church have met several times to discuss plans for the proposed development and concerns voiced by residents of the Neighborhoods; and

WHEREAS, the two most overriding concerns from the Neighborhoods relate to sound and light from events held at the outdoor amphitheatre, and traffic/safety issues;

NOW, THEREFORE, BE IT RESOLVED: that OHAN urges the Church to give full weight to the various options suggested by the Neighborhoods; and

BE IT FURTHER RESOLVED: that OHAN specifically supports the Neighborhoods' position in opposition to the proposed DreamCity outdoor amphitheatre as a host site for events with amplified sound; and

BE IT FURTHER RESOLVED: that OHAN specifically supports the Neighborhoods' position that a center turn lane and acceleration lanes must be in place on Highway 71 prior to the construction of any proposed DreamCity Phase II improvements; and



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BE IT FURTHER RESOLVED: that OHAN specifically supports the Neighborhoods' position that access onto Mowinkle Street must never be used to furnish ingress and egress for the church and Church activities, and OHAN urges the Church to abide by its stated commitment to restrict any such traffic flow to service of the parsonage and for emergency vehicles; and

BE IT FURTHER RESOLVED: that OHAN fully supports the Neighborhoods in their efforts to try to reduce the adverse impact on their residents' lives by the proposed DreamCity development.

Adopted this 6th day of August, 2008.

Dwain K. Rogers Jr

Dwain Rogers, OHAN President

Heldenfels, Leane

From: Charlsa gmail [REDACTED]
Sent: Thursday, January 14, 2016 8:34 AM
To: Heldenfels, Leane
Subject: Re: Case C15-2015-0147 (amphitheater at 8901 SH 71 West)

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Hello, Ms. Heldenfels. I was present at the BOA December 9 meeting, the end result of which was the BOA's postponing until February and also requesting the neighborhoods and LifeAustin to work together to find a compromise solution. I would like to use my own comments and story points to emphasize that "finding a compromise" is exactly what the neighborhoods have been diligently trying to do—and thwarted in these efforts, by both the City and LifeAustin--since 2007.

- In April 2007 I was a Board member in Hill Country Estates Homeowners Association. At my initiation and invitation, Randy Phillips stood in my living room the evening of April 21, 2007 for his first meeting with a small group of residents from Hill Country Estates, Covered Bridge, and Westview Estates. Phillips had no idea of the City's ongoing Oak Hill Neighborhood Planning process, and he told us of his plans for the nearby tract of land to encompass a very large sanctuary and a very large outdoor amphitheater (as well as walking trails, sports facilities, and counseling centers, to name just a few). The neighbors were welcoming of Phillips and his church but expressed concern about issues of sound, lighting, and traffic. At that very first meeting, we suggested that Phillips consider enclosing the amphitheater. Many subsequent meetings were held among the neighborhoods and LifeAustin representatives through 2007, 2008, and 2009. I am quite certain that at every single one of those meetings, compromises were proposed and discussed.
- On August 7, 2008 John Donisi (attorney at that time for LifeAustin) sent an email to me giving us his "personal commitment that if and/or when this or any other filing at the City of this nature is contemplated by [LifeAustin], we would certainly let the group know." (This concerned LifeAustin's withdrawal of their request for a height variance.) This commitment was not upheld by Mr. Donisi, nor was it ever honored or given by any subsequent attorneys or representatives for LifeAustin.
- On January 12, 2009, at a meeting in my living room between representatives of the 3 neighborhoods and LifeAustin, the message expressed to the neighborhoods was that, while LifeAustin would like to have the neighborhoods' approval and acceptance of their entire project (including the outdoor amphitheater), our approval wasn't in fact needed because of the religious nature of the project. [Note: these are my own words expressing the message imparted to us by their representatives at that meeting.]
- On April 10, 2010, I was told by LifeAustin legal representative(s) that we had not heard from them because there was nothing new to report.

- On January 27, 2011 I received via US Mail a City of Austin "Notice of Filing of Application for Administrative Approval of a Site Plan" for the proposed LifeAustin development. Not one of the neighborhood representatives received any communication from any LifeAustin representative regarding the filing of this Application.

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As you and the Board members recognize, over the past 5 years this has become a very complex situation, made all the more so by City staff actions. I cannot stress strongly enough to your BOA members that, from the outset, the neighborhoods have taken the initiative for meetings, have been open and accessible, and have sought to work with Randy Phillips and LifeAustin representatives to find reasonable solutions. And the neighborhoods continue to do so, even today.

Thank you.

Charlsa Bentley, Austin (78704)
cell phone 512-965-6416

On Nov 4, 2015, at 9:32 AM, Heldenfels, Leane <Leane.Heldenfels@austintexas.gov> wrote:

Thanks for sending in your comments, I will include them in the Board's late back up packet that they receive on the dais at Monday's hearing. Note that this case will most likely be postponed to a special called meeting of Wed 12/9 and your comments will also be printed in the advance meeting packet for that hearing.

Take care.

Leane Heldenfels
Board of Adjustment Liaison
City of Austin

From: Charlsa gmail [REDACTED]
Sent: Wednesday, November 04, 2015 7:04 AM
To: Heldenfels, Leane
Subject: Case C15-2015-0147 (amphitheater at 8901 SH 71 West)

This message concerns various pending matters regarding the LifeAustin amphitheater located at 8901 SH 71 West (your case number C15-2015-0147). Although I now live in the Zilker neighborhood, I owned a home and lived in Hill Country Estates from 1994 to 2011. The issues surrounding the amphitheater began when I was an officer in Hill Country Estates Homeowners Association ("HCEHOA"); and as a result of the City's inappropriate handling of filings through these past years, these same issues can now have a huge negative impact on residential properties throughout the greater Austin area.

Accordingly, I am respectfully asking the Board of Adjustment to take several actions:

- Agree to the neighborhoods' request for postponement (from November 9 to December 9);
- Grant the site plan and building permit appeals filed by HCEHOA and Covered Bridge POA ("CBPOA"); and

- Instruct City staff to forward the Temporary Use Permit appeal filed by HCEHOA and CBPOA to the Board of Adjustment.

Thank you.

Charlsa Bentley (78704)

***If not for the dark of night,
there would be no stars. ***

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Heldenfels, Leane

From: Jim Buck [REDACTED]
Sent: Wednesday, December 09, 2015 4:38 PM
To: Heldenfels, Leane
Subject: Late Support Life Austin Board of Adjustment #C15-2015-0147 [REDACTED]

Ms. Heldenfels –

I understand this is extremely late as the hearing is in a few hours. However, I thought it was important to ensure that the Board understands the positioning of the Covered Bridge Board on this matter.

They will likely state that have no ill will against Life Austin “the entity” itself and that their issue is solely with the amphitheater. Well I want the Board of Adjustments to know this is not the case.

I was actually a member of the Board of Directors for the Covered Bridge Property Owners Association and when I joined I did not disclosed where I worshiped as it was not relevant to my ability to serve my community.

It had several disagreements with my colleagues on issues that dealt with the amphitheater, primarily on the approach and tone/tactic being taken. Most of these conversations were done via email so that we could try to maintain a proper decorum in our meetings. Part of what makes our country great is the democratic process and that Boards can discuss matters and agree to disagree.

It became clear that the Covered Bridge Board wanted a unanimous “anti-Life Austin thought process”. I tried explaining that I was only one vote in the process.

When I disclosed that I was a member of Life Austin, things deteriorated quickly, I was confronted, ridiculed, and asked “who sent me to spy on them”. The Covered Bridge Board began to meet without me and then removed me from the Board.

If the legal battle is with the city, and not with the church there would be no “conflict” to have a resident who worships at Life Austin on the Board...

I certainly can't speak for the other neighborhoods, but I can absolutely speak for the Board of Directors for Covered Bridge, they have hatred in their hearts.

Heldenfels, Leane

From: trudie w <[REDACTED]>
Sent: Wednesday, December 09, 2015 2:22 PM
To: Heldenfels, Leane
Subject: case number: C15-2015-0147 and amphitheater address: 8901 SH 71 West, Austin, Texas 78736.

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I urge the Board of Adjustment to grant the appeals filed by Hill Country Estates HOA and the Covered Bridge POA.

I urge the Board of Adjustment to direct staff to forward the Temporary Use Permit appeal filed by Hill Country Estates HOA and the Covered Bridge POA to the BOA. Staff's decisions in this matter affect parcels of land all over Austin. There has been no public input or awareness.

Trudie Weatherford
Austin, TX

Heldenfels, Leane

From: judd@apple.com on behalf of Maxx Judd [REDACTED]
Sent: Wednesday, December 09, 2015 9:58 AM
To: Heldenfels, Leane
Cc: Maxx Judd; Donn Gauger
Subject: Life Austin Church Amphitheater / Case # C15-2015-0147

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Dear Leane Heldenfels,

I'm a resident at 7200 Covered Bridge Drive in Austin and our property is on the ridge looking directly at Life Austin Church and their new Amphitheater.

I would like to add our frustration to the list of residents in our area about the frustrating noise we must tolerate about:

Life Austin Church and Life Austin Amphitheater
Case Number: C15-2015-0147
Address:
Life Austin
8901 SH 71 West
Austin, TX 78735

We've been concerned and actively involved in this for 7 years. The fact that they were given building permits on this amphitheater by city staff and that the city of Austin has now made unprecedented determinations on acceptable outdoor venues and special allowances for a religious organization are unethical and illegal.

The fact that Austin City Staff allowed:

- Staff interpreted the "religious assembly" use to include outdoor religious assembly and an outdoor amphitheater as principal uses under religious assembly.
- Staff interpretation also expanded "religious assembly use" to include musical and theatrical performances as well as benefit events at which tickets can be sold.

What has happened is a fully commercial outdoor performance space that thousands of neighbors now have to deal with on a very very regular basis.

The church has a HUGE INDOOR venue. Why they can't have their meetings inside and in private are beyond me. The staff has lied about their music test, their traffic studies, and their intentions. There's nothing "religious" going on, it's simply a money making scheme by a Pastor who is doing exactly what he wants and is funding it on the backs of his congregation who give untold amounts of money to the church, and now they have a fully operational music venue that they will book at every opportunity. It's an embarrassment for the City of Austin planning teams.

We will be at the meeting tonight at City Hall, and we can't wait to hear what will happen to correct this situation. We are going to hold the City of Austin accountable for the work that Greg Guernsey approved in the dark of night allowing Life Austin Church to get exactly what they wanted.

C15-2015-0147

Heldenfels, Leane

From: justen aranda [REDACTED]
Sent: Wednesday, December 09, 2015 12:19 PM
To: Heldenfels, Leane
Subject: Quick Question <http://www.coveredbridgeaustin.org/board-of-adjustment-hearing-life-austin-outdoor-amphitheater/>

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Hi Leane-

I plan to attend this evening in favor of the Life Austin church ample theatre. I feel that anything in the community of Austin that promotes music, arts & gathering areas for special events that benefit non-profits & charity's should be allowed to do so no matter what religion.

I wanted to make you aware in the hyper link above a few folks of this opposing HOA have sued this church that runs off donations & they have clearly pointed the finger at the city of Austin for making numerous mistakes yet this venue has appeared to have blessed so many lives already? How Ironical the City of Austin is at fault for doing good.

We love you guys!

Justen E. Aranda

Managing Member

Executive Real estate group LLC



EXECUTIVE

REAL ESTATE GROUP

Mobile : 512-750-5690

WRITTEN TESTIMONY OF PAULA JONES

December 9, 2015

C15-2015-0147

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My name is Paula Jones, and I am President of the Hill Country Estates Homeowners Association, one of the appellants in these appeals before the Board of Adjustment.

My involvement with the amphitheater began on February 25, 2007, when I read an article in the Austin American Statesman about the intent of Promise Land West church (PLW) to build a "dream city" very close to my neighborhood. The "dream city" would include an outdoor amphitheater to host concerts, dramas, jazz concerts, graduation ceremonies and other events. PLW would also construct facilities for community activities such as a recreational facility for basketball, racquetball, a weight room, softball and soccer fields, and a hike and bike trail. The Statesman quoted Randy Phillips saying: "What I want to build is a community resource....I didn't want to build a church."

In 2007 and 2008, residents of the Hill Country Estates and Covered Bridge, along with residents from other nearby neighborhoods, requested meetings with Randy Phillips and representatives of PLW, subsequently known as Dream City (now Life Austin).

These neighbors met with PLW several times and expressed willingness to work with them on just about anything they wanted, but we could not agree to what was then proposed as a 2,500 seat outdoor amphitheater to be used for amplified concerts, etc. We offered to accept an indoor music venue, but Randy Phillips personally said he hoped to have 8 events per month at the outdoor amphitheater (nearly 100 per year contemplated).

In November 2007 I began sending a number of emails to Glenn Rhoades who worked in the Development Assistance Center to check on the status of permits, zoning or site plan requests being filed by the church. In one response, Mr. Rhoades noted that he "did look on the [church's] website and saw the future plans. From what I saw they will definitely need a zoning change and a fully engineered site plan. The scope of what they are doing looks like it goes beyond what the City would classify as Accessory Uses."

I asked staff if the property owner submits a site plan similar to what is on the church's Web site (i.e., it has items that clearly aren't permitted like the amphitheater and ball fields), does the site plan get rejected? Staff responded that "[i]f the site plan does not meet the zoning requirements then yes, it would be rejected."

This is NOT about Religious Assembly. It doesn't matter that they want to call it Religious Assembly – that can be done indoors. This is about the outdoor assembly of people - and that is prohibited by the Zoning Code.

11/11/15

Randy Phillips was also later quoted by the Chronicle saying: "I know there's people who have moved out there expecting it to be a sleepy little place. I can see why they might be alarmed, but we're going to work hand in hand with the neighborhoods. We're not there to impose our will on others." He added that, "the community will *love* it."

For 8 ½ years, neighborhoods surrounding Life Austin and hundreds of residents of this community have told City staff, Randy Phillips and members of his church that amplified outdoor entertainment is prohibited in RR zoned neighborhoods and is not, in fact, loved by this community.

I respectfully request that you Make This Right, and grant the appeals.

Written testimony submitted on December 9, 2015.

Paula Jones
President,
Hill Country Estates Homeowners Association

WRITTEN TESTIMONY OF KIM BUTLER
December 9, 2015

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My name is Kim Butler. I live at 7100 Bright Star Lane, and I am a former officer of the Hill Country Estates HOA.

In an October 2008 meeting with area residents, LifeAustin presented their vision for what was then known as "Dream City", including a number of components...lit sports fields, a 6 story parking garage, and an amphitheater, that were incompatible with the location's RR zoning.

LifeAustin, when asked why they bought a property whose zoning would not allow most of the components they were proposing, replied "Because the price was right".

LifeAustin knew that their Site Plan was not appropriate for the property, but didn't care.

I was later the primary contact between the neighbors and Site Plan review case manager Sarah Graham.

During the final days of the Site Plan review, the neighbors pointed out the Site Plan included no use or frequency of use information for the amphitheater, and that its impact couldn't be determined without this information. Ms. Graham was in the process of pursuing the information from LifeAustin, when Greg Guernsey's December 2008 e-mail was used to close the review. The neighbors' request that the city acquire this critical information was denied.

Later, the neighbors were notified that a Restrictive Covenant Agreement would be created to define the use of the amphitheater. The neighbors asked to participate in the creation of the Restrictive Covenant.

Our request was ignored, and the Restrictive Covenant was created and approved by city staff working with representatives of LifeAustin. The very parties NEEDING protection were excluded from the process.

The Restrictive Covenant actually expanded Life Austin's use rights for the amphitheater, by changing the definition of Religious Assembly to include

all manners of entertainment, and other activities typically viewed as commercial or civic in nature.

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The city has since released LifeAustin from having to acquire a sound permit for the amphitheater, by classifying the 1,500 seat concert venue as a residence. There was no public discussion leading to this decision, so the neighbors were once again denied access and a voice.

Astonishingly, this is the very first public discussion regarding the Site Plan, as staff has refused to forward any of the neighbors' appeals to the BoA.

The neighbors finally have a voice. Please hear us; please grant our appeals of the Site Plan, the Restrictive Covenant Agreement, and the building permit.

Please. Make this right.

Kim Butler

WRITTEN TESTIMONY OF MIKE KIRK

December 9, 2015

C15-2015-0147

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1. Introduction
 - a. I am the President of the Covered Bridge Property Owners Association and I represent 340 families in Covered Bridge.
 - b. We are a part of the City of Austin and a multi-family residentially zoned neighborhood.
2. What I and my residents want to know is how can a church build and operate a 1500 seat outdoor amphitheater in our neighborhood? Literally in our back yards.
 - a. First, why would a Christian organization build and operate one of these without any due concern to its neighbors and neighborhoods? We the church representatives not to build this amphitheater.
 - b. Secondly, how could Life Austin manipulate the City permitting process to obtain the permits and approvals to build and operate such a venue? Again, in a RR zoned neighborhood.
 - i. And how could one City staff member make a decision and provide approval for the building of the 1500 seat amphitheater in such a location?
 - ii. Approval was provided and granted from Mr. Greg Guernsey from the City. Sadly Mr. Guernsey did not feel compelled to consult or notify the surrounding neighborhoods. The VERY interested party's...
3. The terrible City process and wrongful approvals is what has brought us here today. We now have an operating, admission charging outdoor amphitheater in our back yards.
 - a. The amplified noise, music, lights, clapping and shouting now enters our homes whether we like it or not.
 - b. It keeps us and our children up at night and is intrusive to whatever we are doing.
 - c. We didn't ask for this. In fact we begged LA not to do this. We trusted that our City officials would do the right thing and protect us.
4. The noise, music, lights, clapping and shouting now enters our homes whether we like it or not. The concert held this past Sunday was heard inside of many homes in Covered Bridge.
 - a. The sound upsets small children trying to go to sleep. It is intrusive to whatever we are doing.
 - b. We didn't ask for this. In fact we begged LA not to do this. We trusted that our City officials would do the right thing and protect us.
5. In addition to the unlawful permitting, lack of due process and unwanted intrusion into our homes, I would like to describe our community's greatest fear.
 - a. I have had conversations with three former homeowners in Covered Bridge whereby they expressed to me that the reason they were moving was the amphitheater.
 - b. These are the only ones that I personally know of but my fear is that there are many more.
 - c. Our real fear is that people will not want to move into CB and our housing values will plummet.

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- d. Several of us from CB recently visited another development and when we shared where we were from, the reaction from the local real-estate agent was, oh you're the ones with the amphitheater... Meaning the word is out and is probably already effecting our property values.
6. In closing.
- a. This is a travesty.
 - b. A travesty that a "Christian" organization would build such a monstrosity in a residential neighborhood without concern for its neighbors.
 - c. A travesty the City would permit and allow this to happen. And that one man has the authority with one email to permit this.
 - d. And that the City would allow the Amphitheater to run. Run without sound permits and operate as "any other residential dwelling"
 - e. It's a travesty that we have been fighting for seven years and we are only now being heard.
7. We are in no way opposed to religion, worship or religious assembly. But we are opposed to amplified sound invading and degrading our lives, our neighborhood and our home values.
8. Please correct this travesty now. You have the opportunity to make this right!

Mike Kirk

President, Covered Bridge Property Owners Association

2/23/15

LifeAustin Noise Report

Neighborhood tool to track noise complaints and sound patterns from LifeAustin's outdoor amphitheater. (Please submit a report for each noise event.)

Please also sign the petition --

- 1. Call 311 to file a noise complaint (Optional)
- 2. Enter incident number: (Optional)

3. When was the event?
12/09/2015 10:30 AM

4. Find your location on the map and click to add a marker
(Can be approximate)

5. How loud was it?
0 1 2 3 4 5

Noise levels are very subjective, but here's a guide:

- 0 I couldn't hear anything
- 1 I could hear it very faintly
- 2 I could occasionally hear it outside
- 3 I could hear singing and cheering, but not inside
- 4 I could hear it in my house, but a TV would drown it out
- 5 My windows were rattling and there was no escape

6. Name / Contact / Comments (Optional)

Name

Email

Comments

7. Submit! (Only your name and noise level will be displayed. Other information is never shared.)

Submit Report

Created by Alan Watts / data.com

www.lifeaustinnoise.org
LifeAustin Noise Report

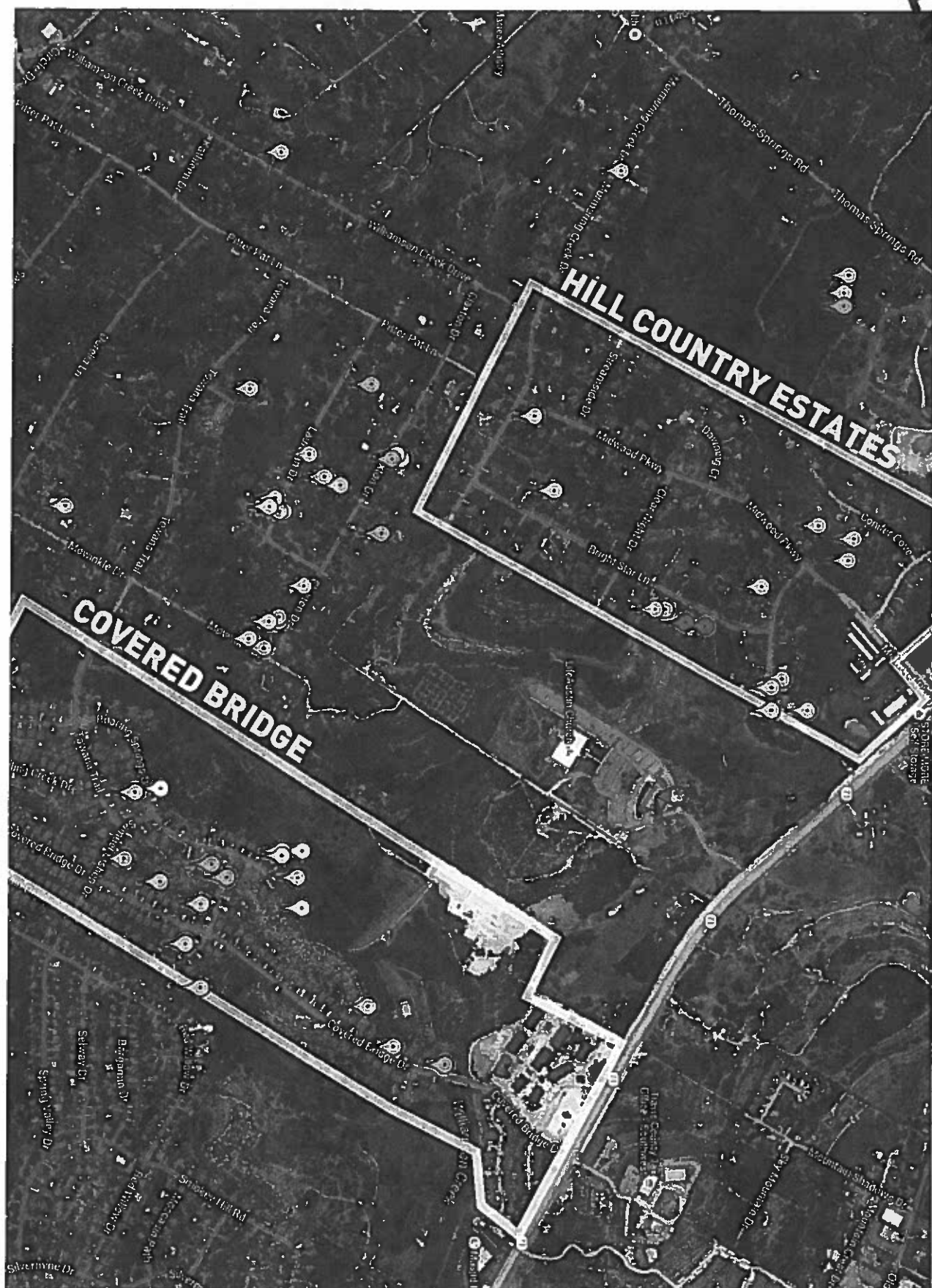


Show all 65 noise reports

Location of LifeAustin Amphitheater

[Attachment 1] LifeAustinNoise.org screenshot

FD-301



[Attachment 2] Map detail with neighborhood boundaries

Heldenfels, Leane

From: Thomas Thayer <[REDACTED]>
Sent: Tuesday, December 08, 2015 11:23 PM
To: Heldenfels, Leane
Subject: C15-2015-0147 8901 SH 71 West, Austin, Texas 78736

PL 3

Dear members of the BOA,

I ask you to grant the appeals filed by Hill Country Estates and Covered Bridge POA in regard to the outdoor amphitheater at 8901 SH 71 West C15-2015-0147.

There was no public hearing held on the site plan or temporary use permit for the outdoor amphitheater on this property. The authorization for the facility was given via e-mail with no notification to any neighborhood groups. Therefore, they should have the chance to appeal the decision.

This amphitheater is a commercial facility that sells tickets. This sets it separate from a purely religious facility and regular worship services. There is no issue with there being a church there, and there is no issue with them playing music. The only problem is the noise from loud music that can be heard inside people's houses. If the amphitheater were enclosed, there would be no problem.

Please revoke the outdoor amphitheater permit and allow neighbors to have some peace and quiet. The church can worship freely without bothering their neighbors.

Thank you.

Tom Thayer
7405 Scenic Brook Dr

Heldenfels, Leane

EL
3/99

From: David King [REDACTED]
Sent: Tuesday, December 08, 2015 9:43 AM
To: Heldenfels, Leane
Subject: BoA Hearing - LifeAustin Outdoor Amphitheater 8901 SH 71 West - Case C15-2015-0147 - December 9, 2015

William Burkhardt, Chair, Melissa Hawthorne, Vice Chair, Brooke Bailey, Michael Bengali, Kelly Blume, Eric Goff, Don Leighton-Burwell, Rahm McDaniel, Melissa Neslund, James Valdez, and Michael Von Ohlen, Board of Adjustment,

Please grant the appeals filed by Hill Country Estates Homeowners Association and the Covered Bridge Property Owners Association. Please direct staff to forward the temporary use permit appeal filed by Hill Country Estates Homeowners Association and the Covered Bridge Property Owners Association to the Board of Adjustment (BoA).

City staff administratively approved a site plan for the LifeAustin Church that included a 1,500 seat outdoor amphitheater on property zoned rural residential and interpreted City code to allow outdoor musical and fundraising events without conditional or temporary use permits.

This issue could affect every neighborhood in the City. Based on staff's expansive interpretation of City code, any church could hold outdoor events without seeking conditional or temporary use permits from the Planning Commission or City. Neighborhoods would have no right to oppose or limit the number of events.

Please consider the following points regarding this matter:

- Staff did not have the authority to administratively approve LifeAustin's construction of an outdoor amphitheater.
- Ticketed concerts, plays and other forms of entertainment are not religious assembly.
- City should enforce the zoning code as it is plainly written.
- Staff's interpretations set a precedent to allow all church grounds to become outdoor entertainment venues.
- If the code says non-residential zoning is required to have an outdoor event with more than 50 people, how can staff approve gatherings of 1,500 people in the Rural Residential zoning district?
- The zoning code requires a conditional use permit (and public hearings) to be obtained before property owners can hold graduations, theatrical plays/productions, meetings, concerts, recitals, ballets, family movie nights, and other events is an event center. Staff has ignored this requirement.
- The amphitheater should be enclosed.
- Rural Residential zoning means a rural and quiet neighborhood.
- The LifeAustin outdoor amphitheater is not a residence and it is not quiet.
- Loud concerts on school nights are bad for school aged children.
- Recurring loud outdoor concerts harm property values. How would you feel if you could hear concert music inside your home on a weekly basis?
- The approval of the outdoor amphitheater violates the letter and the spirit of the zoning code.

Respectfully,

David King
Zilker Neighborhood Resident
Austin, TX 78704

Heldenfels, Leane

From: Juergen [REDACTED]
Sent: Monday, December 07, 2015 9:25 AM
To: Heldenfels, Leane; Juergen
Subject: RE: Case #: C15-2015-0147; address: Life Austin, 8901 SH 71 West
[REDACTED]

EJ
400

Dear Ms. Heldenfels,
thanks a lot for your help. Me and my wife wanted to attend the meeting on Wednesday, however we have to be out of town that day and cannot attend therefore.
I wish the board will consider our inputs very seriously, and overturn the decision for operating an outdoor amphi theatre. Just last night again they had a concert over there, and the music could be heard very far away. Even in our place, we were able to hear the songs they were playing!

Best regards,
Juergen & Maria Lutz

From: Leane.Heldenfels@austintexas.gov
To: [REDACTED]
Subject: RE: Case #: C15-2015-0147; address: Life Austin, 8901 SH 71 West
Date: Tue, 10 Nov 2015 15:50:19 +0000

Thanks for sending in your comments. I will include them in the Board's 12/9 Special Called Meeting packet with the other case material and other responses received.
Take care,
Leane Heldenfels
Board of Adjustment Liaison

From: Juergen [mailto:[REDACTED]]
Sent: Monday, November 09, 2015 3:24 PM
To: Heldenfels, Leane; Juergen
Subject: Case #: C15-2015-0147; address: Life Austin, 8901 SH 71 West

Dear Ms. Heldenfels,
My wife and I are residents of Hill Country Estates subdivision, we live in 9501 Murmuring Creek Drive.

I'm writing you today to express my and my wife's feelings and experience with the noise of the amphitheatre at the Life Austin property.
Despite the fact that our house is quite a distance from the amphitheatre we are able to hear music from there quite often. It of course depends on how the wind blows it's sometimes more and sometimes less. If the wind blows in the "right" direction, the noise is quite annoying!
However we cannot imagine the noise and loudness it will have with neighbors who live closer to the amphitheatre.

The thing which bothers us most is the fact that according to the zoning code it is illegal to build and entertain outdoor assembly in that area. We consider Life Austin as a religious place, where Christian services are held.