

EXHIBIT 9

Service Request Summary Report 15-00195136

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

Type: Loud Commercial Music	SR #: 15-00195136
Area: POLICE PATROL SECTORS - DAVID	Priority: Standard
Group: Economic Development Department	Status: Open
Jurisdiction: City of Austin	Status Date: Aug 15, 2015 7:49:37 PM
Input By: Spot311 Interface	Created Date: Aug 15, 2015 7:49:37 PM
Method: Spot311 Interface	Overdue on: Aug 17, 2015 7:49:37 PM
Received:	
Location: 8901 W SH 71, AUSTIN, TX	
Location Details: 8901 W SH 71; XY: 3064139.3488515234, 10063747.415538847; LatLng: 30.25192144217055, -97.90218239513062	
SR Comments: Life Austin AMPHITHEATER music amplified event. Howling loud music, guitar and vocal. Sounds like 6th street came here to quiet residential neighborhood. Hear inside our back bedroom blocks away. Just starting now... Not main act yet. Will get louder, based on first concert.	

Flex Notes

Flex Note Question

Where is the music coming from?

Is the music coming from an indoor or outdoor venue?

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

During which timeframe is the music causing a disturbance?

If citizen is bilingual, please indicate language.

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

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

Flex Note Answer

Venue

Outdoor

Saturday

No

Participants

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

Activities

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

Details

Service Request Summary Report

15-00248436

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

Type: Loud Commercial Music	SR #: 15-00248436
Area: POLICE PATROL SECTORS - DAVID	Priority: Standard
Group: Economic Development Department	Status: Closed
Jurisdiction: City of Austin	Status Date: Oct 19, 2015 6:03:05 PM
Input By: Spot311 Interface	Created Date: Oct 17, 2015 7:53:13 PM
Method: Spot311 Interface	Overdue on: Oct 19, 2015 7:53:13 PM
Received:	
Location: 8901 W SH 71, AUSTIN, TX 78736	
Location Details: 8901 W SH 71; XY: 3064572.257740162, 10064195.456214363; LatLng: 30.253127057596867, -97.9007806123566	
SR Comments: Amplified concert at lifeaustin amphitheater. Loud whoops n applause, drums n piano, otherwise a nice moonlit night in October. These people are disturbing the peace, in our homes and yards. Why? Why rob our peace? What have we done to them to receive such treatment?	

Flex Notes

Flex Note Question

Where is the music coming from?

Is the music coming from an indoor or outdoor venue?

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

During which timeframe is the music causing a disturbance?

If citizen is bilingual, please indicate language.

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

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

Flex Note Answer

Venue

Outdoor

Saturday

No

Activities

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

Details

Activities

Activities	Assigned Staff	Due Date	Completed Date	Outcome
CLOSE OF SR	Loud Music Staff		Oct 19, 2015 6:03:04 PM	Completed - Close SR

Details

Service Request Summary Report **15-00248427**

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

Type: Loud Commercial Music	SR #: 15-00248427
Area: POLICE PATROL SECTORS - DAVID	Priority: Standard
Group: Economic Development Department	Status: Closed
Jurisdiction: City of Austin	Status Date: Oct 19, 2015 6:02:57 PM
Input By: Spot311 Interface	Created Date: Oct 17, 2015 7:35:08 PM
Method: Spot311 Interface	Overdue on: Oct 19, 2015 7:35:08 PM
Received:	
Location: 8901 W SH 71, AUSTIN, TX 78736	
Location Details: 8901 W SH 71; XY: 3064103.7459669216, 10063937.095678205; LatLng: 30.252444999999948, -97.90228200000001	
SR Comments: Loud music, can hear in my house	

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

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

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

Service Request Summary Report **15-00248279**

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

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

SR #: 15-00248279
Priority: Standard
Status: Closed
Status Date: Oct 19, 2015 6:02:37 PM
Created Date: Oct 17, 2015 4:10:09 PM
Overdue on: Oct 19, 2015 4:10:09 PM

Location: 8901 W SH 71, AUSTIN, TX 78736

Location Details: 8901 W SH 71; XY: 3064133.001749979, 10063927.913163159; LatLng: 30.252417999999487, -97.902190000000002

SR Comments: Stupid loud music

Flex Notes

Flex Note Question

Where is the music coming from?

Is the music coming from an indoor or outdoor venue?

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

During which timeframe is the music causing a disturbance?

If citizen is bilingual, please indicate language.

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

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

Flex Note Answer

Venue

Outdoor

Saturday

No

Activities

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

Details

Activities

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

Details

Service Request Summary Report

15-00239011

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

Type: Loud Commercial Music Area: POLICE PATROL SECTORS - DAVID Group: Economic Development Department Jurisdiction: City of Austin Input By: Spot311 Interface Method Received: Spot311 Interface Location: 8901 W SH 71, AUSTIN, TX 78736 Location Details: 8901 W SH 71; XY: 3064509.459013169, 10064146.290545022; LatLng: 30.25299567973601, -97.90098286421551 SR Comments: Another loud concert, Life Austin Amphitheater acting unneighborly by blasting their high powered music through multiple neighborhoods, disturbing our evening peace. How is this worship, creating noise and stress in our community? Professional amphitheater sound penetrating our homes. How is this NOT commercial, intentional disturbance? Our use and enjoyment of property is diminished.	SR #: 15-00239011 Priority: Standard Status: Closed Status Date: Oct 8, 2015 6:10:26 PM Created Date: Oct 6, 2015 3:30:20 PM Overdue on: Oct 8, 2015 3:30:20 PM
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Flex Notes

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

Activities

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

Service Request Summary Report

15-00237329

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

Type: Loud Commercial Music
Area: POLICE PATROL SECTORS - DAVID
Group: Economic Development Department
Jurisdiction: City of Austin
Input By: Spot311 Interface
Method Received: Spot311 Interface
Location: 8901 W SH 71, AUSTIN, TX 78736
Location Details: 8901 W SH 71; XY: 3064202.67014408, 10063657.86045338; Lat/Lng: 30.251671456032998, -97.90198809437317

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

SR Comments: This is absurd. I have to turn the tv on full blast in my living room to avoid hearing the roaring concert happening in the Life Austin amphitheater over 1000 feet away from my house. Please make it stop!

Flex Notes

Flex Note Question

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

Flex Note Answer

Venue
 Outdoor
 Sunday

No

Activities

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

Details

Activities

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

Details

Service Request Summary Report

15-00225068

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

Type: Loud Commercial Music

Area: POLICE PATROL SECTORS - DAVID

Group: Economic Development Department

Jurisdiction: City of Austin

Input By: Spot311 Interface

Method: Spot311 Interface

Received:

Location: 8901 W SH 71, AUSTIN, TX 78736

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

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

SR #: 15-00225068

Priority: Standard

Status: Closed

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

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

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

Flex Notes

Flex Note Question

Where is the music coming from?

Is the music coming from an indoor or outdoor venue?

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

During which timeframe is the music causing a disturbance?

If citizen is bilingual, please indicate language.

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

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

Flex Note Answer

Venue

Outdoor

Sunday

Activities

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

Details

Activities	Assigned Staff	Due Date	Completed Date	Outcome
CLOSE OF SR	Loud Music Staff		Sep 22, 2015 6:07:36 PM	Completed - Close SR

Details

Service Request Summary Report

15-00225046

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

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

SR #: 15-00225046

Priority: Standard

Status: Closed

Status Date: Sep 22, 2015 6:08:35 PM

Created Date: Sep 20, 2015 4:28:42 PM

Overdue on: Sep 22, 2015 4:28:42 PM

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

Flex Notes

Flex Note Question

Where is the music coming from?

Is the music coming from an indoor or outdoor venue?

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

During which timeframe is the music causing a disturbance?

If citizen is bilingual, please indicate language.

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

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

Flex Note Answer

Venue

Outdoor

Sunday

Activities

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

Details

Activities

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

Details

Service Request Summary Report

15-00225044

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

Type: Loud Commercial Music
Area: POLICE PATROL SECTORS - DAVID
Group: Economic Development Department
Jurisdiction: City of Austin
Input By: Spot311 Interface
Method: Spot311 Interface
Received:
Location: 8901 W SH 71, AUSTIN, TX 78736
Location Details: 8901 W SH 71; XY: 3064115.256017483, 10063619.951832676; LatLng: 30.25157250022284, -97.9022675039476

SR #: 15-00225044
Priority: Standard
Status: Closed
Status Date: Sep 22, 2015 6:08:31 PM
Created Date: Sep 20, 2015 4:25:39 PM
Overdue on: Sep 22, 2015 4:25:39 PM

SR Comments: Very loud music coming from Life Austin amphitheater. They know how to keep the noise level to a point where it won't bother the neighbors but are choosing not too. Ridiculous in a rural residential neighborhood

Flex Notes

Flex Note Question

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

Flex Note Answer

Venue
 Outdoor
 Sunday

No

Activities

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

Service Request Summary Report

15-00212137

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

Type: Loud Commercial Music

Area: POLICE PATROL SECTORS - DAVID

Group: Economic Development Department

Jurisdiction: City of Austin

Input By: Spot311 Interface

Method: Spot311 Interface

Received:

Location: 8901 W SH 71, AUSTIN, TX 78736

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

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

SR #: 15-00212137

Priority: Standard

Status: Closed

Status Date: Sep 6, 2015 6:02:31 PM

Created Date: Sep 4, 2015 5:11:01 PM

Overdue on: Sep 6, 2015 5:11:01 PM

Flex Notes

Flex Note Question

Flex Note Answer

Where is the music coming from?

Venue

Is the music coming from an indoor or outdoor venue?

Outdoor

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

Friday

During which timeframe is the music causing a disturbance?

If citizen is bilingual, please indicate language.

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

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

Activities

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

Details

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

Details

Service Request Summary Report

15-00211437

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

Type: Loud Commercial Music Area: POLICE PATROL SECTORS - DAVID Group: Economic Development Department Jurisdiction: City of Austin Input By: Spot311 Interface Method: Spot311 Interface Received: Location: 8901 W SH 71, AUSTIN, TX 78736 Location Details: 8901 W SH 71; XY: 3063836.490357109, 10063969.451782247; LatLng: 30.252549999999488, -97.903126	SR #: 15-00211437 Priority: Standard Status: Closed Status Date: Sep 5, 2015 6:15:43 PM Created Date: Sep 3, 2015 8:54:06 PM Overdue on: Sep 5, 2015 8:54:06 PM
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SR Comments: Insanely loud music, disturbing the peace, preventing me from enjoying my property, frightening all of my pets worse than fireworks

Flex Notes

Flex Note Question

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

Flex Note Answer

Venue
 Outdoor
 Thursday
 No

Activities

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

Service Request Summary Report

15-00211332

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

Type: Loud Commercial Music
Area: POLICE PATROL SECTORS - DAVID
Group: Economic Development Department
Jurisdiction: City of Austin
Input By: Spot311 Interface
Method: Spot311 Interface
Received:
Location: 8901 W SH 71, AUSTIN, TX 78736
Location Details: 8901 W SH 71; XY: 3064124.173393526, 10064133.118342197; LatLng: 30.25298262643135, -97.90220375158174

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

SR Comments: Life Austin amphitheater loud enough to hear inside home almost to Thomas Springs. Inside. Many blocks away. Unannounced concert outside?

Flex Notes

Flex Note Question

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

Flex Note Answer

Venue
 Outdoor
 Thursday

No

Activities

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

Details

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

Details

Service Request Summary Report

15-00211301

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

Type: Loud Commercial Music
Area: POLICE PATROL SECTORS - DAVID
Group: Economic Development Department
Jurisdiction: City of Austin
Input By: Spot311 Interface
Method Received: Spot311 Interface
Location: 8901 W SH 71, AUSTIN, TX 78736
Location Details: 8901 W SH 71; XY: 3064296.671999717, 10063895.477143535; LatLng: 30.252318999999464, -97.90167400000001

SR #: 15-00211301
Priority: Standard
Status: Closed
Status Date: Sep 5, 2015 6:16:19 PM
Created Date: Sep 3, 2015 6:32:08 PM
Overdue on: Sep 5, 2015 6:32:08 PM

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

Flex Notes

Flex Note Question

Flex Note Answer

Where is the music coming from?

Music Festival or Event

Is the music coming from an indoor or outdoor venue?

Outdoor

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

Thursday

During which timeframe is the music causing a disturbance?

If citizen is bilingual, please indicate language.

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

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

No

Activities

Activities

Assigned Staff

Due Date

Completed Date

Outcome

Review Request

Sep 5, 2015 6:00:00 PM

Overdue Activity Created

Details

Activities

Activities

Assigned Staff

Due Date

Completed Date

Outcome

CLOSE OF SR

Loud Music Staff

Sep 5, 2015 6:16:18 PM

Completed - Close SR

Details

Service Request Summary Report

15-00207059

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

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

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

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

Flex Notes

Flex Note Question

Where is the music coming from?

Is the music coming from an indoor or outdoor venue?

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

During which timeframe is the music causing a disturbance?

If citizen is bilingual, please indicate language.

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

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

Flex Note Answer

Venue

Outdoor

Saturday

No

Activities

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

Details

Activities

Activities	Assigned Staff	Due Date	Completed Date	Outcome
CLOSE OF SR	Loud Music Staff		Aug 31, 2015 6:06:26 PM	Completed - Close SR

Details

Service Request Summary Report

15-00207052

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

Type: Loud Commercial Music
Area: POLICE PATROL SECTORS - DAVID
Group: Economic Development Department
Jurisdiction: City of Austin
Input By: Spot311 Interface
Method Spot311 Interface
Received:
Location: 8901 W SH 71, AUSTIN, TX 78736
Location 8901 W SH 71; XY: 3064226.416709211, 10063832.945939519; LatLng: 30.252151327832564,
Details: -97.90190078451619

SR #: 15-00207052
Priority: Standard
Status: Closed
Status Date: Aug 31, 2015 6:06:18 PM
Created Date: Aug 29, 2015 8:50:01 PM
Overdue on: Aug 31, 2015 8:50:01 PM

SR Comments: A very loud outdoor concert is happening at the Life Austin Outdoor Amphitheater. I can hear it in my home. It should not be audible beyond their property line, and I know that many others in my neighborhood are bothered by this as well.

Flex Notes

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

Activities

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

Details

Activities	Assigned Staff	Due Date	Completed Date	Outcome
CLOSE OF SR	Loud Music Staff		Aug 31, 2015 6:06:18 PM	Completed - Close SR

Details

Service Request Summary Report

15-00207051

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

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

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

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

Flex Notes

Flex Note Question

Flex Note Answer

Where is the music coming from?

Venue

Is the music coming from an indoor or outdoor venue?

Outdoor

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

Saturday

During which timeframe is the music causing a disturbance?

If citizen is bilingual, please indicate language.

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

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

No

Activities

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

Details

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

Details

Service Request Summary Report

15-00207030

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

Type: Loud Commercial Music	SR #: 15-00207030
Area: POLICE PATROL SECTORS - DAVID	Priority: Standard
Group: Economic Development Department	Status: Closed
Jurisdiction: City of Austin	Status Date: Aug 31, 2015 6:05:05 PM
Input By: Spot311 Interface	Created Date: Aug 29, 2015 8:22:55 PM
Method Received: Spot311 Interface	Overdue on: Aug 31, 2015 8:22:55 PM
Location: 8901 W SH 71, AUSTIN, TX 78736	
Location Details: 8901 W SH 71; XY: 3064212.6834640396, 10063974.07237727; LatLng: 30.252540100667577, -97.90193450073656	
SR Comments: Loud concert next door to my neighborhood! This is outrageous. The third outdoor concert this week alone! It has to stop!	

Flex Notes

Flex Note Question

Where is the music coming from?

Is the music coming from an indoor or outdoor venue?

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

During which timeframe is the music causing a disturbance?

If citizen is bilingual, please indicate language.

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

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

Flex Note Answer

Venue

Outdoor

Saturday

No

Activities

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

Details

Activities	Assigned Staff	Due Date	Completed Date	Outcome
CLOSE OF SR	Loud Music Staff		Aug 31, 2015 6:05:04 PM	Completed - Close SR

Details

Service Request Summary Report

15-00207025

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

Type: Loud Commercial Music
Area: POLICE PATROL SECTORS - DAVID
Group: Economic Development Department
Jurisdiction: City of Austin
Input By: Spot311 Interface
Method Received: Spot311 Interface
Location: 8901 W SH 71, AUSTIN, TX 78736
Location Details: 8901 W SH 71; XY: 3064095.2029840816, 10063706.63806134; LatLng: 30.2518119999999468, -97.902325000000002

SR #: 15-00207025

Priority: Standard

Status: Closed

Status Date: Aug 31, 2015 6:04:47 PM

Created Date: Aug 29, 2015 8:16:48 PM

Overdue on: Aug 31, 2015 8:16:48 PM

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

Flex Notes

Flex Note Question

Where is the music coming from?

Is the music coming from an indoor or outdoor venue?

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

During which timeframe is the music causing a disturbance?

If citizen is bilingual, please indicate language.

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

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

Flex Note Answer

Music Festival or Event

Outdoor

Saturday

Activities

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

Details

Activities

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

Details

Service Request Summary Report **15-00206437**

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

Type: Loud Commercial Music	SR #: 15-00206437
Area: POLICE PATROL SECTORS - DAVID	Priority: Standard
Group: Economic Development Department	Status: Closed
Jurisdiction: City of Austin	Status Date: Aug 30, 2015 6:14:43 PM
Input By: Spot311 Interface	Created Date: Aug 28, 2015 9:22:48 PM
Method: Spot311 Interface	Overdue on: Aug 30, 2015 9:22:48 PM
Received:	
Location: 8901 W SH 71, AUSTIN, TX 78736	
Location Details: 8901 W SH 71; XY: 3064136.0663980665, 10064203.116132788; LatLng: 30.253174331289724, -97.90216124859772	
SR Comments: Howling loud life Austin amphitheater. Hear in back bedroom many blocks away. Too loud outside to enjoy moon and evening in yard.	

Flex Notes

Flex Note Question

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

Flex Note Answer

Venue
 Outdoor
 Friday

No

Activities

Activities	Assigned Staff	Due Date	Completed Date	Outcome
Review Request		Aug 30, 2015 6:00:00 PM		Overdue Activity Created

Details

Activities	Assigned Staff	Due Date	Completed Date	Outcome
CLOSE OF SR	Loud Music Staff		Aug 30, 2015 6:14:43 PM	Completed - Close SR

Details

Service Request Summary Report

15-00202056

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

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

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

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

Flex Notes

Flex Note Question

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

Flex Note Answer

Venue
 Outdoor
 Sunday
 8pm to 10pm

Activities

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

Details

Activities

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

Details

Service Request Summary Report

15-00195221

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

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

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

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

Flex Notes

Flex Note Question

Where is the music coming from?

Flex Note Answer

Venue

Is the music coming from an indoor or outdoor venue?

Outdoor

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

Saturday

During which timeframe is the music causing a disturbance?

If citizen is bilingual, please indicate language.

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

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

No

Participants

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

Activities

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

Details

Service Request Summary Report

15-00195206

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

Type: Loud Commercial Music
Area: POLICE PATROL SECTORS - DAVID
Group: Economic Development Department
Jurisdiction: City of Austin
Input By: Spot311 Interface
Method: Spot311 Interface
Received:
Location: 8901 W SH 71, AUSTIN, TX
Location: 8901 W SH 71; XY: 3064080.102150591, 10064287.857840886; LatLng: 30.253410643490483,
Details: -97.90233259036214
SR Comments: Very loud music and concert from huge outdoor music venue. Can hear it all in house.

SR #: 15-00195206

Priority: Standard

Status: Open

Status Date: Aug 15, 2015 9:14:53 PM

Created Date: Aug 15, 2015 9:14:53 PM

Overdue on: Aug 17, 2015 9:14:53 PM

Flex Notes

Flex Note Question

Flex Note Answer

Where is the music coming from?

Venue

Is the music coming from an indoor or outdoor venue?

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

Saturday

During which timeframe is the music causing a disturbance?

If citizen is bilingual, please indicate language.

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

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

No

Participants

Participant Type

Participant Name

Address

Email

Phones/Extension

citizen

Sealy, Earl

proud.texas@yahoo.com

OA Employee

Activities

Activities

Assigned Staff

Due Date

Completed Date

Outcome

view Request

Aug 17, 2015 6:00:00 PM

ails

Service Request Summary Report

15-00195193

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

Type: Loud Commercial Music
Area: POLICE PATROL SECTORS - DAVID
Group: Economic Development Department
Jurisdiction: City of Austin
Input By: Spot311 Interface
Method: Spot311 Interface
Received:
Location: 8901 W SH 71, AUSTIN, TX
Location: 8901 W SH 71; XY: 3064456.8399453997, 10064192.062100919; LatLng: 30.253124665974667,
Details: -97.90114630888765

SR #: 15-00195193
Priority: Standard
Status: Open
Status Date: Aug 15, 2015 8:54:49 PM
Created Date: Aug 15, 2015 8:54:49 PM
Overdue on: Aug 17, 2015 8:54:49 PM

SR Comments: Outdoor concert is very loud. Can hear music and crowd in house.

Flex Notes

Flex Note Question

Flex Note Answer

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

Venue
Outdoor
Saturday

No

Participants

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

Activities

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

Service Request Summary Report

15-00195189

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

Type: Loud Commercial Music Area: POLICE PATROL SECTORS - DAVID Group: Economic Development Department Jurisdiction: City of Austin Input By: Spot311 Interface Method: Spot311 Interface Received: Location: 8901 W SH 71, AUSTIN, TX Location Details: 8901 W SH 71; XY: 3064181.913985597, 10064266.339116745; LatLng: 30.253345372299368, -97.90201169953613 SR Comments: Very loud music, audience clapping and yelling at 1500 seat Life Austin Amphitheater. Can hear all of it in my house over the TV set. Very annoying and intrusive	SR #: 15-00195189 Priority: Standard Status: Open Status Date: Aug 15, 2015 8:49:48 PM Created Date: Aug 15, 2015 8:49:48 PM Overdue on: Aug 17, 2015 8:49:48 PM
--	---

Flex Notes				
Flex Note Question		Flex Note Answer		
Where is the music coming from?		Venue		
Is the music coming from an indoor or outdoor venue?		Outdoor		
Which day of the week is the music causing a disturbance?		Saturday		
During which timeframe is the music causing a disturbance?				
If citizen is bilingual, please indicate language.				
Information is collected for tracking purposes. The citizen may be contacted if additional information is needed.				
To the call taker: Does the caller want to report this issue to APD?		No		
Participants				
Participant Type	Participant Name	Address	Email	Phones/Extension
Citizen	Jones, Paula		pjones78746@yahoo.com	
COA Employee				
Activities				
Activities	Assigned Staff	Due Date	Completed Date	Outcome
Review Request		Aug 17, 2015 6:00:00 PM		
Details				

ZONING USE SUMMARY TABLE (LAND DEVELOPMENT CODE)

EXHIBIT 10

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

RESIDENTIAL USES	LA	RR	SF-1	SF-2	SF-3	SF-4A	SF-4B	SF-5	SF-6	MF-1	MF-2	MF-3	MF-4	MF-5	MF-6	MH	NO	LO	GO	CR	LR	GR	L	CBD	DMU	W/O	CS	CS-1	CH	IP	MI	LI	R&D	DR	AV	AG	PUD	P		
Bed & Breakfast (Group 1)	--	--	P	P	--	--	--	P	P	P	P	P	P	P	P	P	--	P	P	P	P	P	P	P	P	P	P	P	P	--	--	--	--	--	--	--	--	--	--	--
Bed & Breakfast (Group 2)	--	--	--	--	--	--	--	P	P	P	P	P	P	P	P	P	--	P	P	P	P	P	P	P	P	P	P	P	P	--	--	--	--	--	--	--	--	--	--	
Condominium Residential	--	--	--	--	--	--	--	P	P	P	P	P	P	P	P	P	--	P	P	P	P	P	P	P	P	P	P	P	P	--	--	--	--	--	--	--	--	--	--	
Conservation Single Family Residential	--	--	P	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	C	P	P	--	--	--	--	--	--	--	--	--	--	--	--	--	
Duplex Residential	--	--	--	--	P	--	--	P	P	P	P	P	P	P	P	P	--	--	--	--	--	--	--	--	P	P	--	--	--	--	--	--	--	--	--	--	--	--	--	
Group Residential	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	P	P	--	--	--	--	--	--	--	--	--	--	--	--	--	
Mobile Home Residential	--	--	--	--	--	--	--	--	--	--	--	C	P	P	P	P	--	--	--	--	--	--	--	C	P	P	--	--	P	--	--	--	--	--	--	--	--	--	--	
Multifamily Residential	--	--	--	--	--	--	--	--	--	--	--	P	P	P	P	P	--	--	--	--	--	--	--	--	P	P	--	--	--	--	--	--	--	--	--	--	--	--	--	
Retirement Housing (Small Site)	--	--	--	--	P	--	--	P	P	P	P	P	P	P	P	P	--	--	--	--	--	--	--	C	P	P	--	--	P	--	--	--	--	--	--	--	--	--	--	
Retirement Housing (Large Site)	--	--	--	--	--	--	--	C	C	C	C	C	C	C	C	C	--	--	--	--	--	--	--	--	P	P	--	--	--	--	--	--	--	--	--	--	--	--	--	
Single-Family Attached Residential	--	--	--	--	P	--	--	P	P	P	P	C	C	C	C	C	--	--	--	--	--	--	--	P	P	P	--	--	--	--	--	--	--	--	--	--	--	--	--	
Single-Family Residential	P	P	P	P	P	--	--	P	P	P	P	P	P	P	P	P	--	--	--	--	--	--	--	P	P	P	--	--	--	--	--	--	--	1	--	--	--	--	--	
Small Lot Single-Family Residential	--	--	--	--	--	P	P	P	P	P	P	P	P	P	P	P	--	--	--	--	--	--	--	P	P	P	--	--	--	--	--	--	1	P	--	C	3	4		
Townhouse Residential	--	--	--	--	--	--	--	P	P	P	P	P	P	P	P	P	--	--	--	--	--	--	--	P	P	P	--	--	--	--	--	--	--	--	--	--	--	--	--	
Two-Family Residential	--	--	--	--	P	--	--	P	P	P	P	P	P	P	P	P	--	--	--	--	--	--	--	C	P	P	--	--	P	--	--	--	--	--	--	--	--	--	--	
Short-Term Rental ¹³	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	--	--	--	--	--	--	--	P	P	P	--	--	--	--	--	--	--	--	--	--	--	--	P	

COMMERCIAL USES	LA	RR	SF-1	SF-2	SF-3	SF-4A	SF-4B	SF-5	SF-6	MF-1	MF-2	MF-3	MF-4	MF-5	MF-6	MH	NO	LO	GO	CR	LR	GR	L	CBD	DMU	W/O	CS	CS-1	CH	IP	MI	LI	R&D	DR	AV	AG	PUD	P	
Administrative and Business Offices	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	P	P	P	--	P	P	C	P	P	P	P	P	P	P	P	P	1	--	2	--	3	4	
Agricultural Sales and Services	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	P	P	P	--	P	P	C	P	P	P	P	P	P	P	P	1	--	--	--	3	4	
Alternative Financial Services ¹²	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	C	P	--	C	--	P	--	--	--	--	--	--	--	--	--	--	
Art Gallery	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	
Art Workshop	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	1	--	--	--	3	4		
Automotive Rentals	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	P	C	P	P	P	P	P	P	P	1	--	--	--	3	4		
Automotive Repair Services	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	P	C	C	C	--	P	P	P	P	1	--	2	--	3	4		
Automotive Sales	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	P	C	C	C	--	P	P	P	P	1	--	2	--	3	4		
Automotive Washing (of any type)	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	P	C	C	C	--	P	P	P	P	1	--	--	--	3	4		
Bail Bond Services ¹⁰	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	P	C	C	C	--	P	P	P	P	1	--	2	--	3	4		
Building Maintenance Services	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	PC	--	PC	PC	--	PC	PC	PC	PC	PC	1	--	--	--	--	--	
Business or Trade School	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	P	P	P	P	P	1	--	--	--	3	4		
Business Support Services	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	P	C	P	P	C	P	P	P	P	1	--	--	--	3	4		
Campground	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	P	C	P	P	P	P	P	P	1	--	--	--	3	4		
Carriage Stable	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	3	4		
Cocktail Lounge	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	C	--	P	--	--	
Commercial Blood Plasma Center	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	C	P	C	--	--	C	C	--	--	--	--	--	--	--	--	
Commercial Off-Street Parking	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	P5	P5	P5	--	--	--	--	--	--	--	--	
Communications Services	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	2	--	3	4	
Construction Sales and Services	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	2	--	3	4	
Consumer Convenience Services	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	3	4	
Consumer Repair Services	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	2	--	3	4	
Convenience Storage	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	
Drop-Off Recycling Collection Facility	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	3	4	
Electronic Prototype Assembly ¹⁵	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	P4	
Electronic Testing ¹⁶	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	
Equipment Repair Services	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	
Equipment Sales	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	3	4	
Exterminating Services	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	3	4
Financial Services	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	3	4</	

1-Refers to 25-2-602 (13-2-225); 2-Refers to 25-2-622 (13-2-226); 3-Refers to Subchapter B, Art. 2, Div 5; 4 Refers to 25-2-624 (13-2-227); 5-Refers to 25-2-803 (13-2-233); 6-Subject to 25-2-805 (13-2-224); 7-Subject to 25-2-839 (13-2-235 & 13-2-273); 8-Refers to 25-2-842; 9-Refers to 25-2

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

Page 2 of 3

ZONING USE SUMMARY TABLE (LAND DEVELOPMENT CODE)

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

[illegible]

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

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

EXHIBIT 11

1

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

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

ORAL DEPOSITION OF

GREG GUERNSEY

FEBRUARY 20, 2013

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

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

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

5
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24
25 ALSO PRESENT:

Robert J. Kleeman, Plaintiffs' Representative

1 Q. Which ones? All or some?

2 A. All of those, yes.

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

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

10 Q. As a director?

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

16 Q. Okay.

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

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

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

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

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

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

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

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

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

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

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

6 A. It could be.

7 Q. An outdoor amphitheater?

8 A. Could be.

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

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

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

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

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

19 A. Who is using it?

20 Q. Sure.

21 A. Versus?

22 Q. What's on it.

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

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

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

16 A. How are you defining "amphitheater"?

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

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

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

3 A. No, it does not.

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

6 A. Not to my knowledge.

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

11 A. No.

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

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

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

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

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

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

3 A. Not specifically.

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

8 A. Yes.

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

14 Have I read that correctly?

15 A. Yes.

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

18 A. Could you clarify that?

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

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

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

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

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

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

12 A. Yes.

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

16 Q. Are you with me?

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

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

22 Have I read that correctly?

23 A. Yes.

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

1 authority to unilaterally amend the code, do you?

2 A. That's correct.

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

7 A. Correct.

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

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

14 A. I'm sure I have.

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

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

20 A. Generally, yes.

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

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

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

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

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

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

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

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

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

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

3 A. Correct.

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

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

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

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

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

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

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

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

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

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

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

24 A. If someone --

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

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

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

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

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

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

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

18 Q. Yeah, we will.

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

24 Q. So disc golf?

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

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

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

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

13 A. Yes.

14 Q. So is outdoor entertainment?

15 A. Yes.

16 Q. Outdoor sports and recreation?

17 A. Yes.

18 Q. Personal improvement services?

19 A. Yes.

20 Q. Personal services?

21 A. Yes.

22 Q. And theater services, correct?

23 A. Theater, yes.

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

1 correct?

2 A. Yes, Page 3 of 3?

3 Q. Yes, sir.

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

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

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

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

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

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

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

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

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

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

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

4 A. Yes, sir.

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

8 A. Those uses, correct.

9 Q. Are they all principal uses?

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

12 (Exhibit No. 13 marked.)

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

18 A. Yes.

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

22 A. Yes.

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

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

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

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

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

12 A. Yes.

13 Q. You do?

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

16 A. I don't recall.

17 Q. Mr. Rusthoven?

18 A. I don't believe so.

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

21 A. No.

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

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

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

1 you don't know who they are today?

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

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

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

8 Q. And where was the meeting?

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

11 Q. Who was in it?

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

13 Q. Who was that at the time?

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

15 Q. Okay.

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

19 Q. Mr. Conley?

20 A. Yeah, and Mr. Conley.

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

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

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

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

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

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

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

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

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

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

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

1 A. I'm sure I did.

2 Q. Do you recall what he told you?

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

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

6 A. I do not recall.

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

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

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

13 A. I'm sorry.

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

17 A. As a result of this particular discussion?

18 Q. In general. I mean --

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

20 Q. Let's go back.

21 A. Sorry.

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

25 A. Yes.

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

4 A. Yes.

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

8 A. I'm sure it was discussed.

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

13 A. Not at that particular time.

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

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

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

18 A. Sorry.

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

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

1 church.

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

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

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

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

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

14 MS. EDWARDS: Objection.

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

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

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

21 MS. EDWARDS: Objection, form.

22 A. The proposed layout was that conceptual plan.

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

25 A. It had an amphitheater building.

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

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

6 Q. Not an enclosed structure.

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

11 MR. TAUBE: Objection, nonresponsive.

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

15 A. Not an enclosed structure.

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

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

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

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

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

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

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

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

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

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

3 Q. In a building, correct?

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

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

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

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

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

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

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

25 Q. Have you seen some plans or specifications

1 MS. EDWARDS: Objection, form.

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

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

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

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

21 MR. TAUBE: Objection, nonresponsive.

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

23 A. I'm sorry.

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

1 Q. Yes.

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

3 Q. We spoke to a building.

4 A. An activity being inside or outside?

5 Q. Yes, sir.

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

10 Q. Mr. Guernsey, section 25 --

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

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

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

17 MR. TAUBE: Go ahead.

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

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

22 A. I can't say for sure.

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

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

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

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

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

9 A. No.

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

12 A. People ask.

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

15 A. Correct.

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

18 A. I can't say for sure.

19 Q. Is that what you believe?

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

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

1 A. No.

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

6 A. Not that I'm aware.

7 Q. No one ever told you that?

8 A. No.

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

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

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

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

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

1 used for a religious assembly use in my response.

2 MR. TAUBE: Objection, nonresponsive.

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

6 MS. EDWARDS: Objection, form.

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

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

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

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

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

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

25 A. Correct.

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

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

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

11 MS. EDWARDS: Objection, form.

12 A. Could you clarify?

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

19 A. Yes.

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

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

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

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

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

23 Q. The church would only have outdoor concerts?

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

1 services?

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

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

8 A. I don't know.

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

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

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

18 A. I don't know.

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

22 A. I don't know.

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

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

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

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

7 A. Wait, 25-2?

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

10 A. Okay.

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

14 A. Correct.

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

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

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

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

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

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

1 A. Okay. I see --

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

4 A. Right.

5 Q. And the Hill Country --

6 A. William Dabbert?

7 Q. William Dabbert.

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

10 MR. TAUBE: Bottom left-hand column.

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

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

14 A. Bentley. Yes, I see that.

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

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

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

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

25 Q. And are you familiar with the Board of

1 Adjustment rules?

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

4 Q. Well, I'll help you.

5 (Exhibit No. 21 marked.)

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

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

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

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

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

20 A. (C) (1)?

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

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

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

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

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

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

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

20 A. Say that again.

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

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

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

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

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

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

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

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

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

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

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

23 Q. Was it --

24 A. It --

25 Q. Go ahead.

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

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

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

9 Q. Not yet.
10 I'm asking you if it was the same, if it
11 was the same -- In other words, is the covenant and
12 your determination of religious assembly based upon the
13 anticipated use of the property, is it one in the same?

14 MS. EDWARDS: Objection, form.

15 A. Yes, generally.

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

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

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

22 Q. Sure.

23 (Exhibit No. 22 marked.)

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

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

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

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

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

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

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

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

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

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

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

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

7 Q. Who makes that decision? You?

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

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

13 MS. EDWARDS: Objection, form.

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

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

24 A. Generally, yes.

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

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

3 A. (Witness complies.)

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

12 Have I read that correctly?

13 A. Yes.

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

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

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

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

4 I read that correctly?

5 A. Yes.

6 Q. Who determines what "occasional" is?

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

16 MR. TAUBE: Objection, nonresponsive.

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

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

22 Q. So does that include you?

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

1 how that would work, by the Appraisal District.

2 Q. How's it being monitored?

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

5 MR. TAUBE: Sure.

6 (Discussion off the record.)

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

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

12 Q. But not otherwise?

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

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

23 MS. EDWARDS: Objection, form.

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

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

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

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

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

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

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

15 A. On the second page?

16 Q. Yes, sir.

17 A. Okay.

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

22 You see that?

23 A. Yes.

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

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

4 Q. I didn't see any.

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

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

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

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

21 A. Correct.

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

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

3 A. Yes.

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

6 A. Seventeen.

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

8 A. (Witness complies.) Okay.

9 Q. Under U-1.

10 A. U-1, okay.

11 Q. And U-2.

12 A. (Witness complies.) Okay.

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

20 Did I read that correctly?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 Mr. Eric J. Taube, Attorney for Plaintiffs

14 Ms. Chris Edwards, Attorney for Defendants

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

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

23

24

25

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

2
3 *Pamela Nichols*



4
5 PAMELA NICHOLS, Texas CSR 1475

6 Expiration Date: 12/31/2014

7 U.S. Legal Support

8 8200 I.H. 10 West, Suite 810

9 San Antonio, Texas 78230

10 (210) 734-7127

11 Firm Registration No. 341



EXHIBIT 12-1

PLANNING COMMISSION CODES AND ORDINANCES SUBCOMMITTEE MINUTES REGULAR MEETING 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.

- 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.

- 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)

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)

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

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

C7/1

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

ORDINANCE NO. _____

C1/2

**AN ORDINANCE AMENDING SECTION 25-2-921 OF THE CITY CODE
RELATING TO TEMPORARY USES.**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. City Code Section 25-2-921 (*Temporary Uses Described*) is amended to reflect the following:

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

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

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

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

(4) Christmas tree sales;

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

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

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

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

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

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

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

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

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

6 (C) An outdoor public, religious, patriotic, or historic assembly or exhibit, including a
7 festival, benefit, fund raising event, or similar use that typically attracts a mass audience may
8 be permitted as a temporary use under this division if:

9 (1) for a gathering of not more than 50 persons, the use is located in an SF-4 or less
10 restrictive zoning district, or the use is located on a property whose principal developed use
11 is religious assembly, private primary educational facilities, private secondary educational
12 facilities, public primary educational facilities, public secondary educational facilities, or
13 public community recreation;

14 (2) for a gathering of more than 50 persons, the use is located in an LO or less
15 restrictive zoning district, or the use is located on a property whose principal developed use
16 is religious assembly, private primary educational facilities, private secondary educational
17 facilities, public primary educational facilities, public secondary educational facilities, or
18 public community recreation;

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

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

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

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

33 (1) The retail use must:

1 (a) be located within an enclosed fire area, as defined by the Building Code, that
2 does not require structural changes to accommodate the use; and

3 (b) have an approved certificate of occupancy or temporary certificate of
4 occupancy.

5 (2) The retail use may not exceed 12,000 square feet in area unless an approved
6 sprinkler system has been installed in accordance with the Fire Code;

7 (3) The following uses and activities may not be permitted as a temporary retail use
8 under this subsection:

9 (a) personal services;

10 (b) food preparation or the sale or consumption of alcoholic beverages;

11 (c) a portable toilet serving the retail use, whether located inside or outside of the
12 use; or

13 (d) storage of hazardous materials as defined by the Fire Code.

14 (4) A permit for a temporary retail use under this subsection may be issued for up to
15 45 days and renewed once, for a total operating period not to exceed 90 days.

16 (G) The building official may permit other temporary uses that are similar to those
17 described in this section.

18 *Source: Section 13-2-321; Ord. 990225-70; Ord. 031211-11; Ord. 20111103-075.*

19
20
21 **PART 3.** This ordinance takes effect on _____, 2012.
22

1 PASSED AND APPROVED

2
3
4
5 _____, 2012

§
§
§

C1/5

Lee Leffingwell
Mayor

6
7
8
9
10 APPROVED: _____

11 Karen M. Kennard
12 City Attorney

ATTEST: _____

Shirley A. Gentry
City Clerk



City of Austin

P.O. Box 1088, 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

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

C7/7

☐ POTENTIAL IMPACT ON SCHOOL(S)

☒ NO IMPACT ON SCHOOL(S)

CODE AMENDMENT SUMMARY

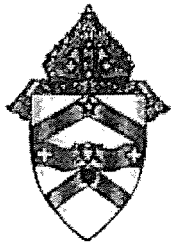
Amend Section 25-2-921 (C) (1) and (2) (*Temporary Uses Described*) of the Austin City Code. This amendment would allow for gatherings in certain zoning districts if the temporary use is located on a property whose principal developed use is religious assembly, private primary educational facilities, private secondary educational facilities, public primary educational facilities, or public secondary educational facilities.

IMPACT ON SCHOOLS

The proposed code amendment change will not have an impact on AISD schools.

Date Prepared: 01/09/2013

Director's Signature: Paul Turner



Diocese of Austin

Chancellor

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

January 9, 2013

C7/A

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

C3
1

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

$$C_{3/2}$$

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

(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:

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

PASSED AND APPROVED

www.wws

_____, 2013

ATTEST: _____
Janette Goodall
City Clerk

EXHIBIT 12-4

ORDINANCE AMENDMENT REVIEW SHEET

Amendment: C20-2012-016 Temporary Outdoor Public Assembly

Description: Consider an amendment to an ordinance amending chapter 25-2-921 of the City Code relating to temporary outdoor public assembly, to allow religious and educational institutions to hold temporary outdoor public assemblies.

Proposed Language: See attached draft ordinance.

Staff Recommendation: Staff recommends this amendment.

Background: Initiated by Planning Commission on September 25, 2012

Under the current code, certain temporary outdoor events are only allowed in certain zoning districts, depending on the number of attendees at said events. These events can include public, religious, patriotic, or historic assembly or exhibit, including a festival, benefit, fund raising even, or similar use. Temporary outdoor public assembly events held by churches and schools, which often have residential zoning, are currently prohibited or restricted in conducting temporary outdoor events if their zoning is residential. The proposed code amendment would allow properties whose principal use is religious, educational, or community recreation, to apply for a temporary use permit to hold a temporary outdoor public assembly event, up to four events per property, per year.

Board and Commission Actions

Planning Commission Subcommittee on Codes and Ordinances – Voted to send this item to full Planning Commission on January 15, 2013. Vote: 4-0.

Voted to send this item to full Planning Commission on February 19, 2013, with the following amendment: Cap the number of temporary permits for this type of event at four per year per property. Vote: 6-0.

Planning Commission – A public hearing was held at Planning Commission on January 22, 2013, with a motion to postpone and send the item back to Codes and Ordinances Subcommittee for further discussion. Vote: 8-0.

A public hearing was held at Planning Commission on March 26, 2013, with a motion to recommend the item to City Council. Vote: 8-0.

Council Action

City Council – A public hearing at City Council has been set for March 21, 2013.

Ordinance Number: NA

City Staff: Greg Dutton

Phone: 974-3509

Email: greg.dutton@austintexas.gov

EXHIBIT 12-5

ORDINANCE AMENDMENT REVIEW SHEET

Amendment: C20-2012-016 Temporary Outdoor Public Assembly

Description: Consider an amendment to an ordinance amending chapter 25-2-921 of the City Code relating to temporary outdoor public assembly, to allow religious and educational institutions to hold temporary outdoor public assemblies.

Proposed Language: See attached draft ordinance.

Staff Recommendation: Staff recommends this amendment.

Background: Initiated by Planning Commission on September 25, 2012

Under the current code, certain temporary outdoor events are only allowed in certain zoning districts, depending on the number of attendees at said events. These events can include public, religious, patriotic, or historic assembly or exhibit, including a festival, benefit, fund raising even, or similar use. Temporary outdoor public assembly events held by churches and schools, which often have residential zoning, are currently prohibited or restricted in conducting temporary outdoor events if their zoning is residential. The proposed code amendment would allow properties whose principal use is religious, educational, or community recreation, to apply for a temporary use permit to hold a temporary outdoor public assembly event, up to four events per property, per year, for a duration of two days maximum per event.

Board and Commission Actions

Planning Commission Subcommittee on Codes and Ordinances

January 15, 2013: Recommended the item to full Planning Commission. Vote: 4-0.

February 19, 2013: Unanimously recommended this item to full Planning Commission on, with the following amendment: Cap the number of temporary permits for this type of event at four per year per property. Vote: 6-0.

Planning Commission

January 22, 2013: A motion to postpone and send the item back to Codes and Ordinances Subcommittee for further discussion. Vote: 8-0.

March 26, 2013: Approved on an 8-0 vote.

Council Action

April 25, 2013: Approved on first reading on a 6-0 vote, with

September 24, 2013: Second/third reading of the item has been set.

Ordinance Number: NA

City Staff: Greg Dutton

Phone: 974-3509

Email: greg.dutton@austintexas.gov

EXHIBIT 12-6

ORDINANCE AMENDMENT REVIEW SHEET

Amendment: C20-2012-016 Temporary Outdoor Public Assembly

Description: Consider an amendment to an ordinance amending chapter 25-2-921 of the City Code relating to temporary outdoor public assembly, to allow religious and educational institutions to hold temporary outdoor public assemblies.

Proposed Language: See attached draft ordinance.

Staff Recommendation: Staff recommends this amendment.

Background: Initiated by Planning Commission on September 25, 2012

Under the current code, certain temporary outdoor events are only allowed in certain zoning districts, depending on the number of attendees at said events. These events can include public, religious, patriotic, or historic assembly or exhibit, including a festival, benefit, fund raising even, or similar use. Temporary outdoor public assembly events held by churches and schools, which often have residential zoning, are currently prohibited or restricted in conducting temporary outdoor events if their zoning is residential. The proposed code amendment would allow properties whose principal use is religious, educational, or community recreation, to apply for a temporary use permit to hold a temporary outdoor public assembly event, up to four events per property, per year, for a duration of two days maximum per event.

Board and Commission Actions**Planning Commission Subcommittee on Codes and Ordinances**

January 15, 2013: Recommended the item to full Planning Commission. Vote: 4-0.

February 19, 2013: Unanimously recommended this item to full Planning Commission on, with the following amendment: Cap the number of temporary permits for this type of event at four per year per property. Vote: 6-0.

Planning Commission

January 22, 2013: A motion to postpone and send the item back to Codes and Ordinances Subcommittee for further discussion. Vote: 8-0.

March 26, 2013: Approved on an 8-0 vote.

Council Action

April 25, 2013: Approved on first reading on a 6-0 vote, with

September 24, 2013: Second/third reading of the item has been set.

Ordinance Number: NA

C20-2012-016

City Staff: Greg Dutton

Phone: 974-3509

Email: greg.dutton@austintexas.gov

EXHIBIT 13-1

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.

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 13-2

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.

1
2 **PART 2.** This ordinance takes effect on _____, 2013.

3 **PASSED AND APPROVED**

4
5
6
7 _____, 2013

§
§
§

Lee Leffingwell
Mayor

8
9
10
11
12 **APPROVED:** _____
13 Karen M. Kennard
14 City Attorney
15

16
ATTEST: _____
Jannette S. Goodall
City Clerk

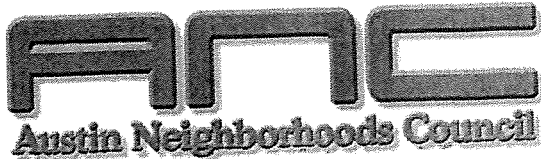


EXHIBIT 14

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;

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



MEMORANDUM

To: Mayor and Council

From: Gregory I. Guernsey, AICP, Director
Planning and Development Review Department

Date: November 18, 2013

Subject: Item 72 – Code Amendment - Temporary Use Permits for Public Assembly
November 21, 2013 Council Agenda

Item 72 on the November 21, 2013 Council agenda is a code amendment posted for second and third reading that would allow properties that are primarily used for certain civic uses to obtain temporary use permits for public assembly. Staff is withdrawing its request for approval of this code amendment.

Last year, responding to a citizen complaint, the Code Compliance Department cited the Delores Catholic Church in Montopolis for having an outdoor festival without a temporary use permit. Furthermore, the Church was informed that because the church is zoned single-family, it would be unable to pull a temporary use permit. A member of the church, Mr. Gavino Fernandez, spoke to both the Planning Commission and the City Council at citizen communications about the issue.

At the request of city staff, the Planning Commission agreed to initiate a code amendment on September 25, 2012, to address the issue. The relevant section of current Code reads as follows:

- (C) An outdoor public, religious, patriotic, or historic assembly or exhibit, including a festival, benefit, fund raising event, or similar use that typically attracts a mass audience may be permitted as a temporary use under this division if:*
- (1) for a gathering of not more than 50 persons, the use is located in an SF-4 or less restrictive zoning district;*
 - (2) for a gathering of more than 50 persons, the use is located in an LO or less restrictive zoning district; or*
 - (3) for an exhibit, the use is located in a GR or less restrictive zoning district.*

Staff proposed adding a new section to the above code that would allow churches, schools, and community recreation centers to be issued a temporary use permit, regardless of zoning:

- (4) the use is located on a property with a principal developed use of religious assembly, private primary educational facilities, private secondary educational facilities, public primary educational facilities, or public secondary educational facilities or community recreation (public);*

At the April 25, 2013 City Council meeting this ordinance passed on first reading. This would require that every church, school and recreation center pull a temporary use permit for any outdoor fundraiser, festival, fair, carnival etc. regardless of the number of attendees. Based upon testimony at first reading, staff was asked to meet with a group of concerned citizens to consider additional proposed amendments. At that meeting several ideas were proposed: limit events to four times a year; prohibit the pulling of an outdoor sound permit in conjunction with a temporary use permit; cap the hours during which an event could be held; and future temporary use permits if two or more violations occurred.

While considering these options, Planning and Development Review (PDR) staff consulted with the Fire Department, Code Compliance Department, Austin Community College, Austin Independent School District and the Catholic Diocese of Austin. It became apparent that even amending the Code to *allow* a temporary use permit for these uses would be problematic: the Fire Department would need to review and inspect each event; Code Compliance would have to investigate the events, most of which occur on weekends, to ensure the permit had been issued; a tracking mechanism would also have to be put into place to ensure the number of allowable annual events were not exceeded. Some facilities, especially high schools, have far more than four events per year. None of the entities we spoke with felt it was necessary for these types of events to pull temporary use permits.

Upon further consideration, PDR staff is of the opinion that school and church fairs and festivals are integral, customary, and incidental to the primary use. In other words, a part of being an elementary school is having a fall carnival, just as much as recess or outside gym class. Likewise, a church having an outdoor festival is a common practice that has been done for a very long time. Having the festival does not temporarily change the use of the property – it is still being used as a church – just as a youth group meeting outside would be. These types of events have long occurred in Austin and until now have not been a problem. To our knowledge, only a single individual has issued complaints against two Catholic churches regarding outdoor festivals. There does not, however, seem to be a community-wide concern with these types of events occurring as they always have in the past.

While the current Code does mention “religious assembly...fundraiser and benefits” as needing temporary use permits, the staff believes this is intended for different circumstances. Examples might include a traveling preacher setting up a large tent for a revival on a vacant lot; or a school using a piece of property *other* than the school grounds for an event; or an event hosted on church or school property that is not related to either use. An example of the latter would be if a church leased its property out for a rock concert. Staff is in agreement that these events are a temporary change of use and therefore a permit is required.

For the type of fair, festival, and carnivals that have been occurring for many decades and are important fundraisers for churches and schools, PDR staff does not believe a temporary use permit should be required and therefore is withdrawing its request that this Code amendment be approved.

If you have any questions please feel free to contact me at (512) 974-2387 or Jerry Rusthoven at (512) 974-3207.

CC: Marc A. Ott, City Manager
Sue Edwards, Assistant City Manager
Carl Smart, Director Code Compliance Department
Chief Rhoda Mae Kerr, Austin Fire Department
Jerry Rusthoven, Division Manager, Planning and Development Review Department

REVISED 04/10		TICKET NUMBER	
Austin Citation <input type="checkbox"/> TR <input type="checkbox"/> CM		13 661515	
<input checked="" type="checkbox"/> D.L.# <input type="checkbox"/> COM DL # 03914196 <input type="checkbox"/> ID #		STATE TX	DL TYPE A B C M
LAST NAME Ruiz		FIRST NAME Albert	MIDDLE INITIAL
RESIDENCE ADDRESS 1111 Montopolis Dr.			
CITY Austin	STATE TX	ZIP CODE 78741	RES PHONE (AC)
DATE OF BIRTH 3-31-46	White <input type="checkbox"/> Black <input type="checkbox"/> <u>Hispanic</u> <input checked="" type="checkbox"/> Asian <input type="checkbox"/> Native Amer. <input type="checkbox"/> Middle Eastern <input type="checkbox"/> Other <input type="checkbox"/>	SEX M <input checked="" type="checkbox"/> F <input type="checkbox"/>	HEIGHT 5'6"
EYES BRO		BUSINESS PHONE (AC)	
EMPLOYER OR SCHOOL		BUSINESS ADDRESS	
OCCUPATION Teacher	SCHOOL ZONE? <input type="checkbox"/>	WORKERS IN CONSTR. ZONE? <input type="checkbox"/>	HAZ MATERIAL? <input type="checkbox"/>
VEH. COLOR	VEH. YEAR	VEHICLE MAKE	VEHICLE TYPE
VIOLATION DATE 5-18-13		VIOL. TIME 2:30 PM	CONDITIONS City Light
VIOLATION LOCATION 1111 Montopolis Dr.		COUNTY	DIRECTION
VIOLATION (A) No temporary use permit		VIOL. CODE 64301	
VIOLATION (B) 2007		VIOL. CODE	
VIOLATION (C)		VIOL. CODE	
REASON FOR STOP 311 Complaint			
RK _____ PS _____ VS _____ RFS _____ Cell phone <input type="checkbox"/> STEP <input type="checkbox"/> CAD _____			
ALLEGED SPEED	SPEED LIMIT	<input type="checkbox"/> RADAR <input type="checkbox"/> LASER <input type="checkbox"/> PACED <input type="checkbox"/> AIRCRAFT <input type="checkbox"/> VISUAL	COLLISION? YES <input type="checkbox"/> BLUE FORM? <input type="checkbox"/>
OFFICER: <u>Max Castro</u> EMP# <u>51185</u>		OFFICER: EMP#	
If Non-Peace Officer, Sign Here.			
APPEARANCE DATE AT COURT / FECHA PARA PRESENTARSE 06-18-2013		READ CITATION FOR ADDITIONAL INFORMATION AND OPERATING HOURS	
I HAVE RECEIVED THIS WRITTEN NOTICE TO APPEAR AND I WILL APPEAR AT THE CITY OF AUSTIN MUNICIPAL COURT ON OR BEFORE THE DATE AND TIME DESIGNATED ABOVE IN ORDER TO ENTER A PLEA OF GUILTY, NOT GUILTY OR NO CONTEST TO EACH VIOLATION LISTED ON THIS TICKET. SU FIRMA ES LA PROMESA QUE SE PRESENTARA EN LA CORTE MUNICIPAL PARA INFORMACION LLAME A (512) 974-4800. THIS IS NOT A PLEA OF GUILTY, ONLY A PROMISE TO APPEAR.			
SIGNATURE/SU FIRMA			
READ INSTRUCTIONS ON THE BACK OF CITATION CAREFULLY.			

DEFENDANT COPY

EXHIBIT 16-1

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 46.04(b), Texas Penal Code. If you have any questions whether these laws make it illegal for you to possess or purchase a firearm, you should consult an attorney.

SPECIAL INSTRUCTIONS FOR JUVENILES AND MINORS

If you are under 17 years of age you will be notified by mail when to appear with your parent or guardian. You must appear before a judge.
DO NOT MAIL FINE PAYMENT.

Address Notification: You and your parent or guardian are required by law to provide to the court in writing your current address and residence. If your place of residence changes, you have 7 days to notify the court in writing of your new address and residence. Failure to keep the court informed of your new residence may result in Failure to Appear and Failure to Notify charges filed against both you and your parent or guardian. The obligation of keeping the court informed of your current address and residence is required until your case is finalized/terminated.



City of Austin
Municipal Court

Evelyn McKee Rebecca Stark
Presiding Judge 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

June 20, 2013

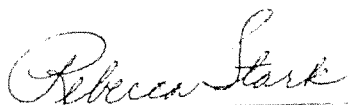
Albert Ruiz
1111 Montopolis DR
Austin, TX. 787413325

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

Cancel
felalb

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

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 (R14) 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: Driving - No Temp. Use Perm.

Jury Waiver: I waive my right to trial by jury and plead Not Guilty to the Court.

Date: _____ Signature: _____

NOTICE: Renewal of Defendant's driver's license may be suspended for failure to appear at court and/or failure to pay a judgment in the case. In order to clear any such suspension Defendant is required to pay the Clerk a \$30 administrative fee in addition to any judgment in the case.

On this, the _____
at the required time of this court, came the described cause to be heard and the Defendant:

☐ Having been informed of his right to trial entered his/her appearance and waived said right to trial by pleading

(Guilty), (No Contest).

☐ Was present in court and, having waived a jury, announced ready for trial, and entered a plea of not guilty in open court.

And after hearing the evidence and argument, and after due consideration of the same, the court finds the Defendant

(Guilty), (Not Guilty),

of the offense in the complaint in this case.

It is therefore ordered and adjudged by the court that the State of Texas for the benefit of the City of Austin, Texas, do have and recover of the Defendant the sum of \$ _____ as the fine assessed and costs in this case; plus \$25 if not paid in full in 30 days; plus the following administrative fees as applicable: \$50 capias pro fine warrant fee; \$30 driver license denial fee and 30% collection fee.

The Court finds that the period which will satisfy the fine and costs is 24 or _____ hours.

Judge, Municipal Court, City of Austin, Texas

Hearing as to Indigency:

Finding: ☐ Indigent ☐ Not Indigent

Plea of No Contest: I, hereby enter my appearance for the offense charged in the above-referenced cause, waive my right to a trial by Jury or Judge, plead no contest to the offense alleged by the citation and/or complaint in this cause, and agree to satisfy the penalty assessed by the Court.

Signature: _____ Date: _____

Atty/Parent: _____ Date: _____

Address: _____

FURTHER ORDERS:

☐ DSC Mandatory

☐ Deferred Disposition

Proof of completion by: _____

☐ Post Fee, bond, or make payment of \$ _____ by _____

☐ Extension to pay \$ _____ monthly/weekly
until balance is paid, start payment _____

☐ Community Service: _____ hours to be done at any place on the
adult - youth list of CSR providers or at any other non-profit agency
doing non-religious, non-political work.

Turn in proof of _____ hours by _____

then turn in proof of _____ hours per month / week until

all hours are done beginning _____

☐ Jail Credit: _____

☐ Total layout credit/Time Served:

☐ Concurrent

☐ Consecutive

Address Notification for Minors:

You and your parent, or guardian are required by law to provide the court in writing your current address and residence. If your place of residence changes, you have 7 days to notify the court in writing of your new address and residence. Failure to keep the court informed of your new residence may result in Failure to Appear and Failure to Notify charges filed against you, your parent or guardian. The obligation of keeping the court informed of your current address and residence is required until your case is finalized/terminated.

State's Motion to Dismiss:

Date: 11/25/13 IE NPO NPO2 IEO IEO2 PH

Other: _____

Assistant City Attorney [Signature]

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

RECEIVED

DEC 06 2013

CITY OF AUSTIN

TELEPHONE (512) 476-6955

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

FACSIMILE (512) 476-1825

Writer's e-mail address:
rkdeeman@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).


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)

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.

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.

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.

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.”

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.

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.

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.

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

Signed _____ Printed _____

Mailing Address _____

City, State & Zip _____ Phone _____

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

Signed _____ Printed _____

Mailing Address _____

City, State & Zip _____ Phone _____

REQUESTS FOR INTERPRETATION
(Appeal of an Administrative Decision)

REQUIRED ITEMS FOR A COMPLETE APPLICATION:

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

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

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

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

To access the Land Development Code: sign on to: www.ci.austin.us.tx/development

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

Signed Margaret G. Butler Printed Margaret G. Butler

Mailing Address 7100 Bright Star Ln.

City, State & Zip Austin, Tx. 78736 Phone (512) 699-6692

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

Signed _____ Printed _____

Mailing Address _____

City, State & Zip _____ Phone _____

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

Signed Frank W. Goodloe Printed FRANK W. GOODLOE

Mailing Address 6705 COVERED BRIDGE DR. UNIT 10

City, State & Zip AUSTIN, TX. 78736 Phone 512-906-4931

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

Signed _____ Printed _____

Mailing Address _____

City, State & Zip _____ Phone _____

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.

PASSED AND APPROVED

2025

Lee Leffingwell
Mayor

Karen M. Kennard
City Attorney

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				
<p>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.</p>				
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 Dulton, 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>				

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

City Staff: Greg Dutton

Phone: 974-3509

Email: greg.dutton@austintexas.gov



MEMORANDUM

To: Mayor and Council

From: Gregory I. Guernsey, AICP, Director
Planning and Development Review Department

Date: November 18, 2013

Subject: Item 72 – Code Amendment - Temporary Use Permits for Public Assembly
November 21, 2013 Council Agenda

Item 72 on the November 21, 2013 Council agenda is a code amendment posted for second and third reading that would allow properties that are primarily used for certain civic uses to obtain temporary use permits for public assembly. Staff is withdrawing its request for approval of this code amendment.

Last year, responding to a citizen complaint, the Code Compliance Department cited the Delores Catholic Church in Montopolis for having an outdoor festival without a temporary use permit. Furthermore, the Church was informed that because the church is zoned single-family, it would be unable to pull a temporary use permit. A member of the church, Mr. Gavino Fernandez, spoke to both the Planning Commission and the City Council at citizen communications about the issue.

At the request of city staff, the Planning Commission agreed to initiate a code amendment on September 25, 2012, to address the issue. The relevant section of current Code reads as follows:

- (C) An outdoor public, religious, patriotic, or historic assembly or exhibit, including a festival, benefit, fund raising event, or similar use that typically attracts a mass audience may be permitted as a temporary use under this division if:*
- (1) for a gathering of not more than 50 persons, the use is located in an SF-4 or less restrictive zoning district;*
 - (2) for a gathering of more than 50 persons, the use is located in an LO or less restrictive zoning district; or*
 - (3) for an exhibit, the use is located in a GR or less restrictive zoning district.*

Staff proposed adding a new section to the above code that would allow churches, schools, and community recreation centers to be issued a temporary use permit, regardless of zoning:

- (4) the use is located on a property with a principal developed use of religious assembly, private primary educational facilities, private secondary educational facilities, public primary educational facilities, or public secondary educational facilities or community recreation (public);*

At the April 25, 2013 City Council meeting this ordinance passed on first reading. This would require that every church, school and recreation center pull a temporary use permit for any outdoor fundraiser, festival, fair, carnival etc. regardless of the number of attendees. Based upon testimony at first reading, staff was asked to meet with a group of concerned citizens to consider additional proposed amendments. At that meeting several ideas were proposed: limit events to four times a year; prohibit the pulling of an outdoor sound permit in conjunction with a temporary use permit; cap the hours during which an event could be held; and future temporary use permits if two or more violations occurred.

While considering these options, Planning and Development Review (PDR) staff consulted with the Fire Department, Code Compliance Department, Austin Community College, Austin Independent School District and the Catholic Diocese of Austin. It became apparent that even amending the Code to *allow* a temporary use permit for these uses would be problematic: the Fire Department would need to review and inspect each event; Code Compliance would have to investigate the events, most of which occur on weekends, to ensure the permit had been issued; a tracking mechanism would also have to be put into place to ensure the number of allowable annual events were not exceeded. Some facilities, especially high schools, have far more than four events per year. None of the entities we spoke with felt it was necessary for these types of events to pull temporary use permits.

Upon further consideration, PDR staff is of the opinion that school and church fairs and festivals are integral, customary, and incidental to the primary use. In other words, a part of being an elementary school is having a fall carnival, just as much as recess or outside gym class. Likewise, a church having an outdoor festival is a common practice that has been done for a very long time. Having the festival does not temporarily change the use of the property – it is still being used as a church – just as a youth group meeting outside would be. These types of events have long occurred in Austin and until now have not been a problem. To our knowledge, only a single individual has issued complaints against two Catholic churches regarding outdoor festivals. There does not, however, seem to be a community-wide concern with these types of events occurring as they always have in the past.

While the current Code does mention “religious assembly...fundraiser and benefits” as needing temporary use permits, the staff believes this is intended for different circumstances. Examples might include a traveling preacher setting up a large tent for a revival on a vacant lot; or a school using a piece of property *other* than the school grounds for an event; or an event hosted on church or school property that is not related to either use. An example of the latter would be if a church leased its property out for a rock concert. Staff is in agreement that these events are a temporary change of use and therefore a permit is required.

For the type of fair, festival, and carnivals that have been occurring for many decades and are important fundraisers for churches and schools, PDR staff does not believe a temporary use permit should be required and therefore is withdrawing its request that this Code amendment be approved.

If you have any questions please feel free to contact me at (512) 974-2387 or Jerry Rusthoven at (512) 974-3207.

CC: Marc A. Ott, City Manager
Sue Edwards, Assistant City Manager
Carl Smart, Director Code Compliance Department
Chief Rhoda Mae Kerr, Austin Fire Department
Jerry Rusthoven, Division Manager, Planning and Development Review Department

EXHIBIT 18

Robert Kleeman

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 <martha_salinas@ymail.com>
Sent: Sunday, May 18, 2014 12:49 PM
To: Smart, Carl
Cc: Ott, Marc; Guernsey, Greg; Acevedo, Art; peacefulresidents@earthlink.net; president@ancweb.org; Robert Kleeman
Subject: Re: Dolores Church Concert and Festival

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

EXHIBIT 20-1

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

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.

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.

§ 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

From: Lloyd, Brent [mailto:Brent.Lloyd@austintexas.gov]
Sent: Wednesday, December 07, 2011 12:03 PM
To: Kleeman, Robert
Cc: Guernsey, Greg; Pitts, Don; Murray, David
Subject: RE: Sound Ordinance; Outdoor Amphitheater; SP-2011-0185C

Robert –

Just wanted to follow-up with you regarding your questions to Greg. We finally got to touch base on this yesterday and both agree as to the following:

1. **Can a sound permit be issued for a structure in an RR zoned district? Can a sound permit ever be issued for an RR zoned property?**

Yes, the site would be eligible to request a sound amplification permit subject to all applicable requirements in Chapter 9-2. There is no blanket restriction against issuing sound amplification permits within residentially zoned areas.

However, as we've previously discussed, any permit would require an impact plan consistent with Chapter 9-2, Division 3 (*Outdoor Music Permits*). An impact plan may include site-specific limitations on outdoor music, including decibel levels and hours of operation, as well as conditions to help mitigate impacts on adjoining residential areas.

Additionally, a permit would be subject to any general limits on hours of operation that are applicable under Section 9-2-14 (*Restrictions on Permits Impacting Residential Properties*) (copied below). In applying this provision, the department measures applicable distances from the location of the sound equipment to the property line of the nearest property that is zoned and used as residential.

2. **What if the structure is considered a Religious Assembly use? How is religious assembly classified under the sound ordinance when the zoning is residential?**

Religious assembly is a civic use per Section 25-2-6(41) (*Religious Assembly Use*). That means the restrictions in Subsections (B) & (C) of Section 9-2-5 (*Restrictions on the Use of Sound Equipment in a Residential Area*) don't apply, since they are triggered only when a residence is located on the property.

However, as stated above, a sound amplification permit would be subject to the restrictions in Section 9-2-14 and any specific conditions included in an event impact plan. Both are intended to afford some protections to adjoining residential areas.

12/7/2011

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

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

Sent: Monday, November 14, 2011 3:54 PM
To: Pitts, Don
Subject: FW: Sound Ordinance; Outdoor Amphitheater; SP-2011-0185C

Robert Kleeman
MUNSCH HARDT
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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?

12/7/2011

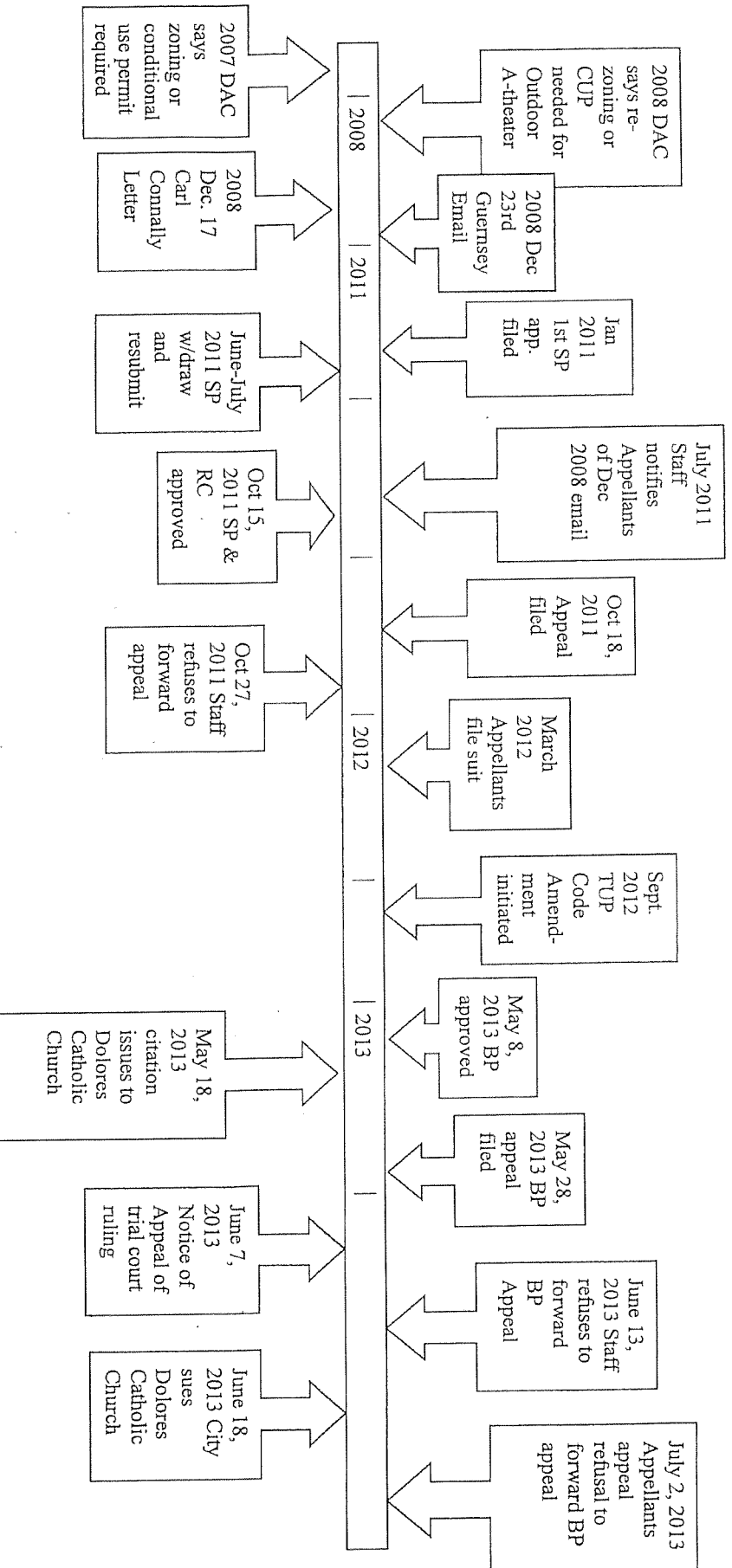
4. When in the process is the applicant required to apply for a sound permit? When the building permit application is filed? Prior to building permit issuance? If at the building permit stage, what is the process for your department to be notified?
5. If the sound permit is not required for the issuance 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?

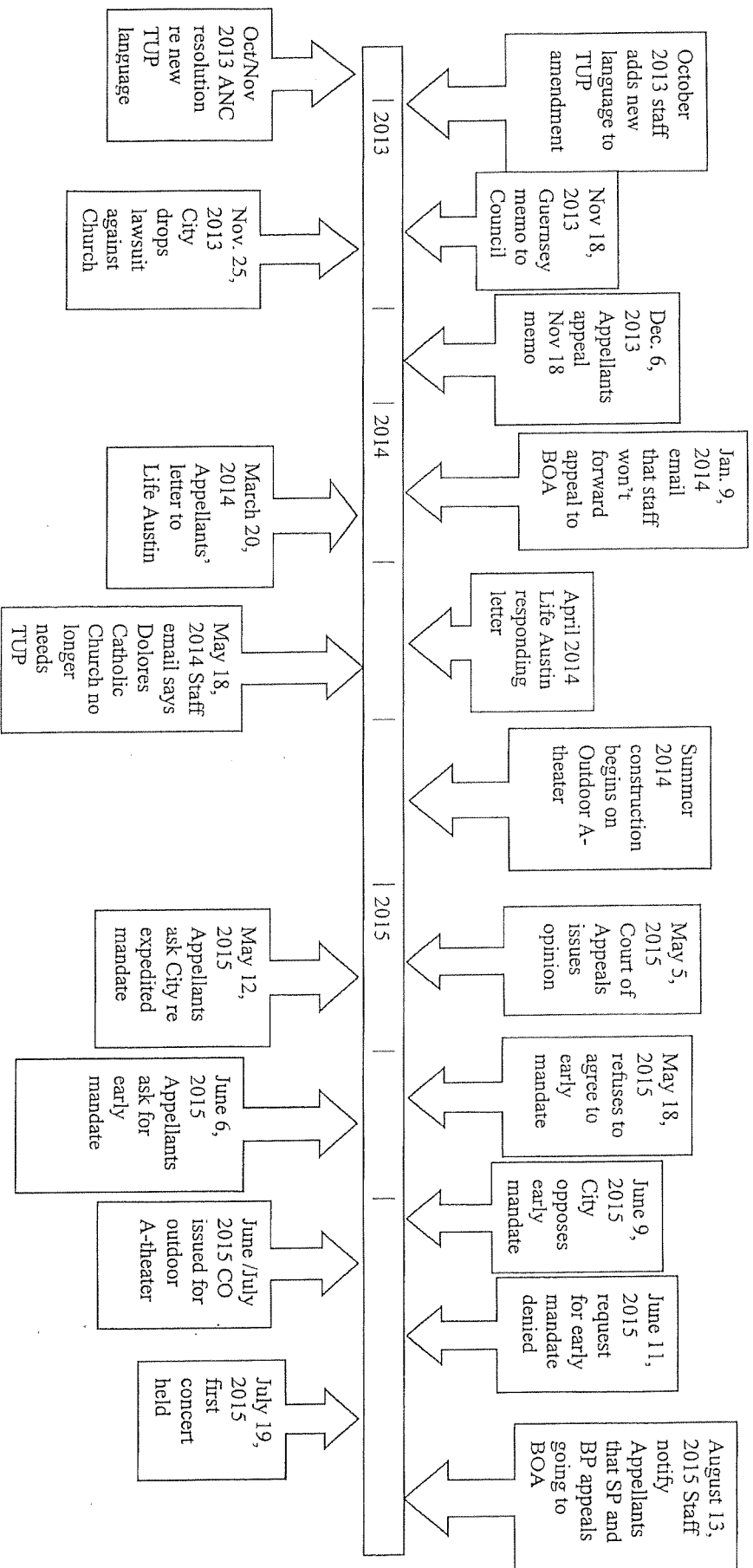
I will greatly appreciate your timely response.

Let me know if you have any questions.

EXHIBIT 21

Timeline








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.