R03/1

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

900 CONGRESS AVENUE, SUITE 300
AUSTIN, TEXAS 78701

TELEPHONE (512) 476-6955 FACSIMILE (512) 476-1825

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

[redacted]

October 31, 2017

via email
Mayor Steve Adler
City Councilmembers
P.O. Box 1088
Austin, Texas 78767

Re: CodeNext Draft 2

Dear Mayor Adler and Councilmembers:

This letter presents my personal views. I am not writing on behalf of any other person, entity, association, or group. I am not being compensated for writing this letter. While many of my comments are based on and will refer to the LifeAustin outdoor amphitheater as a case study, my comments are intended solely as my participation in the legislative process relating to the consideration and adoption of CodeNext. I have no intent to reopen any issues with LifeAustin. The neighborhood associations and LifeAustin have a settlement agreement and it is my personal desire to see the parties fully comply with the settlement agreement. I have no intent of re-litigating staff actions and decisions relating to the LifeAustin outdoor amphitheater but what staff did with respect the LifeAustin outdoor amphitheater is instructive as to how staff would implement the proposed Title 23.

As stated in the Zucker Report, public trust in the zoning and planning departments are low. One cause of the low public opinion is the lack of transparency and accountability. My comments primarily address a key, statutorily required component to maintaining transparency and accountability: appeals to the board adjustment of administrative decisions made pursuant to the City's zoning code ("**BOA Appeals**"). Based on my personal experiences over the last six years, I also address significant changes from the text of Chapter 25-2 that would allow outdoor entertainment and large gatherings of people at outdoor events in low density residential districts.

The implementation of the new zoning code through administrative decisions will reveal many unintended results. Under Chapter 211 of the Texas Local Government Code ("**Chapter 211**"), the board of adjustment has the statutory authority to uphold, amend, and overturn administrative zoning related decisions when appealed by an "aggrieved person." Texas courts have interpreted this state law as authorizing the appeal of **any** administrative decision made pursuant to Chapter 211 and pursuant to a local zoning code. The right to a BOA Appeal is granted and protected by state law, not the City Code.

Chapters 23-2 and 23-4 contain several significant changes from the text of Chapters 25-1 and 25-2 regarding BOA Appeals and would codify several legally questionable interpretations currently used by City staff to thwart the right of an aggrieved person to file a BOA Appeal and have that appeal heard by the board of adjustment. As discussed below, many of the Title 23 appeal procedures violate due process protections provided by Chapter 211. The Council needs to decide whether the implementation of Chapter 23-4 should be an open, transparent public process or a closed one with reduced accountability.

Before addressing the specific provisions of Title 23 relating to BOA Appeals, I will briefly summarize the statutory requirements (Chapter 211) relating to BOA Appeals.

Statutory Right to Appeal Zoning-Related Administrative Decisions

Chapter 211 establishes a separation of powers with respect to zoning regulations. City councils legislatively adopt zone ordinances. Zoning commissions are statutorily required to hold public hearings and make preliminary reports regarding changes to zoning districts and the adoption of new zoning regulations. City staff has the authority to implement a zoning code which necessarily encompasses a limited authority to interpret the zoning code subject to review by the board of adjustment when a BOA Appeal is filed.

If a city establishes a board of adjustment, then state law mandates the board of adjustment has authority to hear and decide an appeal by an aggrieved person that alleges error in an order, requirement, decision, or determination made by an administrative official in the enforcement of [subchapter A, Chapter 211] or an ordinance adopted pursuant to subchapter A, Chapter 211. See Section 211.009(a)(1), Texas Local Government Code ("**TLGC**"). Section 2-1-111(F)(2), City Code, authorizes the Board of Adjustment to "hear and decide an appeal of an administrative action

under Chapter 25-2 (Zoning)". Appeals filed with the board of adjustment are called "Interpretation Appeals."

Consistent with the separation of powers framework found in Chapter 211, a board of adjustment is generally described as a "quasi-judicial" body. The process for filing a BOA Appeal mirrors the procedures for filing a lawsuit. When filing a lawsuit, a plaintiff must first file the original petition with the clerk of the court and then have a copy of the filed petition served on the defendant. The Court Clerk acts independently but in support of the court hearing the case. Court clerks do not review the merits or timeliness of a lawsuit petition.

Importantly, Chapter 211 requires the notice of appeal to be filed with the board of adjustment independent of submitting a copy of the notice of appeal to the administrative official whose decision is being appealed: "appellant must file with the board **and** the official from whom the appeal is taken a notice of appeal specifying the grounds for the appeal." Section 211.010(b) TLGC (Emphasis added).

Under Chapter 211, the deadline for filing a BOA Appeal is determined by the rules of the board: "The appeal must be filed within a reasonable time **as determined by the rules of the board**. Section 211.010(b), TLGC (Emphasis added). It is questionable whether a City Code provision can interfere with the statutory authority of a board of adjustment to set deadlines for filing a BOA Appeal. It is even more questionable that City staff has the lawful authority to interpret and act upon the rules of the board of adjustment without notifying the board of adjustment or having explicit direction from the board of adjustment to take such actions.

Upon the filing of a notice of appeal, two distinct actions are mandated by Section 211.010 TLGC. First, Section 211.010(b), TLGC requires the administrative official to immediately send to the board a complete copy of the file relating to the appeal: "On receiving the notice, the official from whom the appeal is taken **shall immediately transmit to the board all the papers constituting the record of the action that is appealed**." (Emphasis added)

Second, Section 211.010(c), TLGC effectively imposes an injunction on all further municipal actions relating to the decision being appealed: "An appeal stays all proceedings in furtherance of the action that is appealed . . ."

Simply put, the board of adjustment has jurisdiction over a BOA Appeal once notice of the appeal is tendered to the board of adjustment and to the administrative official whose decision is being appealed. Chapter 211 does not contemplate or suggest that administrative staff have any authority to dispose of a BOA Appeal once the notice of appeal is filed. Under Chapter 211, board of adjustment jurisdiction is established by the action of the person appealing, not by the response of City staff. See *Davis v. Zoning Bd. Of Adjustment*, 865 S. W.2d 941 (Tex. 1993). Title 25 follows the requirements of Section 211.010(b) and (c) and recognizes the jurisdictional authority of the board of adjustment: Section 25-1-191(A) states: Before opening a hearing, **a body hearing an appeal shall decide** preliminary issues raised by the parties, including whether to postpone or continue the hearing and **whether the appellant has standing to appeal**. (Emphasis added). The proposed Title 23 does not comply with many of the Chapter 211 requirements pertaining to BOA Appeals.

The purpose of BOA Appeals is to provide an administrative hearing process to address an appeal without being required to file a lawsuit. One element of having standing to file a lawsuit challenging a governmental action is whether the plaintiff has exhausted all available administrative remedies. Under Chapter 211, the board of adjustment if the administrative remedy available to aggrieved persons.

APPEALS TO THE BOARD OF ADJUSTMENT UNDER TITLE 23

Division 23-4B-2 begins with code interpretations and use determinations under Chapter 23-4 (Zoning): Section 23-4B-2010(B) describes "Project-Level Interpretations" and Section 23-4B-2010(C) describes "Non-Project Interpretations." Notably, Division 23-4B-2 does not mention "informal land use determinations and code interpretations." These are not "Non-Project Interpretations" with formal applications. These are the informal communications by telephone call, email, and hallway conversations between staff and the public regarding the meaning and staff interpretation of the City Code and City Rules. These informal determinations and interpretations are not only inevitable (given the complexity of Title 25) but also necessary for the City departments and the public to operate under Title 25. Problems arise when an informal determination or interpretation is deemed to be an "official" determination or interpretation subject to appeal. As drafted, Title 23 allows informal determinations and interpretations to continue (no

problem there) but does not provide any procedures when an informal determination or interpretation is converted into an official, appealable decision.

Division 23-4B-2 ends with Administrative Appeals (BOA Appeals). Section 23-4B-2030 provides:

(A) A **project code interpretation or use determination** issued in compliance with this Division for a particular development application **may be appealed to the Board of Adjustment in compliance with Article 23-2I (Appeals)**. (Emphasis Added). If the code interpretation or use determination is not appealed, or is upheld by the Board on appeal, a subsequent decision by the Planning Director to approve or disapprove a development application associated with the interpretation or determination may not be appealed under this Section.

(B) Except as provided in Subsection (A), a person who alleges that the Director's decision **to approve or disapprove a development application** is inconsistent with a zoning standard adopted under this Title may appeal the Director's decision to the Board of Adjustment **subject to the requirements of Article 23-2I (Appeals)**. (Emphasis added)

By context, Division 23-4B-2 suggests that Project-Level Interpretations and Non-Project Interpretations are the only decisions that are subject to a BOA Appeal. Section 23-4B-2030, however, does not mention a right to appeal a Non-Project Interpretation under Section 23-4B-2010(C). The right to appeal a non-project interpretation to the board of adjustment must be included, as required by Chapter 211. Virtually all zoning code interpretations are subject to a BOA Appeal. *Ballantyne v. Champion Builders, Inc*., 144 S. W. 3d 417, 426 (Tex. 2004). ("The BOA has the power to hear and decide appeals from any decision or determination by a city administrative official pertaining to the enforcement of the city's zoning ordinance"). Title 23 must be either prohibit informal determinations and interpretations from being converted into official, appealable decisions or provide an opportunity for the affected public to appeal.

WHO MAY APPEAL TO THE BOA

Article 23-2 marks a significant departure from the appeal procedures found in Title 25 and violates several of the statutory requirements found in Chapter 211. As drafted, Article 23-2I narrows the opportunities for an "aggrieved party" to have their appeal heard by the Board of

Adjustment and codifies current staff zoning code interpretations and practices that block BOA Appeals from being heard by the board of adjustment.

Section 23-2I-1020(A) states: A person may appeal an administrative decision only if the person is an interested party under Section 23-2C-2020 (Interested Parties) and:

(1) **This Title specifically provides a Right of Appeal for the decision**;
(2) The person provides comments as required under [Section 23-2I-1020(B)]; and
(3) A notice of Appeal under Section 23-2I-2010 (Notice of Appeal) is submitted not later than the deadline specified under Section 23-2I-1030 (Deadline for Appeal). (Emphasis added)

Section 23-2I-1020(A)(1) reflects the fundamental error in Article 23-2I regarding BOA Appeals. The right to appeal a zoning-related administrative decision is granted by state law in Chapter 211; not Title 23 or the City Code. Legal fights between citizens and the City regarding the right to appeal zoning related administrative decisions go back more than thirty years. See *Austin Neighborhoods Council, Inc. v. Board of Adjustment*, 644 S. W.2d 560 at footnote 8 (Tex. App.-Austin 1982, writ ref'd n.r.e.). Title 23 is just the latest chapter in this ongoing struggle.

As discussed below, this deviation from Section 211.010(b) TLGC and staff interpretations of the Title 25 appeal procedures have already eviscerated Chapter 211 appeal rights. Title 23 reflects an attempt to codify these Title 25 interpretations.

TIME TO FILE A BOA APPEAL

Title 23 is not clear as to when a "decision" becomes appealable. For example, the initial set of staff comments to a site plan may include a statement regarding whether the proposed use of the structure is allowed under the zoning district. If an interested party or Registered Party disagrees with the staff comment, does the interested party have to file an appeal based on the first set of staff comments? Section 23-2C-5020 does not appear to require notification of such decisions during the review of an application. Since staff comments to a site plan application or a building permit are not communicated to interested parties, does the 14 day time period apply to appealing the staff comment? How is the public to know of all the non-noticed decisions that affect their BOA Appeal rights?

Under Article 23-2I, an informal land use determination or Non-Project Interpretation communicated between staff and any person triggers the 20 day time period for filing an appeal of

that land use determination. If so, then a prospective permit applicant will be able to block all appeals of the informal land use determination by merely sending an email to the director requesting the director's interpretation a few weeks before submitting the application. The notification requirements for a Non-Project Interpretation are circular and meaningless. Who would staff send notice to regarding a Non-Project Interpretation? This type of appeal blocking Non-Project Interpretation already happens under Title 25.

In the LifeAustin amphitheater BOA Appeal case (C15-2015-0147), staff decided that a private December 2008 email between a director and the engineer for the project was the sole, appealable decision regarding whether a large, permanent outdoor amphitheater was a permitted use in the RR zoning district. Staff did not inform the surrounding neighborhoods of the existence of the email for more than two years. When my homeowners association filed a BOA Appeal in October 2011 regarding the approval of the site plan and restrictive covenant for the outdoor amphitheater, staff refused to forward the appeal to the board of adjustment.

On or about October 27, 2011, the City's Law Department sent a letter informing my neighborhood association that "the Planning & Development Review Department ("PDRD") has rejected your administrative appeal of October 21, 2011 as untimely." The October 27, 2011 letter stated the Administrative Appeal was untimely because the City determined that the decisions being appealed were all subsumed in and addressed in the 2008 Guernsey Email. In the October 27, 2011 letter, the City staff claimed that the referenced 2008 Guernsey Email constituted a "use determination" that could have appealed within twenty days of December 23, 2008, even though my neighborhood association had no notice, actual or constructive, of the decision. Under current staff practices, the responsible director and the Legal Department decide which decision he wants to use for triggering the deadline for filing an appeal. Title 23 would explicitly authorize these practices.

After filing its October 2011 BOA Appeal, my neighborhood association and another neighborhood association filed two additional BOA Appeals relating directly or indirectly to the construction of the Life Austin outdoor amphitheater. Staff refused to forward the appeals to the board of adjustment and did not notify the chair of the board of adjustment that a notice of appeal had been filed and disposed of by staff. In each case, the Legal Department and the responsible

director reviewed each appeal and made a decision to not forward the BOA Appeal to the board of adjustment.

The City Legal Department defended administrative decisions to not forward the BOA Appeals to the board of adjustment by asserting the "appeal is not timely filed," "it is not an appealable decision," or "the party filing the appeal doesn't have standing." I had staff file mark a copy of an appeal when it was submitted at One Texas Center, but the appeals were not entered into the City system and the filing fee check was not deposited. Based on its assessment and decision on the appeal, Staff asserted that no appeal existed and, therefore, the staff had no duty under Chapter 211 or Section 25-2-185 to forward the notice of appeal to the board of adjustment. Section 25-1-185 states: "On receipt of a notice of appeal or an amendment of a notice, the responsible director or building official **shall promptly notify the presiding officer of the body** to which the appeal is made and, if the applicant is not the appellant, the applicant."(Emphasis added)

On one occasion, I timely filed an appeal regarding staff's decision to refuse to forward the previous appeal to the board of adjustment. Clearly a decision made in the enforcement of subchapter A, Chapter 211 and Article 25-2. Staff refused to forward that boa appeal to the board of adjustment and gave me no explanation.

ADMINISTRATIVE DETERMINATIONS OF BOA APPEALS

Article 23-2I eliminates the Title 25 duty of the director to promptly notify the presiding officer of the body to which the appeal is made and ignores the requirements of Section 211.010(b). Article 23-2I also strips the board of adjustment of its current authority under Section 25-1-191(A) to determine preliminary matters, including whether an appellant has standing to appeal. Under Section 23-2I-1020(C), the responsible director will determine whether an appellant has standing to appeal: "If the responsible director determines that an applicant [sic] has failed to meet the requirements of this Section [23-2I-1020], the Appeal may not be considered." Further, "the responsible director may not accept an Appeal submitted past the deadline required by this Section [23-2I-1030]." What is the justification for stripping the board of adjustment of the fundamental power to decide whether an appeal filed pursuant to Chapter 211 should be heard?

Similarly, Section 23-2I-2010(B) states "A notice of Appeal may not be accepted as timely unless it meets the requirements in Subsection (A) [of 23-2I-2010] on or before the deadline

specified under Section 23-2I-1030 (Deadlines for Appeals)." The second sentence of Section 23-2I-2010(B) authorizes the responsible director to decide whether an appellant can supplement a notice of appeal after the applicable filing deadline.

In response to a comment I posted regarding the deletion of the BOA's authority to determine standing, staff wrote:

> "For example, one comment objected to removing an existing Code provision which requires that bodies hearing an appeal decide whether a party has "standing" to appeal. **In staff's view, the clarifications in Article 23-2I make standing a non-issue.** If an appeal is authorized, it timely filed, and meets other applicable procedures, then it should be posted and the body hearing the appeal should consider the merits of the case. If the appeal is not authorized, is untimely, or fails to meet applicable procedures, then the appeal should be considered and any development affected by the appeal should be allowed to proceed." (Emphasis added)

This response mistakenly assumes the infallibility of staff to make dispassionate assessments and decisions regarding appeals challenging the correctness of their own decisions. Staff actions relating to the Life Austin outdoor amphitheater case completely undercut the above quote.

Under Title 23, staff, whose decisions would be appealed, is the gatekeeper as to whether a BOA Appeal is forwarded to the board of adjustment. What is the appellant's remedy if the staff decision not to forward the appeal is wrong? For my neighborhood, it was three years of litigation: Cause No. D-1-GN-12-000878; *Hill Country Estates Homeowners Association, and Covered Bridge Property Owners Association, Inc. v. Greg Guernsey and The City of Austin*; In the 250th Judicial District Court of Travis County, Texas. City staff filed a Plea to the Jurisdiction claiming the two associations did not even have standing to sue the City over the refusal to forward the October 2011 BOA Appeal to the board of adjustment. After the trial court granted the City's Plea to the Jurisdiction, the court of appeals ruled the trial court could not decide on whether the plaintiffs had standing to sue the City until the board of adjustment decided whether the appellants (my neighborhood) had standing. Case NO. 13-13-00395-CV, Thirteenth Court Of Appeals of Texas, Corpus Christi, Texas, *Hill Country Estates Homeowners Association, And Covered Bridge Property Owners Association, Inc., Appellants v. Greg Guernsey And The City Of Austin, Appellees*.

City staff finally forwarded the October 2011 BOA Appeal to the board of adjustment in September 2015. At its December 9, 2015 special called meeting the board of adjustment did determine that the appellant associations had standing to appeal in BOA Appeal cases C15-2015-0147. At the board of adjustment hearing, Staff did not argue the appellants lacked standing before the board of adjustment.

A person whose decision is being challenged by a BOA Appeal is not a disinterested party. Giving the responsible director the authority to decide whether the BOA Appeal will even be "accepted" by the City is a clear violation of the due process rights provided by Chapter 211.

Staff needs to explain why it should be authorized to limit the scope of the Board of Adjustment's statutory authority without violating the separation of powers embedded in Chapter 211. More importantly, staff needs to explain why it should be authorized to abridge the rights of aggrieved parties to file a BOA Appeal under Chapter 211.

The most reliable way to bring the City into compliance with Section 211.010(b), TLGC is to require appeals to the board of adjustment to be filed with the City Clerk's Office. The City Clerk's Office should and can function like a court clerk. The City Clerk's Office can forward the appeal to City staff supporting the board of adjustment who can then forward a copy to the appropriate director. The City Clerk can then send notice of the appeal to the chair of the board of adjustment.

AVOIDANCE OF CHAPTER 211 AUTOMATIC STAY

Section 23-2I-2040(B) allows an applicant for a Site Plan or Building Permit that is subject to Appeal to process changes to the application as an administrative correction, without further notification, in order to address zoning related issues raised in an Appeal or by comments submitted from interested parties under Section 23-2I-1020 (Appeal of Administrative Decisions)." This provision runs afoul of Section 211.010(c), Texas Local Government Code: "An appeal stays all proceedings in furtherance of the action that is appealed . . ." That is, City staff is prohibited from taking any further action relating to the appealed decision until the board of adjustment rules on the appeal. The text of the proposed Section 23-2I-2040(B) does not comply with this statutory requirement. It also appears to authorize staff to negotiate with an applicant a resolution of an appeal without involving the appellant.

APPEAL PROCEDURES UNDER DIVISION 23-4B-2

Even though Article 23-2I purports to be the controlling provision regarding appeals, a significant limitation on the right to appeal zoning related administrative decisions is found in Division 23-4B-2. The second sentence of Section 23-4B-2030(A) states:

> "If the code interpretation or use determination is not appealed or is upheld by the Board on appeal, a subsequent decision by the Planning Director to approve or disapprove a development application associated with the interpretation or determination may not be appealed under this Section."

Similar language is found in the second sentence of Section 23-4B-2010(B)(3).

These sentences are problematic for several reasons. First, Chapter 211 authorizes an aggrieved person to appeal **any** administrative decision relating to zoning. *Ballantyne v. Champion Builders, Inc.*, 144 S. W. 3d 417, 426 (Tex. 2004). Second, if there is no public notice of the initial decision, then potential aggrieved parties will never have the opportunity to appeal to the board of adjustment. Third, initial staff interpretations and determinations often change or "evolve." For example, in the LifeAustin amphitheater case, the initial informal and private land use determination issued in December 2008 stated "I understand that the educational and musical presentations will be limited in scope and will be subordinate to the primary religious assembly use." The restrictive covenant approved by staff in September 2011 for the amphitheater states that "musical or theatrical performances" are permitted as a religious assembly use. The "limited in scope and subordinate to religious assembly use" limitation in the initial private determination had been removed. Staff refused to forward the appeal of the approval of the restrictive covenant, in part, asserting that the terms of the 2011 restrictive covenant were the same as the 2008 informal determination.

As drafted, the second sentence of Section 23-4B-2030(A) gives staff broad, unappealable power to modify its code interpretations and use determinations within the context of specific project application. Modifying a previous decision is, in fact, a new administrative decision that is subject to appeal under Chapter 211. The board of adjustment and not staff should have the authority to decide whether a new decision has been made.

EX PARTE CONTACTS PROHIBITED

Section 23-2I-2050 extends the current board of adjustment rule of prohibiting ex parte contact between a board member and a member of the public to all board and commissions hearing

an appeal. Section 23-2I-2050(B) limits the public's right to communicate to a board or commission member to only during a public hearing. Under Section 23-2I-2050(C), a board or commission member is disqualified from participating in the case for receiving material information that is not made available to other board members and to interested parties. If the board of adjustment and all other boards and commissions were truly courts of law, then the proposed Section 23-2I-2050 prohibitions would be appropriate. In the context of a BOA Appeal, Section 23-2I-2050 does not apply to one party to the appeal--City staff. City staff, and in particular, the City Legal Department can communicate with board of adjustment members at any time and in executive session. It is an inherent conflict of interest for the Legal Department to represent City staff with respect to the administrative decision the subject of a BOA Appeal and then go into executive session with the board of appeal. The BOA Appeal process is not transparent when the board of adjustment makes decisions based on legal advice that is kept from the public. As proposed, Section 23-2I-2050 would limit public input in non-BOA Appeals and would make City staff the only conduit for information provided to the board or commission and would effectively provide City staff the opportunity to have the last word on an issue.

In sum, Title 23 would authorize staff to 1) decide who may appeal an zoning related administrative decision; 2) control the flow of information to the board or commission hearing the appeal; 3) have non-public discussions with the board or commission; and 4) without challenge of a BOA Appeal, change or modify a previous zoning related administrative decision relating to a project application.

OUTDOOR ENTERTAINMENT AND TEMPORARY USES

"Temporary Use" is defined in Title 23 as "Short term activities that are not allowed on a permanent basis but because of their temporary non-permanent intermittent or seasonal nature are acceptable."

According to Table 23-4B-1050(A), "an outdoor public, religious, patriotic, or historic assembly or exhibit, including a festival, benefit, fund raising event, or similar use that typically attracts a large audience" is a temporary use. Table 23-4B-1050(A) does not include the following limitation that appears in Section 25-2-921(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 large 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." As drafted, Chapter 23-4 allows any parcel of land within the City to be used for large outdoor gatherings of people without any notice to the adjoining landowners or the public.

Through administrative interpretation/amendment, staff has already amended Section 25-2-921(C) by determining religious assembly and educational facilities in SF-4 and more restrictive districts have a right to hold outdoor gatherings without a temporary use permit. In 2012, staff requested a code amendment to Section 25-2-921(C) to authorize staff to issue Temporary Outdoor Assembly Permits for religious assembly and educational facilities. Code Amendment Case C20-2012-016. In October 2013, staff released a new draft of the proposed code amendment that would exempt religious assembly properties completely from Section 25-2-291(C). After some public compliant about staff making a material change to the proposed code amendment after all public hearings had been closed, staff issued a November 18, 2013 memorandum to the City Council withdrawing the proposed code amendment because staff determined the amendment wasn't really needed. The memorandum stated religious assembly and educational facilities located in SF-4 and more restrictive districts had the right to hold large outdoor gatherings of people without any permit.

Two neighborhood associations filed a BOA Appeal challenging the code interpretation in the November 18, 2013. The Legal Department refused to forward this appeal to the board of adjustment claiming advice given during a legislative proceeding did not constitute a "decision" subject to a BOA Appeal. In May 2014, an east Austin resident complained to the City about an outdoor music event being held at a church located in a SF-3 zoning district. City staff cited the November 18, 2013 memorandum as the official determination that large outdoor gatherings and events could occur at this church. Details of staff's reinterpretation of Section 25-2-921(C) can be found in the evidentiary records of BOA Appeal case C15-2015-0147.

My only request on the temporary use permit issue is that the community have the opportunity to have an informed discussion on this significant change to the City's zoning regulations.

R03/14

Please do not hesitate to contact me if you have any questions regarding the issues raised in my letter.

Sincerely,

Robert J. Kleeman

RJK/dm

cc: Planning Commission
Zoning and Platting Commission