



City of Austin Draft Land Development Code

SIGN REGULATIONS (CHAPTER 23-8): OVERVIEW OF NEW REGULATIONS

Prepared for Draft 3

April 5, 2018

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INTRODUCTION

Sign regulations are an essential component of most land development codes. Like other development regulations, they include requirements related to size, location, design, and placement in relation to the public realm. Sign regulations are unique, however, in that they directly impact expressive activity which is subject to constitutional protections.

This report provides a general overview of the new sign regulations proposed for CodeNEXT, which are codified in Chapter 23-8 (*Signage*) and are included for the first time in Draft 3. Additionally, the report summarizes key differences between these proposed regulations and the City's current sign regulations.

To make the material easier to understand, this report focuses on key themes and overall topic areas. Code sections that are known to be of interest to commissioners and the larger community are described in greater detail, as are provisions that differ most substantially from the current Land Development Code. In contrast, sections that are more technical or have limited impact are given less detailed treatment and are generally covered only as part of an overview of the "Article" or "Division" in which they appear.

It is hoped that this report will help the City Council, Planning Commission, the Zoning & Platting Commission, and other stakeholders involved in the CodeNEXT process to understand these regulations and the changes proposed to the City's current sign regulations. Staff will be available throughout the CodeNEXT public process to answer questions and provide additional detail on particular provisions.

CodeNEXT Core Team
April 5, 2018

OVERVIEW OF CHAPTER 23-8 (SIGNAGE)

CodeNEXT's proposed sign regulations carry forward most basic elements of the City's current sign regulations, but are substantially rewritten and restructured to improve readability and reduce ambiguity. Additionally, the proposed regulations include a handful of substantive changes aimed at improving administrative efficiency and achieving greater consistency with the City's planning goals.

Following is a summary of the more significant changes included in the proposed regulations, which are discussed in greater detail in the subsequent sections of this report.

- ***Regulations are restructured and rewritten to be clearer and easier to read.***

Like many parts of the current Land Development Code, Chapter 25-10 (*Sign Regulations*) has been amended in piecemeal fashion over the years and contains many long code sections covering multiple topics. In drafting these proposed regulations, which are codified in Chapter 23-8 (*Signs*), staff tried to organize and structure sections more logically by breaking apart discrete topics into separate sections.

The proposed regulations also utilize new stylistic conventions employed throughout CodeNEXT, such as purpose statements and regulatory tables. Additionally, many existing requirements are rewritten to improve overall clarity and address problems in interpretation that have arisen in the context of enforcing and administering the City's sign regulations.

- ***Reduces the number of sign districts and sign types.***

CodeNEXT proposes to carry forward the City's longstanding approach of regulating signs by sign district, which is based on location, as well as by sign type. These categories function much like "overlays" and are an effective way of providing context-specific sign regulations.

However, while CodeNEXT retains this basic structure, it reduces the number of sign districts by consolidating different categories and eliminating redundant or unnecessary sign districts.

- ***Updates the City’s regulations for electronic message signs.***

Drawing on regulations used in other cities, CodeNEXT includes specific requirements for signs displaying electronic messages. These regulations address both the brightness of illumination and the frequency with which images may change.

- ***Revises and updates regulations for off-premise signs.***

“Off-premise signs,” which usually appear in the form of freestanding billboards, consist of commercial messages advertising goods, services, people, or products not directly associated with the property where the sign is installed. The City of Austin has banned new off-premise signs since 1983, but has generally allowed existing off-premise signs lawfully installed before that time to continue as “nonconforming uses” subject to certain restrictions.

Most of the changes to requirements for off-premise signs proposed in CodeNEXT are non-substantive clarifications and do not significantly alter the rules for maintaining an existing off-premise sign. Of the few substantive changes that are proposed, the most significant is the elimination of provisions authorizing the relocation of off-premise signs to new locations. Staff finds these provisions, which were added to existing Chapter 25-10 in 2005 and 2008, to be difficult to administer and inconsistent with regulations applicable to other kinds of nonconforming uses.

- ***Updates administrative and enforcement procedures.***

CodeNEXT updates the procedures that govern permit applications, sign registrations, requests for variances, and administrative enforcement of the sign regulations. Most of the changes are non-substantive and serve primarily to clarify existing procedures.

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SUMMARY OF MAJOR PROVISIONS

The remainder of this report summarizes the major components of CodeNEXT's proposed sign regulations, titled Chapter 23-8 (*Signage*), with an emphasis on the more significant differences between these regulations and the City's current sign regulations codified in Chapter 25-10 (*Sign Regulations*).

Article 23-8A (General Provisions)

The two divisions included in Article 23-8A establish a general framework for the City's sign regulations and adopt procedures for applying the substantive regulations found in later parts of Chapter 23-8.

- ***Division 23-8A-1 (Policy and Administration)***

The code sections included in Division 23-8A-1 do not fundamentally differ from current code, but a few enhancements and revisions are included as noted below.

Sections 23-8A-1010 (*Purpose and Applicability*)

Section 23-8A-1020 (*Noncommercial Message Substitution*)

These provisions carry forward most of the revisions adopted by the City Council in 2017, by passage of Ordinance No. 20170817-072. These provisions conformed the City's sign regulations to recent federal and state court decisions which expanded on earlier precedents requiring sign regulations to be "content neutral."

One difference worth noting is that, under CodeNEXT, well-established exemptions from the sign regulations are listed as exclusions from the general "Applicability" provision in Section 23-8A-1010 rather than as carve-outs from the general definition of "Sign" under Section 23-8A-1070 (*Definitions*). This is a more logical way to document regulatory exemptions, but it does not change the overall scope of the sign regulations from what exists today.

Section 23-8A-1030 (*Review Authority*)

This provision follows the basic approach to delegating administrative authority that is used throughout CodeNEXT. It identifies the Development Services Department as the primary administrative authority for sign regulation, but

acknowledges the City Manager’s authority to assign particular functions to other departments.

Section 23-8A-1040 (*Supplemental Design Guidelines*)

This provision expressly authorizes Council to adopt sign regulations specifically tailored to particular areas, such as historic districts or individual zoning districts. It is intended to better link such enactments, which have been used in the past, to the City’s general sign regulations.

Section 23-8A-1050 (*Sign Districts and Sign Overlay*)

This section carries forward the basic concept of “sign districts” that have long served as an organizing principle for the City’s sign regulations. However, it differs from current regulations in three ways.

First, it provides a more thorough explanation of how sign districts function and clearer guidance for determining which sign district applies to a particular area. Second, it eliminates, retitles, and consolidates a few existing sign districts in a manner that staff believes will make the regulations simpler and easier to administer, while still ensuring that sign regulations are appropriate to surrounding patterns of development.

Finally, this provision introduces a new concept: “sign overlays,” which provide a method for imposing regulations tailored to specific planning goals. While additional overlays could be added in the future, the only one established here is the “Pedestrian Overlay” which may be applied in areas where the City seeks to facilitate a more walkable urban environment.

Because this section is intended as an overview, it does not set forth the actual regulations and standards which apply within particular districts or overlays. Those regulations are codified in Article 23-8C (*Regulations Applicable to Sign Districts and Sign Types*).

Section 23-8A-1060 (*Sign Measurements*)

Section 23-8A-1070 (*Definitions*)

These sections establish common methods for calculating measurements and define terms that are used throughout Chapter 23-8 (*Signage*). No major substantive changes are proposed, but several new or revised definitions are

included in Section 23-8A-1070 (*Definitions*) to clarify and improve the sign regulations.

For example, several new definitions are added to aid in administering new requirements for “electronic message signs.” (These include definitions of “candela,” “lumen,” and “foot candle,” which are technical terms that inform how illuminosity is measured). Additionally, the definition of “mobile billboard” is revised to clarify that electronic messages cannot be displayed on cabs, pedi-cabs, or buses. Staff currently regards such signs as “hazardous signs,” and therefore prohibited, so this change is intended to support existing practices.

A few other new and revised definitions are included as well, but these changes are non-substantive and serve largely to clarify ambiguous provisions of the City’s current regulations and to support existing practices.

- ***Division 23-8A-2 (Sign Permits and Registration)***¹

The code sections in this division establish general procedures for sign permits and registration requirements. It does not differ substantially from current code, but a few revisions or enhancements are included as noted below.

Section 23-8A-2010 (*Sign Permits*)

This provision consolidates various permitting, inspection, notification, and enforcement provisions into a single section. It establishes requirements for “sign installation permits,” which are required under Chapter 23-8 for many types of permanent and temporary signs. It clarifies existing requirements consistent with staff’s practices, but does not make any substantive changes.

Section 23-8A-2020 (*Contractor’s Registration*)

Section 23-8A-2030 (*Billboard Registration*)

These provisions relate to the two types of registrations that are required under both the City’s current sign regulations and Chapter 23-8: registration for contractors who install signs and registration of nonconforming off-premise signs.

Consistent with the City’s current sign regulations, Section 23-8A-2020 requires sign contractors to obtain an annual registration. The registration is intended to

¹ Note that the “contents” for this division, at page 238A-2, lists incorrect section titles and numbers. Staff will provide an errata correcting this error prior to public hearings on Draft 3.

ensure that applicants installing permanent signs possess sufficient qualifications and adequate insurance to protect against potential damage resulting from sign installation. These provisions are generally consistent with current requirements.

Also consistent with current code, Section 23-8A-2030 (*Billboard Registration*) requires owners of nonconforming off-premise signs (commonly called “billboards”) to obtain an annual registration. This requirement ensures that the City has an accurate inventory of existing billboards that helps ensure against the illegal installation of new billboards in violation of the 1983 ban. Other than a few minor clarifications, this provision is generally consistent with current billboard registration procedures.

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Article 23-8B (Regulations Applicable to All Signs)

This division sets forth general regulations applicable to all signs, regardless of which sign district they're located in. The changes proposed from current regulations, described below, are fairly minimal and consist mainly of restructuring and redrafting existing requirements to better align with the drafting style utilized throughout CodeNEXT.

- ***Division 23-8B-1 (General Requirements)***

The requirements in this division address required materials and construction standards, regulations for illumination, and requirements for maintaining signs in safe condition. Most of the regulations, in particular Sections 23-8B-1030 – 1080, include no significant substantive changes from the existing requirements in Chapter 25-10 (*Sign Regulations*).

Section 23-8B-1020 (Illuminated Signs)

One significant change is contained in Section 23-8B-1020 (*Illuminated Signs*), which sets forth regulations applicable to different categories of illuminated signs. In addition to updating general illumination standards, such as requirements for glare reduction and restrictions on fluctuations in brightness, this provision introduces specific requirements tailored to “Electronic Message Signs” capable of automatically changing text or images displayed on the sign face.

The use of electronic message signs has proliferated in recent years, with the rise of digital technology and the use of computer-controlled displays. The City's current sign regulations are outdated, however, and do not include regulations sufficient to address the unique challenges these signs present. City staff currently relies on the general “hazardous sign” prohibition to ensure that electronic message signs are used in a safe manner, but they believe the updates proposed in Section 23-8B-1020 are necessary to clarify the requirements and address the broader range of issues raised by the use of electronic message signs.

The proposed regulations, set forth in Subsection (E), are modelled on those used in other cities and incorporate several new technical terms defined in Section 23-8A-1070 (*Definitions*). Substantively, the main purpose of the regulations is to restrict overall brightness and variations in brightness, as well as the frequency with which messages or images may change.

Section 23-8B-1040 (*Structural Requirements*)
Section 23-8B-1080 (*Maintenance*)

These provisions include existing requirements related to the overall condition of signs, as well as a few new (but very limited) regulations applicable to sign materials, electrical service, and concealment of support structures.

- ***Division 23-8B-2 (On-Premise Signs Allowed Without a Permit)***²

The regulations in this division cover general on-premise signs for which the City does not require a permit. Other than stylistic revisions and restructuring, the changes from current regulations are mainly limited to updating references to zoning districts consistent with the new categories established in Chapter 23-4 (*Zoning*).

- ***Division 23-8B-3 (Prohibited Signs)***

This division sets forth the different types of signs that are generally prohibited in all districts. While a few clarifications are included, most of the changes are non-substantive in nature. However, a few changes are worth noting.

Section 23-8B-3010 (*Signs Prohibited in All Sign Districts*)
Section 23-8B-3020 (*Signs Prohibited in Public Easements and Right-of-Way*)

This provision carries forward all of the blanket prohibitions currently set forth in Section 25-10-103 and incorporates a few other prohibitions that are expressed in other provisions of Chapter 25-10, so that the provision is a more comprehensive description of prohibited signs.

The general prohibition on “mobile billboards” is continued from current Code, but the definition in Section 23-8A-1070 (*Definitions*) has been revised to clarify that “electronic message signs” may not be displayed on motorized or non-motorized vehicles. Staff regards the use of electronic messages on vehicles “hazardous” under current regulations and therefore prohibited, but recommends that the definition be clarified to avoid any ambiguity.

² Note that the “contents” for this division, at page 1 of 8B2, lists incorrect section titles and numbers. Staff will provide an errata correcting this error as Draft 3 proceeds through the public process.

The requirements in Section 23-8B-3020 carry forward current restrictions on the placement of signs on public property, but strengthens the enforcement provisions. Additionally, the referenced provision on “street banners”—Section 23-8C-3030 (*Standards for Street Banners*)—has been revised to enhance the City’s enforcement authority and to clarify that these signs constitute “governmental speech.”

- ***Division 23-8B-4 (Nonconforming Signs)***

The requirements in this division pertain to nonconforming signs—i.e., signs that were legal at the time they were installed, but do not comply with current regulations. Most of these provisions are consistent with regulations in existing Section 25-10-152, but they are substantially rewritten and restructured to be clearer and easier to administer. Additionally, two important substantive changes are made to the regulations affecting off-premise signs.

First, the regulations do not do not carry forward current provisions in Section 25-10-152(B)(5)-(6) which allow sign owners to relocate billboards to offsite locations. Staff recommends this change for the following reasons:

- The regulations are difficult to administer and enforce, as they require careful monitoring both at the time relocation initially occurs and for 25 years afterwards. Consistent with themes emphasized in both the *Zucker Report* (2015) and the *Land Development Code Diagnosis* (2014), staff has sought to reduce complexity where possible.
- In general, the goal in regulating non-conforming uses is to gradually phase them out over time by limiting the extent to which they can be modified, enhanced, or altered. Allowing off-premise signs to be relocated, which is not permitted for other kinds of nonconforming uses, is inconsistent with that goal.

Second, the regulations clarify the circumstances under which an off-premise sign may lose its status as a legal non-conforming use. The first circumstance, which exists under current code, is structural disrepair or dismantlement of the sign without approval or for a period of more than 90 days. The second circumstance is cessation in use of the sign for off-premise advertising, which terminates the use under general zoning principles.

Article 23-8C (Regulations Applicable to Sign Districts and Sign Types)

This article contains regulations applicable within the various sign districts established in Section 23-8A-1050 (*Sign Districts and Sign Overlay*), as well as standards applicable to specific types of signs. As with the regulations in Article 23-8B, discussed above, most of the changes proposed here are non-substantive and intended primary to improve readability. Of the few substantive changes proposed, the most significant are highlighted below.

➤ ***Division 23-8C-1 (Regulations Applicable to Sign Districts and Sign Types)***

The sign district regulations under this division are generally consistent with those established in existing Chapter 25-10, Article 6. However, they are reformatted and rewritten into a table format consistent with conventions used throughout CodeNEXT. Additionally, these proposed amendments:

- Remove the Neighborhood Sign District, because the zoning districts and uses associated with this district do not carry forward in CodeNEXT.
- Renames a few sign districts to more clearly reflect their intent and applicability.
- Revises the language in Section 23-8C-1050 regarding the number of freestanding signs allowed in the Scenic Roadway Sign District to match other commercial districts. This corrects an ambiguity that some have argued allows more signs in the Scenic Roadway Sign District than in less restrictive districts.
- Replaces the sign regulations specific to University Neighborhood Overlay with a more general “Pedestrian Oriented Sign Overlay,” codified in Section 23-8C-1110. This change reflects the fact that the UNO sign standards applicable under current code are applied in a number of regulating plans located outside of the UNO area.

➤ ***Division 23-8C-2 (Regulations by Sign Type)***

This division sets for the regulations applicable to different types of signs, which apply unless regulations adopted for a particular sign district are more restrictive. In terms of structure and format, the regulations are revised consistent with

drafting conventions used throughout CodeNEXT. Additionally, graphics are incorporated to visually depict each type of sign and provide guidance for applying the regulations.

Substantively, the general standards for building-mounted and freestanding signs are similar to those in current Chapter 25-10, Article 7, but the following provisions are new or substantially revised to incorporate more context-sensitive design standards:

- § 23-8C-2030 (*Awning or Canopy Sign*)
- § 23-8C-2040 (*Changeable Copy Sign*)
- § 23-8C-2050 (*Landscape Wall Sign*)
- § 23-8C-2060 (*Marque Sign*)
- § 23-8C-2070 (*Porch Sign*); Section 23-8C-2080 (*Projecting Sign*)
- § 23-8C-2090 (*Roof Sign*); Section 23-8C-2100 (*Suspended Sign*)
- § 23-8C-2110 (*Wall Sign*)
- § 23-8C-2120 (*Mural Sign*)
- § 23-8C-2130 (*Window Sign*)

➤ ***Division 23-8C-3 (Regulations for Nonstandard Signs)***

With a few minor exceptions, the regulations in this division are generally consistent with the requirements for special signs in Chapter 25-10, Article 7, and other parts of current code. However, in addition to stylistic and structural revisions, the regulations for street banners in Section 23-8C-3030 have been substantially revised as previously noted.

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Article 23-8D (Enforcement and Relief Procedures)

This article establishes procedures for enforcement of the City's sign regulations and for obtaining variances and administrative modifications. Aside from stylistic revisions, most of these provisions are substantively consistent with the procedures established in current Chapter 25-10, Articles 2 and 3. However, a few substantive changes are worth noting:

➤ ***Division 23-8D-1 (Enforcement)***

The enforcement provisions in this division are revised from those in current code to better describe activities that constitute a violation and to synch up with the administrative procedures for permit revocation under Article 23-2J (*Enforcement*). Additionally, this division clarifies requirements for removing on-premise signs on properties where the principal use has been abandoned and for signs abandoned on public property.

➤ ***Division 23-8D-2 (Variances and Appeals)***

This division establishes requirements for obtaining administrative relief from sign regulations and for appealing decisions related to staff's interpretation and application of the regulations. Substantively, the procedures are generally consistent with those established in current code.

However, the legal basis for the City's sign regulations has been clarified to reflect that, in addition to the City's home-rule powers: (1) general regulations for on-premise signs are adopted under Chapter 216, Subchapter Z, of the Local Government Code; and (2) regulations relating to off-premise signs, including the longstanding prohibition in effect since 1983, are also an exercise of zoning authority under Chapter 211 of the Local Government Code.


As a practical matter, this distinction means that the Board of Adjustment's approval of variances for on-premise signs does not require a super-majority vote, which is consistent with current practice. It also means that a decision by the director on whether an off-premise sign is legally nonconforming is a zoning determination appealable to the Board of Adjustment under Article 23-2G-1040 (*Appeal of Decision on Nonconforming Status*). These revisions do not substantially impact existing procedures, but help to address confusion that has arisen in past cases involving enforcement of the City's sign regulations.



LAW DEPARTMENT

MEMORANDUM

To: Chair William Burkhart
Board of Adjustment

From: Brent D. Lloyd 
Assistant City Attorney

Date: May 14, 2018

Subject: **Issues on BOA Agenda for May 14, 2018**

To assist the Board with tonight's agenda, this memo provides information on three general business items: (1) administrative appeals; (2) CodeNEXT sign provisions; and (3) attorney representation.

1. **Administrative Appeals** Agenda Item Nos. R-1 and R-4

Attached is a presentation provided at the Board's meeting in March 2018 regarding administrative appeals and the improvements included in CodeNEXT.

The presentation summarizes key improvements to the appeals process that are proposed in CodeNEXT, which includes provisions that: (a) broaden "standing" requirements to conform with the "aggrieved party" standard established by state law; (b) clarify the Board's authority to consider all appeals related to zoning regulations, whether the decision at issue is related to enforcement, permitting, or general administration; (c) clarifies deadlines in permitting appeals and provides greater opportunity for parties to challenge "code interpretations" not associated with a particular project.

The presentation also reviews prior cases where the Board has acted to reverse staff decisions, as well as improvements made in 2012 when Council amended the existing Land Development Code to require notice of "use determinations" made prior site plan submittal. (This latter amendment, which is

carried forward in CodeNEXT, was made in response to a case where notice of a “use determination” was not provided to adjoining landowners prior to site plan approval).

Given the importance of appeals to all parties, including adjoining landowners and permit holders, we advise the Board to work within the process for administrative appeals established under City Code and to coordinate with staff on any needed process improvements, as well as additional recommendations for consideration as part of the CodeNEXT process.

2. CodeNEXT Sign Chapter Agenda Item R-2

Attached in backup is a general report that summarizes the proposed amendments to the CodeNEXT sign chapter, codified in Chapter 23-8. The amendments are not intended to change the Board’s role with respect to sign permitting, but they do clarify that the primary legal basis for most of the City’s sign regulations is Chapter 216, Subchapter Z, of the Local Government Code, rather than the zoning enabling act. (This is why sign variances have never required a super-majority vote, even after the separate Sign Review Board was abolished and its functions reassigned to BOA).

Staff are considering clarifications to these provisions, based on stakeholder feedback, and the Board should not hesitate to ask questions or suggest improvements. I am available to advise or present on these provisions at a future meeting, as well as one-on-one with individual boardmembers.

3. BOA Representation

Attached is a presentation we provided at the Board’s meeting in March 2018, summarizing the law on representation of municipal boards and the Law Department’s role in advising and defending the BOA.

Please do not hesitate to contact us if you have questions regarding any of the above-referenced items.

cc Alecia Mosadomi, Assistant City Attorney

Administrative Appeals Before Zoning Board of Adjustment

Brent Lloyd
Sp. Assistant City Attorney

MARCH 12, 2018
BOARD OF ADJUSTMENT MEETING
AUSTIN CITY HALL



Local Government Code Chpt. 211

- Authorizes local BOA to hear appeals from any “aggrieved party” or city department challenging administrative decisions relating to a zoning ordinance.
- BOA may affirm, reverse, or modify decision appealed and has same authority as the official who made the decision



State Law (cont'd)

- Appeal “stays” the decision pending resolution of the appeal. Where a permit is appealed, development under the permit must stop.
- Courts have upheld authority of municipalities to specify deadlines for BOA appeals.
- Appeals to BOA may be required in order to “exhaust administrative remedies.”



BOA Appeals – Current Code (Title 25)

- Authorizes “interpretation” appeals, but provides no guidance on what constitutes an interpretation or how the process works.
- Assigns appeals to bodies other than the BOA, without regard to the issues raised.
- Limits appeals to “interested parties” and requires appellants to “communicate an interest in the matter subject to appeal.”



BOA Appeals – Current Code (Title 25)

- Authorizes “interpretation” appeals to BOA, but provides no guidance on what constitutes an interpretation or how the process works.
- Assigns many appeals to bodies other than BOA (i.e., building permits, site plans, enforcement orders).
- Limits appeals to “interested parties” and requires appellants to “communicate an interest in the matter subject to appeal.”



Current Code (cont'd)

- Establishes a 20-day deadline for appeals of administrative decisions.
- Ties “standing” to appellant’s status as an “interested party” and whether decision is one that may be appealed.
- Includes detailed provisions on “use determinations.”



CodeNEXT Appeal Provisions

- Tracks state law by authorizing any “aggrieved party” to appeal to BOA, with determination to be made by BOA.
- Clarifies BOA’s authority to consider appeals, including rules for “project” and “non-project” appeals.
- Revises provisions related to enforcement appeals.



Law Department's Representation of Board of Adjustment

Brent Lloyd
Sp. Assistant City Attorney

MARCH 12, 2018
BOARD OF ADJUSTMENT MEETING
AUSTIN CITY HALL



Key Issues

- 1) Representing Cities: General Principles & Issues
- 2) Quasi-Judicial Bodies: Unique Considerations
- 3) Law Department's Representation of the Board of Adjustment



Lawyer's Duty to Client

- Loyalty
- Confidentiality
- Candor
- Zealous Representation



Question: Who is The Client?

- Mayor or City Council?
- City Manager's Office or Department Directors?
- City staff?
- City boards and commissions?



Answer: The City as a Whole

- Per the Texas Disciplinary Rules of Professional Conduct: “A lawyer employed or retained by an organization represents the entity.” TDRPC § 1.12.
- This is true even though, in the ordinary course of business, a lawyer may report to or receive direction from particular constituents of the organization.
- A city attorney represents the city as a whole, acting through its officials, not individual employees or constituents.

Representing Entities: R02/30

General Considerations

- A lawyer's duty is to the organization as a whole, with recognition of the role that individual constituents or employees play in the organization.
- The lawyer relates to the organization through its constituent parts—i.e., city officials, departments, and employees.
- In general, the duty of confidentiality (TDRPC § 1.05) applies to communications with individual officers or constituents acting in an official capacity.



Considerations Unique to Government

- By law, individual agencies within a government body may be tasked with carrying out special functions distinct from those of the organization as a whole.
- So, the Texas rules of professional conduct recognize that how a government attorney relates to individual constituents or entities varies depending on a particular agency's functions.
- For certain types of administrative hearings, “due process” concerns may also affect a lawyer's representation of the tribunal.



General Guidelines & Best Practices

- Like other organizational attorneys, a government lawyer represents the entity as a whole. Courts do not find “conflicts of interest” simply because agencies have competing interests.
- But providing a separate attorney for a specific agency may be appropriate when:
 - An agency has the authority to act independent of the governing body, such that a dispute could result in litigation between the agency and the entity; and
 - Different agencies have adverse interests.



Best Practices (cont'd)

- Texas city attorneys generally represent both the local BOA and planning departments.
- Outside counsel not required for different agencies, except in special circumstances (e.g., adversarial or disciplinary proceedings with potential sanctions or involving appointive authority).
- For example, outside counsel required by Code for Ethics Review Commission in cases affecting certain city officials. See: City Code § 2-7-31.



Law Department's Representation of BOA

- Assigned attorney advises BOA on all variance and special exception cases; staff generally takes no position and does not participate.
- In administrative appeals, Law Department generally assigns separate attorneys for staff and BOA if:
 - Staff has previously sought substantive legal advice regarding the merits of the case on appeal or the specific issues at stake in the appeal; and/or
 - Staff requests to be represented in the appeal.



Representation of BOA (cont'd)

- Law provides the same advice to BOA and to staff regarding issues of Code interpretation.
- Generally advises against changing longstanding interpretations that are consistent with Code text, even if another interpretation is possible.
- Advises BOA on options for reversing staff decisions and assists in crafting language so that interpretation can be followed.
- Provides legal defense where BOA decisions are challenged.



Representation of BOA (cont'd)

- Examples of BOA decisions reversing staff:
 - Definition of “bedroom” under SF-3 zoning
 - McMansion: Dormer & Attic exemptions
 - Short-term rentals
 - What constitutes sufficient enclosure for fitness studios
 - Determining front-yard in cases involving through lots
 - Carports vs. garages under SF zoning regulations
- Example cases of Law Dept. defending BOA rulings:
 - Short-term rentals
 - Rulings on nonconforming billboards

