

## MEMORANDUM

**TO:** Honorable Mayor and City Councilmembers

**FROM:** Terrence S. Welch, City Attorney

**DATE:** September 7, 2022

**RE:** City Council Members as Board and Commission Chairs

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This memorandum addresses basic information about possible revisions to the City's Code of Ordinances should the City Council elect to appoint Council Members as the chairs of the City's various boards and commissions. Following is a list of boards and commissions contained in the City's Code of Ordinances.

Planning and Zoning Commission. Section 2.4 of the Zoning Ordinance provides for the establishment of the Planning and Zoning Commission. Section 2.4.3 of the Zoning Ordinance addresses membership and appointment to the Commission and if the Council desires to provide for a Council Member to serve as the chair, it would be necessary to amend the Zoning Ordinance to provide for that change. As you are aware, any amendment of the Zoning Ordinance would be heard first the Planning and Zoning Commission at a public hearing and thereafter by the City Council at a public hearing.

I would note that Division 2 of Article 1.04 of the Code of Ordinances also provides for the establishment of the Planning and Zoning Commission. When the City adopted the new Zoning Ordinance in 2020, the ordinance repealed any conflicting ordinances; however, the City's codification/publication company, Franklin Legal Publishing, did not take Division 2 of Article 1.04 out of the Code of Ordinances. Thus, if any changes are made relative to the Planning and Zoning Commission, I would recommend the City repeal Division 2 of Article 1.04 so that we do not have two provisions relating the Planning and Zoning Commission in our Code of Ordinances.

Animal Control Advisory Board. This Board is established in Article 2.04 of the Code of Ordinances. The Board is composed of five (5) members: one (1) licensed veterinarian, one (1) animal welfare organization representative, one (1) city official, one (1) city animal shelter employee and one (1) at-large person. This Board, by state law, is purely advisory and there is no provision in the Code for the selection of officers for the Board. The Permit and Appeals Board (Code of Ordinances, § 2.01.002), which hears appeals under the City's animal control ordinance, consists of the members of the Animal Control Advisory Board.

Type A Economic Development Corporation. Pursuant to Section 504.051 of the Texas Local Government Code, the board of directors consists of at least five (5) directors, appointed by the City Council and serve at the pleasure of the City Council. The board of directors appoints its president.

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Type B Economic Development Corporation. Pursuant to Section 505.051 of the Texas Local Government Code, the board of directors consists of seven (7) directors, appointed by the City Council and directors serve at the pleasure of the City Council; however, at least three (3) of the directors must be persons who are not employees, officers, or members of the governing body of the City. *See id.*, § 505.052(c). Like a Type A economic development corporation, the board of directors of a Type B economic development corporation appoints its president.

Zoning Board of Adjustment (Building Board of Appeals, License Appeal Board). Although members of the Zoning Board of Adjustment wear several hats—as members of the Board of Adjustment, the Building Board of Appeals (for substandard structures, for example), and the License Appeal Board (related to sexually oriented businesses), as well as an appeal board related to appeals from administrative decisions related to the City’s adopted uniform codes (building, electric, plumbing, etc.), I would hesitate to appoint City Council Members to this Board since it acts in a quasi-judicial capacity whereas other boards and commissions, not unlike the City Council, act in a legislative capacity.

Like the Planning and Zoning Commission, the new Zoning Ordinance adopted in 2020 contains provisions related the membership and duties of the Zoning Board of Adjustment, and the prior Code provision, Article 14.02, should be repealed in its entirety to avoid having two provisions that establish the Zoning Board of Adjustment.

If you have any questions about the foregoing boards and commissions, please do not hesitate to contact me if I may be of any further assistance to you. Thanks.

c: Mike Peacock, City Manager  
Alice Holloway, City Secretary