



# CITY OF HOUSTON

Legal Department

## Interoffice

Correspondence

To: Anna Russell  
City Secretary

From: <sup>BC</sup> Tracy B. Calabrese  
Section Chief  
General Counsel Section

Date: May 3, 2016

Subject: Notice of Appeal from decision of  
General Appeals Board, Texas  
Direct Auto, sign located at 312  
Main St.

Section 4604(e)(1) of the Sign Code requires that notice of appeal be given in writing to the City Secretary within 10 days of the decision of the General Appeals Board ("GAB"). The decision of GAB was rendered on January 28, 2016, and the notice of appeal filed by Jon M. Stautberg, Attorney at Law, on behalf of Texas Direct Auto, was received by your office on February 5, 2016.

By a memorandum dated February 10, 2016, we previously advised you that the appeal is timely, provided that Mr. Stautberg file with your office the transcript of the GAB hearing within 60 days after the GAB's decision appealed as required by Section 4604(e)(2) of the Sign Code. Mr. Stautberg filed the transcript of the GAB hearing with your office on March 21, 2016, which was within 60 days. Accordingly, the appeal is timely and may be considered by City Council.

However, Mr. Stautberg's notice of appeal included extraneous arguments and information that was not presented at the GAB's January 28, 2016, hearing. The information included in Mr. Stautberg's notice of appeal was improper for the reasons articulated below, and as such, the City has submitted a response, attached.

The appeal at issue originates with a decision/interpretation of the Sign Administrator and pertains to a sign located at 312 Main Street. Because the Sign Code is part of the Building Code, administrative reviews of decisions of the Sign Administrator are reviewed by the GAB. The Board conducts an evidentiary hearing and based on the evidence received and the arguments presented, determines whether or not the Sign Administrator's decision/interpretation should be upheld. In this appeal both the City and the appellant were represented before the GAB by legal counsel.

The process for further appeal to City Council is set out in Section 2-2 of the Code of Ordinances, the Council Rules of Procedure, at Rule 12, styled "Appeals to City Council." The Rule itself, as well as the Sign Code in this instance, requires that a court reporter be present at any such administrative review hearing (again, in this instance, the GAB) to

record the proceedings. A party desiring to appeal from the GAB must pay the cost of having the court reporter transcribe the proceedings, and that transcription, along with relevant and appropriate exhibits, attachments, etc., considered by the GAB constitute the "record" for purposes of review by City Council.

The Rule is very clear as to what transpires from there. The decision of the Board "...shall be reviewed by the city council, **without the taking of further evidence by city council, on the basis of the record of the decision from which the appeal is taken.**" (first sentence, Rule 12, in part, emphasis added). The process is reiterated in the last paragraph of the Rule which provides in part, "...the city council shall consider the appeal **solely on the basis of:** (1) **The written record of the hearing conducted below;** and (2) **The written exceptions,** if any, of each party to the proceeding to the **facts** and administrative rulings and decisions made by the officer, agency, board or commission."

This type of appeal is commonly referred to as an appeal on the record. No extraneous arguments or information not found in the record should be considered by City Council in the appeal process, nor should any be solicited. Personal contact, phone calls, etc., to discuss the matter, either with City representatives or the appellant, would be inappropriate as any such information would be outside of the written record. When the appeal is presented for action at a Council meeting, the Council must then vote on the appeal. Typical language would be a motion to (1) uphold the action of the Board; (2) overturn the action of the Board; or (3) as provided in the last paragraph of the Rule, "In the event the city council finds that the record is incomplete or inadequate, the city council may refer the matter to the officer, agency, board or commission for further proceedings to complete the record." If the Council deems it appropriate to refer the matter back to the General Appeals Board, it should provide direction to the GAB as to what further proceedings are required.

Attachments: Copy of the Notice of Appeal  
Copy of the City's response to the new arguments raised in the Notice of Appeal

nek

cc: Jon M. Stautberg (Via Certified Mail)  
Ronald C. Lewis, City Attorney  
Dale Rudick, Director of Public Works and Engineering  
Marta Crinejo, Agenda Director  
Lisa Lorton, Division Manager, Sign Administration  
David Red, Sr. Assistant City Attorney

