



CITY OF HOUSTON
Legal Department

Interoffice
Correspondence

To: Anna Russell, City Secretary

From: David L. Red

Date: 3 May 2016

Re: Notice of Appeal of decision of the General Appeals Board's upholding revocation of a Sign Permit for Texas Direct Auto at 312 Main Street, Suite 200, Houston, Texas

Texas Direct Auto's appeal in this matter is an appeal on the record. Rule 12 in Section 2-2 of the Code of Ordinances sets forth the procedures for such appeals. The rule states, in part, that the decision of the General Appeals 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.) That the appeal is limited solely to the record of the decision of the General Appeals Board is reiterated in the concluding 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.

The City of Houston excepts to Texas Direct Auto's Supplemental List of Exceptions filed in this matter on 21 March 2016 as it attempts, for the first time, to introduce into evidence a Certificate of Occupancy for the subject premises issued to it on 29 February 2016. The Certificate of Occupancy was not, and indeed could not have been, considered by the General Appeals Board when it met on 28 January 2016 given that it was issued 30 days after that body rendered its decision in this matter. As such, it is improper under Rule 12 of Section 2-2 of the Code of Ordinances for the Certificate of Occupancy to be included in the record in this matter and for it to be considered by the city council when it takes up Texas Direct Auto's appeal.

The City of Houston further excepts to Texas Direct Auto's Supplemental List of Exceptions filed in this matter on 21 March 2016 as Special Exception 5 in that document incompletely and misleadingly states the testimony of Misael Benitez. Mr. Benitez testified that he attempted to inspect the premises at 312 Main Street, Suite 200 on multiple occasions, but that he was never able to access the property due to the doors being locked and to no one from Texas Direct Auto being present. (Transcript of General Appeals Board 28 January 2016 hearing, Page 7/Line 21 - Page 8/Line 15.) Mr. Benitez further testified that he spoke with a representative of Texas Direct Auto concerning access to the premises and was told that Texas Direct Auto did not have a key to the premises. (Transcript of General Appeals Board 28 January 2016 hearing, Page 18/Line 21 - Page 18/Line 10.)

During the 28 January 2016 hearing on the revocation of its sign permit, Texas Direct Auto submitted evidence concerning its alleged use of the premises located at 312 Main Street, Suite 200, but, as is shown in the transcript of that hearing, the General Appeals Board found that evidence lacking, unconvincing, and insufficient to prove that Texas Direct Auto actually conducted business at that location. Texas Direct Auto's failure to conduct business at 312 Main Street, Suite 200 means that its sign located at that address is an Off-Premises Sign under the City of Houston's Sign Code; that Code outlaws such signs.