

ZONING BOARD OF ADJUSTMENT TRAINING

City of Richardson, Texas

YOU ARE VERY IMPORTANT

- Most important board or commission of the City.
- Quasi-Judicial Board.
- Decision of the ZBA has legal implications.
- ZBA unlike other boards does not make recommendations to the Council by rather grants variances to the Comprehensive Zoning Ordinance adopted by the City Council and reviews administrative determinations of staff.

ROLE OF THE ZBA

- To hear and decide appeals where it is alleged that an error in any order, requirement, decision or determination made by an administrative official in the enforcement of the zoning ordinance.
- To hear and grant variances from the zoning ordinance.
- Special Exceptions (Fences Only).

ZBA MEMBERSHIP & VOTING PROCEDURES

- Consists of five members, each appointed for a term of two years. Alternate members may also be appointed to serve when one or more regular members are absent. All cases must be heard by a minimum of 75% of the members.
- Concurring vote of at least 75% of the members is required to reverse administrative decisions and authorize variances.
- ZBA may adopt rules and Bylaws.
- Chair or presiding member may administer oaths.

VARIANCES

- Permission to depart from the literal requirements of a zoning ordinance by virtue of unique hardship due to special circumstances regarding a person's property. It is a waiver of the strict requirements of the comprehensive zoning ordinance.
- Unusual circumstances, strict application of zoning regulations will produce unnecessary hardship. Variances relate to technical zoning matters such as area, setback, and height regulations.
- Cannot grant a variance for a use.

VARIANCES

- As required by law a variance may only be granted if there is a hardship shown based on the shape, size, or topography of the lot or tract.
- If requests for the same type of variances are being requested the City Council will review the Comprehensive Zoning Ordinance to determine whether the zoning regulations are unreasonable and need to be amended.
- It is not for the ZBA to make those determinations.

VARIANCES

- Variances are permissible only if strict application of the zoning ordinance would cause unnecessary hardship.
- Board should require evidence of hardship.
- Not authorized merely to accommodate the highest and best use of the property.

VARIANCES

- Hardship is not self-imposed, frustrated development plans or financial hardship.
- It does not matter that:
 - no person is in opposition;
 - that neighbors or other citizens support the requested variance; or
 - that no person or property will be harmed if granted.

VARIANCES

- Variance is based on each case.
- Each case is unique.
- It does not matter that similar variance has been granted.
- ZBA is not bound by the prior actions of the ZBA.

VARIANCES RELATING TO STRUCTURES

TEX. LOC. GOVT. CODE 211.009(B-1)

- Relates solely to variances relating to structures.
- Establishes five criteria that may be considered when determining presence of unnecessary hardship.
- One: The financial cost of compliance is greater than 50 percent of the appraised value of the structure as shown on the most recent appraisal roll.
- This applies to existing structures already on the tax rolls.
- Whatever would be required by the CZO would need to cost more than half of the structure's appraised value and if so the ZBA can consider this in determining presence of unnecessary hardship.

VARIANCES RELATING TO STRUCTURES

- Two: Compliance would result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development may physically occur.
- Again, this refers to an existing structure.
- If the CZO requires a specific use to have a minimum square footage that is triggered by a remodel or other change in use and expansion/remodel would result in loss of 25% of buildable area, this factor can be considered.

VARIANCES RELATING TO STRUCTURES

- Three: The municipality considers the structure to be a nonconforming structure.
- Four: Compliance would result in the unreasonable encroachment on adjacent property or easement.
- Five: Compliance would result in the structure not in compliance with building code or ordinance of city.
- Generally, cannot grant authority to expand a non-conforming use, but sometimes same rule applies to non-conforming structures. This criteria would allow a house with a side setback that was originally allowed but now is non-conforming to seek a variance to allow the house to be expanded with an addition.

VARIANCES RELATING TO STRUCTURES

- **This law allows the ZBA to consider these criteria BUT IT DOES NOT ELIMINATE THE OTHER STANDARDS RELATING TO:**
 - Not being contrary to the public interest
 - Requiring literal enforcement to result in unnecessary hardship
 - Existence of special conditions that are not self-imposed
 - Must still be within spirit of Zoning Ordinance
 - Substantial justice must still be done.

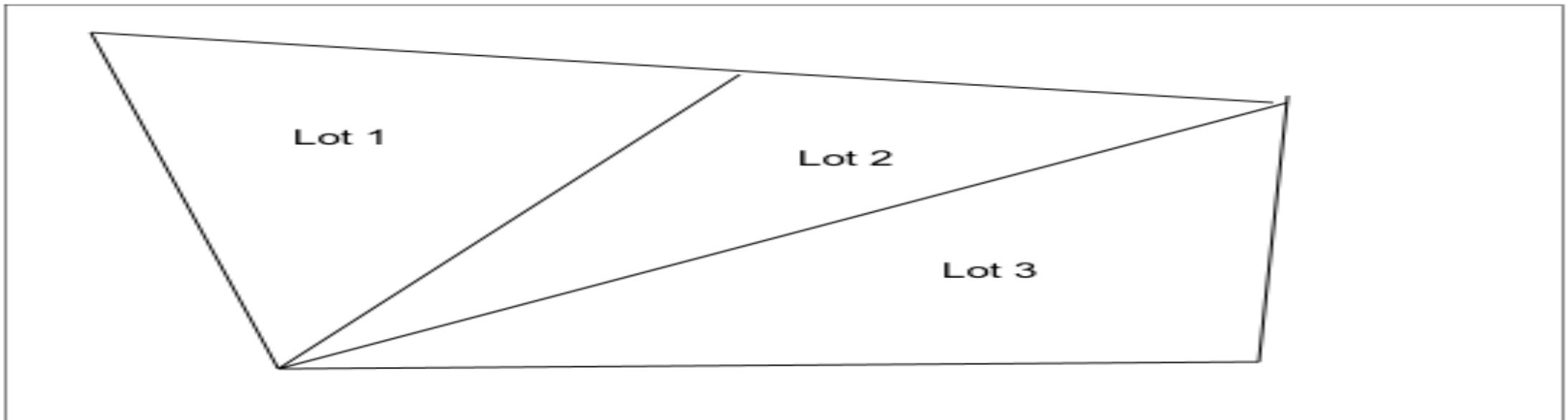
THESE ARE NOT A HARDSHIP



THIS MIGHT CREATE A HARDSHIP



These could create a hardship



PROCEDURE TO APPEAL ADMINISTRATIVE DECISION

- Any person aggrieved by a decision, or any officer, department, board, or bureau of the City affected by any decision of the Chief Building Official or other Administrative Officer may appeal to the Board.
- Filing notice with the administrative officer from whose decision appeal is taken and with the board of adjustment within 20 days after the decision.
- Appeal stays all proceedings unless the administrative officer whose decision has been appealed certifies after notice of appeal that a stay would in his or her opinion cause imminent peril to life or property.

PROCEDURE TO APPEAL ADMINISTRATIVE DECISION

- If appeal is not taken to the board of adjustment, the officer's decision becomes final.
- Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and make it as it ought to be made.
- ZBA is required to set a reasonable time for the appeal hearing and give public notice of the hearing and notice to the parties in interest.
- ZBA is required to decide the appeal at the next meeting for which notice can be provided following the hearing and not later than the 60th day after the date the appeal is filed.

SPECIAL EXCEPTIONS

- ZBA may hear and decide special exceptions to the terms of a zoning ordinance when the ordinance requires the Board to do so.
- Hear and decide other matters authorized by an ordinance.
- CZO does not provide for special exceptions, however Richardson Code of Ordinances Chapter 6, Article IV, authorizes ZBA to hear special exceptions to the Fence Code (not the same as a special exception to the CZO).

SPECIAL EXCEPTIONS

Sec 6-203 of Article IV.- Fences

“When in its judgement the public convenience and welfare will be substantially served and the appropriate use of the neighboring property will not be substantially injured, the ZBA, may authorize special exceptions to the regulations provided in this article in order to permit reasonable development and improvement of property where the literal enforcement of the regulations would result in an unnecessary hardship.”

JUDICIAL REVIEW

- Any aggrieved person may appeal the ZBA's action by filing a petition for writ of certiorari in the state county or district court within ten (10) days after the decision is filed in the ZBA office.
- It is important to file the decision in the ZBA office promptly to start the clock.
- Board files certified copies of the original papers and Court then reviews the decision based on the abuse of discretion standard.

MEETINGS

- Chairperson: presiding officer; ensures rules of procedure are followed; maintains the dignity of the meetings; calls meeting to order; confines the discussion; recognizes members for motions, statements; allows audience participation at appropriate times.
- Regulating talk: Bickering or tiresome exchanges of personal opinions; endless speeches by citizens, and detailed reports by staff - can be overcome by tactful action on the part of the chairperson.
- Shorten agenda- Consent Agenda Items - approval of the minutes, routine items that are approved by a single motion and a vote;
- Review packet before meeting; contact staff prior to meeting with questions and requests for additional information; efficient use of everyone's time; and
- ZBA may have work sessions or briefing sessions when necessary.

MEETINGS

- Afford citizens opportunity to be heard and not a Q & A session.
- Order of presentation, time periods, opening and closing procedures.
- Begin promptly; conduct in an orderly consistent manner in conformance with established rules of procedure.
- Ask questions of the applicant or staff.
- Seek recommendations from staff if not already provided.
- Maintain formality of the meeting - do not refer to persons by their first name.

MEETINGS

- Limit comments to the matter at issue.
- Don't say too much.
- Focus on the issues at hand.
- Peer pressure to ensure all members stay on track.
- Avoid direct dialogue with citizens.
- Do not step down from the dais to have private conversations.
- Don't text or email or use cell phone.
- Do not meet with developers/citizens privately.
- *Ex parte* communication is wrong, creates sense of impropriety and deprives public of hearing your thoughts, opinions and deliberations.

MEETINGS

- Do not hear if notice of the meeting is defective – re-advertise.
- May administer oath to those giving testimony but not required.
- Ask all questions of speakers, staff and applicant before close the hearing.
- Prepare for the meeting; Read your packet before the meeting.
- Ask questions of staff before the meeting so that you have the necessary information timely.
- It is the quality of the time spent at the meeting and not the quantity of time spent at the meeting.
- Make efficient use of your time and that of staff.

OPEN GOVERNMENT TRAINING

- Each member must complete open meetings and public information training course not later than 90 days after the member takes the oath of office or assumes the responsibilities of the office.
- City has designated a public information coordinator to satisfy the open records training requirement.
- Course taken one time only, unless City requires otherwise.
- City Secretary keeps certificate on file.

TEXAS OPEN MEETING ACT

- Every regular, special, or other called meeting of a governing body is open to the public unless a closed meeting is authorized by the Act.
 - *Applies to ZBA.*
- Written notice of the date, hour, place and subject of each meeting, including authorized closed meetings must be posted three business days prior to the date of the scheduled meeting.
- If not on the agenda, ZBA may not discuss the item or take action, except to determine whether to place the item on a future agenda.

TEXAS OPEN MEETING ACT

- Any discussion or deliberation between a quorum or between a quorum and another person regarding public business or policy which ZBA controls or supervises or during which formal action is taken.
- ZBA committee consisting of less than a quorum which meets to discuss public business or to receive information from third party is subject to the Act.
- Does not apply to conventions, candidate debates, seminars or workshops, if no formal action is taken and any discussion of public business is incidental; social meetings unrelated to public business; testimony before legislature and agencies and candidate forums.
- All decisions must be made in public.
- No voting in closed session or by secret ballot.
- You can vote to approve minutes of a meeting where you were absent.

TEXAS OPEN MEETING ACT

- May not use telephone, email/voice/text messages (or social media) to arrive at a decision or consensus concerning public business.
- May not meet in numbers less than a quorum for the purpose of secret deliberations.
- “Walking Quorum” an overlapping series of meetings or telephone conferences with less than a quorum.
- Do not “reply all” to emails to the entire ZBA, as this could be considered as a violation of the Texas Open Meetings Act.



Can I count on your
Vote?

NO VISITORS FORUM; RIGHT TO SPEAK

- Act does not grant the public the right to speak at ZBA meetings except when taking action on an item on the agenda under the Right to Speak Law.
- ZBA is required to allow the public to address the ZBA regarding an item listed on an agenda for action (consideration of) at an open meeting either before or during ZBA discussion of the item.
- Applies only to action items; does not apply to briefing or discussion items or to a work or study session meetings.
- Applies when ZBA re-convenes from executive session and makes a motion to take action-ZBA needs to allow the public to address ZBA prior to taking the action (the vote).
- ZBA may adopt reasonable rules; require persons to register to sign up to speak.
- May not prohibit public criticism, including criticism of any act, omission, policy, procedure, program, or service, unless the public criticism is otherwise prohibited by law.

TEXAS OPEN MEETING ACT

- Member posts comments on a social media platform regarding an issue within jurisdiction of the ZBA and other members individually comment on the same social media platform in response a violation has occurred once a quorum of the ZBA has commented on the social media platform regarding the issue.
- Member discusses an issue within jurisdiction of the ZBA with another member and then further communicates separately with a third and then a fourth member regarding the same issue and such numbers constitute a quorum, a violation has occurred for each member of ZBA that participated in the communication provided they knew that additional communications occurred or would occur among a quorum of the ZBA.
- May not use text or emails to arrive at consensus.

TEXAS OPEN MEETING ACT; EXECUTIVE SESSION

- Limited purposes; only applicable for legal advice.
- First convene open session; presiding officer announces a closed meeting will be held and states applicable section of Government Code and subject matter.
- Certified agenda must be kept and includes announcement at beginning and end of meeting stating the date and time, subject matter and any action taken.
- Attendance limited to persons necessary for the discussion and whose interest are not adverse, to the City.
- Open Meetings Act does not prohibit members from making public statements about the subject matter of closed session, but it is a violation of Code of Ethics.
- Remember the purpose of the Act to allow a closed meeting is to afford ZBA to have candid confidential legal discussion regarding the matter. Privilege held by ZBA as a whole and not waived by an individual member.

LEGAL ADVICE

- If a situation arises during a meeting that requires the ZBA to seek legal advice, ZBA may convene a closed meeting to preserve the attorney/client privilege, even if not posted.
- May use telephone; video conference call or internet communication to consult with an attorney in open or closed meeting, if the attorney is not an employee of the City.

VIOLATIONS OF TEXAS OPEN MEETINGS ACT

- Action taken in violation of the Act is voidable.
- Action may be set aside by a court but can be cured by a subsequent meeting.
- Members who knowingly conspire to circumvent the Act by meeting in numbers less than a quorum for the purpose of secret deliberations are in violation of the Act and have committed a misdemeanor.
- Members who knowingly call or aid in calling or organizing an illegal closed meeting or participate in an illegal closed meeting or close or aid in closing the meeting to the public have committed a misdemeanor.
- Disclosure of the certified agenda or tape recording of a closed meeting is a misdemeanor.
- An offense occurs if a member participates in a closed meeting knowing that a certified agenda or tape recording is not being made.
- Members are liable for damages for personal injury, lost wages, defamation, mental or emotional distress, reasonable attorney's fees and court costs if an individual is slandered during a closed meeting.

VIOLATIONS OF THE OPEN MEETINGS ACT CAN BE CRIMINAL



YES, the public has a right, subject to reasonable access, to tape or videotape ZBA meetings.



TEXAS PUBLIC INFORMATION ACT

- Applies to information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official City business.
- Includes information that the City owns or has a right of access - every form of information in existence.
- Not required to conduct research, collect data or create new records.
- Public may request copies of information or to inspect information on-site.
- City may not inquire into requestor's motives but may require clarification.
- Must be made available within 10 business days after request or if unable to provide the information within 10 business days, must notify the requestor and establish a reasonable date for production.
- If seek to withhold information must notify the requestor and Attorney General that City may seek decision from Attorney General; and then request Attorney General decision within 15 business days after request.
- Communications (text, emails) by members regarding public business are subject to the Act regardless of the device used.
- Don't mix personal and public business.

TEXAS PUBLIC INFORMATION ACT

- Some information is protected by statute or other law and may not be disclosed to the public.
- Information is not released until the Attorney General issues a written opinion requiring the disclosure of the requested information.
- E-mail and text communications and social media of ZBA members relating to city business is public information subject to disclosure under the Act regardless of the device used.
- It is the content of the message that controls.
- Use city email address, if one is provided, otherwise copy the staff with your email so city has a record.
- If ZBA member receives email from public at the member's personal email the member should respond to the sender to contact the ZBA member at CPC's city email address, if one is provided but better yet refer the public to the applicable staff.
- This ensures that the email and any response is part of the city system and can be produced in response to a Public Information Request.

GOLDEN RULE REGARDING THE PUBLIC INFORMATION ACT:



IF YOU DON'T WANT SOMETHING YOU SAY OR DO IN RELATION TO THE CONDUCT OF CITY BUSINESS PUBLISHED ON THE FRONT PAGE OF THE NEWSPAPER....DON'T TYPE IT, WRITE IT DOWN, OR RECORD IT IN ANY FASHION!!!

Remember



"On the Internet, nobody knows you're a dog"

SOCIAL MEDIA

- Focus on the content and not the media through which it is transmitted.
- Avoid appearance that members are deliberating by posting comments about public business.
- Posting comments may be construed as a meeting and as a result may be a crime.
- Social media posts by member regarding public business is public information that must be preserved by the member and surrendered to City.
- City has adopted a social media policy.
- Best practices, guidelines and conduct standards of the policy encourage public officials to keep personal and professional social media accounts separated and require officials to be honest and accurate when posting information and to never represent themselves as a spokesperson for City-related matters unless designated to serve as a spokesperson.

SOCIAL MEDIA

- Exercise caution with respect to comments, particularly those concerning the City and the business of the City.
- Strongly encouraged to consider the potential impact of social media statements prior to posting. The City strives to be professional in its operations and processes. Posts that express favoritism and/or bias for or against any individual or group of individuals reflect poorly on the official, as well as the City and its residents. Further, comments suggesting such treatment can expose the City to liability and legal costs.
- Should refrain from using social media accounts to communicate with City employees about City-related matters as this creates a public record on employees' personal accounts that must be retained according to the City's records retention schedule and possibly produced to the public pursuant to the Texas Public Information Act.
- Should be cautious in using official City-provided photographs on personal social media sites.

ETHICS

- City Code of Ethics applies to ZBA members; should be familiar with the Code of Ethics.
- State law and Ethics Code requires a member who has a conflict (substantial interest) in a matter before the ZBA to file an affidavit, abstain from discussion and voting on such matter.
- Member or spouse of such board member may not have a contract to sell goods, materials or services to the City.
- May not participate in request for variance or plat approval if member owns property within 200 feet of the subject property.

CONFLICTS OF INTEREST CHAPTER 171 TLGC

- Rule: member commits an offense if the official knowingly participates in a vote or decision on any matter involving a business entity or real property in which the official has a “substantial interest”.
- File an affidavit revealing the nature and extent of the interest with the governing body.
- Abstain from further participation on the matter.
- Affidavit is to be filed with the ZBA Secretary.

CONFLICTS OF INTEREST CHAPTER 171 TLGC

- Section 171.002 of the Local Gov't Code defines “substantial interest” in a Business Entity as:
 - the official owns at least 10% share of the voting stock or shares of the business entity, or at least \$15,000 of the fair market value of the business entity; or
 - funds received by the official from the business entity exceeds 10% of the official’s gross income for the previous year.

CONFLICTS OF INTEREST CHAPTER 171 TLGC

- Alternatively, a person has “substantial interest” in Real Property if:
 - it is reasonably foreseeable that an action on the matter will have special economic effect distinguishable from its effect in the public; and
 - the official’s interest is an equitable or legal ownership with a fair market value of \$2,500 or more.

CONFLICTS OF INTEREST CHAPTER 171 TLGC

- Also considered to have “substantial interest” if a relative in the first degree, by either consanguinity or affinity, would have a substantial interest in a business entity or real property under these tests.
 - Affinity
 - Spouse of those under Consanguinity
 - Spouse
 - Spouse’s Parents
 - Spouse’s Children
 - Stepparents or Stepchildren

Consanguinity

Parents

Children

Failure to file the affidavit and to abstain constitutes a Class A Misdemeanor, punishable by a fine of up to \$4,000 and a one-year jail sentence.

LIABILITY

- Immunity.
- Official and Qualified immunity.
- Insurance coverage but not for uncovered claims (libel, slander, fighting, intentional torts).



ZONING BOARD OF ADJUSTMENT PROPOSED BY-LAW AMENDMENTS

December 11, 2025

BACKGROUND

- By-laws were last updated in September 2021
- Starting in January 2026, the Board will no longer be conducting a briefing session in advance of the regular meeting
- The current by-laws do not address the current briefing sessions
- However, based on the review of the by-laws by staff in consultation with the City Attorney, staff is recommending a few minor edits to offer clarity and consistency with administrative practices, compliance with State law, and alignment with best practices

SUMMARY OF PROPOSED BY-LAW AMENDMENTS

- Dividing the zoning-related variance responsibilities from the fence-related variance responsibilities since the power to consider special exceptions to the Fence Ordinance is derived from the Code of Ordinances, while the power to consider zoning-related variances is derived from the Texas Local Government Code and the Comprehensive Zoning Ordinance
- Quorum: Clearly defining the number of members that constitute a quorum, due to the allowance of alternate members to serve in the absence of regular members; the current by-laws could potentially be misconstrued that quorum is based on 7 members given the regular and alternate member references, when quorum is based on the 5 regular members
- Clearly defining what constitutes the 75% affirmative vote given the allowance of alternate members to serve

SUMMARY OF PROPOSED BY-LAW AMENDMENTS - CONTINUED

- Updating meeting agenda packet posting requirements to reflect the minimum three (3) business days given the recent State statute change
- Clarification related to agenda packet and submission of applications to match current practices but providing flexibility to allow for alternate submission methods following implementation of a land management software
- Allowance for work session and similar related agenda items to be posted on a regular meeting agenda instead of limiting such items to a special called meeting

ITEMS WHERE DIRECTION IS SOUGHT FROM THE BOARD

- Meeting Start Time:
 - Staff is proposing a meeting start time of 6:30 PM; this start time is consistent with the Board's current regular meeting start time
 - *Does the proposed meeting time allow for members to consistently arrive on time for achieving meeting quorum?*
- Administering oath to applicants and persons testifying on behalf of the applicant:
 - While not required by State law, it is recommended that due to the formality and seriousness of the hearings associated with consideration of variances and appeals of an administrative official's decision, an oath be administered to applicants and persons testifying on behalf of applicants (commonly referred to as "swearing in"); after consulting with the City Attorney, staff recommends the Board consider having the Chair administer the oath (if so, a script can be provided should the Board decide to implement this action)
 - *Does the Board desire to have an oath administered to applicants and persons testifying on behalf of applicants?*

NEXT STEPS

- If the Board is ready to proceed with taking action on the proposed by-law amendments, then staff recommends the Board approve the by-law amendments as presented
- Should the Board desire additional changes, staff requests direction be provided and, depending on the nature of the requested change, if minor the requested change could be included in the motion for approval with the requested change
- If the changes requested are more substantial, staff can present an updated document for the Board's consideration at the regular meeting in January 2026

ADDITIONAL ITEMS EFFECTIVE JANUARY 2026

- Elimination of briefing sessions
- Posting of meeting audio files on City website
- Posting of meeting transcripts on City website
- Transition to action-oriented meeting minutes