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The Honorable Steve Adler, Mayor  
& Members of the Austin City Council  
301 W. 2<sup>nd</sup>  
Austin, TX 78701

RE: Unlawfully Constituted Planning Commission

Dear Mayor Adler and Council,

We have been approached by some property owners in Austin to consider action regarding the fact that the Austin Planning Commission's current membership violates the City Charter, art. X, section 2. Instead of proceeding directly to institute action, we chose to first make sure the City Council is aware of, and given an opportunity to resolve, the problem. We realize that this new Council may not have been made aware of the Charter restriction on Planning Commission membership before making their appointments, and inadvertently violated the Charter with the Council's collective appointments.

In short, the City Charter prohibits more than 4 out of the 13 members of the Planning Commission from being "directly or indirectly connected with real estate and land development." Currently, at least 6 of the 13 Planning Commission members have such connection to real estate and land development. Considering the vacancy on the Commission at this time, at least one-half of the current planning commissioners are connected to real estate or development.

**The Charter Restriction on Planning Commission Membership**

As part of its Charter Review Commission recommendations in 1994, an election was held on May 7, 1994 that included Council election and City Charter amendments, including single-member districts as well as other issues. The election ballot included Proposition 13:

"Shall the City Charter of the City of Austin be amended to provide that the membership of the City Planning Commission shall be equal to the number of the members of the Council plus two (2) additional members and to increase the minimum number of lay members who are not connected with real estate and land development to two-thirds of the members?"

City Clerk's website, Election History (emphasis added). Proposition 13 passed with 67% of the vote.

The idea for this Charter amendment to restrict developer interests on the Planning Commission apparently originated with the Austin Sierra Club (see attached letter, from Dave Sullivan dated September 26, 1993 located in records of the Austin History Center). The letter said, "Thus, the charter should guarantee that a large majority—say, two-thirds—of commission members not have a professional association with development." The letter suggested that examples of direct or indirect connection would include "license, employment, family associations, etc." The Sierra Club letter also said, "Some parties might be concerned that lay persons lack sufficient familiarity with planning to serve on the commission. On the contrary, I have heard many neighborhood and environmental speakers at commission meetings who were very familiar with planning and urban development issues."

During the election, the City of Austin distributed a pamphlet, dated April, 1994, giving a synopsis of each of the ballot propositions. Regarding Proposition 13, the pamphlet said:

This amendment provides that the number of members of the Planning Commission would be equal to the number of members of the Council plus two—permitting the number of members to change if neighborhood election districts are approved. It would also require a minimum of two-thirds of the members must be lay members not connected to real estate or land development.

Pamphlet "1994 Charter Election" City of Austin, April 1994, available from the Austin History Center (AF C2550 1994) (emphasis added). It is difficult not to recognize the irony that 20 years later the "neighborhood election districts" were approved, but the 10-1 Council appointed far too many commissioners with connections to real estate or development.

As a result of the 1994 election, article X, section 2 of the Charter now says:

§ 2. - THE PLANNING COMMISSION — ORGANIZATION.

There shall be established a planning commission which shall consist of citizens of the City of Austin who must be registered voters in the city and must have resided within the city for one year next preceding their appointment. The planning commission shall have a number of members equal to the number of members on the council plus two (2) additional members, a minimum of two-thirds of the members who shall be lay members not directly or indirectly connected with real estate and land development. The city manager, the chairperson of the zoning board of adjustment, the director of public works and the president of the board of trustees of the Austin Independent School District shall serve as ex officio members. The members of said commission shall be appointed by the council for a term of two (2) years, five (5) members to be appointed in every odd-numbered year and four (4) members in every even-numbered year. The commission shall elect a chairperson from among its membership and shall meet not less than once each month. Vacancies in an unexpired term shall be filled by the council for the remainder of the term.

Austin City Charter, art. X, sec. 2. (emphasis added).

The Austin Code of Ordinances, section 2-1-166, recognizes the supremacy of this Charter provision and establishes the number of members of the Planning Commission at 13:

§ 2-1-166 - PLANNING COMMISSION.

(A) The Planning Commission is composed of 13 members appointed to the commission by council.

(B) The city manager, the chairperson of the zoning board of adjustment, the director of public works, and the president of the board of trustees of the Austin Independent School District (AISD) shall serve as ex officio members.

(C) The president of the AISD board of trustees may designate, in writing, a member of the board of trustees or an employee of AISD to represent the district at meetings of the Planning Commission. The AISD representative may participate in discussion of agenda items subject to approval by the chair of the commission and under such rules as the commission deems appropriate.

(D) The commission is established and governed by City Charter Article X (Planning). The Charter provisions supersede this chapter to the extent of conflict.

Source: Ord. 20071129-011; Ord. 20111215-053; Ord. 20130228-045; [Ord. No. 20150806-047, Pt. 2, 8-17-15](#). (emphasis added). Ordinance No. 20150806-047, effective August 17, 2015, formally increased the number of members of the Planning Commission from 9 to 13.

The law is clear that at least 9 members of the 13-member Planning Commission must be “lay members not directly or indirectly connected with real estate and land development.” The facts are clear that the Council’s collective appointments to the Planning Commission violated article X, section 2 of the Charter.

### **The Evidence of Planning Commissioners’ Connection to Real Estate/Development**

Based on the City of Austin’s planning commissioners’ own official commission applications and statements of financial interest filed with the City, at least six of thirteen planning commissioners are NOT, by their own admission, “lay members not directly or indirectly connected with real estate and land development.” These six commissioners’ self-descriptions of their own work demonstrate that they are “connected directly or indirectly to real estate or land development”. (The bolded text below is added for emphasis).

The Six Planning Commissioners Connected to Real Estate and Land Development:

1. **Fayez Kazi** states in his 2015 application that he is employed by Civiltude LLC and is an engineer. He states that he has “18 years’ experience in **land development** and infrastructure planning.” His statement of financial interest indicates he is a **board member of the Real Estate Council of Austin**, the leading real estate development trade association in Austin. Nominated by CM Garza.
2. **James Schissler** indicates in his application that he is employed by Jones & Carter, Inc.

and is a civil engineer. He says that he has “over thirty years of civil engineering experience include[ing] project management and project engineering **work on a wide variety of civil engineering and site development projects.** I have completed projects including water and wastewater collection systems, preparation of storm water pollution prevention plans, plans and specifications for hazardous material containment systems, preparation of plans and specifications for wastewater pump stations and force mains, and design and permitting for single family, apartments, shopping centers, office buildings, schools and other development project in several states.” He later describes himself in his application “as a **land development engineer.**” According to his statement of financial interest, he also serves as a board member of the **Real Estate Council of Austin.** Nominated by CM Troxclair.

3. **James Shieh** provides in this application that he is employed by J Square Architecture LLC and that his **occupation is design and development.** From 2007 to the present, he has provided “**Real Estate Development** services from feasibility studies, master planning, and site designs.” He further adds that “I have started my own firm, which also assists our clients in **development work.** With experience in commercial, civic, public, historic, and residential projects...” Nominated by Mayor Adler.
4. **Michael Wilson** states in his application that he is employed by Garrett-Ihnen Civil Engineers and his occupation is land planner. He indicates he presently works as:1) “**PRESIDENT CENTRAL TEXAS DEVELOPMENT ASSESSMENTS, INC.** - Service investors, engineers, developers, architects, real estate brokers and property owners to **determine development yield potential in properties**”; and 2) “**BUSINESS DEVELOPMENT MANAGER**“ **GARRETT-IHNEN CIVILENGINEERS** - Primarily responsible for **engineering business development in both the residential and commercial sectors**”. According to his statement of financial interest, he also has several real estate development investments. Nominated by CM Zimmerman.
5. **Stephen Oliver**’s application provides that he is employed by OPA Design Studio and that that he is an architect/principal. He states that he is an “Architect and planner experienced with urban design, sustainability, master planning, residential infill, **commercial development, land use feasibility** and the City of Austin Land Development Code.” He is, according to his statement of financial interest, a board member of AIA Austin, the leading architect trade association. Nominated by Mayor Adler
6. **Trinity White** is self-employed and a **building designer**, according to her application. She states that “I have run my own practice focusing on **affordable and infill housing** for the last 3 years.” Nominated by CM Houston.

### **Conclusion**

In conclusion, the facts, based on their own statements, demonstrate conclusively that at least six of thirteen planning commissioners are directly or indirectly connected to real estate and land development. Since no more than 1/3 of the members (or four members ), may be connected to these industries, the Planning Commission is unlawfully constituted in violation of article X,

section 2 of the City Charter. We respectfully ask the City Council to voluntarily and promptly replace at least 2 of the above-listed planning commissioners with lay persons who are not directly or indirectly connected to real estate and land development. We would prefer to resolve this without expensive litigation to the City of Austin and its taxpayers.

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