

ACTION FORM BRYAN CITY COUNCIL

DATE OF COUNCIL MEETING: February 10, 2015		DATE SUBMITTED: January 7, 2015	
DEPARTMENT OF ORIGIN: Development Services		SUBMITTED BY: Martin Zimmermann	
MEETING TYPE:	CLASSIFICATION:	ORDINANCE:	STRATEGIC INITIATIVE:
<input type="checkbox"/> BCD	<input type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> 1ST READING	<input type="checkbox"/> PUBLIC SAFETY
<input type="checkbox"/> SPECIAL	<input checked="" type="checkbox"/> CONSENT	<input checked="" type="checkbox"/> 2ND READING	<input type="checkbox"/> SERVICE
<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> STATUTORY		<input checked="" type="checkbox"/> ECONOMIC DEVELOP.
<input type="checkbox"/> WORKSHOP	<input type="checkbox"/> REGULAR		<input type="checkbox"/> INFRASTRUCTURE
			<input checked="" type="checkbox"/> QUALITY OF LIFE
AGENDA ITEM DESCRIPTION: Consideration of an ordinance amending sections 98-120 through 98-122 of Chapter 98, Signs, of the Bryan City Code of Ordinances, transferring authority to hear and act upon appeals of interpretations of and variances denied under the requirements of Chapter 98 of the Bryan City Code of Ordinances from the Board of Sign Control And Appeals to the Zoning Board of Adjustment.			
SUMMARY STATEMENT: Chapter 98 of the City of Bryan Code of Ordinances requires that the City Council appoint a five (5) member board known as the Board of Sign Control and Appeals (Board) to (1) determine the amount of compensation to which the owner of a sign that is required to be relocated, reconstructed, or removed is entitled, as outlined in Texas Local Government Code Chapter 216, "Regulation of Signs By Municipalities"; (2) hear and act upon appeals from an interpretation of Chapter 98 made by the Chief Building Official; and (3) hear and act upon appeals from a denial of a sign-related variance request by the Chief Building Official. This five member board is required to be made up of two real estate appraisers, one person engaged in the sign business in the City of Bryan, one employee of the Texas Department of Transportation, and one state licensed landscape architect. The composition of the Board is a requirement of Texas Local Government Code Sec. 216.004, as is the requirement that the Board determine compensation for sign owners in certain very specific situations.			
Over the years, it has become increasingly difficult to locate citizen volunteers or identify citizens who meet these criteria to fill vacant positions on the Board. Currently, the Board does not have enough members to qualify as a governing body. While the power to determine compensation for sign owners is rarely exercised by the Board, there is a need for a standing body to which sign-related decisions by the Chief Building Official may be appealed. The power to hear these appeals is currently given to the Board, but many Texas cities choose to have their Zoning Board of Adjustment (or equivalent) hear such appeals.			
Staff is proposing to amend Chapter 98 to transfer the authority to hear and act upon appeals of interpretations and variance requests to Chapter 98 from the Board of Sign Control and Appeals to the Zoning Board of Adjustment (ZBA), which meets more regularly and has a full complement of members. As proposed, the Board of Sign Control and Appeals would meet on an as needed basis to determine the amount of compensation to which the owner of a sign that is required to be relocated, reconstructed, or removed is entitled, to comply with State law.			
STAFF ANALYSIS AND RECOMMENDATION: Staff recommends approving the proposed text amendment to the Bryan Code of Ordinances transferring the authority to hear and act upon appeals of interpretations of, or variances denied under, the requirements of Chapter 98 to the ZBA. The proposed amendment will allow for appeals to be presented to the ZBA, which is a board that meets more often and has no difficulty locating volunteers to fill the positions.			
OPTIONS (In Suggested Order of Staff Preference):			
1. approve ordinance amendment, as recommended by staff;			

2. approve ordinance amendment with modifications (which may require City Council consideration at a future City Council meeting); or
3. do not approve this ordinance amendment at this time.

ATTACHMENTS:

1. draft ordinance

FUNDING SOURCE: N/A

APPROVALS: Kevin Russell, 1-7-2015; Joey Dunn, 1-8-15; Hugh R. Walker, 01/11/2015

APPROVED FOR SUBMITTAL: CITY ATTORNEY Kean Register, 1-13-2015

APPROVED FOR SUBMITTAL: CITY MANAGER Janis K. Hampton, 1-15-2015

Revised 04/2013

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTIONS 98-120, 98-121, AND 98-122 OF CHAPTER 98 OF THE BRYAN CITY CODE OF ORDINANCES; TRANSFERRING AUTHORITY TO HEAR AND ACT UPON APPEALS OF INTERPRETATIONS OF AND VARIANCES DENIED UNDER THE REQUIREMENTS OF CHAPTER 98 (SIGNS) OF THE BRYAN CITY CODE OF ORDINANCES FROM THE BOARD OF SIGN CONTROL AND APPEALS TO THE ZONING BOARD OF ADJUSTMENT; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR SEVERABILITY; FINDING AND DETERMINING THAT THE MEETINGS AT WHICH THIS ORDINANCE WERE PASSED WERE OPEN TO THE PUBLIC AS REQUIRED BY LAW; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, state law requires that certain issues be handled by the Board of Sign Control and Appeals, but is silent on the issue of appeals to the City’s sign ordinance; and

WHEREAS, the Zoning Board of Adjustment is a standing board with extensive experience in hearing appeals of interpretations of and variances from the City’s zoning ordinance; and

WHEREAS, it is common in other Texas cities for the Zoning Board of Adjustment or its equivalent to hear appeals of ordinance interpretation and variance denials regarding a city’s sign ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRYAN:

1.

That Chapter 98, Signs, Article V, Administration and Enforcement, Section 98-120 of the Bryan Code of Ordinances is hereby amended as follows:

- “(a) There is hereby created a board of sign control and appeals consisting of five members:
- (1) Two real estate appraisers, each of whom must be a member in good standing of a nationally recognized professional appraiser society or trade organization that has an established code of ethics, educational program, and professional certification program;
 - (2) One person engaged in the sign business in the city;
 - (3) One employee of the state department of transportation who is familiar with real estate valuations in eminent domain proceedings; and
 - (4) One architect or landscape architect licensed by the state.
- (b) Board members shall be appointed by the city council for two-year terms with a maximum of three reappointments, or until their successors are appointed. Said members shall serve without compensation. A vacancy shall be filled by a person who meets the same requirements of the person being replaced as detailed in subsection (a) above.
- (c) Three members of the board shall constitute a quorum. In varying the application of any provisions of this Code or in modifying an order of the official, affirmative votes of the majority present, but not less than three affirmative votes, shall be required. A board member shall not act in a case in which he or she has a personal interest, as such term is defined by state law.

(d) The chief building official or his or her designee shall act as secretary of the board of sign control and appeals and shall make a detailed record of all its proceedings, which shall set forth the reasons for its decisions, the vote of each member, the absences of a member, and any failure of a member to vote.

(e) The board of sign control and appeals shall have the following powers:

- ~~(1) To determine the amount of compensation to which the owner of a sign that is required to be relocated, reconstructed, or removed is entitled. The compensation cost and method of compensation is outlined in V.T.C.A., Local Government Code ch. 216, "Regulation of Signs By Municipalities," or any successor statutes;~~
- ~~(2) To hear and act upon appeals from an interpretation of this chapter made by the chief building official (section 98-121); and~~
- ~~(3) To hear and act upon appeals from a denial of a variance request pursuant to section 98-128.~~

(f) The owner of a sign, or duly authorized agent, may appeal the decision of the board of sign control and appeals to a state district court as outlined in V.T.C.A., Local Government Code ch. 216, "Regulation of Signs By Municipalities," or any successor statutes."

2.

That the following language is added to Chapter 98, Signs, Article V, Administration and Enforcement, of the Bryan Code of Ordinances as new Section 98-121:

"Sec. 98-121. – Powers of the Zoning Board of Adjustment.

(a) The zoning board of adjustment, as defined in Section 130-41 of this Code, shall have the following powers:

- (1) To hear and act upon appeals from an interpretation of this chapter made by the chief building official (section 98-121); and
- (2) To hear and act upon appeals from a denial of a variance request pursuant to section 98-128.

(b) Any person may appeal a decision of the chief building official to the zoning board of adjustment on the grounds that the decision misconstrues or wrongly interprets this chapter, by filing a written notice of appeal with the building services department within 30 calendar days after the decision. The appealing party shall comply with the chief building official's decision pending appeal unless the chief building official shall direct otherwise.

(c) In considering an appeal from a decision of the chief building official, made in the enforcement of this chapter, the sole issue before the zoning board of adjustment shall be whether the chief building official erred in his or her interpretation and/or application of the requirements of this chapter and all other applicable city ordinances. The board shall consider the same standards that the chief building official was required to consider in making the decision."

3.

That existing sections 98-121 and 98-122 are deleted.

4.

That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

5.

The Bryan City Code, as amended, shall remain in full force and effect, save and except as amended by this ordinance.

6.

If any section, paragraph, sentence, clause, phrase or word of this ordinance is declared unconstitutional or invalid for any purpose, the remainder of this ordinance shall not be affected thereby and to this end the provisions of this ordinance are declared to be severable.

7.

It is hereby found and determined that the meetings at which this ordinance was passed were open to the public, as required by Section 551.001, *et seq.*, of the Texas Government Code, and that advance public notice of the time, place and purpose of said meetings was given.

8.

It is the intention of the City Council that this ordinance shall become a part of the Bryan City Code and it may be renumbered and codified therein accordingly.

9.

This ordinance shall become effective after its second and final reading.

PRESENTED AND GIVEN first reading the 27th day of January, 2015, at a regular meeting of the City Council of the City of Bryan, Texas; and given second reading, **PASSED AND APPROVED** on the 10th day of February, 2015, by a vote of _____ ayes and _____ noes at a regular meeting of the City Council of the City of Bryan, Texas.

ATTEST:

CITY OF BRYAN:

Mary Lynne Stratta, City Secretary

Jason P. Bienski, Mayor

APPROVED AS TO FORM:

Janis K. Hampton, City Attorney