

Effectively Utilizing Citizen Advisory Boards



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INTRODUCTION

In addition to providing valuable input and support for government programs, volunteer citizens serving on advisory boards and commissions can also play a vital role in the actual provision of services and the performance of administrative duties, particularly in small institutions that have a limited professional staff. However, advisory boards can create as many problems as they create solutions if the boards are improperly structured or left unsupervised.

This paper is intended to educate readers on the *pros* and *cons* of using citizen advisory boards; offer suggestions on how to structure the groups; and provide tips on providing administrative support. The ultimate goal is to increase the opportunities for meaningful citizen participation in government, and to maximize the efficiency and effectiveness of these valuable civic volunteers.

PURPOSE OF BOARDS

The reasons for creating citizen advisory boards differ from jurisdiction to jurisdiction, and vary across subject matters.

Rubber Stamping

Clearly, many governmental agencies appoint groups of citizens to review and evaluate agency policies and actions in hopes of obtaining public support, often through a mere *rubber stamp* process. It is an age old technique to attempt to cloak unilateral agency decisions in a veil of public support. This maneuver is usually characterized by the government decision-makers having already determined a course of action and wanting to be able to convey to the outside world (e.g., citizenry, media, or other branches of government) that the action has been blessed by the governed.

Effective Implementation

Literature on the topic suggests that the groups responsible for implementation should be involved up front as decision makers. Accordingly, many agencies utilize volunteers to actually formulate policy and make vital decisions about the acquisition of public goods, provision of services, and expenditure of public funds. Public administration literature has advocated that a policy decision embodying a substantial departure from the *status quo* will have greater chances of achieving its desired goal if the program is actively supported by organized constituency groups throughout the implementation process, not just at the very beginning or end.¹ Thus, because the governing body cannot legislate public attitudes, it is often wise to take steps to influence public support and the attitudes of key constituency groups during the policy formation process as well as during policy implementation and evaluation.

¹ Mazmanian, Daniel A. and Paul A. Sabatier, Implementation and Public Policy (1989).

Settling Conflicts

Increasingly, government entities seek to settle disputes by organizing stakeholders into groups that can fashion an agreed resolution to the conflict. These advisory boards may be created to defuse a public controversy, negotiate a compromise on an administrative matter, or bring an end to a lawsuit. These processes tend to be characterized by the use of negotiating groups who:

- represent the stakeholders (including the government institution) impacted by the decision;
- define the problem;
- generate possible options;
- solicit broader public input and feedback from special-interest groups; and
- create an agreed timeline and establish milestones for progress toward implementation.

Boards created in an effort to negotiate the resolution of a conflict may be well-served by the use of a neutral facilitator who assists in convening the group and in managing the consensus-building process.²

Community Building

Many voices in public administration have spoken to the themes of building community, civil society, and civic infrastructure as partial solutions to the growing distance between citizens and governing institutions. A study of Italian regional governments found that the presence of “social capital,” along with a strong network of local associations, and active engagement in community affairs had a positive effect on economic development and the performance of government institutions. Others have argued that reconnecting citizens to government requires government orientation toward citizen involvement rather than control by professional elites.³ Indeed, some have gone so far as to state that:

“in the future the legitimacy of professional administrators in local government will be grounded in the tasks of community building and enabling democracy-- in getting things done collectively, while building a sense of inclusion.”⁴

Encourage Responsibility

The engagement of citizens in the operation of their government may be viewed as an important step in creating a more just society. A former president of the International

² Thompson, Mary, “Learning from Experience: “Guidelines for Using Collaborative Agreement-Seeking Processes,” reprinted with permission in Annual Editions: Public Administration (Balanoff 01/02) from Management Exchange, March 2000.

³ Nalbandian, John, “Facilitating Community, Enabling Democracy: New Roles for Local Government Managers,” reprinted with permission in Annual Editions: Public Administration (Balanoff 01/02) from Public Administration Review, May/June 1999.

⁴ *Id.*

City/County Management Association (ICMA) eloquently stated this principle as follows:

“The primary goal of government, and especially local government, is to create conditions that insure, foster, and encourage responsibility. This means creating responsibility in the people who work for us; in our customers; and in our citizens.”⁵

This sense of responsibility is perhaps most vitally channeled toward strategic planning and the long-term allocation of public resources. According to one noted author:

“Reform should allow citizens to be fully engaged in the processes of local governance. I anticipate that neighborhood councils will increasingly take over many of the responsibilities of city councils and administrators for setting priorities and evaluating service delivery.”⁶

CREATION

Creating Boards

Ideally, advisory boards should be created in writing, either by ordinance of the governing body (e.g., City Council or County Commissioners Court) by order of the chief executive officer (e.g., Mayor or County Judge). While it is possible for advisory boards to come into existence upon the mere adoption of a resolution (even an oral resolution made in the form of a motion), the preferred means is by ordinance. Ordinances are a good idea because they allow the agency to clearly delineate some of the key parameters and authority for the advisory board.

The ordinance that creates an advisory board can be freestanding (i.e., the sole subject of the ordinance is the creation of the board), or it can also contain substantive regulations of general applicability (e.g., an ethics ordinance can establish ethics rules can also create an ethics advisory committee).

In home-rule cities, certain boards may be mandated by the Charter. When creating a board, the agency may also want to consider if the board is going to function in perpetuity or if it will automatically expire (cease to exist) at a date certain (e.g., in five years) or upon the occurrence of a certain event (e.g., the plan is adopted).

⁵ Norm King, Executive Director of the San Bernardino Associated Governments, at 1997 ICMA conference, as reported by John Nalbandian, “Facilitating Community, Enabling Democracy: New Roles for Local Government Managers,” reprinted in Annual Editions: Public Administration (Balanoff 01/02).

⁶ *Id.*

Qualifications

The ordinance creating the advisory board should clearly establish the qualifications for membership on the board. For example, the agency can require certain experience, education, residency, or demographic representation (e.g., in order to achieve certain diversity goals, the agency may seek to appoint board members that represent certain neighborhoods, races, gender, religion, socio-economic status). In some instances, the makeup of the advisory board can actually increase the likelihood that a regulation will be upheld as legal by the courts. In a landmark case dealing with historic preservation, the US Fifth Circuit Court of Appeals applauded a city for “curbing the possibility for abuse by the Commission” by specifying the composition of the commission and its manner of selection, assuring that it includes “architects, historians and business persons offering complementary skills, experience and interests.”⁷

Researchers evaluating shifts in government reliance upon citizen volunteers have noted that diversity on citizen advisory boards has yielded more representation of race and gender, more special interest members, and more anti-government activists. Potentially, each represents a different way of viewing the role of government, the governing body, and the relationships between citizens and professional staff. It is important to note the shift away from thinking of diversity as merely a form of affirmative action (i.e., politically correct), and instead making the connection between diversity and problem solving (i.e., a prudent factor that just makes sense).⁸ While the agency creating the advisory board may want to be selective, be sure not to adopt criteria that are unlawfully discriminatory.

Appointment

The appointing authority can specify the method of appointment for board members. Alternatives may include the following: (a) each member of the governing body appoints one board member; (b) the chief executive nominates board members and the governing body votes to approve (i.e., confirm) the nominations; (c) any member of the governing body can nominate candidates and the entire governing body votes to approve individual board members or a complete slate of candidates; or (d) staff prepares a slate of nominees and the governing body approves, rejects, or modifies the slate. Obviously, other options exist.

Deliberations in Executive Session

The “Personnel Matters” exception in the Open Meetings Act allows governing bodies to conduct closed door meetings (i.e., “executive sessions) to discuss the appointment, employment, evaluation, reassignment, discipline or dismissal of an *officer* or *employee*, or to hear a complaint or charge against an officer or employee.⁹

⁷ *Maier v. City of New Orleans*, 516 F.2d 1051, 1062 (5th Cir. 1975).

⁸ Nalbandian, John, “Facilitating Community, Enabling Democracy: New Roles for Local Government Managers,” reprinted with permission in Annual Editions: Public Administration (Balanoff 01/02) from *Public Administration Review*, May/June 1999.

⁹ Tex. Gov’t Code § 551.074.

Volunteer members of advisory boards are generally *not* considered “public officers or employees.” Thus, *city councils* might not be able to conduct deliberations regarding the appointment, removal, or tenure of these individuals in executive session under the personnel matters exception. For example, the Texas Attorney General has determined that members of the Volunteer Fire Fighter Advisory Committee appointed by the Texas Commission on Fire Protection are not public officers or employees. Accordingly, the AG concluded that the Texas Commission on Fire Protection may not meet in executive session to discuss the qualifications of persons under consideration for appointment to either of these advisory committees.¹⁰ However, *county commissioners’ courts* have express statutory authority to deliberate advisory board members behind closed doors.¹¹

Some cities have addressed this issue and sought to achieve a different result by carefully documented their treatment of members of bodies such as Planning and Zoning Commissions as *officers* by requiring the volunteers to take an oath of office, by subjecting the volunteers to municipal ethics ordinances that would otherwise apply to city councilmembers, and requiring compliance with the Open Meeting Act. As a result, these cities might arguably invoke the Personnel Matters exception when deliberating behind closed doors regarding these individuals.

Vacancies

In addition to providing for the initial appointment of board members, agencies should also address the procedure for filling vacancies. Vacancies may occur for a number of reasons, including death or disability, resignations, disqualification, board members declining to accept an additional term, or as a result of having been removed from office. Another issue that should be addressed is whether individuals appointed to fill a vacancy receive a full term or simply serve the remainder of their predecessor's unexpired term.

Removal

Although we never like to expect the worse, it is wise to plan for the possibility that the agency may need to someday remove a board member from office prior to the expiration of the board member's term. The ordinance creating the board should establish whether members may be removed at-will or only for cause, and what type of cause will support removal. You should consider if it sufficient for a board member to be removed upon a simple majority vote of the city council or is a super-majority (2/3 or 3/4) vote required. Agencies can adopt a policy stating that board members serve “at-will,” thus allowing the city council to terminate board members for any reason or for no reason.

Officers

The governing body may want to determine what officer positions will be on the board. How many officer positions should there be? Who selects officers? How long do they serve? What functions or duties must officers perform?

¹⁰ Op. Tex. Att’y Gen. No. DM-149 (1992); *See also* Tex. Gen. LO 94-063 (1994) (City Council may convene in executive session to discuss the appointment of members to a governing board).

¹¹ Tex. Gov’t Code § 551.0745.

CONDUCTING BUSINESS

Meetings

It is wise to consider how frequently the board is required to meet. Boards may meet regularly or solely as needed. Who establishes the agenda for the board? Must an agenda item be sponsored by a board member (or multiple members) in order to be included on the agenda? Can any citizen request that an item be placed on the agenda? Must all advisory board meetings be held in a particular location, or within an established geographic region? The board can adopt parliamentary rules or those can be established by the agency.

Open Meetings Act

Generally, the Texas Open Meetings Act (OMA) does not apply to volunteer citizen advisory boards that are *purely* advisory. Five prerequisites must be met in order for the OMA to apply to a meeting of a statewide public body. These are:

- (1) The body must be an entity within the executive or legislative department (e.g. not judicial);
- (2) The entity must be under the control of one or more elected or appointed members;
- (3) The meeting must involve formal action or deliberation between a *quorum* of members;
- (4) The discussion or action must involve *public business* or public policy; and
- (5) The entity must have *supervision or control* over that public business or policy.¹²

In determining whether an advisory board is subject to the Open Meetings Act it must be shown that the advisory board has the power to supervise or control *public business*. To decide if the advisory board has such powers, the structure of the board and the resolution that defines the powers are reviewed. If evidence shows that the advisory board exercises additional authority as a matter of practice, then the advisory board is subject to the OMA.¹³

Additional authority includes such things as rule-making or quasi-judicial power and considerable independent authority over public business.¹⁴ If the functions of the advisory board are to do an extensive study on a particular topic and make recommendations on various issues but the board has no authority to make binding decisions, then these functions are purely advisory and therefore not subject to the OMA.¹⁵ In order for an advisory board to avoid being subject to the OMA, the board

¹² Op. Tex. Att’y Gen. Nos. H-772 (1976), JM-331 (1985).

¹³ Op. Tex. Att’y Gen. Nos. H-772 (1976), H-994 (1977).

¹⁴ Op. Tex. Att’y Gen. Nos. H-438 (1974), H-467 (1974), H-1281 (1978).

¹⁵ Op. Tex. Att’y Gen. Nos. H-467 (1974), H-772 (1976), H-994 (1977); see also Op. Tex. Att’y Gen. No. JM-183 (1984) (the Texas Attorney General has stated that an advisory council to a major resource system

must be *purely* advisory. If the advisory board actually functions as something more than an advisory board and supervises or controls public business or policy, then the board will likely have to comply with the OMA.

Some municipalities choose to voluntarily subject their advisory boards to the Open Meetings Act by ordinance. Other advisory boards are subjected to the OMA automatically by virtue of the functions they perform or their membership. Still other boards are expressly subject to the OMA by other state law (e.g., Local Government Code Chapter 211 and Planning & Zoning Commissions).¹⁶

Public Information Act

The data considered and created by advisory boards is probably subject to the Texas Public Information Act (formerly, the “Open Records Act”). Although citizen advisory board members are not compensated by public funds, the boards are likely to be supported by public funds and to be provided with the administrative support of staff members of the governmental body.¹⁷ Advisory board members are also given access to the agency’s records to enable the board to make recommendations. Even if the information that the advisory board has access to might not be public information,¹⁸ the material generated or issued by the advisory board *could* be subject to the PIA. It is possible the information produced by the advisory board is subject to the PIA because the services of the advisory board is supported by or paid for by public funds or because the advisory board could be providing a public service.

Of particular importance is the possibility that written communications (either by ink or electronic transmissions) among advisory board members or between board members and staff and the city council is subject to disclosure under the PIA.¹⁹ Thus, beware of email.

Voting

One issue that arises frequently is whether there are any restrictions on the voting power of board members. For example, can the chairperson vote? Must any board member abstain from deliberations (discussions and voting) if that board member has a conflict of interest? If so, how is a conflict of interest defined under the ordinance? Another issue worth addressing is whether any particular matters (e.g., overturning the action of an

of libraries is a hybrid entity which is not within the executive department of the state, nor is the advisory council considered a special district. Therefore, this advisory council does not fall within the definition of a governmental body and is not subject to the OMA.)

¹⁶ The Health and Safety Code specifically requires the Health Department advisory board to provide the public with a reasonable opportunity to appear before the advisory board and to speak on any issue under the jurisdiction of the advisory board. See Tex. Health & Safety Code Ann. § 401.0181. Therefore, it appears that the Open Meetings Act can apply to state advisory board meetings, except for ones involving confidential material.

¹⁷ Op. Tex. Att’y Gen. ORD. 666 (2000).

¹⁸ *Id.*

¹⁹ Tex. Att’y Gen. ORD-654 (1997) (work-related e-mail addressing government business is subject to the PIA); see also Tex. Att’y Gen. OR2001-1790 (the home e-mail of a city councilmember can be subject to the PIA).

administrative official) should require a super-majority vote (e.g., 75% of the full board or of those present and voting).

Duties

Governing bodies should spend some time considering the scope of authority granted to advisory boards and the specific tasks the agencies want the boards to perform. Sometimes, the powers assigned to boards can appear to be merely advisory; however, evidence can be presented to show that the board actually possesses a rule-making or quasi-judicial power, which would make the board subject to other laws.²⁰

It is wise to consider the precise nature of the duties you want the board to undertake before you create the body and periodically thereafter. What (if any) products will the board be expected to provide on a routine basis (e.g., reports, draft ordinances, memos)? Many agencies view advisory boards as a means to gather and funnel public input in an organized manner. In these instances, the boards serve as sounding boards designed to give feedback regarding particular policy initiatives being considered. Some municipalities use advisory boards to administer programs in lieu of professional staff members. Frequently, advisory boards may be called upon to even craft legislation (ordinances, resolutions, or policies).

Some government institutions call upon boards to take a critical look at policies or examine city ordinances to determine what they like and do not like. Volunteer citizens groups are often helpful at the vision-thing, or articulating core community values that are positive aspects of the community that citizens view as essential to retain.²¹

While boards can be great resources, appointing authorities are cautioned to be selective when assigning legislative drafting duties to advisory boards. Board members often become attached to the ordinances they create and develop a sense of ownership in the text. There are often political consequences created when a city manager, city attorney, or city council rejects or modifies particular language in a draft.

Often, it is wiser to let the city attorney or city staff to prepare the ordinance with written input from the advisory board. A more productive use of advisory board time is the identification of issues and the generation of options and goals. The actual crafting of the legislative document is better left to attorneys and managers.

Charge from Council

Councils should consider giving express guidance to boards on a regular basis. What does the council need, want, and expect from the board on a particular issue? This can be contained in the ordinance or in subsequent guidance documents. Are there any particular deadlines the board must meet or parameters within which the board must function?

²⁰ Op. Tex. Att'y Gen. No. H-994 (1977).

²¹ Arendt, Randall, Rural By Design, APA Planners Press, p. 26 (1994).

Group dynamics

If an advisory board is going to be successful, the appointing authority must pay attention to the group dynamic(s) developing within the advisory board. How are members getting along? How are the agendas set? Are there any mechanisms in place that will help keep the board focused on their mission and key duties? Advisory board members are often the first representatives of the agency that many citizens meet; thus, it is wise for the governing body to keep an eye on how the board is operating.

Interaction w/ other groups

When creating an advisory board or delegating an assignment to an existing board, it is wise to consider whether the board will be autonomous and independent, or will its mission necessitate working closely or frequently with other organizations. In other words, will the board be charged with interfacing directly with specific groups, such as the local historical society, chamber of commerce, or conservation association?

Also consider the advisory board's interaction (or lack thereof) with other agency advisory boards. For example, is it appropriate for the Planning and Zoning Commission to make recommendations regarding variances being considered by the Board of Adjustment? How does the work being performed by the Road and Bridges Committee dovetail into the document being prepared by the Comprehensive Plan Committee?

ADMINISTRATIVE MATTERS

Support

One question worth addressing early on involves the tools the advisory board will need to get the job done. What resources are available to the board? Will there be specific staff members assigned to assist the board with administrative tasks? Will the board members have access to legal counsel, consultants or other experts? If so, who will be the consultant's ultimate client: the board, the chief executive, or the governing body?

Simple matters, such as making copies and posting notices, become crucial if the board conducts public hearings. Having accurate data is a must if the board is proposing the adoption of agency policies or the creation of regulations and ordinances.

Funding

If a board is important and performs many tasks for a agency, it may need specific appropriations in the annual budget. Is there a specific budget for the board's activities? Are there materials or services the board will need to procure in order to complete its mission successfully?

Education

A great deal of political fallout, administrative frustration, and legal liability can be avoided if advisory board members receive the proper training. Whether provided in-house by your attorney and manager, or out-house at a conference or seminar, education

can help your boards work more effectively. Some agencies provide orientation sessions for newly appointed advisory board members.

Recognition

Government institutions that rely on citizen volunteers should constantly keep in mind the valuable contribution these individuals. Time should be regularly set aside to recognize and honor advisory board members. Agencies should frequently nominate their advisory boards for local, regional, state or national awards. The media should be kept informed of the amount of time and effort that civic-minded volunteers give to make government work better.

LEGAL ISSUES

Liability

Volunteer citizen advisory board members are treated as public officials in the sense that they can be named as a party to a lawsuit. In the *Battleship Texas* case, the court held that when a plaintiff seeks injunctive relief that involves an activity of a state agency he must sue some individual in authority at that agency; he may not sue the agency itself. The plaintiff in that case included the chairman of the Battleship Texas Advisory Board as a party to the suit. Additionally, the court looked to that statute that gave the board its power to determine what authority the board actually had.²²

Although the author has not identified any case law holding volunteers responsible for violating a citizens constitutional rights when those volunteers are assisting the government, government leaders should still exercise caution when appointing and training board members and assigning governmental responsibilities.

Local Ethical Restrictions

In addition to possibly being subject to the Open Meetings and Open Records acts, members of an advisory board can be expected to comply with the local ethics ordinances. There are very few Texas laws and regulations that specifically apply to volunteer citizen advisory board members. On a general level the State's conflict of interest statute only applies to public officials whose responsibilities are *beyond advisory* in nature.²³ Therefore, the conflict of interest statute does not apply to advisory boards. However, as we have discussed above, many "advisory" board members go beyond giving advice and actually create or administer municipal policy and regulations. Each agency has the authority to create an advisory board and each agency is responsible for setting out the rules that the advisory board must follow.

Courts have found that the goal of preventing the appearance of impropriety, conflicts of interest, and self-dealing in local government is considered legitimate ends and rationally

²² *Battleship Texas Advisory Bd. of State of Tex. v. Texas Dynamics, Inc.*, 737 S.W.2d 414, 418 (Tex. App.-Houston [14th Dist.] 1987).

²³ Tex. Loc. Gov't Code Ann. § 171.001.

related to the situation. This conclusion has led to the permissible application of local ethics ordinances to advisory board members.²⁴ It appears that courts look to see if such an ethics ordinance is rationally related to the situation and if the goal of the ordinance has a legitimate purpose.

Liability Coverage

The Texas Municipal League Intergovernmental Risk Pool (TML-IRP) coverage applies to volunteer advisory board members. Persons entitled to coverage under the Risk Pool are officials, employees, retirees, employees of affiliated service contractors, and their dependents.²⁵ Although the Texas Government Code does not define the term *official*, the Local Government Code defines an official to be someone who exercises responsibility beyond those that are advisory.²⁶ However, the language in coverage documents from TML-IRP specifically includes volunteers and board members.

Beyond ethical violations, volunteer advisory board members are typically not liable for any of their actions because their actions are merely advisory and the governing body does not have to follow the advisory board's decision. Government agencies should be cautious, however, when advisory boards and board members are given authority beyond simply rendering advice and making recommendations.

CONCLUSION

Citizen Advisory Boards are a great way to get things done, particularly in small towns and sparsely populated counties. Boards can also serve as training grounds for future candidates and elected officials. Arguably, it is the responsibility of government managers and elected officials to craft and use tools of engagement that empower citizens to help government operate. While fashioning these mechanisms, government leaders should give careful consideration to *who* is appointed to advisory boards, *how* boards are structured, and *what* functions the agency wants the board (and individual board members) to perform. Key issues to keep in mind when creating new boards or reviewing existing boards include:

- **Purpose** (why is the board being formed)
- **Documentation** (ordinance, resolution, executive order home-rule charter)
- **Membership** (qualifications, appointment, removal)
- **Authority & Duties** (goals, tasks, voting, timelines)
- **Products** (legislation, regulations, policies, procedures, contracts)
- **Group Dynamics** (interactions)
- **Administrative Support** (funding, education, staff assistance, advisors)
- **Liability** (state laws, ethics ordinances, risk coverage)

²⁴ *Price v. City of San Marcos*, 744 S.W.2d 349, 351 (Tex. App.-Austin 1988).

²⁵ Tex. Loc. Gov't Code Ann. § 172.005.

²⁶ Tex. Loc. Gov't Code Ann. § 171.001.

Sample Building Commission Ordinance

This document is provided as a sample and is intended for educational purposes only.

ORDINANCE NO. 2003-_____

**AN ORDINANCE OF THE TOWN OF BOJANGLES,
TEXAS, ESTABLISHING A BUILDING COMMISSION
AND PROVIDING FOR THE DUTIES, APPOINTMENT,
AND REMOVAL OF COMMISSION MEMBERS**

WHEREAS, the Town Council of the Town of Bojangles seeks to provide for the proper construction and expansion of building facilities within the Town through the use and enforcement of uniform building, electrical, plumbing, mechanical, energy conservation, and fire codes; and

WHEREAS, pursuant to Texas Local Government Code Chapter 214, the Town Council is expressly authorized to adopt certain codes and enact local amendments and establish procedures for the administration and enforcement of such codes; and

WHEREAS, the Town Council finds it to be in the best interest of the public safety, health and welfare to establish a Building Commission to advise the Town Council and assist with the administration and enforcement of the Town's uniform construction codes; and

NOW THEREFORE, be it ordained by the Town Council of the Town of Bojangles County of Walker, State of Texas:

Section 1. Findings of Fact

That the foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if set forth herein at length.

Section 2. Purpose

The purpose of this Ordinance is to provide for the orderly and safe development, within the Town's corporate boundaries (i.e., "city limits"). This Ordinance is adopted so that the Building Commission (hereafter, the "Commission") may advise and assist the Town Council so to promote the public health, safety morals and general welfare, and protect the public interest and preserve the safety of Town residents, business owners, employees, and guests.

Section 3. Duties of the Commission

A. Advisory Duties

The Commission shall recommend building codes, electrical codes, plumbing codes, mechanical codes, energy conservation codes, and other development standards and regulations for consideration by the Town Council. The Commission shall also recommend amendments as needed. It shall hold public hearings, conduct work sessions, and make recommendations to the Town Council regarding planning, construction issues, and land development matters. As directed by the Town Council, the Commission shall also assist with the administration and enforcement of the construction codes adopted by the Town Council.

B. Permitting Functions

The Commission will review applications for building permits and other permits designated by the Town Council. The Commission will confer with applicants regarding the Town's permitting procedures and regulations. The Commission will approve or deny all applications for building permits.

C. Variances

The Commission may grant variances for those regulation over which the Commission has express authority. Variances may only be granted following a public meeting and in instances where the Commission makes written findings regarding the following:

- (1) the variance is not contrary to the public interest; and
- (2) due to special conditions, a literal enforcement of the regulation would result in an unnecessary hardship; and
- (3) the spirit of the ordinance is observed and substantial justice is done.

Financial hardship alone does not necessarily qualify as undue hardship for purposes of granting a variance.

D. Building Official

The Chairperson of the Commission shall serve as the Building Official for the Town of Bojangles. The Town Council may appoint another person to serve as Building Official if for any reason the Chairperson is unable to serve.

Section 4. Membership of the Commission

The Commission shall be an independent advisory Commission to the Town Council, and shall be comprised exclusively of citizen volunteer members appointed by the Council. The Commission shall be comprised of five (5) registered voters. At least three (3) members must be residents of the Town of Bojangles. No more than two (2) members may be residents of the extraterritorial jurisdiction. To the extent reasonably possible, members are required to have experience or education in the area of construction or development.

Section 5. Appointment of Commissioners

Each Town Councilmember shall appoint one member to the Commission. The Mayor may appoint one (1) *ex officio* member and up to three (3) alternates. The Mayor and other members of the Council may nominate persons for consideration. If a vacancy occurs on the Commission, the Town Council shall appoint an alternate or another person to fill the unexpired term. Commissioners are officers of the Town, and as such must take an oath of office.

Section 6. Terms of Commissioners

At the first regular meeting, all Commissioners shall either agree among themselves, or draw lots to determine which three (3) members shall serve an initial term of one (1) year. Thereafter, all terms shall be two (2) years.

In situations where the enactment creating boards provides for a multi-member board with staggered terms of office, in the absence of anything to the contrary, it will probably be presumed that the city council intended that the commencement date of the term of office of such appointive positions will be the effective date of the enactment creating such position.²⁷

Section 7. Removal of Commissioners

The Town Council may by majority vote remove a Commissioner for lack of confidence, incompetence, corruption, misconduct, or malfeasance. Any Commissioner who misses three (3) consecutive regular meetings within a twelve (12) month time period or one-third (1/3) of all regular meetings shall be deemed to have automatically vacated his/her position on the Commission. This section shall not apply to a Commissioner who applied for and received an excused absence from the Commission Chairperson prior to the meeting(s) at issue. Any Commissioner who no longer resides within the Town, is deemed to have automatically vacated the position on the Commission.

Section 8. Commission Officers

From among its members the Commission shall elect its officers, those being the Chairperson, Vice-Chairperson, and Secretary. Officers shall be elected for terms of one (1) year. The Commission Chairperson shall preside over all meetings and may vote. If the Chairperson fails or refuses to act, the Vice-Chairperson shall perform the duties of the Chairperson. If the Chairperson and Vice-Chairperson are absent, any Commissioner may be appointed by the Commission to preside over the meeting.

²⁷ See Op. Tex. Att'y Gen. No. MW-355 (1981).

Section 9. Commission Meetings

The Commission shall conduct regular meetings once a month at a time and place determined by resolution adopted by the Commission. The initial meeting of the Commission shall be called by the Town Council. Special meetings may be called by the Commission Chairperson or upon application of two Commissioners. A majority of the Commission shall constitute a quorum. Meetings may be cancelled or rescheduled by the Chairperson or by majority vote of the Commission. The Commission may determine the rules of its proceedings. The Commission must comply with the Texas Open Meetings Act. The Chairperson counts towards the establishment of a quorum and is entitled to vote on all matters properly before the Commission.

Section 10. Appeals

Decisions of the Commission may be appealed in writing to the Town Council. All such appeals must be submitted in writing to the Town Secretary no later than ten (10) business days following the Commission's action.

Section 11. Severability

It is hereby declared to be the intention of the Town Council that the phrases, clauses, sentences, paragraphs and sections of this Ordinance be severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this Ordinance, and the remainder of this Ordinance shall be enforced as written.

Section 12. Effective Date

This Ordinance shall take effect immediately from and after its passage and publication as may be required by governing law.

Section 13. Proper Notice and Open Meeting

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.