

- SUBJECT:** Amending rules of and appeals to a city board of adjustment
- COMMITTEE:** Land and Resource Management — committee substitute recommended
- VOTE:** 7 ayes — Craddick, Muñoz, C. Bell, Biedermann, Leman, Minjarez, Stickland
- 0 nays
- 2 absent — Canales, Thierry
- WITNESSES:** For — Walter Moreau, Foundation Communities; Dianne Bangle and Geoffrey Tahuahua, Real Estate Council of Austin; (*Registered, but did not testify*: Phil Thoden, Austin AGC; TJ Patterson, City of Fort Worth; David Glenn, Home Builders Association of Greater Austin; Zeeshan Malik, Metcalfe Wolff; Chelsy Hutchison, Real Estate Council of San Antonio; Kyle Jackson, Texas Apartment Association; Scott Norman, Texas Association of Builders; Daniel Gonzalez and Julia Parenteau, Texas Realtors; Dana Harris, The Greater Austin Chamber of Commerce; David Cain, The Real Estate Council of Dallas; Roger Borgelt; Chet Morrison; Patrick Rose)
- Against — William Burkhardt; Fred Lewis; (*Registered, but did not testify*: Brie Franco, City of Austin)
- BACKGROUND:** Local Government Code sec. 211.008 allows the governing body of a city to appoint a board of adjustment, which must adopt rules in accordance with any adopted zoning ordinance.
- Under sec. 211.009, the board may hear and decide an appeal that alleges error in a decision made by an administrative official in the enforcement of zoning regulations. A vote of 75 percent of the board is required to reverse a zoning decision.
- Sec. 211.010 allows an aggrieved person or an affected officer, department, board, or bureau of the city to appeal a decision to the board.

The appellant must file the appeal and the board must make a decision on the appeal within a reasonable time, as determined by board rules.

**DIGEST:** CSHB 2497 would require a board of adjustment to obtain approval from a municipality's governing body when adopting rules.

The bill also would specify that a person could not appeal a decision made by an administrative official that was related to a specific application, address, or project, unless that person:

- filed the application that was the subject of the decision;
- was the owner or representative of the owner of the property that was the subject of the decision;
- was aggrieved by the decision and was the owner of real property within 200 feet of the property that was the subject of the decision;
- or
- was an officer, department, board, or bureau of the municipality affected by the decision.

The bill would specify that an appeal had to be filed no more than 20 days after the decision was made. The board would decide the appeal at the next meeting for which notice could be provided following the hearing and not later than 60 days after the appeal was filed.

The bill would take effect September 1, 2019, and would apply only to rules adopted by a board of adjustment or a decisions made by an administrative official on or after that date.

**SUPPORTERS SAY:** CSHB 2497 would help clarify the process of appealing a land development decision to a board of adjustment. Cities have the option to establish boards of adjustment to lighten the administrative burden for appeals regarding zoning regulations, but currently the process is vague and can interrupt development projects.

The bill would require that a city council or other relevant governing body review and approve all rules adopted by a board, ensuring that those rules

did not conflict with city code. The bill also would split administrative decisions into two categories: decisions related to a specific project and non-project decisions. This would clarify who qualified as an "aggrieved party" in an appeal. Currently, any person can bring an appeal on any project, which can lead to projects being unnecessarily slowed or halted and raises project costs.

The bill also would create a more specific timeline for both filing and deciding an appeal, rather than leaving the timeline open-ended. This would prevent appeals from being filed after construction on a project had already started and would ensure a timely appeal process, since the board would have to make a decision on the appeal within 60 days or at the next board meeting, whichever came first.

**OPPONENTS  
SAY:**

CSHB 2497 would needlessly remove the authority of a board of adjustment and instead apply it to a city or other municipality. Boards of adjustment have acted properly to uphold property rights, and this bill would be unnecessary and burdensome.

Boards of adjustment work as a check on the power of local government bureaucrats by allowing aggrieved property owners to challenge a land development decision. By requiring city approval for board rules, the bill effectively would remove the board's authority. Further, the 20 day deadline on applications for appeals could undercut property owner's rights. The bill would not require the city to first notify landowners of a decision, meaning that they could be unaware that 20 days had passed and miss their opportunity to file for appeal.