

Agenda item # 96

**CITY OF SAN ANTONIO
OFFICE OF THE CITY CLERK
CITY COUNCIL AGENDA MEMORANDUM**

TO: Mayor and City Council

FROM: Leticia M. Vacek, City Clerk *Lv*

SUBJECT: Boards and Commissions Recommended for Sunset

DATE: June 29, 2006

SUMMARY AND RECOMMENDATIONS

This item is an ordinance sunsetting three City Committees. In accordance with City Code, Chapter 2, Article IX, Section 2-542(a), those District Boards, Commissions and Committees subject to the provisions of Chapter 2, Article IX, submitted annual reports to their designated City Council Committee. Section 2-542(b) authorizes those City Council Committees to recommend sunset of inactive boards, commissions or committees. As a result, the following chart depicts the recommendations made:

CITY COUNCIL COMMITTEE	BOARD(S) RECOMMENDED FOR SUNSET
Governance City Council Committee	AFFIRMATIVE ACTION ADVISORY COMMITTEE
Governance City Council Committee	TAX PHASE-IN ADVISORY COMMITTEE
Quality of Life City Council Committee	HOME IMPROVEMENT ADVISORY COMMITTEE

After meeting with respective department representatives with regard to each committee's purpose and mission, the Committees determined to abolish the above noted boards, and formulate an ad hoc committee to review any immediate needs.

At its meeting on May 24, 2006, the Council Committee on Boards and Commissions recommended that these three (3) boards be sunset. The Office of the City Clerk will notify each of the current board members, and will advise them of their new status, upon the passage of this ordinance.

COORDINATION

This Ordinance has been coordinated with the Office of the City Attorney, Human Resources Department, Economic Development Department, and Development Services.

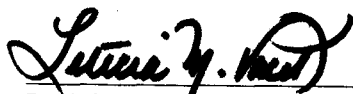
FISCAL IMPACT

There is no fiscal impact to the General Fund.

Mayor & City Council

June 29, 2006

Page 2

A handwritten signature in cursive script, reading "Leticia M. Vacek". The signature is written in black ink and is positioned above a horizontal line.

Leticia M. Vacek
City Clerk

AN ORDINANCE

ABOLISHING THE AFFIRMATIVE ACTION ADVISORY COMMITTEE, THE HOME IMPROVEMENT ADVISORY COMMITTEE AND THE TAX PHASE-IN ADVISORY COMMITTEE; REPEALING THE ORDINANCES ESTABLISHING AND APPOINTING MEMBERS TO THOSE COMMITTEES AND AMENDING CHAPTER 16, ARTICLE IV, OF THE CITY CODE OF THE CITY OF SAN ANTONIO TO REMOVE REFERENCES TO THE HOME IMPROVEMENT ADVISORY BOARD.

* * * * *

WHEREAS, in accordance with Chapter 2, Article IX, Section 2-542 of the City Code of the City of San Antonio, Council Committees met to review the annual reports of District Boards, Commissions and Committees, and to recommend reauthorization or sunset of inactive boards, commissions and committees; and

WHEREAS, the City Council Committee on Boards and Commissions met on May 24, 2006, to review the findings of the City Council Committees, and concurs with the recommendations of the Governance Committee and the Quality of Life Committee, to sunset the Affirmative Action Advisory Board, the Home Improvement Advisory Board, and the Tax Phase-In Advisory Board; and

WHEREAS, it is necessary to amend the City Code of the City of San Antonio to remove references to the Home Improvement Advisory Board from Chapter 16, Article IV; **NOW THEREFORE**:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. Ordinances No. 60191, which established the Affirmative Action Advisory Board, and Ordinance No. 67378, which amended the (composition of the?) board, are repealed, as are all ordinances appointing members to the Affirmative Action Advisory Board.

SECTION 2. Chapter 16, Article IV, which governs the home improvement contractor's licensing, and which includes the rules for the Home Improvement Advisory Board, is amended by adding the underscored words and deleting those words struck through and bracketed to read in its entirety as follows:

"DIVISION 1. GENERALLY

Sec. 16-66. Title.

This article shall be known as the home improvement contractors' licensing ordinance.

Sec. 16-67. Definitions.

In the construction of this article, the following terms shall have the following meaning, unless the context clearly indicates otherwise:

Additional living space means the creation of new living space within an existing residential accessory structure or residence, by such means as attic conversion, garage conversion, porch or patio enclosure.

Class "I" license means a license to perform any home improvement as defined herein on private residences, including dwelling places for one family or two families and on residential accessory structures.

Class "II" license means a license to perform limited scope home improvement work as the term "home improvement" is defined herein, and is limited so as not to include:

(1) Any structural repairs on residential accessory structures, or (2) constructions of room additions, or (3) the creation of additional living space out of existing roofed portions of a structure, or (4) any structural modification work on a residential building, including the relocation or the addition of a support beam, wall, window or doorway.

Such "Class II," limited scope home improvement includes, but is not limited to the construction/installation or repair of: (1) roofing, (2) a fence, (3) a swimming pool, (4) driveway or walkway, (5) inside or outside window shutter, (6) rain gutter, (7) overhead garage door, (8) indoor or outdoor floor tile, (9) cabinetry, (10) existing window or door, not involving creation or enlargement of opening.

Contractor shall mean any person, other than a bona fide employee who owns and operates a home improvement business or who undertakes or offers to undertake or agrees to perform any home improvement, whether or not such person is licensed pursuant to this subtitle and whether or not such person is a prime contractor.

Home improvement shall mean the repair, replacement, remodeling, alteration, conversion, modernization, or addition to any existing building, or any portion thereof, not owned or controlled by a federal, state or local government agency, which is used or designed to be used as a private residence or dwelling place for not more than two (2) families, and shall include, but not by way of limitation, the construction, replacement or improvement of driveways, swimming pools, porches, garages, carports, fallout shelters, fences and other similar improvements, subject, however, to the provisions of subparagraph (2) of this paragraph. "Home improvement" shall not include:

(1) The construction of a new private residence or dwelling place for not more than two (2) families, and the initial construction of improvements or additions to the same lot or lots provided such addition or improvement is commenced within one (1) year from the date of completion of construction of said new residence or dwelling place, nor

(2) The sale of goods or materials by a seller who neither arranges to perform nor performs directly or indirectly any work or labor in connection with the installation of or application of the goods or materials.

Licensee means a person authorized to engage in the home improvement business or the sale of home improvement services under the provisions of this article.

Owner means any homeowner, tenant, or any other person who orders, contracts for or purchases the home improvement services of a contractor, or the person entitled to the performance of the work of a contractor.

Registered business office means a place equipped with a telephone designated by a licensee as the address to which all correspondence and notices shall be sent.

Salesman means any natural person, not otherwise a licensee, who:

(1) Negotiates or offers to negotiate a home improvement contract with an owner, or
(2) Solicits or otherwise endeavors to procure by any means whatsoever, directly or indirectly, a home improvement contract from an owner.

~~[Sec. 16-68. Advisory board.~~

~~The city council shall appoint eleven (11) persons to the home improvement advisory board which is hereby established. The eleven (11) members shall be comprised of six (6) members that are home improvement contractors with a minimum of five (5) years residency in the county, and five (5) members that are representatives of the general public. Each appointment shall be for a period of two (2) years. The board shall select its own chairman. Advisory board members shall serve without compensation. The home improvement advisory board shall make recommendations to the director of building inspections in all matters relating to the enforcement and application of this article and shall advise the director of building inspections administration concerning each application for a license and on cancellations of licenses as provided in section 16-94.]~~

Sec. 16-69. Powers and duties of director of Development Services [building inspections].

In addition to the powers and duties elsewhere prescribed in this article, the director of Development Services [building inspections] shall have the power and duty to keep all records of licenses applied for, issued, refused and cancelled. Such records shall be open to the public for inspection during regular business hours. He shall further have the power and duty to adopt, amend or repeal [; with the advice of the home improvement advisory board,] such rules and regulations not inconsistent with the provisions of this article as may be necessary for the proper administration and enforcement hereof.

DIVISION 2. LICENSES

Sec. 16-81. Required.

It shall be unlawful for any person to maintain, own or operate a home improvement contracting business or to act as a salesman of home improvement services, unless a license is first obtained therefor.

Sec. 16-82. Persons required to obtain license.

The owner of a business and all partners of a partnership and all officers of a corporation who are actively engaged in the performance of home improvement service must qualify for the license required by this division. Licenses will be issued to owner of a business, partnership or corporation. All employees of a business, a partnership or corporation doing sales work must have a salesman's license.

Sec. 16-83. Exceptions. A license shall not be required under this division for:

- (1) An individual, not a salesman, who performs labor or services as a bona fide employee of a licensed contractor or an individual, not a salesman, who performs labor or services as a bona fide employee or subcontractor of a licensed contractor who does not deal directly with the general public as a home improvement contractor;
- (2) A homeowner or tenant or a bona fide employee of a homeowner or tenant performing work on his own residence;
- (3) A plumber, an electrician or other skilled tradesman licensed under the laws of the state, this Code or other ordinances of the city who is acting exclusively within the scope of the craft for which he is currently licensed; and

(4) In connection with any agreement for the performance of a home improvement where the total amount to be paid the contractor thereunder does not exceed two hundred dollars (\$200.00).

Sec. 16-84. Application.

Applications for licenses required by this division shall be submitted to the director of Development Services [~~building inspections~~] on a form established by him.

Sec. 16-85. Information to be submitted with application.

(a) Applicants for the licenses required by this division shall establish to the satisfaction of the director of Development Services [~~building inspections and the home improvement advisory board~~] at least the following:

(1) The existence and maintenance of a bona fide office, equipped with telephone for the conduct of his business;

(2) If he is not an individual proprietor of a home improvement contracting business for which the application is made, authority from the business to submit the application on its behalf,

(3) That neither the applicant nor any partner or corporate officer in the home improvement contracting business on whose behalf the application is submitted, has ever been convicted of any penal offense arising out of or related to the performance of home improvements nor convicted of a felony or a misdemeanor involving moral turpitude during a five-year period immediately preceding the date of the applications;

(4) That applicant, or the entity upon whose behalf the application is submitted, is qualified by either training or experience to conduct a home improvement contracting business or to sell home improvement services;

(5) That neither applicant, nor any partner or corporate officer in the home improvement business upon whose behalf the application is made, has heretofore been convicted of a violation of this division.

(b) In addition to the foregoing requirements, the director of Development Services [~~building inspections~~] may require that the applicant furnish information reasonably pertinent to the determination of the applicant's fitness to be issued such license, or any renewal thereof and the reasons or any of them contained in section 16-94 herein as grounds for cancellation of a license shall be sufficient reason to deny the application.

Sec. 16-86. Investigation; issuance or denial.

(a) The director of Development Services [~~building inspections~~] shall investigate and examine the qualifications and fitness of the applicant.

(b) Within a period of thirty (30) days from receipt of an application in proper form, the director of Development Services [~~building inspections with the advice of the home improvement advisory board~~] shall issue or refuse a license to the applicant.

(c) Upon issuance of the license, the fee required therefor shall be paid by the applicant to the director of Development Services [~~building inspections~~].

(d) If an application is refused, the director of Development Services [~~building and inspections~~] shall furnish the applicant a written statement by certified or registered mail to the applicant's last known mailing address setting forth the grounds for the refusal.

Sec. 16-87. Appeal.

The action of the director of Development Services [~~building inspections~~] in refusing to grant a license required by this division shall be appealable by applicant or his representative filing a written notice of appeal with the city clerk appealing such determination to the city council. The notice of appeal shall be filed within ten (10) days after the notification provided for in this article.

Sec. 16-88. Fees.

(a) The fee for the initial contractor's license to conduct a home improvement business shall be one hundred dollars (\$100.00), and for each annual renewal thereof the fee shall be fifty dollars (\$50.00). The initial fee for a salesman's license shall be fifty dollars (\$50.00) and for each annual renewal thereof the fee shall be thirty dollars (\$30.00).

(b) The fee for issuing a duplicate license for one (1) which has been lost, destroyed or mutilated shall be five dollars (\$5.00).

(c) All fees shall be paid to the director of Development Services [~~building inspections~~] upon issuance of the license.

Sec. 16-89. Term.

Licenses issued pursuant to this division shall be valid for a period of one (1) year from the date of issuance.

Sec. 16-90. Nontransferability.

Licenses issued pursuant to this division shall not be assignable or transferable except as specifically authorized.

Sec. 16-91. Renewals.

Any license issued pursuant to this division, which has not been suspended or revoked, may, upon the payment of the renewal fee prescribed in this chapter, be renewed for an additional period of one (1) year from its expiration, upon filing of an application for such renewal, on a form to be prescribed by the city manager.

Sec. 16-92. Duplicates.

A duplicate license may be issued for one lost, destroyed or mutilated upon application therefor on a form prescribed by the city manager and the payment of the fee prescribed therefor by this division. Each duplicate license shall have the word "duplicate" stamped across the face thereof and shall bear the same number as the one it replaces.

Sec. 16-93. Posting.

Each license issued pursuant to this division shall be posted in a conspicuous place in the office of the licensee.

Sec. 16-94. Cancellation.

(a) A home improvement contractor's or salesman's license shall be cancelled by the director of Development Services [~~building inspections upon recommendation of the home improvement advisory board~~] after a hearing before the director [~~board~~], in the event the licensee, or any proprietor, partner or corporate officer is convicted of any penal offense arising out of or related to the performance of a home improvement or suffers a

judgment against him in a civil action predicated upon fraud in connection with the performance of a home improvement.

(b) The director of Development Services ~~building inspections upon recommendation of the home improvement advisory board~~ after a hearing before the director ~~[said board]~~ shall cancel a license for any one (1) or more of the following reasons:

- (1) Conviction of the licensee or any proprietor, partner or corporate officer therein of a felony or misdemeanor involving moral turpitude;
 - (2) The making of any false statement as to a material matter in an application for license, renewal thereof or hearing in connection with same;
 - (3) Conviction of violation of the building code of the city;
 - (4) Violation of any provision of this article;
 - (5) Upon judicial determination of an abandonment or willful failure to perform any home improvement contract or project in or undertaken by a contractor; or willful deviation from or disregard of plans or specifications in any material respect;
 - (6) Upon judicial determination of substantial misrepresentation on part of contractor in the procurement of a home improvement contract;
 - (7) Upon judicial determination of fraud on the part of a contractor in the execution of or in the material alteration of any home improvement contract or mortgage, promissory note or other document relating to the contract;
 - (8) Upon judicial determination that contractor prepared or accepted any mortgage, promissory note or other evidence of indebtedness pertaining to a home improvement transaction with knowledge that it recited a greater monetary obligation than the agreed consideration for the home improvement work;
 - (9) The contractor directly or indirectly published any advertisement relating to home improvement which contains assertions, representations or statements which are false, deceptive or misleading;
 - (10) Failure of contractor to notify director of Development Services ~~[building inspections]~~ of any change in the ownership, management, business name, or location of his registered business office;
 - (11) The contractor conducting a home improvement business in any name other than the one licensed;
 - (12) The licensed contractor obtaining a permit for an unlicensed contractor or one whose license has been revoked or denied.
- (c) Notification to the licensee of a hearing before the director of Development Services ~~home improvement advisory board~~ shall be mailed by the director ~~of building inspections~~ to the licensee by certified or registered mail, at his last known mailing address. The notification shall give not less than ten (10) days' notice of the hearing.
- (d) The director of Development Services ~~home improvement advisory board~~ shall be authorized to conduct hearings for the purpose of making findings of fact to assist him ~~[the board]~~ in making his ~~[its]~~ recommendation.

Sec. 16-95. Name on licensed vehicles.

All owned vehicles used in business licensed by this article shall have posted on each side in letters three (3) inches minimum height in contrasting colors stating name of contractor and his home improvement contractor's license number.

Sec. 16-96. Temporary license.

The director of Development Services [~~building inspections with the advice of the home improvement advisory board~~] may, in his judgment, issue a temporary license or continue in existence a license already issued for a period not to exceed ninety (90) days in any matter wherein the evidence before the director [~~and board~~] indicates a violation of the home improvement contractor's licensing ordinance. The issuance of any such temporary license shall be for the purpose of permitting the applicant or licensee to correct and alleviate the circumstances and condition which may justify the cancellation of any license or militate against the issuance of any license. Within the ninety-day period the applicant or licensee may furnish additional evidence to the [said] director [~~and advisory board~~]. Upon the receipt of such additional evidence and/or at the expiration of the ninety-day period the director [~~with the advice of the advisory board~~] shall determine whether the application for the license shall be denied, or whether the license in existence shall be cancelled. The applicant or licensee shall be notified in writing by certified or registered mail of the action of the director. Appeal from the action of the director to the city council may be taken by the applicant or licensee as provided for in section 16-87. The fee to be paid by an applicant for a license who is instead granted a temporary license as herein provided shall be ten dollars (\$10.00) which sum shall not be returnable but which may, if applicant subsequently is granted a license, be applied toward the payment of the required fee for such license."

SECTION 3. Ordinance No. 85607, which established the Tax Phase-In Advisory Board, is repealed.

SECTION 4. All Ordinances appointing members to the Affirmative Action Advisory Board, the Home Improvement Advisory Board and the Tax Phase-In Advisory Board, are repealed.

SECTION 5. This Ordinance is effective immediately upon the receipt of eight (8) affirmative votes, or in the event eight (8) affirmative votes are not received, ten (10) days after passage.

PASSED AND APPROVED this 15th day of June 2006.

M A Y O R

ATTEST: _____
City Clerk

APPROVED AS TO FORM: _____
City Attorney