



WHEREAS, state law provides the citizens of Austin the right to appeal to the Board of Adjustment all administrative decisions made pursuant to the Austin Zoning Code (Interpretation Appeal); and

WHEREAS, under state law the Board of Adjustment is an independent, sovereign body characterized as a quasi-judicial body; and

WHEREAS, under state law and the present City Code, the Board of Adjustment is authorized to adopt its own rules and to determine whether a person's Interpretation Appeal shall be heard by the Board of Adjustment; and

WHEREAS, to maintain its integrity and independence, the Board of Adjustment has adopted a rule prohibiting all ex parte communications with Board members regarding a case before the Board of Adjustment; and

WHEREAS, City staff is an interested party in all Interpretation Appeals submitted to City staff for filing with the Board of Adjustment; and

WHEREAS, the City Legal Department represents City staff; and

WHEREAS, in violation of state law and the City Code, the City Legal Department reviews all submitted Interpretation Appeals and decides whether the Interpretation Appeal will be accepted for filing and forwarded to the Board of Adjustment; and

WHEREAS, at Board of Adjustment Interpretation Appeal hearings, the City Legal Department serves as legal counsel to staff and to the Board of Adjustment; and

WHEREAS, on occasion, the Board of Adjustment has gone into executive session with the City Legal Department to discuss an Interpretation Appeal pending before the Board of Adjustment; and

WHEREAS, the City Legal Department's representation of City staff and legal counsel role with the Board of Adjustment constitutes an inherent conflict of interest

detrimental to both the rights of the appellant and the public trust in the Interpretation Appeal process; and

WHEREAS, the above described practices by the City Legal Department have precipitated a broadly held public perception that the City Legal Department shields staff decision from proper, statutorily authorized citizen oversight and thus creates a non-transparent and unpredictable regulatory environment.

NOW, THEREFORE BE IT RESOLVED:

1. That with respect to interpretation cases, the BOA should immediately amend its Bylaws and/or Rules of Procedure to follow standard practice and have Interpretation cases filed directly with the city clerk, officially date and time stamped upon receipt, and then timely copied to the Chair of the Board of BOA to determine standing, completeness and timeliness, and distributed with like timeliness to interested parties; and
2. That the BOA should be provided independent legal counsel, as the city attorney's office, by default, has a conflict of interest; and
3. That City Attorneys should not attend BOA Executive sessions related to interpretation cases. City legal staff is rightfully counsel to the defendant of the interpretation (COA) and their attendance would constitute ex parte communications.

Presented to the ANC Executive Committee February 14, 2018
Approved and Adopted by the ANC Executive Committee February 14, 2018
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