

RESOLUTION

WHEREAS, the Board of Adjustment is a Sovereign board established by City Council pursuant to Chapter 211 of the Texas Local Government Code and;

WHEREAS, The Board of Adjustment derives its authority from state law as well as City Code 2-1-111 and Chapter 25-2, Zoning, to uphold, amend, and overturn administrative zoning related decisions when appealed by an aggrieved person or entity and;

WHEREAS, under section 211.010(b) of the Texas Local Government Code and the present City Code Chapter 25-2, the Board of Adjustment is authorized to adopt its own rules and to determine whether a person's Interpretation Appeal will be heard by the Board of Adjustment and;

WHEREAS, under Chapter 211, the deadline for filing a Board of Adjustment Appeal is determined by the Board based on the rules of the Board and;

WHEREAS, City staff has authority to implement a zoning code that necessarily involves interpreting the zoning code, which then is subject to review by the Board of Adjustment when an appeal is filed and;

WHEREAS, to maintain its integrity and independence, the Board of Adjustment has adopted a rule prohibiting all *ex parte* communications between Board members and interested parties and their representatives regarding a case before the Board of Adjustment and;

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

WHEREAS, the City Legal Department represents City staff and;

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

~~WHEREAS, in arrogation of the Board of Adjustments statutory authority, the City Legal Department currently reviews all submitted Interpretation Appeals and decides on its own whether the Interpretation Appeal will be accepted for filing and forwarded 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 ex parte Interpretation Appeal pending before the Board of Adjustment and;~~

WHEREAS the City Legal Department is currently advising both City Staff and the Board of Adjustment and;

WHEREAS, the City Legal Department's representation of City staff and the Board of Adjustment on the same matter constitutes the appearance of a 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 have precipitated a broadly held public perception that the City Legal Department shields City staff decisions from proper statutorily authorized citizen oversight, thus creating a non-transparent, unfair, and unaccountable regulatory environment.

Therefore, be it RESOLVED:

1. BOA should immediately amend its Bylaws and/or Rules of Procedure to have Interpretation cases filed directly with the city clerk, officially date and time stamped upon receipt and immediately copied to the Chairman of the Board of Board of Adjustment and interested parties to have the Board of Adjustment determine standing, completeness and timeliness, and all other matters;
2. The BOA should retain independent legal counsel as it is an inherent a perceived conflict of interest for the Legal Department to represent City Staff with respect to -interpretation cases, an administrative decision, the subject of a Board of Adjustment Appeal, and then advise or go into executive session with the Board of Adjustment relating to that appeal. and;
- ~~3. City legal department should not attend BOA Executive sessions. City legal is rightfully counsel to the defendant of the interpretation (COA) and their attendance would constitute ex parte communications with the BOA, creating an appearance that the Board of Adjustments Appeal process is not transparent, fair or accountable when the Board of Adjustment makes decisions based on City Legal advice that is kept from the public.~~

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