

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 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 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 a perceived conflict of interest for the Legal Department to represent City Staff with respect to interpretation cases, 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.

Board and Commission Council Committee Agenda Item Request

Name of Board or Commission: Board of Adjustment

Request Number: 20170410-N7

Description of Item: Explore having independent legal counsel represent the Board of Adjustment during Interpretation Appeals since City legal represents City staff.

Board or Commission Vote to refer item to Council: 11-0

Date of Approval of Request: April 10, 2017

Attachments: Yes No

If yes, please list the attachments: 4/10 Board minutes with motion regarding the request

Attest: Leane Heldenfels



MAYOR'S OFFICE USE ONLY

Council Committee Assigned:

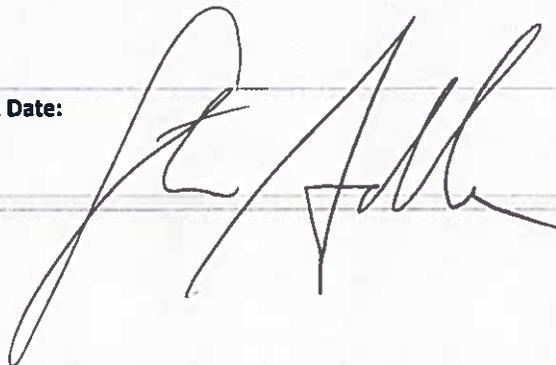
- Audit and Finance Committee
- Austin Energy Utility Oversight Committee
- Mobility Committee
- Health and Human Services Committee
- Housing and Planning Committee

Recommend a Fiscal Analysis be completed? YES

Recommend a Legal Analysis be completed?

Notes:

Mayor Signature & Date:



8/3/17

Wed 4/19 CAG Mapping Rollout, CodeTalk: Community Character, City Hall, 6-9pm
Mon 5/8 (our meeting date, maybe they can watch video on ATXN archive if interested)
CodeTalk: Affordability, Town Lake Center, 721 Barton Springs Rd, 6-8pm
Wed 5/31 CodeTalk: Mobility, City Hall, 6-8pm
Wed 6/7 CodeTalk: Permit and Processing, City Hall, 6-8pm

N-6 Invitation to attend Joint Planning/ZAP Commission Meetings on CodeNEXT scheduled for Tuesday 4/18 and Tuesday 5/30 at City Hall at 6pm.

N-7 Discussion and possible action on Budget

The public hearing was closed on Board Member Eric Goff motion to put forward the budget request to ask City Council to explore cost/benefit and other Cities use of outside Counsel to represent the Board on interpretation cases due to potential conflict of interest and perception of conflict of interest, Board Member Don Leighton-Burwell second on an 11-0 vote.

O. ADJOURNMENT

The City of Austin is committed to compliance with the American with Disabilities Act. Reasonable modifications and equal access to communications will be provided upon request. Meeting locations are planned with wheelchair access. If requiring Sign Language Interpreters or alternative formats, please give notice at least 2 days before the meeting date. Please call Leane Heldenfels at Planning & Development Review Department, at 512-974-2202 or Diana Ramirez at Planning & Development Review Department at 512-974-2241, for additional information; TTY users route through Relay Texas at 711.