

Division 3 Appeals Procedure

Sec. 2-45. Appeals generally.

An appeal of any final decision expressly appealable to City Council under other provisions of this Code, including the Land Use Code, shall be initiated by an eligible party and decided in the manner set forth in this Division. Any action taken in reliance upon any decision of an original decision maker that is subject to review or appeal under this Division shall be solely at the risk of the person(s) taking such action until all appeal rights related to such decision have been exhausted, and the City shall not be liable for any damages arising from any such action.

Sec. 2-46. Definitions.

The following words, terms and phrases, when used in this Division, shall have the meanings ascribed to them in this Section:

Appeal party means an eligible person who has taken steps necessary under Section 2-52(a) and been verified under Section 2-52(b) to participate in an appeal.

Appellant means one or more eligible persons appealing a decision from an original decision maker to the City Council by the filing of a notice of appeal.

Appellant representative means the individual designated in a notice of appeal as the contact person for all matters related to that appeal.

Applicant means the person who or organization that submitted the application to the original decision maker whose decision has been appealed.

Decision maker, administrative means the designee of the City Manager who performs fair hearing reviews under Section 2-48 and notice of appeal screening under Section 2-51.

Decision maker, original means the board, commission or other decision maker the final decision of which is the subject of an appeal or a request for administrative review.

Eligible person means a person who or organization that has standing to appeal the final decision of an original decision maker. Such standing to appeal shall be limited to the following:

- (1) The applicant;
- (2) Any party holding an ownership or possessory interest in the real or personal property that was the subject of the decision of the original decision maker whose action is to be appealed;
- (3) Any person who or organization that provided written comments to the appropriate City staff for delivery to the original decision maker before or at the hearing on the matter that is to be appealed;
- (4) Any person who or organization that appeared before and provided comments to the original decision maker at the hearing on the action that is to be appealed;
- (5) The City Council as represented by the request of a single member of the City Council.

Evidence means any information, whether in verbal, audio, written, graphic, or other form, presented at the appeal hearing to support or refute a particular proposition or conclusion. *Evidence* does not include argument as to how information offered as evidence should be viewed by the City Council.

Final decision means the action of an original decision maker when no further rehearing is available before that original decision maker; provided, however, that a recommendation to the City Council from a board, commission or other decision maker shall not be considered as a final decision of that board, commission or other decision maker.

New evidence means any evidence, relating to the proposal or application that was the subject of final decision by an original decision maker, that was not provided or presented at the hearing or as part of the record before that original decision maker. *New evidence* does not include evidence in the record that has been modified, highlighted, underlined, italicized-or otherwise marked to emphasize certain portions of writings or graphics presented to the original decision maker as long as any modified graphic presented to the City Council at the appeal hearing is accompanied by a reference to the location of the original material in the record of the decision being appealed.

Sec. 2-47. Appeal of final decision permitted; effect of appeal; grounds for appeal; limit on subject matter of appeal.

- (a) Initiating an appeal. Any eligible person may appeal to the City Council the final decision of any original decision maker to which this appeal procedure applies in the manner provided in this Division by the filing a notice of appeal with the City Clerk within fourteen (14) calendar days after the decision that is the subject of the appeal. A separate process for seeking administrative review of fair hearing issues is provided in Section 2-48.
- (b) Grounds for appeal. Except for appeals by members of the City Council, the permissible grounds for appeal shall be limited to allegations that the original decision maker failed to properly interpret and apply relevant provisions of the Code and Charter in deciding particular aspects of the decision raised by an eligible person for consideration by the original decision maker.
- (c) Limit on subject matter of appeal. Allegations of appeal must follow from issues raised before the original decision maker. Issues not raised in connection with the original decision are deemed waived and are not subject to appeal.
- (d) Councilmember appeals. Appeals filed by members of the City Council must include a statement of each specific question to be considered on appeal rather than allegations of error.
 - (1) Upon the filing of any such appeal, the director of the affected City service area shall identify the specific Code provisions that may pertain to the specific questions raised by the appeal and shall provide the information to the City Clerk before the date that the notice of hearing on the appeal is to be mailed under Section 2-52 of this Division.
 - (2) The City Clerk will include said information with the notice of hearing.
 - (3) Councilmembers who file an appeal may participate in hearing an appeal in the same manner as they participate in hearing appeals filed by other eligible persons.

Sec. 2-48. Administrative fair hearing review of final decision permitted; effect of fair hearing determination.

- (a) Fair hearing review. Any eligible person may seek administrative review of procedural defects in connection with the final decision of an original decision maker to which this Division applies by filing a request for fair hearing review with the City Clerk within fourteen (14) calendar days after the decision that is the subject of the requested review.
- (b) Fair hearing issues. Procedural defects subject to review include those matters constituting an alleged failure to conduct a fair hearing in that:
 - (1) The original decision maker exceeded its authority or jurisdiction as contained in the Code or Charter;
 - (2) The original decision maker substantially ignored its previously established rules of procedure;

- (3) The original decision maker considered evidence relevant to its findings that was substantially false or grossly misleading;
 - (4) The original decision maker improperly failed to receive all relevant evidence offered by the appellant; or
 - (5) The original decision maker was biased against the appellant by reason of a conflict of interest or other close business, personal or social relationship that interfered with the original decision maker's independence of judgment.
- (c) Review process.
- (1) The request for fair hearing review shall be on a form provided by the City Clerk, shall be signed by all persons joining the request for review, and must include documentation to substantiate the grounds for the review sought, such as evidence in the record, new evidence relevant to the issues under review, and written arguments explaining the allegations.
 - (2) If the eligible person seeking the fair hearing review is not the applicant, the City Clerk will notify and provide a copy of the request for review to the applicant within two (2) working days of receiving the request for review.
 - (3) The applicant may file a written summary of facts and arguments and any documentation to oppose the allegations no later than five (5) working days after the City Clerk's notice of the request.
 - (4) The administrative decision maker may review any information received from the requesting party, applicant, City staff or other source, that the administrative decision maker considers relevant to evaluate the allegations of procedural defects, including the original decision and supporting documents internally, potentially requesting additional information or clarification.
- (d) Fair hearing/procedural defect determination.
- (1) The administrative decision maker will review all information received and any other information obtained by the administrative decision maker related to the allegations, and will make findings and conclusions as to the issues raised no later than five (5) working days after receipt of the request, unless the request was made by the a party other than the applicant, in which event the administrative decision maker will issue a decision no later than five (5) working days after receipt of the applicant's response.
 - (2) If the administrative decision maker determines that no procedural defect raised a significant question as to whether the decision under review was based on a fair hearing, the administrative decision maker will provide written notice of that determination to the requesting party and to the applicant.
 - (3) If the administrative decision maker determines that a procedural defect occurred that raises a significant question as to whether the decision under review was based on a fair hearing, the administrative decision maker will remand the matter for rehearing.
 - (4) If the administrative decision maker determines that on remand the original decision maker will be unable to provide a fair rehearing or will be unable to provide a fair rehearing because a quorum will not be available, the administrative decision maker must remand the matter for rehearing to a qualified, alternative decision maker. Additionally, the administrative decision maker may remand

the matter for rehearing to a qualified, alternative decision maker if the public confidence in the decision on remand would be better served than remand to the original decision maker.

- (e) Effect of fair hearing determination. If the administrative decision maker remands the matter for rehearing, any notice of appeal that was filed on the same matter will be automatically cancelled without prejudice and the appeal fee will be refunded.
- (f) Fair hearing review fee. In all fair hearing reviews, the person requesting review must remit to the City Clerk with the request a fee of [FILL IN FEE AMOUNT HERE] [Add escalation clause based on inflation or some other index?] No fair hearing review will begin until the fee has been received by the City Clerk. Any fair hearing review for which the fair hearing review fee has not been paid before the deadline for the filing of the fair hearing review will be rejected as untimely.
- (g) Final decision. Any fair hearing review decision under this Section is final and is not subject to further municipal review or appeal.

Sec. 2-49. Notice of appeal; no new evidence.

- (a) Form of appeal notice. The notice of appeal must be on a form provided by the City Clerk, must be signed by all persons joining the appeal and must include the following:
 - (1) The action of the original decision maker that is the subject of the appeal;
 - (2) The date of the action;
 - (3) The name, address, telephone number and the basis for the person's qualification to appeal as an eligible person;
 - (4) In all appeals except those filed by members of City Council, the grounds for the appeal, including specific allegations of error of interpretation or application of relevant and specific provisions of Code or the Charter;
 - (5) A summary of the facts contained in the record on appeal (no new evidence) that support the appeal allegations, separated into support for each separate allegation, including where in the record (such as the minute number in a recording, or page and line number in a document) the appellant raised the issue(s) before the original decision maker;
 - (6) A written summary of the appellant's argument accompanied by specific references to applicable material in the record (no new evidence), separated into argument for each separate allegation;
 - (7) The name, address, email address, and phone number of the appellant representative who is authorized to receive notice required to be mailed by the City to the appellant and an indication of the appellant representative's preferred means of contact. In the case of an appeal filed by more than one (1) person, the name, address, email address, and telephone number of one (1) appellant representative who is authorized to receive, on behalf of all persons joining the appeal, any notice required to be mailed by the City to the appellant under this Division and an indication of the appellant representative's preferred means of contact; and
 - (8) Any other information required by the City Clerk.
- (b) Limit on submittal. No materials other than that specified in Subsection (a) of this Section are allowed to be included in or attached to the notice of appeal or submitted by the appellant at any time, except for presentation materials as allowed in Section 2-54(d).
- (c) Appeal fee. In all appeals, except those filed by members of the City Council, the appellant must remit to the City Clerk with the notice of appeal a fee of [FILL IN FEE AMOUNT HERE] [Add escalation clause based on inflation or some other index?] No appeal will be reviewed for completeness or sufficiency until the appeal fee

has been received by the City Clerk. Any appeal for which the appeal fee has not been paid before the deadline for the filing of the appeal will be rejected as untimely. If a fair hearing review was filed on the same matter and the administrative decision maker remands the matter for rehearing, the appeal for the same matter will be automatically cancelled without prejudice and the appeal fee will be refunded.

Sec. 2-50: Completeness review.

- (a) Within three (3) working days of receiving the notice of appeal and appeal fee, the City Clerk will review the notice of appeal in consultation with the City Attorney for completeness and sufficiency.
- (b) Completeness includes any obvious defects in form or substance, confirmation that the person(s) submitting the appeal qualifies as an eligible person (the person has standing to raise the appeal), confirmation that the listed code provisions are relevant, and determination that all items in Section 2-49 have been properly provided.
 - (1) If a notice of appeal is incomplete, the City Clerk will promptly notify the person authorized to receive notice that the notice of appeal is incomplete and will specify the incomplete items.
 - (2) Within three (3) working days of being notified the notice of appeal is incomplete, the notice of appeal may be resubmitted with the incomplete items cured.
 - (3) If the notice of appeal is not resubmitted, or if the resubmitted notice of appeal is determined, after additional review to be incomplete, the appeal shall be terminated, the City Clerk will provide notice to the appellant representative, and no further action will be taken on the notice of appeal.
- (c) When an appeal has been determined to be complete and the appeal fee has been paid, the City Clerk will promptly forward the appeal to the administrative decision maker for screening. When an appeal has been determined to be complete, the City Clerk will also order assembly of the relevant record and thereafter will make it available to the appeal parties.

Sec. 2-51: Screening review.

- (a) Scope of screening. If a notice of appeal is determined to be complete, whether initially or after resubmittal, the administrative decision maker will review the subject matter of the appeal to determine whether:
 - (1) all persons joining in the appeal are eligible persons;
 - (2) each ground for appeal was raised before the original decision maker;
 - (3) each ground for appeal is legally sufficient and raises a valid interpretation or application issue
 - (4) each ground for appeal has merit based on clearly established evidence in the record of the original decision; and
 - (5) no new evidence was submitted.
- (b) Screening review process. The administrative decision maker may review any information received as part of the notice of appeal, or in the record of the original decision, that the administrative decision maker deems relevant to evaluate the appeal allegations.
- (c) Screening determination.
 - (1) The administrative decision maker will review all information received and any other information obtained by the administrative decision maker related to the allegations, and will make findings and conclusions as to the sufficiency of the appeal and each allegation on appeal no later than ten (10) working days after receipt of the notice of appeal, except if a simultaneous fair hearing review was filed under Section 2-48, the ten (10) working days' time for completing the screening review does

not begin until after the fair hearing review is determined.

- (2) If the administrative decision maker determines that the appeal or any allegation asserted in the appeal is not proper, does not raise legally cognizable issues for review, or has no merit based on clearly established evidence in the record of the original decision, the appeal or those allegations will not be presented to the City Council for review and will be dismissed.
- (d) Notification of decision. Upon completion of the screening determination, the administrative decision maker will notify the appellant and the applicant of the determination and those appeal allegations that remain active will be set for hearing and appeal party registration will proceed as described in Section 2-52.
- (e) Posting of appeal materials. The City Clerk will promptly post on the appeal page of the City's website the notice of appeal and screening determination of the administrative decision maker, and the information will be made part of the record on appeal and will be available for public inspection in the Office of the City Clerk.
- (f) Final decision. The screening determination under this Section is final and is not subject to further municipal review or appeal.

Sec. 2-52. Appeal party registration/ scheduling of the hearing/ pre-hearing conference/ consolidation of hearings/no ex parte contacts.

- (a) Appeal party registration. Within fourteen (14) calendar days after the complete and screened notice of appeal is posted on the City's website, any eligible person who intends to be an appeal party must register with the City Clerk using a form provided by the City Clerk as follows:
 - (1) The eligible person(s) who signed the notice of appeal is deemed an appeal party by virtue of filing a complete notice of appeal.
 - (2) An eligible person who is not the appellant but wishes to be an appeal party in support of the appeal must do so through the appellant and as part of the appellant's presentation and argument on the appeal.
 - (3) An eligible person who wishes to be an appeal party opposed to the appeal must submit:
 - i. a statement of how the person qualifies as an eligible person;
 - ii. a summary of the facts contained in the record on appeal (no new evidence) that oppose the appellant's appeal allegations, separated into support for each separate allegation;
 - iii. a summary of the appeal party's argument accompanied by references to applicable material in the record, separated into argument for each separate allegation; and
 - iv. the name, address, email address, and phone number of the person and an indication of the person's preferred means of contact.
- (b) Verification. Within two (2) working days of receiving the registration submittal the City Clerk will review the submittal and confirm the registrant is an eligible person before the person is deemed an appeal party.
- (c) Posting of appeal materials. Upon verification of any appeal party opposed to the appeal under Subsection (b) of this Section, the City Clerk will promptly post the summary of facts filed by the verified appeal party and any attached information on the City's website, and the information will be made part of the record on appeal and will be available for public inspection in the Office of the City Clerk.
- (d) Scheduling of the hearing. After screening of an appeal is complete and the deadline for appeal party registration has elapsed, the City Clerk will identify a possible date for the hearing on the appeal as early as reasonably practicable but no fewer than fourteen (14) and no more than sixty-three (63) calendar days after-the-deadline

for appeal party registration has elapsed and their appeal materials are posted on the City's website under Subsection (c) of this Section. The City Clerk will also identify a possible date for the pre-hearing conference under Subsection (f) of this Section.

- (1) Before scheduling the hearing, the Clerk will notify the appeal parties of the possible hearing date or dates and the possible pre-hearing conference date or dates.
 - (2) The appeal parties must respond within two (2) working days to inform the City Clerk if they believe they have an unavoidable conflicts that makes attendance impossible at such date, or dates.
 - (3) The City Clerk will set the hearing date at a time that takes into account the unavoidable conflicts identified to the extent reasonably practicable.
- (e) Posting of hearing notice. The City Clerk will post on the appeals page of the City's website and will mail to the appeal parties written notice of the date, time and place of the hearing and the pre-hearing conference no more than five (5) working days after setting the date of the hearing. Said notice shall also include a copy of the notice of appeal (excluding attachments, which shall be available as provided in Section 2-51(e)).
- (f) Pre-hearing conference. Not fewer than four (4) working days before the scheduled appeal hearing, the City Clerk will convene a meeting with the appeal parties to provide information and respond to questions about the appeal hearing process. Any questions the City Clerk receives outside of the pre-hearing conference will be addressed at the pre-hearing conference so that all appeal parties may receive the same information.
- (g) Consolidation of hearings. All appeals regarding the same decision will be consolidated and scheduled together to be heard in a single hearing. Council may in its discretion by majority vote at the time of the scheduled hearing separate the hearing process for individual appeals as provided under Section 2-53(e).
- (h) Extension. At any time before the expiration of the time for Council to hear an appeal under Subsection (d), the City Manager may in the event of scheduling difficulties or notice defects request that Council approve by motion or resolution the extension of the time for hearing an appeal for a specified period.
- (i) No ex parte contact. To afford all eligible persons a fair opportunity to respond to the information upon which the City Council is to base its decision on appeal, and to preserve the impartiality of Councilmembers hearing the appeal, all Councilmembers who intend to participate in hearing the appeal shall, to the extent reasonably possible, avoid communications with appeal parties and members of the general public regarding the merits of the appeal before the hearing on the appeal, and all appeal parties and the general public must avoid communications with Councilmembers regarding the merits of the appeal.

Sec. 2-53. Procedure at the hearing.

- (a) At the hearing on the appeal by the City Council, the presentation of argument on the merits of the appeal shall be made in the following order and for the times set forth below, subject to modification of time and scope allowed as may be established at the discretion of the Mayor or a majority vote of the Council:
- (1) Presentation by City staff explaining the nature of the appeal or appeals and the decision being appealed;
 - (2) Comments by Councilmembers who have inspected the site of their own accord regarding the date of the inspection and any observations of the site they believe may be relevant to the Council's determination of the appeal;
 - (3) Consideration of any procedural issues identified under Subsection (c) below;
 - (4) Presentation of argument by the appellant for up to twenty (20) minutes or such other time as City Council allots;
 - (5) Presentation of argument by any appeal party opposed to the appeal for a total of up to twenty (20) minutes or such other time as City Council allots;
 - (6) If one or more appeal parties has argued to oppose the appeal, rebuttal presentation by the appellant for up to ten (10) minutes or such other time as City Council allots;

- (7) Rebuttal presentation by any appeal party opposed to the appeal for a total of up to ten (10) minutes or such other time as City Council allots;
 - (8) Councilmember questions of City staff and appeal parties; and
 - (9) Motion, discussion and vote by the City Council.
- (b) Factors to be considered in determining whether to modify the period of time for the presentation of argument on the merits of an appeal shall include, but not be limited to, the complexity of the issues raised in the notice of appeal, the length of the record on appeal, the potential impact that the determination of the appeal may have on the community at large and the number of appeal parties who wish to address the Council with regard to the merits of the appeal.
 - (c) Prior to hearing the presentation of argument on the merits of the appeal, the Mayor may, in their discretion, establish a separate period of time during which the Council may first consider and the Mayor may determine, subject to override by the Council by majority vote, any procedural issues related to the hearing of the appeal, including, but not limited to, objections regarding the possible introduction or exclusion of certain evidence, whether to separate any consolidated appeals of the same decision by different appellants, the period of time to be allowed for presentation of argument and rebuttal on the merits of the appeal and any concerns or objections related to the record on appeal.
 - (d) No person making a presentation to the City Council shall be subject to cross-examination except that members of the City Council and the City Attorney may inquire of such person for the purpose of eliciting information and for the purpose of clarifying information presented.
 - (e) In the event of multiple appeals involving the same decision of an original decision maker that have been consolidated in accordance with Section 2-52(f), the Mayor, in the Mayor's discretion, may modify the procedure contained in Subsection (a) of this Section to expedite the hearing of such appeals, while still ensuring that each appellant can make that appellant's own case and that appeal parties for and against each appeal will have equal time.

Sec. 2-54. Record on appeal; written materials; evidence.

- (a) The City Council shall consider an appeal based upon the record on appeal, the relevant provisions of the Code and Charter and any other applicable legal authorities, the grounds for appeal cited in the notice of appeal, the arguments made by appeal parties at the hearing on the appeal, and the City staff report and presentation prepared for the appeal; provided, however, that issues raised during the presentation of argument but not within the allowable scope of the appeal shall not be considered by the City Council in deciding the appeal.
- (b) The record provided to the City Council shall include the following:
 - (1) All exhibits, including, without limitation, all writings, drawings, maps, charts, graphs, photographs and other tangible items received or viewed by the original decision maker at the proceedings;
 - (2) A verbatim transcript of the proceedings before the original decision maker unless the decision was not made a hearing (such as a decision by a department director). The cost of the transcript shall be borne by the City.
 - (3) If available, a video recording of the proceedings before the original decision maker. The cost of reproducing any such video recording for review by the City Council shall be borne by the City. Additional copies shall be provided to appeal party requesting the same within a reasonable period of time before the date for hearing the appeal, at a cost not to exceed the actual reproduction costs incurred by the City.
 - (4) A copy of the notice of appeal and screening determination.
 - (5) A copy of all appeal party submittals admitted under Section 2-52(c).
 - (6) A copy of notice of the appeal hearing.
 - (7) City staff presentation required under Subsection (d) of this Section and appeal parties' presentations.

- (c) No new evidence shall be presented to the City Council before or during an appeal hearing, and no new evidence shall be considered on appeal, except:
 - (1) When offered by City staff or parties-in-interest in response to questions presented by Councilmembers at the hearing on the appeal; or
 - (2) When offered by Councilmembers after inspecting the site of the project development plan or other proposal that is the subject of an appeal.
- (d) City staff shall prepare for Council consideration the record as described in Subsections (a) and (b) of this Section, together with a staff agenda item summary and presentation materials, which shall become part of the record of the appeal hearing. Staff shall also provide to the Council the notice of appeal and all attachments to it.
- (e) Any appeal party wishing to submit a presentation of their previously submitted written facts and argument must submit them to the City Clerk in digital form and in hard copy no later than noon on the working day before the day of the appeal hearing. The City Clerk will post any presentation materials received by the end of the working day before the day of the hearing. In light of the prohibition on submission of new evidence, admission of any such materials for consideration shall be subject to Council determination at the appeal hearing. Any appeal party may provide a true and accurate hard copy of any such argument or presentation to be provided to the Council at the hearing, and to City staff and the other appeal parties, so long as no fewer than twenty (20) such copies are brought to the hearing for distribution.
- (f) Any appeal party who believes that evidence has been improperly offered or introduced into the appeal hearing may, at any time during the hearing, interrupt the proceedings and object to the Council's consideration of such evidence. If such an objection is made, the Mayor shall rule on the objection, after consultation with the City Attorney if necessary, and the evidence shall either be received and considered by the Council or disregarded by the Council in accordance with the ruling of the Mayor. The Mayor's ruling on this or any other procedural issue raised during the course of the hearing may be overridden by a majority of the Council. The failure of an appeal party to make such an objection shall constitute a waiver of the same by that appeal party for the purpose of any court appeal of the Council's decision.

Sec. 2-55. City Council decision on appeal.

- (a) In considering an allegation that a board, commission or other decision maker failed to properly interpret and apply the relevant provisions of the Code or Charter asserted under Subsection 2-49(b) of this Article, the City Council shall determine how such provisions should, in the City Council's judgment, be applied to the evidence contained in the record of the appeal hearing.
- (b) At the conclusion of such hearing, the City Council shall uphold, overturn or modify the decision of the original decision maker, and may impose such conditions as the Council determines appropriate to further the purposes of or compliance with the standards governing the decision; provided, however, that:

The City Council may also remand the matter for rehearing for the original decision maker to receive and consider additional information with regard to any issue raised on appeal. Any such remand shall include direction from the City Council to the original decision maker as to the issues to be considered at the rehearing.
- (c) No later than the date of its next regular meeting, the City Council shall adopt, by resolution, findings of fact in support of its decision. The date of passage of such resolution shall be the date of final action of the City Council for the purpose of any subsequent judicial review of the decision of the City Council.
- (d) After adoption of the resolution required under Subsection (c) of this Section, the Council may amend the resolution at any time to clarify or correct it, or to modify the decision to resolve a related legal dispute or to bring the decision into compliance with federal, state or local law, including the Charter and Code of the City of Fort Collins, provided:
 - (1) At least fourteen (14) days before consideration of any such amendments, written notice that the Council will consider such amendments must be mailed to the last known address of the appeal parties who appeared at the related appeal hearing.

- (2) Persons entitled to notice of the consideration of amendments shall have an opportunity to comment at the time of such consideration.

Secs. 2-56—2-70. Reserved.