

AGENDA ITEM SUMMARY

City Council



STAFF

Carrie Daggett, City Attorney
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SUBJECT

Second Reading of Ordinance No. 003, 2025, Repealing and Reenacting Chapter 2, Article II, Division 3 of the Code of the City of Fort Collins Pertaining to Appeals Procedure.

EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on January 7, 2025, incorporates process improvements to the procedures for addressing appeals and other questions of final decisions that are appealable to Council. The City Code changes address previously identified concerns with the current Council appeals procedure as discussed among Council, administrative staff, hearing officers, City boards and commissions, and members of the public. The City Code changes also clarify the processes and offer different routes for different types of questions on review.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

FIRST READING BACKGROUND / DISCUSSION

During 2021 through 2024 staff and Council processed several appeals wherein Council sat as a quasi-judicial body to consider appeals of final decisions of boards, commissions, or other decision makers. Experiences and concerns from these many appeals has identified many possible improvements.

On November 14, 2023, Council held a work session to discuss the current state of the appeals process. The work session reviewed and discussed various elements of that process that might be updated to create a more fair, consistent, and simple appeals system. That November 2023 work session resulted in direction to staff to present a range of alternatives and possible solutions to Council to simplify and streamline the process, provide a better experience for all parties and community, and investigate some specific elements of the current process that might impact our current state.

On August 27, 2024, a second work session provided specific feedback on issues and elements of the current process, including who is the appropriate decision maker, who has standing to appeal, what are the allowable grounds for appeal, whether there should be multiple levels of appeals, what evidence and arguments are allowed, and some process improvements.

On December 10, 2024, at third work session on this topic, staff proposed updates and revisions to the overall process and decision makers at different levels to simplify the appeals process for the community, staff, and Council. Attached to this AIS is a version showing the proposed changes marked as highlights and strike-outs to the existing code. The alterations between the Code presented December 10, 2024 and the Code presented with this agenda item are identified in red.

The Ordinance shows a version of the code without the changes tracked, as the Ordinance repeals the existing Code in its entirety and replaces it with the revised Code. A summary of the Code changes that are proposed is as follows:

- **Standing to appeal / participation.** An appellant must have participated in the original hearing/decision by providing oral or written comments to the original decision maker. The proposed Code defines both an “eligible person” and an “appeal party,” distinguishing between the eligible person who participated in the original decision and the appeal party who is an eligible person who registers with the City Clerk their intention to participate in an appeal. These Code changes also remove receipt of an original hearing notice as a basis for eligibility and replace the term “party-in-interest” with the more specific term “eligible party.”
- **Two routes.** The proposed Code creates two routes for an eligible person to raise questions about a final decision.
 - **Council appeal.** One route for an eligible person to raise questions about a final decision is the Council appeal route wherein Council will examine questions of interpretation and application of City Code. The fee for an appeal is raised in the proposed Code from \$100 to \$250.
 - **Fair hearing review.** Another route for an eligible person to raise questions about a final decision is an administrative route wherein an appointee in the City Manager’s Office will examine alleged procedural defects, such as questions of whether the appellant was given a fair hearing as those grounds are described in the existing code. The fee for such an administrative review is \$100.
- **Permitted grounds for appeal: issues of interpretation and application of City Code.** The proposed Code allows appeal to Council only on issues raised with the original decision maker and that are questions of interpretation and application of City Code. The appeal must be based solely on the existing record, with no new evidence.
- **Process improvements.** Several process improvements the proposed Code introduces are a completeness review, screening review, materials submission requirements, a pre-hearing conference, and a shortened time frame in which to schedule an appeal hearing.
 - **Completeness review** is a review of a submitted notice of appeal for completeness—to ensure the person submitting the appeal qualifies as an eligible person, to confirm that the listed code provisions are relevant, and to determine that all the required notice of appeal information has been properly provided. An appeal party has the option to cure an incomplete application before it is dismissed as incomplete.
 - **Screening review** is a screening of the notice of appeal to ensure it raises questions narrow in focus that relate directly to the record of the decision being appealed. The screen will ensure the stated grounds were introduced at an original hearing/decision process and will determine that all persons joining the appeal qualify as eligible persons, that the appeal is legally sufficient and raises a valid interpretation or application of Code issue based on the record, and that no new evidence was submitted.
 - **Appeals pre-hearing conference** is a conference the City Clerk convenes not fewer than four days before an appeal hearing to respond to questions and concerns of all appeal parties together.

- **Materials submission requirements** clarify the specificity appeal parties must provide in the notice of appeal and opposing party response, and also clarify the deadline for submitting a presentation version of the appeal party's argument.
- **Appeal hearing scheduling** must be between fourteen and thirty-five days after the deadline for appeal party registration has elapsed.
- The proposed Code specifies the composition of the record on appeal, eliminates the organized site visit, clarifies time allotments for appeal parties during the appeal hearing, and provides times when the City Clerk will post submitted materials.

At the December 2024 work session, Council was interested when the appeal fee was last set. The date the existing appeal fee of \$100 was last set was 1990 (Ordinance No. 023, 1990). The fee in the proposed code is increased to \$250.

CITY FINANCIAL IMPACTS

There will be minimal costs to codify the changed Code, and when an appeal or fair hearing review is filed in the future, the administrative costs incurred that were previously unremunerated will be more adequately covered with the updated fees.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

None.

PUBLIC OUTREACH

Appeal parties and members of the community have provided feedback about the process.

ATTACHMENTS

First Reading attachments not included.

1. Ordinance for Consideration