

APPEALS

The proposed changes will ensure that if an application for appeal of a decision that the application is not reheard, but otherwise, is appealed based on whether or not a decision or determination shall not be reversed or modified unless there is a finding that there was a denial of due process or the administrative body has acted arbitrarily and capriciously, exceeded its jurisdiction or abused its discretion.

CHAPTER 17.25 **APPEALS**

SECTIONS:

17.25.010	Purpose
17.25.020	Authority
17.25.030	Applicability
17.25.040	Appeal Procedures

17.25.010 – PURPOSE.

The purpose of this Chapter is to establish the procedures for appealing a decision made by the Community Development Director, Planning Commission, Historic Preservation Board, or Board of Adjustment.

17.25.020. - AUTHORITY.

- A. Board of Adjustment. The Board of Adjustment shall have the authority to hear and decide the following appeals:
 - 1. The denial of an Administrative Modification pursuant to Chapter 17.23.
- B. City Council. The City Council shall have the authority to hear and decide all other appeals of decisions made by the Community Development Director, Planning Commission, Historic Preservation Board, or Board of Adjustment.

17.25.030. - APPLICABILITY.

- A. Any person aggrieved by a decision by the Community Development Director, Planning Commission, Historic Preservation Board, or Board of Adjustment may appeal such decision as outlined herein.
- B. Any person who has provided a written comment to the Community Development Department regarding a land development application that is permitted to be approved administratively will be provided with a copy of the decision by the Community Development Department including information on how to appeal that decision.

17.25.040. - APPEAL PROCEDURES.

- A. Appeal Application Submittal. Appeals are required to be filed in writing with the Community Development Department within *fourteen (14)* ~~thirty (30)~~ days of the decision that is being appealed. The Community Development Director may prescribe a specific form that is required for an application for an Appeal. The appeal shall state the specific grounds upon which the appeal is based and shall have attached to it any documentary evidence.
- B. Burden of Proof on Appellant. The party making the appeal (the appellant) shall have the burden of proving ~~the necessary facts to warrant reversal or amendment of the decision being appealed~~ *that the decision being appealed should be reversed based upon the standard of review set forth herein below.* ~~Such proof shall include applicable specific section references within this Code and shall be provided with the application.~~ The ~~application appeal~~ shall be based *solely* on the record established in the decision-making process.
- ~~C. Staff Review and Action. The Director shall review the appeal application and prepare a staff report.~~
- ~~1. Staff review of the appeal shall confirm that the application is complete and that the appeal is heard by the appropriate authority.~~
 - ~~2. Staff review of the appeal shall confirm that the application is complete based on the record that has been established.~~
 - ~~3. The staff report shall summarize the information included in the record and may include a recommendation.~~
- ~~D.C.~~ D. Scheduling and Notice of Public Hearings. The appeal shall be scheduled for a public ~~hearing meeting~~ before the appropriate appellate body within forty-five (45) days of the date of the filing of the appeal. Public notice shall be provided in accordance with Subsection 17.07.040.E.
- D. Standard of review. Unless otherwise specifically stated in this Title, the decision-making body authorized to hear the appeal shall decide the appeal based solely upon the record established by the body from which the appeal is taken. A decision or determination shall not be reversed or modified unless there is a finding that there was a denial of due process or the administrative body has acted arbitrarily and capriciously, exceeded its jurisdiction or abused its discretion.*
- E. Action by the decision-making body hearing the appeal. The decision-making body hearing the appeal may reverse, affirm or modify the decision or determination appealed from and, if the decision is modified, shall be deemed to have all the powers of the officer, board or commission from whom the appeal is taken, including the power to impose reasonable conditions to be complied with by the ~~appellant~~ applicant of the original application. The decision-making body may also elect to remand an appeal to the body that originally heard the matter for further proceedings consistent with that body's jurisdiction and directions given, if any, by the body hearing the appeal. The decision shall be approved by written resolution. All appeals shall be public meetings.*

~~E. Review and Decision.~~

- ~~1. The appropriate appellate body shall consider the following in determining whether to affirm, reverse or amend a decision or interpretation made by the decision-making body:
 - ~~i) The facts stated in the application, as presented by the appellant;~~
 - ~~ii) The requirements and intent of the applicable standards from this Code compared to the decision that is being appealed;~~
 - ~~iii) Evidence related to how the applicable standards from this Code have been administered or interpreted in the past; and~~
 - ~~iv) Consistency with the Comprehensive Plan.~~~~
- ~~2. The appellate body may reverse a previous decision in whole or in part, or may modify the order, requirement, decision, or determination appealed from.~~
- ~~3. The appellate body may attach conditions of approval on any appeal to ensure the health, safety, and welfare of the City.~~

- F. Post-Decision Actions and Limitations. Any further appeals *of a decision of* ~~from~~ City Council shall be made to the courts in accordance with state law.