

ORDINANCE NO. 24 - 18

AN ORDINANCE AMENDING SECTION 415 (APPEALS) OF PART 4 (GENERAL PROCEDURES) OF ARTICLE 5 (ADMINISTRATION AND ENFORCEMENT) OF CHAPTER 7 (UNIFIED DEVELOPMENT CODE) OF THE CODE OF THE CITY OF COLORADO SPRINGS 2001, AS AMENDED, PERTAINING TO SCHEDULING OF APPEAL HEARINGS

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. Section 415 (Planning Commission) of Part 4 (General Procedures) of Article 5 (Administration and Enforcement) of Chapter 7 (Unified Development Code) of the Code of the City of Colorado Springs 2001, as amended, is hereby amended to read as follows:

7.5.415: APPEALS:

A. \* \* \*

6. Scheduling of Hearing: Upon receiving a complete notice of appeal and payment of **the corresponding fee**; ~~the City shall schedule a public hearing on the agenda of the next regular meeting of the appellate body that is at least twenty (20) days after receipt of the appeal~~

a. **Within seven (7) days after receipt of the appeal, and after providing the applicant and appellant with an opportunity to comment on the date of the hearing, the City shall schedule the public hearing.**

b. **The public hearing shall be scheduled for a regular or special meeting that is at least thirty (30) days, but not more than sixty (60) days, after the City's receipt of the appeal.**

\* \* \*

Section 2. This ordinance shall be in full force and effect from and after its final adoption and publication as provided by Charter.

Section 3. Council deems it appropriate that this ordinance be published by title and summary prepared by the City Clerk and that this ordinance be available for inspection and acquisition in the office of the City Clerk.

Introduced, read, passed on first reading and ordered published this 9<sup>th</sup> day of April 2024.

**Finally passed:** April 23, 2024



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Randy Helms, Council President

**Mayor's Action:**

- Approved on APR 26 2024.
- Disapproved on \_\_\_\_\_, based on the following objections:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Blessing A. Mobolade*

\_\_\_\_\_  
Blessing A. Mobolade, Mayor

**Council Action After Disapproval:**

- Council did not act to override the Mayor's veto.
- Finally adopted on a vote of \_\_\_\_\_, on \_\_\_\_\_.
- Council action on \_\_\_\_\_ failed to override the Mayor's veto.

\_\_\_\_\_  
Randy Helms, Council President

ATTEST:

*Sarah B. Johnson*  
\_\_\_\_\_  
Sarah B. Johnson, City Clerk



CAO: *MB*  
COS: \_\_\_\_\_

- D. Development Agreements shall be approved by the Manager following referral to any City departments or agencies whose facilities, services, or duties are affected by the content of the proposed Development Agreement.

**7.5.415 Appeals****A. General Requirements****1. Right to Appeal**

- a. An Affected Party aggrieved by an appealable administrative decision made by the Manager or other City official under this UDC may appeal the decision, except where appeals are specifically barred under this UDC.
- b. For purposes of this Section, an Affected Party is:
- (1) The applicant for the decision being appealed;
  - (2) The owner or tenant of a lot or parcel of land located within one thousand (1,000) feet of the subject lot; or
  - (3) Any owner or tenant of a lot or parcel of land located within three (3) miles of the subject property who has preserved standing by:
    - (a) Testifying at the public hearing on the application;
    - (b) Submitting written comments prior to the public hearing on the application; or
    - (c) In the case of applications approved by the Manager or an administrative official, submitting written comments to the Manager or administrative official during the comment period before the Manager or administrative official's action.

**2. Notice of Appeal**

- a. The notice of appeal shall state:
- (1) The specific provision(s) of this UDC that is the basis of the appeal;
  - (2) Which of the following criteria for reversal or modification of the decision is applicable to the appeal:
    - (a) The decision is contrary to the express language of this UDC;
    - (b) The decision is erroneous; or
    - (c) The decision is clearly contrary to law; and
  - (3) Describe how the criteria for the relevant application have or have not been met.
- b. A recommendation to City Council to approve an application shall not be the basis for an appeal.
- c. As a preliminary matter, the body hearing the appeal may choose to vote on the sufficiency of the appeal to determine if the appeal has met the requirements of this Subsection. Upon a finding of insufficiency by a majority of the body hearing the appeal, the appeal shall be rejected, and no hearing held.

**3. Complete Appeal Required**

Any person pursuing an appeal subject to this Section 7.5.416 (Appeals) shall complete all forms pursuant to Section 7.5.403 (Application Submission) and the payment of all fees required by Section 7.5.404 (Fees). Failure to pay any required fee or to properly complete any required form within the time provided shall be deemed a waiver of the right to appeal.

**4. Failure to appeal**

An Affected Party shall file a written notice of appeal with the City within ten (10) days from the date of the final decision. The failure to appeal an appealable decision within ten (10) days of the decision shall be deemed a waiver of right to appeal to the courts under rule 106 of the Colorado Rules of Civil Procedure for failure to exhaust administrative the remedies.

**5. Stay of Decision**

A perfected appeal to a City appellate body operates as a stay of the decision unless the Manager certifies in writing that one of the following apply:

- a. A stay would cause or result in an imminent hazard to public health, safety, and welfare; or
- b. The appeal or violation of this UDC relates to a current or proposed activity that is of such a short term nature that by the time an appeal hearing is held, the activity or violation will have been concluded, terminated, or moved to another site. The time frame in which violations of this nature operate is such that a stay of proceedings will make the enforcement process ineffective. Examples of short term violations include, but are not limited to, temporary vendors, promotional events, and temporary signs.

**6. Scheduling of Hearing**

Upon receiving a complete notice of appeal and payment of the ~~corresponding fee, the City shall schedule the hearing on the agenda of the next regular meeting of the appellate body that is at least twenty (20) days after receipt of the appeal.~~

~~a. Within seven (7) days after receipt of the appeal, and after providing the applicant and appellant with an opportunity to comment on the date of the hearing, the City shall schedule the public hearing.~~

~~b. The public hearing shall be scheduled for a regular or special meeting that is at least thirty (30) days, but not more than sixty (60) days, after City's receipt of the appeal.~~

**7. Record on Appeal**

On appeal the entire file of the Planning Department pertaining to the matter shall be made a part of the record. The file must include at a minimum, the minutes of any related hearings, maps, drawings, reports, and applications.

**8. Further Appeals**

Appeals decided by the Planning Commission, Historic Preservation Board, or FBZ Review Board may be further appealed to the City Council, unless the matter is remanded to the City official or body that made the decision that is the subject of the appeal.

**9. Final Decision**

On appeals to City Council, the decision of the City Council is a final decision and may be subject to review by the courts under rule 106 of the Colorado Rules of Civil Procedure and other applicable rules and statutes, unless the matter is remanded to the body that made the appealed-from decision.

**B. Decisions of the Manager or Other City Official**

**1. Appellate Body**

Appeal shall be made to the Planning Commission except in the following cases:

- a. If the appeal relates to an FBZ regulating plan, the appeal shall be made to an FBZ Review Board;
- b. If the appeal relates to a decision made by the Stormwater Enterprise Manager, the appeal shall be made to the Public Works Director;

- c. If the appeal relates to a decision made by the City Engineer pursuant to this Code, the appeal shall be made to the Public Works Director pursuant to those procedures for appeals of City Engineer decisions in Section 7.5.1006 (Appeals); or
- d. If the appeal relates to a decision of the Manager regarding a WCF Small Facility or a WCF Eligible Facilities Request, the appeal shall be subject to review by the courts under rule 106 of the Colorado Rules of Civil Procedure and other applicable rules and statutes.

#### 2. Procedure and Effect of Appeal

- a. In all cases except appeals of decisions under Subsection 1.b above, the Manager shall place the appeal on the calendar of the Planning Commission or FBZ Review Board, as applicable, for the next regularly scheduled meeting that is more than twenty (20) days after the City's receipt of the notice of appeal.
- b. For an appeal of a decision made by the Stormwater Enterprise, the Manager shall refer the appeal to the Public Works Director.

#### C. Hearing Procedure

##### 1. Standard of Review

The appellate body may hear the appeal de novo or may limit the hearing to matters raised on appeal.

##### 2. Decisions

Following review by the appellate body, the appellate body may affirm, reverse, modify the decision of the decision-making body, or remand the item back to the decision-making body for further consideration.

##### 3. Postponement

- a. Any request for postponement of a hearing may only be granted for good cause shown to and found by the decision-making body.
- b. If new or additional evidence is set forth as the grounds for a request for a postponement, the appeal may be referred to the body that made the appealed-from decision for further hearing and recommendations.

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## 7.5.5 ADMINISTRATIVE DECISIONS

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### 7.5.501 General

- A. This Part 7.5.5 describes the types of applications under this UDC that may be approved administratively by the Manager without the need for a public hearing.
- B. This Part 7.5.5 also describes the circumstances under which an application listed in this Part may require approval by the Planning Commission, FBZ Review Board, Historic Preservation Board, or City Council because of the size or complexity of the proposed development, the combination of related applications submitted for the development, or the context in which the application was submitted. In such cases, the listing of the application as an "administrative decision" in this Part shall not be deemed a substantive inconsistency with text or flowcharts requiring higher level review, and the provisions for review by the Planning Commission, FBZ Review Board, Historic Preservation Board, or City Council shall apply.
- C. Unless otherwise stated in this Part 7.5.5, the General Provisions in Part 7.5.4 apply to these administrative decisions without being restated in this Section. In the event of a conflict between the General Procedures in Part 7.5.4 and more specific procedures in this Part 7.5.4, the provisions in this Part 7.5.5 shall apply.

I HEREBY CERTIFY that the foregoing ordinance entitled “AN ORDINANCE AMENDING SECTION 415 (APPEALS) OF PART 4 (GENERAL PROCEDURES) OF ARTICLE 5 (ADMINISTRATION AND ENFORCEMENT) OF CHAPTER 7 (UNIFIED DEVELOPMENT CODE) OF THE CODE OF THE CITY OF COLORADO SPRINGS 2001, AS AMENDED, PERTAINING TO SCHEDULING OF APPEAL HEARINGS” was introduced and read at a regular meeting of the City Council of the City of Colorado Springs, held on April 9, 2024; that said ordinance was finally passed at a regular meeting of the City Council of said City, held on the 23<sup>rd</sup> day of April 2024, and that the same was published by title and in summary, in accordance with Section 3-80 of Article III of the Charter, a newspaper published and in general circulation in the Gazette, at least ten days before its passage.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City, this 23<sup>rd</sup> day of April 2024.

  
Sarah B. Johnson, City Clerk

1<sup>st</sup> Publication Date: April 12, 2024

2<sup>nd</sup> Publication Date: May 1, 2024

Effective Date: May 6, 2024

Initial:   
City Clerk

