

ORDINANCE NO. 16-_____

AN ORDINANCE REPEALING AND REORDAINING SECTION 906 (APPEALS) OF PART 9 (NOTICE, HEARINGS AND APPEALS) OF ARTICLE 5 (ADMINISTRATION AND PROCEDURES) OF CHAPTER 7 (PLANNING, DEVELOPMENT AND BUILDING) OF THE CODE OF THE CITY OF COLORADO SPRINGS 2001, AS AMENDED, PERTAINING TO APPEALS

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

Section 1. Section 906 (Appeals) of Part 9 (Notice, Hearings and Appeals) of Article 5 (Administration and Procedures) of Chapter 7 (Planning, Development and Building) of the Code of the City of Colorado Springs 2001, as amended, is repealed and reordained to read as follows:

7.5.906: Appeals

A. Parties That May Appeal:

1. Administrative Decisions:

Any appealable final administrative decision made by the Manager may be appealed by a party-in-interest to the Planning Commission, an FBZ Review Board or Historic Preservation Board. For purposes of appealing an administrative decision, a "party-in-interest" shall be defined as one (1) of the following:

- a. The applicant and owners of the property or properties directly subject to the decision, including any party holding a legal or equitable interest in the subject property;
- b. Persons who own or reside within or lease a real property any part of which is located within five hundred (500) feet of the specific real property which is the subject of the administrative decision, or the board of any active homeowners, property owners, neighborhood, or merchants association the boundaries of which include the subject property or are within five hundred (500) feet of the subject property. For purposes of this section an "active homeowners, property owners, or neighborhood association" shall mean:

i. A unit owners' association currently registered with the Colorado HOA Information and Resource Center under the Colorado Common Interest Ownership Act (C.R.S. §§ 38-33.3-101, *et seq.*), as amended;

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ii. A homeowners, property owners, or neighborhood association registered to do business in the State of Colorado and in good standing with the Colorado Secretary of State; and/or

iii. A homeowners, property owners, or neighborhood association with defined geographic boundaries that is included in the Department's database of homeowners, property owners, or neighborhood associations.

c. Any person to whom the City mailed notice in accord with section 7.5.902(C)(3) of this article; or

d. Any person or organization that has an injury in fact to a **protected** legal interest **protected under this City Code** and has provided written comments, including by email, to the appropriate City staff prior to the decision being appealed. Signing a petition, in and of itself, shall not be considered providing written comment for purposes of this provision.

2. Hearing-Based Decisions:

Any party-in-interest may appeal to the City Council any final decision of the Planning Commission, an FBZ Review Board or Historic Preservation Board to City Council. For purposes of an appeal of a decision of the Planning Commission, an FBZ Review Board or Historic Preservation Board, a "party-in-interest" shall be defined as one (1) of the following:

a. Any party-in-interest identified in subsection (A)(1) above;

b. Any person or organization that has an injury in fact to a **protected** legal interest **protected under this City Code** and has provided written comments, including by email, to the appropriate City staff for delivery to the Planning Commission, an FBZ Review Board, or Historic Preservation Board prior to or at the hearing on the decision being appealed. Signing a petition, in and of itself, shall not be considered providing written comment for purposes of this provision;

c. Any person or organization that has an injury in fact to a **protected** legal interest **protected under this City Code** and has appeared and provided testimony before the Planning Commission, an FBZ Review Board, or Historic Preservation Board at the hearing on the decision being appealed; or

d. The City of Colorado Springs administration.

B. Criteria and Contents of Appeals:

In the written appeal application, the appellant must substantiate the following:

1. Provide full contact information for the party-in-interest appealing, and the party-in-interest's property that is impacted by the decision being appealed, if applicable.
2. Identify the specific paragraph in Section A above under which the appellant claims to be a "party-in-interest" and, if applicable, a brief description of the protected legal interest and the injury in fact thereto. If the appellant is an "legally constituted and active homeowners, property owners, or neighborhood association the boundaries of which include the subject property" the appellant must provide documentation from either the Colorado HOA Information and Resource Center or the Colorado Secretary of State, or both, showing that it is currently registered with that agency or it must be registered in the Department's database of homeowners, property owners, or neighborhood associations; a map of the association's boundaries; and documentation of the association's board authorizing the association to file the appeal.
3. Identify the explicit ordinance provisions which are in dispute and show that the decision is incorrect because of one or more of the following grounds:
 - a. It was against the express language of this Chapter, or
 - b. It was against the express intent of this Chapter, or
 - c. It is unreasonable, or
 - d. It is erroneous, or
 - e. It is clearly contrary to law.
4. Identify the benefits and adverse impacts created by the decision, describe the distribution of the benefits and impacts between the community and the appellant, and show that the burdens placed on the appellant outweigh the benefits accrued by the community.

C. Appeals of Administrative Decisions:

1. Appealable Decisions:

The following administrative decisions are appealable:

- a. Appeals from all notice and orders alleging violations associated with Chapter 6 or Chapter 7 of this Code that are to be filed and heard in accord with the Zoning Code.
- b. Decisions Appealable to FBZ Review Board: Administrative decisions are appealable to an FBZ Review Board in accord with an approved FBZ regulating plan.
- c. Decisions Appealable to the Historic Preservation Board or its Minor Works Committee.

d. Appeals to the Planning Commission from otherwise final administrative decisions relating to the following sections and articles of this Code as outlined in the following table:

Code Sections Applicable to Appealable Administrative Decisions	
CODE SECTION:	TOPIC:
7.2.108	Similar Use Determinations
7.3.504	Hillside Grading Plan
7.4.308	Landscape Plan
7.5.302.C	Site Plan
7.5.501	Concept Plans
7.5.502	Development Plans
7.5.503	Concept and Development Plan Application Review Procedures (minor amendments)
7.5.802	Nonuse Variances
7.5.1101-1107	Administrative Relief
7.5.1201-1208	Nonconforming Development
7.5.1301-1304	Sexually Oriented Business
7.5.1401-1405	Temporary Uses
7.5.1501-1506*	Home Occupations
7.7.304	Modifications (plat)
7.7.201-205	Preliminary Platting Procedures
7.7.301-306	Final Platting Procedures
7.7.501	Property Boundary (Lot Line) Adjustments
7.7.502	Preservation Area Boundary Amendments
7.7.503	Resolutions for Amending Plat Restrictions
7.7.504	Issuance of Building Permits to Unplatted Lands
7.7.505	Issuance of Building Permits to Previously Platted Lands or Waiver of Replat
7.7.506	Issuance of Building Permits Prior to Platting

2. Scheduling:

A party-in-interest must file a written appeal application with the Department within ten (10) days from the date of the final decision. If the written appeal application is timely filed and substantially conforms to the criteria in subsection (B) above, the Department shall place the appeal on the agenda of the next regularly scheduled meeting of the Planning Commission, an FBZ Review Board or Historic Preservation Board occurring a minimum of twenty (20) days and a

maximum of forty-eight (48) days after the date the appeal application is received.

3. Action on the Appeal:

Before the public hearing is commenced, the Planning Commission, an FBZ Review Board or Historic Preservation Board will receive evidence and make a finding solely on the issue of whether the appellant is a party-in interest as defined in Section A above. If the Planning Commission, an FBZ Review Board or Historic Preservation Board determines that the appellant is not a party-in-interest, the appeal will be dismissed with prejudice. After a public hearing, the Planning Commission, an FBZ Review Board or Historic Preservation Board shall have the power to affirm, reverse, or modify these decisions. The applicable body shall decide the appeal based on the applicable standards contained or referenced in this Chapter. The scope of the hearing may be limited to matters raised on appeal.

4. Stays of Administrative Decisions:

A perfected appeal shall operate as a stay of the administrative decision unless the Manager certifies in writing that a stay would cause or result in an imminent hazard to the public health, safety, and welfare or the violation is of such a short term nature that by the time an appeal hearing is held, the violation will have been 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.

5. Filing Fees:

Any person pursuing an appeal pursuant to this subsection A shall be responsible for the payment of all fees and for the completion of all forms which may be prescribed by the Manager. Failure to pay any required fee or to properly complete any required form shall be deemed a waiver of the right to appeal.

D. Appeals of Planning Commission, an FBZ Review Board and Historic Preservation Board Decisions:

1. Appealable Decisions:

All final actions of the Planning Commission, an FBZ Review Board or Historic Preservation Board may be appealed to City Council.

2. Scheduling, Postponement:

a. Scheduling: An appellant must file a written appeal application with the City Clerk within ten (10) days from the date of the hearing at which the final decision is made. If the appeal is timely filed and substantially conforms to the criteria in subsection (B) above, the City

Clerk shall place the appeal on the agenda of the next regularly scheduled City Council meeting occurring a minimum of twenty (20) days after the appeal has been filed.

b. Postponement of Items on Appeal to the City Council: Any requests for postponement shall be granted only for good cause shown to and found by the City Council. At the beginning of the City Council meeting at which the appeal is first scheduled to be heard or at the beginning of the appeal, City Council may postpone the first scheduled Council hearing to the next regularly scheduled City Council meeting or a date certain. If new or additional evidence is set forth as the grounds for a request for a postponement, the appeal may be referred to the Planning Commission, an FBZ Review Board or Historic Preservation Board for further hearing and recommendations.

3. Action on the Appeal:

a. The Manager shall prepare a staff report including all relevant facts and the record of the decision of the hearing body.

b. The City Council shall hold a public hearing. Before the public hearing is commenced, the City Council will receive evidence and make a finding solely on the issue of whether the appellant is a party-in interest as defined in in Section A above. If City Council determines that the appellant is not a party-in-interest, the appeal will be dismissed with prejudice. If City Council determines that the appellant is a party-in-interest, the City Council may entertain a motion to uphold the action of the Planning Commission, an FBZ Review Board or Historic Preservation Board or refer the matter back to the appropriate body with direction for further consideration and recommendation.

c. After a public hearing, City Council shall have the power to affirm, reverse, or modify the prior decisions or to refer the matter back to the appropriate body with direction for further consideration and recommendation. City Council may hear the appeal de novo, or may limit the hearing to matters raised on appeal.

City Council shall make findings to support their decision based on the applicable standards contained or referenced in this Chapter.

4. Failure to Appeal: The failure to appeal the decision of the Planning Commission, or an FBZ Review Board or Historic Preservation Board within the tentwelve (102) day period shall be deemed to be a waiver of the applicant's or a party in interest's right to appeal to the courts under Rule 106 of the Colorado Rules of Civil Procedure for failure to exhaust administrative remedies.

5. Final Decision; Court Review: On such appeals, the decision of the City Council shall be final agency action, and shall be subject to review by the courts pursuant to applicable rules and statutes, unless the matter is remanded to the Planning Commission, or an FBZ Review Board or Historic Preservation Board.

6. Filing Fee: The filing fee shall be borne by the appellant; provided however, that if the City of Colorado Springs is the appellant the fee shall be waived.

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 ____ day of _____, 2016.

Finally passed: _____
Council President

Mayor's Action:

- Approved on _____.
- Disapproved on _____, based on the following objections:

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.

Council President

ATTEST:

September 7, 2016 Draft

Sarah B. Johnson, City Clerk

DRAFT