



## Legislation Text

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**File #:** CPC CA 16-00008, **Version:** 9

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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.

(Legislative)

**Presenter:**

Peter Wysocki, Planning and Community Development Director  
Carl Schueler, Comprehensive Planning Manager

**Summary:**

This proposal is to amend City Code Section 7.5.906 pertaining to zoning and other land use-related appeals and to make other limited conforming amendments in other areas of Chapter 7. The draft Ordinance is attached.

Key aspects and changes from the recommended version as presented to City Council on August 9, 2016 are:

- Removal of the “automatic bump” for any party (applicant or appellant)
  - This recent change treats all parties with standing consistently; noting that all parties can still request a continuance by City Council with justification.
- Confirmation from Code Scrub Committee that the 10-calendar day maximum period in which to file an appeal is acceptable and recommended
- Provision for the body hearing the appeal to determine standing for the appellant.
  - This would occur at the beginning of the hearing. Staff would make a recommendation based on an analysis of the criteria for standing.
- Limits standing related to “protected legal interest(s)” to those protected under City Code
  - In prior versions of the ordinance there had been additional language pertaining to standing for those providing prior written comments and/or testimony. This language has now been modified to combine it with the “protected legal interest” provision.

The currently recommended version of the ordinance has the unanimous endorsement of the entire Code Scrub Committee, as voted on in their September 7, 2016 meeting. At that meeting the

Committee systematically worked through the changes proposed by Councilman Don Knight (July 2016 “Version B”) and voted on whether to accept, decline or modify these changes individually.

**Previous Council Action:**

On August 9, 2016, City Council voted 9 to 0 to postpone this item indefinitely. The direction was to return to Council preferably within 60 days after reconsideration by the Code Scrub Committee and the Planning Commission.

On June 13 and July 11, City Council considered previous versions of this ordinance in work sessions and had several questions. On November 21, 2016 the current version of the ordinance was introduced to City Council in a work session (refer to Background for further discussion).

The last time City Council made substantive changes to this section of the City Code was in 2001.

**Background:**

This proposed Code change has been considered at several previous meetings and hearings including but not limited to the following:

March 17, 2016-	First recommendation by Planning Commission
May 19, 2016-	First reconsideration by Planning Commission
June 13, 2016-	City Council Work Session
July 11, 2016-	City Council Work Session (direction to make revisions based on comments from Clerk and Councilman Don Knight)
July 14, 2016-	Consideration by Parks Board (their recommendation was to develop separate criteria of parks-related appeals).
August 9, 2016-	City Council hearing- (at which this item was postponed and remanded to Code Scrub Committee and then Planning Commission for reconsideration of latest versions)
October 20, 2016-	Second reconsideration by Planning Commission

**Key Code Scrub Committee Meetings:**

November 4, 2015  
November 18, 2015  
January 20, 2016  
February 14, 2016  
July 20, 2016  
September 7, 2016

**Included as attachments are:**

- Clean version of recommended ordinance
- Redline of ordinance highlighting key changes since this ordinance considered by Council on August 9, 2016
- “Version B” option proposed by Councilman Don Knight
- Planning Commission staff report and record of decision

Additional background information is available with previous City Council agenda items associated with this topic.

Follow-up from November 21, 2016 Work Session:

At the November 21, 2016 Work Session there were a number of comments made and questions raised, in particular by Councilors Knight and Murray, in particular on the definition and determination of “protected legal interest”. To help guide the determination of what would constitute a protected legal interest, staff would likely turn to the review criteria applicable to the application being appealed and other standards set forth in City Code that may apply to the application/project.

The following are a few examples in response to the question of standing to file an appeal based on protected legal interest pertaining to cases where the potential appellant might not otherwise have standing under the new ordinance:

1) Rezoning requests where the concern could be any factor (e.g. height, bulk, scale, traffic, stormwater, noise etc.)

Response- All rezoning applications go on to City Council for final action in any case, and would no longer be appealable prior to final action (but any party would continue to have standing in front of City Council). These would include any requests for relief from height requirements not allowed administrative relief or by non-use variance. Therefore, rezoning requests are not ordinarily applicable to the issue of standing for appeals.

2) Conditional uses such as smaller human service facilities and establishments in single-family or multifamily zone districts.

Response- Conditional uses are ordinarily heard and finally acted upon by the Planning Commission. The applicant or parties within 500 feet and/or provided notice would have standing to appeal to City Council, as would others identifying a nexus with a “legally projected interest” in the Code such as traffic, based on citation of the applicable criteria or standards. However, in the rare event that a party living or owning a business relatively far from the project would desire to appeal, it is likely they would be determined to not have standing (e.g. with an objection based on fundamental opposition, competition or precedent).

3) Approval of a development plan for apartments on multifamily-zoned property.

Response- A prospective appellant would either have to have been provided notice, or fall within the defined boundary areas. If outside these areas they would have to identify a legally protected interest potentially impacting them and related to the development plan review criteria in the Code. These could include criteria pertaining to an example such as traffic safety pertaining to location of an access, but also could be related to the more general “harmonious and compatible” criteria currently contained in 7.5.502.E (“Will the project design be harmonious with the surrounding land uses and neighborhood”?)

If an owner not otherwise allowed automatic standing, could make a reasonable case for being legally impacted related to one of the development plan review criteria in the Code, an argument could still be made that the appellant has standing.

4) Administrative relief from provisions such as set-back, height, parking or access associated with a development plan.

Response- A prospective appellant (ordinarily to the Planning Commission in this case) would either have to have been provided notice, or be located within the prescribed areas. If outside these areas they would have to identify a legally protected interest potentially impacting them and related to one of the pertinent sections of the Code. It should be noted that provisions for administrative relief are customarily limited (e.g. limited to 15% of height) and the logical and expected area of impact to adjoining owners is typically limited. However, one of the applicable requirements in 7.5.1102.C states, "The granting of administrative relief will not result in an adverse impact on surrounding properties". Therefore, if an owner not otherwise identified as having standing, could make a reasonable case for being a surrounding owner potentially impacted, a justification could still be made that the appellant has standing.

5) Non-use variance to allow greater height in an office zone district.

Response: Non-use variances (including for building height) can be applied for in conventional (e.g. non-PUD) zone districts through an administrative process (subject to appeal first to Planning Commission). If for example, an applicant desired an 80-foot height limit in an OC (Office Complex) zone district where the maximum height is 45 feet; this could be processed administratively with notice to owners in the area. (It should be noted staff would have the option of either elevating the process and/or expanding the notice area in some cases). In the case of an objection from a party not noticed and outside of the area with automatic standing, they could be determined to have a legally protected interest under the Code if they objected to an impact such as traffic from the taller and ostensibly larger building, even though the party might not be judged to otherwise have standing, based on an appeal directly related to the issue of building height.

Some Councilmembers have continued concerns about the City's direct notification requirements (mailed postcards to property owners). City Code is explicitly prescriptive as to the distances used for direct notification: 150, 500 or 1,000 foot radii from the project boundary. It appears that some Councilmembers feel the boundary options should be more malleable and adjustable based on perceived controversy or impacts the project may have on certain neighborhoods. Although the desire to notify as many persons as possible is commendable, a flexible and undefined standard is subjective and would likely not eliminate "why did I not get a postcard?" complaints. Staff would be subject to criticism that they arbitrarily define an "area of impact" In order to additionally "get the word out", many communities, including Colorado Springs, require posting of the property along with mailed notice. Although appeal standards and notification standards are connected, these are in separate sections of the Code and therefore should be considered independently for amendment.

**Financial Implications:**

N/A

**Board/Commission Recommendation:**

Standard notification is not utilized for legislative code changes, as the proposed application affects all City residents and property owners. However, adequate public outreach and input was achieved principally through the City's Code Scrub Committee ("Committee"). The Committee included several representatives from Council of Neighbors and Organizations (CONO) as well as a development engineer, an architect and other development industry representatives. Staff from the City Attorney's Office and Planning & Community Development Department participated in all meetings. As noted above, this topic and proposed change have been discussed at several Committee meetings

beginning in late 2015 and extending into much of 2016.

**Stakeholder Process:**

At their October 20, 2016 meeting, Planning Commission reconsidered this item for a second time and recommends approval of a revised ordinance as attached. At this meeting Councilman Knight testified in support of changing the ten (10) calendar days to 12 (twelve days). An original motion was made to approve the ordinance to change the appeal period to 12 days. A motion was then made to amend this motion to retain the 10 days. This motion to amend was approved on a 6-3 vote. Then, the original motion was then approved on an 8-1 vote. Commissioner Markewich voted in opposition was based on an objection to the 10 days.

**Alternatives:**

1. Approve the ordinance.
2. Not approve the ordinance. If the ordinance is rejected by Council, the current appeal provisions in Chapter 7 of City Code would continue to apply.
3. Approve the ordinance with modifications. Given that the ordinance has been reviewed and considered by the Code Scrub Committee and the Planning Commission on several occasions, staff feels that the City Council could modify the ordinance without sending it back to the Planning Commission.

Since some of the Council members raised concerns about the “legal interest protect under City Code” requirement, the Council could consider the removal of this requirement from paragraphs 7.5.906.A.1.d; 7.5.906.A.2.b; 7.5.906.A.2.c; and 7.5.906.B.2. Removal of this prerequisite would simplify the definition of “party-in-interest” and would allow any person to file an appeal provided they met one or more of the otherwise stipulated requirements (e.g. received notification, submitted written comments, or testified at a hearing).

**Proposed Motion:**

Approve the ordinance as presented.

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