

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:

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.

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. (Ord. 23-03; 24-18)