

Appeal Guidelines

Contents

Appealable Decisions	1
Eligibility to File an Appeal	1
Filing Fee	2
How and When Appeals are Filed	2
Grounds for Appeal	3
Council Initiated Appeals	4
Appeal Hearing Scheduling	4
Site Inspections	4
Appeal Hearing “Record”	5
New Evidence	6
No Ex-parte Contacts	8
Agenda Material Available	8
Hearing Procedures	8
Order for Presentations	9
Possible Council Action	10
Findings Resolution	10
Hearing Records	10
Further Information	11
Appendix A and B	

Appealable Decisions

An appeal asks City Council to change a decision of a board, commission or other decision maker.

An appeal is filed to ask the Fort Collins City Council to change or modify a final decision made by any of the following City boards, commissions or other decision makers:

- Building Review Board
- Fire Board of Appeals
- Landmark Preservation Commission
- Planning and Zoning Board (except for decisions made under C.R.S §22-32-124 and C.R.S §31-23-209 regarding reviews by the City of public buildings and school facilities)
- A “decision maker” under the provisions of Section 2.2.12 of the Land Use Code.
- Water Board
- Zoning Board of Appeals

Any action taken in reliance upon any decision of a board, commission or other decision maker that is subject to appeal under the provisions of this Appeal Procedure shall be totally at the risk of the person(s) taking such action until all appeal rights related to such decision have been exhausted, and the City shall not be liable for any damages arising from any such action taken during said period of time.

Eligibility to File an Appeal

Any party-in-interest may file an appeal.

Parties-in-interest have the right to file an appeal.

A party-in-interest is a person who, or organization which, has standing to appeal the final decision of a board, commission or other decision maker. Such standing to appeal is limited to the following:

- The applicant.
- Anyone who owns, occupies, or has some other legal interest in the property which was the subject of the decision made by the board, commission or other decision maker.
- Anyone who received the mailed notice of, or spoke at, the hearing of the board, commission or other decision maker.

- Anyone who provided written comments to the appropriate City staff for delivery to the board, commission or other decision maker prior to or at the hearing on the matter that is being appealed.
- A City Councilmember.

Filing Fee

A filing fee of \$100 is due when the appeal is filed.

A filing fee of \$100 is collected when the appeal notice is filed with the City Clerk (except for appeals filed by Councilmembers). Make checks payable to: *City of Fort Collins*.

It is acceptable to pay the appeal fee with more than one check. Your check will be your receipt. Please **do not** pay with cash.

How and When Appeals Are Filed

The deadline to file an appeal is 14 calendar days after the decision of the board, commission or other decision maker.

A written notice of appeal must be filed with the City Clerk within 14 calendar days after the decision of the board, commission or other decision maker. The notice of appeal must be on a form provided by the City Clerk (Appendix B) and must be signed by all appellants.

The notice of appeal filed with the City Clerk **must** state and provide (as applicable):

- The action of the board, commission or other decision maker which is the subject of the appeal.
- The date of such action.
- Name, address, telephone number, email address and relationship of each appellant to the subject of the action which is the subject of the appeal.
- Grounds for the appeal including specific “allegations of error” pursuant to Section 2-48 of the City Code, and a summary of the facts contained in the record on appeal supporting the allegations.
- In the case of an appeal alleging that a board, commission or other decision maker considered evidence relevant to its findings that was

substantially false or grossly misleading or was biased, any new evidence the appellant wishes to submit at the hearing on the appeal in support of this allegation.

- If there is more than one appellant, the name, address, telephone number and email address of one individual designated as a representative of all appellants.
- Any other information required by the City Clerk.

No information other than that specified above shall be included in or attached to the notice of appeal.

Grounds for Appeal

Specific grounds must be stated for an appeal to be heard.

Permissible grounds for appeal are limited to allegations that the board, commission or other decision maker committed one or more of the following errors:

- Relevant laws were not properly interpreted and applied.
- The board, commission or other decision maker failed to hold a fair hearing in that it:
 - exceeded its authority or jurisdiction.
 - ignored its previously established rules of procedure.
 - considered substantially false or grossly misleading evidence.
 - improperly failed to receive all relevant evidence offered.
 - was biased against the appellant by reason of a conflict of interest or other close business, personal or social relationship.

Council Initiated Appeals

Appeals filed by a Councilmember must give a general description of the issues to be considered.

Appeals filed by City Councilmembers **are not** required to state specific grounds for appeal, but must include a general description of the issues to be considered on appeal.

Council initiated appeals must be filed with the City Clerk within the same time frame as other appeals (14 days). No appeal fee is charged.

When an appeal is filed by a Councilmember, the director of the affected City service area must identify the specific Code provisions pertaining to the issues raised by the appeal and provide that information to the City Clerk to include in the hearing notice mailed to parties-in-interest.

Councilmembers who file an appeal can participate in deciding the appeal.

Appeal Hearing Scheduling

The City Clerk schedules the Council hearing and mails a notice at least 10 calendar days prior to the hearing.

The City Clerk schedules a hearing before the Council for a date as early as reasonably practicable, but no more than 75 calendar days after the date of filing of the notice of appeal.

The City Clerk must mail written notice of the Council hearing date, time, and place to the appellant(s) and all parties-in-interest at least ten (10) calendar days before the hearing.

The hearing notice includes a copy of the notice of appeal and informs parties-in-interest of the time frame within which any new evidence permitted under City Code Subsection 2-55(b)(1) or (2) must be submitted (See page 6-New Evidence).

Site Inspections

Councilmembers may inspect the site of an overall development plan, project development plan or other proposal that is the subject of an appeal.

Councilmembers may inspect the site of an overall development plan, project development plan, or other proposal that is the subject of an appeal, either alone or with City staff present, for the purpose of gaining a better understanding of the physical characteristics of the site and the surrounding area, as well as the issues on appeal.

Any Councilmember who wishes to schedule a site inspection with City staff present, may, no later than ten (10) days after the filing of the notice of appeal, request that the City Manager schedule an inspection. The City

Manager shall schedule the inspection for a date and time when he or she believes that the majority of Councilmembers wishing to inspect the site will be able to attend.

No less than five (5) days prior to the date of the site inspection, the City Clerk shall mail notice of the inspection to the appellant and to all parties-in-interest to whom notice of the appeal hearing was sent by the City Clerk under Section 2-52 of the City Code. The appellant and all other parties-in-interest are entitled to attend such scheduled inspection, along with any members of City staff whose presence is requested by the City Manager.

Any Councilmembers conducting a site inspection, either alone or with City staff present, shall at the hearing on the appeal, state on the record any observations they made or conversations they had at the site which they believe may be relevant to their determination of the appeal.

Appeal Hearing “Record”

Council’s hearing is based on “the record”, the grounds for appeal, and relevant provisions of the Code and Charter.

Appeal hearings are based on the record of what happened at the hearing held by the board, commission or other decision maker, the grounds for appeal stated in the notice of appeal, and any relevant provisions of the Code and Charter.

A verbatim transcript of the proceeding of the board, commission or other decision maker is prepared at the expense of the City. Council also receives a DVD of the proceedings of the board, commission or other decision maker if the proceedings were videotaped. If a verbatim transcript of the proceedings does not exist and cannot be produced, the decision that is the subject of the appeal will be re-heard before the decision maker after notice is provided as required by City Code or the Land Use Code and the appeal will be terminated.

Council receives all exhibits received or viewed by the board, commission or other decision maker concerning the matter appealed.

At the hearing, Council may consider only:

- the same facts and information presented at the particular hearing of the board, commission or other decision maker which is the subject of the appeal.

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- relevant provisions of the City Code, Land Use Code and Charter.
 - the grounds for appeal cited in the notice of appeal.
 - Arguments made by parties-in-interest at the hearing on the appeal; provided, however, that issues raised during the presentation of argument but not raised in the notice of appeal will not be considered by City Council in deciding the appeal.
 - new evidence received by the Council as set forth below.

New Evidence

There are limits on presentation of new evidence.

New evidence may be considered at the appeal hearing *only* if it is offered:

- in support of or in opposition to an allegation under Section 2-48(b)(2)(c) of the City Code that a board, commission or other decision maker considered substantially false or grossly misleading evidence relevant to its findings.
- in support of or in opposition to an allegation of bias by the decision maker against the appellant by reason of a conflict of interest or other close business, personal or social relationship that interfered with the decision maker's independence of judgment.
- by City staff or parties-in-interest in response to Council questions.
- by Councilmembers after inspecting the site of the project development plan or other proposal that is the subject of an appeal to report observations made or conversations had during a site inspection that Councilmember believe may be relevant to their determination of the appeal..
- to directly rebut or support any allegedly false or misleading evidence.

New evidence is limited to any new evidence described in the notice of appeal in support of an allegation that a board, commission or other decision maker considered substantially false or grossly misleading evidence, an allegation of bias by the decision maker, or is offered in response to questions presented by a Councilmember.

As an example, photos can be shown only if they were shown at the hearing where the board, commission or other decision maker made the decision being appealed, or if they are offered to show that certain evidence in the record is substantially false or grossly misleading.

New evidence as permitted by City Code Subsection 2-55(b)(1) or (2) is to be submitted to the City Clerk in writing at least seven (7) days prior to the appeal hearing by any party-in-interest opposed to the appeal or is provided to the City Council by City staff prior to or during the appeal hearing.

Modifying, highlighting, underlining, italicizing or otherwise emphasizing certain portions of writings or graphics presented to the original decision maker will not be considered presenting new evidence as long as the modified graphic presented to City Council at the appeal hearing is accompanied by the original graphic.

Parties-in-interest may interrupt the appeal hearing proceedings and object to the introduction of any evidence that they believe is improper.

The Mayor, with advice from the City Attorney, determines the admissibility of all evidence at the hearing on the appeal. The Mayor's ruling may be overturned by majority vote of the Council.

The failure of a party-in-interest to make an objection constitutes a waiver of the objection by that party-in-interest for the purpose of any court appeal of the Council's decision.

No Ex-parte Contacts

No contact with Councilmembers regarding the merits of the appeal is allowed.

In order to maintain the impartiality of the Council, Councilmembers must avoid communication with parties-in-interest and members of the public regarding the merits of the appeal prior to the hearing on the appeal.

Agenda Material Available

Agenda material is available several days prior to the appeal hearing.

The material Council receives prior to the hearing on an appeal is available online on the Thursday prior to the Council hearing at www.fcgov.com/agendas.

Hearing Procedures

Presentations follow a specific order, and time limits are set.

Hearings on appeals follow certain procedures. Presentations are made to the Council in a specific order. Time limits are set by the Mayor. Factors to be considered in determining the period of time for the presentation of argument on the merits of the appeal, include, but are not limited to, the complexity of the issues raised in the notice of appeal, the length of the record on appeal, the potential impact that the determination of the appeal may have on the community-at-large, and the number of parties-in-interest who wish to address the Council with regard to the merits of the appeal.

Prior to the hearing the presentation of argument, the Mayor may, at his or her discretion, establish a separate period of time for the Council to consider and determine, by majority vote, any procedural issues related to the hearing of the appeal, including, but not limited to, the possible introduction or exclusion of certain evidence, the period of time to be allowed by the Mayor for the presentation of argument on the merits of the appeal, and any concerns or objections related to the record on appeal.

Presentations are most effective when arguments are brief and to the point. Arguments should focus on the record. Speakers should clearly state what they would like Council to do.

Parties-in-interest **are not** permitted to cross-examine one another or City staff. Councilmembers or the City Attorney may ask questions to elicit or clarify information.

The Mayor may choose to modify the hearing procedures. (Example: multiple appeals involving the same decision of a board, commission or other decision maker.)

Order for Presentations

Order:
staff presentation,
Councilmember
observations,
procedural issues,
supporting
arguments, opposing
arguments,
rebuttrals, Council
questions, and
Council action.

The order of proceedings for the appeal hearing is set by the City Code as follows:

- Staff makes a presentation explaining the nature of the appeal.
- Councilmembers comment on observations made or conversation had during an inspection of the site.
- Consideration of any procedural issues identified.
- Appellants and any parties-in-interest present arguments in support of the appeal.
- Any parties-in-interest present arguments in opposition to the appeal.
- Opportunity for appellants and parties-in-interest to rebut arguments of the opposing side.
- Opportunity for opponents to rebut arguments raised by the supporters of the appeal.
- Councilmembers may ask questions of City staff and parties-in-interest.
- Council motion, discussion, and vote.

The appeal hearing is considered to be a quasi-judicial proceeding.

Possible Council Action

Council may: uphold, overturn, modify, or remand.

After the hearing concludes, Council makes a motion, discusses the appeal, and votes.

Council may vote to:

- **uphold** the decision of the board, commission or other decision maker.
- **overturn** the decision of the board, commission or other decision maker.
- **modify** the decision of the board, commission or other decision maker.
- **remand** (send back) the matter to the board, commission or other decision maker for rehearing if it finds that the board, commission or other decision maker failed to hold a fair hearing, or if it believes that the board, commission or other decision maker should receive and consider additional information with regard to any issue raised on appeal. Any remand will include direction from the City Council to the board, commission or other decision maker as to the issues to be considered at the re-hearing.

Findings Resolution

Council adopts findings resolution at the next regular meeting.

No later than its next regular meeting, Council must adopt a resolution making findings of fact in support of its decision, in order to provide a clear record for any subsequent judicial review. This is **not** an opportunity for any further hearing or rehearing. The date of passage of the findings resolution is the date of final action of the Council.

Hearing Records

Copies of Council records are available at the City Clerk's Office.

Minutes of Council meetings and background records for Council hearings are kept in the City Clerk's Office and online at www.fcgov.com/agendas. Copies of Council records may be obtained for a charge of 25 cents per page.

Videos of Council meetings are available online at www.fcgov.com/video and from the Cable 14 Office for a fee. Phone: (970) 221-6510.

Further Information

Contact the City Clerk's Office at 221-6515 for more information.

The applicable City Code sections are appended to these Guidelines and should be consulted.

Contact the City Clerk's Office at City Hall West, 300 LaPorte Avenue, (970) 221-6515, for information about the appeal process.

Interested parties may wish to seek private legal counsel to obtain legal advice concerning an appeal.

APPENDIX A

CITY CODE PROVISIONS RELATING TO APPEALS

Appellant shall mean a party-in-interest who has taken an appeal from a board, commission or other decision maker to the City Council by the filing of a notice of appeal.

Applicant shall mean the person who or organization which submitted the application to the board, commission or other decision maker whose decision has been appealed.

Evidence shall mean any information, whether in verbal, written, graphic or other form, presented at the hearing to support or refute a particular proposition or conclusion. *Evidence* shall not include argument as to how information offered as evidence should be viewed by the City Council.

Final decision shall mean the action of a board, commission or other decision maker by a vote of a majority of its members when no further rehearing is available before such board, commission or other decision maker; provided, however, that a recommendation to the City Council from a board, commission or other decision maker shall not be considered as a final decision of that board, commission or other decision maker.

New evidence shall mean any evidence relating to the proposal or application which was the subject of final decision by a board, commission or other decision maker and which was not presented at the hearing before such board, commission or other decision maker. *New evidence* does not include modifying, highlighting, underlining, italicizing or otherwise emphasizing certain portions of writings or graphics presented to the original decision maker as long as any modified graphic presented to the City Council at the appeal hearing is accompanied by the original graphic.

Party-in-interest shall mean a person who or organization which has standing to appeal the final decision of a board, commission or other decision maker. Such standing to appeal shall be limited to the following:

- (1) The applicant;
- (2) Any party holding a proprietary or possessory interest in the real or personal property which was the subject of the decision of the board, commission or other decision maker whose action is to be appealed;
- (3) Any person to whom or organization to which the City mailed notice of the hearing of the board, commission or other decision maker;
- (4) Any person who or organization which provided written comments to the appropriate City staff for

*Division 3
Appeals Procedure **

Sec. 2-46. Definitions.

The following words, terms and phrases, when used in this Division, shall have the meanings ascribed to them in this Section:

* **Cross-references**—Appeals from the Liquor Licensing Authority, § 3-36; appeals from the Building Review Board may be heard by the City Council, § 5-312; appeals from the decision of the City regarding alarm permits to the City Council, § 15-36; appeals from the determinations of the Building Review Board regarding alarm permits to the City Council, § 15-41(b); disapproval of pawnbroker's license may be appealed to the City Council, § 15-265(c); applicant for license regarding places of entertainment may appeal the decision to the City Council, § 15-298; appeals from the denial of the secondhand dealer's license to the City Council, § 15-318(d); appeals for denial of a license for a mobile home park may be appealed to the City Council, § 18-5(d).

delivery to the board, commission or other decision maker prior to or at the hearing on the matter which is to be appealed;

(5) Any person who or organization which appeared before the board, commission or other decision maker at the hearing on the action which is to be appealed;

(6) The City Council as represented by the request of a single member of the City Council.

(Code 1972, § 3A-2; Ord. No. 67, 1993, § 1, 7-20-93; Ord. No. 53, 1997, § 2, 3-18-97; Ord. No. 088, 2006, § 1, 6-6-06; Ord. No. 066, 2014, 5-20-14)

Cross-reference—Definitions and rules of construction generally, § 1-2.

Sec. 2-47. Certain appeals to be taken to City Council.

Appeals taken from decisions made by any of the following boards, commissions or other decision makers shall be taken to the City Council in the manner set forth in this Division:

- (1) Building Review Board;
- (2) Fire Board of Appeals;
- (3) Landmark Preservation Commission;
- (4) Planning and Zoning Board, except for decisions made under Sections 22-32-124 and 31-23-209, C.R.S.;
- (5) A "decision maker" under the provisions of Section 2.2.12 of the Land Use Code;
- (6) Water Board;
- (7) Zoning Board of Appeals.

(Code 1972, § 3A-1; Ord. No. 117, 1996, § 3, 9-17-96; Ord. No. 53, 1997, § 1, 3-18-97; Ord. No. 28, 1998, § 2, 3-17-98; Ord. No. 066, 2014, 5-20-14)

Editor's note—Paragraph (4) formerly referred to the Building Contractor Licensing Board, which is no longer in existence, being replaced by the Building Review Board pursuant to Ord. No. 93, 1987. The editor has, therefore, deleted former Paragraph (4) and has renumbered Paragraphs (5)—(7) as (4)—(6).

Cross-references—Building Review Board, § 2-117 et seq.; Landmark Preservation Commission, § 2-276 et seq.; Planning and Zoning Board, § 2-351 et seq.; Water Board, § 2-436 et seq.; Zoning Board of Appeals, § 2-451 et seq.; Fire Board of Appeals, §§ 9-2, 9-3.

Sec. 2-48. Appeal of final decision permitted; effect of appeal; grounds for appeal.

(a) A party-in-interest may appeal to the City Council the final decision of any board, commission or other decision maker to which this appeal procedure applies in the manner provided in this Division. Any action taken in reliance upon any decision of a board, commission or other decision maker that is subject to appeal under the provisions of this Division shall be totally at the risk of the person(s) taking such action until all appeal rights

related to such decision have been exhausted, and the City shall not be liable for any damages arising from any such action taken during said period of time.

(b) Except for appeals by members of the City Council, the permissible grounds for appeal shall be limited to allegations that the board, commission or other decision maker committed one (1) or more of the following errors:

- (1) Failure to properly interpret and apply relevant provisions of the Code and Charter.
- (2) Failure to conduct a fair hearing in that:
 - a. The board, commission or other decision maker exceeded its authority or jurisdiction as contained in the Code or Charter;
 - b. The board, commission or other decision maker substantially ignored its previously established rules of procedure;
 - c. The board, commission or other decision maker considered evidence relevant to its findings which was substantially false or grossly misleading;
 - d. The board, commission or other decision maker improperly failed to receive all relevant evidence offered by the appellant; or
 - e. The board, commission or other decision maker was biased against the appellant by reason of a conflict of interest or other close business, personal or social relationship that interfered with the decision maker's independence of judgment.

(c) Appeals filed by members of the City Council need not include specific grounds for appeal, but shall include a general description of the issues to be considered on appeal. Upon the filing of any such appeal, the director of the affected City service area shall identify the specific Code provisions that may pertain to the issues raised by such appeal and shall provide such information to the City Clerk prior to the date that the notice of hearing on the appeal is to be mailed by the City Clerk to parties-in-interest under § 2-52 of this Division. Said information shall then be mailed to the parties-in-interest together with the notice of hearing. Councilmembers who file an appeal may participate in hearing such an appeal in the same manner as they participate in hearing appeals filed by other parties-in-interest.

(Code 1972, § 3A-3; Ord. No. 124, 1987, § 1, 9-1-87; Ord. No. 23, 1990, § 1, 4-3-90; Ord. No. 59, 1994, § 1, 4-19-94; Ord. No. 88, 1995, § 1, 8-1-95; Ord. No. 53, 1997, § 2, 3-18-97; Ord. No. 234, 1998, § 1, 1-5-99; Ord. No. 090, 2006, 6-6-06; Ord. No. 131, 2011, § 1, 2-21-12; Ord. No. 066, 2014, 5-20-14)

Sec. 2-49. Filing of notice of appeal; no other written materials.

(a) An appeal shall be taken by filing a notice of appeal of the final decision of a board, commission or other decision maker to which this Division applies with the City Clerk within fourteen (14) calendar days after the action which is the subject of the appeal. Such notice of appeal shall be on a form provided by the City Clerk, shall be signed by all appellants and shall include the following:

- (1) The action of the board, commission or other decision maker which is the subject of the appeal;
- (2) The date of such action;
- (3) The name, address, telephone number and relationship of each appellant to the subject of the action of the board, commission or other decision maker;
- (4) In all appeals except those filed by members of City Council, the grounds for the appeal, including specific allegations of error and a summary of the facts contained in the record on appeal which support those allegations;
- (5) In the case of an appeal alleging under Subparagraph 2-48(b)(2)c. above that a board, commission or other decision maker considered evidence relevant to its findings that was substantially false or grossly misleading, any new evidence the appellant wishes to submit at the hearing on the appeal in support of this allegation;
- (6) In the case of an appeal filed by more than one (1) appellant, the name, address and telephone number of one (1) such appellant who shall be authorized to receive, on behalf of all appellants, any notice required to be mailed by the City to the appellants under the provisions of § 2-52 of this Division; and
- (7) Any other information required by the City Clerk.

(b) No information other than that specified in Subsection (a) above shall be included in or attached to the notice of appeal.

(Code 1972, § 3A-4; Ord. No. 111, 1989, § 1, 8-1-89; Ord. No. 23, 1990, § 2, 4-3-90; Ord. No. 67, 1993, § 2, 7-20-93; Ord. No. 88, 1995, § 2, 8-1-95; Ord. No. 53, 1997, § 2, 3-18-97; Ord. No. 131, 2011, § 2, 2-21-12; Ord. No. 066, 2014, 5-20-14)

Sec. 2-50. Cost of appeal.

In all appeals, except those filed by members of the City Council, the appellant shall be charged a fee of one hundred dollars (\$100.) for the cost of the appeal, to be

paid to the City Clerk at the time of the filing of the notice of appeal.

(Code 1972, § 3A-7; Ord. No. 23, 1990, § 4, 4-3-90; Ord. No. 066, 2014, 5-20-14)

Sec. 2-51. Record on appeal.

Any appeal to the City Council shall be an appeal on the record of the hearing before the board, commission or other decision maker. The record provided to the City Council shall include the following:

- (1) All exhibits, including, without limitation, all writings, drawings, maps, charts, graphs, photographs and other tangible items received or viewed by the board, commission or other decision maker at the proceedings;
- (2) A verbatim transcript of such proceedings before the board, commission or other decision maker. The cost of the transcript shall be borne by the City. If a verbatim transcript of the proceedings does not exist and cannot be produced, whether due to an equipment malfunction or clerical error, or for any other reason, the decision that is the subject of the appeal will be re-heard before the decision maker after notice as required by the relevant provisions of this Code or the Land Use Code, whichever is applicable, and the appeal shall be terminated.
- (3) If available, a videotape recording of such proceedings before the board, commission or other decision maker. The cost of reproducing any such videotape for review by the City Council shall be borne by the City. Additional copies shall be provided to any party-in-interest requesting the same within a reasonable period of time prior to the date for hearing the appeal, at a cost not to exceed the actual reproduction costs incurred by the City.

(Code 1972, § 3A-8; Ord. No. 174, 1988, § 1, 12-20-88; Ord. No. 23, 1990, §§ 5, 6, 4-3-90; Ord. No. 59, 1994, § 3, 4-19-94; Ord. No. 5, 1995, 2-7-95; Ord. No. 53, 1997, § 2, 3-18-97; Ord. No. 066, 2014, 5-20-14)

Sec. 2-52. Scheduling of the hearing.

In the event of an appeal, the City Clerk shall schedule the hearing on the appeal for a date as early as reasonably practicable but no more than seventy-five (75) calendar days after the date of filing of the notice of appeal. Written notice of the date, time and place of the hearing shall be mailed by the City Clerk to the appellant and all other parties-in-interest no less than ten (10) calendar days prior to the date of said hearing. Said notice shall also include a copy of the notice of appeal and shall inform the parties-in-interest of the period of time within which any new evidence permitted under Paragraph 2-55(b)(1) or (2) below must be submitted.

(Code 1972, § 3A-9; Ord. No. 88, 1995, § 4, 8-1-95; Ord. No. 151, 1996, 12-17-96; Ord. No. 234, 1998, § 4, 1-5-99; Ord. No. 088, 2006, § 2, 6-6-06; Ord. No. 131, 2011, § 2-21-12; Ord. No. 066, 2014, 5-20-14)

Sec. 2-53. Site inspection/no ex parte contacts.

(a) Councilmembers may inspect the site of an overall development plan, project development plan or other proposal that is the subject of an appeal, either alone or with City staff present, for the purpose of gaining a better understanding of the physical characteristics of the site and the surrounding area, as well as the issues on appeal. If a Councilmember wishes to schedule a site inspection with City staff present, he or she shall, no later than ten (10) days after the filing of the notice of appeal, request that the City Manager schedule such inspection. Upon receipt of such a request, the City Manager shall forthwith schedule the inspection for a date and time when he or she believes that a majority of the Councilmembers wishing to inspect the site will be able to attend. The City Clerk shall, no less than five (5) days prior to the date of the site inspection, mail notice of such inspection to the appellant and to all parties-in-interest to whom notice of the appeal hearing was sent by the City Clerk under Section 2-52 above. The appellant and all other parties-in-interest shall be entitled to attend such scheduled inspection, along with any members of City staff whose presence is requested by the City Manager. Failure to mail notice to any party-in-interest shall not affect the scheduling or validity of any proceeding held or determination made under this Division. Upon receipt of any notice returned by the U.S. Postal Service marked as undeliverable for any reason, the City Clerk may exclude the party-in-interest to which such notice had been mailed from any future mailings related to the appeal that was the subject of the returned notice.

(b) Any Councilmembers conducting a site inspection under the provisions of Subsection (a) above, either alone or with City staff present, shall, at the hearing on the appeal, state on the record any observations they made or conversations they had at the site which they believe may be relevant to their determination of the appeal.

(c) Nothing in this Section shall be construed to authorize any Councilmember or other officer or employee of the City to enter upon any parcel of real property that is not open to the public without the permission of the owner of such property or the permission of such other person or entity as may be lawfully in possession of the property.

(d) In order to afford all parties-in-interest a fair opportunity to respond to the information upon which the City Council is to base its decision on appeal, and in order to preserve the impartiality of Councilmembers hearing the appeal, all Councilmembers who intend to participate in hearing the appeal shall, to the extent reasonably possible, avoid communications with parties-in-interest and members of the general public regarding the merits of the appeal prior to the hearing on the appeal.

(Ord. No. 088, 2006, § 3, 6-6-06; Ord. No. 003, 2008, § 1, 2-5-08; Ord. No. 131, 2011, § 5, 2-21-12; Ord. No. 066, 2014, 5-20-14)

Sec. 2-54. Procedure at the hearing.

(a) At the hearing on the appeal by the City Council, the presentation of argument on the merits of the appeal shall be made in the following order, subject to such limitations in time and scope as may be imposed at the discretion of the Mayor:

- (1) Explanation of the nature of the appeal and presentation by City staff;
- (2) Comments by Councilmembers who have inspected the site pursuant to Subsection 2-53(a) above;
- (3) Consideration of any procedural issues identified under Subsection (c) below;
- (4) Presentation of argument by the appellant and any party-in-interest in support of the appeal;
- (5) Presentation of argument by any party-in-interest who is an opponent of the appeal;
- (6) Rebuttal presentation by the appellant and any party-in-interest in support of the appeal;
- (7) Rebuttal presentation by any party-in-interest who is an opponent of the appeal;
- (8) Councilmember questions of City staff and parties-in-interest; and
- (9) Motion, discussion and vote by the City Council.

(b) Factors to be considered in determining the period of time for the presentation of argument on the merits of an appeal shall include, but not be limited to, the complexity of the issues raised in the notice of appeal, the length of the record on appeal, the potential impact that the determination of the appeal may have on the community at large and the number of parties-in-interest who wish to address the Council with regard to the merits of the appeal.

(c) Prior to hearing the presentation of argument on the merits of the appeal, the Mayor may, in his or her discretion, establish a separate period of time during which the Council may first consider and determine, by majority vote, any procedural issues related to the hearing of the appeal, including, but not limited to, the possible introduction or exclusion of certain evidence, the period of time to be allowed by the Mayor for presentation of argument on the merits of the appeal and any concerns or objections related to the record on appeal.

(d) No person making a presentation to the City Council shall be subject to cross-examination except that members of the City Council and the City Attorney may inquire of such person for the purpose of eliciting information and for the purpose of clarifying information presented.

(e) In the event of multiple appeals involving the same decision of a board, commission or other decision maker, the Mayor, in his or her discretion, may modify the procedure contained in Subsection (a) above so as to expedite the hearing of such appeals.

(Code 1972, § 3A-10; Ord. No. 124, 1987, § 2, 9-1-87; Ord. No. 174, 1988, §§ 2, 3, 12-20-88; Ord. No. 111, 1989, § 4, 8-1-89; Ord. No. 23, 1990, § 7, 4-3-90; Ord. No. 139, 1990, 1-15-91; Ord. No. 59, 1994, § 4, 4-19-94; Ord. No. 53, 1997, § 2, 3-18-97; Ord. No. 003, 2008, § 2, 2-5-08; Ord. No. 131, 2011, § 6, 2-21-12; Ord. No. 066, 2014, 5-20-14)

Sec. 2-55. Written materials; new evidence; scope of review; alternative actions available to the City Council; date of final action.

(a) The City Council shall consider an appeal based upon the record on appeal, the relevant provisions of the Code and Charter, the grounds for appeal cited in the notice of appeal and the arguments made by parties-in-interest at the hearing on the appeal; provided, however, that issues raised during the presentation of argument but not raised in the notice of appeal shall not be considered by the City Council in deciding the appeal.

(b) No written materials related to an appeal, other than the notice of appeal and the record on appeal, shall be presented to the City Council before or during an appeal hearing, and no new evidence shall be considered on appeal, except that new evidence in oral or written form may be submitted and considered under the following circumstances:

(1) When offered in support of or in opposition to an allegation under Subparagraph 2-48(b)(2)c. of this Article that a board, commission or other decision maker considered evidence relevant to its findings which was substantially false or grossly misleading;

(2) When offered in support of or in opposition to an allegation of bias under Subparagraph 2-48(b)(2)e. of this Division;

(3) When offered by City staff or parties-in-interest in response to questions presented by Councilmembers under Subsection 2-54(a) or (d) above; or

(4) When offered by Councilmembers after inspecting the site of the project development plan or other proposal that is the subject of an appeal pursuant to the provisions of § 2-53 of this Article.

(c) Any new evidence permitted under Paragraphs (b)(1) or (2) above and submitted prior to the hearing or offered at the appeal hearing by City staff or parties-in-interest shall be limited to that which is either:

(1) Described in the notice of appeal;

(2) Submitted to the City Clerk in writing at least seven (7) days prior to the appeal hearing by any party-in-interest opposed to the appeal; or

(3) Provided to the City Council by City staff prior to or during the appeal hearing.

(d) Any party-in-interest who believes that new evidence has been improperly introduced into the appeal hearing may, at any time during the hearing, interrupt the proceedings and object to the Council's consideration of such evidence. If such an objection is made, the Mayor shall rule on the objection, after consultation with the City Attorney if necessary, and the evidence shall either be received and considered by the Council or disregarded by the Council in accordance with the ruling of the Mayor; provided, however, that the Mayor's ruling on this or any other procedural issue raised during the course of the hearing may be overridden by a majority of the Council. The failure of a party-in-interest to make such an objection shall constitute a waiver of the same by that party-in-interest for the purpose of any court appeal of the Council's decision.

(e) In considering an allegation that a board, commission or other decision maker failed to properly interpret and apply the relevant provisions of the Code or Charter asserted under Paragraph 2-48(b)(1) of this Article, the City Council shall determine how such provisions should, in the City Council's judgment, be applied to the evidence contained in the record on appeal.

(f) At the conclusion of such hearing, the City Council shall uphold, overturn or modify the decision of the board, commission or other decision maker; provided, however, that

(1) The City Council shall instead remand the matter for rehearing if it finds that the appellant was denied a fair hearing before the board, commission or other decision maker for any of the reasons stated in Paragraph 2-48(b)(2) of this Article.

(2) The City Council may also remand the matter for rehearing in order for the board, commission or other decision maker to receive

and consider additional information with regard to any issue raised on appeal. Any such remand shall include direction from the City Council to the board, commission or other decision maker as to the issues to be considered at the rehearing.(g)

No later than the date of its next regular meeting, the Council shall adopt, by resolution, findings of fact in support of its decision. The date of passage of such resolution shall be the date of final action of the City Council for the purpose of any subsequent judicial review of the decision of the City Council.

(Code 1972, § 3A-11; Ord. No. 124, 1987, § 3, 9-1-87; Ord. No. 23, 1990, § 8, 4-3-90; Ord. No. 67, 1993, § 3, 7-20-93; Ord. No. 59, 1994, § 5, 4-19-94; Ord. No. 88, 1995, § 5, 8-1-95; Ord. No. 53, 1997, § 2, 3-18-97; Ord. No. 234, 1998, § 5, 1-5-99; Ord. No. 088, 2006, § 4, 6-6-06; Ord. No. 089, 2006, 6-6-06; Ord. No. 003, 2008, § 3, 2-5-08; Ord. No. 131, 2011, § 7, 2-21-12; Ord. No. 066, 2014, 5-20-14)

Secs. 2-56—2-70. Reserved

APPENDIX B

APPEAL FORM

NOTICE OF APPEAL

Action Being Appealed:	Date of Action:
Decision Maker (Board, Commission, or Other):	
Appellant/Appellant Representative (if more than one appellant): Name, address, telephone number(s), and email address of an individual appellant authorized to receive, on behalf of all appellants, any notice required to be mailed by the City to the appellants.	
Name:	Phone #:
Address:	Email:

GROUNDS FOR APPEAL

The Decision Maker committed one (1) or more of the following errors (check all that apply):

- Failure to properly interpret and apply relevant provisions of the City Code, the Land Use Code, and Charter. List relevant Code and/or Charter provision(s) here, by specific Section and subsection/subparagraph:

(Attach additional sheets as necessary)
- Failure to conduct a fair hearing in that:
 - The Board, Commission, or Other Decision Maker exceeded its authority or jurisdiction as contained in the Code or Charter;
 - The Board, Commission, or Other Decision Maker substantially ignored its previously established rules of procedure;
 - The Board, Commission, or Other Decision Maker considered evidence relevant to its findings which was substantially false or grossly misleading. Describe any new evidence the appellant intends to submit at the hearing on the appeal in support of these allegations²: _____
_____ ; or
 - The Board, Commission, or Other Decision Maker improperly failed to receive all relevant evidence offered by the appellant.
 - The Board, Commission, or Other Decision Maker was biased against the appellant by reason of a conflict of interest or other close business, person or social relationship that interfered with the decision maker's independence of judgment. Describe any new evidence the appellant intends to submit at the hearing on the appeal in support of these allegations²: _____

_____.

Instructions:

1. For *each allegation* marked above, please attach a separate summary of the facts contained in the record which support the allegation. Each summary is limited to two pages, Times New Roman 12 point font. Please restate allegation at top of first page of each summary.
2. No new evidence will be received at the hearing in support of these allegations unless it is either described above or offered in response to questions presented by Councilmembers at the hearing.

APPELLANTS

Name:	Date:
Signature:	Email:
Address:	Phone #:
Please describe the nature of the relationship of appellant to the subject of the action of the Board, Commission or other Decision Maker:	

Name:	Date:
Signature:	Email:
Address:	Phone #:
Please describe the nature of the relationship of appellant to the subject of the action of the Board, Commission or other Decision Maker:	

Name:	Date:
Signature:	Email:
Address:	Phone #:
Please describe the nature of the relationship of appellant to the subject of the action of the Board, Commission or other Decision Maker:	

Name:	Date:
Signature:	Email:
Address:	Phone #:
Please describe the nature of the relationship of appellant to the subject of the action of the Board, Commission or other Decision Maker:	

ATTACH ADDITIONAL SIGNATURE SHEETS AS NECESSARY