

SECTION 10 - PLANNING PROCEDURES¹

Editor's note: current through Ordinance 2018-1131

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10.1 **PUBLIC HEARINGS.** This section describes the procedure for noticing public hearings required by other Sections of the Zoning Ordinance.

10.1.1 **General Notice.** When notice of a public hearing is required to be given under this Section, notice is given in all of the following ways:

(a) **Mailing.** Notice of the hearing is mailed or delivered at least 10 days before the hearing to all of the following:

(1) *Applicant.* The project applicant, if other than the city.

(2) *Persons Requesting Notice.* Any person who has filed a written request for notice with the Zoning Administrator under Government Code Section 65092. Requests for notice must be accompanied by the fee established by the Council and annually renewed.

(b) **Posting.** Notice of the hearing is posted at least 10 days before the hearing as follows:

(1) In at least three public places in the city, one of which may be satisfied by posting as provided in subsection (b)(2) or in Section 10.1.3(b).

(2) An applicant seeking an entitlement for a specific property must post a copy of the notice, provided by the City, at the front property line of the property subject to the entitlement request, in a manner readable from the public right-of way.

10.1.2 **Owners and Agencies.** When notice of a public hearing is required to be given under this Section, notice of the hearing is given as provided in 10.1.1 and is mailed or delivered at least 10 days before the hearing to:

(a) **Owner.** The owner of any real property that is the subject of the application, and owner's duly authorized agent, if any.

¹ Section 10 was substantially rewritten by Ord. 2018-1131, 4/24/2018; previously amended by 2015-1083, 1/27/2015; Ord. 906, 7/11/96; Ord. 717, 3/13/84; Ord. 591, 1/24/77; Ord. 520, 11/26/73; Ord. 502, 2/23/73; Ord. 464, 3/22/71; Ord. 404, 11/12/68

- (b) **Local Agencies.** Each local agency expected to provide water, sewage, highways, schools or other essential facilities or services to the project, whose ability to provide those facilities and services may be significantly affected.
- 10.1.3 **Area Notice.** When notice of a public hearing is required to be given under this Section, notice is given as provided in 10.1.1 and 10.1.2, and at least 10 days before the hearing is given as follows:
- (a) Notice is mailed or delivered to all owners of real property as shown on the latest equalized assessment roll within 300 feet of the real property that is the subject of the hearing. In lieu of utilizing the assessment roll, records of the county assessor that contain more recent information than the assessment roll may be utilized.
 - (b) Posted notice under Section 10.1.1(b) must include the area directly affected by the proceeding, if any.
- 10.1.4 **Additional Notice.** The city may give notice in any other manner it deems necessary or desirable in addition to the notice required by this section. This may include publishing the notice at least once in a newspaper of general circulation within the county at least 10 days before the hearing.
- 10.1.5 **Content of Notice.**
- (a) Notice of a public hearing on an entitlement application shall include the date, time and place of the public hearing, the identity of the hearing body or officer, a general explanation of the matter to be considered, including any proposed environmental determination and action, any recommendation of the planning commission or other advisory body, and a general description, in text or by diagram, of the location of real property, if any, that is the subject of the hearing.
 - (b) In accordance with Government Code Section 65009(b), all public notices related to projects within the scope of the state Planning and Zoning Law must include notice stating substantially all of the following:

“If you challenge the (nature of the proposed action) in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Zoning Administrator at, or prior to, the public hearing.”
 - (c) The city may require project applicants to provide all information and materials needed to give notice.
- 10.1.6 **Failure to receive notice.** The failure of the city to give notice or the failure of any person or entity to receive notice of a public hearing shall not constitute grounds to invalidate the actions for which the notice was given.
- 10.1.7 **Continuances.** A public hearing may be continued from time to time to a date certain without the need for additional public notice.
- 10.1.8 **Notice for drive-through facilities.** Whenever the city considers the adoption or amendment of policies or ordinances affecting drive-through facilities, or regarding a

permit for a drive-through facility or modification of an existing drive-through facility permit, the city shall notify the blind, aged and disabled communities in order to facilitate their participation in the hearing process.

10.2 SERVICE OF NOTICE. Except as otherwise provided, service of notice is governed by Belmont City Code Section 1-12.

10.3 ZONING ADMINISTRATOR. In accordance with Government Code Section 65900, there is hereby established the office of Zoning Administrator.

10.3.1 **Duty and Authority** – The duties of the Zoning Administrator are set forth in Government Code Section 65901 and this Ordinance. The Zoning Administrator shall administer, interpret and enforce the provisions of this Ordinance and in performance of these duties shall:

- (a) Receive and examine applications for and issue Zoning Certificates, and maintain permanent records thereof.
- (b) Conduct such inspections of buildings, structures and use of land as are necessary to determine compliance with the terms of this Ordinance.
- (c) Maintain permanent and current records of applications for all Amendments, Variances, Conditional Use Permits, and Design Review, and of the hearings and actions thereon.
- (d) Provide and maintain a continuing program of public information on zoning matters.
- (e) Order the abatement of violations of the Zoning Ordinance and aid in the prosecution of such violations.
- (f) Receive, file and transmit to the Planning Commission all applications, petitions and other communications upon which the Commission is required hereby to act.

10.3.2 **Use Classification Interpretation.**

- (a) This Section provides a procedure for determining whether the characteristics of a proposed use which is not specifically listed as a permitted or conditional use in one or more districts are sufficiently similar to a listed use to justify a finding that the use should be deemed a permitted or a conditional use in one or more districts.
- (b) A property owner whose property is located in the district affected by a proposed interpretation may request a use interpretation by filing an application in compliance with Section 10.4.
- (c) The Zoning Administrator shall consider and act upon all requests for a use interpretation.
- (d) The Zoning Administrator may determine that a use be deemed a permitted or a conditional use in one or more districts if the following findings are made:
 - (1) The use is consistent with the purposes of the district

- (2) The use has the same basic characteristics and is sufficiently similar to uses permitted in the district, taking into account its nature, function, and operation.
- (3) The use will not be detrimental to the public health, safety or welfare.
- (4) The use will not adversely affect the character of the district.
- (5) The use will not create more vehicular traffic than the volume normally created by uses permitted in the district.
- (6) The use will not create more odor, dust, dirt, smoke, noise, vibration, illumination, glare, unsightliness or any other objectionable influence than the amount normally created by uses permitted in the district.

10.4 ENTITLEMENT APPLICATIONS. This Section applies to applications for new or amended zoning permits, approvals or use interpretations under the Zoning Ordinance, which are referred herein as administrative entitlements, and to applications to amend the General Plan, specific plans, and zoning regulations, which are referred to as legislative entitlements. Administrative and legislative entitlements are collectively referred to as zoning entitlements

10.4.1 **Form.** Applications for a zoning entitlement must be made to the Zoning Administrator on a form prescribed by that office.

10.4.2 **Contents.** The application must include the following.

- (a) Name and address of the applicant, and the applicant's authorized agent, if any.
- (b) Applications seeking entitlements affecting particular real property must be accompanied by the following.
 - (1) A statement certifying under penalty of perjury that the applicant is the owner of the property or the authorized agent of the owner.
 - (2) The address or description of property.
 - (3) An accurate scale drawing of the site showing the contours at intervals of not more than 5 feet and the locations of any existing and proposed streets, property lines, uses, structures, driveways, pedestrian walks, off-street parking and off-street loading facilities and landscaped areas. This requirement may be waived or modified by the Zoning Administrator.
 - (4) A detailed statement indicating the precise manner of compliance with each applicable plan, program, policy, ordinance, standard, requirement or similar provision applicable to the entitlements sought, together with any other data pertinent to the findings prerequisite to the granting of the permit or approval, as required by the Zoning Administrator
- (c) Such other information, plans, maps and data that the Zoning Administrator determines are necessary for evaluating applications for particular entitlements or will assist the

reviewing authority in making a determination in harmony with the requirements of this Ordinance.

- (d) A statement that the applicant agrees to defend, indemnify, and hold harmless the city and its agents, officers, and employees from any action, claim, or proceeding brought against the city or its agents, officers, or employees which challenges the validity of any zoning entitlement approval by the city.

10.4.3 **Resubmittal.** An application for a zoning entitlement which has been denied or revoked may not be resubmitted in either the same or substantially the same form or with reference to substantially the same premises for substantially the same purpose within one year from the date of the denial, or revocation.

10.4.4 **Fees.**

- (a) Applications for zoning entitlements must be accompanied by, and may not be accepted without, payment of the fees established by the City Council for processing an application for the entitlements sought. Fees shall be paid to the Zoning Administrator.
- (b) No part of any such fee which accompanies an application for an Zoning Entitlement shall be returnable except that, upon written notice of withdrawal filed with the Zoning Administrator before the giving of notice for any required hearing on the application, the applicant shall be entitled to a refund of the fee, excluding the actual costs incurred for processing the application (time, material, and overhead). In the event of such withdrawal, the Community Development Director shall certify to the City Treasurer that a refund is due by reason thereof, and upon such certification the City Treasurer shall make such refund.
- (c) Applicant shall pay the cost of any required notices due to postponement or amendment of an application requested by the applicant.
- (d) Until all applicable fees, charges and expenses have been paid in full, no action shall be taken on any application, appeal or other matter pertaining to this Ordinance as to which a fee, charge or payment of expense is required, nor shall the applicant be permitted to obtain a building permit or establish a use until all applicable fees, charges, and expenses have been paid in full.

10.5 ENTITLEMENT REVIEW

10.5.1 **Approval Authority.**

- (a) Generally. The approval authority for an entitlement application is set forth in the Zoning Ordinance Section governing the particular requirements for that entitlement.
- (b) Dependent Entitlements. When a zoning entitlement may not be granted without the granting of another entitlement from a higher approval authority, the lesser approval authority's determination is forwarded as a recommendation to the higher approval authority.
- (c) Independent Entitlements. When an application seeks an entitlement that may be granted by a lesser authority independent of other entitlements sought in the application

that may only be granted by a higher authority, the lesser authority may refer the independent entitlement to the higher authority after rendering a recommendation to approve, conditional approve, or deny the dependent entitlement.

- (d) Recommendation Procedure. When a lesser approval authority or other advisory body renders a recommendation to a higher approval authority on an entitlement, the Zoning Administrator shall transmit the recommendation in a staff report to the higher approval authority. The higher approval authority shall follow the same notice and hearing procedures that govern the lesser approval authority's review of the entitlement application, or more formal procedures.
- (e) Hierarchy. Except as otherwise provided, the hierarchy of approval authority is in descending order as follows: City Council, Planning Commission, Zoning Administrator.

10.5.2 **Determinations.**

- (a) Determinations must be consistent with the General Plan and any applicable Specific Plan.
- (b) Determinations to approve, conditionally approve, or deny an administrative entitlement application must be made within the timeframes required by law, and be based on evidence in the record and rendered in compliance with due process and all applicable laws.
- (c) Administrative entitlement determinations are effective upon the expiration of any applicable appeal period unless an appeal is timely filed. Administrative entitlement determinations that are final when rendered are effective immediately.
- (d) As used in this Section, determination includes decisions to approve, conditionally approve, or deny an entitlement application, and decisions to modify or revoke an entitlement.

10.5.3 **Conditions of Approval.**

- (a) Conditions of approval must be reasonable and have a sufficient nexus between the condition imposed and the projected burden of the proposed development.
- (b) The approving authority may not condition the issuance of a building permit, variance or use permit on any of the following:
 - (1) The dedication of land for any purpose not reasonably related to the use of the property for which a variance, building, or use permit is requested.
 - (2) The posting of a bond to guarantee installation of public improvements not reasonably related to the use of the property for which a variance, building, or use permit is requested.
- (c) Variances and use permits run with the land and the approval authority may not condition these entitlements on their non-transferability.

10.5.4 **Effectiveness.** Except as otherwise provided, a zoning entitlement approval is effective 10 days following the date on which the application is approved unless appealed, and remains effective for two years thereafter unless timely extended or timely exercised. Once expired, the entitlement may not be revived.

10.5.5 **Extension of Approval.** The reviewing body with original jurisdiction to grant the zoning entitlement may grant a 1-year extension of the approval upon making the following findings:

- (a) The governing regulations under which the permit was originally approved have not changed in a way that have established different findings, development standards, or evaluation criteria.
- (b) The applicants have presented a reasonable explanation of the delay in completing the project and have demonstrated intent to complete the project within the next year.
- (c) The surrounding neighborhood conditions and site characteristics have not changed in a way that would no longer provide a factual basis for positively reaffirming the original findings.

10.5.6 **Lapse of Entitlement Approval.**

- (a) An administrative entitlement approval is null and void if the Zoning Administrator determines in accordance with this section that the approval was not timely exercised.
- (b) An entitlement is “exercised” if one of the following occurs before the expiration of the approval:
 - (1) A valid building permit is issued in relation to the entitlement and construction diligently pursued;
 - (2) A valid certificate of occupancy is issued in relation to the entitlement;
 - (3) If neither a building permit nor a certificate of occupancy is required, the use has been established in reliance on the entitlement; or
 - (4) The applicant has taken substantial action in good faith to implement the permit, and has incurred substantial expense acting in reliance on the entitlement.
- (c) If the Zoning Administrator determines that there are reasonable grounds to believe that an administrative entitlement approval was not timely exercised, the Zoning Administrator shall provide written notice to the record owner of the property (as shown on the County’s current equalized assessment roll), the applicant, and any occupant of the property. The notice shall describe the expired entitlement, the basis for the Zoning Administrator’s determination, and the opportunity to request a hearing within 14 days of the notice.
- (d) If a hearing is requested, the Zoning Administrator shall conduct a public hearing. Notice of the public hearing shall be given under Section 10.1.2.

- 10.5.7 **Amendments.** Amendments to approved entitlements are subject to the same application procedure as applications for new entitlements.
- 10.6 **VARIANCES.** A variance allows deviation from site development standards where because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, strict application of the Zoning Ordinance deprives the property of privileges enjoyed by other property in the vicinity and under an identical zoning classification. A variance may not be granted for a parcel of property which authorizes a use or activity which is not otherwise expressly authorized by the zoning regulations governing the parcel.
- 10.6.1 **Approval Authority.** The Zoning Administrator may grant a variance to commercial and manufacturing site development standards of up to 10 percent. The Planning Commission may grant all other variances.
- 10.6.2 **Application.** Application for a Variance shall include a statement of the precise nature of the Variance requested and the practical difficulties or unnecessary physical hardship, which would result from the strict or literal interpretation and enforcement of a specified regulation of this Ordinance, together with any other data pertinent to the findings prerequisite to the granting of a Variance as determined by the Zoning Administrator.
- 10.6.3 **Public Hearing.** The approval authority shall hold a public hearing before acting on a variance application. Notice of the public hearing shall be given as provided in Section 10.1.3.
- 10.6.4 **Findings.**
- (a) **All Variances.** The approval authority may grant a Variance to a development standard if the following findings are made:
- (1) There are special circumstances applicable to the property involved or to the intended use of the property which do not apply generally to other properties classified in the same zoning district.
 - (2) The strict or literal interpretation and enforcement of the specified regulation would deprive the property of privileges enjoyed by other properties in the vicinity classified in the same zoning district, including causing practical difficulty or unnecessary physical hardship
 - (3) The granting of the Variance as conditioned will not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity and classified in the same zoning district.
 - (4) The granting of the Variance will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.
- (b) **Additional Findings For Parking And Loading.** The approval authority may grant a Variance for off-street parking facilities or off-street loading facilities if it makes the findings in Subsection (a) and the following additional findings:

- (1) That neither present nor anticipated future traffic volumes generated by the use of the site, or the uses of sites in the vicinity, reasonably require strict or literal interpretation and enforcement of the specified regulation.
 - (2) That the granting of the Variance will not result in the parking or loading of vehicles on public streets in such a manner as to interfere with the free flow of traffic on the streets.
 - (3) That the granting of the Variance will not create a safety hazard.
- (c) ***Additional Findings for Zoning Administrator Variances.*** In addition to the findings in subsections (a) and (b) as applicable, before approving a Variance the Zoning Administrator must find that the cumulative effect of any previously approved variances will not result in the requested development standard alteration exceeding 10 percent.

10.7 **USE PERMITS.** The purpose of conditional use permits is to provide a process for reviewing land uses which may be compatible with the zoning district, but whose effect on the site and surroundings cannot be determined before being proposed for a specific location. Such uses may be suitable in a zoning district only in specific locations or only if designed in a particular manner or subject to specific conditions.

10.7.1 **Public Hearings.** The reviewing authority shall hold a public hearing before acting on a Use Permit application. Notice of the public hearing shall be given as provided in Section 10.1.3.

10.7.2 **Approving Authority.** Except as provided in Section 10.7.4, the Planning Commission shall take action upon every application for a Use Permit.

10.7.3 **Planning Commission Review**

(a) ***Findings.*** The Planning Commission may grant a Use Permit only if it finds the proposed use is in accordance with the provisions of the General Plan and this Ordinance and that the following conditions have been met. The Commission must deny the application for a Use Permit if it is unable to make the findings.

- (1) The location of the proposed use is compatible to other land uses in the general neighborhood area and does not place an undue burden on existing transportation, utilities and service facilities in the vicinity.
- (2) The site is of sufficient size to accommodate the proposed use together with all yards, open spaces, walls and fences, parking and loading facilities, landscaping and such other provisions required by this Ordinance.
- (3) The site will be served by streets of capacity sufficient to carry the traffic generated by the proposed use.
- (4) The proposed use, if it complies with all conditions upon which approval is made contingent, will not adversely affect other property in the vicinity or the general welfare of the City.

(b) **Additional C- District Findings.** For ground floor non-retail uses in C-1, C-2, and C-4 Districts, the Commission shall make one of the following additional findings before approving a Use Permit:

- (1) that the proposed ground floor non-retail use is the best use in consideration of the building location and design and parking availability, or
- (2) the nature of the proposed ground floor non-retail use will enhance the neighboring retail base by bringing clients into the area who would be likely to patronize neighboring businesses.

10.7.4 **Zoning Administrator Review.** The Zoning Administrator shall administratively approve a Use Permit in any commercial or manufacturing district provided the following criteria are met:

- (a) The proposed use is similar in nature to the prior use of the property.
- (b) The proposed use does not substantially increase impacts of traffic, noise, odor, vibration, parking or other objectionable elements to a residential neighborhood.
- (c) The proposed use will not be detrimental to the public health, safety or welfare.
- (d) No other Planning Commission entitlements are required.

10.7.5 **Conditions of Approval.**

- (a) In approving any application for a Use Permit, the reviewing authority may require higher standards of site development than listed for such use in this Ordinance and may make approval contingent upon the acceptance and observance by the applicant of specified conditions that are consistent with Section 10.5.3.
- (b) Conditions of approval may include but are not limited to, the following considerations:
 - (1) Conformity to plans and drawings submitted with the application;
 - (2) The provision of open spaces, buffer strips, screen walls, fences, hedges and landscaping;
 - (3) The volume of traffic generated, vehicular movements within the site, and points of vehicular ingress and egress;
 - (4) Performance characteristics, related to the emission of noise, vibration and other potentially dangerous or objectionable elements;
 - (5) Limits on time of day for the conduct of specified activities.
 - (6) Guarantees as to compliance with the terms of the approval.

10.8 **REASONABLE ACCOMODATIONS.** This Section provides a procedure to request reasonable accommodation for persons with disabilities seeking equal access to housing

under the Federal Fair Housing Act and the California Fair Employment and Housing Act in the application of zoning laws and other land use regulations, policies and procedures, and establishes relevant criteria to be used when considering such requests.

10.8.1 **Applicability.** In order to make specific housing available to an individual with a disability, any person may request a modification or exception to the rules, standards and practices for the siting, development and use of housing or housing-related facilities that would eliminate regulatory barriers and provide a person with a disability equal opportunity to housing of his or her choice. A person with a disability is a person who has a physical or mental impairment that limits or substantially limits one or more major life activities, anyone who is regarded as having such impairment or anyone who has a record of such impairment. This Section applies only to those persons who are defined as disabled under the Federal Fair Housing Act and the California Fair Employment and Housing Act.

10.8.2 **Application Requirements.**

- (a) An applicant may request an alternative application format if necessary to ensure accessibility.
- (b) The applicant may be the person with the disability or his or her representative.
- (c) The application must include:
 - (1) The basis for the claim that the individual is considered disabled under fair housing laws;
 - (2) The zoning provision, regulation or policy from which reasonable accommodation is being requested;
 - (3) An explanation why the reasonable accommodation is necessary to make the specific property accessible to the individual;
 - (4) Plans showing the details of the proposal.
- (d) If the project for which the request for reasonable accommodation is being made also requires some other discretionary approval under this Ordinance (including but not limited to a conditional use permit, architectural control, variance, or zoning amendment), the application for reasonable accommodation shall be submitted and reviewed at the same time as the related applications.

10.8.3 **Approval Authority.**

- (a) If the application is filed without any accompanying application for another zoning entitlement, the Zoning Administrator shall make a written determination within 45 days and either grant, grant with modifications or deny a request for reasonable accommodation.
- (b) If the application is filed with an application for another zoning entitlement, it shall be heard and acted upon at the same time and in the same manner as the other application, and shall be subject to all of the same procedures.

10.8.4 Findings And Decision.

- (a) Any decision on an application under this Section shall be supported by written findings addressing the criteria set forth in this subsection. An application under this Section for a reasonable accommodation shall be granted if all of the following findings are made:
- (1) The housing, which is the subject of the request, will be used by an individual disabled under the Federal Fair Housing Act and the California Fair Employment and Housing Act.
 - (2) The requested reasonable accommodation is necessary to make specific housing available to an individual with a disability under the Federal Fair Housing Act and the California Fair Employment and Housing Act.
 - (3) The requested reasonable accommodation would not impose an undue financial or administrative burden on the city.
 - (4) The requested reasonable accommodation would not require a fundamental alteration in the nature of a city program or law, including but not limited to land use and zoning.
 - (5) The requested reasonable accommodation would not adversely impact surrounding properties or uses.
 - (6) There are no reasonable alternatives that would provide an equivalent level of benefit without requiring a modification or exception to the city's applicable rules, standards and practices.
- (b) In granting a request for reasonable accommodation, the approving authority may impose any conditions of approval deemed reasonable and necessary to ensure that the reasonable accommodation would comply with the findings required by subsection (a).

10.9 REVOKING OR MODIFYING ENTITLEMENTS FOR CAUSE

- (a) If the Zoning Administrator determines that there is reasonable cause to revoke or modify an entitlement, he or she shall schedule a hearing before the Planning Commission or City Council, whichever originally took final action on the entitlement. If the Zoning Administrator or Community Development Director approved the entitlement, then the hearing shall be scheduled before the City Council. Notice of the public hearing shall be given as provided in Section 10.1.2.
- (b) The reviewing authority shall conduct a public hearing before revoking or modifying the entitlement. The reviewing authority may revoke or modify the entitlement if it makes one of the following findings based upon substantial evidence in the record of the proceeding:
- (1) The entitlement was obtained by misrepresentation or fraud;
 - (2) The terms or conditions of approval for the entitlement have not been met;

- (3) The improvement, use, or activity authorized by the entitlement is in violation of any statute, ordinance, law, or regulation or constitutes a nuisance; or
 - (4) The owner or occupant of the property is conducting the use or any associated or other use of the property in violation of any statute, ordinance, law, or regulation or in a manner that constitutes a nuisance.
- (c) The city's authority to modify or revoke an entitlement, as provided in this section, is cumulative to any other remedy allowed by law.

10.10 DISCONTINUANCE OF USE PERMIT, VARIANCE, OR NONCONFORMING USE

- (a) If the Zoning Administrator finds reasonable grounds to believe that a conditional use, variance, or non-conforming use has been discontinued, the zoning administrator shall provide written notice to the record owner of the property (as shown on the County's current equalized assessment roll), the applicant, and any occupant of the property. The notice shall describe the use or variance, the basis for the zoning administrator's belief that the use or variance was discontinued, and the opportunity to request a hearing within 14 days of the notice.
- (b) For the purpose of this section, a use is "discontinued" if:
 - (1) circumstances clearly indicate an intent to abandon the use, including replacing a use with another use, or
 - (2) the use ceases for 180 consecutive days.
- (c) If a hearing is requested, the Zoning Administrator shall conduct a public hearing. Notice of the public hearing shall be given under Section 10.1.2.

10.11 REVIEW OF ENTITLEMENT DECISIONS.

10.11.1 **Scope of Process.**

- (a) This Section provides a procedure for appeal and review of zoning entitlement decisions.
- (b) This procedure does not apply to the following:
 - (1) Recommendations to another administrative body;
 - (2) Decisions for which an appeal to a body other than the City Council or Planning Commission or other appeal procedures is provided;
 - (3) Where the matter at issue is only hypothetical or the existence of a controversy merely speculative; and
 - (4) Decisions that are final and conclusive under other provisions of this Ordinance, another ordinances, or the City Code.

10.11.2 **Reviewing body.**

- (a) The Planning Commission reviews zoning entitlement decisions of the Zoning Administrator, or other official when so provided by ordinance.
- (b) The City Council reviews zoning entitlement decisions of the Planning Commission, or other official when so provided by ordinance.

10.11.3 **Who may appeal.** An appeal may be filed by any interested person.

10.11.4 **Notice of Appeal**

- (a) **Timing.** A written notice of appeal together with the required fee must be filed with the Zoning Administrator within 10 calendar days following the date of the decision that is being appealed. The time limit will extend to the next business day when the tenth day falls on a day that the city is not open for business.
- (b) **Content.** The notice of appeal must state the decision appealed from, contain a statement summarizing the factual and legal basis for the appeal, and state the relief or action sought. Unless a timely and complete notice of appeal is filed, the right to appeal is waived and the decision is final and conclusive as to the City.
- (c) **Stay of Proceedings.** The timely filing of a complete notice of appeal automatically stays the operative effect of the decision from which the appeal is taken until a final decision is rendered on the appeal, unless the appeal is withdrawn by the appellant or the stay lifted by the Council.

10.11.5 **Consideration of Appeal**

- (a) When a timely and complete notice of appeal is filed, the Zoning Administrator shall schedule the matter for consideration by the appeal body and prepare a report on the matter.
- (b) Appealed matters are considered de novo by the appeal body. The appeal body shall follow the same notice and determination procedures that govern the lesser approval authority's action on the entitlement, and any other procedures required by law.
- (c) The appellant must deliver to the Zoning Administrator all written materials that he or she wishes the appeal body to consider no later than 5 business days before the meeting at which the appeal is first considered. The appellant may supplement these materials with additional written materials to rebut any written information first provided to appeal body after or less than 24 hours before Appellant submitted his or her initial materials. The appeal body may extend or waive the timing requirements in this paragraph for good cause. The appeal body shall continue the meeting and the hearing of evidence as necessary for due process.

10.12 **ERROR.** No action, inaction, or recommendation by the City Council, citizen advisory bodies, or any city official on any matter subject to the Zoning Ordinance shall be held invalid or set aside by any court on the ground of the improper admission or rejection of evidence or by reason of any error, irregularity, informality, neglect, or omission ("error") as to any matter pertaining to petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals, or any matters of procedure whatsoever, unless the court finds that the error was prejudicial and that the party complaining or appealing

suffered substantial injury from that error and that a different result would have been probable if the error had not occurred. There shall be no presumption that error is prejudicial or that injury was done if the error is shown.