

ARTICLE 9.7 – APPEAL OF DECISIONS

SECTION 9.7.001 - PURPOSE

The purpose of this Article is to establish uniform procedures for the appeal of land use and development and policy decisions provided in Chapter 8 of this Code.

SECTION 9.7.002 - APPEAL AUTHORITY

- A. Decisions reached by the following review authorities pursuant to Chapter 8 shall be subject to appeal to the authority shown:
1. Community Development Department/Planning Division/Community Development Director/Planner - Decision may be appealed to the Planning Commission.
 2. Planning Commission - Decision may be appealed to the City Council
 3. Landmarks Commission – Decision may be appealed to the City Council
 4. City Council - Decision may be appealed to the Land Use Board of Appeals (LUBA).
- B. Any request for modification or removal of conditions of approval shall be subject to review by the approving body. The approving body shall grant such request or portions thereof, only upon finding that the application of the condition or conditions would impose an undue or unnecessary hardship on the applicant, and that the condition causing the difficulty was not created by the applicant.

SECTION 9.7.003 - STANDING TO APPEAL

To have standing to appeal, persons must participate either orally or in writing at the public hearing.

SECTION 9.7.004 - INITIATION OF APPEAL

A decision of a review authority pursuant to Chapter 8 shall be appealed by a party with standing within the time limits prescribed in Chapter 9 of this Code. The filing of a Notice of Appeal shall be accompanied by the fee prescribed by Resolution of the City Council. The Notice of Appeal shall be submitted upon the form provided by the Community Development Department/Planning Division, shall include any such information as listed on the application submittal checklist and contain the following:

- A. A concise description of the land use decision sought to be reviewed, including the date of decision.
- B. A statement of the interest of the appellant seeking review and, that the appellant was a party to the initial proceedings.
- C. The grounds relied upon for review.

SECTION 9.7.005 - SCOPE OF REVIEW ON APPEAL

All appeals to the Planning Commission or City Council shall include a de novo evidentiary hearing.

SECTION 9.7.006 - REVIEW OF THE RECORD

- A. When an appeal is scheduled for hearing by the Planning Commission or City Council, the Community Development Department/Planning Division shall prepare and transmit the Record, which shall include:
1. Findings prepared by the Community Development Department/Planning Division or the Order adopted by the Planning Commission.
 2. All exhibits, materials, pleadings, memoranda, stipulations and motions submitted by any party and received or considered in reaching the decision under review.
 3. Minutes of any hearing or meeting during which the matter was discussed.
- B. The appeal authority shall make its decision based upon the Record and the testimony received during the hearing.

SECTION 9.7.007 - NOTICE OF APPEAL HEARING

Notice of the hearing held by an appeal authority shall be of the same type as that required for the original hearing. Notice shall be mailed to the appellant, to all persons originally notified, and to parties to the hearing who may not have been on the original notification list.

SECTION 9.7.008 - APPEAL AUTHORITY DECISION

- A. Upon review, the appeal authority may by Order remand, affirm, reverse, or modify a determination or requirement of the decision that is under review. When the appeal authority renders a decision that reverses or modifies a decision of the hearing body, the appeal authority, in its Order, shall set forth its findings and state its reasons for taking the action encompassed in the Order. When the appeal authority elects to remand the matter to the hearing body for further consideration, it shall include a statement explaining the errors or omissions found to have materially affected the outcome of the original decision and the action necessary to rectify such.
- B. Action by the appeal authority shall be decided by a majority vote of a quorum of the hearing body. The appeal authority shall render its decision no later than thirty (30) days from the date at which review was made. Findings of Fact and an Order shall be prepared in accordance with Section 9.5.011.