

## Exhibit M: Proposed Amended Article 28

(Note: underline and bolded text represents new text; ~~strike-through~~ text represents text to be eliminated)

### Article 28 Appeals

#### Sections:

- 5-2800 Purpose and Authorization for Appeals**
- 5-2802 Rights of Appeal**
- 5-2804 Time Limits for Appeals**
- 5-2806 Initiation of Appeals**
- 5-2808 Procedures for Appeals**
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#### **5-2800 Purpose and Authorization for Appeals**

To avoid results inconsistent with the purposes of this Code, decisions of the Zoning Enforcement Official may be appealed to the Board of Zoning Adjustments or the Planning Commission, whichever is most appropriate, and decisions of the Site Development Sub-Commission, the Planning Commission, and Board of Zoning Adjustments may be appealed to the City Council. (Ord. 2001-015 § 1)

#### **5-2802 Rights of Appeal**

Rights of appeal are prescribed in the individual articles of this Code authorizing each decision that is subject to appeal. (Ord. 2001-015 § 1)

#### **5-2804 Time Limits for Appeals**

- A. Appeals by Applicants and Interested Parties. Appeals shall be initiated within fifteen (15) days of the date of the decision.
- B. Time Limits. When the appeal period ends on a weekend or holiday, the time limits shall be extended to the next working day. (Ord. 2001-015 § 1)

#### **5-2806 Initiation of Appeals**

- A. Filing of Appeals. An appeal shall be filed with the City Clerk on a form provided and shall state specifically the reason for the appeal.
- B. Effect on Decisions. Decisions that are appealed shall not become effective until the appeal is resolved. (Ord. 2001-015 § 1)

## 5-2808 Procedures for Appeals

- A. Appeal Hearing Date. An appeal shall be scheduled for a hearing before the appellate body within ~~forty-five (45)~~ **sixty (60)** days of the City's receipt of an appeal, unless both applicant and appellant consent to a later date.
- B. Notice and Public Hearing. An appeal hearing shall be a public hearing ~~if the decision being appealed or reviewed required a public hearing~~. Notice of public hearings shall be given in the manner required for the decision being appealed.
- C. Plans and Materials. At an appeal or review hearing, the appellate body shall consider only the same application, plans, and related project materials that were the subject of the original decision and only the issue(s) raised by the appeal or the call for review. However, applicants may modify plans to respond to issues raised, and such modification shall be considered at the hearing. Compliance with this provision shall be verified prior to, or during, the hearing by the Zoning Enforcement Official.
- D. Hearing. ~~At the~~ **During the public** hearing, the appellate body shall review the record of the decision and hear testimony of the appellant, the applicant, and any other interested party.
- E. Decision and Notice. After the **close of the public** hearing, the appellate body shall affirm, modify, or reverse the original decision. When a decision is modified or reversed, the appellate body shall state the specific reasons for modification or reversal. ~~Decisions on appeals shall be rendered within twenty one (21) days of the close of the hearing.~~ The Zoning Enforcement Official shall mail notice of a **Board of Zoning Adjustments or** Planning Commission decision and the City Clerk shall mail notice of a City Council decision. Such notice shall be mailed within five (5) working days after the date of the decision to the applicant, the appellant, and any other party **upon** requesting such notice.
- F. Failure to Act. Failure of the body receiving the appeal to act within the time limits prescribed in Subsections A ~~and E~~ above shall be deemed affirmation of the original decision. (Ord. 2001-015 § 1)

## 5-2810 Effective Date

A decision by the City Council regarding an appeal shall become final on the date of the decision. A decision by the Planning Commission regarding an appeal shall become final on the date of the decision, unless appealed to the City Council. (Ord. 2001-015 § 1)

## 5-2812 New Appeal

Following denial of an appeal, any matter that is the same, or substantially the same, shall not be considered by the same body within two (2) years, unless the denial is made without prejudice. (Ord. 2001-015 § 1)