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## Chapter 21.64 – Appeals and Calls for Review

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### Sections:

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### 21.64.010 – Purpose

The purpose of this chapter is to provide procedures for the appeal or call for review of determinations and decisions of the Director, Zoning Administrator, and Planning Commission, and to establish provisions for appeals to the Commission. Any provision of this Implementation Plan relating to appeals shall be considered a call for review and processed according to this chapter when initiated by a member of the Commission or City Council under Section 21.64.030(A) if the purpose for the call for review is to bring the matter in front of the entire body for review.

### 21.64.020 – Appeals or Calls for Review

- A. **Director.** Interpretations of the Director may be appealed or called for review to the Planning Commission.
- B. **Zoning Administrator.** Decisions of the Zoning Administrator may be appealed or called for review to the Planning Commission.
- C. **Planning Commission.** Decisions of the Commission may be appealed or called for review to the Council.

### 21.64.030 – Filing and Processing of Appeals and Calls for Review

- A. **Eligibility.** Appeals may be initiated by any interested party. Calls for review may be initiated by a member of the Planning Commission or City Council, in the member's official capacity, if the purpose for the call for review is to bring the matter in front of the entire body for review.
- B. **Timing and Form of Appeal and Calls for Review.** An appeal shall be submitted in writing and shall state the facts and basis for the appeal. A call for review initiated by a member of the Commission or City Council, in their official capacity, shall be submitted in writing and shall be for the purpose of bringing the matter in front of the entire body for review.
  - 1. **General Appeals.**

- a. **Filing an Appeal or Call for Review.** An appeal or call for review shall be filed with the Director or City Clerk, as applicable, within fourteen (14) days following the date the action or decision was.
  - (1) Appeals addressed to the Commission shall be filed with the Director on forms provided by the Department; and
  - (2) Appeals addressed to the Council shall be filed with the City Clerk on forms provided by the Clerk.
  - (3) Calls for review addressed to the Planning Commission shall be filed with the Director on forms provided by the Department; and
  - (4) Calls for review addressed to the City Council shall be filed with the City Clerk on forms provided by the Clerk.
- b. **Filing Fee.**
  - (1) Coastal Development Permits. No fee shall be required for appeals regarding coastal development permits.
  - (2) An appeal regarding any other action other than a coastal development permit shall be accompanied by the filing fee identified in the City's master fee schedule.
  - (3) A call for review is exempt from the payment of a filing fee.

- 2. **Appeal by Coastal Commissioners.** An appeal of a City decision on a Coastal Development Permit by two (2) Coastal Commissioners shall be subject to Section 21.64.035, below.

**C. Report, Scheduling, Noticing, and Conduct of Hearing.**

- 1. The decision from which an appeal or call for review has been made has no force of effect as of the date on which the appeal or call for review is filed. When an appeal or call for review has been filed, the Director shall prepare a report on the matter, including all of the application materials in question, and schedule the matter for a public hearing by the appropriate review authority identified in Section 21.64.020 (Appeals and Calls for Review).
- 2. Notice of the hearing shall be provided, and the hearing shall be conducted, in compliance with Chapter 21.62 (Public Hearings).
- 3. **Conduct of Hearing.**
  - a. Review of an appeal from a decision of the Zoning Administrator or Commission shall be de novo. On review, the Council may sustain, reverse, or modify the decision of the Commission, or remand the matter for further consideration, which remand shall include either specific issues to be considered or a direction for a new hearing.

A call for review of a decision of the Zoning Administrator, Planning Commission, or the Director, including Director interpretations, shall be de novo. The body hearing a matter that is called for review shall follow the same procedure applicable to the lower hearing.

- b. The review authority is not bound by the decision that has been appealed or called for review or limited to the issues raised on appeal.
- c. The review authority shall hear testimony of the appellant, the applicant, and any other interested party.
- d. The review authority shall consider the same application, plans, and project-related materials that were the subject of the original decision, unless otherwise deemed relevant by the review authority.

**D. Decision on Appeal or Call for Review.**

- 1. As provided in this Implementation Plan, the review authority may, based upon findings of fact about the particular case:
  - a. Affirm, affirm in part, or reverse the action, determination, or decision that is the subject of the appeal or call for review. Adopted findings shall identify the reasons for the action on the appeal;
  - b. Adopt additional conditions of approval that may address issues or concerns other than those that were the basis of the appeal; or
  - c. Deny the permit approved by the previous review authority, even where the appellant only requested a change or elimination of one or more conditions of approval.
- 2. If new or different evidence is presented on appeal or review, the Commission or Council may refer the matter to the previous review authority for further consideration.
- 3. In the event of a tie vote by the review authority on an appeal or call for review, the decision being appealed shall stand.

**21.64.035 – Appeal to the Coastal Commission**

A final action taken by the City on a Coastal Development Permit application for appealable development as defined in Subsection A., below, may be appealed to the Coastal Commission in compliance with this Section.

- A. **Appealable development - Public Resources Code Section 30603(a).** A decision by the City on a Coastal Development Permit application within the appeal areas depicted on the Permit and Appeal Jurisdiction Map or a project that constitutes a major public works project or energy facility may be appealed to the Coastal Commission.
- B. **Status of appellant.**

1. **Who May Appeal.** An appeal may be filed by an applicant, an aggrieved person, or two (2) members of the Coastal Commission in compliance with Public Resources Code Section 30625.
  2. **Aggrieved Person Defined.** As provided by Public Resources Code Section 30801, an aggrieved person is anyone who, in person or through a representative, appeared at a public hearing held before the Zoning Administrator, Planning Commission, or Council in connection with the decision or action appealed, or who by other appropriate means prior to a hearing, informed the City of the nature of their concerns or who for good cause was unable to do either.
- C. **Exhaustion of City Appeals Required.** An applicant or other aggrieved person may appeal a City decision on a Coastal Development Permit application to the Coastal Commission only after exhausting all appeals to the Planning Commission and Council in compliance with this Chapter. This limitation shall not apply to any circumstance identified in Code of Regulations Section 13573, including:
1. An appellant was denied the right of appeal under this Chapter because City notice and hearing procedures did not comply with Title 14, Division 5.5, Chapter 8, Subdivision 2 of the Code of Regulations; or
  2. An appeal of a City decision was filed by two (2) members of the Coastal Commission in compliance with Public Resources Code Section 30625. (Notice of a Coastal Commissioners' appeal shall be transmitted to the City in compliance with Code of Regulations Section 13573(b). The appeal shall be suspended where the City decision has been appealed. If the final action by an appellate body modifies or reverses the previous decision, the Coastal Commissioners shall be required to file a new appeal of that decision if deemed appropriate and necessary.)
- D. **Grounds for Appeal to Coastal Commission - Public Resources Code Section 30603.** The grounds for an appeal to the Coastal Commission of a City decision on a Coastal Development Permit application are as follows:
1. For approval of a Coastal Development Permit as described in Subsection A., above, an allegation that the project does not conform to the standards of the Local Coastal Program or the public access policies of the Coastal Act;
  2. For denial of a development described in Subsection A., above, an allegation that the project conforms to the standards of the Local Coastal Program and the public access policies of the Coastal Act.
- E. **Notice of Final Action on Appeals within the Coastal Zone.** Where an appeal has been filed and decided on a project that is appealable to the Coastal Commission in compliance with this Section, the City shall provide notice of the final action.
- F. **Time Limit for Filing an Appeal to the Coastal Commission.** An appeal of a Council decision on an appealable development shall be filed with the Coastal Commission within ten (10) working days of the receipt by the Coastal Commission of adequate notice of final City action, in compliance with this Chapter and the Coastal Act.

- G. **Notice to City of Appeal to Coastal Commission.** An appellant shall notify the City when appealing to the Coastal Commission by providing the City a copy of the appeal within five (5) days of filing the appeal.

**21.64.050 – Judicial Review of City Decision**

A person shall not seek judicial review of a City decision on a permit or other matter until all appeals or calls for review, if applicable, to the Commission and Council have been first exhausted in compliance with this chapter.