

Any person, including the applicant for any approval, license, or permit required by this Ordinance and any board or officer of the City, adversely affected by a decision of a Land Use Authority's decision administering or interpreting this Ordinance may appeal that decision to the Appeal Authority identified by this Chapter.

Section 2801—Appeal Authorities:

To provide for appeals of decisions of Land Use Authorities administering or interpreting this Ordinance, and to comply fully with the requirements of Part 7 and Part 8 of Chapter 10-9a, U.C.A., the following appeal authorities, with their appeal responsibilities are identified.

Section 2802—District Court:

- 1) Any person aggrieved by a decision of the Council in administering or interpreting this Ordinance may file a petition with District Court, as provided herein.
- 2) Any person aggrieved by a decision of the Board of Adjustment (BOA) in administering or interpreting this Ordinance may file a petition with District Court, as provided herein.

Section 2803—Council:

- 1) Any person aggrieved by a decision of the Commission in administering or interpreting this Ordinance may file an appeal with the Council.

Section 2804—Commission:

- 1) Any person aggrieved by a decision of the Zoning Administrator in administering or interpreting this Ordinance may file an appeal with the Commission.
- 2) Any person aggrieved by an action of the Enforcement Officers, as identified by Chapter 27 herein, may file an appeal with the Commission.

Section 2805—Maximum Time Allowed to File Appeal:

A person, including the applicant for any approval, license, or permit required by this Ordinance and any board or officer of the City, adversely affected by a decision of a Land Use Authority administering or interpreting this Ordinance may, within ten (10) days of the decision, appeal that decision to the Appeal Authority identified by this Chapter.

Section 2806 – Requirements for an Appeal of a Land Use Authority Decision:

An appeal of a Land Use Authority's decision shall clearly identify the alleged error in any order, requirement, decision, or determination made by the Land Use Authority in the administration or interpretation of this Ordinance. Only those decisions in which a Land Use Authority has applied the requirements of this Ordinance to a particular application, person, or parcel may be appealed to an

Appeal Authority.

Section 2807 – Condition Precedent to Judicial Review, Appeal Authority Duties:

- 1) As a condition precedent to judicial review, each adversely affected person shall timely and specifically challenge a Land Use Authority's decision, in accordance with the requirements of this Chapter.
- 2) An Appeal Authority shall:
 - a) Act in a quasi-judicial manner; and
 - b) Serve as the final arbiter of issues involving the interpretation or application of land use ordinances; and
 - c) May not entertain an appeal of a matter in which the Appeal Authority, or any participating member, had first acted as the Land Use Authority.
- 3) An Appeal Authority shall require an adversely affected party to present every theory of relief that it can raise in district court.
- 4) An Appeal Authority shall not require an adversely affected party to pursue duplicate or successive appeals before it or another Appeal Authority as a condition of the adversely affected party's duty to exhaust administrative remedies, as required by Section 2814 herein.

Section 2808—Application Required:

- 1) An application for an appeal of a decision of a Land Use Authority shall be made on the application, provided by the City.
- 2) An application for an appeal shall be determined complete by the Zoning Administrator, as provided by herein. For applications determined to be incomplete, the Zoning Administrator shall comply with the requirements of Section 1207, herein.

Section 2809—Meetings, Records, and Action of an Appeal Authority: Each Appeal Authority, as identified herein shall:

- 1) Notify each of its members of any meeting or hearing;
- 2) Provide each of its members with the same information and access to City resources as any other member;
- 3) Convene only if a quorum of its members is present; and
- 4) Act only upon the vote of a majority of its convened members.
- 5) After an appeal application is determined to be complete by the Zoning Administrator, as provided herein, the Zoning Administrator shall coordinate with the Appeal Authority staff to schedule the appeal application. The Development Services Director shall transmit to Appeal Authority all materials constituting the record of the decision of the Land Use Authority.
- 6) Following a written decision by the Appeal Authority, as provided by Section 2813, the staff of the Appeal Authority shall provide the applicant with a copy of the written decision.
- 7) A record of the decisions of the Appeal Authority shall be maintained in the office of the City Recorder, which shall constitute the record of the appeal.

Section 2810—Due process.

- 1) Each Appeal Authority, identified by this Chapter, shall conduct each appeal as provided herein.
- 2) Each Appeal Authority, identified herein, shall respect the due process rights of each of the

participants.

Section 2811—Burden of proof.

Any person bringing an appeal and alleging an error of a Land Use Authority's decision administering or interpreting this Ordinance has the burden of proving that the Land Use Authority erred.

Section 2812—Standard of Review for Appeals.

- 1) Each Appeal Authority identified by this Chapter shall hear and review all appeal matters “on the record,” including the review of all factual matters. Each Appeal Authority shall only consider the materials presented and originally before the Land Use Authority in making the decision that is the subject of an appeal.
- 2) The Appeal Authority, as identified by this Chapter, shall determine the correctness of a decision of the Land Use Authority in its interpretation and application of a land use ordinance.
- 3) Only those decisions in which a Land Use Authority has applied the requirements of this Ordinance to a particular application, person, or parcel may be appealed to an Appeal Authority.
- 4) An application for an appeal shall not be used to waive, modify, or amend any requirement, provision, or term of this Ordinance.

Section 2813—Final Decision.

A decision of each Appeal Authority, as identified herein, shall take effect on the date when the Appeal Authority, as applicable, issues a written decision, which shall constitute a final decision by the City in the matter.

Section 2814—District Court Review:

- 1) Required Time for Filing.
 - a) No person may challenge in district court a decision of a Land Use Authority until that person has exhausted all administrative remedies as provided by this Chapter and received a final decision from the Appeal Authority.
 - b) Any person adversely affected by a final decision made in the exercise of or in violation of the provisions of this chapter may file a petition for review of the decision with the district court within 30 days after the local land use decision is final.
- 2) Tolling of Time.
 - a) The required time for filing for District Court review shall be tolled from the date the any person files a request for arbitration of a constitutional taking issue with the property rights ombudsman, as provided by §63-34-13 U.C.A., until 30 days after:
 - i) The arbitrator issues a final award; or
 - ii) The property rights ombudsman issues a written statement under §63-34- 13(4)(b) U.C.A., declining to arbitrate or to appoint an arbitrator.
 - b) A tolling under this Section operates only as to the specific constitutional taking issue that is the subject of the request for arbitration filed with the property rights ombudsman by a property owner.
 - c) A request for arbitration filed with the property rights ombudsman after the time under Subsection (2)(a) to file a petition has expired does not affect the time to file a petition.
- 3) Standards Governing Court Review.
 - a) The Court shall:

- i) Presume that a decision, ordinance, or regulation made under the authority of Chapter 10-9a U.C.A. is valid; and
 - ii) Determine only whether or not the decision, ordinance, or regulation is arbitrary, capricious, or illegal.
 - b) A decision, ordinance, or regulation involving the exercise of legislative discretion is valid if the decision, ordinance, or regulation is reasonably debatable and not illegal.
 - c) A decision of a Land Use Authority or an Appeal Authority involving the exercise of administrative discretion is valid if the decision is supported by substantial evidence in the record and is not arbitrary, capricious, or illegal.
 - d) A determination of illegality requires a determination that the decision, ordinance, or regulation violates a law, statute, or ordinance in effect at the time the decision was made or the ordinance or regulation adopted.
 - e) The time requirements for the filing of a petition with District Court, as provided by this Section apply from the date on which the Land Use Authority takes final action on a land use application for any adversely affected third party, if the Land Use Authority conformed with the notice provisions of this Ordinance, as applicable, or for any person who had actual notice of the pending decision.
 - f) If the City has complied with the notice requirements, as provided by this Ordinance, a challenge to the enactment of this Ordinance or the enactment of the Roy City General Plan may not be filed with the District Court more than 30 days after the enactment.
 - g) A petition is barred unless it is filed within 30 days after the Appeal Authority's decision is final.
- 4) Record on Review.
- a) The Land Use Authority or Appeal Authority, as the case may be, shall transmit to District Court the record of its proceedings, including its minutes, findings, orders, and, if available, a true and correct transcript of its proceedings.
 - b) If the proceeding was tape-recorded, a transcript of that tape recording is a true and correct transcript for purposes of this Section.
 - c) If there is a record, the District Court's review is limited to the record provided by the Land Use Authority or Appeal Authority, as the case may be.
 - d) The court may not accept or consider any evidence outside the record of the Land Use Authority or Appeal Authority, as the case may be, unless that evidence was offered to the Land Use Authority or Appeal Authority, respectively, and the court determines that it was improperly excluded.
 - e) If there is no record, the court may call witnesses and take evidence.
 - f) The filing of a petition does not stay the decision of the Land Use Authority or authority Appeal Authority, as the case may be.
- 5) Staying of Decision.
- a) Before filing a petition under this Section or a request for mediation or arbitration of a constitutional taking issue under §63-34-13 U.C.A., the aggrieved party may petition the Appeal Authority to stay its decision.
 - b) Upon receipt of a petition to stay, the Appeal Authority may order its decision stayed pending District Court review if the Appeal Authority finds it to be in the best interest of the municipality.
 - c) After a petition is filed under this section or a request for mediation or arbitration of a constitutional taking issue is filed under §63-34-13 U.C.A., the petitioner may seek an injunction staying the Appeal Authority's decision.

Figure 28-1 – Appeal Authorities

