

§ 2-1-111 - BOARD OF ADJUSTMENT.

- (A) The Board of Adjustment is established as provided in Local Government Code Chapter 211 (*Municipal Zoning Authority*).
- (B) The board shall be composed of 11 members.
- (C) Each board member shall be appointed to serve a two-year term.
- (D) The council may appoint alternate board members to serve in the absence of regular members. An alternate member shall be appointed to serve a two-year term.
- (E) A regular or alternate board member may be removed by council for cause on a written charge after a public hearing.
- (F) The board shall:
  - (1) hear and decide a request for a variance from the requirements of Chapter 25-2 (*Zoning*), except as otherwise provided by the Code;
  - (2) hear and decide an appeal of an administrative action under Chapter 25-2 (*Zoning*);
  - (3) hear and decide a request for a variance from the requirements of airport zoning regulations under Section 241.034, Local Government Code;
  - (4) hear and decide a request for a special exception under Chapter 25-2 (*Zoning*); and
  - (5) perform other duties prescribed by ordinance or state law.
- (G) The board shall hold meetings at the call of the chairperson and at other times as requested by the board.
- (H) The chairperson, or the acting chairperson in the absence of the chairperson, may administer oaths and compel the attendance of witnesses.
- (I) Each case before the board must be heard by at least 75 percent of the board members.
- (J) The concurring vote of 75 percent of the board members is necessary to:
  - (1) reverse an order, requirement, decision, or determination of an administrative official;
  - (2) decide in favor of an applicant on a matter on which the board is required to pass under Chapter 25-2 (*Zoning*); or
  - (3) authorize a variation from the terms of Chapter 25-2 (*Zoning*).
- (K) The board shall prepare minutes of its proceedings. The minutes shall include the vote of each member on each item before the board and shall state if a member is absent or fails to vote on an item.

*Source: Ord. 20071129-011; Ord. 20080110-048; Ord. 20080618-030; Ord. 20110526-098; [Ord. No. 20141211-204, Pt. 14, 7-1-15](#).*

## ARTICLE 3. - PROCEDURES FOR APPEALS

### Division 1. - Reserved.<sup>[2]</sup>

#### Footnotes:

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**Editor's note**— Ord. No. [20170518-014](#) >, Pt. 4, effective May 29, 2017, repealed §§ 2-5-41—2-5-45, which pertained to public hearings. See Code Comparative Table for complete derivation.

§§ 2-5-41—2-5-45. - RESERVED.

### Division 2. - Appeals.

#### § 2-5-61 - GENERAL PROVISIONS FOR APPEALS.

- (A) Except as otherwise provided in the Code, including Subsection (B), this division applies to an appeal authorized under the Code. A provision regarding an appeal in another chapter of the Code prevails over this article to the extent of any conflict.
- (B) An appeal authorized under Title 25 (*Land Development*) shall be conducted as prescribed by Chapter 25-1, Article 7, Division 1 (*Appeals*).
- (C) Nothing in this division creates a right of appeal.

*Source: 1992 Code Section 2-2-61; Ord. 031204-9; Ord. 031211-11.*

#### § 2-5-62 - STANDING TO APPEAL.

A person has standing to appeal a decision if a provision of the Code identifies the decision as one that may be appealed by that person.

*Source: 1992 Code Section 2-2-62; Ord. 031204-9; Ord. 031211-11.*

#### § 2-5-63 - INITIATING AN APPEAL.

Except as otherwise provided in the Code, an interested party may initiate an appeal by filing a notice of appeal, including the basis of the appeal, with the city manager not later than:

- (1) the 14th day after the date of the decision of the city manager, or a board or commission; or
- (2) the 20th day after an administrative decision.

*Source: 1992 Code Section 2-2-63; Ord. 031204-9; Ord. 031211-11.*

#### § 2-5-64 - INFORMATION REQUIRED IN NOTICE OF APPEAL.

Except as otherwise provided in the Code, the notice of appeal must be on a form prescribed by the city manager and must include:

- (1) the name, address, and telephone number of the appellant;

- (2) if the appeal relates to an application, the name of the applicant, if the appellant is not the applicant;
- (3) the decision being appealed;
- (4) the date of the decision;
- (5) a description of the appellant's status as an interested party; and
- (6) the reasons the appellant believes the decision does not comply with the requirements of the Code.

*Source: 1992 Code Section 2-2-64; Ord. 031204-9; Ord. 031211-11.*

§ 2-5-65 - RESERVED.

**Editor's note**— Ord. No. [20170518-014](#)>, Pt. 5, effective May 29, 2017, repealed § 2-5-65, which pertained to conduct of public hearing on an appeal. See Code Comparative Table for complete derivation.

ARTICLE 6. - INTERESTED PARTIES, NOTICE, AND PUBLIC HEARING PROCEDURES.

Division 1. - Interested Parties and Notice.

§ 25-1-131 - INTERESTED PARTIES.

- (A) An interested party is a person who has an interest in a matter that is the subject of a public hearing or administrative decision. A person has an interest if the person:
- (1) is the applicant or the record owner of property that is the subject of a public hearing or administrative decision; or
  - (2) communicates an interest in a matter; and
    - (a) occupies a primary residence that is within 500 feet of the site of the proposed development;
    - (b) is the record owner of property within 500 feet of the site of the proposed development;
    - (c) is an officer of an environmental or neighborhood organization that has an interest in the site of the proposed development or whose declared boundaries are within 500 feet of the site of the proposed development; or
    - (d) has a utility account address located within 500 feet of the site of the proposed development, as shown in the City utility records on the date of the filing of the application.
- (B) A person communicates an interest in a matter that is the subject of a public hearing by:
- (1) delivering a written statement that generally identifies the issues of concern to the body conducting the hearing, either before or during the public hearing; or
  - (2) appearing and speaking for the record at the public hearing.
- (C) A person communicates an interest in a matter that is the subject of an administrative decision by delivering a written statement to the responsible director or by making telephone contact with the responsible director. The communication must:
- (1) generally identify the issues of concern;
  - (2) include the person's name, telephone phone number, and mailing address;
  - (3) be delivered before the earliest date on which action on the application may occur; and
  - (4) if the communication is by telephone, be confirmed in writing not later than seven days after the earliest date on which action on the application may occur.

Source: Section 13-1-240; Ord. 990225-70; Ord. 010329-18; Ord. 031211-11; Ord. 20080515-033; Ord. 20090521-062.

§ 25-1-132 - NOTICE OF PUBLIC HEARING.

- (A) For a notice required to be given under this subsection, the responsible director shall give notice of a public hearing before a board or commission by mailing notice not later than the 11th day before the date of the hearing to the:
- (1) applicant;
  - (2) notice owner of property located within 500 feet of the subject property;
  - (3) registered environmental or neighborhood organization whose declared boundaries are within 500 feet of the site of the proposed development;
  - (4) parties to an appeal; and

- (5) utility account addresses located within 500 feet of the site of the proposed development, as shown in the City utility records on the date of the filing of the application.
- (B) For a notice required to be given under this subsection, the responsible director shall give notice of a public hearing before the council by:
  - (1) publishing notice not later than the 16th day before the date of the public hearing; and
  - (2) mailing notice not later than the 16th day before the date of the hearing to the:
    - (a) applicant;
    - (b) notice owner of property located within 500 feet of the subject property;
    - (c) registered environmental or neighborhood organization whose declared boundaries are within 500 feet of the site of the proposed development;
    - (d) parties to an appeal; and
    - (e) utility account addresses located within 500 feet of the site of the proposed development, as shown in the City utility records on the date of the filing of the application.
- (C) For a notice required to be given under this subsection, the responsible director shall give notice of a public hearing before a board or commission or the council by:
  - (1) mailing notice to a neighborhood organization not later than the 11th day before the date of a hearing scheduled before a board or commission and not later than the 16th day before the date of a hearing scheduled before the council; and
  - (2) publishing notice not later than the 16th day before the date of a hearing before the council.
- (D) This subsection applies to public hearings on two or more matters related to the same property or development.
  - (1) One notice may be provided if the hearings are scheduled:
    - (a) on the same date before the same body; or
    - (b) before two or more bodies not later than the 45th day after the date of a notice.
  - (2) The responsible director shall provide notice not later than the date the earliest notice is required.
- (E) Notice provided under this section must:
  - (1) generally describe the subject matter of the public hearing;
  - (2) identify the applicant and the location of the subject property;
  - (3) identify the body holding the public hearing and the date, time, and place of the public hearing;
  - (4) if the decision of the body holding the public hearing may be appealed, describe the procedure and requirements for an appeal; and
  - (5) include the address and telephone number of the office from which additional information may be obtained.

Source: Section 13-1-200 and Section 13-1-202(b); Ord. 990225-70; Ord. 010329-18; Ord. 030828-65; Ord. 031211-11; Ord. 20080515-033; Ord. 20090521-062.

§ 25-1-133 - NOTICE OF APPLICATIONS AND ADMINISTRATIVE DECISIONS.

- (A) For notice required to be given under this subsection, the responsible director shall mail notice not later than the 14th day after the filing of an application to the:
  - (1) applicant;

- (2) notice owner of real property located within 500 feet of the subject property; and
  - (3) registered environmental or neighborhood organization whose declared boundaries are within 500 feet of the site of the proposed development; and
  - (4) utility account addresses located within 500 feet of the site of the proposed development, as shown in the City utility records on the date of the filing of the application.
- (B) For notice required to be given under this subsection, the responsible director shall mail notice not later than one day after an administrative decision to:
- (1) the record owner of the subject property; and
  - (2) interested parties.
- (C) Notice provided under this section must:
- (1) describe the general nature of the application;
  - (2) identify the applicant and the location of the site;
  - (3) generally describe the proposed development;
  - (4) identify the entity that may approve the application;
  - (5) state the earliest date that action under a decision may occur;
  - (6) describe the procedure and requirements for becoming an interested party;
  - (7) if the decision may be appealed, describe the procedure for an appeal; and
  - (8) include the address and telephone number of the accountable official from whom additional information may be obtained.
- (D) An accountable official may not make a decision on an application for which notice is required to be provided under this section earlier than the 14th day after the date the notice is issued. The responsible director may permit the decision to be made sooner.

Source: Section 13-1-201 and Section 13-1-202(c); Ord. 990225-70; Ord. 010329-18; Ord. 031211-11; Ord. 20080515-033; Ord. 20090521-062.

§ 25-1-134 - PROCEDURES AND REQUIREMENTS FOR NOTICE.

- (A) Published notice is effective on the date a notice is published in a newspaper of general circulation in the city.
- (B) Mailed notice is effective on the date a letter is deposited in a depository of the U.S. Post Office, postage paid, and addressed:
- (1) to an applicant, by mailing notice to the property owner or agent at the address shown on the application or on a written change of address form filed with the responsible director or building official;
  - (2) to a notice owner of real property, by mailing notice to the owner shown on the records of the county tax appraisal district;
  - (3) to a record owner of real property, by mailing notice to the owner at the street address of the property or, if the property does not have a street address, to the return address shown on the deed; and
  - (4) to a neighborhood organization, by mailing notice to the agent or officer of the organization at the mailing address specified in the City registration information.
- (C) Notice by certified mail, return receipt requested, is only required if prescribed in this title.

- (D) Notice by hand delivery may be substituted for notice by mail if the addressee provides a receipt of delivery.
- (E) When mailed notice to a notice owner is required:
  - (1) except as provided in Subsection (E)(2), the responsible director shall prepare the list of notice owners; or
  - (2) if the county tax appraisal district maintains ownership records on an automated data base that is not accessible by the City, the applicant shall provide a complete list of notice owners from information obtained from the tax appraisal district and shall certify its accuracy on a form provided by the responsible director.
- (F) The responsible director shall notify a neighborhood organization of:
  - (1) an application concerning property located completely or partially within the boundaries of the neighborhood organization; and
  - (2) a proposed amendment to the text of this title or the Comprehensive Plan.

Source: Section 13-1-202(a) and (b); Ord. 990225-70; Ord. 010329-18; Ord. 031211-11.

§ 25-1-135 - POSTING OF SIGNS.

- (A) The responsible director shall post a sign required by this title.
- (B) A sign must:
  - (1) specify the type of action pending, the file number, and the name and telephone number of the person to contact for additional information;
  - (2) be visible from the street; and
  - (3) be spaced not more than 200 feet apart from another sign for the same application.
- (C) If the street frontage of the subject property is less than 200 feet in length, only one sign is required. Not more than three signs are required regardless of the length of the street frontage.
- (D) A person may not remove a sign before the earliest date on which action may be taken on the application.
- (E) If requested by an applicant, the responsible director may allow the applicant to post a sign. The applicant shall:
  - (1) place a sign on property in accordance with this section;
  - (2) provide verification of the placement of the sign in the manner prescribed by the responsible director; and
  - (3) respond to a complaint not later than 24 hours after receiving the complaint.

Source: 13-1-202(d); Ord. 990225-70; Ord. 010329-18; Ord. 031211-11.

Division 2. - Public Hearing Procedures.

§ 25-1-151 - CONDUCT OF PUBLIC HEARINGS.

- (A) A person shall register to speak at a public hearing with the presiding officer of the body conducting the hearing in the manner provided by the presiding officer.

- (B) A person who registers before the hearing may speak at the time provided in Subsection (E). A person who registers after the beginning of a hearing may speak before the close of the hearing with the permission of the presiding officer.
- (C) The speaker registration shall identify the name and mailing address of the speaker and the matter to be addressed.
- (D) A speaker shall state the speaker's name at the beginning of the speaker's presentation when addressing the body conducting the hearing.
- (E) Except as provided in Article 7 (*Appeals, Variances, Special Exceptions, and Adjustments*), a public hearing shall proceed as follows:
  - (1) presentation of a report by City staff;
  - (2) presentation by the applicant, for a hearing on an application;
  - (3) presentation by interested parties supporting the application or proposal;
  - (4) presentation by interested parties opposing the application or proposal;
  - (5) rebuttal by the applicant, for a hearing on an application.
- (F) A member of the body conducting the public hearing may ask questions of a person at any time during the hearing. With the approval of the presiding officer, a person may ask a question of another person.
- (G) The body conducting a public hearing may limit a speaker's time to address the body. The presiding officer may request that a speaker eliminate repetitious or irrelevant testimony.

Source: Section 13-1-241; Ord. 990225-70; Ord. 031211-11.

§ 25-1-152 - POSTPONEMENT AND CONTINUATION OF PUBLIC HEARINGS.

- (A) The body conducting a public hearing may:
  - (1) postpone a public hearing by announcing the postponement on the date and at the time and location stated in the notice for the scheduled hearing; and
  - (2) continue a public hearing to a later date by announcing the continuance after the hearing begins.
- (B) If the body conducting a public hearing postpones or continues a hearing to a specific date and time not later than 60 days after the date on which the postponement or continuance is announced, the announcement is adequate notice of the next hearing and additional notice is not required.
- (C) When a body conducting a public hearing postpones or continues a hearing, the next hearing shall be held at the same location as the original hearing unless a change in location is announced at the time of the postponement or continuance.
- (D) If a body does not specify a hearing date and time at the time that a postponement or continuance is announced, notice of the next hearing shall be provided in the manner required for the original hearing.
- (E) The body conducting a public hearing regarding a preliminary plan or plat may not postpone or continue the hearing, unless it can do so without exceeding the time limitations in Section 25-4-32 (*Action Within 30 Days*) and Section 25-4-39 (*Action Within 15 Days after Applicant Response*).

Source: Section 13-1-203; Ord. 990225-70; Ord. 031211-11; Ord. No. [20190822-117](#), Pt. 13, 9-1-19.

§ 25-1-153 - CHANGE OF LOCATION OF PUBLIC HEARINGS.

- (A) The presiding officer of the body conducting a public hearing may change the location of a hearing for good cause.



- (B) The presiding officer shall post a sign notifying the public of the change of location. The sign must:
  - (1) be prominently displayed at the original location of the hearing on the date and at the time of the original hearing;
  - (2) identify the hearing being relocated;
  - (3) state the time, date, and new location of the hearing; and
  - (4) provided an explanation for relocation.
- (C) The hearing shall be postponed a sufficient period of time to provide a reasonable opportunity for interested parties to travel from the original location to the new location of the hearing.

Source: Section 13-1-203; Ord. 990225-70; Ord. 031211-11.

§ 25-1-154 - RECORD OF PUBLIC HEARING.

- (A) The body conducting a public hearing shall record each public hearing on audio tape or video tape.
- (B) The official record of a public hearing includes:
  - (1) the audio tape or video tape recording of the public hearing;
  - (2) written staff reports; and
  - (3) documentary evidence submitted during a public hearing.
- (C) A person may review the official record of a public hearing.
- (D) The custodian of the records of the body conducting the hearing may establish rules regarding the time and location for review of the record.

Source: Section 13-1-242; Ord. 990225-70; Ord. 031211-11.

ARTICLE 7. - APPEALS, VARIANCES, SPECIAL EXCEPTIONS, AND ADJUSTMENTS.

Division 1. - Appeals.

§ 25-1-181 - STANDING TO APPEAL.

- (A) A person has standing to appeal a decision if:
- (1) the person is an interested party; and
  - (2) a provision of this title identifies the decision as one that may be appealed by that person.
- (B) A body holding a public hearing on an appeal shall determine whether a person has standing to appeal the decision.

Source: Section 13-1-250; Ord. 990225-70; Ord. 030828-65; Ord. 031211-11.

§ 25-1-182 - INITIATING AN APPEAL.

An interested party may initiate an appeal by filing a notice of appeal with the responsible director or building official, as applicable, not later than:

- (1) the 14th day after the date of the decision of a board or commission; or
- (2) the 20th day after an administrative decision.

Source: Section 13-1-251(a); Ord. 990225-70; Ord. 031211-11.

§ 25-1-183 - INFORMATION REQUIRED IN NOTICE OF APPEAL.

The notice of appeal must be on a form prescribed by the responsible director or building official and must include:

- (1) the name, address, and telephone number of the appellant;
- (2) the name of the applicant, if the appellant is not the applicant;
- (3) the decision being appealed;
- (4) the date of the decision;
- (5) a description of the appellant's status as an interested party; and
- (6) the reasons the appellant believes the decision does not comply with the requirements of this title.

Source: Section 13-1-251(a); Ord. 990225-70; Ord. 010329-18; Ord. 031211-11.

§ 25-1-184 - NOTICE TO APPLICANT CONCERNING INTERESTED PARTY.

The responsible director shall notify an applicant in writing if there is an interested party to an administrative decision.

Source: Section 13-1-251(b); Ord. 990225-70; Ord. 010329-18; Ord. 031211-11.

§ 25-1-185 - NOTICE TO PRESIDING OFFICER AND APPLICANT.

On receipt of a notice of appeal or an amendment of a notice, the responsible director or building official shall promptly notify the presiding officer of the body to which the appeal is made and, if the applicant is not the appellant, the applicant.

Source: Section 3-1-253(a); Ord. 990225-70; Ord. 010329-18; Ord. 031211-11.

§ 25-1-186 - MEETING TO RESOLVE ISSUES.

If requested by an interested party, the responsible director shall schedule a meeting to discuss and attempt to resolve the issues raised by an appeal of an administrative decision. The responsible director shall notify all interested parties of a meeting scheduled under this section. All interested parties may attend the meeting.

Source: Section 13-1-251(b); Ord. 990225-70; Ord. 010329-18; Ord. 031211-11.

§ 25-1-187 - DEVELOPMENT NOT PERMITTED DURING APPEAL.

- (A) Development under a site plan may not occur during the time period during which an appeal of the site plan may be initiated.
- (B) An approved plan or permit is suspended on the timely filing of an appeal of the plan or permit.
- (C) Development affected by an appeal may not occur pending the final disposition of the appeal.

Source: Section 13-1-252; Ord. 990225-70; Ord. 031211-11.

§ 25-1-188 - SCHEDULING OF PUBLIC HEARING.

A public hearing on an appeal shall be scheduled for the first available meeting for which notice of the hearing can be timely provided.

Source: Section 13-1-253(b); Ord. 990225-70; Ord. 031211-11.

§ 25-1-189 - NOTICE OF PUBLIC HEARING.

- (A) The responsible director shall give notice under Section 25-1-132(B) (*Notice of Public Hearing*) of a public hearing on an appeal to the council.
- (B) Except as provided in Subsection (C), the responsible director shall give notice under Section 25-1-132(A) (*Notice of Public Hearing*) of a public hearing on an appeal to a board or commission.
- (C) The responsible director shall give notice under Chapter 25-12 (*Technical Codes*) and applicable state law of a public hearing on an appeal to a board or commission created by Chapter 25-12 (*Technical Codes*) or having jurisdiction over regulations contained in Chapter 25-12 (*Technical Codes*).

Source: Section 13-1-253(b); Ord. 990225-70; Ord. 010329-18; Ord. 031211-11.

§ 25-1-190 - APPELLATE BURDEN.

The appellant must establish that the decision being appealed is contrary to applicable law or regulations.

Source: Section 13-1-254; Ord. 990225-70; Ord. 031211-11.

§ 25-1-191 - CONDUCT OF PUBLIC HEARING.

- (A) Before opening a hearing, a body hearing an appeal shall decide preliminary issues raised by the parties, including whether to postpone or continue the hearing and whether the appellant has standing to appeal.
- (B) A public hearing on an appeal shall proceed in the following order:
  - (1) a report from City staff;
  - (2) a presentation by the appellant;
  - (3) comment by persons supporting the appeal;
  - (4) comment by persons opposing the appeal; and
  - (5) a rebuttal by the appellant.

Source: Section 13-1-255; Ord. 990225-70; Ord. 031211-11.

§ 25-1-192 - POWER TO ACT ON APPEAL.

A body hearing an appeal may, in accordance with the requirements of this title, exercise the power of the official or body whose decision is appealed. A decision may be upheld, modified, or reversed.

Source: Section 13-1-256; Ord. 990225-70; Ord. 031211-11.

Division 2. - Administrative Decisions.

§ 25-1-197 - USE DETERMINATIONS.

- (A) This section applies to a formal determination by the director under Section 25-2-2 (*Determination of Use Classification*) regarding the appropriate classification of a land use that is not specifically classified under Chapter 25-2, Subchapter A (*Zoning Uses*).
- (B) Except as otherwise provided by this section, a use determination may be requested at any time by filing an application on a form provided by the director and by paying a fee established by separate ordinance.
- (C) In addition to any additional information required by the director, an application for a use determination must:
  - (1) state whether the determination is requested in connection with a specific project, and if so, reference the application number;
  - (2) if the determination is not related to a specific development application, state whether it is requested for a particular address;
  - (3) describe the land use(s) for which a determination is sought; and
  - (4) include any information that the applicant requests the director to consider in making the use determination, including but not limited to an explanation of the similarities, if any, of the use to other classified uses.
- (D) A use determination for a project that is subject to a pending development application is a "project use determination" and is subject to the requirements of this subsection.

- (1) The director shall determine whether a site plan application requires a use determination under Section 25-2-2 (*Determination of Use Classification*) within the applicable review period required by Section 25-5-114 (*Time Periods for Determination; Notice*) or Section 25-5-143 (*Director's Report*).
  - (2) If the director determines that a use determination is required, the applicant must submit a request for a project use determination under Subsection (B) before the application expires.
  - (3) Within 14 days after receiving a request for a project use determination, the director shall issue a determination under Subsection (F) of this section and provide notice of the determination under Section 25-1-133(B) (*Notice of Applications and Administrative Decisions*).
  - (4) Any person entitled to notice of a use determination under Section 25-1-133(B) (*Notice of Applications and Administrative Decisions*) may appeal the decision to the Board of Adjustment no later than 14 days after notice is provided.
- (E) A request for a use determination that is not associated with a pending development application is a "non-project use determination" and is subject to the requirements of this subsection.
- (1) A non-project use determination may be requested by anyone, at any time, for a use that requires a determination under Section 25-2-2 (*Use Determination*).
  - (2) In addition to the requirements in Subsection (C) of this section, an application for a non-project use determination must include:
    - (a) any information requested by the director regarding the nature of the use for which a determination is requested, including the size, scale, or intensity of the use; and
    - (b) a specific address, if the applicant intends to rely on the determination in connection with a development application.
  - (3) Within 14 days after receiving a request for a non-project use determination, the director shall provide notice of the determination:
    - (a) to the applicant and to registered environmental and neighborhood organizations, if the determination is not associated with a specific address; or
    - (b) to all parties entitled to notice under Section 25-1-133(A) (*Notice of Applications and Administrative Decisions*), if the determination is associated with a particular address.
  - (4) Any person entitled to notice of a non-project use determination under this subsection may appeal the determination to the Board of Adjustment within 14 days.
- (F) The director may not make a decision on an application that is dependent upon a use determination:
- (1) until after the period for appealing the use determination to the Board of Adjustment has run;
  - (2) if the use determination is appealed to the Board of Adjustment, until after the board has decided the appeal; or
  - (3) if a decision of the Board of Adjustment is appealed to district court, until after the district court has decided the appeal.
- (G) Unless a use determination is reversed or modified by the Board of Adjustment, the director shall follow the determination in reviewing subsequent requests for a determination on the same or substantially similar land uses.
- (H) A use determination is not subject to further notification or appeal under this section if it has been considered by the Board of Adjustment in response to an appeal or notice of the determination was previously provided under this section and no appeal was filed.
- (I) A use determination issued by the director under this section must:
- (1) include all information required under Section 25-1-133(C) (*Notice of Applications and Administrative Decisions*);

- (2) state the director's determination regarding how the use is classified under existing use regulations;
  - (3) explain the factors considered by the director in making the determination under Section 25-2-2 (*Determination of Use Classification*), including the similarity of a use to other classified land uses; and
  - (4) describe any special characteristics of the use determination, including limitations on the size, scale, location or intensity, of the use.
- (J) A use determination issued under this section may not be used to render decisions interpreting site development regulations.

Source: Ord. 20120426-122.

### Division 3. - Variances and Special Exceptions.

#### § 25-1-211 - APPLICATION FOR A VARIANCE OR SPECIAL EXCEPTION.

- (A) A person may file an application for a variance or a special exception with:
- (1) the building official for a variance or special exception granted by the Board of Adjustment; or
  - (2) the responsible director for a variance granted by the Land Use Commission or the council.
- (B) An application may include a request for:
- (1) variances or special exceptions from regulations applicable to the same site; or
  - (2) similar variances or special exceptions on two or more adjacent parcels with similar characteristics.
- (C) The building official or responsible director may require that the applicant provide information that the building official or responsible director determines is necessary to evaluate the variance or special exception request.

Source: Section 13-1-280; Ord. 990225-70; Ord. 010329-18; Ord. 010607-8; Ord. 031211-11; Ord. 20110526-098.

#### § 25-1-212 - REPORT.

- (A) For an application for a variance or special exception requiring consideration by the Board of Adjustment, the building official shall prepare and file a report with the board not later than the 11th day before the public hearing.
- (B) For an application for a variance requiring consideration by the Land Use Commission, the responsible director shall prepare and file a report with the Land Use Commission not later than the 11th day before the public hearing.
- (C) The building official shall make a report described in this section available to the public when the report is filed with the Board of Adjustment or Land Use Commission.
- (D) This subsection applies to an application for a zoning variance or special exception for property zoned as a family residence (SF-3) or more restrictive district.
- (1) The building official shall waive the application fee if the official determines that the variance or special exception is supported by the notice owners of 80 percent or more of the property located within 300 feet of the property for which the variance is sought.
  - (2) An applicant who seeks a fee waiver must:

- (a) obtain the signature of each notice owner who supports the variance or special exception, on a form provided by the building official; and
- (b) submit the completed form to the building official.

Source: Section 13-1-281 and 13-1-282; Ord. 990225-70; Ord. 010329-18; Ord. 010607-8; Ord. 031211-11; Ord. 20080110-106; Ord. 20110526-098.

§ 25-1-213 - REVIEW BY THE ENVIRONMENTAL BOARD.

- (A) This section applies to an application for a variance from the requirements of Chapter 25-8, Subchapter A (*Water Quality*).
- (B) The Environmental Board shall consider an application for a variance and forward its recommendation to the Land Use Commission.
- (C) The Land Use Commission shall consider the Environmental Board's recommendation before acting on a variance.

Source: Section 13-1-283(b); Ord. 990225-70; Ord. 010607-8; Ord. 031211-11.

§ 25-1-214 - PUBLIC HEARING AND NOTICE.

- (A) This subsection does not apply to a preliminary plan, plat, or subdivision construction plan. For all other development applications:
  - (1) The Board of Adjustment or Land Use Commission, as applicable, shall hold a public hearing on an application for a variance or special exception not later than the 45th day after the date the application is filed.
  - (2) The building official or responsible director, as applicable, shall give notice under Section 25-1-132(A) (*Notice of Public Hearing*) of a public hearing on an application for a variance or special exception, and, for a variance or special exception heard by the Board of Adjustment, by posting one or more signs.
- (B) For an application to replat without vacation of the preceding plat, the director shall give notice under Section 25-1-132(B) (*Notice of Public Hearing*) if:
  - (1) During the preceding five years any of the area to be platted was limited by an interim or permanent zoning classification to residential use for not more than two residential units per lot; or
  - (2) Any lot in the preceding plan was limited by deed restriction to residential use for not more than two residential units per lot.

Source: Section 13-1-283(a); Ord. 990225-70; Ord. 010329-18; Ord. 010607-8; Ord. 031211-11; Ord. 20110526-098; Ord. No. [20190822-117](#), Pt. 14, 9-1-19.

§ 25-1-215 - ACTION ON AN APPLICATION.

- (A) Except as otherwise provided in this chapter, the Board of Adjustment or the Land Use Commission shall act on an application for a variance or special exception not later than the next meeting after the public hearing is closed.
- (B) The Board of Adjustment or the Land Use Commission may:
  - (1) approve an application for a variance;

- (2) approve an application for a variance with modifications; or
- (3) deny an application for a variance.
- (C) The Board of Adjustment or the Land Use Commission may require that a variance be:
  - (1) revocable;
  - (2) effective for a specified time period; or
  - (3) subject to one or more conditions.
- (D) The Board of Adjustment may act on a request for a special exception in the manner provided for variances under Subsections (B) and (C) of this section.

Source: Section 13-1-284; Ord. 990225-70; Ord. 010607-8; Ord. 031211-11; Ord. 20110526-098.

§ 25-1-216 - EFFECTIVE DATE OF VARIANCE OR SPECIAL EXCEPTION.

- (A) Except as provided in Subsection (B), a decision on a variance or special exception is effective immediately.
- (B) If a variance or special exception is appealable, a decision on the variance is effective:
  - (1) except as provided in Subsection (B)(2), at the expiration of the time period during which an appeal may be filed; or
  - (2) if a notice of appeal is filed, when a final decision on the appeal is made.

Source: Section 13-1-285; Ord. 990225-70; Ord. 031211-11; Ord. 20110526-098.

§ 25-1-217 - EXPIRATION OF VARIANCE OR SPECIAL EXCEPTION.

- (A) Except as provided in Subsection (B), a variance or special exception expires:
  - (1) except as provided in Subsection (A)(2), one year after the effective date of the variance or special exception; or
  - (2) on the date established as a condition of approval.
- (B) A variance or special exception expires on the date an approved plan or permit expires if:
  - (1) an application for approval of a plan or permit is submitted before a variance or special exception expires under Subsection (A); or
  - (2) the variance or special exception is granted in association with the approved plan or permit.

Source: Section 13-1-286; Ord. 990225-70; Ord. 031211-11; Ord. 20110526-098.

§ 25-1-218 - RESTRICTION ON SIMILAR APPLICATIONS.

If an application for a variance or special exception is denied or if a variance or special exception is revoked, a person may not file an application for the same or a similar variance or special exception on the same or substantially the same site for a period of one year from the date of denial or revocation.

Source: Section 13-1-287; Ord. 990225-70; Ord. 031211-11; Ord. 20110526-098.



Footnotes:

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**Editor's note—** [Ord. No. 20140612-084, Pt. 4, effective June 23, 2014](#), repealed Division 4, §§ 25-1-231—25-1-234, which pertained to special exceptions. See References to Ordinances for complete derivation. Subsequently, Division 5 was renumbered as Division 4.

§ 25-1-251 - APPLICATION FOR ADJUSTMENT.

- (A) An application for an adjustment under Chapter 25-8, Subchapter A (*Water Quality*) may be considered only in connection with the review of:
- (1) a site plan;
  - (2) a subdivision; or
  - (3) other specific development project or proposal.
- (B) An applicant may file an application for an adjustment with the director.
- (C) An application for an adjustment must be on a form prescribed by the director and must include:
- (1) the names and addresses of the applicant and the owner;
  - (2) the address and legal description of the property;
  - (3) proof that the applicant is either the record owner or the record owner's agent;
  - (4) identification of the section of Chapter 25-8, Subchapter A (*Water Quality*) that, as applied to the development project or proposal, the applicant claims violates the United States Constitution, the Texas Constitution, or federal or state statute, and the provisions violated;
  - (5) a statement of the factual basis for applicant's claims;
  - (6) a legal brief supporting applicant's claims; and
  - (7) a description of the adjustment requested, and an explanation of how the adjustment is the minimum required to comply with the conflicting law and provides maximum protection of water quality.

Source: Section 13-1-304; Ord. 990225-70; Ord. 031211-11; Ord. 20131017-046.

§ 25-1-252 - CONSIDERATION OF APPLICATION FOR ADJUSTMENT.

This section prescribes the order of process for an application for adjustment.

- (1) The Law Department shall review an application for adjustment and advise the city manager.
- (2) The city manager shall present the application and the city manager's recommendation to the council.
- (3) The council shall determine whether application of the identified section of Chapter 25-8, Subchapter A (*Water Quality*) to the applicant's development project or proposal violates the United States Constitution, the Texas Constitution, or federal or state statute. An affirmative determination requires a three-quarters vote of the city council. If the council does not make an affirmative determination, the application is denied.
- (4) This subsection applies if the council makes an affirmative determination under Subsection (3).

- (a) The Watershed Protection Department shall review the application and advise the city manager.
- (b) The city manager shall present the application and the city manager's recommendation to the council at a public hearing.
- (c) After a public hearing, the city council shall:
  - (i) determine the minimum adjustment required to comply with the conflicting law and provide maximum protection of water quality; and
  - (ii) grant the adjustment.

Source: Section 13-1-305; Ord. 990225-70; Ord. 010329-18; Ord. 031211-11; Ord. 20131017-046.