

CHAPTER 10

APPEALS

SECTION:

- 9-10-1: General Provisions
- 9-10-2: Administrative Appeals
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- 9-10-4: City Council Appeals
- 9-10-5: Request For Mediation By Affected Persons

9-10-1: **GENERAL PROVISIONS:**

- A. Any Decision Appealable: Any decision may be appealed in accordance with Idaho Code and procedures established herein.
- B. Filing Appeal; Fee: All appeals must be written, accompanied by a fee, as set forth by resolution of the city council, in the city clerk's office, and submitted to the administrator prior to the deadlines set forth herein. If the deadline falls on a weekend or holiday, the appeal period is automatically extended to the next workday. Each appeal must clearly state the name, address and phone number of the person or organization appealing and the specific issues, items or conditions that are being appealed and state the error of procedure or law which forms the basis of the appeal.
- C. Review; Council Decision: After review following a public hearing or not, at the council's discretion, the council may grant, amend, sustain or deny a permit; or delay such a decision for up to one hundred twenty (120) days, or, upon finding that special conditions warrant, for up to two hundred seventy (270) days for further study or hearing. (Ord. 426, 7-8-2002)

9-10-2: **ADMINISTRATIVE APPEALS:**

- A. Appeal From Decision Of Administrator: Decisions of the administrator regarding interpretation of this title may be appealed to the

planning and zoning commission by any affected person aggrieved by such decision, specifying the grounds upon which the appeal is being taken.

- B. Public Hearing: The commission shall hold a public hearing on appeals from decisions of the administrator following the date the notice of appeal was filed.
- C. Publication Of Notice Of Appeal: The commission shall publish a notice of the appeal, with the time, date of the hearing, in a newspaper of general circulation in the city once, at least fifteen (15) days before the date of the public hearing.
- D. Written Decision Of Commission: The commission shall, within thirty (30) days following the hearing, issue a written decision affirming, reversing or modifying the administrator's decision. The written decision shall contain the reasons for such a decision.
- E. Appeal To City Council: The commission decision is final unless appealed to the city council. (Ord. 426, 7-8-2002)

9-10-3: **COMMISSION APPEALS:**

- A. Appeal To City Council: Any decision of the commission may be appealed to the city council by the applicant, any affected person or the administrator. The appeal shall be filed with the administrator before five o'clock (5:00) P.M. of the fourteenth calendar day after the written decision or determination of the commission has been made.
- B. Procedural Requirements: The administrator shall ascertain that the procedural requirements have been met and notify the city council of the appeal.
- C. Placement On Agenda: The clerk, upon notice of an appeal of a decision by the commission, shall set the item on the agenda of the city council at the earliest possible regular meeting of the city council.
- D. Public Hearing: If the city council requests a public hearing, the administrator shall follow the notification procedures outlined in chapter 11 of this title.

- E. Pertinent Information: All pertinent information in the planning and zoning file shall be forwarded to the city council for review.
- F. Council Action: The city council may act on the record and hold a public hearing to review the commission proceedings and decisions and may obtain additional information from the administrator, the applicant, the appellant, or the public.
- G. Council Requests Public Hearing; Decision: If the city council requests a public hearing, the same requirements of notice as for the original public hearing before the commission shall be followed. The city council may sustain, amend, modify or delay the decision of the commission for up to one hundred twenty (120) days, or, upon finding that special conditions warrant, for up to two hundred seventy (270) days for further study or hearing. The decision of the city council is final and need not be referred back to the commission, except the city council may elect to refer the matter to the commission with specific instructions. (Ord. 426, 7-8-2002)

9-10-4: **CITY COUNCIL APPEALS:** An affected person aggrieved by a decision of the city council may, within twenty eight (28) days after all remedies have been exhausted under local ordinances, seek judicial review as provided in Idaho Code. (Ord. 426, 7-8-2002)

9-10-5: **REQUEST FOR MEDIATION BY AFFECTED PERSONS:** Mediation is a process available to a citizen who has an objection with a planning and zoning related permit, approval, or denial. In an effort to promote resolution of potentially time consuming and divisive land use matters, the city council will consider mediation. The process for mediation is as follows:

- A. Application For Mediation: Mediation must be requested, in writing, by any applicant or affected person or by the mayor, department head, council or commission member or member of the governing board affected by any decision of the planning and zoning commission or city council at any time prior to filing of a lawsuit with the district court.
- B. Forms: The application for mediation must be submitted on forms provided by the city within fourteen (14) days of the final decision as evidenced by the written decision. The application shall indicate why the applicant is requesting mediation and what the applicant hopes to accomplish by mediation.

- C. Notice Of Willingness To Enter Mediation: The city council shall notify the applicant within twenty one (21) days if it is willing to enter into mediation with the applicant.
- D. Mediation; Compensation Of Mediator: The applicant and any person(s) objecting to the application made the basis of a mediation application shall participate in at least one mediation session if mediation is requested by either the planning and zoning commission or by the city council. The city council shall select the mediator and shall pay the expense of mediation for the first meeting among mediating parties. Compensation of the mediator shall be determined among each party participating in the mediation prior to the conclusion of the first mediation session.
- E. Right To Decline: Unless such parties participating in the first mediation session have been directed to participate in mediation by the governing board, an applicant may decline to participate in mediation that has been requested by an affected person, and an affected person may decline to participate in a mediation requested by the applicant.
- F. Public Hearing: A noticed public hearing shall be held before city council where a proposed resolution through mediation occurs following a final decision on an application made on the basis of such mediation. Notification procedures are outlined in chapter 11 of this title.
- G. Process Not Public Or Part Of Official Record: The mediation process itself shall not be public or part of the official record regarding consideration of the application upon which the mediation is based.
- H. Time Periods For Appeal To Court: The time periods for appeal to court shall be tolled upon request for mediation and until:
1. Denial of the request to mediate, or
 2. At least one mediation session has been held, and
 - a. Any party states, in writing, that no further participation by that party is desired, or
 - b. Where no mediation session is scheduled for at least twenty eight (28) days from the date of such a request, or

c. Where the city council acts on a request for mediation.

- I. Final Action By Council: Final action by the city council may: 1) modify, 2) reverse, 3) add additional conditions, or 4) reinstate the original action taken by the city council. (Ord. 426, 7-8-2002)