

**A RESOLUTION OF THE CITY OF COMMERCE CITY ADOPTING RULES OF  
PROCEDURE FOR APPEALS OF A DECISION BY THE COMMUNITY  
DEVELOPMENT DIRECTOR**

**NO. 2022-61**

WHEREAS, the Land Development Code (the "LDC") of the City of Commerce City (the "City") establishes the general procedure for appeals of a decision made by the Community Development Director (the "Director");

WHEREAS, Article III Division 4 § 21-3425 of the LDC provides that the Planning Commission makes a recommendation to the City Council and the City Council makes the final decision on appeals of the Director's decision;

WHEREAS, the LDC does not provide for rules of procedure for the appeal hearing and specifically authorizes the appellate body to adopt rules of procedure; and

WHEREAS, the Planning Commission and City Council find it necessary for the consistent administration of appeals of the Director's decision to adopt rules of procedures for such appeals.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COMMERCE CITY, COLORADO, AS FOLLOWS:

**SECTION 1. Findings.** The recitals to this resolution are incorporated as findings of the City Council. This resolution is found to be necessary for the preservation of the public health, safety, and welfare and in the public interest.

**SECTION 2. Rules of Procedure.** The following rules of procedure shall apply to hearings held by the Planning Commission and City Council on appeals of a decision made by the Community Development Director (the "Director").

- a) **General Process.** Article III Division 4 of the Land Development Code (the "LDC") provides the general process for appeals of a decision made by the Director. Nothing in these rules of procedure shall be construed to amend or alter any provision in the LDC. In the case of a conflict, the provisions of the LDC shall apply.
- b) **Staff Report.** City Staff shall prepare a Staff Report detailing the application and decision. Such Staff Report shall be provided to both parties at least seven days prior to any scheduled hearing on the matter and considered as part of the official record.
- c) **Appellant's Request for Appeal.** The appellants written request for an appeal shall be considered as part of the official record.
- d) **Appeal.** Appeal proceedings shall be held with the Planning Commission and City Council in conformance with the LDC, and shall not be considered a "public hearing" within the meaning of any City Council Policies or

Planning Commission Rules of Procedure, but instead shall be considered special appellate proceedings governed by this Resolution.

- e) **Public Comment and Witness Testimony.** No public comment or witness testimony shall be heard at the hearings, except as provided in subsections f) and h) below.
- f) **Presentations.** The appellant and City Staff, or their legal representative, shall each be given 10 minutes to present, beginning with Staff. If the applicant is different from the appellant, the applicant, or their legal representative, shall be given 10 minutes to present at the outset of the presentations. No time shall be reserved for rebuttal in any case.
- g) **Evidence Presented.** Evidence presented shall be limited to the information contained in the official record of the action as forwarded to each party by the Director and as defined in the LDC. No other evidence shall be considered in the Planning Commission recommendation or the City Council decision.
- h) **Deliberation.** After the close of each party's presentation, the appellate body shall deliberate and may ask either party to come forward and elaborate on any relevant matter to the decision.
- i) **Decision.** The appellate body shall review the application *de novo*. The Planning Commission shall make a recommendation to the City Council based upon the relevant approval criteria for the application. The City Council shall affirm, affirm with conditions, or deny the appeal based upon the relevant approval criteria.

**SECTION 3. Severability.** If any clause, sentence, paragraph, or part of this resolution or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect the remaining provisions of this resolution.

RESOLVED AND PASSED THIS 16TH DAY OF MAY 2022.

CITY OF COMMERCE CITY, COLORADO

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Benjamin A. Huseman, Mayor

ATTEST

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Dylan A. Gibson, City Clerk