



STAFF REPORT

Report To: Board of Supervisors **Meeting Date:** June 16, 2022

Staff Contact: Jason D. Woodbury, District Attorney

Agenda Title: For Possible Action: Discussion and possible action to adopt, on second reading, Bill No. 106, a proposed ordinance establishing various provisions governing administrative appeals related to land use and zoning. (Jason D. Woodbury, jwoodbury@carson.org)

Staff Summary: This is the second reading of a proposed ordinance which, if enacted, will establish various provisions governing administrative appeals related to land use and zoning in the Carson City Municipal Code ("CCMC"). Pursuant to Nevada Revised Statutes ("NRS") Chapter 237, a business impact statement was not required to be prepared with this ordinance.

Agenda Action: Ordinance - Second Reading **Time Requested:** 10 minutes

Proposed Motion

I move to adopt, on second reading, Bill No. 106, Ordinance No. _____.

Board's Strategic Goal

Efficient Government

Previous Action

May 5, 2022 - The Board of Supervisors considered an initial draft of this proposed ordinance on first reading and requested the District Attorney's Office to revise certain provisions of the draft for reintroduction on first reading at a later date.

May 19, 2022 - The Board of Supervisors introduced, on first reading, a revised draft of the proposed ordinance incorporating the various changes discussed at the May 5, 2022 meeting.

Background/Issues & Analysis

This proposed ordinance establishes new provisions and revises existing provisions of CCMC governing administrative appeals related to land use and zoning. Pursuant to NRS 278.3195, Carson City is required to adopt an ordinance providing for any person who is aggrieved by a decision of the Planning Commission, hearing examiner or any other person appointed or employed by Carson City who is authorized to make decisions regarding the use of land, to appeal the decision to the Board of Supervisors. Provisions governing such administrative appeals in Carson City were adopted in 2011 and are codified in Title 18 of CCMC.

While the existing provisions of CCMC relating to administrative appeals from land use decisions fully satisfy all state law requirements, this proposed ordinance resets - for the benefit of the public and without altering the original intent of CCMC as ascertained through a plain reading of the existing ordinance language - the

organizational structure of the relevant CCMC appeal provisions, and also updates language for legal clarity, technical precision and textual consistency with current legislative drafting style and convention.

In addition, for consideration by the Board of Supervisors, this proposed ordinance incorporates the following substantive changes which are intended to foster the public trust by increasing governmental transparency through procedural exactness in the appeal process: (1) a requirement for the submission of a standardized form, to be prescribed by the Community Development Director, for the filing of an appeal; (2) provisions for amending an incomplete or deficient form and the effect of resubmission on timing for an appeal; (3) the express authorization for the consolidation of appeals; (4) the standard of review for appeals; and (5) the criteria pursuant to which a person is deemed to be a person aggrieved by a decision for the purpose of establishing legal standing. See, e.g., City of Las Vegas v. Eighth Judicial Dist. Ct., 122 Nev. 1197, 1206 (2006) (explaining that in counties with populations less than 400,000 - since amended to 700,000 - local ordinances govern the definition of who is aggrieved for purposes of NRS 278.3195).

After the Board of Supervisors considered the initial draft of this proposed ordinance at its May 5, 2022 meeting, the Board requested the District Attorney's Office to revise language to specify a time certain for the filing of an administrative appeal and to provide a definition for "abuse of discretion" as the standard of review in an appeal. A new draft incorporating those edits and also including other clerical and conforming changes was reintroduced on first reading during the May, 19, 2022 meeting of the Board of Supervisors.

Except as specifically exempted, NRS 237.080 requires a business impact statement to be prepared whenever an ordinance by the adoption of which the governing body of a local government exercises legislative powers. Under these exemptions, a business impact statement was not required to be prepared with this ordinance because the ordinance is proposed pursuant to a provision of NRS Chapter 278 and also because Carson City does not have the authority to consider less stringent alternatives pursuant to a state statute (NRS 278.3195).

Applicable Statute, Code, Policy, Rule or Regulation

NRS Chapters 237 and 244; NRS 278.3195; Article 2 of the Carson City Charter

Financial Information

Is there a fiscal impact? No

If yes, account name/number:

Is it currently budgeted?

Explanation of Fiscal Impact:

Alternatives

Do not adopt the proposed ordinance on second reading, modify the proposed ordinance and/or provide alternative direction.

Attachments:

[Ord_2022_Title 18 appeals_second reading.pdf](#)

Board Action Taken:

Motion: _____	1) _____	Aye/Nay
	2) _____	_____

(Vote Recorded By)

Summary: an ordinance establishing various provisions governing administrative appeals related to land use and zoning.

BILL NO. 106

ORDINANCE No. 2022 - _____

AN ORDINANCE RELATING TO ADMINISTRATIVE APPEALS; ESTABLISHING PROVISIONS GOVERNING APPEALS FROM ADMINISTRATIVE DECISIONS OF THE DIRECTOR OF THE COMMUNITY DEVELOPMENT DEPARTMENT; REVISING PROVISIONS GOVERNING APPEALS FROM DECISIONS OF THE HEARING EXAMINER, THE HISTORIC RESOURCES COMMISSION, THE GROWTH MANAGEMENT COMMISSION AND THE PLANNING COMMISSION; ESTABLISHING PROVISIONS REQUIRING THE SUBMISSION OF A PRESCRIBED FORM TO FILE AN APPEAL; ESTABLISHING PROVISIONS AUTHORIZING THE CONSOLIDATION OF MULTIPLE APPEALS; ESTABLISHING THE STANDARD OF REVIEW IN AN APPEAL; ESTABLISHING PROVISIONS FOR LEGAL STANDING IN AN APPEAL; REPEALING OBSOLETE PROVISIONS GOVERNING APPEALS FROM DECISIONS OF THE HISTORIC RESOURCES COMMISSION; AND PROVIDING OTHER MATTERS PROPERLY RELATING THERETO.

The Board of Supervisors of Carson City do ordain:

SECTION I:

That Title 18 (ZONING), Chapter 18.02 (ADMINISTRATIVE PROVISIONS) is hereby amended (**bold, underlined** text is added, [~~stricken~~] text is deleted) by adding thereto a new section 18.02.057 (Appeals to Commission: procedure; standing) as follows:

18.02.057 – Appeals to Commission: procedure; standing. (NRS 278.3195)

1. Except as otherwise provided in CCMC 18.12.090 for the transfer of an entitlement certificate, a person who is aggrieved by an administrative decision of the Director may, not later than before the close of business on the tenth day after the date on which the written notice of decision is filed with the Clerk-Recorder, file an appeal to the Commission in the same manner as is prescribed by CCMC 18.02.060 for the filing of an appeal to the Board of Supervisors.

2. In computing the period prescribed in subsection 1:

(a) The day on which the written notice of decision is filed with the Clerk-Recorder is excluded from the computation; and

(b) The last day of the period is included in the computation, except that if the last day falls on a Saturday, Sunday, legal holiday or holiday proclaimed by the Governor or on a day on which the Department is not open for the conduct of business, the period is extended to the close of business on the next business day.

3. For purposes of this section, a person is deemed to be aggrieved by a decision if the person:

(a) Submitted an application for a property pursuant to the provisions of this title which was denied by the decision; or

(b) Appeared, in person, through an authorized representative or in writing, before the Department or Director and who satisfies one of the following conditions:

(1) Received, or should have received, a notice of public hearing required by CCMC 18.02.045; or

(2) Resides in Carson City or possesses a right in real property or a lawful business located in Carson City.

SECTION II:

That Title 18 (ZONING), Chapter 18.02 (ADMINISTRATIVE PROVISIONS), Section 18.02.060 (Appeals) is hereby amended (**bold, underlined** text is added, [~~stricken~~] text is deleted) as follows:

18.02.060 – [~~Appeals.~~] Appeals to Board of Supervisors: procedure; standard of review; standing. (NRS 278.3195)

~~1. Appeals of Staff Decisions. An administrative decision of the director may be appealed by the applicant or any aggrieved party to the commission following the procedures in subsection 4 of this section within ten days of the date of the decision. The commission may affirm, modify or reverse the decision.~~

~~2. Appeals of Commission, Hearing Examiner or Historic Resources Commission (HRC). Any decision of the commission, hearing examiner or the HRC may be appealed to the board by the applicant, any aggrieved party, or any member of the board by following the procedures in subsection 4 of this section within 10 days of the date of the decision. The board may affirm, modify or reverse the decision. In reviewing the decision, the board shall be guided by the statement of purpose underlying the regulation of the improvement of land expressed in NRS 278.020.~~

~~3. Appeals of Board Decisions. A decision of the board is final. Any appeal of its decision shall be in a court of competent jurisdiction within the time frames established by the NRS.~~

~~4. Procedures for Filing an Appeal.~~

~~_____ a. Standing for filing an appeal. Any project applicant or any aggrieved party may file an appeal as specified in this section provided that the appellant has participated in the administrative process prior to filing the appeal.~~

~~_____ b. Issues for an Appeal. Issues not addressed in the public hearing stage of the administrative process for a project which is being appealed may not be raised as a basis for the appeal unless there is substantial new evidence which has become available accompanied by proof that the evidence was not available at the time of the public hearing. If new information is submitted to the board, the application shall be referred back to the commission for further appeal, review and action.~~

~~_____ c. Appeal Application. All appeal applications shall be filed in writing with a letter of appeal to the director.~~

~~_____ (1) The letter of appeal and application shall be submitted within ten days of the date of the staff or commission decision for which an appeal is requested.~~

~~_____ (2) The appeal letter shall include the appellant's name, mailing address, daytime phone number and shall be accompanied by the appropriate fee.~~

~~_____ (3) The letter shall specify the project or decision for which the appeal is being requested. The letter shall indicate which aspects of the decision are being appealed. No other aspect of the appealed decision shall be heard.~~

~~_____ (4) The letter shall provide the necessary facts or other information that support the appellant's contention that the staff or commission erred in its consideration or findings supporting its decision.~~

~~_____ d. Decision. The commission or board, whichever has jurisdiction over the appeal, shall render its decision on the appeal within 60 days of the submittal of a complete appeal application.~~

~~_____ e. Notice of appeals. Notice of an appeal hearing shall be provided in accordance with section 18.02.045.] A person who is aggrieved by a decision of the hearing examiner, the HRC, the Growth Management Commission or the Commission may, not later than before the close of business on the tenth day after the date on which the written notice of decision is filed with the Clerk-Recorder, file an appeal to the Board of Supervisors.~~

2. In computing the time prescribed in subsection 1:

(a) The day on which the written notice of decision is filed with the Clerk-Recorder is excluded from the computation; and

(b) The last day of the period is included in the computation, except that if the last day falls on a Saturday, Sunday, legal holiday or holiday proclaimed by the Governor or on a day on which the Department is not open for the conduct of business, the period is extended to the close of business on the next business day.

3. An appeal must be submitted on a form prescribed by the Department and be accompanied by the required fee for filing an appeal as set forth in CCMC 18.02.055. The form must include, without limitation:

(a) The name and signature of the person who is aggrieved.

(b) The mailing address, electronic mail address and telephone number of the person who is aggrieved.

(c) If the form is submitted through an authorized representative of the person who is aggrieved, the mailing address, electronic mail address and telephone number of the authorized representative.

(d) The complete street address of the property that is the subject of the appeal.

(e) A complete description of the project that is the subject of the appeal.

(f) The date on which the written notice of decision which is the basis of the appeal was filed with the Clerk-Recorder.

(g) A clear and concise statement of the specific issue of fact or law raised on appeal.

4. If a form that is submitted pursuant to subsection 3 is deemed incomplete or deficient in any material respect by the Director, the Director must make a reasonable attempt to notify the person who submitted the form of the incompleteness or deficiency. A person may submit an amended form without incurring an additional fee for filing an appeal. The failure of a person to submit a completed form in the time prescribed shall constitute a forfeiture of any right to appeal under this section. The time to complete or otherwise amend a submitted form:

(a) Tolls any limitation in which a public hearing on the appeal must be heard until such time a completed form is submitted.

(b) Does not toll any limitation in which a completed form must be submitted.

5. A form that is submitted pursuant to subsection 3 may be accompanied by supporting material as evidence for the appeal. Except as otherwise provided in subsection 6, supporting material must be substantially related to an issue of fact or law that was previously considered in the issuance of the decision that is the basis of the appeal.

6. A new issue of fact or law that is raised on appeal and which was not previously considered in the issuance of the decision that is the basis of the appeal may be introduced if the person who is aggrieved submits with the form:

(a) Supporting material substantially relevant to the new issue of fact or law; and

(b) Proof that the supporting material was not available at the time the decision which is the basis of the appeal was issued.

7. If a new issue of fact or law is properly introduced during an appeal in accordance with subsection 6, the Board of Supervisors may remand the matter of the appeal to the person or entity from which the notice of decision was issued for further consideration.

8. If more than one appeal concerning the same decision is filed pursuant to this section, the appeals may be consolidated. A decision to consolidate appeals is at the sole discretion of:

(a) The Mayor, if the appeal is before the Board of Supervisors.

(b) The hearing examiner or the Chair of the entity, as applicable, if the matter of the appeal has been remanded for further consideration pursuant to subsection 7.

9. Unless a different period is required by statute, the person or entity before which an appeal must be heard pursuant to this section shall hold a public hearing and issue a decision on the appeal not more than 60 days after the date on which a completed form is submitted pursuant to subsection 3.

10. The standard of review for an appeal before the Board of Supervisors is an abuse of discretion standard. In issuing a decision, the Board of Supervisors:

(a) May affirm, modify or reverse the decision which is the basis of the appeal; and

(b) Will be guided by the statement of purpose underlying the regulation of the improvement of land expressed in NRS 278.020.

11. A decision of the Board of Supervisors is a final decision for the purpose of judicial review.

NAYS: SUPERVISORS:

Lori Bagwell
Mayor

ATTEST:

Aubrey Rowlatt
Clerk-Recorder

This ordinance shall be in force and effect from the 22nd day of the month of June of the year 2022.

TEXT OF REPEALED SECTIONS

~~[18.06.070 – Appeals of HRC action.~~

~~Appeal of the HRC action must be as follows:~~

- ~~1. Appeals of HRC decisions. Any decision of the HRC may be appealed by the applicant, any aggrieved party, or any member of the board by following the procedures in subsection 2 of this section within ten (10) days of the date of the HRC decision.~~
- ~~2. Procedures for filing an appeal.

 - ~~a. Standing for filing an appeal. Any project applicant or any aggrieved party may file an appeal as specified in this section provided that the appellant has participated in the administrative process prior to filing the appeal.~~
 - ~~b. Issues for an appeal. Issues not addressed in the public hearing stage of the administrative process for a project which is being appealed may not be raised as a basis for the appeal unless there is substantial new evidence which has become available accompanied by proof that the evidence was not available at the time of the public hearing. If new information is submitted to the board, the application may be referred back to the HRC for further review and action.~~
 - ~~c. Appeal application. All applicant or aggrieved party appeal requests shall be filed in writing with a letter of appeal to the director.~~~~

- ~~(1) The letter of appeal shall be submitted within ten (10) days of the date of the staff or HRC decision for which an appeal is requested.~~
- ~~(2) The appeal letter shall include the appellant's name, mailing address, daytime phone number, and shall be accompanied by the appropriate fee.~~
- ~~(3) The letter shall specify the project or decision for which the appeal is being requested. The letter shall indicate which aspects of the decision are being appealed. No other aspect of the appealed decision shall be heard.~~
- ~~(4) The letter shall provide the necessary facts or other information which support the appellant's contention that the staff or HRC erred in its consideration or findings supporting its decision.~~

~~d. Upon determination that the appeal request is complete, the director shall request time on the next available board meeting agenda.~~

~~Appeals before the board shall be scheduled within time frames established in NRS.]~~