



WILDWOOD

2017 Hearing and Appeals Committee

Draft Recommendation Report

To: Mayor Jim Bowlin and Wildwood City Council Members
From: Hearing and Appeals Committee
Date: September 27, 2017
Re: Recommendation of Hearing and Appeal Procedures in the City Code

On March 29, 2017, the Hearing and Appeals Committee commenced its review of the City Code to review possible recommendations pertaining to the various hearing, appeal and notice procedures of the City. Over the course of the past six months, it has held a total of four (4) meetings, and generally reviewed the following categories: 1) General Administrative Procedures; 2) Zoning Procedures; and 3) Public Notices. The general principles that guided the Committees recommendation were: 1) improve efficiency and clarity of City procedures; 2) promote opportunities for public involvement; 3) preserve “contested case” status where appropriate; and 4) promote effective means of public notice.

Hearing and Appeals Procedures

It is recommended that various provisions of the City Code be amended to provide for the procedures generally reflected in Flow Charts A and B, enclosed herewith, and set forth in more detail below. The suggested revisions to the City Code will accomplish the following:

- Eliminate inconsistent language within and among provisions of the City Code;
- Simplify and streamline existing procedures by requiring hearings to be held before the Board of Administrative Review rather than before the City Council or any of a variety of City Staff unless otherwise required by statute or the City Charter;
- Providing for hearings by right where required by statute or the Constitution;
- Incorporating certain procedural requirements for hearings before the Board of Administrative Review to preserve “contested case” status;¹
- Except as otherwise provided by law, provide for the entitlement to file appeal (rather than automatically conducting the appeal) for the dual purposes of efficiency and assuring available administrative remedies; and
- For purposes of administrative procedures, the term “City Administrator” should be defined to include “his/her designee” in order to allow the City greater flexibility in implementing the hearing and appeals procedures.

¹ “Contested Case” status in an administrative proceeding limits a courts scope of review and preserves certain defenses available to the City should the matter be challenged in court.

RECOMMENDATIONS:

I. General Administrative Procedures (See Flow Chart A)

- **Section: §§ 150.030-.100: Code of Administrative Procedure**
 - Category: hearing not required but recommended for reasons such as preserving “exhaustion of administrative remedies” defense
 - Amend to eliminate City Council from the appeal procedure. Amend for consistent terminology: use “Board of Administrative Review” throughout and eliminate inconsistent use of “the Administrative Review Board.”
- **Section 217.100: Appeal of Determination of Noise Violation.**
 - Category: hearing required by Constitutional Due Process
 - Appeals handled in conjunction with St. Louis County. Arguably appealable under Chapter 150.
 - Amend to clarify that the hearing before the Board of Appeals is final decision (not appealable to the Board of Administrative Review).
- **Section 217.110: Variances.**
 - Category: hearing required by Constitutional Due Process
 - Appeals handled in conjunction with St. Louis County. Arguably appealable under Chapter 150.
 - Amend to clarify that the hearing before the Board of Appeals is final decision (not appealable to the Board of Administrative Review).
- **Section 230.310: Suspension of Waste Transport License.**
 - Category: hearing required by Constitutional Due Process
 - Remove hearing upon appeal from City Council to the Board of Administrative Review.
- **Section 600.080-090: Liquor License Suspension.**
 - Category: hearing required by Constitutional Due Process
 - Amend to provide for appeal under Chapter 150. Hearing currently before City Council first.
- **Section 605.030(A): Business Category**
 - Category: identified as a hearing in City Code
 - Amend as follows:
 - The City Administrator or his/her designee shall initially establish and identify each business within the categories as proposed above. Any business which objects to the category upon which it is originally placed or the square footage determination, shall have the opportunity to file a written appeal to the Board of Administrative Review for designation to a category other than the category to which they are originally assigned or to change the square

footage. Said appeal must be filed pursuant to Chapter 150 of this Code by the authorized representative of the business within sixty (60) days after the notice of the assignment of the business to a category or notice of the square footage determination is mailed to the applicant for the business license.

- **Section 605.070: Grant of Noncompliant Business License Upon Condition of Council.**
 - Category: identified as a hearing in City Code
 - Suggest removal.

- **Section 605.210: General Business License Revocation or Suspension.**
 - Category: hearing required by Constitutional Due Process
 - Amend to make appealable to the Board of Administrative Review rather than to the Director of Finance and Administration.

- **Section 620.090: Suspension or Revocation of Tow Truck License.**
 - Category: hearing required by Constitutional Due Process
 - Amend to make appealable to the Board of Administrative Review rather than to the Director of Finance and Administration.

- **Section 630.050: Application and Renewal for Alarm Business License.**
 - Category: hearing required by Constitutional Due Process
 - Amend to require the initial determination to be made by the City Administrator or his/her designee; amend to require the appeal be made to the Board of Administrative Review.

- **Section 630.130: Suspension or Revocation of Alarm Business License.**
 - Category: hearing required by Constitutional Due Process
 - Amend to require the initial determination to be made by the City Administrator or his/her designee; amend to require the appeal be made to the Board of Administrative review.

- **Section 645.050: Revocation of Sexually Oriented Business License.**
 - Category: hearing required by Constitutional Due Process
 - Amend to require the initial determination be made by the City Administrator or his/her designee rather than the City Clerk.

II. Zoning Procedures (See Flow Chart B)

- **Section 415.500: CUP.**
 - Incorporate procedural requirements for hearings to preserve “contested case” status

- **Section 415.500(H) and (I): CUP.**
 - Category: Gray (hearing not required but recommended for reasons such as preserving “exhaustion of administrative remedies” defense)
 - Amend Subsection (I) to eliminate reference to the Planning and Zoning Committee and potential for hearing in front of Planning and Zoning Committee (appeals heard by City Council)

- **Section 415.500(L): Appeal of Decision of Planning Department re: Development Plans for CUP.**
 - Category: White (hearing not required by constitution, statute, or city charter)
 - Amend to eliminate reference to the Planning and Zoning Committee (appeals heard by City Council)

- **Section 415.510(Q): Appeal of Denial of Extension of Time for PRD.**
 - Category: White (hearing not required by constitution, statute, or city charter)
 - Amend to eliminate reference to the Planning and Zoning Committee (appeals heard by City Council)

- **Section 415.530: Appeal and Protest Procedure for Change of Zoning and Special Procedures.**
 - Category: White-PH (identified as a public hearing in City Code)
 - Amend to eliminate reference to the Planning and Zoning Committee and potential for hearing in front of Planning and Zoning Committee (appeals heard by City Council)

III. Public Notices

In furtherance of the City’s longstanding policy of fostering public knowledge and encouraging public participation, City policy and practices with regard to notice to the public far exceeds that which is otherwise required by law. Notices for public hearings on zoning matters before the City Council, Planning Zoning Commission and Board of Adjustment include published notices where required by statute, and also include notices posted on affected properties and mailed notices to persons owning property within 1,500 feet of the affected property. In addition, mailed notices are sent to property owners within 1,500 feet of affected properties for all meetings at which a proposed zoning action will be considered.

Public notice on matters addressed by the City affecting residents should serve the following purposes:

- Provide as much advance notice of meetings as is practicable;
- Provide sufficient information to notify the action being considered; and
- Provide all persons affected by a proposed action an opportunity to be heard.

Consistent with the foregoing, the Committee recommends the following:

- The Committee finds and determines that published notice is not an effective or cost appropriate means of providing notice to the residents of the City. Accordingly, it is recommended that, except as otherwise required by law, the City remove from the City Code any requirements for published notice.
- The City Council should consider the scope of persons receiving mailed notifications to those property owners within 3,000 feet of affected property, rather than 1,500 feet.
- The City should periodically reassess available media for communicating public notices, considering effectiveness, cost and staff resources.