

**TITLE 26  
LAND USE REGULATIONS  
PART 300 — GENERAL PROCEDURES AND REGULATIONS**

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**26.304.010. General.**

This Chapter sets out the common procedures for review of all development applications, unless otherwise specifically stated. Generally, all proposed development shall be subject to the following six (6) step approval process.

1. A pre-application conference between the applicant and a staff member of the Community Development Department;
2. Submission of the development application and fees by the applicant;
3. Determination of completeness and review of the development application by the Community Development Director;
4. Review of the development application by the relevant decision-making body;
5. Receipt of a development order or certificate of zoning compliance; and
6. Receipt of a building permit.

**26.304.020. Pre-application conference.**

**A. General.** Prior to the formal filing of a development application, unless waived by the Community Development Director, the applicant shall confer with a member of the staff of the Community Development Department to obtain information and guidance regarding the format and processing of the development application. The purpose of such a conference is to permit the applicant and the Community Development Department staff to review informally a proposed development and determine the most efficient method of development review before substantial commitments of time and money are made in the submission of an application. The Community Development Director may decide as part of the pre-application process to hold pre-application work sessions with decision-making bodies if it is determined that such work sessions would provide the Community Development

Department or the applicant with additional information or guidance necessary to the preparation or processing of an application for development.

**B. Issues of discussion.** Issues that may be discussed at the pre-application conference may include, but are not limited to, the following:

1. Proposed development. The applicant should describe the general nature of the proposed development including, if applicable, proposed land uses and their densities; proposed placement of buildings, structures and other improvements; character and location of common open space or treatment of public uses; preservation of natural features; preservation of properties listed on the Aspen Inventory of Historic Landmark Sites and Structures; protection of environmentally sensitive areas; proposed off-street parking and internal traffic circulation and total ground coverage of paved areas and structures.
2. Review procedure. The Community Development Department staff member shall identify procedural review requirements for the proposed development and applicable review standards and terms of this Title that apply to the review of the proposed development. This should include identifying those stages of the common review procedure which apply, which decision-making body or bodies will review the development application and the approximate length of the development review procedure.
3. Referral agencies. The Community Development Department staff member shall identify the City, State and Federal agencies that are required to review the proposed development, provide the applicant with persons at these agencies to contact about review procedures and generally describe the information which will be needed to satisfy the concerns of the relevant City, State and Federal agencies.
4. Application contents. The Community Development Department staff member shall establish the contents of the development application required to be submitted for the proposed development. This should include descriptions of the types of reports and drawings required, the general form which the development application should take and the information which should be contained within the application.
5. Application copies and fee. The Community Development Department staff member shall identify the number of copies of the development application that are required to be submitted for the proposed development, along with the amount of the fee needed to defray the cost of processing the application and an estimate of the number of hours of staff review time associated with the fee.
6. Written summary. Following the conclusion of the conference, the applicant shall be presented with a written summary of the meeting. One (1) copy of this written summary should be submitted back to the Community Development Department at the time of submission of the development application.
7. Neighborhood Outreach. The Community Development Department staff member shall identify if neighborhood outreach, as outlined in Sec 26.304.035, is required prior to submission of the development application.

[\(Ord. No. 1-2002, § 5 \[part\]; Ord. No. 3-2012, §2\)](#)

**26.304.030. Application and fees.**

**A. General.** The requisite number of copies of the development applications shall be submitted to the Community Development Director containing all of the information and materials specified by the applicable sections of this Title and such additional information or materials identified in the preapplication conference. The development application shall be accompanied by the applicable fee. (See Chapter 2.12 for schedule of fees.)

**B. Application.** At a minimum, all development applications shall include the following information and materials.

1. Contained within a letter signed by the applicant, the applicant's name, address and telephone number and the name, address and telephone number of any representative authorized to act on behalf of the applicant.
2. The street address, legal description and parcel identification number of the property proposed for development.
3. A disclosure of ownership of the parcel proposed for development, consisting of a current certificate from a title insurance company or attorney licensed to practice in the state, listing the names of all owners of the property and all mortgages, judgments, liens, easements, contracts and agreements affecting the parcel and demonstrating the owner's right to apply for the development application.
4. An 8½" x 11" vicinity map locating the subject parcel within the City of Aspen.
5. A site plan depicting the proposed layout and the project's physical relationship to the land and its surroundings.
6. A site improvement survey certified by a registered land surveyor, licensed in the state, showing the current status of the parcel including the current topography and vegetation. (This requirement or any part thereof may be waived by the Community Development Director if the project is determined not to warrant a survey document.)
7. A written description of the proposal and a written explanation of how the proposed development complies with the review standards relevant to the development application.
8. Additional materials, documentation or reports as deemed necessary by the Community Development Director.

**C. Building model.** The Planning Director may require the applicant to prepare an accurate three (3) dimensional massing model, built to scale, that depicts the proposed development, any existing buildings on the site that will remain following the proposed development and topography on the site, with a contour interval of not less than two (2) feet. Conditions that would cause the Planning Director to require the model to be prepared include, but are not limited to, a finding that the project is a complex development, is a project of great public significance or involves a site that has unique topography or sensitive natural or man-made features or is highly visible.

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1. Before preparing the model, the applicant shall confer with the Planning Director to determine whether the model should also show topography and existing buildings on properties adjacent to the subject property, to provide a neighborhood context for the proposed development.
2. The applicant shall provide the model for inspection by the Planning Director no less than one (1) week prior to the initial meeting at which the application will be reviewed by a decision making body so the Director may confirm the accuracy and completeness of the model.
3. Following conclusion of the review of the project, the applicant shall submit photographs of the model so documentation of the appearance of the model can be part of the record of the application.

**D. Consolidation of applications.** If an applicant has requested the consolidation of development applications, the Community Development Director may waive any overlapping application submission requirements in the consolidated development application. (See Subsection 26.304.060.B, Modification of review procedures).

**E. Copyrighted materials.** The City will not accept for development application or recordation purposes any materials to which copyright applications have been made unless the applicant shall waive all claims and indemnify the City. Any person submitting a development application shall consent that any document submitted to the City a part of the development application may be utilized by the City in any manner deemed necessary, including recording at the county clerk and recorder, to preserve the representations made during the development review process.

**F. No multiple applications.** The City shall not accept or review more than one (1) development application concurrently on any one (1) property or portion of a property. To submit a new application on a property, any active development application must be vacated. ([Ord. No. 56-2000, § 16](#); [Ord. No. 40-2003, § 1](#))

#### **26.304.035. Neighborhood Outreach**

**A. Purpose.** In order to facilitate citizen participation early in the development review process, the City requires development applications to conduct neighborhood outreach. The purpose of the outreach is to inform neighbors and interested members of the public about the project. The applicant must show a concerted effort inform neighbors and the public about the application prior to the first public hearing.

**B. Applicability.** A neighborhood meeting shall be required on any development proposal that is subject to City Council review unless the Community Development Department determines as a part of the pre-application conference that the development proposal is limited in nature. In addition, the Community Development Department may make a determination that neighborhood outreach is required for significant development applications reviewed by the Planning and Zoning Commission or Historic Preservation Commission.

**C. Appropriate forms of public outreach.** The applicant must choose to do one or more of the following forms of neighborhood outreach. Community Development Department staff may, as part of the pre-application conference, suggest certain forms of neighborhood outreach that would be most

appropriate for a development application. In addition, Community Development Department staff may identify specific aspects of the project or potential impacts of the project that should be addressed as part of the neighborhood outreach.

1. Information meeting. The applicant must hold a neighborhood meeting to gain input from neighbors and citizens. The meeting must be open and accessible to the general public and held in a location in proximity to the proposed development or in a publicly accessible building such as City Hall or the Public Library. The applicant or applicant's representative shall attend the neighborhood meeting and be available to answer questions from the public. The applicant shall be responsible for scheduling and coordinating the neighborhood meeting. Renderings, modeling, or other visual representations of the project within its context is required. The applicant must conduct a minimum level noticing, pursuant to Section 26.304.060.E.3.c, to ensure the public is aware of the meeting. Additional noticing beyond that called for in Section 26.304.060.E.3.c may be provided.
2. On-line meeting. The applicant must conduct an on-line meeting to gain input from neighbors and citizens. The meeting must be open to the general public. The applicant or applicant's representative shall attend the on-line meeting and be available to answer questions from the public. The applicant shall be responsible for scheduling and coordinating the on-line forum. Renderings, modeling, or other visual representations of the project within its context is required. The applicant must conduct a minimum level noticing, pursuant to Section 26.304.060.E.3.c, to ensure the public is aware of the on-line meeting. Additional noticing beyond that called for in Section 26.304.060.E.3.c may be provided.
3. Enhanced Public Information. The applicant must provide detailed information on the project in the form of a project website, a detailed public notice mailing, etc. that explains the proposal, outlines the review process, provides visual rendering or maps, or any other information that will describe the project in layman's terms. The applicant shall be responsible for coordinating the information. The applicant must conduct a minimum level noticing, pursuant to Section 26.304.060.E.3.c, to ensure the public is aware of a website, etc. Additional noticing beyond that called for in Section 26.304.060.E.3.c may be provided.
4. Individual Outreach. The applicant must conduct individual or small group meetings with neighbors of the project. The applicant shall be responsible for organizing and attending the meetings. At the meetings, the applicant should provide a summary of the proposal, including basic use-type information, building height, and renderings.
5. Any other form of neighborhood outreach that will provide neighbors a genuine opportunity to understand the development proposal and provide comments to the application.

**F. Summary of Public Outreach.** A written summary of the neighborhood outreach, as well as the method of public notification, shall be prepared by the applicant and submitted as part of the official record – either as part of the initial application or as an addendum to the application. Any documentation that was presented to the public as part of the outreach should also be included as part of the official record.

[\(Ord. No. 3 – 2012, §3\)](#)

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#### **26.304.040. Initiation of Application for Development Order.**

An application for a Development Order may only be initiated by (1) a person or persons who represents they have legal authority to affect title to the property subject to the development application and proposed development; (2) the City Council or the Planning and Zoning Commission for the purpose of amending the text of this Chapter or the Official Zone District Map (Chapter 26.310) or to designate a Planned Development (Chapter 26.445); and, (3) the City Council, Planning and Zoning Commission, or Historic Preservation Commission for the purpose of designating an Historic Overlay District or designating a property on the Aspen Inventory of Historic Landmark Sites and Structures.

([Ord. No. 1-2002, § 5 \[part\]](#); [Ord. No. 36-2013, §11](#))

#### **26.304.050. Determination of completeness and review by the Community Development Director.**

**A. Determination of completeness.** After a development application has been received, the Community Development Director shall determine whether the application is complete. If the Community Development Director determines that the application is not complete, written notice shall be served on the applicant specifying the deficiencies. The Community Development Director shall take no further action on the application until the deficiencies are remedied. If the application is determined to be complete, the Community Development Director shall notify the applicant of its completeness. A determination of completeness shall not constitute a determination of compliance with the substantive requirements of this Title and it shall not preclude a request for additional information or materials in the future to complete the review of the development application. Upon a determination of completeness, the applicant may be asked to submit additional copies of relevant documents as requested.

#### **B. Review and recommendation by Community Development Director.**

1. Comments on application from City staff. When the development application is determined complete by the Community Development Director, copies shall be distributed to appropriate City staff persons, departments and referral agencies. Any comments from the department of community development and other referral agencies shall be returned to the Community Development Director prior to submitting a recommendation to the applicable decision-making body.
2. Report and recommendation. The Community Development Director shall compile all comments and recommendations from appropriate City staff persons, departments and referral agencies and shall make a written report and recommendation to the appropriate decision-making body on the development application. The written report and recommendation shall state whether the application conforms to the review standards pertaining to the relevant development approval sought and whether it should be continued, approved, approved with conditions or disapproved. The Community Development Director shall attach any referral agency comments to the report and recommendation.

**C. Setting the hearing.** The Community Development Director shall establish a place and time certain for the hearing, if required, on the development application, pursuant to the requirements of this

Title. If the hearing is a public hearing required to be noticed, the applicant or the Community Development Director shall cause public notice to be given pursuant to the procedure and requirements established in Subsection 26.304.060.E.

**26.304.060. Review of a development application by decision-making bodies.**

**A. Review procedures and standards.** Specific development review procedures and standards for different types of development applications are set forth in the relevant chapters of this Title. They include the following:

Permitted Uses:	Chapter 26.404
Variances:	Chapter 26.314
Residential Design Standards:	Chapter 26.410
Development involving the Aspen Inventory of Historic Landmark Sites and Structures or in an H, Historic Overlay District:	Chapter 26.415
Conditional Uses:	Chapter 26.425
Special Review:	Chapter 26.430
Development in Environmentally Sensitive Areas:	Chapter 26.435
Planned Developments:	Chapter 26.445
Temporary Uses:	Chapter 26.450
Growth Management Quota System (GMQS):	Chapter 26.470
Subdivision:	Chapter 26.480
Amendments to Text and Zone District Map:	Chapter 26.310

**B. Modification of review procedures.**

1. Combined reviews. The procedures for reviewing development plans and applications where more than one (1) development approval is being sought simultaneously may be combined or modified whenever the Community Development Director determines, in consultation with the applicant, that such combination or modification would eliminate or reduce duplication and ensure economy of time, expense and clarity; provided, however, that all public noticing normally associated with the subject development application(s) is maintained and that a thorough and full review of the application and proposed development as otherwise required by this Title is achieved.
2. Sketch plan review. If the Community Development Director, in consultation with the applicant, determines that a proposed development application may be complex, have the potential for significant community interest, involves a public facility or the proposed project

would benefit from additional community input, the Community Development Director may schedule a joint meeting with the City Council and either the planning and zoning commission, the historic preservation commission or both, for a sketch plan review. A sketch plan review may be held either before or after an application is submitted and determined to be sufficiently complete by the director of the Community Development Department. If it is scheduled after an application is determined complete by the Community Development Director, the sketch plan review meeting shall be conducted prior to any other land use review proceeding required by this Code. A sketch plan review meeting shall be noticed by publication, mailing and posting (See Subsection 26.304.060[E] Paragraph [3]) and the joint meeting shall be conducted as a public meeting. The minutes of the joint meeting shall become part of the formal record of the proceedings before the City Council and the decision-making body which has been invited to attend the joint meeting with the City Council. A quorum of the City Council shall not be required to conduct a sketch plan review hearing. The Community Development Director may invite particular members of the public (stakeholders) to attend and participate in the sketch plan review hearing. At the conclusion of the public meeting, the members of the City Council, decision-making body invited to attend the joint meeting and stakeholders (if invited to attend) may offer the applicant advisory suggestions regarding the proposed application, but shall not make any decisions regarding the application for development. Applicants shall not be entitled to rely upon any decisions, comments or suggestions made by the members of the joint public meeting as no attempt shall be made to approve a development proposal even on a conceptual level at a sketch plan review.

3. **Public Projects.** If the Community Development Director, or City Council, determines that a proposed development is authorized for Public Project Review in accordance with Section 26.500.040.D, the Community Development Director shall cause the application to proceed in accordance with Section 26.500.040.

**C. General hearing procedures.** The following general procedures shall apply to the conduct of all hearings regarding the review of a development application by decision-making bodies.

1. **Oath or affirmation.** The chairperson of the decision-making body or the Mayor may require that testimony and evidence shall be given under oath or by affirmation to the body conducting the hearing.
2. **Rights of all persons.** Any person may appear at a public hearing and submit evidence either individually or as a representative of another person or an organization. The chairperson of the decision-making body or the Mayor may require anyone representing another person or an organization to present written evidence of their authority to speak on behalf of the person or the organization in regard to the matter under consideration. Each person who appears at a public hearing shall be identified and, if appearing on behalf of another person or an organization, state the name and mailing address of the person or the organization.
3. **Due order of proceedings.** The decision-making body conducting the hearing may exclude testimony or evidence that it finds to be irrelevant, immaterial or unduly repetitious. The order of proceedings shall be as follows:

- a) The Community Development Director shall present a narrative and/or graphic description of the development application.
  - b) The Community Development Director shall present a written and oral recommendation. This recommendation shall address each factor required to be considered by this Title and the Aspen Area Community Plan prior to development approval and shall be made available to the applicant and to the decision-making body at least two (2) working days prior to the hearing.
  - c) The applicant shall have the burden to demonstrate that the application and proposed development comply with all applicable provisions of this Title and the Community Plan and to present all information deemed necessary and appropriate to evaluate the development proposal. The applicant must also demonstrate, through an affidavit, that all required public notice regarding the application review process was timely given in accordance with this Title.
  - d) The Community Development Director may respond to any statement made by the applicant or any public comment.
  - e) The applicant may respond to any testimony or evidence presented by the Community Development Director or public.
4. Testimony. In the event any testimony or evidence is excluded as irrelevant, immaterial or unduly repetitious, the person offering such testimony or evidence shall have an opportunity to make a proffer in regard to such testimony or evidence for the record. Such proffer shall be made prior to the conclusion of the hearing.
  5. Continuance of hearing. The decision-making body conducting the hearing may, on its own motion or at the request of any person, continue the hearing to a fixed date, time and place. Assuming valid notice was properly given in the first instance, no second or new notice shall be required where a hearing is continued. An applicant shall have the right to request and be granted one (1) continuance; however, all subsequent continuances shall be granted at the discretion of the decision-making body conducting the hearing, only upon good cause shown. Where a public hearing has been adjourned, the hearing may only be reconvened upon the giving of all notice(s) as would be required for an initial public hearing.
  6. Other rules to govern. Other matters pertaining to the public hearing shall be governed by other provisions of this Code, applicable to the decision-making body conducting the hearing and its adopted rules of procedure, so long as the same are not in conflict with this Title. The City's decision-making bodies may adopt rules of procedure to limit the number of development applications which may be considered at a hearing.
  7. Record.
    - a) *Records of hearing.* All hearings shall be recorded by audio tape or other similar recording device. A copy of the audio tape of a hearing shall be provided upon the request of any person and the payment of a fee covering the reasonable cost thereof.

- b) *Record.* The transcript of oral proceedings, including testimony and statements of personal opinions, the minutes of the secretary, all applications, exhibits and papers submitted in any proceeding before the decision-making body, the report and recommendation of the Community Development Director and the decision and report of the decision-making body shall constitute the record.

**D. Actions by decision-making bodies.** All decision-making bodies shall act in accord with the time limits established in this Title. Action shall be taken as promptly as possible in consideration of the interests of the citizens of the City. Depending upon which decision-making body has final approval authority over a given development application, a site specific development plan may only be approved by written resolution of the planning and zoning commission or historic preservation commission or by ordinance adopted by the City Council. Any land use approval which places any burden upon or limits the use of private property shall be by ordinance. All resolutions and ordinances granting final approval for a site-specific development plan shall:

1. Be preceded by a public hearing following public notice by publication (See Subparagraph 26.304.060.E.3.a, below); and
2. Include the following provisions:
  - a) The rights granted by the approval of this site-specific development plan shall remain vested for a period of three (3) years from the effective date of the approved development order. However, any failure to abide by any of the terms and conditions attendant to this approval shall result in the forfeiture of said vested property rights. Failure to properly record all plats and agreements required to be recorded by this Code within one-hundred-eighty (180) days of the effective date of the development order shall also result in the forfeiture of said vested property rights and shall render the development order void within the meaning of Section 26.104.050 (Void permits).
  - b) The approval granted hereby shall be subject to all rights of referendum and judicial review; the period of time permitted by law for the exercise of such rights shall not begin to run until the date of publication of the notice of final development approval as required under Subsection 26.304.070.A of this Chapter.
  - c) Zoning that is not part of the approved site-specific development plan shall not result in the creation of a vested property right.
  - d) Nothing in this approval shall exempt the development order from subsequent reviews and approvals required by this approval of the general rules, regulations and ordinances or the City provided that such reviews and approvals are not inconsistent with this approval.
  - e) The establishment of a vested property right shall not preclude the application of ordinances or regulations which are general in nature and are applicable to all property subject to land use regulation by the City including, but not limited to, building, fire, plumbing, electrical and mechanical codes. In this regard, as a condition of this development approval, the applicant shall abide by any and all such building, fire, plumbing, electrical and mechanical codes, unless an exemption therefrom is granted in writing by the City.

**E. Public notice.**

1. General. Whenever a notice of a public hearing is required, notice shall be provided to the public, pursuant to the terms of this Section.
2. Content of notice. Every notice shall include the name and address of the applicant, the type of development application sought, date, time and place of the hearing, the address and legal description of the subject property if applicable, a summary of the development application under consideration and identification of the decision-making body conducting the hearing and such other information as may be required to fully apprise the public of the nature of the application.
3. Manner of notice. Every notice shall be given in one (1) or more of the following manners, as specified in this Title for each type of development:
  - a) *Publication of notice.* Publication of notice shall be provided by the applicant or the Community Development Department at least fifteen (15) days prior to the public hearing through publication in the legal notice section of an official paper or a paper of general circulation in the City.
  - b) *Posting of notice.* Posting of notice shall be made by the applicant, who shall obtain a copy of the form from the Community Development Department. The notice shall be posted at least fifteen (15) days prior to the public hearing, by posting a sign in a conspicuous place on the property subject to the development application. The sign shall be made of suitable, waterproof materials, shall be not less than twenty-two (22) inches wide and twenty-six (26) inches high and shall be composed of letters not less than one (1) inch in height.
  - c) *Mailing of notice.* Mailing of notice shall be made by the applicant, who shall obtain a copy of the notice from the Community Development Department. The mailing shall contain that information described in Paragraph E.2 above. At least fifteen (15) days prior to the public hearing, notice shall be sent by first class, postage prepaid U.S. mail or hand delivered, to all owners of property within three hundred (300) feet of the property subject to the development application. The names and addresses of property owners shall be those on the current tax records of Pitkin County as they appeared no more than sixty (60) days prior to the date of the public hearing.
  - d) *Rezoning or text amendment.* Whenever the Official Zoning District Map is in any way to be changed or amended incidental to or as part of a general revision of this Title or whenever the text of this Title is to be amended, whether such revision be made by repeal of this Title and enactment of a new land use regulation or otherwise, the requirement of an accurate survey map or other sufficient legal description of and the notice to and listing of names and addresses of owners of real property in the area of the proposed change, shall be waived. However, the proposed zoning map shall be available for public inspection in the planning agency during all business hours for fifteen (15) days prior to the public hearing on such amendments.
  - e) *Notice to mineral estate owner.* An applicant for surface development shall notify affected mineral estate owners by at least thirty (30) days prior to the date scheduled for the initial public hearing on the application for development. The applicant shall certify that notice has been provided to the mineral estate owner.

**F. Re-submittal of a previously denied application.**

After a final decision that results in the denial of a development application by the appropriate final approving body, an applicant wishing to resubmit the same plan for approval:

1. May not submit the same development application or one (1) substantially the same, as determined by the Community Development Director, for a period of one (1) year from the date of the most recent ruling of denial; or
2. May submit a revised application that adequately addresses all of the stated reasons for denial. The Community Development Director shall determine whether a) a new submittal adequately addresses all of the stated reasons for denial and can proceed with a submittal; or, b) a new submittal is sufficiently enough altered from the project denied that it qualifies as a new application for a different project. In either scenario, such application shall be treated as a new application for purposes of review and scheduling.

[\(Ord. No. 7-2000, §2; Ord. No. 1-2002, §5 \[part\]; Ord. No. 9-2002, §4; Ord. No. 52-2003, §3; Ord. No.36-2013, §9; Ord. No.46-2015, §9\)](#)

**26.304.065. Compliance with City of Aspen Charter.**

All development applications shall comply with the regulations outlined in the City of Aspen Charter, including Article XIII Section 13.14, *Voter authorization of certain land use approvals*.

[\(Ord. No. 20-2015, §1\)](#)

**26.304.070. Applicability of land use code amendments.**

Applications for a site-specific development plan shall be reviewed according to the land use code in effect on the date the application was determined by the City to be complete, pursuant to Section 26.304.050(A), *Determination of completeness*. The application shall continue to be reviewed according to the provisions of the land use code in effect upon such date throughout the application’s period of pendency.

Applications for a site-specific development plan which require multiple steps, such as “conceptual review” and “final review” or “project review” and “detailed review,” shall be reviewed according to the land use code in effect on the date the application for the initial step was determined by the City to be complete. The application shall continue to be reviewed according to the provisions of the land use code in effect upon such date throughout the application’s period of pendency.

**A. Amendments to Approved Site-Specific Development Plans.** Amendments to an approved site-specific development plan shall be considered either minor in scope or major in scope, and shall be reviewed as follows:

1. Minor Amendments. During the period of pendency, minor amendments initiated by the applicant and amendments to an application proposed as a means to achieve compliance with city standards, review criteria, or requirements of reviewing agencies shall be reviewed under

the original land use code in effect during the initial approval for the site specific development plan. Minor Amendments shall not cause a new submission date or interrupt the applicability of the land use code to the project.

Unless otherwise stated in the Development Order, minor amendments to an approved site-specific development plan shall continue to be reviewed according to the land use code under which the plan was approved for the period of statutory vested rights, as may be extended. Approved amendments to a previously issued Development Order shall cause issuance of a revised Development Order pursuant to Section 26.304.070.B, but shall not effect a new expiration date of the Development Order.

2. Major Amendments. During the period of pendency, major amendments to an application which are initiated by the applicant independent of a code requirement shall be subject to the land use code in effect upon amendment submission. The entirety of the application shall be subject to all aspects of the land use code in effect at the time of the amendment submission, not only the amended elements. No aspect of the application shall be considered immune from compliance.

Unless otherwise stated in the Development Order, major amendments to an approved site-specific development plan shall be subject to the land use code in effect upon amendment submission. Approved amendments to a previously issued Development Order shall cause issuance of a revised Development Order pursuant to Section 26.304.070.B, but shall not effect a new expiration date of the Development Order.

3. Amendments after vesting. Amendments to an approved site-specific development plan accepted by the City after the period of statutory vested rights has expired shall be reviewed according to the land use code in effect on the date the amendment application was determined by the City to be complete, pursuant to Section 26.304.050(A), *Determination of completeness*.
4. Major and Minor Amendments defined. For the purposes of this section, minor amendments are those which do not change the inherent nature, use, massing, character, dimensions, or design of the project or which changes these attributes in an inconsequential manner. All other amendments shall be considered major.
5. Appeals. Appeals shall be made pursuant to Chapter 26.316, *Appeals*. All appeals shall be heard by City Council.

([Ord. No. 5-2000, §6](#); [Ord. No 4-2010, §1](#); [Ord. No 27-2015, §1](#))

#### **26.304.080. Development orders.**

**A. Publication of development approval.** No later than fourteen (14) days following final approval of all requisite reviews necessary to obtain a development order as set forth in this Title, the City Clerk shall cause to be published in a newspaper of general circulation within the jurisdictional boundaries of the City, a notice advising the general public of the approval of a site-specific development plan and creation of a vested property right pursuant to this Title. Such notice shall be substantially in the following form:

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Notice is hereby given to the general public of the approval of a site specific development plan and the creation of a vested property right pursuant to the Land Use Code of the City and Title 24, Article 68, C.R.S., pertaining to the following described property: [parcel address and legal description], by [ordinance or resolution] of the [City Council or other appropriate decision-making body], numbered: [enter ordinance or resolution number].

**B. Development order—issuance.** Following the publication of the published notice as set forth at Paragraph A above, the Community Development Director shall issue a written development order which shall contain, at a minimum, the following information:

1. The property owner's name, mailing address and telephone number.
2. The street address and legal description of the parcel.
3. A written description of the site-specific plan.
4. Identification of the land use approvals received and the date of such approvals. A copy of the ordinance(s) or resolution(s) shall be attached.
5. The effective date of the development order.
6. A notice disclosing to the applicant the expiration date of the development order and the availability of a procedure for seeking an extension of the development order pursuant to Subsection 26.308.010.C.

**C. Effective date of the development order.** The effective date of a development order including one (1) which authorizes allotments under the growth management quota system pursuant to Chapter 26.470, shall be the date of publication of the notice of the approval of the site specific development plan as set forth at Subsection A above.

**D. Expiration of development order.** The development order shall not expire but shall be subject to any amendments to the Land Use Code, that have been adopted since the development was approved, after the period of vested rights has expired. Vested property rights, including allotments received pursuant to Chapter 26.470, shall expire on the day after the third (3<sup>rd</sup>) anniversary of the effective date of the development order, unless a building permit application submittal is accepted and deemed complete by the Chief Building Official, pursuant to Section 26.304.075 below, or unless an exemption or extension of the approval is granted by the City Council pursuant to Section 26.308. Once a complete building permit application submittal has been accepted, the development order shall remain valid subject to applicable limitations of the International Building Code, the International Residential Code and adopted policies of the Chief Building Official; regarding the timely pursuit and execution of a building permit. In no case shall a development order be valid more than ten (10) years.

**E. Revocation of development order.** The approval of a site-specific development plan and subsequent issuance of a development order may be made with or without conditions. Failure to fully abide by the terms of any of the conditions of approval may result in the revocation of the development order and all associated vested property rights in accordance with Subsection 26.308.010.E.

**F. Abandonment of application.** If an applicant fails to pursue the approval of a site-specific development plan in a timely fashion after filing an application for same, the application shall be considered abandoned. For purposes of this Subsection, failure to pursue the approval of a site-specific development plan in a timely fashion shall mean a failure on the part of the applicant to take any action with the Community Development Department in furtherance of the application for a period of at least one year. An abandoned application shall render all previously issued land use approvals, which do not constitute the approval of a site-specific development plan, void unless the Community Development Director determines that reinstatement of the application is in the best interests of the City.

([Ord. No. 5-2000, §6](#); [Ord. No 4-2010, §1](#); [Ord. No 27-2015, §1](#))

#### **26.304.090. Building permit.**

##### **A. Application.**

1. Recordation and fees. Prior to the submission of an application for a building permit, all documents reflecting and memorializing final development approval for which a building permit is requested shall be reviewed and approved by the City of Aspen and recorded in the county clerk and recorder's office. Proof of such recording shall accompany the building permit application. Documents reflecting or memorializing final development approval shall include, but not be limited to, a final plat, a resolution or ordinance granting final development approval, a subdivision or other improvements agreement, a development agreement and/or deed restrictions which may be required as a condition of development approval. Prior to the submission of an application for a building permit, all fees associated with a project's land use review shall be paid in full. Unless otherwise determined by the Community Development Director, the Chief Building Official shall not accept building permit applications for which all documents and agreements have not been recorded or land use review fees have not been paid.
2. Contents. An application for a building permit shall be submitted to the Chief Building Official. The application shall include scaled plans, drawings, depictions, studies, and reports sufficient to demonstrate compliance with applicable codes and regulations of the City of Aspen, codes and regulations of outside agencies with jurisdiction, and the allowances and limitations of the Development Order. The application shall be submitted in a form and manner as prescribed by the Community Development Director, as may be amended from time to time. The application shall be accompanied by the applicable permit review fees, some or all of which may not be refundable upon denial or withdrawal of the application. Attached to the application shall be a copy of the development order (if applicable) and an improvements survey meeting the standards and requirements of the City Engineer that has been prepared and certified by a registered land surveyor. The improvements survey shall include a site plan which conforms to the requirements set forth at Subsection 13.20.020(b) Paragraph (2) for a tree removal permit.
3. Completion Review and Acceptance. The Chief Building Official shall review the contents of the building permit application for completion in a timely manner. Applications found complete shall be reviewed for compliance with applicable codes and regulations of the City of Aspen, codes and regulations of outside agencies that have jurisdiction, and the allowances and limitations of the Development Order. Applications found incomplete shall be returned to the

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applicant along with all review fees. Partial or incomplete applications shall not be accepted. Acceptance of a complete application shall not imply compliance or prohibit the Chief Building Official from requesting additional information or amendments to the plans in order to determine or achieve compliance.

**B. Compliance Review and Issuance.** Upon receipt of a completed application, the Chief Building Official shall timely refer copies of same to the Community Development Director and such other appropriate City staff and/or departments and outside agencies for compliance review. The application shall be evaluated to determine whether the proposed development:

1. Complies with the International Building Code and other applicable construction codes;
2. Complies with the adopted requirements, specifications, and regulations of the City of Aspen and outside agencies with jurisdiction;
3. Complies with zoning requirements and the allowances and limitations of the Development Order, development agreements and land use approvals and entitlements granted by the City, and all conditions thereon.
4. Is subject to review, impact, cash-in-lieu, dedication, permitting or other similar development fees or taxes. The Chief Building Official shall provide to the applicant a summary of such fees to be collected by the City upon issuance of the building permit, or phases thereof.

If the application does not comply with the above enumerated requirements, written notice shall be timely provided to the applicant specifying the deficiencies. No further action shall be taken on the application until all deficiencies are remedied by the applicant. If the applicant does not address the deficiencies within a reasonable timeframe, as determined by the Chief Building Official, the application shall be denied. Upon cure of all deficiencies, the Chief Building Official shall again review the application for compliance, which may again include referring the application to appropriate City or outside agencies.

If the application does comply with the above enumerated requirements, a building permit shall issue upon payment of all applicable City fees and other fees collected by the City on behalf of outside agencies. The Chief Building Official may choose to issue permits for portions or phases of a project in compliance with the allowances and limitations of the International Building Code and the policies of the Community Development Department.

[\(Ord. No 4-2010, §2; Ord. No 27-2015, §1\)](#)



**Chapter 26.306**  
**INTERPRETATIONS OF TITLE**

Sections:

26.306.010. Interpretation.

**26.306.010. Interpretation.**

**A. Authority.** The Community Development Director shall have the authority to make all interpretations of the text of this Title and the boundaries of the zone district map.

**B. Initiation.** An interpretation may be requested by any affected person, any resident or real property owner in the City or any person having a contractual interest in real property in the City. The Community Development Director shall have the authority to initiate interpretations of Title 26.

**C. Procedures.**

1. Submission of request for interpretation. Before an interpretation shall be provided by the Community Development Director, a request for interpretation shall be submitted to the Community Development Director.
2. Determination of completeness. Within fifteen (15) days after a request for interpretation has been received, the Community Development Director shall determine whether the request is complete. If the Community Development Director determines that the request is not complete, he or she shall serve a written notice on the applicant specifying the deficiencies. The Community Development Director shall take no further action on the request for interpretation until the deficiencies are remedied.
3. Rendering of interpretation. After the request for interpretation has been determined complete, the Community Development Director shall render an interpretation within fifteen (15) days. The Community Development Director may consult with the City Attorney and review this Title and the zone district map, whichever is applicable, before rendering an interpretation.

**D. Form.** The interpretation shall be in writing and shall be sent to the applicant by certified mail.

**E. Official record.** The Community Development Director shall maintain an official record of all interpretations in the Community Development Department, which shall be available for public inspection during normal business hours. Once an interpretation is rendered, public notice describing the interpretation shall be published in the legal notice section of an official paper or a paper of general circulation in the City. Such notice shall be provided within fifteen (15) days of the interpretation being rendered and shall be substantially in the following form: "A code interpretation to Section 26.xx.xx of the City of Aspen Land Use Code, requested by xx, was rendered on xx/xx/xx and is available for public inspection in the Community Development Department."

**F. Appeal.** Any person who has made a request for interpretation may appeal the interpretation of the Community Development Director to the City Council in accordance with the appeal procedures set forth at Chapter 26.316.

[\(Ord. No. 12, 2007, §13\)](#)

**Chapter 26.308**  
**VESTED PROPERTY RIGHTS**

Sections:

26.308.010. Vested property rights.

**26.308.010. Vested property rights.**

**A. Rights conferred.** A development order constitutes a site specific development plan and subject to a vested property right. A vested property right is subject to expiration (See Subsection 26.304.070.D), revocation (See Subsection 26.304.070.E) and all rights of referendum and judicial review. A vested property right shall preclude any zoning or land use action by the City or by an initiated measure which would alter, impair, prevent, diminish or otherwise delay the development or use of the property as set forth in the development order, except as set forth in Section 24-68-105, C.R.S., as amended.

**B. Exemption from expiration of vested rights.**

1. The City Council may by resolution at a public hearing noticed by publication, mailing and posting (See Subparagraphs 26.304.060[E][3][a][b] and [c]) approve an exemption of the expiration of vested rights in accordance with this Section. Only subdivisions composed of detached residential or duplex units shall be eligible for the exemption from the expiration provisions of Subsection 26.304.070.D. To obtain an exemption, an application for exemption shall be submitted at any time prior to the third ( $\frac{1}{3}$ ) anniversary of the effective date of the development order which shall demonstrate to the satisfaction of City Council that:
  - a) Those conditions applied to a project at the time of final approval that were to have been met as of the date of application for exemption have been complied with; and
  - b) Any public or private improvements that were required to be installed by the applicant prior to construction of any dwelling unit have been installed.
2. An exemption from the expiration of vested rights shall have no time limit.

**C. Extension or reinstatement of vested rights.** The City Council may, by resolution at a public hearing noticed by publication, mailing and posting (See Subparagraphs 26.304.060[E][3][a][b] and [c]) approve an extension or reinstatement of expired vested rights or a revoked development order in accordance with this Section.

1. In reviewing a request for the extension or reinstatement of vested rights the City Council shall consider, but not be limited to, the following criteria:
  - a) The applicant's compliance with any conditions requiring performance prior to the date of application for extension or reinstatement;
  - b) The progress made in pursuing the project to date including the effort to obtain any other permits, including a building permit and the expenditures made by the applicant in pursuing the project;

- c) The nature and extent of any benefits already received by the City as a result of the project approval such as impact fees or land dedications;
  - d) The needs of the City and the applicant that would be served by the approval of the extension or reinstatement request.
2. An extension or reinstatement may be in the form of a written agreement duly authorized and executed by the applicant and the City. Reasonable conditions may be imposed by the City Council including, but not limited to, compliance with any amendments to this Title adopted subsequent to the effective date of the development order and associated vested rights.
  3. If the request is for reinstatement of a revoked development order, the City Council shall determine the financial impacts of the investigation and may require the applicant to pay the reasonable costs of investigation, enforcement and reporting by City staff.

**D. Expiration of vested rights.** Pursuant to Section 26.304.070 a vested property right is initiated on the effective date of a development order for a site specific development plan and expires on the day after the third ( $\frac{1}{3}$ ) anniversary of said effective date. After expiration, a development order remains valid, excluding any allotments granted pursuant to Chapter 26.470, Growth Management, but shall be subject to any changes in the Land Use Code that have been adopted since the development's original approval. The period of vested rights may be extended or the development exempted from expiration pursuant to this Section.

**E. Revocation.** The City Council may by resolution at a public hearing noticed by publication, mailing to the applicant and posting (See Subparagraphs 26.304.060[E][3][a][b] and [c]) revoke a development order and associated vested rights upon a finding that:

1. The terms and conditions of the development order have not been met; or
2. The development order is void within the meaning of Section 26.104.050.

[\(Ord. No. 5-2000, §8; Ord. No. 27-2002, §§3—5\)](#)



**Chapter 26.310**  
**AMENDMENTS TO THE LAND USE CODE AND OFFICIAL ZONE DISTRICT**  
**MAP**  
**(REZONING)**

Sections

26.310.010	Purpose
26.310.020	Amendments to the Land Use Code - Procedure for amendment
26.310.030	Amendments to the Land Use Code – Application contents
26.310.040	Amendments to the Land Use Code standards of review – Initiation
26.310.050	Amendments to the Land Use Code standards of review – Adoption
26.310.060	Rezoning - Procedure for amendment
26.310.070	Initial Zoning for Annexed Properties
26.310.080	Rezoning – Application contents
26.310.090	Rezoning – Standards of review
26.310.100	Notation of Planning and Zoning Commission resolution on Official Zone District Map
26.310.110	Recordation of designation
26.310.120	Placement on City's Official Zone District Map
26.310.130	Disputes about zoning of a property
26.310.140	Time limitations

**26.310.010. Purpose.**

The purpose of this Chapter is to provide a means for amending the text of this Title (the Land Use Code) and the Official Zone District Map. It is not intended to relieve particular hardships or confer special privileges or rights on any person or property.

**26.310.020. Amendments to the Land Use Code procedure for amendment.**

**A. General** An application for amendments to the Land Use Code may be initiated by City Council and shall be processed in accordance with the common development review procedures set forth at Chapter 26.304, Common Development Review Procedures, and the steps identified in Section 26.310.020(B) – (C).

1. City Council may authorize a private party to submit a code amendment application. In such case, the City Council shall determine the extent to which Step One is required (Steps Two and Three are mandatory) and shall determine if the applicant shall pay review fees.
2. The Planning and Zoning Commission may initiate an amendment to the Land Use Code, as provided for in Chapter 26.212, *Planning and Zoning Commission*. Initiation shall require the adoption of a Resolution by the Planning and Zoning Commission. The Resolution shall be forwarded to City Council for authorization to proceed through the process outlined herein. City Council shall determine the extent to which Step One is required (Steps Two and Three are mandatory).
3. The Historic Preservation Commission may initiate an amendment to the Land Use Code. Initiation shall require the adoption of a Resolution by the Historic Preservation Commission.

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The Resolution shall be forwarded to City Council for authorization to proceed through the process outlined herein. City Council shall determine the extent to which Step One is required (Steps Two and Three are mandatory).

4. The Community Development Director may initiate an amendment to the Land Use Code, as provided for in Chapter 26.210, *Community Development Department*. City Council shall determine the extent to which Step One is required (Steps Two and Three are mandatory).

**B. Steps required.** Unless initiated by the City Council in accordance with Subsection C below, or unless additional steps are requested by City Council, the review of a proposed text amendment shall require three steps.

1. Step One – Community Input.

- a) *Purpose.* To gather ideas, suggestions, comments, opinions, and recommendations from a wide range of participants to determine if an amendment to the text of the Land Use Code should be pursued by the City Council.
- b) *Process.* The Community Development Director shall seek input from a wide range of community members through a variety of methods, which may include focus groups, structured facilitated sessions, surveys, or other methods. The Director shall solicit input from the Planning and Zoning Commission, the Historic Preservation Commission, or other Boards of the City, as applicable. Depending on the nature of the potential amendment, the Director may solicit input from business owners, lodging operators, local architects and planners, organizations that may have an interest in the topic, and the general public. The Director shall develop a summary of the input methods used and comments received during this step
- c) *Notice requirements.* None.

2. Step Two – Public hearing before City Council.

- a) *Purpose.* To determine if an amendment to the text of the Land Use Code should be pursued.
- b) *Process.* The Community Development Director shall present City Council with a summary of comments received during Step One and a recommendation on whether and how to amend the Land Use Code. The recommendation shall include proposed objectives to be accomplished but need not include specific code sections or proposed text. The recommendation shall include an analysis of the public policies of the City to be advanced including, but not limited to, those stated in the Aspen Area Community Plan. The Director may recommend options for consideration. The City Council may request additional community engagement prior to a decision.
- c) *Standards of review.* Section 26.310.040, Amendments to the Land Use Code standards of review - Initiation
- d) *Form of decision.* City Council shall decide to pursue an amendment to the Land Use Code by resolution after considering the recommendation of the Community Development Director and comments and testimony from the public at a duly noticed public hearing. The resolution shall include the objective to be accomplished by the code amendment but need

not cite specific code sections or proposed text. The City Council may elect to not amend the Land Use Code, which shall not require adoption of a resolution.

- e) *Notice requirements*: Publication pursuant to Subsection 26.304.060.E.3.a, *Publication of notice*.

3. Step Three – Public Hearing before City Council.

- a) *Purpose*. To determine if application meets standards for amendment to the text of the Land Use Code.
- b) *Process*. The Community Development Director shall provide City Council with a recommendation to amend the Land Use Code with proposed text to chapters and sections.
- c) *Standards of review*. Section 26.310.050, Amendments to the Land Use Code standards of review - Adoption
- d) *Form of decision*. City Council decision shall be by ordinance after considering the recommendation of the Community Development Director and comments and testimony from the public at a duly noticed public hearing. The ordinance shall include the amended text of the Land Use Code by chapter and section.
- e) *Notice requirements*. Publication pursuant to Subparagraph 26.304.060.E.3.a., *Publication of notice*, in addition to the requisite notice requirements for adoption of an ordinance by City Council.

**C. Emergency amendments to Land Use Code by City Council.** Notwithstanding the procedures for review set forth above and consistent with the authority of the City Council to adopt emergency ordinances pursuant to Section 4.11 of the City Charter, for the preservation of public property, health, peace or safety, the City Council may amend this Title in accordance with the procedures set forth at Section 4.11 of the City Charter (Emergency ordinances).

([Ord. No. 27-2002, §6](#); [Ord. No. 12, 2007, §14](#); [Ord. No. 11-2012, §1](#))

**26.310.030. Amendments to the Land Use Code – application contents.**

A formal application is required prior to initiating Step Three of the code amendment process, outlined above in Section 26.310.020(B)(3), *Step Three – Public Hearing before City Council*. The application shall include:

- A.** The general application information required in Section 26.304.030, Application and Fees.
- B.** A copy of the City Council resolution requesting the amendment and a brief summary of how the proposed text meets the stated objectives of the amendment.
- C.** A copy of the comments received during the Public Input phase.
- D.** The precise wording of the proposed amendment.

**26.310.040. Amendments to the Land Use Code standards of review – Initiation.**

In reviewing a request to pursue an amendment to the text of this Title, per Section 26.310.020(B)(2), *Step Two – Public Hearing before City Council*, the City Council shall consider:

- A. Whether there exists a community interest to pursue the amendment.
- B. Whether the objectives of the proposed amendment furthers an adopted policy, community goal, or objective of the City including, but not limited to, those stated in the Aspen Area Community Plan.
- C. Whether the objectives of the proposed amendment are compatible with the community character of the City and in harmony with the public interest and the purpose and intent of this Title.

[\(Ord. No. 3 -2012, § 4, Ord. No. 11-2012, §1\)](#)

**26.310.050 Amendments to the Land Use Code Standards of review - Adoption.**

In reviewing an application to amend the text of this Title, per Section 26.310.020(B)(3), *Step Three – Public Hearing before City Council*, the City Council shall consider:

- A. Whether the proposed amendment is in conflict with any applicable portions of this Title.
- B. Whether the proposed amendment achieves the policy, community goal, or objective cited as reasons for the code amendment or achieves other public policy objectives.
- C. Whether the proposed amendment is compatible with the community character of the City and is in harmony with the public interest and the purpose and intent of this Title.

[\(Ord. No. 3 -2012, § 5; Ord. No. 11-2012, §1\)](#)

**26.310.060. Rezoning - Procedure for amendment.**

**A. General.** An application for amendments the Official Zone District Map may be initiated by the City Council, the Community Development Director, or a person or persons owning more than fifty (50) percent of the area of land subject to the amendment and shall be processed in accordance with the common development review procedures set forth at Chapter 26.304.

**B. Steps required:** The review of an application to amend the Official Zone District Map shall require two (2) steps.

1. Step One – Public hearing before Planning and Zoning Commission.
  - a) *Purpose.* To determine if the application meets standards for amendment to the Official Zone District Map and to provide a recommendation to City Council.

- b) *Process.* The Community Development Director shall provide the Planning and Zoning Commission with a recommendation regarding the specific request to amend the Official *Zone District Map*.
  - c) *Standards of Review.* Section 26.310.090, Amendments to the Official Zone District Map – Standards of Review
  - d) *Notice requirements.* Publication, mailing and posting (see Subparagraphs 26.304.060.E.3.a., b. and c.). For an amendment to the Official Zone District Map initiated by the City, notice shall also include mailing to owners of property subject to the rezoning application at least fifteen (15) days prior to the public hearing.
2. Step Two – Public Hearing before City Council.
- a) *Purpose.* To determine if application meets standards for amendment to the Official Zone District Map.
  - b) *Process.* The Community Development Director shall forward the recommendation of the Planning and Zoning Commission and shall provide the City Council with a recommendation to amend the Official Zone District Map.
  - c) *Standards of review.* Section 26.310.090, Amendments to the Official Zone District Map – Standards of Review
  - d) *Form of decision.* City Council decision shall be by Ordinance after considering the recommendations of the Community Development Director, the Planning and Zoning Commission, and comments and testimony from the public at a duly noticed public hearing.
  - e) *Notice requirements.* Publication, mailing and posting as provided for in subparagraphs 26.304.060.E.3.a., b. and c., *Public Notice – Publication of notice, Posting of notice, and Mailing of notice*, in addition to the requisite notice requirements for adoption of an ordinance by City Council.

For an amendment to the Official Zone District Map initiated by the City, notice shall also include mailing to owners of property subject to the rezoning application at least fifteen (15) days prior to the public hearing, in addition to the requisite notice requirements for adoption of an ordinance by City Council.

[\(Ord. No. 11-2012, §1\)](#)

**26.310.070. Initial Zoning for Annexed Properties.**

An application to establish the initial zoning for annexed property shall be reviewed according to the standards and procedures of this Chapter.

[\(Ord. No. 11-2012, §1\)](#)

**26.310.080. Rezoning – Application Contents.**

The development application for an amendment to the Official Zone District Map shall include:

- A. The general application information required in Section 26.304.030, *Application and Fees*.

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- B. The present Zone District classification and existing land uses of the real property proposed to be amended.
- C. The area of the property proposed to be amended, stated in square feet or acres.
- D. An accurate survey map of the real property proposed for amendment.

[\(Ord. No. 11-2012, §1\)](#)

**26.310.090. Rezoning - Standards of review.**

In reviewing an amendment to the Official Zone District Map, the City Council and the Planning and Zoning Commission shall consider:

- A. Whether the proposed amendment is compatible with surrounding zone districts and land uses, considering existing land use and neighborhood characteristics.
- B. Whether and the extent to which the proposed amendment would result in demands on public facilities and whether and the extent to which the proposed amendment would exceed the capacity of such public facilities including, but not limited to, transportation facilities, sewage facilities, water supply, parks, drainage, schools and emergency medical facilities.
- C. Whether and the extent to which the proposed amendment would result in significantly adverse impacts on the natural environment.
- D. Whether the proposed amendment is consistent and compatible with the community character in the City and in harmony with the public interest and the intent of this Title.

[\(Ord. No. 11-2012, §1\)](#)

**26.310.100. Notation on Official Zone District Map.**

Upon acceptance of an application for an amendment to the Official Zone District Map, the Community Development Director shall make a notation on the Official Zone District Map to show the pending amendment.

[\(Ord. No. 11-2012, §1\)](#)

**26.310.110. Recordation of designation.**

Upon the effective date of an act by the City Council approving a development application for an amendment to the Official Zone District Map, the Community Development Director shall notify the City Clerk of the designation, who shall record among the real estate records of the clerk and recorder of the county, a certified copy of the ordinance. The ordinance shall include a legal description of the property whose Zone District designation is changed by the amendment.

[\(Ord. No. 11-2012, §1\)](#)

**26.310.120. Placement on City's Official Zone District Map.**

Upon the effective date of an act by the City Council approving a development application for an amendment to the Official Zone District Map, the Community Development Director shall place the amendment on the City's Official Zone District Map, which is kept in the Community Development Department.

[\(Ord. No. 11-2012, §1\)](#)

**26.310.130. Disputes about zoning of a property.**

In cases where there is a dispute as to the correct zoning of a property, the ordinance approving or establishing the zoning shall be the final authority and not the Official Zone District Map.

[\(Ord. No. 52-2003, §4; Ord. No. 11-2012, §1\)](#)

**26.310.140. Time limitations.**

Unless otherwise waived by City Council, the City shall not accept an application to amend the Official Zone District Map (Rezoning), nor shall the City accept or initiate an application to amend the text of the Land Use Code, which has been denied for a period of two years from the date of denial.

[\(Ord. No. 11-2012, §1\)](#)





**Chapter 26.311**  
**MASTER PLANS**

Sections

- 26.311.010 Purpose
- 26.311.020 Procedure for Plan Development, Review, and Adoption
- 26.311.030 Master Plan Use and Effect

**26.311.010. Purpose.**

The purpose of this Chapter is to provide a means for formulating, adopting, and updating master plans, comprehensive plans, and special area or topical plans. For the purposes of this Chapter, these planning efforts are referred to as “master plans.”

The City may from time to time adopt, re-adopt, amend, update, or add to the comprehensive community plan (known as the Aspen Area Community Plan or AACP) which establishes and projects the City's land use and development planning philosophy, goals, and policies. The AACP may be broader in scope and serve as a guide for non-land use issues of the community. The AACP shall encourage regional planning with neighboring communities and jurisdictions.

The City may from time to time adopt, re-adopt, amend, update, or add to a master plan which establishes and projects the City's philosophy, goals, and policies regarding a particular area, issue, or topic. Examples include a neighborhood plan, a downtown pedestrian plan, and the like.

This Chapter outlines a process for adopting master plans focused on land use and development. Plans focusing on non-land use issues may also follow this process. This Chapter does not require all City initiatives to be developed and approved in this manner and does not preclude processes that are not outlined herein.

[\(Ord. No. 31-2012, §1\)](#)

**26.311.020. Procedure for Plan Development, Review, and Adoption**

**A. General.** The City of Aspen may from time to time adopt master plans to reflect the needs and aspirations of the community and define methods to achieve those goals.

**B. Steps required:** The following steps may be modified to address the nature of a master plan topic and the needs of the community. The desired steps should be considered during step one, plan initiation. Step eight is required for adoption of a master plan. The City Council may decide to pursue an initiative through other means than outlined below.

1. Step One – Plan Initiation.

- a) *Purpose:* To determine if a master plan should be initiated or updated.
- b) *Process:* The City Council shall decide whether the City should initiate a master plan. The City Manager, Community Development Director, or City Department Director, as

applicable, may provide City Council with a recommendation regarding the initiation of a master plan. Input from city boards, citizens, civic or business groups, and other government organizations should be considered. A general understanding of the topics to be covered, resources needed, the desired process steps, and timeframe for adoption should be considered.

c) *Form of decision:* City Council decision to initiate a master plan shall be by motion. The direction may be provided during a regular meeting or a work session of the Council and *may be incorporated into approval of a department work program or budget.*

d) *Notice requirements:* None.

2. Step Two – Existing Conditions/Background Information.

a) *Purpose:* To assemble need information and resources to facilitate plan development.

b) *Process:* City staff shall identify and assemble important background information, studies, reports, etc., as needed to enable an informed dialogue on the topic. Background information may be issued as a report or presented to the public or City boards as applicable.

3. Step Three – Public Outreach.

a) *Purpose:* To facilitate citizen awareness and solicit participation regarding community goals, aspirations, and expectations of the master plan.

b) *Process:* City staff shall engage the public through a variety of efforts, which may include open houses, surveys, small-group meetings, structured feedback sessions, web-based methods, outreach to groups or individuals with particular interest, etc. City Council shall be made aware of the outreach efforts and may from time to time request additional or different techniques. A summary of the outreach efforts and citizen comments may be issued as a report or presented to the public or City boards as applicable.

4. Step Four – Draft Plan.

a) *Purpose:* To assimilate community aspirations into a cohesive plan.

b) *Process:* City staff shall develop a draft master plan that assimilates community aspirations into a plan with a cohesive vision and a set of goals and policy objectives. The plan should be aspirational in nature but should include sufficient detail to guide implementation. A draft plan may take several iterations or be developed in a phased manner. A draft plan may suggest multiple options or strategies for further refinement.

5. Step Five – Establish Comments Period.

a) *Purpose:* To establish a public comments period and identify specific interest groups from which comments are sought.

b) *Process:* Unless otherwise established in step 1, City Council shall determine the length of the comment period. This period may be extended. City Council may request formal comments from certain city boards; citizen, civic, non-profit, or business associations; or, from other governmental bodies. City Council may direct city staff to assist interest groups

in the formulation of comments. City Boards may provide general comments, specific language or topical changes, or other changes and comments as they deem necessary.

- c) *Form of decision:* City Council direction shall be by motion. The direction may be provided during a regular meeting or a work session of the Council.

6. Step Six – Public Review and Comment.

- a) *Purpose:* To facilitate citizen awareness of the draft plan and solicit comments, critique, and suggestions on how to improve the plan.
- b) *Process:* City staff shall engage the public through a variety of efforts, which may include open houses, surveys, small-group meetings, structured feedback sessions, web-based methods, direct outreach to groups or individuals with particular interest, etc. City Council shall be made aware of the outreach efforts and may from time to time request additional or different techniques or extend the comments time period. A summary of the outreach efforts and comments received may be issued as a report or presented to the public or city boards as applicable.

7. Step Seven – City Council Review.

- a) *Purpose:* To review the draft master plan and the comments received and either direct amendments to the draft plan (which may include repeating some of the above steps) or direct staff to proceed to the adoption step.
- b) *Process:* City staff shall present the draft plan and the public feedback to City Council. City staff may also present modifications or options to the plan in response to public feedback or suggest repeating some or all of the above steps. City Council shall review the draft plan and provide direction to staff to either amend the plan for further consideration by the Council, amend the plan and repeat some of the above steps, or prepare the plan for adoption.
- c) *Form of decision:* City Council direction shall be by motion. The direction may be provided during a regular meeting or a work session of the Council.
- d) *Notice requirements:* None.

8. Step Eight – City Council Adoption.

- a) *Purpose:* To consider adoption of the master plan.
- b) *Process:* City staff shall present City Council with the draft plan along with a summary of the steps taken to develop the plan, comments received, and any suggested amendments to the plan. After receiving comments from the public during a public hearing, City Council may adopt the plan as presented, adopt the plan with amendments, direct amendments to the plan for further consideration, direct staff to repeat of any of the above process steps, or not adopt the plan and terminate the process.
- c) *Standard of Review:* City Council shall determine if adoption of the master plan is in the best interests of the community.

d) *Form of decision:* City Council adoption shall be by Resolution, after a public hearing. Direction to staff to amend the plan or repeat any of the process steps above may be by motion.

e) *Notice requirements:* Publication, pursuant to Subparagraph 26.304.060.E.3.a.

**C. Reciprocal Adoption.** City Council may adopt a master plan of another jurisdiction by using the steps outlined above. City Council may condition adoption of a master plan on the adoption of the plan by another jurisdiction.

**D. Master Planning Termination.** Notwithstanding the above steps, City Council may terminate a master planning process at any time by motion of the Council.

[\(Ord. No. 31-2012, §1\)](#)

**26.311.030. Master Plan Use and Effect.**

Adopted master plans of the City of Aspen shall be guiding and shall not place a burden on property. Master plans may be used to develop proposed legislation (which may burden property), to initiate new policies or operational practices, to develop budgets or department work programs, or to otherwise guide action of the City in the public interest.

Master plans shall not be legally binding and shall not regulate or place a burden on real property.

[\(Ord. No. 31-2012, §1\)](#)

**Chapter 26.312**  
**NONCONFORMITIES**

Sections:

- 26.312.010 Purpose
- 26.312.020 Nonconforming uses
- 26.312.030 Nonconforming structures
- 26.312.040 Nonconforming accessory uses and accessory structures
- 26.312.050 Nonconforming lots of record
- 26.312.060 Lot reduction

**26.312.010. Purpose.**

Within the Zone Districts established by this Title, there exist uses of land, buildings and structures that were lawfully established before this Title was adopted or amended which would be in violation of the terms and requirements of this Title. The purpose of this Chapter is to regulate and limit the continued existence of those uses, buildings and structures that do not conform to the provisions of this Title as amended.

It is the intent of this Chapter to permit nonconformities to continue, but not to allow nonconformities to be enlarged or expanded. The provisions of this Chapter are designed to curtail substantial investment in nonconformities in order to preserve the integrity of the zone districts and the other provisions of this Title but should not be construed as an abatement provision.

**26.312.020. Nonconforming uses.**

**A. Authority to continue.** Nonconforming uses of land or structures may continue in accordance with the provisions of this Chapter and this Section.

**B. Normal maintenance.** Normal maintenance may be performed upon nonconforming uses of land and structures, provided that the maintenance performed within any twelve (12) consecutive month period does not exceed ten percent (10%) of the current replacement cost of the structure.

**C. Extensions/expansions.** Nonconforming uses shall not be extended or expanded. This prohibition shall be construed so as to prevent:

1. Enlargement of nonconforming use by increasing the net leasable area, the net livable area of a dwelling unit, or the area within a structure in which such nonconforming use is located; or
2. Occupancy of additional lands; or,
9. Increasing the size, considering all dimensions, of a structure in which a nonconforming use is located.

**D. Relocation.** A structure housing a nonconforming use may not be moved to another location on or off the parcel of land on which it is located, unless the use thereafter shall conform to the limitations of the zone district into which it is moved.

**E. Change in use.** A nonconforming use shall not be changed to any other use unless the new use conforms to the provisions of the zone district in which it is located.

**F. Abandonment or discontinuance.** The intent of the owner notwithstanding, where a nonconforming use of land or nonconforming use of structure is discontinued or abandoned for twelve (12) consecutive months, then such use may not be reestablished or resumed, and any subsequent use must conform to the provisions of this Title. Any nonconforming use not associated with a structure may not be restored after a discontinuance period of more than thirty (30) days.

**G. Demolition or destruction.**

1. Ability to restore. Any nonconforming use located in a structure which is purposefully demolished, pursuant to the definition of *demolition*, may not be continued or restored. Any nonconforming use located in a structure undergoing construction, which does not constitute a demolition, has an approved development order, and an approved building permit shall not be considered discontinued.
2. Nonwillful destruction. Any nonconforming use which is demolished or destroyed by an act of nature or through any manner not purposefully accomplished by the owner may be restored as of right, regardless of the extent of demolition or destruction, if a building permit for reconstruction is issued within twelve (12) months of the date of demolition or destruction.

[\(Ord. No. 55-2000, §§2, 3; Ord. No. 12, 2007, §§15, 16; Ord. No.7, 2014, §13\)](#)

**26.312.030. Non-conforming structures.**

**A. Authority to continue.** A nonconforming structure devoted to a use permitted in the zone district in which it is located may be continued in accordance with the provisions of this Chapter.

**B. Normal maintenance.** Normal maintenance to nonconforming structures may be performed without affecting the authorization to continue as a nonconforming structure.

**C. Extensions.** A nonconforming structure shall not be extended by an enlargement or expansion that increases the nonconformity. A nonconforming structure may be extended or altered in a manner that does not change or that decreases the nonconformity.

1. Historic structures. The first exception to this requirement shall be for a structure listed on the Aspen Inventory of Historic Landmark Sites and Structures. Such structures may be extended into front yard, side yard and rear yard setbacks, may be extended into the minimum distance between buildings on a lot and may be enlarged, provided, however, such enlargement does not exceed the allowable floor area of the existing structure by more than five hundred (500) square feet, complies with all other requirements of this Title and receives development review approval as required by Chapter 26.415.

2. Mandatory occupancy Accessory Dwelling Units and Carriage Houses. The second exception to this requirement shall be for a property with a detached Accessory Dwelling Unit or Carriage House (“ADU”) having a mandatory occupancy requirement. Such a detached ADU may be

enlarged or expanded by up to five hundred (500) square feet of floor area, provided that this bonus floor area shall go entirely to the detached ADU and also provided that the ADU does not exceed the maximum size allowed for an ADU or carriage house. The enlargement or expansion must comply with all other requirements of this Title and shall receive development review approval as required herein.

- a) *Procedure.* The procedure for increasing the maximum floor area of a property for the purpose of increasing the size of an ADU requires the submission of a development application. The development application shall be processed under Chapter 26.430, Special Review.
- b) *Review Standards.* An application for increasing the floor area of a property for the purpose of increasing the size of an ADU shall meet the standards in Section 26.520.050, Design Standards, unless otherwise approved pursuant to Section 26.520.080 Special Review, as well as the following additional review standards:
  - (1) Newly established floor area may increase the ADU up to a cumulative maximum of 500 sq. ft. of floor area and is required to be mitigated by either of the following two options.
    - (a) Extinguishment of Historic Transferable Development Right Certificates (“certificate” or “certificates”). A property owner may increase the ADU by extinguishment of a maximum of two certificates with a transfer ratio of 250 sq. ft. of floor area per each certificate. Refer to Chapter 26.535 for the procedures for extinguishing certificates.
    - (b) Extinguishment of unused floor area from another property. A property owner may increase the maximum floor area of a property for the purpose of increasing the size of an ADU by extinguishment of a maximum of 500 square feet of available un-built floor area from one property to the ADU.
  - (2) The additional floor area is a conversion of existing square footage which was not previously counted in floor area. (Example: storage space made habitable or the additional floor area creates a more desirable, livable unit with minimal additional impacts to the bulk and mass of the ADU structure.
  - (3) The additional floor area creates a unit which is more suitable for caretaker families.
  - (4) The increased impacts from the larger size are outweighed by the benefits of having a larger, more desirable ADU.
  - (5) The area and bulk of the ADU structure, after the addition of the bonus floor area, must be compatible with surrounding uses and the surrounding neighborhood.
  - (6) For the transfer of allowable floor area through the use of Historic Transferable Development Right Certificates, the certificates shall be extinguished pursuant to Chapter 26.535, Transferable Development Rights.
  - (7) For the transfer of allowable floor area from a non-historically designated property to an ADU deed-restricted as a mandatory occupancy unit, the applicant shall record an instrument in a form acceptable to the City Attorney removing floor area from the sending property to the mandatory occupancy ADU.

**D. Relocation.** A nonconforming structure shall not be moved unless it thereafter conforms to the standards and requirements of the zone district in which it is located.

**E. Unsafe structure.** Any portion of a nonconforming structure which becomes physically unsafe or unlawful due to lack of repairs and maintenance and which is declared unsafe or unlawful by a duly authorized city official, but which an owner wishes to restore, repair or rebuild shall only be restored, repaired or rebuilt in conformity with the provisions of this Title.

**F. Ability to restore.**

1. Non-purposeful destruction. Any nonconforming structure which is demolished or destroyed by an act of nature or through any manner not purposefully accomplished by the owner, may be restored as of right if a building permit for reconstruction is issued within twenty-four (24) months of the date of demolition or destruction.
2. Purposeful destruction. Any nonconforming structure which is purposefully demolished or destroyed may be replaced with a different structure only if the replacement structure is in conformance with the current provisions of this Title or unless replacement of the nonconformity is approved pursuant to the provisions of Chapter 26.430, Special Review. Any structure which is nonconforming in regards to the permitted density of the underlying zone district may maintain that specific nonconformity only if a building permit for the replacement structure is issued within twelve (12) months of the date of demolition or destruction.\*

\*A duplex or two single-family residences on a substandard parcel in a zone district permitting such use is a nonconforming structure and subject to nonconforming structure replacement provisions. Density on a substandard parcel is permitted to be maintained but the structure must comply with the dimensional requirements of the Code including single-family floor area requirements.

[\(Ord. No. 1-2002, § 6 \[part\]; Ord. No. 9-2002, § 5; Ord. No. 35-2004, § 1; Ord. No. 7-2008\)](#)

**26.312.040. Nonconforming accessory uses and accessory structures.**

No nonconforming accessory use or accessory structure shall continue after the principal structure or use shall have terminated unless such structure or use thereafter shall conform to the provisions of the zone district in which it is located.

**26.312.050. Nonconforming lots of record.**

**A. General.** A detached single-family dwelling and customary accessory buildings may be developed on a lot of record if:

1. The lot of record is in separate ownership and not contiguous to lots in the same ownership; and
2. The proposed single-family dwelling can be located on the lot so that the yard, height, open space and floor area dimensional requirements of the zone district can be met or a variance is obtained from said dimensional requirements pursuant to Chapter 26.314.

**B. Undivided lot.** If two (2) or more lots or combinations of lots with continuous frontage in single ownership (including husband and wife as in all cases a single owner) are of record as of



November 22, 1971, regardless of time of acquisition and if all or parts of the lots do not meet the requirements established for lot width and area, the lots shall be considered an undivided parcel and no portion shall be used or occupied which does meet the width and area requirements of this Title.

**C. Historic property.** A lot of record containing a property listed on the Aspen Inventory of Historic Landmark Sites and Structures need not meet the minimum lot area requirement of its zone district to allow the uses that are permitted and conditional uses in the district subject to the standards and procedures established in Chapter 26.415. ([Ord. No. 1-2002 § 6 \[part\]](#))

**26.312.060. Lot reduction.**

**A.** No lot or interest therein shall be transferred, conveyed, sold or subdivided so as to create a new nonconforming lot, to avoid, circumvent or subvert any provision of this Title or to leave remaining any lot in violation of the dimensional requirements of this Title.

**B.** No lot or portion of a lot required as a building site under this Title shall be used as a portion of a lot required as a site for another structure.

**C.** No building permit shall be issued for any lot or parcel of land which has been conveyed, sold or subdivided in violation of this Section.



## **Chapter 26.314 VARIANCES**

Sections:

- 26.314.010 Purposes
- 26.314.020 Authority
- 26.314.030 Authorized variances
- 26.314.040 Standards applicable to variances
- 26.314.050 Procedure for variance approval
- 26.314.060 Conditions
- 26.314.070 Expiration
- 26.314.080 Appeals

**26.314.010. Purposes.**

Variations are deviations from the terms of this Title which would not be contrary to the public interest when, owing to special circumstances or conditions, the literal enforcement of the provisions of this Title would result in undue and unnecessary hardship. Variations shall only be granted in accordance with the terms of this Chapter.

**26.314.020. Authority.**

The Board of Adjustment, in accordance with the procedures, standards and limitations of this Chapter shall approve, approve with conditions or disapprove a development application for variations to the terms of this Title. If the application for a variance is part of a consolidated application process authorized by the Community Development Director pursuant to Subsection 26.304.060.B.1, the Planning and Zoning Commission or the Historic Preservation Commission may review the application for a variance using the standards and procedures set forth in this Chapter.

**26.314.030. Authorized variances.**

Variations may only be granted from the following requirements of this Title 26:

- A.** Dimensional requirements.
- B.** Permitted uses, but only to allow for the temporary off-site location or storage of materials, structures or equipment pursuant to building construction or construction staging.

**26.314.040. Standards applicable to variances.**

**A.** In order to authorize a variance from the dimensional requirements of Title 26, the appropriate decision-making body shall make a finding that the following three (3) circumstances exist:

1. The grant of variance will be generally consistent with the purposes, goals, objectives and policies of this Title and the Municipal Code; and

2. The grant of variance is the minimum variance that will make possible the reasonable use of the parcel, building or structure; and
3. Literal interpretation and enforcement of the terms and provisions of this Title would deprive the applicant of rights commonly enjoyed by other parcels in the same zone district and would cause the applicant unnecessary hardship, as distinguished from mere inconvenience. In determining whether an applicant's rights would be deprived, the Board shall consider whether either of the following conditions apply:
  - a) There are special conditions and circumstances which are unique to the parcel, building or structure, which are not applicable to other parcels, structures or buildings in the same zone district and which do not result from the actions of the applicant; or
  - b) Granting the variance will not confer upon the applicant any special privilege denied by the terms of this Title and the Municipal Code to other parcels, buildings or structures, in the same zone district.

**B.** In order to authorize a variance from the permitted uses of Title 26, the appropriate decision-making body shall make a finding that all of the following circumstances exist:

1. Notice by publication, mailing and posting of the proposed variance has been provided to surrounding property owners in accordance with Subparagraphs 26.304.060.E.3.a.—c.
2. A variance is the only reasonable method by which to afford the applicant relief, and to deny a variance would cause the applicant unnecessary hardship such that the property would be rendered practically undevelopable, as distinguished from mere inconvenience.
4. The temporary off-site storage or construction staging can be undertaken in such a manner so as to minimize disruption, if any, of normal neighborhood activities surrounding the subject parcel.
5. If ownership of the off-site parcel subject to the proposed variance is not vested in the applicant, then verified written authorization of the parcel's owner must be provided.
6. Adequate provision is made to restore the subject parcel to its original condition upon expiration of the variance, including the posting of such financial security as deemed appropriate and necessary by the appropriate decision-making body to ensure such restoration.

[\(Ord. No. 27-2002, §7; Ord. No. 12, 2007, §17; Ord. No. 3-2012, §6\)](#)

**26.314.050. Procedure for variance approval.**

**A. Initiation.** A development application for a variance may be initiated by over fifty percent (50%) of the owners of the real property for which the variance is proposed.

**B. Determination of completeness and review by the Planning Director.** A development application for a variance shall be initiated by the submission of a development application to the Community Development Director in a form established for such purposes. The Community

Development Director shall review the application and determine its completeness and shall refer written comments to the appropriate decision-making body.

**C. Steps required.** One step is required to review an application for a variance: A public hearing before the appropriate decision-making body.

Notice requirements: Publication, mailing and posting (See Subparagraphs 26.304.060[E][3][a]—[c]).

**D. Decision-making body action.** At the conclusion of the public hearing, the appropriate decision-making body shall determine if the application meets the standards of this Chapter and shall issue a resolution to approve, approve with conditions or disapprove the application for a variance.

[\(Ord. No. 27-2002, §8\)](#)

#### **26.314.060. Conditions.**

The Director of the Community Development Department may recommend and the appropriate decision-making body may impose such conditions on variances as are necessary to accomplish the goals, objectives and policies of the Aspen Area Community Plan and the terms of this Title. All variances granted so as to permit the temporary off-site storage of materials, structures or equipment pursuant to building construction or construction staging shall commence and terminate on dates certain as established by the appropriate decision-making body and shall not relieve an applicant from obtaining all necessary building permits.

#### **26.314.070. Expiration.**

**A. Expiration.** Unless vested as part of a development plan pursuant to Section 26.308.010 and except as otherwise established by the appropriate decision-making body, a variance granted under this Chapter shall automatically expire after twelve (12) months from the date of approval unless development has been commenced as illustrated by the issuance of a building permit.

**B. Extension.** The appropriate decision-making body may grant a one time extension of a variance for up to twelve (12) months. All requests for an extension must be submitted prior to the expiration of the existing development order, must demonstrate good cause showing that an extension is necessary and must demonstrate that the circumstances as set forth in this Chapter are still applicable.

#### **26.314.080. Appeals.**

An applicant may appeal an adverse determination by the Planning and Zoning Commission or Historic Preservation Commission on an application for a variance, not including variances to allowable FAR or height, that is consolidated with other development applications to the Board of Adjustment. Such appeals shall follow the general appeal procedures set forth in Chapter 26.316.

[\(Ord. No. 46-2015, §10\)](#)



**Chapter 26.316**  
**APPEALS**

Sections:

26.316.010	Appeals, purpose statement
26.316.020	Authority
26.316.030	Appeal procedures

**26.316.010. Appeals, purpose statement.**

The purpose of this Chapter is to establish the authority of the Board of Adjustment, the Planning and Zoning Commission and City Council to hear and decide certain appeals and to set forth the procedures for said appeals.

[\(Ord. No. 46-2015, §11\)](#)

**26.316.020. Authority.**

**A. Board of Adjustment.** The Board of Adjustment shall have the authority to hear and decide the following appeals:

1. The denial of a variance pursuant to Chapter 26.314 by the Planning and Zoning Commission or Historic Preservation Commission.

**B. City Council.** The City Council shall have the authority to hear and decide the following appeals:

1. An interpretation to the text of this Title or the boundaries of the zone district map by the Community Development Director in accordance with Chapter 26.306. An appeal of this nature shall be a public meeting.
2. Any action by the Historic Preservation Commission in approving, approving with conditions or disapproving a development application for development in an "H," Historic Overlay District pursuant to Chapter 26.415. An appeal of this nature shall be a public meeting.
3. The scoring determination of the Community Development Director pursuant to Chapter 26.470. An appeal of this nature shall be a public meeting.
4. The allocation of growth management allotments by the Planning and Zoning Commission pursuant to Chapter 26.470. An appeal of this nature shall be a public meeting.
5. Any other appeal for which specific authority is not granted to another board or commission as established by this Title. An appeal of this nature shall be a public meeting.

**C. Planning and Zoning Commission.** The Planning and Zoning Commission shall have the authority to hear and decide an appeal from an adverse determination by the Community Development

Director on an application for exemption pursuant to the Growth Management Quota System in accordance with Subsection 26.470.060.D. of this Title.

**D. Administrative Hearing Officer.** The Administrative Hearing Officer shall have the authority to hear an appeal from any decision or determination made by an administrative official unless otherwise specifically stated in this Title.

([Ord. No. 17-2002, §2 \[part\]](#); [Ord. No. 27-2002, §23](#); [Ord. No. 12, 2007, §18](#))

### **26.316.030. Appeal procedures.**

**A. Initiation.** Any person with a right to appeal an adverse decision or determination shall initiate an appeal by filing a notice of appeal on a form prescribed by the Community Development Director. The notice of appeal shall be filed with the Community Development Director and with the City office or department rendering the decision or determination within fourteen (14) days of the date of the decision or determination being appealed. Failure to file such notice of appeal within the prescribed time shall constitute a waiver of any rights under this Title to appeal any decision or determination.

**B. Effect of filing an appeal.** The filing of a notice of appeal shall stay any proceedings in furtherance of the action appealed from unless the Community Development Director certifies in writing to the chairperson of the decision-making body authorized to hear the appeal that a stay poses an imminent peril to life or property, in which case the appeal shall not stay further proceedings. The chairperson of the decision-making body with authority to hear the appeal may review such certification and grant or deny a stay of the proceedings.

**C. Timing of appeal.** The decision-making body authorized to hear the appeal shall consider the appeal within thirty (30) days of the date of filing the notice of appeal or as soon thereafter as is practical under the circumstances.

**D. Notice requirements.** Notice of the appeal shall be provided by mailing to the appellant and by publication to all other affected parties. (See Subsection 26.304.060[E]).

**E. Standard of review.** Unless otherwise specifically stated in this Title, the decision-making body authorized to hear the appeal shall decide the appeal based solely upon the record established by the body from which the appeal is taken. A decision or determination shall be not be reversed or modified unless there is a finding that there was a denial of due process or the administrative body has exceeded its jurisdiction or abused its discretion.

**F. Action by the decision-making body hearing the appeal.** The decision-making body hearing the appeal may reverse, affirm or modify the decision or determination appealed from and, if the decision is modified, shall be deemed to have all the powers of the officer, board or commission from whom the appeal is taken, including the power to impose reasonable conditions to be complied with by the appellant. The decision-making body may also elect to remand an appeal to the body that originally heard the matter for further proceedings consistent with that body's jurisdiction and directions given, if any, by the body hearing the appeal. The decision shall be approved by written resolution. All appeals shall be public meetings.



[\(Ord. No. 55-2000, §§4, 5; Ord. No. 27-2002, §24; Ord. No. 12, 2007, §19\)](#)

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