

ATTACHMENT B

Administrative Review Procedure Sample Ordinance

Basic cautions for implementation:

- Consult your City Attorney before implementing this sample ordinance to ensure it meets your City's needs and does not conflict with current City policies or applicable law as implemented.
- Incorporate ordinance within code of ordinances
 - Be careful to review what acts require administrative review so entire code works together
 - Ensure decisions that are applicable, are not "final decisions" until completion of this process
 - NOTE: some statutes give direct appeal rights without exhaustion requirements – this will not change those rights.
 - Ensure an appropriate "review" board is designated or created (BZA, planning commission, etc.)
- Review time frames and process to make sure it fits practical application

NOTICE & DISCLAIMER:

These materials and the related presentation are intended for discussion purposes and to provide those attending the seminar with useful ideas and guidance on the topics and issues covered. The materials and the comments of the presenters do not constitute, and should not be treated as, legal advice regarding the use of any particular technique, device or suggestion, or its legal advantages or disadvantages. Although we have made every effort to ensure the accuracy of these materials and the presentation, neither the attorney presenting this seminar nor Cunningham, Vogel & Rost, P.C. assumes any responsibility for any individual's reliance on the written or oral information presented.

SAMPLE ORDINANCE

ARTICLE ____ . ADMINISTRATIVE REVIEW PROCEDURE

SECTION ____.010. DEFINITIONS

As used in this Article, the following terms shall be defined as follows:

AGGRIEVED: A person directly impacted by an action or decision of the City such that the person would have standing in a court of law to challenge the action.

BOARD: The Board of Administrative Review established herein.

FINAL ACTION:

1. Any action or decision for which no further review or amendment is contemplated or apparent, other than through this procedure; and

2. Any temporary or interim action or failure to act for which immediate irreparable injury will occur prior to any final action being taken.

UNLAWFUL: Any act or omission in violation of any applicable law or actions that are not authorized by any applicable law.

SECTION ____.020. SCOPE AND PURPOSE

The administrative review procedures set forth in this Article shall apply to all final actions of any city officer, employee, board, commission or the City Council that are claimed by an aggrieved party to be unlawful or an unconstitutional taking of property without compensation; provided however, that this Article shall not apply to appeals of zoning decisions required to be reviewed by the Board of Adjustment pursuant to Section 89.090, RSMo. The City shall not intentionally take any action that is unlawful nor shall it unconstitutionally deprive property owners of real property interests without just compensation. This Article shall be construed to provide for the objective and fair review of claims by aggrieved persons asserting unlawful actions of the City or unconstitutional deprivation of vested real property rights or interests without just compensation. Nothing contained herein shall be construed to limit the ability of the City to lawfully fulfill its duties and functions.

SECTION ____.030. ESTABLISHMENT OF AND REVIEW BY ADMINISTRATIVE REVIEW BOARD -- EXHAUSTION REQUIRED

A. There is hereby established the Administrative Review Board to review petitions pursuant to this Article. The City Council hereby designates the Board of Adjustment to act as the Board of Administrative Review (hereinafter referred to as "the Board") to hear and consider petitions within the scope of this Article. The Board may establish additional procedures to fulfill the purposes of this Article.

B. Any aggrieved party shall petition to the Board for a review of any final decision of any city officer, employee, board, commission or the City Council. To the fullest extent permitted by law, the review procedures herein shall be exhausted before any action may be filed in any court against the City or its officers, employees, boards, officials or commissions.

SECTION __.040. REVIEW PROCEDURE

The following procedures for review of a final action shall be followed:

1. **Final decision.** The person petitioning for review shall obtain a final decision before requesting review.

2. **Petition for review.** Within ten (10) days from the date of the final decision, the person requesting the review shall file, in the office of the City Clerk, five (5) copies of a written petition for review of that decision. A copy shall also be filed with the City Attorney.

3. **Initial review of decision.** The City Administrator, in consultation with the City Attorney where appropriate, shall review each petition and determine whether it seeks review authorized by this Article. In the event that the petition does not allege a review authorized by this Article, the petition shall be dismissed upon direction of the City Attorney or upon referral to the Administrative Review Board.

4. **Stay of final action.** Upon request of the petitioner, the Board may stay pending its review the final action of any decision, other than a decision of the City Council, upon a showing:

a. The petitioner has a substantial likelihood of demonstrating that the final action to be reviewed is unlawful or an unconstitutional taking;

b. Irreparable harm if such stay is not issued; and

c. The public interest would not be harmed by issuance of such stay.

Where the final action is a decision of the City Council, the petitioner may seek such stay from the City Council, whereupon in its discretion, such stay may be granted pending review by the Board.

5. **Hearing date.** The Board shall set a time to review the decision that gave rise to the petition as soon as reasonably practical and shall provide public notice of such meeting. The Board shall hear and consider the evidence related to and submitted by the petitioner, the City or other interested parties in the discretion of the Board. The hearing shall include written submittals.

6. **Hearing requirements.** Unless a hearing or the requirements herein are waived by petitioner, each hearing shall provide a record of the proceedings (by audio, video, stenographic or other reliable means of recording capable of transcription) and shall permit the parties to introduce evidence under oath and shall provide for cross-examination, when requested. The formal hearing requirements herein shall be deemed waived if not affirmatively requested by petitioner in its petition.

7. The City Council or the Mayor may remove any matter directly to the City Council for review by filing notice with the Board to such effect.

8. Nothing herein regarding hearing requirements shall prevent summary decision on any petition where there is no genuine dispute as to the relevant facts.

SECTION __.050. EXPEDITED REVIEW PROCEDURE

In the event that the aggrieved party claims irreparable harm will occur unless immediate review is granted, the party may request expedited review, upon facts justifying such action alleged by affidavit, whereupon the Board, if it determines it is appropriate, shall shorten the time for submissions and review.

SECTION __.060. APPLICANT INFORMATION -- SUBMITTAL

A. **Initial Filing Information.** With the petition for review or within seven (7) days prior to the date of hearing, the petitioner shall submit six (6) copies of the following by affidavit to the City Clerk:

1. The name of the petitioner requesting review;
2. The precise final action to be reviewed, including the date, the decision maker and copies of all documentation of the decision;
3. If injury to an interest relating to real property is claimed, the legal description of the property and the name and business address of the current owner of the property; the form of ownership, i.e. whether sole proprietorship, for-profit or not-for-profit corporation, partnership, joint venture or other; and if owned by other than a real person, the name and address of all partners or shareholders owning ten percent (10%) or more of the outstanding shares;
4. A detailed description of the factual and legal grounds for the claim that the final action is unlawful or constitutes an unconstitutional taking without just compensation; and
5. A description of the protectable right or property interest claimed to be affected, including a statement of any claimed or threatened damages and the basis for such computation.

B. **Supplemental Information.** If the Board determines that additional information is needed, the Board may further require legal briefing or such other information to be submitted by affidavit as may be deemed necessary for adequate and prompt review. If any supplemental information is required, the petitioner shall file six (6) copies of the required information with the City Clerk. With regard to claims of unconstitutional takings, the Board also requests:

1. The evidence and documentation as to the value of the property interest claimed taken, including the date and cost at the date the property was acquired. This material should include any evidence of the value of that same property before and after the alleged unconstitutional taking; the name of the party from whom purchased, including the relationship, if any, between the person requesting a review; and the party from whom the property was acquired;
2. The terms, including sale price, of any previous purchase or sale of a full or partial interest in the property during the three (3) years prior to the date of application;
3. All appraisals of the property prepared for any purpose, including financing, offering for sale or ad valorem taxation, within the three (3) years prior to the date of application;
4. The assessed value of and ad valorem taxes on the property for the previous three (3) years;

5. All information concerning current mortgages or other loans secured by the property, including the name of the mortgagee or lender; current interest rate, remaining loan balance and term of the loan and other significant provisions including, but not limited to, the right of purchasers to assume the loan;

6. All listings of the property for sale or rent, price asked and offers received, if any, within the previous three (3) years;

7. All studies commissioned by the petitioner or agents of the petitioner within the previous three (3) years concerning feasibility of development or utilization of the property;

8. For income producing property, itemized income and expense statements from the property for the previous three (3) years;

9. Information from a title policy or other source showing all recorded liens or encumbrances affecting the property; and

10. Such additional information reasonably necessary in the Board's opinion to arrive at a conclusion concerning the nature of and the value of the alleged unconstitutional taking.

SECTION __.070. REVIEWING GUIDELINES

The Board shall review the facts and information presented by the petitioner and determine if the final action is unlawful or constitutes an unconstitutional taking without just compensation. In doing so, the City Attorney shall serve as legal counsel and shall be consulted. The Board shall review the facts in light of the applicable City, State and Federal law. An affirmative vote of four (4) of the five (5) members of the Board shall be required to support any decision.

SECTION __.080. TIME FOR FINAL DECISION

If the Board fails to hear and decide the petition within thirty (30) days after the filing of the petition, the final action of the City Officer, employee, board, commission or the City Council shall be deemed to be submitted to the City Council without recommendation pursuant to Section __.090(A); provided however, the Board may extend the time to reach a decision, not exceeding an additional one hundred twenty (120) days following the receipt of the information required pursuant to this Article, if prior to the expiration of the thirty (30) day period, the Board notifies the petitioner, in writing, of such extension.

SECTION __.090. RESULTS OF REVIEW

A. After completing the review, the Board shall make a determination regarding the petition and, if determined to be necessary and appropriate, make a recommendation to City Council or the appropriate officer, employee, board or commission. The evidence before the Board shall be submitted to the City Council for its determination.

B. The City Council shall have thirty (30) days to take action on the petition or recommendation of the Board, unless extended by the City Council for cause. No petition shall become final for purposes of judicial review of the action subject to review until the effective date of City Council action on the petition or upon expiration of the review period after the petition is submitted to the City Council.

SECTION ____100. REVIEW ADVISORY

The decisions of the Board rendered pursuant to the provisions of this Article are advisory and shall not be construed to expand or limit the scope of the City's liability for any claimed unlawful action or unconstitutional taking of a vested property interest. The decision of the Board rendered pursuant to the provisions of this Article is not admissible in court for any purpose other than to demonstrate that the petitioner has exhausted the requisite administrative remedies and in no event shall any recommended compensation be admissible into evidence. The decision of the City Council pursuant to the preceding Section shall be deemed the final decision for purposes of judicial review.