



To: Chair Thiesse and Planning Commission Members
Jessica Loftus, City Administrator

From: Jeremy Barnhart, Community Development Director

Date: September 19, 2016

Subject: #16-3865, City of Orono,
Text Amendment: Appeals
Public Hearing

<p>Application Summary: The proposed ordinance formally consolidates and clarifies the appeal process for a number of decisions made by city staff, the Board of Appeals, and the City Council.</p> <p>Staff Recommendation: Planning Department Staff recommends approval of the ordinance as drafted.</p>

List of Exhibits

Exhibit A. Draft Ordinance

Background

Among the priorities for amendments to the city ordinances was the need to clarify the appeal process. An appeal of a decision is one of the fundamental rights a resident has, and the avenue in which to make this appeal, and resolve it in a timely manner required clarification.

Currently, references to appeals are located throughout the code, and pertain to administrative decisions made by staff and officials, (2-41), false alarm penalties (42-168) permit revocations (18-111), violations of tobacco regulations (50-32), Special event permits (66-225), nuisance abatement (Chapter 70), zoning decisions (Chapter 78), and subdivisions (Chapter 82).

Section 1 of the draft ordinance consolidates the appeal process for decisions made by the city administrator or any other city official. This includes alarms, special event permits, site plan process, and vegetative alterations. In all cases, an appeal must be submitted within 10 days of the decision being appealed, to avoid a person requesting an appeal 6 months after a decision was made and acted on. 10 days is a standard appeal timeline.

Sections 2-9, 12, 14 of the draft ordinance amend the various sections of the code which reference administrative type decisions.

Section 10 notes that Zoning Board of Appeals (ZBA) decisions on appeals are binding, though they may be appealed to the City Council. ZBA decisions on variances are advisory, the Council makes the final decisions.

Section 13 relates to floodplain regulations, and is mandated by the National Flood Insurance Program.

Section 15 names the Zoning Board of Appeals established for zoning variances is the board for appeals from the administration of the subdivision ordinance. The Zoning board of Appeals in Orono is currently the Planning Commission.

Staff Recommendation

Staff recommends approval of the ordinance as written.

ORDINANCE NO. ____, THIRD SERIES

**CITY OF ORONO
HENNEPIN COUNTY, MINNESOTA**

**AN ORDINANCE AMENDING THE CITY ORDINANCE
PERTAINING TO FILING OF
ADMINISTRATIVE, ZONING, AND SUBDIVISION APPEALS**

THE CITY COUNCIL OF ORONO ORDAINS:

SECTION 1. Section 2-41 Right to administrative appeal is hereby amended to read as follows:

Except as otherwise provided, if any person shall be aggrieved by any administrative decision of the city administrator or any other city official, or any board or commission not having within its structure an established review schedule or an appellate procedure, such aggrieved person is entitled to a full hearing before the council upon serving a written request upon the mayor and city clerk ~~at least seven days prior to any regular council meeting~~. Such request shall contain a general statement setting forth the administrative decision to be challenged by the appellant. An appeal under this section shall be served no later than 10 days following the decision. A hearing on the appeal shall occur at the next regularly scheduled council meeting that is at least seven days after the appeal is served. At such hearing, the appellant may present any evidence he deems pertinent to the appeal; but the city shall not be required to keep a verbatim record of the proceedings. The mayor, or other officer presiding at the hearing, may, in the interest of justice or to comply with time requirements and on the mayor's own motion or the motion of the appellant, the city clerk, or a member of the council, adjourn the hearing to a more convenient time or place; but such time or place shall be fixed and determined before adjournment so as to avoid the necessity for formal notice of reconvening. An employee of the city who is aggrieved by an action or decision of another city employee that relates to their employment shall exhaust the grievance procedures set forth in the administrative and personnel policy before requesting a hearing before the city council. The city council's decision on appeal may only be appealed to the Minnesota Court of Appeals. This Section shall not apply to hearing officer decisions under Section 50-32; decisions of an administrative officer under Chapter 78; decisions of an administrative officer under Chapter 82; or decisions of the planning director under Section 78-1604.

SECTION 2. Section 18-111 Revocation Subsection (e) is hereby amended to read as follows:

(e) ~~*[Purposely left blank]* Any person whose permit is revoked may appeal that revocation to the city council by filing notice of such appeal with the city clerk within ten days of the date the revocation was mailed or delivered.~~

SECTION 3. Section 42-168 User fee sub paragraph (b) is hereby amended to read as follows:

(b) Any alarm user required by the city to pay a user fee as the result of a false alarm may make a written appeal of the false alarm charge to the chief of police within ten days of notice from the city of the false alarm charge. ~~Following review and determination by the chief of police, such decision may be appealed to the city administrator, who will have the~~

50 authority to make a final determination as to whether the appellant is to be charged with
51 a fee for a false alarm.
52

53 **SECTION 4.** Section 50-32 Violations Subsection (b) is hereby amended to read as follows:
54

55 (a) *Hearings.* If a person accused of violating this article so requests within 10 days of receipt
56 of a citation, a hearing shall be scheduled, the time and place of which shall be published
57 and provided to the accused violator.
58

59 **SECTION 5.** Section 66-225 Denial of permit Subsection (b) is hereby amended to read as
60 follows:
61

62 (b) The city administrator or designee shall act promptly upon a timely filed application for a
63 parade or special event permit, but in no event shall grant or deny a permit less than 48
64 hours prior to the parade or special event and shall include reasons for denial. ~~Any~~
65 ~~applicant shall have the right to appeal the denial of a parade or special event permit to~~
66 ~~the city council. The appeal shall be filed within five days after receipt of the denial to the~~
67 ~~city clerk. The city council shall act upon the appeal at the next scheduled meeting~~
68 ~~following receipt of the notice of appeal.~~
69

70 **SECTION 6.** Section 70-5 Abatement procedure Subsection (b) is hereby amended to read as
71 follows:
72

73 (b) Summary abatement. The city administrator or designee may provide for abating a public
74 nuisance without following the procedure required in paragraph (a) above when:
75 (1) There is an immediate threat to the public health or safety;
76 (2) There is an immediate threat of serious property damage; or
77 (3) A public nuisance has been caused by private parties on public property.

78 If the city administrator or designee abates the nuisance under this section, he must
79 reasonably attempt to notify the owner, occupant, or other responsible party of the intended
80 action and the right to appeal the abatement and any cost recovery ~~at the next regularly~~
81 ~~scheduled city council meeting.~~
82

83 **SECTION 7.** Section 70-129 Approval is hereby amended to read as follows:
84

85 All permits are subject to the approval of the city administrator upon recommendation of
86 the chief of police. ~~Appeals of denials of permits are subject to council review.~~
87

88 **SECTION 8.** Section 70-131 Notice to owners of surrounding property is hereby amended to
89 read as follows:
90

91 An annual permit shall require notice to be given to surrounding property owners and an
92 opportunity for them to object prior to issuance of a permit under this subdivision, but such
93 objections shall not require the permit to be withheld. ~~Any person may appeal the denial of a~~
94 ~~permit to the council.~~

95 **SECTION 9.** **Section 78-96 Board established Subsection (a)** is hereby amended to read as
96 follows:
97

98 (a) A zoning board of appeals and adjustments is established. The planning commission is
99 constituted as the board of appeals and adjustments. The decisions of the board are advisory to
100 the council. The board shall have the following powers:

101 (1) To hear and decide appeals from any affected person where it is alleged that there is an
102 error in any order, requirement, decision or determination made by an administrative officer in
103 the enforcement of this chapter.

104 (2) To hear requests for variances in accordance with this chapter.

105 (3) To exercise other functions as provided in this chapter.

106
107 **SECTION 10.** Section 78-99 Appeals procedures is hereby amended to read as follows:
108

109 ~~The decisions of the board on requests for variances are advisory and will automatically proceed~~
110 ~~to the council for review. The decisions of the board on appeals are binding.~~ The applicant or
111 other person or officers of the city affected may appeal a binding decision of the board to the
112 council by filing a written notice stating the action appealed from and stating the specific
113 grounds upon which the appeal is made. The notice shall be accompanied by a fee in the
114 amount prescribed by the current city fee schedule payable to the city, which fee shall not be
115 refundable. An appeal under this section shall be filed no later than 10 days following the
116 decision of the board.

117
118 **SECTION 11.** Section 78-100 Subdivisions is hereby amended to read as follows:
119

120 ~~[Purposely left blank] Appeals to the board of appeals and adjustments may be taken by any~~
121 ~~affected person upon compliance with any reasonable conditions imposed by the subdivision~~
122 ~~regulations. The board has the following powers with respect to the subdivision regulations:~~

123
124 ~~(1) To hear and decide appeals where it is alleged that there is an error in any order,~~
125 ~~requirement, decision or determination made by an administrative officer in the~~
126 ~~enforcement of chapter 82.~~

127 ~~(2) To hear requests for varying the regulations as they apply to specific properties where an~~
128 ~~unusual hardship on the land exists, but variances may be granted only upon the specific~~
129 ~~grounds set forth in the subdivision regulations. Unusual hardship includes but is not~~
130 ~~limited to inadequate access to direct sunlight for solar energy systems.~~

131
132 **SECTION 12.** Section 78-143 Review process Subsection (2) is hereby amended as to read
133 follows:
134

135 (2) *Planning and zoning coordinator.* The planning and zoning coordinator shall make a
136 decision on site plans reviews to change the use of a building or parcel of land; to modify
137 the interior or exterior of a building or site or land feature in any manner that results in a
138 different site design or intensity of use, including the requirement for additional parking
139 or to enlarge a building by less than ten percent of its gross floor area. The planning and
140 zoning coordinator shall have the authority to refer an administrative site plan review to
141 the city council for decision. ~~The owner may appeal the decision of the planning and~~
142 ~~zoning coordinator to the city council.~~

143
144 **SECTION 13.** Section 78-1134 Subdivisions Subsection (b) is hereby amended to read as
145 follows:
146

147 (b) Administrative review. The city council shall hear and decide appeals where it is

148 alleged there is error in any order, requirement, decision, or determination made by
149 an administrative official in the enforcement or administration of this article. An
150 appeal must be filed within 10 days of the administrative official's order,
151 requirement, decision, or determination.

152
153 **SECTION 14.** Section 78-1285 Vegetation alterations Subsection (a) is hereby amended to read
154 as follows:

155
156 (a) No live tree within 75 feet of the shoreline or within the bluff impact zone with a
157 diameter of six inches or more (or 19 inches in circumference or greater) measured three
158 feet above the ground may be removed without first obtaining a permit from the city
159 staff, provided that at least the equivalent number of replacement trees of a size and
160 nature found acceptable to the staff are planted at the same setback from the shoreline
161 as those removed. ~~Appeals of staff determinations as to type, size and quality of the trees~~
162 ~~to be replaced will be to the council.~~ Removal of trees that are dead shall not require a
163 permit, but such trees must be inspected by city staff prior to their removal.
164

165 **SECTION 15.** Chapter 82 Article II is hereby amended by the addition of the following Section
166 **82-51:**

167
168 **Sec 82-51. – Appeals.**

169 The zoning board of appeals and adjustments established in Section 78-96 shall also serve as
170 the subdivision board of appeals and adjustments. The board has the following powers with
171 respect to the subdivision regulations:

- 172 (1) To hear and decide appeals where it is alleged that there is an error in any
173 order, requirement, decision or determination made by an administrative
174 officer in the enforcement of chapter 82. An appeal under this section shall
175 be filed no later than 10 days following the order, requirement, decision or
176 determination. Appeals to the board of appeals and adjustments may be
177 taken by any affected person upon compliance with any reasonable
178 conditions imposed by the subdivision regulations.
179 (2) To hear requests for varying the regulations as they apply to specific
180 properties where an unusual hardship on the land exists, but variances may
181 be granted only upon the specific grounds set forth in the subdivision
182 regulations. Unusual hardship includes but is not limited to inadequate access
183 to direct sunlight for solar energy systems.

184 The procedures set forth in Sections 78-97 through 78-99 apply to determinations of the
185 subdivision board of appeals and adjustments.

186
187 **SECTION 16.** Section 82-85 Appeal to the council Subsection (d)(3) is hereby amended to read as
188 follows:

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190 ~~[Purposely left blank] Appeal to the council. Should any subdivider wish to appeal a~~
191 ~~recommendation of the planning commission to the council, the subdivider shall, within ten~~
192 ~~days of the action by the planning commission, file a written appeal with the zoning~~
193 ~~administrator and pay an appeal fee. Upon filing of an appeal, the zoning administrator shall~~
194 ~~have ten days to prepare a report and place the appeal on the agenda of the next regularly~~
195 ~~scheduled council meeting. The council shall review the report and appeal and may concur with~~
196 ~~the planning commission or may instruct the planning commission to reconsider the~~
197 ~~application.~~

198
199 **SECTION 17. EFFECTIVE DATE:** This ordinance shall take effect immediately upon its passage and
200 publication.
201

202 **ADOPTED** this _____ day of _____, 2016 on a vote of __ ayes and __ nays by the City Council
203 of Orono, Minnesota.

204
205 ATTEST:

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208
209

Diane Tiegs, City Clerk

Lili Tod McMillan, Mayor

210
211
212
213 *Ordinance published in The Laker and The Pioneer newspapers the week of _____, 2016.*