

## Chapter 17.92 Appeals

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### 17.92.010 - Purpose of Chapter

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This Chapter establishes procedures for the appeal and review of determinations and decisions of the Director or Commission.

### 17.92.020 - Appeal Subjects and Jurisdiction

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**A. Code administration and interpretation.** The following determinations and actions of the Director and Department staff may be appealed to the Planning Commission and then to the Council:

1. Any determination on the meaning or applicability of the regulations contained in this Development Code that are believed to be in error, and cannot be resolved with the Director;
2. Any determination that a permit application or information submitted with the application is incomplete, in compliance with State law (Government Code Section [65943](#)); and
3. Any enforcement action in compliance with Chapter 17.98 (Enforcement and Penalties).

**B. Planning permit decisions.** Decisions of the Director on an Administrative Variance, Coastal Development Permit, Design Review, Limited Term Permit, Minor Use Permit, Sign Permit, or Zoning Clearance may be appealed to the Commission. Decisions of the Commission may be appealed to the Council.

### 17.92.030 - Filing and Processing of Local Appeals

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#### A. Eligibility.

1. An appeal in compliance with this Chapter may be filed by any aggrieved person as defined in Section [17.92.040\(A\)\(2\)](#) except that in the case of a decision on a Use Permit, Variance, and/or other Commission decision that followed a public hearing, an appeal may only be filed by a person who, in person or through a representative, appeared at the public hearing in connection with the decision being appealed, or who otherwise informed the City in writing of the nature of their concerns before the hearing.
2. Any action or decision by the Commission in compliance with this Development Code may be appealed by a Council member acting as an individual, but the Council member shall not vote when the appeal is considered by the Council.

**B. Timing and form of appeal.** An appeal shall be submitted in writing and shall specifically state the pertinent facts and the basis for the appeal.

1. An appeal shall be filed with the Department or City Clerk, as applicable, within 10 days of the date the decision was rendered.
  - a. Appeals addressed to the Commission shall be filed with the Department;

- b. Appeals addressed to the Council shall be filed with the City Clerk.
2. An appeal shall be accompanied by the filing fee identified in the City's Fee Schedule.
3. The appeal fee may be refunded by a majority vote of the Council if the appeal of the applicant is sustained by the Council.

**C. Scope of planning permit appeals.** An appeal of a decision on a planning permit shall be limited to issues raised at the public hearing, or in writing before the hearing, or information that was not known at the time of the decision that is being appealed.

**D. Report and scheduling of hearing.**

1. When an appeal has been filed, the Director shall prepare a report on the matter, including all of the application materials in question, and schedule the matter for a public hearing by the appropriate review authority identified in Section [17.92.020](#) (Appeal Subjects and Jurisdiction), above.
2. Notice of the hearing shall be provided, and the hearing shall be conducted, in compliance with Chapter [17.96](#) (Public Hearings). Any interested party may appear and be heard regarding the appeal.

**E. Decision.**

1. At a hearing on an appeal, except for an appeal of a decision on a planning permit, the review authority may consider any issue involving the matter that is the subject of the appeal ("de novo"), in addition to the specific grounds for the appeal. The review authority may:
  - a. Affirm, affirm in part, or reverse the action, determination, or decision that is the subject of the appeal, based upon findings of fact about the particular case. The findings shall identify the reasons for the action on the appeal, and verify the compliance or non-compliance of the subject of the appeal with this Development Code;
  - b. Adopt additional conditions of approval, that may address issues or concerns other than the subject of the appeal; or
  - c. Disapprove the planning permit approved by the previous review authority, even where the appellant only requested a modification or elimination of one or more conditions of approval.
2. If new or different evidence is presented on appeal, the Commission or Council may refer the matter to the Director or Commission for further consideration.
3. Within 60 days of the initial public hearing, the review authority shall render its decision on the appeal, unless it is continued for good cause.
4. In the event of a tie vote by the review authority on an appeal, the decision being appealed shall stand.

**F. Effective date of appeal decision.**

1. **Commission decision.** A decision by the Commission is effective on the 11th day after the decision is rendered, when no appeal to the decision has been filed with the Council.
2. **Council decision.** A decision by the Council is final and shall be effective on the date the decision is rendered, except in the case of a development that is appealable to the Coastal Commission in compliance with Section [17.92.040](#) (Appeals to the Coastal Commission), below.

**G. Notice of final action on development that is appealable to the Coastal Commission.** Where a local appeal has been filed and decided on a project that is appealable to the Coastal Commission in compliance with Section [17.92.040](#) (Appeals to the Coastal Commission) below, the City shall provide notice of the final action in compliance with Subsection [17.71.045\(J\)](#) (Final City action on a Coastal Development Permit).

### **17.92.040 - Appeals to the Coastal Commission**

Within ten (10) working days of Coastal Commission receipt of the Notice of Final Action, a Coastal Development Permit application for appealable development as defined in Subsection C. may be appealed to the Coastal Commission by an applicant, other aggrieved person who has exhausted local appeals, or by any two members of the Coastal Commission, in compliance with this Section.

#### **A. Status of appellant.**

- 1. Who may appeal.** An appeal may be filed by an applicant, any aggrieved person who has exhausted local appeals, or two members of the Coastal Commission in compliance with State law (Public Resources Code Section [30625](#)).
- 2. Aggrieved person defined.** As provided by Public Resources Code Section [30801](#), an aggrieved person is anyone who, in person or through an explicitly identified representative, appeared at a public hearing before the Director, Commission, or Council in connection with the decision or appeal of any development, or who by other appropriate means before a hearing, informed the City of the nature of their concerns, unless for good cause was unable to do either.

**B. Exhaustion of City appeals required for appealable coastal development permits as defined in Subsection C, an appellant shall be deemed to have exhausted local appeals and shall be qualified as an aggrieved person where the appellant has pursued his or her appeal to the appellate bodies identified in this Chapter; except that exhaustion of all local appeals shall not be required if any of the following occur:**

1. An appellant was denied the right of appeal under this Chapter because City notice and hearing procedures did not comply with the provisions of Section [17.71.045\(G and H\)](#);
2. The City charges an appeal fee for the filing or processing of local appeals; or
3. An appeal of a City decision by two members of the Coastal Commission in compliance with Public Resources Code Section [30625](#). (Notice of a Coastal Commissioners' appeal shall be transmitted to the Council in compliance with California Code of Regulations Section 13573(b). The appeal shall be suspended where the City decision has been appealed to the Council. If the Council modifies or reverses the previous decision, the Coastal Commissioners shall be required to file a new appeal of that decision.)

**C. Appealable development - Public Resources Code Section [30603\(a\)](#).** A decision by the City on a coastal development permit application for any of the following projects may be appealed to the Coastal Commission for only the following types of developments:

- 1. Between the sea and the first public road.** Developments approved by the City between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or the mean high tide line of the sea where there is no beach, whichever is the greater distance;
- 2. Public trust lands, submerged lands, or tidelands.** Developments approved by the City not included within paragraph (1) that are located on public trust lands, submerged lands, tidelands, or within 100 feet of any estuary, stream, or wetland, or within 300 feet of the top of the seaward face of any coastal bluff;

3. Developments approved by the City not included within paragraph (1) or (2) that are located in a sensitive coastal resource area.

4. **Public works/energy facility.** Any development that constitutes a major public works project or a major energy facility. The phrase “major public works” or a “major energy facility” as used in Public Resources Code Sec. 30603(a)(5) and in these regulations shall mean: any proposed public works project or energy facility, as defined by Section 13012 of the Coastal Commission Regulations and the Coastal Act.

**D. Grounds for appeal to Coastal Commission - Public Resources Code Section [30603](#).** The grounds for an appeal to the Coastal Commission of a City decision are as follows:

1. For approval of development as described in Subsection C. above, an allegation that the development does not conform to the standards of the City’s certified Local Coastal Program or the public access policies of the Coastal Act; or

2. For disapproval of development described in C.3. above, an allegation that the development conforms to the standards of the City’s certified Local Coastal Program and the public access policies of the Coastal Act.

**E. Time limit for filing an appeal to the Coastal Commission.** An appeal of a Council decision on an appealable development shall be filed with the Coastal Commission within 10 working days of the receipt by the Coastal Commission of adequate notice of final City action, in compliance with this Chapter and the Coastal Act.

**F. Notice to City of appeal to Coastal Commission.** An appellant shall notify the City when appealing to the Coastal Commission by providing the City a copy of the information required by State law (California Code of Regulations Section 13111.)

#### **17.92.050 - Judicial Review of City Decision**

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No person shall seek judicial review of a City decision on a planning permit or other matter in compliance with this Development Code until all appeals to the Commission and Council have been first exhausted in compliance with this Chapter and, where applicable all appeals to the Coastal Commission allowed by the Coastal Act.

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**The Fort Bragg Coastal Land Use and Development Code is current through Ordinance 943, passed November 13, 2018.**

Disclaimer: The City Clerk's Office has the official version of the Fort Bragg Coastal Land Use and Development Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.