
Sec. 27-61. Review.

- (a) *Applicability and purpose.* This section establishes procedures that shall apply to the review of any applicable decision as expressly authorized in this section. The purpose of this section is to provide adequate due process to petitioners seeking review of applicable decisions by setting forth procedures for the review of those decisions.
- (b) *Decisions that may be reviewed; jurisdiction.* The following decisions shall be reviewed pursuant to this section:
- (1) A formal decision of the reviewing official may be reviewed by city council for a final order after receipt of a recommended order by a hearing officer, as set forth below.
- (j) *Review hearing.*
- (1) *Review of formal decision of the zoning administrator.*
- a. In a petition to review a formal decision rendered by the zoning administrator, the petition shall be heard by the hearing officer, in a de novo proceeding. The hearing officer shall provide a recommended order to city council for a final determination as set forth below.
- b. *Pre-hearing procedures.*
- i. *Hearing officers.* The city shall negotiate and enter into contracts with hearing officers from time to time, and shall maintain a list of such hearing officers. Cases shall be assigned to hearing officers on a rotating basis. If a hearing officer is unable to accept a case because of a conflict, time constraints, or any other reason, the case shall be assigned to the next available hearing officer on the list. Upon scheduling the hearing, the city clerk shall notify all parties of the assignment of the particular hearing officer and the date upon which the hearing will be held.
- ii. *Parties.* The parties to the petition for review shall include the petitioner, the property owner (if not the petitioner) and any person who participated in the formal decision process by submitting evidence or testimony during the open record period, as defined in section 27-54.
- iii. *Non-party participants.* Any person who participates in the hearing before the hearing officer but does not qualify as a party as set forth in section (ii) above shall be considered a non-party participant.
- iv. *Hearing date.* The hearing shall commence no more than ninety (90) calendar days after the date the petition was filed, unless all parties stipulate in writing to a later hearing date.

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- v. *Motions.* Any motion to be filed by a party for consideration by the hearing officer must be submitted to the city clerk with a copy to the City of Tampa Legal Department no less than seven (7) calendar days prior to the scheduled hearing. The hearing officer may render a written opinion on the motion without argument prior to the hearing, or may request argument prior to conducting the hearing.
- c. *Hearing.*
 - i. *Oath.* The hearing officer shall have the power to administer oaths. All testimony shall be under oath.
 - ii. *Consideration.* The hearing officer shall consider all relevant evidence and testimony presented prior to or during the hearing, including the formal decision issued by the zoning administrator and all competent evidence upon which that formal decision was based. The hearing officer shall also consider all relevant provisions of the City of Tampa Code of Ordinances, or other applicable administrative, federal or state law in effect at the time the petition was filed.
 - iii. *Burden of proof.* The petitioner filing the request for review shall have the burden of proof.
 - iv. *Formality.* Formal rules of evidence shall not apply. Any relevant evidence shall be admitted. Hearsay evidence may be admitted, but shall not form the sole basis for the hearing officer's recommended order. Irrelevant and unduly repetitious evidence shall be considered non-persuasive. The hearing shall be conducted in a manner to ensure that procedural due process is afforded the parties and non-party participants.
 - v. *Record.* All evidence received by the hearing officer during the hearing, shall be kept on file in the city clerk's office. The hearing shall be recorded. The record of the hearing shall, at a minimum, consist of the formal decision issued by the zoning administrator; all notices, motions or rulings of the hearing officer; all evidence received by the hearing officer during the hearing; the recommended order issued by the hearing officer; and, the verbatim record of the hearing consisting of a video recording (tape, digital, or other available visual media) of the hearing, or a verbatim transcript if one is provided.
 - d. *Recommended order; exceptions.*
 - i. *Contents.* The hearing officer's recommended order shall contain findings of fact, based exclusively on the record, and conclusions of law. The recommended order of the hearing officer shall be based on competent substantial evidence after applying the criteria set forth in the City Code and

any applicable administrative, federal and state law in effect at the time the petition was filed.

- ii. *Filing of recommended order: Public notice.* The hearing officer shall file a recommended order with the city clerk within fifteen (15) working days of the close of the hearing. The city clerk shall provide a copy of the recommended order along with the notification of the date the recommended order is scheduled for consideration by city council, to all parties and interveners that provide the clerk with either electronic mail information or prepaid postage.
 - iii. *Exceptions.* All parties shall have ten (10) working days prior to the date that the recommended order is scheduled for consideration by city council to file with the city clerk exceptions to the recommended order. Exceptions shall consist of any objections to the findings of fact or conclusions of law contained in the recommended order. The exceptions must identify the disputed portion of the recommended order by page number and paragraph and provide the basis for the exception, including citation to any evidence in the record. If the exception is based upon testimony presented at the hearing, then the person filing the exception must provide either a verbatim transcript of the proceedings or a video recording (tape, digital, or other available visual media) record of the public hearing.
- e. *City council consideration of the recommended order.*
- i. *Submission of the recommended order.* Upon receipt of a recommended order from the hearing officer, and after the deadline for receipt of exceptions thereto, the city clerk shall forward the recommended order and any exceptions to city council, along with a copy of all documentary evidence accepted by the city clerk during the hearing.
 - ii. *Oral argument.*
 - 1. City council may only allow public discussion upon a request for oral argument filed by a party or upon its own motion. City council may only open the meeting for oral argument if city council finds that the hearing officer did not address a matter introduced into the record or the recommended order contains an ambiguity. If city council allows oral argument, city council may limit such oral argument to addressing only those matters for which it opened for oral argument.
 - 2. Parties must file their requests for oral argument concurrent with the filing of an exception. The request shall be based upon the criteria described in subsection 1. above. The city council attorney

shall review the request for oral argument and make a recommendation as to whether the request for oral argument meets the criteria.

3. In the event that city council approves the request for oral argument, the content of testimony shall be the same as the content of testimony submitted verbally or in writing to the hearing officer. If city council permits oral argument, it shall allow staff and each party up to ten (10) minutes for oral presentation or argument. Non-party participants may be permitted oral presentation or argument of up to three (3) minutes. No person may submit new evidence to the city council during oral argument and all persons must confine their presentations to evidence made part of the record before the hearing officer.
- iii. *Final order.* City council may adopt the recommended order as the final order, or may reject or modify the recommended order as provided herein. City council may not reject or modify any findings of fact reached by the hearing officer. If city council determines that a finding of fact is not based upon competent, substantial evidence contained in the record or that a finding of fact does not comply with the essential requirements of the law, city council may remand the matter back to the hearing officer, but only if it determines that additional fact finding is required. If city council rejects or modifies a conclusion of law, it must state with particularity in the final order its reasons and must make a finding that its substitution of a conclusion of law is as or more reasonable than that which was rejected or modified. If city council directs staff to prepare a revised order, the revised order shall be transmitted to the parties and non-party participants and presented to city council within forty-five (45) calendar days for adoption.
 - iv. *Final decision.* The final order rendered by city council shall be deemed final and may be appealed to a court of competent jurisdiction in a manner set forth by applicable law.