

**Chapter 27 -- Administrative Procedure for Review of Certain Actions**

**27.010 Definitions.**

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

“Aggrieved” means 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.

“Final Action” means

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 formal action being taken.

“Review Board” means the Board of Administrative Review established herein.

“Unlawful” means any act or omission in violation of any applicable law or actions that are not authorized by any applicable law.

**27.020 Scope and purpose.**

The administrative review procedures set forth in this Chapter shall apply to all final actions of any City Officer, employee, board, commission, or the Board of Aldermen that are claimed by an aggrieved party to be unlawful or an unconstitutional taking of property without compensation; provided however, that this Chapter shall not apply to \_\_\_\_\_(left blank)\_\_. 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 Chapter 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.

**27.030 Establishment of, and review by, administrative review board – exhaustion required.**

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

(b) Exhaustion. Any aggrieved party shall petition to the Review Board for a review of any final action of any City Officer, employee, board, commission, or the Board of Aldermen within the scope of this Chapter. 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, Board of Aldermen, officials or commissions.

**27.040      Review procedure.**

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

- (a) Final Action. The person petitioning for review shall obtain a final action before requesting review.
- (b) Petition for Review. Within fourteen (14) days from the date of the final action, the person requesting the review shall file, in the office of the City Clerk, a written petition for review of that decision. A copy shall also be filed with the City Attorney.
- (c) Initial Review of Final Action. The City Clerk, in consultation with the City Attorney where appropriate, shall review each petition and determine whether it seeks review authorized by this Chapter. In the event that the petition does not allege a review authorized by this Chapter, the petition shall be dismissed upon direction of the City Clerk.
- (d) Stay of Final Action. Upon request of the petitioner, the Review Board may stay pending its review the final action of any decision, other than a decision of the Board of Aldermen, upon a showing:
  - (1) That the petitioner has a substantial likelihood of demonstrating that the final action to be reviewed is unlawful or an unconstitutional taking,
  - (2) Irreparable harm if such stay is not issued, and
  - (3) That the public interest would not be harmed by issuance of such stay. Where the final action is a decision of the Board of Aldermen, the petitioner may seek such stay from the Board of Aldermen, whereupon in its discretion, such stay may be granted pending review by the Review Board.
- (e) Hearing Date. The Review 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 Review 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 Review Board. The hearing shall include written submittals.
- (f) 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.
- (g) Removal. The Board of Aldermen or the Mayor may remove any matter directly to the Review Board for review by filing notice with the Board to such effect.

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

**27.050      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 Review Board, if it determines it is appropriate, shall shorten the time for submissions and review.

**27.060      Application 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 the following by affidavit:

- (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 Review Board determines that additional information is needed, the Review 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. With regard to claims of unconstitutional takings, the Review 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;

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- (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 Review Board's opinion, to arrive at a conclusion concerning the nature of and the value of the alleged unconstitutional taking.

### **27.070 Reviewing guidelines.**

The Review 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 Review 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 Review Board shall be required to support any decision.

### **27.080 Time for recommendation.**

If the Review 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 Board of Aldermen shall be deemed to be submitted to the Board of Aldermen without recommendation; provided however, the Review 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 Chapter, if prior to the expiration of the thirty

(30) day period, the Review Board notifies the petitioner, in writing, of such extension.

**27.090      Results of review.**

- (a) After completing the review, the Review Board shall make a recommendation regarding the petition to the Board of Aldermen or the appropriate officer, employee, board or commission. The evidence before the Review Board shall be submitted to the Board of Aldermen for its determination.
- (b) The Board of Aldermen shall have thirty (30) days to take action on the petition or recommendation of the Review Board, unless extended by the Board of Aldermen for cause. To the extent permitted by law, no petition shall become final for purposes of judicial review of the action subject to review until the effective date of Board of Aldermen action on the petition, or upon expiration of the review period after the petition is submitted to the Board of Aldermen.

**27.100      Review advisory.**

The decisions of the Review Board rendered pursuant to the provisions of this Chapter 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 Review Board rendered pursuant to the provisions of this Chapter 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 Board of Aldermen pursuant to the preceding Section shall be deemed the final decision for purposes of judicial review.

*Adopted by Ordinance #768, 3/13/17.*