

Summary: Changes procedures for making appeals of administrative land use and certain building code decisions to the Washoe County Board of Adjustment; adds a new procedures section for appealing decisions of the Washoe County Board of Adjustment, the Washoe County Planning Commission, and Hearing Examiners to the Washoe County Board of County Commissioners; modifies existing sections to refer to these new appeal procedures; and, corrects the terminology of the Planning and Development Division of the Washoe County Community Services Department.

BILL NO. 1736

ORDINANCE NO. 1555

An ordinance amending the Washoe County Code at Chapter 110 (Development Code), to delete Section 110.806.25, *Hearing of Appeal by Board*, and Section 110.806.30, *Notice of Board Hearing*, of Division Eight, *Procedures*; to add a new Section at 110.912.20 of Division Nine, *General Provisions*, regarding appeals to the Board of County Commissioners of decisions by the Board of Adjustment, the Planning Commission, and Hearing Examiners; to amend various sections throughout the Development Code to adopt the new appeal provisions, including Section 110.606.55, *Appeals of Parcel Map Decisions*, and Section 110.608.15, *Appeals of Decisions Regarding Subdivision Maps*, of Division Six, *Subdivision Regulations*; and, Section 110.804.40, *Appeals of Decisions Regarding Variances*, Section 110.806.15, *Review Procedures of Planning Commission Regarding Vacations and Abandonments of Easements or Streets*, Section 110.806.35, *Action by Board Regarding Vacations and Abandonments of Easements or Streets*, Section 110.808.45, *Appeals of Decisions Regarding Administrative Permits*, Section 110.810.50, *Appeals of Decisions Regarding Special Use Permits*, Section 110.818.25, *Appeals of a Denial Regarding Development Code Amendments*, and Section 110.818.30, *Action by Board Regarding Development Code Amendments*, of Division Eight, *Procedures*; and, Section 110.912.10, *Washoe County Board of Adjustment*, to add a new subsection (j) to provide general rules regarding appeals of administrative decisions to the Board of Adjustment and other matters relating to the new appeal provisions and Board membership that is no longer applicable; Section 110.914.05,

Washoe County Department of Community Development, at subsection (f) to provide for appeals of a decision of the Director; and, Section 110.914.00, *Purpose*, and Section 110.914.05, *Washoe County Department of Community Development*, to correct the terminology of the Planning and Development Division with the establishment of the Community Services Department of Division Nine, *General Provisions*. Recommendations include other matters properly relating thereto.

WHEREAS:

- A. Ordinance 1501 enacted on October 23, 2012 amends Article 910 of the Washoe County Development Code to provide that certain decisions and actions made during the enforcement of the Development Code may be appealed to the Board of Adjustment, and this Commission desires to amend Washoe County Code Section 110.912.10 (Board of Adjustment) to provide general rules governing such appeals to the Board of Adjustment, including what kinds of matters may be appealed, the procedures to be followed, and further providing that decisions of the Board of Adjustment may be appealed to the Board of County Commissioners or may be submitted directly to judicial review under certain circumstances; and,
- B. In accordance with NRS 278.300, NRS 278.310 (2), and NRS 278.3195, this Commission desires to coordinate and update various provisions in the Washoe County Development Code regarding appeals to the Board of County Commissioners of decisions of the Board of Adjustment, the Planning Commission, Hearing Examiners, the Parcel Map Review Committee and other bodies who make land use decisions by adding a new Section 110.912.20 governing such appeals and amending various sections in the Development Code to refer to the new section; and,
- C. As authorized by Washoe County Code Section 110.818.05, the Washoe County Planning Commission initiated amendments to the Development Code to clarify and expand appeal processes by resolution on November 13, 2014. The amendments and this ordinance were drafted by the District Attorney, and the Planning Commission held a duly noticed public hearing for DCA 14-010 on March 3, 2015, and adopted a resolution recommending adoption of this ordinance.

D. Following a first reading and publication as required by NRS 244.100 (1), and after a duly noticed public hearing, this Board of County Commissioners desires to adopt this Ordinance; and

E. This Commission has determined that this ordinance is being adopted pursuant to requirements set forth in Chapter 278 of NRS, therefore is not a "rule" as defined in NRS 237.060 requiring a business impact statement.

THE BOARD OF COUNTY COMMISSIONERS OF WASHOE COUNTY DOES HEREBY ORDAIN:

SECTION 1. Sections 110.806.25 and 110.806.30 have been deleted in their entirety:

SECTION 2. A new Section 110.912.20 is added to read in its entirety as follows:

Section 110.912.20 Appeals to the Board of County Commissioners of a decision by the Board of Adjustment, the Planning Commission, Hearing Examiner or other deciding body. Except as specifically provided elsewhere in the County Code (such as appeals of master plan decisions by the Planning Commission), this section applies to appeals of decisions of the Planning Commission, the Board of Adjustment, a hearing examiner, or other deciding body.

(a) Time for appeal; form, fees, stay of decision.

- (1) A person aggrieved by a decision of the Board of Adjustment, the Planning Commission, a Hearing Examiner, or an administrative enforcement official or a hearing officer following the provisions of Article 910 of the Development Code whose decision is not otherwise appealable (the "deciding body") may appeal the decision to the Board of County Commissioners.
- (2) The appeal must be in writing and delivered to the Planning and Development Division within 10 calendar days from the date that the decision being appealed is reduced to writing and is filed with the secretary to the deciding body (for hearing examiner decisions the decision is to be filed with the Director of the Planning and Development Division), and mailed to the original applicant in the proceeding being appealed.
- (3) When the written appeal is filed and fees paid, it operates to stay the implementation of the decision being appealed, even if the appeal is incomplete upon initial submission. The application must be completed as provided for in subsection (4) below.
- (4) The Division may follow up to require the appeal to be on certain forms and/or to obtain more information. The appellant must submit the forms or supply the additional information within 14 business days after written notification by the Division. Failure to do so within this time frame invalidates the appeal submission. The appellant must submit a new appeal containing the original material, and the additional information requested, within 14 business days of written notice that the original application was incomplete. When the Division

deems the appeal complete and the fees have been paid, it shall process the appeal as provided herein.

- (5) Fees for the appeal are authorized by NRS 278.3195(2)(g) and may be set by resolution of the Board of County Commissioners.

(b) Scheduling of Hearing; notice.

- (1) Scheduling a hearing. Under NRS 278.3195(2)(d)(2), a decision must be rendered on the appeal within 60 days from when the Division deems the appeal to be complete, and the County Clerk shall schedule a public hearing on the appeal accordingly.

- (2) Notice. Notice for the public hearing before the Board of County Commissioners shall be the same as the required notice set out in the Development Code for the proceeding being appealed. For example, if there is an appeal of a decision to deny a special use permit, then notice for the appeal hearing shall be the same as in WCC Section 110.804.20 for the underlying special use permit. Other than notice to the appellant, notice is not required for the appeal of administrative enforcement decisions that are affirmed or denied by the appellate body.

- (3) Panels. The Board of County Commissioners may appoint two or more of its members to serve as a panel to hear the appeal and render a decision that would be binding on the Board of County Commissioners. Each appointment shall select which commissioner is to preside over the proceeding, include instructions as to voting rights and requirements, indicate whether or not decisions of the panel may be appealed to the whole Board of County Commissioners, and include any other procedural matters deemed important to the Board of County Commissioners.

- (4) Record on Appeal; Prehearing Procedures.

- (i) At least 20 days before the hearing, the Division shall prepare a record on appeal including the written appeal, the written decision or action order being appealed, draft minutes or recording of the proceeding leading to the decision being appealed, the staff report and all materials submitted to the deciding body in connection with the hearing. The original shall be filed with the County Manager's Office and a copy shall be provided to the appellant for use and reference at the hearing before the Board of County Commissioners.

- (ii) The Chairman of the Board of County Commissioners or the presiding officer of the panel may:

- (1) Issue subpoenas compelling witnesses to appear at the hearing;
- (2) Require and oversee prehearing procedural matters, including prehearing conferences, discovery proceedings, briefing schedules, and evidence assembly and marking; and
- (3) Agree to stipulated continuances or other scheduling matters.

- (5) Hearing procedures; evidence. At the hearing, the Board of County Commissioners:

- (i) May consider the matter de novo or as an appeal limited to determining if the deciding body abused its discretion;
- (ii) Shall afford all parties an opportunity to respond and present relevant and non-repetitious evidence and arguments on all issues being decided on appeal (even if it is new evidence);

- (ii) Shall hear public comment on the matter being heard; and
 - (iv) Shall view the record on appeal and all evidence, testimony, documents, information and arguments introduced at the hearing.
- (6) Burden of persuasion; standards of review and final decision by Board; judicial review of Board's decision.
- (i) Burden of Persuasion. Decisions of the Board of Adjustment, Planning Commission or Hearing Examiner, or an administrative enforcement official or a hearing officer are presumed to be reasonable and lawful, and it is the burden of the appellant to persuade the Board of County Commissioners otherwise.
 - (ii) Findings. On appeal, the Board of County Commissioners may review the findings made by the deciding body and may affirm, reverse, modify or apply a different interpretation to any finding. Unless otherwise required by a specific provision in statute or code relating to the type of matter being appealed, the Board of County Commissioners is not required to make specific findings.
 - (iii) Guiding Policy. In reviewing the decision, the Board of County Commissioners shall be guided by the statement of purpose underlying the regulation of improvement of land expressed in NRS 278.020 [NRS 278.3195(2)(f)].
 - (iv) Possible actions; vote required. On a majority vote of all its members, the Board of County Commissioners may affirm, reverse, or modify the decision of the deciding body. If the decision being appealed is the denial of a building permit, special use permit, variance, master plan amendment, regulatory zoning amendment, or other entitlement, the Board of County Commissioners may either remand the matter back to the deciding body with instructions or may directly grant the building permit, special use permit, variance or other entitlement if properly agendized under the open meeting law and subject to NRS 278.220 for master plan amendments.
 - (v) Memorandum of Decision. A memorandum of decision shall be prepared by and filed with the County Clerk and mailed to the appellant, and when filed and mailed, the decision of the Board of County Commissioners is final for purposes of judicial review.
 - (vi) Judicial Review of BCC Decision. A person aggrieved by the decision of the Board of County Commissioners may file a petition for judicial review within 25 days of the filing of the Memorandum of Decision with the County Clerk.

SECTION 3. Section 110.606.55 is hereby amended to read as follows:

Section 110.606.55 Appeals. All appeals regarding tentative and final parcel maps shall be made as provided in this section.

- (a) Process for Tentative Parcel Map. A party aggrieved by a decision of the Parcel Map Review Committee may appeal the decision to the Board of County Commissioners in accordance with Section 110.912.20 of the Development Code.

- (b) Process for Final Parcel Map. A person aggrieved by a decision of the Director of the Planning and Development Division regarding a Final Parcel Map may be appealed to the Board of Adjustment in accordance with Section 110.912.10 of the Development Code.

SECTION 4. Section 110.608.15 is hereby amended to read as follows:

Section 110.608.15 Review Procedures. The review procedures for tentative maps shall be as set forth in this section.

- (a) Filing. The subdivider shall file with the Director of the Planning and Development Division a complete application and the required supporting materials as outlined in the application packet.
- (b) Review. If the application is found to be complete, the Director of the Planning and Development Division shall transmit one print of each tentative map to the County Engineer, any other public agency which may be affected by the proposed subdivision, and such other persons as the Director of the Planning and Development Division may deem appropriate.
- (c) Action Required by the Planning Commission. The Planning Commission shall, within 60 days after receipt of the complete tentative map application by the Director of the Planning and Development Division, conduct a public hearing on the application and following the public hearing, approve, conditionally approve or deny the proposed map; said action being an affirmative vote of a majority of the members of the Planning Commission present at the hearing. At the public hearing, the Planning Commission may relieve the applicant of the requirement to provide an easement for water, sewer, gas, electric, telecommunications and franchised community antenna television (where permitted to provide service) services if the applicant can demonstrate that there is not an essential nexus to the public purpose for the proposed dedication and the dedication would not be roughly proportional in nature and extent to the impact of the proposed development. Notice of the public hearing conducted by the Planning Commission shall be in accordance with the provisions of this article. Review time may be extended by mutual consent of the Director of the Planning and Development Division and the applicant.
- (d) Appeal. The decision of the Planning Commission may be appealed to the Board of County Commissioners in accordance with Section 110.912.20 of the Development Code.
- (e) Time Limits. The time limits set forth in this section are suspended for a period, not to exceed one (1) year, during which the State of Nevada or the federal government takes any action to protect the environment or an endangered species which prohibits, stops or delays the processing of a tentative map.
- (f) No Guarantee of Final Map Approval. Approval by the Planning Commission or the Board of County Commissioners of a tentative map imposes no obligation on the part of the Planning Commission or the Board of County Commissioners to approve the final map or to accept any public dedication shown on the final map.

SECTION 5. Section 110.804.40 is hereby amended to read as follows:

Section 110.804.40 Appeals. An action of the Board of Adjustment, Planning Commission or hearing examiner made pursuant to this article may be appealed to the Board of County Commissioners in accordance with the provisions of Section 110.912.20 of the Development Code.

SECTION 6. Section 110.806.15 is hereby amended to read as follows:

Section 110.806.15 Review Procedures of Planning Commission. The Planning Commission shall review applications for abandonments and vacations in accordance with the provisions of this section.

- (a) General Provisions. The Planning Commission shall conduct a public hearing for the purpose of receiving evidence relative to the application. The evidence shall be reviewed to determine if the application is consistent with existing policies, standards and required findings.
- (b) Time Period for Hearing and Action. The Planning Commission shall hold a public hearing on the application for vacation or abandonment of an easement or street not less than 10 business days after the newspaper notice as required below is first published.
- (c) Notice of Planning Commission Hearing.
 - (1) Notice of Vacation or Abandonment, Only. Notice of a vacation or abandonment application to be heard by the Planning Commission shall be given by mailing to each owner of property abutting or connected to the proposed vacation or abandonment a notice of the proposed vacation or abandonment application through a delivery method that does not require signature of receipt of the notice by the abutting property owner, but does confirm delivery of the notice to the abutting property owner. Mailing of the notice shall occur at least 10 business days prior to the date of the Planning Commission's public hearing. Furthermore, a notice shall be published at least once in a newspaper of general circulation in the County not less than 10 business days prior to the date of the Planning Commission's public hearing.
 - (2) Notice of Vacation or Abandonment Combined with Tentative Subdivision Map Application. If the vacation or abandonment application is part of a tentative subdivision map application, the notice of the proposed vacation or abandonment shall be contained in the notice for the tentative subdivision map, and each owner of property abutting or connected to the proposed vacation or abandonment shall be provided notice of the combined proposed vacation or abandonment and tentative subdivision notice pursuant to the requirements of subsection (1). Notice shall be published at least once in a newspaper of general circulation in the County pursuant to the requirements of subsection (1).
 - (3) Notice of Public Utility and Community Antenna Television Company. Each public utility as defined in NRS 360.815 and each community antenna television company as defined in NRS 711.030 serving the area in which an easement or street is proposed to be abandoned shall receive a notice no later than 10 business days prior to the date of the Planning Commission's public hearing on the application. Accompanying the application shall be a request that the public

utility and/or community antenna television company indicate in writing whether that entity wishes to have an easement for its purposes provided.

- (d) Action by the Planning Commission. Except as provided in Section 110.806.40, if, upon public hearing, the Planning Commission is satisfied that the public will not be materially injured by the proposed vacation, it shall order the street or easement vacated. The Planning Commission may make the order conditional, and the order becomes effective only upon the fulfillment of the conditions prescribed. Notwithstanding the final decision of the Planning Commission, if a public utility and/or community antenna television company requests an easement for its purposes pursuant to the notice provided in subsection (c)(3), an easement in favor of the public utility and/or community antenna television company shall be provided and the County shall ensure recordation of same.

SECTION 7. Section 110.806.35 is hereby amended to read as follows:

Section 110.806.35 Appeals to Board of County Commissioners.

- (a) An appeal of the Planning Commission's decision regarding a vacation or abandonment of an easement or street may be appealed to the Board of County Commissioners following the procedure set out in WCC 110.912.20 of the Development Code.
- (b) Except as provided in Section 110.806.40, if, upon public hearing on the appeal of the Planning Commission's final action on an abandonment or vacation of an easement or street, the Board is satisfied that the public will not be materially injured by the proposed vacation, it shall order the street or easement vacated. The Board may make the order conditional, and the order becomes effective only upon the fulfillment of the conditions prescribed. The action of the Board of County Commissioners shall be final for the purposes of judicial review. Notwithstanding the final decision of the Board of County Commissioners, if a public utility and/or community antenna television company requests an easement for its purposes pursuant to the notice provided in subsection 110.806.15(c)(3), an easement in favor of the public utility and/or community antenna television company shall be provided and the County shall ensure recordation of same.

SECTION 8. Section 110.808.45 is hereby amended to read as follows:

Section 110.808.45 Appeals. An action of the hearing examiner or Board of Adjustment made pursuant to this article may be appealed to the Board of County Commissioners in accordance with the provisions of Section 110.912.20 of the Development Code.

SECTION 9. Section 110.810.50 is hereby amended to read as follows:

Section 110.810.50 Appeals. An action of the Planning Commission, Board of Adjustment or a hearing examiner made pursuant to this article may be appealed to the Board of County Commissioners in accordance with the provisions of Section 110.912.20 of the Development Code.

SECTION 10. Section 110.818.25 is hereby amended to read as follows:

Section 110.818.25 Appeal of Denial. A denial action of the Planning Commission made pursuant to this article may be appealed to the Board of County Commissioners in accordance with the provisions of Section 110.912.20 of the Development Code.

SECTION 11. Section 110.818.30 is hereby amended to read as follows:

Section 110.818.30 Action by Board. Except as provided in Section 110.818.60, the Board of County Commissioners shall review proposed Development Code amendments in conformance with this section.

- (a) Time Period for Hearing. The Clerk of the Board of County Commissioners shall schedule a public hearing before the Board of County Commissioners on the appeal of a denial or recommendation of approval of the Planning Commission within 60 days of the filing of the appeal or receipt of the Planning Commission's action.
- (b) Notice of Hearing. The public hearing on the appeal shall be noticed as required by this article.

SECTION 12. Section 110.912.10 is hereby amended to read as follows:

Section 110.912.10 Washoe County Board of Adjustment.

- (a) Creation. The Washoe County Board of Adjustment is hereby created, pursuant to NRS 278.270, to perform all the duties and functions delegated to a County Board of Adjustment by the terms of NRS 278.010 to 278.630, inclusive.
- (b) Membership and Terms of Office.
 - (1) The Washoe County Board of Adjustment shall consist of five members.
 - (2) The term of office of each member shall be four years, or until his or her successor takes office.
- (c) Appointment and Qualifications.
 - (1) The Chairman of the Board of County Commissioners shall appoint, subject to the approval of the Board, the members of the Washoe County Board of Adjustment.
 - (2) The members shall hold no other public office, with the exception that one member may also be a member of the Planning Commission.
 - (3) The members shall be residents of the unincorporated area of Washoe County and registered voters therein at the time of their appointment and continuously throughout their term of office.
 - (4) Members of the Board of Adjustment shall be appointed based on representation of the County Commission Districts as described below. If qualified applicants

are not available from the following County Commission Districts, appointments can be made from the County Commission District which would experience the next vacancy.

- (i) One member from County Commission District One.
 - (ii) One member from County Commission District Two.
 - (iii) One member from County Commission District Three.
 - (iv) One member from County Commission District Four.
 - (v) One member from County Commission District Five.
- (d) Vacancies. Vacancies occurring other than through the expiration of a member's term shall be filled for the unexpired term.
- (e) Removal from Office. Any member of the Washoe County Board of Adjustment may be removed from office, following a public hearing, by a majority vote of the Board of County Commissioners for inefficiency, neglect of duty, or malfeasance of office.
- (f) Powers of Board.
- (1) The Washoe County Board of Adjustment shall hear and decide appeals under NRS 278.300(1)(a) and 278.310(1) as provided in subsection (j) of this section.
 - (2) The Washoe County Board of Adjustment shall also have all the powers pursuant to NRS 278.290 to 278.310, inclusive.
- (g) Meetings and Records.
- (1) The Washoe County Board of Adjustment may hold at least one regular meeting each month, but may meet less frequently if the Board so decides. The Board may also schedule special meetings as warranted.
 - (2) The Washoe County Board of Adjustment shall adopt rules for the transaction of business and shall keep a record of its resolutions, transactions, findings and determinations. This record shall be a public record.
 - (3) Complete records of official actions of the Washoe County Board of Adjustment shall be kept on file in the office of the Planning and Development Division of the Washoe County Community Services Department.
- (h) Chairman and Other Officers.
- (1) The Washoe County Board of Adjustment shall elect its Chairman from among the appointed members.
 - (2) In addition to electing its Chairman, the Washoe County Board of Adjustment shall create and fill such other of its offices as it may determine.
- (i) Compensation. All members of the Washoe County Board of Adjustment shall be compensated at a rate of \$80.00 per meeting (up to \$200.00 per month), and shall

receive compensation for reasonable travel expenses and subsistence allowances made necessary in the fulfillment of their official duties.

(j) Appeals to the Board of Adjustment

(1) Preface and Definitions. This subsection establishes general rules governing appeals to the Board of Adjustment as required by NRS 278.310 (2). The Board of Adjustment may adopt supplemental rules not inconsistent with these rules. For the purpose of this subsection, "Board" means the Washoe County Board of Adjustment.

(2) Matters that May be Appealed. A person aggrieved (as defined in Section 110.910.02) by any of the following decisions may appeal the decision to the Board of Adjustment:

(i) Decisions of Building Official. Decisions of the Building Official made in the course of enforcing the County Code may be appealed to a hearing officer and the decisions of the hearing officer may be appealed to the Board as provided in WCC 110.910.15. Otherwise, a person aggrieved by his/her inability to obtain a building permit or by the decision of the Building Official made in the course of administration or enforcement of any regulation relating to the soundness of structures may appeal the decision to the Technical Review Board subject to and in accordance with Chapter 100 of this Code (Building Code), and if so appealed, the decision of the Technical Review Board may be appealed to the Board in accordance with this Article. If a decision of the Building Official is not heard by a hearing officer or the Technical Review Board, then a person aggrieved by the decision may appeal it directly to the Board under this Article; or,

(ii) Decisions of Fire Code Official. Decisions of the Fire Code Official made in the course of enforcing the County Code may be appealed to a hearing officer and the decisions of the hearing officer may be appealed to the Board as provided in WCC 110.910.15. Otherwise, a person aggrieved by his/her inability to obtain a building permit or by the decision of the Fire Code Official made in the course of administration or enforcement of any regulation relating to the soundness of structures may appeal the decision to the Technical Review Board in accordance with Chapter 60 of this Code (Fire Code), and if so appealed, the decision of the Technical Review Board may be appealed to the Board in accordance with this Article. If a decision of the Fire Code Official is not appealed to a hearing officer or the Technical Review Board, then a person aggrieved by that decision may appeal it directly to the Board but only if the decision results in denial of a building permit or is related to the soundness of structures. Decisions relating to public safety or fire code administration or enforcement are not subject to appeal to the Board unless they directly relate to the soundness of a structure or result in denial of a building permit; or,

(iii) A decision of an administrative hearing officer if an administrative enforcement proceeding is completed in accordance with Article 910 of the Development Code; or,

(iv) A decision of the Director the Planning and Development Division made in the course of administration of any zoning regulation or any regulation relating to the location or soundness of structures if the decision cannot be appealed to an administrative hearing officer.

- (3) Form and Time for Appeal. Appeals must be in writing on forms or in the format prescribed by, and must be delivered to, the Planning and Development Division of the Department of Community Services within 10 calendar days from the date that the decision is communicated in writing to the appellant.
- (4) Scheduling of Hearing on Appeal. The Chairman of the Board shall schedule the appeal for a hearing to occur not later than the date of the next regular meeting of the Board but no more than 60 days from the date the appeal was filed in accordance with paragraph (3) unless otherwise agreed with the appellant. Within that timeline, the Chairman of the Board may also schedule a special meeting to hear the appeal. If the appellant fails to observe any prehearing schedule, the Chairman may extend the hearing date for a reasonable period of time.
- (5) Prehearing Procedures. The Chairman of the Board of Adjustment may:
 - (i) Require and oversee ministerial prehearing procedural matters, including prehearing conferences, discovery proceedings, briefing schedules, evidence assembly and marking; however, matters involving jurisdiction or issues to be heard by the Board, or admissibility of evidence are to be heard by the Board;
 - (ii) Issue subpoenas compelling witnesses to appear before the Board; and
 - (iii) Schedule the hearing before the Board.
- (6) Record on Appeal; Additional Evidence. A record on appeal shall be prepared by the County (including either a transcript of or a copy of the recording of the proceeding, at the discretion of the Chairman of the Board) and the Board:
 - (i) Shall review the record on appeal and all evidence, testimony, documents, information and arguments introduced and the decision in the proceedings being appealed;
 - (ii) Shall afford all parties an opportunity to respond and present relevant and non-repetitious evidence and arguments on all issues being decided on appeal even if it is new evidence;
 - (iii) Shall conduct a public hearing, and hear and consider relevant information and comments by members of the public, even if they did not appear in the proceeding under appeal;
 - (iv) May consider, upon disclosure, information and comments communicated to Board members before the hearing; and
 - (v) May consider maps, adopted master plans to include area plans, and its own knowledge of conditions that exist.
- (7) Burden of Proof and Persuasion; Reasons for Reversal of Underlying Decisions; Limitations on Awards.
 - (i) Decisions of administrative officials, hearing officers, and the technical review boards for building code and fire codes are presumed to be reasonable and lawful, and it is the burden of the appellant to persuade the Board otherwise.
 - (ii) On an affirmative vote of a majority of the members present at the hearing, the Board may affirm the decision being appealed,

- (iii) On a majority vote of all its members [as required by NRS 278.300 (2)], the Board may reverse, modify or remand a decision if the decision:
 - (A) Was made contrary to the constitution, a statute, an ordinance or regulation, or the law of the case;
 - (B) Exceeds the jurisdiction or statutory authority of the deciding official or body;
 - (C) Was made on unlawful procedure;
 - (D) Is affected by an erroneous interpretation or other error of law;
 - (E) Is clearly erroneous in view of the reliable, probative and substantial evidence on the whole record, or
 - (F) Is arbitrary or capricious or characterized by abuse of discretion.
 - (iv) The Board may not award, allocate or direct the payment of money damages, attorney's fees or costs of the proceeding to any party.
- (8) Decision; Communication.
- (i) The Board may take a matter under advisement and continue the hearing until its next regularly scheduled meeting, or may set a special public hearing to conclude the matter, and may require briefings or seek opinions of counsel. The Board may render a decision and instruct counsel to prepare a written decision either to be signed by the Chairman of the Board or reviewed at a subsequent meeting by the Board (provided, however, that the outcome shall not be changed at the subsequent meeting).
 - (ii) The Board must render a written decision within 60 days after the hearing unless otherwise agreed with the appellant.
 - (iii) When a decision is signed by the Chairman of the Board, a copy shall be delivered to all parties of record, and a copy shall be filed with the secretary to the Board as an official record. When a decision is so served and filed, it is final for purposes of judicial review or appeal. A petition for reconsideration or rehearing is not required as a condition to judicial review or appeal to the Board of County Commissioners.
- (9) Appeals of Board of Adjustment Decisions. A party of record who is aggrieved by a decision of the Board of Adjustment may:
- (i) Seek judicial review of the decision by filing a petition in the Second Judicial District Court for the State of Nevada within 25 days from the date that the decision becomes final as specified under paragraph (8) above, and pursuant to the rules and rulings of the Court; or,
 - (ii) Appeal the decision to the Board of County Commissioners in accordance with Section 110.912.20 of this Article.

SECTION 13. Section 110.914.00 is hereby amended to read as follows:

Article 914

ESTABLISHMENT OF DIVISION

Section 110.914.00 Purpose. The purpose of this article, Article 914, Establishment of Division, is to specify the establishment and authority of the Planning and Development Division of the Washoe County Community Services Department.

SECTION 14. Section 110.914.05 is hereby amended to read as follows:

Section 110.914.05 Planning and Development Division of the Washoe County Community Services Department.

(a) **Division Created.**

- (1) There is hereby created the Planning and Development Division of the Washoe County Community Services Department.
- (2) The division shall be responsible for the development and administration of comprehensive planning programs, as well as development review programs, including business licensing and codes compliance, for the County in accordance with relevant local, state and federal ordinances, laws and regulations, as well as such other functions as may be assigned by the Board of County Commissioners.

(b) **Director's Position Created.**

- (1) The position of the Division Director Planning and Development is hereby created. The Director shall be appointed by the Community Services Department Director and shall serve at the pleasure of the Community Services Department Director.
- (2) The Director shall appoint, pursuant to any applicable provisions of law regulating County personnel, such technical, clerical and operating staff as the execution of the duties of the Director and operation of the department may require.

(c) **Director's Powers and Duties.** As the executive head of the division, the Director shall direct and supervise all administrative, technical and operational activities of the division. In addition to such activities as may be required in the daily administration of the division, the Community Services Department Director may make additional assignments as deemed necessary. The Director shall have the authority to interpret and make decisions regarding the provisions of the Development Code.

(d) **Compensation.**

- (1) Except as provided in Subsection (d)(2) of this section, the salaries and other fringe benefits of the Director and employees of the Planning and Development Division shall be established in accordance with the provisions of the Merit Personnel Ordinance or any other applicable laws regulating the employment of County personnel.

- (2) The salary for the position of Director shall be established by the Board of County Commissioners.
- (e) Programs. The division shall consist of such programs, as are deemed necessary to the efficient performance of the duties of the division, created upon the recommendation of the Director and approved by the Community Services Department Director.
- (f) Appeal of a Director's Decision. A person aggrieved by a decision of the Director may appeal the decision in accordance with Section 110.912.10 of the Development Code.

SECTION 15. General Terms.

1. All actions, proceedings, matters and things heretofore taken, had and done by the County and its officers not inconsistent with the provisions of this Ordinance are ratified and approved.
2. The Chairman of the Board and the officers of the County are authorized and directed to take all action necessary or appropriate to effectuate the provisions of this ordinance. The District Attorney is authorized to make non-substantive edits and corrections to this Ordinance.
3. All ordinances, resolutions, bylaws and orders, or parts thereof, in conflict with the provisions of this ordinance are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any ordinance, resolution, bylaw or order, or part thereof, heretofore repealed.
4. Each term and provision of this ordinance shall be valid and shall be enforced to the extent permitted by law. If any term or provision of this ordinance or the application thereof shall be deemed by a court of competent jurisdiction to be in violation of law or public policy, then it shall be deemed modified, ipso facto, to bring it within the limits of validity or enforceability, but if it cannot be so modified, then it shall be excised from this ordinance. In any event, the remainder of this ordinance, or the application of such term or provision to circumstances other than those to which it is invalid or unenforceable, shall not be affected.

PASSAGE AND EFFECTIVE DATE

This ordinance was proposed on 4-14-15 by Commissioner Hartung.

This ordinance was passed on 4-28-15.

Those voting "aye" were Berkbigler, Jung, Henman, Lucey & Hartung

Those voting "nay" were none.

Those absent were none.

Those abstaining were none.

This ordinance shall be published and shall be in force and effect immediately upon the date of the second publication as set forth in NRS 244.100.

Marsha Berkbigler
Marsha Berkbigler, Chair
Washoe County Commission



ATTEST:
Nancy L. Parent
Nancy Parent, County Clerk

RENO NEWSPAPERS INC

Publishers of

Reno Gazette-Journal

955 Kuenzli St • P.O. Box 22,000 • Reno, NV 89520 • 775.788.6200

Legal Advertising Office 775.788.6394

WASHOE CO
PO BOX 11130
RENO NV 89520-0027

Customer Acct# 349008
PO# 1555
Ad# 2000055726
Legal Ad Cost \$380.00

STATE OF NEVADA
COUNTY OF WASHOE

Being first duly sworn, deposes and says: That as the legal clerk of the Reno Gazette-Journal, a daily newspaper of general circulation published in Reno, Washoe County, State of Nevada, that the notice referenced below has published in each regular and entire issue of said newspaper between the dates: **5/1/2015 - 5/8/2015**, for exact publication dates please see last line of Proof of Publication below.

Subscribed and sworn to before me

Signed: _____



Proof of Publication

NOTICE OF ADOPTION WASHOE COUNTY ORDINANCE NO. 1555 BILL NO. 1736
NOTICE IS HEREBY GIVEN that typewritten copies of the above-numbered and entitled ordinance are available for inspection by the interested parties at the office of the County Clerk of Washoe County, Nevada, at her office in the Washoe County Complex, 1001 E. Ninth Street, Building A, Reno, Washoe County, Nevada; and that the ordinance was proposed on April 14, 2015 by Commissioner Hartung and was passed and adopted without amendment at a regular meeting held on April 28, 2015 by the following vote of the Board of County Commissioners: An ordinance amending the Washoe County Code at Chapter 110 (Development Code), to delete Section 110.806.25, Hearing of Appeal by Board, and Section 110.806.30, Notice of Board Hearing, of Division Eight, Procedures; to add a new Section at 110.912.20 of Division Nine, General Provisions, regarding appeals to the Board of County Commissioners of decisions by the Board of Adjustment, the Planning Commission, and Hearing Examiners; to amend various sections throughout the Development Code to adopt the new appeal provisions, including Section 110.606.55, Appeals of Parcel Map decisions, and Section 110.608.15, Appeals of decisions regarding subdivision maps, of Division Six, Subdivision Regulations; and, Section 110.804.40, Appeals of decisions regarding variances, Section 110.806.15, Review procedures of

**NOTICE OF ADOPTION
WASHOE COUNTY ORDINANCE NO. 1555
BILL NO. 1736**

NOTICE IS HEREBY GIVEN that typewritten copies of the above-numbered and entitled ordinance are available for inspection by the interested parties at the office of the County Clerk of Washoe County, Nevada, at her office in the Washoe County Complex, 1001 E. Ninth Street, Building A, Reno, Washoe County, Nevada; and that the ordinance was proposed on April 14, 2015 by Commissioner Hartung and was passed and adopted without amendment at a regular meeting held on April 28, 2015 by the following vote of the Board of County Commissioners:

An ordinance amending the Washoe County Code at Chapter 110 (Development Code) to delete Section 110.806.25, Hearing of Appeal by Board; and Section 110.806.30, Notice of Board Hearing, of Division Eight, Procedures; to add a new Section at 110.912.20 of Division Nine, General Provisions, regarding appeals to the Board of County Commissioners of decisions by the Board of Adjustment, the Planning Commission, and Hearing Examiners; to amend various sections throughout the Development Code to adopt the new appeal provisions, including Section 110.606.55, Appeals of Parcel Map decisions, and Section 110.608.15, Appeals of decisions regarding subdivision maps; of Division Six, Subdivision Regulations; and, Section 110.804.40, Appeals of decisions regarding variances, Section 110.806.15, Review procedures of Planning Commission regarding vacations and abandonments of easements or streets, Section 110.806.35, Action by Board regarding vacations and abandonments of easements or streets, Section 110.808.45, Appeals of decisions regarding administrative permits, Section 110.810.50, Appeals of decisions regarding special use permits, Section 110.818.25, Appeals of a denial regarding Development Code amendments, and Section 110.818.30, Action by Board regarding Development Code amendments, of Division Eight, Procedures; and, Section 110.912.10, Washoe County Board of Adjustment, to add a new Subsection (J) to provide general rules regarding appeals of administrative decisions to the Board of Adjustment and other matters relating to the new appeal provisions and Board membership that is no longer applicable; Section 110.914.05, Washoe County Department of Community Development, at Subsection (F) to provide for appeals of a decision of the Director; and, Section 110.914.00, Purpose, and Section 110.914.05, Washoe County Department of Community Development, to correct the terminology of the Planning and Development Division with the establishment of the Community Services Department of Division Nine, General Provisions. Recommendations include other matters properly relating thereto. (Bill No. 1736)

Those Voting Aye: Vaughn Hartung, Jeanne Herman, Marsha Berkgigler, Kitty Jung and Bob Lucey

Those Absent: None

This Ordinance shall be in full force and effect from and after May 8, 2015.
IN WITNESS WHEREOF, the Board of County Commissioners of Washoe County, Nevada, has caused this Ordinance to be published by title only.

DATED April 29, 2015

Nancy Parent, Washoe County Clerk, and
Clerk of the Board of County Commissioners

No. 55726

May 1, 8, 2015

Planning Commission regarding vacations and abandonments of easements or streets, Section 110.806.35, Action by Board regarding vacations and abandonments of easements or streets, Section 110.808.45, Appeals of decisions regarding administrative permits, Section 110.810.50, Appeals of decisions regarding special use permits, Section 110.818.25, Appeals of a denial regarding Development Code amendments, and Section 110.818.30, Action by Board regarding Development Code amendments, of Division Eight, Procedures; and, Section 110.912.10, Washoe County Board of Adjustment, to add a new Subsection (J) to provide general rules regarding appeals of administrative decisions to the Board of Adjustment and other matters relating to the new appeal provisions and Board membership that is no longer applicable; Section 110.914.05, Washoe County Department of Community Development, at Subsection (F) to provide for appeals of a decision of the Director; and, Section 110.914.00, Purpose, and Section 110.914.05, Washoe County Department of Community Development, to correct the terminology of the Planning and Development Division with the establishment of the Community Services Department of Division Nine, General Provisions. Recommendations include other matters properly relating thereto. (Bill No. 1736) Those Voting Aye: Vaughn Hartung, Jeanne Herman, Marsha Berkgigler, Kitty Jung and Bob Lucey Those Absent: None This Ordinance shall be in full force and effect from and after May 8, 2015. IN WITNESS WHEREOF, the Board of County Commissioners of Washoe County, Nevada, has caused this Ordinance to be published by title only. DATED April 29, 2015 Nancy Parent, Washoe County Clerk and Clerk of the Board of County Commissioners No. 55726 May 1, 8, 2015