

CITY OF DANA POINT**AGENDA REPORT**

DATE: SEPTEMBER 15, 2026

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: SHAYNA SHARKE, CITY CLERK
JONATHAN LIGHTFOOT, DIRECTOR OF COMMUNITY DEVELOPMENT

SUBJECT: DAYLIGHTING AMENDMENTS TO THE DANA POINT MUNICIPAL CODE
RELATING TO APPEAL PROCEDURES

RECOMMENDED ACTION:

That the City Council receive, discuss and advise on the proposed changes to portions of the Dana Point Municipal Code relating to appeal procedures.

BACKGROUND:

The City Council has prioritized the comprehensive review and modernization of the Dana Point Municipal Code (DPMC) in support of Strategic Plan Goal 4: Effective, Efficient, and Innovative City Administration. Multiple DPMC chapters currently contain inconsistent appeal procedures, which creates confusion for applicants, staff, and decision-makers and reduces administrative efficiency. The proposed amendments would harmonize and modernize appeal provisions across the DPMC by establishing uniform appeal timelines to improve user clarity and provide increased efficiency through streamlined procedures.

DISCUSSION:

Staff reviewed appeal provisions throughout the DPMC and recommends amendments to replace Sections 2.04.100 through 2.04.130 with a consolidated framework governing appeal of administrative and discretionary decisions, except where a more specific DPMC provision or controlling state or federal law establishes different requirements.

The proposed amendments would:

- Define administrative, discretionary, and ministerial decisions.
- Establish a uniform 15-calendar-day appeal filing period for most appeal types; require appeals to be submitted in writing to the City Clerk; specify the scope of the appeal and include the applicable appeal fee.
- Designate the appropriate appeal authority based on the underlying decision and subject matter.
- Clarify when an appeal decision becomes final and when specialized procedures established elsewhere in the DPMC take precedence.

- Revise the City Council call-up procedure to allow a Council Member to move to appeal an action identified in agendaized commission or committee minutes, subject to the motion receiving a second.

The proposed amendments also revise appeal provisions throughout the DPMC to direct applicable matters to the consolidated procedures in Title 2 of the DPMC and eliminate duplicative or conflicting language. Specialized requirements established by State law will be retained where necessary, including alternative appeal periods, advance deposits and hardship waivers for administrative fines, subject-specific hearing officers or appeal bodies, land-use noticing requirements, building-code appeal procedures, and judicial or California Coastal Commission review. Additional conforming amendments would update statutory judicial-review deadlines and modernize terminology.

The proposed amendments affect the following DPMC titles:

- Title 1 – General Provisions
- Title 2 – Administration and Personnel
- Title 3 – Revenue and Finance
- Title 5 – Business Regulations
- Title 6 – Health and Sanitation
- Title 7 – Subdivisions
- Title 8 – Buildings and Construction (Public Hearing Required)

Appeal procedure recommendations within the Zoning Code (Title 9) will be presented at a future date.

A summary of the proposed appeal procedure amendments is included as Supporting Document A. A full draft of each section's proposed amendments is attached as Supporting Document B with deletions shown as strikethroughs and additions to the code shown in red text.

NOTIFICATION AND FOLLOW UP:

Schedule a Public Hearing for the first reading of an Ordinance at a future Council Meeting.

FISCAL IMPACT:

None.

STRATEGIC PLAN IMPLEMENTATION:

Strategic Plan Goal 4: Effective, Efficient and Innovative City Administration.

ALTERNATIVE ACTIONS:

Other alternatives as directed by the City Council.

SUPPORTING DOCUMENTS:**Page No.**

A. Consolidated Summary of Changes	4
B. Strikethrough Draft of Each Proposed Section	6

SUPPORTING DOCUMENT A

CODE #	TYPE	CURRENT APPEAL BODY	RECOMMENDED APPEAL BODY	CHANGES PROPOSED
2.04.100 - 2.04-130	Proposed Universal Appeal Section	N/A	N/A	Creates clear definition of appeal bodies, timing, and criteria for applicable appeal types within entire code to reference.
01.10.070	Amount of Civil Fines	City Council	Determined by City Manager - Final	Removes language conflicting the finality of City Manager decision.
02.50.020	Actions Attacking Certain Decisions, Time Limitation	N/A	N/A	Updates timeline from 120 days to 90 days for serving deadline.
03.25.100	Transient Occupancy Tax	City Council	City Council	Refers back to 2.04.100
05.02.080	Revocation of Street Vending	City Council	City Council	Refers back to 2.04.100
05.03.080	Sidewalk Vendors	Hearing Officer	Hearing Officer	Refers back to 2.04.100
05.20.250	Massage Regulations	City Council	Hearing Officer	Finalizes the Hearing Officer decision.
05.30.140	Cable Communications Franchises	City Council	City Council	Refers back to 2.04.100
05.32.090	Adult-Oriented Business	City Council or Hearing Officer (Determined by CM)	Hearing Officer	Finalizes Hearing Officer decision.
05.36.040	Video Franchise Fees	City Council	Same	Refers back to 2.04.100 and specifies calendar days.
06.10.070	Solid Waste Disposal and Organic Waste	Hearing (not specified)	Noam will talk to Pat after update	Refers back to 2.04.100 and specifies calendar days.
06.12.140	Construction and Demolition Debris	City Manager	City Manager	Refers back to 2.04.100 and specifies calendar days.

CODE #	TYPE	CURRENT APPEAL BODY	RECOMMENDED APPEAL BODY	CHANGES PROPOSED
06.14.208	Abandoned Vehicles	Hearing Officer > City Council	Hearing Officer	Finalizes the Hearing Officer decision.
06.14.413	Loud or Unruly Parties	City Council	Hearing Officer	Finalizes the Hearing Officer decision.
06.15.004	Landscape Maintenance of Vacant Properties	Hearing Officer > City Council	Hearing Officer > City Council	Refers back to 2.04.100. This specific Hearing Officer determination can be appealed to City Council.
07.05.080	Tentative Tract Map	City Council	City Council	Refers back to 2.04.100.
07.24.025	Final Maps	City Council	City Council	Refers back to 2.04.100 and specifies calendar days.
07.30.020	Certificate of Compliance	City Council	Planning Commission	Refers back to 2.04.100.
07.32.020	Lot Line Adjustments	Planning Commission	Planning Commission	Refers back to 2.04.100.
08.01.150	Grading and Excavation Hazardous Condition	City Manager > City Council	City Manager > City Council	Refers back to 2.04.100.
08.10.001	Relocated Buildings Code	Board of Appeals	Same	Refers back to 2.04.100.
08.18.018	Uniform Swimming Pool, Spa	Board of Appeals	Same	
08.40.070	Reasonable Accommodation	Director > Planning Commission > City Council	Same	Refers back to 2.04.100.

SUPPORTING DOCUMENT B

Proposed New Universal Appeal Section to replace [Section 2.04.100 – 2.04.130](#)

Section 2.04.100. Appeal Procedures

A. Purpose and Applicability.

This section establishes the standard appeal procedures for any person aggrieved by administrative or discretionary decisions made by a City official, committee, commission, or other administrative body under the Dana Point Municipal Code. Except where an appeal procedure is expressly stated elsewhere in this Code, or where state or federal law provides otherwise, all appeals shall be processed in accordance with this section. There shall be no such right of appeal with regard to law enforcement activities involving State law.

B. Definitions.

Ministerial Decision. A ministerial decision is a decision made by a City official, officer, or employee, pursuant to routine implementation of objective standards or fixed criteria established by federal, state, or local law that does not involve the exercise of judgment or discretion by the decision-maker. A ministerial decision shall be based solely on whether the applicable objective requirements have been satisfied. Unless expressly provided otherwise in this Code or required by state law, ministerial decisions are final and are not subject to administrative appeal.

Administrative Decision. An administrative decision is a decision, determination, approval, denial, permit, or other action made by a City official, officer, employee, board, commission, or other authorized decision-making body in the administration or enforcement of this Code.

Administrative decisions may relate to interpretations or investigations and are commonly specifically vested within the municipal code to a manager or Director.

Discretionary Decision. A discretionary decision is a decision that requires the exercise of judgment or deliberation in applying policies, guidelines, or goals, making findings, weighing evidence, or determining whether an application or request should be approved, approved with conditions, or denied. Discretionary decisions are appealable only as provided in this Code or state law.

C. Appealability of Ministerial Decisions.

Except where expressly authorized by this Code or required by state law, ministerial decisions are final and are not subject to appeal. An appeal may not be used to challenge the objective standards applicable to a ministerial decision or the exercise of duties that are mandatory under this Code.

D. Time to File Appeal.

A written notice of appeal must be received by the City Clerk within fifteen (15) calendar days of the date of the determination being appealed. Failure to file a timely appeal constitutes a waiver of all rights to challenge the decision.

E. Filing Requirements.

All appeals shall be in writing and shall include:

1. Identification of the decision being appealed;
2. The specific grounds for the appeal;
3. A statement of the facts supporting the appeal;
4. The relief or action requested; and
5. All supporting documents the appellant wishes considered.

All appeal filings shall be accompanied by the applicable appeal fee as established by the most recent resolution of the City Council establishing the Schedule of Service Fees. An appeal shall be deemed timely filed and complete only if all applicable appeal conditions are satisfied including, but not limited to, remittance and receipt by the City of any required appeal fees prior to the deadline to file the appeal.

F. Scheduling and Notice of Hearing.

Upon filing of a timely and complete appeal and payment of required fees, the City Clerk shall schedule the matter for a hearing before the designated appeal body, unless otherwise provided in this Code, and such appeal body shall have discretion to consider any part of the project or approval at-issue as part of its determination.

No hearing shall be held unless and until the fine or penalty has been timely deposited with the City Clerk, or an advance deposit hardship waiver has been approved and issued. (See [§ 1.10.070 Amount of Civil Fines](#))

The City Clerk shall provide the appellant with written notice of the hearing date, time, and location not less than ten (10) calendar days before the hearing, unless notice is waived or another notice period is specified for the underlying action.

G. Appeal Authority

No appeal may be taken from any administrative or discretionary decision made by a City official pursuant to any provision of the Dana Point Municipal Code unless the appellant has first submitted a written statement of their case for formal review and addressed to the responsible Department Head and/or the City Manager, and such official(s) has not adjusted the matter to the appellant's satisfaction.

Unless otherwise noted in the code specific to the appeal and/or where provided that a decision is deemed final, the appeal body shall be as follows:

- a) Appeals of Code Enforcement Issued Citations are to be heard by a Hearing Officer. The decisions of the Hearing Officer shall be final, except that any person aggrieved by the decision of the Hearing Officer may obtain review of the decision by filing a petition for review with the Orange County Superior Court in accordance with the timelines and provisions set forth in California Government Code Section [53069.4](#) or as otherwise allowed under the State law.

- b) Appeals of Determinations on Administrative Permits or licenses, including Street Vendor Permits, Short-Term Rental Permits, and Massage Licenses are to be heard by the City Manager or the City Manager's designee.
- c) Appeals of the Director of Community Development. Appeals of administrative or discretionary decisions of the Director of Community Development Director are to be heard by the Planning Commission. Appeals of Building Code determinations are to be heard by the City Council, or if designated, a Board of Appeals.
- d) Appeals of the City Manager. Appeals of administrative or discretionary decisions of the City Manager are to be heard by the City Council.
- e) Appeals of discretionary decisions of the Planning Commission. Appeals of Planning Commission action are to be heard by the City Council.
- f) Appeals of Coastal Development Permits. After the exhaustion of the appeal procedures described in Section [9.61.110\(a\)](#) through [\(c\)](#), except as provided for in Section [9.69.090\(a\)\(1\)](#) of the Zoning Code, the City's final action on a coastal development permit for development that is appealable, as described in Section [9.69.090](#), may be appealed to the Coastal Commission in accordance with the procedures specified in Section [9.69.090](#).
- g) City Council Call-Up. When receiving the agendized minutes from appointed Commissions or Committees, a member of the City Council may make a motion to appeal an action taken by the Commission or Committee reflected within those minutes. If that motion receives a second, the item is deemed appealed, and the item will be scheduled, noticed, and heard in accordance with the provisions of this section.

H. Conduct of the Hearing.

- a) The appeal body shall consider the entire record and any additional relevant evidence submitted by the appellant and City staff, unless otherwise limited by law or code.
- b) The appellant bears the burden of establishing that the decision being appealed should be reversed or modified.
- c) For appeal hearings before the Planning Commission or City Council, both the appellant and applicant (if applicable) will be allotted five (5) minutes to present their testimony and an additional five (5) minutes for rebuttal, unless otherwise determined by the appeal body.
- d) The appeal body may affirm, reverse, or modify the original decision, and may take any action that could have been taken by the original decision-maker.
- e) All determinations on appeal shall address and be based upon the same findings required to be made in the original determination from which the appeal is taken.
- f) Notification requirements shall be the same as those applicable to the original determination.

- g) The person or entity presiding over the appeal hearing shall only hear evidence from the applicant that has previously been presented to staff at the initial decision-making stage and/or the appeal application.

I. Effect of Filing an Appeal.

Filing of an appeal stays the effective date of the underlying decision unless:

1. The applicable Code section expressly provides otherwise;
2. State or federal law requires immediate effectiveness; or
3. The decision involves public health, safety, or welfare.

Section 2.04.120. Exhaustion of Administrative Remedies; Waiver.

A. Exhaustion Required. A person seeking judicial review or other legal relief concerning any decision, determination, order, or action subject to the administrative appeal procedures established by this Code shall first timely and fully exhaust all administrative remedies provided by this Code.

B. Issues Not Raised on Appeal. Any issue, claim, objection, or argument that is not timely and properly raised before the administrative appeal body shall be deemed waived. The person shall be precluded from raising such issue, claim, objection, or argument for the first time in any subsequent administrative proceeding, judicial proceeding, or other legal action challenging the decision.

C. Failure to Perfect Appeal. An appeal shall be deemed abandoned and the underlying decision shall become final if the appellant fails to timely file an appeal in the manner and within the time prescribed by this Code or if the person fails to appear at the noticed hearing for the appeal. A person who fails to timely perfect an appeal shall be deemed to have exhausted, and waived, the administrative remedies available under this Code and shall be precluded from thereafter challenging the decision or raising any issue, claim, objection, or argument that could have been raised through a timely and properly perfected appeal.

D. Finality of Decision. Upon expiration of the applicable appeal period without a timely and properly perfected appeal, or upon completion of the administrative appeal process, the decision shall be final for purposes of administrative enforcement and judicial review, subject only to such exceptions as may be required by applicable law.

E. No Enlargement of Appeal Period. The failure of any person to receive actual notice of an appeal deadline shall not extend the applicable appeal period when notice is otherwise provided in the manner required by this Code, except as otherwise required by applicable law.

F. Conflicts with Other Code Sections. Where another section of this Code provides a different appeal timeline, procedure, or standard (e.g., special noticing, hardship waivers, cost recovery, or land-use radius notifications) for a specific decision, that section shall control. In all other respects, the provisions of this Chapter shall apply.

~~(a) No notice of appeal shall be acted upon unless filed within 10 days after service of written notice of the determination appealed from, provided that if such notice of determination has not been served in writing, the appellant may, within 10 days after being apprised of such determination, demand service of written notice thereof, and shall have 10 days following such service in which to file the notice of appeal.~~

~~(b) The notice of appeal shall set forth: (1) the specific action appealed from; (2) the specific grounds of the appeal; and (3) the relief or action sought from the City Council. In the event any notice of appeal fails to set forth any information required by this Section, the City Clerk shall return the same to the appellant with a statement of the respects in which it is deficient, and the appellant shall thereafter be allowed five days in which to perfect and refile the notice of appeal.~~

~~(c) Except in those instances where an appeal is filed by the City Manager or other public official pursuant to official duties, the written notice of appeal from the determination of an administrative official or from an administrative body of the City, as the case may be, shall be accompanied by such fee as may be established by resolution of the City Council.~~

(Amended by [Ord. 23-07](#), 11/7/2023)

[§ 2.04.120 Appeals — Hearings — Notices.](#)

~~(a) Upon the timely filing of a Notice of Appeal in proper form, and the payment of the requisite appeal fee, the City Clerk shall schedule the matter for de novo hearing promptly before the City Council at a subsequent regular meeting and shall cause notice thereof to be given to the appellant not less than five days prior to such hearing, unless such notice is waived in writing by the appellant. The City Clerk shall also cause a copy of the Notice of Appeal to be transmitted to the official or body whose decision the appeal relates.~~

~~(b) If two or more members of the City Council file with the City Clerk, within the time for the filing of an appeal as set forth in Subsection [2.04.110\(a\)](#) of this Chapter, written requests to have a decision of the Planning Commission brought to the City Council for review, the City Clerk shall schedule the matter for Council consideration at the earliest possible date. The filing of such two written requests shall constitute, for all purposes, an appeal brought pursuant to this Subsection shall not require payment of the appeal fee required by Section [2.04.110\(c\)](#) of this Chapter.~~

(Amended by Ord. 89-19, 7/27/89; [Ord. 23-07](#), 11/7/2023)

[§ 2.04.130 Appeals — Hearings — Procedure.](#)

~~(a) The City Council may limit participation at the hearing to those parties directly interested, or may allow participation by the public. Such public participation, however, shall only occur when the Council deems the same necessary to further the public interest. If a hearing is ordered open to public participation, notice thereof shall be given by publishing notice of the same in a newspaper of general circulation in the City not less than five days prior to the date of such hearing, and by such other means as the City Council deems necessary.~~

~~(b) At the time of consideration of the appeal by the City Council the appellant shall be limited to a presentation on the specific grounds of appeal and matters set forth in his or her notice of appeal and shall have the burden of establishing cause why the decision appealed from should be altered, reversed, or modified. Unless otherwise directed by the Mayor, the appellant~~

~~representative and applicant representative may have five minutes to present their testimony and an additional five minutes for rebuttal. The Council may continue the matter from time to time; and at the conclusion of its consideration may affirm, reverse, or modify the decision appealed from and may take any action which might have been legally taken in the first instance by the official or body from whose action the appeal has been taken. In ruling on the appeal, the finding and action of the Council shall be final and conclusive in the matter.~~

~~(Amended by Ord. 23-07, 11/7/2023)~~

§ 1.10.070 Amount of Civil Fines.

(d) For fines imposed under the Dana Point Municipal Code for second and subsequent violations of the same ordinance, regulation, condition, or permit within one year from the date of the first violation, the citation recipient of a fine may request a hardship waiver by completing a hardship waiver form and returning the form to the City Clerk within 10 **calendar** days of the date stated on the citation. The waiver request shall include a sworn affidavit and any supporting documents or materials demonstrating to the satisfaction of the City Manager or ~~his or her~~ **their** designee that: (1) the recipient of the fine has made a bona fide effort to comply after the first violation; and (2) payment of the full amount of the fine would impose an undue **and significant** financial burden on the recipient. The City Clerk shall serve written notice of the determination of the City Manager or ~~his or her~~ **the City Manager's** designee on the recipient of the fine by first class mail. Service shall be deemed complete at the time the notice is deposited into the mail and addressed to the person at the address indicated on the hardship waiver form. The notice shall include a brief description of the reasons for the determination to approve or not approve the hardship waiver. The written determination of the City Manager **or City Manager's designee** shall be final. ~~If the City Manager determines not to approve a hardship waiver, the recipient of the fine shall within 10 days of service of that determination either remit the deposit amount to the City Clerk or shall file an appeal of the citation in compliance with the applicable procedures in the Dana Point Municipal Code. in accordance with Section 2.04.100 of this code.~~

§ 1.10.270 Consequence of Open Matters.

Consequence of Open Matters. No person shall be issued a permit or receive any approval for the construction, use, or improvement of a property if said property is the subject of an open enforcement case (unless said approval or permit is integral to remediating the violation identified in the enforcement case) or if such person owes the City any fees, fines, costs, or penalties relating to the subject property.

§ 2.50.020 Actions Attacking Certain Decisions, Time Limitation.

Any action or proceeding to attack, review, set aside, void, or annul any decision of matters listed in Sections **65901** and **65903** of the Government Code of the State of California, or concerning any of the proceedings, acts, or determinations taken, done, or made prior to such decision, or to determine the reasonableness, legality, or validity of any condition attached thereto, shall not be maintained by any person unless the action or proceeding is commenced and the legislative body is served within 90 **calendar** days after the date of the notice of the legislative body's decision, **unless a different deadline is set forth in State law** ~~and the legislative body is served within 120 days after the notice of the legislative body's decision.~~ Thereafter, all persons are barred from any such action

or proceeding or any defense of invalidity of any unreasonableness of that decision or of these proceedings, acts, or determinations.

§ 2.50.030 Limitations of Issues Raised.

(d) Except as provided in Section 2.50.010 of this Chapter and Subsection (e), no action or proceeding shall be maintained in any of the following cases by any person unless the action or proceeding is commenced and service is made on the legislative body 90 ~~calendar~~ 120 days after the date of the notice of the legislative body's decision ~~unless a different deadline is set forth in State law.~~

(1) To attack, review, set aside, void, or annul the decision of the City Council to adopt or amend a general or specific plan. This paragraph does not apply where an action is brought based upon the complete absence of a general plan or a mandatory element thereof, but does apply to an action attacking a general plan or mandatory element thereof on the basis that it is inadequate.

(2) To attack, review, set aside, void, or annul the decision of the City Council to adopt or amend a zoning ordinance.

(3) To determine the reasonableness, legality, or validity of any decision to adopt or amend any regulation attached to a specific plan.

(4) Concerning any of the proceedings, acts, or determinations taken, done, or made prior to any of the decisions listed in paragraphs (1), (2), and (3).

Transient Occupancy Tax

§ 3.25.100 Appeal.

~~Appeals shall be submitted and heard in accordance with Section 2.04.100 et seq. of this Code.~~

~~Any operator aggrieved by any decision of the Tax Administrator with respect to the amount of such tax, interest, and penalties, if any, may appeal to the City Council by filing a notice of appeal with the City Clerk within 15 days of the serving or mailing of the determination of tax due. The City Council shall fix a time and place for hearing such appeal, and the City Clerk shall give notice in writing to such operator at his last known place of business. The findings of the City Council are final and conclusive and shall be served upon the appellant in the manner prescribed above for service of notice of hearing. Any amount found to be due is immediately due and payable upon the service of notice.~~

Regulation of Street Vending

§ 5.02.030 Permit Approval.

~~(b) The decision of the City Manager may be appealed pursuant to Sections 2.04.100 through 2.04.130 of this Code.~~

~~(b) Appeals shall be submitted and heard in accordance with Section 2.04.100 et seq. of this Code.~~

§ 5.02.080 Appeal of Revocation of Vendor Permit.

In the event of the revocation of a vendor permit, the permittee shall have the right to appeal such revocation in accordance with ~~Section 2.04.100 et seq. of this Code.~~ In the event the revocation

is upheld, the permittee shall not be eligible to apply for a new vendor permit for a period of one year from the date of revocation.

Regulation of Sidewalk Vendors

§ 5.03.080 Appeals.

Appeals to any determination made with respect to the permit of a sidewalk vendor shall be submitted in accordance with Section 2.04.100 et seq. of this Code.

(1) If an administrative fine is the subject of an appeal, the hearing officer shall take into consideration the person's ability to pay the fine. The hearing officer shall provide the person with notice of his or her right to request an ability-to-pay determination and shall make available instructions or other materials for requesting an ability-to-pay determination. The person may request an ability-to-pay determination at or before the hearing or while the administrative fine remains unpaid. If the hearing officer determines that the appellant has a difficulty paying the entire fine, the hearing officer may establish a reasonable payment schedule for the appellant.

~~(2) If the person meets the criteria described in subsection (a) or (b) of Government Code Section 68632, or any successor section, the hearing officer shall accept, in full satisfaction, 20% of the administrative fine~~ (2) If the person meets the criteria in subsection (a) or (b) of Government Code Section 68632, or any successor section, the hearing officer shall accept a reduced administrative fine as full satisfaction of the fine that is reasonable based on the person's financial condition. ~~imposed pursuant to this Chapter.~~

(3) The hearing officer may allow the person to complete community service in lieu of paying the total administrative fine, may waive the administrative fine, or may offer an alternative disposition including a payment schedule.

After the hearing, the hearing officer shall affirm, modify or reverse the original decision or administrative fine. When a decision or administrative fine is modified or reversed, the hearing officer shall state the specific reasons for modification or reversal. Decisions on appeals shall be rendered within 30 calendar days of the close of the hearing. The hearing officer shall mail notice of a decision to the appellant. Such notice shall be mailed within five working days after the date of the decision to the appellant. The decision of the hearing officer shall be final. If the person contesting an administrative citation prevails in a challenge to the citation, the City shall within 30 calendar days refund the full amount of the fine or penalty deposited.

Massage Regulations

§ 5.20.250 Hearing for Revocation of License.

~~(h) The decision of the Hearing Officer shall be appealable to the City Council by the filing of a written appeal with the City Clerk within 15 calendar days following the day of mailing of the Hearing Officer's decision and paying the fee for appeals provided under this Code. All such appeals shall be filed with the City Clerk and shall be public records. The City Council shall, at a regularly scheduled meeting within 30 calendar days from the date the written appeal was filed hold a public hearing to consider the appeal, and shall accept all testimony and evidence from the parties that the City Council deems pertinent. At the conclusion of the review, a majority of the City Council members present shall decide to sustain the decision, modify the decision, or order~~

~~the decision stricken and issue such order as the City Council finds is supported by the entire record. The action of the City Council shall be final and conclusive and there shall be no additional right of appeal.~~

(h) The presiding hearing officer shall determine whether the permittee or any of its agents has violated any applicable law, regulation, rule, or standard, or has engaged in an act of moral turpitude. If the presiding hearing officer determines that such a violation or conduct warrants suspension or revocation, the City Manager or City Manager's designee may suspend or revoke the permittee's license and any related entitlements.

(i) The decision of the Hearing Officer shall be final, except that any person aggrieved by the decision of the Hearing Officer may obtain review of the decision by filing a petition for review with the Orange County Superior Court in accordance with the timelines and provisions set forth in California Government Code Section [53069.4](#) or other legal means, as applicable.

Cable Communications Franchises

§ 5.30.140 Enforcement Mechanism.

(b) Delegation of Enforcement Mechanisms. Such liquidated damages as grantor may assess against grantee pursuant to a grantee's franchise which do not include loss of the franchise may, at grantor's option, be determined by an officer or agency of the grantor to which it may delegate such administrative decisions, subject to due process and the criteria contained in this Chapter and the franchise, and subject to appeal to the City Council in accordance with ~~Section 2.04.100 of this code~~ Section 2.04.100 et seq. of this Code.

Adult Oriented Business

§ 5.32.090 Enforcement and Revocation.

(a) Inspections. Due to the potential harm associated with the secondary effects found to be created by adult-oriented businesses, the permittee shall permit officers of the City of Dana Point, the County of Orange, and each of their authorized representatives to conduct unscheduled inspections of the premises of the adult-oriented business for the purpose of ensuring compliance with the law at any time the adult-oriented business is open for business or occupied.

(b) Revocation Grounds. The Director of Community Development may revoke an adult-oriented business permit when he or she discovers that any of the following have occurred:

(1) Any of the findings and requirements contained in Section [5.32.050](#) above ceases to be satisfied;

(2) The application contains incorrect, false or misleading information;

(3) The applicant, and/or any of the officers or general partners, if a corporation or partnership, of the adult-oriented business has been found guilty of violating any of the provisions of an adult-oriented business permit or similar permit or license in any city, county, territory or state, or of any misdemeanor or felony classified by the state as a sex-related offense, including, but not limited to, a violation of the following [Penal Code](#) Sections and their subparts and subsections: 220, 261, 262, 264, 264.1, 265, 266, (including 266a through 266k) 267, 286, 286.5, 288, 288a, 289, 647, 647b, 647d, 647.6.

(4) Any person has been convicted of a sex-related offense as a result of his or her activity on the premises of the adult-oriented business.

(5) Following a hearing before the City Manager or City Manager's designee, the presiding hearing officer shall determine whether the permittee or any of its agents has violated any applicable law, regulation, rule, or standard, or has engaged in an act of

moral turpitude. If the presiding hearing officer determines that such a violation or conduct warrants suspension or revocation, the City Manager or City Manager's designee may suspend or revoke the permittee's entitlements.

(c) Revocation Notice. Upon determining that the grounds for permit revocation exist, the Director of Community Development shall furnish written notice of the proposed revocation to the permittee. Such notice shall summarize the principal reasons for the proposed revocation, shall state that the permittee may appeal the decision within 15 calendar days of the posting or the post-marked date on the notice. The notice shall be delivered both by posting the notice at the location of the adult-oriented business and by sending the same, ~~first-class mail, and certified mail, return receipt requested and~~ postage pre-paid, to the permittee as that name and address appears on the permit. Not later than 15 calendar days after the latter of the mailing or posting of the notice, the permittee may file an appeal of the Director of Community Development's determination with the City Clerk. If the appeal is ~~received by the City Clerk~~ filed within 15 calendar days of the mailing or posting of the notice referenced above, the appeal hearing shall be provided as contained in subsection **(d)** of this Section.

(d) Appeal. Appeals shall be submitted in accordance with ~~Section 2.04.100 of this code~~ **Section 2.04.100 et seq. of this Code** and will be heard by ~~the a third part hearing officer.~~ **City Manager or City Manager's designee.**

~~Upon receipt of a written appeal request, the City Clerk shall schedule an appeal to be heard before the City Council or, if determined appropriate by the City Manager, a Hearing Officer, within 30 calendar days of receipt of such request. Notice of the appeal hearing shall be provided in the manner required under Section 9.61.110 of this Code. Notice of the time and place of the hearing shall be sent to the permittee via certified mail, return receipt requested and postage prepaid at least 15 calendar days in advance of the date set for the hearing. At the hearing, the permittee and the City shall be entitled to present relevant evidence, testify under oath, and call witnesses who shall testify under oath. The City Council, or Hearing Officer, as applicable, shall not be bound by the traditional rules of evidence in a hearing, except that hearsay evidence may not be the sole basis for the decision of the City Council or the Hearing Officer, as applicable. The City Council or the Hearing Officer, as applicable, may continue the hearing as it deems necessary. Within 15 calendar days after the conclusion of the hearing, the City Council or the Hearing Officer shall rule on the appeal.~~

~~**(e)** Rule Application After Revocation. No person, corporation, partnership or member thereof or any other entity may obtain an adult oriented business permit within two years of the date its permit has been revoked.~~

~~**(f)** Maintenance of Status Quo. The status quo shall be maintained pending conclusion of the revocation hearing. If a judicial action is commenced challenging the revocation, the status quo shall be maintained until such time as a judicial decision is rendered from the court in which the action is filed.~~

~~(Added by Ord. 03-06, 4/9/03; amended by **Ord. 25-09**, 6/17/2025)~~

Video Franchise Fees, Customer Service and Other Video-Related Matters

§ 5.36.040 Customer Service Penalties Under State Franchises.

(c) A State franchisee may appeal a penalty assessed to the City Council in accordance with ~~Section 2.04.100 of this code~~ **Section 2.04.100 et seq. of this Code** within 60 **calendar days of the date of said penalty**. After relevant speakers are heard, and any necessary staff reports are

submitted, the City Council will vote to either uphold or vacate the penalty. The City Council's decision on the imposition of a penalty shall be final.

Solid Waste Disposal and Organic Waste Diversion

§ 6.10.070 Self-haulers.

(i) The City Manager may revoke a self-hauler permit if the permittee:

(1) fails to divert at least 50% of all solid waste generated at its premises from landfills in a manner that complies with the requirements of AB 939;

(2) fails to divert organic waste from disposal in accordance with applicable laws including 14 CCR, Div. 7, Chapter 12, Section **18988.3**,

(3) fails to deliver solid waste generated at its premises to appropriate disposal or recycling facilities at least as frequently as collection is required for such self-hauler by the City Manager; or

(4) fails to comply with the provisions of **State law**, this Chapter or its permit. The City Manager shall notify any permittee in writing of the decision to revoke its permit, and the basis therefore, and the permittee may appeal any such decision to the City Council in accordance with ~~Section 2.04.100 of this code~~ **Section 2.04.100 et seq. of this Code** within 15 **calendar** days of the date of such notice being issued in the same manner applicable to administrative citations set forth in Section **1.10.090** of this Code.

Solid Waste Disposal and Organic Waste Diversion

§ 6.10.080 Removal of unauthorized containers.

In addition to any other penalties and/or remedies as set forth in this Chapter or provided for by law, any container placed within the City for the collection of solid waste in violation of Section **6.10.060(h)** (hereinafter "unauthorized container(s)") may be impounded as set forth herein.

(a) The City Manager may cause a notice to be placed in a conspicuous place on any unauthorized container directing that it be removed. The notice shall specify the nature of the violation and shall state that the container must be removed within 24 hours or it may be removed and stored by the City, and the contents disposed of, at the expense of the owner thereof. The notice shall indicate the time that it was posted and shall include the name and phone number of a person designated by the City to hear any appeal or challenge to the requirement that the container be removed, and, further, shall indicate that any appeal of the order for removal must occur within 24 hours of the posting of the notice. The posting of a notice to remove shall constitute constructive notice to the owner and user of the requirement to remove the unauthorized container, and a copy of the notice shall be provided to the owner of the unauthorized container once said owner's identity is ascertained by City, and if not provided sooner, a copy of the notice shall be provided at such time as the owner of the unauthorized container seeks to retrieve any such container removed hereunder.

(b) If within 24 hours after a notice to remove is posted on an unauthorized container a request for an appeal has not been received and the container is not removed, the City Manager may direct the removal and storage of the unauthorized container. In addition, if the contents of the container are either comprised of a substantial amount of putrescible solid waste, or determined by the City Manager to create a threat to health and safety if not disposed of immediately, the City Manager may direct that the contents of the container be disposed of. The owner of the unauthorized container shall be responsible to reimburse the City for the actual cost of removal, storage and disposal. All amounts due to the City for the cost of removal, storage and disposal

must be paid before the unauthorized container may be returned to the owner. Such amounts shall constitute a debt owed by the owner to the City, and the owner shall be liable to the City in an action brought by the City for the recovery of such amounts.

(c) After removal of an unauthorized container, appeals shall be submitted in accordance with ~~Section 2.04.100 of this code~~ **Section 2.04.100 et seq. of this Code** and will be heard by the City Manager **or City Manager's designee**. ~~Between the date following the date upon which any unauthorized container is removed by the City, and the date which is five business days following its retrieval from City, the owner of the unauthorized container may submit a written appeal requesting to challenge the City's determination that the container is an unauthorized container subject to removal by City as set forth herein. The City Manager shall establish a procedure for such a hearing and the method for requesting such a hearing shall be included on the notice to remove. If the appeal is granted, any payments due to City shall be forgiven and any amounts paid shall be reimbursed to the appellant within 30 calendar days of said determination.~~

Construction & Demolition Deposit

§ 6.12.140 Appeals.

Appeals shall be submitted in accordance with ~~Section 2.04.100 of this code~~ **Section 2.04.100 et seq. of this Code** and will be heard by the City Manager **or the City Manager's designee**.

~~The applicant or any interested person may appeal to the City Manager any decision of the C&D Compliance Official. Notice of any appeal from the decision of the C&D Compliance Official must be filed with the City's office within 10 calendar days of the date of the decision being appealed. Failure to file a notice of appeal within the time prescribed herein shall constitute a waiver of any objection to the decision(s) of the C&D Compliance Official and such decision(s) shall be final; otherwise the decision of the City Manager shall be final. The fee for any appeal authorized herein shall be as set forth by City Council Resolution.~~

§ 6.14.210 Costs.

The **City Manager or City Manager's designee** on appeal in accordance with ~~Section 2.04.100 of this code~~ **Section 2.04.100 et seq. of this Code** shall determine the administrative costs and cost of removal to be charged. If the administrative costs and the cost of removal are charged against the owner or a parcel of land pursuant to this Article and are not paid within 30 calendar days of the date of the order, or the final disposition of an appeal therefrom, such costs shall be assessed against the parcel of land pursuant to Section 38773.5 of the Government Code and shall be transmitted to the tax collector for collection. The assessment shall have the same priority as other taxes.

Nuisances – Abandoned Vehicle

§ 6.14.208 Appeal.

Appeals shall be submitted **and heard in accordance with Section 2.04.100 et seq. of this Code** and ~~will be heard by a Third Party~~ **shall be presided over by a hearing officer**.

~~Any interested party may appeal the decision of the hearing officer by filing a written notice of appeal with the City Clerk within 10 days after the decision and by paying the appeal fee set by Resolution. Such appeal shall be heard by the City Council which may affirm, amend or reverse the order or take any other action deemed appropriate. The City Clerk shall give written notice of the time and place of the hearing to the appellant and those persons specified in~~

Section ~~6.14.206~~. In conducting the hearing, the City Council shall not be limited by the technical rules of evidence. The decision of the City Council shall be final.

Nuisances – Loud or Unruly Parties

§ 6.14.413 Appeals.

Appeals shall be submitted and heard in accordance with ~~Section 2.04.100 of this code~~ Section 2.04.100 et seq. of this Code shall be presided over by a hearing officer.

~~(a) Any person who has been notified by the City by first class mail that he or she will be held liable for second or subsequent response costs in accordance with this Article may appeal to the City Council for a hearing. The appeal shall be in writing, shall be signed by the appellant, and shall set forth the facts and reasons upon which the appeal is based. The appeal shall be filed with the City Clerk within 10 days following the date of official written notice to the appellant that he or she will be held liable for such costs.~~

~~(b) Upon receipt of an appeal, the City Clerk shall cause the matter to be placed on the next available Council agenda for a hearing.~~

~~(c) The appellant shall be notified in writing at least five days in advance of the hearing.~~

~~(d) The Council shall hear the appeal and determine whether to allow the relief being sought or to deny the appeal.~~

~~(a) If the appeal is denied, the appellant shall have 10 calendar days to pay the applicable response costs, or the City may commence proceedings to collect such sums as are due as provided by law and to place a lien or special assessment upon the affected property, if the property owner was notified by the City pursuant to Subsection (a) above.~~

Landscape and Maintenance of Vacant Property in Commercial Districts

§ 6.15.004 Hearing—Determination of Hearing Officer—Properties Combined into One Action.

(a) At the administrative hearing ~~held to consider any challenge of a determination~~, any party having an interest in the matter may present testimony and evidence. The City Manager shall designate a ~~Third Party~~ hearing officer for the hearing. The hearing officer shall not be a Dana Point City employee. The employment, performance evaluation, compensation and benefits of the hearing officer, if any, shall not be directly or indirectly conditioned upon the findings and/or decision of the hearing officer. After hearing testimony and receiving evidence, the hearing officer shall determine if the subject property is a vacant property and whether additional landscaping or maintenance is required under this Chapter. Such determination by the hearing officer may be appealed to the City Council in accordance by following substantially the same form as ~~Section 2.04.100 et seq. of this Code~~ of the Dana Point Municipal Code. ~~Unless a life or safety issue exists~~, enforcement of this Chapter shall be suspended with regard to the subject property while the appeal is pending.

Tentative Maps – Procedures

§ 7.05.075 Period of Validity—Extensions.

(e) Denial of a request for extension may be appealed by the subdivider in accordance with ~~Section 2.04.100 of this code~~ Section 2.04.100 et seq. of this Code.

§ 7.05.080 Appeal of Tentative Map to City Council.

Appeals shall be submitted **and heard** in accordance with ~~of this code and will be heard in accordance with Section 2.04.100 of this code~~ **Section 2.04.100 et seq. of this Code.**

Except as provided in Section **7.05.075**, any interested person may appeal to the City Council from any action of the Subdivision Committee with respect to a tentative map. by filing an appeal in accordance with Section **2.04.100** et seq. of this Code.

Final Maps

§ 7.24.025 Method of Approval.

Appeals shall be submitted **and heard** in accordance with ~~Section 2.04.100. of this code~~ **Section 2.04.100 et seq. of this Code.**

Final tract maps, together with any required improvement agreements and security, shall be submitted to the City Engineer for review and preliminary determination as to:

- (a)** Compliance with any conditions imposed on the approval of the tentative map; and
- (b)** Substantial conformance with the approved tentative map and any improved alterations thereof.

In the event the City Engineer determines that the subdivision is not in compliance or substantial conformance, the Director shall within 10 **calendar** days of the date the final map was submitted, advise the subdivider in writing of his/her preliminary determination. ~~The subdivider may appeal the Director's determination to the Subdivision Committee or directly to the City Council in the event the map was originally approved on appeal to the City Council. Any such appeal shall be filed and heard in accordance with Section 2.04.10 et seq. of this Code. Upon hearing any such appeal, the Subdivision Committee or City Council shall make an advisory ruling to the City Engineer. The final determination as to whether the final tract map is in compliance and substantial conformance shall be made by the City Engineer. Within 20 days (or more if requested by the subdivider) after the City Engineer determines that all conditions precedent to the approval of the tract map have been satisfied and any required improvement agreements and security are in order, the Director shall execute the certificate required by the Subdivision Map Act.~~

Certificate of Compliance

§ 7.30.020 Appeal to City Council.

Appeals shall be submitted **and heard** in accordance with **Section 2.04.100 et seq. of this Code.**

~~Section 2.04.00 of this code and will be heard in accordance with Section 2.04.100 of this code. Any interested person may appeal to the City Council from any action of the Director of Public Works on a certificate of compliance in accordance with Section **2.04.100** et seq. of this Code.~~
(Added by Ord. 95-03, 2/14/95)

Lot Line Adjustments**§ 7.32.020 Appeal.**

Appeals shall be submitted **and heard** in accordance with **Section 2.04.100 et seq. of this Code.**

~~Section 2.04.00 of this code and will be heard in accordance with Section 2.04.100 of this code. Any person adversely affected by a decision of the advisory agency for this Chapter may appeal that decision to the Planning Commission in accordance with Section **2.04.100** et seq. of this Code.~~

Grading and Excavation – Organization and Enforcement**§ 8.01.150 Hazardous Conditions.**

(e) Order, Finality and Appeal. If the Director determines the existence of a hazardous condition, the Director shall determine whether such hazards are subject to corrective work and/or the need for more analysis through the preparation of reports and shall order such work or reports and specify a completion time.

(1) Finality of Order. The determination and order may be made orally at the hearing **or in writing, but if the former, then the Director and shall be shall provide the owner a written determination of their decision** ~~written and transmitted to the owner~~ within a reasonable time. The determination and order shall become final within five **business** days, ~~excluding Saturdays, Sundays and holidays,~~ from the time it is first rendered, except in the event that the owner was not present at the City hearing, within five **calendar** days of the mailing of the order to the last known address of said owner.

(2) Appeal. The owner may, at any time prior to the determination and order becoming final, appeal in writing the decision ~~of the Director to the City Council,~~ in accordance with ~~Section 2.04.100 of this code~~ **Section 2.04.100 et seq. of this Code.**

Subsection [A] 113.1 of Section 113 of Division II of the CBC is hereby amended to read in its entirety as follows:

[A] 113.1 General. In order to hear and decide appeals of the orders, decisions or determinations made by the Building Official relative to the application and interpretation of this Code there shall be and is hereby created a board of appeals. The board of appeals shall be the City Council **or a board of appeal** ~~or a hearing officer~~ appointed by the City Council. Depending on the subject of the appeal, specialized expertise may be solicited for the purpose of providing input to the Appeals Board. The board shall render all decisions and findings in writing to the appellant with a duplicate copy to the Building Official.

Building Code – Reasonable Accommodation

Appeals shall be submitted **and considered** in accordance with ~~Section 2.04.100 of this code~~ **Section 2.04.100 et seq. of this Code.**

~~A. Within 15 calendar days of the date the Director of Community Development or Building Official issues a written determination, the applicant requesting the accommodation may appeal an adverse determination or any conditions or limitations imposed in the written determination.~~

~~B. All appeals shall be in writing and contain a statement of the grounds for the appeal.~~

~~C. Appeals shall be to the Planning Commission who shall hear the matter and render a determination as soon as reasonably practicable, but in no event later than 60 days after an appeal has been filed. All determinations on appeal shall address and be based upon the same findings required to be made in the original determination from which the appeal is taken.~~

~~D. An applicant may request reasonable accommodation in the procedure by which an appeal will be conducted.~~

~~E. Notice of hearing pursuant to this section shall be provided not less than 10 calendar days prior to the hearing and shall be mailed or delivered to all owners of real property as shown on the latest equalized assessment roll within 300 feet of the real property that is the subject of the hearing. In all cases under this section, the applicant shall bear the cost of the radius mailing.~~

~~A. The Director of Community Development or Planning Commission acting pursuant to this section, shall (1) grant the accommodation request, (2) grant the accommodation request subject to specified nondiscriminatory conditions, including, but not limited to, a condition requiring the applicant to show proof of any required State license for the activity or occupancy contemplated, or (3) deny the request.~~

~~G. The Director of Community Development or Planning Commission, as appropriate, shall explain, in writing, the basis of the determination including the Director of Community Development's or Planning Commissioner's findings on the criteria set forth in Section 8.40.060. All written determinations shall give notice of the right to appeal and the right to request reasonable accommodation on the appeals process, if necessary. The notice of the determination shall be sent to the applicant by first class mail.~~

~~H. Within 15 calendar days of the issuance of a written determination on the hearing conducted pursuant to this section, any aggrieved party within the meaning of this Code, may file an appeal from the determination of the Director of Community Development or Planning Commission. (??) Appeals from a determination of the Director of Community Development shall be to the Planning Commission, appeals from a determination of the Planning Commission shall be to the City Council. All appeals shall contain a statement of the grounds for the appeal.~~

~~I. Appeals to the Planning Commission or City Council pursuant to this section shall be heard as soon as reasonably practicable, but in no event later than 60 calendar days after an appeal has been filed. All determinations on appeal shall address and be based upon the same findings required to be made in the original determination from which the appeal is taken.~~