

ORDINANCE NO. 3691

AN ORDINANCE OF THE CITY OF HUNTINGTON BEACH  
AMENDING CHAPTER 248 OF THE HUNTINGTON BEACH  
ZONING AND SUBDIVISION ORDINANCE ENTITLED  
NOTICES, HEARINGS, FINDINGS, DECISIONS AND APPEALS

The City Council of the City of Huntington Beach does hereby ordain as follows:

SECTION 1. Chapter 248 of the Huntington Beach Zoning and Subdivision Ordinance is hereby amended to read as follows:

**Chapter 248 Notices, Hearings, Findings, Decisions and Appeals**

**Sections:**

- 248.02 Director's Duty to Give Notice
- 248.04 Notice Requirements
- 248.06 Rules Governing Conduct of Hearing, Opportunity to be Heard and Burden of Proof
- 248.08 Requirement that Findings be Made Upon Grant of Application
- 248.10 Time and Manner of Decision
- 248.12 Time Limit on Reapplication for Same Matter
- 248.14 Denial Without Prejudice
- 248.16 Finality of Decision and Time for Appeal
- 248.18 Designation of Hearing Body on Appeal
- 248.20 Appeal of Decision
- 248.22 Appeal of a Failure to Act
- 248.24 Appeal of Decision Not Otherwise Provided For
- 248.26 Fee for Appeal
- 248.28 Appeal by City Council Members or Planning Commissioner
- 248.30 Effective Date of Decision

**248.02 Director's Duty to Give Notice**

Within sixty (60) days after final environmental evaluation the Director shall give the notice of public hearing required by law. The form of the notice shall contain:

- A. The date, time and place of the hearing;
- B. A general explanation of the matter to be considered, including a general description of the area affected;
- C. Other information which is required by statute or specific provision of this code or which the Director considers necessary or desirable.

*Approved For Introduction 11/15/04*

*G-1a*

**248.04 Notice Requirements**

Type of Action	Notice Requirement*	Reference to Notice Requirement
A. General Plan Adoption or Amendment	65090, 65091	65353
B. Zoning Ordinance		
Planning Commission (Gen.)	65090	65853--65857
Planning Commission (Uses)	65090, 65091	65853--65957
City Council	65090	65853--65857
C. Variance, development agreement, special sign permit, revocation, modification, or appeal	65091	65905
D. Conditional Use Permits	65091 with 500 foot notification radius	65905
E. Subdivision	65090, 65091	66451.3(a)
F. Home occupation revocation	65091	65905

\*References are to the Government Code

These notice requirements are declaratory of existing law. If state law prescribes a different notice requirement, notice shall be given in that manner. A reviewing body designated to hear a matter may direct that notice be given in a manner that exceeds the notice requirement prescribed by state law. Public notice requirements for coastal development permits shall be as described in Section 245.20 or 245.22. (3334)

**248.06 Rules Governing Conduct of Hearing: Opportunity to be Heard and Burden of Proof**

Public hearings shall comply with minimum procedural standards prescribed by Government Code section 65804. Each person interested in a matter that is the subject of a public hearing shall be given an opportunity to be heard. In each case, the applicant has the burden of proof at the public hearing on the application and at the public hearing on the appeal.

**248.08 Requirement that Findings be Made Upon Grant of Application**

- A. In each case where a reviewing body is designated to make a decision of an adjudicatory nature as the result of a proceeding in which a hearing is required by state law or this ordinance code to be given, the body shall make findings to support its decision.
- B. Subsection A applies only to a determination made in the reviewing body's adjudicatory capacity. It does not apply to an action of a legislative nature such as a

G-1a2

recommendation for an adoption of a zoning or subdivision provision. The existence or non-existence of a determination in connection with a legislative action does not affect the validity of that action unless otherwise directed by state law.

**248.10 Time and Manner of Decision**

- A. Form. After hearing the evidence and considering the application, the reviewing body, i.e., Zoning Administrator, Planning Commission, or City Council, shall make its decision. The decision shall be in the form of a written statement, minute order or resolution and shall be accompanied by reasons sufficient to inform as to the basis for the decision.
- B. Time. The reviewing body shall formulate its written findings within 5 calendar days after the decision.
- C. Notice of Decision. The Director shall have notice of the decision mailed to the applicant at the address given in the application and to each person who requests in writing notice of the proceedings within 5 working days of the decision, excluding weekends and holidays. The Director shall also have notice of the decision posted and distributed to the Planning Commission and City Council within 48 hours of such decision.
- D. Acceptance is Applicant's Agreement. The applicant's acceptance of the decision is an agreement to comply with the decision and its terms and conditions.

**248.12 Time Limit on Reapplication for Same Matter**

If an application is denied and the decision is final, no person may file a new application for substantially the same request for a period of one year from the date the action of the city is final except as provided in section 248.14 for denial "without prejudice."

**248.14 Denial Without Prejudice**

If the application is denied "without prejudice," the applicant may reapply for substantially the same request without complying with the time limit prescribed in section 248.12.

**248.16 Finality of Decision and Time for Appeal**

A decision on a discretionary approval is not final until the time for appeal expires. The time for appeal from a decision by the Zoning Administrator, the Environmental Assessment Committee, Subdivision Committee, Design Review Board, or the Planning Commission shall be filed within ten calendar days after the date of the decision. Appeals may not be processed on actions which must be heard by and receive final action by the City Council, except that coastal development permits for development located in the appealable area of the coastal zone may be appealed to the Coastal Commission as described in Section 245.32. (3334)

G-1a.3

**248.18 Designation of Hearing Body on Appeal**

The Planning Commission shall hear an appeal from the decision of the Director, Zoning Administrator, Design Review Board, Environmental Assessment Committee, and Subdivision Committee. The City Council shall hear an appeal from the decision of the Planning Commission. The decision of the City Council is final, except that coastal development permits for development located in the appealable area of the coastal zone may be appealed to the Coastal Commission. (3334)

**248.20 Appeal of Decision**

- A. Notice of Appeal. A person desiring to appeal a decision shall file a written notice of appeal with the Director within the time required by section 248.16 except an appeal to the Planning Commission's decision shall be filed with the City Clerk. This section shall not apply to any action which must be heard by the City Council whether or not an appeal from the Planning Commission is filed.
- B. Form of Notice on Appeal. The notice of appeal shall contain the name and address of the person appealing the action, the decision appealed from and the grounds for the appeal. The Director may provide the form of the notice of appeal. A defect in the form of the notice does not affect the validity or right to an appeal.
- C. Action on Appeal. The Director or City Clerk shall set the matter for hearing before the reviewing body and shall give notice of the hearing on the appeal in the time and manner set forth in Sections 248.02 and 248.04.
- D. De Novo Hearing. The reviewing body shall hear the appeal as a new matter. The original applicant has the burden of proof. The reviewing body may act upon the application, either granting it, conditionally granting it or denying it, irrespective of the precise grounds or scope of the appeal. In addition to considering the testimony and evidence presented at the hearing on the appeal, the reviewing body shall consider all pertinent information from the file as a result of the previous hearings from which the appeal is taken.
- E. Decision on Appeal. The reviewing body may reverse or affirm in whole or in part, or may modify the order, requirement, decision, or determination that is being appealed.

**248.22 Appeal of Failure to Act**

An applicant may appeal the failure of the Zoning Administrator, Design Review Board, Environmental Assessment Committee, Subdivision Committee or Planning Commission to act on an application if the failure to act continues beyond a reasonable time and the time to act is not otherwise fixed by law. The appeal body shall consider all of the circumstances surrounding the application in determining what is a reasonable time.

**248.24 Appeal of Decision Not Otherwise Provided For**

- A. Any person may appeal a decision, requirement or determination made by the Director in the administration of the zoning and subdivision ordinances not otherwise provided for in the individual titles of this code. The Planning Commission shall hear the appeal in the first instance. The appeal shall be in writing, filed with the Director and shall specifically set forth the decision appealed from and the grounds for the appeal. The

G-1a.4

notice of appeal shall be filed within ten calendar days of the date of the action appealed.

- B. The notice of appeal shall be in the form provided by Section 248.20 A and B. The Director shall schedule the appeal for consideration by the Planning Commission within 30 calendar days and shall give the appellant ten calendar days notice of the time and place of the hearing. The decision of the Planning Commission may be appealed to the City Council.

**248.26 Fee for Appeal**

The notice of appeal shall be accompanied by the fee fixed by resolution of the City Council.

**248.28 Appeal by City Council Member or Planning Commissioner**

- A. A City Council member or a Planning Commissioner may appeal a decision of the Director, Design Review Board, Environmental Assessment Committee, Subdivision Committee, Planning Commission or Zoning Administrator. The appeal shall be processed in the same manner as an appeal by any other person but need not be accompanied by the fee prescribed for an appeal.
- B. The City Council member or Planning Commissioner appealing the decision is not disqualified by that action from participating in the appeal hearing and the deliberations nor from voting as a member of the reviewing body.

**248.30 Effective Date of Decision**

A decision on a discretionary approval becomes effective at the end of the appeal period. The decision of the City Council is final on the date of its decision, except that decisions on coastal development permits for development located in the appealable area of the coastal zone, the effective date is the day after the Coastal Commission appeal period expires and no appeals were filed or the date upon which final action on the appeal occurs. (3334)

SECTION 2. This ordinance shall become effective 30 days after its adoption.

PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

*Jennifer M. Ford*  
\_\_\_\_\_  
City Attorney 11/9/04

REVIEWED AND APPROVED:

*Pauline Castellano*  
\_\_\_\_\_  
City Administrator

INITIATED AND APPROVED:

*[Signature]*  
\_\_\_\_\_  
Director of Planning

G-1a.5

Intentionally

Left

Blank

Legislative Draft for  
Ordinance No. 3691

## Chapter 248 Notices, Hearings, Findings, Decisions and Appeals

### Sections:

248.02	Director's Duty to Give Notice
248.04	Notice Requirements
248.06	Rules Governing Conduct of Hearing, Opportunity to be Heard and Burden of Proof
248.08	Requirement that Findings be Made Upon Grant of Application
248.10	Time and Manner of Decision
248.12	Time Limit on Reapplication for Same Matter
248.14	Denial Without Prejudice
248.16	Finality of Decision and Time for Appeal
248.18	Designation of Hearing Body on Appeal
248.20	Appeal of Decision
248.22	Appeal of a Failure to Act
248.24	Appeal of Decision Not Otherwise Provided For
248.26	Fee for Appeal
248.28	Appeal by City Council Members or Planning Commissioner
248.30	Effective Date of Decision

### 248.02 Director's Duty to Give Notice

Within sixty (60) days after final environmental evaluation the Director shall give the notice of public hearing required by law. The form of the notice shall contain:

- A. The date, time and place of the hearing;
- B. A general explanation of the matter to be considered, including a general description of the area affected;
- C. Other information which is required by statute or specific provision of this code or which the Director considers necessary or desirable.

(Rest of page not used)

**248.04 Notice Requirements**

Type of Action	Notice Requirement*	Reference to Notice Requirement
A. General Plan Adoption or Amendment	65090, 65091	65353
B. Zoning Ordinance Planning Commission (Gen.) Planning Commission (Uses) City Council	65090 65090, 65091 65090	65853--65857 65853--65957 65853--65857
C. Variance, <del>conditional use permit</del> , development agreement, special sign permit, revocation, modification, or appeal	65091	65905
<b>D Conditional Use Permits</b> .	<b>65091 with 500 foot notification radius</b>	<b>65905</b>
<del>D</del> Subdivision <b>E</b> .	65090, 65091	66451.3(a)
<del>E</del> Home occupation revocation <b>F</b> .	65091	65905

\*References are to the Government Code

These notice requirements are declaratory of existing law. If state law prescribes a different notice requirement, notice shall be given in that manner. A reviewing body designated to hear a matter may direct that notice be given in a manner that exceeds the notice requirement prescribed by state law. Public notice requirements for coastal development permits shall be as described in Section 245.20 or 245.22. (3334)

**248.06 Rules Governing Conduct of Hearing: Opportunity to be Heard and Burden of Proof**

Public hearings shall comply with minimum procedural standards prescribed by Government Code section 65804. Each person interested in a matter that is the subject of a public hearing shall be given an opportunity to be heard. In each case, the applicant has the burden of proof at the public hearing on the application and at the public hearing on the appeal.

**248.08 Requirement that Findings be Made Upon Grant of Application**

G-1a.7

- A. In each case where a reviewing body is designated to make a decision of an adjudicatory nature as the result of a proceeding in which a hearing is required by state law or this ordinance code to be given, the body shall make findings to support its decision.
- B. Subsection A applies only to a determination made in the reviewing body's adjudicatory capacity. It does not apply to an action of a legislative nature such as a recommendation for an adoption of a zoning or subdivision provision. The existence or non-existence of a determination in connection with a legislative action does not affect the validity of that action unless otherwise directed by state law.

**248.10 Time and Manner of Decision**

- A. Form. After hearing the evidence and considering the application, the reviewing body, i.e., Zoning Administrator, Planning Commission, or City Council, shall make its decision. The decision shall be in the form of a written statement, minute order or resolution and shall be accompanied by reasons sufficient to inform as to the basis for the decision.
- B. Time. The reviewing body shall formulate its written findings within 5 calendar days after the decision.
- C. Notice of Decision. The Director shall have notice of the decision mailed to the applicant at the address given in the application and to each person who requests in writing notice of the proceedings within 5 working days of the decision, excluding weekends and holidays. The Director shall also have notice of the decision posted and distributed to the Planning Commission and City Council within 48 hours of such decision.
- D. Acceptance is Applicant's Agreement. The applicant's acceptance of the decision is an agreement to comply with the decision and its terms and conditions.

**248.12 Time Limit on Reapplication for Same Matter**

If an application is denied and the decision is final, no person may file a new application for substantially the same request for a period of one year from the date the action of the city is final except as provided in section 248.14 for denial "without prejudice."

**248.14 Denial Without Prejudice**

If the application is denied "without prejudice," the applicant may reapply for substantially the same request without complying with the time limit prescribed in section 248.12.

**248.16 Finality of Decision and Time for Appeal**

A decision on a discretionary approval is not final until the time for appeal expires. The time for appeal from a decision by the Zoning Administrator, the Environmental Assessment Committee, Subdivision Committee, Design Review Board, or the Planning Commission shall be filed within ten calendar days after the date of the decision. Appeals may not be processed on actions which must be heard by and receive final action by the City Council, except that coastal development permits for

development located in the appealable area of the coastal zone may be appealed to the Coastal Commission as described in Section 245.32. (3334)

### **248.18 Designation of Hearing Body on Appeal**

The Planning Commission shall hear an appeal from the decision of the Director, Zoning Administrator, Design Review Board, Environmental Assessment Committee, and Subdivision Committee. The City Council shall hear an appeal from the decision of the Planning Commission. The decision of the City Council is final, except that coastal development permits for development located in the appealable area of the coastal zone may be appealed to the Coastal Commission. (3334)

### **248.20 Appeal of Decision**

- A. Notice of Appeal. A person desiring to appeal a decision shall file a written notice of appeal with the Director within the time required by section 248.16 except an appeal to the Planning Commission's decision shall be filed with the City Clerk. This section shall not apply to any action which must be heard by the City Council whether or not an appeal from the Planning Commission is filed.
- B. Form of Notice on Appeal. The notice of appeal shall contain the name and address of the person appealing the action, the decision appealed from and the grounds for the appeal. The Director may provide the form of the notice of appeal. A defect in the form of the notice does not affect the validity or right to an appeal.
- C. Action on Appeal. The Director or City Clerk shall set the matter for hearing before the reviewing body and shall give notice of the hearing on the appeal in the time and manner set forth in Sections 248.02 and 248.04.
- D. De Novo Hearing. The reviewing body shall hear the appeal as a new matter. The original applicant has the burden of proof. The reviewing body may act upon the application, either granting it, conditionally granting it or denying it, irrespective of the precise grounds or scope of the appeal. In addition to considering the testimony and evidence presented at the hearing on the appeal, the reviewing body shall consider all pertinent information from the file as a result of the previous hearings from which the appeal is taken.
- E. Decision on Appeal. The reviewing body may reverse or affirm in whole or in part, or may modify the order, requirement, decision, or determination that is being appealed.

### **248.22 Appeal of Failure to Act**

An applicant may appeal the failure of the Zoning Administrator, Design Review Board, Environmental Assessment Committee, Subdivision Committee or Planning Commission to act on an application if the failure to act continues beyond a reasonable time and the time to act is not otherwise fixed by law. The appeal body shall consider all of the circumstances surrounding the application in determining what is a reasonable time.

G12.9

**248.24 Appeal of Decision Not Otherwise Provided For**

- A. Any person may appeal a decision, requirement or determination made by the Director in the administration of the zoning and subdivision ordinances not otherwise provided for in the individual titles of this code. The Planning Commission shall hear the appeal in the first instance. The appeal shall be in writing, filed with the Director and shall specifically set forth the decision appealed from and the grounds for the appeal. The notice of appeal shall be filed within ten calendar days of the date of the action appealed.
- B. The notice of appeal shall be in the form provided by Section 248.20 A and B. The Director shall schedule the appeal for consideration by the Planning Commission within 30 calendar days and shall give the appellant ten calendar days notice of the time and place of the hearing. The decision of the Planning Commission may be appealed to the City Council.

**248.26 Fee for Appeal**

The notice of appeal shall be accompanied by the fee fixed by resolution of the City Council.

**248.28 Appeal by City Council Member or Planning Commissioner**

- A. A City Council member or a Planning Commissioner may appeal a decision of the Director, Design Review Board, Environmental Assessment Committee, Subdivision Committee, Planning Commission or Zoning Administrator. The appeal shall be processed in the same manner as an appeal by any other person but need not be accompanied by the fee prescribed for an appeal.
- B. The City Council member or Planning Commissioner appealing the decision is not disqualified by that action from participating in the appeal hearing and the deliberations nor from voting as a member of the reviewing body.

**248.30 Effective Date of Decision**

A decision on a discretionary approval becomes effective at the end of the appeal period. The decision of the City Council is final on the date of its decision, except that decisions on coastal development permits for development located in the appealable area of the coastal zone, the effective date is the day after the Coastal Commission appeal period expires and no appeals were filed or the date upon which final action on the appeal occurs. (3334)

G-1a.10

Intentionally  
left Blank