

Rules & Regulations Regarding Suspension or Revocation of Zoning Permits/Approvals - Process for Notice, Determination and Appeal (Adopted August 12, 2016; Amended January 5, 2017)

1. Purpose

These rules and regulations establish and govern the process for notice, determination, and appeal of a final decision to suspend or revoke a zoning permit/approval pursuant to Denver Zoning Code Section 12.11.6 and Former Chapter 59, Section 59-28. Section 12.11.6.4, Denver Zoning Code, provides for an Opportunity To Be Heard prior to any final decision to suspend or revoke a zoning permit/approval. Accordingly, these rules and regulations also establish the procedures for an informal Opportunity To Be Heard.

2. Authority

These rules and regulations are adopted and issued by the Executive Director of the City and County of Denver Department of Community Planning and Development in accordance with Denver Zoning Code Section 12.2.3 and Article II of Chapter 12 of the Denver Revised Municipal Code.

3. Definitions

Except as noted below, all words and phrases shall have the meaning assigned in the Denver Zoning Code. As used in these Rules and Regulations, the following terms shall have the following meanings:

CPD means the Department of Community Planning and Development and any divisions within the Department.

Date of Issuance means the date shown or indicated on any notice or letter delivered by CPD according to these Rules and Regulations.

Denver Zoning Code means the Denver Zoning Code effective on June 25, 2010 and restated on July 6, 2015, as may be amended from time to time.

Executive Director means the appointed Executive Director for the Department of Community Planning and Development, or the Executive Director's authorized designee(s). Executive Director is synonymous with the term "Manager of Community Planning & Development" as defined in Division 12.2 of the Denver Zoning Code.

Permittee means the person having legal authority to take action according to the zoning permit/approval for use or construction approved and issued by CPD. "Permittee" shall have the same meaning as the term "Applicant" in the Denver Zoning Code, and in addition, shall

always include the owner of record of the subject real property, as “Owner” is defined in the Denver Zoning Code.

Repeat Offender means that the Permittee has had three or more code violations pertaining to the subject zoning permit/approval or property; and/or has previously materially departed from any approved plan or permit issued by the City; and/or has previously procured the subject permit or any other permit or plan by false representation as documented by CPD or the City.

Revocation/Revoke means requiring the stoppage of any work, construction, use, or other activity by the Permittee due to any act listed in Denver Zoning Code Section 12.11.6.4.B or Former Chapter 59 Section 59-27.

Suspension/Suspend means requiring the stoppage of any work, construction, use, or other activity by the Permittee due to any act listed in Denver Zoning Code Section 12.11.6.4.B or Former Chapter 59 Section 59-27 for a duration of time determined by the Executive Director to be reasonably necessary for the Permittee to come into compliance with the zoning code.

4. Determining Whether to Suspend or Revoke Zoning Permit/Approval

A. Determination of Violation

Upon a staff determination that any act listed in Denver Zoning Code Section 12.11.6.4.B or Former Chapter 59 Section 59-27 has occurred, the Executive Director may direct a Notice of Suspension or Notice of Revocation to be prepared.

B. Determination Whether to Suspend or to Revoke Zoning Permit/Approval

The Executive Director shall determine whether to suspend or to revoke a zoning permit/approval on a case-by-case basis upon considering the totality of the circumstances as revealed by the City record pertaining to the subject property and zoning permit/approval.

Factors to be considered in determining whether to suspend or to revoke zoning permit/approval include, but are not limited to, the following:

1. Type of violation (e.g., use versus construction violation).
2. Extent, degree and character of the violation, or departure from the permit or approved plans, specifications, or conditions.
3. Potential for adverse impacts on adjacent properties, the subject neighborhood, and/or the greater community.
4. Whether Permittee is a Repeat Offender, as defined herein.
5. Whether Permittee cooperates with the City’s investigation.

6. Permittee's statement of intent as disclosed on the permit application or other related documentation.
7. Whether continuing the work, construction, use or other activity will increase or exacerbate the violation or constitute a danger to the public.
8. Any other factor or consideration relevant to the subject zoning permit/approval, property, or Section 12.11.6, Denver Zoning Code.

C. *Imminent Peril to Life or Property*

If the Executive Director determines that there is imminent peril to life or property because of the violation, the Executive Director may issue a final decision to suspend or revoke the zoning permit/approval without providing Notice to Suspend or Revoke, or an Opportunity to be Heard.

5. Notice and Posting of Property

A. *Issuance of Notice to Suspend or Notice to Revoke Zoning Permit/Approval*

Upon the Executive Director's decision to suspend or revoke a zoning permit/approval according to Section 4 of these rules, CPD will issue in writing, and deliver to the Permittee by Priority U.S. Mail, a Notice of Suspension or Notice of Revocation, along with a copy of the zoning permit/approval being suspended or revoked. Additionally, when the Permittee is not the Owner of record, CPD shall mail a copy of the Notice and zoning permit/approval to such Owner of record by first class U.S. Mail.

B. *Effect of Notice to Suspend or Notice to Revoke Zoning Permit/Approval*

Upon the date of issuance of the Notice of Suspension or Notice of Revocation, no work, construction, or other development activity (but not including use) shall proceed after the date of issuance of such Notice.

C. *Content of Notice to Suspend or Notice to Revoke Zoning Permit/Approval*

1. A Notice of Suspension shall state the following:
 - a. the name and address of the Permittee, and
 - b. the address of the subject property, and
 - c. the zoning permit/approval number or other official reference, and
 - d. the zoning permit/approval provision(s) or condition(s) and/or code sections violated along with a narrative description of the violation, including a reference to Section 12.11.6.4.B, Denver Zoning Code or to Former Chapter 59 Section 27, and

- e. the conditions resulting from the suspension, including length of suspension and the effective date of the final decision to suspend in case of the Permittee's failure to act (see Section 9 below), and
 - f. the actions required to correct and lift the suspension, and
 - g. the procedure for an Opportunity To Be Heard and/or appealing the suspension.
2. A Notice of Revocation shall state the following;
- a. the name and address of the Permittee, and
 - b. the address of the subject property, and
 - c. the zoning permit/approval number, and
 - d. the zoning permit/approval provision(s) or condition(s) and/or code sections violated along with a narrative description of the violation, including a reference to Section 12.11.6.4.B, Denver Zoning Code or to Former Chapter 59 Section 27, and
 - e. the conditions resulting from revocation, including the effective date of the final decision to revoke in case of the Permittee's failure to act (see Section 9 below), and
 - f. the procedure for an Opportunity To Be Heard and/or appealing the revocation.

D. *Posting of Placard*

CPD shall post the subject property with a placard stating the zoning permit/approval for the property has been suspended or revoked. If a placard is posted on the property, it shall remain posted on the property during the entirety of CPD's enforcement activities, and may only be removed upon the occurrence of one of the following events:

1. On or after the issuance date of the Executive Director's final decision NOT to suspend or revoke the zoning permit/approval according to Section 7 of these rules; or
2. Any time after the Permittee's receipt of CPD's determination to reinstate the zoning permit/approval according to Section 8 of these rules because the Permittee has corrected the conditions precipitating suspension as detailed in the Notice of Suspension; or
3. No sooner than 30 days after the date of issuance of any letter indicating that the subject zoning permit/approval is revoked.

It shall be unlawful to remove the placard unless and until one of the foregoing conditions, 1., 2., or 3. has occurred.

6. Opportunity To Be Heard

A. Purpose of Opportunity To Be Heard

The purpose of the Opportunity To Be Heard is allow the Permittee to dispute in an informal setting the Executive Director's determination to suspend or revoke the zoning permit/approval due to any act listed in Denver Zoning Code Section 12.11.6.4.B or Former Chapter 59 Section 59-27, before the Executive Director makes a final decision.

B. Request for Opportunity To Be Heard

The Permittee may request an Opportunity To Be Heard, in writing, to the Executive Director within twenty (20) calendar days from the date of issuance of the Notice to Suspend or Notice to Revoke. If the Permittee does not respond within the 20-day request period, the Executive Director's decision to suspend or revoke the permit shall be considered final.

C. Opportunity To Be Heard Procedure

Upon receipt of a written request for an Opportunity To Be Heard, the Executive Director shall schedule a meeting with the Permittee within fourteen (14) calendar days after receipt of the permittee's request, unless specific circumstances require a later time, in which case the meeting shall be held as soon as possible after expiration of the 14-day period. The Executive Director shall provide the Permittee with written notice of the date, time, and place for the Opportunity To Be Heard meeting. The Opportunity To Be Heard is an opportunity for informal exchange of information; rules of evidence and rules of civil procedure do not apply.

The Executive Director will accept information and/or documentation from the Permittee as well as any City records pertaining to the subject property. If different from the Permittee, the Owner of record of the subject property may attend the Opportunity To Be Heard meeting.

7. Final Decision to Suspend or Revoke Zoning Permit/Approval

Within 15 calendar days from the conclusion of the Opportunity To Be Heard meeting, the Executive Director shall issue a final decision whether to suspend or revoke the zoning permit/approval.

The Executive Director's final decision whether to suspend or revoke the subject zoning permit/approval shall be based on the complete record, including information presented at the Opportunity To Be Heard meeting, as applicable, and considering the factors stated in Section 4 of these rules. The final decision shall be in writing and mailed by Priority U.S. Mail to the Permittee and to the Owner of record of the subject property.

As of the date of issuance of the Executive Director's final decision to suspend or revoke the subject zoning permit/approval, no work, construction, development activity, or use shall

proceed at the subject property according to Section 11 below or until the Permittee complies with Section 8 below.

8. Procedure to Reinstate Suspended Zoning Permit/Approval

The Permittee shall make a request to CPD to reinstate a suspended zoning permit/approval. CPD must receive the request to reinstate prior to the date on which the suspension period expires.

A valid request to reinstate the zoning permit/approval shall demonstrate all of the following:

- a) The period of suspension as indicated in the Notice of Suspension has not yet elapsed,
- b) The Permittee has successfully remedied the violation(s) and satisfied any conditions enumerated in the Notice of Suspension,
- c) Compliance with any conditions attached to the zoning permit/approval, and
- d) Compliance with all applicable code provisions or rules and regulations.

CPD shall determine compliance with this Section's provisions within 10 calendar days after receipt of a complete request for reinstatement. CPD's decision to reinstate or revoke in response to the Permittee's request for reinstatement shall be made in writing and mailed to the Permittee (and Owner of record if different from Permittee) by Priority U.S. Mail.

- a) After issuance of such written decision, any necessary action by CPD to reinstate or revoke the zoning permit/approval shall be completed by no later than 7 days from the date of issuance of CPD's written decision to reinstate or revoke.
- b) If CPD's written decision is to revoke, then no work, construction, development activity, or use shall proceed at the subject property according to Section 11 below.

If CPD finds that additional time to inspect the subject property or conduct a final investigation is reasonably necessary to determine compliance, CPD and the Permittee shall agree to a reasonable time extension not to exceed 30 calendar days after receipt of the complete request for reinstatement, during which time the decision determining compliance shall be made.

Failure of CPD to determine compliance or request additional time within 10 calendar days of a valid request for reinstatement, or within the agreed upon extension of time, shall render the suspension void and the zoning permit/approval reinstated.

9. Failure to Act

The Permittee is not required to request an Opportunity to Be Heard.

However, if the subject zoning permit/approval is suspended and the Permittee fails to correct the conditions precipitating suspension as detailed in the Notice of Suspension, the permit will

be revoked immediately upon expiration of the period of suspension. If the subject zoning permit/approval is suspended and the Permittee fails to seek reinstatement as detailed in Section 8 herein, the permit will be revoked immediately upon expiration of the period of suspension.

In case of revocation as detailed herein, no work, construction, development activity, or use shall proceed at the subject property according to Section 11 below.

10. Appeals of Final Decisions

Any decision to suspend, revoke, or reinstate a suspended zoning permit/approval shall be considered a final decision of the Executive Director and may be appealed to the Board of Adjustment as provided in Denver Zoning Code Section 12.4.8 or Former Chapter 59 Section 39.


11. Effect of Revocation on Subsequent Zoning Permit/Approval Applications

In the event that the subject zoning permit/approval is revoked, all work, construction, development activity, or use originally allowed under the revoked zoning permit/approval shall permanently cease at the subject property upon the date of issuance of the final decision. In addition, the Permittee shall not apply for the same use or project scope (including work, construction, or other development activity) at the same subject location as contained in the revoked permit for at least 1 year from the date of the final decision revoking the zoning permit/approval.

**Rules & Regulations Regarding Suspension or Revocation of Zoning Permits/Approvals -
Process for Notice, Determination and Appeal**

Adopted pursuant to Denver Revised Municipal Code Section 12.18. Public Hearing held on
November 2, 2016.

Approved for Legality

1/3/17

Kristin M. BronsonDate
City Attorney, City and County of Denver

Approved and Adopted

1.5.17

Brad BuchananDate
Executive Director, Community Planning & Development, City and County of Denver