

Article 5.2 Common Procedures

Sections

5.201	Application Process
5.202	Fees and Fines
5.203	Pre-Application Review
5.204	Neighborhood Meeting
5.205	Notice of Public Hearings
5.206	Public Hearing Procedures
5.207	Findings Required
5.208	Administrative Procedures
5.209	Ex Parte Communications
5.2010	Final Decisions
5.2011	Procedures for Appeals

5.201 Application Process

- A. ***Applications.*** Completed applications shall be submitted to the Development Services division on a form established by the Director of Planning. Any of the following persons or entities may submit an application:
1. The owner of the property;
 2. An authorized agent of the owner; or
 3. A person acting under a purchase contract or exclusive option to purchase the property.
- B. ***Application Content.***
1. The Director of Planning shall specify the form and content of applications that are required pursuant to the Zoning Code. The Director may require additional supporting materials as part of the application, including but not limited to, legal descriptions, statements, photographs, plans, drawings, renderings, models, material samples and other items necessary to describe the existing situation and the proposed project. The applicant shall be responsible for the accuracy and completeness of all information submitted to the Town. The Director may waive the submission of specific material or information if he finds it is not needed to reach a decision on the application.

2. No application for amendments to the Zoning Map, General Plan land use designations, use permit, variance or annexation will be deemed complete without submission of a Waiver of Claims for Diminution in Value pursuant to the Arizona Revised Statutes, §§12-1131 through 12-1138 executed by all the owners of the property. The owner(s) shall verify property ownership by submitting a title report.
 3. Prior to and as a condition of final approval of a change to any land use law, the Director may require the owner to execute a new waiver of claims.
- C. **Determination of Completeness.** After receiving an application accompanied by the required fee, the Director of Planning shall determine if the application is complete within 7 working days of the filing date. The Director shall notify the Applicant if the application is incomplete. If the application is incomplete, the Town shall identify the items that must be filed to complete the application.
- D. **Concurrent Applications.** When a project requires approvals under more than one section of the Zoning Code, the individual applications may be accepted for concurrent review.
- E. **Inspection and Reproduction of Public Records.** All applications, including supporting materials, are public records. Public records may be reviewed and copied upon request during normal business hours. The applicant shall clearly label each page of copyrighted or trademarked materials, and such materials shall be available for public inspection, but copyrighted materials shall not be copied.
- F. **Inactive Applications.** All applications shall be actively pursued to a decision. If no applicant activity has occurred on an application for 180 days, the application shall be determined to be inactive. Thirty (30) days prior to that date the planning staff shall notify the applicant in writing that the application will become inactive. If the applicant requests in writing that the Director extend the 180 day period, such request shall be accompanied by an explanation for the period of inactivity. The Director may grant an extension for up to 180 days for good cause if there is a reasonable belief that the application will be actively pursued during the extension period. If an extension is not approved, the application will be deemed withdrawn and the file shall be closed.

5.202 Fees and Fines

- A. **Required Fees.** All applications required by the Zoning Code shall be accompanied by the required fees set by resolution of the Town Council. Applications shall not be accepted without payment of the required fee.
- B. **Fee Refunds.** If an application is withdrawn prior to a decision, the applicant may be eligible for a refund of a portion of the fee. The amount of the refund shall be determined by the Director of Planning based on direct and indirect costs incurred by the Town through the date of withdrawal. Fee refunds shall not be made for applications that have been denied or determined to be inactive.

- C. **Fines.** All fines imposed by the Town of Gilbert Municipal Court for violations of a zoning ordinance, the Zoning Code, a use permit, a variance or a Design Review approval shall be set forth in the court fine schedule.

5.203 Pre-Application Review

- A. **Pre-Application Requirements.** Pre-application review is required for all of the following before an application will be accepted for processing:

1. Zoning applications;
2. General Plan Text, Land Use or Circulation Map Amendments.
3. Preliminary subdivision plats;
4. Design review for:
 - a. Shopping centers;
 - b. Individual commercial and employment buildings on sites 5 acres and larger that are not within an approved shopping center or industrial park;
 - c. Office complexes;
 - d. Employment projects located on parcels 3 acres or larger;
 - e. Any single building with more than 10,000 square feet of gross floor area;
 - f. Business parks;
 - g. Multi-family residential uses;
 - h. Public and private schools;
 - i. Public Safety Facilities, Government Offices and Facilities, Outdoor Entertainment and Recreation;
 - j. Other large-scale projects with multiple structures developed under a unified plan; and
5. New vertical structures for Wireless Communication Facilities.

- B. **Pre-Application Waivers.** The Director of Planning may waive the requirement for a pre-application review based on a determination that no purpose will be served by the

review. In such cases, the Director shall prepare a written statement setting forth the reasons for approving the waiver.

- C. **Optional Review.** An applicant for a project not requiring pre-application review may request such review.
- D. **Application Submittal.** A request for pre-application review shall be filed with the Development Services division on a form established by the Director of Planning pursuant to the requirements of Section 5.201: Application Process. An incomplete application may be returned.
- E. **Pre-Application Meetings.** After reviewing the application for compliance with the Zoning Code, Town staff will meet with the applicant or representative to provide comments. Following the meeting, Staff shall provide the applicant with a written summary of comments and place a copy of the comments in the project file.

5.204 Neighborhood Meeting

- A. **Neighborhood Meeting Requirements.** Applicants for General and Specific Plan Text, Land Use or Circulation Map Amendments and rezoning shall schedule and conduct a neighborhood meeting in accordance with this section.
- B. **Neighborhood Meeting Scheduling.** The applicant shall schedule a neighborhood meeting to receive comments on the proposal. Neighborhood meetings shall be conducted prior to pre-application review and after filing of an application.
- C. **Neighborhood Meeting Notification.** At least 10 days prior to the neighborhood meeting, notification shall be provided as follows:
 - 1. Applicant shall notify by first-class mail all property owners of record within 300 feet of the property, unless the General Plan or other policy adopted by the Town Council requires notification within a larger area;
 - 2. Applicant shall notify by first-class mail all Homeowners Associations (HOAs) within 1,000 feet of the property;
 - 3. Applicant shall notify by first-class mail all neighborhoods within 1,000 feet of the property that are registered with the Town of Gilbert Neighborhood Services Office;
 - 4. The Director may expand the notification area set forth in Sections 5.204C.1, 5.204C.2, and 5.204C.3 if he determines the potential impact of the project extends beyond the required notification boundary;

5. Applicant shall notify any persons who have specifically requested notice regarding the application who register their names and addresses with the Town as being interested in receiving such notice. Registration shall be in written form addressed to the Director
 6. The notice shall set forth the purpose, substance of the proposed application, and the time, date and place of the meeting. A copy of the notice shall be submitted to the Director of Planning; and
 7. Applicant shall install a sign on the property in a location or locations clearly visible to adjacent residents setting forth the purpose, time, date, and place of the neighborhood meeting. Size, color, content, and location of the sign shall be designated by Town Council resolution for posting of public hearing and neighborhood meeting notices.
- D. **Neighborhood Meeting Procedure.** The applicant shall conduct the meeting in a location, time, and meeting format approved by the Director. Following the meeting, which the Town staff may attend, the applicant shall create a written summary of the meeting, including comments received. Staff may augment the meeting record as necessary.
- E. **Record of Proceedings.** Concurrent with application submittal for General or Specific Plan Map Amendments, and amendments to a zoning ordinance or the Official Zoning Map, the applicant shall file with the Director of Planning:
1. Certification, on a form established by the Director, that the meeting was noticed and conducted in compliance with requirements of this section;
 2. A dated photograph of the sign installed in compliance with Section 5.204C.7; and
 3. A written summary of the meeting prepared pursuant to Section 5.204D: Neighborhood Meeting Procedure, including a list of all attendees' names and addresses.
- F. **Additional Meetings.** The Director may require that 1 or more additional neighborhood meetings be held. If the application is substantially modified from what was presented at the neighborhood meeting, a second neighborhood meeting shall be held to present the modified application. The notification procedures set forth in Section 5.204C: Neighborhood Meeting Notification shall be followed.
- G. **Other Required Meetings.** For projects where the applicant is not otherwise required to conduct a neighborhood meeting, the Director may require that a neighborhood meeting be held if a determination is made that the project may substantially impact adjacent neighborhoods.

5.205 Notice of Public Hearings

Prior to consideration of any action for which the Zoning Code requires notice pursuant to this section, notice shall be given in compliance with the following requirements:

A. **Published Notice.** For General or Specific Plan amendments, amendments to the zoning code text, amendments to a zoning ordinance or the Official Zoning Map, conditional and special use permits, preliminary subdivision plats, zoning variances, and appeals heard by the Board of Adjustment, the Town Clerk or Director, as appropriate, shall prepare for publication a Notice of Public Hearing. The notice shall comply with the following requirements:

1. The notice shall be published at least 15 days prior to the date of the public hearing at least once in a newspaper of general circulation within the Town of Gilbert. Notice of a hearing on a major amendment to the General Plan shall be posted not more than 30 days prior to the hearing.
2. A general description of the proposed project or action and the property included in the application;
3. The date, time, location, and purpose of the public hearing;
4. The location and times at which the complete application and project file may be viewed by the public;
5. A statement that any interested person or authorized agent may appear and be heard; and
6. A statement describing how and when to submit written comments.

B. **Posting of Official Notice.** For applications for General and Specific Plan amendments, amendments to the zoning code text, amendments to a zoning ordinance or the Official Zoning Map, conditional and special use permits, preliminary subdivision plats, zoning variances, preliminary and final design review, and appeals heard by the Board of Adjustment, the Town Clerk or Director, as appropriate, shall prepare for posting a Notice of Public Hearing.

The Town shall post the notice at least 24 hours prior to the date of the public hearing at 4 public places within the Town designated by Town Council resolution governing posting of public notices.

C. **Property Posting.** For applications for annexation, General and Specific Plan map amendments, amendments to a zoning ordinance or the Official Zoning Map, conditional and special use permits, preliminary subdivision plats, preliminary and final design review, zoning variances, and appeals heard by the Board of Adjustment, the applicant shall post the Notice of Public Hearing on the subject property. Applications

for amendments to the text of the Zoning Code shall not require property posting. The notice shall be subject to the following requirements:

1. The notice shall be posted at least 15 days prior to the date of the public hearing.
2. Posting, maintenance and removal of signs are the responsibility of the applicant. Failure to remove the sign within 10 days of public hearing action shall result in Town removal of the sign and a charge to the applicant for costs incurred.
3. Size, color, content, and location of public hearing sign shall be designated by Town Council resolution for posting of public hearing notices.
4. The applicant shall submit a signed affidavit and dated, color photos of the sign or signs prior to the public hearing.
5. Failure of the applicant to provide evidence of posting shall result in a postponement of the public hearing.

D. **Neighborhood Notice.** For applications for General and Specific Plan amendments, rezoning, conditional and special use permits, preliminary subdivision plats, preliminary and final design review, zoning variances and appeals heard by the Board of Adjustment, the Director shall prepare a Notice of Public Hearing. The notice shall be subject to the following requirements:

1. At least 15 days prior to the date of the public hearing, the applicant shall notify by first-class mail:
 - a. All property owners of record within 300 feet of the property, unless the General Plan or other policy adopted by the Town Council requires notification within a larger area;
 - b. All HOAs within 1,000 feet of the property;
 - c. All neighborhoods within 1,000 feet of the property that are registered with the Town of Gilbert Neighborhood Services Office;
 - d. The property owner if the application is initiated by a person other than the property owner; and

- e. Any persons who have specifically requested notice regarding the application who register their names and addresses with the Town as being interested in receiving such notice. Registration shall be in written form addressed to the Director.
2. For any Wireless Communication Facility requiring a Conditional Use Permit, the applicant shall provide the notice required above at least 30 days prior to the date of the public hearing and if, in response to this notification, two or more individuals or a community association requests an opportunity for additional input, the applicant shall hold a neighborhood meeting prior to the Planning Commission public hearing on the project.
3. The Director may expand the notification area set forth in Section 5.205D.1a, 5.205D.1b, and 5.205D.1c and if he determines the potential impact of the project extends beyond the required notification boundary;
4. The notice shall set forth the purpose, time, date, and place of the meeting. A copy of the notice shall be submitted to the Director of Planning; and
5. The applicant shall submit a signed affidavit and copies of the mailing prior to the public hearing. Failure of the applicant to provide evidence of mailing shall result in a postponement of the public hearing.

The validity of the proceedings shall not be affected by the failure of any person to receive such mailed notice.

5.206 Public Hearing Procedures

A public hearing held pursuant to the Zoning Code shall comply with the following procedures:

A. *Public Hearing Testimony.*

1. *Rights of All Persons.* Any person may appear at a public hearing and submit oral or written evidence related to the application, either individually or as a representative of a person or an organization. Each person who appears at a public hearing shall be identified, state an address and, if appearing on behalf of a person or organization, state the name and mailing address of the person or organization being represented.
2. *Time Limits.* The Mayor, Chair, or Zoning Hearing Officer may establish time limits for individual testimony and may require that individuals with shared concerns select one or more spokespersons to present testimony on behalf of those individuals.

3. *Exclusion of Testimony.*

- a. The Mayor, Chair, or Zoning Hearing Officer may exclude testimony or evidence that is irrelevant, immaterial, or repetitious.
- b. In the event any testimony or evidence is excluded as irrelevant, immaterial, or repetitious, the person offering such testimony or evidence shall have an opportunity to offer a written statement in regard to such testimony or evidence for the record. Such written statement shall be presented to the Town Clerk within 3 working days of the hearing.

B. ***Order of Proceedings at Public Hearing.*** The order of the proceedings at the public hearing shall be as follows:

1. *Introduction of Item.* The Mayor, Chair, or Zoning Hearing Officer shall introduce the item.
2. *Public Hearing.* The Mayor, Chair, or Zoning Hearing Officer shall open the public hearing.
3. *Staff Report.* Staff shall present a report, which includes a written recommendation and shall respond to questions from the decision-making body.
4. *Applicant Presentation.* The applicant shall present the project, indicate concurrence or disagreement with advisory body or staff recommendations, and respond to questions from the body.
5. *Public Testimony.* Testimony will be accepted from those requesting to be heard, subject to the limitations of Section 5.206A: Public Hearing Testimony.
6. *Applicant Response.* The Mayor, Chair, or Zoning Hearing Officer may request the applicant to respond to testimony or evidence presented by the public or staff.
7. *Staff Response.* Staff and the Town Attorney may provide information or clarification regarding matters raised during the public hearing.
8. *Continuance of Public Hearing.* The body conducting the public hearing may by motion continue the public hearing to a fixed date, time, and place.
9. *Close of Public Hearing.* The Mayor, Chair, or Zoning Hearing Officer shall close the public hearing.
10. *Tabling.* The decision-making body conducting the public hearing may by motion table the public hearing. The public hearing on the matter shall not be conducted until notice is given in the same manner as for the initial hearing.

11. *Deliberation and Action.* The Town Council, Board of Adjustment, Planning Commission, Design Review Board, Redevelopment Commission, or Zoning Hearing Officer shall discuss the request and approve, approve with modifications and/or conditions or deny the request, unless it has been continued or tabled.

12. *Revision to Conditions.* If the Town Council, Board of Adjustment, Planning Commission, Design Review Board, Redevelopment Commission, or Zoning Hearing Officer makes a change to the recommended conditions, the public hearing shall be re-opened prior to the vote for the limited purpose of affording the applicant an opportunity to comment on any modified conditions. The public hearing shall be closed before action is taken.

C. *Approval of Items by Consent.* The hearing body may, by a single motion, approve any number of public hearing items where, after opening the public hearing, no person requests the item be removed from the public hearing consent calendar. If such a request is made, the hearing body shall then withdraw the item from the public hearing consent calendar for the purpose of public discussion and separate action.

5.207 Findings Required

When making a decision to approve, approve with modifications and/or conditions, revoke, or deny any conditional or special use permit, administrative use permit, variance, preliminary or final design review, or preliminary subdivision plat, the decision-making body shall make findings of fact required by the Zoning Code. Findings shall be based upon consideration of the application, plans, testimony, reports, and other materials that constitute the record and shall be in writing or included in the minutes. The findings shall be set forth in the staff report and Notice of Decision that the Director issues following a decision.

5.208 Administrative Procedures

Any person may examine an application and materials submitted in support of or in opposition to an application in the Planning Department offices during normal business hours. Copies of such materials shall be made available at a reasonable cost to be established from time to time through Town Council resolution. Staff reports to the Commission, Zoning Hearing Officer, Board, Design Review Board, or Town Council will not be made available to the public until they have been submitted to the body for which the report will be prepared.

5.209 Ex Parte Communications

A. *Prohibition against Ex Parte Communications.* To ensure that the decision-making process is fair and impartial, the Zoning Hearing Officer or a member of the Board of Adjustment shall not, directly or indirectly, participate in any ex parte communication

relevant to an application pending before that body. Ex parte communications are oral or written communications related to the matter to be heard by the Hearing Officer or Board and which is made to or by the Hearing Officer or any member of the Board, including in person, telephonic or electronic communications that occur outside of a public meeting of the hearing body.

- B. **Exceptions.** This prohibition shall not apply to communications between the Hearing Officer or members of the Board and Town staff. This prohibition is not intended to prevent site visits, the receipt of expert opinions, and the review of mail and other correspondence relating to the proceedings. All such communications shall be documented and entered into the record of the proceedings as provided for in Section 5.209C: Disclosure of Communications.
- C. **Disclosure of Communications.** If a Zoning Hearing Officer or Board member receives an ex parte communication the Officer or Board member shall place the communication in the public record or shall enter into the record a statement describing the time, place, and content of the communication.

5.2010 Final Decisions

- A. **Time of Decision.** A final decision shall be deemed to have been made at the time action is taken by the Board of Adjustment, Planning Commission, Design Review Board, or Redevelopment Commission. A final decision shall be deemed to have been made on the date of issuance of Notice of Decision by the Zoning Hearing Officer, Zoning Administrator, or Director.
- B. **Notice of Decision.** If a final decision is made by Notice of Decision, the Notice shall describe the decision made and the findings that were the basis for the decision. The Director shall mail the Notice to the applicant at the mailing address stated in the application and to any other person or entity requesting such notification in writing with the Development Services division.

5.2011 Procedures for Appeals

This section sets forth the procedures for appeals except for appeals filed pursuant to Article 5.10: Appeals of Dedications, Exactions and Zoning Regulations and Reconsideration of Certain Decisions. Any decision within the authority of the decision-making body may be appealed, unless the Zoning Code provides that the decision is final.

- A. **Rights of Appeal.**
 - 1. Except as provided in Section 5.2011A.2, appeals may be filed by:
 - a. The owner of property that is the subject of a final decision by the Zoning

Administrator, Zoning Hearing Officer, Director of Planning, Planning Commission, Design Review Board, Board of Adjustment, or Redevelopment Commission;

- b. Any other person aggrieved by a final decision of a decision-making body identified in Section 5.2011A.1 and who has standing to appeal pursuant to State law;
 - c. A member of the Town Council;
 - d. The Town Manager; or
 - e. The Director of Planning.
2. All administrative remedies shall be exhausted prior to bringing legal action in Superior or Federal Court against the Town or any of its boards, commissions, employees, or officers.
- B. **Filing of Appeal.** An appeal shall be filed with the Development Services division on a form established by the Director of Planning. The appeal shall set forth the decision or decisions being appealed and the grounds upon which the appeal is based. The appeal shall be accompanied by any applicable fees.
- C. **Time Limits for Appeal.** All appeals shall be filed within 10 calendar days of the decision, except for appeals from decisions of the Zoning Hearing Officer and Board of Adjustment. Appeals from decisions of the Zoning Hearing Officer and Board of Adjustment shall be filed within 30 calendar days of the decision.
- D. **Proceedings Stayed by Appeal.** The timely filing of an appeal, except for the appeals of a decision of the Board of Adjustment to Superior Court, shall stay all proceedings in the matter appealed.
- E. **Public Notice.** Prior to consideration of any appeal for which State law or the Zoning Code requires a public hearing, the Town shall provide public notification in compliance with Section 5.205: Notice of Public Hearings or as required by State law, whichever requires the most notice.
- F. **Transmission of Record.** The Director shall forward the appeal, the Notice of Decision, and all other documents that constitute the record to the decision-making body.
- G. **Standards.** When reviewing any decision on appeal, the decision-making body shall use the same standards for decision-making required for the original decision.
- H. **Hearing Body Action.** Public hearings shall be conducted in accordance with procedures set forth in Section 5.206: Public Hearing Procedures. In addition, the decision-making body may remand the matter to the original decision-making body for reconsideration, for additional information or to cure a deficiency in the record or

proceeding. The decision-making body shall hold a hearing on the appeal within 60 days of the filing of the request. The decision-making body shall render its decision within 30 days of the date the hearing is closed unless State law requires a shorter deadline.