



# Planning Commission Staff Report

Meeting Date: November 13, 2014 Agenda Item Number: 7C

Subject: Request to Initiate Development Code Amendment

Applicant: Planning and Development Division

Summary: To initiate an amendment to Washoe County Code, Chapter 110, Development Code, at Division 8 (Procedures) and at Article 912 (Establishment of Commissions, Boards and Hearing Examiners) to regulate appeals heard by the Board of Adjustment and appeals of decisions to the Washoe County Board of County Commissioners, and at Article 914 (Establishment of Department) concerning appeals of Director’s interpretations.

**Recommendation: Adopt and authorize the Chair to sign the attached resolution**

Prepared by: Bob Webb, Planning Manager  
 Washoe County Community Services Department  
 Planning and Development Division

Phone: 775.328.3623

Email: [bwebb@washoecounty.us](mailto:bwebb@washoecounty.us)

## Description

To initiate an amendment to Washoe County Code, Chapter 110, Development Code, at various articles within Division 8 (Procedures) and at Article 912 (Establishment of Commissions, Boards and Hearing Examiners) to provide general rules governing appeals to the Washoe County Board of Adjustment and appeals of decisions to the Washoe County Board of County Commissioners including matters that may be appealed, appeal hearing procedures, and appeal or judicial review of decisions by the Washoe County Board of Adjustment on an appeal; and, at Article 914 (Establishment of Department) to conform with amendments to Article 910 (Enforcement) concerning appeals of Director’s interpretations.

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**Initiating Development Code Amendments**

The Washoe County Development Code is Chapter 110 of the Washoe County Code (WCC). The Development Code broadly regulates allowable and permitted land uses, subdivision of land, planning permit requirements and procedures, signage, infrastructure availability, land use development standards, and other related matters. Because the Development Code covers so many varying aspects of land use and development standards, it is expected that from time to time it may be necessary to change or amend one or more portions of the Development Code to keep it up to date with the most current and desirable trends in planning and development.

The Development Code amendment process provides a method of review and analysis for such proposed changes. Development Code amendments may be initiated by the Washoe County Commission, the Washoe County Planning Commission, or an owner of real property. Development Code amendments are initiated by resolution of the Washoe County Commission or the Washoe County Planning Commission. Real property owners may submit an application to initiate a Development Code amendment.

After initiation, the Planning Commission considers the proposed amendment in a public hearing. The Planning Commission may recommend approval, approval with modifications or denial of the proposed amendment. The Planning Commission records its recommendation by resolution.

The Washoe County Board of County Commissioners (BCC) hears all amendments recommended for approval, and amendments recommended for denial upon appeal. The BCC will hold a first reading and introduction of the ordinance (proposed amendment), followed by

a second reading and possible ordinance adoption in a public hearing at a second meeting at least two weeks after the first reading. Unless otherwise specified, ordinances are effective 10 days after adoption.

### **Public Notice**

There are no public notice requirements established within the Development Code for initiation of a Development Code amendment.

### **Background**

NRS 278.310 requires the Washoe County Board of Adjustment (BOA) to hear appeals of building permit denials, and appeals of decisions of administrative officials who are administering or enforcing “any zoning regulation or any regulation relating to the location or soundness of structures.” The Development Code currently only provides that interpretations of the Development Code by the Director, Planning and Development Division, Community Services Department may be appealed to the BOA. The code sections within Article 912 (Establishment of Commissions, Boards and Hearing Examiners) establishing the BOA must be amended to reflect State Law requirements concerning appeals to the BOA.

The code sections must also be amended to conform to amendments within Article 910 (Enforcement). Those amendments establish an administrative enforcement process for development regulations and for decisions of County staff such as the Director, based on the Washoe County Administrative Enforcement Code (WCC Chapter 125). The administrative enforcement process includes provisions for appeals to an administrative hearing officer. Decisions of the administrative hearing officer may be appealed to the BOA for Development Code related cases.

The amendments to Article 912 will include a new subsection within Washoe County Code Section 110.912.10, Board of Adjustment, which will provide for:

- The type of decisions which may be appealed to the BOA, to include administrative decisions by the County’s Building Official, the County’s Fire Code Official, an Administrative Hearing Officer, and decisions of the Director;
- Who may file an appeal;
- How to appeal (e.g., on a written form to the Planning and Development Division);
- Scheduling of the appeal hearing (e.g., maximum time frame for the BOA to hear the appeal);
- Pre-hearing procedures (e.g., ministerial processes and subpoena authority);

- The record and evidence on which the BOA will decide appeals;
- The burden of proof of the appellant and basis on which administrative decisions may be reversed or modified;
- How the appellant will be notified of the BOA's decision on the appeal; and,
- The process to appeal the BOA's decision on an appeal (i.e., judicial review or appeal to the Washoe County Board of County Commissioners).
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Since the new subsection in Article 912 will regulate appeals of interpretations and other decisions of the Director, the current Code Section within Article 914 (Establishment of Department) addressing appeals of the Director concerning Development Code interpretations will be deleted.

Various articles within Division 8 (Procedures) such as Article 810 (Special Use Permits) contain appeal provisions which do not comply with State Statutes or with Constitutional principles regarding appeals. The amendments will create a new section within Article 912 to provide general rules and procedures regarding appeals to the Washoe County Board of County Commissioners concerning decisions made by the BOA, by the Washoe County Planning Commission, or by a hearing examiner. The appeal sections within the various articles within Division 8 will then be amended to refer to the new Article 912 section.

The Washoe County Planning Commission initiated amendments to Articles 912 and 914 on this subject matter on October 2, 2012, and adopted a resolution recommending approval of the Code amendments to the Washoe County Board of County Commissioners (BCC) on March 5, 2013. The amendments were scheduled for a first reading before the BCC on August 13, 2013; however, the matter was pulled from the agenda based on concerns expressed by the Builders Association of Northern Nevada (BANN). Staff met with BANN staff and resolved those concerns, which will be reflected in the proposed amendments. Based on the length of time from the actions of the Planning Commission on the proposed amendments, and the changes to the amendments made in the interim period, staff believes it is prudent to start the process over and bring the amendments for a new initiation to the Planning Commission.

### **Recommendation**

Staff recommends that the Washoe County Planning Commission adopt the resolution as set forth in Exhibit A initiating an amendment to Washoe County Code, Chapter 110, Development Code, at Article 912 (Establishment of Commissions, Boards and Hearing Examiners) to provide

general rules governing appeals to the Board of Adjustment including matters that may be appealed, appeal hearing procedures, and appeal or judicial review of decisions by the Board of Adjustment on an appeal; and, at Article 914 (Establishment of Department) to conform with amendments to Article 910 (Enforcement) concerning appeals of Director's interpretations. The following motion is provided for your consideration:

**Motion**

"After giving reasoned consideration to the information contained in the staff report, I move to adopt the resolution contained in Exhibit A to initiate an amendment to Washoe County Code, Chapter 110, Development Code, at Article 912 (Establishment of Commissions, Boards and Hearing Examiners) to regulate appeals heard by the Board of Adjustment and at Article 914 (Establishment of Department) concerning appeals of Director's interpretations. I further move to authorize the Chair to sign the resolution contained in Exhibit A on behalf of the Washoe County Planning Commission and to direct staff to bring the amendment back to this Commission for a hearing within 125 days of today's date."

Attachment: Exhibit A, Resolution

xc: Gregory Salter, Esq., District Attorney's Office  
Bill Whitney, Director, Planning & Development Division



## **RESOLUTION OF THE WASHOE COUNTY PLANNING COMMISSION**

**INITIATING AN AMENDMENT TO THE WASHOE COUNTY CODE AT CHAPTER 110, DEVELOPMENT CODE, AT DIVISION 8 (PROCEDURES) AND AT ARTICLE 912 (ESTABLISHMENT OF COMMISSIONS, BOARDS AND HEARING EXAMINERS) TO REGULATE APPEALS HEARD BY THE BOARD OF ADJUSTMENT AND APPEALS OF DECISIONS TO THE WASHOE COUNTY BOARD OF COUNTY COMMISSIONERS, AND AT ARTICLE 914 (ESTABLISHMENT OF DEPARTMENT) CONCERNING APPEALS OF DIRECTOR'S INTERPRETATIONS.**

Resolution Number 14-\_\_

Whereas the Washoe County Development Code requires that amendments to the Code be initiated by resolution of the Washoe County Planning Commission; and

Whereas the Washoe County Planning Commission received a report on November 13, 2014, concerning potential amendments to Washoe County Code, Chapter 110, Development Code, Division 8 (Procedures), Article 912 (Establishment of Commissions, Boards and Hearing Examiners), and 914 (Establishment of Department); and

Whereas such amendments would focus on (but are not limited to):

1. Conforming to appeal requirements for the Washoe County Board of Adjustment as set forth in NRS 278,310;
2. Conforming to amendments in Article 910 (Enforcement) concerning administrative enforcement processes and appeals to administrative hearing officers;
3. Delineating the type of decisions which may be appealed to the Washoe County Board of Adjustment, stipulating who may make such appeals, and setting forth procedures and processes for appeal hearings;
4. Establishing the records, evidence, and decisions of appeal hearings before the Washoe County Board of Adjustment;
5. Providing for the judicial review or appeal to the Washoe County Board of County Commissioners for appeal decisions by the Washoe County Board of Adjustment; and,
6. Providing for general rules and procedures regarding appeals to the Washoe County Board of County Commissioners concerning decisions made by the Washoe County

Board of Adjustment, by the Washoe County Planning Commission, or by a hearing examiner.

Now, therefore, be it resolved that pursuant to Washoe County Code Section 110.818.05(a) that an amendment is initiated to the Washoe County Code, Chapter 110, Development Code, Article 912 (Establishment of Commissions, Boards and Hearing Examiners) and 914 (Establishment of Department) as set forth in the agenda for the November 13, 2014 meeting of the Washoe County Planning Commission, that a public hearing with this Planning Commission on the amendment shall be held within 125 days of this resolution's adoption date, and that this amendment is initiated without prejudice to its final disposition.

ADOPTED on November 13, 2014.

WASHOE COUNTY PLANNING COMMISSION

ATTEST:

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Carl R. Webb, Jr. AICP, Secretary

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Roger Edwards, Chairman