

APPENDIX OF OPTIONAL SECTIONS

This Appendix contains provisions that are made optional. Some are entire sections, and some are paragraphs from sections that are part of the model law.

103 Exemptions for Corridor Maps

This Chapter does not apply to applications and decisions on, development on land reserved in corridor maps.

Comment: Corridor map legislation provides its own procedures for the consideration of development on land reserved in corridor maps. These procedures take into account the possible takings implications of corridor map reservations, and special needs to coordinate the administration of corridor maps with other state and local agencies that may have an interest.

201 Development Permit; Unified Development Permit Review Process; Inclusion of Amendment of Zoning Map

Optional additional language for paragraph (2):

For each such development permit, the list shall include:

- (a) citation to the land development regulations, statute, rule, or other legal authority under which the development permit is required;
- (b) the category of development to which it applies;
- (c) the stage or sequence of the development process at which it must be obtained;
- (d) the designation of the officer or body of the local government responsible for reviewing and granting the development permit and the subsequent certificate of compliance; whether a record hearing is required; [and] the approximate time necessary for review and grant of such development permit; [and] the time limit for granting, granting subject to conditions, or denying such development permit pursuant to Section 210. The time limit shall:
 - 1. commence from the time the local government makes a written determination that a development permit application is complete, or from the time a development application is deemed complete; and
 - 2. be reasonably based on the approximate time determined under paragraph (2)(d) above.

204 Administrative Review

The following provisions in paragraph (6) are optional:

- (a) The ordinance establishing the unified development permit review process may describe the type and sequence of inspections regarding a development authorized by a

development permit in order that a determination of compliance may be issued at the completion of the development.

(b) An owner of land for which a development permit has been issued may apply upon completion of the development for a determination of compliance, and may introduce documentation and evidence, including the written reports of inspections performed according to paragraph (6)(a) above, and if the agency that issued the development permit finds that the completed development was in accordance with the terms and conditions of the development permit as of a particular date, the determination of compliance shall be effective as of that date. The determination of compliance shall only address matters of physical construction, not conditions that concern ongoing operations, such as hours of operation, lighting and maintenance.

(c) The ordinance establishing the development review process may also provide for the periodic review of compliance with development permits.

(d) A local government may bring enforcement proceedings to remedy a violation of this paragraph, as authorized by law.

207 Record Hearings

The following provisions in paragraph (11) are optional:

(a) The ordinance establishing the unified development permit review process may describe the type and sequence of inspections regarding a development authorized by a development permit in order that a determination of compliance may be issued at the completion of the development.

(b) An owner of land for which a development permit has been issued may apply upon completion of the development for a determination of compliance, and may introduce documentation and evidence, including the written reports of inspections performed according to paragraph (6)(a) above, and if the agency that issued the development permit finds that the completed development was in accordance with the terms and conditions of the development permit as of a particular date, the determination of compliance shall be effective as of that date. The determination of compliance shall only address matters of physical construction, not conditions that concern ongoing operations, such as hours of operation, lighting and maintenance.

(c) The ordinance establishing the development review process may also provide for the periodic review of compliance with development permits.

(d) A local government may bring enforcement proceedings to remedy a violation of this paragraph, as authorized by law.

208 Consolidated Permit Review Process

(1) As part of the ordinance establishing the unified development permit review process, the legislative body of each local government [shall *or* may] establish a consolidated permit review process in which an applicant for a development permit may apply at one time for all development permits or zoning map amendments needed for a development.

(2) If an applicant for a development permit applies for a master permit, the local government shall determine what procedures apply to the review of the development, and shall designate a permit coordinator who shall coordinate the consolidated permit review process. A consolidated permit review process may provide different procedures for different categories of development permits. If a development requires permits from more than one category of development permit as well as zoning map amendments, the local government [shall *or* may] provide for a consolidated permit review process with [1] record hearing and no more than one record appeal.

(3) The local government may authorize the permit coordinator to issue a master permit. The permit coordinator shall issue a master permit if all required development permits have been granted.

HEARING EXAMINERS

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301 Hearing Examiner System

(1) The legislative body of each local government may adopt an ordinance, as part of its land development regulations, which establishes a hearing examiner system. The ordinance shall specify those matters on which a hearing examiner may hear and make decisions and recommendations including, but not limited to, the following;

(a) development permit applications;

(b) proposals for the adoption or amendment of a local comprehensive plan or subplan, or the text or map amendment of a land development regulation;

(c) the administration, interpretation, and enforcement of land development regulations;

(d) such other matters as the legislative body believes should be heard and decided by a hearing examiner.

(2) The ordinance establishing a hearing examiner system may also authorize the hearing examiner to exercise some or all of the powers and duties delegated to [*insert names of officials and boards*]. Sections 301 to 307 apply to hearing examiners when they exercise the powers and duties of the [*insert names of officials and boards*].

(3) The ordinance establishing a hearing examiner system shall specify the qualifications for hearing examiners and the terms and conditions under which they shall serve. Hearing examiners shall have such training and experience as will qualify them to conduct hearings and make decisions and recommendations as authorized by this Chapter.

[(4) A local government may also contract with [*insert name of state official*] for the use of administrative law judges appointed under [*cite to state administrative procedure act*] to hear any matter a hearing examiner may hear.]

302 Hearing Examiner's Jurisdiction

The ordinance establishing a hearing examiner system shall specify the procedures for initiating hearings before a hearing examiner, which may include, but shall not be limited to, procedures that authorize:

(1) an applicant for a development permit to file an application with a hearing examiner when a record hearing is required, after the local government has determined that the application is complete, or after it is deemed complete under this Chapter;

(2) a permit coordinator appointed under Section 208 to refer applications for development permits submitted in a consolidated review process to a hearing examiner;

(3) an appeal, within [30] days after a land-use decision is issued[, or within [30] days after the date a land-use decision is deemed approved under Section 210:

(a) if there has been a record hearing, by the applicant for the development permit, and by any party to the record hearing; and

(b) if there has been an administrative review:

1. by the applicant for the development permit; and

2. by any person, neighborhood planning council, neighborhood or community organization, or governmental unit, if it is aggrieved by the land-use decision.

(4) the legislative body, the local planning commission, the [Land-Use Review Board], and any other body or official to refer any matter delegated to them to a hearing examiner.

303 Decision to Recuse

The ordinance establishing a hearing examiner system shall authorize the hearing examiner to recuse himself or herself in any matter submitted, referred, or appealed to the examiner, and to refer the matter back so that the appointment of another hearing examiner can be considered.

304 Decisions Based on Record Hearings

(1) The hearing examiner shall hold a record hearing on an application for a development permit. If a record hearing has not been held on any other matter submitted, referred, or appealed to him or her, the hearing examiner shall hold a record hearing within [15] days of receiving an a referral from an officer or body of the local government, or an appeal.

(2) The hearing examiner shall:

(a) give notice of the record hearing as required by Section 205, through the methods specified in the local government's unified development permit review process ordinance;

(b) conduct the record hearing as required by the local government's unified development permit review process; and

(c) make findings, make a decision or recommendations, and give notice of that decision or recommendations as required by Section 207(9);

305 Decisions Based on Record Appeals

If a record hearing has been held on any matter submitted, referred or appealed to the hearing examiner, the examiner shall conduct a record appeal within [15] days of receiving an application for a development permit, a referral from a board or official of the local government, or an appeal. Section 209 shall govern record appeals held by the hearing examiner.

306 Effect of Hearing Examiner's Decisions

(1) A hearing examiner's decision on the adoption or amendment of a local comprehensive plan or subplan, or the textual or map amendment of a land development regulation, shall only be given the effect of a recommendation to the legislative body.

(2) The ordinance establishing a hearing examiner system shall specify the legal effect of all other decisions by a hearing examiner, and may provide that their legal effect may vary for the different categories of development permits, referrals, and appeals heard by the hearing examiner. The ordinance may include any or a combination of the following:

(a) it may give the hearing examiner's decision the effect of a recommendation to the legislative body, board or official having jurisdiction; or

(b) it may give the hearing examiner's decision the effect of a final decision, and may specify whether the decision is appealable to the legislative body or to a designated official or body, or whether the decision is a final decision subject only to judicial review as provided by this Chapter.

307 Review of Hearing Examiner Recommendations

(1) If the hearing examiner has held a record hearing on the recommendation, the legislative body, board, or officer shall consider the recommendation as a record appeal and shall make a decision on the recommendation as provided by Section 209.

[(2) If the hearing examiner has not held a record hearing on the recommendation, the legislative body, board, or officer shall hold a record hearing on the recommendation and shall make a decision on the recommendation as provided by Section 207.

[(3) The legislative body, board, or officer shall give [due regard *or* substantial weight] to the recommendation of the hearing examiner.]

308 Filing and Publication of Hearing Examiner Decisions

The ordinance establishing the hearing examiner system shall require the filing of hearing examiner decisions in a manner that makes them available to the public, and may require the publication of hearing examiner decisions in print or electronic media.