

**CITY DEVELOPMENT BOARD[263]**

**Adopted and Filed**

**Rulemaking related to waivers**

The City Development Board hereby rescinds Chapter 6, “Waiver Rules,” Iowa Administrative Code, and adopts a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is adopted under the authority provided in Iowa Code section 368.10.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code section 17A.9A.

*Purpose and Summary*

Pursuant to Executive Order 10, the Board rescinds Chapter 6 and adopts a new chapter in lieu thereof. The new chapter omits repetition of statutory language and clarifies Board policies and procedures regarding waivers.

*Public Comment and Changes to Rulemaking*

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 13, 2023, as **ARC 7136C**. Public hearings were held on January 2, 2024, and January 9, 2024. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

*Adoption of Rulemaking*

This rulemaking was adopted by the Board on February 14, 2024.

*Fiscal Impact*

This rulemaking has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rulemaking, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 263—Chapter 6.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rulemaking will become effective on April 10, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 263—Chapter 6 and adopt the following **new** chapter in lieu thereof:

CHAPTER 6  
WAIVER RULES

**263—6.1(17A) Definitions.**

*“Board”* means the same as defined in Iowa Code section 368.1(3).

*“Petitioner”* means a person who petitions an agency for the waiver of a rule.

*“Waiver”* means the same as defined in Iowa Code section 17A.9A(5) as applied to an action by the board.

**263—6.2(17A) Scope.** This chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by the board in situations where no other more specifically applicable law provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this chapter with respect to any waiver from that rule.

**263—6.3(17A) Applicability.** The board may grant a waiver of a rule as permitted by Iowa Code section 17A.9A(1).

**263—6.4(17A) Criteria for waiver.** In response to a petition completed pursuant to rule 263—6.6(17A), the board may issue a waiver if the board makes the applicable findings in Iowa Code section 17A.9A(2).

**263—6.5(17A) Filing of petition.** A petition for a waiver must be submitted in writing to the board as follows:

**6.5(1) Pending matters.** If the petition relates to a pending petition or application for city development action, the petition requesting a waiver shall be filed in the pending proceeding, using the caption of that matter.

**6.5(2) Other.** If the petition does not relate to a pending matter, the petition may be submitted to the board chairperson.

**263—6.6(17A) Content of petition.** A petition for waiver shall include the following information where applicable and known to the requester:

1. The name, address, and telephone number of the entity or person for whom a waiver is requested and the case number of any related city development proceeding.

2. A description and citation of the specific rule from which a waiver is requested.

3. The specific waiver requested, including the precise scope and duration.

4. The relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in Iowa Code section 17A.9A(2). This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver.

5. A history of any prior contacts between the board and the petitioner relating to the activity affected by the proposed waiver, including a description of each related city development action by the requester within the past five years.

6. Any information known to the requester regarding the board’s treatment of similar cases.

7. The name, address, and telephone number of any public agency or political subdivision that might be affected by the granting of a waiver.

8. The name, address, and telephone number of any entity or person who would be adversely affected by the granting of a petition, including all parties to the proceeding if the petition relates to a matter pending before the board.

9. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.

**263—6.7(17A) Additional information.** Prior to issuing an order granting or denying a waiver, the board may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the board may, on its own motion or at the petitioner's request, schedule a meeting between the petitioner and the board's chair, or a committee of the board, or a quorum of the board.

**263—6.8(17A) Notice.** The board will acknowledge a petition upon receipt. The board shall ensure that, within 30 days of the receipt of the petition, notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law. In addition, the board may give notice to other persons. To accomplish this notice provision, the board may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law or who may be impacted by the requested waiver and provide a written statement to the board attesting that notice has been provided.

**263—6.9(17A) Hearing procedures.** The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings apply to any petition for a waiver filed within a pending city development action pursuant to subrule 6.5(1). If a petition for waiver is filed with the board pursuant to subrule 6.5(2), the provisions of Iowa Code sections 17A.10 to 17A.18A apply to board proceedings for a waiver only when the board so provides by rule or order or is required to do so by statute.

**263—6.10(17A) Ruling.** Iowa Code section 17A.9A(3) describes certain procedural aspects for considering a petition for waiver and issuing a ruling thereon, including the burden of persuasion; the manner in which a petition for waiver must be evaluated; the limits of the waiver, if one is issued; and the circumstances under which the board may place a condition on the waiver. When the rule from which a waiver is sought establishes administrative deadlines, the board shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons. The board shall have the sole discretion to decide whether to grant a waiver.

**6.10(1) Form of ruling.** An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and duration of the waiver, if one is issued.

**6.10(2) Time for ruling.** The board shall grant or deny a petition for a waiver as soon as practicable but, in any event, shall do so within 90 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a pending city development action, the board shall grant or deny the petition no later than the time at which the final decision in that matter is issued.

**6.10(3) When deemed denied.** Failure of the board to grant or deny a petition within the required time period shall be deemed a denial of that petition by the board. However, the board shall remain responsible for issuing an order denying a waiver.

**6.10(4) Service of order.** Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

**6.10(5) Filing of waiver ruling.** Within 60 days of granting or denying a waiver, the board shall submit information as required by Iowa Code section 17A.9A(4).

**263—6.11(17A) Cancellation of a waiver.** A waiver issued by the board pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the board issues an order finding any of the following:

1. The petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver;
2. The alternative means for ensuring that the public health, safety and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or
3. The subject of the waiver order has failed to comply with all conditions contained in the order.

**263—6.12(17A) Violations.** Violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this chapter who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

**263—6.13(17A) Defense.** After the board issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

These rules are intended to implement Iowa Code section 17A.9A.

[Filed 2/16/24, effective 4/10/24]

[Published 3/6/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/6/24.