

## Red Tape Review Rule Report (Due: September 1, 20 23 )

<b>Department Name:</b>	City Development Board	<b>Date:</b>	8/31/2023	<b>Total Rule Count:</b>	15
<b>IAC #:</b>	263	<b>Chapter/ SubChapter/ Rule(s):</b>	Chapter 6	<b>Iowa Code Section Authorizing Rule:</b>	17A.9A, 368.10
<b>Contact Name:</b>	Kristin Hanks-Bents	<b>Email:</b>	Kristin.hanks-bents@iowafinance.com	<b>Phone:</b>	515-452-0404

**PLEASE NOTE, THE BOXES BELOW WILL EXPAND AS YOU TYPE**

**What is the intended benefit of the rule?**

To describe the process for granting individual waivers from rules adopted by the Board.

**Is the benefit being achieved? Please provide evidence.**

Yes. The chapter outlines the process for granting individual waivers from rules.

**What are the costs incurred by the public to comply with the rule?**

A petitioner may incur some costs to prepare a petition for waiver. Cities or affected parties may require staff time to complete a petition for waiver. Cities or affected parties may rely on external service providers, such as lawyers, to complete a petition for waiver and prepare any supporting documents. The amount of the costs will vary depending on the complexity of the issues and the compensation of such staff or service provider.

**What are the costs to the agency or any other agency to implement/enforce the rule?**

IEDA provides office space and staff assistance to the board and covers expenses of the board pursuant to Iowa Code section 368.9. The agency incurs staff time to implement the waiver process, including time to review petitions for waiver. If the petition for waiver is filed within a pending city development action, staff time is required to hold a hearing in accordance with contested case hearing procedures.

**Do the costs justify the benefits achieved? Please explain.**

No additional costs are imposed by the rules chapter beyond the board's statutory obligations in 17A.9A.

**Are there less restrictive alternatives to accomplish the benefit?  YES  NO**

**If YES, please list alternative(s) and provide analysis of less restrictive alternatives from other states, if applicable. If NO, please explain.**

No less restrictive alternatives were identified.

Does this chapter/rule(s) contain language that is obsolete, outdated, inconsistent, redundant, or unnecessary language, including instances where rule language is duplicative of statutory language? [list chapter/rule number(s) that fall under any of the above categories]

**PLEASE NOTE, THE BOXES BELOW WILL EXPAND AS YOU TYPE**

Yes.

Rule 263.6.1 should be updated to remove statutory language and add definitions to clarify the chapter.

Rule 263.6.3 should be updated to remove statutory language.

Rule 263.6.4 should be updated to remove statutory language.

Rule 263.6.6 should be updated to replace a rule reference with a statutory reference.

Rule 263.6.7 should be updated to remove unnecessary language.

Rule 263.6.8 should be updated to remove an unnecessary restrictive term.

Rule 263.6.9 should be updated to remove an unnecessary restrictive term and clarify when contested case hearing procedures will apply to a petition for waiver.

Rule 263.6.10 should be updated to remove statutory language and restructured to maintain the description of requirements for the issuance of a waiver ruling that are not found within Iowa Code section 17A.9A.

Rule 263.6.11 should be consolidated with the revised rule 263.6.10 so that all subrules pertaining to waiver rulings are contained within one rule.

Rule 263.6.15 should be deleted to remove unnecessary language.

**RULES PROPOSED FOR REPEAL (list rule number[s]):**

263.6.11

263.15

**\*RULES PROPOSED FOR RE-PROMULGATION\* (list rule number[s] or include text if available):**

CHAPTER 6  
WAIVER RULES

**263—6.1(17A) Definitions.**

“*Board*” means the same as Iowa Code section 368.(3).

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

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

**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 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 which 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 subsection 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 granted, 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, subsection 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.

***\*For rules being re-promulgated with changes, you may attach a document with suggested changes, if available.***

#### METRICS

Total number of rules repealed:	2
Proposed word count reduction after repeal and/or re-promulgation	316*
Proposed number of restrictive terms eliminated after repeal and/or re-promulgation	10*

**\*Estimated. The reduction in word count and restrictive terms may be impacted by the board's review of the proposed updates.**

**ARE THERE ANY STATUTORY CHANGES YOU WOULD RECOMMEND INCLUDING CODIFYING ANY RULES?**

No.