

Mayor as Appeal Hearing Officer Procedures and Authority

A. *Conflicts of Interest*

1. **Conflicts of Interest.** The Mayor as the Appeals Hearing Officer shall not participate in any appeal or other matter in which the Mayor has a conflict of interest prohibited by Title 2, Chapter 2.44 of the Salt Lake City Code or by the Rules of Professional Conduct governing attorneys in the State of Utah if applicable. The hearing officer may declare a conflict of interest regarding specific agenda items. When the hearing officer believes that he or she may have an actual, apparent, or reasonably foreseeable conflict of interest on any matter that may come before the Appeals Hearing Officer, he or she shall explain the apparent conflict to the City Attorney and recuses her or himself from hearing the matter. When a Conflict of Interest arises, another appointed Appeals Hearing Officer will conduct the meeting.

C. *Procedures Prior to Hearing.*

1. **Initial Notification to Appeals Hearing Officer.** Once an application has been submitted that will be heard by the Mayor, the Planning Division staff will notify the Mayor of the matter prior to scheduling the matter for a public meeting.
2. **Scheduling matters for the Appeals Hearing Officer meeting.** The staff will work with the appellant and the Mayor, to find a date that works for all involved in the matter.

Once the matter is scheduled, the meeting can be postponed by the Mayor if an appellant or their representative has a scheduling conflict and cannot attend the meeting, by mutual agreement of all parties, or for other good cause as determined by the Mayor. However, the meeting time should not be delayed more than once, especially if the matter is an enforcement item and the delay could be construed as a tactic to delay a project from commencing or enforcement action from taking place.

3. **Provision of Contact Information:** Absent a showing that such a requirement is prejudicial to any party, the appellant and / or appellant's representative, a designated member of the Planning Staff, applicable City Attorney and any other interested

- person who desires notice over and above that required by the local ordinances with regard to a specific application or appeal shall provide the Planning Division with an email address or other means of contact.
- a. This email address will be used to notify the parties of the information required for the meeting and the process to be followed at the meeting in addition to exchange documents, discuss scheduling, procedures, or any other information about the process of the appeal or application review before and after any meeting on the matter. The Mayor, appellant, or other interested parties shall not discuss the merits of the appeal outside of a public meeting.
 - b. Any such emailed messages are public documents and subject to the Government Records Access Management Act.
 - c. The application form used to file an appeal shall include notice of the requirement for the applicant to provide an email address and a summary of the provisions of this policy. Unless this policy is made the subject of a written protest by the applicant that this requirement is prejudicial, the submittal of the application for filing of the appeal shall be considered as consent to this policy and notification and correspondence may be made by email to the applicant or appellant
 - d. **Notification of Public Meetings:** Notices of all items scheduled for an Appeals Hearing Officer meeting shall be provided to the appropriate parties prior to the meeting consistent with Salt Lake City Code or State Law relating to public meetings. **Notice of Appeals Hearing Officer Meetings:** Copies of decisions and/or staff reports shall be posted on the City's website by the Secretary assigned to the meeting and thus made available to members of the public.
- 4. Staff Report:** All issues presented to the Appeals Hearing Officer for consideration shall be accompanied by a Staff Report outlining the issue and providing background information and facts. For Land Use Appeals, the Staff Report may be prepared by the Planning Division or Attorney's Office (generally referred to as a brief).
- a. Staff Reports shall address the portion of the Salt Lake City Code affected by the petitioner's request, and how the request fits within the guidelines of the ordinance.
 - b. Staff Reports shall be as concise as possible, while allowing for adequate coverage of the subject matter.
 - c. Staff Reports may include a recommendation for action by the Appeals Hearing Officer.
 - d. Staff Reports shall be made available to the Mayor, appellant or any other interested party at least five calendar days before a meeting is held on the issue which is the subject of the appeal.

- e. Staff Reports shall be considered a public document and shall be made available for public view, and posted on the City's website at least five calendar days before the public meeting. Printed copies of the Staff Reports are to be made available to anyone requesting a copy of the Staff Report within 24 hours of a request. Any notice provided of meetings by the Mayor as the Appeals Hearing Officer shall include a statement that the Staff Report for each issue to be heard is available online, along with the web address at which the Staff Reports are posted.

D. Meetings by the Appeals Hearing Officer.

1. **Place:** All meetings of the Mayor as the Appeals Hearing Officer shall be held in a room as determined appropriate in the City and County Building, located at 451 South State Street, Salt Lake City, Utah; or at such other place as the Mayor may designate.
 - a. A meeting having been convened at the place designated, may be adjourned by the Mayor to any other place within Salt Lake City for the sole purpose of investigating some particular matter of business, which may be more conveniently investigated at such other place.
 - b. A meeting may also be adjourned to any other room more convenient for conducting the business of the Mayor as Appeals Hearing Officer, so long as proper notice of the meeting location is provided to the parties to an issue and others who are to receive notice of the meeting.
2. **Field Trips:** On those occasions when site inspections are deemed advisable, field trips may be conducted by the Mayor as the Appeals Hearing Officer, and notice of the time and place of the field trip shall be provided to the parties and others who receive notice of the meeting.
 - a. The parties shall be allowed at the sites of the field trip.
 - b. Field trips shall be for the purpose of gathering information, not for the discussion of the project or decisions.

E. Procedure at Meetings:

1. **Due Process.** The Mayor shall act in a quasi-judicial manner and ensure that those appearing before the Mayor are afforded due process, which includes the following:
 - a. The right to notice of a meeting where the matter is to be considered.

- b. The right of parties to be heard in a meaningful manner to be heard on the matter, as provided in Section 21A.16 relating to appeals of administrative decisions
- c. The right to a fair and an unbiased decision-maker.
- d. There shall be no ex parte contact between the Mayor and any party, including the City Staff, on the merits of a pending decision.

2. Who May Appear.

- a. For appeals of a decision by the Historic Landmark Commission, the Mayor shall allow only the appellant, Planning Division Staff, City Attorney representative and other persons responding to the appeal to make comment related to the matter. No public testimony shall be considered.

3. Order of Consideration of Items: The following procedure will normally be observed; however, it may be rearranged by the Mayor for individual items if necessary for the expeditious conduct of business and in the interest of fairness:

a. Appeals of Historic Landmark Commission Decision:

- 1) Item introduction by Mayor.
- 2) Presentation and recommendation by the person bringing the appeal who bears the burden of proof. The person bringing the appeal shall generally have a total of 30 minutes to make arguments and responses during the meeting.
- 3) Presentation and recommendation by the Planning Staff, City Attorney or other person responding to the appeal. The Planning Staff, City Attorney and / or other person responding to the appeal shall generally have a total of 30 minutes to make arguments and responses during the meeting.

F. Standard of Review

- 1. **Record Review.** For appeals of decisions of the Historic Landmark Commission, the appeal shall be based on the record of the decision provided by the Historic Landmark Commission as per Chapter 21A.16 of the Salt Lake City Code.
 - a. The person appealing a decision of the Historic Landmark Commission shall have the burden to prove that the decision was erroneous.
 - b. The Mayor shall review the decision appealed on a standard of correctness, and shall presume that the decision was correct.
 - c. The Mayor shall uphold the decision which is the subject of the appeal unless it is demonstrated that the decision is not supported by substantial evidence in the

record or violates a law, statute, or ordinance in effect when the decision was made.

- d. No new evidence shall be heard by the Mayor unless such evidence was improperly excluded from consideration in the decision which has been appealed.
- e. A record review shall not involve the provision of new facts to the Mayor and the person bringing the appeal or the person's representative shall restrict the information provided to an explanation of how the decision was not supported by substantial evidence in the record or was otherwise illegal.

G. Procedure: Decision

1. **Completion of Evidence and Comments.** After hearing the presentations and comments of those appearing before the Mayor as the Appeals Hearing Officer, the Mayor may continue the matter and leave the record open for more submittals by the parties or others; take the matter under advisement; or announce a decision.
2. **Rendering a Decision.** A decision may reverse or affirm, wholly or in part, or may modify the decision subject to the appeal. The Mayor may also remand the matter back to the original authority with specific instructions to address any portion of the matter that may be missing from the record.
 - a. A Record of Decision of any matter shall be prepared which sets forth the facts and law upon which the decision is made.
 - b. The date of the decision shall be the date that it is rendered.
 - c. The decision generally should be made within 10 days of the meeting.
 - d. Notification of the decision shall be sent to all parties to the appeal as provided by the Salt Lake City Code. If parties agree, notification of the decision may be sent via email as per procedures (3.c Contact Information). Within 24 hours of the decision, the City will post the decision to the City's webpage.
3. **Stay of Decisions.** The Mayor may stay the issuance of any permits or approvals of development activity that was the subject of the appeal only if the Mayor determines there is a compelling, countervailing public interest in doing so. Upon such finding, the Mayor may stay the matter during the period in which the decision may be appealed to the district court, and, if a petition for review is filed with the District Court, during pendency of the matter before the court.

I. Reconsideration of Decisions.

1. **Not Required.** The Mayor is not required to reconsider a matter.
2. **Request for Reconsideration.** The person seeking reconsideration must submit to the Mayor evidence which supports claims that the decision warrants reconsideration.
 - a. The Planning Director or the Director's designee shall be notified of and may comment on a request for reconsideration.
 - b. A request for reconsideration can be made based on proof of a substantial change in the law, facts, evidence, or conditions relating to the decision.
 - c. A request for reconsideration does not alter appeal deadlines to the Third District Court. After receiving the evidence, the Mayor shall determine whether or not there appears to have been a substantial change in the law, facts, evidence, or conditions relating to the application which would warrant reconsideration.
 - d. If the Mayor finds that there may have been such a change, it shall thereupon treat the request as a new application. Consideration of the matter shall then be conducted as provided in these rules for new applications.
3. **Reconsideration by the Mayor as Appeals Hearing Officer.** The Mayor may also reconsider any decision within 10 days of making the decision where the Mayor believes she / he may have made an error.

J. Suspension or Alteration of Rules

1. **Approval Required.** No standing rules, policies, or procedures of the Mayor as the Appeals Hearing Officer shall be altered, amended, suspended, or rescinded without the approval of the Planning Director.
2. **Notice Required.** Any proposed change in the standing rules, policies, or procedures shall be posted on the Appeals Hearing Officer website. Notice of any proposed changes shall also be provided to those who have requested notice of changes in the website, the Planning Director, the Mayor, and the Council Chair.

K. Staff.

1. **Secretary:** For matters relating to appeals of Historic Landmark Commission decisions, a member of the Planning Division Staff shall serve as Secretary to the Mayor as the Appeals Hearing Officer. The secretary's duties are:
 - a. To provide notice to the parties and others who are to be notified about any issue, in accordance with legal noticing requirements provided for in relevant sections of the Salt Lake City Code.

- b. To attend meetings held by the Appeals Hearing Officer and to receive and bring to the attention of the Mayor all messages and other communications related to an issue that are not otherwise provided at the hearing.
- c. To make an audio recording of and also prepare a written summary of the proceedings of the appeals meeting.
- d. To keep and maintain a permanent record file of all documents, recordings and papers pertaining to each issue considered by the Mayor as the Appeals Hearing Officer.
- e. To ensure that the Mayor receives materials pertinent to any issue considered.
- f. To perform such other duties as may be required.

L. Recording of Policies and Procedures

1. **Permanent Record.** These policies and procedures and all subsequent amendments shall be recorded by the Planning Division in the permanent records of the Appeals Hearing Officer and the current policies and procedures shall be posted on the City's website.