

SALT LAKE CITY APPEALS HEARING OFFICER POLICIES AND PROCEDURES

A. General Provisions

- 1. Hearing Officer:** One or more individuals shall be appointed to act as an Appeals Hearing Officer for Land Use Appeals as provided in Section 21A.06.040 of the Salt Lake City Code and shall act as the Land Use Appeal Authority required by Utah Code Section 10-9a-701. Such Appeals Hearing Officer(s) shall also act as the hearing officer as provided in Salt Lake City Code Section 18.98.090 and Utah Code Section 11-36a-703 for impact fee appeals. Only one hearing officer shall hear and decide any one appeal or petition.
- 2. Legislative Matters.** The Appeals Hearing Officer shall not hear any appeal of a legislative decision or any other decision made by the City Council.
- 3. Duty to Exhaust.** Each adversely affected person who wishes to challenge a local administrative land use decision or impact fee shall, before going to court, timely and specifically challenge the local land use decision in accordance with the provisions of the Salt Lake City Code.
- 4. Other Law Controls.** Where these policies and procedures conflict with existing statutes or ordinances, the statute or ordinance shall take precedence.
- 5. Compensation.** The Appeals Hearing Officer shall be paid per agreement with the City.

B. Conflicts of Interest & Exparte Communication

- 1. Conflicts of Interest.** The Appeals Hearing Officer shall not participate in any appeal or other matter in which the Appeals Hearing Officer has a conflict of interest prohibited by 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. When an Appeals Hearing Officer reasonably 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 recuse her or himself from hearing the matter. When a conflict of interest arises, another appointed Appeals Hearing Officer will be selected to hear such matter.
- 2. Exparte Communication.** The Appeals Hearing Officer shall not discuss or exchange any communication regarding the merits of the appeal outside of a public 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 Appeals Hearing Officer, the Planning Division staff will notify the Appeals Hearing Officer of the matter prior to scheduling the matter for a public meeting.

- 2. Scheduling matters for the Appeals Hearing Officer meeting.** Planning Division staff will work with the appellant, applicant (in the case where someone other than the original applicant is appealing the matter) and the Appeals Hearing Officer, to find a date that works for all involved in the matter. Typically the Appeals Hearing Officer meeting will be held on the third Thursday of the month. However, if all parties are able to meet at a time during the regular work week that works better for all involved and still affords the time for proper noticing of the meeting, other dates can be arranged in order to ensure a timely meeting.

Once the matter is scheduled, the meeting can be postponed by the Appeals Hearing Officer if an appellant or their representative or applicant 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 Appeals Hearing Officer. However, the meeting time should not be delayed more than once, especially if the matter is being appealed by someone other than the applicant or 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. Except in case of emergency, requests to postpone a matter must be submitted no later than 7 days in advance of the scheduled meeting.

- 3. Provision of Contact Information:** Absent a showing that such a requirement is prejudicial to any party, the applicant or person bringing an appeal, 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 hearing on the matter.

- b. Any such emailed messages are public documents and subject to the Government Records Access Management Act (GRAMA).

- 4. **Notification of Public Meetings:** Notice 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 zoning ordinance and Utah State statute. Where the meeting is a public hearing, notices should be sent as per Chapter 21A.10 of the Salt Lake City zoning ordinance (*General Application and Public Hearing Procedures*). For appeals of impact fees, noticing shall be consistent with Section 18.98.090 of the Salt Lake City Code.
 - a. **Notice of Appeals Hearing Officer Meetings:** Copies of decisions and/or staff reports shall be posted on the City’s website by Planning Division staff assigned to the meeting and thus made available to members of the public.

- 5. **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 and how the decision fits within the guidelines of the ordinance.
 - b. Staff reports should 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 Appeals Hearing Officer, appellant or applicant or any other interested party at least six 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 six calendar days before the public meeting. Any notice provided of meetings by the Appeals Hearing Officer shall include a statement that the staff report for each matter to be heard is available online, along with the web address where the staff reports are posted.

- 6. **Submission of Written Materials:**
 - a. **Commission Decisions:** Appeals of commission decisions are considered “on the record” reviews and no new information may be presented that was not made available to the commission prior to the commission’s decision. Written materials submitted regarding an appeal of a commission decision may only be submitted by the appellant, applicant (if different than the appellant), or the city. Any such submissions by the appellant or applicant (if different than the appellant) must be

submitted to the Planning Division no later than fourteen calendar days prior to a meeting in order for the materials to be analyzed and incorporated into the staff report. Except for proposed findings of fact and conclusions of law, no submissions may be made after this time unless requested by the Appeals Hearing Officer.

- b. Administrative Land Use Decisions/Impact Fee Appeals/Variances:** Any written materials submitted by the public or interested parties for the Appeals Hearing Officer's review must be submitted to the Planning Division fourteen days prior to the scheduled hearing in order to allow time to incorporate the material into the published staff report. Except for proposed findings of fact and conclusions of law, no submissions may be made after this time unless requested by the Appeals Hearing Officer.
- c. General guidelines:**
 - i.** Written materials submitted should be concise.
 - ii.** No later than two business days after a matter is heard, unless otherwise directed by the Appeals Hearing Officer, any party to a matter, including the Planning Division, may submit proposed findings of fact and conclusions of law for adoption by the Appeals Hearing Officer.

D. Meetings by the Appeals Hearing Officer.

- 1. Place:** All meetings of the Appeals Hearing Officer shall be held virtually only. A link to the meeting shall be included in the agenda for each Appeals Hearing Officer meeting posted on the Planning Division website. A meeting may be adjourned and rescheduled by the Appeals Hearing Officer in order to afford due process to the interested parties.
- 2. Field Trips:** On those occasions when site inspections are deemed advisable, field trips may be conducted by 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 Appeals Hearing Officer shall act in a quasi-judicial manner and ensure that those appearing before them are afforded due process, which includes the following:
 - a. The right to notice 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.
 - c. The right to review and comment upon any evidence that may be the basis for a decision as provided in Section 21A.16.
 - d. The right to a fair and an unbiased decision-maker.

- 2. Who May Appear.**
 - a. Where the matter is identified as a public hearing, the public may appear before the Appeals Hearing Officer and make comments related to the matter.
 - b. Where the matter is an appeal of a decision by the Historic Landmark Commission or Planning Commission, the Appeals Hearing Officer shall allow only the appellant, applicant, where the appellant is not the applicant, Planning Division staff, and representatives of the foregoing to make comment related to the matter. The public may attend the meeting but cannot comment on the matter.
 - c. Where the matter is an appeal of an impact fee, the Appeals Hearing Officer shall conduct the meeting as per Salt Lake City Code Section 18.98.090, Challenges and Appeals.

- 3. Order of Consideration of Items:** The following procedure will normally be observed; however, it may be rearranged by the Appeals Hearing Officer for individual items if necessary for the expeditious conduct of business and in the interest of fairness:
 - a. Appeals of Historic Landmark Commission or Planning Commission Decision:
 - 1) Item introduction by Appeals Hearing Officer.
 - 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.

 - b. Appeals of Administrative Decisions or applications for Variances

- 1) Because Appeals of Administrative Decisions or Variances are public hearings, they shall not be heard before 5:00 p.m.
- 2) Item introduction by Appeals Hearing Officer.
- 3) Presentation and recommendation by the person bringing the appeal or application for a variance.
- 4) Presentation and recommendation by the Planning Staff and / or City Attorney.
- 5) Comments and argument by others. Where the matter is identified in the zoning ordinance as a public hearing others may make comments. There shall be a two minute maximum per individual's presentation/ comments, unless the Appeals Hearing Officer authorizes additional time.
- 6) When a public hearing is held, the person bringing the appeal and the Planning Staff should be given opportunity to respond to comments made by any other person.
 - a. The Appeals Hearing Officer has the authority to allow additional time to ensure enough time to sufficiently understand the matter at hand.

F. Standard of Review

1. **Record Review.** Where the Appeals Hearing Officer hears a matter brought on appeal from the Planning Commission or the Historic Landmark Commission, the appeal shall be based on the record of the decision provided by the Planning Commission or Historic Landmark Commission as per Chapter 21A.16 of the Salt Lake City Zoning Ordinance.
 - a. The person appealing a decision of the Planning Commission or the Historic Landmark Commission shall have the burden to prove that the decision was erroneous.
 - b. The Appeals Hearing Officer shall review the decision appealed on a standard of correctness, and shall presume that the decision was correct.
 - c. The Appeals Hearing Officer 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 Appeals Hearing Officer 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 Appeals Hearing Officer 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.

2. **De Novo Review.** Where the Appeals Hearing Officer hears a matter brought on appeal from a decision by the Planning Division staff or any other administrative matter not previously decided by the Planning Commission or Historic Landmark Commission, or hears a variance request, the matter shall be heard *de novo*, which means that the item shall be newly considered and shall not be decided based on the facts or law previously reviewed.
 - a. The person bringing the appeal or variance request and others providing evidence and comment on matters heard *de novo* should not presume that any information available to any person who reviewed the matter previously is before the Appeals Hearing Officer and shall have a duty to provide to the Appeals Hearing Officer any information that is to be considered by the Appeals Hearing Officer.
 - b. A public hearing will be conducted.
3. **Subject Matter Specific Standards.** Appeals procedures and standards of review set forth in Chapter 21A.16 (or as to impact fee appeals Section 18.98.090) shall supersede and apply to matters before the Appeals Hearing Officer specific to variances, nonconforming/noncomplying structures, appeals of planning commission decisions concerning subdivision amendments, or any other matter involving the administrative application, administration, or enforcement of the Salt Lake City zoning code.

G. Procedure: Decision

1. **Completion of Evidence and Comments.** After hearing the presentations and comments of those appearing before the Appeals Hearing Officer, the Appeals Hearing Officer 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 Appeals Hearing Officer may also remand the matter back to the original decisionmaker, Planning Commission or Historic Landmark Commission, with specific instructions to address any portion of the matter that may be missing from the record. On Variances, the Appeals Hearing Officer is the decision making authority.
 - 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 Appeals Hearing Officer may stay the issuance of any permits or approvals of development activity that was the subject of the appeal only if the Appeals Hearing Officer determines there is a compelling, countervailing public interest in doing so. Upon such finding, the Appeals Hearing Officer 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 Appeals Hearing Officer is not required to reconsider a matter.
2. **Request for Reconsideration:** The person seeking reconsideration must submit to the Appeals Hearing Officer evidence which supports claims that the decision warrants reconsideration.
 - a. All parties 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 district court.
 - d. The Appeals Hearing Officer may consider a request for reconsideration on written submissions only or hold another meeting to consider the request. If another meeting is scheduled, the notification procedures required by Part C shall be complied with. After receiving all comments regarding the reconsideration request, the Appeals Hearing Officer 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. If the Appeals Hearing Officer determines that reconsideration is appropriate, then he/she shall render a revised decision accordingly.
3. **Reconsideration by the Appeals Hearing Officer.** Without receiving a request, the Appeals Hearing Officer may also voluntarily reconsider any decision within 10 days of making the decision where the Appeals Hearing Officer believes the decision may have been made in error. Any appeal deadline shall commence on the date any new decision is issued pursuant to this provision.


J. Suspension or Alteration of Rules

- 1. **Approval Required.** No standing rules, policies, or procedures of 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 City Council Chair.

L. Records

- 1. **Record of Proceedings.** The Planning Division shall make an audio recording of and also prepare a written summary of the proceedings of the Appeals Hearing Officer. For each matter before an Appeals Hearing Officer the Planning Division shall keep and maintain a permanent record file of all associated documents, recordings and papers considered by the Appeals Hearing Officer and decisions issued thereby.
- 2. **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.

Approved by:


Michaela Oktay (Jun 26, 2024 13:38 MDT)

Michaela Oktay, Deputy Planning Director

06/26/2024

Date



Blake Thomas, Community & Neighborhoods Director

06/26/2024

Date









Appeals Hearing Officer Policies & Procedures

Final Audit Report

2024-06-26

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