

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 a 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 State Statute (10-91-701). The same individual(s) shall also serve as a hearing officer for impact fee appeals per Chapter 11-36a of the Utah Code. 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. **Appeals Hearing Officer:** The person or persons appointed as Appeals Hearing Officer shall act as the Land Use Appeals Hearing Officer as described in Utah Code Ann. 10-9a-701 for the matters and issues described in the appropriate sections of the Salt Lake City Code which assign duties to the Land Use Appeals Hearing Officer. The Appeals Hearing Officer shall also act as the hearing officer for impact fee appeals per Chapter 11-36a of the Utah Code.
4. **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.
5. **Other Law Controls.** Where these policies and procedures conflict with existing or future statutes or ordinances, the statute or ordinance shall control.
Compensation. The Appeals Hearing Officer shall be paid per contract agreement with the City

B. Conflicts of Interest

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 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 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. The 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 First Wednesday of the month or the third Wednesday of the month when the first does not work for the parties involved. 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.

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. The Appeals Hearing Officer, 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 or application for a variance 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 a variance or 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
- 4. 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. Where the meeting is a public hearing for a Land Use Matter, notices should be sent as per Chapter 21A.10, Salt Lake City Code (*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 the Secretary 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 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 Appeals Hearing Officer, appellant or petitioner 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 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.
- 6. Submission of Written Materials:** Any written materials submitted by the public or interested parties for the Appeals Hearing Officer's review of a Land Use matter which is also a public hearing, should be submitted to the Planning Division Office one week prior to a scheduled hearing, allowing time to attach the material to the staff report. In order for written materials to be included and analyzed in the staff report, it should be submitted two weeks prior to the scheduled hearing.
- a. Materials submitted after that but prior to the meeting date will be emailed to the Appeals Hearing Officer. Materials submitted on the day of the hearing will be provided to the Appeals Hearing Officer at the scheduled hearing.
 - b. Written materials submitted should be concise.
 - c. Any party to a matter, including the Planning Staff, may submit proposed findings of fact and conclusions of law for adoption by the Appeals Hearing Officer.
 - d. Written materials from the appellant or petitioner should be submitted to the project staff at least fourteen calendar days prior to a meeting to give time for staff to analyze the material prior to finalizing the staff report. If materials are submitted after this date, the item may be postponed to give other parties and the Appeals Hearing Officer time to analyze the information. If the matter is delayed by the Appeals Hearing Officer, written materials should be submitted fourteen days prior to the rescheduled meeting date.
 - e. All materials submitted by the Planning Staff or any individual who has standing to appear before the Appeals Hearing Officer shall be provided, as soon as it is practical to do so, to the other parties to the matter. Posting materials on the City's website along with email notice to the parties to the matter shall be considered as adequate.

D. Meetings by the Appeals Hearing Officer.

- 1. **Place:** All meetings of 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 Appeals Hearing Officer may designate.

- a. A meeting having been convened at the place designated, may be adjourned by the Appeals Hearing Officer 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 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 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 it 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 and 21A.18, variances.
 - c. The right to review and comment upon any evidence that may be the basis for a decision as provided in Section 21A.16 relating to appeals of administrative decisions and 21A.18, variances.
 - d. The right to a fair and an unbiased decision-maker.
 - e. There shall be no ex parte contact between Hearing Officer acting as the Appeals Hearing Officer and any party, including the City Staff, on the merits of a pending decision.
2. **Who May Appear.**
 - a. Where the matter is identified in the Zoning Ordinance as a public hearing, and the matter is not an appeal of a Planning Commission or Historic Landmark Commission decision, the public may appear before the Appeals Hearing Officer and make comment 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 original applicant, Planning Division Staff, City Attorney representative and other persons responding to the appeal to make comment related to 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 (2) minute maximum per individual's presentation/ comments, unless the 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 Code.
 - 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 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. **Variances.** When hearing a request for a variance from the provisions of the land use ordinance under Chapter 21A.18 of the Salt Lake City Code, the provisions of that Chapter shall apply.

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 authority 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 hearing officer determines there is a compelling, countervailing public interest in doing so. Upon such finding, the 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.

H. Modifications of Applications for Variances and DeNovo appeals

1. **By the Applicant.** An application before the Appeals Hearing Officer may be modified by a written request from the applicant to the Appeals Hearing Officer.
 - a. Such a request shall include a description of the proposed change and shall be accompanied by evidence such as affidavits, drawings etc. where applicable.
 - b. Copies of such a request shall also be provided to other parties to the issue, who shall be allowed a reasonable opportunity to comment on the request.
 - c. If the Appeals Hearing Officer finds that the modification to the application and any comments from other parties relating to the modification constitutes a substantial change, the Appeals Hearing Officer may consider the application to be a new application. In so doing, the Appeals Hearing Officer may request a new staff report and new meeting date be set to consider the matter.
2. **During Review.** The issues in an application may also be revised and adjusted during the process of review and consideration as deemed appropriate by the Appeals Hearing Officer.

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. 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 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.
 - d. If the Appeals Hearing Officer 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 Appeals Hearing Officer.** The Appeals Hearing Officer may also reconsider any decision within 10 days of making the decision where the Appeals Hearing Officer believes it may have made an error.

J. Suspension or Alteration of Rules

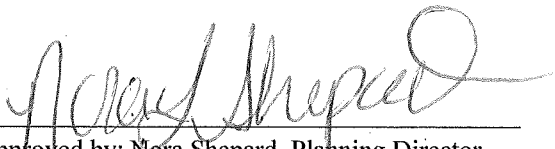
1. **Approval Required.** No standing rules, policies, or procedures of the Appeals Hearing Officer shall be altered, amended, suspended, or rescinded without the approval of the Planning Director.
2. **Notice Required.** Any proposed change in the standing rules, policies, or procedures shall be posted 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 Council Chair.

K. Staff.

1. **Secretary:** For matters relating to appeals of administrative land use decisions, appeals of Historic Landmark Commission or Planning Commission decisions or variance requests, a member of the Planning Division Staff shall serve as Secretary to the Appeals Hearing Officer. For appeals of Impact Fee matters, a member of the Community and Economic Development Department Staff shall serve as Secretary to the Appeals Hearing Office. 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 Appeals Hearing Officer 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 Hearing Officer.
 - d. To keep and maintain a permanent record file of all documents, recordings and papers pertaining to each issue considered by the Appeals Hearing Officer.
 - e. To ensure that the Appeals Hearing Officer 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.


Approved by: Nora Shepard, Planning Director

3/23/2016
Date Approved