



# Information on Proposed Amendments

Community & Economic Development  
Office of the Director

**To:** Historic Landmark Commission members

**From:** Cheri Coffey<sup>cc</sup>, Assistant Planning Director ([cheri.coffey@slcgov.com](mailto:cheri.coffey@slcgov.com) – 801-535-6188)

**Date:** June 1, 2012

**Re:** Fine Tuning of the Appeals Hearing Officer regulations

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The Planning Division is currently working on a petition to Fine Tune various aspects of the regulations relating to the Appeals Hearing Officer. On February 7, 2012, the City Council adopted Ordinance No 8 of 2012; an ordinance establishing an Appeals Hearing Officer and eliminating the Board of Adjustment and Land Use Appeals Board. However, it was not until the preparations for the first meeting of the Appeals Hearing Officer, held on May 30, 2012, that it was discovered that some requirements were not consistent with other parts of the zoning ordinance. This memorandum is submitted to inform the Historic Landmark Commission of the proposed amendments.

1. Clarifying Noticing Requirements for DeNovo vs On the Record requests. In the adoption of Ordinance No 8 of 2012, relating to the Appeals Hearing Officer, it was the intent that appeals from the Planning Commission or Historic Landmark Commission were appeals on the record and although the meetings would be open to the public, no public hearing would be conducted. This was consistent with the process for the Land Use Appeals Board of which these types of appeals used to be heard. Appeals of Administrative decisions by the Planning Director or the Planning Director's designee and decisions relating to Variances would be DeNovo matters and public hearings would be conducted because in those instances, a public hearing had never been conducted on those requests. This process is similar to what the Board of Adjustment process was.

However, the adopted language for the Appeals Hearing Officer requires noticing of property owners and tenants within 300 feet of the subject property, a posting of the property and a publication of the notice in the newspaper for all matters, which implies that all meetings conducted by the Appeals Hearing Officer are public hearings. This not only conflicts with other sections of the ordinance that are clear that in appeals of Planning Commission and Historic Landmark Commission decisions no public hearing is allowed, it sets up a false expectation to those who were notified.

2. Eliminating the Newspaper Notice Requirement. In addition, the proposed changes include eliminating the newspaper notification requirement. State law only requires newspaper notice for zoning text amendments and master plan adoptions and amendments. In Planning Staff's opinion, newspaper notification is costly and ineffective. Very few people tend to read these types of legal notices. Direct notification and notification through the listserv is much more effective. Therefore, staff does not believe requiring newspaper notification is appropriate for anything other than what State law requires.
3. Ensuring consistency with the proposed Historic Landmark Commission regulation Fine Tuning Petition. The City Council is currently reviewing a petition to Fine Tune the regulations relating to the Historic Preservation regulations. Staff will ensure that the proposed changes to the Appeals Hearing Officer ordinance are not in conflict with the proposed Fine Tuning of the Historic Preservation ordinance.
4. Clarifying that the Planning Commission and Historic Landmark Commission's authority relating to administrative vs. legislative decisions. The Authority and regulations relating to the Appeals Hearing Officer are mainly found in Chapter 21A.16, *Appeals of Administrative Decisions*. The proposed amendments make it clear that the Historic Landmark Commission and Planning Commission make decisions on some administrative matters (vs. making recommendations on legislative matters)

Attached are the proposed zoning text amendment changes.

The Planning Commission is scheduled to hold a public hearing on Wednesday June 27, 2012 and make a formal recommendation to the City Council on this matter.

Thank You

## Proposed Fine Tuning Modifications to the Zoning Ordinance relating to the Appeals Hearing Officer regulations

### **21A.06.040: APPEALS HEARING OFFICER:**

A. Creation: The position of appeals hearing officer is created pursuant to the enabling authority granted by the Municipal Land Use, Development, and Management Act, Section 10-9a-701 of the Utah Code Annotated.

B. Jurisdiction and Authority: The appeals hearing officer shall have the following powers and duties in connection with the implementation of this title:

1. Hear and decide appeals from any administrative decision made by the zoning administrator in the administration or the enforcement of this title pursuant to the procedures and standards set forth in Chapter 21A.16, "Appeals Of Administrative Decisions", of this title, ~~with the exception of administrative reviews of certificates of appropriateness which shall be appealed to the historic landmark commission, as set forth in Subsection 21A.06.050.C.3 of this chapter;~~

2. Authorize variances from the terms of this title pursuant to the procedures and standards set forth in Chapter 21A.18, "Variances", of this title;

3. Hear and decide appeals ~~of any administrative decision from decisions~~ made by the historic landmark commission pursuant to the procedures and standards set forth in ~~Subsection-Section~~ 21A.34.020.F.2.h of this code;

4. Hear and decide appeals from decisions made by the planning commission concerning subdivisions or subdivision amendments pursuant to the procedures and standards set forth in Title 20 of this code; and

5. Hear and decide appeals from ~~administrative~~ decisions made by the planning commission ~~regarding conditional uses, conditional site plan reviews for sexually oriented businesses, or planned developments~~ pursuant to the procedures and standards set forth in Section 21A.54.160 of this code.

C. Qualifications: The appeals hearing officer shall be appointed by the mayor with the advice and consent of the city council. The mayor may appoint more than one (1) appeals hearing officer, but only one hearing officer shall consider and decide upon any matter properly presented for hearing officer review. The appeals hearing officer may serve a maximum of two (2) consecutive full terms of five (5) years each. The appeals hearing officer shall either be law trained or have significant experience with land use laws and the requirements and operations of administrative hearing processes.

**Comment [c1]:** In the proposed HLC Fine Tuning ordinance, the authority that the Planning Director can deny a petition is removed. Therefore, appeals of administrative cases would not occur (staff would forward the information to the HLC to make the decision rather than having staff make a decision that is appealed.)

**Comment [c2]:** Clarifying that administrative decisions made by the Historic Landmark Commission can be appealed to the Appeals Hearing Officer.

**Comment [c3]:** The original language did not include Special Exceptions which the Planning Commission was given authority over in Ordinance 73, 2011. Clarifying that it is administrative (vs legislative) decisions that are appealed will decrease needing to actually list each type of case in this section (the specific chapters are throughout this ordinance anyway. )

D. Conflict of Interest: The appeals hearing officer shall not participate in any appeal in which the hearing officer has a conflict of interest prohibited by Title 2, Chapter 2.44 of this code.

E. Removal of the Hearing Officer: The appeals hearing officer may be removed by the mayor for violation of this title or any policies and procedures adopted by the planning director following receipt by the mayor of a written complaint filed against the appeals hearing officer. If requested by the appeals hearing officer, the mayor shall provide the appeals hearing officer with a public hearing conducted by a hearing officer appointed by the mayor.

**21A.16.010: AUTHORITY:**

As described in Section 21A.06.040 of this title, the appeals hearing officer shall hear and decide appeals alleging an error in any administrative decision made by:

1. The zoning administrator or the administrative hearing officer in the administration or enforcement of this title, as well as decisions of the
2. The Historic Landmark Commission; and
3. The Planning Commission.

**Comment [c4]:** This clarifies what administrative decisions are that the Appeals Hearing Officer can review.

In addition, the appeals hearing officer shall hear and decide applications for variances as per Section 21A.18..

**21A.16.030: PROCEDURE:**

Appeals of administrative decisions by the Zoning Administrator, Administrative Hearing Officer, Historic Landmark Commission or Planning Commission to the appeals hearing officer shall be taken in accordance with the following procedures:

**Comment [c5]:** Clarifies what administrative decisions are that the Appeals Hearing Officer can review.

A. Filing of Appeal: An appeal shall be made in writing within ten (10) days of the administrative decision by the Zoning Administrator, Administrative Hearing Officer, Historic Landmark Commission or Planning Commission and shall be filed with the zoning administrator. The appeal shall specify the decision appealed, the alleged error made in connection with the decision being appealed, and the reasons the appellant claims the decision to be in error, including every theory of relief that can be presented in district court.

B. Fees: Nonrefundable application and hearing fees shown on the Salt Lake City consolidated fee schedule shall accompany the appeal.

C. Stay of Proceedings: An appeal to the appeals hearing officer shall stay all further proceedings concerning the matter about which the appealed order, requirement, decision, determination, or interpretation was made unless the zoning administrator certifies in writing to the appeals hearing officer, after the appeal has been filed, that a stay would, in the zoning administrator's opinion, be against the best interest of the city.

D. Notice ~~and Hearing Required~~:

~~1. Upon receipt of an appeal of an administrative decision by the zoning administrator, the appeals hearing officer shall schedule and hold a public hearing in accordance with the standards and procedures for conduct of the public hearing set forth in Chapter 21A.S.10 of this title, give notice and hold a hearing on the appeal. Notice shall be given as follows:~~

~~1. Providing all of the information necessary for notice of an appeal hearing required under this chapter shall be the responsibility of the appellant and shall be in the form established by the appeals hearing officer pursuant to the standards of this subsection.~~

~~2. Notice by first class mail shall be provided:~~

~~a. A minimum of twelve (12) calendar days in advance of the hearing;~~

~~b. To all owners and tenants of the land subject to the appeal as shown on the Salt Lake City geographic information system records; and~~

~~c. Within three hundred feet (300') from the periphery of the land subject to the appeal, inclusive of streets and rights-of-way.~~

~~d. Mailing labels shall be generated by the city when an appeal is filed using Salt Lake City geographic information system records.~~

~~3. The city shall give email notification, or other form of notification chosen by the appeals hearing officer, a minimum of twelve (12) calendar days in advance of the hearing to any organization entitled to receive notice pursuant to Title 2, Chapter 2.62 of this code.~~

~~4. The notice for any hearing shall generally describe the subject matter of the appeal; the date, time and place of the appeal hearing; and the place where the record of the appeal may be inspected by the public.~~

~~5. The land subject to an appeal hearing shall be posted by the city with a sign giving notice of the hearing, providing the date of the hearing including contact information for more information, at least ten (10) calendar days in advance of the hearing:~~

~~a. One (1) notice shall be posted for each five hundred feet (500') of frontage, or portion thereof, along a public street. At least one (1) sign shall be posted on each public street. Sign(s) shall be located on the land subject to the appeal and shall be set back no more than twenty five feet (25') from the front property line and shall be visible from the street. Where the subject land does not have frontage on a public street, sign(s) shall be erected on the nearest street right-of-way with an attached notation indicating generally the direction and distance to the land subject to the appeal.~~

~~b. If a sign is removed through no fault of the appellant before the appeal hearing, such removal shall not be deemed a failure to comply with the standards of this subsection or be grounds to challenge the validity of any decision made on the appeal.~~

~~6. At least twelve (12) calendar days in advance of the appeal hearing the City shall publish a notice of such hearing in a newspaper of general circulation in Salt Lake City.~~

2. Notice of Appeals of Administrative Decisions of the Historic Landmark Commission or Planning Commission 7. Appeals hearing

**Comment [c6]:** This language is similar to all other language throughout the ordinance in regards to a public hearing including those for public hearings on Variances, and those public hearings conducted by Administrative Hearing Officer, Planning Commission and HLC. The actual noticing requirements should not be included in this chapter because it makes it different from how noticing is dealt with throughout the rest of the Zoning Ordinance and if noticing requirements for hearings change, it is easier to just make changes to the Noticing chapter (Chapter 21A.10)..

**Comment [c7]:** Newspaper notice is only required by state law for text amendments and master plans. This is a costly and inefficient way to give notice. Planning Staff is of the opinion that a newspaper notice not be required for appeals.

~~pertaining to an appeal~~ from a decision of the historic landmark commission or planning commission is based on evidence in the record. Therefore, testimony at the appeal meeting shall be limited to the appellant and the respondent, who may present legal argument based on evidence in the record.

**Comment [c8]:** Not sure if that is adequate language. It may need to be fixed for legalese. Do we want to put in a requirement for noticing the appellant or is that something that just happens in scheduling an application? I'm not sure we need to give them 12 days notice in advance (because in reality they will know way ahead of that time) but putting in a requirement to meet the sunshine law (like 24 hours) seems to be something we would be criticized for not giving enough notice.

E. Standard of Review:

1. The standard of review for an appeal, other than as provided in Subsection 2 of this Subsection E, shall be de novo. The appeals hearing officer shall review the matter appealed anew, based upon applicable procedures and standards for approval, and shall give no deference to the decision below.

2. An appeal from a decision of the historic landmark commission or planning commission shall be based on the record made below.

a. No new evidence shall be heard by the appeals hearing officer unless such evidence was improperly excluded from consideration below.

b. The appeals hearing officer shall review the decision based upon applicable standards and shall determine its correctness.

c. The appeals hearing officer shall uphold the decision unless it is not supported by substantial evidence in the record or it violates a law, statute, or ordinance in effect when the decision was made.

F. Burden of Proof: The appellant has the burden of proving the decision appealed is incorrect.

G. Action by the Appeals Hearing Officer: The appeals hearing officer shall render a written decision on the appeal. Such decision may reverse or affirm, wholly or in part, or may modify the administrative decision. A decision by the appeals hearing officer shall become effective on the date the decision is rendered.

H. Notification of Decision: Notification of the decision of the appeals hearing officer shall be sent by mail to all parties to the appeal within ten (10) days of the appeals hearing officer's decision.

I. Record of Proceedings: The proceedings of each appeal hearing shall be recorded on audio equipment. The audio recording of each appeal hearing shall be kept for a minimum of sixty (60) days. Upon the written request of any interested person, such audio recording shall be kept for a reasonable period of time beyond the sixty (60) day period, as determined by the appeals hearing officer. Copies of the tapes of such hearings may be provided, if requested, at the expense of the requesting party. The appeals hearing officer may have the appeal proceedings contemporaneously transcribed by a court reporter.

J. Appeals: Any person adversely affected by a final decision made by the appeals hearing officer may file a petition for review of the decision with the district court within thirty (30) days after the decision is rendered.

K. Policies and Procedures: The planning director shall adopt policies and procedures, consistent with the provisions of this Subsection E, for processing appeals, the conduct of an appeal hearing, and for any other purpose considered necessary to properly consider an appeal.

section. Applications for a certificate of appropriateness for demolition shall also submit a reuse plan for the property.

d. Notice: Applications for a certificate of appropriateness shall require notice pursuant to chapter 21A.10. of this title.

**21A.54.070: SEQUENCE OF APPROVAL OF APPLICATIONS FOR BOTH A CONDITIONAL USE AND A VARIANCE:**

Whenever the applicant indicates pursuant to Subsection 21A.54.060.A.9 of this chapter that a variance will be necessary in connection with the proposed conditional use ~~(other than a planned development)~~, the applicant shall at the time of filing the application for a conditional use, file an application for a variance with the appeals hearing officer.

A. Combined Review: Upon the filing of a combined application for a conditional use and a variance, at the initiation of the planning commission or the appeals hearing officer, the commission and the officer may hold a joint session to consider the conditional use and the variance applications simultaneously.

B. Actions by Planning Commission and Appeals Hearing Officer: Regardless of whether the planning commission and appeals hearing officer conduct their respective reviews in a combined session or separately, the appeals hearing officer shall not take any action on the application for a variance until the planning commission shall first act to recommend approval or disapproval of the application for the conditional use.

**Comment [c9]:** Since planned developments are not a form of conditional use and therefore, not in chapter 54 anymore (they are in 55) this phrase should be deleted.

# Appeals Hearing Officer Noticing Requirements

Type of Application	Type of Review	Who Allowed to Speak at Hearing	Noticing Requirement
Variances	DeNovo review (New information reviewed)	All who wish including applicant and public	<ul style="list-style-type: none"> <li>• 12 day mailed notice prior to hearing to Property owners and Tennants within 300 Feet of subject property</li> <li>• Post subject property 10 days prior to meeting</li> <li>• Send to listserve including community council chairs 12 days prior to hearing</li> <li>• Meeting information posted on Planning Division website</li> </ul>
Appeals of Administrative Determinations/ Interpretations	DeNovo review (New information reviewed)	All who wish including applicant and public	<ul style="list-style-type: none"> <li>• 12 day mailed notice prior to hearing to Property owners and Tennants within 300 Feet of subject property</li> <li>• Post subject property 10 days prior to meeting</li> <li>• Send to listserve including community council chairs 12 days prior to hearing</li> <li>• Meeting information posted on Planning Division website</li> </ul>
Appeal of Planning Commission Decision	On the Record	Appeallant and Applicable City Staff including City Attorney representing Commission	<ul style="list-style-type: none"> <li>• Notice given to appellant and applicant if different than appellant hearing.</li> <li>• Send to listserve including community council chairs 12 days prior to hearing.</li> <li>• Meeting information posted on Planning Division website</li> </ul>
Appeal of Historic Landmark Commission Decision	On the Record	Appeallant and Applicable City Staff including City Attorney representing Commission	<ul style="list-style-type: none"> <li>• Notice given to appellant and applicant if different than appellant hearing.</li> <li>• Send to listserve including community council chairs 12 days prior to hearing.</li> <li>• Meeting information posted on Planning Division website</li> </ul>