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Chapter 21A.16
APPEALS OF ADMINISTRATIVE DECISIONS

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21A.16.010: Authority

21A.16.020: Parties Entitled ~~To~~ to Appeal

21A.16.030: Procedure

21A.16.040: Appeal ~~Of~~ of Decision

21A.16.050: Stay ~~Of~~ of Decision

21A.16.010: AUTHORITY:

A. Title 21A Appeals, Applications and Determinations: As described in section 21A.06.040 of this title, the ~~A~~appeals ~~H~~hearing ~~O~~fficer shall hear and decide or make determinations regarding:

1. Appeals alleging an error in any administrative decision made by the ~~z~~Zoning ~~a~~Administrator, ~~or the Administrative Hearing Officer in the administration or enforcement of this title, as well as administrative decisions of the P~~planning ~~C~~commission or the historic landmark commission involving the application, administration, enforcement or compliance with Title 21A of this code;
2. 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;
3. Applications for variances as per chapter 21A.18 of this title,
4. The existence, expansion or modification of nonconforming uses and noncomplying structures pursuant to the procedures and standards set forth in chapter 21A.38, “Nonconforming Uses and Noncomplying Structures”, of this title, and
5. Any other matter involving application, administration or enforcement of this code where specifically authorized by a provision of this code.

B. State and Federal Law: The ~~a~~Appeals ~~h~~Hearing ~~o~~fficer ~~may~~ shall not hear and decide or make determinations regarding any of the following:

1. Appeals alleging an error in ~~the application, administrative decisions made by the Historic Landmark Commission pursuant to section 21A.16.020 of this chapter.~~ administration, enforcement or compliance with a provision of state or federal law, including but not limited to provisions of state and federal statutes, state and federal constitutions and state and federal common law;

45 2. Appeals alleging a violation of state law or federal law, including but not limited to
46 provisions of state and federal statutes, state and federal constitutions and state and
47 federal common law;

48
49 3. Appeals requesting legal or equitable remedies available under state or federal law.

50
51 An appeal seeking the determinations identified in this subsection must be made directly to
52 the district court, as provided for in Utah code section 10-9a-701(4)(e) or its successor.

53
54 C. Requirement to Disclose: An appeal that alleges one or more claims that the hearing officer
55 has authority to hear and decide must include every theory of relief that can be presented in
56 district court, including theories the hearing officer does not have authority to hear and
57 decide.

58
59 D. Mixed Appeals: When an appeal alleges one or more claims that the hearing officer has
60 authority to hear and decide and one or more claims that the hearing officer does not have
61 authority to hear and decide, the appeals hearing officer shall hear and decide only the claims
62 the hearing officer has the authority to hear and decide. The claims the hearing officer does
63 not have authority to hear and decide may be brought in district court on conclusion and
64 exhaustion of all remedies available for the claims the hearing officer has authority to hear
65 and decide.

66 ~~In addition, the Appeals Hearing Officer shall hear and decide applications for variances as per~~
67 ~~chapter 21A.18 of this title and shall make determinations regarding the existence, expansion or~~
68 ~~modification of nonconforming uses and noncomplying structures pursuant to the procedures and~~
69 ~~standards set forth in chapter 21A.38, "Nonconforming Uses And Noncomplying Structures", of~~
70 ~~this title.~~

71 ~~As described in section 21A.06.080 of this title, the Historic Preservation Appeal Authority may~~
72 ~~hear and decide appeals alleging an error in administrative decisions of the Historic Landmark~~
73 ~~Commission pursuant to section 21A.16.020 of this chapter.~~

74
75 **21A.16.020: PARTIES ENTITLED TO APPEAL:**

76
77 ~~An applicant, a board or officer of the municipality, or any other person or entity~~
78 ~~adversely affected party, as that term is defined by Utah code section 10-9a-103 or its successor, by a~~
79 ~~decision administering or interpreting this title may appeal to the Appeals Hearing Officer.~~
80 ~~For decisions made by the Historic Landmark Commission, the applicant may appeal to either~~
81 ~~the Historic Preservation Appeal Authority or the Appeals Hearing Officer.~~

82
83 **21A.16.030: PROCEDURE:**

84
85 Appeals of administrative decisions by the ~~z~~Zoning ~~a~~Administrator, ~~h~~Historic ~~I~~Landmark
86 ~~c~~Commission or ~~p~~Planning ~~c~~Commission shall be taken in accordance with the following
87 procedures:
88

89 A. Form: The appeal shall be filed using an application form provided by the zoning
90 administrator. To be considered complete, the application must include all information

91 required on the application, including but not limited to identification of the decision
92 appealed, the alleged error made in connection with the decision being appealed, and the
93 reasons the appellant claims the decision to be in error. Incomplete applications will not be
94 accepted.

95
96 B. Filing: The application must be submitted as indicated on the form by the applicable
97 deadline, together with all applicable fees.

98
99 AC. Time for Filing Of an Appeal: The deadlines for filing a complete application for appeal
100 are: All appeals shall specify the decision appealed, the alleged error made in connection with
101 the decision being appealed, and the reasons the appellant claims the decision to be in error,
102 including every theory of relief that can be presented in District Court. The deadlines for
103 filing an appeal are as indicated below:

- 104
105 1. Administrative decisions made by the zZoning aAdministrator: tTen (10) days;
106
107 2. Planning cCommission decisions: tTen (10) days;
108
109 3. Historic lLandmark cCommission: tThirty (30) days for appeals filed by the applicant,
110 ten (10) days for appeals filed by any other party entitled to appeal.

111
112 BD. Fees: The application shall be accompanied by the applicable following fees:

- 113
114 1. The applicable fees shown on the Salt Lake City consolidated fee schedule; and
115
116 2. The applicant shall also be responsible for payment of allThe fees established for
117 providing the public notice required by chapter~~chapter~~ 21A.10 of this title.

118
119 All fees are due at the time of filing the appeal. An appeal will not be considered complete
120 until all applicable fees are paid.

121
122 CE. No Automatic Stay: Filing an appeal with a hearing officer does not stay the decision
123 appealed, unless a provision of this code specifically states otherwise. Stay Of Proceedings:
124 An appeal to the Appeals Hearing Officer or Historic Preservation Appeal Authority shall
125 stay all further proceedings concerning the matter about which the appealed order,
126 requirement, decision, determination, or interpretation was made unless the Zoning
127 Administrator certifies in writing to the Appeals Hearing Officer or Historic Preservation
128 Appeal Authority, after the appeal has been filed, that a stay would, in the Zoning
129 Administrator's opinion, be against the best interest of the City.

130
131 F. Requesting a Stay: The hearing officer may grant a request filed by the Appellant,
132 Respondent, or any other party to the appeal, to stay a decision of the zoning administrator,
133 planning commission or historic landmark commission for a specified period of time or until
134 the appeals hearing officer issues a decision, if the requesting party can show a stay is
135 necessary to prevent substantial harm to the requesting party. No request is required, if a

136 provision of this code imposes an automatic stay on the filing of an appeal with a hearing
137 officer.

138
139 ~~D~~G. Notice Required:

- 140
141 1. Public Hearing: Upon receipt of an appeal of an administrative decision by the ~~z~~Zoning
142 ~~a~~A Administrator, the ~~a~~A Appeals ~~h~~Hearing ~~o~~O Officer shall schedule and hold a public hearing
143 in accordance with the standards and procedures for conduct of the public hearing set
144 forth in chapter 21A.10 of this title.
145
146 2. Public Meeting: Appeals from a decision of the ~~h~~H Historic ~~I~~Landmark ~~c~~C Commission or
147 ~~p~~P Planning ~~c~~C Commission are based on evidence in the record. Therefore, testimony at the
148 appeal meeting shall be limited to the appellant and the respondent.
149
150 a. Upon receipt of an appeal of a decision by the ~~h~~H Historic ~~I~~Landmark ~~c~~C Commission or
151 ~~p~~P Planning ~~c~~C Commission, the ~~a~~A Appeals ~~h~~Hearing ~~o~~O Officer ~~or Historic Preservation~~
152 ~~Appeal Authority~~ shall schedule a public meeting to hear arguments by the appellant
153 and respondent. Notification of the date, time and place of the meeting shall be given
154 to the appellant and respondent a minimum of twelve (12) calendar days in advance
155 of the meeting.
156
157 b. The ~~c~~C City shall give e-mail notification, or other form of notification chosen by the
158 ~~a~~A Appeals ~~h~~Hearing ~~o~~O Officer ~~or Historic Preservation Appeal Authority~~, a minimum
159 of twelve (12) calendar days in advance of the hearing to any organization entitled to
160 receive notice pursuant to ~~title~~ Title 2, ~~chapter~~ chapter 2.60 of this ~~c~~C Code.

161
162 ~~3~~H. Time Limitation: All appeals shall be heard within one hundred eighty (180) days of the
163 filing of the appeal. Appeals not heard within this time frame will be considered void and
164 withdrawn by the appellant.
165

166 ~~E~~I. Standard ~~o~~Of Review:

- 167
168 1. The standard of review for an appeal, other than as provided in subsection ~~E2-I2~~ of this
169 section, shall be de novo. The ~~a~~A Appeals ~~h~~Hearing ~~o~~O Officer ~~or Historic Preservation Appeal~~
170 ~~Authority~~ shall review the matter appealed anew, based upon applicable procedures and
171 standards for approval, and shall give no deference to the decision below.
172
173 2. An appeal from a decision of the ~~h~~H Historic ~~I~~Landmark ~~c~~C Commission or ~~p~~P Planning
174 ~~c~~C Commission shall be based on the record made below.
175
176 a. No new evidence shall be heard by the ~~a~~A Appeals ~~h~~Hearing ~~o~~O Officer ~~or Historic~~
177 ~~Preservation Appeal Authority~~ unless such evidence was improperly excluded from
178 consideration below.
179

180 b. The ~~a~~Appeals ~~h~~Hearing ~~o~~Officer ~~or Historic Preservation Appeal Authority~~ shall
181 review the decision based upon applicable standards and shall determine its
182 correctness.

183
184 c. The ~~a~~Appeals ~~h~~Hearing ~~o~~Officer ~~or Historic Preservation Appeal Authority~~ shall
185 uphold the decision unless it is not supported by substantial evidence in the record or
186 it violates a law, statute, or ordinance in effect when the decision was made.
187

188 **FJ.** Burden ~~O~~of Proof: The appellant has the burden of proving the decision appealed is
189 incorrect.

191 **GK.** Action ~~b~~By ~~t~~The Appeals Hearing Officer ~~Or Historic Preservation Appeal Authority~~:
192 The ~~a~~Appeals ~~h~~Hearing ~~o~~Officer ~~or Historic Preservation Appeal Authority~~ shall render a
193 written decision on the appeal. Such decision may reverse or affirm, wholly or in part, or
194 may modify the administrative decision. A decision shall become effective on the date the
195 decision is rendered.

197 **HL.** Notification ~~o~~Of Decision: Notification of the decision of the ~~a~~Appeals ~~h~~Hearing
198 ~~o~~Officer ~~or Historic Preservation Appeal Authority~~ shall be sent to all parties to the appeal
199 within ten (10) days of the decision.
200

201 **IM.** Record ~~o~~Of Proceedings: The proceedings of each appeal hearing shall be recorded, ~~on~~
202 ~~audio equipment. The audio R~~recordings ~~of each appeal hearing shall be retained kept by the~~
203 ~~planning division for a period that is consistent with city retention policies and any applicable~~
204 ~~retention requirement set forth in state law. minimum of sixty (60) days. Upon the written~~
205 ~~request of any interested person, such audio recording shall be kept for a reasonable period of~~
206 ~~time beyond the sixty (60) day period, as determined by the Appeals Hearing Officer or~~
207 ~~Historic Preservation Appeal Authority. Copies of the tapes of such hearings may be~~
208 ~~provided, if requested, at the expense of the requesting party. The Appeals Hearing Officer~~
209 ~~and Historic Preservation Appeal Authority may have the appeal proceedings~~
210 ~~contemporaneously transcribed by a court reporter.~~

211
212 **JN.** Policies ~~a~~And Procedures: The ~~P~~planning ~~D~~irector shall adopt policies and procedures,
213 consistent with the provisions of this section, for processing appeals, the conduct of an appeal
214 hearing, and for any other purpose considered necessary to properly consider an appeal.
215

216 **KO.** Matters Delayed: For all matters delayed by the ~~A~~appeals ~~H~~hearing ~~O~~fficer ~~and~~
217 ~~Historic Preservation Appeal Authority~~, any subsequent written materials shall be submitted
218 a minimum of fourteen (14) days prior to the rescheduled meeting date.
219

220 **21A.16.040: APPEAL OF DECISION:**

221

222 Any person adversely affected by a final decision made by the ~~A~~appeals ~~H~~hearing ~~O~~fficer ~~or~~
223 ~~Historic Preservation Appeal Authority~~ may file a petition for review of the decision with the
224 ~~D~~istrict ~~C~~court within thirty (30) days after the decision is rendered.
225

226 **21A.16.050: STAY OF DECISION:**

227

228 ~~The filing of a petition in district court does not stay the final decision of the appeals hearing~~
229 ~~officer. A final decision of an appeals hearing officer may be stayed as provided for under Utah~~
230 ~~code section 10-9a-801(9)(b) or its successor.~~

231 ~~The Appeals Hearing Officer and Historic Preservation Appeal Authority may stay the issuance~~
232 ~~of any permits or approvals based on its decision for thirty (30) days or until the decision of the~~
233 ~~District Court in any appeal of the decision.~~

234

235 SECTION 2. Amending the Text of Salt Lake City Code Section 21A.18.120. That section

236 21A.18.120 Stay of Decision of the *Salt Lake City Code* shall be and hereby is amended to read as
237 follows:

238 21A.18.120: STAY OF DECISION:

239

240 A final decision of an appeals hearing officer may be stayed as provided for in section 21A.16.050
241 or its successor. ~~The appeals hearing officer may stay the issuance of any permits or approval~~
242 ~~based on its decision for thirty (30) days or until the decision of the district court in any appeal of~~
243 ~~the decision.~~

244

245 SECTION 3. Amending the Text of Salt Lake City Code Section 21A.34.020L.3(e). That

246 section 21A.34.020L.3(e) Appeal of Decision, of the *Salt Lake City Code* shall be and hereby is
247 amended to read as follows:

248 Appeal: Any owner adversely affected by a final decision of the Historic Landmark Commission
249 may appeal the decision in accordance with the provisions of chapter 21A.16 of this title. ~~The~~
250 ~~filing of an appeal shall stay the decision of the Historic Landmark Commission pending the~~
251 ~~outcome of the appeal.~~

252

253 SECTION 4. Amending the Text of Salt Lake City Code Section 21A.52.120 Appeal of

254 Decision. That section 21A.52.120 Appeal of Decision, of the *Salt Lake City Code* shall be and
255 hereby is amended to read as follows:

256 21A.52.120: APPEAL OF DECISION:

257 A. Any party aggrieved by a decision of the planning director may appeal the decision to the
258 planning commission pursuant to the provisions in chapter 21A.16 of this title.

259 B. Any party aggrieved by a decision of the planning commission on an application for a
260 special exception may file an appeal to the appeals hearing officer within ten (10) days of the
261 date of the decision. The filing of the appeal shall not stay the decision of the planning

262 commission pending the outcome of the appeal, except as provided for under section
263 21A.160.30F. unless the planning commission takes specific action to stay a decision.

264
265 SECTION 5. Amending the Text of Salt Lake City Code Section 21A.54.160 Appeal of

266 Planning Commission Decision. That section 21A.54.160 Appeal of Planning Commission
267 Decision, of the *Salt Lake City Code* shall be and hereby is amended to read as follows:

268 21A.54.160: APPEAL OF PLANNING COMMISSION DECISION:

269 Any person adversely affected by a final decision of the planning commission on an application for a
270 conditional use may appeal to the appeals hearing officer in accordance with the provisions of chapter
271 21A.16 of this title. ~~Notwithstanding section 21A.16.030 of this title, t~~The filing of the appeal shall not
272 stay the decision of the planning commission pending the outcome of the appeal, except as provided for
273 under section 21A.16.030F of this title. unless the planning commission takes specific action to stay a
274 decision.

275 SECTION 6. Amending the Text of Salt Lake City Code Section 21A.55.070 Appeal of
276 the Planning Commission Decision. That section 21A.55.070 Appeal of the Planning Commission

277 Decision, of the *Salt Lake City Code* shall be and hereby is amended to read as follows:

278 21A.55.070: APPEAL OF THE PLANNING COMMISSION DECISION:

279 Any person adversely affected by a final decision of the Planning Commission on an application
280 for a planned development may appeal to the Appeals Hearing Officer in accordance with the
281 provisions of chapter 21A.16 of this title. ~~Notwithstanding section 21A.16.030 of this title, t~~The
282 filing of the appeal shall not stay the decision of the Planning Commission pending the outcome
283 of the appeal, except as provided for under section 21A.16.030F of this title. unless the Planning
284 Commission takes specific action to stay a decision.

285
286 SECTION 7. Effective Date. This Ordinance shall become effective on the date of its first
287 publication.

288 Passed by the City Council of Salt Lake City, Utah this ___ day of _____, 2020.

289
290 _____
291 CHAIRPERSON

292 ATTEST:
293
294
295 _____

296 CITY RECORDER

297

298

299 Transmitted to Mayor on _____.

300

301 Mayor's Action: _____ Approved. _____ Vetoed.

302

303

304

305

MAYOR

306

307

308 CITY RECORDER

309

310 (SEAL)

311

312 Bill No. _____ of 2020.

313 Published: _____.

DRAFT