

# PLANNING COMMISSION STAFF REPORT



Planning and Zoning  
Division  
Department of  
Community and  
Economic Development

## Legislative Matter Appeals Hearing Officer Regulations Fine Tuning Zoning Text Amendment PLNPCM2012-00344 June 27, 2012

**Applicant:** Mayor Ralph  
Becker

**Staff:**  
Cheri Coffey (801) 535-6188  
Cheri.coffey@slcgov.com

**Master Plan Designation:**  
City-wide

**Council District:** City-wide

**Applicable Land Use  
Regulations:**

- 21A.50.050- Standards for General Amendments
- 21A.6- Decision Making Bodies and Officials
- 21A.16- Appeals of Administrative Decisions
- 21A.54- Conditional Uses

**Notification:**

- Emailed to Planning Division Listserve including Community Council Chairs June 14, 2012
- Published in newspaper June 15, 2012
- Posted on City & State Websites June 14, 2012

**Attachments:**

- A. Draft Ordinance

### ***Request***

Mayor Ralph Becker is requesting a Zoning Text Amendment to modify various sections of the Zoning Ordinance in order to clarify the regulations and processes relating to the authority and meetings of the Appeals Hearing Officer. As a legislative request, the recommendation of the Planning Commission will be forwarded to the City Council which has final decision making authority on Zoning Ordinance text amendments.

### ***Recommendation***

Based on the findings listed in the staff report, it is the Planning Staff's opinion that the proposed text amendments generally meet the applicable factors to consider and therefore, recommends the Planning Commission pass the following motion to transmit a favorable recommendation to the City Council relating to this request.

### ***Potential Motion:***

Based on the findings listed in the staff report, testimony and proposed text amendment presented, I move that the Planning Commission transmit a favorable recommendation to the City Council relating to this request to clarify various sections of the zoning ordinance relating to the appeals hearing officer authority and noticing requirements.

## **Background**

### **Project Description**

On February 7, 2012, the City Council adopted Ordinance 8 of 2012. This ordinance established an Appeals Hearing Officer to review and decide matters that had previously been granted to the Board of Adjustment and Land Use Appeals Board. Since that time, the Appeals Hearing Officer has held two meetings. As the ordinance has been reviewed for actual implementation, it was discovered that clarification and refinement are necessary to ensure consistency with the rest of the Zoning Ordinance and clarification of the authority Appeals Hearing Officer and noticing requirements various types of meetings held by the Appeals Hearing Officer.

### **Proposed Code Changes & Analysis**

The proposed amendments relate to four items listed below. Please see Attachment A for the proposed specific ordinance language relating to these four items.

1. Clarification of the Authority of the Appeals Hearing Officer

The Land Use Appeals Board used to hear appeals of the Historic Landmark Commission and Planning Commission decisions. The section of the City Code that used to deal with the Land Use Appeals Board was not part of the Zoning Ordinance. In establishing the Appeals Hearing Officer, the authority of this person was included in Chapter 16 of the Zoning Ordinance –Appeals of Administrative Decisions. However, when the Zoning Ordinance was first adopted in 1995, Chapter 16 dealt with decisions that were made by staff. In order to “fold” into the Zoning Ordinance, appeals of the Historic Landmark Commission and Planning Commission, it is essential to clarify in Chapter 16 of the Zoning Ordinance that those administrative decisions made by the Historic Landmark Commission (such as Alterations, New Construction and Demolitions in local historic districts) and by the Planning Commission (such as Conditional Uses, Planned Developments and Subdivisions) are all items that the Appeals Hearing Officer has the authority to review.

2. Clarification of what is a public hearing and what is a public meeting and the noticing requirements for each.

The ordinance has conflicting language relating to public notice and allowed testimony relating to the different types of cases heard by the Appeals Hearing Officer. This conflicting language should be corrected to ensure that due process is followed and to eliminate false expectations for public testimony when it is not appropriate.

For Variances and Appeals of Administrative Determinations, the matters are de novo- which means the Appeals Hearing Officer will review all of the application information and take public testimony. The Appeals Hearing Officer would be the first public meeting for either a variance or an appeal of an administrative determination and therefore, a public hearing is required. In these instances, notification for a public hearing should be the same as for any public hearing required in the zoning ordinance (as per Chapter 21A.10). This includes notification of property owners and tenants within 300 feet of the subject property 12 days prior to the hearing, notification of those on the Planning Division’s list serve, including Community Council Chairs, through e-mail 12 days prior to the hearing and posting the property 10 days prior to the public hearing.

For appeals of decisions made by the Historic Landmark Commission or Planning Commission these appeals are “on the record” which means that the Appeals Hearing Officer does not consider new information; he only reviews the information that the decision making body had when it made its decision, to determine whether the decision was arbitrary or capricious. In these instances, testimony is only taken from the appellant and the representatives of the Historic Landmark Commission or Planning Commission (usually City Staff).

The current ordinance has conflicting noticing requirements relating to the appeals of the Historic Landmark Commission and Planning Commission cases. These are not public hearings. Sending notification as required by Chapter 21A.10 for these types of cases, creates a false sense of expectation to those who receive notice that they will be able to speak at the meeting, and in fact, the Hearing Officer is not allowed to take public testimony for “on the record” types of cases. Therefore, the proposed amendments are necessary to clarify this conflict. In addition, rather than listing the notification requirements in Chapter 21A.16, Staff is recommending that this chapter references 21A.10 which is consistent with all of the other public hearing processes listed in the Zoning Ordinance.

3. Elimination of Newspaper Publication requirement

The current ordinance requires that all matters before the Appeals Hearing Officer require the notice be published in the newspaper. The State Law only requires notices to be published in the newspaper for projects relating to master plan adoption, master plan amendment or zoning text amendments. No other Planning type of project requires newspaper notification. Since newspaper notification is a costly and inefficient means of notifying the public, it is the Planning Staff’s opinion that this requirement should be eliminated.

4. Clarification that Planned Developments are no longer a type of Conditional Use.

One section of the adopted ordinance, relating to the sequence of approval of an application for both a conditional use and a variance, references planned developments. Since planned developments are no longer a type of conditional use, this reference should be eliminated.

## ***Public Participation***

### **Open House and Commission Briefings**

The Planning Division briefed the Historic Landmark Commission about this matter at its June 7, 2012 meeting. The Historic Landmark Commission did not have any substantive issues with the proposed changes. Staff requested that if the Historic Landmark Commissioners had specific suggestions for wording, to submit the comments to the Planning Staff.

The Planning Division will host a public open house on June 21, 2012. Notice of the meeting was sent to Community Council chairs, and other groups and individuals whose names are on the Planning Division’s List serve. Notice was also posted on the City and State websites. The proposed ordinance was posted on the Planning Division webpage on Monday June 18, 2012. As of the finalization of this staff report, no public comments have been submitted. The Planning Staff will forward any additional comments it receives about this proposal to the Planning Commission members, prior to the meeting on June 27, 2012

## City Department Comments

This petition proposes to amend a process that generally is not a concern of other City departments or divisions. The Planning Division has consulted with the City Attorney's Office, Building Services and Civil Enforcement Division, City Council Staff and the Community and Economic Development Department. The Planning Division has not received any specific comments from the other applicable City Departments / Divisions at the time of finalizing this staff report that weren't already incorporated into the proposed ordinance amendments.

## Analysis and Findings

### Options

The City Council has final decision making authority over Zoning Text Amendments. If the proposed changes are not adopted, there may be continued conflicts between various sections of the Zoning Ordinance which in some ways sets a false expectation of the public especially relating to the public hearings and public meetings held by the Appeals Hearing Officer. The proposed changes help to clarify and eliminate confusion relating to the process and some regulations for meetings of the Appeals Hearing Officer. If the ordinance is not changed, it may cause confusion about the specific authority of the Appeals Hearing Officer, what type of notification is required for the various types of items reviewed by the Appeals Hearing Officer, and continuation of conflicting sections of the ordinance.

### Findings

#### 21A.50.050 Standards for General Amendments.

A decision to amend the text of this title or the zoning map by general amendment is a matter committed to the legislative discretion of the city council and is not controlled by any one standard. In making its decision concerning a proposed text amendment, the city council should consider the following factors:

1. **Whether a proposed text amendment is consistent with the purposes, goals, objectives, and policies of the city as stated through its various adopted planning documents;**

**Discussion:** None of the existing adopted Salt Lake City master plans specifically address the proposed amendments. The 1992 Salt Lake City Strategic plan notes an importance of developing business friendly regulatory practices. It is staff's opinion that the proposed amendments to the Zoning Ordinance relating to the Appeals Hearing Officer will help clarify and make consistent various regulations which in turn, furthers the goal of creating business friendly regulatory practices.

**Finding:** The proposed amendments will help implement adopted policies of the City as stated through the Salt Lake City Strategic Plan.

2. **Whether a proposed text amendment furthers the specific purpose statements of the zoning ordinance;**

**Discussion:** The proposed changes to the Zoning Ordinance will not affect the overall purpose of the Zoning Ordinance.

**Finding:** The proposed amendments meet this standard.

3. **Whether a proposed text amendment is consistent with the purposes and provisions of any applicable overlay zoning districts which may impose additional standards; and**

**Discussion:** The proposed text amendments are not associated with any specific overlay zoning districts or development project.

**Finding:** These amendments do not impact the regulations relating to any overlay zoning districts.

4. **The extent to which a proposed text amendment implements best current, professional practices of urban planning and design.**

**Discussion:** The proposed changes relate to providing clarification and consistency in the regulations relating to the Appeals Hearing Officer. Whenever regulations are made clearer and the processes more consistent, it helps all users of the regulations to better understand what is meant by the regulations leading to fewer interpretations and a more efficient process. The regulations do not relate to any specifics relating to professional practices of design.

**Finding:** The proposed text amendment meets this standard

### ***Potential Motions***

**Consistent with Staff Recommendation:** Based on the findings listed in the staff report, testimony and proposed text amendment presented, I move that the Planning Commission transmit a favorable recommendation to the City Council relating to this request to clarify various sections of the zoning ordinance relating to the appeals hearing officer authority and noticing requirements.

**Not Consistent with Staff Recommendation:** Based on the testimony, proposed text amendment as presented and the following findings, I move that the Planning Commission transmit a negative recommendation to the City Council relating to this request to clarify various sections of the zoning ordinance relating to the appeals hearing officer authority and noticing requests.

The Planning Commission shall make findings on the Zoning Text Amendment standards as listed below:

1. Whether a proposed text amendment is consistent with the purposes, goals, objectives, and policies of the City as stated through its various adopted planning documents;
2. Whether a proposed text amendment furthers the specific purpose statements of the zoning ordinance;
3. Whether a proposed text amendment is consistent with the purposes and provisions of any applicable overlay zoning districts which may impose additional standards; and
4. The extent to which a proposed text amendment implements best current, professional practices of urban planning and design.

# **Attachment A**

## **Draft Ordinance**

## Proposed Fine tuning relating to the Appeals Hearing Officer Regulations

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### 21A.6: DECISION MAKING BODIES AND OFFICIALS

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#### **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;~~

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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, ~~--"H Historic Preservation Overlay District~~ 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, ~~--"Subdivisions"~~, 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, ~~"Zoning Ordinance" 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.

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: APPEALS OF ADMINISTRATIVE DECISIONS**

### **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 ~~the~~ zoning administrator or the administrative hearing officer in the administration or enforcement of this ~~title, as well as administrative decisions of the~~ Historic Landmark Commission; and ~~the~~ Planning Commission.

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, Historic Landmark Commission or Planning Commission to the appeals hearing officer shall be taken in accordance with the following procedures:

A. Filing of Appeal: An appeal shall be made in writing within ten (10) days of the administrative decision by the Zoning Administrator, 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 21AS.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~~

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~~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 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.~~

~~a. Upon receipt of an appeal of a decision by the Historic Landmark Commission or Planning Commission the appeals hearing officer shall schedule a public meeting to hear arguments by the appellant and respondent. Notification of the date, time and place of the meeting shall be given to the Appellant and Respondent a minimum of twelve (12) calendar days in advance of the meeting.~~

~~b. The City shall give e-mail 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.~~

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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.

## **21A.54: CONDITIONAL USES**

### **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.

# 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.</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.</li> <li>• Meeting information posted on Planning Division website</li> </ul>