



# Staff Report

PLANNING DIVISION

DEPARTMENT of COMMUNITY and NEIGHBORHOODS

**To:** Salt Lake City Planning Commission  
**From:** Amy Thompson – Principal Planner  
(801) 535-7281 or amy.thompson@slcgov.com  
**Date:** June 14, 2017  
**Re:** PLNPCM2017-00154 Text Amendment: Appeals of Historic Landmark Commission Decisions

## ZONING ORDINANCE TEXT AMENDMENT

**REQUEST:** A request by Mayor Jackie Biskupski to amend sections of the Zoning Ordinance that relate to the appeals process for decisions made by the Historic Landmark Commission. The purpose of these amendments is to update the Zoning Ordinance so that it is compliant with bill HB 30 that was passed by the Utah State Legislature. The proposed amendment will affect sections 21A.06, 21A.16 and 21A.34.020 of the zoning ordinance and may include changes to other sections as necessary. The changes would apply citywide.

**RECOMMENDATION:** Planning Staff recommends that the Planning Commission forward a positive recommendation to the City Council regarding the amendments to sections 21A.06, 21A.16 and 21A.34.020 as proposed.

**MOTION:** Based on the analysis and findings listed in this staff report, testimony and the proposal presented, I move that the Commission forward a positive recommendation to the City Council regarding the amendments to section 21A.06, 21A.16 and 21A.34.020 and related sections as proposed. The Commission finds that the proposed project complies with the review standards as demonstrated in Attachment B of this staff report.

### BACKGROUND AND AMENDMENT DESCRIPTION:

H.B. 30 “Historic Preservation Amendments” was passed during the 2017 General Session of the Utah State Legislature. The bill modifies the appeal process for decisions made by the Historic Landmark Commission. The bill does the following:

- Establishes a historic preservation appeal authority that is made up of the City’s governing body. The mayor is considered the governing body for appeals of Historic Landmark Commission decisions due to our form of government and because Historic Landmark Commission decisions are administrative.
- Allows an applicant to appeal to either the historic preservation appeal authority or the land use appeal authority (the City’s appeal hearing officer). If a neighbor, property owner or any other person other than the applicant files an appeal, the land use appeal authority hears and decides on the appeal.
- Applicants appealing a decision made by the Historic Landmark Commission will have 30 days to file an appeal. The current appeal period is 10 days. Any other person other than the applicant still has 10 days to file an appeal.

The purpose of the proposed text amendments is to update the zoning ordinance so that it is compliant with changes made to the State Code with the passing of H.B. 30. The proposed changes to Title 21A.06, 21A.16, and 21A.34.020 are included with this staff report for review (Attachment A).

**NEXT STEPS:**

The recommendations of the Historic Landmark Commission and the Planning Commission will be forwarded to the City Council for a decision.

**ATTACHMENTS:**

- A.** Proposed Text Amendments
- B.** Analysis of Standards
- C.** Public Process and Comments
- D.** H.B. 30 Historic Preservation Amendments

## **ATTACHMENT A: PROPOSED TEXT AMENDMENTS**

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## **Chapter 21A.06**

### **DECISION MAKING BODIES AND OFFICIALS**

**21A.06.010: SUMMARY OF AUTHORITY:**

**21A.06.020: CITY COUNCIL; JURISDICTION AND AUTHORITY:**

**21A.06.030: PLANNING COMMISSION:**

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

**21A.06.050: HISTORIC LANDMARK COMMISSION:**

**21A.06.060: ZONING ADMINISTRATOR:**

**21A.06.070: DEVELOPMENT REVIEW TEAM (DRT):**

**21A.06.080: HISTORIC PRESERVATION APPEAL AUTHORITY**

#### **21A.06.080: HISTORIC PRESERVATION APPEAL AUTHORITY**

- A. Creation: The position of the historic preservation appeal authority 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. The Mayor is the historic preservation appeal authority.
- B. Jurisdiction and Authority: The historic preservation appeal authority shall have the following powers and duties in connection with the implementation of this title:
1. Hear and decide appeals of administrative decision made by the historic landmark commission pursuant to the procedures and standards set forth in section 21A.34.020, "Historic Preservation Overlay District", and 21A.16 "Appeals of Administrative Decisions" of this title;
- C. Conflict of Interest: The historic preservation appeal authority shall not participate in any appeal in which the historic preservation appeal authority has a conflict of interest prohibited by title 2, chapter 2.44 of this code.

# **Chapter 21A.16**

## **APPEALS OF ADMINISTRATIVE DECISIONS**

### **21A.16.010: AUTHORITY:**

### **21A.16.020: PARTIES ENTITLED TO APPEAL:**

### **21A.16.030: PROCEDURE:**

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

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

### **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 planning commission. The appeals hearing officer may hear and decide on appeals alleging an error in administrative decision made by the historic landmark commission pursuant to 21A.16.020, and the planning commission.

In addition, the appeals hearing officer shall hear and decide applications for variances as per chapter 21A.18 of this title and shall make determinations regarding 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. (Ord. 10-16, 2016)

As described in section 21A.06.080 of this title, the historic preservation appeal authority may hear and decide appeals alleging an error in an administrative decision of the historic landmark commission pursuant to 21A.16.020.

### **21A.16.020: PARTIES ENTITLED TO APPEAL:**

An applicant or any other person or entity adversely affected by a decision administering or interpreting this title may appeal to the appeals hearing officer. (Ord. 31-12, 2012)  
For decisions made by the historic landmark commission, the applicant may appeal to either the historic preservation appeal authority or the appeals hearing officer.

### **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~~ All appeals 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. The deadlines for filing an appeal are as indicated below:

1. Administrative decisions made by the zoning administrator: 10 days
2. Planning Commission decisions: 10 days

3. Historic Landmark Commission: 30 days for appeals filed by the applicant, 10 days for appeals filed by any other party entitled to appeal.

B. Fees: The application shall be accompanied by the applicable fees shown on the Salt Lake City consolidated fee schedule. The applicant shall also be responsible for payment of all fees established for providing the public notice required by chapter 21A.10 of this title.

C. Stay of Proceedings: An appeal to the appeals hearing officer or historic preservation appeal authority 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 Required:

1. Public Hearing: Upon receipt of an appeal of an administrative decision by the zoning administrator, the appeals hearing officer or historic preservation appeal authority 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.10 of this title.
2. Notice of Appeals of Administrative Decisions of The Historic Landmark Commission or Planning Commission: Appeals from a decision of the historic landmark commission or planning commission are based on evidence in the record. Therefore, testimony at the appeal meeting shall be limited to the appellant and the respondent.
  - a. Upon receipt of an appeal of a decision by the historic landmark commission or planning commission, the appeals hearing officer or historic preservation appeal authority 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 or historic preservation appeal authority, a minimum of twelve (12) calendar days in advance of the hearing to any organization entitled to receive notice pursuant to [title 2, chapter 2.60](#) of this code.
3. Time Limitation: All appeals shall be heard within one hundred eighty (180) days of the filing of the appeal. Appeals not heard within this time frame will be considered void and withdrawn by the appellant.

E. Standard of Review:

1. The standard of review for an appeal, other than as provided in subsection E2 of this section, 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 or historic preservation appeal authority unless such evidence was improperly excluded from consideration below.

- b. The appeals hearing officer or historic preservation appeal authority shall review the decision based upon applicable standards and shall determine its correctness.
- c. The appeals hearing officer or historic preservation appeal authority 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~~ or Historic Preservation Appeal Authority: The appeals hearing officer or historic preservation appeal authority 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 or historic preservation appeal authority 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 or historic preservation appeal authority. Copies of the tapes of such hearings may be provided, if requested, at the expense of the requesting party. The appeals hearing officer and historic preservation appeal authority 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 or by the historic preservation appeal authority, 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 section, for processing appeals, the conduct of an appeal hearing, and for any other purpose considered necessary to properly consider an appeal.

~~L.~~ Matters Delayed: For all matters delayed by the appeals hearing officer and historic preservation appeal authority, any subsequent written materials shall be submitted a minimum of fourteen (14) days prior to the rescheduled meeting date. (Ord. 10-16, 2016; Ord. 54-14, 2014; Ord. 58-13, 2013; Ord. 61-12, 2012)

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

Any person adversely affected by a final decision made by the appeals hearing officer or historic preservation appeal authority may file a petition for review of the decision with the district court within thirty (30) days after the decision is rendered. (Ord. 8-12, 2012)

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

The appeals hearing officer and historic preservation appeal authority may stay the issuance of any permits or approvals based on its decision for thirty (30) days or until the decision of the district court in any appeal of the decision. (Ord. 8-12, 2012)

## **21A.34.020: H HISTORIC PRESERVATION OVERLAY DISTRICT:**

### **F. Procedure For Issuance Of Certificate Of Appropriateness:**

2. Historic Landmark Commission: Certain types of construction, demolition and relocation shall only be allowed to be approved by the historic landmark commission subject to the following procedures:
  - a. Types Of Construction: The following shall be reviewed by the historic landmark commission:
    - (1) Substantial alteration or addition to a landmark site or contributing structure/site;
    - (2) New construction of principal building in H historic preservation overlay district;
    - (3) Relocation of landmark site or contributing site;
    - (4) Demolition of landmark site or contributing site;
    - (5) Applications for administrative approval referred by the planning director; and
    - (6) Installation of solar energy collection systems pursuant to section [21A.40.190](#) of this title.
  - b. Submission Of Application: The procedure for an application for a certificate of appropriateness shall be the same as specified in subsection F1b of this section.
  - c. Fees: The application shall be accompanied by the applicable fees shown on the Salt Lake City consolidated fee schedule. The applicant shall also be responsible for payment of all fees established for providing the public notice required by chapter 21A.10 of this title.
  - d. Materials Submitted With Application: The requirements for the materials to be submitted upon application for a certificate of appropriateness shall be the same as specified in subsection F1c of this section. Applications for a certificate of appropriateness for demolition shall also submit a reuse plan for the property.
  - e. Notice: Applications for a certificate of appropriateness shall require notice pursuant to chapter 21A.10 of this title.
  - f. Public Hearing: Applications for a certificate of appropriateness shall require a public hearing pursuant to chapter 21A.10 of this title.
  - g. Standards For Approval: The application shall be reviewed according to the standards set forth in subsections G through L of this section, whichever are applicable.
  - h. Review And Decision By The Historic Landmark Commission: The historic landmark commission shall make a decision at a regularly scheduled meeting, within sixty (60) days following receipt of a completed application, except that a review and decision on an application for a certificate of appropriateness for demolition of a landmark site or



declaring an economic hardship shall be made within one hundred twenty (120) days following receipt of a completed application.

- (1) After reviewing all materials submitted for the case, the recommendation of the planning division and conducting a field inspection, if necessary, the historic landmark commission shall make written findings of fact based on the standards of approval as outlined in this subsection F through subsection L of this section, whichever are applicable.
- (2) On the basis of its written findings of fact the historic landmark commission shall either approve, deny or conditionally approve the certificate of appropriateness. A decision on an application for a certificate of appropriateness for demolition of a contributing structure may be deferred for up to one year pursuant to subsections L and M of this section.
- (3) The decision of the historic landmark commission shall become effective at the time the decision is made. Demolition permits for landmark sites or contributing structures shall not be issued until the appeal period has expired.
- (4) Written notice of the decision of the historic landmark commission on the application, including a copy of the findings of fact, shall be sent by first class mail to the applicant within ten (10) working days following the historic landmark commission's decision.

i. ~~Appeal of Historic Landmark Commission Decisions: To Appeals Hearing Officer:~~ Any person adversely affected by a final decision of the historic landmark commission may file an appeal in accordance with the provisions of chapter 21A.16 of this title. The applicant, any owner of abutting property or of property located within the same historic preservation overlay district, any recognized organization pursuant to title 2, chapter 2.60 of this code, the Utah State Historical Society or the Utah Heritage Foundation, aggrieved by the historic landmark commission's decision, may object to the decision by filing a written appeal with the appeals hearing officer within ten (10) calendar days following the date on which a record of decision is issued. The filing of the appeal shall stay the decision of the historic landmark commission pending the outcome of the appeal, except that the filing of the appeal shall not stay the decision of the historic landmark commission if such decision defers a demolition request for up to one year pursuant to the provisions of subsections L and M of this section.

j. ~~Review By City Attorney:~~ Following the filing of an appeal to the appeals hearing officer of a decision of the historic landmark commission to deny or defer a certificate of appropriateness for demolition, the planning director shall secure an opinion of the city attorney evaluating whether the denial or deferral of a decision of the demolition would result in an unconstitutional taking of property without just compensation under the Utah and United States constitutions or otherwise violate any applicable constitutional provision, law, ordinance or regulation.

k. ~~Appeal Of Appeals Hearing Officer Decision To District Court:~~ Any party aggrieved by the decision of the appeals hearing officer may file a petition for review with the district court within thirty (30) days following the decision of the appeals hearing officer. The filing of an appeal of the appeals hearing officer decision shall stay the decision of the appeals hearing officer pending the outcome of the appeal, except that

the filing of the appeal shall not stay the decision of the appeals hearing officer if such decision defers a demolition request for up to one year pursuant to the provisions of subsections L and M of this section.

## ATTACHMENT B: ANALYSIS OF STANDARDS

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### 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.

A. In making its decision concerning a proposed text amendment, the city council should consider the following factors:

Standard	Finding	Rationale
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	Complies	The proposed text revisions are for the purpose of maintaining, updating, and clarifying the Zoning Ordinance for consistency with State Code.
Whether a proposed text amendment furthers the specific purpose statements of the zoning ordinance	Complies	The proposed text amendments will not have an effect on the overall purpose of the zoning ordinance or specific purpose statements of the zoning ordinance.
Whether a proposed text amendment is consistent with the purposes and provisions of any applicable overlay zoning districts which may impose additional standards	Complies	The proposed text amendments are consistent with the purposes and provisions of the H Historic Preservation Overlay zoning district, and help to clarify the provisions for appeals of decisions of the Historic Landmark Commission so they are compliant with State Code requirements.
The extent to which a proposed text amendment implements best current, professional practices of urban planning and design	Complies	The code changes are proposed as a result of State enabling regulation changes. It is necessary for Salt Lake City to make code revisions that lead to a greater ease of use and understanding of the ordinance and to maintain consistency with State regulations. Updating the appeals process for decisions made by the Historic Landmark Commission is consistent with Utah State code as it relates to procedures for due process for aggrieved parties.

## **ATTACHMENT C: PUBLIC PROCESS AND COMMENTS**

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### **Public Notice, Meetings and Comments**

The following is summary of the public notice that has occurred, as well a list of meetings that have been held, and other public input opportunities, related to the proposed project.

### **Notice of the public hearing for the proposal include:**

- Newspaper notification on May 30, 2017
- Notice mailed on June 1, 2017.
- Agenda posted on the Planning Division and Utah Public Meeting Notice websites on June 1, 2017.

### **Meetings**

- An Open House was held on April 20, 2017. No one from the public attended the open house.

### **Public Hearing**

- A public hearing was held with the Historic Landmark Commission on June 1<sup>st</sup> 2017. The Historic Landmark Commission forwarded a positive recommendation to the City Council.

### **Public Comments:**

- Staff has not received any comments or questions related to the proposed text amendments.

## **ATTACHMENT D: H.B. 30 HISTORIC PRESERVATION AMENDMENTS**

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# HISTORIC PRESERVATION AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: R. Curt Webb**

Senate Sponsor: Daniel W. Thatcher

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## LONG TITLE

### General Description:

This bill addresses administrative decisions and appeals related to land use applications in historic preservation districts or areas.

### Highlighted Provisions:

This bill:

- defines terms;
- authorizes a legislative body to designate a historic preservation authority to make administrative decisions on land use applications related to historically significant real property;
- requires the establishment of an appeal authority to review decisions of a historic preservation authority; and
- makes technical and conforming changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

[10-9a-103](#), as last amended by Laws of Utah 2015, Chapter 327

[10-9a-503](#), as last amended by Laws of Utah 2016, Chapter 404

[10-9a-701](#), as last amended by Laws of Utah 2011, Chapter 92

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[10-9a-703](#), as last amended by Laws of Utah 2008, Chapter 326

[10-9a-704](#), as last amended by Laws of Utah 2006, Chapter 240

ENACTS:

[10-9a-527](#), Utah Code Annotated 1953

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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **10-9a-103** is amended to read:

### **10-9a-103. Definitions.**

As used in this chapter:

(1) "Affected entity" means a county, municipality, local district, special service district under Title 17D, Chapter 1, Special Service District Act, school district, interlocal cooperation entity established under Title 11, Chapter 13, Interlocal Cooperation Act, specified public utility, property owner, property owners association, or the Utah Department of Transportation, if:

(a) the entity's services or facilities are likely to require expansion or significant modification because of an intended use of land;

(b) the entity has filed with the municipality a copy of the entity's general or long-range plan; or

(c) the entity has filed with the municipality a request for notice during the same

48 calendar year and before the municipality provides notice to an affected entity in compliance  
49 with a requirement imposed under this chapter.

50 (2) "Appeal authority" means the person, board, commission, agency, or other body  
51 designated by ordinance to decide an appeal of a decision of a land use application or a  
52 variance.

53 (3) "Billboard" means a freestanding ground sign located on industrial, commercial, or  
54 residential property if the sign is designed or intended to direct attention to a business, product,  
55 or service that is not sold, offered, or existing on the property where the sign is located.

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56 (4) (a) "Charter school" means:

57 (i) an operating charter school;

58 (ii) a charter school applicant that has its application approved by a charter school  
59 authorizer in accordance with Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act; or  
60 (iii) an entity that is working on behalf of a charter school or approved charter applicant  
61 to develop or construct a charter school building.

62 (b) "Charter school" does not include a therapeutic school.

63 (5) "Conditional use" means a land use that, because of its unique characteristics or  
64 potential impact on the municipality, surrounding neighbors, or adjacent land uses, may not be  
65 compatible in some areas or may be compatible only if certain conditions are required that  
66 mitigate or eliminate the detrimental impacts.

67 (6) "Constitutional taking" means a governmental action that results in a taking of  
68 private property so that compensation to the owner of the property is required by the:

69 (a) Fifth or Fourteenth Amendment of the Constitution of the United States; or

70 (b) Utah Constitution, Article I, Section 22.

71 (7) "Culinary water authority" means the department, agency, or public entity with  
72 responsibility to review and approve the feasibility of the culinary water system and sources for  
73 the subject property.

74 (8) "Development activity" means:

75 (a) any construction or expansion of a building, structure, or use that creates additional  
76 demand and need for public facilities;

77 (b) any change in use of a building or structure that creates additional demand and need  
78 for public facilities; or

79 (c) any change in the use of land that creates additional demand and need for public  
80 facilities.

81 (9) (a) "Disability" means a physical or mental impairment that substantially limits one  
82 or more of a person's major life activities, including a person having a record of such an

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83 impairment or being regarded as having such an impairment.

84 (b) "Disability" does not include current illegal use of, or addiction to, any federally  
85 controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C.  
86 802.

87 (10) "Educational facility":

88 (a) means:

89 (i) a school district's building at which pupils assemble to receive instruction in a  
90 program for any combination of grades from preschool through grade 12, including  
91 kindergarten and a program for children with disabilities;

92 (ii) a structure or facility:

93 (A) located on the same property as a building described in Subsection (10)(a)(i); and

94 (B) used in support of the use of that building; and

95 (iii) a building to provide office and related space to a school district's administrative  
96 personnel; and

97 (b) does not include:

98 (i) land or a structure, including land or a structure for inventory storage, equipment  
99 storage, food processing or preparing, vehicle storage or maintenance, or similar use that is:

100 (A) not located on the same property as a building described in Subsection (10)(a)(i);

101 and

102 (B) used in support of the purposes of a building described in Subsection (10)(a)(i); or

103 (ii) a therapeutic school.

104 (11) "Fire authority" means the department, agency, or public entity with responsibility  
105 to review and approve the feasibility of fire protection and suppression services for the subject  
106 property.

107 (12) "Flood plain" means land that:

108 (a) is within the 100-year flood plain designated by the Federal Emergency Management  
109 Agency; or

110 (b) has not been studied or designated by the Federal Emergency Management Agency  
 111 but presents a likelihood of experiencing chronic flooding or a catastrophic flood event because  
 112 the land has characteristics that are similar to those of a 100-year flood plain designated by the  
 113 Federal Emergency Management Agency.

114 (13) "General plan" means a document that a municipality adopts that sets forth general  
 115 guidelines for proposed future development of the land within the municipality.

116 (14) "Geologic hazard" means:

- 117 (a) a surface fault rupture;
- 118 (b) shallow groundwater;
- 119 (c) liquefaction;
- 120 (d) a landslide;
- 121 (e) a debris flow;
- 122 (f) unstable soil;
- 123 (g) a rock fall; or
- 124 (h) any other geologic condition that presents a risk:
- 125 (i) to life;
- 126 (ii) of substantial loss of real property; or
- 127 (iii) of substantial damage to real property.

128 (15) "Historic preservation authority" means a person, board, commission, or other  
 129 body designated by a legislative body to:

130 (a) recommend land use regulations to preserve local historic districts or areas; and

131 (b) administer local historic preservation land use regulations within a local historic  
 132 district or area.

133 ~~[(15)]~~ (16) "Hookup fee" means a fee for the installation and inspection of any pipe,  
 134 line, meter, or appurtenance that connects to a municipal water, sewer, storm water, power, or  
 135 other utility system.

136 ~~[(16)]~~ (17) "Identical plans" means building plans submitted to a municipality that:

137 (a) are clearly marked as "identical plans";

138 (b) are substantially identical to building plans that were previously submitted to and  
 139 reviewed and approved by the municipality; and

140 (c) describe a building that:

141 (i) is located on land zoned the same as the land on which the building described in the  
 142 previously approved plans is located;

143 (ii) is subject to the same geological and meteorological conditions and the same law as  
 144 the building described in the previously approved plans;

145 (iii) has a floor plan identical to the building plan previously submitted to and reviewed  
 146 and approved by the municipality; and

147 (iv) does not require any additional engineering or analysis.

148 ~~[(17)]~~ (18) "Impact fee" means a payment of money imposed under Title 11, Chapter  
 149 36a, Impact Fees Act.

150 ~~[(18)]~~ (19) "Improvement completion assurance" means a surety bond, letter of credit,  
 151 financial institution bond, cash, assignment of rights, lien, or other equivalent security required  
 152 by a municipality to guaranty the proper completion of landscaping or an infrastructure  
 153 improvement required as a condition precedent to:

154 (a) recording a subdivision plat; or

155 (b) development of a commercial, industrial, mixed use, or multifamily project.

156 ~~[(19)]~~ (20) "Improvement warranty" means an applicant's unconditional warranty that  
 157 the applicant's installed and accepted landscaping or infrastructure improvement:

158 (a) complies with the municipality's written standards for design, materials, and  
 159 workmanship; and

160 (b) will not fail in any material respect, as a result of poor workmanship or materials,  
 161 within the improvement warranty period.

162 ~~[(20)]~~ (21) "Improvement warranty period" means a period:

163 (a) no later than one year after a municipality's acceptance of required landscaping; or

164 (b) no later than one year after a municipality's acceptance of required infrastructure,  
 165 unless the municipality:

166 (i) determines for good cause that a one-year period would be inadequate to protect the  
 167 public health, safety, and welfare; and

168 (ii) has substantial evidence, on record:

169 (A) of prior poor performance by the applicant; or

170 (B) that the area upon which the infrastructure will be constructed contains suspect soil  
 171 and the municipality has not otherwise required the applicant to mitigate the suspect soil.

172 ~~[(21)]~~ (22) "Infrastructure improvement" means permanent infrastructure that an



- 173 applicant must install:
- 174 (a) pursuant to published installation and inspection specifications for public
- 175 improvements; and
- 176 (b) as a condition of:
- 177 (i) recording a subdivision plat; or
- 178 (ii) development of a commercial, industrial, mixed use, condominium, or multifamily
- 179 project.
- 180 ~~[(22)]~~ (23) "Internal lot restriction" means a platted note, platted demarcation, or
- 181 platted designation that:
- 182 (a) runs with the land; and
- 183 (b) (i) creates a restriction that is enclosed within the perimeter of a lot described on the
- 184 plat; or
- 185 (ii) designates a development condition that is enclosed within the perimeter of a lot
- 186 described on the plat.
- 187 ~~[(23)]~~ (24) "Land use application" means an application required by a municipality's
- 188 land use ordinance.
- 189 ~~[(24)]~~ (25) "Land use authority" means:
- 190 (a) a person, board, commission, agency, or body, including the local legislative body,
- 
- 191 designated by the local legislative body to act upon a land use application; or
- 192 (b) if the local legislative body has not designated a person, board, commission, agency,
- 193 or body, the local legislative body.
- 194 ~~[(25)]~~ (26) "Land use ordinance" means a planning, zoning, development, or
- 195 subdivision ordinance of the municipality, but does not include the general plan.
- 196 ~~[(26)]~~ (27) "Land use permit" means a permit issued by a land use authority.
- 197 ~~[(27)]~~ (28) "Legislative body" means the municipal council.
- 198 ~~[(28)]~~ (29) "Local district" means an entity under Title 17B, Limited Purpose Local
- 199 Government Entities - Local Districts, and any other governmental or quasi-governmental entity
- 200 that is not a county, municipality, school district, or the state.
- 201 (30) "Local historic district or area" means a geographically definable area that:
- 202 (a) contains any combination of buildings, structures, sites, objects, landscape features,
- 203 archeological sites, or works of art that contribute to the historic preservation goals of a
- 204 legislative body; and
- 205 (b) is subject to land use regulations to preserve the historic significance of the local
- 206 historic district or area.
- 207 ~~[(29)]~~ (31) "Lot line adjustment" means the relocation of the property boundary line in
- 208 a subdivision between two adjoining lots with the consent of the owners of record.
- 209 ~~[(30)]~~ (32) "Moderate income housing" means housing occupied or reserved for
- 210 occupancy by households with a gross household income equal to or less than 80% of the
- 211 median gross income for households of the same size in the county in which the city is located.
- 212 ~~[(31)]~~ (33) "Nominal fee" means a fee that reasonably reimburses a municipality only
- 213 for time spent and expenses incurred in:
- 214 (a) verifying that building plans are identical plans; and
- 215 (b) reviewing and approving those minor aspects of identical plans that differ from the
- 216 previously reviewed and approved building plans.
- 217 ~~[(32)]~~ (34) "Noncomplying structure" means a structure that:
- 
- 218 (a) legally existed before its current land use designation; and
- 219 (b) because of one or more subsequent land use ordinance changes, does not conform
- 220 to the setback, height restrictions, or other regulations, excluding those regulations, which
- 221 govern the use of land.
- 222 ~~[(33)]~~ (35) "Nonconforming use" means a use of land that:
- 223 (a) legally existed before its current land use designation;
- 224 (b) has been maintained continuously since the time the land use ordinance governing
- 225 the land changed; and
- 226 (c) because of one or more subsequent land use ordinance changes, does not conform
- 227 to the regulations that now govern the use of the land.
- 228 ~~[(34)]~~ (36) "Official map" means a map drawn by municipal authorities and recorded in
- 229 a county recorder's office that:
- 230 (a) shows actual and proposed rights-of-way, centerline alignments, and setbacks for
- 231 highways and other transportation facilities;
- 232 (b) provides a basis for restricting development in designated rights-of-way or between
- 233 designated setbacks to allow the government authorities time to purchase or otherwise reserve
- 234 the land; and
- 235 (c) has been adopted as an element of the municipality's general plan.

236 ~~[(35)]~~ (37) "Parcel boundary adjustment" means a recorded agreement between owners  
 237 of adjoining properties adjusting their mutual boundary if:

238 (a) no additional parcel is created; and

239 (b) each property identified in the agreement is unsubdivided land, including a  
 240 remainder of subdivided land.

241 ~~[(36)]~~ (38) "Person" means an individual, corporation, partnership, organization,  
 242 association, trust, governmental agency, or any other legal entity.

243 ~~[(37)]~~ (39) "Plan for moderate income housing" means a written document adopted by  
 244 a city legislative body that includes:

245 (a) an estimate of the existing supply of moderate income housing located within the  
 246 city;

247 (b) an estimate of the need for moderate income housing in the city for the next five  
 248 years as revised biennially;

249 (c) a survey of total residential land use;

250 (d) an evaluation of how existing land uses and zones affect opportunities for moderate  
 251 income housing; and

252 (e) a description of the city's program to encourage an adequate supply of moderate  
 253 income housing.

254 ~~[(38)]~~ (40) "Plat" means a map or other graphical representation of lands being laid out  
 255 and prepared in accordance with Section [10-9a-603](#), [17-23-17](#), or [57-8-13](#).

256 ~~[(39)]~~ (41) "Potential geologic hazard area" means an area that:

257 (a) is designated by a Utah Geological Survey map, county geologist map, or other  
 258 relevant map or report as needing further study to determine the area's potential for geologic  
 259 hazard; or

260 (b) has not been studied by the Utah Geological Survey or a county geologist but  
 261 presents the potential of geologic hazard because the area has characteristics similar to those of  
 262 a designated geologic hazard area.

263 ~~[(40)]~~ (42) "Public agency" means:

264 (a) the federal government;

265 (b) the state;

266 (c) a county, municipality, school district, local district, special service district, or other  
 267 political subdivision of the state; or

268 (d) a charter school.

269 ~~[(41)]~~ (43) "Public hearing" means a hearing at which members of the public are  
 270 provided a reasonable opportunity to comment on the subject of the hearing.

271 ~~[(42)]~~ (44) "Public meeting" means a meeting that is required to be open to the public

272 under Title 52, Chapter 4, Open and Public Meetings Act.

273 ~~[(43)]~~ (45) "Receiving zone" means an area of a municipality that the municipality  
 274 designates, by ordinance, as an area in which an owner of land may receive a transferable  
 275 development right.

276 ~~[(44)]~~ (46) "Record of survey map" means a map of a survey of land prepared in  
 277 accordance with Section [17-23-17](#).

278 ~~[(45)]~~ (47) "Residential facility for persons with a disability" means a residence:

279 (a) in which more than one person with a disability resides; and

280 (b) (i) which is licensed or certified by the Department of Human Services under Title  
 281 62A, Chapter 2, Licensure of Programs and Facilities; or

282 (ii) which is licensed or certified by the Department of Health under Title 26, Chapter  
 283 21, Health Care Facility Licensing and Inspection Act.

284 ~~[(46)]~~ (48) "Rules of order and procedure" means a set of rules that govern and  
 285 prescribe in a public meeting:

286 (a) parliamentary order and procedure;

287 (b) ethical behavior; and

288 (c) civil discourse.

289 ~~[(47)]~~ (49) "Sanitary sewer authority" means the department, agency, or public entity  
 290 with responsibility to review and approve the feasibility of sanitary sewer services or onsite  
 291 wastewater systems.

292 ~~[(48)]~~ (50) "Sending zone" means an area of a municipality that the municipality  
 293 designates, by ordinance, as an area from which an owner of land may transfer a transferable  
 294 development right.

295 ~~[(49)]~~ (51) "Specified public agency" means:

296 (a) the state;

297 (b) a school district; or

298 (c) a charter school.

299 ~~[(50)]~~ (52) "Specified public utility" means an electrical corporation, gas corporation,  
 300 or telephone corporation, as those terms are defined in Section 54-2-1.  
 301 ~~[(51)]~~ (53) "State" includes any department, division, or agency of the state.  
 302 ~~[(52)]~~ (54) "Street" means a public right-of-way, including a highway, avenue,  
 303 boulevard, parkway, road, lane, walk, alley, viaduct, subway, tunnel, bridge, public easement, or  
 304 other way.  
 305 ~~[(53)]~~ (55) (a) "Subdivision" means any land that is divided, resubdivided or proposed  
 306 to be divided into two or more lots, parcels, sites, units, plots, or other division of land for the  
 307 purpose, whether immediate or future, for offer, sale, lease, or development either on the  
 308 installment plan or upon any and all other plans, terms, and conditions.  
 309 (b) "Subdivision" includes:  
 310 (i) the division or development of land whether by deed, metes and bounds description,  
 311 devise and testacy, map, plat, or other recorded instrument; and  
 312 (ii) except as provided in Subsection ~~[(53)]~~ (55)(c), divisions of land for residential and  
 313 nonresidential uses, including land used or to be used for commercial, agricultural, and  
 314 industrial purposes.  
 315 (c) "Subdivision" does not include:  
 316 (i) a bona fide division or partition of agricultural land for the purpose of joining one of  
 317 the resulting separate parcels to a contiguous parcel of unsubdivided agricultural land, if neither  
 318 the resulting combined parcel nor the parcel remaining from the division or partition violates an  
 319 applicable land use ordinance;  
 320 (ii) a recorded agreement between owners of adjoining unsubdivided properties  
 321 adjusting their mutual boundary if:  
 322 (A) no new lot is created; and  
 323 (B) the adjustment does not violate applicable land use ordinances;  
 324 (iii) a recorded document, executed by the owner of record:  
 325 (A) revising the legal description of more than one contiguous unsubdivided parcel of

326 property into one legal description encompassing all such parcels of property; or  
 327 (B) joining a subdivided parcel of property to another parcel of property that has not  
 328 been subdivided, if the joinder does not violate applicable land use ordinances;  
 329 (iv) a recorded agreement between owners of adjoining subdivided properties adjusting  
 330 their mutual boundary if:  
 331 (A) no new dwelling lot or housing unit will result from the adjustment; and  
 332 (B) the adjustment will not violate any applicable land use ordinance;  
 333 (v) a bona fide division or partition of land by deed or other instrument where the land  
 334 use authority expressly approves in writing the division in anticipation of further land use  
 335 approvals on the parcel or parcels; or  
 336 (vi) a parcel boundary adjustment.  
 337 (d) The joining of a subdivided parcel of property to another parcel of property that has  
 338 not been subdivided does not constitute a subdivision under this Subsection ~~[(53)]~~ (55) as to the  
 339 unsubdivided parcel of property or subject the unsubdivided parcel to the municipality's  
 340 subdivision ordinance.  
 341 ~~[(54)]~~ (56) "Suspect soil" means soil that has:  
 342 (a) a high susceptibility for volumetric change, typically clay rich, having more than a  
 343 3% swell potential;  
 344 (b) bedrock units with high shrink or swell susceptibility; or  
 345 (c) gypsiferous silt and clay, gypsum, or bedrock units containing abundant gypsum  
 346 commonly associated with dissolution and collapse features.  
 347 ~~[(55)]~~ (57) "Therapeutic school" means a residential group living facility:  
 348 (a) for four or more individuals who are not related to:  
 349 (i) the owner of the facility; or  
 350 (ii) the primary service provider of the facility;  
 351 (b) that serves students who have a history of failing to function:  
 352 (i) at home;

353 (ii) in a public school; or  
 354 (iii) in a nonresidential private school; and  
 355 (c) that offers:  
 356 (i) room and board; and  
 357 (ii) an academic education integrated with:  
 358 (A) specialized structure and supervision; or  
 359 (B) services or treatment related to a disability, an emotional development, a behavioral  
 360 development, a familial development, or a social development.

[~~(56)~~] (58) "Transferable development right" means a right to develop and use land that originates by an ordinance that authorizes a land owner in a designated sending zone to transfer land use rights from a designated sending zone to a designated receiving zone.

[~~(57)~~] (59) "Unincorporated" means the area outside of the incorporated area of a city or town.

[~~(58)~~] (60) "Water interest" means any right to the beneficial use of water, including:

(a) each of the rights listed in Section [73-1-11](#); and

(b) an ownership interest in the right to the beneficial use of water represented by:

(i) a contract; or

(ii) a share in a water company, as defined in Section [73-3-3.5](#).

[~~(59)~~] (61) "Zoning map" means a map, adopted as part of a land use ordinance, that depicts land use zones, overlays, or districts.

Section 2. Section **10-9a-503** is amended to read:

**10-9a-503. Land use ordinance or zoning map amendments -- Historic district or area.**

(1) The legislative body may amend:

(a) the number, shape, boundaries, or area of any zoning district;

(b) any regulation of or within the zoning district; or

(c) any other provision of a land use ordinance.

(2) The legislative body may not make any amendment authorized by this section unless the amendment was proposed by the planning commission or was first submitted to the planning commission for its recommendation.

(3) The legislative body shall comply with the procedure specified in Section [10-9a-502](#) in preparing and adopting an amendment to a land use ordinance or a zoning map.

(4) (a) As used in this Subsection (4):

(i) "Condominium project" means the same as that term is defined in Section [57-8-3](#).

[~~(ii) "Local historic district or area" means a geographically or thematically definable area that contains any combination of buildings, structures, sites, objects, landscape features, archaeological sites, or works of art that contribute to the historic preservation goals of a legislative body.~~]

[~~(iii)~~] (ii) "Unit" means the same as that term is defined in Section [57-8-3](#).

(b) If a municipality provides a process by which one or more residents of the municipality may initiate the creation of a local historic district or area, the process shall require that:

(i) more than 33% of the property owners within the boundaries of the proposed local historic district or area agree in writing to the creation of the proposed local historic district or area;

(ii) before any property owner agrees to the creation of a proposed local historic district or area under Subsection (4)(b)(i), the municipality prepare and distribute, to each property owner within the boundaries of the proposed local historic district or area, a neutral information pamphlet that:

(A) describes the process to create a local historic district or area; and

(B) lists the pros and cons of a local historic district or area;

(iii) after the property owners satisfy the requirement described in Subsection (4)(b)(i), for each parcel or, if the parcel contains a condominium project, each unit, within the boundaries of the proposed local historic district or area, the municipality provide:

(A) a second copy of the neutral information pamphlet described in Subsection (4)(b)(ii); and

(B) one public support ballot that, subject to Subsection (4)(c), allows the owner or owners of record to vote in favor of or against the creation of the proposed local historic district or area;

(iv) in a vote described in Subsection (4)(b)(iii)(B), the returned public support ballots that reflect a vote in favor of the creation of the proposed local historic district or area:

(A) equal at least two-thirds of the returned public support ballots; and

(B) represent more than 50% of the parcels and units within the proposed local historic district or area;

(v) if a local historic district or area proposal fails in a vote described in Subsection (4)(b)(iii)(B), the legislative body may override the vote and create the proposed local historic district or area with an affirmative vote of two-thirds of the members of the legislative body; and

(vi) if a local historic district or area proposal fails in a vote described in Subsection (4)(b)(iii)(B) and the legislative body does not override the vote under Subsection (4)(b)(v), a resident may not initiate the creation of a local historic district or area that includes more than

50% of the same property as the failed local historic district or area proposal for four years after the day on which the public support ballots for the vote are due.

(c) In a vote described in Subsection (4)(b)(iii)(B):

(i) a property owner is eligible to vote regardless of whether the property owner is an individual, a private entity, or a public entity;

(ii) the municipality shall count no more than one public support ballot for:

(A) each parcel within the boundaries of the proposed local historic district or area; or

(B) if the parcel contains a condominium project, each unit within the boundaries of the proposed local historic district or area; and

(iii) if a parcel or unit has more than one owner of record, the municipality shall count a

public support ballot for the parcel or unit only if the public support ballot reflects the vote of the property owners who own at least a 50% interest in the parcel or unit.

(d) The requirements described in Subsection (4)(b)(iv) apply to the creation of a local historic district or area that is:

(i) initiated in accordance with a municipal process described in Subsection (4)(b); and

(ii) not complete on or before January 1, 2016.

(e) A vote described in Subsection (4)(b)(iii)(B) is not subject to Title 20A, Election Code.

Section 3. Section **10-9a-527** is enacted to read:

**10-9a-527. Historic preservation authority.**

(1) (a) A legislative body may designate a historic preservation authority.

(b) A legislative body may not designate the legislative body or the municipality's governing body as a historic preservation authority.

(2) In making administrative decisions on land use applications, a historic preservation authority shall apply the plain language of the land use regulations to a land use application.

(3) If a land use regulation does not plainly restrict a land use application, the historic preservation authority shall interpret and apply the land use regulation to favor the land use application.

Section 4. Section **10-9a-701** is amended to read:

**10-9a-701. Appeal authority required -- Condition precedent to judicial review -- Appeal authority duties.**

(1) Each municipality adopting a land use ordinance shall, by ordinance, establish one or more appeal authorities to hear and decide:

(a) requests for variances from the terms of the land use ordinances;

(b) appeals from decisions applying the land use ordinances; and

(c) appeals from a fee charged in accordance with Section [10-9a-510](#).

(2) As a condition precedent to judicial review, each adversely affected person shall

timely and specifically challenge a land use authority's decision, in accordance with local ordinance.

(3) An appeal authority:

(a) shall:

(i) act in a quasi-judicial manner; and

(ii) serve as the final arbiter of issues involving the interpretation or application of land use ordinances; and

(b) may not entertain an appeal of a matter in which the appeal authority, or any participating member, had first acted as the land use authority.

(4) By ordinance, a municipality may:

(a) designate a separate appeal authority to hear requests for variances than the appeal authority it designates to hear appeals;

(b) designate one or more separate appeal authorities to hear distinct types of appeals of land use authority decisions;

(c) require an adversely affected party to present to an appeal authority every theory of relief that it can raise in district court;

(d) not require an adversely affected party to pursue duplicate or successive appeals before the same or separate appeal authorities as a condition of the adversely affected party's duty to exhaust administrative remedies; and

(e) provide that specified types of land use decisions may be appealed directly to the district court.

(5) If the municipality establishes or, prior to the effective date of this chapter, has established a multiperson board, body, or panel to act as an appeal authority, at a minimum the board, body, or panel shall:

(a) notify each of its members of any meeting or hearing of the board, body, or panel;

486 (b) provide each of its members with the same information and access to municipal  
487 resources as any other member;

488 (c) convene only if a quorum of its members is present; and

489 (d) act only upon the vote of a majority of its convened members.

490 (6) (a) Each municipality that designates a historic preservation district or area shall, by  
491 ordinance, establish or designate a historic preservation appeal authority.

492 (b) A historic preservation appeal authority shall:

493 (i) be comprised of the members of the governing body;

494 (ii) exercise only administrative authority and act in a quasi-judicial manner; and

495 (iii) hear and decide appeals from administrative decisions of the historic preservation  
496 authority.

497 (c) An applicant appealing an administrative decision of the historic preservation  
498 authority may appeal to either:

499 (i) the historic preservation appeal authority; or

500 (ii) the land use appeal authority established under Subsection (1).

501 Section 5. Section **10-9a-703** is amended to read:

502 **10-9a-703. Appealing a land use authority's decision -- Panel of experts for**  
503 **appeals of geologic hazard decisions -- Automatic appeal for certain decisions.**

504 (1) The applicant, a board or officer of the municipality, or any person adversely  
505 affected by the land use authority's decision administering or interpreting a land use ordinance  
506 may, within the applicable time period ~~[provided by ordinance]~~, appeal that decision to the  
507 appeal authority by alleging that there is error in any order, requirement, decision, or  
508 determination made by the land use authority in the administration or interpretation of the land  
509 use ordinance.

510 (2) (a) An applicant who has appealed a decision of the land use authority administering  
511 or interpreting the municipality's geologic hazard ordinance may request the municipality to  
512 assemble a panel of qualified experts to serve as the appeal authority for purposes of  
513 determining the technical aspects of the appeal.

514 (b) If an applicant makes a request under Subsection (2)(a), the municipality shall

515 assemble the panel described in Subsection (2)(a) consisting of, unless otherwise agreed by the  
516 applicant and municipality:

517 (i) one expert designated by the municipality;

518 (ii) one expert designated by the applicant; and

519 (iii) one expert chosen jointly by the municipality's designated expert and the applicant's  
520 designated expert.

521 (c) A member of the panel assembled by the municipality under Subsection (2)(b) may  
522 not be associated with the application that is the subject of the appeal.

523 (d) The applicant shall pay:

524 (i) 1/2 of the cost of the panel; and

525 (ii) the municipality's published appeal fee.

526 Section 6. Section **10-9a-704** is amended to read:

527 **10-9a-704. Time to appeal.**

528 (1) The municipality shall enact an ordinance establishing a reasonable time of not less  
529 than 10 days to appeal to an appeal authority a written decision issued by a land use authority.

530 (2) In the absence of an ordinance establishing a reasonable time to appeal, an adversely  
531 affected party shall have 10 calendar days to appeal to an appeal authority a written decision  
532 issued by a land use authority.

533 (3) Notwithstanding Subsections (1) and (2), for an appeal from a decision of a historic  
534 preservation authority regarding a land use application, the applicant may appeal the decision  
535 within 30 days after the day on which the historic preservation authority issues a written  
536 decision.