



Staff Report

PLANNING DIVISION
COMMUNITY & NEIGHORHOOD DEVELOPMENT

To: Salt Lake City Planning Commission
From: Daniel Echeverria, 801-535-7165, daniel.echeverria@slcgov.com
Date: October 8, 2020 (publication)
Re: PLNPCM2020-00352 Administrative Decision Appeals Text Amendment

Zoning Text Amendment

REQUEST:

The City Council is requesting amendments to the zoning ordinance regulations regarding appeals of administrative decisions. Administrative decisions are those made by the Planning Commission, Historic Landmark Commission, or the Zoning Administrator in the administration of the zoning ordinance. The proposed amendments would modify City Code to align with State law, related case law, and make other clarifications to that code section. The amendments primarily clarify what matters can be decided by the City's Appeals Hearing Officer, who can appeal decisions, and when an appeal can stay a decision. The proposed amendments affect Chapter 21A.16 of the zoning ordinance. Related provisions of Title 21A-Zoning may be amended as part of this petition. The changes would apply Citywide.

RECOMMENDATION:

Based on the findings listed in the staff report, Planning Staff recommends that the Planning Commission forward a favorable recommendation for the text amendment request to the City Council.

ATTACHMENTS:

- A. [Proposed Code Text](#)
- B. [Existing Code Text](#)
- C. [Analysis of Standards – Zoning Text Amendment](#)
- D. [Public Process and Comments](#)
- E. [Department Review Comments](#)

Petition Description

The City Council initiated a petition to amend the Appeals chapter of the zoning ordinance in May of this year. The changes were initiated due to issues with the code being identified by the Attorney's Office in responding to and processing recent "Administrative Decision" appeals.

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Administrative decisions are those made by the Planning Commission, Historic Landmark Commission, or the Zoning Administrator in the administration of the zoning ordinance. Administrative decisions include such items as Planned Developments, Design Reviews, Subdivisions, Special Exceptions, and Major/Minor Alterations. These include when City staff is administering the ordinance by issuing decisions for these items directly or when the Planning Commission or Historic Landmarks Commission are the decision makers.

The proposed amendments would modify City Code to align with State law, related case law, and make other clarifications to that code section. The amendments primarily do the following:

- Clarify what matters can be decided by the City's Appeals Hearing Officer,
- Modify who can appeal decisions to comply with State Code, and
- Modify when an appeal can stay a decision to comply with State Code and case law.

Other minor miscellaneous clarifications are included in the code changes for consistency and enforceability. The changes are discussed in more detail in the [Key Code Changes](#) section below.

Applicable Review Processes and Standards

Review Processes: Zoning Text Amendment

Zoning text amendments are reviewed against four considerations, pertaining to whether proposed code is consistent with adopted City planning documents, furthers the purposes of the zoning ordinance, are consistent with other overlay zoning codes, and the extent they implement best professional practices. Those considerations are addressed in [Attachment C](#).

City Code amendments are ultimately up to the discretion of the City Council and are not controlled by any one standard.

Community Input

Notification of this proposal was sent out in June to all registered community councils to get community input and an online open house website was posted with the proposed draft and an overview of the proposal to get wider input. One community council (Sugar House) responded with a request to attend their Land Use and Zoning Committee meeting to go over the changes and staff attended that meeting. No other input has been received from community councils on the proposal.

KEY CODE CHANGES:

The below sections go over the primary code changes proposed with this amendment.

1. [Appeals Hearing Officer Authority Over City and State Code Appeals](#)
2. [State Code Updates Narrowing Appellants](#)
3. [Stays of Decisions for Appeals](#)
4. [Miscellaneous Changes](#)

1. Appeals Hearing Officer Authority Over City and State Code Appeals

Proposed Change:

- Clarify that the City Appeals Hearing Officer can only make decisions regarding the interpretation and application of provisions of Salt Lake City Code, not provisions regarding the interpretation and application of provisions of the Utah State Code, the Utah Constitution, Utah common law or federal law.

Utah State Code requires that a municipality that adopts a land use ordinance, shall also establish one or more appeal authorities to hear and decide the following: (1) requests for variances under the City’s land use ordinance; (2) appeals from decisions applying the land use ordinance, and (3) appeals from certain fees imposed by the City, e.g. review of building plans and hook-up fees. Utah Code § [10-9a-701\(1\)](#)

Most applications the City receives, and most interpretations it must make on a day-to-day basis, concern interpretation and application of provisions of the City’s local land use ordinance (City Code). If an affected person disagrees with the City’s interpretation of a provision of the City’s local land use ordinance, such as a zoning setback requirement, they can appeal it to the City’s Appeals Hearing Officer (the local land use appeal authority.)

On occasion, the City will receive an application that requests a land use that is provided for in Utah Code, not City ordinance. For example, Utah Code provides for relocation of billboards, where specifically prohibited by the City’s local land use ordinance. These applications require the City to review the application and determine if the applicant meets the requirements of a provision of state law, not City Code. In circumstances where the City has found the applicant does not meet the requirements of the provision, applicants have sought to appeal these decisions to the City’s Appeals Hearing Officer. On occasion, the City’s hearing officers, over the objection of the City, have heard and issued decisions on these appeals.

Neither Salt Lake City Code, nor Utah State Code, permit a City Hearing Officer to make these decisions. See Utah State Code § [10-9a-701\(1\)](#) (requiring an appeal authority to hear appeals from a city’s land use ordinance); Salt Lake City Code [21A.16.010](#) & 020 (stating hearing officer’s authority is to hear appeals alleging an error in interpretation, administration or enforcement of Title 21A of the Salt Lake City Code). These appeals should be made directly to the State’s district courts.

Thus, to remove any confusion, the amendments to the ordinance make clear the authority of the City’s hearing officers is limited to reviewing the City’s interpretation and application of provisions of the Salt Lake City Code, not provisions of State or Federal law.

This clarification of the authority of the City’s Appeals Hearing Officers is specifically provided for and permitted by the provision of State Code requiring the City to establish a land use appeal authority. See Utah Code § [10-9a-701\(4\)\(e\)](#) (stating a municipality may by ordinance “provide that specified types of land use decisions may be appealed directly to the district court.)

The changes are shown starting on line 39 of the redline draft in [Attachment A](#).

2. State Code Updates Narrowing Appellants

Proposed Change:

- Modify the list of allowed appellants to the land use applicant, City board or officer, or “an adversely affected party” to comply with new State Code.

This year the State Legislature with [House Bill 388](#) adopted changes to Utah State Code section [10-9a-7](#) “Appeal Authority and Variances.” That code section authorizes cities to establish land use appeal processes. That code section includes provisions that also limit land use appellants to three entities. The code changes narrowed the list of the entities that can appeal land use decisions by making the following change to that list of possible appellants (strikethroughs show deleted text and underlines show new text):

The (1) land use applicant, (2) a board or officer of the municipality, or (3) [~~any person adversely affected by the land use authority's decision administering or interpreting a land use ordinance~~] an adversely affected party may...

The entity defined as “any person adversely affected by the land use authority’s decision” was revised to the term “adversely affected party.” State Code then defines that term as:

(2) "Adversely affected party" means a person other than a land use applicant who:

(a) owns real property adjoining the property that is the subject of a land use application or land use decision; or

(b) will suffer a damage different in kind than, or an injury distinct from, that of the general community as a result of the land use decision.

While still using the term “adversely affected” it narrowly defines it to the two specific circumstances above in (a) and (b).

The proposed changes to the City’s appeals chapter would revise the list of allowed appellants to comply with the current State Code allowance. The changes are shown starting on line 80 of the redline draft in [Attachment A](#).

3. Stays of Decisions for Appeals

Proposed Change:

- Eliminate automatic stays of decisions. An appellant would have to specifically request and justify a stay.

Currently City Code specifies that a land use decision is automatically stayed upon submission of an appeal. A “stay” means that the decision is put on hold and no further proceedings can occur on the matter, pending a decision by the appeal authority on the appeal. For example, if the Planning Commission approved a development, but it was appealed and a stay was imposed, the developer couldn’t pull permits or start construction on their proposal. The current City Code also provides that an automatic stay can be released if the City’s Zoning Administrator (a member of City Planning staff) certifies in writing to the Appeals Hearing Officer that the stay would be against the best interest of the City.

The proposal would change the code section to no longer automatically stay a decision and instead require that an appellant formally request a stay. The appellant would also need to justify the stay by showing how it would be necessary “to prevent substantial harm” to the appellant. The Appeals Hearing Officer would then decide on whether to impose a stay. This change is intended to reflect State Code ([10-9a-801\(3\)\(b\)](#)) and case law wherein the decision of the Planning Commission or Historical Landmark Commission (“land use authority”) is to be initially presumed to be valid by a court or appeal authority in reviewing an appeal. An automatic stay is contrary to that presumption and so the proposal would eliminate that automatic stay. Additionally, automatic stays incentivize appeals that have no merit and put applicants in a difficult position whereby City approvals may be put on hold for up to six months when there may be no justification for such a stay.

The related changes are shown starting on line 129 of the redline draft in [Attachment A](#). Other changes are included to other related sections of the code, such as the Planning Commission and Historic Landmarks Commission sections, to reflect and reference that change starting on line 231 and continuing to 292 of the redline draft in [Attachment A](#).

4. Miscellaneous Changes

Proposed Changes:

- Clarifications to code references and removal of potentially conflicting language

The code includes other minor changes and clarifications to the appeals chapter. These include removal of potentially conflicting code regarding record keeping. City record keeping timeframes are imposed by other City Code and State law and the code change reduces the language to simply refer to those in order to avoid conflicts. These changes begin on line 208 of the draft code in [Attachment A](#). They also include changes to reflect and reference the current types of city applications and processes the Appeals Hearing Officer has authority over. Those changes are in the Authority section, starting on line 16 in [Attachment A](#). Changes clarifying that there is an application and fee for appeals is included in the “Procedure” section, starting on line 96 in [Attachment A](#). There are also deletions of the reference to the “Historic Preservation Appeal Authority” shown in the draft. Those are intended to reflect a recently adopted ordinance that deleted that entity, which has just not yet been incorporated or “codified” into the official city zoning text.

DISCUSSION:

The proposed code updates have been reviewed against the Zoning Amendment consideration criteria in [Attachment C](#). The proposed code changes implement best practices by ensuring the code is up to date, does not conflict with other applicable State or City Code, and complies with the City’s zoning purposes by ensuring that City ordinances can be legally administered and enforced.

Due to these considerations, staff is recommending that the Commission forward a favorable recommendation on this request to the City Council.

NEXT STEPS:

The Planning Commission can provide a positive or negative recommendation for the proposed text amendments. The recommendation will be sent to the City Council, who will hold a briefing and additional public hearing on the proposed text amendments amendment. The City Council may make modifications to the proposal and approve or decline to approve the proposed zoning text amendments.

If the text amendments are approved by the City Council, appeals would be subject to the new City ordinance standards.

ATTACHMENT A: **Proposed Code Text**

This attachment includes a “clean” version of the code without strikethroughs and underlines that show deleted and new text, and a “draft” version that identifies such deletions and new text with strikethroughs and underlines, respectively.

SECTION 1. Amending the Text of *Salt Lake City Code* Section 21A.16. That chapter 21A.16 Appeals of Administrative Decisions of the *Salt Lake City Code* shall be and hereby is amended to read as follows:

**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:

- A. Title 21A Appeals, Applications and Determinations: As described in section 21A.06.040 of this title, the appeals hearing officer shall hear and decide or make determinations regarding:
 - 1. Appeals alleging an error in any administrative decision made by the zoning administrator, the planning 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 appeals hearing officer shall not hear and decide or make determinations regarding any of the following:
 - 1. Appeals alleging an error in the application, 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;

Attachment A: Appeals Chapter Proposed Text – Clean Version

2. Appeals alleging a violation of state law or federal law, including but not limited to provisions of state and federal statutes, state and federal constitutions and state and federal common law;
3. Appeals requesting legal or equitable remedies available under state or federal law.

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

- C. Requirement to Disclose: An appeal that alleges one or more claims that the hearing officer has authority to hear and decide must include every theory of relief that can be presented in district court, including theories the hearing officer does not have authority to hear and decide.
- D. Mixed Appeals: When an appeal alleges one or more claims that the hearing officer has authority to hear and decide and one or more claims that the hearing officer does not have authority to hear and decide, the appeals hearing officer shall hear and decide only the claims the hearing officer has the authority to hear and decide. The claims the hearing officer does not have authority to hear and decide may be brought in district court on conclusion and exhaustion of all remedies available for the claims the hearing officer has authority to hear and decide.

21A.16.020: PARTIES ENTITLED TO APPEAL:

An applicant, a board or officer of the municipality, or an adversely affected party, as that term is defined by Utah code section 10-9a-103 or its successor, may appeal to the appeals hearing officer.

21A.16.030: PROCEDURE:

Appeals of administrative decisions by the zoning administrator, historic landmark commission or planning commission shall be taken in accordance with the following procedures:

- A. Form: The appeal shall be filed using an application form provided by the zoning administrator. To be considered complete, the application must include all information required on the application, including but not limited to identification of 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. Incomplete applications will not be accepted.
- B. Filing: The application must be submitted as indicated on the form by the applicable deadline, together with all applicable fees.
- C. Time for Filing an Appeal: The deadlines for filing a complete application for appeal are:
 1. Administrative decisions made by the zoning administrator: ten (10) days;

Attachment A: Appeals Chapter Proposed Text – Clean Version

2. Planning commission decisions: ten (10) days;
3. Historic landmark commission: thirty (30) days for appeals filed by the applicant, ten (10) days for appeals filed by any other party entitled to appeal.

D. Fees: The application shall be accompanied by the following fees:

1. The applicable fees shown on the Salt Lake City consolidated fee schedule; and
2. The fees established for providing the public notice required by chapter 21A.10 of this title.

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

E. No Automatic Stay: Filing an appeal with a hearing officer does not stay the decision appealed, unless a provision of this code specifically states otherwise.

F. Requesting a Stay: The hearing officer may grant a request filed by the Appellant, Respondent, or any other party to the appeal, to stay a decision of the zoning administrator, planning commission or historic landmark commission for a specified period of time or until the appeals hearing officer issues a decision, if the requesting party can show a stay is necessary to prevent substantial harm to the requesting party. No request is required, if a provision of this code imposes an automatic stay on the filing of an appeal with a hearing officer.

G. Notice Required:

1. Public Hearing: Upon receipt of an appeal of an administrative decision by the zoning administrator, the appeals hearing officer shall schedule and hold a public hearing in accordance with the standards and procedures for conduct of the public hearing set forth in chapter 21A.10 of this title.
2. Public Meeting: 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 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

Attachment A: Appeals Chapter Proposed Text – Clean Version

- hearing to any organization entitled to receive notice pursuant to Title 2, chapter 2.60 of this code.
- H. 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.
- I. Standard of Review:
1. The standard of review for an appeal, other than as provided in subsection I2 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 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.
- J. Burden of Proof: The appellant has the burden of proving the decision appealed is incorrect.
- K. 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 shall become effective on the date the decision is rendered.
- L. Notification of Decision: Notification of the decision of the appeals hearing officer shall be sent to all parties to the appeal within ten (10) days of the decision.
- M. Record of Proceedings: The proceedings of each appeal hearing shall be recorded. Recordings shall be retained by the planning division for a period that is consistent with city retention policies and any applicable retention requirement set forth in state law.
- N. 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.

Attachment A: Appeals Chapter Proposed Text – Clean Version

O. Matters Delayed: For all matters delayed by the appeals hearing officer, any subsequent written materials shall be submitted a minimum of fourteen (14) days prior to the rescheduled meeting date.

21A.16.040: APPEAL OF DECISION:

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.

21A.16.050: STAY OF DECISION:

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

SECTION 2. Amending the Text of *Salt Lake City Code* Section 21A.18.120. That section 21A.18.120 Stay of Decision of the *Salt Lake City Code* shall be and hereby is amended to read as follows:

21A.18.120: STAY OF DECISION:

A final decision of an appeals hearing officer may be stayed as provided for in section 21A.16.050 or its successor.

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

Appeal: Any owner adversely affected by a final decision of the Historic Landmark Commission may appeal the decision in accordance with the provisions of chapter 21A.16 of this title.

SECTION 4. Amending the Text of *Salt Lake City Code* Section 21A.52.120 Appeal of Decision. That section 21A.52.120 Appeal of Decision, of the *Salt Lake City Code* shall be and hereby is amended to read as follows:

21A.52.120: APPEAL OF DECISION:

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

Attachment A: Appeals Chapter Proposed Text – Clean Version

B. Any party aggrieved by a decision of the planning commission on an application for a special exception may file an appeal to the appeals hearing officer within ten (10) days of the date of the decision. The filing of the appeal shall not stay the decision of the planning commission pending the outcome of the appeal, except as provided for under section 21A.160.30F.

SECTION 5. Amending the Text of *Salt Lake City Code* Section 21A.54.160 Appeal of Planning Commission Decision. That section 21A.54.160 Appeal of Planning Commission

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

21A.54.160: APPEAL OF PLANNING COMMISSION DECISION:

Any person adversely affected by a final decision of the planning commission on an application for a conditional use may appeal to the appeals hearing officer in accordance with the provisions of chapter 21A.16 of this title. The filing of the appeal shall not stay the decision of the planning commission pending the outcome of the appeal, except as provided for under section 21A.16.030F of this title.

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

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

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

Any person adversely affected by a final decision of the Planning Commission on an application for a planned development may appeal to the Appeals Hearing Officer in accordance with the provisions of chapter 21A.16 of this title. The filing of the appeal shall not stay the decision of the Planning Commission pending the outcome of the appeal, except as provided for under section 21A.16.030F of this title.

1 SECTION 1. Amending the Text of Salt Lake City Code Section 21A.16. That chapter
2 21A.16 Appeals of Administrative Decisions of the *Salt Lake City Code* shall be and hereby is
3 amended to read as follows:

4 **Chapter 21A.16**
5 **APPEALS OF ADMINISTRATIVE DECISIONS**

- 6
7 **21A.16.010: Authority**
8 **21A.16.020: Parties Entitled ~~To~~ to Appeal**
9 **21A.16.030: Procedure**
10 **21A.16.040: Appeal ~~Of~~ of Decision**
11 **21A.16.050: Stay ~~Of~~ of Decision**
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14 **21A.16.010: AUTHORITY:**

15
16 A. Title 21A Appeals, Applications and Determinations: As described in section 21A.06.040 of
17 this title, the ~~A~~appeals ~~H~~hearing ~~O~~fficer shall hear and decide or make determinations
18 regarding:

- 19
20 1. Appeals alleging an error in any administrative decision made by the ~~z~~Zoning
21 ~~a~~Administrator, ~~or the Administrative Hearing Officer in the administration or~~
22 ~~enforcement of this title, as well as administrative decisions of the P~~lanning
23 ~~C~~ommission or the historic landmark commission involving the application,
24 ~~administration, enforcement or compliance with Title 21A of this code;-~~
25
26 2. Appeals from decisions made by the planning commission concerning subdivisions or
27 ~~subdivision amendments pursuant to the procedures and standards set forth in Title 20 of~~
28 ~~this code;~~
29
30 3. Applications for variances as per chapter 21A.18 of this title;
31
32 4. The existence, expansion or modification of nonconforming uses and noncomplying
33 ~~structures pursuant to the procedures and standards set forth in chapter 21A.38,~~
34 ~~“Nonconforming Uses and Noncomplying Structures”, of this title; and~~
35
36 5. Any other matter involving application, administration or enforcement of this code where
37 ~~specifically authorized by a provision of this code.~~
38

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

- 41
42 1. Appeals alleging an error in ~~the application, administrative decisions made by the~~
43 ~~Historic Landmark Commission pursuant to section 21A.16.020 of this chapter.~~

44 administration, enforcement or compliance with a provision of state or federal law,
45 including but not limited to provisions of state and federal statutes, state and federal
46 constitutions and state and federal common law;

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48 2. Appeals alleging a violation of state law or federal law, including but not limited to
49 provisions of state and federal statutes, state and federal constitutions and state and
50 federal common law;

51
52 3. Appeals requesting legal or equitable remedies available under state or federal law.

53
54 An appeal seeking the determinations identified in this subsection must be made directly to
55 the district court, as provided for in Utah code section 10-9a-701(4)(e) or its successor.

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

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

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

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

77
78 **21A.16.020: PARTIES ENTITLED TO APPEAL:**

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

90 **21A.16.030: PROCEDURE:**
91

92 Appeals of administrative decisions by the ~~z~~Zoning ~~a~~Administrator, ~~h~~Historic ~~I~~Landmark
93 ~~c~~Commission or ~~p~~Planning ~~c~~Commission shall be taken in accordance with the following
94 procedures:
95

96 A. Form: The appeal shall be filed using an application form provided by the zoning
97 administrator. To be considered complete, the application must include all information
98 required on the application, including but not limited to identification of the decision
99 appealed, the alleged error made in connection with the decision being appealed, and the
100 reasons the appellant claims the decision to be in error. Incomplete applications will not be
101 accepted.
102

103 B. Filing: The application must be submitted as indicated on the form by the applicable
104 deadline, together with all applicable fees.
105

106 AC. Time for Filing Of an Appeal: The deadlines for filing a complete application for appeal
107 are: All appeals shall specify the decision appealed, the alleged error made in connection with
108 the decision being appealed, and the reasons the appellant claims the decision to be in error,
109 including every theory of relief that can be presented in District Court. The deadlines for
110 filing an appeal are as indicated below:
111

- 112 1. Administrative decisions made by the ~~z~~Zoning ~~a~~Administrator: ~~t~~Ten (10) days;:-
- 113
- 114 2. Planning ~~c~~Commission decisions: ~~t~~Ten (10) days;:-
- 115
- 116 3. Historic ~~I~~Landmark ~~c~~Commission: ~~t~~Thirty (30) days for appeals filed by the applicant,
- 117 ten (10) days for appeals filed by any other party entitled to appeal.
- 118

119 BD. Fees: The application shall be accompanied by the applicable following fees:
120

- 121 1. The applicable fees shown on the Salt Lake City consolidated fee schedule; and
- 122
- 123 2. The applicant shall also be responsible for payment of allThe fees established for
124 providing the public notice required by ~~chapter~~ chapter 21A.10 of this title.
- 125

126 All fees are due at the time of filing the appeal. An appeal will not be considered complete
127 until all applicable fees are paid.
128

129 CE. No Automatic Stay: Filing an appeal with a hearing officer does not stay the decision
130 appealed, unless a provision of this code specifically states otherwise. Stay Of Proceedings:
131 An appeal to the Appeals Hearing Officer or Historic Preservation Appeal Authority shall
132 stay all further proceedings concerning the matter about which the appealed order,
133 requirement, decision, determination, or interpretation was made unless the Zoning
134 Administrator certifies in writing to the Appeals Hearing Officer or Historic Preservation

135 ~~Appeal Authority, after the appeal has been filed, that a stay would, in the Zoning~~
136 ~~Administrator's opinion, be against the best interest of the City.~~

- 137
138 F. Requesting a Stay: The hearing officer may grant a request filed by the Appellant,
139 Respondent, or any other party to the appeal, to stay a decision of the zoning administrator,
140 planning commission or historic landmark commission for a specified period of time or until
141 the appeals hearing officer issues a decision, if the requesting party can show a stay is
142 necessary to prevent substantial harm to the requesting party. No request is required, if a
143 provision of this code imposes an automatic stay on the filing of an appeal with a hearing
144 officer.

145
146 DG. Notice Required:

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148 1. Public Hearing: Upon receipt of an appeal of an administrative decision by the zZoning
149 aAdministrator, the aAppeals hHearing officer shall schedule and hold a public hearing
150 in accordance with the standards and procedures for conduct of the public hearing set
151 forth in chapter 21A.10 of this title.
152
153 2. Public Meeting: Appeals from a decision of the hHistoric ILandmark cCommission or
154 pPlanning cCommission are based on evidence in the record. Therefore, testimony at the
155 appeal meeting shall be limited to the appellant and the respondent.
156
157 a. Upon receipt of an appeal of a decision by the hHistoric ILandmark cCommission or
158 pPlanning cCommission, the aAppeals hHearing officer ~~or Historic Preservation~~
159 ~~Appeal Authority~~ shall schedule a public meeting to hear arguments by the appellant
160 and respondent. Notification of the date, time and place of the meeting shall be given
161 to the appellant and respondent a minimum of twelve (12) calendar days in advance
162 of the meeting.
163
164 b. The cCity shall give e-mail notification, or other form of notification chosen by the
165 aAppeals hHearing officer ~~or Historic Preservation Appeal Authority~~, a minimum
166 of twelve (12) calendar days in advance of the hearing to any organization entitled to
167 receive notice pursuant to ~~title~~-title 2, ~~chapter~~-chapter 2.60 of this cCode.

- 168
169 3H. Time Limitation: All appeals shall be heard within one hundred eighty (180) days of the
170 filing of the appeal. Appeals not heard within this time frame will be considered void and
171 withdrawn by the appellant.

172
173 EI. Standard of Review:

- 174
175 1. The standard of review for an appeal, other than as provided in subsection ~~E2-I2~~ of this
176 section, shall be de novo. The aAppeals hHearing officer ~~or Historic Preservation Appeal~~
177 ~~Authority~~ shall review the matter appealed anew, based upon applicable procedures and
178 standards for approval, and shall give no deference to the decision below.
179

180 2. An appeal from a decision of the hHistoric ~~I~~Landmark cCommission or pPlanning
181 cCommission shall be based on the record made below.

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- 183 a. No new evidence shall be heard by the aAppeals hHearing officer ~~or Historic~~
184 ~~Preservation Appeal Authority~~ unless such evidence was improperly excluded from
185 consideration below.
- 186
- 187 b. The aAppeals hHearing officer ~~or Historic Preservation Appeal Authority~~ shall
188 review the decision based upon applicable standards and shall determine its
189 correctness.
- 190
- 191 c. The aAppeals hHearing officer ~~or Historic Preservation Appeal Authority~~ shall
192 uphold the decision unless it is not supported by substantial evidence in the record or
193 it violates a law, statute, or ordinance in effect when the decision was made.

194

195 FJ. Burden ~~O~~of Proof: The appellant has the burden of proving the decision appealed is
196 incorrect.

197

198 GK. Action bBy ~~t~~The Appeals Hearing Officer ~~Or Historic Preservation Appeal Authority~~:
199 The aAppeals hHearing officer ~~or Historic Preservation Appeal Authority~~ shall render a
200 written decision on the appeal. Such decision may reverse or affirm, wholly or in part, or
201 may modify the administrative decision. A decision shall become effective on the date the
202 decision is rendered.

203

204 HL. Notification oOf Decision: Notification of the decision of the aAppeals hHearing
205 officer ~~or Historic Preservation Appeal Authority~~ shall be sent to all parties to the appeal
206 within ten (10) days of the decision.

207

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

218

219 JN. Policies aAnd Procedures: ~~The P~~planning ~~D~~irector shall adopt policies and procedures,
220 consistent with the provisions of this section, for processing appeals, the conduct of an appeal
221 hearing, and for any other purpose considered necessary to properly consider an appeal.

222

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

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21A.16.040: APPEAL OF DECISION:

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

21A.16.050: STAY OF DECISION:

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

~~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.~~

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

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

21A.18.120: STAY OF DECISION:

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

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

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

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

262 SECTION 4. Amending the Text of Salt Lake City Code Section 21A.52.120 Appeal of
263 Decision. That section 21A.52.120 Appeal of Decision, of the *Salt Lake City Code* shall be and
264 hereby is amended to read as follows:

265 21A.52.120: APPEAL OF DECISION:

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

268 B. Any party aggrieved by a decision of the planning commission on an application for a
269 special exception may file an appeal to the appeals hearing officer within ten (10) days of the
270 date of the decision. The filing of the appeal shall not stay the decision of the planning
271 commission pending the outcome of the appeal, except as provided for under section
272 21A.16.030F. ~~unless the planning commission takes specific action to stay a decision.~~

273
274 SECTION 5. Amending the Text of Salt Lake City Code Section 21A.54.160 Appeal of
275 Planning Commission Decision. That section 21A.54.160 Appeal of Planning Commission
276 Decision, of the *Salt Lake City Code* shall be and hereby is amended to read as follows:

277 21A.54.160: APPEAL OF PLANNING COMMISSION DECISION:

278 Any person adversely affected by a final decision of the planning commission on an application for a
279 conditional use may appeal to the appeals hearing officer in accordance with the provisions of chapter
280 21A.16 of this title. ~~Notwithstanding section 21A.16.030 of this title, t~~The filing of the appeal shall not
281 stay the decision of the planning commission pending the outcome of the appeal, except as provided for
282 under section 21A.16.030F of this title. ~~unless the planning commission takes specific action to stay a~~
283 ~~decision.~~

284 SECTION 6. Amending the Text of Salt Lake City Code Section 21A.55.070 Appeal of
285 the Planning Commission Decision. That section 21A.55.070 Appeal of the Planning Commission
286 Decision, of the *Salt Lake City Code* shall be and hereby is amended to read as follows:

287 21A.55.070: APPEAL OF THE PLANNING COMMISSION DECISION:

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

ATTACHMENT B: Existing Code Text

CHAPTER 21A.16 APPEALS OF ADMINISTRATIVE DECISIONS

SECTION:

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 appeals alleging an error in administrative decisions made by the historic landmark commission pursuant to Section 21A.16.020 of this chapter.

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.

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.

21A.16.030: PROCEDURE:

Appeals of administrative decisions by the zoning administrator, historic landmark commission or planning commission shall be taken in accordance with the following procedures:

A. Filing of Appeal:

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: ten (10) days.
2. Planning commission decisions: ten (10) days.
3. Historic landmark commission: Thirty (30) days for appeals filed by the applicant, ten (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 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 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. Public Meeting:** 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 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 2.60 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 E.2 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 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 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 to all parties to the appeal within ten (10) days of the 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. 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.

K. Matters Delayed:

For all matters delayed by the appeals hearing officer, any subsequent written materials shall be submitted a minimum of fourteen (14) days prior to the rescheduled meeting date.

21A.16.040: APPEAL OF DECISION:

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.

21A.16.050: STAY OF DECISION:

The appeals hearing officer 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.

ATTACHMENT C: Analysis of Standards – Zoning Text Amendment

ZONING TEXT AMENDMENT

21A.50.050: 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 a decision to amend the zoning map, the City Council should consider the following:

CONSIDERATION	FINDING	RATIONALE
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;	The proposed amendments are generally consistent with the goals and policies the City’s plans.	None of the existing adopted Salt Lake City master plans specifically address the proposed amendments. However, the changes clarify the code and remove conflicts to ensure that the ordinance is enforceable. Master Plan provisions involving land use are implemented through the zoning ordinance and so an enforceable zoning ordinance is consistent with the City’s Master Plans. The proposed amendments to the Zoning Ordinance relating to the appeals process will clarify processes and reduce legal issues with the code, which supports implementation of the City’s adopted plans and policies.
2. Whether a proposed text amendment furthers the specific purpose statements of the zoning ordinance;	The proposal generally furthers the specific purpose statements of the zoning ordinance by ensuring their enforcement and administration.	The purpose of the zoning ordinance is to “promote the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Salt Lake City, to implement the adopted plans of the City, and carry out the purposes of the Municipal Land Use Development and Management Act (State Code). The proposed amendments reduce conflicts between City and State Code, better allowing enforcement and administration of the City’s zoning ordinance. The proposed changes maintain conformity with the general purpose statements of the zoning ordinance and ensure that the code can be legally administered and enforced to further those ordinance purposes.
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	The proposal is consistent with and does not impact the enforceability of any existing appeal process references in any zoning overlays.	The proposed amendments will impact appeals relating to all sections of the zoning ordinance, including any overlays. Various overlays reference the appeals process in the affected code sections. Those references will remain in place and will continue to be enforceable.
4. The extent to which a proposed text amendment implements best current,	The proposed changes eliminate legal conflicts,	The proposed changes eliminate legal conflicts in the code, allowing for better enforceability and administration of City Code provisions. Legal, enforceable code is a best professional practice in urban

professional practices of urban planning and design.	improve enforceability and administration of City Code, and so implement best professional practices.	planning. The regulation changes do not pertain to professional practices of design.
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ATTACHMENT D: **Public Process and Comments**

Public Notice, Meetings, Comments

The following is a list of public meetings that have been held, and other public input opportunities, related to the proposal:

- Early notification/online Open House notices e-mailed out June 18, 2020
 - Notices were e-mailed to all recognized community organizations (community councils) per City Code 2.60 with a link to the online open house webpage
 - One community council (Sugar House) requested that staff attend and present the changes to their Land Use and Zoning Committee
 - Staff attended the meeting over video conference, reviewed the proposal, and answered questions.
 - No formal input was received from any community councils.
 - No public comments were received.

Notice of the public hearing for the proposal included:

- Public hearing notice published to newspaper September 30, 2020
- Public notice posted on City and State websites and Planning Division listserv on September 30, 2020

ATTACHMENT E: Department Review Comments

Planning Staff Note: This text amendment generally does not impact most other City departments and so other departments did not provide any concerns. Appeals can be submitted regarding building permits issued by Building Services; however, Building Services did not have any concerns with the changes.