

ERIN MENDENHALL
Mayor



DEPARTMENT of COMMUNITY
and NEIGHBORHOODS
Blake Thomas
Director

CITY COUNCIL TRANSMITTAL


Lisa Shaffer (Dec 14, 2020 11:15 MST)

Lisa Shaffer, Chief Administrative Officer

Date Received: 12/14/2020

Date sent to Council: 12/14/2020

TO: Salt Lake City Council
Chris Wharton, Chair

DATE: 12/4/2020

FROM: Blake Thomas, Director, Department of Community & Neighborhoods



SUBJECT: PLNPCM2020-00352 Administrative Decision Appeals Text Amendment

STAFF CONTACT: Daniel Echeverria, Senior Planner, 801-535-7165,
daniel.echeverria@slcgov.com

DOCUMENT TYPE: Ordinance

RECOMMENDATION: That the City Council adopt the proposed modifications to Chapter 21A.16 as recommended by the Planning Commission and Attorney's Office.

BUDGET IMPACT: None

BACKGROUND/DISCUSSION: This proposed ordinance includes changes to the City Zoning Ordinance pertaining to appeals of administrative land use decisions. The proposal was initiated by the City Council 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, particularly related to recent appeals regarding billboards.

Administrative decisions are those made by the Planning Commission, Historic Landmark Commission, or the Zoning Administrator (City Staff) in the administration of the zoning ordinance. Administrative decisions include decisions on such processes as Planned Developments, Design Reviews, Subdivisions, Special Exceptions, and Major/Minor Alterations to historic properties. Administrative decisions also include when City staff is administering the ordinance by directly issuing decisions on development proposals or permits, or when the Planning Commission or Historic Landmarks Commission are the decision makers on proposals.

The proposed amendments would modify City Code to align with State law, related case law, and make other clarifications to the “Appeals” chapter of the Zoning Ordinance. The amendments primarily do the following:

- 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.
- 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.
- Eliminate automatic stays of decisions. An appellant would have to specifically request and justify a “stay” (a hold on further proceedings on a matter) when appealing an administrative decision.

Other minor, miscellaneous clarifications are included in the code changes for consistency and enforceability. The details of the code changes can be found in the staff report located in Exhibit 3b.

PUBLIC PROCESS:

- Early notification and online Open House notices were 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 with the proposed code.
 - One community council (Sugar House) requested that staff attend and present the changes to their Land Use and Zoning Committee.
 - Staff attended the Sugar House meeting over video conference, reviewed the proposal, and answered questions.
 - No formal input was received from any community councils.
 - No public comments were received.
- The Planning Commission held a public hearing on the proposal on October 14, 2020:
 - A public hearing notice was published in the newspaper, posted on City and State websites, and sent out on the Planning Division notification listserv on September 30, 2020.
 - No members of the public spoke at the public hearing.
 - Planning Commission members asked the City Attorney’s Office staff technical questions about the ordinance.
 - The Planning Commission passed a unanimous recommendation that the City Council approve the ordinance.

EXHIBITS:

- 1) Chronology
- 2) Notice of City Council Hearing
- 3) Planning Commission
 - a) Newspaper Notice
 - b) Staff Report
 - c) Agenda and Minutes

- d) Presentation Slides
- 4) Original Petition

SALT LAKE CITY ORDINANCE
No. _____ of 2020
(An ordinance amending Chapter 21A.16 of the *Salt Lake City Code*
pertaining to Appeals of Administrative Decisions)

An ordinance amending Chapter 21A.16 of the *Salt Lake City Code* pertaining to Appeals of Administrative Decisions, pursuant to petition number PLNPCM2020-00352

WHEREAS, the Salt Lake City Planning Commission held a public hearing on October 14, 2020 to consider a request made by the Salt Lake City Council (Petition No. PLNPCM2020-00352) to amend Chapter 21A.16 of the *Salt Lake City Code*; and

WHEREAS, at its October 14, 2020 hearing, the planning commission voted in favor of forwarding a positive recommendation to the Salt Lake City Council; and

WHEREAS, after a public hearing on this matter, the city council has determined that adopting this ordinance is in the city's best interests,

WHEREAS, Utah Code § 10-9a-701 requires a municipality that adopts a land use ordinance to establish an appeal authority to hear and decide requests for variances from the terms of the land use ordinances and appeals from decisions applying the land use ordinances;

WHEREAS, Salt Lake City has adopted a land use ordinance and established such an appeal authority;

WHEREAS, Utah Code § 10-9a-701 also provides that a municipality may provide that specified types of land use decisions may be appealed directly to the district court;

WHEREAS, the Salt Lake City Council finds it necessary to clarify, as provided for in Utah Code § 10 -9a-701, the authority of that appeal authority and to specify the types of land use decisions that may be appealed directly to district court;

WHEREAS, the Salt Lake City Council finds it is also necessary to clarify the process for filing appeals with the appeal authority;

WHEREAS, the Salt Lake City Council finds, after holding a public hearing on this matter, that adopting this ordinance is in the City's best interests.

NOW, THEREFORE, be it ordained by the City Council of Salt Lake City, Utah:

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;
 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;
 - 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 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.
- 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:

21A.34.020L.3(e)

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.

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.

SECTION 7. Effective Date. This ordinance shall become effective on the date of its passage.

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

CHAIRPERSON

ATTEST AND COUNTERSIGN:

CITY RECORDER

Transmitted to Mayor on _____.
Mayor's Action: _____ Approved. _____ Vetoed.


MAYOR

CITY RECORDER

(SEAL)

Bill No. _____ of 2020.
Published: _____.

Approved As To Form
Salt Lake City Attorney's Office

By: 
Katherine Lewis, City Attorney
Date: November 3, 2020

LEGISLATIVE DRAFT

SALT LAKE CITY ORDINANCE

No. _____ of 2020

(An ordinance amending Chapter 21A.16 of the *Salt Lake City Code*
pertaining to Appeals of Administrative Decisions)

An ordinance amending Chapter 21A.16 of the *Salt Lake City Code* pertaining to Appeals of
Administrative Decisions, pursuant to petition number PLNPCM2020-00352

WHEREAS, the Salt Lake City Planning Commission held a public hearing on October 14, 2020 to
consider a request made by the Salt Lake City Council (Petition No. PLNPCM2020-00352) to amend
Chapter 21A.16 of the *Salt Lake City Code*; and

WHEREAS, at its October 14, 2020 hearing, the planning commission voted in favor of forwarding a
positive recommendation to the Salt Lake City Council; and

WHEREAS, after a public hearing on this matter, the city council has determined that adopting this
ordinance is in the city's best interests,

WHEREAS, Utah Code § 10-9a-701 requires a municipality that adopts a land use ordinance
to establish an appeal authority to hear and decide requests for variances from the terms of the land
use ordinances and appeals from decisions applying the land use ordinances;

WHEREAS, Salt Lake City has adopted a land use ordinance and established such an
appeal authority;

WHEREAS, Utah Code § 10-9a-701 also provides that a municipality may provide that
specified types of land use decisions may be appealed directly to the district court;

WHEREAS, the Salt Lake City Council finds it necessary to clarify, as provided for in
Utah Code § 10 -9a-701, the authority of that appeal authority and to specify the types of land use
decisions that may be appealed directly to district court;

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WHEREAS, the Salt Lake City Council finds it is also necessary to clarify the process for filing appeals with the appeal authority;

WHEREAS, the Salt Lake City Council finds, after holding a public hearing on this matter, that adopting this ordinance is in the City's best interests.

NOW, THEREFORE, be it ordained by the City Council of Salt Lake City, Utah:

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~~to Appeal

21A.16.030: Procedure

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

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

21A.16.010: AUTHORITY:

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

1. ~~A~~appeals alleging an error in any administrative decision made by the ~~z~~Zoning ~~a~~Administrator, ~~or the Administrative Hearing Officer in the administration or enforcement of this title, as well as administrative decisions of the P~~planning ~~C~~commission ~~or the historic landmark commission involving the application, administration, enforcement or compliance with Title 21A of this code;~~
2. Appeals from decisions made by the planning commission concerning subdivisions or subdivision amendments pursuant to the procedures and standards set forth in Title 20 of this code;
3. Applications for variances as per chapter 21A.18 of this title;
4. The existence, expansion or modification of nonconforming uses and noncomplying structures pursuant to the procedures and standards set forth in chapter 21A.38, "Nonconforming Uses and Noncomplying Structures", of this title; and

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5. Any other matter involving application, administration or enforcement of this code where specifically authorized by a provision of this code.

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

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

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.

~~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.~~

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

21A.16.020: PARTIES ENTITLED TO APPEAL:

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An applicant, a board or officer of the municipality, or ~~any other person or entity~~ an adversely affected party, as that term is defined by Utah code section 10-9a-103 or its successor, ~~by a decision administering or interpreting this title~~ may appeal to the aAppeals hHearing oOfficer. ~~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 zZoning aAdministrator, hHistoric lLandmark cCommission or pPlanning cCommission 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.

A.C. Time for Filing Of an Appeal: The deadlines for filing a complete application for appeal are: 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 zZoning aAdministrator: tTen (10) days;
2. Planning cCommission decisions: tTen (10) days;
3. Historic lLandmark cCommission: tThirty (30) days for appeals filed by the applicant, ten (10) days for appeals filed by any other party entitled to appeal.

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

1. The applicable fees shown on the Salt Lake City consolidated fee schedule; and
2. The applicant shall also be responsible for payment of all The fees established for providing the public notice required by chapter 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.

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153 ~~E.~~ No Automatic Stay: Filing an appeal with a hearing officer does not stay the decision
154 appealed, unless a provision of this code specifically states otherwise. Stay Of Proceedings:
155 An appeal to the Appeals Hearing Officer or Historic Preservation Appeal Authority shall
156 stay all further proceedings concerning the matter about which the appealed order,
157 requirement, decision, determination, or interpretation was made unless the Zoning
158 Administrator certifies in writing to the Appeals Hearing Officer or Historic Preservation
159 Appeal Authority, after the appeal has been filed, that a stay would, in the Zoning
160 Administrator's opinion, be against the best interest of the City.

161
162 F. Requesting a Stay: The hearing officer may grant a request filed by the Appellant,
163 Respondent, or any other party to the appeal, to stay a decision of the zoning administrator,
164 planning commission or historic landmark commission for a specified period of time or until
165 the appeals hearing officer issues a decision, if the requesting party can show a stay is
166 necessary to prevent substantial harm to the requesting party. No request is required, if a
167 provision of this code imposes an automatic stay on the filing of an appeal with a hearing
168 officer.

169
170 DG. Notice Required:

- 171
172 1. Public Hearing: Upon receipt of an appeal of an administrative decision by the zZoning
173 aAdministrator, the aAppeals hHearing oOfficer shall schedule and hold a public hearing
174 in accordance with the standards and procedures for conduct of the public hearing set
175 forth in chapter 21A.10 of this title.
176
177 2. Public Meeting: Appeals from a decision of the hHistoric lLandmark cCommission or
178 pPlanning cCommission are based on evidence in the record. Therefore, testimony at the
179 appeal meeting shall be limited to the appellant and the respondent.
180
181 a. Upon receipt of an appeal of a decision by the hHistoric lLandmark cCommission or
182 pPlanning cCommission, the aAppeals hHearing oOfficer ~~or Historic Preservation~~
183 ~~Appeal Authority~~ shall schedule a public meeting to hear arguments by the appellant
184 and respondent. Notification of the date, time and place of the meeting shall be given
185 to the appellant and respondent a minimum of twelve (12) calendar days in advance
186 of the meeting.
187
188 b. The cCity shall give e-mail notification, or other form of notification chosen by the
189 aAppeals hHearing oOfficer ~~or Historic Preservation Appeal Authority~~, a minimum
190 of twelve (12) calendar days in advance of the hearing to any organization entitled to
191 receive notice pursuant to ~~title~~ Title 2, ~~chapter~~ chapter 2.60 of this cCode.

192
193 3H. Time Limitation: All appeals shall be heard within one hundred eighty (180) days of the
194 filing of the appeal. Appeals not heard within this time frame will be considered void and
195 withdrawn by the appellant.

196
197 EI. Standard oOf Review:
198

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1. The standard of review for an appeal, other than as provided in subsection ~~E2-I2~~ of this section, shall be de novo. The ~~a~~Appeals ~~h~~Hearing ~~o~~Officer ~~or Historic Preservation Appeal Authority~~ 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 ~~h~~Historic ~~L~~Landmark ~~c~~Commission or ~~p~~Planning ~~c~~Commission shall be based on the record made below.

a. No new evidence shall be heard by the ~~a~~Appeals ~~h~~Hearing ~~o~~Officer ~~or Historic Preservation Appeal Authority~~ unless such evidence was improperly excluded from consideration below.

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

c. The ~~a~~Appeals ~~h~~Hearing ~~o~~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.

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

~~GK~~. Action ~~b~~By ~~t~~The Appeals Hearing Officer ~~Or Historic Preservation Appeal Authority~~: The ~~a~~Appeals ~~h~~Hearing ~~o~~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 shall become effective on the date the decision is rendered.

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

~~IM~~. Record ~~o~~Of Proceedings: The proceedings of each appeal hearing shall be recorded ~~on audio equipment. The audio R~~recordings ~~of each appeal hearing~~ shall be retained kept by the planning division for a period that is consistent with city retention policies and any applicable retention requirement set forth in state law. ~~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.~~

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~~J~~N. Policies ~~a~~And Procedures: The ~~P~~planning ~~D~~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~~O. Matters Delayed: For all matters delayed by the ~~A~~appeals ~~H~~hearing ~~O~~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.

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~~district ~~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~~

LEGISLATIVE DRAFT

~~filing of an appeal shall stay the decision of the Historic Landmark Commission pending the outcome of the appeal.~~

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.

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. ~~unless the planning commission takes specific action to stay a decision.~~

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. ~~Notwithstanding section 21A.16.030 of this title, t~~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. ~~unless the planning commission takes specific action to stay a decision.~~

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:

LEGISLATIVE DRAFT

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. ~~Notwithstanding section 21A.16.030 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. ~~unless the Planning Commission takes specific action to stay a decision.~~

SECTION 7. Effective Date. This ordinance shall become effective on the date of its passage.

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

CHAIRPERSON

ATTEST AND COUNTERSIGN:

CITY RECORDER

Transmitted to Mayor on _____.
Mayor's Action: _____ Approved. _____ Vetoed.

MAYOR

CITY RECORDER

(SEAL)

Bill No. _____ of 2020.
Published: _____.

Approved As To Form
Salt Lake City Attorney's Office

By: _____
Katherine Lewis, City Attorney
Date: _____

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 - d. Presentation Slides**
- 4. ORIGINAL PETITION**

1. CHRONOLOGY

PROJECT CHRONOLOGY

Petition: PLNPCM2020-00352 Administrative Decision Appeals Text Amendment

May 5, 2020	City Council initiates petition
May 12, 2020	Petition assigned to Daniel Echeverria, Senior Planner
June 8, 2020	Draft ordinance prepared by Attorney's Office
June 18, 2020	Early notification notices sent to all recognized organizations and posted on City webpage for public input
July 20, 2020	Staff attends Sugar House Community Council Land Use and Zoning Committee meeting via web video conference to discuss proposal
August 3, 2020	Early notification period ends
September 30, 2020	Public hearing notice for Planning Commission meeting published in newspaper, posted on City/State notice websites, and sent out on Planning notification listserv.
October 8, 2020	Staff report for the item is published
October 14, 2020	Planning Commission public hearing held. Planning Commission passes unanimous motion recommending approval of the proposal

2. NOTICE OF CITY COUNCIL HEARING

**SALT LAKE CITY CORPORATION
SALT LAKE CITY COUNCIL
NOTICE OF HEARING**

NOTICE IS HEREBY GIVEN THAT ON **DATE** and **DATE** at 7:00 p.m. public hearings will be held by the Salt Lake City Council to accept public comment and consider adopting an ordinance relating to Petition No. PLNPCM2020-00352.

A proposed ordinance is before the Council to amend the text of Title 21A of the Salt Lake City Code pertaining to 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.

The Council may consider adopting the ordinance on the same night of the second public hearing. This meeting will be electronic pursuant to the Chair's determination that conducting the meeting at a physical location may present a substantial risk to the health & safety (due to the ongoing COVID-19 pandemic) of those who would otherwise be present at an anchor location, and pursuant to SLC Emergency Proclamation. If you are interested in participating in the Public Hearing, please visit the website <https://www.slc.gov/council/> to learn how you can share your comments during the meeting. Comments may also be provided by calling the 24-Hour comment line at (801)535-7654 or sending an email to council.comments@slcgov.com. All comments received through any source are shared with the Council and added to the public record.

Publish:

3. PLANNING COMMISSION – Oct. 14, 2020
a. Newspaper Notice

The Salt Lake Tribune

Publication Logo
Unavailable

Publication Name:

The Salt Lake Tribune

Publication URL:

Publication City and State:

Salt Lake City, UT

Publication County:

Salt Lake

Notice Popular Keyword Category:

Notice Keywords:

plnpcm2020-00352

Notice Authentication Number:

202011250158583150503

3430682078

Notice URL:

[Back](#)

Notice Publish Date:

Saturday, October 03, 2020

Notice Content

Notice of Public Hearing On Wednesday, October 14, 2020, the Salt Lake City Planning Commission will hold a public hearing to consider making recommendations to the City Council regarding the following petitions: 1. Administrative Decision Appeals Text Amendment - 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 also be amended as part of this petition. The changes would apply Citywide. (Staff contact: Daniel Echeverria at (801) 535-7165 or daniel.echeverria@slcgov.com) Case Number PLNPCM2020-00352 The public hearing will begin at 5:30 p.m. via Webex. To participate go to: <http://tiny.cc/slc-pc-10142020> This Meeting will not have an anchor location at the City and County Building. Commission Members will connect remotely. If you are interested in watching the Planning Commission meetings, they are available on the following platforms: YouTube: www.youtube.com/slclivemeetings SLCTv Channel 17 Live: [www.slctv.com/livestream/SLC tv-Live/2](http://www.slctv.com/livestream/SLC%20tv-Live/2) If you are interested in participating during the Public Hearing portion of the meeting or provide general comments, email; planning.comments@slcgov.com. 1300772 UPAXLP

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PLANNING COMMISSION – Oct. 14, 2020
b. Staff Report



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.

SALT LAKE CITY CORPORATION
451 SOUTH STATE STREET, ROOM 406
PO BOX 145480 SALT LAKE CITY, UT 84114-5480

www.slcgov.com
TEL 801-535-7757 FAX 801-535-6174

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;

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;

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

- 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.

- 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.

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.

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~~ to Appeal

21A.16.030: Procedure

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

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

21A.16.010: AUTHORITY:

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

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

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

1. Aappeals alleging an error in the application, administrative decisions made by the Historic Landmark Commission pursuant to section 21A.16.020 of this chapter.

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

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.

~~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.~~

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

21A.16.020: PARTIES ENTITLED TO APPEAL:

~~An applicant, a board or officer of the municipality, or any other person or entity, adversely affected party, as that term is defined by Utah code section 10-9a-103 or its successor, by a decision administering or interpreting this title may appeal to the aAppeals hHearing oOfficer. 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 ~~z~~Zoning ~~a~~Administrator, ~~h~~Historic ~~I~~Landmark ~~c~~Commission or ~~p~~Planning ~~c~~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.

AC. Time for Filing Of an Appeal: The deadlines for filing a complete application for appeal are: 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 ~~z~~Zoning ~~a~~Administrator: ~~t~~Ten (10) days;
2. Planning ~~c~~Commission decisions: ~~t~~Ten (10) days;
3. Historic ~~I~~Landmark ~~c~~Commission: ~~t~~Thirty (30) days for appeals filed by the applicant, ten (10) days for appeals filed by any other party entitled to appeal.

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

1. The applicable fees shown on the Salt Lake City consolidated fee schedule; and
2. ~~The applicant shall also be responsible for payment of all~~ The fees established for providing the public notice required by ~~chapter 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.

CE. 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. 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 or Historic Preservation

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

- 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.

DG. Notice Required:

1. Public Hearing: Upon receipt of an appeal of an administrative decision by the ~~z~~Zoning ~~a~~Administrator, the ~~a~~Appeals ~~h~~Hearing ~~o~~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 ~~h~~Historic ~~l~~Landmark ~~c~~Commission or ~~p~~Planning ~~c~~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 ~~h~~Historic ~~l~~Landmark ~~c~~Commission or ~~p~~Planning ~~c~~Commission, the ~~a~~Appeals ~~h~~Hearing ~~o~~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 ~~c~~City shall give e-mail notification, or other form of notification chosen by the ~~a~~Appeals ~~h~~Hearing ~~o~~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~~Title 2, ~~chapter~~chapter 2.60 of this ~~c~~Code.

3H. 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.

EI. Standard ~~o~~Of Review:

1. The standard of review for an appeal, other than as provided in subsection ~~E2-I2~~ of this section, shall be de novo. The ~~a~~Appeals ~~h~~Hearing ~~o~~Officer ~~or Historic Preservation Appeal Authority~~ 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 hHistoric ILandmark cCommission or pPlanning cCommission shall be based on the record made below.

- a. No new evidence shall be heard by the aAppeals hHearing oOfficer ~~or Historic Preservation Appeal Authority~~ unless such evidence was improperly excluded from consideration below.
- b. The aAppeals hHearing oOfficer ~~or Historic Preservation Appeal Authority~~ shall review the decision based upon applicable standards and shall determine its correctness.
- c. The aAppeals hHearing oOfficer ~~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.

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

GK. Action bBy ~~t~~The Appeals Hearing Officer ~~Or Historic Preservation Appeal Authority~~: The aAppeals hHearing oOfficer ~~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 shall become effective on the date the decision is rendered.

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

IM. Record of Proceedings: The proceedings of each appeal hearing shall be recorded ~~on audio equipment. The audio recordings of each appeal hearing shall be retained kept by the planning division for a period that is consistent with city retention policies and any applicable retention requirement set forth in state law. 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.~~

JN. Policies aAnd 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.

KO. 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.

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.~~

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.

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.16.030F. ~~unless the planning commission takes specific action to stay a decision.~~

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. ~~Notwithstanding section 21A.16.030 of this title, t~~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. ~~unless the planning commission takes specific action to stay a decision.~~

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. ~~Notwithstanding section 21A.16.030 of this title, t~~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. ~~unless the Planning 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.

PLANNING COMMISSION – Oct. 14, 2020
c. Agenda/Minutes

SALT LAKE CITY PLANNING COMMISSION MEETING AGENDA
This meeting will be an electronic meeting pursuant to the
Salt Lake City Emergency Proclamation
October 14, 2020, at 5:30 p.m.
(The order of the items may change at the Commission's discretion)

This Meeting will **not** have an anchor location at the City and County Building. Commission Members will connect remotely. We want to make sure everyone interested in the Planning Commission meetings can still access the meetings how they feel most comfortable. If you are interested in watching the Planning Commission meetings, they are available on the following platforms:

- YouTube: www.youtube.com/slclivemeetings
- SLCTv Channel 17 Live: www.slctv.com/livestream/SLCtv-Live/2

If you are interested in participating during the Public Hearing portion of the meeting or provide general comments, email: planning.comments@slcgov.com or connect with us on Webex at:

- <http://tiny.cc/slc-pc-10142020>

Instructions for using Webex will be provided on our website at SLC.GOV/Planning

PLANNING COMMISSION MEETING WILL BEGIN AT 5:30 PM
APPROVAL OF MINUTES FOR SEPTEMBER 23, 2020
REPORT OF THE CHAIR AND VICE CHAIR

REPORT OF THE DIRECTOR

1. **Union Pacific Hotel Time Extension Request** - Mark Sanford, project representative, is requesting a one-year time extension for the Union Pacific Hotel Planned Development and Conditional Building and Site Design Review, located at 2 S. 400 West. The applicant has indicated that additional time is needed to finalize financing for the proposed hotel project. The Planned Development and Conditional Building and Site Design Review was approved by the Planning Commission on November 14, 2018 for an 8-story, 225-room hotel to be located on the west side of the existing Union Pacific Railroad Station. All new construction in the Gateway-Mixed Use zoning district must be reviewed as a planned development. The subject property is located within Council District 4, represented by Ana Valdemoros. (Staff contact: Kelsey Lindquist at (385) 226-7227 or kelsey.lindquist@slcgov.com) **Case numbers PLNSUB2018-00617 & PLNSUB2018-00618**
2. **Edison House Conditional Use Time Extension Request** - Bubba Holdings, LLC, applicant, request a one-year time extension for the Edison House Conditional Use at 335 South 200 West. The Planning Commission approved the conditional use on October 9, 2019. The project is a 3-story structure that would house a membership-based social club. In the D-3 Downtown Warehouse/Residential District, a Conditional Use review is required if a structure is 3 or more stories in height and contains commercial uses but no residential uses. Indoor and Outdoor Bar Establishments are also subject to a Conditional Use review in this zone. Building permit plans have been submitted but the applicant needs additional time to solve technical issues resulting from the permit plan review. The property is located within Council District 4, represented by Ana Valdemoros. (Staff contact: Wayne Mills at (801) 535-7282 or wayne.mills@slcgov.com) **Case number PLNPCM2019-00671**

PUBLIC HEARINGS

1. **Height & Grade Change Special Exceptions at approximately 333 N Federal Heights Circle** - Scott and Jennifer Huntsman, the property owners, are requesting special exception approval to construct a new single-family detached structure that exceeds the maximum permitted building and wall height and maximum allowable grade changes in the FR-3/12,000 Foothills Residential District. The subject property is located at 333 N Federal Heights Circle and is currently vacant. The proposed structure will exceed the height limit of 28' by 2'-8" at two points on the rear and middle of the structure. The requested grade changes in the

rear yard will exceed the permitted 4 feet in the setback area and 6 feet in the buildable area. The subject property is located in the FR-3/12,000 (Foothills Residential) zoning district and within Council District 3, represented by Chris Wharton (Staff contact: Kristina Gilmore at (801) 535-7780 or kristina.gilmore@slcgov.com) **Case number PLNPCM2020-00639**

2. **800 South & State Street Design Review at approximately 754 S. State Street** - Aabir Malik, an applicant with Colmena Group, is requesting Design Review approval to develop a portion of the former Sears property into an 11-story, 120 foot tall, mixed-use development consisting of ground floor retail and 360 multi-family residential units on the upper floors. The applicant is requesting Design Review approval to allow for additional building height, modification to the spacing of building entrances and to exceed the maximum street facing facade length. The project site is located in the D-2 (Downtown Support) zoning district and is located within Council District 4, represented by Ana Valdemoros (Staff contact: Nannette Larsen at (801) 535-7645 or nannette.larsen@slcgov.com) **Case number PLNPCM2020-00439**
3. **Kozo House Apartments Design Review at approximately 157 & 175 North 600 West, & 613, 621, 625, & 633 West 200 North** – A request by David Clayton for Design Review approval to develop a 312-unit mixed use building on six parcels located at 157 North 600 West, 175 North 600 West, 613 West 200 North, 621 West 200 North, 625 West 200 North, and 633 West 200 North. These properties are located in the TSA-UC-T Zoning District. The applicant is requesting Design Review approval to allow the proposed building to exceed the maximum street facing facade length and to modify the spacing of building entrances. The project is located within Council District 3, represented by Chris Wharton (Staff contact: Caitlyn Miller at (385) 315-8115 or caitlyn.miller@slcgov.com) **Case number PLNPCM2020-00258**
4. **West End Rezone at approximately 715 W Genesee Ave** - A request by Maximilian Coreth, property owner, to rezone the parcel located at approximately 715 W Genesee Avenue and a portion of a city owned public alley at approximately 740 W 900 South. The properties are currently zoned Light Manufacturing (M-1) and the request is to rezone them to Residential Mixed Use (R-MU). The purpose of the requested rezone is to accommodate a future multi-family residential development on a portion of the subject site. The property is zoned M-1 (Light Manufacturing) and is located within Council District 2, represented by Andrew Johnston (Staff contact: Chris Earl at (801) 535-7932 or christopher.earl@slcgov.com) **Case number PLNPCM2020-00268**
5. **Administrative Decision Appeals Text Amendment** - 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 also be amended as part of this petition. The changes would apply Citywide. (Staff contact: Daniel Echeverria at (801) 535-7165 or daniel.echeverria@slcgov.com) **Case Number PLNPCM2020-00352**

For Planning Commission agendas, staff reports, and minutes, visit the Planning Division's website at slc.gov/planning/public-meetings. Staff Reports will be posted the Friday prior to the meeting and minutes will be posted two days after they are ratified, which usually occurs at the next regularly scheduled meeting of the Planning Commission.

SALT LAKE CITY PLANNING COMMISSION MEETING EXCERPT
This meeting was held electronically pursuant to the
Salt Lake City Emergency Proclamation
Wednesday, October 14, 2020

A roll is being kept of all who attended the Planning Commission Meeting. The meeting was called to order at [5:56:09 PM](#). Audio recordings of the Planning Commission meetings are retained for a period of time.

Present for the Planning Commission meeting were: Chairperson, Adrienne Bell; Vice Chairperson, Brenda Scheer; Commissioners; Maurine Bachman, Amy Barry, Jon Lee, Matt Lyon, Andres Paredes, Sara Urquhart, and Crystal Young-Otterstrom. Commissioner Carolynn Hoskins was excused.

Planning Staff members present at the meeting were: Nick Norris, Planning Director; Michaela Oktay, Planning Deputy Director; Paul Neilson, Attorney; Kelsey Lindquist, Senior Planner; Wayne Mills, Planning Manager; Kristina Gilmore, Principal Planner; Nannette Larsen, Principal Planner; Caitlyn Miller, Principal Planner; Chris Earl, Associate Planner; Daniel Echeverria, Senior Planner; and Marlene Rankins, Administrative Secretary.

[8:43:00 PM](#)

Administrative Decision Appeals Text Amendment - 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 also be amended as part of this petition. The changes would apply Citywide. (Staff contact: Daniel Echeverria at (801) 535-7165 or daniel.echeverria@slcgov.com) **Case Number PLNPCM2020-00352**

Daniel Echeverria, Senior Planner, reviewed the petition as outlined in the Staff Report (located in the case file). He stated Staff recommended that the Planning Commission forward a positive recommendation to the City Council.

The Commission and Staff discussed the following:

- Clarification on who oversees the hearing officer to determine whether the property analyzing City code issues versus State code issues
- Clarification on the difference between applying State law and interpreting it

PUBLIC HEARING [8:54:33 PM](#)

Chairperson Bell opened the Public Hearing; seeing no one wished to speak; Chairperson Bell closed the Public Hearing.

MOTION [8:55:33 PM](#)

Commissioner Scheer stated, based on the information in the staff report, the information presented, and the input received during the public hearing, I move that the Planning Commission

recommend that the City Council approve the proposed text amendment, PLNPCM2020-00352 Administrative Decision Appeals Text Amendment.

Commissioner Bachman seconded the motion. Commissioners Bachman, Barry, Lee, Lyon, Paredes, Scheer, Urquhart, and Young-Otterstrom voted “Aye”. The motion passed unanimously.

The meeting adjourned at [8:57:50 PM](#)

PLANNING COMMISSION – Oct. 14, 2020
d. Presentation Slides



Salt Lake City Planning Commission



October 14, 2020
Administrative Decision Appeals
Zoning Text Amendment

Admin. Appeals Text Amendment



Appeals Chapter 21A.16

- Regulates appeals of administrative decisions

Decisions by:

- Planning Commission
- Historic Landmarks Commission
- Other Administrative decisions
 - Zoning Administrator/Planning Director/Staff
- Appeals heard by an appointed Appeals Hearing Officer
- Technical changes to Appeals chapter
- Comply with recent state code and case law

Admin. Appeals Text Amendment



- Clarify authority of Appeals Hearing Officer
 - Authority over City code appeals only, not state code
- Align allowed appellant definition with State Code
 - (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.
- Stays of decisions with appeals
 - Appeals will not automatically stay decisions
 - Appeals Hearing Officer would decide on stay requests from appellants
 - Appellant must demonstrate potential substantial harm
- Other wording, clarification changes

4. ORIGINAL PETITION

City Council Announcements

May 5, 2020

For Your Information

A. Billboard Ordinance Amendments [6:13:46 PM](#)

In October 2019, the Salt Lake City Attorney's Office let the Council know about areas of the City's zoning ordinances pertaining to billboards that need updating to be in line with state law. Those changes include:

- amending the zoning code to remove the City billboard bank
- clarify the scope of administrative land use appeals

The City Council may wish to initiate a petition requesting those amendments be made. The Attorney's Office would work with other City departments to process those changes and then transmit them to the Council for final consideration.

- **If the Council supports this text amendment, it may officially be initiated during tonight's (May 5) formal meeting.** [Cindy Gust-Jenson, Executive Council Director](#), said the ordinance needed to be updated to adhere to State law. She said in order for this to go through the proper procedure, it would be best if the request was made by the Council. She said it was scheduled for action tonight during the formal meeting unless objections were raised. Councilmember Dugan asked if this would increase the chance for more billboards. Ms. Gust-Jenson said no. Council Members had no objections.