

August 9, 2012

Appeals Hearing Officer Regulations - Petition No. PLNPCM2012-00344

- This item is presented as a written briefing. A Council staff report was not prepared.
- The Council is also scheduled to set a public hearing date for September 4, 2012.
- An ordinance has been prepared for Council consideration to the City zoning regulations to clarifying the role and authority of the Appeals Hearing Officer. Changes include:
 - A. Clarification of what constitutes a public hearing and public meeting and the noticing requirements of each.
 - B. Elimination of newspaper publication requirements.
 - C. Clarification that a planned development is no longer a type of conditional use.

FRANK B. GRAY
DIRECTOR

SALT LAKE CITY CORPORATION

DEPARTMENT OF COMMUNITY & ECONOMIC DEVELOPMENT
OFFICE OF THE DIRECTOR

SCANNED TO:
RALPH BECKER
SCANNED BY:
MAYOR

MARY DE LA MARE-SCHAEFER
DEPUTY DIRECTOR

ROBERT FARRINGTON, JR.
DEPUTY DIRECTOR

CITY COUNCIL TRANSMITTAL




David Everitt, Chief of Staff

Date Received: 07/18/2012

Date Sent to City Council: 07/19/2012

TO: Salt Lake City Council
Søren Simonsen

DATE:

FROM: Mary DeLaMare-Schaefer
Deputy Director, CED



SUBJECT: PLNPCM2012-00344; Appeals Hearing Officer Regulations Fine Tuning

STAFF CONTACT: Cheri Coffey, 801-535-6188; cheri.coffey@slcgov.com

DOCUMENT TYPE: Ordinance

RECOMMENDATION: Adopt the proposed amendments.

BUDGET IMPACT: May decrease notification / newspaper publication expenses.

DISCUSSION:

Issue Origin: On February 7, 2012, the City Council adopted Ordinance No 8 of 2012; an ordinance establishing an Appeals Hearing Officer and eliminating the Board of Adjustment and Land Use Appeals Board. Since the adoption of the new ordinance and the appointment of the Appeals Hearing Officer, there have been two meetings with the Appeals Hearing Officer. In the preparation for the noticing of the first meeting, it was discovered that there were some clarification issues that needed to be addressed as well as some inconsistencies with the noticing requirements. The subject petition is proposed to fine tune the ordinance in order to address these issues.

Analysis:

The proposed amendments relate to four items listed below.

1. Clarification of the Authority of the Appeals Hearing Officer

The Land Use Appeals Board used to hear appeals of the Historic Landmark Commission and Planning Commission decisions. The section of the City Code that used to deal with the Land Use Appeals Board was not part of the Zoning Ordinance. In establishing the Appeals Hearing Officer, the authority of this person was included in Chapter 16 of the Zoning Ordinance – Appeals of Administrative Decisions. However, when the Zoning Ordinance was first adopted in 1995, Chapter 16 dealt with decisions that were made by staff. In order to “fold” into the Zoning Ordinance, appeals of the Historic Landmark Commission and Planning Commission, it is essential to clarify in Chapter 21A.16 of the Zoning Ordinance that those administrative decisions made by the Historic Landmark Commission (such as Alterations, New Construction and Demolitions in local historic districts) and by the Planning Commission (such as Conditional Uses, Planned Developments and Subdivisions) are all items that the Appeals Hearing Officer has the authority to review.

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

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

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

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

The current ordinance has conflicting noticing requirements relating to the appeals of the Historic Landmark Commission and Planning Commission cases. These are not public hearings. Sending notification, as required by Chapter 21A.10 for these types of cases, creates an expectation on the part of those who receive notice that they will be able to speak at the meeting. In fact, the Hearing Officer is not allowed to take public testimony

for “on the record” types of cases. Therefore, the proposed amendments are necessary to clarify this conflict. In addition, rather than listing the notification requirements in Chapter 21A.16, staff is recommending that this chapter references 21A.10, which is consistent with all of the other public hearing processes listed in the Zoning Ordinance, adopted by the City Council through Ordinance 62, 2011.

3. Elimination of Newspaper Publication requirement

The current ordinance requires that all matters before the Appeals Hearing Officer require the notice be published in the newspaper. State law only requires notices to be published in the newspaper for projects relating to master plan adoption, master plan amendment or zoning text amendments. No other planning type of project requires newspaper notification. Since newspaper notification is a costly and a fairly inefficient means of notifying the public, the Planning Commission recommends this requirement be deleted.

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

One section of the adopted ordinance, relating to the sequence of approval of an application for a conditional use and a variance, references planned developments. Since planned developments are no longer a type of conditional use, as adopted by the City Council through Ordinance 23 of 2010, this reference should be eliminated.

Master Plan Considerations:

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

PUBLIC PROCESS: The Planning Division briefed the Historic Landmark Commission about this matter at its June 7, 2012 meeting. The Historic Landmark Commission did not have any substantive issues with the proposed changes.

The proposed ordinance was posted on the Planning Division webpage on Monday June 18, 2012. The Planning Division also hosted a public open house on June 21, 2012. Notice of the meeting was sent to Community Council chairs, business groups, the media and other groups and individuals whose names are on the Planning Division’s List serve.

The Planning Commission held a public hearing on Wednesday June 27, 2012. The Planning Commission passed a motion to recommend the City Council adopt the petition as proposed. There was no public comment.

RELEVANT ORDINANCES:

Amendments to the Zoning Ordinance are authorized under Section 21A.50 of the Salt Lake City Zoning Ordinance. As detailed in Section 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.” It does, however, list four standards, which should be analyzed prior to amending the text of the zoning ordinance (Section 21A.50.050 A.1-4). The four standards are discussed in detail starting on page 4 of the Planning Commission Staff Report (see Attachment 5B).

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1. Chronology

PROJECT CHRONOLOGY
Petition #PLNPCM2012-00344

June 1, 2012	Mayor Initiates petition at request of the Planning Division
June 1, 2012	Routed to applicable departments to review and provide comments by June 18, 2012.
June 7, 2012	Briefed the Historic Landmark Commission on the necessity to clarify the existing appeals hearing officer language.
June 14, 2012	Notice e-mailed to Planning Division listserv, including Community Council Chairs, and posted on the City and State Websites.
June 15, 2012	Notice published in Salt Lake Tribune.
June 18, 2012	Information posted to the Planning Division website.
June 21, 2012	Open House held at Day Riverside Public Library
June 27, 2012	Planning Commission held public hearing and voted unanimously to transmit a favorable recommendation to the City Council.
July 2, 2012	Staff requests ordinance from City Attorney's office.
July 11, 2012	Planning Commission ratified minutes for the June 27, 2012 meeting.
July 16, 2012	Staff received draft of proposed ordinance from City Attorney's Office.

2. Ordinance

SALT LAKE CITY ORDINANCE

No. _____ of 2012

(An ordinance amending various sections of Title 21A of the
Salt Lake City Code pertaining to land use appeal authority)

An ordinance amending various sections of Title 21A of the *Salt Lake City Code* pursuant to Petition No. PLNPCM2012-00344 to provide additional clarity and efficiency in regulations relating to the Appeals Hearing Officer regulations.

WHEREAS, the Salt Lake City Planning Commission (“planning commission”) held a public hearing on June 27, 2012 to consider a request made by Salt Lake City Mayor Ralph Becker (Petition no. PLNPCM2012-00344) to amend the text of Chapters 21A.06 (Zoning: Decision Making Bodies and Officials); 21A.16 (Zoning: Appeals of Administrative Decisions); and 21A.54 (Zoning: Conditional Uses); and

WHEREAS, at its June 27, 2012 hearing, members of the Planning Commission voted in favor of recommending to the City Council of Salt Lake City (“city council”) that the city council amend the sections of Title 21A of the *Salt Lake City Code* identified herein; and

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

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

SECTION 1. Amending text of *Salt Lake City Code* Section 21A.06.040. That section 21A.06.040 of the *Salt Lake City Code* (Zoning: Decision Making Bodies and Officials: Appeals Hearing Officer), shall be, and hereby is, amended to read as follows:

21A.06.040: APPEALS HEARING OFFICER:

- A. Creation: The position of appeals hearing officer is created pursuant to the enabling authority granted by the Municipal Land Use, Development, and Management Act, Section 10-9a-701 of the Utah Code Annotated.
- B. Jurisdiction and Authority: The appeals hearing officer shall have the following powers and duties in connection with the implementation of this title:
1. Hear and decide appeals from any administrative decision made by the zoning administrator in the administration or the enforcement of this title pursuant to the procedures and standards set forth in Chapter 21A.16, "Appeals Of Administrative Decisions", of this title. ~~with the exception of administrative reviews of certificates of appropriateness which shall be appealed to the historic landmark commission, as set forth in Subsection 21A.060.050.C.3 of this chapter~~
 2. Authorize variances from the terms of this title pursuant to the procedures and standards set forth in Chapter 21A.18, "Variances", of this title;
 3. Hear and decide appeals of any administrative decision ~~from decisions~~ made by the historic landmark commission pursuant to the procedures and standards set forth in ~~Subsection~~ Section 21A.34.020, "Historic Preservation Overlay District" ~~34.010.F.2.h~~ of this code;
 4. Hear and decide appeals from decisions made by the planning commission concerning subdivisions or subdivision amendments pursuant to the procedures and standards set forth in Title 20, "Subdivisions", of this code; and
 5. Hear and decide appeals from administrative decisions made by the planning commission ~~regarding conditional uses, conditional site plan reviews for sexually oriented businesses, or planned developments~~ pursuant to the procedures and standards set forth in ~~Section~~ Title 21A, "Zoning Ordinance", ~~54.160~~ of this code.
- C. Qualifications: The appeals hearing officer shall be appointed by the mayor with the advice and consent of the city council. The mayor may appoint more than one (1) appeals hearing officer, but only one hearing officer shall consider and decide upon any matter properly presented for hearing officer review. The appeals hearing officer may serve a maximum of two (2) consecutive full terms of five (5) years each. The appeals hearing officer shall either be law trained or have significant experience with land use laws and the requirements and operations of administrative hearing processes.
- D. Conflict of Interest: The appeals hearing officer shall not participate in any appeal in which the hearing officer has a conflict of interest prohibited by Title 2, Chapter 2.44 of this code.

- E. Removal of the Hearing Officer: The appeals hearing officer may be removed by the mayor for violation of this title or any policies and procedures adopted by the planning director following receipt by the mayor of a written complaint filed against the appeals hearing officer. If requested by the appeals hearing officer, the mayor shall provide the appeals hearing officer with a public hearing conducted by a hearing officer appointed by the mayor.

SECTION 2. Amending text of Salt Lake City Code Section 21A.16.010. That section 21A.16.010 of the *Salt Lake City Code* (Zoning: Appeals of Administrative Decisions: Authority), shall be, and hereby is, amended to read as follows:

21A.16.010: AUTHORITY:

As described in Section 21A.06.040 of this title, the appeals hearing officer shall hear and decide appeals alleging an error in any administrative decision made by the zoning administrator or the administrative hearing officer in the administration or enforcement of this title, as well as administrative decisions of the historic landmark commission; and the planning commission.

In addition, the appeals hearing officer shall hear and decide applications for variances as per Section 21A.18.

SECTION 3. Amending text of Salt Lake City Code Section 21A.16.030. That section 21A.16.030 of the *Salt Lake City Code* (Zoning: Appeals of Administrative Decisions: Procedure), shall be, and hereby is, amended to read as follows:

21A.16.030: PROCEDURE:

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

- A. Filing of Appeal: An appeal shall be made in writing within ten (10) days of the administrative decision by the zoning administrator, historic landmark commission or planning commission and shall be filed with the zoning administrator. The appeal shall specify the decision appealed, the alleged error made in connection with the decision being appealed, and the reasons the appellant claims the decision to be in error, including every theory of relief that can be presented in district court.
- B. Fees: Nonrefundable application and hearing fees shown on the Salt Lake City consolidated fee schedule shall accompany the appeal.

C. Stay of Proceedings: An appeal to the appeals hearing officer shall stay all further proceedings concerning the matter about which the appealed order, requirement, decision, determination, or interpretation was made unless the zoning administrator certifies in writing to the appeals hearing officer, after the appeal has been filed, that a stay would, in the zoning administrator's opinion, be against the best interest of the city.

D. Notice and Hearing Required:

1. Upon receipt of an appeal of an administrative decision by the zoning administrator, the appeals hearing officer shall schedule and hold a public hearing in accordance with the standards and procedures for conduct of the public hearing set forth in Chapter 21A.10 of this title. ~~give notice and hold a hearing on the appeal.~~ Notice shall be given as follows:
 1. ~~Providing all of the information necessary for notice of an appeal hearing required under this chapter shall be the responsibility of the appellant and shall be in the form established by the appeals hearing officer pursuant to the standards of this subsection.~~
 2. ~~Notice by first class mail shall be provided:~~
 - a. ~~A minimum of twelve (12) calendar days in advance of the hearing;~~
 - b. ~~To all owners and tenants of the land subject to the appeal as shown on the Salt lake City geographic information system records; and~~
 - c. ~~Within three hundred feet (300') from the periphery of the land subject to the appeal, inclusive of streets and rights of way.~~
 - d. ~~Mailing labels shall be generated by the city when an appeal is filed using Salt lake City geographic information system records.~~
 3. ~~The city shall give email notification, or other form of notification chosen by the appeals hearing officer, a minimum of twelve (12) calendar days in advance of the hearing to any organization entitled to receive notice pursuant to Title 2, Chapter 2.62 of this code.~~
 4. ~~The notice for any hearing shall generally describe the subject matter of the appeal; the date, time and place of the appeal hearings; and the place where the record of the appeal may be inspected by the public.~~
 5. ~~The land subject to an appeal hearing shall be posted by the city with a sign giving notice of the hearing, providing the date of the hearing including contact information for more information, at least ten (10) calendar days in advance of the hearing.~~
 - a. ~~One (1) notice shall be posted for each five hundred feet (500') of frontage, or portion thereof, along a public street. At least one (1) sign shall be posted on each public street. Sign(s) shall be located on the land subject to the appeal and shall be set back no more than twenty five feet (25') from the front property line and shall be visible from the street. Where the subject land does not have frontage on a public street, sign(s) shall be erected on the nearest street right of way with an attached notation indicating generally the direction and distance to the land subject to the appeal.~~

- ~~b. If a sign is removed through no fault of the appellant before the appeal hearing, such removal shall not be deemed a failure to comply with the standards of this subsection or be grounds to challenge the validity of any decision made on the appeal.~~
- ~~6. At least twelve (12) calendar days in advance of the appeal hearing the City shall publish a notice of such hearing in a newspaper of general circulation in Salt Lake City.~~
- ~~7. A hearing pertaining to an appeal from a decision of the historic landmark commission or planning commission shall be limited to the appellant and the respondent who may present legal argument based on evidence in the record.~~

2. Notice of Appeals of Administrative Decisions of the Historic Landmark Commission or Planning Commission. Appeals from a decision of the historic landmark commission or planning commission are based on evidence in the record. Therefore, testimony at the appeal meeting shall be limited to the appellant and the respondent.

- a. Upon receipt of an appeal of a decision by the historic landmark commission or planning commission the appeals hearing officer shall schedule a public meeting to hear arguments by the appellant and respondent. Notification of the date, time and place of the meeting shall be given to the appellant and respondent a minimum of twelve (12) calendar days in advance of the meeting.
- b. The city shall give e-mail notification, or other form of notification chosen by the appeals hearing officer, a minimum of twelve (12) calendar days in advance of the hearing to any organization entitled to receive notice pursuant to Title 2, Chapter 2.62 of this code.

E. Standard of Review:

- 1. The standard of review for an appeal, other than as provided in Subsection 2 of this Subsection E, shall be de novo. The appeals hearing officer shall review the matter appealed anew, based upon applicable procedures and standards for approval, and shall give no deference to the decision below.
- 2. An appeal from a decision of the historic landmark commission or planning commission shall be based on the record made below.
 - a. No new evidence shall be heard by the appeals hearing officer unless such evidence was improperly excluded from consideration below.
 - b. The appeals hearing officer shall review the decision based upon applicable standards and shall determine its correctness.
 - c. The appeals hearing officer shall uphold the decision unless it is not supported by substantial evidence in the record or it violates a law, statute, or ordinance in effect when the decision was made.

- F. Burden of Proof: The appellant has the burden of proving the decision appealed is incorrect.
- G. Action by the Appeals Hearing Officer: The appeals hearing officer shall render a written decision on the appeal. Such decision may reverse or affirm, wholly or in part, or may modify the administrative decision. A decision by the appeals hearing officer shall become effective on the date the decision is rendered.
- H. Notification of Decision: Notification of the decision of the appeals hearing officer shall be sent by mail to all parties to the appeal within ten (10) days of the appeals hearing officer's decision.
- I. Record of Proceedings: The proceedings of each appeal hearing shall be recorded on audio equipment. The audio recording of each appeal hearing shall be kept for a minimum of sixty (60) days. Upon the written request of any interested person, such audio recording shall be kept for a reasonable period of time beyond the sixty (60) day period, as determined by the appeals hearing officer. Copies of the tapes of such hearings may be provided, if requested, at the expense of the requesting party. The appeals hearing officer may have the appeal proceedings contemporaneously transcribed by a court reporter.
- J. Appeals: Any person adversely affected by a final decision made by the appeals hearing officer may file a petition for review of the decision with the district court within thirty (30) days after the decision is rendered.
- K. Policies and Procedures: The planning director shall adopt policies and procedures, consistent with the provisions of this Subsection E, for processing appeals, the conduct of an appeal hearing, and for any other purpose considered necessary to properly consider an appeal.

SECTION 4. Amending text of Salt Lake City Code Section 21A.54.070. That section 21A.54.070 of the *Salt Lake City Code* (Zoning: Conditional Uses: Sequence of Approval of Applications for Both a Conditional Use and a Variance), shall be, and hereby is, amended to read as follows:

21A.54.070: SEQUENCE OF APPROVAL OF APPLICATIONS FOR BOTH A CONDITIONAL USE AND A VARIANCE:

Whenever the applicant indicates pursuant to Subsection 21A.54.060.A.9 of this chapter that a variance will be necessary in connection with the proposed conditional use, (~~other than a planned development~~) the applicant shall at the time of filing the application for a conditional use, file an application for a variance with the appeals hearing officer.

C. Coffey
7/17/12

- A. Combined Review: Upon the filing of a combined application for a conditional use and a variance, at the initiation of the planning commission or the appeals hearing officer, the commission and the officer may hold a joint session to consider the conditional use and the variance applications simultaneously.
- B. Actions by Planning Commission and Appeals Hearing Officer: Regardless of whether the planning commission and appeals hearing officer conduct their respective reviews in a combined session or separately, the appeals hearing officer shall not take any action on the application for a variance until the planning commission shall first act to recommend approval or disapproval of the application for the conditional use.

SECTION 5. Effective Date. This ordinance shall become effective on the date of its first publication.

Passed by the City Council of Salt Lake City, Utah, this _____ day of _____, 2012.

CHAIRPERSON

ATTEST AND COUNTERSIGN:

CITY RECORDER

Transmitted to Mayor on _____.

Mayor's Action: _____ Approved. _____ Vetoed.

MAYOR

CITY RECORDER
(SEAL)

Bill No. _____ of 2012.
Published: _____.

SALT LAKE CITY ORDINANCE
No. _____ of 2012

(An ordinance amending various sections of Title 21A of the
Salt Lake City Code pertaining to land use appeal authority)

An ordinance amending various sections of Title 21A of the *Salt Lake City Code* pursuant to Petition No. PLNPCM2012-00344 to provide additional clarity and efficiency in regulations relating to the Appeals Hearing Officer regulations.

WHEREAS, the Salt Lake City Planning Commission (“planning commission”) held a public hearing on June 27, 2012 to consider a request made by Salt Lake City Mayor Ralph Becker (Petition no. PLNPCM2012-00344) to amend the text of Chapters 21A.06 (Zoning: Decision Making Bodies and Officials); 21A.16 (Zoning: Appeals of Administrative Decisions); and 21A.54 (Zoning: Conditional Uses); and

WHEREAS, at its June 27, 2012 hearing, members of the Planning Commission voted in favor of recommending to the City Council of Salt Lake City (“city council”) that the city council amend the sections of Title 21A of the *Salt Lake City Code* identified herein; and

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

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

SECTION 1. Amending text of *Salt Lake City Code* Section 21A.06.040. That section 21A.06.040 of the *Salt Lake City Code* (Zoning: Decision Making Bodies and Officials: Appeals Hearing Officer), shall be, and hereby is, amended to read as follows:

21A.06.040: APPEALS HEARING OFFICER:

- A. Creation: The position of appeals hearing officer is created pursuant to the enabling authority granted by the Municipal Land Use, Development, and Management Act, Section 10-9a-701 of the Utah Code Annotated.
- B. Jurisdiction and Authority: The appeals hearing officer shall have the following powers and duties in connection with the implementation of this title:
 - 1. Hear and decide appeals from any administrative decision made by the zoning administrator in the administration or the enforcement of this title pursuant to the procedures and standards set forth in Chapter 21A.16, "Appeals of Administrative Decisions", of this title.
 - 2. Authorize variances from the terms of this title pursuant to the procedures and standards set forth in Chapter 21A.18, "Variances", of this title;
 - 3. Hear and decide appeals of any administrative decision made by the historic landmark commission pursuant to the procedures and standards set forth in Section 21A.34.020, "H Historic Preservation Overlay District" of this code;
 - 4. Hear and decide appeals from decisions made by the planning commission concerning subdivisions or subdivision amendments pursuant to the procedures and standards set forth in Title 20, "Subdivisions", of this code; and
 - 5. Hear and decide appeals from administrative decisions made by the planning commission pursuant to the procedures and standards set forth in Title 21A, "Zoning Ordinance", of this code.
- C. Qualifications: The appeals hearing officer shall be appointed by the mayor with the advice and consent of the city council. The mayor may appoint more than one (1) appeals hearing officer, but only one hearing officer shall consider and decide upon any matter properly presented for hearing officer review. The appeals hearing officer may serve a maximum of two (2) consecutive full terms of five (5) years each. The appeals hearing officer shall either be law trained or have significant experience with land use laws and the requirements and operations of administrative hearing processes.
- D. Conflict of Interest: The appeals hearing officer shall not participate in any appeal in which the hearing officer has a conflict of interest prohibited by Title 2, Chapter 2.44 of this code.
- E. Removal of the Hearing Officer: The appeals hearing officer may be removed by the mayor for violation of this title or any policies and procedures adopted by the planning director following receipt by the mayor of a written complaint filed against the appeals hearing officer. If requested by the appeals hearing officer, the mayor shall provide the appeals hearing officer with a public hearing conducted by a hearing officer appointed by the mayor.

SECTION 2. Amending text of Salt Lake City Code Section 21A.16.010. That section 21A.16.010 of the *Salt Lake City Code* (Zoning: Appeals of Administrative Decisions: Authority), shall be, and hereby is, amended to read as follows:

21A.16.010: AUTHORITY:

As described in Section 21A.06.040 of this title, the appeals hearing officer shall hear and decide appeals alleging an error in any administrative decision made by the zoning administrator or the administrative hearing officer in the administration or enforcement of this title, as well as administrative decisions of the historic landmark commission; and the planning commission.

In addition, the appeals hearing officer shall hear and decide applications for variances as per Section 21A.18.

SECTION 3. Amending text of Salt Lake City Code Section 21A.16.030. That section 21A.16.030 of the *Salt Lake City Code* (Zoning: Appeals of Administrative Decisions: Procedure), shall be, and hereby is, amended to read as follows:

21A.16.030: PROCEDURE:

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

- A. Filing of Appeal: An appeal shall be made in writing within ten (10) days of the administrative decision by the zoning administrator, historic landmark commission or planning commission and shall be filed with the zoning administrator. The appeal shall specify the decision appealed, the alleged error made in connection with the decision being appealed, and the reasons the appellant claims the decision to be in error, including every theory of relief that can be presented in district court.
- B. Fees: Nonrefundable application and hearing fees shown on the Salt Lake City consolidated fee schedule shall accompany the appeal.
- C. Stay of Proceedings: An appeal to the appeals hearing officer shall stay all further proceedings concerning the matter about which the appealed order, requirement, decision, determination, or interpretation was made unless the zoning administrator certifies in writing to the appeals hearing officer, after the appeal has been filed, that a stay would, in the zoning administrator's opinion, be against the best interest of the city.

D. Notice Required:

1. Upon receipt of an appeal of an administrative decision by the zoning administrator, the appeals hearing officer shall schedule and hold a public hearing in accordance with the standards and procedures for conduct of the public hearing set forth in Chapter 21A.10 of this title.
2. Notice of Appeals of Administrative Decisions of the Historic Landmark Commission or Planning Commission. Appeals from a decision of the historic landmark commission or planning commission are based on evidence in the record. Therefore, testimony at the appeal meeting shall be limited to the appellant and the respondent.
 - a. Upon receipt of an appeal of a decision by the historic landmark commission or planning commission the appeals hearing officer shall schedule a public meeting to hear arguments by the appellant and respondent. Notification of the date, time and place of the meeting shall be given to the appellant and respondent a minimum of twelve (12) calendar days in advance of the meeting.
 - b. The city shall give e-mail notification, or other form of notification chosen by the appeals hearing officer, a minimum of twelve (12) calendar days in advance of the hearing to any organization entitled to receive notice pursuant to Title 2, Chapter 2.62 of this code.

E. Standard of Review:

1. The standard of review for an appeal, other than as provided in Subsection 2 of this Subsection E, shall be de novo. The appeals hearing officer shall review the matter appealed anew, based upon applicable procedures and standards for approval, and shall give no deference to the decision below.
2. An appeal from a decision of the historic landmark commission or planning commission shall be based on the record made below.
 - a. No new evidence shall be heard by the appeals hearing officer unless such evidence was improperly excluded from consideration below.
 - b. The appeals hearing officer shall review the decision based upon applicable standards and shall determine its correctness.
 - c. The appeals hearing officer shall uphold the decision unless it is not supported by substantial evidence in the record or it violates a law, statute, or ordinance in effect when the decision was made.

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

- G. Action by the Appeals Hearing Officer: The appeals hearing officer shall render a written decision on the appeal. Such decision may reverse or affirm, wholly or in part, or may modify the administrative decision. A decision by the appeals hearing officer shall become effective on the date the decision is rendered.
- H. Notification of Decision: Notification of the decision of the appeals hearing officer shall be sent by mail to all parties to the appeal within ten (10) days of the appeals hearing officer's decision.
- I. Record of Proceedings: The proceedings of each appeal hearing shall be recorded on audio equipment. The audio recording of each appeal hearing shall be kept for a minimum of sixty (60) days. Upon the written request of any interested person, such audio recording shall be kept for a reasonable period of time beyond the sixty (60) day period, as determined by the appeals hearing officer. Copies of the tapes of such hearings may be provided, if requested, at the expense of the requesting party. The appeals hearing officer may have the appeal proceedings contemporaneously transcribed by a court reporter.
- J. Appeals: Any person adversely affected by a final decision made by the appeals hearing officer may file a petition for review of the decision with the district court within thirty (30) days after the decision is rendered.
- K. Policies and Procedures: The planning director shall adopt policies and procedures, consistent with the provisions of this Subsection E, for processing appeals, the conduct of an appeal hearing, and for any other purpose considered necessary to properly consider an appeal.

SECTION 4. Amending text of Salt Lake City Code Section 21A.54.070. That section 21A.54.070 of the *Salt Lake City Code* (Zoning: Conditional Uses: Sequence of Approval of Applications for Both a Conditional Use and a Variance), shall be, and hereby is, amended to read as follows:

21A.54.070: SEQUENCE OF APPROVAL OF APPLICATIONS FOR BOTH A CONDITIONAL USE AND A VARIANCE:

Whenever the applicant indicates pursuant to Subsection 21A.54.060.A.9 of this chapter that a variance will be necessary in connection with the proposed conditional use, the applicant shall at the time of filing the application for a conditional use, file an application for a variance with the appeals hearing officer.

- A. Combined Review: Upon the filing of a combined application for a conditional use and a variance, at the initiation of the planning commission or the appeals hearing

officer, the commission and the officer may hold a joint session to consider the conditional use and the variance applications simultaneously.

- B. Actions by Planning Commission and Appeals Hearing Officer: Regardless of whether the planning commission and appeals hearing officer conduct their respective reviews in a combined session or separately, the appeals hearing officer shall not take any action on the application for a variance until the planning commission shall first act to recommend approval or disapproval of the application for the conditional use.

SECTION 5. Effective Date. This ordinance shall become effective on the date of its first publication.

Passed by the City Council of Salt Lake City, Utah, this _____ day of _____, 2012.

CHAIRPERSON

ATTEST AND COUNTERSIGN:

CITY RECORDER

Transmitted to Mayor on _____.

Mayor's Action: _____ Approved. _____ Vetoed.

MAYOR

CITY RECORDER
(SEAL)

APPROVED AS TO FORM
Salt Lake City Attorney's Office
Date: July 16, 2012
By: Paul C. Nielson
Paul C. Nielson, Senior City Attorney

Bill No. _____ of 2012.
Published: _____.

3. City Council Public Hearing Notice

NOTICE OF PUBLIC HEARING

The Salt Lake City Council is considering petition **PLNPCM2012-00344 Appeals Hearing Officer Regulations Fine Tuning** - A request by Mayor Ralph Becker for a Zoning Text Amendment to fine tune various regulations relating to the Appeals Hearing Officer decision making process. Generally the request includes clarifying noticing requirements, eliminating conflicts with other proposed text amendments and clarifying the administrative decision making authority of the Historic Landmark Commission and Planning Commission. The amendment will generally affect sections 21A.6, *Decision Making Bodies and Officials*; 21A.16, *Appeals of Administrative Decisions* and 21A.54 *Conditional Uses*. Related provisions of Title 21A-Zoning may also be amended as part of this petition. (Staff contact: Cheri Coffey at (801) 535-6188 or cheri.coffey@slcgov.com).

As part of their study, the City Council is holding an advertised public hearing to receive comments regarding the petition. During this hearing, anyone desiring to address the City Council concerning this issue will be given an opportunity to speak. The hearing will be held:

DATE:

TIME: 7:00 p.m.

PLACE: Room 315
City & County Building
451 South State Street
Salt Lake City, Utah

If you have any questions relating to this proposal or would like to review the file, please call Cheri Coffey at 801-535-6188 between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday or via e-mail at cheri.coffey@slcgov.com

People with disabilities may make requests for reasonable accommodation no later than 48 hours in advance in order to attend this hearing. Accommodations may include alternate formats, interpreters, and other auxiliary aids. This is an accessible facility. For questions, requests, or additional information, please contact the Planning Division at (801) 535-7757; TDD (801) 535-6021.

4. Mailing Labels

Erin Youngberg
Westpointe
1910 Bridge Crest Circle
Salt Lake City UT 84116

Thomas Mutter
Central City
228 E 500 South St
Salt Lake City UT 84111

R Gene Moffitt
East Bench
1410 Chancellor Way
Salt Lake City UT 84108-0272

Brad Bartholomew
Rose Park
871 N Poinsettia Dr
Salt Lake City UT 84116

Gary Felt
East Central
606 Trolley Square
Salt Lake City UT 84102

Christopher Thomas
Sugar House
2722 S 10th East Apt A
Salt Lake City UT 84106

Angie Vorher
Jordan Meadows
1988 Sir James Dr
Salt Lake City UT 84116

Esther Hunter
East Central
606 Trolley Square
Salt Lake City UT 84102

Gordon Storrs
Fairpark
223 N 800 West St
Salt Lake City UT 84116

Michael Cohn
East Liberty Park
PO Box 520123
Salt Lake City UT 84125

Andrew Johnston
Poplar Grove
716 Glendale St
Salt Lake City, Utah 84104

DeWitt Smith
Liberty Wells
328 E Hollywood Ave
Salt Lake City UT 84115

Randy Sorenson
Glendale
1184 S Redwood Dr
Salt Lake City UT 84104-3325

Roger Little
Yalecrest
1764 Laird Ave
Salt Lake City UT 84108

Katherine Gardner
Capitol Hill
606 De Soto St
Salt Lake City UT 84103

Patrick Frasier
Wasatch Hollow
1543 Roosevelt Ave
Salt Lake City UT 84105

John K Johnson
Greater Avenues
142 E 200 South St Ste 312
Salt Lake City UT 84111

Pat Schulze
Sunnyside East
2122 Hubbard Ave
Salt Lake City UT 84108

D Christian Harrison
Downtown
336 W Broadway #308
Salt Lake City UT 84101

Ellen Reddick
Bonneville Hills
2177 Roosevelt Ave
Salt Lake City UT 84108

Elke Phillips
Ball Park
839 S Washington St
Salt Lake City UT 84101

Vacant
Foothill Sunnyside

Community Council Chairs
Last updated from CC website 4.10.12

5.Planning Commission

5.A. Receipt of Newspaper Legal Notice and Agenda

5.A. Receipt of Newspaper Legal Notice and Agenda

Order Confirmation for Ad #0000800129-01

Client	PLANNING DIVISION	Payor Customer	PLANNING DIVISION
Client Phone	801-535-7759	Payor Phone	801-535-7759
Account#	9001394298	Payor Account	9001394298
Address	PO BOX 145480 SALT LAKE CITY UT 84114-5480 USA	Payor Address	PO BOX 145480 SALT LAKE CITY UT 84114-5480
Fax		Ordered By	Acct. Exec
EMail	Deborah.Severson@slcgov.com	Michelle	kstowe

Total Amount	\$142.50		
Payment Amt	\$0.00		
Amount Due	\$142.50	Tear Sheets	Proofs
		0	0
			Affidavits
			1

Payment Method **PO Number** PH June 27th

Confirmation Notes:

Text: Michelle

Ad Type	Ad Size	Color
Legal Liner	2.0 X 55 Li	<NONE>

Product	Placement	Position
Salt Lake Tribune::	Legal Liner Notice - 0998	Public Meeting/Hear-ing Notices
Scheduled Date(s):	06/15/2012	
Product	Placement	Position
sltrib.com::	Legal Liner Notice - 0998	Public Meeting/Hear-ing Notices
Scheduled Date(s):	06/15/2012	
Product	Placement	Position
utahlegals.com::	utahlegals.com	utahlegals.com
Scheduled Date(s):	06/15/2012	

Ad Content Proof Actual Size

NOTICE OF PUBLIC HEARING

On Wednesday June 27, 2012, the Salt Lake City Planning Commission will hold a public hearing to consider making recommendations regarding the following petitions:

PLNFCM2012-00344 Appeals Hearing Officer regulations Fine Tuning - A request by Mayor Ralph Becker for a Zoning Text Amendment to fine tune various regulations relating to the Appeals Hearing Officer decision making process, generally including the request to clarify zoning requirements, eliminate conflicts with other proposed text amendments and to clarify the administrative decision making authority of the Historic Landmark Commission and Planning Commission. The amendment will generally affect sections 21A.6, Decision Making Bodies and Officials; and 21A.16, Appeals of Administrative Decisions. Related provisions of Title 21A - Zoning may also be amended as part of this petition. (Staff contact: Cren Coffey at (801) 535-6188 or cren.coffey@slcgov.com).

PLNFCM2012-00225 Christensen Zoning Map Amendment - A request by Lars and Bethany Christensen to change the zoning of the vacant property located at approximately 1614 West 700 North from R-1/5000 Single Family Residential to a CB Community Business zoning district to accommodate the construction of a new dental office. The subject property is located in Council District 1, represented by Corlor Christensen. (Staff contact: Ana Valdemoros at (801) 535-7236 or a.valdemoros@slcgov.com)

PLNFCM2012-00114 Epic Brewing Zoning Map Amendment - A request by Peter Erickson, representing Epic Brewing LLC to amend the Salt Lake City Zoning Map for the properties located approximately between 828 and 836 South Edison Street. The proposal would modify the zoning map for properties currently zoned SR-3 Special Development Pattern zoning district to D-2 Downtown Support and RAU-35 Residential Mixed Use zoning districts. The purpose of the proposal is to facilitate the expansion of Epic Brewing and the construction of a mixed use development. The amendments would increase the allowed density and the allowed height of any buildings constructed on the subject properties. The property is located in Council District 4 represented by Luke Carroll. (Staff Contact: John Anderson at 801-535-7214 or john.anderson@slcgov.com)

The public hearing will begin at 5:30 p.m. in room 326 of the City County Building, 451 South State Street, Salt Lake City, UT. For more information or for special ADA accommodations, which may include alternate formats, interpreters, and other auxiliary aids or additional information, please contact Michael Starr at 801-535-7976 or call TDD 801-535-6220.
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**SALT LAKE CITY
PLANNING COMMISSION
MEETING AGENDA**

**In Room 326 of the City & County Building at 451 South State Street
Wednesday, June 27, 2012, at 5:30 p.m.**

The field trip is scheduled to leave at 4:00 p.m.

Dinner will be served to the Planning Commissioners and Staff at 5:00 p.m. in Room 126.

WORK SESSION: There is no work session or briefings scheduled. The regular meeting will start at 5:30 pm.

APPROVAL OF MINUTES FOR JUNE 13, 2012

REPORT OF THE CHAIR AND VICE CHAIR

REPORT OF THE DIRECTOR

PUBLIC HEARING

Legislative Matters

1. **PLNPCM2012-00344 Appeals Hearing Officer regulations Fine Tuning** - A request by Mayor Ralph Becker for a Zoning Text Amendment to fine tune various regulations relating to the Appeals Hearing Officer decision making process generally including the request is to clarify noticing requirements, eliminate conflicts with other proposed text amendments and to clarify the administrative decision making authority of the Historic Landmark Commission and Planning Commission. The amendment will generally affect sections 21A.6, *Decision Making Bodies and Officials*; and 21A.16, *Appeals of Administrative Decisions*. Related provisions of Title 21A- Zoning may also be amended as part of this petition. (Staff contact: Cheri Coffey at (801) 535-6188 or cheri.coffey@slcgov.com).
2. **PLNPCM2012-00114 Epic Brewing Zoning Map Amendment** - A request by Peter Erickson, representing Epic Brewing LLC to amend the Salt Lake City Zoning Map for the properties located approximately between 828 and 836 South Edison Street. The proposal would modify the zoning map for properties currently zoned SR-3 Special Development Pattern zoning district to D-2 Downtown Support and RMU-35 Residential Mixed Use zoning districts. The purpose of the proposal is to facilitate the expansion of Epic Brewing and the construction of a mixed use development. The amendments would increase the allowed density and the allowed height of any buildings constructed on the subject properties. The property is located in Council District 4 represented by Luke Garrott. (Staff Contact: John Anderson at 801-535-7214 or john.anderson@slcgov.com)
3. **PLNPCM2012-00225 Christensen Zoning Map Amendment** - A request by Lars and Bethany Christensen to change the zoning of the vacant property located at approximately 1614 West 700 North from R-1/5000 Single Family Residential to CB Community Business zoning district to accommodate the construction of a new dental office. The subject property is located in Council District 1, represented by Carlton Christensen. (Staff contact: Ana Valdemoros at (801) 535-7236 or ana.valdemoros@slcgov.com)

Administrative Matters

4. **PLNPCM2012-00243, Liberty Village Apartments** - A request for Conditional Building and Site Design Review by Cowboy Partners, represented by Scot Safford, for a new apartment building located at approximately 2150 S. McClelland Street. The proposal involves construction of a new building of 171 units with underground parking. The subject property is zoned C-SHBD2 (Sugar House Business District) and is located in Council District 7 represented by Søren Simonsen. (Staff contact: Lex Traughber at (801) 535-6184 or lex.traughber@slcgov.com).

The files for the above items are available in the Planning Division offices, room 406 of the City and County Building. Please contact the staff planner for information. Visit the Planning Division's website at www.slcgov.com/CEd/planning for copies of the Planning Commission agendas, staff reports, and minutes. 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. Planning Commission Meetings may be watched live on SLCTV Channel 17; past meetings are recorded and archived, and may be viewed at www.slctv.com

People with disabilities may make requests for reasonable accommodation no later than 48 hours in advance of the hearing in order to attend. Accommodations may include alternate formats, interpreters and other auxiliary aids. This is an accessible facility. For questions, requests or additional information, please contact the Salt Lake City Planning Office at: 801-535-7757/TDD 801-535-6220.

**5.B. Planning Commission Staff Report
June 27, 2012**

PLANNING COMMISSION STAFF REPORT



Planning and Zoning
Division
Department of
Community and
Economic Development

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

Applicant: Mayor Ralph
Becker

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

Master Plan Designation:
City-wide

Council District: City-wide

**Applicable Land Use
Regulations:**

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

Notification:

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

Attachments:

- A. Draft Ordinance

Request

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

Recommendation

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

Potential Motion:

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

Background

Project Description

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

Proposed Code Changes & Analysis

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

1. Clarification of the Authority of the Appeals Hearing Officer

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

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

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

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

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

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

3. Elimination of Newspaper Publication requirement

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

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

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

Public Participation

Open House and Commission Briefings

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

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

City Department Comments

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

Analysis and Findings

Options

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

Findings

21A.50.050 Standards for General Amendments.

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

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

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

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

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

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

Finding: The proposed amendments meet this standard.

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

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

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

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

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

Finding: The proposed text amendment meets this standard

Potential Motions

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

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

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

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

Attachment A

Draft Ordinance

Proposed Fine tuning relating to the Appeals Hearing Officer Regulations

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21A.6: DECISION MAKING BODIES AND OFFICIALS

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21A.06.040: APPEALS HEARING OFFICER:

A. Creation: The position of appeals hearing officer is created pursuant to the enabling authority granted by the Municipal Land Use, Development, and Management Act, Section 10-9a-701 of the Utah Code Annotated.

B. Jurisdiction and Authority: The appeals hearing officer shall have the following powers and duties in connection with the implementation of this title:

1. Hear and decide appeals from any administrative decision made by the zoning administrator in the administration or the enforcement of this title pursuant to the procedures and standards set forth in Chapter 21A.16, "Appeals Of Administrative Decisions", of this title.

~~with the exception of administrative reviews of certificates of appropriateness which shall be appealed to the historic landmark commission, as set forth in Subsection 21A.06.050.C.3 of this chapter;~~

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2. Authorize variances from the terms of this title pursuant to the procedures and standards set forth in Chapter 21A.18, "Variances", of this title;

3. Hear and decide appeals ~~of any administrative decision from decisions~~ made by the historic landmark commission pursuant to the procedures and standards set forth in ~~Subsection~~ Section 21A.34.020, "H Historic Preservation Overlay District 34.020.F.2.h of this code;

4. Hear and decide appeals from decisions made by the planning commission concerning subdivisions or subdivision amendments pursuant to the procedures and standards set forth in Title 20, ~~"Subdivisions"~~, of this code; and

5. Hear and decide appeals from administrative decisions made by the planning commission ~~regarding conditional uses, conditional site plan reviews for sexually oriented businesses, or planned developments~~ pursuant to the procedures and standards set forth in Section 21A, ~~"Zoning Ordinance" 54.160~~ of this code.

C. Qualifications: The appeals hearing officer shall be appointed by the mayor with the advice and consent of the city council. The mayor may appoint more than one (1) appeals hearing officer, but only one hearing officer shall consider and decide upon

any matter properly presented for hearing officer review. The appeals hearing officer may serve a maximum of two (2) consecutive full terms of five (5) years each. The appeals hearing officer shall either be law trained or have significant experience with land use laws and the requirements and operations of administrative hearing processes.

D. Conflict of Interest: The appeals hearing officer shall not participate in any appeal in which the hearing officer has a conflict of interest prohibited by Title 2, Chapter 2.44 of this code.

E. Removal of the Hearing Officer: The appeals hearing officer may be removed by the mayor for violation of this title or any policies and procedures adopted by the planning director following receipt by the mayor of a written complaint filed against the appeals hearing officer. If requested by the appeals hearing officer, the mayor shall provide the appeals hearing officer with a public hearing conducted by a hearing officer appointed by the mayor.

21A.16: APPEALS OF ADMINISTRATIVE DECISIONS

21A.16.010: AUTHORITY:

As described in Section 21A.06.040 of this title, the appeals hearing officer shall hear and decide appeals alleging an error in any administrative decision made by ~~The zoning administrator or the administrative hearing officer in the administration or enforcement of this title, as well as administrative decisions of the~~ The Historic Landmark Commission; and ~~The Planning Commission.~~

In addition, the appeals hearing officer shall hear and decide applications for variances as per Section 21A.18.-

21A.16.030: PROCEDURE:

Appeals of administrative decisions by the Zoning Administrator, Historic Landmark Commission or Planning Commission to the appeals hearing officer shall be taken in accordance with the following procedures:

A. Filing of Appeal: An appeal shall be made in writing within ten (10) days of the administrative decision by the Zoning Administrator, Historic Landmark Commission or Planning Commission and shall be filed with the zoning administrator. The appeal shall specify the decision appealed, the alleged error made in connection with the decision being appealed, and the reasons the appellant claims the decision to be in error, including every theory of relief that can be presented in district court.

B. Fees: Nonrefundable application and hearing fees shown on the Salt Lake City consolidated fee schedule shall accompany the appeal.

C. Stay of Proceedings: An appeal to the appeals hearing officer shall stay all further proceedings concerning the matter about which the appealed order, requirement, decision, determination, or interpretation was made unless the zoning administrator certifies in writing to the appeals hearing officer, after the appeal has been filed, that a stay would, in the zoning administrator's opinion, be against the best interest of the city.

D. Notice ~~and Hearing~~Required:

1. ~~Upon receipt of an appeal of an administrative decision by the zoning administrator, the appeals hearing officer shall schedule and hold a public hearing in accordance with the standards and procedures for conduct of the public hearing set forth in Chapter 21A§.10 of this title. give notice and hold a hearing on the appeal. Notice shall be given as follows:~~

~~1. Providing all of the information necessary for notice of an appeal hearing required under this chapter shall be the responsibility of the appellant and shall be in the form established by the appeals hearing officer pursuant to the standards of this subsection.~~

~~2. Notice by first class mail shall be provided:~~

~~a. A minimum of twelve (12) calendar days in advance of the hearing;~~

~~b. To all owners and tenants of the land subject to the appeal as shown on the Salt Lake City geographic information system records; and~~

~~c. Within three hundred feet (300') from the periphery of the land subject to the appeal, inclusive of streets and rights of way.~~

~~d. Mailing labels shall be generated by the city when an appeal is filed using Salt Lake City geographic information system records.~~

~~3. The city shall give email notification, or other form of notification chosen by the appeals hearing officer, a minimum of twelve (12) calendar days in advance of the hearing to any organization entitled to receive notice pursuant to Title 2, Chapter 2.62 of this code.~~

~~4. The notice for any hearing shall generally describe the subject matter of the appeal; the date, time and place of the appeal hearing; and the place where the record of the appeal may be inspected by the public.~~

~~5. The land subject to an appeal hearing shall be posted by the city with a sign giving notice of the hearing, providing the date of the hearing including contact information for more information, at least ten (10) calendar days in advance of the hearing.~~

~~a. One (1) notice shall be posted for each five hundred feet (500') of frontage, or portion thereof, along a public street. At least one (1) sign shall be posted on each public street. Sign(s) shall be located on the land subject to the appeal and shall be set back no more than twenty five feet (25') from the front property line and shall be visible from the street. Where the subject land does not have frontage on a public street, sign(s) shall be erected on the nearest street right of way with an attached notation indicating generally the direction and distance to the land subject to the appeal.~~

~~b. If a sign is removed through no fault of the appellant before the appeal hearing, such removal shall not be deemed a failure to comply with the standards of~~

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~~this subsection or be grounds to challenge the validity of any decision made on the appeal.~~

~~-6. At least twelve (12) calendar days in advance of the appeal hearing the City shall publish a notice of such hearing in a newspaper of general circulation in Salt Lake City.~~

~~— -2. Notice of Appeals of Administrative Decisions of the Historic Landmark Commission or Planning Commission 7. Appeals hearing pertaining to an appeal from a decision of the historic landmark commission or planning commission is based on evidence in the record. Therefore, testimony at the appeal meeting shall be limited to the appellant and the respondent. who may present legal argument based on evidence in the record.
a. Upon receipt of an appeal of a decision by the Historic Landmark Commission or Planning Commission the appeals hearing officer shall schedule a public meeting to hear arguments by the appellant and respondent. Notification of the date, time and place of the meeting shall be given to the Appellant and Respondent a minimum of twelve (12) calendar days in advance of the meeting.
b. The City shall give e-mail notification, or other form of notification chosen by the appeals hearing officer, a minimum of twelve (12) calendar days in advance of the hearing to any organization entitled to receive notice pursuant to Title 2, Chapter 2.62 of this code.~~

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E. Standard of Review:

1. The standard of review for an appeal, other than as provided in Subsection 2 of this Subsection E, shall be de novo. The appeals hearing officer shall review the matter appealed anew, based upon applicable procedures and standards for approval, and shall give no deference to the decision below.

2. An appeal from a decision of the historic landmark commission or planning commission shall be based on the record made below.

a. No new evidence shall be heard by the appeals hearing officer unless such evidence was improperly excluded from consideration below.

b. The appeals hearing officer shall review the decision based upon applicable standards and shall determine its correctness.

c. The appeals hearing officer shall uphold the decision unless it is not supported by substantial evidence in the record or it violates a law, statute, or ordinance in effect when the decision was made.

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

G. Action by the Appeals Hearing Officer: The appeals hearing officer shall render a written decision on the appeal. Such decision may reverse or affirm, wholly or in part, or may modify the administrative decision. A decision by the appeals hearing officer shall become effective on the date the decision is rendered.

H. Notification of Decision: Notification of the decision of the appeals hearing officer shall be sent by mail to all parties to the appeal within ten (10) days of the appeals hearing officer's decision.

I. Record of Proceedings: The proceedings of each appeal hearing shall be recorded on audio equipment. The audio recording of each appeal hearing shall be kept for a minimum of sixty (60) days. Upon the written request of any interested person, such audio recording shall be kept for a reasonable period of time beyond the sixty (60) day period, as determined by the appeals hearing officer. Copies of the tapes of such hearings may be provided, if requested, at the expense of the requesting party. The appeals hearing officer may have the appeal proceedings contemporaneously transcribed by a court reporter.

J. Appeals: Any person adversely affected by a final decision made by the appeals hearing officer may file a petition for review of the decision with the district court within thirty (30) days after the decision is rendered.

K. Policies and Procedures: The planning director shall adopt policies and procedures, consistent with the provisions of this Subsection E, for processing appeals, the conduct of an appeal hearing, and for any other purpose considered necessary to properly consider an appeal.

21A.54: CONDITIONAL USES

21A.54.070: SEQUENCE OF APPROVAL OF APPLICATIONS FOR BOTH A CONDITIONAL USE AND A VARIANCE:

Whenever the applicant indicates pursuant to Subsection 21A.54.060.A.9 of this chapter that a variance will be necessary in connection with the proposed conditional use ~~(other than a planned development)~~, the applicant shall at the time of filing the application for a conditional use, file an application for a variance with the appeals hearing officer.

A. Combined Review: Upon the filing of a combined application for a conditional use and a variance, at the initiation of the planning commission or the appeals hearing officer, the commission and the officer may hold a joint session to consider the conditional use and the variance applications simultaneously.

B. Actions by Planning Commission and Appeals Hearing Officer: Regardless of whether the planning commission and appeals hearing officer conduct their respective reviews in a combined session or separately, the appeals hearing officer shall not take any action on the application for a variance until the planning commission shall first act to recommend approval or disapproval of the application for the conditional use.

Appeals Hearing Officer Noticing Requirements

Type of Application	Type of Review	Who Allowed to Speak at Hearing	Noticing Requirement
Variances	DeNovo review (New information reviewed)	All who wish including applicant and public	<ul style="list-style-type: none"> • 12 day mailed notice prior to hearing to Property owners and Tennants within 300 Feet of subject property • Post subject property 10 days prior to meeting • Send to listserve including community council chairs 12 days prior to hearing • Meeting information posted on Planning Division website
Appeals of Administrative Determinations/ Interpretations	DeNovo review (New information reviewed)	All who wish including applicant and public	<ul style="list-style-type: none"> • 12 day mailed notice prior to hearing to Property owners and Tennants within 300 Feet of subject property • Post subject property 10 days prior to meeting • Send to listserve including community council chairs 12 days prior to hearing • Meeting information posted on Planning Division website
Appeal of Planning Commission Decision	On the Record	Appeallant and Applicable City Staff including City Attorney representing Commission	<ul style="list-style-type: none"> • Notice given to appellant and applicant if different than appellant • Send to listserve including community council chairs 12 days prior to hearing. • Meeting information posted on Planning Division website
Appeal of Historic Landmark Commission Decision	On the Record	Appeallant and Applicable City Staff including City Attorney representing Commission	<ul style="list-style-type: none"> • Notice given to appellant and applicant if different than appellant • Send to listserve including community council chairs 12 days prior to hearing. • Meeting information posted on Planning Division website

**5.C Planning Commission Minutes
June 27, 2012**

SALT LAKE CITY PLANNING COMMISSION MEETING
Room 326 of the City & County Building
451 South State Street, Salt Lake City, Utah
Wednesday, June 27, 2012

A roll is being kept of all who attended the Planning Commission Meeting. The meeting was called to order at [5:34:21 PM](#). Audio recordings of the Planning Commission meetings are retained in the Planning Office for an indefinite period of time.

Present for the Planning Commission meeting were:, Vice Chair Michael Gallegos and Commissioners, Emily Drown, Michael Fife, , Bernardo Flores-Sahagun, Marie Taylor and Mary Woodhead. Commissioners Chairperson Angela Dean, Lisa Adams, Clark Ruttinger, Kathleen Hill and Matthew Wirthlin were excused.

Planning Staff members present at the meeting were: Wilf Sommerkorn. Planning Director; Joel Paterson, Planning Manager; Nick Britton, Senior Planner; Doug Dansie, Senior Planner; John Anderson, Principal Planner; Elizabeth Buehler, Principal Planner; Ray Milliner, Principal Planner; Michaela Oktay, Principal Planner; Ana Valdemoros, Principal Planner; Paul Nielson, City Land Attorney; and Michelle Moeller, Senior Secretary.

[5:36:20 PM](#)

PLNPCM2012-00344 Appeals Hearing Officer regulations Fine Tuning - A request by Mayor Ralph Becker for a Zoning Text Amendment to fine tune various regulations relating to the Appeals Hearing Officer decision making process generally including the request is to clarify noticing requirements, eliminate conflicts with other proposed text amendments and to clarify the administrative decision making authority of the Historic Landmark Commission and Planning Commission. The amendment will generally affect sections 21A.6, Decision Making Bodies and Officials; and 21A.16, Appeals of Administrative Decisions. Related provisions of Title 21A- Zoning may also be amended as part of this petition. (Staff contact: Cheri Coffey at (801) 535-6188 or cheri.coffey@slcgov.com).

Ms. Cheri Coffey, Assistant Planning Director, reviewed the petition as presented in the Staff Report. She stated it was Staff's recommendation that the Planning Commission forward a favorable recommendation to the City Council.

The Commissioners and Staff discussed how the Planning Commissioners were notified of cases that were sent before the Appeals Hearing Officer. Staff explained the Listserv notification and stated final decisions regarding Planning Commission appeals would be sent to the Planning Commissioners. The

Commissioners and Staff discussed how the Appeals Hearings functioned and the Commissioners role in them.

[5:43:29 PM](#)

PUBLIC HEARING

Vice Chairperson Gallegos opened the Public Hearing, seeing no one in the Audience wanted to speak regarding the issue Vice Chairperson Gallegos closed the Public Hearing.

[5:43:59 PM](#)

MOTION

Commissioner Fife stated in regards to PLNPCM2012-00344 Appeals Hearing Officer Regulations Fine tuning he moved that the Planning Commission forward a favorable recommendation to the City Council. Commissioner Drown seconded the motion. The motion passed unanimously

6. Public Engagement Information



Proposed Amendments of Appeals Hearing Officer Regulations

Community & Economic Development
Office of the Director

Petition PLNPCM2012-00344. The Planning Division is currently working on a petition to Fine Tune various aspects of the regulations relating to the Appeals Hearing Officer. On February 7, 2012, the City Council adopted Ordinance No 8 of 2012; an ordinance establishing an Appeals Hearing Officer and eliminating the Board of Adjustment and Land Use Appeals Board. However, it was not until the preparations for the first meeting of the Appeals Hearing Officer, held on May 30, 2012, that it was discovered that some requirements were not consistent with other parts of the zoning ordinance. The proposed changes address the following issues:

1. Clarification of the Authority of the Appeals Hearing Officer

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

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

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

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

including Community Council Chairs, through e-mail 12 days prior to the hearing and posting the property 10 days prior to the public hearing.

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

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

3. Elimination of Newspaper Publication requirement

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

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

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

Attached is the draft ordinance showing the proposed zoning text amendment changes.

The Planning Commission is scheduled to hold a public hearing on Wednesday June 27, 2012 and make a formal recommendation to the City Council on this matter. Public Comment can be submitted prior to the public hearing in the following ways:

By Email to cheri.coffey@slcgov.com

By U.S. Mail at
Cheri Coffey, Assistant Planning Director
Salt Lake City Planning Division
451 South State Street, Room 406
PO Box 145480

SLC UT 84114-5480

Or in person at

Salt Lake City Planning Division
451 South State Street, Room 406
Salt Lake City, Utah

Or at the June 21st Planning Division Open House from 4:30-6:00 P.M. at
Day Riverside Library
1575 West 1000 North
Salt Lake City, Utah

If you have any questions, please contact Cheri Coffey at 801-535-6188 or via e-mail at cheri.coffey@slcgov.com

Proposed Fine tuning relating to the Appeals Hearing Officer Regulations

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21A.6: DECISION MAKING BODIES AND OFFICIALS

21A.06.040: APPEALS HEARING OFFICER:

A. Creation: The position of appeals hearing officer is created pursuant to the enabling authority granted by the Municipal Land Use, Development, and Management Act, Section 10-9a-701 of the Utah Code Annotated.

B. Jurisdiction and Authority: The appeals hearing officer shall have the following powers and duties in connection with the implementation of this title:

1. Hear and decide appeals from any administrative decision made by the zoning administrator in the administration or the enforcement of this title pursuant to the procedures and standards set forth in Chapter 21A.16, "Appeals Of Administrative Decisions", of this title, ~~with the exception of administrative reviews of certificates of appropriateness which shall be appealed to the historic landmark commission, as set forth in Subsection 21A.06.050.C.3 of this chapter;~~

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2. Authorize variances from the terms of this title pursuant to the procedures and standards set forth in Chapter 21A.18, "Variances", of this title;

3. Hear and decide appeals ~~of any administrative decision from decisions~~ made by the historic landmark commission pursuant to the procedures and standards set forth in ~~Subsection Section~~ 21A.34.020, ~~"H Historic Preservation Overlay District~~ 34.020.F.2.h of this code;

4. Hear and decide appeals from decisions made by the planning commission concerning subdivisions or subdivision amendments pursuant to the procedures and standards set forth in Title 20, ~~"Subdivisions"~~, of this code; and

5. Hear and decide appeals from ~~administrative~~ decisions made by the planning commission ~~regarding conditional uses, conditional site plan reviews for sexually oriented businesses, or planned developments~~ pursuant to the procedures and standards set forth in Section 21A, ~~"Zoning Ordinance"~~ 54.160 of this code.

C. Qualifications: The appeals hearing officer shall be appointed by the mayor with the advice and consent of the city council. The mayor may appoint more than one (1) appeals hearing officer, but only one hearing officer shall consider and decide upon any matter properly presented for hearing officer review. The appeals hearing officer may serve a maximum of two (2) consecutive full terms of five (5) years each. The appeals

hearing officer shall either be law trained or have significant experience with land use laws and the requirements and operations of administrative hearing processes.

D. Conflict of Interest: The appeals hearing officer shall not participate in any appeal in which the hearing officer has a conflict of interest prohibited by Title 2, Chapter 2.44 of this code.

E. Removal of the Hearing Officer: The appeals hearing officer may be removed by the mayor for violation of this title or any policies and procedures adopted by the planning director following receipt by the mayor of a written complaint filed against the appeals hearing officer. If requested by the appeals hearing officer, the mayor shall provide the appeals hearing officer with a public hearing conducted by a hearing officer appointed by the mayor.

21A.16: APPEALS OF ADMINISTRATIVE DECISIONS

21A.16.010: AUTHORITY:

As described in Section 21A.06.040 of this title, the appeals hearing officer shall hear and decide appeals alleging an error in any administrative decision made by ~~the~~ zoning administrator or the administrative hearing officer in the administration or enforcement of this ~~title, as well as~~ administrative decisions of the Historic Landmark Commission; and the Planning Commission.

In addition, the appeals hearing officer shall hear and decide applications for variances as per Section 21A.18.:

21A.16.030: PROCEDURE:

Appeals of administrative decisions by the Zoning Administrator, Historic Landmark Commission or Planning Commission to the appeals hearing officer shall be taken in accordance with the following procedures:

A. Filing of Appeal: An appeal shall be made in writing within ten (10) days of the administrative decision by the Zoning Administrator, Historic Landmark Commission or Planning Commission and shall be filed with the zoning administrator. The appeal shall specify the decision appealed, the alleged error made in connection with the decision being appealed, and the reasons the appellant claims the decision to be in error, including every theory of relief that can be presented in district court.

B. Fees: Nonrefundable application and hearing fees shown on the Salt Lake City consolidated fee schedule shall accompany the appeal.

C. Stay of Proceedings: An appeal to the appeals hearing officer shall stay all further proceedings concerning the matter about which the appealed order,

requirement, decision, determination, or interpretation was made unless the zoning administrator certifies in writing to the appeals hearing officer, after the appeal has been filed, that a stay would, in the zoning administrator's opinion, be against the best interest of the city.

D. ~~Notice and Hearing Required:~~

~~1. Upon receipt of an appeal of an administrative decision by the zoning administrator, the appeals hearing officer shall schedule and hold a public hearing in accordance with the standards and procedures for conduct of the public hearing set forth in Chapter 21A S.10 of this title. give notice and hold a hearing on the appeal. Notice shall be given as follows:~~

~~1. Providing all of the information necessary for notice of an appeal hearing required under this chapter shall be the responsibility of the appellant and shall be in the form established by the appeals hearing officer pursuant to the standards of this subsection.~~

~~2. Notice by first class mail shall be provided:~~

~~a. A minimum of twelve (12) calendar days in advance of the hearing;~~

~~b. To all owners and tenants of the land subject to the appeal as shown on the Salt Lake City geographic information system records; and~~

~~c. Within three hundred feet (300') from the periphery of the land subject to the appeal, inclusive of streets and rights-of-way.~~

~~d. Mailing labels shall be generated by the city when an appeal is filed using Salt Lake City geographic information system records.~~

~~3. The city shall give email notification, or other form of notification chosen by the appeals hearing officer, a minimum of twelve (12) calendar days in advance of the hearing to any organization entitled to receive notice pursuant to Title 2, Chapter 2.62 of this code.~~

~~4. The notice for any hearing shall generally describe the subject matter of the appeal; the date, time and place of the appeal hearing; and the place where the record of the appeal may be inspected by the public.~~

~~5. The land subject to an appeal hearing shall be posted by the city with a sign giving notice of the hearing, providing the date of the hearing including contact information for more information, at least ten (10) calendar days in advance of the hearing.~~

~~a. One (1) notice shall be posted for each five hundred feet (500') of frontage, or portion thereof, along a public street. At least one (1) sign shall be posted on each public street. Sign(s) shall be located on the land subject to the appeal and shall be set back no more than twenty five feet (25') from the front property line and shall be visible from the street. Where the subject land does not have frontage on a public street, sign(s) shall be erected on the nearest street right of way with an attached notation indicating generally the direction and distance to the land subject to the appeal.~~

~~b. If a sign is removed through no fault of the appellant before the appeal hearing, such removal shall not be deemed a failure to comply with the standards of this subsection or be grounds to challenge the validity of any decision made on the appeal.~~

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~~-6. At least twelve (12) calendar days in advance of the appeal hearing the City shall publish a notice of such hearing in a newspaper of general circulation in Salt Lake City.~~

~~— 2. Notice of Appeals of Administrative Decisions of the Historic Landmark Commission or Planning Commission 7. Appeals hearing pertaining to an appeal from a decision of the historic landmark commission or planning commission is based on evidence in the record. Therefore, testimony at the appeal meeting shall be limited to the appellant and the respondent, who may present legal argument based on evidence in the record.~~

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

~~b. The City shall give e-mail notification, or other form of notification chosen by the appeals hearing officer, a minimum of twelve (12) calendar days in advance of the hearing to any organization entitled to receive notice pursuant to Title 2, Chapter 2.62 of this code.~~

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E. Standard of Review:

1. The standard of review for an appeal, other than as provided in Subsection 2 of this Subsection E, shall be de novo. The appeals hearing officer shall review the matter appealed anew, based upon applicable procedures and standards for approval, and shall give no deference to the decision below.

2. An appeal from a decision of the historic landmark commission or planning commission shall be based on the record made below.

a. No new evidence shall be heard by the appeals hearing officer unless such evidence was improperly excluded from consideration below.

b. The appeals hearing officer shall review the decision based upon applicable standards and shall determine its correctness.

c. The appeals hearing officer shall uphold the decision unless it is not supported by substantial evidence in the record or it violates a law, statute, or ordinance in effect when the decision was made.

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

G. Action by the Appeals Hearing Officer: The appeals hearing officer shall render a written decision on the appeal. Such decision may reverse or affirm, wholly or in part, or may modify the administrative decision. A decision by the appeals hearing officer shall become effective on the date the decision is rendered.

H. Notification of Decision: Notification of the decision of the appeals hearing officer shall be sent by mail to all parties to the appeal within ten (10) days of the appeals hearing officer's decision.

I. Record of Proceedings: The proceedings of each appeal hearing shall be recorded on audio equipment. The audio recording of each appeal hearing shall be kept for a minimum of sixty (60) days. Upon the written request of any interested person, such audio recording shall be kept for a reasonable period of time beyond the sixty (60) day period, as determined by the appeals hearing officer. Copies of the tapes of such hearings may be provided, if requested, at the expense of the requesting party. The appeals hearing officer may have the appeal proceedings contemporaneously transcribed by a court reporter.

J. Appeals: Any person adversely affected by a final decision made by the appeals hearing officer may file a petition for review of the decision with the district court within thirty (30) days after the decision is rendered.

K. Policies and Procedures: The planning director shall adopt policies and procedures, consistent with the provisions of this Subsection E, for processing appeals, the conduct of an appeal hearing, and for any other purpose considered necessary to properly consider an appeal.

21A.54: CONDITIONAL USES

21A.54.070: SEQUENCE OF APPROVAL OF APPLICATIONS FOR BOTH A CONDITIONAL USE AND A VARIANCE:

Whenever the applicant indicates pursuant to Subsection 21A.54.060.A.9 of this chapter that a variance will be necessary in connection with the proposed conditional use ~~(other than a planned development)~~, the applicant shall at the time of filing the application for a conditional use, file an application for a variance with the appeals hearing officer.

A. Combined Review: Upon the filing of a combined application for a conditional use and a variance, at the initiation of the planning commission or the appeals hearing officer, the commission and the officer may hold a joint session to consider the conditional use and the variance applications simultaneously.

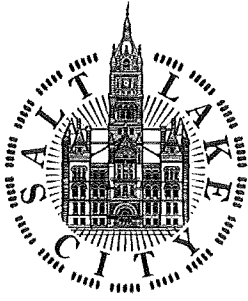
B. Actions by Planning Commission and Appeals Hearing Officer: Regardless of whether the planning commission and appeals hearing officer conduct their respective reviews in a combined session or separately, the appeals hearing officer shall not take any action on the application for a variance until the planning commission shall first act to recommend approval or disapproval of the application for the conditional use.

Appeals Hearing Officer Noticing Requirements

Type of Application	Type of Review	Who Allowed to Speak at Hearing	Noticing Requirement
Variances	DeNovo review (New information reviewed)	All who wish including applicant and public	<ul style="list-style-type: none"> • 12 day mailed notice prior to hearing to Property owners and Tennants within 300 Feet of subject property • Post subject property 10 days prior to meeting • Send to listserv including community council chairs 12 days prior to hearing • Meeting information posted on Planning Division website
Appeals of Administrative Determinations/ Interpretations	DeNovo review (New information reviewed)	All who wish including applicant and public	<ul style="list-style-type: none"> • 12 day mailed notice prior to hearing to Property owners and Tennants within 300 Feet of subject property • Post subject property 10 days prior to meeting • Send to listserv including community council chairs 12 days prior to hearing • Meeting information posted on Planning Division website
Appeal of Planning Commission Decision	On the Record	Appellant and Applicable City Staff including City Attorney representing Commission	<ul style="list-style-type: none"> • Notice given to appellant and applicant if different than appellant. • Meeting information posted on Planning Division website
Appeal of Historic Landmark Commission Decision	On the Record	Appellant and Applicable City Staff including City Attorney representing Commission	<ul style="list-style-type: none"> • Notice given to appellant and applicant if different than appellant. • Meeting information posted on Planning Division website

7. Original Petition

7. Original Petition



Petition Initiation Request

RECEIVED

JUN 01 2012

SCANNED TO: *[Signature]*
SCANNED BY: *[Signature]*
DATE: 6/1/12

Planning Division
Community & Economic Development Department
Salt Lake City Mayor

To: Mayor Becker

From: Wilf Sommerkorn, Planning Director *WS*

Date: June 1, 2012

CC: Frank Gray, Community and Economic Development Director; Mary De La Mare-Schaefer, Community & Economic Development Department Deputy Director; Cheri Coffey, Assistant Planning Director; file

Re: Initiate Petition to fine tune the Zoning Ordinance relating to various regulations relating to the Appeals Hearing Officer including noticing requirements.

This memo requests that you initiate a petition for the Planning Division to analyze the appropriateness of processing "fining tuning" amendments to various provisions of the Salt Lake City Zoning Ordinance, relating to the Appeals Hearing Officer decision making process.

1. Clarifying Noticing Requirements for DeNovo vs On the Record requests. In the adoption of Ordinance No 8 of 2012, relating to the Appeals Hearing Officer, it was the intent that appeals from the Planning Commission or Historic Landmark Commission were appeals on the record and although the meetings would be open to the public, no public hearing would be conducted. This was consistent with the process for the Land Use Appeals Board of which these types of appeals used to be heard. Appeals of Administrative decisions by the Planning Director or the Planning Director's designee and decisions relating to Variances would be DeNovo matters and public hearings would be conducted because in those instances, a public hearing had never been conducted on those requests. This process is similar to what the Board of Adjustment process was.

However, the adopted language for the Appeals Hearing Officer requires noticing of property owners and tenants within 300 feet of the subject property, a posting of the property and a publication of the notice in the newspaper for all matters, which implies that all meetings conducted by the Appeals Hearing Officer are public hearings. This not only conflicts with other sections of the ordinance that are clear that in appeals of Planning Commission and Historic Landmark Commission decisions no public hearing is allowed, it sets up a false expectation to those who were notified.


2. Eliminating the Newspaper Notice Requirement. In addition, the proposed changes include eliminating the newspaper notification requirement. State law only requires newspaper notice for zoning text amendments and master plan adoptions and amendments. In Planning Staff's opinion, newspaper notification is costly and ineffective. Very few people tend to read these types of legal notices. Direct notification and notification through the listserve is much more effective. Therefore, staff does not believe requiring newspaper notification is appropriate for anything other than what State law requires.
3. Ensuring consistency with the proposed Historic Landmark Commission regulation Fine Tuning Petition. The City Council is currently reviewing an petition to Fine Tune the regulations relating to the Historic Preservation regulations. Staff will ensure that the proposed changes to the Appeals Hearing Officer ordinance are not in conflict with the proposed Fine Tuning of the Historic Preservation ordinance.
4. Clarifying that the Planning Commission and Historic Landmark Commission's authority relating to administrative vs. legislative decisions. The Authority and regulations relating to the Appeals Hearing Officer are mainly found in Chapter 21A.16, *Appeals of Administrative Decisions*. The proposed amendments make it clear that the Planning Commission makes decisions on some administrative matters (vs. making recommendations on legislative matters)

As part of the process, the Planning Division will follow the City adoption process for amending the City Code and zoning text amendments which includes citizen input and public hearings with the Planning Commission and City Council.

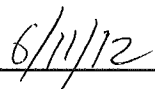
If you have any questions, please contact me.

Thank you.

Concurrence to initiate the zoning text amendment petition as noted above.



Ralph Becker, Mayor



Date