

APPEAL AUTHORITIES AND PROCEDURES**Section 2601—Purpose:**

As required by the Act, this Chapter is provided to allow the Applicant, a Board, or Officer of the City, or any other person who believes they are adversely affected by a decision of a Land Use Authority to appeal the decision to an Appeal Authority, as identified by this Chapter.

1. District Court. Any person aggrieved by a decision of the Council in enacting or administering this Ordinance may file a Petition with District Court, as provided by this Chapter.
2. Commission. Any person aggrieved by a decision of the Zoning Administrator in administering or interpreting this Ordinance may file an Appeal Application with the Commission.

Section 2602—Appeal Authorities:

As provided by the Act, and to provide for appeals of decisions of the City's Land Use Authorities administering or interpreting the City's Land Use Ordinances, including this Ordinance, the following Appeal Authorities, with their respective appeal responsibilities, are hereby identified:

1. District Court.

- 1.1. Any person aggrieved by a decision of the Council in enacting or administering this Ordinance, or the City's other Land Use Ordinances, may file a Petition with District Court, as provided by this Chapter.
- 1.2. Any person aggrieved by a decision of the BOA in administering this Ordinance may file a Petition with the District Court, as provided by this Chapter.

2. Council.

- 2.1. Any person aggrieved by a decision of the Commission in administering this Ordinance may file an Appeal with the Council.
- 2.2.

3. Commission.

- 3.1. Any person aggrieved by a decision of the Zoning Administrator in administering or interpreting this Ordinance, or the City's other Land Use Ordinances may file an Appeal with the Commission.

Section 2603—Maximum Time Allowed to File Appeal:

1. Any person, including the Applicant for any Land approval required by this Ordinance, and any board or officer of the City, aggrieved by a decision of a Land Use Authority's decision administering or interpreting this Ordinance, or the City's Land Use Ordinances may, within ten (10) days of the decision, appeal that decision to the Appeal Authority identified by Section 2602 herein, except as may be further provided by Subsection (2) and (3) below.
2. Any person, including the Applicant for any approval required by this Ordinance, or the City's Other Land Use Ordinances, and any board or officer of the City, aggrieved by a decision of the Council, acting as a Land Use Authority, may file a Petition for the review of the Council's decision with the District Court within thirty (30) calendar days after the decision is final, as provided by Section 2611 and Section 2612, herein.
3. Any person, including the Applicant for any approval required by this Ordinance, or the City's other Land Use Ordinances, and any board or officer of the City, aggrieved by a decision of an Appeal Authority may file a Petition for review of the decision with the District Court within thirty (30) calendar days after the decision is final, as provided by Section 26 11 and Section 2612, herein.

Section 2604 – Requirements for an Appeal:

1. An Appeal Petition of a Land Use Authority's decision made under the authority of this Ordinance, or the City's other Land Use Ordinances, shall clearly identify the alleged error in any order, requirement, decision, or determination made by the Land Use Authority in the administration or interpretation of this Ordinance, or the City's other Land Use Ordinances.
2. Only those decisions in which a Land Use Authority has applied the requirements of this Ordinance, or the City's other Land Use Ordinances to a particular application, person, lot, or parcel may be appealed to an Appeal Authority.

Section 2605 – Condition Precedent to Judicial Review, Appeal Authority Duties:

1. As required by the Act, and as a condition precedent to judicial review, each adversely affected person shall timely and specifically challenge a Land Use Authority's decision, in accordance with the requirements of this Chapter.
2. An Appeal Authority shall:
 - 2.1. Act in a quasi-judicial manner; and
 - 2.2. Serve as the final arbiter of issues involving the interpretation or application of this Ordinance, and the City's other Land Use Ordinances; and
 - 2.3. May not entertain an appeal of a matter in which the Appeal Authority, or any participating member, had first acted as the Land Use Authority.
3. As provided by the Act, an adversely affected party shall present every theory of relief to the Appeal Authority that it can raise in District Court.
4. As required by the Act, an Appeal Authority shall not require an adversely affected party to pursue duplicate or successive appeals before it, or another Appeal Authority, as a condition of the adversely affected party's duty to exhaust administrative remedies.

Section 2606—Application Required:

1. An Appeal Petition or Application for an Appeal, of a Land Use Authority's decision shall be made on the Appeal Application, available in the Office of the City Recorder.
2. An Appeal Application shall be determined complete by the City Recorder, as provided by Chapter 12, herein. If an Appeal Application is determined to be incomplete, the City Recorder shall comply with the requirements of Chapter 12, herein.

Section 2607—Meetings, Records, and Action of an Appeal Authority:

1. Each Appeal Authority, as identified herein shall:
 - 1.1. Notify each of its members of any meeting or hearing;
 - 1.2. Provide each of its members with the same information and access to City resources as any other member;
 - 1.3. Convene only if a quorum of its members is present; and

- 1.4. Act only upon the vote of a majority of its convened members.
2. After an Appeal Petition is determined complete by the City Recorder, as provided herein, the Zoning Administrator shall coordinate with the Appeal Authority to schedule the hearing of the appeal. The Zoning Administrator shall transmit to the Appeal Authority all materials constituting the full and complete record of the decision of the Land Use Authority.
3. Following a written decision by the Appeal Authority, as provided by Section 2611 herein, the Appeal Authority shall provide the applicant with a copy of the written decision.
4. A record of the decisions of the Appeal Authority shall be maintained in the Office of the City Recorder, which shall constitute the official record of the Appeal Authority.

Section 2608—Due process:

1. Each Appeal Authority, identified by this Chapter, shall conduct each appeal hearing, as provided herein.
2. Each Appeal Authority, identified herein, shall respect the due process rights of each of the participants.

Section 2609—Burden of Proof:

Any person bringing an appeal and alleging an error of a Land Use Authority's decision administering or interpreting this Ordinance or the City's other Land Use Ordinances has the burden of proof that the Land Use Authority erred.

Section 2610—Standard of Review for Appeals:

1. Each Appeal Authority identified by this Chapter shall hear and review all appeal matters "on the record," including the review of all factual matters. Each Appeal Authority shall only consider those materials presented and originally before the Land Use Authority in making the decision that is the subject of the appeal.
2. The Appeal Authority shall determine the correctness of a decision of the Land Use Authority in its interpretation and application of this Ordinance, and the City's other Land Use Ordinances.
3. Only those decisions in which a Land Use Authority has applied the requirements of this Ordinance, or the City's other Land Use Ordinances to a particular application, person, lot, or parcel may be appealed to an Appeal Authority.

4. An Appeal Application shall not be used to waive, modify, or amend any requirement, provision, or term of this Ordinance, or the City's other Land Use Ordinances.

Section 2611—Final Decision:

A decision of each Appeal Authority, as identified herein, shall take effect on the date when the Appeal Authority, as applicable, issues a written decision, which shall constitute a final decision by the City in the matter.

Section 2612—District Court Review:

1. Required Time for Filing.

- 1.1. No person may challenge in District Court a decision of a Land Use Authority until that person has exhausted all administrative remedies as provided by this Chapter and received a final decision from the Appeal Authority, as provided by Section 2611 herein.
- 1.2. Any person adversely affected by a final decision made in the exercise of, or in violation of, the provisions of this Chapter may file an Appeal Petition for review of the decision with the District Court within thirty (30) calendar days after the decision is final.
- 1.3. An Appeal Petition is barred unless it is filed within thirty (30) calendar days after the Appeal Authority's decision is final.

2. Tolling of Time.

- 2.1. The required time for filing for District Court review shall be tolled from the date the a person files a request for arbitration of a constitutional taking issue with the property rights ombudsman, as provided by §63-34-13, Utah Code Annotated, 1953, as amended, until thirty (30) calendar days after:
 - 2.1.1. The arbitrator issues a final award; or
 - 2.1.2. The property rights ombudsman issues a written statement under §63-34-13(4)(b) Utah Code Annotated, 1953, as amended, declining to arbitrate or to appoint an arbitrator.
- 2.2. A tolling under this Section operates only as to the specific constitutional taking issue that is the subject of the request for arbitration filed with the property rights ombudsman by a property owner.

2.3. A request for arbitration filed with the property rights ombudsman after the time under Subsection 2.1 to file an Appeal Petition has expired does not affect the time to file an Appeal Petition.

3. Standards Governing Court Review.

3.1. The District Court shall:

3.1.1. Presume that a decision, ordinance, or regulation made under the authority of this Ordinance, or the City's other Land Use Ordinances, and the Act, is valid; and

3.1.2. Determine only whether or not the decision, ordinance, or regulation is arbitrary, capricious, or illegal.

3.2. A decision, ordinance, or regulation of the Council involving the exercise of legislative discretion is valid if the decision, ordinance, or regulation is reasonably debatable and not illegal.

3.3. A decision of a Land Use Authority or an Appeal Authority involving the exercise of administrative discretion is valid if the decision is supported by substantial evidence in the record and is not arbitrary, capricious, or illegal.

3.4. A determination of illegality requires a determination that the decision, ordinance, or regulation violates a law, statute, or ordinance in effect at the time the decision was made or the ordinance or regulation adopted.

3.5. The time requirements for the filing of an Appeal Petition with District Court, as provided by this Chapter apply from the date on which the Land Use Authority takes final action on a land use application for any adversely affected third party, if the Land Use Authority conformed with the notice provisions of this Ordinance, as applicable, or for any person who had actual notice of the pending decision.

3.6. If the City has complied with the notice requirements, as provided by this Ordinance, a challenge to the enactment of this Ordinance may not be filed with the District Court more than thirty (30) calendar days after the enactment.

4. Appeal Authority – Review on the Record.

4.1. The Council, acting as a Land Use Authority, or Appeal Authority, as the case may be, shall transmit to District Court the record of its proceedings, including its minutes, findings, orders, and, if available, a true and correct transcript of its proceedings.

4.1.1. If the proceeding was tape-recorded, a transcript of that tape recording is a true and correct transcript for purposes of this Section.

4.1.2. If there is a record, the District Court's review is limited to the record provided by the Land Use Authority, or Appeal Authority, as the case may be.

4.2. The court may not accept or consider any evidence outside the record of the Land Use Authority or Appeal Authority, as the case may be, unless that evidence was offered to the Land Use Authority or Appeal Authority, respectively, and the court determines that it was improperly excluded.

4.3. If there is no record, the court may call witnesses and take evidence.

4.4. The filing of a Petition does not stay the decision of the Land Use Authority, or Appeal Authority, as the case may be.

5. Staying of Decision.

5.1. Before filing a Petition under this Chapter, or a request for mediation or arbitration of a constitutional taking issue under §63-34-13 Utah Code Annotated, 1953, as amended, the aggrieved party may petition the Appeal Authority to stay its decision.

5.2. Upon receipt of a petition to stay, the Appeal Authority may order its decision stayed pending District Court review if the Appeal Authority finds it to be in the best interest of the City.

5.3. After a Petition is filed under this Chapter, or a request for mediation or arbitration of a constitutional taking issue is filed under §63-34-13 Utah Code Annotated, 1953, as amended, the petitioner may seek an injunction staying the Appeal Authority's decision.

**Figure 26-1
Appeal Authorities**

