

**ESCALANTE CITY  
ORDINANCE 2025-03**

**AN ORDINANCE AMENDING ESCALANTE CITY CODE NO. 10.06 BOARD OF  
ADJUSTMENTS TO BE THE APPEAL AUTHORITY AND PROVIDING REPEALER  
WITHIN THE CITY OF ESCALANTE, STATE OF UTAH.**

**WHEREAS**, the City Council, as the governing body of the City of Escalante, State of Utah, specifically finds that it is in the best interest of the safety and welfare of the citizens of the City of Escalante to amend the following Ordinance; and

**WHEREAS**, The City Council and Mayor wish to amend such an Ordinance.

**NOW THEREFORE**, be it ordained by the Council of the Escalante City, in the State of Utah, as follows:

**SECTION 1:**        **AMENDMENT** “10.06 Board Of Adjustment” of the Escalante Zoning Code is hereby *amended* as follows:

AMENDMENT

10.06 ~~Board Of Adjustment~~Appeal Authority

**SECTION 2:**        **AMENDMENT** “10.06.010 Board, Number Of Members, Appointments Term And Removal, Vacancies” of the Escalante Zoning Code is hereby *amended* as follows:

AMENDMENT

10.06.010 ~~Board, Number Of Members, Appointments Term And Removal, Vacancies~~Appointment

~~The Escalante City Board of Adjustment shall consist of five (5) members, each to be appointed by the Mayor for the term of five (5) years provided that the term of one (1) member shall expire each year. Any member may be removed for cause by the appointing authority upon written charges and after public hearing, if such public hearing is requested. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. One (1) member, but not more than one (1) of the Escalante City Planning Commission shall be a member of the Escalante City Board of Adjustment. In like manner, one or more alternate members may be appointed by the chief executive officer with the advice of the legislative body for a term of five (5) years.~~

There is hereby created an Appeal Authority of one person to be appointed by the Mayor with the advice and consent of the City Council. The Appeal Authority may not be a resident of the City, nor have a financial interest in property within the City and must have background in land use regulations . It is the intent of the City that the appointed individual will not personally benefit from decisions associated with the interpretation of the ordinances of the City.

**SECTION 3:**        AMENDMENT “10.06.020 Organization” of the Escalante Zoning Code is hereby *amended* as follows:

AMENDMENT

10.06.020 ~~Organization~~Term

~~The Escalante City Board of Adjustment shall elect a Chairperson and a Vice-Chairperson from among its members, who shall serve for a term of one (1) year and shall adopt rules complying with the ordinances of the legislative body. The appointed Chairperson or Vice-Chairperson shall supervise the affairs of the board of adjustment including calling meetings. The board of adjustment shall adopt administrative rules. The Chairperson or Vice-Chairperson, in absence of the Chairperson, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote indicating such fact, and shall keep records of its examinations and other official actions; all of which shall be filed in the office of the board of adjustment and shall be a public record.~~

The Appeal Authority shall serve until the Appeal Authority position is vacant on account of death, resignation, removal or disqualification. In the event of vacancy, the position of Appeal Authority shall be filled in the same manner as an original appointment.

**SECTION 4:**        AMENDMENT “10.06.040 Quorum” of the Escalante Zoning Code is hereby *amended* as follows:

AMENDMENT

10.06.~~040 Quorum~~030 Removal

~~A quorum shall be considered three (3) members of the Escalante City Board of Adjustment, and no evidence shall be presented to the Board unless a quorum is present.~~

The appointed Appeal Authority may be removed for cause by the City Council upon written

charges, which shall be filed with the Mayor, and after public hearing, if such public hearing is requested by the appointed Appeal Authority.

**SECTION 5:            AMENDMENT** “10.06.030 Powers And Duties” of the Escalante Zoning Code is hereby *amended* as follows:

AMENDMENT

10.06.~~030~~040 Powers And Duties

- A. The Appeal Authority shall have the following powers and duties:
  - 1. To act in a quasi-judicial manner; and
  - 2. To serve as the final arbiter of issues involving the interpretation or the application of Land Use Ordinances.
- B. The Appeal Authority shall hear and decide the following:
  - 1. Requests for variances from the terms of the Land Use Ordinances;
  - 2. Appeals from decisions applying the Land Use Ordinances;
  - 3. Determinations regarding the existence, expansion, or modification of nonconforming uses;
  - 4. Special exceptions to the terms of the zoning ordinance where the City Council has granted jurisdiction to the Appeal Authority to do so, and in the manner so provided; and
- C. The Appeal Authority 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.
- D. The Appeal Authority shall:
  - 1. Comply with the requirements of Utah Code 52-4, Open and Public Meetings.
  - 2. Keep minutes of its proceedings, including a record of the examination of evidence and other official actions.
- E. The records of the Appeal Authority shall be filed in the City office with the City Recorder and shall be public records. ~~The Escalante City Board of Adjustment shall have the following powers:~~
  - ~~A. To hear and decide appeals from zoning decisions applying to the zoning ordinance;~~
  - ~~B. To hear and decide special exceptions to the terms of this Ordinance upon which such Board is required to pass under the provisions of this Ordinance; and~~
  - ~~C. To hear and decide variances from the terms of this Ordinance. The Board may grant a variance only if:~~
    - ~~1. Literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance; There are special circumstances attached to the property which do not generally apply to other property in the same district; Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district; The variance will not substantially affect the general plan and will not be contrary to the~~

~~public interest; The spirit of the zoning ordinance is observed and substantial justice done.~~

**SECTION 6:            AMENDMENT** “10.06.060 Vote Necessary For Reversal” of the Escalante Zoning Code is hereby *amended* as follows:

**A M E N D M E N T**

10.06.060 ~~Vote Necessary For Reversal~~Variances

~~The concurring vote of three (3) members of the Escalante City Board of Adjustment shall be necessary to reverse any order, requirement, or determination of any such administrative official, or to decide in favor of the appellant on any matter upon which it is required to pass under this Ordinance or to effect any variation of the provisions of this Ordinance. Decisions of the board become effective at the meeting in which the decision is made, unless a different time is designated in the board's rules or at the time the decision is made.~~

- A. Any person or entity desiring a waiver or modification of the requirements of a Land Use Ordinance as applied to a parcel or property that he owns, leases, or in which he holds some other beneficial interest may apply to the Appeal Authority for a variance from the terms of the ordinance.
- B. The Appeal Authority shall set a hearing to be held within a reasonable time from the date the request is received. Written notice of the date set for hearing the request shall be mailed to the applicant at least ten (10) days before the hearing date. At the hearing, the requesting party shall appear in person or by agent or by attorney. After the hearing, the Appeal Authority may wholly or partially grant or deny the applicant's request.
- C. The Appeal Authority may grant a variance only if:
  - 1. Literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the Land Use Ordinances;
  - 2. There are special circumstances attached to the property that do not generally apply to other properties in the same zone;
  - 3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone;
  - 4. The variance will not substantially affect the general plan and will not be contrary to the public interest; and
  - 5. The spirit of the Land Use Ordinance is observed and substantial justice done.
- D. In determining whether or not enforcement of the Land Use Ordinance would cause unreasonable hardship, the Appeal Authority may not find an unreasonable hardship unless the alleged hardship:
  - 1. Is located on or associated with the property for which the variance is sought; and
  - 2. Comes from circumstances peculiar to the property, not from conditions that

are general to the neighborhood.

3. Is not self-imposed or economic.
- E. In determining whether or not there are special circumstances attached to the property, the Appeal Authority may find that special circumstances exist only if the special circumstances:
  1. Relate to the hardship complained of; and
  2. Deprive the property of privileges granted to other properties in the same zone.
- F. The applicant shall bear the burden of proving that all of the conditions justifying a variance have been met.
- G. Variances run with the land.
- H. The Appeal Authority may not grant a use variance.
- I. In granting a variance, the Appeal Authority may impose additional requirements on the applicant that will:
  1. Mitigate any harmful effects of the variance; or
  2. Serve the purpose of the standard or requirement that is waived or modified.
- J. The City, or any person adversely affected by any decision of the Appeal Authority, may petition the District Court for a review of the decision, provided the petition is filed with the Court within 30 days after the Appeal Authority has issued its final written decision. In the petition, the appealing party may only allege that the Appeal Authority's decision was arbitrary, capricious, or illegal. The Appeal Authority may, after finding that it is in the best interest of the City to do so, stay its decision pending District Court review.
- K. Unless otherwise specified by the Appeal Authority, any order or decision of the Appeal Authority authorizing a variance shall expire if the applicant fails to obtain a building permit within one year from the date of the decision. Any applicant may withdraw a request for variance at any time prior to a decision by the Appeal Authority. No person shall be entitled to claim a refund of costs for any reason.

**SECTION 7:**AMENDMENT “10.06.070 Appeals To Board-Time-Person Entitled-Transmission Of Papers” of the Escalante Zoning Code is hereby *amended* as follows:

#### AMENDMENT

10.06.070 Appeals To ~~Board-Time-Person Entitled-Transmission Of Papers~~The Appeal Authority

~~Appeals to the Escalante City Board of Adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of Escalante City affected by any decision of the administrative officer in the administration of this Ordinance. Such appeal shall be taken within thirty (30) days as provided by the rules of the Board by filing with the officer from whom the appeal is taken and with the Escalante City Board of Adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the~~

~~Escalante City Board of Adjustment all the papers constituting the record upon which the action appealed from was taken.~~

- A. As a condition precedent to judicial review, each adversely affected person may specifically challenge a Land Use Authority's decision, within ten (10) business days of the land use decision and pay the related fee.
- B. The Appeal Authority shall review the matter de novo and determine the correctness of a decision of the Planning and Zoning Commission in its interpretation and application of a Land Use Ordinance.
- C. Only those decisions in which a Planning and Zoning Commission has applied a Land Use Ordinance to a particular application, person or parcel may be appealed to the Appeal Authority.
- D. All documents and exhibits constituting the record upon which the action appealed was made shall be presented to the City Recorder with the application for hearing.
- E. For every appeal, the applicant shall present to the Appeal Authority every theory of relief that it can raise in District Court.
- F. The notice of appeal shall specifically allege the error which was made in the order, requirement, recommendation, decision, or determination made by an official or officials in the administration or interpretation of the land use ordinances. A notice of appeal failing to allege such error or specify the grounds for appeal may be summarily dismissed by the Appeal Authority, with or without prejudice.
- G. The Appeal Authority shall set the appeal hearing to be held within a reasonable time from the date the appeal is received. Written notice of the date set for hearing the appeal shall be mailed to the applicant at least ten (10) days before the appeal hearing date. At the hearing, the party appealing shall appear in person or by agent or by attorney.
- H. The Appeal Authority shall conduct each appeal and variance request as described by this Chapter.
- I. The person or entity who filed the appeal has the burden of proving that the Planning and Zoning Commission erred.
- J. The Appeal Authority shall respect the due process rights of each of the participants.
- K. The Appeal Authority shall issue a written decision within a reasonable time after the hearing.
- L. Any applicant may withdraw an appeal at any time prior to a decision by the Appeal Authority. No person shall be entitled to claim a refund of costs for any reason.

**SECTION 8:**        AMENDMENT “10.06.100 Rules” of the Escalante Zoning Code is hereby *amended* as follows:

AMENDMENT

10.06.~~100 Rules~~080 Interpretation Of Land Use Ordinance

- A. Any person alleging there was an error in any order, requirement, decision, or

determination made by the Planning and Zoning Commission in the administration or interpretation of the Land Use Ordinance may request an interpretation and decision from the Appeal Authority.

B. The Appeal Authority will overturn decisions of the Planning and Zoning Commission only as follows:

1. If the decision or requirement by the Planning and Zoning Commission conflicts with the intent or literal interpretation of the Land Use Ordinances; or
2. If the decision or requirement by the Planning and Zoning Commission conflicts with state or local laws.

C. In some instances, the Appeal Authority may not fully understand the intent of an ordinance or requirement placed upon any person(s) by the Planning and Zoning Commission. Under these circumstances the Appeal Authority may obtain a decision from the City Council prior to making a final decision (if applicable).

1. If the Appeal Authority requires an interpretation from the City Council, the Appeal Authority shall make a final decision within ten (10) days after that interpretation is given.

**SECTION 9:            AMENDMENT** “10.06.080 Stay Off Proceeding Pending Appeal” of the Escalante Zoning Code is hereby *amended* as follows:

AMENDMENT

10.06.~~080~~090 Stay Off Proceeding Pending Appeal

An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the ~~Escalante City Board of Adjustment~~ Appeal Authority after the notice of appeal shall have been filed with him or her that by reason of facts stated in the certificate a stay would in his or her opinion cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by restraining order which may be granted by the ~~Escalante City Board of Adjustment~~ Appeal Authority or by district court on application and notice and on due cause shown.

**SECTION 10:            AMENDMENT** “10.06.090 Decision On Appeal” of the Escalante Zoning Code is hereby *amended* as follows:

AMENDMENT

10.06.~~090~~100 Decision On Appeal

~~In exercising the above-mentioned powers~~ After hearing the appeal, the ~~Escalante City Board of Adjustment~~ Appeal Authority may in conformity with the provisions of this Ordinance

reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such other, requirement, decision, or determination as ought to be made.

**SECTION 11:**        **AMENDMENT** “10.06.110 Judicial Review Of Board's Decision - Time Limitations” of the Escalante Zoning Code is hereby *amended* as follows:

AMENDMENT

10.06.110 Judicial Review Of Board's Decision - Time Limitations

The Escalante City Council or any person aggrieved by any decision of the ~~Esealante City Board of Adjustmen~~ Appeal Authority † may have and maintain a plenary action for relief there from in any court of competent jurisdiction; provided, petition for such relief is presented to the court within thirty (30) days after the filing of such decision in the office of the ~~Board~~ Appeal Authority.

PASSED AND ADOPTED BY THE ESCALANTE CITY COUNCIL JUNE 17, 2025.

	<b>AYE</b>	<b>NAY</b>	<b>ABSENT</b>	<b>ABSTAIN</b>
Councilmember Stowe	<u>  X  </u>	<u>      </u>	<u>      </u>	<u>      </u>
Councilmember Lyman	<u>      </u>	<u>      </u>	<u>  X  </u>	<u>      </u>
Councilmember Porter	<u>  X  </u>	<u>      </u>	<u>      </u>	<u>      </u>
Councilmember Orme	<u>  X  </u>	<u>      </u>	<u>      </u>	<u>      </u>
Councilmember Wilson	<u>      </u>	<u>      </u>	<u>  X  </u>	<u>      </u>

Presiding Officer

Attest

  
\_\_\_\_\_  
Melani Torgersen, Mayor, Escalante  
City

  
\_\_\_\_\_  
Stephanie Steed, MMC, UCC, City  
Recorder, Escalante City

