

ORDINANCE NO. 2018-26

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SOUTH JORDAN, UTAH, AMENDING SUBSECTION 17.16.020.020 (APPEALS) OF THE SOUTH JORDAN CITY MUNICIPAL CODE TO CLARIFY THE LAND USE APPEALS PROCEDURE AND THE HEARING OFFICER'S DUTIES; AND AMENDING CITY CODE TO HAVE THE CITY'S APPEAL AND VARIANCE HEARING OFFICER REVIEW CONDITIONAL USE APPEALS.

WHEREAS, Utah Code § 10-9a-102 grants the City Council of the City of South Jordan (the "City Council") authority to enact ordinances that it considers necessary or appropriate for the use and development of land in the City of South Jordan (the "City"), including the City's aesthetics; and

WHEREAS, the City Council has adopted Title 17 (Planning and Zoning Code) of the City of South Jordan Municipal Code ("City Code"); and

WHEREAS, the City Council desires to amend City Code § 17.16.020.020 to clarify the land use appeals procedure and the Hearing Officer's duties; and to amend City Code to have the City's Appeal and Variance Hearing Officer review conditional use appeals; and

WHEREAS, the South Jordan Planning Commission held a public hearing, and reviewed and made a recommendation concerning the subject text amendment; and

WHEREAS, the City Council held a public hearing and reviewed the subject text amendment; and

WHEREAS, the City Council finds that the subject text amendment will enhance the public health, safety and welfare, and will promote the goals of the General Plan.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SOUTH JORDAN, UTAH:

SECTION 1. Amendment. The City Council approves and adopts the amendments shown in **Exhibit A** and **Exhibit B**.

SECTION 2. Severability. If any section, part or provision of this Ordinance is held invalid or unenforceable, such invalidity or unenforceability shall not affect any other portion of this Ordinance and all sections, parts, provisions and words of this Ordinance shall be severable.

SECTION 3. Effective Date. This Ordinance shall become effective immediately upon publication and posting as required by law.

[SIGNATURE PAGE FOLLOWS]

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF SOUTH JORDAN, UTAH, ON THIS 4 DAY OF December, 2018 BY THE FOLLOWING VOTE:

	YES	NO	ABSTAIN	ABSENT
Patrick Harris	___	X	___	___
Bradley Marlor	X	___	___	___
Donald Shelton	X	___	___	___
Tamara Zander	X	___	___	___
Jason McGuire	___	X	___	___

Mayor: _____

[Signature]
 Dawn R. Ramsey

Attest: _____

[Signature]
 City Recorder

Pro Tempore _____
Donald J. Shelton

Approved as to form:

[Signature]
 Office of the City Attorney



EXHIBIT A

(Deletions in ~~striketrough~~, new language in **bolded underline**)

17.16.020.020: APPEALS:

A. Parties Entitled To Appeal:

1. The city, an applicant, or any other person or party adversely affected by a final written decision of the ~~development services~~**planning** director, city engineer, or planning commission administering or interpreting this title or title 16, "Development Code", of this code may appeal the decision to a hearing officer.

2. If an appeal is regarding a landowner's property but the landowner is not the appellant or appellee, a hearing officer may determine the landowner's level of involvement in an appeal.

B. Time To File Appeal: A hearing officer may only consider appeals properly filed pursuant to this section within ten (10) days of the date the disputed final written decision was issued.

C. Application: **All appeals are limited to the land use decisions on the record. "Record" means the land use application, public meeting/minutes, and any relevant public document held by the city that specifically relates to the issue(s) on appeal. An** Appellants shall file ~~their~~**an** appeals in writing by submitting an **online** appeal application to the city ~~recorder~~. A hearing officer may only consider an appeal if the appellant submitted a complete application within the time period provided in subsection B of this section. An appeal application is complete if it includes:

1. A completed application form provided by the ~~development services department;~~**city.**
2. Payment of applicable fees including those shown on the current year city fee schedule; ~~and.~~
3. A written statement **that is no more than five (5) pages with one (1) inch margins, twelve (12) point Times New Roman font, single spaced,** that **concisely:**
 - a. ~~Concisely~~ explains the appellant's standing to appeal;
 - b. ~~I~~ identifies the alleged error that is grounds for the appeal; **and**
 - c. ~~P~~ provides reasons the appellant claims the applicable decision was made in error; ~~and.~~
 - d. Every theory of relief that can be presented to a district court.

4. All records (e.g. land use application, staff reports, and meeting minutes). (The records may be attached to the written statement as an exhibit and, if so, the exhibits shall not be counted against the statement's page limit.)

D. Stay Of Proceedings Pending Appeal: An appeal stays all proceedings, unless the officer or decision making body that made the decision being appealed certifies to a hearing officer after the notice of appeal is filed with the city recorder that, by reason of the facts stated in the certificate, the stay would

in the officer's or decision making body's opinion cause imminent peril to life and property. In such case, proceedings shall not be stayed unless a hearing officer or the district court grants a restraining order on application, notice, and due cause shown.

E. Notice Of Hearing: After receiving an appeal application from the city recorder, a hearing officer shall fix a reasonable time and place for hearing the appeal during a public meeting. Thereafter, the city recorder shall publish an agenda at city hall and on the city's website, give notice to the parties, and provide the appeal application to appellee.

F. Response And Representation: **At least ten (10) days** Prior to the hearing, the appellee may submit to the city recorder a response to the appeal application that the city recorder shall give to a hearing officer and appellant. **The response shall have the same restrictions listed in subsection C.3. above.** At the hearing, the parties may appear in person or by agent or attorney.

G. **Hearing Officer: A hearing officer shall:**

1. act in a quasi-judicial manner and serve as the final arbiter of issues involving the interpretation or application of land use ordinances; and

2. may not entertain an appeal of a matter in which the hearing officer had first acted as the land use authority.

H. **Hearing And Decision Procedures:**

1. Minutes: A hearing officer shall cause minutes to be kept of all proceedings before him or her and shall keep record of all other official actions, including written decisions. A hearing officer's minutes and official records shall be immediately filed with the city recorder as a public record and shall be retained according to applicable law.

2. Written Decision: A hearing officer shall file with the city recorder a written decision on each appeal that reverses or affirms, in whole or in part, the administrative decision being appealed.

a. The written decision shall set forth the facts and law upon which the decision is made.

b. If a hearing officer reverses any part of the administrative decision being appealed, the hearing officer shall remand the administrative decision to the officer or decision making body that made the decision for further proceedings consistent with the hearing officer's decision.

c. The city recorder shall notify the parties of a hearing officer's decision by mail within ten (10) days of the decision's effective date.

d. A decision of a hearing officer takes effect and is final on the date when the hearing officer issues a written decision.

3. Other Policies And Procedures: A hearing officer may formally adopt other policies and procedures that do not otherwise conflict with this section or other laws.

~~H.I.~~ **Standard Scope** Of Review: A hearing officer, acting in his or her quasi-judicial capacity, shall review all appeals based on the record below. **The scope of review is limited to factual matters on the record. A hearing officer shall:**

1. Determine whether the record on appeal includes substantial evidence for each essential finding of fact.

~~12.~~ **No Public Comment:** A hearing officer shall not ~~r~~**Receive no** public comment, **including witness testimony,** and the parties may not present new evidence **outside the record,** unless such evidence was improperly excluded below.

~~23.~~ **Review For Correctness:** A hearing officer shall ~~d~~**Determine the correctness of the interpretation and application of the plain meaning of the land use regulation,** decision at issue and shall uphold the decision unless it is not supported by substantial evidence in the record or is otherwise illegal.

~~3J.~~ **Burden Of Proof:** The appellant has the burden of proving the appealed decision was made in error.

~~4K.~~ **Judicial Review Of Hearing Officer's Decision:** The city or any person adversely affected by any hearing officer's decision may **file a petition for review of the decision with the district court within 30 days after the hearing officer's decision is final.** ~~appeal to the district court of competent jurisdiction by filing a plenary action for relief; provided, petition for such relief is presented to the court within thirty (30) days after the filing of such decision with the city recorder.~~

~~4L.~~ **Stay Of Decision:** A hearing officer may stay his or her decision for thirty (30) days or until the district court decides any appeal of the hearing officer's decision.

EXHIBIT B

(Deletions in ~~strikethrough~~, new language in **bolded underline**)

17.84.070: ~~CITY COUNCIL REVIEW OR APPEALS:~~

A. The city or any person aggrieved by a final decision, determination, or requirement of the planning commission regarding the approval, approval with conditions, or denial of a conditional use permit application may appeal the planning commission's final action to the city's **appeal and variance hearing officer**~~—council~~ pursuant to section ~~16.04.370~~**17.16.020.020**, "Appeals", of this code.

~~B. The city council shall review the planning commission's final action as follows:~~

~~1. The city council may, after reviewing the record of the planning commission's final action, summarily affirm the planning commission's final action, or review the appealed conditional use application de novo.~~

~~2. Where the city council reviews the conditional use permit application de novo, the city council shall follow the same procedure as set forth in this chapter and:~~

~~a. Shall approve the conditional use permit application if reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the proposed conditional use in accordance with applicable standards; or~~

~~b. May deny a conditional use permit application if the reasonably anticipated detrimental effects of a proposed conditional use cannot be substantially mitigated by the proposal or the imposition of reasonable conditions to achieve compliance with applicable standards. (Ord. 2015-04, 5-5-2015)~~

17.18.050 CONDITIONAL USES:

G. ~~City Council Review Or Appeals:~~

1. The city or any person aggrieved by a final decision, determination, or requirement of the planning commission regarding the approval, approval with conditions, or denial of a conditional use permit application may appeal the planning commission's final action to the city's **appeal and variance hearing officer**~~—council~~ pursuant to section ~~16.04.370~~**17.16.020.020**, "Appeals", of this code.

~~2. The city council shall review the planning commission's final action as follows:~~

~~a. The city council may, after reviewing the record of the planning commission's final action, summarily affirm the planning commission's final action, or review the appealed conditional use application de novo.~~

~~b. Where the city council reviews the conditional use permit application de novo, the city council shall follow the same procedure as set forth in this section and:~~

~~(1) Shall approve the conditional use permit application if reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects of the proposed conditional use in accordance with applicable standards; or~~

~~(2) May deny a conditional use permit application if the reasonably anticipated detrimental effects of a proposed conditional use cannot be substantially mitigated by the proposal or the imposition of reasonable conditions to achieve compliance with applicable standards.~~