

Ordinance No 017-2021

AN ORDINANCE AMENDING PROVIDENCE CITY CODE TITLE 2: BOARDS AND COMMISSIONS, CHAPTER 5: APPEAL AUTHORITY, SECTIONS: ALL SECTIONS

**WHEREAS**, UCA § 10-9a-102.(2) states “. . . municipalities may enact all ordinances, resolutions, and rules and may enter into other forms of land use controls . . .” and

**WHEREAS** Providence City desires to provide for the health, safety, and welfare, and promote the prosperity, peace and good order, comfort, convenience, and aesthetics of the city and its present and future inhabitants and businesses, and,

**WHEREAS** the purpose and intent of PCC 2-5 is to establish an appeal authority to govern the appeals process. The code establishes the authority to hear requests for variances from the terms of the land use ordinances and appeals from decisions applying the land use ordinances which shall be vested in the Providence City Administrative Appeals Authority.

**WHEREAS** the proposed revisions, attached to this ordinance as EXHIBIT A, seeks to change from a three member, with two alternate members appeal board, to an administrative appeal hearing officer appointed by the Mayor with consent of City Council.

**WHEREAS** the proposed attached revision went before Providence City Planning Commission on September 22nd with the following motion and results:

*Motion to recommend to the Providence City Council the proposed amendments to the City Code Title 2 Boards and Commissions, Chapter 5 Appeal Authority, All Sections. Motion — M Fortune, second — T Riggs Vote: Yea: K Alder, M Fortune, B Marble, R Perry, Tyler Riggs. Nay: Abstained: Excused:*

**THEREFORE** be it resolved by the Providence City Council:

- The attached revision of PCC 2-5 Appeal Authority is approved.
- This ordinance shall become effective immediately upon passage.

Passed by vote of the Providence City Council this 20th day of October 2021.

Council Vote:

Eck, Kristina	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Excused	<input type="checkbox"/> Abstained	<input type="checkbox"/> Absent
Kirk, Carrie	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Excused	<input type="checkbox"/> Abstained	<input type="checkbox"/> Absent
Paulsen, Joshua	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Excused	<input type="checkbox"/> Abstained	<input type="checkbox"/> Absent
Sealy, Jeanell	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Excused	<input type="checkbox"/> Abstained	<input type="checkbox"/> Absent
Speth, Brent	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Excused	<input type="checkbox"/> Abstained	<input type="checkbox"/> Absent

Providence City

John Drew, Mayor

Attest:

Tyler Cameron, City Recorder

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## EXHIBIT A

### Code Amendment Review and Revision

Code Amendment Review				
Prepared by: S Bankhead	Date: 08/17/2021	Land Use	Yes: X	No:
Code Title: 2 Boards & Commissions	Title Chapter: 5 Appeal Authority	Chapter Section: 1 - 4		
Applicant: Providence City	Application Date: NA			
<b>Abbreviations &amp; Authority:</b> <ol style="list-style-type: none"> <li>1. Utah Code Annotated: UCA</li> <li>2. The UCA references are summarized in this analysis. For a complete details and code requirements, please review the online Utah Code at: <a href="https://le.utah.gov/xcode/code.html">https://le.utah.gov/xcode/code.html</a></li> <li>3. Providence City Code: PCC</li> <li>4. The PCC references are summarized in this analysis. For a complete details and code requirements, please review our online city code at: <a href="https://providence.municipalcodeonline.com/book?type=ordinances#name=Preface">https://providence.municipalcodeonline.com/book?type=ordinances#name=Preface</a></li> <li>5. Land Use Authority: Planning Commission (PCC: 10-4-4:B.1)</li> <li>6. Legislative body: City Council</li> </ol>				
<b>Background Information:</b> <ol style="list-style-type: none"> <li>1. In 2007, the City Council adopted Ordinance 004-2007, an ordinance approving a code amendment to Providence City land use ordinance utilizing recent amendments to the Utah Code including the establishment of a land use authority and an appeal authority consisting of four residents at large and one shared professional.</li> <li>2. In 2013, the City Council adopted Ordinance 009-2013, changing the appeal authority to three members; two being residents of Providence City and one professional that may or may not be a resident of Providence City.</li> <li>3. In 2018, the City Council appointed 2 alternates to help with scheduling conflicts and/or conflicts of interest.</li> <li>4. To be as transparent as possible and to reduce the potential for conflict, the City also utilizes two attorneys for each appeal or variance request. One attorney advises the appeal authority members; the other attorney advises the staff.</li> <li>5. While the appeal authority members are good, dedicated people, scheduling has continued to be a problem.</li> <li>6. City staff has reviewed PCC 2-5 Appeal Authority and suggest changing from a 3-person board to an administrative appeals hearing officer.</li> </ol>				

#### FINDINGS OF FACT:

1. UCA 10-3-701. Legislative power exercised by ordinance. Except as otherwise specifically provided, the governing body of each municipality shall exercise its legislative powers through ordinances.
2. UCA 10-3-702. The governing body may pass any ordinance to regulate, require, prohibit, govern control or supervise any activity, business, conduct of condition authorized by this act or any other provision of law.
3. UCA 10-9a-102 Purposes – General land use authority.  
A municipality may enact all ordinances, resolutions, and rules and may enter into other forms of land use controls and development agreements that the municipality considers necessary or appropriate for the use and development of land within the municipality, including ordinances, resolutions, rules, restrictive covenants, easements, and development agreements governing: (a) uses; (b) density; (c) open spaces; (d) structures; (e) buildings; (f) energy efficiency; (g) light and air; (h) air quality; (i) transportation and public or alternative transportation; (j) infrastructure; (k) street and building orientation; (l) width requirements; (m) public facilities; (n) fundamental fairness in land use regulation; and (o) considerations of surrounding land uses to balance the foregoing purposes with a landowner's private property interests and associated statutory and constitutional protections.
4. UCA 10-9a-201(1) Only a legislative body, as the body authorized to weigh policy considerations, may enact a land use regulation.

5. UCA 10-9a-302(1) The planning commission shall review and make a recommendation to the legislative body for (b) land use regulations, including: (i) ordinances regarding the subdivision of land within the municipality; and (ii) amendments to existing land use regulations.
6. UCA 10-9a-502(1) The planning commission shall provide notice, hold a public hearing, and review and recommend a proposed land use regulation to the legislative body.
7. UCA 10-9a-701 (1)(a) Each municipality adopting a land use ordinance shall, by ordinance, establish one or more appeal authorities.

**CONCLUSIONS OF LAW:**

1. The Providence City Council may enact or amend land use regulations.
2. The Providence Planning Commissions reviews and makes recommendations to the city council for land use regulations.
3. Ordinances regulating appeal authorities are part of the Municipal Land Use, Development, and Management Act.

**CONDITIONS:**

1. Before making a recommendation to a legislative body on an amendment to an existing land use regulation, the planning commission shall hold a public hearing in accordance with UCA 10-9a-404
2. The applicant shall meet all applicable City, state and federal laws, codes, rules.

CHAPTER 5  
APPEAL AUTHORITY

SECTION:

- 2-5-1: Appeal Authority  
2-5-2: Appointment of ~~Appeal Authority~~ **Administrative Appeals Hearing Officer**  
2-5-3: Appealing Land Use Decision  
2-5-4: Variances

2-5-1 **Appeal Authority:** The authority to hear requests for variances from the terms of the land use ordinances and appeals from decisions applying the land use ordinances shall be vested in the Providence City **Administrative Appeals Authority Hearing Officer**.

2-5-2 **Appointment of Appeal Authority:** The mayor shall appoint ~~three (3) members to the Appeal Authority; 2 being residents of Providence City, one (1) a professional that may or may not be a resident of Providence City and may be shared with other communities~~ **an administrative appeals hearing officer** with the advice and consent of the city council. ~~The one professional shall act as chair of the Appeal Authority. The members of the Appeal Authority~~ **administrative appeals hearing officer** will serve until a replacement is appointed.

**A. With the advice and consent of the city council, the mayor may appoint separate administrative appeals hearing officers; one to hear appeals and one to hear variances.**

2-5-3 **Appealing Land Use Authority's Decision:** An applicant, a board or officer of the City, or any person adversely affected by the land use authority's decision applying a land use ordinance may, within the time period provided in subsection 2-5-3:A. below, appeal that decision to the Appeal Authority by alleging there is error in any order, requirement decision, or determination made by the land use authority in the decision applying the land use ordinance.

A. Time to appeal.

1. Any appeal, pursuant to Section 6-2-5(C) above, must be filed in writing with the City Recorder within ~~fifteen (15)~~ **ten (10)** calendar days of the issuance of the written decision applying the land use ordinance.
2. **Notwithstanding A.1., for an appeal from a decision of a historic preservation authority regarding a land use application, the land use applicant may appeal the decision within 30 days after the day on which the historic preservation authority issues a written decision.**

B. Time for Hearing Appeal. ~~The Appeal Authority~~ **administrative appeals hearing officer** shall hear the appeal within ~~15 to~~ **thirty (30)** days of the date the appeal was filed.

C. Written Statement Setting Forth Theories of Relief Required. The appellant shall deliver to the ~~Appeal Authority~~ **administrative appeals hearing officer** and all other participants, five (5) business days prior to the hearing, a written statement setting forth each and every theory of relief he intends to raise at the hearing, along with a brief statement of facts in support thereof.

D. Condition Precedent to Judicial Review. No person, board, or officer of the City may seek judicial review of any decision applying the land use ordinance until after challenging the land use authority's decision in accordance with this part. No theory of relief may be raised in the District Court unless it was timely and specifically presented to the ~~Appeal Authority~~ **administrative appeals hearing officer**.

Proposed Code Amendment: DRAFT 08-03-2021

Providence City Code Title 2 Boards and Commissions, Chapter 5 Appeal Authority

Providence City Code  
Title 2  
Boards & Commissions  
Chapter 5  
Appeal Authority

- Adopted  
01/23/2007 (004-2007)
- Revisions  
09/13/2013 (009-2013)

DRAFTS

- 08/03/2021



- E. Standard of Review and Burden of Proof on Appeal. The ~~Appeal Authority~~ **administrative appeals hearing officer** shall, on appeal, presume that the decision applying the land use ordinance is valid and determine only whether or not the decision is arbitrary, capricious, or illegal. The burden of proof on appeal is on the appellant.
- F. Due Process Rights. The ~~Appeal Authority~~ **administrative appeals hearing officer** shall respect the due process rights of each participant.
- G. Direct Appeal to District Court. Notwithstanding the foregoing, decisions of the City Council relative to adopting or amending the general plan or any other land use ordinance may only be appealed directly to the district court.

2-5-4 **Variances:** Any person or entity desiring a waiver or modification of the requirements of a land use ordinance as applied to a parcel of property that he owns, leases, or in which he holds some other beneficial interest may apply to the ~~Appeal Authority~~ **administrative appeals hearing officer** for a variance from the terms of the ordinance.

- A. 1. The ~~Appeal Authority~~ **administrative appeals hearing officer** may grant a variance only if:
  - a. Literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purposes of the land use ordinances;
  - b. There are special circumstances attached to the property that do not generally apply to other properties in the same zone;
  - c. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone;
  - d. The variance will not substantially affect the general plan and will not be contrary to the public interest; and
  - e. **The spirit of the land use ordinance is observe and substantial justice done.**
- 2. a. In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship under Subsection (A)(1)(a), the ~~Appeal Authority~~ **administrative appeals hearing officer** may not find an unreasonable hardship unless the alleged hardship:
  - i. ~~a.~~ Is located on or associated with the property for which the variance is sought; and
  - ii. ~~b.~~ Comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.
- ~~b.3.~~ In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship under Subsection (A)(1)(a), the ~~Appeal Authority~~ **administrative appeals hearing officer** may not find an unreasonable hardship or the hardship is self-imposed or economic.
- ~~3.4.~~ In determining whether or not there are special circumstances attached to the property under Subsection (A)(1)(b), the ~~Appeal Authority~~ **administrative appeals hearing officer** may find that special circumstances exist only if the special circumstances:
  - a. Relate to the hardship complained of; and
  - b. Deprive the property of privileges granted to other properties in the same zone.
- B. The applicant shall bear the burden of proving that all of the conditions justifying a variance have been met.
- C. Variances run with the land.
- D. The ~~Appeal Authority~~ **administrative appeals hearing officer** may not grant a use variance.
- E. In granting a variance, the ~~Appeal Authority~~ **administrative appeals hearing officer** may impose additional requirements on the applicant that will:
  - 1. Mitigate any harmful affects of the variance; or
  - 2. Serve the purpose of the standard or requirement that is waived or modified.