

**TAYLORSVILLE CITY COUNCIL  
AGENDA ITEM SUMMARY**

**MEETING DATE:** January 20, 2016

**AGENDA ITEM:** Ordinance #16-01 text amendment to sections 2.20.060; 3.16.010; 13.02.200; 13.03.010; 13.03.020; 13.03.040; 13.04.110; 13.11.070; 13.15.050; 13.34.010; 13.36.150; and 18.08.060 of the Taylorsville City Code related to the Board of Adjustment/Hearing Officer.

**PRESENTER:** Mark McGrath

**SUMMARY:** The current appeal authority for land use decisions is the “Board of Adjustment”, which is comprised of five (5) regular members and two (2) alternate members; all of which are citizens within the City.

City staff is recommending the appeal authority be changed to a “Hearing Officer” who is trained and experienced in legal matters related to land use decisions. The proposed changes appoint the “Administrative Law Judge” as the Hearing Officer. These changes would simplify the process for appeals and ensure an efficient and fair process for all who wish to appeal a City decision.

The attached Ordinance #16-01 is a comprehensive update of various sections of the City Code as recommended by the Taylorsville Planning Commission. The update includes a number of adjustments to the existing regulations by replacing “board of adjustment” with “hearing officer”. Amendments are also required to outline the specific duties and responsibilities of the hearing officer; which are in-line with the current duties and responsibilities of the board of adjustment.

All of the proposed changes are outlined in “Exhibit A” with the traditional strikethrough and underline format.

**PLANNING COMMISSION RECOMMENDATION:** The Planning Commission made a unanimous recommendation to approve the proposed amendments on July 14, 2015.

**STAFF RECOMMENDATION:** City staff recommends approval of the text amendments related to the Board of Adjustment/Hearing Officer.

**RECOMMENDED MOTION:** I move that we approve Ordinance Number 16-01 amending sections 2.20.060; 3.16.010; 13.02.200; 13.03.010; 13.03.020; 13.03.040; 13.04.110; 13.11.070; 13.15.050; 13.34.010; 13.36.150; and 18.08.060 of the Taylorsville City Code related to the Board of Adjustment/Hearing Officer.

**TAYLORSVILLE, UTAH**  
**ORDINANCE NO. 16-01**

AN ORDINANCE OF THE CITY OF TAYLORSVILLE TO AMEND SECTIONS 2.20.060;  
3.16.010; 13.02.200; 13.03.010; 13.03.020; 13.03.040; 13.04.110; 13.11.070; 13.15.050;  
13.34.010; 13.36.150; AND 18.08.060 OF THE TAYLORSVILLE CITY CODE RELATED  
TO THE BOARD OF ADJUSTMENT/HEARING OFFICER.

The City Council of Taylorsville ordains as follows:

**WHEREAS**, on June 10, 2015 a notice of public hearing regarding a proposed amendment to sections 2.20.060; 3.16.010; 13.02.200; 13.03.010; 13.03.020; 13.03.040; 13.04.110; 13.11.070; 13.15.050; 13.34.010; 13.36.150; and 18.08.060 of the Taylorsville City Code related to the Board of Adjustment/Hearing Officer was posted in the Salt Lake Tribune and Deseret News; and

**WHEREAS**, on July 2, 2105 a notice of public hearing regarding the proposed text amendment was posted in 3 different places within the City of Taylorsville boundaries; and

**WHEREAS**, on July 14, 2015 the Taylorsville Planning Commission properly noticed and held a public hearing regarding amending the text of sections 2.20.060; 3.16.010; 13.02.200; 13.03.010; 13.03.020; 13.03.040; 13.04.110; 13.11.070; 13.15.050; 13.34.010; 13.36.150; and 18.08.060 of the Taylorsville City Code related to the Board of Adjustment/Hearing Officer; and

**WHEREAS**, on July 14, 2015 the Taylorsville Planning Commission voted 6-0 to forward a positive recommendation to amend sections 2.20.060; 3.16.010; 13.02.200; 13.03.010; 13.03.020; 13.03.040; 13.04.110; 13.11.070; 13.15.050; 13.34.010; 13.36.150; and 18.08.060 of the Taylorsville City Code related to the Board of Adjustment/Hearing Officer; and

**WHEREAS**, the Taylorsville City Council met in a regular session on January 20, 2016 to conduct and consider, among other things, a public hearing regarding the proposed text amendment; and

**WHEREAS**, after careful consideration and review, the City Council has determined that it is in the best interest of the health, safety, and welfare of the citizens of Taylorsville to amend sections 2.20.060; 3.16.010; 13.02.200; 13.03.010; 13.03.020; 13.03.040; 13.04.110; 13.11.070; 13.15.050; 13.34.010; 13.36.150; and 18.08.060 of the Taylorsville City Code related to the Board of Adjustment/Hearing Officer.

**NOW, THEREFORE, BE IT ORDAINED** by the Taylorsville City Council that the amendments made in the attached exhibit "A" are hereby adopted and are designated by interlineating the words to be deleted and underlining the words to be added.

This Ordinance, assigned Ordinance No. 16-01, shall take effect as soon as it shall be published or posted as required by law, deposited, and recorded in the office of the City Recorder, and accepted as required herein.

**PASSED AND APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**TAYLORSVILLE CITY COUNCIL**

By: \_\_\_\_\_  
Ernest Burgess, Chair

**VOTING:**

Daniel Armstrong	Yea	___	Nay	___
Dama Barbour	Yea	___	Nay	___
Ernest Burgess	Yea	___	Nay	___
Bradley W. Christopherson	Yea	___	Nay	___
Kristie S. Overson	Yea	___	Nay	___

**PRESENTED** to Mayor of Taylorsville for his approval this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

By: \_\_\_\_\_  
Lawrence Johnson, Mayor

ATTEST:

\_\_\_\_\_  
**Cheryl Peacock Cottle**, Recorder

**DEPOSITED** in the Recorder's office this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**POSTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**Exhibit A**

- 2.20.060 Department of Community Development and Duties of Appointed Officers**
  - B. Boards and Commissions
- 3.16.010 Hearing Officer Application Fees**
- 13.02.200 Nonconforming Uses and Noncomplying Structures; Substitution, Extension, Discontinuance, etc.**
  - C. Appeal
- 13.03.010 Purpose**
- 13.03.020 Community Development Director**
  - A. Reviews and Decisions
  - B. General Plan
  - C. Administrative Staff Assistance and Technical Advice
  - D. Development Code Enforcement
  - E. Delegate Responsibility
  - F. Administrative Conditional Uses
- 13.03.040 Appeal Authorities**
  - A. Hearing Officer
  - B. City Council
  - C. Administrative Officer
- 13.04.110 Boundary Interpretation**
- 13.11.070 Residential Facility for Elderly Persons or for Persons with a Disability**
  - G. Accommodation
- 13.15.050 Exceptions**
  - A. Previously Platted Plots
- 13.34.010 Appeals**
  - J. Effective Date Of Appeal Authority Decision
- 13.36.150 "N" Definitions**
  - NONCONFORMING LOT
- 18.08.060 Powers of the Hearing Officer**

**2.20.060: DEPARTMENT OF COMMUNITY DEVELOPMENT AND DUTIES OF APPOINTED OFFICERS:**

B. Boards And Commissions: The following boards and commissions are hereby established for the city. Their organization, duties and powers are outlined elsewhere within the city's ordinances. These boards and commissions shall, where appropriate, coordinate with the city administration through the director of community development and the mayor:

1. Planning commission; and
2. ~~Board of adjustment~~Hearing Officer.

**3.16.010: ~~BOARD OF ADJUSTMENT~~HEARING OFFICER APPLICATION FEES:**

The fees for application to the ~~board of adjustment~~Hearing Officer shall be as follows:

Commercial uses	\$300 .00
Residential uses	150 .00

(Ord. 96-37, 9-11-1996)

**13.02.200: NONCONFORMING USES AND NONCOMPLYING STRUCTURES; SUBSTITUTION, EXTENSION, DISCONTINUANCE, ETC.:**

C. Appeal: Any person adversely affected by a decision of the planning commission regarding nonconforming uses or noncomplying structures may, within ten (10) days of the decision, appeal the decision to the ~~board of adjustment~~Hearing Officer by alleging that there is error in any order, requirement, decision, or determination made by the planning commission. (Ord. 12-15, 7-11-2012)

**13.03.010: PURPOSE:**

This chapter sets forth the purpose, duties, organization, and powers of city boards, commissions, and other bodies charged in making decisions and recommendations under this development code. (Ord. 12-15, 7-11-2012)

**13.03.020: COMMUNITY DEVELOPMENT DIRECTOR:**

The community development director, hereinafter referred to as the "director", in addition to duties elsewhere in this development code, is charged with the responsibility of interpretation and enforcement of this development code. Interpretation of this development code includes, but is not limited to, clarification of intention, determination of zoning classifications of land uses not specified in this development code, the delegation of processing procedures and requirements, and enforcement of development code provisions. The specific duties of the director shall include the following:

- A. Reviews And Decisions: The director shall be authorized to undertake reviews, recommendations and decisions as described in this development code. The director shall be governed by the standards and procedures as set forth in this development code for the specific review, determination, or appeal which has been delegated to him.
- B. General Plan: The director shall assist the planning commission and city council in the development and implementation of the general plan for the physical and economic growth of the city and shall prepare population and growth studies in support of the general plan.
- C. Administrative Staff Assistance And Technical Advice: The director shall provide staff, including secretarial assistance, to the planning commission and ~~board of adjustment~~Hearing Officer. Staff assistance shall include attendance at regularly scheduled meetings and the preparation and publication of agendas. The director shall act as technical advisor to the mayor, city council, other city departments upon request, and other committees and commissions as the mayor may designate.
- D. Development Code Enforcement: The director is hereby designated and authorized as the officer charged with the enforcement of this development code. He shall enforce all the provisions of this development code, including court action when necessary, and his failure to do so shall not legalize any violation of such provisions. The police department is also hereby designated and authorized with enforcement of any nuisance provision of this development code.
- E. Delegate Responsibility: The director may designate representatives to execute the responsibilities in this development code.
- F. Administrative Conditional Uses: The director shall be authorized to review and decide administrative conditional uses. (Ord. 12-15, 7-11-2012)

#### 13.03.040: APPEAL AUTHORITIES:

##### A. ~~Board Of Adjustment~~Hearing Officer:

1. **Purpose:** In order to provide for just and fair treatment in the administration of local land use ordinances and to ensure that substantial justice is done, a ~~board of adjustment~~ Hearing Officer has been ~~created~~ appointed to exercise the powers and duties provided hereafter. The Administrative Law Judge will act as the Hearing Officer as per 18.02.035.
2. **Created and Appointment:**
  - a. The Hearing Officer shall be appointed or removed by the Mayor with the advice and consent of the City Council.
  - b. Pursuant to Utah Code 10-9a-701 the City hereby establishes an appeal authority consisting of a Hearing Officer to:

- i. Hear and decide requests for variances from the terms of the land use ordinance;
  - ii. Hear and decide appeals from decisions applying the land use ordinance;
  - iii. Hear and decide appeals from a fee charged in accordance with State Code Section 10-9a-510;
  - iv. Hear and decide other matters as established by the City Council; and
  - v. Hear and decide appeals from decisions regarding administrative conditional uses.
- c. Appeals may not be used to waive or modify the terms or requirements of the land use ordinance.

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**3. Creation And Membership:** The board of adjustment shall consist of five (5) regular members and two (2) alternate members.

- The mayor shall appoint the members and alternate members with the advice and consent of the city council for a term of five (5) years.
- All members and alternate members of the board of adjustment shall be residents of the city. Any member or alternate member of the board of adjustment relocating their primary residence outside the limits of the city shall resign their appointment within thirty (30) days prior to their relocation, if possible.
- Members of the board of adjustment may be removed for cause by the mayor upon written charge and after a public hearing (if a public hearing is requested by the member being removed). Any vacancy occurring on the board of adjustment shall be promptly filled by the mayor, with the advice and consent of the city council for the unexpired term of the member whose office is vacant.

**4.3. Organization and Procedures:**

- Organize and elect a chairman.
- Adopt rules that comply with all applicable state statutes and city ordinances. Such rules shall establish procedures for alternate members to serve in the absence of members of the board of adjustment and shall provide that no more than two (2) alternate members may sit at any meeting of the board of adjustment.
- Meet at the call of the chair and at any other times that the board of adjustment determines.
- Have the chair, or in the absence of the chair, the acting chair may administer oaths and compel the attendance of witnesses.

~~Conduct its meeting in compliance with the requirements of state statutes and city ordinances concerning the keeping of minutes, recording of votes, and absences.~~

~~a. Hear a request for a variance or appeal. Three (3) members constitute a quorum of the board of adjustment and a concurring vote of three (3) members is necessary to grant a variance or to overturn a decision on an appeal.~~

~~a. Make decisions on scheduled agenda items. Decisions of the board of adjustment 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.~~

~~h. Each member of the board of adjustment shall receive a stipend for each meeting.~~

~~a. All hearings of the Hearing Officer shall be open to the public.~~

~~b. The Hearing Officer shall keep minutes of its proceedings, and~~

~~c. The Hearing Officer may, but is not required to, have its proceedings contemporaneously transcribed by a court reporter or a tape recorder.~~

~~d. The Hearing Officer shall file its records in the office of the City Recorder.~~

~~e. All records in the office of the City Recorder are public records.~~

~~a.f. Decisions of the Hearing Officer become effective at the time the decision is filed with the City Recorder, unless a different time is designated by the Hearing Officer.~~

**4. Powers And Duties:** The board of adjustment shall hear and decide:

~~Requests for variances from the terms of the land use ordinance.~~

~~Appeals from decisions where it is alleged that there is an error in the order, requirement, decision, or determination made by an administrative official or director in the enforcement or interpretation of this development code. Appeals may not be used to waive or modify the terms or requirements of the development code. No authority has been granted to the board of adjustment to make determinations regarding the existence, expansion, or modification of nonconforming structures or nonconforming uses.~~

~~e. Other matters as established by the city council.~~

**B. City Council:** All appeals from decisions regarding ~~nonadministrative~~ conditional uses shall be heard by the city council.

**C. Administrative Law Judge:** All appeals from decisions regarding ~~administrative~~ conditional uses shall be heard by the administrative law judge.

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C. **Administrative Officer:** The director is designated as an appeal authority for the purpose of reviewing and deciding matters as established by the city council. (Ord. 12-15, 7-11-2012)

**13.04.110: BOUNDARY INTERPRETATION:**

Where physical or cultural features existing on the ground are different than shown on the zoning map or in other circumstances not covered by subsection 13.04.100A of this chapter, the director shall interpret the district boundaries. Any appeal of boundary interpretation shall be made to the ~~board of adjustment~~Hearing Officer. (Ord. 12-15, 7-11-2012)

**13.11.070: RESIDENTIAL FACILITY FOR ELDERLY PERSONS OR FOR PERSONS WITH A DISABILITY:**

G. Accommodation:

1. Accommodation Required: None of the requirements of this section shall be interpreted to limit any accommodation which is reasonable and necessary to allow the establishment or occupancy of a residential facility for persons with a disability.
2. Application: Any person or entity wanting an accommodation shall make application to the planning commission and shall articulate in writing the nature of the requested accommodation and the basis for the request.
3. Appeal: If an accommodation request is denied, the decision may be appealed to the ~~board of adjustment~~Hearing Officer in the manner provided for appeals of administrative decisions set forth in this title.
4. Prohibited Accommodations: The requested accommodation must relate to the use of the property so that it may be enjoyed as other similarly situated properties. An example would include a reduction in setback requirements for the installation of handicapped accessibility improvements. An accommodation cannot be granted to waive a zoning requirement, general setback reduction requests not related to the occupants, increase the profitability of the facility, or increase the maximum number of unrelated occupants above eight (8) plus two (2) additional persons acting as house parents or guardians.

**13.15.050: EXCEPTIONS:**

- A. Previously Platted Lots: If a lot which contains or is adjacent to thirty percent (30%) or greater slopes was platted, approved, and recorded prior to the adoption of sensitive area (or similar) regulations either in Salt Lake County or the city and such lot does not comply with the city's current sensitive area overlay zone, a property owner may request a special exception from the director to allow construction on the property at reduced or no setback from the thirty percent (30%) or greater slope. If it is determined that this

exception applies, the lot will not be required to proceed through sensitive area overlay zone review though special requirements to protect the health, safety, and welfare of the lot owner and residents of the city will be imposed before the issuance of a building permit. A property owner may request this exception only if the lot complies with the following:

1. Qualifications: Property which qualifies for the exception is limited to the following:
  - a. Subdivision lots approved and recorded prior to the enactment of sensitive overlay (or similar) regulations which were applicable to the property, or subdivision lots approved and recorded under different regulations than currently apply to the property; and
  - b. The lot contains or is adjacent to thirty percent (30%) or greater slope and cannot be built upon in compliance with the setbacks required by the sensitive area overlay zone in effect at the time the request is made; and
  - c. The lot does not have the amount of usable land area required by the sensitive area overlay zone in effect at the time the request is made; and
  - d. The slope is stable and suitable for construction as determined by the city engineer; and
  - e. Measures can be imposed which mitigate or eliminate hazards created by construction near the slope; and
  - f. The development shall comply with all other requirements of the code including driveway slopes and cuts and fills unless the ~~board of adjustment~~Hearing Officer approves a variance.

**13.34.010: APPEALS:**

- J. Effective Date Of Appeal Authority Decision: A decision of an appeal authority takes effect:
  1. ~~Board Of Adjustment~~Hearing Officer: At the meeting in which the decision is made.
  2. Other Appeal Authorities: On the date when the appeal authority issues a written decision or approval of the minutes of the meeting at which the decision was made, if applicable, whichever occurs first. (Ord. 12-15, 7-11-2012)

**13.36.150: "N" DEFINITIONS:**

NONCONFORMING LOT: A lot whose width, area, or other dimension does not conform to the regulations when this code became effective. However, proposed structures for such lots shall meet the required setbacks under this code unless otherwise stipulated by the ~~board of adjustment~~Hearing Officer.

**18.08.060: POWERS OF THE HEARING OFFICER:**

- A. The hearing officer has the authority to hold hearings, determine if violations of city ordinances exist, order compliance with city ordinances, and enforce compliance as provided in this title on any matter subject to the provisions of this title.
- B. A hearing officer may, for good cause shown by one of the parties or if the hearing examiner independently determines that due process has not been adequately afforded to such party, continue a hearing.
- C. The hearing officer, at the request of any party to the hearing, may sign subpoenas for witnesses, documents, and other evidence where the attendance of the witness for the admission of evidence is deemed necessary to decide the issues at the hearing. All costs related to the subpoena, including witness and mileage fees, shall be borne by the party requesting the subpoena. The hearing officer shall develop policies and procedures relating to the issuance of subpoenas in administrative code enforcement hearings, including the form of the subpoena and related costs.
- D. The hearing officer has continuing jurisdiction over the subject matter of an administrative code enforcement hearing for the purposes of granting a continuance; ordering compliance by issuing an administrative code enforcement order using any remedies available under the law; ensuring compliance of that order, which includes the right to authorize the city to enter and abate a violation; modifying an administrative code enforcement order; or, where extraordinary circumstances exist, granting a new hearing.
- E. The hearing officer has the authority to require a responsible person to post a code enforcement bond to ensure compliance with an administrative code enforcement order.
- F. ~~A hearing officer shall not make determinations as to the existence of a nonconforming structure or use. If a responsible person claims such a right as a defense, the hearing official shall not continue and refer the matter to the board of adjustment for a determination as to the existence of the nonconforming structure or use. The board of adjustment's decision shall be binding on the hearing officer. The responsible person shall bear the costs of the referral to the board of adjustment.~~ (Ord. 08-14, 7-9-2008)

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