

Midway City Council
2 May 2023
Regular Meeting

Ordinance 2023-05 /
Appeal Authority



CITY COUNCIL MEETING STAFF REPORT

DATE OF MEETING: May 2, 2023
NAME OF APPLICANT: Midway City
AGENDA ITEM: Code Text Amendment of Section 16.26.6: Appeal Authority

ITEM: 9

Midway City is proposing an amendment to Chapter 16.26.6: Appeal Authority. The proposed amendment will establish a time limit for when an appeal decision by the City Council may be appealed to the District Court.

BACKGROUND:

Midway is proposing a code text amendment to the Midway Municipal Code. The proposed change will clarify the appeal authority appeal process. There are a number of reasons for the proposed changes. First, the time of appeal of an administrative decision would reduce from 30 days to 10 days which will match Utah law. Second, an applicant would have 30 days to appeal the appeal authority's decision to district court. Third, the appeal authority is required to issue a written decision within 30 days after the close of the appeal hearing.

The current code states the following in Section 16.26.6 Appeal Authority:

16.26.060 Appeal Authority

16.26.060 Appeal Authority

A. The Board of Adjustment shall be the appeal authority to hear and decide requests for variances from the terms of the Land Use Title. An adverse decision by the Board of Adjustment in variance matters may be appealed to district court pursuant to Utah law.

B. The City Council shall be the appeal authority for review of constitutional takings issues.

C. Appeal of an administrative order issued by a City administrative law judge shall be made directly to district court within 30 days of the issuance of the order.

D. Except as provided in this Section, the City Council shall be the appeal authority of all non-variance land use decisions in which the City Council has not first acted as the land use authority. Appeal of such decisions shall be made to the City Council within 30 days of the decision being appealed. The standard of review by the City Council shall be de novo. An adverse decision by the City Council acting as appeal authority may be appealed to district court pursuant to Utah law.

E. Appeal shall be made directly to district court of all non-variance land use decisions in which the City Council has acted as the land use authority. In acting as the land use authority, the City Council shall keep a written record of its proceedings in the form of minutes or other records.

F. Each appeal authority shall keep a written record of its appeal proceedings.

The proposed code is the following:

16.26.060 Appeal Authority

A. The Board of Adjustment shall be the appeal authority to hear and decide requests for variances from the terms of the Land Use Title. An adverse decision by the Board of Adjustment in variance matters may be appealed to district court pursuant to Utah law.

B. The City Council shall be the appeal authority for review of constitutional takings issues.

C. Appeal of an administrative order issued by a City administrative law judge shall be made directly to district court within 30 days of the issuance of the order.

*D. Except as provided in this Section, the City Council shall be the appeal authority of all non-variance land use decisions in which the City Council has not first acted as the land use authority. **Only a decision in which a land use authority has applied a land use regulation to a particular land use application, person, or parcel may be appealed to an appeal authority.** Appeal of such **administrative** decisions shall be made **in writing** to the City Council within **10** days of the **administrative** decision being **issued in writing**. **The adversely affected party shall be required to present in its written appeal every theory of relief that the adversely affected party can raise in district court. The appellant has the burden of proving that the land use authority erred.** The standard of review by the City Council shall be de novo. An adverse*

- decision by the City Council acting as appeal authority may be appealed to district court within 30 days of the appeal authority's final decision, pursuant to Utah law.*
- E. Appeal shall be made directly to district court of all non-variance land use decisions in which the City Council has acted as the land use authority. In acting as the land use authority, the City Council shall keep a written record of its proceedings in the form of minutes or other records.*
 - F. Each appeal authority shall issue a written decision within 30 days after the close of the appeal hearing.*
 - G. Each appeal authority shall keep a written record of its appeal proceedings.*

PLANNING COMMISSION RECOMMENDATION:

Motion: Commissioner Nokes: I make a motion that we recommend approval of an amendment to Chapter 16.26.6: Appeal Authority. The proposed amendment will establish a time limit for when an appeal decision by the City Council may be appealed to the District Court. We accept the staff findings in the staff report.

Seconded: Commissioner Wardle

Chairman Nicholas: Any discussion on the motion?

Chairman Nicholas: All in favor.

Ayes: Commissioners: Ream, Miles, Wardle, Nokes, Osborne and Lineback

Nays: None

Motion: Passed

POSSIBLE FINDINGS:

- The proposed language will match State law.
- The proposed language clarifies the appeal timeline and process.
- The proposed language will better serve the City and the public by clarifying the process.

ALTERNATIVE ACTIONS:

1. Approval. This action can be taken if the City Council finds that the proposed language is an acceptable amendment to the City's Municipal Code.
 - a. Accept staff report
 - b. List accepted findings

2. Continuance. This action can be taken if the City Council would like to continue exploring potential options for the amendment.
 - a. Accept staff report
 - b. List accepted findings
 - c. Reasons for continuance
 - i. Unresolved issues that must be addressed
 - d. Date when the item will be heard again.

3. Denial. This action can be taken if the City Council finds that the proposed amendment is not an acceptable revision to the City's Municipal Code.
 - a. Accept staff report
 - b. List accepted findings
 - c. Reasons for denial



Midway

ORDINANCE

2023-____

**AN ORDINANCE TO AMEND CHAPTER 16.26 OF THE
MIDWAY CITY LAND USE CODE TO CLARIFY THE
CITY'S ROLE AS AN APPEAL AUTHORITY.**

WHEREAS, pursuant to Utah Code Section 10-9a-509 the Midway City Council may formally initiate proceedings to amend city ordinances; and

WHEREAS, the Midway City Council desires to amend certain sections of Chapter 16.26 of the Midway City Land Use Code to further outline and clarify the City's role as an appeal authority.

NOW THEREFORE, be it ordained by the City Council of Midway City, Utah, as follows:

The following Section of Chapter 16.26 shall be amended to read as follows:

16.26.060 Appeal Authority

- A. The Board of Adjustment shall be the appeal authority to hear and decide requests for variances from the terms of the Land Use Title. An adverse decision by the Board of Adjustment in variance matters may be appealed to district court pursuant to Utah law.
- B. The City Council shall be the appeal authority for review of constitutional takings issues.
- C. Appeal of an administrative order issued by a City administrative law judge shall be made directly to district court within 30 days of the issuance of the order.
- D. Except as provided in this Section, the City Council shall be the appeal authority of all non-variance land use decisions in which the City Council has not first acted as the land use authority. **Only a decision in which a land use authority has applied a land use regulation to a particular land use application, person, or parcel may be appealed to an appeal authority.** Appeal of such **administrative** decisions shall be made **in writing** to the City Council within 30 days of the **administrative** decision being **issued in writing**. **The adversely affected party shall be required to present in its written appeal every theory of relief that the adversely affected party can raise in district court. The appellant has the**

burden of proving that the land use authority erred. The standard of review by the City Council shall be de novo. An adverse decision by the City Council acting as appeal authority may be appealed to district court pursuant to Utah law.

- E. Appeal shall be made directly to district court of all non-variance land use decisions in which the City Council has acted as the land use authority. In acting as the land use authority, the City Council shall keep a written record of its proceedings in the form of minutes or other records.
- F. **Each appeal authority shall issue a written decision within 30 days after the close of the appeal hearing.**
- G. Each appeal authority shall keep a written record of its appeal proceedings.

This ordinance shall take effect upon publication as required by law.

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PASSED AND ADOPTED by the City Council of Midway City, Wasatch County, Utah
this ____ day of _____, 2023.

	AYE	NAY
Council Member Steve Dougherty	_____	_____
Council Member Jeff Drury	_____	_____
Council Member Lisa Orme	_____	_____
Council Member Kevin Payne	_____	_____
Council Member JC Simonsen	_____	_____

APPROVED:

Celeste Johnson, Mayor

ATTEST:

Brad Wilson, City Recorder

APPROVED AS TO FORM:

Corbin Gordon, City Attorney

(SEAL)