

## ORDINANCE NO. 2011-\_\_\_\_\_

### AN ORDINANCE OF THE NORTH OGDEN CITY COUNCIL REPEALING CHAPTER 4 OF TITLE 11 “BOARD OF ADJUSTMENT” OF THE NORTH OGDEN CITY CODE, ENACTING A NEW CHAPTER 4A “VARIANCES AND ADMINISTRATIVE INTERPRETATIONS” OF TITLE 11, AND AMENDED SECTIONS 1-8-6; 5-7-3; 10-1-5; 11-6-3; 11-10-4; 11-18-3; 11-22-13; 12-5-2; 12-8-2; and 12-8-3 OF THE NORTH OGDEN CITY CODE

**WHEREAS:** the North Ogden City Council finds that state law allows cities to utilize an administrative hearing process to consider the types of appeals historically heard by the Board of Adjustment; and

**WHEREAS:** the City Council finds that, because so few cases are heard by the Board, there are challenges to the City maintaining a Board that is fully staffed, adequately trained and possesses the level of knowledge and expertise necessary to perform its functions; and

**WHEREAS:** the City has enacted an administrative hearing process and appointed an Administrative Law Judge in order to provide a more efficient, effective and less adversarial method to resolve disputes with the City; and

**WHEREAS:** the City Council finds that the administrative hearing process promises to be a superior forum to adjudicate disputes between property owners and the City that hinge on the interpretation of state and local zoning regulations, including variances;

**NOW THEREFORE, BE IT ORDAINED** that Chapter 4 “Board of Adjustment” of Title 11 of the North Ogden City Code is repealed in its entirety; enacted in its place is Chapter 4A “Variances and Administrative Interpretations” of Title 11 as set forth below; in addition, Sections 1-8-6; 5-7-3; 10-1-5; 11-6-3; 11-10-4; 11-18-3; 11-22-13; 12-5-2; 12-8-2; and 12-8-3 of the North Ogden City Code are amended to read as set forth below:

#### **~~11-4-1: APPOINTMENT, TERM AND REMOVAL:~~**

~~A. Appointment, Term: The board of adjustment shall consist of five (5) members and such alternate members as the mayor deems appropriate, each to be appointed by the mayor, with the advice and consent of the city council, for a term of five (5) years. The terms of the members of first board so appointed shall be such that the term of one member shall expire each year.~~

~~B. Removal: Any member may be removed for cause by the mayor, with the advice and consent of the city council, upon written charges filed with the mayor against the member. A public hearing shall be provided, if the member requests one.~~

~~C. Vacancy; Term: If a member resigns or is removed from office, prior to the completion of a term, a person shall be appointed to fill the unexpired term of the departing member. The vacancy shall be filled by the mayor, with the advice and consent of the city council. The person appointed shall serve for the unexpired term of the member, or alternate member, whose office is vacant.~~

~~D. Temporary Disability: In the event that any regular member is temporarily unable to act owing to absence from the city, illness, interest in a case before the board, or any other cause, his place may be taken during such temporary disability by an alternate member at the request of the mayor.~~

~~E. Alternate Members: No more than two (2) alternate members may sit at any meeting of the board of adjustment at one time.~~

#### **11-4-2: ORGANIZATION AND MEETINGS:**

~~A. Chairperson: The board of adjustment shall organize and elect a chairperson and adopt rules in accordance with provisions adopted by the city council.~~

~~B. Meetings: Meetings of the board shall be held at the call of the chairperson and at such times as the majority of the board may determine.~~

~~C. Oaths And Attendance Of Witnesses: The chairperson, or in his absence the acting chairperson, may administer oaths and compel the attendance of the witnesses.~~

~~D. Open And Public Meetings: All meetings of the board of adjustment shall comply with the requirements of Utah Code Annotated title 52, chapter 4, open and public meetings.~~

~~E. Minutes: 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 action.~~

~~F. Tape Recording Option: The board of adjustment may, but is not required to, have its proceedings contemporaneously tape recorded.~~

~~G. Records Filed: The board of adjustment shall file its records in the office of the board of adjustment. The office of the board of adjustment is the planning department of the city. The records in the office of the board of adjustment are public records.~~

~~H. Voting: The concurring vote of three (3) members of the board of adjustment is necessary to reverse any order, requirement, decision or determination of any~~

~~administrative official or agency, or to decide in favor of the appellant, or to grant a variance.~~

~~I. Decisions Effective When: Decisions of the board of adjustment 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.~~

~~J. Compensation: Each member of the board of adjustment shall be compensated according to adopted resolution.~~

#### **~~11-4-3: ADOPTION OF RULES AND REGULATIONS:~~**

~~The board of adjustment shall adopt rules and regulations for the conduct of its meetings and business, subject to the provisions of the laws of the state and the zoning ordinances of the city, and may amend such rules from time to time. All such rules and all amendments thereof shall be reduced to writing and shall be filed with the city recorder. These rules and regulations shall be public documents and will be available for inspection by the public during the city's regular business hours and during all meetings of the board of adjustment.~~

#### **~~11-4-4: POWERS AND DUTIES:~~**

~~A. Specified: The board of adjustment shall hear and decide:~~

- ~~1. Appeals: Appeals from zoning decisions applying this title;~~
- ~~2. Special Exceptions: Special exceptions to the terms of this title;~~
- ~~3. Variances: Variances from the terms of this title;~~
- ~~4. Other Referrals: Other matters referred to the board of adjustment by the city council.~~

~~B. Minutes Provided To City Council: Minutes of meetings shall be provided to the city council.~~

#### **~~11-4-5: APPEALS:~~**

~~A. Authority: The applicant, or any other person or entity adversely affected by a decision administering or interpreting this title, except the denial or granting of a conditional use permit, may appeal that decision applying this title by alleging that there is error in any order, requirement, decision or determination made by an official in the administration or interpretation of this title.~~

~~B. Time Limit: Any person or entity adversely affected by decisions administering or interpreting this title shall appeal the decision within thirty (30) days from the date of the decision. The board shall have no authority to hear untimely appeals.~~

~~C. City Appeal: Any officer, department, board or bureau of the city affected by the grant or refusal of a building permit or by any other decisions of the administrative officer in the administration or interpretation of this title may appeal any decision to the board of adjustment within the time limits set forth in subsection B of this section.~~

~~D. Burden Of Proof: The person or entity making the appeal has the burden of proving that an error has been made.~~

~~E. Decisions Applicable: Only decisions applying this title may be appealed to the board of adjustment.~~

~~F. Amendments Not Applicable: A person may not appeal, and the board of adjustment may not consider, any zoning ordinance amendments.~~

~~G. Waiver Or Modification Not Applicable: Appeals may not be used to waive or modify the terms or requirements of this title.~~

~~H. Decision Of Board; Power And Authority: In exercising the powers of the board, the board may, in conformity with the provisions of this chapter, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made, and to that end, shall have all the powers of the officer from whom the appeal is taken.~~

#### **11-4-6: VARIANCES:**

~~A. Application: Any person or entity desiring a waiver or modification of the requirements of this title as applied to a parcel of property that that person owns, leases or in which that person holds some other beneficial interest may apply to the board of adjustment for a variance from the terms of the zoning ordinance.~~

~~B. Findings Required: The board of adjustment may grant a variance only if all five (5) of the following findings are made:~~

- ~~1. Literal enforcement of this title would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of this title; and~~
- ~~2. There are special circumstances attached to the property that do not generally apply to other properties in the same district; and~~
- ~~3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district; and~~
- ~~4. The variance will not substantially affect the general plan and will not be contrary to the public interest; and~~

~~5. The spirit of this title is observed and substantial justice is done.~~

~~C. Conditions Of Unreasonable Hardship: In determining whether or not enforcement of this title would cause unreasonable hardship under subsection B of this section, the board of adjustment 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.~~

~~D. Unreasonable Hardship Determination: In determining whether or not enforcement of the zoning ordinance would cause unreasonable hardship under subsection B of this section, the board of adjustment may not find an unreasonable hardship if the hardship is self-imposed or economic.~~

~~E. Special Circumstances: In determining whether or not there are special circumstances attached to the property under subsection B of this section, the board of adjustment 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 district.~~

~~F. Burden Of Proof: The applicant shall bear the burden of proving that all of the conditions justifying the variance have been met.~~

~~G. Run With Land: Variances run with the land.~~

~~H. Use Variances Prohibited: The board of adjustment and any other body may not grant use variances.~~

~~I. Additional Requirements Imposed: In granting a variance, the board of adjustment 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.~~

#### ~~11-4-7: DISTRICT COURT REVIEW:~~

~~A. Authority: The city or any person or entity adversely affected by any decision of the board of adjustment may petition the district court for a review of the decision.~~

- ~~B. Allegations Permitted: In the petition, the plaintiff may only allege that the board of adjustment decision was arbitrary, capricious or illegal.~~
- ~~C. Time Limit: The petition is barred unless it is filed within thirty (30) days after the board of adjustment decision is final.~~
- ~~D. Constitutional Takings<sup>1</sup>: If a person believes that a constitutional taking issue has taken place as a result of the board of adjustment's action, a request may be filed with the private property ombudsman in accordance with Utah Code Annotated section 10-9-708(3)(b).~~
- ~~E. Records Transmitted: The board of adjustment shall transmit to the reviewing court the record of its proceedings, including its minutes, findings, orders and, if available, a true and correct transcript of its proceedings.~~
- ~~F. Tape Recordings: If the proceeding was tape recorded, a transcript of that tape recording is a true and correct transcript for purposes of subsection E of this section.~~
- ~~G. Review Limited To Record: If there is a record, the district court review is limited to the record provided by the board of adjustment.~~
- ~~H. Outside Evidence: The court may not accept or consider any evidence outside the board of adjustment record unless the evidence was offered to the board of adjustment and the court determines that it was improperly excluded by the board of adjustment.~~
- ~~I. No Record: If there is no record, the court may call witnesses and take evidence.~~
- ~~J. Affirm Decision Of Board: The court shall affirm the decision of the board of adjustment if the decision is supported by substantial evidence in the record.~~
- ~~K. Stay Of Decision: The filing of the petition does not stay the decision of the board of adjustment. Before filing a petition under this section or a request for mediation or arbitration of a constitutional taking issue under Utah Code Annotated section 63-34-13, the aggrieved party may petition the board of adjustment to stay its decision. Upon receipt of a petition to stay, the board of adjustment may order its decision stayed pending district court review if the board of adjustment finds it to be in the best interest of the city. After the petition is filed under this section or a request for mediation or arbitration of a constitutional taking issue is filed under Utah Code Annotated section 63-34-13, the petitioner may seek an injunction staying the board of adjustment decision.~~

**11-4-8: FILING FEE:**

~~Upon the filing of any appeal or application to the board of adjustment, the appellant or applicant shall pay to the city a fee which will be established by resolution. Said fee~~

~~shall be deposited with the city treasurer and credited to the general fund. No appeal or application shall be considered by the board unless and until such fee has been paid. Said fee shall be nonrefundable.~~

**~~11-4-9: TIME LIMITATION ON VARIANCE:~~**

In the event the board of adjustment does grant a variance in accordance with the provisions of this chapter, alterations in accordance with the variance must be activated within six (6) months after the date the variance is granted or the variance becomes null and void. The time limit of the variance may be extended an additional six (6) months by the board of adjustment and then only if the petitioner shows adequate cause to the board that circumstances necessitate a time extension.

Title 11  
ZONING REGULATIONS

Chapter 4  
VARIANCES AND ADMINISTRATIVE INTERPRETATIONS

11-4A-1: CONSIDERATION OF VARIANCES AND CERTAIN ZONING APPEALS BY ADMINISTRATIVE LAW JUDGE

11-4A-2: RULES AND PROCEDURES:

11-4A-3: APPEALS:

11-4A-4: VARIANCES:

11-4A-5: DISTRICT COURT REVIEW:

11-4A-6: FILING FEE:

11-4A-7: TIME LIMITATION ON VARIANCE:

**11-4A-1: CONSIDERATION OF VARIANCES AND CERTAIN ZONING APPEALS BY ADMINISTRATIVE LAW JUDGE**

The Administrative Law Judge (ALJ) appointed pursuant to Chapter 8, Title 1 of this Code is granted the following powers and duties:

- A. To decide petitioners for variances as defined in state law and this title;
- B. To hear appeals from zoning decisions by City staff hinging on the interpretation of state or local zoning laws; and
- C. To decide requests for Special Exceptions as provided according to the terms of this title.

**11-4A-2: RULES AND PROCEDURES:**

A. Hearings held pursuant to this Chapter shall conform to the rules and procedures established under Chapter 8 of Title 1 of this Code.

**11-4A-3: APPEALS:**

A. Authority: The applicant, or any other person or entity adversely affected by a decision of a City official administering or interpreting this title, except the denial or granting of a conditional use permit, may appeal that decision applying this title by alleging that there is error in any order, requirement, decision or determination made.

B. Time Limit: Any person or entity adversely affected by decisions administering or interpreting this title shall appeal the decision within thirty (30) days from the date of the decision. The ALJ shall have no jurisdiction to hear untimely appeals.

C. City Appeal: Any officer, department, board or bureau of the city affected by the grant or refusal of a building permit or by any other decisions of the administrative officer in the administration or interpretation of this title may appeal any decision to the ALJ within the time limits set forth in subsection B of this section.

D. Burden Of Proof: The person or entity making the appeal has the burden of proving that an error has been made.

E. Decisions Applicable: Only decisions applying this title may be appealed to the ALJ.

F. Waiver Or Modification Not Applicable: The ALJ has no authority to waive or modify the terms or requirements of this title.

G. Decision Of ALJ; Power And Authority: The ALJ may, in conformity with the provisions of this chapter, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination from which the appeal is taken.

**11-4A-4: VARIANCES:**

A. Application: Any person or entity desiring a waiver or modification of the requirements of this title as applied to a parcel of property that that person owns, leases or in which that person holds some other beneficial interest may apply to the ALJ for a variance from the terms of the zoning ordinance.

B. Findings Required: The ALJ may grant a variance only if all five (5) of the following findings are made:

1. Literal enforcement of this title would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of this title; and

2. There are special circumstances attached to the property that do not generally apply to other properties in the same district; and
3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district; and
4. The variance will not substantially affect the general plan and will not be contrary to the public interest; and
5. The spirit of this title is observed and substantial justice is done.

C. Conditions Of Unreasonable Hardship: In determining whether or not enforcement of this title would cause unreasonable hardship under subsection B of this section, the ALJ 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.

D. Unreasonable Hardship Determination: In determining whether or not enforcement of the zoning ordinance would cause unreasonable hardship under subsection B of this section, the ALJ may not find an unreasonable hardship if the hardship is self-imposed or economic.

E. Special Circumstances: In determining whether or not there are special circumstances attached to the property under subsection B of this section, the ALJ 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 district.

F. Burden Of Proof: The applicant shall bear the burden of proving that all of the conditions justifying the variance have been met.

G. Run With Land: Variances run with the land.

H. Use Variances Prohibited: The ALJ and any other body may not grant use variances.

I. Additional Requirements Imposed: In granting a variance, the ALJ 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.

#### **11-4A-5: DISTRICT COURT REVIEW:**

- A. Authority: The city or any person or entity adversely affected by any decision of the ALJ may petition the district court for a review of the decision.
- B. Allegations Permitted: In the petition, the plaintiff may only allege that the ALJ decision was arbitrary, capricious or illegal.
- C. Time Limit: The petition is barred unless it is filed within thirty (30) days after the ALJ decision is final.
- D. Constitutional Takings<sup>1</sup>: If a person believes that a constitutional taking issue has taken place as a result of the board of adjustment's action, a request may be filed with the private property ombudsman in accordance with Utah Code Annotated section 10-9-708(3)(b).
- E. Records Transmitted: The ALJ shall transmit to the reviewing court the record of its proceedings, including its minutes, findings, orders and, if available, a true and correct transcript of its proceedings.
- F. The party appealing the order of the ALJ to the District Court shall pay all costs associated with preparation of the record of the ALJ proceeding, including the cost of preparing any transcript of the recording of the hearing.
- G. Tape Recordings: If the proceeding was tape recorded, a transcript of that tape recording is a true and correct transcript for purposes of subsection E of this section.
- H. Review Limited To Record: If there is a record, the district court review is limited to the record provided by the ALJ.
- I. Outside Evidence: The court may not accept or consider any evidence outside the ALJ record unless the evidence was offered to the ALJ and the court determines that it was improperly excluded by the ALJ.
- J. No Record: If there is no record, the court may call witnesses and take evidence.
- K. Affirm Decision Of ALJ: The court shall affirm the decision of the ALJ if the decision is supported by substantial evidence in the record.
- L. Stay Of Decision: The filing of the petition does not stay the decision of the ALJ. Before filing a petition under this section or a request for mediation or arbitration of a constitutional taking issue under Utah Code Annotated section 63-34-13, the aggrieved party may petition the ALJ to stay its decision. Upon receipt of a petition to stay, the ALJ may order its decision stayed pending district court review if the board of adjustment finds it to be in the best interest of the city. After the petition is filed under this section or a request for mediation or arbitration of a constitutional taking

issue is filed under Utah Code Annotated section 63-34-13, the petitioner may seek an injunction staying the ALJ decision.

#### **11-4A-6: FILING FEE:**

Upon the filing of any appeal or application to the ALJ, the appellant or applicant shall pay to the city a fee which will be established by resolution. Said fee shall be deposited with the city treasurer and credited to the general fund. No appeal or application shall be considered by the ALJ unless and until the fee has been paid. The fee shall be nonrefundable.

#### **11-4A-7: TIME LIMITATION ON VARIANCE:**

In the event the ALJ does grant a variance in accordance with the provisions of this chapter, alterations in accordance with the variance must be activated within six (6) months after the date the variance is granted or the variance becomes null and void. The time limit of the variance may be extended an additional six (6) months by the ALJ and then only if the petitioner shows adequate cause to the board that circumstances necessitate a time extension.

#### **1-8-6: POWERS OF ADMINISTRATIVE LAW JUDGE:**

- A. An administrative law judge shall have authority to hold an administrative hearing for violations of this code and such other matters as specifically designated by ordinance.
- B. An administrative law judge may continue a hearing for good cause shown by one of the parties or if the administrative law judge independently determines that due process has not been adequately afforded to a party.
- C. At the request of any party to an administrative hearing, an administrative law judge may issue administrative subpoenas for witnesses, documents, and other evidence where the attendance of the witness or the admission of evidence is deemed helpful by the administrative law judge to decide issues at the hearing. All costs related to the subpoena, including witness and mileage fees, shall be borne by the party requesting the subpoena.
- D. The administrative law judge may modify civil fees or fines upon a finding of good cause. The administrative law judge may reduce the fines to what is just and equitable under the circumstances; however, in connection with an appeal regarding an itemized statement of costs, the administrative law judge may not order the responsible person to pay less than actual costs incurred by the city and shall require the responsible person to pay the city's administrative costs as established in the consolidated fee schedule.

- E. Where specifically authorized by municipal ordinance, the administrative law judge shall have the authority to reverse or modify the decision of a city official.
- F. An administrative law judge has continuing jurisdiction over the subject matter of an administrative hearing for the purposes of: granting a continuance; ordering compliance by issuing an administrative order; ensuring compliance of that order; authorizing the city to enter upon private property to abate a violation; modifying an administrative order, assessing costs of abatement, assessing civil fines; or, where extraordinary circumstances exist, granting a new hearing.
- G. An administrative law judge may require a responsible person to post a performance bond to ensure compliance with an administrative order, but only if agreed to by the enforcement official handling the matter for the city.
- ~~H. An administrative law judge shall not make determinations as to the existence of nonconforming rights. If a responsible person claims a nonconforming right as a defense, the administrative law judge shall continue the administrative hearing and shall refer the matter to the North Ogden city board of adjustment for a determination as to the existence of the nonconforming right. The board of adjustment's decision regarding the existence of a nonconforming right shall be binding on the administrative law judge. The responsible person shall bear the costs of the appeal to the board of adjustment.~~
- ~~H~~. An administrative law judge shall not make any order that would require or allow a responsible person to violate state law or city ordinance.

**5-7-3: ALTERNATIVES:**

Protective ground cover not authorized for planting may not be installed unless approved by a city official designated for that purpose. All appeals from the decision of said official shall be to the [board of adjustment](#) ALJ in accordance with section [11-4-4](#) of this code. In no event, however, shall an alternative protective ground cover be approved by the designated official which: a) fails to maintain storm runoff detention capabilities of the area to be landscaped to substantially the same degree that would be accomplished if authorized protective ground cover were installed; or b) which is injurious to the health, safety, welfare (including aesthetics), and property values of the surrounding residences.

**10-1-5: APPEALS:**

Any person disputing any application or interpretation of any code adopted by this chapter shall have a right of appeal pursuant to the provisions of this section.

A. Filing; Information: The person filing the appeal shall file an appeal with the city recorder. The appeal must be in writing and must include:

1. The name, address and daytime telephone number of the person making the appeal;

2. The date of the decision from which the appeal is made;
  3. The name of the person making the decision;
  4. A description of all facts and circumstances giving rise to the decision and the appeal, including all relevant documents, plans and drawings submitted to the person who made the original decision and all relevant documents, plans and drawings received from the person who made the original decision;
  5. A copy of the written decision from which the person making the appeal is appealing. If no written decision exists, the person making the appeal shall submit an affidavit describing the decision; and
  6. A description of the relief requested, including a description of the decision the person making the appeal feels should have been made.
- B. Time Limit For Filing: Appeals must be filed within thirty (30) days of the date of the decision from which the appeal is taken.
- C. Incomplete: Appeals which do not contain all of the information described in subsection A of this section shall be deemed incomplete and shall be returned to the person making the appeal. The person shall then have an additional thirty (30) days to submit a complete appeal.
- D. Notification; Response: Upon receiving an appeal, the city recorder shall notify the person who made the original decision that an appeal has been filed and that person shall have twenty (20) days to respond. Responses shall be in writing and may be accompanied by any additional documents, plans or drawings which were not submitted with the original appeal and which the person making the original decision believes will be beneficial in explaining the original decision. The response, if any, shall be submitted to the city recorder.
- E. Failure To Respond: If the person making the original decision fails to submit a response within twenty (20) days of receiving notice of the appeal, the city recorder may presume that the person making the original decision will not file a response.
- F. Referral To Board: Within thirty (30) days of receiving an appeal, the city recorder shall refer the appeal and any response to the ~~board of appeals~~ **board of adjustment** ALJ or city council for a hearing. The ~~board of appeals~~ ALJ shall convene a hearing on the appeal within thirty (30) days after the matter is referred to the ~~board~~ ALJ by the city recorder.
- G. Hearing Notice: The ~~board of appeals~~ ALJ shall give the person filing the appeal at least ten (10) days' notice of the time and place of the hearing.

H. Hearing Procedure: At the hearing on the matter, the person filing the appeal shall have a right to: 1) be represented by an attorney at his own expense; 2) present evidence and call witnesses regarding the appeal; and 3) cross examine any witnesses called by the city in support of the original decision.

I. Written Decision: The ~~board of appeals~~ ALJ shall issue a written decision regarding the appeal within thirty (30) days of the date of the hearing.

J. Limited Authority Of ALJ: The ~~board of appeals~~ ALJ shall have no authority to hear appeals regarding the administrative provisions of the codes. The ~~board of appeals~~ ALJ shall have no authority to waive any of the requirements of any of the codes.

### **11-6-3: RULES APPLICABLE WHERE BOUNDARIES UNCERTAIN:**

Where uncertainty exists as to the boundary of any zone, the following rules shall apply:

A. Wherever the zone boundary is indicated as being approximately upon the centerline of a street, alley or block, such centerline shall be construed to be the boundary of such zone.

B. Whenever such boundary line is indicated as being approximately on the property line, the property line shall be construed to be the boundary of the zone.

C. Where such zone boundary lines cannot be determined by the above rules, their location may be found by the use of the scale appearing upon the map.

D. Where the application of the above rules does not clarify the zone boundary location, the ~~board of adjustment~~ ALJ shall interpret the map.

### **11-10-4: ADDITIONAL YARD REGULATIONS:**

A. No required yard or other open space around an existing building, or which is hereafter provided around any building for the purpose of complying with provision of this title, shall be considered as providing a yard or open space for any other building; nor shall any yard or other required open space on an adjoining lot be considered as providing a yard or open space on a lot whereon a building is to be erected or established.

B. On any lot under the same ownership as an adjoining lot and of record as of December 31, 2000, and such lot having a smaller width than required for the zone in which it is located, and the adjoining lot has sufficient width and size to allow both lots to meet at least the minimum zoning requirements, the lot shall be reconfigured and recorded so both lots meet at least the minimum standards of the zoning district wherein they are located.

- C. Except for landscaping vegetation, every part of a required yard shall be open to the sky unobstructed, except for accessory buildings in a rear yard, and except for the ordinary projections of skylights, sills, belt courses, cornices, and other ornamental features, which do not project more than two feet (2') into the required yard.
- D. Open or lattice enclosed fire escapes, fireproof outside stairways, regular unwallled porches, terraces, balconies, and balconies opening upon fire towers may project five feet (5') into a required front yard, ten feet (10') into a required rear yard, and three feet (3') into a required side yard; and the ordinary projections of chimneys and flues are permitted.
- E. No accessory building nor group of accessory buildings in any residential zone shall cover more than twenty five percent (25%) of the rear yard.
- F. No space needed to meet the width, yard, area, coverage, parking, or other requirements of this title for a lot or building may be conveyed away from such lot or building, except as permitted by the board of adjustment ALJ, and any attempted conveyance or lease in violation hereof shall be void.
- G. No parcel of land which has less than the minimum width and area requirements for the zone in which it is located may be divided off from a larger parcel of land for the purpose, whether immediate or future, of building or development as a lot.

### **11-18-3: LOCATION:**

Any television satellite antenna shall be located as follows:

- A. Setbacks: All television satellite antennas shall have setbacks of at least five feet (5'), if freestanding. The setbacks shall be measured from the property lines to the nearest point of the antenna. The distance for rotating dish antennas shall be measured from the nearest point of the antenna in its closest rotational configuration.
- B. Commercial, Manufacturing Zones: In any commercial or manufacturing zone, such antenna may be located on the roof or in the rear or side yard; but shall only be permitted in the front yard or on a side yard facing the street on a corner lot by approval of the board of adjustment ALJ when a usable satellite signal cannot be obtained in an otherwise approved location.
- C. Residential Zones: In any residential zone, television satellite antennas shall only be located in the rear yard of any lot. If a usable satellite signal cannot be obtained from such rear yard, the antenna may be located on the roof or side yard (except side yards facing the street on a corner lot) by approval of the board of adjustment ALJ.
- D. Visual Impacts Reduced: The television satellite antenna or dish shall be so located and/or screened so as to reduce visual impacts from public right of way.

### **11-22-13: SIGN PERMITS; FEES:**

- A. ~~Permit Required; Exception:~~ Sign permits, issued by the building department, are required for placement of all signs, except those signs authorized in subsection [11-22-6A1](#) and sections [11-22-8](#) and [11-22-12](#) of this chapter, and windows signs. The fee for sign permits shall be established by resolution of the city council.
- B. Unlawful Without Permit; Appeal: It shall be unlawful to erect, install and/or modify any sign that requires a sign permit within the city without first applying for and obtaining a sign permit. "Modify", as it is used herein, shall mean any change in or to an existing sign, its face, electrical components, design and/or supporting structures. Appeals of any decision by the building department concerning sign permits shall be directed to the ~~board of adjustment~~ ALJ or city council.
- C. Electrical Work Not Included: A sign permit does not include electrical work; however, this exemption shall not be deemed to grant authorization for any work to be done in violation of the provisions of this code or any other laws or ordinances.

### **12-5-2: CITY COUNCIL APPROVAL:**

- A. Less Than Ten Lots: Before the approval of a minor subdivision, the city council shall certify on a document the following:
1. The planning commission has made recommendation to the city council;
  2. The subdivision is not traversed by the mapped lines of a proposed street as shown in the general plan;
  3. The subdivision does not require the dedication of any street or other public purposes;
  4. Each lot meets the frontage, width and area requirements of the zoning district where the subdivision is located, or has been granted a variance from those requirements by the ~~board of adjustment~~ ALJ;
  5. The subdivision has less than ten (10) lots;
  6. The subdivision does not require any new utilities or utility line extensions.
- B. Less Than Five Lots:
1. Subdivisions with fewer than five (5) lots which also meet subsections A2, A3, A4 and A6 of this section may be approved by the community development director, mayor and the city administrator.

2. Any such subdivision approval shall be reported to the planning commission and city council at their respectively next scheduled meeting.

**12-8-2: SUBMISSION OF APPLICATION:**

- A. Documents And Information Required: The owner or developer of a proposed condominium project desiring approval shall file the following with the planning commission:
1. An application for condominium approval on a form prescribed by the city;
  2. Twenty (20) copies of the proposed record of survey map required by Utah Code Annotated section 57-8-13. The map shall also:
    - a. Be drawn to a scale no smaller than one inch equals forty feet (1" = 40')
    - b. Contain diagrammatic floor plans identifying boundaries of the project units, convertible and expandable areas or spaces and common areas;
    - c. Contain a designation of the intended use of common areas, such as storage areas, recreational areas, parking areas for guests, open space, etc.;
    - d. Contain a designation of the common areas which are open to the public, which are assigned to specific units and which are semi-private and available only to unit owners; and
    - e. Contain a detailed description of existing or proposed driveways, pedestrianways, curb cuts, walls, structures, fences, landscaping and sprinkling systems;
    - f. Show individual utility connections for each unit.
  3. Two (2) copies signed in the original of the proposed condominium declarations and bylaws.
  4. If the development will include the conversion of one or more existing buildings to condominium ownership, the developer shall also submit two (2) copies of a property report prepared by a licensed architect or engineer. This property report shall contain:
    - a. The age of the buildings;
    - b. A description of the general condition of the buildings and the expected useful life of the buildings;
    - c. A description of the condition of the structural and mechanical elements of the buildings and an estimate of their useful life, including the roof foundation, mechanical

system, electrical system, plumbing system, boiler (if any) and other structural or mechanical systems;

- d. A description of all known conditions constituting deficiencies requiring repair to meet existing building codes;
  - e. A description of how each unit will have its own utility connections and a drawings of the utility lines for each unit;
  - f. All known conditions which may require repair or replacement within the next succeeding five (5) year period;
  - g. A plan for proposed improvements, renovations and repairs to the existing buildings; and
  - h. A certification from the building inspector that all violations of the applicable building codes have been repaired and that the buildings comply with all building codes at the time the application is made.
5. Proof of notice to tenants as required by section [12-8-5](#) of this chapter have been sent to tenants; provided, that the developer may send those notices after the planning commission has made a recommendation for approval of the plans to the city council; and
6. A condominium application filing fee, which shall be equal to the filing fee the developer pays for the subdivision application.
- B. Meetings: The building inspection department or the community development department may, at their discretion, meet with developers to comment on incomplete applications. Such meetings shall not be deemed acceptance of such incomplete applications for purposes of determining vested rights, and the city departments shall not retain copies of such incomplete applications. The city shall not schedule meetings and hearings before the planning commission on an application that is not complete.
- C. Variances: If a developer proposes to convert one or more buildings to condominium ownership and the developer believes that there are circumstances existing in one or all of the buildings which would not allow literal application of the building codes, the developer shall file a request for variance from the ~~city board of adjustment~~ ALJ. The board of adjustment ALJ may grant variances only when it determines that:
1. The building codes do not apply;
  2. The building codes have been incorrectly interpreted; or

3. The developer is proposing a form of construction, which is as good as, or better than, the forms described in the building codes.

### **12-8-3: STAFF REVIEW:**

Upon receipt of a completed application for approval of a condominium project, the city planning staff shall route copies of the application and development plans in the same manner as a standard subdivision. Additionally, preliminary review by the planning staff, fire chief and building inspection department shall include, but not be limited to, the following:

#### **A. Community Development Department Staff Review:**

1. Letter Of Intent: A letter of intent shall be submitted indicating proposed concept of project for staff review. The condominium declarations and bylaws shall be reviewed as part of the final approval process and will include provisions addressing and fixing responsibility for the maintenance, upkeep and repair of common areas, including common walls, electrical, mechanical, plumbing or utility systems, recreational areas, landscaping, private streets and parking areas. The declarations shall also restrict the use of any individual residential dwelling unit to single families. The staff shall also review the declaration to require appropriate disclosure of any unusual circumstances, variances or conditions placed upon the condominium project for approval.
2. Plans And Related Documents: The staff shall review the plans and related documents to determine whether the project conforms to applicable requirements of this title, the status or extent of nonconforming rights, applicable conditions imposed upon the building or use by ordinance, **board of adjustment** ALJ variance, conditional use permit and/or prior approval under a PRUD, clustered or group dwelling plan. If the planning staff finds there are violations of applicable zoning ordinances or requirements, the staff may recommend denial of the condominium project until such violations have been corrected or requirements completed or monies escrowed for one hundred ten percent (110%) of the cost for correction before a recommendation can be made by the planning commission.

#### **B. Building Department Review:**

1. Upon receipt of the application for approval of a condominium project, the building department shall review the proposed building plans for new construction and/or in the case of a conversion project, the property report and plan of improvement, renovations and repairs to determine conformance with applicable building codes. In the case of a conversion, the department shall require inspections of the property and may require supplementation, revision and resubmission of the property report where necessary.

2. Assurance that each unit has individual utility connections, including, but not limited to, water, sewer, electrical and gas.
  3. In the preliminary review report to the planning commission, the inspection department shall note corrections, repairs and replacements which must be made to bring the structures into code compliance, together with a list of renovation improvements proposed by the owner/developer which are not required by code. The chief building official shall also list any requirements of the adopted building codes that need consideration due to unique circumstances associated with the structure. The building official may then recommend denial until such time as existing violations of the code are corrected or may recommend preliminary approval of the project and building report, subject to correction of the violations prior to final approval.
- C. Fire Safety Review: The fire marshal shall inspect each structure proposed for conversion and shall submit a report thereon to the planning staff outlining the conditions of the structures as they relate to fire safety. The fire marshal shall stipulate those conditions requiring improvement prior to occupancy in the report.
- D. City Attorney: The city attorney shall review the declaration of condominium to assure its conformance to Utah Code Annotated and city ordinances.

This ordinance shall take effect upon the first publication and filing of a copy thereof in the office of the City Recorder.

**DATED THIS 24<sup>th</sup> day of May, 2011.**

**BY THE CITY COUNCIL:**

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**Richard G. Harris, Mayor**

**ATTEST:**

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**S. Annette Spendlove, MMC**  
**City Recorder**