



PLANNING COMMISSION MEETING STAFF REPORT

DATE OF MEETING: March 14, 2023
NAME OF APPLICANT: Midway City
AGENDA ITEM: Code Text Amendment of Section 16.26.6: Appeal Authority

ITEM: 3

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.*

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. Recommendation of Approval. This action can be taken if the Planning Commission 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 Planning Commission 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. Recommendation for Denial. This action can be taken if the Planning Commission 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