

ORDINANCE NO. 13-11

AN ORDINANCE OF SOUTH OGDEN CITY, UTAH, REVISING AND AMENDING VARIOUS SECTIONS OF THE CITY CODE OF SOUTH OGDEN REPLACING THE BOARD OF ADJUSTMENT WITH AN APPEAL AUTHORITY; MAKING NECESSARY LANGUAGE CHANGES TO THE CITY CODE TO EFFECT THOSE CHANGES; AND ESTABLISHING AN EFFECTIVE DATE FOR THOSE CHANGES.

Section 1 - Recitals:

WHEREAS, SOUTH OGDEN City (“City”) is a municipal corporation duly organized and existing under the laws of the State of Utah; and,

WHEREAS, the City Council finds that in conformance with the provisions of Utah Code (“UC”) §10-3-717, and UC §10-3-701, the governing body of the city may exercise all administrative and legislative powers by resolution or ordinance; and,

WHEREAS, the City Council finds that in conformance with the provisions of UC §10-3-717, and UC §10-3-701, the governing body of the city has previously adopted a City Code which, among other things, deals with how appeals are handled on and for various decisions made by city officials and boards and related issues; and,

WHEREAS, the City Council finds that South Ogden City Code, is based on and adopted in conformance with the authority granted to the City by UC Title 10; and,

WHEREAS, the City Council finds that it is in the public interest to manage and regulate how appeals are handled on and for various decisions made by city officials and boards and related issues; and,

WHEREAS, the City Council finds that South Ogden City Code, should be amended by the addition of new language governing how appeals are handled on and for various decisions made by city officials and boards and related issues for and on behalf of the city; and,

WHEREAS, the City Council finds that the requirements herein should be effective upon passage of this Ordinance; and,

WHEREAS, the City Council finds that the public safety, health and welfare is at issue in this matter and requires action by the City as noted above;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF SOUTH OGDEN CITY, UTAH that the City Code be changed and amended to as follows:

Amended Section:

Upon the adoption of this Ordinance, the following sections are amended and adopted to read as follows:

Title 10, Chapter 4 of the City Code is hereby rescinded and re-codified to read as follows.

APPEAL AUTHORITY/HEARING OFFICER

10-4-1: APPOINTMENT, TERM AND REMOVAL:

10-4-2: ORGANIZATION AND MEETINGS:

10-4-3: APPEALS:

10-4-4: STAY OF PROCEEDINGS PENDING APPEAL:

10-4-5: NOTICE OF MEETING ON APPEAL; RIGHT OF APPEARANCE:

10-4-6: POWERS OF HEARING OFFICER ON APPEAL:

10-4-7: DECISION ON APPEAL:

10-4-8: VOTE NECESSARY FOR REVERSAL:

10-4-9: JUDICIAL REVIEW OF APPEAL AUTHORITY'S DECISION; TIME LIMITATION:

10-4-10: TIME LIMITATION OF VARIANCE:

10-4-11: FILING FEE:

10-4-12: COMPENSATION OF APPEAL AUTHORITY:

10-4-13: DEFINITIONS:

10-4-1: APPOINTMENT, TERM AND REMOVAL:

The Appeal Authority ("Hearing Officer") shall be a single individual, appointed by the mayor, with the advice and consent of the city council, for a term of three (3) years and may be appointed for succeeding three (3) year terms.

- A. The Hearing Officer shall, as a minimum, have such training and experience as will qualify them to conduct administrative or quasi-judicial hearings regarding land use, land development, and regulatory codes dealing with issues related to land use and have knowledge and familiarity with constitutional due process rights.
- B. The mayor may remove the Hearing Officer for cause upon receipt of written charges filed against the Hearing Officer, after a public hearing, if requested and upon the advice and consent of the city council.
- C. In the case of death, resignation, removal or disqualification, the position of Hearing Officer shall be promptly filled by a replacement appointed by the mayor with the advice and consent of the city council for the unexpired term of the previous Hearing Officer.
- D. The Hearing Officer shall be considered an independent contractor.
- E. The mayor may, from time to time, appoint a Hearing Officer pro tempore temporarily when necessitated by the absence, unavailability, incapacity or disqualification of the regularly appointed Hearing Officer, upon the advice and consent of the city council. Each Hearing Officer pro tempore shall, as a

minimum, have qualifications similar to those specified in subsection A of this section.

10-4-2: ORGANIZATION AND MEETINGS:

The Hearing Officer shall adopt rules in accordance with state law, this chapter and any other applicable ordinance. Meetings of the Hearing Officer shall be held at such times as the Hearing Officer may determine. The Hearing Officer may administer oaths and compel the attendance of witnesses. All meetings of the appeal authority shall be open to the public.

- A. Minutes; Records: The Hearing Officer shall keep minutes of its proceedings, and shall keep records of its examinations and other official actions; all of which shall be immediately filed in the office of the city recorder and shall be a public record.
- B. Routine, Uncontested Matters: The mayor, with the advice and consent of the city council, may appoint a zoning administrator to decide routine and uncontested matters of the appeal authority, in concurrence with the city attorney, as designated by the appeal authority, and under its established guidelines. Any person aggrieved by a decision of the zoning administrator may appeal the decision to the Hearing Officer, as provided in this chapter.

10-4-3: APPEALS:

Any person aggrieved by his inability to obtain a building permit, or by the decision of any administrative officer or agency based upon or made in the administration or enforcement of this title, or any part of this code related to a decision of a land use application, land development, or City regulatory codes or a variance may take an appeal to the Hearing Officer. Appeals to the appeal authority may be taken by any officer, department, board or bureau of the city affected by the grant of or refusal to grant a building permit or by any other decision of an administrative officer or agency based on or made in the administration or enforcement of this title, or any part of this code related to a decision of a land use application, land development, or City regulatory codes or a variance.

- A. Time To Appeal: Any appeal, under this section must be filed in writing with the city recorder within fourteen (14) calendar days of the issuance of the written decision applying the land use ordinance.
- B. Time For Hearing Appeal: The Hearing Officer should hear the appeal within fifteen (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 Hearing Officer and all other participants, five (5) business days prior to the hearing, a written statement setting forth every theory of relief he intends to raise at the hearing, with a brief statement of facts in support.
- D. Condition Precedent to Judicial Review: No theory of relief may be raised in the district court unless it was timely and specifically presented to the Hearing Officer.

- E. Standard of Review and Burden of Proof on Appeal: The 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 Hearing Officer shall respect the due process rights of each participant.

10-4-4: STAY OF PROCEEDINGS PENDING APPEAL:

An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Hearing Officer after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate, the stay would in his opinion cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by restraining order which may be granted by the Hearing Officer or by the district court on application and notice and on good cause shown.

10-4-5: NOTICE OF MEETING ON APPEAL; RIGHT OF APPEARANCE:

The Hearing Officer shall fix a reasonable time for hearing the appeal, give public notice as well as due notice to the parties in interest and shall decide the same within a reasonable time. At the hearing, any party may appear in person or by agent or by attorney.

10-4-6: POWERS OF HEARING OFFICER ON APPEAL:

The Hearing Officer shall have the following powers:

- A. Appeals: To hear and decide appeals where it is alleged by the appellant there is error in any order, requirement, decision or refusal made by administrative official or agency based on or made in the enforcement of this title.
- B. Special Exceptions: To hear and decide, under this title, requests for "special exceptions" or for interpretation of the map or for decisions on other special questions on which such authority is authorized by this title to pass.
- C. Variances: To authorize, on an appeal, a variance from strict application of the regulations where, exceptional narrowness, shallowness or shape of a specific piece of property at the time of the enactment of the regulation, or by exceptional topographic conditions or other extraordinary and exceptional situations or conditions of such piece of property, the strict application of any regulations enacted would cause peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon, the owner of such property. The variance from such strict application can be granted to relieve such difficulties or hardships, provided such relief may be granted without substantial detriment to the public good and without substantial impairment to the intent and purpose of the master plan and this title. Before any variance may be authorized, however, it shall be shown that:

1. The variance will not substantially affect the comprehensive plan of zoning in the city and that adherence to the strict letter of this title will cause difficulties and hardships, the imposition of which upon the petitioner is unnecessary to carry out the general purpose of the plan.
 2. Special circumstances are attached to the property covered by the application which do not generally apply to other properties in the same zone.
 3. Because of said special circumstances, property covered by the application is deprived of privileges possessed by other properties in the same zone; and that granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone.
 4. In determining whether enforcement of the land use ordinance would cause unreasonable hardship, the appeal authority may not find an unreasonable hardship if the hardship is self-imposed or economic.
- D. Nonconforming Uses: To permit the enlargement of, addition to, or relocation of a building or structure, nonconforming as to use regulations, the following shall apply:
1. For a nonconforming use in a residential zone, the enlargement, addition or relocation shall either:
 - a. Comply with all the height, yard and area requirements for a single-family dwelling in the zone in which the nonconforming building is located; or
 - b. The proposed enlargement, addition or relocation will either:
 - (1) Improve the area by increasing the off street parking; or
 - (2) Improve the general appearance, convenience or safety of the area.
 2. For a nonconforming use in any zone other than a residential zone, the enlargement, addition or relocation shall comply with all height, yard and area requirements for a main building, other than dwellings, in the zone in which it is located.
 3. Before granting a permit for any enlargement, addition or relocation, the Hearing Officer shall find in its public meeting that the proposed changes will not hinder or obstruct the attainment of the objectives in section 10-1-2 of this code more than does the existing nonconforming use.
- E. Nonconforming Yard, Height Or Area Regulations: To allow those enlargements of, additions to or relocation of buildings and structures, nonconforming as to yard, height or area regulations, where an undue hardship will result to the owner of the land involved unless granted and the attainment of the objectives in section 10-1-2 of this code will not be hindered or obstructed, and provided the proposed enlargement, addition to or relocation of will either:

1. Improve the area by increasing needed off street parking; or
 2. Improve the general appearance, convenience or safety of the area.
- F. Extension Of Use: To permit, where a zone boundary line divides a lot in single ownership at the time of establishment of said boundary, a use authorized on either portion of such lot to extend to the entire lot, provided such permission shall not authorize the use to extend over thirty five feet (35') beyond the zone boundary line or extend to an area greater than five thousand (5,000) square feet beyond the said boundary line.
- G. Changes In Nonconforming Uses: To permit a nonconforming use to be changed to another use allowed in the same or a more restrictive zone than the one in which the nonconforming use would be allowed; provided, that the Hearing Officer finds in its public meeting such change will not hinder or obstruct the attainment of the objectives in section 10-1-2 of this code more than does the existing nonconforming use.
- H. Use Permitted Without Street Frontage: To permit the construction and use of a dwelling upon a lot which does not have frontage on a street, but has frontage on a dedicated right of way.
- I. Lot Splitting: To permit the splitting of a lot wherein such lot split creates a lot which does not have the required width of the zone in which the lot is located, provided the created nonconforming lot meets the area requirements of the zone and the structure placed on the lot meets all required site standards of the zone; and that before building permits are issued for the nonconforming split, the lot split shall be reviewed and approved by the city engineer.
- J. Burden Of Proof: The applicant shall bear the burden to prove that all of the conditions justifying a variance have been met.
- K. Variances Run With Land: Variances run with the land.
- L. Additional Requirements: In granting a variance, the Hearing Officer 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 waived or modified.

10-4-7: DECISION ON APPEAL:

In exercising the above mentioned powers, such Hearing Officer may, in conformity with 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 thereby should be made, and shall have all the powers of the officer from whom the appeal is taken.

10-4-8: VOTE NECESSARY FOR REVERSAL:

The favorable finding of the Hearing Officer shall be necessary to reverse any order, requirement or determination of any administrative official, or to decide

in favor of the appellant on any matter upon the Hearing Officer is required or entitled to decide under this code, or to effect any variation in such code or title.

10-4-9: JUDICIAL REVIEW OF APPEAL AUTHORITY'S DECISION; TIME LIMITATION:

The city or any person aggrieved by a decision of the Hearing Officer may have and maintain a plenary action for relief therefrom in any court of competent jurisdiction, provided petition for such relief is presented to the court within thirty (30) days after the Hearing Officer files his decision in the office of the city recorder.

10-4-10: TIME LIMITATION OF VARIANCE:

If the Hearing Officer grants a variance under this chapter, alterations under the variance, if required, 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 appeal authority, and then only if the petitioner shows adequate cause to the Hearing Officer that circumstances necessitate a time extension.

If it is the case that the variance granted permits the continuation of a previously nonconforming use, that use shall continue and shall run with the land.

10-4-11: FILING FEE:

Upon filing of any appeal or application to the appeal authority, the appellant or applicant shall pay to the city a fee prescribed by the city council. The said fee shall be collected by the officer in whose office said appeal is filed and shall be deposited with the city treasurer and credited to the general fund. No appeal or application shall be considered by the Hearing Officer unless such fee has been paid.

10-4-12: COMPENSATION OF APPEAL AUTHORITY:

The Hearing Officer shall be considered an independent contractor; and as such will enter into a three (3) year contract for services at the beginning of each appointed term. Terms for compensation and reimbursement will be determined and agreed upon and approved by the city council prior to any individual entering into service as the appeal authority.

10-4-13: DEFINITIONS:

APPEAL AUTHORITY: The person, appointed by the Mayor, subject to advice and consent, to decide an appeal of a decision of a land use application, land development, or City regulatory codes or a variance.

HEARING OFFICER: The individual duly appointed as the Appeal Authority

LAND USE APPLICATION: An application required by a municipality's land use ordinance.

LAND USE AUTHORITY: A person, appeal authority, commission, agency, or

other body designated by the local legislative body to act upon a land use application.

LAND USE ORDINANCE: A planning, zoning, development, or subdivision ordinance of the municipality, but does not include the general plan.

THIS TITLE: Titles 3, 4, 7, 9, 10, or 11 of the City Code, or any other part of this City Code related to a decision of a land use application, land development, or City regulatory codes or a variance.

10-1-14: APPEALS: is amended to read:

10-1-14: APPEALS: Any person shall have the right to appeal to the Appeal Authority a decision of disapproval of a zoning ordinance or map amendment and approval or disapproval of a conditional use application as set out in Title 10, Chapter 4 of the City Code. The reasons for the appeal shall be submitted in writing to the city recorder.

10-10B-10: APPEALS is amended to read:

10-10B-10: APPEALS: If the applicant is dissatisfied with the decision of the planning commission, an appeal may be submitted to the Appeal Authority in accordance with section [10-1-14](#) of this title

12-3-5: VARIANCE PROCEDURES: Is amended to read as follows:

12-3-5: VARIANCE PROCEDURES: A. The Appeal Authority as established by 10-4-1 of this Code shall hear and render judgment on requests for variances from the requirements of this title.

- B. The Appeal Authority shall hear and render judgment on an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the floodplain administrator in the enforcement or administration of this title.
- C. Any person or persons aggrieved by the decision of the Appeal Authority may appeal such decision in the courts of competent jurisdiction.
- D. The floodplain administrator shall maintain a record of all actions involving an appeal and shall report variances to the federal emergency management agency upon request.
- E. Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures in the remainder of this title.
- F. Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half ($1/2$) acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors in subsection [12-3-4B](#) of this chapter have been fully considered. As the lot

size increases beyond the one-half (1/2) acre, the technical justification required for issuing the variance increases.

G. Upon consideration of the factors noted above and the intent of this title, the Appeal Authority may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this title (see section [12-1-3](#) of this title).

H. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

I. Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

J. Prerequisites for granting variances:

1. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

2. Variances shall only be issued upon:

a. Showing a good and sufficient cause;

b. A determination that failure to grant the variance would result in exceptional hardship to the applicant; and

c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

3. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

K. Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that:

1. The criteria outlined in subsections A through I of this section are met, and

2. The structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

Section 2 - Repealer of Conflicting Enactments:

All orders, ordinances and resolutions with respect to the changes herein enacted and adopted which have heretofore been adopted by the City, or parts thereof, which are in conflict with any of the provisions of this Ordinance, are, to the extent of such conflict, hereby repealed, except that this repeal shall not be construed to revive any act, order or resolution, or part thereof, heretofore repealed.

Section 3 - Prior Ordinances and Resolutions:

The body and substance of any and all prior Ordinances and Resolutions, together with their specific provisions, where not otherwise in conflict with this Ordinance, are hereby reaffirmed and readopted.

Section 4 - Savings Clause:

If any provision of this Ordinance shall be held or deemed to be or shall, in fact, be invalid, inoperative or unenforceable for any reason, such reason shall not have the effect of rendering any other provision or provisions hereof invalid, inoperative or unenforceable to any extent whatever, this Ordinance and the provisions of this Ordinance being deemed to be the separate independent and severable act of the City Council of South Ogden City.

Section 5 - Date of Effect

This Ordinance shall be effective on the 21st day of May, 2013, and after publication or posting as required by law.

DATED this 21st day of May, 2013

SOUTH OGDEN, a municipal corporation

by: _____
Mayor James F. Minster

Attested and recorded

Leesa Kapetanov
City Recorder