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Staff Report Memorandum June 19, 2025

To: City Council via Planning Commission

From: Community Development Department

Subject: Amendments to Title 21 of the Land Development Code related to Appeals and Variances CA06062025-0006980

Public Hearing Notice: This item has been noticed on public websites, sent to affected entities and posted in three public locations at least 10 days prior to the Public Hearing.

Request

On behalf of Sandy City, the Community Development Department is proposing to amend Title 21, *Land Development Code*, Chapter 35, *Appeals and Variances*. The proposed amendments will bring the code up to date with the Utah Code by revising any requirement for a public hearing related to appeals and variances. The specific amendments to the Land Development Code are included as Exhibit "A" (red-lined version) and Exhibit "B" (clean version).

Background

During the 2025 Utah Legislative Session, [House Bill 368 Local Land Use Amendments](#), an omnibus bill was passed that include multiple amendments to the Land Use, Development and Management Act (LUDMA). Among these changes is an amendment to [UCA 10-9a-701\(5\)](#), which states that the city "*may not require a public hearing for a request for a variance or land use appeal.*" To address this new provision in state law, the proposed amendments will bring the City's land use code into compliance with the current Utah Code.

Public Notice

The city issued notice of the public hearing for the proposed code amendments on public websites, mailed notice to affected entities and posted in three public locations at least 10 days prior to the Planning Commission public hearing in accordance with the Land Development Code Sec. 21-36-1 and the Utah State Code § 10-9a-205.

Analysis

To implement current state law provisions, the Sandy Land Development Code was reviewed to identify any requirement for a public hearing related to appeals and variances. It was found that Title 21, and specifically [Chapter 35, Appeals and Variances](#) does not mandate a public hearing for appeals or variances; however, the "*Board of Adjustments Rules and Procedures*" document, does specify conducting public hearings in the sections related to meeting procedures. Consequently, these rules and procedures will need to be updated by replacing references to a public "*hearing*" with a public "*meeting*." These rules and procedures are not codified in the land development code; they are adopted separately by the Board of Adjustment, which can be accomplished by adopting an update to the rules and procedures at their next regularly scheduled meeting.

That said, there are two issues that still need to be addressed under Chapter 35, *Appeals and Variances*, to provide clarity and consistency, in accordance with state law. Utah Code [10-9a-306](#) requires cities to use “plain language” in land use regulations and the following amendments are proposed to the land development code:

1. Section 21-35-1(f)(2) is amended by removing the option to review an appeal “*de novo*.” The term “*de novo*” refers to a review of a case as if it had not been heard before, and which allows new information to be submitted into the record. This runs contrary to Sec. 21-35-1(g)(3), which states: “No new information that was not previously presented to the land use authority may be presented on appeal.” Further, review of an appeal *de novo* is indirectly inconsistent with the new state law provisions that prohibit a public hearing on appeal because it would limit the public from challenging new information submitted into the record on the appeal.

Therefore, the code is proposed to be amended by prohibiting new information to be submitted into the record on appeal, consistent with Sandy Code and Utah Code. If the appeal authority finds the record is incomplete or deficient, it may remand the case to develop the record or continue the meeting to complete the record with any information previously presented to the land use authority. This provides the appeal authority with options without permitting new information to be submitted into the record during the appeal.

2. Section 21-35-1(j) is also amended to clarify the effective and final date of an appeal authority decision. The existing code is ambiguous because it is unclear whether the appeal authority’s decision is final 1) at the meeting in which the decision is made, 2) when a written decision is issued, or 3) when the minutes of the meeting are approved. This ambiguity is problematic because the 30-day deadline to file a petition with the District Court is dependent on the date that the local land use decision is final (per Sec. 21-35-3(a)). Therefore, the code is proposed to be amended to remove this ambiguity and clarify the code.

For the specific language of the proposed amendments, see Exhibit “A” (red-lined version) and Exhibit “B” (clean version), which are attached to this report.

Non-Conforming Uses

This code amendment would not create any non-conforming situations.

Land Development Code Purpose Compliance

The Sandy City Land Development Code in 21-1-3 lists the criteria explaining the intent and purpose of the Ordinance. The purpose is:

21-1-3 Purpose

This Code is adopted to implement Sandy City’s General Plan and to promote public health, safety, convenience, aesthetics, welfare; efficient use of land; sustainable land use and building practices; transportation options and accessibility; crime prevention; timely citizen involvement in land use decision making; and efficiency in development review and land use administration. Specifically, this Code is established to promote the following purposes:

1. General

- To facilitate the orderly growth and development of Sandy City.*
- To facilitate adequate provision for transportation, water, sewage, schools, parks, and other public requirements.*
- To stabilize property values.*
- To enhance the economic well-being of Sandy City and its inhabitants.*

2. Implementation of General Plan

To coordinate and ensure the implementation of the City’s General Plan through effective execution of development review requirements, adequate facility and services review and other goals, policies, or programs contained in the General Plan.

3. Comprehensive, Consistent and Equitable Regulations

To establish a system of fair, comprehensive, consistent and equitable regulations, standards and procedures for review and approval of all proposed land development within the City.

4. Efficiently and Effectively Managed Procedures

- To promote fair procedures that are efficient and effective in terms of time and expense.*
- To be effective and responsive in terms of the allocation of authority and delegation of powers and duties among ministerial, appointed, and elected officials.*
- To foster a positive customer service attitude and to respect the rights of all applicants and affected citizens.*

The proposed code amendment is consistent with the purpose of the Land Development Code because the proposal promotes the public health, safety and welfare; ensures consistency and equitable standards; establishes fair procedures that are efficient and effective in terms of time and expense; facilitates the orderly growth and development of Sandy City; and is consistent with the Sandy City General Plan.

General Plan Compliance

The Sandy City General Plan encourages appropriate development standards for all uses and zoning categories within the city. The proposed code amendment furthers that goal and objective by establishing appropriate land development standards for all uses and zoning categories within Sandy City.

Recommendation

Staff recommends that the Planning Commission forward a positive recommendation to the City Council to amend Title 21, of the Sandy Municipal Code, relating to appeals and variances, as shown in Exhibit “A”, based on the following findings:

Findings:

1. The City Council may amend land use ordinances consistent with the purposes of the Sandy Land Development Code, the Sandy City General Plan, and the Utah Code, Municipal Land Use, Development, and Management Act per Title 21 Chapter 5 of the Sandy Municipal Code.
2. The proposal is reviewed by the Planning Commission and City Council in accordance with the requirements of Title 21 Chapter 5 of the Sandy Municipal Code.
3. The proposal complies with the purpose of the Land Development Code under Section 21-1-03 by promoting the public health, safety, and welfare; ensuring consistent and equitable standards; establishing fair procedures that are efficient and effective in terms of time and expense; and by facilitating the orderly growth and development of Sandy City.
4. The proposal complies with the Goals and Policies of the General Plan by establishing appropriate development standards for all uses and zoning categories within Sandy City.
5. The proposal clarifies the Land Development Code by removing ambiguity, consistent with UCA 10-9a-306, which requires cities to use “plain language” in land use regulations.

Planner:



Melissa Anderson
Zoning Administrator

Exhibits:

- A. Proposed code amendments (red-lined version)
- B. Proposed code amendments (clean version)

File Name: \\FSUSERS\CH-USERS\USERS\PLN\STAFFRPT\2025\CA06062025-0006980- HB368 PH FOR APPEALS AND VARIANCE\STAFF REPORT\STAFF REPORT - PHS ON APPEALS AND VARIANCE CODE AMEND.FINAL.DOCX

CHAPTER 21-35. APPEALS AND VARIANCES¹

Sec. 21-35-1. Appeals.

- (a) *Administrative Appeal Required.* As a condition precedent to judicial review, each adversely affected person shall timely and specifically challenge the land use authority's decision, in accordance with these ordinances.
- (b) *Authority.* The appeal authorities set forth in this title act in a quasi-judicial manner and as the final arbiter of issues involving the interpretation or application of land use ordinances.
- (c) *Who May Appeal.* The applicant, the City, a board or officer of the City, or any person adversely affected by the land use authority's decision administering or interpreting a land use ordinance may, within the time period provided in this title, appeal that decision to the designated appeal authority by alleging that there is an error in any order, requirements, decision, or determination made by the land use authority in the administration or interpretation of this title. In the event that the land use authority requires that a matter return to it for further review, an appeal can only be made on a decision made after that further review.
- (d) *Time for Appeal.* Except as provided in U.C.A. 1953, § 10-9a-704, an appeal of a decision of a land use authority to an appeal authority must be filed in writing with the Community Development Department within ten calendar days of the date the land use authority issues a written decision or approval of the minutes of a meeting at which the decision was made, if applicable, whichever occurs first.
- (e) *Information to be Presented.*
 - (1) An appellant must first present any and all information to the land use authority which it intends to raise before the appeal authority. The appellant may not bring new information for consideration before the appeal authority that had not been previously presented to the land use authority during its consideration of the matter.
 - (2) An appellant must present to the designated appeal authority every theory of relief that it can raise in District Court.
 - (3) No new information that was not previously presented to the land use authority may be presented on appeal.
- (f) *Review of the Record of the Land Use Authority.*
 - (1) The appeal authority's review of decisions of a land use authority shall be confined to the administrative record developed by the land use authority unless the appeal authority determines that the record is incomplete or deficient.
 - (2) If the appeal authority determines that the record is incomplete or deficient, it may ~~review the matter de novo~~ remand the case to develop the record or continue the meeting to complete the record with the information previously presented to the land use authority.
- (g) *Burden of Proof.* The appellant has the burden of proving that the land use authority erred.
- (h) *Standard of Review.*
 - (1) *Legal Issues; Correctness Standard.* The appeal authority shall determine the correctness of a decision of the land use authority or administrative official in its interpretation and application of a land use ordinance. Because no specialized knowledge is necessary to make such a determination, no deference is given to the land use authority or administrative official; provided, however, the appeal authority shall not overrule that decision as a matter of law without the advice of its legal counsel.

¹State law reference(s)—Appeals and variances, U.C.A. 1953, § 19-9a-701 et seq.

(2) *Factual Issues and Other Issues; Arbitrary and Capricious Standard.* Land use authorities and administrative officials have specialized knowledge in the field of planning and land use and are charged with and are experienced in implementing the goals and policies of the community as adopted by and under the supervision of elected representatives of the public. Accordingly, they should be allowed a comparatively wide latitude of discretion; and their actions endowed with a presumption of correctness and validity which an appeal authority should not interfere with unless it is shown that there is no reasonable basis to justify the action taken, and that, therefore, the determinations made were so unreasonable as to be arbitrary and capricious. It is not the appeal authority's prerogative to substitute its judgment for that of the land use authority where the record discloses a reasonable basis for the land use authority's determination.

- (i) *Scope of Authority.* Only those decisions in which a land use authority has applied a land use ordinance to a particular application, person, or parcel may be appealed to an appeal authority.
- (j) *Effective Date of Appeal Authority Decision.* A decision of an appeal authority ~~takes effect~~ is final 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, whichever comes first.

~~(1) —Board of Adjustment. 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 comes first.~~

(LDC 2008, § 15A-35-01; Ord. No. 16-05, 2-5-2016)

Sec. 21-35-2. Variances.

Variances shall be governed by U.C.A. 1953, § 10-9a-702.

(LDC 2008, § 15A-35-02)

Sec. 21-35-3. District Court of Review of Decision.

- (a) Any person adversely affected by a final decision made in the exercise of or in violation of the provisions of this chapter may file a petition for review of the decision with the District Court within 30 days after the land use decision is final.
- (b) No person may challenge in District Court the City's land use decision made under this chapter or under a regulation made under authority of this title, until that person has exhausted their administrative remedies as provided herein and in the Municipal Land Use, Development, and Management Act (U.C.A. 1953, § 10-9a-101 et seq.), if applicable.
- (c) The filing of a petition in the District Court and its review shall be governed by the provisions of the Municipal Land Use, Development, and Management Act (U.C.A. 1953, § 10-9a-101 et seq.).

(LDC 2008, § 15A-35-03)

State law reference(s)—District court review, U.C.A. 1953, § 10-9a-801 et seq.

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