

Ordinance 2018-46

AN ORDINANCE AMENDING THE LAND MANAGEMENT CODE OF PARK CITY, UTAH, CHAPTER 15-1-18 APPEALS AND RECONSIDERATION PROCESS AND CHAPTER 15-1-21 NOTICE MATRIX

WHEREAS, the Land Management Code was adopted by the City Council of Park City, Utah to promote the health, safety and welfare of the residents, visitors, and property owners of Park City; and

WHEREAS, the Utah state legislature made changes in 2017 that impacted the treatment of historic resources, including the required public noticing for such actions; and

WHEREAS, the City reviews the Land Management Code and identifies necessary amendments to address planning and zoning issues that have come up in the past, and to address specific Land Management Code issues raised by the public, Staff, and the Commission, and to align the Code with the Council's goals and implementation of the General Plan; and

WHEREAS, June 23, 2018, legal notice was published in the Park Record as required by the Land Management Code; and

WHEREAS, the Planning Commission conducted a public hearing at the regularly scheduled meeting on July 11, 2018, and forwarded a recommendation to the City Council; and

WHEREAS, the City Council conducted a public hearing at its regularly scheduled meeting on August 2, 2018; and

WHEREAS, it is in the best interest of the residents of Park City, Utah to amend the Land Management Code to be consistent with the Park City General Plan and to be consistent with the values and identified goals of the Park City community and City Council to protect health and safety, maintain the quality of life for its residents, preserve and protect the residential neighborhoods, and preserve the community's unique character.

NOW, THEREFORE, BE IT ORDAINED by the City Council of Park City, Utah as follows:


SECTION 1. AMENDMENTS TO TITLE 15 - Land Management Code Chapter 1 (General Provision and Procedures), Section 15-1-18. The recitals above are incorporated herein as findings of fact. Section 15-1-18 of the Land Management Code of Park City is hereby amended as redlined (see Attachment A).

SECTION 2. AMENDMENTS TO TITLE 15 - Land Management Code Chapter 1 (General Provision and Procedures), Section 15-1-21. The recitals above are incorporated herein as findings of fact. Section 15-1-21 of the Land Management Code of Park City is hereby amended as redlined (see Attachment B).

PASSED AND ADOPTED this 2nd day of August, 2018

PARK CITY MUNICIPAL CORPORATION





Andy Beerman, Mayor

Attest:



Michelle Kellogg, City Recorder

Approved as to form:



Mark Harrington, City Attorney

Attachment A

15-1-18 Appeals And Reconsideration Process

- A. **STAFF.** Any decision by either the Planning Director or Planning Staff regarding Application of this LMC to a Property may be appealed to the Planning Commission. Appeals of decisions regarding the Design Guidelines for Historic Districts and Historic Sites shall be reviewed by the Board of Adjustment or City Council at the request of the appellant. If the appellant chooses to have the City Council hear the appeal, the appellant must do so in writing at the time the appellant submits the appeal.
- B. **HISTORIC PRESERVATION BOARD (HPB).** The City or any Person with standing adversely affected by any decision of the Historic Preservation Board may be appealed to the Board of Adjustment or City Council at the request of the appellant. If the appellant chooses to have City Council hear the appeal, the appellant must do so in writing at the time the appellant submits the appeal.
- C. **PLANNING COMMISSION.** The City or any Person with standing adversely affected by a Final Action by the Planning Commission on appeals of Staff action may petition the District Court in Summit County for a review of the decision. Final Action by the Planning Commission on Conditional Use permits and Master Planned Developments (MPDs) involving City Development may be appealed to the Board of Adjustment at the City Council's request. All other Final Action by the Planning Commission concerning Conditional Use permits (excluding those Conditional Use permits decided by Staff and appealed to the Planning Commission; final action on such an appeal shall be appealed to the District Court) and MPDs may be appealed to the City Council. When the City Council determines it necessary to ensure fair due process for all affected parties or to otherwise preserve the appearance of fairness in any appeal, the City Council may appoint an appeal panel as appeal authority to hear any appeal or call up that the Council would otherwise have jurisdiction to hear. The appeal panel will have the same scope of authority and standard of review as the City Council. Only those decisions in which the Planning Commission has applied a land Use ordinance to a particular Application, Person, or Parcel may be appealed to an appeal authority.
1. **APPEAL PANEL MEMBERSHIP AND QUALIFICATIONS.** The appeal panel shall have three (3) members. The decision to appoint and the appointment of an appeal panel shall be made by the City Council at a duly noticed public meeting after publicly noticed request for qualifications. Qualifications shall include a weighted priority for the following: Park City or Area residency, five years or more of prior experience in an adjudicative position, and/or a legal or planning degree. Each member of the appeal panel shall have the ability to:

- a. Conduct quasi-judicial administrative hearings in an orderly, impartial and highly professional manner.
 - b. Follow complex oral and written arguments and identify key issues of local concern.
 - c. Master non-legal concepts required to analyze specific situations, render findings and determinations.
 - d. Absent any conflict of interest, render findings and determinations on cases heard, based on neutral consideration of the issues, sound legal reasoning, and good judgment.
2. **PROCESS.** Any hearing before an appeal panel shall be publicly noticed, include a public hearing, and meet all requirements of the Utah Open and Public Meetings Act. The appeal panel shall have the same authority and follow the same procedures as designated for the "City Council" in this section 15-1-18 (G-I). The City Council may decide to appoint an appeal panel for a particular matter at any time an application is pending but the appointment of the individual members of the panel shall not occur until an actual appeal or call up is pending.

D. **STANDING TO APPEAL.** The following has standing to appeal a Final Action:

1. Any Person who submitted written comment or testified on a proposal before the Planning Department, Historic Preservation Board or Planning Commission;
2. The Owner of any Property within three hundred feet (300') of the boundary of the subject site;
3. Any City official, Board or Commission having jurisdiction over the matter; and
4. The Owner of the subject Property.

E. **TIMING.** All appeals must be made within ten (10) calendar days of the Final Action except for an appeal from a decision by the historic preservation authority, which is a decision by Staff, regarding the Design Guidelines for Historic Districts and Historic Sites or a decision by the Historic Preservation Board regarding a land use application, the applicant may appeal the decision within thirty (30) days after the day on which the historic preservation authority issues a written decision. If the appellant chooses to have City Council hear the appeal, the appellant must do so in writing at the time the appellant submits the appeal. The reviewing body, with the consultation of the appellant, shall set a date for the appeal. All appeals shall be heard by the reviewing body within forty-five (45) days of the date that the appellant files an appeal unless all parties, including the City, stipulate otherwise.

- F. **FORM OF APPEALS.** Appeals to the Planning Commission, Board of Adjustment, or Historic Preservation Board must be filed with the Planning Department. Appeals to the City Council must be filed with the City Recorder. Appeals must be by letter or petition, and must contain the name, address, and telephone number of the petitioner; his or her relationship to the project or subject Property; and must have a comprehensive statement of all the reasons for the appeal, including specific provisions of the law, if known, that are alleged to be violated by the action taken. The Appellant shall pay the applicable fee established by resolution when filing the appeal. The Appellant shall present to the appeal authority every theory of relief that it can raise in district court. The Appellant shall provide required envelopes within fourteen (14) days of filing the appeal.
- G. **BURDEN OF PROOF AND STANDARD OF REVIEW.** The appeal authority shall act in a quasi-judicial manner even if the appeal authority is the City Council. The appellant has the burden of proving that the land use authority erred. The appeal authority shall review factual matters de novo, without deference to the land use authority's determination of factual matters. The appeal authority shall determine the correctness of the land use authority's interpretation and application of the plain meaning of the land use regulations, and interpret and apply a land use regulation to favor a land use application unless the land use regulation plainly restricts the land use application. All appeals must be made in writing. Review of petitions of appeal shall include a public hearing and shall be limited to consideration of only those matters raised by the petition(s), unless the appeal authority grants either party approval to enlarge the scope of the appeal to accept information on other matters. New evidence may be received so long as it relates to the scope of the appeal. City Council, when acting as an appeal body for appeals of Historic Preservation decisions, may exercise only administrative authority.
- H. **NON-ADVERSARIAL PROCESS.** For all appeals before City Council, and any Board or Commission, the following shall apply:
1. The procedural hearings and reviews established by the City's regulatory procedures does not adopt or utilize in any way the adversary criminal or civil justice system used in the courts.
 2. The role of City staff, including legal staff, is to provide technical and legal advice and professional judgment to each decision making body, including City Council, as they are not advocates of any party or position in a dispute, notwithstanding the fact that their technical and legal advice and professional judgment may lead them to make recommendations concerning the matter.
 3. In the absence of clear evidence in the record that a staff member has lost his or her impartiality as a technical adviser, the City's need for consistent,

coherent and experienced advisers outweighs any claims of bias by the applicant.

- I. **WRITTEN FINDINGS REQUIRED.** The appeal authority shall direct staff to prepare detailed written Findings of Fact, Conclusions of Law and the Order.

J. **CITY COUNCIL ACTION ON APPEALS.**

1. The City Council, with the consultation of the appellant, shall set a date for the appeal.
2. The City Recorder shall notify the Property Owner and/or the Applicant of the appeal date. The City Recorder shall obtain the findings, conclusions and all other pertinent information from the Planning Department and shall transmit them to the Council.
3. The City Council may affirm, reverse, or affirm in part and reverse in part any properly appealed decision of the Planning Commission. The City Council may remand the matter to the appropriate body with directions for specific Areas of review or clarification. City Council review of petitions of appeal shall include a public hearing and be limited to consideration of only those matters raised by the petition(s), unless the Council by motion, enlarges the scope of the appeal to accept information on other matters.
4. Staff must prepare written findings within fifteen (15) working days of the City Council vote on the matter.

- K. **CITY COUNCIL CALL-UP.** Within fifteen (15) calendar days of Final Action on any project, the City Council, on its own motion, may call up any Final Action taken by the Planning Commission or Planning Director for review by the Council. Call-ups involving City Development may be heard by the Board of Adjustment at the City Council's request. The call-up shall require the majority vote of the Council. Notice of the call-up shall be given to the Chairman of the Commission and/or Planning Director by the Recorder, together with the date set by the Council for consideration of the merits of the matter. The Recorder shall also provide notice as required by Sections 15-1 -12 and 15-1-18 (K) herein. In calling a matter up, the Council may limit the scope of the call-up hearing to certain issues. The City Council, with the consultation of the Applicant, shall set a date for the call-up. The City Recorder shall notify the Applicant of the call-up date. The City Recorder shall obtain the findings, and all other pertinent information and transmit them to the Council.

- L. **NOTICE.** There shall be no additional notice for appeals of Staff determination other than listing the matter on the agenda, unless notice of the Staff review was provided, in which case the same notice must be given for the appeal. Notice of appeals of Final Action by the Planning Commission and Historic Preservation Board; notice of all appeals to City Council, reconsiderations, or call-ups shall be given by:

1. Publishing the matter once at least fourteen (14) days prior to the first hearing in a newspaper having general circulation in Park City;
2. Mailing courtesy notice at least fourteen (14) days prior to the first hearing to all parties who received mailed courtesy notice for the original action.
3. Posting the Property at least fourteen (14) days prior to the first hearing; and
4. Publishing notice on the Utah Public Notice Website at least fourteen (14) days prior to the first hearing.

M. **STAY OF APPROVAL PENDING REVIEW OF APPEAL**. Upon the filing of an appeal, any approval granted under this Chapter will be suspended until the appeal body, pursuant to this Section 15-1-18 has acted on the appeal.

N. **APPEAL FROM THE CITY COUNCIL**. The Applicant or any Person aggrieved by City action on the project may appeal the Final Action by the City Council to a court of competent jurisdiction. The decision of the Council stands, and those affected by the decision may act in reliance on it unless and until the court enters an interlocutory or final order modifying the decision.

O. **RECONSIDERATION**. The City Council, and any Board or Commission, may reconsider at any time any legislative decision upon an affirmative vote of a majority of that body. The City Council, and any Board or Commission, may reconsider any quasi-judicial decision upon an affirmative vote of a majority of that body at any time prior to Final Action. Any action taken by the deciding body shall not be reconsidered or rescinded at a special meeting unless the number of members of the deciding body present at the special meeting is equal to or greater than the number of members present at the meeting when the action was approved.

P. No participating member of the appeal panel may entertain an appeal in which he or she acted as the land Use authority.

Attachment B
15-1-21 Notice Matrix

NOTICE MATRIX (See Section 15-1-12 for specific notice requirements)			
ACTION:	POSTED (ON THE CITY WEBSITE OR IN AT LEAST THREE (3) PUBLIC PLACES WITHIN THE CITY:	MAILING:	PUBLISHED (IN A NEWSPAPER OF GENERAL CIRCULATION WITHIN CITY AND ON THE UTAH PUBLIC NOTICE WEBSITE):
Zoning and Rezoning	14 days prior to the first hearing before Planning Commission and City Council. Any subsequent hearings shall be posted at least 24 hours prior to hearing.	Required mailing 14 days prior to the first hearing to each Affected Entity and to each Property Owner whose property is at least partially within the area to be zoned or rezoned.	14 days prior to the first hearing before the Planning Commission and City Council.
LMC Amendments	14 days prior to the first hearing before the Planning Commission and City Council. Any subsequent hearings shall be posted at least 24 hours prior to hearing.	Required mailing 14 days prior to the first hearing to each Affected Entity.	14 days prior to the first hearing before the Planning Commission and City Council.
General Plan Amendments	14 days prior to the first hearing before the Planning Commission and City Council. Any subsequent hearings shall be posted at least 24 hours prior to hearing.	Required mailing 14 days prior to the first hearing to each Affected Entity.	14 days prior to the first hearing. Any subsequent hearings shall be so published at least 24 hours prior to hearing.
Master Planned Developments (MPD)	14 days prior to the first hearing.	Courtesy mailing 14 days prior to the first hearing, to Property Owners within 300 ft.	14 days prior to the first hearing.

Appeals of Planning Director, Historic Preservation Board, or Planning Commission decisions or City Council Call-Up and Reconsideration	14 days prior to the date set for the appeal, reconsideration, or call-up hearing (See Section 15-1-18).	Courtesy mailing 14 days prior to the appeal, reconsideration, or call-up hearing, to all parties who received mailed notice for the action being appealed (See Section 15-1-18).	14 days prior to the date set for the appeal, reconsideration, or call-up hearing (See Section 15-1-18).
Conditional Use Permit	14 days prior to the first hearing before the Planning Commission.	Courtesy mailing 14 days prior to the first hearing before the Planning Commission, to Property Owners within 300 ft.	14 days prior to the first hearing before the Planning Commission.
Administrative Conditional Use Permit	10 days prior to Final Action.	Courtesy mailing 10 days prior to Final Action, to adjacent Property Owners.	No published notice required.
Administrative Permit	10 days prior to Final Action.	Courtesy mailing 10 days prior to Final Action, to adjacent affected Property Owners.	No published notice required.
Variance Requests, Non-conforming Use Modifications and Appeals to Board of Adjustment	14 days prior to the first hearing before the Board of Adjustment.	Courtesy mailing 14 days prior to the first hearing before the Board of Adjustment, to owners within 300 ft.	14 days prior to the first hearing before the Board of Adjustment.
Certificate of Appropriateness for Demolition (CAD)	45 days on the Property upon refusal of the City to issue a CAD; 14 days prior to the first hearing before the CAD Hearing Board.	Courtesy mailing 14 days prior to the first hearing before the Historic Preservation Board, to Property Owners within 300 ft.	14 days prior to the first hearing before the Historic Preservation Board.
Determination of Significance	14 days prior to the first hearing before the Historic Preservation	Courtesy mailing 14 days prior to the first hearing before the	14 days prior to the first hearing before the Historic Preservation

	Board.	Historic Preservation Board to property owners within 100 feet.	Board.
Historic Preservation Board Review for Material Deconstruction	14 days prior to the first hearing before the Historic Preservation Board.	Courtesy mailing 14 days prior to the first hearing before the Historic Preservation Board to property owners within 100 feet.	14 days prior to the first hearing before the Historic Preservation Board.
Historic District or Historic Site Design Review	<p>First Posting: The Property shall be posted for a 14 day period once a Complete Application has been received. The date of the public hearing shall be indicated in the first posting. Other posted legal notice not required.</p> <p>Second Posting: For a 10 <u>30</u> day period once the Planning Department has determined the proposed plans comply or does not comply with the Design Guidelines for Historic Districts and Historic Sites. Other posted legal notice not required.</p>	<p>First Courtesy Mailing: To Property Owners within 100 feet once a Complete Application has been received, establishing a 14 day period in which written public comment on the Application may be taken. The date of the public hearing shall be indicated.</p> <p>Second Courtesy Mailing: To Property Owners within 100 feet and individuals who provided written comment on the Application during the 14 day initial public comment period. The second mailing occurs once the Planning Department determines whether the proposed plans comply or do not comply with the Design Guidelines for Historic Districts and Historic Sites and no later than 45 days after the end of the initial public comment period. This establishes a 10 <u>30</u> day period after which</p>	If appealed, then once 14 days before the date set for the appeal.

		the Planning Department's decision may be appealed.	
Annexations	Varies, depending on number of Owners and current State law. Consult with the Legal Department.		
Termination of Project Applications	-----	Required mailing to Owner/Applicant and certified Agent by certified mail 14 days prior to the Planning Director's termination and closure of files.	-----
Lot Line Adjustments: Between 2 Lots without a plat amendment	10 days prior to Final Action on the Property. Other posted legal notice not required.	Courtesy mailing to Property Owners within 300 ft. at time of initial Application for Lot line adjustment. Need consent letters, as described on the Planning Department Application form, from all adjacent Owners.	No published notice required.
Preliminary and Final Subdivision Plat Applications	14 days prior to the first hearing.	Courtesy mailing 14 days prior to the first hearing to Property Owners within 300 ft.	14 days prior to the first hearing before the Planning Commission and City Council.
Condominium Plats	14 days prior to the first hearing.	Courtesy mailing 14 days prior to the first hearing to Property Owners within 300 ft.	14 days prior to the first hearing before the Planning Commission and City Council.
Condominium Plat Amendments	14 days prior to the first hearing.	Courtesy mailing 14 days prior to the first hearing, to Property Owners within 300 ft.	14 days prior to the first hearing before the Planning Commission and City Council.
Subdivision Plat Amendments	14 days prior to the first hearing.	Courtesy mailing 14 days prior to the first hearing, to Property Owners within 300 ft.	14 days prior to the first hearing before the Planning Commission and City Council.

Implementing an Amendment to Adopted Specifications for Public Improvements that Apply to a Subdivision or Development		The City shall give a thirty (30) day mailed notice and an opportunity to comment to anyone who has requested the notice in writing.	
Vacating or Changing a Public Street, Right-of-Way, or Easement	14 days prior to each hearing before the City Council on or near the Street, Right-of-Way, or easement in a manner that is calculated to alert the public.	Required mailing to each Property Owner of record of each Parcel or Lot that is accessed by the Public Street, Right-of-Way or easement at least 14 days prior to the hearing before the City Council.	14 days prior to the hearing before the City Council.
Extension of Approvals	Posted notice shall be the same as required for the original application.	Mailed notice shall be the same as required for the original application.	Published notice shall be the same as required for the original application.
<p>1) For all Applications, notice will be given to the Applicant of date, time, and place of the public hearing and public meeting to consider the Application and of any Final Action on a pending Application.</p> <p>2) All notices, unless otherwise specified in this Code or by State law, must state the general nature of the proposed action; describe the land affected; and state the time, place and date of the hearing. Once opened, the hearing may be continued, if necessary, without re-publication of notice until the hearing is closed.</p> <p>3) A copy of each Staff report regarding the Applicant, or the pending Application, shall be provided to the Applicant at least three (3) business days before the public hearing or public meeting.</p> <p>4) If notice provided per this Section is not challenged within 30 days after the meeting or action for which notice is given, the notice is considered adequate and proper.</p> <p>5) All days listed are the minimum number of days required.</p>			
Appendix A – Official Zoning Map (Refer to the Planning Department)			