

ORDINANCE NO. 2023-36

**AN ORDINANCE AMENDING LAND MANAGEMENT CODE SECTIONS 15-1-8
REVIEW PROCEDURE UNDER THE CODE AND 15-1-18 APPEALS**

WHEREAS, the Land Management Code implements the goals and policies of the General Plan in part to promote the health, safety, and welfare of the present and future inhabitants, to protect and enhance the vitality of the City's resort-based economy, and to protect or promote moderate income housing;

WHEREAS, the Utah Code Section 10-9a-701 requires that each local government that regulates land use appoint an appeal authority to hear appeals from decisions applying those land use regulations to a particular application or property;

WHEREAS, Park City is one of the last remaining cities in Utah to still use its legislative body as an appeal authority for Master Planned Developments and Conditional Use Permits;

WHEREAS, due to the increased complexity of matters upon appeal, increased risk of due process and conflict challenges to legislative bodies acting as quasi-judicial appeal authorities, changes in state law, and the City Council's desire to remain proactive and fully empowered to engage affirmatively its representation of constituents and residents regarding land use matters;

WHEREAS, on June 14, 2023, the Planning Commission conducted a duly noticed public hearing;

WHEREAS, on June 14, 2023, the Planning Commission unanimously forwarded a positive recommendation for City Council's consideration;

WHEREAS, on July 13, 2023, the City Council conducted a duly noticed public hearing;

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

SECTION 1. AMEND MUNICIPAL CODE OF PARK CITY LAND MANAGEMENT CODE TITLE 15. Municipal Code of Park City Title 15 Land Management Code Sections 15-1-8 *Review Procedure Under the Code* and 15-1-18 *Appeals* are hereby amended as outlined in Attachment 1.

SECTION 2. EFFECTIVE DATE. This Ordinance shall be effective upon publication.
PASSED AND ADOPTED THIS 13th day of July, 2023.

PARK CITY MUNICIPAL CORPORATION

DocuSigned by:

Nann Worel

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Nann Worel, Mayor

Attest:

DocuSigned by:
Michelle Kellogg
E5F905BB533F431...



City Recorder

Approved as to form:

DocuSigned by:
Mark Harrington
B7478B7734C7490...

City Attorney's Office

1 **Attachment 1**

2 **15-1-8 Review Procedure Under The Code**

3 A. No Building Permit shall be valid for any Building project unless the plans for the
4 proposed Structure have been submitted to and have been approved by the
5 Planning, Engineering and Building Departments.

6 B. No new Use shall be valid on any Property within the City unless the Use is
7 allowed.

8 C. No Subdivision shall be valid without preliminary approval of the Planning
9 Commission and final approval by the City Council with all conditions of approval
10 completed.

11 D. Proposals submitted to the Planning Department must be reviewed according to
12 the type of Application filed. Unless otherwise provided for in this LMC, only one
13 (1) Application per type, per Property, will be accepted and processed at a time.

14 E. The Planning, Engineering and Building Departments review all Allowed Uses,
15 Administrative Lot Line Adjustments, Administrative Permits, and Administrative
16 Conditional Use permits.

17 F. Projects in the Historic Districts and Historic Sites outside the Historic Districts
18 are subject to design review under the Design Guidelines for Historic Districts
19 and Historic Sites.

20 G. Conditional Uses and Master Planned Developments are initially reviewed by
21 staff and submitted to the Planning Commission for review, final permitting and
22 Final Action.

23 H. Subdivisions and Plat Amendments are initially reviewed by staff and submitted
 24 to the Planning Commission who makes a recommendation to the City Council
 25 for Final Action.

26 I. Variances, Special Exceptions, Non-Conforming Uses and Non-Complying
 27 Structures are reviewed by the Board of Adjustment.

28 J. No review may occur until all applicable fees have been paid. Final approval is
 29 not effective until all other fees including engineering fees have been paid, and
 30 following applicable staff review.

31

RECOMMENDATION (y), and FINAL ACTION (X), and APPEAL (z)						
	Planning	HPB	Board of Adjustment	Planning Commission	City Council	<u>Appeal Panel</u>
Allowed Use	X					
[Allowed-] Historic District Design Review [(HDDR)]	X		z [(when HPB takes part in the HDDR review)]			
Administrative Permits	X			z		
Conditional Use			[z (at request of the City Council for City Development applications)]	X	[z]	z
Conditional Use Admin.	X			z		

Determination of Significance		X	z			
MPD			{z (at request of the City Council for City Development applications)}	X	[z]	z
Determination of Non-Conforming Use and Non-Complying Structures	X		z			
Change of Non-Conforming Use			X			
Historic Preservation Board Review for Material Deconstruction [HPBR]		X	z			
Plat Amendment				y Recommendation to CC	X	
Variance			X			
Subdivision and Condominium Plats				y Recommendation to CC	X	
Annexation and Zoning				y [Recommendation]	X	

				<u>Recommendation</u> to CC		
Zoning Appeal			X			
LMC Amendments				y Recommendation to CC	X	

32 *All Applications shall be filed with the Planning Department. Planning
 33 Department staff makes a recommendation to the appropriate decision making
 34 body (X).

35 HISTORY

- 36 *Adopted by Ord. [00-25](#) on 3/30/2000*
- 37 *Amended by Ord. [06-22](#) on 4/27/2006*
- 38 *Amended by Ord. [09-10](#) on 3/5/2009*
- 39 *Amended by Ord. [09-23](#) on 7/9/2009*
- 40 *Amended by Ord. [11-05](#) on 1/27/2011*
- 41 *Amended by Ord. [12-37](#) on 12/20/2012*
- 42 *Amended by Ord. [15-35](#) on 10/12/2015*
- 43 *Amended by Ord. [15-53](#) on 12/17/2015*
- 44 *Amended by Ord. [2016-44](#) on 9/15/2016*

45 **15-1-18 Appeals And Reconsideration Process**

46 A. **STAFF**. Final Action by either the Planning Director or Planning Staff may be
 47 appealed to the Planning Commission. Final Action regarding the Design
 48 Guidelines for Historic Districts and Historic Sites shall be reviewed by the Board
 49 of Adjustment.

50 B. **HISTORIC PRESERVATION BOARD (HPB)**. The City or any Person with
51 standing adversely affected by any decision of the Historic Preservation Board
52 may be appealed to the Board of Adjustment.

53 C. **PLANNING COMMISSION**. The City or any Person with standing adversely
54 affected by a Final Action by the Planning Commission on appeals of Staff action
55 may petition the District Court in Summit County for a review of the decision.

56 ~~Final Action by the Planning Commission on Conditional Use permits and Master~~
57 ~~Planned Developments (MPDs) involving City Development may be appealed to~~
58 ~~the Board of Adjustment at the City Council's request. All other~~ Final Action by
59 the Planning Commission concerning Conditional Use permits (excluding those
60 Conditional Use permits decided by Staff and appealed to the Planning
61 Commission; final action on such an appeal shall be appealed to the District
62 Court) and MPDs may be appealed to the Appeal Panel. ~~City Council. When the~~
63 ~~City Council determines it is necessary to ensure fair due process for all affected~~
64 ~~parties or to otherwise preserve the appearance of fairness in any appeal, the~~
65 ~~City Council may appoint an appeal panel as appeal authority to hear any appeal~~
66 ~~or call up that the Council would otherwise have jurisdiction to hear. The appeal~~
67 ~~panel will have the same scope of authority and standard of review as the City~~
68 ~~Council.~~ Only those decisions in which the Planning Commission has applied a
69 land use ordinance to a particular Application, Person, or Parcel may be
70 appealed to an appeal authority.

71 1. **APPEAL PANEL MEMBERSHIP AND QUALIFICATIONS.** The ~~[appeal~~
72 ~~panel]~~ Appeal Panel shall have three (3) members. The decision to

73 appoint and the appointment of ~~[an appeal panel]~~ the Appeal Panel shall
74 be made by the City Council at a duly noticed public meeting after publicly
75 noticed request for qualifications. Qualifications shall include a weighted
76 priority for the following: Park City or Area residency, five years or more of
77 prior experience in an adjudicative position, and/or a legal or planning
78 degree. Each member of the ~~[appeal panel]~~ Appeal Panel shall have the
79 ability to:

- 80 a. Conduct quasi-judicial administrative hearings in an orderly,
81 impartial and highly professional manner.
- 82 b. Follow complex oral and written arguments and identify key issues
83 of local concern.
- 84 c. Master non-legal concepts required to analyze specific situations ~~and~~
85 ~~render findings and determinations~~.
- 86 d. Absent any conflict of interest, render findings and determinations
87 on cases heard, based on neutral consideration of the issues,
88 sound legal reasoning, and good judgment.

89 2. **PROCESS.** Any hearing before ~~[an appeal panel]~~ the Appeal Panel shall
90 be publicly noticed, include a public hearing, and meet all requirements of
91 the Utah Open and Public Meetings Act. ~~[The appeal panel shall have the~~
92 ~~same authority and follow the same procedures as designated for the “City~~
93 ~~Council” in this Section. The City Council may decide to appoint an appeal~~
94 ~~panel for a particular matter at any time an application is pending but the~~

95 ~~appointment of the individual members of the panel shall not occur until an~~
96 ~~actual appeal or call up is pending.]~~

97 3. The City Council shall appoint the Appeal Panel. The appointment of the
98 individual members of the panel shall be for terms of three (3) years.

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

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

108 E. **TIMING**. All appeals must be made within ten (10) calendar days of the Final
109 Action except for an appeal from a decision by the historic preservation authority
110 which is a decision by Staff regarding the Design Guidelines for Historic Districts
111 and Historic Sites or a decision by the Historic Preservation Board regarding a
112 land use application, the applicant may appeal the decision within thirty (30) days
113 after the day on which the historic preservation authority issues a written
114 decision. The reviewing body, with the consultation of the appellant, shall set a
115 date for the appeal. All appeals shall be heard by the reviewing body within forty-
116 five (45) days of the date that the appellant files an appeal unless all parties,
117 including the City, stipulate otherwise.

118 F. **FORM OF APPEALS**. Appeals to the Planning Commission, Board of
119 Adjustment, or Historic Preservation Board must be filed with the Planning
120 Department. ~~Appeals to the City Council must be filed with the City Recorder.~~
121 Appeals to the Appeal Panel must be filed with the City Recorder. Appeals must
122 be by letter or petition, and must contain the name, address, and telephone
123 number of the petitioner; the petitioner's relationship to the project or subject
124 Property; and a comprehensive statement of all the reasons for the appeal,
125 including specific provisions of the law, if known, that are alleged to be violated
126 by the action taken. The Appellant shall pay the applicable fee established by
127 resolution when filing the appeal. The Appellant shall present to the appeal
128 authority every theory of relief that it can raise in district court. The Appellant
129 shall provide courtesy mailing to all parties who received mailed notice for the
130 action being appealed within fourteen (14) days of filing the appeal.

131 G. **BURDEN OF PROOF AND STANDARD OF REVIEW**. The appeal authority
132 shall act in a quasi-judicial manner ~~[even if the appeal authority is the City~~
133 ~~Council]~~. The appellant has the burden of proving that the land use authority
134 erred. The appeal authority shall review factual matters de novo, without
135 deference to the land use authority's determination of factual matters. The appeal
136 authority shall determine the correctness of the land use authority's interpretation
137 and application of the plain meaning of the land use regulations, and interpret
138 and apply a land use regulation to favor a land use application unless the land
139 use regulation plainly restricts the land use application. All appeals must be
140 made in writing. Review of petitions of appeal shall include a public hearing and

141 shall be limited to consideration of only those matters raised by the petition(s),
142 unless the appeal authority grants either party approval to enlarge the scope of
143 the appeal to accept information on other matters. New evidence may be
144 received so long as it relates to the scope of the appeal.

145 H. **NON-ADVERSARIAL PROCESS**. For all appeals before ~~[City Council]~~ the
146 Appeal Panel, and any Board or Commission, the following shall apply:

147 1. The procedural hearings and reviews established by the City's regulatory
148 procedures does not adopt or utilize in any way the adversary criminal or
149 civil justice system used in the courts.

150 2. The role of City staff, including legal staff, is to provide technical and legal
151 advice and professional judgment to each decision making body,
152 ~~[including City Council,]~~ as they are not advocates of any party or position
153 in a dispute, notwithstanding the fact that their technical and legal advice
154 and professional judgment may lead them to make recommendations
155 concerning the matter.

156 3. In the absence of clear evidence in the record that a staff member has lost
157 impartiality as a technical adviser, the City's need for consistent, coherent
158 and experienced advisers outweighs any claims of bias by the applicant.

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

161 J. **[CITY COUNCIL] APPEAL PANEL ACTION ON APPEALS**.

162 1. The Appeal Panel, with the consultation of the appellant, shall set a date
163 for the appeal.

164 2. The City Recorder shall notify the Property Owner and/or the Applicant of
165 the appeal date. The City Recorder shall obtain the findings, conclusions
166 and all other pertinent information from the Planning Department and shall
167 transmit them to the Appeal Panel.

168 3. The Appeal Panel may affirm, reverse, or affirm in part and reverse in part
169 any properly appealed decision of the Planning Commission. The Appeal
170 Panel may remand the matter to the appropriate body with directions for
171 specific Areas of review or clarification. Appeal Panel review of petitions of
172 appeal shall include a public hearing and be limited to consideration of
173 only those matters raised by the petition(s), unless the Panel by motion,
174 enlarges the scope of the appeal to accept information on other matters.

175 4. Staff must prepare written findings within fifteen (15) working days of the
176 Appeal Panel vote on the matter.

177 K. **CITY COUNCIL CALL-UP**. Within fifteen (15) calendar days of Final Action on
178 any project, the City Council, on its own motion, may call up any Final Action
179 taken by the Planning Commission or Planning Director for review by the
180 ~~[Council] the Appeal Panel. [Call-ups involving City Development may be heard~~
181 ~~by the Board of Adjustment at the City Council's request.]~~ The call-up shall
182 require the majority vote of the Council. Notice of the call-up shall be given to the
183 Chairman of the Commission and/or Planning Director by the Recorder, together
184 with the date set by the Council for consideration of the merits of the matter. The
185 Recorder shall also provide notice as required by Sections 15-1 -12 and 15-1-18
186 (K) herein. In calling a matter up, the Council may limit the scope of the call-up

187 hearing to certain issues. The City Council, with the consultation of the Applicant,
188 shall set a date for the call-up. The City Recorder shall notify the Applicant of the
189 call-up date. The City Recorder shall obtain the findings, and all other pertinent
190 information and transmit them to the Council.

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

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

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

208 N. **APPEAL FROM THE ~~[CITY COUNCIL]~~ APPEAL PANEL**. The Applicant or any
209 Person aggrieved by City action on the project may appeal the Final Action by

210 the ~~[City Council]~~ Appeal Panel to a court of competent jurisdiction. The decision
211 of the ~~[Council]~~ Appeal Panel stands, and those affected by the decision may act
212 in reliance on it unless and until the court enters an interlocutory or final order
213 modifying the decision.

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

223 P. ~~[No participating member of the Appeal Panel may entertain an appeal in which~~
224 ~~the participating member acted as the land use authority.] The Appeal Authority~~
225 ~~shall conduct the hearing in accordance with Utah Code Sections 10-9a-701(3)~~
226 ~~and (5), as amended.~~

227 HISTORY

228 *Adopted by Ord. 00-25 on 3/30/2000*

229 *Amended by Ord. 06-22 on 4/27/2006*

230 *Amended by Ord. 09-10 on 3/5/2009*

231 *Amended by Ord. 09-23 on 7/9/2009*

232 *Amended by Ord. 10-15 on 4/15/2010*

- 233 Amended by Ord. [12-37](#) on 12/20/2012
- 234 Amended by Ord. [14-37](#) on 7/17/2014
- 235 Amended by Ord. [15-35](#) on 10/12/2015
- 236 Amended by Ord. [15-53](#) on 12/17/2015
- 237 Amended by Ord. [16-15](#) on 3/24/2016
- 238 Amended by Ord. [2016-44](#) on 9/15/2016
- 239 Amended by Ord. [2017-04](#) on 2/16/2017
- 240 Amended by Ord. [2017-42](#) on 8/3/2017
- 241 Amended by Ord. [2018-46](#) on 8/2/2018
- 242 Amended by Ord. [2020-34](#) on 7/9/2020
- 243 Amended by Ord. [2022-16](#) on 5/26/2022