

**TOOELE COUNTY
ORDINANCE 2020-27**

**AN ORDINANCE AMENDING CHAPTER 8, ADMINISTRATIVE
HEARING OFFICER, OF TITLE 4, BOARDS AND COMMITTEES, OF
THE TOOELE COUNTY CODE**

WHEREAS, Tooele County recognizes the need to update and improve Chapter 8, *Administrative Hearing Officer*, of Title 4, *Boards and Committees*, of the Tooele County Code; and

WHEREAS, Tooele County desires to expand the scope and powers of the administrative hearing officer, specifically to adjudicate nonconforming use issues and violations of County ordinances; and

WHEREAS, Tooele County seeks to clarify and improve the procedures for hearings before the administrative hearing officer.

NOW, THEREFORE, BE IT ORDAINED BY THE LEGISLATIVE BODY OF TOOELE COUNTY, UTAH AS FOLLOWS:

SECTION I – CHAPTER AMENDED. Chapter 8, *Administrative Hearing Officer*, of Title 4, *Boards and Committees*, of the Tooele County Code is hereby amended to read as attached hereto, which attachment is, by this reference, made a part hereof.

SECTION II – REPEALER. Ordinances and resolutions in conflict herewith are hereby repealed to the extent of such conflict.

SECTION III – EFFECTIVE DATE. This ordinance shall become effective fifteen (15) days after its passage, provided it has been published, or at such publication date if more than fifteen (15) days after passage.


Tooele County
Ord. 2020-27

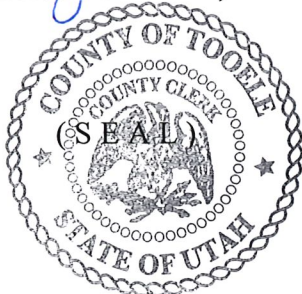
IN WITNESS WHEREOF the Tooele County Commission, which is the legislative body of Tooele County, passed, approved and enacted this ordinance this 15th day of Sept. 2020.

ATTEST:

TOOELE COUNTY COMMISSION:



MARILYN K. GILLETTE, Clerk


TOM TRIPP, Chairman



Commissioner Milne voted aye
Commissioner Thomas voted aye
Commissioner Tripp voted aye

APPROVED AS TO FORM:


SCOTT A. BROADHEAD
Tooele County Attorney

TOOELE COUNTY CODE
TITLE 4
BOARDS AND COMMITTEES

CHAPTER 8
ADMINISTRATIVE HEARING OFFICER

Section

4-8-1. Administrative hearing officer.

4-8-2. Powers and duties.

4-8-3. Appeals of land use ordinance decisions.

4-8-4. Variances.

4-8-5. District court review of administrative hearing officer's decisions.

4-8-6. Ex parte contact.

4-8-1. Administrative hearing officer.

(1) In order to provide for just and fair treatment in the administration of Tooele County ordinances, and to ensure that substantial justice is done, there is hereby created the office of administrative hearing officer to exercise the powers and duties provided in this chapter.

(2) The county commission may appoint as many administrative hearing officers as necessary.

(3) Administrative hearing officers are hereby designated as appeal authorities for Tooele County. (Reference UCA 17-27a-701)

4-8-2. Powers and duties.

(1) The administrative hearing officer shall hear and decide:

(a) citations alleging violations of county ordinances other than citations prosecuted in the district, justice or juvenile courts;

(b) appeals from administrative decisions applying the land use ordinance;

(c) special exceptions to the terms of the land use ordinance;

(d) variances from the terms of the land use ordinance;

(e) whether a nonconforming use exists, the scope of any such nonconforming use, and whether any such nonconforming use has been expanded, modified or abandoned; and

(f) disputed lot lines or disputed district boundary lines or similar questions.

(2) Procedures.

(a) The administrative hearing officer may administer oaths and compel the attendance of witnesses.

(b) All hearings before the administrative hearing officer shall comply with the requirements of Title 52, Chapter 4, Open and Public Meetings Act, of the Utah Code.

(c) The administrative hearing officer shall:

(i) keep minutes and recordings of his or her proceedings;

(ii) keep records of his or her examinations and other official actions; and

(iii) file his or her records in the Community Development Department.

(d) An administrative hearing officer's decision becomes final and effective when it is first issued, either orally or in writing, unless a different time is designated at the time the decision is issued.

(3) The administrative hearing officer:

(a) shall:

(i) act in a quasi-judicial manner; and

(ii) serve as the final arbiter of issues involving the interpretation or application of land use ordinances; and

(b) may not entertain an appeal of a matter in which the administrative hearing officer had first acted as the land use authority.

4-8-3. Appeals of land use ordinance decisions.

(1) (a) Any person or entity adversely affected by a decision administering or interpreting a land use ordinance may appeal that decision by alleging that there is error in any order, requirement, decision or determination made by an official in the administration or interpretation of the land use ordinance.

(b) Appeals to the administrative hearing officer shall be made in writing and shall be filed with the Community Development Department within 10 business days of the decision administering or interpreting the land use ordinance.

(2) The person or entity making the appeal has the burden of proving that an error has been made.

(3) Only decisions applying the land use ordinance may be appealed to the administrative hearing officer. A person may not appeal, and the administrative hearing officer may not consider, land use ordinance amendments.

(4) Appeals may not be used to waive or modify the terms or requirements of the land use ordinance.

4-8-4. Variances.

(1) Any person or entity desiring a waiver or modification of the requirements of the land use ordinance as applied to a parcel of property that he or she owns or leases or holds some other beneficial interest in may apply to the administrative hearing officer for a variance from the terms of the land use ordinance.

(2) (a) The administrative hearing officer may grant a variance only if:

(i) literal enforcement of the land use ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the land use ordinance;

(ii) there are special circumstances attached to the property that do not generally apply to other properties in the same zoning district;

(iii) granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district;

(iv) the variance will not substantially affect the general plan and will not be contrary to the public interest; and

(v) the spirit of the land use ordinance is observed, and substantial justice is done.

(b) In determining whether enforcement of the land use ordinance would cause unreasonable hardship under Subsection (2)(a)(i), the administrative hearing officer may not find an unreasonable hardship unless the alleged hardship:

- (i) is located on or associated with the property for which the variance is sought;
- (ii) comes from circumstances peculiar to the property and not from conditions that are general to the neighborhood; and
- (iii) is neither self-imposed nor economic.

(c) In determining whether there are special circumstances attached to the property under Subsection (2)(a)(ii), the administrative hearing officer may find that special circumstances exist only if the special circumstances:

- (i) relate to the hardship complained of; and
- (ii) deprive the property of privileges granted to other properties in the same zoning district.

(3) The applicant shall bear the burden of proving that all of the conditions justifying a variance have been met.

(4) Variances run with the land.

(5) The administrative hearing officer may not grant use variances.

(6) In granting a variance, the administrative hearing officer may impose additional requirements on the applicant that will:

- (a) mitigate any harmful effects of the variance; or
- (b) serve the purpose of the standard or requirement that is waived or modified.

4-8-5. District court review of administrative hearing officer's decisions.

(1) Any person adversely affected by any decision of an administrative hearing officer may petition the district court for a review of that decision, as provided in Utah Code Ann. §17-27a-801 et seq.

(2) In the petition, the plaintiff may only allege that the administrative hearing officer's decision was arbitrary, capricious, or illegal.

(3) The petition is barred unless it is filed within 30 days after the administrative hearing officer's decision is final.

(4) The administrative hearing officer shall transmit to the reviewing court the record of his or her proceedings, including his or her minutes, findings, orders and, if available, a true and correct transcript of his or her proceedings. If the proceeding was recorded, a transcript of that recording is a true and correct transcript for purposes of this subsection.

(5) If there is a record, the district court's review is limited to the record provided by the administrative hearing officer. The court may not accept or consider any evidence outside the administrative hearing officer's record unless that evidence was offered to the administrative hearing officer and the court determines that it was improperly excluded by the administrative hearing officer.

(6) If there is no record, the court may call witnesses and take evidence.

(7) The court shall affirm the decision of the administrative hearing officer if the decision is supported by substantial evidence in the record.

(8) The filing of a petition does not stay the decision of the administrative hearing officer. Before filing the petition, the aggrieved party may petition the administrative hearing officer to stay his or her decision. Upon receipt of a petition to stay, the administrative hearing officer may

order his or her decision stayed pending district court review if the administrative hearing officer finds it to be in the best interest of the county. After the petition is filed, the petitioner may seek an injunction staying the administrative hearing officer's decision.

4-8-6. Ex parte contact.

(1) Ex parte contact between an administrative hearing officer and parties or their representatives is prohibited. This prohibition shall also include contact with plaintiffs who have filed suit against Tooele County, claimants who have served a Notice of Claim on Tooele County, and defendants in actions filed by Tooele County, such as those in violation of provisions of the Tooele County Code or the Tooele County Land Use Ordinance.

(2) If ex parte contact occurs, it shall be disclosed by the administrative hearing officer who had such contact and who shall then neither participate in the discussion nor render a decision in the matter.

(3) Receipt of written information regarding an active request for a hearing, variance, appeal of administrative decision, or special exception shall be permitted, provided such written information is disclosed by the administrative hearing officer and submitted as a part of the record.

TOOELE COUNTY CODE
TITLE 4
BOARDS AND COMMITTEES

CHAPTER 8
ADMINISTRATIVE HEARING OFFICER

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4-8-6. Ex parte contact.

4-8-1. Administrative hearing officer.

(1) In order to provide for just and fair treatment in the administration of ~~the~~ Tooele County ~~zoning~~ ordinances, and to ensure that substantial justice is done, there is hereby ~~appointed~~ ~~an~~ created the office of administrative hearing officer to exercise the powers and duties provided in this chapter.

(2) The county commission may appoint as many administrative hearing officers as necessary.

(3) Administrative hearing officers are hereby designated as appeal authorities for Tooele County. (Reference UCA 17-27a-701)

4-8-2. Powers and duties.

(1) The administrative hearing officer shall hear and decide:

(a) citations alleging violations of county ordinances other than citations prosecuted in the district, justice or juvenile courts;

~~(ab)~~ appeals from zoning administrative decisions applying the zoning land use ordinance;

~~(bc)~~ special exceptions to the terms of the zoning land use ordinance; and

~~(ed)~~ variances from the terms of the zoning land use ordinance;

(e) whether a nonconforming use exists, the scope of any such nonconforming use, and whether any such nonconforming use has been expanded, modified or abandoned; and

(f) disputed lot lines or disputed district boundary lines or similar questions.

~~(2) The administrative hearing officer shall not make determinations regarding the existence, expansion, or modification of nonconforming uses. Procedures.~~

(a) The administrative hearing officer may administer oaths and compel the attendance of witnesses.

(b) All hearings before the administrative hearing officer shall comply with the requirements of Title 52, Chapter 4, Open and Public Meetings Act, of the Utah Code.

(c) The administrative hearing officer shall:

(i) keep minutes and recordings of his or her proceedings;

(ii) keep records of his or her examinations and other official actions; and

(iii) file his or her records in the Community Development Department.

(d) An administrative hearing officer's decision becomes final and effective when it is first issued, either orally or in writing, unless a different time is designated at the time the decision is issued.

~~(3) The administrative hearing officer may interpret the zoning maps and pass upon disputed questions of lot lines, district boundary lines, or similar questions as they arise in the administration of the zoning regulations.~~

~~(4) An~~ The administrative hearing officer:

(a) shall:

(i) act in a quasi-judicial manner; and

(ii) serve as the final arbiter of issues involving the interpretation or application of land use ordinances; and

(b) may not entertain an appeal of a matter in which the administrative hearing officer, ~~or any participating member,~~ had first acted as the land use authority.

4-8-3. Appeals of land use ordinance decisions.

(1) (a) ~~An applicant or any other~~ Any person or entity adversely affected by a decision administering or interpreting a zoning land use ordinance may appeal that decision ~~applying the zoning ordinance~~ by alleging that there is error in any order, requirement, decision or determination made by an official in the administration or interpretation of the zoning land use ordinance.

(b) Appeals to the administrative hearing officer shall be made in writing and shall be filed with the ~~county department of engineering~~ Community Development Department within ~~30~~ 10 business days of the decision administering or interpreting a zoning the land use ordinance.

(2) The person or entity making the appeal has the burden of proving that an error has been made.

(3) Only decisions applying the zoning land use ordinance may be appealed to the administrative hearing officer. A person may not appeal, and the administrative hearing officer may not consider, ~~any zoning land use~~ ordinance amendments.

(4) Appeals may not be used to waive or modify the terms or requirements of the zoning land use ordinance.

4-8-4. Variances.

(1) Any person or entity desiring a waiver or modification of the requirements of the zoning land use ordinance as applied to a parcel of property that he ~~or she~~ owns, ~~or~~ leases, ~~or in which he~~ holds some other beneficial interest in may apply to the administrative hearing officer for a variance from the terms of the zoning land use ordinance.

(2) (a) The administrative hearing officer may grant a variance only if:

(i) literal enforcement of the zoning land use ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning land use ordinance;

(ii) there are special circumstances attached to the property that do not generally apply to other properties in the same zoning district;

(iii) granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district;

(iv) the variance will not substantially affect the general plan and will not be contrary to the public interest; and

(v) the spirit of the zoning land use ordinance is observed, and substantial justice is done.

(b) (i) In determining whether ~~or not~~ enforcement of the zoning land use ordinance would cause unreasonable hardship under Subsection (2)(a)(i), the administrative hearing officer may not find an unreasonable hardship unless the alleged hardship:

~~1)(i)~~ is located on or associated with the property for which the variance is sought; ~~and~~

~~2)(ii)~~ comes from circumstances peculiar to the property; and not from conditions that are general to the neighborhood; and

~~(iii) In determining whether or not enforcement of the zoning ordinance would cause unreasonable hardship under subsection (2)(a), the administrative hearing officer may not find an unreasonable hardship if the hardship is neither self-imposed or nor economic.~~

(c) In determining whether ~~or not~~ there are special circumstances attached to the property under Subsection (2)(a)(ii), the administrative hearing officer may find that special circumstances exist only if the special circumstances:

(i) relate to the hardship complained of; and

(ii) deprive the property of privileges granted to other properties in the same zoning district.

(3) The applicant shall bear the burden of proving that all of the conditions justifying a variance have been met.

(4) Variances run with the land.

(5) The administrative hearing officer may not grant use variances.

(6) In granting a variance, the administrative hearing officer may impose additional requirements on the applicant that will:

(a) mitigate any harmful effects of the variance; or

(b) serve the purpose of the standard or requirement that is waived or modified.

4-8-5. District court review of administrative hearing officer's decisions.

(1) Any person adversely affected by any decision of an administrative hearing officer may petition the district court for a review of ~~the~~ that decision, as provided in Utah Code Ann. §17-27a-801 et seq.

(2) In the petition, the plaintiff may only allege that the administrative hearing officer's decision was arbitrary, capricious, or illegal.

(3) The petition is barred unless it is filed within 30 days after the administrative hearing officer's decision is final. ~~As a condition precedent to judicial review, each adversely affected person shall timely and specifically challenge a land use authority's decision, in accordance with this title.~~

(4) The administrative hearing officer shall transmit to the reviewing court the record of ~~its~~ his or her proceedings, including ~~its~~ his or her minutes, findings, orders and, if available, a true

and correct transcript of its his or her proceedings. If the proceeding was ~~tape~~ recorded, a transcript of that ~~tape~~ recording is a true and correct transcript for purposes of this subsection.

(5) If there is a record, the district court's review is limited to the record provided by the administrative hearing officer. The court may not accept or consider any evidence outside the administrative hearing officer's record unless that evidence was offered to the administrative hearing officer and the court determines that it was improperly excluded by the administrative hearing officer.

(6) If there is no record, the court may call witnesses and take evidence.

(7) The court shall affirm the decision of the administrative hearing officer if the decision is supported by substantial evidence in the record.

(8) The filing of a petition does not stay the decision of the administrative hearing officer. Before filing the petition, the aggrieved party may petition the administrative hearing officer to stay its his or her decision. Upon receipt of a petition to stay, the administrative hearing officer may order its his or her decision stayed pending district court review if the administrative hearing officer finds it to be in the best interest of the county. After the petition is filed, the petitioner may seek an injunction staying the administrative hearing officer's decision.

4-8-6. Ex parte contact.

(1) ~~Ex parte contact between an administrative hearing officer and opposing parties involved in litigation with Tooele County involving land use issues shall be~~ or their representatives is prohibited. ~~Appeal authorities shall not participate in site or office visits, electronic communication, written communication, or verbal conversation either face-to-face or over the telephone, with any individual or any representative of a company or entity involved in legal proceedings with Tooele County involving land use issues. This prohibition shall also include contact with plaintiffs who have filed suit against Tooele County, claimants who have served a Notice of Claim on Tooele County, and defendants in actions filed by Tooele County, such as those in violation of provisions of the Tooele County Code or the Tooele County Land Use Ordinance.~~

(2) ~~Appeal authorities shall be restricted from ex parte contact, including site or office visits, electronic communication, written communication, and verbal conversation either face-to-face or over the telephone, with any individual or representative of a company or entity when such interaction involves a request for hearings, variances, appeals of administrative decisions, or special exceptions. This restriction on ex parte contact applies to all variances, appeals of administrative decisions, or special exceptions after an application for such is filed with the Tooele County Engineering Department, while the application is under review by the administrative hearing officer or while the application is under appeal, if an appeal is filed. Appeal authorities shall not participate in ex parte contact with individuals or representatives of a company or entity opposed to a request for a hearing, variance, appeal of administrative decision, or special exception.~~

~~(3) If ex parte contact as described in Subsections (1) or (2) occurs, it shall be disclosed by the administrative hearing officer who had such contact and who shall then neither participate in the discussion nor render a decision on in the matter.~~

(43) Receipt of written information regarding an active request for a hearing, variance, appeal of administrative decision, or special exception shall be permitted, provided such written information is disclosed by the administrative hearing officer and submitted as a part of the record.