

**ORDINANCE #2017-23**

**AN ORDINANCE TO AMEND CHAPTER 17.72 OF THE MOAB MUNICIPAL CODE TO AUTHORIZE A HEARING OFFICER TO DECIDE LAND USE CODE APPEALS AND MODIFYING VARIOUS APPEAL PROCEDURES**

The following describe the intent and purpose of the City of Moab in the adoption of this ordinance.

- a. The City currently authorizes an Appeal Authority comprised of five persons to hear and decide certain land use appeals under the Moab Municipal Code. Given the limited number of appeals and the difficulty in filling volunteer positions generally, the City has had difficulty establishing an Appeal Authority.
- b. U.C.A. § 10-9a-701 authorizes municipalities to establish appeal authorities to hear and decide matters interpreting land use ordinances.
- c. The City finds that it is in the public interest to designate a person with the requisite skill and knowledge of land use matters and the conduct of adjudicatory hearings to serve as a hearing officer.
- d. The City additionally finds that it will serve the public interest to provide a forum for the adjudication of municipal land use matters that does not require court action.
- e. Last, the City finds that it is appropriate to revisit the types of land use approvals which should be subject to an appeal authority process, and this ordinance updates those determinations to provide for efficient review.

**NOW, THEREFORE,** the City Council repeals Sections 17.72.100 through 170 and replaces same as follows:

**17.72.100 Matrix of Advisory, Land Use Authority, and Appeal Bodies.**

A. The Appeal Authority is authorized to hear and decide the following appeals, which are designated by the term AA in the column labelled Appeal Body. As used in this matrix, PC means Planning Commission; CC means City Council; DC means District Court; BC means the Boundary Commission; and NA means Not Applicable.

<b>Application/Action</b>	<b>Advisory Body</b>	<b>Land Use Authority</b>	<b>Appeal Body</b>	<b>Required Public Hearing</b>
Zone Change	Planning Commission (PC)	City Council (CC)	District Court (DC)	Yes, PC
Land Use Map Amendment or Text Amendment	PC	CC	DC	Yes, PC

General Plan Amendment	CC	CC	DC	Yes, PC
Annexation	PC	CC	Boundary Commission/DC	Yes, CC
Pre-Annexation Agreement	NA	CC	DC	No
Conditional Use	PC	CC	DC	No
Site Plan Tier I	NA	Staff	AA	No
Site Plan Tier II	Staff	PC	AA	No
Master Planned Development Prelim. MPD	PC	CC	AA	Yes, PC
Master Planned Development Final MPD	PC	CC	AA	No
Zoning Code Interpretation	NA	Zoning Administrator	AA	No
Non-Conforming Use	NA	Zoning Administrator	AA	No
Variances	Zoning Administrator	AA	DC	No
Flood Plain Ordinance	NA	Zoning Administrator	AA	No
Hillside Ordinance	PC	CC	AA	No
Planned Unit Development	PC	CC	AA	Yes, PC
Subdivision, Less than Five Lots	Staff	PC	AA	No
Subdivision, Five Lots or More	PC	CC	AA	Yes, PC
Home Occupation	NA	Zoning Administrator	AA	No
Accessory Use or Structure	NA	Zoning Administrator	AA	No
Secondary Dwelling Unit	NA	Zoning Administrator	AA	No
Geologic Hazard Determination		Same as for the Underlying Application	Expert Panel Per MMC 17.72.230	No

B. In the event of any conflict between the designation of the applicable appeal authority in this Section 100 and the terms of any other provision of the Moab Municipal Code, the terms of this Section shall control.

C. Where the Appeal Authority is not designated as the appellate body, review shall be obtained by filing an action in the District Court.

#### 17.17.120 Hearing Officer to Serve as Appeal Authority.

A. The Appeal Authority shall be comprised of a single Hearing Officer appointed by the Mayor with the advice and consent of the City Council. The person appointed to serve as the hearing officer shall be a person with: a) knowledge of the Moab Municipal Code and zoning matters, generally; and b) knowledge of adjudicatory hearing procedures and the due process rights of land use applicants and other hearing participants.

B. The Hearing Officer shall be paid for services performed pursuant to a contract and at such rates as shall be approved by the City Council. The Hearing Officer shall serve for a term of four (4) years from the date of appointment.

#### 17.72.130 Jurisdiction.

A. As a condition precedent to obtaining judicial review, each adversely affected party shall challenge the decision of the applicable Land Use Authority by filing an appeal under this Chapter. The Appeal Authority shall have jurisdiction to hear and decide only the following:

1. Appeals of decisions interpreting Chapter 17 (zoning), and Chapter 16 (subdivisions), and Chapter 15.40 (flood plain matters) of the Moab Municipal Code (MMC) as shown in the appeal matrix in § 17.72.100.

B. In any appeal where a party claims that the land use authority reached a decision in violation of state or federal laws, as opposed to provisions of the Moab Municipal Code, the Appeal Authority shall not have jurisdiction to decide the matter, and review shall be obtained before the District Court.

#### 17.72.140 Notice of Appeal and Appeal Fee.

A. Any person adversely affected by a decision which is within the jurisdiction of the Appeal Authority may appeal under this Chapter. An appeal shall be commenced by filing a written Notice of Appeal and paying the applicable fee, as set by the Council from time to time. The City must receive the Notice of Appeal and appeal fee no later than thirty (30) calendar days from the date of the decision by the City which is the subject of the appeal.

B. An untimely appeal shall be dismissed with prejudice.

#### 17.72.150 Conduct of Hearings.

A. All hearing shall be conducted in a quasi-judicial manner and be recorded. The Hearing Officer shall conduct and control the hearing, administer oaths, and receive all evidence. Any interested party may offer evidence in the form of live testimony or by providing documentary or other forms of evidence. The Utah Rules of Evidence shall not apply; however the Hearing Officer has discretion to exclude from consideration any evidence which is deemed to be immaterial, irrelevant, or unreliable.

Additionally, the Hearing Officer has discretion to weigh the credibility and demeanor of witnesses who provide testimony where the appeal centers on disputed issues of fact.

B. Hearings shall be scheduled with reasonable promptness, depending on the scope of the issues subject to review. The Hearing Officer may enter pre-hearing orders with respect to discovery, disclosure of witnesses and exhibits, or the like.

C. Any interested party may appear individually or be represented by an attorney.

D. The appealing party has the burden of proof to show that the decision or order of the City was unlawful, arbitrary, or capricious.

E. All hearings shall be open to the public and notice of same shall be provided as otherwise provided for other public meeting of City bodies.

F. The decision of the Appeal Authority shall be in writing, and shall contain findings of fact and conclusions of law. The Appeal Authority may affirm the decision, in whole or in part; reverse the decision, in whole or in part; or modify the decision as is warranted by the law and the evidence.

#### 17.72.160 Stay of Decision.

A. The filing of an appeal under this Chapter does not stay the decision that is the subject of the appeal. To obtain a stay the appealing party must separately file a written request for stay with the Appeal Authority, which must show that the appealing party will suffer irreparable harm if the stay is not granted. The request for stay should be accompanied by the evidence, documents, or other information the appellant relies upon in support of its request for stay.

#### 17.72.170 Exhaustion of Administrative Remedies; District Court Review.

A. If a matter is within the jurisdiction of the Appeal Authority, the interested party must exhaust all of its administrative remedies by seeking review and a decision by the Appeal Authority prior to seeking review by the District Court. Every theory of relief predicated upon the interpretation of the Moab Municipal Code must first have been presented to the Appeal Authority to be preserved for review by the District Court.

B. A party wishing to appeal the final decision of the Appeal Authority must commence an action in the District Court no later than thirty (30) calendar days from the date of the final written decision by the Appeal Authority. A judicial action which is not commenced within that time shall be dismissed with prejudice.

C. Review by the District Court shall be based solely on the record before the Appeal Authority. The Appeal Authority shall promptly transmit the record of its proceedings, including the transcript of the recorded hearing, all exhibits and other evidence, and all orders entered in the proceeding. The cost of preparing the transcript shall be paid by the appellant prior to transmittal of the record to the District Court.

D. In any district court proceeding under this Chapter the appealing party has the burden of proof to show that the decision of the Appeal Authority was arbitrary, capricious, or illegal.

**PASSED AND APPROVED** by a majority of the City of Moab City Council. This ordinance shall take effect no later than twenty (20) days from the date of publication.

SIGNED:

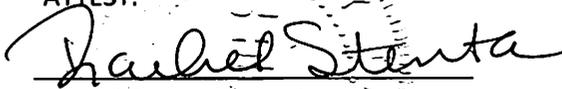
  
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David L. Sakrison; Mayor

7-25-17

Date

ATTEST:

  
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Rachel Stenta, Recorder

