ORDINANCE NO. 2012-09

AN ORDINANCE CHANGING MIDVALE CITY’S LAND USE APPEAL AUTHORITY FROM A FIVE MEMBER BOARD TO AN APPEALS AND VARIANCE HEARING OFFICER THROUGH REPEALING AND RESTATING CHAPTER 17-5 AND REVISING LANGUAGE IN CHAPTERS 17-1, 17-2, 17-3 AND 17-4 TO BE CONSISTENT WITH THIS CHANGE AND STATE LAW; ALSO PROVIDING A SAVING CLAUSE AND AN EFFECTIVE DATE FOR THE ORDINANCE.

WHEREAS, Section 10-9a-701 Utah Code Annotated requires and permits a city, by ordinance, to establish an appeal authority; and

WHEREAS, this appeal authority shall hear and decide requests for variances from the terms of the land use ordinances and shall hear and decide appeals from decisions applying the land use ordinances; and

WHEREAS, Chapter 17-5 of the Midvale City Zoning Ordinance (Title 17) created a five member Board of Adjustment to serve as the primary appeal authority; and

WHEREAS, Chapter 17-3 of the Midvale City Zoning Ordinance (Title 17) provided for the Planning Commission and City Council to hear and decide appeals regarding applications for administrative conditional use permits, conditional use permits, and small scale master plan developments; and

WHEREAS, hearing and deciding variances and appeals requires an expertise in land use principles and conducting quasi-judicial hearings, as well as having persons who are neutral and unbiased; and

WHEREAS, the Planning Commission held a public hearing on February 23, 2011, to review this issue, with such meeting being preceded by notice through publication in the Salt Lake Tribune and Deseret News on February 9, 2011, and the Planning Commission forwarded a recommendation on such to the City Council on February 23, 2011; and

WHEREAS, the City Council of Midvale City, Utah held a public hearing on July 10, 2012, which meeting was preceded by notice through publication in the Salt Lake Tribune and Deseret News on June 26, 2012; and

WHEREAS, the City Council has taken into consideration citizen testimony, advice of City Staff, and the Planning Commission recommendation, and has determined that this text amendment is appropriate and within the best interests in protecting and promoting the health, safety, and welfare of Midvale City.

NOW, THEREFORE, BE IT ORDAINED by the City Council of Midvale City, Utah as follows:
Section 1. Chapter 17-5 of the Midvale City Zoning Ordinance (Title 17) shall be repealed and restated as included in ATTACHMENT A of this document.

Section 2. The following chapters and sections of the Midvale City Zoning Ordinance (Title 17) are hereby amended as included in ATTACHMENT B of this document.

Section 3. If any part of this ordinance or the applications thereof to any person or circumstances shall, for any reason, be adjudged by a court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remainder of this ordinance or the application thereof to other persons and circumstances, but shall be confined to its operation to the section, subdivision, sentence or part of the section and the persons and circumstances directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the City Council that this section would have been adopted if such invalid section, provisions, subdivision, sentence or part of a section or application had not been included.

Section 4. This ordinance shall be effective upon publication of a summary thereof.

PASSED AND APPROVED this 10th day of July, 2012.

JoAnn B. Seghini, Mayor

ATTEST:

Rori Andrea, MMC
City Recorder

Date of first publication: July 15, 2012

Voting by City Council

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ATTACHMENT A

Chapter 17-5
APEAL AUTHORITY

Sections:
17-5-1 Establishment of Appeal Authority
17-5-2 Powers and duties
17-5-3 Appointment, qualifications, term.
17-5-4 Organization.

17-5-1 Establishment of Appeal Authority.

Pursuant to the Utah Code, Municipal Land Use, Development, and Management Act, Midvale City is required to establish one or more appeal authorities to hear and decide variances and appeals regarding land use ordinances. Based on this, the City has created an Appeals and Variance Hearing Officer ("Hearing Officer") position to fulfill these duties.

17-5-2 Powers and Duties.

The Hearing Officer shall act in a quasi-judicial manner, and shall serve as a final arbiter of issues involving the interpretation or application of land use ordinances. The powers and duties of the Hearing Officer shall be as follows:

A. To hear and decide appeals from decisions applying the provisions of this Title; and

B. To hear and decide requests for variances from the terms of the zoning ordinance, pursuant to the standards of Section 17-5-4.

17-5-3 Appointment, Qualifications and Term.

The appointment of the Hearing Officer shall be made in the following manner:

A. The appointment shall be recommended by the City Attorney and Community and Economic Development Director for appointment by the Mayor with the advice and consent of the City Council.

B. The Hearing Officer shall be appointed for a two year term, and, may thereafter, be appointed for additional two year terms.

C. The Hearing Officer shall have legal training and experience, with qualifications to conduct administrative or quasi-judicial hearings regarding land use, land development, and land use regulatory codes.
D. In the case of a vacancy in the Hearing Officer position, a replacement shall be promptly appointed to fill the unexpired term of the previous Hearing Officer. This appointment shall be made in the same manner and with the same required qualifications as stated above.

E. The Mayor may appoint a Hearing Officer pro tempore when necessitated by the absence, unavailability, incapacity or disqualification of the regularly appointed Hearing Officer. These appointments shall be made in the same manner and the individuals shall have the same required qualifications as stated above.

17-5-4 Organization.

The Hearing Officer shall organize and implement the powers and duties of the position as follows:

A. The Hearing Officer shall adopt reasonable policies and procedures in accordance with City Ordinances and State Law to govern the functioning of the position and the conduct of meetings. Such policies and procedures shall be approved by the City Council.

B. The Hearing Officer shall act in a quasi-judicial manner and respect due process from all parties.

C. Public hearings and public meetings are not required, provided notice is given to all affected parties of any proceedings or process where the issue is to be heard and evidence is to be gathered.

D. The Hearing Officer shall hold meetings as needed to consider applications within the powers and duties defined in Section 17-5-2 above.

E. Decisions made by the Hearing Officer shall become effective upon the execution of written findings of fact and conclusions of law on the matter in question.
17-1-4 How to use this title.

E. Variances/Rezones. If the applicant cannot meet the standards described in subsection B of this section, the applicant should determine whether there are alternative development options or any exceptions to the general rules that may accommodate the project. If the project does not meet standards and other development alternatives are not possible, then there are two methods available to attempt to vary the standards: the variance process and a petition for rezone.

1. The variance process is generally used for existing development, or development of an existing, validly created lot. The board-of-adjustment appeal authority shall issue a variance upon the applicant’s demonstration that the application meets each variance standard detailed in Chapter 17-5.

2. A petition for rezone is a request to change the development standards for the property in question. The process for requesting a rezone is detailed in Section 17-3-1. Rezones are discretionary legislative acts.

17-2-1 “A” definitions.

“Apiary” means the assembly of one or more colonies of bees at a single location.

“Appeals and Variance Hearing Officer” means an independent contractor appointed by the City to fill the position of an appeal authority with the powers and duties as designated by Chapter 17-5.

“Appeal authority” means the person, board, commission, agency, or other body designated by ordinance to decide an appeal of a decision of a land use application or a variance.

17-2-2 “B” definitions.

“Block” means a tract of land bounded by streets, or by a combination of streets and public parks, cemeteries, railroad rights-of-way, shore lines of water ways, or city boundary lines, as shown on an official plat.

“Board of adjustment” means the quasi-judicial appeal body with the powers and duties as designated by Chapter 17-5.

Bond, landscape. See “Landscape bond.”
Chapter 17-3
ADMINISTRATION AND ENFORCEMENT

Sections:

17-3-1 Amendments to the zoning code or map.
17-3-2 Reviewing bodies.
17-3-3 Allowed use review.
17-3-4 Conditional use review.
17-3-5 Large scale master planned development (MPD).
17-3-6 Small scale master planned development (MPD).
17-3-7 Sign permit review.
17-3-8 Telecommunications.
17-3-9 Notice.
17-3-10 Termination of projects for inaction.
17-3-11 Penalties.
17-3-12 Licensing.
17-3-13 Variance process.
17-3-14 Appeals and reconsideration process.
17-3-15 Constitutional takings—Review and appeal.
17-3-16 Notice matrix.

17-3-2 Reviewing bodies.

The community and economic development department (CEDD), the board of adjustment (BOA), the appeal authority (AA), the planning commission (PC), and the city council (CC) each have the following primary authority to review applications for compliance with this title:

| Table 17-3-2 |
| Reviewing Bodies |
| Type of Review | CEDD | BOA | AA | PC | CC |
| Administrative Lot Line Adjustment Appeal | X | | | |
| Allowed Use Appeal | X | | X | |
| Business License | X | | | |
| Conditional Use Appeal | X | X | | |
| Conditional Use-Administrative Appeal | X | | X | |

Ordinance No. 2012-09
A. No building permit shall be valid for any structure unless the plans for the proposed structure have been submitted to and have been approved by the community and economic development department.

B. No new use shall be valid on any property unless the use is allowed in the zone or unless a conditional use permit has been properly issued for the use.

C. No subdivision map shall be recorded unless all conditions of subdivision approval have been satisfied or otherwise secured.

D. The community and economic development department initially reviews all complete applications requiring action by the planning commission and recommends approval or rejection to the planning commission, according to the type of application filed. The community and economic development department may process one application at a time per property or may process coordinated applications simultaneously.

E. The community and economic development department issues permits for allowed uses, administrative lot line adjustments, administrative conditional uses, and building permits and issues business licenses.

F. The planning commission reviews, and forwards a recommendation to the city council regarding, each application for subdivision approval, subdivision plat amendment, initial zoning, rezoning, condominium record of survey, master planned developments, and amendments to this title.

G. The board-of-adjustment appeal authority hears all requests for variances, special exceptions, modifications of noncomplying structures and zoning land use appeals (except appeals relating to conditional-use permits, administrative conditional-use permits and MPD's).

H. No review shall occur until all applicable fees are paid.
17-3-4 Conditional use review.

H. Appeals. Appeals must be pursuant to Section 17-3-13.14.

17-3-13 Variance Process.

Any person or entity desiring a waiver or modification of the requirements of the zoning ordinance as applied to a parcel of property that he owns, leases, or in which he holds some other beneficial interest may apply for a variance from the terms of the zoning ordinance.

A. Variance Criteria.

1. Standards. A variance may only be granted if all of the following conditions are met:
   a. Literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance;
   b. There are special circumstances attached to the property that do not generally apply to other properties in the same district;
   c. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district;
   d. The variance will not substantially affect the general plan and will not be contrary to the public interest; and
   e. The spirit of the zoning ordinance is observed and substantial justice done.

2. Unreasonable Hardship. In determining whether or not enforcement of the zoning ordinance would cause unreasonable hardship, the appeal authority may not find an unreasonable hardship if the hardship is self-imposed or economic. In addition, the appeal authority may not find an unreasonable hardship unless the applicant proves that the alleged hardship:
   a. Is located on or associated with the property for which the variance is sought;
   b. Comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood. Special circumstances must:
      i. Relate to the hardship complained of; and
      ii. Deprive the property of privileges granted to other properties in the same district.
3. The applicant shall bear the burden of proving that all of the conditions justifying a variance have been met.

4. The appeal authority may not grant a use variance.

5. Variances run with the land.

6. Additional Requirements. In granting a variance, the appeal authority may impose additional requirements on the applicant that will:
   a. Mitigate any harmful affects of the variance; or
   b. Serve the purpose of the standard or requirement that is waived or modified.

B. Process. The appeal authority shall review all applications for variance requests according to the following procedure:

1. Variance requests must be submitted to the community and economic development department. The applicant must pay all appropriate fees and must file a complete application, including an explanation of how all variance criteria has been met.

2. Notice/Posting. Upon receipt of a complete application, the community and economic development department shall set a meeting date with the appeal authority and shall provide reasonable notice as provided in Section 17-3-16.

3. The appeal authority shall consider the variance application in accordance with Section 17-3-13 A.

4. The appeal authority shall prepare written findings and a final decision on the variance request within thirty working days of the appeal authority meeting.

5. Appeal of Final Decision. The applicant or any person aggrieved by the final decision on the variance request may appeal to a court of competent jurisdiction within thirty days of the written decision. The decision shall stand, and those affected by the decision may act in reliance on it, unless and until a court enters an interlocutory or final order modifying or suspending the decision.

17-3-13 14 Appeals and reconsideration process.

The applicant, staff, or any other person with standing to challenge a decision administering or interpreting this title may appeal the decision as follows:
A. Zoning Code Interpretation and Administration. All city decisions which interpret or administer this title may be appealed to the board of adjustment appeal authority within ten days of final action by filing notice of appeal with the community and economic development department, except that:

1. Administrative Conditional Use Permit. The planning commission shall hear appeals of any decision by the community and economic development director regarding an application for administrative conditional use permit. The appeal must be filed with the community and economic development department within ten days of final action.

2. Conditional Use Permit/Small Scale MPD. The city council shall hear appeals of planning commission decisions with respect to a conditional use permit or small scale MPD. The appeal must be filed with the city recorder within ten days of the planning commission's final action.

B. Board of Adjustment Appeal Authority. The district court hears appeals of decisions of the board of adjustment appeal authority that are filed within thirty days of the final board written decision.

C. Standing to Appeal. The following persons have standing to appeal a final action:

1. Any person who submitted written comment or testified on a proposal before the community and economic development department or planning commission;

2. The owner of any property within three hundred feet 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.

D. Form of Appeals. Appeals must be filed with the community and economic development department and must be by letter or petition, with the name, address, and telephone number of the petitioner; his or her relationship to the project or subject property; and a comprehensive statement of the reasons for the appeal, including the specific provisions of law that are alleged to be violated by the action taken.

E. Written Findings Required. The appellate body shall direct staff to prepare detailed written:

1. Findings of fact, which explain the circumstances of the body's decision; and
2. Conclusions of law in support of its decision.

F. Action on Appeals to a City Body - the Appeal Authority. The appeal authority shall comply with the following standards for all appeals to a city body under this title:

1. The city appeal authority, in consultation with the appellant, shall set a date for the appeal;

2. The city appeal authority shall notify the owner of the appeal date;

3. The city body hearing the appeal - the appeal authority shall consider the written appeal, final action and all other pertinent information from the appellant and the community and economic development department;

4. The city-body hearing the appeal - the appeal authority may affirm, reverse, or affirm in part and reverse in part any properly appealed decision or may remand the matter with directions for specific areas of review or clarification. Appellate review is limited to consideration of only those matters raised in the written appeal and the staff’s responses thereto, unless the body appeal authority, by motion, enlarges the scope of the appeal to accept information on other matters; and

5. Staff The appeal authority shall prepare written findings for review and approval within thirty working days of the appellate decision.

G. City Council Call-Up. Within fifteen calendar days of final action on any project, the city council, on its own motion, may call up for review any final action taken by the planning commission. The city recorder shall give prompt notice of the call-up to the chairman of the planning commission 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 Section 17-3-9. In calling a matter up, the council may limit the scope of the hearing to certain issues.

H. Notice. Notice of all appeals or call-ups shall be given by: to all affected parties of any proceedings or process where the issue is to be heard and evidence is to be gathered:

1. Publishing the matter once at least seven days prior to the hearing in a newspaper having general circulation in the city; and

2. By mailing courtesy notice seven days prior to the hearing to all parties who requested mailed courtesy notice for the original action.
I. Stay of Approval Pending Review of Appeal. Upon call-up or appeal, any approval granted by the planning commission or staff will be suspended until the reviewing body has taken final action on the appeal.

J. Appeal From the City Council. The applicant or any person aggrieved by city action on the project may appeal from the final action of the board of adjustment or city council appeal authority to a court of competent jurisdiction. The decision shall stand, and those affected by the decision may act in reliance on it, unless and until a court enters an interlocutory or final order modifying or suspending the decision.

K. Finality of Action. Final action occurs when the deciding body has adopted and executed written findings of fact and conclusions of law on the matter in question.

17-3-14 15 Constitutional takings—Review and appeal.

To promote the protection of private property rights and to prevent the physical taking or exaction of private property without just compensation, the city council and all commissions and boards shall adhere to the following before authorizing the seizure or exaction of property:

A. Takings Review Procedure. Prior to any proposed action to exact or seize property, the city attorney shall review the proposed action to determine if a constitutional taking requiring "just compensation" would occur. The city attorney shall review all such matters pursuant to the guidelines established in subsection B of this section. Upon identifying a possible constitutional taking, the city attorney shall, in a confidential, protected writing, inform the council, commission or board of the possible consequences of its action. This opinion shall be advisory only. No liability shall be attributed to the city for failure to follow the recommendation of the city attorney.

B. Takings Guidelines. The city attorney shall review whether the action constitutes a constitutional taking under the Fifth or Fourteenth Amendments to the Constitution of the United States, or under Article I, Section 22 of the Utah Constitution. The city attorney shall determine whether the proposed action bears an essential nexus to a legitimate governmental interest and whether the action is roughly proportionate and reasonably related to the legitimate governmental interest. The city attorney shall also determine whether the action deprives the private property owner of all reasonable use of the property. These guidelines are advisory only and shall not expand nor limit the scope of the city's liability for a constitutional taking.

C. Appeal. Any owner of private property who believes that his/her property is proposed to be "taken" by an otherwise final action of the city may appeal the city's decision to the takings appeal board appeal authority within thirty days after the decision is made. The appeal must be filed in writing with the city recorder. The takings appeal board appeal authority shall hear and
approve and remand or reject the appeal within fourteen calendar days after the appeal is filed. The takings-appeal-board appeal authority, with advice from the city attorney, shall review the appeal pursuant to the guidelines in subsection B of this section. The decision of the takings appeal-board appeal authority shall be in writing and a copy given to the appellant and to the city council, commission or board that took the initial action. The takings-appeal-board-appeal authority’s rejection of an appeal constitutes exhaustion of administrative remedies rendering the matter suitable for appeal to a court of competent jurisdiction.

D. Takings Appeal Board. There is created a three-member takings appeal board. The mayor shall appoint three current members of the board of adjustment to serve on the takings appeal board. If, at any time, three members of the board of adjustment cannot meet to satisfy the time requirements stated in subsection C of this section, the mayor shall appoint a member or sufficient members to fill the vacancies.

17-3-15 16 Notice matrix.

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<td>To owners within 300 ft., prior to the hearing before the planning commission.</td>
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<tr>
<td>Zoning and Rezoning</td>
<td>To owners of the property and owners within 300 ft. prior to each hearing before the planning commission and city council.</td>
<td>Posted; published Mailing</td>
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<td>Zoning Ordinance Amendments</td>
<td>Prior to each hearing before the planning commission and city council.</td>
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<td>General Plan Amendments</td>
<td>Prior to each hearing before the planning commission and city council.</td>
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<tr>
<td>Master Planned Developments</td>
<td>To owners within 300 ft. prior to the hearing before the planning commission.</td>
<td>Posted; mailing</td>
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<td>Appeals from Staff, Planning Commission and City Council Call-Up</td>
<td>To all parties who received mailed notice for the original planning commission meeting prior to the date set for the appeal or call-up meeting.</td>
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Variance Requests, Nonconforming Use Modifications
and Appeals to Board of Adjustment

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<th>Description</th>
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<td>To owners within 300 ft. prior to the hearing meeting before the board of adjustment appeal authority. To council prior to any final action.</td>
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Appeals

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<td>To all affected parties</td>
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Lot Line Adjustments:
Between two lots without a plat amendment

Need consent letters, as described on the CEDD Application form, from owners involved.
If application is turned down, then applicant will be notified of right to appeal to planning commission and of right to file a formal plat amendment application.

Preliminary and Final Subdivision Plat Applications

To owners within 300 ft. prior to the hearing before the planning commission and city council.

Condominium Applications (Record of Survey Plats)

To owners within 300 ft. prior to the hearing before the planning commission and city council.

Chapter 17-4
PLANNING COMMISSION

Sections:

17-4-1 Establishment of the commission.
17-4-2 Appointment—Term.
17-4-3 Powers and duties.
17-4-4 Organization.
17-4-5 Powers on appeal.

17-4-5 Powers on appeal.

The planning commission shall have the power to hear appeals of administrative conditional-use permits and staff interpretations of this title.
## PROOF OF PUBLICATION

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## AFFIDAVIT OF PUBLICATION

AS NEWSPAPER AGENCY COMPANY, LLC dba MEDIAONE OF UTAH LEGAL BOOKER, I CERTIFY THAT THE ATTACHED ADVERTISEMENT OF MIDVALE CITY PUBLIC NOTICE. Notice is hereby given that during a City Council meeting on June 19, 2012, the Midvale City Council adopted Ordinance No. 2012-09. FOR MIDVALE CITY, WAS PUBLISHED BY THE NEWSPAPER AGENCY COMPANY, LLC dba MEDIAONE OF UTAH, AGENT FOR THE SALT LAKE TRIBUNE AND DESERET NEWS, DAILY NEWSPAPERS PRINTED IN THE ENGLISH LANGUAGE WITH GENERAL CIRCULATION IN UTAH, AND PUBLISHED IN SALT LAKE CITY, SALT LAKE COUNTY IN THE STATE OF UTAH. NOTICE IS ALSO POSTED ON UTAHLEGALS.COM ON THE SAME DAY AS THE FIRST NEWSPAPER PUBLICATION DATE AND REMAINS ON UTAHLEGALS.COM INDEFINITELY.

PUBLISHED ON  
Start 07/24/2012  
End 07/24/2012  

SIGNATURE  
Dangeli M. Horn  

DATE  
7/25/2012  

THIS IS NOT A STATEMENT BUT A "PROOF OF PUBLICATION"  
PLEASE PAY FROM BILLING STATEMENT