



160 SOUTH MAIN  
FARMINGTON, UT 84025  
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## CITY COUNCIL MEETING NOTICE AND AGENDA

Notice is given that the Farmington City Council will hold a regular meeting on **Tuesday, October 17, 2023** at City Hall 160 South Main, Farmington, Utah. A work session will be held at 6:00 pm in Conference Room 3 followed by the regular session at 7:00 pm in the Council Chambers. The link to listen to the regular meeting live and to comment electronically can be found on the Farmington City website [www.farmington.utah.gov](http://www.farmington.utah.gov). If you wish to email a comment for any of the listed public hearings, you may do so to [dcarlile@farmington.utah.gov](mailto:dcarlile@farmington.utah.gov)

### **WORK SESSION – 6:00 p.m.**

- Appeal authority consolidation & removal of references to Board of Adjustment 3
- Discussion of regular session items upon request

### **REGULAR SESSION – 7:00 p.m.**

#### **CALL TO ORDER:**

- Invocation – Melissa Layton, Councilmember
- Pledge of Allegiance – Scott Isaacson, Councilmember

#### **PRESENTATION:**

- Genevieve Foster Spotlight 21
- Department Report by Public Works

#### **BUSINESS:**

- Zone Text Amendments regarding Historic Resources on the Farmington City Landmarks Register 23

#### **GOVERNING BODY REPORTS:**

- City Manager Report
- Mayor Anderson & City Council Reports

#### **ADJOURN**

**CLOSED SESSION** – Minute motion adjourning to closed session, for reasons permitted by law.

In compliance with the Americans with Disabilities Act, individuals needing special accommodations due to a disability, please contact DeAnn Carlile, City recorder at 801-939-9206 at least 24 hours in advance of the meeting.

*I hereby certify that I posted a copy of the foregoing Notice and Agenda at Farmington City Hall, Farmington City website [www.farmington.utah.gov](http://www.farmington.utah.gov) and the Utah Public Notice website at [www.utah.gov/pmn](http://www.utah.gov/pmn). Posted on October 12, 2023*

## CITY COUNCIL AGENDA

For Council Meeting:  
October 17, 2023

### **WORK SESSION:**

- Appeal authority consolidation & removal of references to Board of Adjustment
- Discussion of regular session items upon request.

## CITY COUNCIL STAFF REPORT WORK SESSION

To: City Council, Mayor  
 From: Paul Roberts, City Attorney  
 Date: October 10, 2023  
 Subject: APPEAL AUTHORITY CONSOLIDATION & REMOVAL OF REFERENCES TO BOARD OF ADJUSTMENT

### SUMMARY

Earlier this year we discussed moving administrative appeals from various appeal bodies and placing those appeals within the jurisdiction of an administrative hearing officer. This year all employee appeals were transferred to the AHO, as were reasonable accommodation appeals in the land use context.

Staff proposes forwarding ordinances that establish the following:

- Move nearly all administrative appeals to the AHO (see Table)
- Standardize the administrative hearing process by creating Chapter 3-7
- Eliminate references to the Board of Adjustment

### BACKGROUND

#### Administrative Appeals

The following table indicates the appeal authorities for certain administrative decisions. If a change will be proposed in the draft ordinance, then it will indicate a new appeal body on the right column. If it is proposed to keep it in the same place, then the column is blank for that item.

Decision	Appeal Authority	Section	New Appeal Body
Administrative Hearing Officer Order	District Court	1-6-180	
Constitutional Takings	Council	2-5-030	
Employee appeals	AHO	3-4-040	
Records request	City Manager	3-5-060	
Records appeal	State Records Comm.	3-5-070	
Impact fees (data-driven challenges)	Council	5-11-090	AHO

Business License Denial, Susp, Rev	City Manager	6-3-050	AHO
Solicitor Permit	Council	6-4-030	AHO
SOB License Denial	Council	6-6-120	AHO
SOB Licenses Suspension/Revocation	Council	6-6-150	AHO
Noise permits by ZA	City Manager	7-10-050	
Notice of Violation by CE	Comm Dev Dir	7-9-110	AHO
Contesting Notice of Nuisance Condition	City Manager	7-11-060	AHO
Sidewalk decisions by PW Dir	Council	8-2-070	
Excavation Permits	City Manager	8-5-032	AHO
Public Works stop order	Council	8-5-190	AHO
Water shut-off notices	Council	9-1-130	
Fire hydrant water use permit	Council	9-1-300	AHO
Secondary water system violations	Council	9-3-110	AHO
Utility Transportation Fund Fees	Mayor	9-5-080	AHO
Building Inspections (non-code)	Manager	10-4-090	
Manager review of building inspection	Mayor	10-4-090	
Building Official code interpretation	Board of Appeals	10-8-040	
Development Plan Review (ZA or PC)	Council	11-18-070	AHO
PMP Decisions	Council	11-18-080	AHO
Architectural compliance decisions by ZA	Planning Commission	11-19-070	AHO
Commercial Recreation decisions by PC	Council	11-25-080	AHO
Temporary Uses of Land/Structures by ZA	Planning Commission	11-28-120	AHO
Demolition Permit by ZA	City Manager	11-28-230	AHO
Flood Damage Prevention decision by ZA	Council	11-31-070	AHO
Variances	District Court	11-31-080	
Home Occupation Business License	Council	11-35-070	AHO
Historic District Decisions by ZA	Board of Adjustment or AHO	11-39-090	AHO
Historic District Decisions by HPC	Council	11-39-090	

Bonding and Release for public improvements	City Manager	11-4-070	
Administrative Land Use Decisions by ZA	Board of Adjustment or AHO	11-4-090	AHO
Administrative Land Use Decisions by PC <sup>1</sup>	Council	11-4-090	AHO
Urban Forester decisions	Shade Tree Commission (PC)	11-42-140	AHO
Shade Tree Commission decisions	Council	11-42-140	AHO
Subdivision Plat Decisions by PC	Council	12-1-070	AHO
Park Land Fee Modification by PC	Council	12-7-060	
Truck Route Permit by ZA	Council	14-8-050	AHO
Sign permits	Board of Adjustment or AHO	15-7-040	AHO
Stormwater Enforcement	City Manager	16-1-040	AHO
Reasonable Accommodation Requests	AHO	11-4-100	

Because many of these touch upon the development of land, they will need to be channeled through the planning commission first. Once the PC has rendered a recommendation, then we anticipate bringing that land-use ordinance forward with an ordinance that affects non-development codes.

If there are specific administrative decisions that you would like to keep unmodified, or change their appeal authority, please raise it during our discussion. Although redlines of these sections have been drafted, we would like the PC to take a look at their sections first, and then bring all off them to the Council at one time.

These changes do not affect legislative decisions like ordinance text changes, budgetary decisions, or zoning map amendments. Those remain only assailable as an appeal directly to district court or through referendum.

### Uniform Procedures for Administrative Hearings

With so many types of appeals coming before the AHO, it should be helpful to have code that governs procedures for administrative hearings generally. This will be particularly helpful in the case of a district court review. I have found the district courts will hold parties to our procedures in the absence of governing state codes.

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<sup>1</sup> This includes site plans, conditional uses, etc.

I recommend adding a new chapter to the city's administrative code: Chapter 3-7. Redline of that procedural code is attached to this memo.

The code includes:

- Parameters for the AHO to be appointed, which power is currently vested – and would remain with – the City Manager
- A list of the AHO's powers.
- Procedures for how to request an administrative hearing. Rather than having such requests go through various people, like the zoning administrator, city recorder, city manager, or other folks, a uniform point for all appeals is established – the city recorder.
- Uniform timing for appeals– 10 business days following the decision subject to the appeal.
- Procedures for the hearing, including limited pre-hearing motions and filings.
- Burdens of proof for various proceedings.
- Describes the remedies available to the AHO.
- Lays out the standard of review by the district court. The ordinance will now clearly indicate that the review is of the record – not de novo, and that the appellant's appeal is dismissed if they have not made arrangements to pay for the cost of the record's preparation.
- A list of matters to be appealed to the AHO, to clear up confusion over whether specific issues are heard by the AHO or someone else.

It is hoped that when these rare administrative appeals come up, all parties can refer to standardized procedures and move through the process without unnecessary complications or uncertainty. A draft of this new chapter is included; we seek suggestions and input from the Council.

#### Elimination of References to Board of Adjustment

When section 11-5-045 was inserted into chapter 11-5 in 2021, the council likely thought it prudent to retain the provisions about the board of adjustment, in case things didn't work out. Staff's experience has been that the AHO has worked very well. The law-trained AHO's written opinions have been excellent.

Retaining language about the Board of Adjustment can be a little confusing for those unfamiliar with the process. As state law no longer requires us to have one, and considering the success we've had with utilizing one for variances and other board of adjustment duties, I recommend that the council eliminate references to the board of adjustment in our code entirely. It is a little confusing to have sections referring to the board, when it is a single individual who acts as AHO. And other provisions have been retained even though the process for an AHO is different from the BOA. For instance, in one section it indicates that a district court petition must be taken within thirty days after the date of *the hearing* at which the decision of the board was rendered. 11-5-060(F). Yet it is more common for the AHO to take the matter under advisement

and issue a written ruling without holding another hearing. It is proposed that we simply remove all references to the BOA and replace them with references to an administrative hearing officer.

Those redline amendments would be part of the development-related amendments that will first make their way through the planning commission for a recommendation.

Respectfully submitted,



Paul Roberts  
City Attorney

Review and concur,



Brigham Mellor  
City Manager

## **NEW CHAPTER 3-7**

### **Chapter 3-7 Administrative Hearings**

#### **3-7-010 Purpose; Due Process:**

- (A) For municipal actions particularly defined and designated in this code in which an adverse decision by a city official result in detriment to a person, it is the purpose of this chapter to afford that person due process of law by way of an administrative hearing.
- (B) Due process shall require notice of applicable hearings, the opportunity to be heard, a hearing before a fair and impartial official, the right to present evidence, the right to cross-examine any witnesses presented by the city, the right to be represented by an attorney or other advocate, the right to receive an adequate explanation of the reasons justifying the administrative order, and the right to petition the district court for review of the administrative order. In the context of an enforcement action, due process also includes notice of alleged violations, served upon the responsible person.

#### **3-7-020 Definitions:**

- (A) “Business License Official” is the city official described in Section 6-1-030 of the Farmington Municipal Code.
- (B) “District court” means a district court of the State of Utah with jurisdiction over Farmington City.
- (C) “Enforcement action” means a citation, notice or order identifying a condition or action in violation of any provision of the Farmington Municipal Code, which either:

  - (1) Imposes a monetary penalty upon the recipient;
  - (2) Includes the city’s intention to abate a nuisance; or
  - (3) Orders the property owner to rehabilitate or demolish a structure pursuant to the Abatement of Dangerous Buildings Code, indicated in section 10-2-100 of this code.
- (D) “Enforcement official” means any city employee or official authorized by code or by the City Manager to enforce provisions of the Farmington Municipal Code.
- (E) “Land use application” has the same definition as provided in Chapter 10-9a of the Utah Code, as amended.



(F) “Land use regulation” has the same definition as provided in Chapter 10-9a of the Utah Code, as amended.

(G) “Zoning Administrator” is the city official described in Section 11-4-030 of the Farmington Municipal Code.

**3-7-030 Administrative Hearing Officer:**

(A) The administrative hearing officer shall be law trained or have significant experience with the requirements and operation of administrative hearing processes. The person shall be free from bias or conflict of interest that might affect impartiality of decisions.

(B) The administrative hearing officer for Farmington City shall be appointed by the City Manager. In the case of a conflict of interest or major scheduling conflict with the appointed administrative hearing officer, the City Manager may appoint an administrative hearing officer on a provisional basis.

(C) The administrative hearing officer shall serve for a term of two years, and during that two-year term, shall be subject to removal by the City Manager only for cause. Provisional administrative hearing officers only serve until the case for which they were appointed is completed.

(D) The administrative hearing officer shall be compensated for time spent preparing for hearings, conducting hearings and preparing orders. Rates of compensation shall be established via written agreement.

**3-7-040 Powers:**

(A) The administrative hearing officer shall have authority to hold an administrative hearing for any matter that comes before the officer. In cases involving strictly legal interpretations, the administrative hearing officer may render a decision based upon briefs filed by both parties.

(B) The administrative hearing officer may continue a hearing for good cause shown by one of the parties or if the administrative hearing officer independently determines that due process has not been adequately afforded to a party.

(C) At the request of any party to an administrative hearing, an administrative hearing officer may sign subpoenas for witnesses, documents, and other evidence where the attendance of the witness or the admission of evidence is deemed helpful by the administrative hearing officer to decide issues at the hearing. All costs related to the subpoena, including witness and mileage fees, shall be borne by the party requesting the subpoena.

- (D) The administrative hearing officer may modify civil fees or fines upon a finding of good cause. The administrative hearing officer may reduce the fines to what is just and equitable under the circumstances; however, in connection with an appeal regarding an itemized statement of costs, the administrative hearing officer may not order the responsible person to pay less than actual costs incurred by the City and shall require the responsible person to pay the administrative fees established in the consolidated fee schedule.
- (E) The administrative hearing officer shall have the authority to reverse or modify the decision of any city official whose decision is within the administrative hearing officer's jurisdiction.
- (F) The administrative hearing officer has continuing jurisdiction over the subject matter of an administrative hearing for the purposes of: granting a continuance; ordering compliance by issuing administrative orders; ensuring compliance of that order; authorizing the city to enter upon private property to abate a violation; authorizing the demolition of a dangerous structure; modifying an administrative order; assessing costs of abatement; assessing civil fines; or, in the case of extraordinary circumstances, granting a new hearing.
- (G) An administrative hearing officer shall not make any order that would require or allow a person to violate state law or city code.

**3-7-050 Request for Administrative Hearing:**

- (A) Where the right to an administrative hearing has been established under this code, a person having that right may request an administrative hearing, if the request is filed within ten (10) calendar days from the date of service of:

  - (1) Administrative citations or Notices of Violation issued by an enforcement official;
  - (2) An itemized statement of cost; or
  - (3) Notice of any other municipal action where the right to an administrative appeal is provided under any provision of this code.
- (B) In all cases except enforcement actions, a person is required to file their appeal within ten (10) calendar days from the date on which the party received actual or constructive notice that an administrative decision has been made. Appeals after that date are untimely and the person has waived any right to appeal that decision.
- (C) Failure to request an administrative hearing within ten (10) calendar days from the date of service of any of the notices in subsection (A) or (B) of this

section shall constitute a waiver of the right to an administrative hearing and the right to an appeal.

(D) The request for administrative hearing shall be made in writing and shall be accompanied by a filing fee to be established in the consolidated fee schedule. The fee shall not be waived, but the administrative hearing officer may order the fee to be refunded in cases where the officer reverses the administrative decision made by the city official.

(E) The request shall:

(1) Be in writing;

(2) Contain a legible, plain statement of the reason or reasons that the person requesting the hearing is entitled to relief from the municipal action;

(3) Be accompanied by a copy of the notice, citation or statement sought to be appealed;

(4) Contain the name of the person requesting the hearing, an email address to which all notices and orders may be delivered, and a physical mailing address;

(5) Be dated and signed by the person requesting the hearing; and

(6) Be filed with the City Recorder or an individual assigned by the City Recorder to receive administrative appeals.

(F) The City may initiate an administrative hearing by service and filing of a notice of violation or other document that summons an individual to an administrative hearing.

### **3-7-060 Scheduling Administrative Hearing:**

(A) Within ten (10) business days of receiving a request for an administrative hearing or the service of a notice of violation requiring a hearing, the administrative hearing officer shall schedule a date, time and place for the administrative hearing.

(B) Notice shall be provided using the email address provided by the appellant. If no email address is available for a party, then mailing a copy to the appellant's address shall be deemed served on the third day following the date of mailing.

- (C) Hearings shall be scheduled as expeditiously as is reasonable, taking into consideration the schedules of parties and witnesses and the complexity of the matter to be considered.
- (D) Upon service of a notice of violation and summons, the person receiving the service shall be required to attend the administrative hearing at the appointed date and time.
- (E) No adverse action, except for emergency abatements, shall take place pending the administrative hearing.
- (F) The administrative hearing officer may reschedule the hearing to a date and time more convenient to the hearing officer or either party, in the hearing officer's discretion.

**3-7-070 Administrative Hearing Process:**

- (A) Administrative hearings are informal in nature. Formal rules of evidence and discovery shall not apply. However, upon request made in writing reasonably in advance of a hearing, the city shall provide to a person requesting a hearing the opportunity to review documents, photographs or other tangible evidence it intends to present at the hearing and shall provide a list of the witnesses it intends to call at the hearing. Failure to request this review shall not be a basis for a continuance.
- (B) If an administrative hearing involves a complainant for nuisance violations, the complainant's information shall not be released or disclosed unless the complainant is a witness at the hearing.
- (C) Parties shall have the opportunity to cross-examine witnesses and present evidence in support of their position. A written declaration signed under penalty of perjury may be accepted in lieu of a personal appearance. Testimony may be provided by any witness or party via electronic means.
- (D) Administrative hearings shall be open to the public and audio-recorded.
- (E) All parties shall have the right to be represented by an attorney or other advocate. If an attorney will be representing a responsible person at a hearing, notice of the attorney's name, email, address, and telephone number shall be given to the city attorney at least one day prior to the hearing. If such notice is not given, the hearing may be continued at the city's request, and all costs associated with the continuance shall be assessed against the person requesting the hearing.
- (F) Administrative hearings may be held on Monday through Friday, excluding holidays, between the hours of 8:00 am and 9:00 pm. Lengthy hearings may

extend beyond 9:00 pm at the administrative hearing officer's discretion, with consent of both parties.

- (G) The parties may stipulate to certain or all factual issues and present purely legal questions to the administrative hearing officer. In the absence of a written stipulation or stipulation made in the presence of the administrative hearing officer, facts will be established through the presentation of evidence by the parties.
- (H) Ex parte communication with the administrative hearing officer regarding the substance of a matter pending before the officer is prohibited.
- (I) Parties may, at least three (3) business days prior to the scheduled hearing, file a brief with the administrative hearing officer addressing legal issues. Such briefs must be filed electronically via email and the brief shall be provided contemporaneously to the other party. A party may file an opposing brief in response to a brief filed by the other party, at least twenty-four (24) hours prior to the hearing.

### **3-7-080 Burdens of Proof:**

In administrative hearings, the burdens of proof and persuasion shall be borne by the same party, unless otherwise indicated in the code. Burdens of proof in an administrative review are:

- (A) For enforcement actions, including civil citations and notices of violation, the burden of proof is on the City to demonstrate by a preponderance of the evidence that a violation of the code exists and that the individual given notice bears responsibility for it.
- (B) For abatement of nuisances, or the elimination of dangerous conditions, the burden of proof is on the City to demonstrate by a preponderance of the evidence that the nuisance or dangerous condition exists and that the individual given notice bears responsibility for it.
- (C) For orders to rehabilitate or demolish a structure, the burden of proof is on the City to demonstrate by a preponderance of the evidence that the conditions alleged in the notice exist and that the structure constitutes a dangerous building, as provided in Section 10-2-100 of this code. If a responsible person is given an opportunity to rehabilitate the property by the administrative hearing officer, then a review hearing shall be scheduled, at which time the burden of proof is on the responsible person to demonstrate that the building has been sufficiently rehabilitated to the extent that it is no longer a dangerous building.

- (D) For reviews of City actions regarding land use applications, the appellant bears the burden of demonstrating by a preponderance of the evidence that the administrative action was arbitrary, capricious or illegal.
- (E) For variances, the burden of proof is upon the applicant to demonstrate by a preponderance of the evidence that all necessary conditions justifying the variance have been met.
- (F) For determinations of legal nonconformity, the burden of proof is upon the applicant to demonstrate by a preponderance of the evidence that the nonconforming use or structure lawfully existed and was not abandoned by that person or any predecessor in interest.
- (G) For reviews of other city administrative actions that have a right to appeal within this code, the appellant shall bear the burden of demonstrating by a preponderance of the evidence that the administrative action was arbitrary, capricious or illegal.
- (H) For employee appeals, the burden of proof is as provided in section 3-4-055 of this code.

**3-7-090 Failure to Attend Administrative Hearing:**

A person who fails to appear at an administrative hearing shall be deemed to have waived all rights in connection with the hearing, including the right to petition the district court for relief from the administrative order or action that was subject to appeal. Provided that proper notice of the hearing has been provided under section 3-7-050, an administrative order may be entered against a person based upon their failure to appear.

**3-7-100 Administrative Orders:**

- (A) Unless otherwise required by another provision of city code, within fifteen (15) business days after all evidence and testimony are presented, the administrative hearing officer shall issue a written administrative order that affirms or rejects the violation, appeal or application. The administrative hearing officer may modify an administrative action if the officer finds that the city official's action was arbitrary, capricious or illegal in some fashion.
- (B) The administrative order shall specify the evidence supporting the administrative hearing officer's decision and the action required to satisfy the order.

(C) The administrative hearing officer may issue an oral ruling at the hearing and assign the party who prevails at the administrative hearing to prepare a draft order. If this is done, then the prevailing party shall send a copy of the draft order to the opponent within seven (7) business days after receiving the assignment, and the opponent shall have three (3) business days after it is sent to raise an objection to the form of the proposed order. The administrative hearing officer may enter an order without conducting a hearing on the objection.

(D) An administrative order may:

(1) Order a person to cease violating this code and to take necessary corrective actions;

(2) Authorize city officials or their agents to enter the property and abate all violations, including the removal of animals in violation of an applicable code requirement. All abatement orders shall order the responsible person to pay to the city the actual costs of the abatement and the administrative fee associated with managing the abatement.

(3) Authorize the demolition of a dangerous building;

(4) Revoke any permit or license issued by the city;

(5) Establish specific deadlines for payments of fees and costs, and condition the total or partial assessment of civil fees on the responsible person's ability to take necessary corrective actions by specified deadlines. Such fees shall continue to accrue until the responsible person complies with the administrative hearing officer's decision and corrects the violation;

(6) Take any action reasonably necessary to obtain compliance with the applicable city ordinances;

(7) Impose civil fines for failure to abate a violation of city code by a stated deadline, which shall continue to accrue additional fines until the responsible person complies with the administrative hearing officer's decision and corrects the violation, except that the accrued fine shall not exceed one-thousand dollars (\$1,000.00) per day; and

(8) Schedule review hearings as necessary or requested by the city to ensure compliance with an administrative order;

(E) An administrative order is effective on the date it is signed by the administrative hearing officer.

(F) Once effective, the administrative hearing officer shall transmit the order to the city, which shall transmit it to all other parties within two (2) business days of receiving it. A delay in transmission shall extend the deadline for a petition for review by the number of days beyond two (2) days it was not transmitted.

**3-7-110 Failure to Comply:**

(A) It shall be unlawful for any person to fail to comply with the terms and deadlines set forth in a final administrative order.

(B) A violation of this section shall be a class B misdemeanor.

(C) Upon failure of a person to comply with the terms and deadline set forth in the administrative order, the city may use all appropriate legal means to recover civil penalties and administrative costs necessary to obtain compliance.

**3-7-120 Petition to Review:**

(A) Any person adversely affected by a final administrative order made in the exercise of the provisions of this chapter may file a petition for review in the district court.

(B) The petition shall be barred unless it is filed within thirty (30) calendar days after the administrative order is final.

(C) In the petition, the person may only allege that the administrative order was arbitrary, capricious or illegal.

(D) The reviewing court shall:

(1) Presume that the administrative order is valid;

(2) Review the record to determine whether the order was arbitrary, capricious or illegal; and

(3) Affirm the administrative order if it is supported by substantial evidence in the record.

(E) The party seeking judicial review is responsible for all costs of record preparation. Within ninety (90) calendar days after submitting the petition for review, the party filing the petition shall request a copy of the record of the



proceedings, including minutes, exhibits, findings, orders, and a transcript of the hearing.

- (1) The city shall not submit copies of files or transcripts to the reviewing court until the party petitioning for appeal has paid all required costs.
  - (2) The petitioning party's failure to request copies of the record, or to pay the full costs for the record, within ninety (90) calendar days after the petition for review was filed shall be grounds for dismissal of the petition.
  - (3) Upon receipt of the payment of all required costs, the city shall arrange for the compilation of a true and correct copy of the administrative hearing transcript and transmit it and all other record materials to the reviewing court.
- (F) If a transcript of the administrative hearing cannot be prepared because no such recording exists or is inadequate to prepare a transcript, the district court may, in its discretion, remand the matter to the administrative hearing officer for a supplemental proceeding to complete the record. The district court may limit the scope of the supplemental proceeding to issues that, in the court's opinion, need to be clarified.
- (G) If there is a record, court review is limited to the record of the proceeding. The court may not accept or consider any evidence outside the record unless that evidence was offered to the administrative hearing officer and the court determines that the administrative hearing officer improperly excluded it.
- (H) If there is no record of the proceedings, the court may call witnesses and take evidence as a de novo review.
- (I) The filing of a petition for review with the district court does not stay execution of an administrative order. Before filing a petition, a person may request the administrative hearing officer to stay an administrative order. Upon receipt of the request to stay, the administrative hearing officer may order the administrative order to be stayed pending district court review if the administrative hearing officer finds such stay is in the best interest of the city.

**3-7-130 Matters Heard by Administrative Hearing Officer:**

The administrative hearing officer is authorized to review the following matters:

- (A) Violations of municipal code, including:

- (1) Civil citations;
- (2) Notices of Violation;
- (3) Abatement notices;
- (4) Orders to rehabilitate or demolish a dangerous building;
- (5) Storm water and illicit discharge violations; and
- (6) Costs and fees related to abatements;

(B) Appeals from land use applications and administrative land use decisions, including:

- (1) Conditional Use Permits;
- (2) Zoning interpretations;
- (3) Temporary land use or temporary use of structure;
- (4) Home occupation permits;
- (5) Preliminary and final subdivisions plats, both minor and major;
- (6) Sign permits;
- (7) Land disturbance permits;
- (8) Boundary line and lot line adjustments;
- (9) Final site plan reviews;
- (10) Project master plan interpretations;
- (11) Condominium plats, final and amended;
- (12) Development plan reviews;
- (13) Architectural compliance decisions;
- (14) Decisions by Planning Commission related to uses within the commercial recreation zone;
- (15) Flood damage prevention decisions by zoning administrator;
- (16) Historic district decisions by the zoning administrator;
- (17) Building and fire code interpretations; and
- (18) Impact fee challenges;

(H) Variances and applications for legal nonconformity, in which case the administrative hearing officer conducts the sole administrative review on the behalf of the city;

(I) Business licensing decisions, including:

(1) Denial of business licenses and permits;

(2) Suspension or revocation of business licenses and permits;

(3) Home occupation permits;

(4) Regulatory fee challenges; and

(5) Any decision rendered by the Business License Official having a direct financial impact on the business owner;

(J) Reasonable accommodations:

(1) Related to land use barriers to individuals with disabilities;

(2) Related to employees of the city; and

(3) Related to public facilities;

(K) Employee appeals, as provided in chapter 3-4 of this code;

(L) Urban forestry orders; and

(M) Administrative actions for which a right of appeal is indicated in this code, and which is not designated as being appealed to another individual or body.

## CITY COUNCIL AGENDA

For Council Meeting:  
October 17, 2023

### **PRESENTATION:**

- Genevieve Foster – Spotlight
- Department Report by Public Works

## Farmington City Student of the Month



Student: Genevieve Foster

Nominated by: Shelly Baker, 4th grade teacher Ascent Academy

Genevieve is an amazing student. She is exceeding all academic requirements for a 4th grader. She is an amazing dancer and athlete. She is kind and always willing to help other people in the classroom. She is a dream student that every teacher would love to have. She is changing the world everyday with her knowledge, her kindness, and her willingness to try new things without being afraid of failing. She comes from a loving family that pushes her academically as hard as I do. Genevieve is very active not only with dance, she is exploring nature often by hiking with her family. She completes all work including homework even with her busy schedule outside of school. Her work ethic is spectacular.

**CITY COUNCIL AGENDA**

For Council Meeting:  
October 17, 2023

**BUSINESS:**            **Zone Text Amendments regarding Historic Resources on the Farmington  
City Landmarks Register**

**GENERAL INFORMATION:**

See staff report prepared David Peterson, Community Development Director

## CITY COUNCIL STAFF REPORT

**To:** Mayor and City Council  
**From:** David Petersen – Community Development Director  
**Date:** 10/17/2023  
**Subject:** Zone Text Amendments regarding Historic Resources on the Farmington City Landmarks Register. (ZT-18-23)

### RECOMMENDATION

Move the City Council adopt the enclosed enabling ordinance approving the proposed changes to Section 11-39-050 of the Zoning Ordinance.

#### Findings:

1. The changes to the zoning text clarify that only certain kinds of building permits for exterior work require a certificate of historic appropriateness.
2. The amendment provides a more expeditious path where needed to the owner to obtain a certificate of historic appropriateness.

### BACKGROUND

The Farmington City Landmarks Register consists of at least 11 Historic Resources and the Clark Lane Historic district. On September 19, 2023, the City Council held a public hearing to consider whether or not to include the Main Street Historic District on the Landmarks Register as well, but tabled action for further deliberation.

Whether or not the Council decides to place the Main Street Historic District on the Register, it is recommended that the City clarify that a certificate of historic appropriateness is only required for the issuance of building permits related to “exterior” repairs, alterations, additions, relocation or demolitions to historic resources. [Note: Ordinary maintenance and repair of any exterior architectural or environmental feature in or on a historic resource to correct deterioration, decay, or to sustain the existing form, and that does not involve a material change in design, material or outer appearance thereof, does not require a certificate of historic appropriateness].

Respectfully submitted,

*David E. Petersen*

David Petersen  
Community Development Director

Review and concur,



Brigham Mellor  
City Manager

**Supplemental Information**

1. Enabling Ordinance



**FARMINGTON CITY, UTAH  
ORDINANCE NO. 2023-**

**AN ORDINANCE AMENDING SECTION 11-39-050 OF CHAPTER 39, HISTORIC BUILDINGS AND SITES, OF THE FARMINGTON CITY ZONING ORDINANCE PROVIDING AN ALTERNATIVE APPROVAL ENTITY TO OBTAIN A CERTIFICATE OF HISTORIC APPROPRIATENESS FOR HISTORIC RESOURCES ON THE CITY'S LANDMARK REGISTER AND CLARIFYING WHAT TYPE OF BUILDING PERMITS REQUIRE SUCH CERTIFICATE. (ZT-18-23)**

**WHEREAS**, the Planning Commission has held a public hearing in which the text for Sections 11-39-050 of the Zoning Ordinance was thoroughly reviewed and has recommended that this ordinance be approved by the City Council; and

**WHEREAS**, the Farmington City Council has also held a public meeting pursuant to notice and as required by law and deems it to be in the best interest of the health, safety, and general welfare of the citizens of Farmington to make the changes proposed;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF FARMINGTON CITY, STATE OF UTAH:**

**Section 1. Amendment.** Section 11-39-050 of the Farmington City Zoning Ordinance is hereby amended as set forth in **Exhibit "A"** attached hereto and by this reference made a part hereof

**Section 2. Severability.** If any provision of this ordinance is declared invalid by a court of competent jurisdiction, the remainder shall not be affected thereby.

**Section 3. Effective Date.** This ordinance shall take effect immediately upon publication or posting or 30 days after passage by the City Council, whichever comes first.

**PASSED AND ADOPTED** by the City Council of Farmington City, State of Utah, on this 17<sup>th</sup> day of October, 2023.

**FARMINGTON CITY**

**ATTEST:**

\_\_\_\_\_  
Brett Anderson, Mayor

\_\_\_\_\_  
DeAnn Carlile, City Recorder

# Exhibit A

## 11-39-050: FARMINGTON CITY HISTORIC LANDMARKS REGISTER:

A. Created: There is hereby created a Farmington City historic landmarks register (the "register"), which shall provide further recognition of significant historic resources; provide protection for historic resources as set forth in this chapter; and may qualify owners of historic resources to special assistance from the city as may be determined by the city council in its sole discretion. The register shall be prepared and maintained by the historic preservation commission in accordance with the provisions set forth in this chapter. A notice of listing shall be filed for each property listed on the register with the city and recorded in the office of the Davis County recorder.

B. Contents: The register shall describe each historic resource, the date or approximate date of its construction, the date during which its historic significance was established, the qualifications for including it on the register, and the name and address of the current owner of the property as shown on the records of the Davis County recorder.

C. Criteria: Any building, structure, object or district may be designated to the register in accordance with the procedures set forth herein if it meets all the criteria set forth below:

1. It is located within the corporate boundaries of Farmington City.
2. It is currently listed in the national register of historic places (the "national register"), or it has been officially determined eligible for listing in the national register under the criteria of 36 CFR 60.4, as amended.
3. Historic resources shall also meet at least two (2) of the following criteria:
  - a. It is an easily identifiable visual feature of its neighborhood or the city because of its positioning, location, age, scale or style, and it contributes to the distinctive quality or identity of its area in such a way that its absence would negatively affect the area's sense of place;
  - b. It figures importantly into Farmington City's founding or development through its uses, especially public uses;
  - c. It is associated with persons significant in the founding or development of Farmington City, especially the earliest settler families (1847 - 1900);
  - d. It is associated with events that have made a significant contribution to the founding or development of Farmington City;
  - e. It illustrates an important architectural form, style or building technique, especially as an example of "local vernacular" (e.g., single- and two-story rock/adobe homes; simple brick Victorians) or as a singular example of form, style or technique within the city;
  - f. It has been used as a wayfinding landmark for at least fifty (50) years; or
  - g. It has yielded, or may be likely to yield, information important in prehistory or history (e.g., archaeological sites).

4. If a historic resource does not meet at least two (2) of the criteria of subsection C3 of this section, but is of exceptional importance to Farmington City's history and the owner of the property wishes to have it designated as a historic resource on the register, the historic preservation commission may review the request and, if deemed suitably significant, may recommend to the city council that the historic resource be added to the register.

D. Notification: The owner of the historic resource shall be notified in writing either by certified mail or hand delivery of proposed action to designate the historic resource to the register and shall be invited to attend the historic preservation commission meeting in which the designation will be discussed.

E. Designation:

1. Official designation proceedings shall begin with submittal of a written request for designation by either the property owner or a member of the historic preservation commission. The request shall identify the property by its address and historic name, give the date the property was listed in the national register or officially determined eligible, and include a statement summarizing the property's significance to the city. This official request may be preceded by informal contacts with the property owner by historic preservation commission members, private citizens, local officials or others regarding designation of the property.

2. Upon written request for designation, the historic preservation commission chairperson shall arrange for the designation to be considered at the next historic preservation commission meeting, which shall be held at a time not to exceed thirty (30) days from the date the designation request was received.

3. A decision by the historic preservation commission shall be based on whether the property meets the criteria for designating properties to the register as set forth in subsection C of this section. The historic preservation commission shall forward its recommendation in writing to the city council within fourteen (14) days of the decision.

4. The city council may, by adoption of an appropriate ordinance, designate a historic resource to the register. The owner of the historic resource shall be notified at least three (3) days prior to the city council meeting at which the ordinance will be considered and shall be allowed to address the council with regard to the designation. Following designation, a notice of such shall be mailed to the owners of record together with a copy of this chapter.

5. A historic resource which, in the opinion of the historic preservation commission, no longer meets the criteria for eligibility may be removed from the register after review and recommendation by the historic preservation commission and the adoption of an appropriate ordinance by the city council.

6. Upon official adoption of a designating or removal ordinance, the historic preservation commission shall record the ordinance with both the city recorder's office and the county recorder's office to indicate such designation or removal on the official records thereof.

F. Result Of Designation:

1. An owner of a historic resource listed on the register may seek assistance from the historic preservation commission in applying for grants or tax credits for rehabilitating the owner's properties.

2. **Except as set forth in sub-paragraph 3 below, p**Proposed **exterior** repairs, alterations, additions, relocation or demolitions to historic resources listed on the register requiring a building permit are subject to review by the historic preservation commission and shall receive a "certificate of historic appropriateness" prior to issuance of a building permit. The purpose of this review is to ensure the preservation of historic resources to the greatest extent reasonably possible.

**a. The city manager, at his or her sole discretion, and with the advice of the community development director and the chair of the historic preservation commission, may appoint an historic preservation architect or a reconnaissance level survey professional to consider applications for certificates of appropriateness related to repairs, alterations, or additions. Once appointed, the architect or professional shall have all the powers and duties of the historic preservation commission, but limited solely to the consideration and issuance of a certificate of historic appropriateness. The historic preservation commission shall retain authority related to relocation or demolition of an historic resource.**

**ab.** Any application for a building permit pertaining to a historic resource designated on the register shall be forwarded by the zoning administrator to the historic preservation commission for its determination prior to the issuance of the requested permit.

**bc.** At its next scheduled meeting, the historic preservation commission shall review the application and proposed work for compliance using the United States secretary of the interior's standards for rehabilitation (the "standards") as set forth in section 11-39-060 of this chapter.

**ed.** The historic preservation commission's determination shall be forwarded within three (3) days to the zoning administrator for review. If the historic preservation commission denies or requires significant revisions to a permit application, the determination shall indicate of the specific "standards" on which the decision of the historic preservation commission is based and, where appropriate, shall provide a brief explanation setting forth the reasons for the determination. Copies of the determination shall be forwarded by the zoning administrator to the property owner.

**ee.** The zoning administrator shall, upon receipt of the historic preservation commission's determination, process the permit as set forth in this section. Projects which, as determined by the historic preservation commission, are consistent with the standards shall be issued a certificate of historical appropriateness which authorizes the building permit to be issued upon compliance with all other applicable requirements of this title or any other applicable ordinance.

**ef.** An applicant whose submittal does not comply with the standards may, for a period of sixty (60) days, meet with the historic preservation commission, together with the zoning administrator, to explore means for proper repair, alteration or addition to the historical resource which are consistent with the standards, which may include the following:

- (1) Feasibility of modifications to the plans;
- (2) Feasibility of alternative uses of the historic resource;
- (3) Feasibility of acquiring easements and/or variances;
- (4) Feasibility of acquiring financial or other forms of assistance from preservations organizations.

f. If no approval is granted within the initial sixty (60) days, the historic preservation commission may grant an extension of an additional sixty (60) days. If no approval is granted at the conclusion of one hundred twenty (120) days, the certificate of historic appropriateness shall be denied if the standards for rehabilitation cannot be met and the requested building permit shall not be issued by the zoning administrator.

g. A decision by the historic preservation commission approving or denying a certificate of historic appropriateness for the relocation of a historic resource shall be guided by the following criteria:

(1) How the historic character and aesthetic interest of the historic resource contributes to its present setting;

(2) Whether there are definite plans for the area to be vacated and what the effect of those plans on the character of the surrounding area will be;

(3) Whether the historic resource can be relocated without significant damage to its physical integrity; and

(4) Whether the proposed relocation area is compatible with the historical and architectural character of the historic resource.

h. A decision by the historic preservation commission approving or denying a certificate of historic appropriateness for the demolition of a historic resource listed on the register shall be guided by the following criteria:

(1) The historic, scenic or architectural significance of the historic resource;

(2) The importance of the resource to the character of the neighborhood or city;

(3) The difficulty or the impossibility of reproducing the historic resource because of its design, texture, material, detail or unique location;

(4) Whether the historic resource is one of the last remaining examples of its kind in the neighborhood or city;

(5) Whether there are definite plans for use of the property if the proposed demolition is carried out, and what the effect of those plans on the character of the surrounding area would be;

(6) Whether reasonable measures can be taken to save the historic resource from deterioration or collapse; and

(7) Whether the historic resource is capable of being used to earn a reasonable economic return on its value.

i. A certificate of historical appropriateness shall become void unless construction authorized by a building permit is commenced within one hundred eighty (180) days after issuance of the certificate.

3. Ordinary maintenance and repair of any exterior architectural or environmental feature in or on a historic resource **as determined by the Zoning Administrator** to correct deterioration, decay, or to sustain the existing form, and that does not involve a material change in design, material or outer appearance thereof, does not require a certificate of historic appropriateness.

G. Enforcement: Failure to follow the procedure for acquiring a certificate of historical appropriateness may result in the zoning administrator issuing a stop work order while a review is conducted. The review will determine if revocation of a conditional use permit granted for a use associated with the historic resource revocation of building permits and/or other penalty fines are necessary as per chapter 38, "Enforcement And Penalties", of this title.

1. Failure to follow the procedure set forth in this chapter for acquiring a certificate of historic appropriateness may result in removal of the historic resource from the register and the national register, thus rendering the property ineligible for federal, state, and city tax credits, grant and loan programs.

2. In addition, if the historic resource has received land use entitlements as a result of its placement on the register, the city may consider the revocation of such entitlements and/or the acceleration of any debt issued by the city as part of a program of historic preservation/rehabilitation consistent with applicable law. (Ord. 2013-08, 4-16-2013)