

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLES ONE (1) AND ELEVEN (11) OF THE NORTH OGDEN MUNICIPAL CODE CREATING AN ADMINISTRATIVE HEARING OFFICER

WHEREAS, North Ogden City uses an Administrative Law Judge to consider variances and certain zoning appeals; and,

WHEREAS, there can be untimely delays in hearing variances and certain zoning appeals because of busy court dockets; and,

WHEREAS, the Board of Justice Court Judges identified potential conflicts when a judge serves in both the judicial and administrative branches of government; and,

WHEREAS, North Ogden City desires to continue using an administrative officer to consider variances and certain zoning appeals:

BE IT THEREFORE ORDAINED by the North Ogden City Council that Titles one (1) and eleven (11) of the North Ogden Municipal Code shall be amended as follows.

TITLE 1 Chapter 8
ADMINISTRATIVE HEARINGS

1-8-1: PURPOSE AND INTENT:

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1-8-1: PURPOSE AND INTENT:

For specified municipal action, as more particularly defined and designated in this code, in which an adverse decision by a city official results in detriment to a responsible person or the responsible person's property, it is the purpose and intent of the city council to afford that person due process of law by way of an administrative hearing. Due process shall require proper notice of the nature of the violation and the opportunity to be heard by a fair and impartial

administrative law judge, the right to present evidence, the right to cross examination, the right to be represented by an attorney or other advocate and the right to appeal an administrative order to the district court. (Ord. 2010-10, 9-7-2010)

1-8-2: EFFECT OF HEADINGS:

Title, chapter, and section headings contained herein shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of this chapter. (Ord. 2010-10, 9-7-2010)

1-8-3: SEVERABILITY:

If any section, subsection, sentence, clause, phrase, portion, or provision of this chapter is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter. The city council hereby declares that it would have adopted this chapter and each section, subsection, sentence, clause, phrase, portion, or provision thereof, irrespective of the fact that any one or more sections, subsections, clauses, phrases, portions, or provisions be declared invalid or unconstitutional. This section shall apply to all amendments made to this chapter. (Ord. 2010-10, 9-7-2010)

1-8-4: DEFINITIONS:

The following words and phrases used in this chapter shall have the following meanings unless a different meaning clearly appears from the context:

ADMINISTRATIVE CITATION: A citation issued to a responsible person that gives notice of a violation and requires the responsible person to remedy a violation of city ordinance, to pay a civil fee and/or to make a mandatory appearance before an administrative law judge.

ADMINISTRATIVE LAW JUDGE AND/ OR ADMINISTRATIVE HEARING OFFICER: A hearing officer appointed to preside over administrative hearings.

ADMINISTRATIVE ORDER: An order issued by an administrative law judge and/or administrative hearing officer. The order may include an order to enter upon private property to abate a violation of city ordinance, to pay civil fees and administrative costs, to reverse or modify decisions of city officials as provided elsewhere in this code or take any other action as authorized or required by this chapter and applicable state codes.

EMERGENCY ABATEMENT: The immediate elimination or eradication of any condition that creates an imminent life safety hazard.

ITEMIZED STATEMENT OF COSTS: A written notice to a responsible person, itemizing the city's actual costs and administrative cost of abating a code violation, ordering payment of those costs and providing an explanation of the procedure for a responsible person to appeal the reasonableness of the costs.

MUNICIPAL ACTION: An administrative citation or any other adverse municipal decision for which the right to an administrative hearing is specifically provided by ordinance.

RESPONSIBLE PERSON: Any natural person, firm, joint venture, joint stock company, partnership, association, club, company, corporation, business trust, organization, or the manager, lessee, agent, sergeant, officer, or employee of any of them, or any other entity that is recognized by law as the subject of rights or duties relating to a person or property affected by a municipal action. For purposes of this chapter, "responsible person" also indicates a "person" whose interest is adverse to the city at an administrative hearing. (Ord. 2010-10, 9-7-2010)

1-8-5: APPOINTMENT AND QUALIFICATIONS OF THE ADMINISTRATIVE LAW JUDGE AND/OR ADMINISTRATIVE HEARING OFFICER:

A. The mayor, with the consent of the city council, shall appoint an administrative law judge and/or administrative hearing officer to preside at administrative hearings.

B. The administrative law judge and/or administrative hearing officer shall serve for a term of two (2) years and, during that two (2) year term, shall be subject to removal by the mayor only for cause.

C. Cause for removal may be for any conduct unbecoming a hearing officer as determined by the city council, dereliction of assigned duties, the existence of a bias or conflict of interest that might affect impartiality of decisions or the failure of the city council to appropriate funding for the administrative law judge and/or administrative hearing officer position.

D. The administrative law judge and/or administrative hearing officer may appeal a removal for cause to the city council which shall uphold the removal if there is substantial evidence to support the mayor's decision.

E. A person appointed to serve as an administrative law judge and/or administrative hearing officer shall either be law trained or have significant experience with the requirements and operation of administrative hearing processes. The person appointed shall be free from any bias or conflict of interest that might affect impartiality of decisions.

F. An administrative law judge and/or administrative hearing officer is subject to disqualification for bias, prejudice, interest, or any other reason for which a judge may be disqualified in a court of law. (Ord. 2010-10, 9-7-2010)

1-8-6: POWERS OF ADMINISTRATIVE LAW JUDGE AND/OR ADMINISTRATIVE HEARING OFFICER:

A. An administrative law judge and/or administrative hearing officer shall have authority to hold an administrative hearing for violations of this code and such other matters as specifically designated by ordinance.

B. An administrative law judge and/or administrative hearing officer may continue a hearing for good cause shown by one of the parties or if the administrative law judge and/or 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 law judge and/or administrative hearing officer may issue administrative subpoenas for witnesses, documents, and other evidence where the attendance of the witness or the admission of evidence is deemed helpful by the administrative law judge and/or 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 law judge and/or administrative hearing officer may modify civil fees or fines upon a finding of good cause. The administrative law judge and/or 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 law judge and/or 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 city's administrative costs as established in the consolidated fee schedule.

E. Where specifically authorized by municipal ordinance, the administrative law judge and/or administrative hearing officer shall have the authority to reverse or modify the decision of a city official.

F. An administrative law judge and/or 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 an administrative order; ensuring compliance of that order; authorizing the city to enter upon private property to abate a violation; modifying an administrative order, assessing costs of abatement, assessing civil fines; or, where extraordinary circumstances exist, granting a new hearing.

G. An administrative law judge and/or administrative hearing officer may require a responsible person to post a performance bond to ensure compliance with an administrative order, but only if agreed to by the enforcement official handling the matter for the city.

H. An administrative law judge and/or administrative hearing officer shall not make any order that would require or allow a responsible person to violate state law or city ordinance. (Ord. 2011-11, 5-24-2011)

1-8-7: PROCEDURES AT ADMINISTRATIVE HEARINGS:

A. Administrative hearings are intended to be 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 responsible 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 discovery shall not be a basis for a continuance. Complainant information shall not be disclosed or released unless the complainant is a witness at the hearing. The procedure and format of the administrative hearing shall follow duly adopted policies and procedures.

B. The city shall bear the burden of proof to establish the existence of a violation of municipal ordinance.

C. Such proof shall be established by a preponderance of the evidence.

D. Each party shall have the opportunity to cross examine witnesses and present evidence in support of his case. A written declaration signed under penalty of perjury may be accepted in lieu of a personal appearance. Testimony may be given by telephone or other electronic means.

E. Administrative hearings shall be held at city hall, open to the public and shall be recorded by audiotape; however, at the discretion of the administrative law judge, administrative hearings may be held at the location of a violation as long as adequate provision is made to preserve a verbatim record of the hearing.

F. The responsible person 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, address, and telephone number should 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 of the continuance shall be assessed to the responsible person.

G. The burden to prove any raised defenses shall be upon the party raising any such defense and shall be established by a preponderance of the evidence.

H. Administrative hearings may be held on Mondays through Fridays, excluding city holidays, between the hours of eight o'clock (8:00) A.M. and nine o'clock (9:00) P.M. (Ord. 2010-10, 9-7-2010)

1-8-8: REQUEST FOR ADMINISTRATIVE HEARING:

A. Where the right to an administrative hearing has been established under this code, a responsible 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 one of the following:

1. Itemized statement of costs;
2. Administrative citation;
3. Notice of any other municipal action where the right to an administrative hearing is provided under any other title and chapter of this code.

B. The request for an administrative hearing shall be made in writing, and shall be accompanied by a filing fee in the amount established in the consolidated fee schedule. This fee shall not be waived.

C. The request shall comply with the following requirements:

1. It shall be in writing;
2. It shall contain a legible, plain statement of the reason or reasons that the responsible person requesting the hearing is entitled to relief from the municipal action;
3. It shall be accompanied by a copy of the itemized statement of costs, administrative citation or other notice of municipal action for which the hearing is requested;
4. Where no written notice of the municipal action has been issued by the city, the request shall describe the nature of the municipal action from which the appeal is taken, including the date of the action and the name of the municipal official responsible for the municipal action;
5. It shall contain the name of the responsible person requesting the hearing and the address to which all notices and orders shall be mailed;
6. It shall be dated and signed by the responsible person requesting the hearing; and
7. It shall be filed with the city recorder.

D. When it issues an administrative citation, the city may require a mandatory appearance at an administrative hearing.

E. Within twenty (20) days after receiving a request for an administrative hearing, or the service of a citation requiring a mandatory appearance, the administrative law judge and/or administrative hearing officer shall schedule a date, time, and place for the administrative hearing. Failure to hold the hearing within twenty (20) days of the request shall not be a basis for reversal of the municipal action. No adverse action, except an emergency abatement pursuant to section 1-9-19 of this title, shall be taken pending the administrative hearing.

F. Failure to request an administrative hearing within ten (10) calendar days from the date of service of any of the notices in subsection A of this section shall constitute a waiver of the right to an administrative hearing and the right to an appeal. (Ord. 2010-10, 9-7-2010)

1-8-9: NOTICE OF ADMINISTRATIVE HEARINGS:

A. Notice of the date, time, and place of the administrative hearing shall be served upon the responsible person requesting the hearing no later than five (5) city business days in advance of the hearing. Failure to provide timely notice of the hearing shall result in the continuation of the

hearing. No adverse action will be taken or imposed by the city, with the exception of emergency abatement action.

B. Notice of the administrative hearing may be included in an administrative citation, or may be personally served or served by mailing the notice to the address designated in the request for hearing.

C. Upon service of the notice the responsible person receiving the service shall be required to attend the administrative hearing at the appointed date and time.

D. Notice of emergency abatement shall be served upon the responsible person personally or by regular mail as soon as practicable after abatement of the emergency condition but no later than ten (10) days after the abatement is completed. (Ord. 2010-10, 9-7-2010)

1-8-10: FAILURE TO APPEAR AT ADMINISTRATIVE HEARING:

A. A responsible 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 appeal.

B. Provided that proper notice of the hearing has been given as provided in section 1-8-9 of this chapter, the administrative law judge and/or administrative hearing officer, after receiving a proffer of the evidence supporting the municipal action, may enter an administrative order in the absence of the responsible person. (Ord. 2010-10, 9-7-2010)

1-8-11: ADMINISTRATIVE ORDERS:

A. A responsible person and the city may enter into a stipulated agreement, which shall be signed by both parties. Such agreement may be entered as an administrative order. Entry of such agreement shall constitute a waiver of the right to an administrative hearing and the right to appeal.

B. Within ten (10) days after receiving evidence, the administrative law judge and/or administrative hearing officer shall issue a written administrative order that affirms, rejects or modifies the itemized statement of costs, administrative citation, notice of emergency abatement or other municipal action.

C. If affirmed, the administrative order shall specify the evidence supporting the administrative law judge's and/or administrative hearing officer's decision and the action required to satisfy the order.

D. The administrative law judge and/or administrative hearing officer -may assign the party who prevails at the administrative hearing to prepare findings of fact and conclusions of law.

E. An administrative law judge and/or administrative hearing officer may issue an administrative order that requires a responsible person to cease from violating this code and to take any necessary corrective action.

F. An administrative law judge and/or administrative hearing officer may order the city to enter upon private property and abate all violations, including the removal of animals, noxious weeds, overgrown landscape, junk, including junk vehicles, deleterious objects or structures, etc., which exist in violation of municipal ordinance. Whenever an order of abatement is entered, the administrative law judge and/or administrative hearing officer shall order the responsible person to pay to the city the actual costs of the abatement and the administrative costs of the city to perform the abatement.

G. As part of an administrative order, an administrative law judge and/or administrative hearing officer may establish specific deadlines for the payment 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 law judge's and/or administrative hearing officer's decision and corrects the violation.

H. An administrative order imposing civil fines for failure to abate a violation of this code by a stated deadline, shall continue to accrue additional fines until the responsible person complies with the administrative law judge's and/or administrative hearing officer's decision and corrects the violation but shall not exceed one thousand dollars (\$1,000.00) for any single violation.

I. An administrative law judge and/or administrative hearing officer may schedule subsequent review hearings as may be necessary or as requested by the city to ensure compliance with an administrative order.

J. An administrative law judge and/or administrative hearing officer may order a responsible person to post a performance bond to ensure compliance with an administrative order, but only if agreed to by the enforcement official handling the matter for the city.

K. An administrative law judge and/or administrative hearing officer may revoke or suspend a business license, a building permit, or permits for any alteration, repair, or construction pertaining to any existing or new structures or signs on the property, or any permits pertaining to the use and development of real property or a structure where a violation is located where specifically authorized in this code.

L. An administrative order shall become final on the date of signing by an administrative law judge and/or administrative hearing officer.

M. An administrative order shall be served on all parties by regular mail at the address listed in the citation or request for hearing.

N. An administrative law judge and/or administrative hearing officer may order any action reasonably necessary to obtain compliance with the applicable city ordinances.

O. An administrative law judge and/or administrative hearing officer may assess civil fines and costs of abatement and administrative costs to a responsible person. (Ord. 2010-10, 9-7-2010)

1-8-12: FAILURE TO COMPLY WITH ADMINISTRATIVE ORDER:

A. It shall be unlawful for any responsible 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 responsible person to comply with the terms and deadline set forth in the administrative order, the city may use all appropriate legal means to recover the civil penalties and administrative costs to obtain compliance. (Ord. 2010-10, 9-7-2010)

1-8-13: APPEAL:

A. The city or any responsible 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) days after the administrative order is final.

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

D. The 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 record of the proceedings including minutes, findings, orders and, if available, a true and correct transcript of the proceeding shall be transmitted to the reviewing court.

F. The party requesting the hearing shall bear the cost of preparing the transcript of the hearing.

G. If the proceeding was tape recorded, a transcript of such tape recording shall be deemed a true and correct transcript for purposes of this subsection. If a transcript of a hearing cannot be prepared because the tape recording is incomplete or unintelligible, the district court may, in its discretion, remand the matter to the administrative law judge and/ or 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.

H. If there is a record, court review shall be limited to the record of the proceeding. The court may not accept or consider any evidence outside such record unless that evidence was offered to the administrative law judge and/or administrative hearing officer and the court determines that

the administrative law judge improperly excluded it. The court may call witnesses and take evidence if there is no record.

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 responsible person may request the administrative law judge and/or administrative hearing officer to stay an administrative order. Upon receipt of a request to stay, the administrative law judge and/or administrative hearing officer may order the administrative order to be stayed pending district court review if the administrative law judge and/or administrative hearing officer finds such stay to be in the best interest of the city. (Ord. 2010-10, 9-7-2010)

1-9-19: EMERGENCY ABATEMENT:

A. Whenever the director determines that an imminent life safety hazard exists that requires immediate correction or elimination, the director shall exercise the following powers without prior notice to the responsible person:

1. Order the immediate vacation of any tenants, and prohibit occupancy until all repairs are completed;
2. Post the premises as unsafe, substandard, or dangerous;
3. Board, fence, or secure the building or site;
4. Raze and grade that portion of the building or site to prevent further collapse, and remove any hazard to the general public;
5. Make any minimal emergency repairs as necessary to eliminate any imminent life safety hazard; or
6. Take any other action appropriate to eliminate the emergency.

B. The director may, based on exigent circumstances, enter property without a search warrant or administrative order to accomplish the above listed acts.

C. The director shall pursue only the minimum level of correction or abatement as necessary to eliminate the immediacy of a hazard. Costs incurred by the city during the emergency abatement process shall be calculated and an itemized statement of costs shall be prepared. Further correction needed to bring the violation into compliance will be addressed through the administrative citation procedures set forth in this chapter.

D. The director may also pursue any other administrative or judicial remedy to abate any remaining violations.

E. After an emergency abatement, the city shall, within ten (10) days, serve the itemized statement of costs upon the responsible person as provided in section 1-9-15 of this chapter.

F. Such notice shall include a description of the imminent life safety hazard warranting the emergency abatement.

G. A responsible person has the right to contest the need for the emergency abatement and/or the reasonableness of the itemized statement of costs at an administrative hearing. A request for such hearing shall be filed in accordance with section 1-8-8 of this title, within ten (10) days from the date of service of the itemized statement of costs. Failure to request an administrative hearing shall constitute a waiver of an administrative hearing and waiver of the right to appeal. (Ord. 2010-09, 9-7-2010)

VARIANCES AND ADMINISTRATIVE INTERPRETATIONS

11-4-1: CONSIDERATION OF VARIANCES AND CERTAIN ZONING APPEALS BY ADMINISTRATIVE LAW JUDGE AND/OR ADMINISTRATIVE HEARING OFFICER:

11-4-2: RULES AND PROCEDURES:

11-4-3: APPEALS:

11-4-4: VARIANCES:

11-4-5: DISTRICT COURT REVIEW:

11-4-6: FILING FEE:

11-4-7: TIME LIMITATION ON VARIANCE:

11-4-1: CONSIDERATION OF VARIANCES AND CERTAIN ZONING APPEALS BY ADMINISTRATIVE LAW JUDGE AND/OR ADMINISTRATIVE HEARING OFFICER:

The administrative law judge and/or administrative hearing officer (ALJ and/or AHO) appointed pursuant to title 1, chapter 8 of this code is granted the following powers and duties:

A. To decide petitioners for variances as defined in state law and this title;

B. To hear appeals from zoning decisions by city staff hinging on the interpretation of state or local zoning laws; and

C. To decide requests for special exceptions as provided according to the terms of this title. (Ord. 2011-11, 5-24-2011)

11-4-2: RULES AND PROCEDURES:

A. Hearings held pursuant to this chapter shall conform to the rules and procedures established under title 1, chapter 8 of this code. (Ord. 2011-11, 5-24-2011)

11-4-3: APPEALS:

A. Authority: The applicant, or any other person or entity adversely affected by a decision of a city official administering or interpreting this title, except the denial or granting of a conditional

use permit, may appeal that decision applying this title by alleging that there is error in any order, requirement, decision or determination made.

B. Time Limit: Any person or entity adversely affected by decisions administering or interpreting this title shall appeal the decision within thirty (30) days from the date of the decision. The ALJ and/or AHO shall have no jurisdiction to hear untimely appeals.

C. City Appeal: Any officer, department, board or bureau of the city affected by the grant or refusal of a building permit or by any other decisions of the administrative officer in the administration or interpretation of this title may appeal any decision to the ALJ and/or AHO within the time limits set forth in subsection B of this section.

D. Burden Of Proof: The person or entity making the appeal has the burden of proving that an error has been made.

E. Decisions Applicable: Only decisions applying this title may be appealed to the ALJ and/or AHO.

F. Waiver Or Modification Not Applicable: The ALJ and/or AHO has no authority to waive or modify the terms or requirements of this title.

G. Decision Of ALJ and/or AHO; Power And Authority: The ALJ and/or AHO may, in conformity with the provisions of this chapter, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination from which the appeal is taken. (Ord. 2011-11, 5-24-2011)

11-4-4: VARIANCES:

A. Application: Any person or entity desiring a waiver or modification of the requirements of this title as applied to a parcel of property that that person owns, leases or in which that person holds some other beneficial interest may apply to the ALJ and/or AHO for a variance from the terms of the zoning ordinance.

B. Findings Required: The ALJ and/or AHO may grant a variance only if all five (5) of the following findings are made:

1. Literal enforcement of this title would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of this title; and
2. There are special circumstances attached to the property that do not generally apply to other properties in the same district; and
3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district; and

4. The variance will not substantially affect the general plan and will not be contrary to the public interest; and

5. The spirit of this title is observed and substantial justice is done.

C. Conditions Of Unreasonable Hardship: In determining whether or not enforcement of this title would cause unreasonable hardship under subsection B of this section, the ALJ and/or AHO may not find an unreasonable hardship unless the alleged hardship:

1. Is located on or associated with the property for which the variance is sought; and

2. Comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.

D. Unreasonable Hardship Determination: In determining whether or not enforcement of the zoning ordinance would cause unreasonable hardship under subsection B of this section, the ALJ and/or AHO may not find an unreasonable hardship if the hardship is self-imposed or economic.

E. Special Circumstances: In determining whether or not there are special circumstances attached to the property under subsection B of this section, the ALJ and/or AHO may find that special circumstances exist only if the special circumstances:

1. Relate to the hardship complained of; and

2. Deprive the property of privileges granted to other properties in the same district.

F. Burden Of Proof: The applicant shall bear the burden of proving that all of the conditions justifying the variance have been met.

G. Run With Land: Variances run with the land.

H. Use Variances Prohibited: The ALJ and/or AHO and any other body may not grant use variances.

I. Additional Requirements Imposed: In granting a variance, the ALJ and/or AHO may impose additional requirements on the applicant that will:

1. Mitigate any harmful effects of the variance; or

2. Serve the purpose of the standard or requirement that is waived or modified. (Ord. 2011-11, 5-24-2011)

11-4-5: DISTRICT COURT REVIEW:

A. Authority: The city or any person or entity adversely affected by any decision of the ALJ and/or AHO may petition the district court for a review of the decision.

B. Allegations Permitted: In the petition, the plaintiff may only allege that the ALJ and/or AHO decision was arbitrary, capricious or illegal.

C. Time Limit: The petition is barred unless it is filed within thirty (30) days after the ALJ and/or AHO decision is final.

D. Constitutional Takings¹: If a person believes that a constitutional taking issue has taken place as a result of the ALJ's and/or AHO's action, a request may be filed with the private property ombudsman in accordance with Utah Code Annotated section 10-9-708(3)(b).

E. Records Transmitted: The ALJ and/or AHO shall transmit to the reviewing court the record of its proceedings, including its minutes, findings, orders and, if available, a true and correct transcript of its proceedings.

F. Preparation Costs: The party appealing the order of the ALJ and/or AHO to the district court shall pay all costs associated with preparation of the record of the ALJ and/or AHO proceeding, including the cost of preparing any transcript of the recording of the hearing.

G. Tape Recordings: If the proceeding was tape recorded, a transcript of that tape recording is a true and correct transcript for purposes of subsection E of this section.

H. Review Limited To Record: If there is a record, the district court review is limited to the record provided by the ALJ and/or AHO.

I. Outside Evidence: The court may not accept or consider any evidence outside the ALJ and/or AHO record unless the evidence was offered to the ALJ and/or AHO and the court determines that it was improperly excluded by the ALJ and/or AHO.

J. No Record: If there is no record, the court may call witnesses and take evidence.

K. Affirm Decision Of ALJ and/or AHO: The court shall affirm the decision of the ALJ and/or AHO if the decision is supported by substantial evidence in the record.

L. Stay Of Decision: The filing of the petition does not stay the decision of the ALJ and/or AHO. Before filing a petition under this section or a request for mediation or arbitration of a constitutional taking issue under Utah Code Annotated section 63-34-13, the aggrieved party may petition the ALJ and/or AHO to stay its decision. Upon receipt of a petition to stay, the ALJ and/or AHO may order its decision stayed pending district court review if the ALJ and/or AHO finds it to be in the best interest of the city. After the petition is filed under this section or a request for mediation or arbitration of a constitutional taking issue is filed under Utah Code Annotated section 63-34-13, the petitioner may seek an injunction staying the ALJ and/or AHO decision. (Ord. 2011-11, 5-24-2011)

11-4-6: FILING FEE:

Upon the filing of any appeal or application to the ALJ and/or AHO, the appellant or applicant

shall pay to the city a fee which will be established by resolution. Said fee shall be deposited with the city treasurer and credited to the general fund. No appeal or application shall be considered by the ALJ and/or AHO unless and until the fee has been paid. The fee shall be nonrefundable. (Ord. 2011-11, 5-24-2011)

11-4-7: TIME LIMITATION ON VARIANCE:

In the event the ALJ and/or AHO does grant a variance in accordance with the provisions of this chapter, alterations in accordance with the variance must be activated within six (6) months after the date the variance is granted or the variance becomes null and void. The time limit of the variance may be extended an additional six (6) months by the ALJ and/or AHO and then only if the petitioner shows adequate cause to the ALJ and/or AHO that circumstances necessitate a time extension. (Ord. 2011-11, 5-24-2011)