

ORDINANCE NO. 22-33

AN ORDINANCE AMENDING CHAPTER 17.16 AND SECTIONS 17.08.020, 17.36.050, 17.52.150, 17.54.090, 17.54.100, 17.56.080, 17.56.090, 17.56.100, 17.56.110, 17.56.120, 17.56.130, 17.56.140, 17.60.060 AND 17.170.050, AND REPEALING SECTION 17.12.110 OF THE MURRAY CITY MUNICIPAL CODE RELATING TO LAND USE APPEALS AND VARIANCES

BE IT ORDAINED BY THE MURRAY CITY MUNICIPAL COUNCIL:

Section 1. Purpose. The purpose of this Ordinance is to amend chapter 17.16 and sections 17.08.020, 17.36.050, 17.52.150, 17.54.090, 17.54.100, 17.56.080, 17.56.090, 17.56.100, 17.56.110, 17.56.120, 17.56.130, 17.56.140, 17.60.060 and 17.170.050, and repeal section 17.12.110 of the Murray City Municipal Code relating to land use appeals and variances.

Section 2. Amendment of chapter 17.16 and sections 17.08.020, 17.36.050, 17.52.150, 17.54.090, 17.54.100, 17.56.080, 17.56.090, 17.56.100, 17.56.110, 17.56.120, 17.56.130, 17.56.140, 17.60.060 and 17.170.050 of the Murray City Municipal Code. Chapter 17.16 and sections 17.08.020, 17.36.050, 17.52.150, 17.54.090, 17.54.100, 17.56.080, 17.56.090, 17.56.100, 17.56.110, 17.56.120, 17.56.130, 17.56.140, 17.60.060 and 17.170.050 of the Murray City Municipal Code relating to land use appeals and variances shall be amended to read as follows:

CHAPTER 17.08

17.08.020: TERMS DEFINED:

...
ADVERSELY AFFECTED PARTY: a person other than a land use applicant who: (a) owns real property adjoining the property that is the subject of a land use application or land use decision; or (b) will suffer a damage different in kind than, or an injury distinct from, that of the general community as a result of the land use decision.

...
APPEAL AUTHORITY: A land use appeal and variance hearing officer ("hearing officer").

...
LAND USE AUTHORITY: The planning commission, the community and economic development director, or a staff member of the community and economic development division when making any order, requirement, decision or determination in the enforcement of title 16 or 17 of this code, or any other related ordinance.

LAND USE DECISION: an administrative decision of a land use authority or appeal authority regarding: (a) a land use permit; (b) a land use decision; or (c) the enforcement of a land use regulation, land use permit, or development agreement.

...
SUBSTANTIAL EVIDENCE: the degree of relevant evidence which a reasonable person, considering the record as a whole, might accept as adequate to support a conclusion, even though other reasonable persons might disagree.

CHAPTER 17.16
LAND USE APPEALS AND VARIANCES

17.16.010: APPOINTMENT OF HEARING OFFICERS:

A. The mayor shall appoint a list of at least three (3) hearing officers, with advice and consent of the city council, to serve as an appeal authority for appeals of land use decisions and requests for variances under this title

B. A hearing officer shall be a resident of the city.

C. Hearing officers shall, at a minimum, have such training and experience as will qualify them to conduct administrative or quasi-judicial hearings regarding land use, land development and regulatory codes dealing with issues related to land use.

D. A hearing officer shall be appointed for a term of three (3) years and may not serve more than three (3) consecutive terms. Vacancies occurring during a term shall be filled for the balance of the term. An individual is considered to have served a full term if, due to filling a vacancy, the individual has served for at least twelve (12) months.

E. A hearing officer may be removed from the list by the mayor for any reason. (Ord. 14-10)

17.16.020: AUTHORITY OF HEARING OFFICER:

A. A hearing officer shall hear and decide:

1. Requests for variances from the terms of the city's land use ordinances;
2. Appeals from decisions by a land use authority applying the city's land use ordinances;
3. Appeals from a fee charged in accordance with section 10-9a-510 of the Utah code;
4. Appeals of the denial by a land use authority of a request for a reasonable accommodation; and
5. Any other request or appeal of a decision delegated to a land use authority by title 16 or 17 of this code.

B. A hearing officer shall:

1. Act in a quasi-judicial manner;
2. Serve as the final arbiter of issues involving the interpretation or application of city land use ordinances subject to appeal to the Utah district courts as provided in section 10-9a-801 of the Utah code. (Ord. 14-10)

17.16.030: APPEAL PROCESS:

A. Parties Entitled to Appeal: The City, a land use applicant, or an adversely affected party may appeal a final written decision of the land use authority.

B. Time to File Appeal:

1. Except as provided in subsection 2, an appeal of a land use decision must be filed with the city's community and economic development division within ten (10) calendar days from the date of a written decision issued by a land use authority. If a written appeal or request is not timely filed as provided in this section, the decision of the land use authority shall be final.
2. An appeal may be filed within thirty (30) calendar days from the date of a written decision issued by a land use authority related to (a) the denial of a request for a reasonable accommodation under chapter 17.36; or (b) for the land use applicant only, the decision of a historic preservation authority regarding a land use application.

C. Application: A hearing officer may only consider an appeal if the appellant submitted a complete application within the time period provided in subsection B of this section. An appeal application is complete if it includes:

1. A completed appeal application form provided by the city;
2. Payment of applicable fee; and
3. A written statement, no more than five (5) pages with one inch (1") margins, 12-point sans serif font, single spaced, that concisely: (a) explains the appellant's standing to appeal; (b) identifies the alleged error in the administration or interpretation of the city's land use ordinances that is grounds for the appeal; and (c) provides reasons the appellant claims the applicable decision was made in error.

D. Stay of Proceedings: The filing of a written appeal or request does not stay the decision of the land use authority. The appellant may petition the assigned hearing officer to stay the land use authority decision. Upon petition, the assigned hearing officer may order the decision of the land use authority stayed pending review by the assigned hearing officer.

E. Hearing: Upon receipt of a completed appeal application, the matter shall be placed on the next available hearing officer agenda for which the item may be reasonably scheduled. The hearing officer shall proceed to take all steps necessary to

review and hear the appeal at a public meeting. The hearing officer shall respect the due process rights of each of the participants.

17.16.040: SCOPE AND STANDARD OF REVIEW:

A. The review by the hearing officer of the appeal shall be limited to the record of the land use application process resulting in the decision made by the land use authority which is the subject of the appeal. The record may include written communications, the land use application, staff reports, meeting minutes and the written land use decision.

B. The hearing officer may not hear, accept or consider any evidence outside the record of the land use authority unless that evidence was offered to the land use authority and the hearing officer determines that it was improperly excluded.

C. The appellant has the burden of proving that the land use authority erred.

D. 1. Except as provided in subsection 2, the hearing officer shall determine whether the record on appeal includes substantial evidence for each essential finding of fact.

2. For appeals under the MCCD design review approval process outlined in section 17.170.050, the hearing officer shall uphold the decision so long as the decision was not arbitrary or capricious.

E. The hearing officer shall:

(a) determine the correctness of the land use authority's interpretation and application of the plan meaning of land use regulations, and

(b) interpret and apply a land use regulation to favor a land use application unless the land use regulation plainly restricts the land use application.

17.16.050: FINAL DECISION:

A. A decision of a hearing officer takes effect on the date when the hearing officer issues a written decision.

B. An appeal of the decision by the hearing officer may be made to the Utah district court in compliance with section 10-9a-801 of the Utah code.

17.16.060: VARIANCES:

A. Parties Entitled to Request a Variance: Any person or entity desiring a waiver or modification of a land use requirement of this title as applied to a parcel of property that they own, lease or in which they hold some other beneficial interest may apply to a hearing officer for a variance after receiving a final written administrative decision or interpretation of the land use requirement from a land used authority.

B. Application: a hearing officer may only consider a variance request after a complete variance application and fees have been submitted to the community and economic development division.

C. A hearing officer may grant a variance only if:

1. Literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the land use ordinances;

2. There are special circumstances attached to the property that do not generally apply to other properties in the same zone;

3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone;

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

5. The spirit of the land use ordinance is observed and substantial justice done.

D. In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship under subsection C1 of this section, the hearing officer 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;

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

3. In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship under subsection C1 of this section, the hearing officer may not find an unreasonable hardship if the hardship is self-imposed or economic.

E. In determining whether or not there are special circumstances attached to the property under subsection C1 of this section, the hearing officer 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 zone.

F. The appellant shall bear the burden of proving that all of the conditions justifying a variance have been met.

G. Variances run with the land.

H. The hearing officer may not grant:

1. a use variance;

2. a temporary variance; or

3. a variance that is greater than the minimum variation necessary to relieve the unreasonable hardship the applicant can demonstrate.

I. In granting a variance, the hearing officer may impose additional requirements on the appellant that will:

1. Mitigate any harmful affects of the variance; or
 2. Serve the purpose of the standard or requirement that is waived or modified.
- (Ord. 14-10)

J. Final Decision on Variances.

1. A decision of a hearing officer on a variance request takes effect on the date when the hearing officer issues a written decision.
2. An appeal of the decision on a variance request by the hearing officer may be made to the Utah district court in compliance with section 10-9a-801 of the Utah code. (Ord. 14-10)

[Chapter 17.36 – Residential Facility for Persons with a Disability]

17.36.050: REASONABLE ACCOMMODATION:

A. None of the requirements of this chapter shall be interpreted to limit any reasonable accommodation necessary to allow the establishment or occupancy of a residential facility for persons with a disability.

B. Any person or entity wanting a reasonable accommodation shall make application therefor to the community development director or designee and shall articulate in writing the nature of the requested accommodation and the basis for the request.

C. The community development director, or designee, shall render a written decision on each application for a reasonable accommodation within thirty (30) days. The decision shall be based on evidence of record demonstrating:

1. The requested accommodation will not undermine the legitimate purposes of existing zoning regulations notwithstanding the benefit that the accommodation would provide to a person with a disability;
2. That, but for the accommodation, one or more persons with a disability likely will be denied an equal opportunity to enjoy housing of their choice; and
3. That equal results will be achieved as between the person with a disability requesting the accommodation and a nondisabled person.

D. If a reasonable accommodation request is denied, the decision may be appealed as provided in this title. (Ord. 14-10: Ord. 07-30 § 2)

[Chapter 17.52 – Nonconforming Buildings and Uses]

**17.52.150: REGISTRATION OF NONCONFORMING USES AND STRUCTURES
REQUIRED:**

A. Rights: The rights given to those using or owning property involving a nonconforming use or structure under this chapter are specifically conditioned on the registration of the nonconformity with the community development division. Nonconforming uses and structures so registered shall be deemed lawful uses and structures under the provisions of this code to the extent documented on the registration form.

B. Registration: Registration shall be required for all nonconforming uses and structures. There shall be no deadline for the registration required by this section. The community development director, or designee, shall establish a process for the registration of nonconformities and shall establish a system for keeping records of the same. The director shall provide registration forms for this purpose.

C. Verification Required; Appeal: The director shall verify the qualification of a nonconforming use or structure for registration under this section. The director shall refuse to permit the expansion, continuance, repair maintenance or other continuance of nonconforming status for a nonconforming use or structure not registered in accordance with this section. An adversely affected party may appeal the director's registration or denial as provided in this title.

[Chapter 17.54 – Site Plan Review]

(Ord. 14-10: Ord. 09-20 § 2)

17.54.080: INSPECTION:

Following approval of site plan review, the community and economic development department shall approve an application for a building permit upon submittal of plans meeting the conditions contained in the site plan review letter. Representatives of the community and economic development department shall inspect the site to ensure that all required improvements meet the conditions of the site plan review and this title before a certificate of occupancy is issued by the building division and/or prior to the issuance of a business license and before an application for permanent or temporary power from the property may be approved by the city power department. (Ord. 09-20 § 2)

17.54.090: CONTINUING EFFECT:

A site plan review, once approved, affects real property regardless of change in ownership and all subsequent owners are subject to those conditions so long as the site is being operated. If the site or use becomes nonconforming due to a later amendment of this title, the provisions of chapter 17.52 of this title relating to nonconforming buildings and uses shall apply. (Ord. 09-20 § 2)

[Chapter 17.56 – Conditional Uses]

17.56.070: INSPECTION:

Following the issuance of a conditional use permit, the planning office shall approve an application for a building permit upon compliance of construction plans meeting such conditions and requirements as established by the planning commission.

Representatives of the code enforcement/community development division shall inspect the project to ensure that all required improvements meet the conditions of the conditional use permit and this title before a certificate of occupancy is issued by the building inspection division and before an application for permanent or temporary power for the property may be approved by the city power department. (Ord. 07-30 § 2)

17.56.080: REVOCATION:

A. Written Complaint: Upon receiving a written complaint alleging a violation or failure to comply with any condition prescribed in a conditional use permit, the code enforcement/community development division shall investigate the complaint. If the complaint has merit, and attempts to remedy the complaint fail, the community development division may place the complaint on the agenda of the regular meeting of the planning commission, provided, that the permittee shall have at least fourteen (14) days' notice of the meeting.

B. Hearing Procedure: Permittee shall be given written notice of the exact nature of the complaint and the date and time of the hearing before the planning commission. The hearing shall be held in accordance with customary administrative hearings procedures.

C. Action; Complaint Dismissal: The planning commission, after hearing the evidence presented regarding the complaint, may continue the hearing from time to time, modify or rescind any condition or requirement of the conditional use permit as it deems necessary, revoke the conditional use permit, or take no action and dismiss the complaint.

D. Relief From Order: Any permittee aggrieved by an order entered by the planning commission pursuant to this section may maintain an action for relief therefrom in any court of competent jurisdiction. Action for relief must be filed with the court within thirty (30) days after the order from which relief is sought is made.

E. Notices: All notices required herein shall be provided by personal service or by certified mail.

F. Effective Date And Scope: This section shall apply to all conditional use permits issued after the effective date hereof, regardless of change in ownership or occupancy. (Ord. 07-30 § 2)

17.56.090: TIME LIMIT:

A. A temporary conditional use permit may be issued by the planning commission for a period of six (6) months. This permit may be renewed by the planning staff for a total of three (3) successive six (6) month time periods, allowing a total of two (2) years for

the temporary conditional use permit. Where hardship or unusual circumstances exist, the planning commission may extend the temporary permit for one additional year. These extensions shall be granted in two (2) separate six (6) month increments. A temporary conditional use permit shall not be issued for a use which is not incidental to or directly related to an intended permanent use on the property.

Mobile offices, homes or trailers which are used for business purposes shall only be allowed for a six (6) month time period as authorized by the planning commission. The planning commission may extend the time period for the temporary structure up to one additional year providing that plans for a permanent structure have received commission approval.

Temporary structures shall be removed from the property upon occupancy of the permanent structure. Premanufactured structures which meet all building code regulations and construction trailers shall be exempt from this regulation.

B. A temporary conditional use occupancy permit shall not be issued nor shall the building structure or other facility be occupied until all water, sewer, and electrical permits have been issued and all appropriate inspections performed.

C. Unless there is substantial action under a conditional use permit within a maximum period of two (2) years of its issuance, the conditional use permit shall expire. The planning commission may grant a yearly extension, when deemed in the public interest. (Ord. 07-30 § 2)

17.56.100: CONDITIONAL ZONES:

Upon the recommendation of the planning and zoning commission and after the public hearing, the city may establish conditional zones within existing zoning districts where it is shown that it is in the best interests and general welfare of the community. The planning commission may establish and impose such conditions and requirements that are in keeping with the best interest and general welfare of the community. (Ord. 07-30 § 2)

17.56.110: REAPPLICATION AFTER DENIAL:

Denial of an application for a conditional use permit regarding any parcel of property shall prohibit the filing of another application for a conditional use permit for the same parcel of property or any portion thereof, within one year of the date of the final denial of the previous application unless the planning commission finds that there has been a substantial change in the circumstances or sufficient new evidence as submitted by the applicant in writing since the denial of the previous application to merit consideration of a second application within the one year time period. (Ord. 07-30 § 2)

17.56.120: CONTINUING EFFECT:

A conditional use permit, once approved, affects real property regardless of change in ownership and all subsequent owners are subject to those conditions so long as that conditional use is being conducted on the property. The conditional use may be

conducted either intermittently or continuously, provided, however, that if the conditional use becomes a legal nonconforming use due to a later amendment to this title, the provisions of chapter 17.52 of this title relating to nonconforming buildings and uses shall apply. (Ord. 07-30 § 2)

17.56.130: REPORTING REQUIREMENTS:

Before February 1 of every year, the owner or occupant of a property which has been approved for the following land use under a conditional use permit shall provide written evidence to the community development division that the property use complies with this title:

1210.1 Supervised youth group home. (Ord. 07-30 § 2)

[Chapter 17.60 – Planned Unit Development]

17.60.060: SCOPE OF PLANNING COMMISSION ACTION:

In carrying out the intent of this chapter, the planning commission shall consider the following principles:

A. It is the intent of this chapter that site and building plans for a planned unit development shall be prepared by a designer or team of designers having professional competence in urban planning as proposed in the application. The commission may require the applicant to engage such a qualified designer or design team.

B. It is not the intent of this section that control of the design of a planned unit development by the planning commission be so rigidly exercised that individual initiative be stifled and substantial additional expense incurred; rather, it is the intent of this section that the control exercised be the minimum necessary to achieve the purpose of this chapter.

C. The planning commission may approve or disapprove an application for a planned unit development. In approving an application the commission may attach such conditions as it may deem necessary to secure compliance. (Ord. 07-43 § 2)

[Chapter 17.170 – Murray City Center District MCCD]

17.170.050: PROCEDURES:

A. Applications: The Community and Economic Development Department shall receive applications for design review approval as required under section 17.170.040 of this chapter. Applications for new construction or major alteration must be reviewed by the MCCD Review Committee, which must forward a recommendation to the Commission. Members of the Planning Commission or MCCD Review Committee may enter, solely in performance of their official duties and only at reasonable times, upon private lands for examination or survey thereof. However, no member, employee, or agent of the Commission or Committee may enter any private building without express consent of the owner or occupant thereof.

B. Public Meeting: Prior to action on an application for design review approval, the Commission shall hold a public meeting. The Commission shall take such action as may reasonably be required to inform the owners of any property likely to be materially affected by the application and shall give the applicant and such owners an opportunity to be heard. A written notice of the proposal shall be sent at least ten (10) days prior to the hearing to the applicant and to owners of property (lots, parcels, or tracts of land) within three hundred feet (300') of the property that is the subject of an application for design review approval.

C. Final Action: The Commission's final action on an application for design review approval for major alterations and new construction shall be by the passage of a motion to take one (1) of the following actions:

1. Grant the design review approval as proposed.
2. Grant the design review approval subject to specific conditions and/or modifications of the proposal presented in the application.
3. Deny the design review approval as proposed or modified.

D. Appeal:

1. Minor Alterations: Minor alterations denied by the administrative staff may be appealed to the Planning Commission by filing written notice of the appeal with the Community and Economic Development Department within thirty (30) calendar days from issuance of the written decision by the administrative staff.

2. Major Alterations And New Construction: Planning Commission decisions on applications for design review approval may be appealed to the Hearing Officer by an adversely affected party as provided in this title (Ord. 21-21: Ord. 19-40)

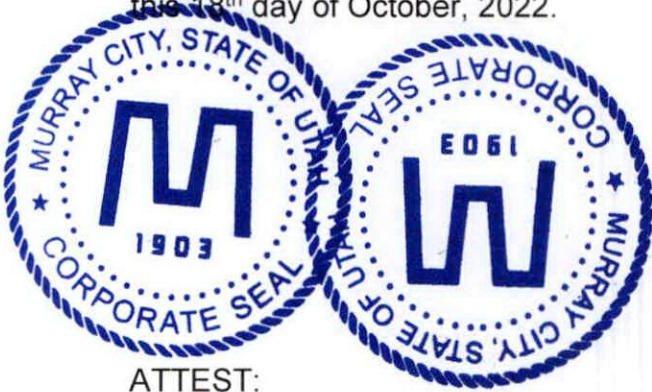
Section 3. Repeal section 17.12.110 of the Murray City Municipal Code. Section 17.12.110 of the Murray City Municipal Code relating to land use appeals and variances shall be repealed as follows:

[Chapter 17.12 - Planning and Zoning Commission]

17.12.110: PLANNING COMMISSION APPEALS: [REPEALED]

Section 4. Effective date. This Ordinance shall take effect upon first publication.

PASSED, APPROVED AND ADOPTED by the Murray City Municipal Council on this 18th day of October, 2022.



MURRAY CITY MUNICIPAL COUNCIL

Kat Martinez
Kat Martinez, Chair

ATTEST:

Brooke Smith
Brooke Smith, City Recorder

Transmitted to the Office of the Mayor of Murray City on this 21st day of October, 2022.

MAYOR'S ACTION: Approved

DATED this 21st day of October, 2022.

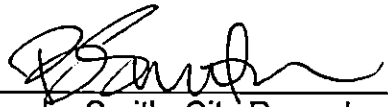
Brett A. Hales
Brett A. Hales, Mayor

ATTEST:

Brooke Smith
Brooke Smith, City Recorder

CERTIFICATE OF PUBLICATION

I hereby certify that this Ordinance or a summary hereof was published according to law on the 21st day of October, 2022.



Brooke Smith, City Recorder