

**ALPINE CITY  
ORDINANCE 2021-03**

**AN ORDINANCE ADOPTING AMENDMENTS TO ARTICLE 3.01.120; 2.03.050;  
AND 3.25.150 OF THE ALPINE CITY DEVELOPMENT CODE TO CLARIFY  
SECTIONS PERTAINING TO THE APPEAL AUTHORITY.**

**WHEREAS**, The City Council adopted Ordinance 2015-01 on February 10, 2015 to eliminate the Board of Adjustment and institute an Appeal Authority; and

**WHEREAS**, the City Council adopted ordinance 2017-10 on June 13, 2017 to amend the ordinance to require that hearings for appeals from a land use decision be based on the record of proceedings and not de novo; and

**WHEREAS**, the ordinance has been found in 2021 to still contain references to the Board of Adjustments; and

**WHEREAS**, on January 5, 2021, the Planning Commission recommended approval of the ordinance as proposed; and

**WHEREAS**, the City Council of Alpine, Utah has deemed it in the best interest of Alpine City to amend the ordinance to clarify sections pertaining to the Appeal Authority; and

**WHEREAS**, the Alpine City Planning Commission has reviewed the proposed Amendments to the Development Code, held a public hearing, and has forwarded a recommendation to the City Council; and

**WHEREAS**, the Alpine City Council has reviewed the proposed Amendments to the Development Code:

**NOW THEREFORE**, be it ordained by the Council of Alpine City, in the State of Utah, as follows: The amendments to Article 3.01.120; 2.03.050; and 3.25.150 contained in the attached document will supersede Article 3.01.120; 2.03.050; and 3.25.150 as previously adopted. This ordinance shall take effect upon posting.

**SECTION 1:**        **AMENDMENT** “3.01.120 Fees And Charges” of the Alpine City Development Code is hereby *amended* as follows:

AMENDMENT

3.01.120 Fees And Charges

(Ord. 94-02, 2/8/94). All costs for the processing of applications for zone changes, subdivision reviews, conditional use approvals, Appeal Authority rulings, and similar actions required under the terms of this ordinance shall be borne by the applicant. The City Council may, by resolution, establish fees for the processing of such applications and the administration of this ordinance and provide for the assessment and collection thereof.

**SECTION 2:**            **AMENDMENT** “2.03.050 District Court Review Of Appeal Authority Decisions” of the Alpine City Development Code is hereby *amended* as follows:

#### AMENDMENT

#### 2.03.050 District Court Review Of Appeal Authority Decisions

(Ord. 98-02, 1/13/98. Amended Ord. 2006-17, 11/14/06; Ord. 2013-03, 3/12/13; Ord. 2015-01, 02/10/15; Ord. No. 2017-10, 06/13/17)

1. Any person adversely affected by any decision of the Land Use Hearing Officer or the Appeal Authority may petition the district court for a review of the decision. However, no person may challenge in district court the City’s land use decision until that person has exhausted the person’s administrative remedies as provided in Utah State Code Title 10, Chapter 9a, Part 7, Appeal Authority and Variances, if applicable.
2. In the petition, the petitioner may only allege that the Land Use Hearing Officer’s or the Appeal Authority’s decision was arbitrary, capricious, or illegal.
3.
  - a. The petition is barred unless it is filed within 30 days after the Land Use Hearing Officer’s or the Appeal Authority’s decision is final.
  - b.
    - i. The time under Part 3,a to file a petition is tolled from the date a property owner files a request for arbitration of a constitutional taking issue with the private property ombudsman under Utah Code Annotated 13-43-204 until 30 days after:
      - (1) the arbitrator issues a final award; or
      - (2) the private property ombudsman issues a written statement under Utah Code Annotated 13-43-204(3)(b) declining to arbitrate or to appoint an arbitrator.
    - ii. A tolling under Part 3,b,i operates only as to the specific constitutional taking issues that are the subject of the request for arbitration filed with the private property ombudsman by a property owner.
    - iii. A request for arbitration filed with the private property ombudsman after the time under Part 3,a to file a petition has expired does not affect the time to file a petition.
4.
  - a. The Land Use Hearing Officer or the Appeal Authority shall transmit to the district court the record of its proceedings including its minutes, findings, orders, and if available, a true and correct transcript of its proceedings.
  - b. If the proceeding was taped, a transcript of that tape recording is a true and

- correct transcript for purposes of this Part.
5.
    - a.
      - i. If there is a record, the district court's review is limited to the record provided by the Land Use Hearing Officer or the Appeal Authority.
      - ii. The court may not accept or consider any evidence outside the Land Use Hearing Officer or the Appeal Authority record unless that evidence was offered to the Hearing Officer or the Appeal Authority and the court determines that it was improperly excluded by the Hearing Officer or the Appeal Authority.
    - b. If there is no record, the court may call witnesses and take evidence.
  6. The court shall affirm the decision of the Land Use Hearing Officer or the Appeal Authority if the decision is supported by substantial evidence in the record and is not arbitrary, capricious, or illegal.
  7.
    - a. The filing of a petition does not stay the decision of the Land Use Hearing Officer or the Appeal Authority.
    - b.
      - i. Before filing a petition under this section or a request for mediation or arbitration of a constitutional taking issue under Utah Code Annotated 13-43-204, the aggrieved party may petition the Land Use Hearing Officer or the Appeal Authority to stay its decision.
      - ii. Upon receipt of a petition to stay, the Land Use Hearing Officer or the Appeal Authority may order its decision stayed pending district court review if the Land Use Hearing Officer or the Appeal Authority of Adjustment finds it to be in the best interest of the City.
      - iii. After a petition is filed under this section or a request for mediation or arbitration of a constitutional taking issue is filed under Utah Code Annotated 13-43-204, the petitioner may seek an injunction from the district court staying the Land Use Hearing Officer's or the Appeal Authority's decision.

**SECTION 3:**        **AMENDMENT** "3.25.150 Appeals And Variances" of the Alpine City Development Code is hereby *amended* as follows:

#### AMENDMENT

##### 3.25.150 Appeals And Variances

Any person dissatisfied with the decision of Alpine City in regards to this Chapter shall have the right to appeal the decision to the Alpine City Appeal Authority within ten (10) days after said decision is made final in writing. The appellant shall follow the appeal process as outlined in DCA 2.03.040 (Appeals from Land Use Decisions).

(Amended by Ord. No. 2005-02, 2/3/05 & Ord. No. 2005-19, 10/25/05; Ord. No. 2007-02, 4/24/07; Ord. No. 2008-04, 5/13/08; Ord. No. 2011-01, 01/11/11)

PASSED AND ADOPTED BY THE ALPINE CITY COUNCIL

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	<b>AYE</b>	<b>NAY</b>	<b>ABSENT</b>	<b>ABSTAIN</b>
Lon Lott	<u>✓</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
Carla Merrill	<u>✓</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
Gregory Gordon	<u>✓</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
Jason Thelin	<u>✓</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
Jessica Smuin	<u>✓</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>

Presiding Officer

Attest



\_\_\_\_\_  
Troy Stout, Mayor, Alpine City



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Bonnie Cooper, City Recorder Alpine City

