

CHAPTER 1.04 LAND USE AND APPEAL AUTHORITIES

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1.04.005 ZONING ADMINISTRATOR - AUTHORITY AND DUTIES. The Zoning Administrator or designee is hereby granted the following authority and duties, including but not limited to the following:

- A. Enforce Titles I, II, and III and all provisions thereof and shall do so by any legal means.
- B. Advise the Building Official on the issuance of Building Permits relating to requirements in Titles I, II, and III.
- C. Inspects the uses of buildings, structures or land to determine compliance with these Titles or any Conditions issued with a development permit. Such inspections shall be made at reasonable times.
- D. Issue Notices of Violation wherever building, land, or development permits are being used contrary to the provisions of Titles I, II, and III. (This shall be done by serving notice in writing on any person engaged in said violation and posting such notice on the premises.)
- E. Inform the City Council of significant Title violations and recommend specific courses of action with regard to each violation.
- F. Maintain a file of Title violations and action to be taken by the City Council on such violations.
- G. Interpret codes and maps if another body is not identified. The Zoning Administrator is authorized to forward issues to the Planning Commission for Interpretation.
- H. Serves as the staff to the Planning Commission and is authorized to set the Planning Commissions agenda and to set dates for public hearings on the Planning Commissions agenda.
- I. Other duties specifically assigned in these Titles.

1.04.010 PLANNING COMMISSION, NUMBER OF MEMBERS. There is hereby created a Planning Commission for Tremonton City, Utah. The Planning Commission shall consist of five (5) Members; each appointment consented to by the City Council. Members of said Commission may reside outside of Tremonton City. The City Council may assign a City Council member as an ex-officio and non-voting Member of the Planning Commission.

1.04.015 PLANNING COMMISSION APPOINTMENT. When vacancies occur in the Planning Commission, a City Council member that is an ex-officio member of the Planning Commission shall appoint an individual to serve on the Planning Commission with the advice and consent of the City Council. In cases when a City Council member has not been assigned to be an ex-officio Member of the Planning Commission, the Mayor shall appoint an individual to serve on the Planning Commission with the advice and consent of the City Council. It is the responsibility of the City Council member or Mayor that is appointing, with the advice and consent of the City Council, to make a careful and critical evaluation of the individual ability to fulfill the role of a Planning Commissioner. To aid in the evaluation process, the City Council or Mayor may interview or request a letter of interest, resume, written statement growth-related issues, etc., from the prospective Planning Commissioner.

1.04.020 TERM OF OFFICE. The terms of the appointed Members of the Planning Commission shall be three (3) years, and until their respective successors shall have been appointed, except that the terms of appointment shall be such that the terms of two (2) Members shall expire each year. The City Council member assigned to be the ex-officio member shall serve at the pleasure of the City Council. The Planning Commission existing at the time of passage of this Title shall continue to serve, and the terms of its Members shall be fixed by the City Council in such a manner as to comply with the above provisions for staggering terms of service. Vacancies of appointed Members occurring other than through the expiration of a term shall be filled for the remainder of the unexpired term by appointment of the City Council.

1.04.025 REMOVAL OF PLANNING COMMISSIONERS. Planning Commissioners are political appointees of the City Council and serve at the pleasure of the City Council. As political appointees, the City Council shall have the right to remove any Member of the Planning Commission for any reason or no reason at all. A Planning Commissioner shall be removed from their public office by a majority vote of the City Council.

1.04.030 CHAIRPERSON. The Planning Commission shall elect a Chairperson from its Members, whose term shall be for one (1) year, and shall preside and conduct the Planning Commission meetings. The Chairperson shall pace the meeting so that all items on the agenda should be addressed and either concluded or continued. The Chairperson shall ensure that the time limits on the public comment portion of the meeting are complied with. The Chairperson shall use their best efforts to see that Members and the public are treated at all times with respect and that the meetings are orderly.

1.04.035 ROLE OF THE PLANNING COMMISSION. Planning Commissioners are public officials that are political appointees of the City Council. As non-elected public officials, Planning Commissioners do not have a constituency, nor do they represent the citizens or a neighborhood. The Planning Commission's primary purpose is to be an advisory body to the City Council by providing reasoned recommendations to the City Council on land use matters.

1.04.040 PLANNING COMMISSION'S POWERS AND DUTIES. The Planning Commission is hereby granted the following powers and duties:

- A. Make a recommendation to the City Council on a General Plan and amendments to the General Plan;
- B. Make a recommendation to the City Council on land use Ordinances, zoning maps, official maps, and amendments;
- C. Make a recommendation on the appropriate delegation of power to a Land Use Authority to hear and act on a land use application;

D. Make recommendations on appropriate delegation of power to an Appeal Authority to hear and act on an appeal from a decision of a Land Use Authority;

E. Make recommendations on application processes that may include a designation of routine land use matters that, upon application and proper notice, shall receive informal streamlined review and action if the application is uncontested (see UCA 10-9a-302 (5)); and

F. Act as the Land Use Authority as prescribed in Title I and Title II.

G. Act as the Appeal Authority as prescribed in Title I and Title II.

1.04.045 VOTING. Three (3) voting Members of the Planning Commission shall constitute a Quorum. The minimum number of "yes" votes to approve any application, approve any recommendation, or to take any other action by the Planning Commission shall be the majority of the Quorum present at a meeting. The Chairperson of the Planning Commission shall be a voting Member.

1.04.050 TRAINING. In accordance with Utah Code 10-9a-302, each Planning Commissioner shall complete four hours of annual land-use training. One hour of the annual training shall be on general powers and duties under Title 10, Chapter 9a, Municipal Land Use, Development, and Management Act. Three hours of annual training on land use, which may include: appeals and variances; conditional use permits; exactions; impact fees; vested rights; subdivision regulations and improvement guarantees; land use referenda; property rights; real estate procedures and financing; zoning, including use-based and form-based; and drafting ordinances and code that complies with state statute.

1.04.055 COMPENSATION. The Members of the Planning Commission shall serve without compensation, except that the City shall reimburse the Members of the Planning Commission for actual expenses incurred, upon presentation of proper receipts and vouchers, and with prior approval of the Zoning Administrator.

1.04.060 TRAFFIC ADVISORY BOARD. Reserved.

1.04.065 DEVELOPMENT REVIEW COMMITTEE, NUMBER OF MEMBERS, APPOINTMENT. There is hereby created a Development Review Committee for Tremonton City, Utah, hereafter referred to as DRC. The Development Review Committee shall consist of five (5) Members. The City Council hereby appoints as regular Members of the DRC the individuals holding the following positions: City Manager, Zoning Administrator, Public Works Director, Parks and Recreation Director, and City Engineer. The alternate Members of the DRC shall be the: City Attorney and Building Official. The Chairperson may decide when to use an alternate member of the DRC in the place of a regular Member.

1.04.070 TERM OF OFFICE. The term of office of the Development Review Committee Member shall be concurrent with the term of their employment with Tremonton City.

1.04.075 VOTING. Three (3) voting Members of the DRC shall constitute a Quorum. The minimum number of "yes" votes to approve any application, approve any recommendation, or to take any other action by the DRC shall be three (3). The Chairperson of the Development Review Committee shall be a voting Member.

1.04.080 CHAIRPERSON. The Zoning Administrator shall serve as the Chairperson and shall preside and conduct at the DRC meetings. The City Manager shall be the Chairperson in the absences of the Zoning Administrator. Chairperson shall chair the meeting in a manner to accomplish the following goals. The Chairperson, shall pace the meeting so that all items on the agenda should be addressed and either concluded or continued. The Chairperson shall ensure that the time limits on the public comment portion of the meeting are complied with. The Chairperson shall use their best efforts to see that Members and the public are treated at all times with respect and that the meetings are orderly.

1.04.085 DRC'S POWERS AND DUTIES. The DRC is hereby granted the following powers and duties:

A. Act upon Land Use and Development as prescribed in Title I and Title II.

B. Act as the Appeal Authority as prescribed in Title I and Title II.

1.04.090 RULES OF PROCEDURE AND ORDER. Pursuant to Utah Code 10-3-606, the following rules of order and procedure shall be used to govern the meetings of the Planning Commission, Development Review Committee, and Appeal Authorities.

A. Meeting Procedures. All Planning Commission, DRC, and Appeal Authority meetings shall be conducted in accordance with Roberts Rules of Order. If any rule contained in Roberts Rules of Order conflicts with any provision of these rules in this Section or Utah State law governing meeting procedures for the Planning Commission, DRC, or Appeal Authorities, the Planning Commission, DRC, and Appeal Authority shall follow the provision of these rules in this Section or State Law.

B. Public Comment. There shall be on every agenda of the Planning Commission, DRC, and Appeal Authority an item entitled "public comment." The public comment portion of the meeting shall be limited to the public speaking to the Planning Commission, DRC, or Appeal Authority on any item not on the agenda or at the discretion of the Chairperson an item on the agenda. Members of the public shall be free to express any idea, question, or view point without limitation except for time and the manner of the presentation. Individual members of the public shall be limited to three (3) minutes time. The Chairperson of the meeting shall ensure that the public comment is civil and orderly. The Chairperson shall use its best efforts to allow the free expression of the public and keep the meeting in order. Members should not interrupt, argue with, or otherwise interfere with any comment by a member of the public. The Planning Commission, DRC, or Appeal Authority may ask clarifying questions of the member of the public making a presentation and other members of the public may ask clarifying questions of the presenter at the discretion of the Chairperson.

C. Public Participation in Meeting. Other than, at a required public hearing and the public comment portion of the meeting, members of the public shall not be allowed to participate in the meeting unless they are on the agenda.

D. Member Participation. At regular meetings of the Planning Commission, DRC, and Appeal Authority Members shall speak only after being recognized by the Chairperson. Any meeting designated as a work meeting shall be more informal and Members may freely participate as long as proper decorum is maintained. Members shall conduct themselves at all times with decorum and respect. They shall refrain from making any disparaging remarks concerning any other member of the body or the public. Any Member wishing to speak on any item on the agenda shall be recognized by the Chairperson to do so.

E. Disclosure. An opportunity to see, hear, and know all facts and evidence that are considered by the Planning Commission, DRC, and Appeal Authority in making a decision shall be known. Any private or ex parte communication to individual Members of the Planning Commission, DRC, or Appeal Authority shall be made known at the meeting for the record.

F. Conflicts of Interest. Member of the Planning Commission, DRC, or Appeal Authority shall adhere to UCA 10-3-1301 *et.al.* and disclose conflicts of interest pertaining to items that are on the Commission and Board's agenda. Conflicts of interests generally include a direct or indirect financial interest in the decision, or a close familial relationship with an Applicant, and other circumstances that could create a potential bias by the Member. Generally, state law requires Members to disclose the conflict and it is recommended that the Member recuse themselves from participation in the discussion and decision. Members of the Planning Commission, DRC, and Appeal Authorities are encouraged to discuss potential conflict of interest with the City Attorney to ensure compliance with state law.

G. Findings of Fact. An Administrative Decision made by the Planning Commission or DRC shall include the explicit and careful findings of fact which are enumerated for the record so that all interested persons know exactly what has been decided and the basis for the decision. Enumerating specific Ordinances or criteria within approving, approving with conditions, or denying an application are an essential aspect of due process and may be the basis for which an appeal of a decision is made. Records of all findings shall be kept and maintained.

H. Meeting Adjournment. Meetings of the Planning Commission and DRC, as a goal, shall be scheduled to end at or before 8:30 p.m. for the Planning Commission and 12:00 noon for the DRC and the Chairperson and Members shall use their best efforts to conclude the meeting in a timely manner. However, no motion to extend the time of the meeting is necessary to be made. The meetings of the Planning Commission and DRC shall not be adjourned until either all items listed on the agenda have been acted upon or a motion to adjourn is made and approved by a majority of the Members.

1.04.095 APPEAL AUTHORITY. The City Council, Planning Commission, DRC, Zoning Administrator, Engineering Appeal Panel, and other public bodies or individuals as specifically prescribed in Title I and Title II are hereby designated to serve as Appeal Authorities and to decide upon appeals of a decision of a Land Use Authority. The Appeal Authority for an appeal associated with the Engineering Appeal Panel shall be in accordance with UCA 10-9a-508(5) and Geologic Hazards shall be in accordance with UCA 10-9a-703 (2).

A. Condition Precedent to Judicial Review. No person, board, or officer of a Land Use Authority may seek judicial review of any decision applying the Land Use Ordinance until after challenging the Land Use Authority's decision in accordance with Title I or Title II. No theory of relief may be raised in the District Court unless it was timely and specifically presented to the Appeal Authority. In accordance with UCA 10-9a-701(4) adversely affected party shall not be required to pursue duplicate or successive appeals before the same or separate Appeal Authorities as a condition of an appealing party's duty to exhaust administrative remedies before appealing to district court.

B. Appeal Authority Procedures. The number of Members, Chairperson, appointments, term of office, quorum and voting requirements of the City Council, Planning Commission, DRC, Zoning Administrator and other public bodies or individuals acting as a Appeal Authorities, shall be the same as prescribe in Title I or Title II, or if not contained in Title I or Title II than as contained by City Ordinance or in State law. If there is no specific quorum and voting requirement listed for a body in Title I or Title II, City Ordinance, or State law than the quorum or voting requirement shall be the majority members of the body shall be present to constitute a quorum; the minimum number of "yes" votes to approve any appeal shall be the majority of the quorum present at the meeting. Appeal authority procedures not specifically prescribed in Title I or Title II shall be in accordance with UCA 10-9a Part 7.

1.04.100 SUBMISSION OF APPEAL APPLICATION. An applicant, person, board or officer of the City adversely affected by the Land Use Authority's decision applying a Land Use Ordinance may, within the time period provided in Title I and Title II (see individual processing Chapter for time periods), appeal that decision to the Appeal Authority by alleging there is error in any order, requirement decision, or determination made by the Land Use Authority in the decision applying the Land Use Ordinance. Appeal Application shall generally be submitted to the Zoning Administrator unless otherwise noted in Title I, II, or State law. No Appeal Application may be processed without the submission of the application, all the supporting materials as required by Section, and the application fee. Incomplete applications shall not be processed under any circumstance.

1.04.105 FORM AND CONTENTS OF APPEALS AND REQUIRED DOCUMENTS. The Appeal Application shall be submitted with the materials listed in this Section. The Zoning Administrator or Appeal Authority may determine and require that additional items not listed herein be submitted in order to evaluate the proposed Appeal Application. The number of hard copies shall be determined by the Zoning Administrator.

A. Written Statement Setting Forth Theories of Relief Required. The appellant shall submit a written statement setting forth each theory of relief they intend to raise at the hearing, along with a brief statement of facts in support thereof.

B. Public Notice. Addressed and stamped envelopes (the City's address shall be the return addresses on the envelopes) of property owners located within three-hundred (300) feet of the proposed Appeal.

C. Fee. The processing fee required by the current Fee Schedule as set by resolution of the City Council shall be paid.

1.04.110 PUBLIC NOTICE. The Zoning Administrator shall cause all property owners within three-hundred (300) feet of the boundaries of the parcel of property which is subject to the Appeal to be notified by first class mail of the date, place and time of the public hearing and other relevant information associated with the hearing at least ten (10) days prior to the hearing. A notice of the date, place and time of the public hearing and other relevant information associated with the hearing shall also be posted in three (3) public places within the City, or posted on the City website and the Utah Public Notice website at least ten (10) days prior to the hearing. Twenty-four (24) hour notice of a public meeting shall be posted in three (3) public places within the City or posted on the City website and the Utah Public Notice website. Pursuant to UCA 10-9a-206 (1) (b) the City shall post notice on the property with a sign of sufficient size, durability, print quality, and location that is reasonably calculated to give notice to passer-by.

1.04.115 APPEAL REVIEW AND APPROVAL PROCEDURE.

A. Upon receipt of a complete application, the Zoning Administrator shall schedule the application for a public hearing and review before the Appeal Authority. Prior to the hearing at which the Appeal Application is scheduled to be heard, the Zoning Administrator shall transmit the application materials together with a written analysis of the Appeal application, pertinent facts, a review of applicable regulations and a formal staff recommendation to the Appeal Authority.

B. The Appeal Authority shall hold a public hearing on the Appeal and thereafter consider the Appeal, together with all pertinent facts, applicable regulations and the staff recommendation and shall take action to approve, disapprove or request further information prior to rendering a final determination on the Appeal application.

1.04.120 APPEAL STANDARD.

A. Standard of Review and Burden of Proof on Appeal. The Appeal Authority shall, on appeal, presume that the decision applying the Land Use Ordinance is valid and determine only whether the decision is arbitrary, capricious, or illegal. The burden of proof on appeal is on the Appellant.

B. Findings of Facts. The Appeal Authority shall not approve, an Appeal application unless it makes findings of facts that enumerates the Land Use Authorities decision on applying the Land Use Ordinance was arbitrary, capricious, or illegal.

REV 10/07
REV 04/08
REV 06/13
ORD 18-15
ORD 19-11
ORD 21-06
ORD 22-03
ORD 24-01