

Chapter 12-4 ZONING ADMINISTRATION

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12-4-101. City Council.

Powers and Duties Related to this Title. In addition to the powers and duties of the City Council set forth elsewhere in this Code, for purposes of administering this Title, the City Council has the powers and duties set forth below. Each of such powers and duties shall be exercised pursuant to the procedural and other applicable provisions of this Title.

- (a) Adopt, modify, or reject a proposed General Plan or any amendment thereto for all or part of the City and its surroundings;
- (b) Adopt, modify, or reject proposed amendments to the text of this Title and to the Zoning Map;
- (c) Adopt, modify or reject temporary land use regulations;
- (d) Establish fees and fee schedules for applications required by this Title; and
- (e) Act as a land use authority and as an appeal authority as provided in this Title.

12-4-102. Planning Commission.

There is hereby created a Planning Commission of the City of Woods Cross (the “Planning Commission”) which shall consist of seven (7) members. Members of the Planning Commission shall be registered voters in the City and shall be appointed by the Mayor with the advice and consent of the City Council. The Planning Commission shall have the powers and perform the duties, and shall complete the annual training, as defined by Utah Code Ann. §10-9a-302 and by this Chapter.

- (a) Compensation. Commission members may be compensated as provided by State Law and by the City Council; reasonable expenses incurred in the performance of their duties shall also be paid.
- (b) Term of Office; Vacancies; Removal. Members of the Planning Commission shall be appointed for staggered terms with each member’s term to run for 4 years. Any vacancy shall promptly be filled by the Mayor and City Council for the unexpired term of such member. The Mayor, with the advice and consent of the City Council, may remove any member of the Planning Commission at any time with or without cause. Written notice of removal shall be given to a member who is removed.

(c) Commission Organization; Rules and Regulations; Meetings.

(1) At the first regular Planning Commission meeting held in each calendar year, the members shall select a Chair and a Vice Chair and such other officers deemed necessary in carrying out the functions of the Planning Commission.

(2) The Planning Commission shall from time to time adopt rules and regulations for the conduct of its meetings, the processing of applications, and for any other purposes considered necessary or appropriate; said rules and regulations shall be submitted to the City Council for approval.

(3) Meetings of the Planning Commission shall generally be held twice each month according to a schedule of meetings to be published in January of each year. Special meetings may be held at the call of the Chair and at such other times as the Planning Commission may determine in accordance with the law.

(4) Meetings of the Planning Commission shall comply with the Utah Open and Public Meetings Act, Utah Code Ann. § 52-4-101, et seq. be open to the public, unless closed in accordance with law.

(5) Four members of the Planning Commission shall constitute a quorum for the transaction of business.

(d) Powers and Duties.

The Planning Commission shall have all the powers and duties, explicit or implied, given planning commissions by Utah State law, including but not limited to the following. Each of such powers and duties shall be exercised pursuant to the procedural and other provisions of this Title.

(1) The following shall be prepared by the Planning Commission and then recommended to the City Council for its adoption, denial or revision:

(A) The general plan and amendments to the general plan;

(B) Zoning ordinances and maps, and amendments to zoning ordinances and maps;

(C) The adoption of temporary land use regulations;

(D) Adoption or amendment of subdivision regulations;

(E) Approval or denial of subdivision applications;

(F) Any other matters that may be requested by the City Council.

(2) The Planning Commission shall also have the following duties and responsibilities:

(A) Administer applicable provisions of this Title;

- (B) Hear and decide the approval or denial of conditional use permits;
- (C) Hear and decide the approval or denial of site plans;
- (D) Hear and decide other matters as required by this Title or as may be directed by the City Council directly;
- (E) Act as a land use authority and as an appeal authority as provided in this Title; and
- (F) Exercise any other powers that are necessary to enable the Planning Commission to perform its function or as they may be delegated by the City Council.

(e) Special Exceptions

(1) Definitions. A special exception is:

(A) An activity or use incidental to or in addition to a principal use permitted in a zoning district;

(B) An adjustment to a fixed dimension standard permitted as an exception to the requirements of this title;

(C) A transfer of development right (TDR), or rights, established because of blight which results in an additional lot, or lots, or a dwelling unit, or units;

(D) An adaptive reuse of a building or structure eligible, or that may be eligible, for the National Register of Historic Places so long as the adaptive reuse does not compromise such eligibility; or

(E) Additional dwelling units to provide housing for moderate-income households, subject to written agreement by the city at the sole discretion of the City Council.

(2) Lower Impact. A special exception has less potential impact than a conditional use but still requires careful review of such factors as location, design, configuration and/or impacts to determine the desirability of authorizing its establishment on any given site. This section sets forth procedures for considering and approving special exceptions to the provisions of this title.

(3) Authority. When expressly provided for under the provisions of this title, the Planning Commission is authorized to approve special exceptions to the provisions of this title in accordance with the terms and provisions set forth in this section.

(4) Initiation. A property owner, or the owner's agent, may request a special exception to the provisions of this title in accordance with the procedures set forth herein.

(5) Procedure. An application for a special exception shall be considered and processed as follows:

(A) A complete application shall be submitted to the Director in a form established by the City along with any fee established by the City's fee schedule. The application shall include at least the following information:

(i) The name, address and telephone number of the applicant and the applicant's agent, if any.

(ii) The address and parcel identification of the subject property.

(iii) The zone, zone boundaries and present use of the subject property.

(iv) A complete description of the proposed special exception.

(v) A plot plan showing the following:

a. Applicant's name;

b. Site address;

c. Property boundaries and dimensions;

d. Layout of existing and proposed buildings, parking, landscaping and utilities; and

e. Adjoining property lines and uses within one hundred feet (100') of the subject property.

(vi) Such other and further information or documentation as the Director may deem necessary for a full and proper consideration and disposition of a particular application.

(B) After the application is determined to be complete, the Director shall schedule a public hearing before the Planning Commission. Notice of public hearings shall be given as required by law and according to policies established by the commission. The Planning Commission shall take action on the application within a reasonable time after the filing of a complete application.

(C) A staff report evaluating the application shall be prepared by the Director.

(D) The Planning Commission shall hold a public hearing and thereafter shall approve, approve with conditions or deny the application pursuant to the standards set forth herein. Any conditions of approval shall be limited to conditions needed to conform to the special exception to approval standards.

(E) After the Planning Commission makes a decision, the Director shall give the applicant written notice of the decision.

(F) A record of all special exceptions shall be maintained by the Community Development Department.

(6) Approval Standards: The following standards shall apply to the approval of a special exception:

(A) Conditions may be imposed as necessary to prevent or minimize adverse effects upon other property or improvements in the vicinity of the special exception, upon the City as a whole, or upon public facilities and services. These conditions may include, but are not limited to, conditions concerning use, construction, character, location, landscaping, screening, parking and other matters relating to the purposes and objectives of this title. Such conditions shall be expressly set forth in the motion authorizing the special exception.

(B) The Planning Commission shall not authorize a special exception unless the evidence presented establishes the proposed special exception:

(i) Will not be detrimental to the health, safety or general welfare of persons residing or working in the vicinity, or injurious to property or improvements in the vicinity;

(ii) Will not create unreasonable traffic hazards;

(iii) Is located on a lot or parcel of sufficient size to accommodate the special exception.

(7) Effect Of Approval: A special exception shall not authorize the establishment of any use nor the development, construction, reconstruction, alteration or moving of any building or structure, but shall merely authorize the preparation, filing and processing of applications for any approvals or permits that may be required by this title or other applicable provisions of this Code.

(8) Amendments: The procedure for amending a special exception shall be the same as the original procedure set forth in this section.

(9) Expiration: Subject to an extension of time, a special exception which is not exercised within one hundred eighty (180) days shall expire and have no further force or effect.

(f) Governmental Immunity. As members of a municipal commission, the members of the Planning Commission shall be entitled to all the protections provided by the Governmental Immunity Act of Utah, Utah Code Ann. Section 63G-7-101, *et seq.* as amended.

(g) Appeals. Any interested person adversely affected by a final decision of the Planning Commission may appeal such decision to the Hearing Officer in accordance with the procedures set forth in Section 12-4-103.

12-4-103. Appeal Authority Created – Rules, Regulations and Procedures.

(a) Legal Authority. Pursuant to Utah Code Annotated Section 10-9a-701, the City is required to establish one or more appeal authorities to hear and decide requests for variances from the terms of the land use ordinances of the City, appeals from decisions applying the land use ordinances of the City, and appeals from a fee charged in accordance with U.C.A. §10-9a-510. The timely and specific appeal to the appeal authority described in this chapter, and the exhaustion of administrative remedies, shall be conditions precedent to judicial review of any decision.

(b) Creation of Appeal Authority, Qualification, Selection. The City creates the position of land use hearing officer (the “Hearing Officer”) as an appeal authority for the City. The City may appoint one or more Hearing Officers to ensure availability as required for the efficient disposition of appeals brought under this title. The City Council shall continue to act as an appeal authority where expressly required by this Title; all other matters shall be heard by the Hearing Officer.

(1) The Hearing Officer shall be appointed by the Mayor with the advice and consent of the City Council. The appointment of the Hearing Officer shall not be subject to the procurement rules and procedures of the City.

(2) The Hearing Officer shall be or have been a professional in law, land use, or public administration, and shall have the knowledge, training and experience necessary to effectively conduct administrative hearings regarding variances and appeals of land use decisions, including knowledge and familiarity with the requirements of constitutional due process.

(3) The Hearing Officer shall not be a member of the City Council, Planning Commission, City staff or any other elected or appointed official of the City.

(4) The Hearing Officer shall serve for a term of one year, or as defined in a written agreement with the City. The initial term may be extended from time to time by the Mayor. The Hearing Officer serves at the pleasure of the City; and with the advice and consent of the City Council may be dismissed by the Mayor with or without cause.

(c) Powers and Duties. The Hearing Officer shall have all the powers and duties prescribed by law and by this Title, including to hear and decide appeals from decisions applying the City’s land use ordinance, requests for variances from the terms of the land use ordinance, and appeals from any fee imposed by the City under this Title. The Hearing Officer shall act in a quasi-judicial matter, and consistent with the requirements of this Chapter, shall serve as the City’s final arbiter of issues involving land use ordinances as described in this Title.

(1) Except as otherwise provided herein, the Hearing Officer is authorized to hear and decide appeals from any final order, requirement, determination or decision of the Director or the Planning Commission related to the application of the zoning ordinance.

(2) The hearing officer is not authorized to hear appeals of conditional use, nonconforming use, or site plan decisions made by the Planning Commission or the Director. Appeals of such matters shall be heard and decided by the City Council; the

time requirements, evidentiary requirements and procedures of such an appeal shall follow the rules established in this Chapter.

(3) The Hearing Officer may not hear or decide an appeal of any legislative act of the City Council, including without limitation, zoning ordinance amendments. Except as expressly provided in the sections below on variances, the Hearing Officer may not waive or modify the terms or requirements of the zoning ordinance.

(d) Hearings, Rules and Decisions. Hearings before the Hearing Officer are convened on a case-by-case basis when the City Recorder has received an application for a variance or a notice of appeal of a land use decision. Upon the filing of an appeal, the Director shall forthwith transmit to the Hearing Officer all the papers constituting the record upon which the action appealed from was taken.

(1) The Hearing Officer may adopt rules for the regulation of his/her procedures and the conduct of his/her duties. Such rules shall be consistent with state law and with the provisions of this code and shall be approved by the City Council.

(2) The Hearing Officer may administer oaths and compel the attendance of witnesses.

(3) All meetings of the Hearing Officer shall comply with the requirements of the Utah Open and Public Meetings Act, U.C.A. § 52-4-101, *et seq.*

(4) Decisions of the Hearing Officer become effective on the date the Hearing Officer issues a written decision, unless a different time is designated at the time the decision is made.

(5) Any decision of the Hearing Officer shall be served on all parties to the proceeding and may be posted as required for public notice.

(e) Appeals Process, Notice of Appeal. The applicant, a board or officer of the City, or any person adversely affected by a decision administering or interpreting a land use ordinance may, within ten days of the date of the final decision, appeal that decision to the Appeal Authority by alleging that there is error in any order, requirement, decision, or determination made by the land use authority in the administration or interpretation of the land use ordinance. The appeal shall be filed, in writing, with the office of the City Recorder, and shall state with specificity the reasons for the appeal.

(1) An appellant or adversely affected party must first present to the land use authority any and all information pertinent to its land use application or request. On appeal, the appellant may not bring new information for consideration by the Hearing Officer that has not first been presented to the land use authority during its consideration of the matter.

(2) An appellant or adversely affected party shall present to the Hearing Officer every theory for relief that it can raise in district court.

(3) An appellant or adversely affected party bears the burden to prove, by substantial evidence, that there is error in in any order, requirement, decision, or determination in the administration or interpretation of the land use ordinance.

(4) The Hearing Officer shall presume that the decision that is being appealed is correct and shall only modify the decision if there is substantial evidence presented to the Hearing Officer that the Director or Planning Commission erred in its application or interpretation of the applicable land use ordinance(s).

(A) When presented with legal issues, the Hearing Officer shall apply a correctness standard to its review. Inasmuch as no specialized knowledge is necessary to make such a determination, no deference is given to the land use authority.

(B) When presented with factual issues, the Hearing Officer shall apply an arbitrary and capricious standard to its review, and the decision of a land use authority shall not be disturbed if there is substantial evidence in the record that discloses a reasonable basis for the land use authority's decision. Inasmuch as land use authorities and administrative officials have specialized knowledge in the field of planning and land use and are expected to implement the goals and policies of the City, they should be allowed a comparatively wide latitude of discretion. Their decisions should be disturbed only if the Hearing Officer determines that the decision is arbitrary, capricious or illegal.

(5) An appeal stays all proceedings in the action that is the subject of the appeal. In the event a stay would cause imminent peril to life or property, the party seeking protection from imminent peril may seek an expedited ruling from the Hearing Officer or may seek immediate relief from the district court.

(6) Proceedings and hearings before the Hearing Officer shall be in conformance with the general principles of due process.

(7) The person or entity filing the appeal may appear at such hearing in person, by agent, or by an attorney and may present to the Hearing Officer any evidence or argument to support the contentions on appeal.

(8) The land use authority that rendered the decision that is being appealed shall appear and present any evidence or argument it finds necessary to justify its decision.

(9) The Hearing Officer shall cause a record of its proceedings to be kept, including a recording of all evidentiary proceedings and all oral arguments of the parties, and shall make written findings and conclusions of all of its decisions.

(f) Review of the Land Use Authority's Record. The Hearing Officer's review of any decision of a land use authority shall be confined to the administrative record developed by the land use authority, unless the Hearing Officer determines that the record is incomplete or deficient. If the Hearing Officer determines that the record is incomplete or deficient, the Hearing Officer may review the matter *de novo*.

(g) Variances. Any person or entity desiring a waiver or modification of the requirements of this title as applied to a parcel of property that such person owns, leases or in which such person holds some other beneficial interest may apply to the Hearing Officer for a variance from the terms of this Title.

(1) The Hearing Officer may grant a variance only if:

(A) 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;

(B) there are special circumstances attached to the property that do not generally apply to other properties in the same zone;

(C) granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone;

(D) the variance will not substantially affect the general plan and will not be contrary to the public interest; and

(E) the spirit of the land use ordinance is observed and substantial justice done.

(2)

(A) In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship under Subsection (g)(1)(A), the Hearing Officer may not find an unreasonable hardship unless the alleged hardship:

(i) is located on or associated with the property for which the variance is sought; and

(ii) comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.

(B) In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship under Subsection (g)(1)(A), the Hearing Officer may not find an unreasonable hardship if the hardship is self-imposed or economic.

(3) In determining whether or not there are special circumstances attached to the property under Subsection (e), the Hearing Officer may find that special circumstances exist only if the special circumstances:

(A) relate to the hardship complained of; and

(B) deprive the property of privileges granted to other properties in the same zone.

(4) The applicant shall bear the burden of proving that all conditions justifying a variance have been met.

(5) Variances run with the land.

(6) The Hearing Officer may not grant a use variance.

(7) In granting a variance, the Hearing Officer may impose additional requirements on the applicant that will:

(A) mitigate any harmful effects of the variance; or

(B) serve the purpose of the standard or requirement that is waived or modified.

(h) **Effective Date – Final Decision – Appeal to District Court.** The decision of the Hearing Officer shall take effect on the date when it issues a written decision, or at a different time as may be designated in the written decision. A written decision of the Hearing Officer constitutes a final decision under U.C.A. §§ 10-9a-801(2)(a) and 10-9a-801(4). A person adversely affected by a final decision of the Hearing Officer shall file a petition for review with the District court within 30 days after the date of the decision.

(i) **Ex Parte Communications – Penalty.** It shall be unlawful for any individual, including the party bringing the appeal or requesting a variance, to discuss substantive matters pertaining to a pending appeal or variance with the Hearing Officer. Violation of this section shall be a Class C Misdemeanor. The requirements of this section shall not apply to proceedings and communications during a properly scheduled public meeting or hearing for consideration of the appeal or variance, communications where all parties are present and given an opportunity to speak, or to a discussion limited to procedural matters not related to the substance of the proceedings, such as the date, time or place of the hearing.

(j) **Governmental Immunity.** The Hearing Officer shall be considered an appointed official and shall be entitled to all of the protections of the Utah Governmental Immunity Act.

(k) **Compensation – Contract.** Terms for compensation and reimbursement shall be memorialized by written contract with the Hearing Officer. The written contract required by this section shall be approved and adopted by the City Council.

(l) **District Court Review of Appeal Authority Decisions.** Any person adversely affected by any decision of the Hearing Officer may petition the district court for a review of the decision.

(1) No person may file a petition for review of the Hearing Officer's decision unless he has first exhausted his administrative remedies.

(2) The petition to the district court may allege only that the Hearing Officer's decision was arbitrary, capricious, or illegal.

(3) The petition shall be filed within thirty days after the Hearing Officer's decision. However, the time for filing an appeal to the district court is stayed by the filing of a request for arbitration of a constitutional taking issue with the Utah Property Rights Ombudsman under U.C.A. § 13-43-204; in which event, a petition shall be filed within thirty days after completion of proceedings before the Ombudsman.

(4) The Hearing Officer shall transmit to the district court the record of its proceedings including a transcript of all proceedings, all documentary evidence received

at the hearing, and a copy of the Hearing Officer's rulings, findings, and orders. The transcript shall be made by a person authorized to make certified transcripts of recorded proceedings and shall bear a certification that the transcript is a true and correct copy of the proceedings before the Hearing Officer.

(A) If a transcript is made of the proceedings before the Hearing Officer, the district court's review is limited to the record. The district court shall affirm the decision of the Hearing Officer if the decision is supported by substantial evidence in the record and is not arbitrary, capricious, or illegal.

(B) If there is no record of the proceedings before the Hearing Officer, the appeal to the district court shall be a *de novo* appeal.

(5) The district court may hear only those issues and theories for relief that are first raised in the proceedings before the Hearing Officer.

(6) The filing of a petition with the district court does not stay the decision of the Hearing Officer unless the Hearing Officer determines, in writing, that a stay is in the best interests of the City or that enforcement of the ruling would cause imminent peril to life or property. This section shall not preclude a party from seeking a stay from the district court.

(7) The court shall affirm the decision of the Hearing Officer if the decision is supported by substantial evidence in the record and is not arbitrary, capricious, or illegal.

(m) The Community Development Director may, with the advice and consent of the Planning Commission and the City Council, develop a graphical matrix to show the powers and duties of each land use authority within the City, the appeal authority for decisions of the land use authority, and the time for appeal of any decision.

12-4-104. Community Development Director.

The position of "Community Development Director" (the "Director") has been and is hereby created. The Director shall be appointed by the Mayor with the advice and consent of the City Council. The Director is the administrative officer of the City charged with the enforcement of the Code provisions involving or related to land use planning, zoning, development, signs, and subdivisions. The Director may utilize City staff to assist in the performance of these duties and may delegate those duties within the Community Development Department.

(a) **Reviews and Approvals.** The Director shall be authorized to undertake reviews, recommendations, and approvals as described in this Title.

(b) **General Plan.** The Director shall assist the Planning Commission in the development and implementation of the General Plan for the physical growth of and development in the City. The Director shall assure that the General Plan, including any maps, overlays, and other illustrative graphic material, remain current and accurate, and shall prepare population and growth studies as needed in support of the General Plan.

(c) **Ordinance Interpretation.** The Director is authorized to interpret the zoning ordinance, the zoning district map, the subdivision ordinance, and other ordinances regulating land use and development in the City. Decisions of the Director regarding the interpretations or

administration of the ordinances herein may be appealed to the Hearing Officer as provided in this Chapter.

(d) **Administrative Services and Assistance.** The Director shall provide administrative services to the Planning Commission including preparation and publication of the agenda for all meetings of the Planning Commission and the preparation and distribution of staff reports and recommendations for matters to be considered by the Planning Commission and the City Council. The Director shall attend all meetings of the Planning Commission and other meetings as may be required by the City Administrator or City Council. The Director shall also provide administrative services and assistance as needed by any appeal authority.

(e) **Applications: Certificates, Permits, and Reviews.** Applications for all certificates, permits, and reviews shall be filed with the Community Development Department and reviewed by the Director. Applications shall be made on forms prepared and provided by the City and shall be accompanied by the proper fee and all required documents. Issuance of certificates, permits, and reviews shall proceed as provided in this Title and as otherwise required by City ordinance.

(f) **Zoning Review.** The Director shall receive and review all applications for building permits and other land and development-related permits, licenses, or certificates to assure compliance with zoning regulations.

(g) **Site Plan Review.** The Director shall receive and review all submittals for site plan review. The Director shall assure that submittals are complete and placed upon the Planning Commission's agenda for timely review.

(h) **Conditional Use Permit.** The Director shall receive and review applications for conditional use permits and shall ensure that applications are complete. Applications requiring only administrative approval shall be reviewed and may be approved by the Director; other applications shall be reviewed and may be approved by the Planning Commission. The Director is responsible for preparing and issuing conditional use permits and shall ensure that all required conditions appear on the permit.

(i) **Industrial Performance Standards.** Where the requirements of Chapter 12-32 are implicated, the Director shall inform the Environmental Health Services Section of the State Division of Health of all applicants for conditional use permits in the I-2, I-1 and AP Zones. The Director may initiate an investigation of any suspected violation of the industrial performance standards; where a violation is found, the Director shall refer the violation to the appropriate State agency for enforcement or may initiate enforcement proceedings by the City.

12-4-105. Zoning Enforcement.

(a) **Enforcement – Director.** The Director or designee shall oversee enforcement of the provisions of this Zoning Ordinance and shall oversee the inspection of all buildings in course of construction, alteration or repair, and any change in the use of land. If the Director or designee determines that there has been a violation of the provisions of this Title or other requirement of the Code, the Director shall issue and serve a written stop order directing a violator to cease and desist such construction, alteration, repair or use.

(b) **Enforcement – Police Department.** Under the direction of the City Council and Chief of Police, one or more members of the Police Department shall be appointed as the City's Code Enforcement Official(s). The Code Enforcement Official shall coordinate its activities with the

Director. If the Code Enforcement Official determines that there has been a violation of the provisions of this Title or other requirement of the Code, the Official shall issue and serve a written stop order directing a violator to cease and desist any construction, alteration, repair or use that is in violation of law. The Code Enforcement Official is also authorized and directed to issue written citations on behalf of the City.

(c) Violations shall be reported to the City Attorney or City Prosecutor for administrative proceedings or prosecution.