

CHAPTER 3

POLICIES, PROCEDURES AND ADMINISTRATION

10-3-1: CITY COUNCIL

The Wendover City Council has the following powers and duties in connection with the implementation of this Ordinance:

1. to adopt, amend, or reject a proposed General Plan for all or part of the area within the City;
2. to consider and adopt, reject or modify amendments to the text of this Ordinance and to the Zoning Map pursuant to the provisions of this chapter;
3. to establish a Fee Schedule for applications for zoning amendments, special approvals and any other type of approval required by the provisions of this Ordinance; and
4. to take such other actions not delegated to other bodies which may be desirable and necessary to implement the provisions of this Ordinance.

10-3-2: PLANNING COMMISSION / QUORUM

There is hereby created a Planning Commission, composed of four (4) members who shall be appointed by the Mayor with the approval of the City Council. A quorum of not less than three (3) members shall be required to transact the business of the Commission. The minimum number of “yes” votes required to take any action by the Commission shall be a majority of the members of the Commission, but in any event shall not be less than three (3). If less than a quorum is present at a meeting, said meeting shall be rescheduled and appropriate notices given. No Commission member may vote or act by proxy at any meeting of the Commission.

10-3-3: OFFICERS

The Commission shall appoint from among its members a Chair and a Vice-Chair of the Planning Commission, who shall each be appointed to a one year term beginning January 1st to December 31st, which may be extended with the approval of the Commission. The City Recorder shall serve as the Secretary. The duties and responsibilities of the Officers of the Commission shall be as described in this Chapter.

10-3-4: BOARD MEMBERSHIP

The following rules shall govern membership on the Planning Commission:

1. One member of the Commission shall be a member of the City Council, who shall serve in an ex-officio manner, and shall be a non-voting member.
2. The remaining members of the Commission shall be residents of the City of Wendover, UT or if deemed advisable by the governing body, owners, managers or employees of a business entity located in the City of Wendover, Utah.
3. The City Recorder may be a member, and with the approval of the City Council, may serve as Secretary.
4. With the exception of the City Councilmember (who shall serve at the pleasure of the governing body), each member of the Commission shall serve a term of five (5) years, and at the time of appointment, the dates of their term shall be identified on the records of the City.

10-3-5: ABSENCE FROM MEETINGS

Planning Commission members who have knowledge of the fact that they will not be able to attend a scheduled meeting, the Board Member shall notify the Planning Chairperson or Clerk at the earliest possible opportunity and, in any event, no less than 24 hours prior to 5:00 p.m. on the day of the Commission meeting. The Chairperson of the Commission shall be notified in the event that the projected absences will produce a lack of a quorum.

10-3-6: VACANCY / REMOVAL

Any vacancy on the Commission, for whatever reason, shall be filled by appointment as provided in this Chapter for the unexpired term of such member whose office becomes vacant. Any member may be removed with or without cause by the Mayor with the approval of the City Council. The absence of any member at three (3) or more consecutive meetings, without providing prior notice to the Secretary or Chair of the Commission, shall be cause for removal by the governing body.

10-3-7: COMPENSATION

Members of the Commission shall serve with compensation of \$50.00 per month in actual attendance of a Commission Meeting. If no meeting is held for the month, no compensation will be given. Members can be paid or reimbursed for reasonable expenses incurred in the performance of their duties, with the approval of the governing body. If a member of the commission acts as secretary, upon approval by the governing body, that member may be paid reasonable compensation for the taking and maintenance of minutes of the meetings of the Commission.

10-3-8: DUTIES AND RESPONSIBILITIES

All Planning Commission members shall be under the direction of the Mayor and Council and shall not involve themselves in matters such as business licensing, animal regulations, and nuisance enforcement unless delegated to do so by the Mayor or City Council. The Planning Commission shall elect from its members a Chair and Vice Chair, during the month of December of each year, whose term of office shall be from January 1st to December 31st or until a successor is elected. The Commission shall be governed by the following duties as prescribed by the Wendover City Council and the Utah Code. Any future revisions of said section or any successor provision of law relating to the powers and duties of planning commissions in fifth class cities shall govern and control this ordinance.

1. The Planning Commission shall make a recommendation to the legislative body for:
 - a) a general plan and amendments to the general plan;
 - b) land use ordinances, zoning maps, official maps, and amendments;
 - c) an appropriate delegation of power to at least one designated land use authority to hear and act on a land use application;
 - d) an appropriate delegation of power to at least one appeal authority to hear and act on an appeal from a decision of the land use authority; and
 - e) application processes that:
 - i) may include a designation of routine land use matters that, upon application and proper notice, will receive informal streamlined review and action if the application is uncontested; and
 - ii) shall protect the right of each:
 - A) applicant and third party to require formal consideration of any application by a land use authority;
 - B) applicant, adversely affected party, or municipal officer or employee to appeal a land use authority's decision to a separate appeal authority; and
 - C) participant to be heard in each public hearing on a contested application.
2. Planning Chairperson
 - a) shall preside over all meetings for the Planning and Zoning Board;
 - b) shall call special meetings of the Commission in accordance with these procedures;

- c) shall execute all documents for the Commission and see that all actions of the Commission are properly taken;
 - d) shall recommend to the Secretary items to be placed on meeting agendas.
- 3. Planning Vice-Chairperson
 - a) shall act as Chairperson in the absence or disability of the Chairperson and shall perform such other duties as may be designated by the Chairperson.
- 4. Secretary
 - a) Prepare and maintain documentation of agenda items including the posting of agendas and record of minutes.
- 5. The Planning Commission shall administer provisions of the land use ordinance, where specifically provided in this Code.
- 6. The Planning Commission shall hear or decide the approval or denial of, or recommendations to approve or deny, conditional use permits.

10-3-9: ENTRANCE UPON LAND

The Planning Commission or its authorized agents may enter upon any land at reasonable times to make examinations and surveys.

10-3-10: EFFECT ON EXISTING MEMBERS OF COMMISSION

Nothing in this Ordinance shall be construed to affect the eligibility or qualifications to serve of any of the present members of the Commission, whose terms have not expired or to affect their eligibility for reappointment. All current members of the Commission shall complete their terms. In the event there is a question as to the expiration of any member's term at the time this Ordinance is adopted, the governing body shall identify each current member of the Commission and determine the end of his or her term. This Ordinance shall not be construed to prohibit the appointment to the Planning Commission of any person previously appointed as an "alternate" member of the Commission.

10-3-11: GENERAL PLAN

- 1. The City of Wendover shall prepare and adopt a comprehensive, long range, general plan for the growth and development of the land within the City of Wendover considering the present and future needs of the City of Wendover and the growth and development of the land. The City shall use the regulations set forth in the Utah Code for the content required in the General Plan.
- 2. Except as provided below Section 10-3-11 (#3) hereafter the general plan is an advisory guide for land use decisions.
- 3. After the City Council has adopted a general plan, no street, park, or other public way, ground, place, or space, no publicly owned building or structure, and no public utility, whether publicly or privately owned, may be constructed or authorized until and unless it conforms to the current general plan.

10-3-12: CONFLICTS OF INTEREST

A Planning Commissioner to whom some private benefits may come as the result of a Planning Commission action should not be a participant in the action. A Planning Commissioner experiencing, in their opinion, a conflict of interest should declare their interest publicly, abstain from voting on the action, and may excuse themselves from the room during consideration of the action. They should not discuss the matter privately with any other Commissioner. The vote of a Planning Commissioner experiencing a conflict of interest who fails to disqualify them self shall be disallowed.

10-3-13: EMPLOYEES AND CONSULTANTS

Upon approval by the governing body, the Commission may appoint such employees, staff and consultants as deemed reasonable and necessary to carry out the powers, functions and duties of the Commission. The employees, staff and consultants which may be appointed by the Commission include, without limitation, a secretary to the Commission, planners, engineers, attorneys, and other consultants.

10-3-14: RECORD OF MEETINGS

The Planning Commission shall keep a public record of its proceedings, the original of which shall be maintained by and in the office of the City Clerk/Recorder.

10-3-15: MEETINGS

All meetings of the Planning Commission shall be held in compliance with Utah's Open and Public Meeting Law. Regular meetings of the Commission shall be held monthly at times and dates determined by the Commission. Special meetings of the Commission may be called by or at the request of the Chairperson. The order of business that the Commission will be as follows: Call Meeting to Order; Roll Call; Pledge of Allegiance; Approval of prior Meeting Minutes; Review and discuss land use and matters related thereto; and Adjournment.

10-3-16: RULES OF PROCEDURE

The Commission shall govern its proceedings consistent with the provisions of Utah law relating to cities. The Chairperson of the Commission shall rule on all matters of procedure with fundamental fairness and a reasonable opportunity to be heard as the controlling rationale. An applicant should be present, or have present a representative at all meetings that pertain to the application. The Chairperson may be reversed on matter of procedure by a majority vote of the Commission members present and entitles to vote. All action of the Commission shall be initiated by a motion and a second, prior to a vote of the membership. Voting shall be by verbal vote and the order of voting may be rotated each meeting, except that the Chairperson shall vote last.

10-3-17: DOCUMENT SUBMISSION AND REVIEW PROCEDURES

1. Pre-submission Procedures: To facilitate the handling of applications, the Planning Commission may adopt pre-submission procedures to allow for adequate investigations and staff review and may require compliance with such pre-submission review procedures as a pre-requisite to formal receipt and action by the Planning Commission. Pre-submission review shall in no way be interpreted to mean review by the Planning Commission.
2. Submission and Docketing for Review: Upon receipt of all required fees and information for any specific step of the review procedure, the Zoning Administrator or Secretary and other members of the Technical Review Committee if established, shall review the application for completeness and compliance with the provisions of this Code and other pertinent municipal regulations. When the Zoning Administrator or Secretary determines that the application is ready for Planning Commission review, the Zoning Administrator or Secretary will docket the application for review at the next regular public meeting of the Planning Commission. Incomplete applications shall not be docketed for Planning Commission review.

10-3-18: ZONING DISTRICTS

1.
 - a) The City Council by recommendation of the Planning Commission may divide the territory over which, it has jurisdiction into zoning districts of a number, shape, and area that it considers appropriate to carry out the purposes of this chapter.
 - b) Within zoning districts, the City Council may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings and structures, and the use of land.
2. The City Council shall ensure that the regulations are uniform for each class or kind of buildings throughout each zoning district, but the regulations in one zone may differ from those in other zones.
3.
 - a) There is no minimum area or diversity of ownership requirement for a zone designation.

- b) Neither the size of a zoning district nor the number of landowners within the district may be used as evidence of the illegality of a zoning district or the invalidity of a municipal decision.

10-3-19: TEMPORARY REGULATIONS

1.
 - a) The City Council may, without prior consideration of or recommendation from the Planning Commission, enact an ordinance establishing temporary land use regulation for any part or all of the area within the City if the City Council makes a finding of compelling, countervailing public interest or the area is unregulated.
 - b) A temporary land use regulation under this section may prohibit or regulate the erection, construction, reconstruction, or alteration of any building or structure or any subdivision approval.
 - c) A temporary land use regulation under this section may not impose an impact fee or other financial requirement on building or development.
2. The City Council shall establish a period of limited effect for the ordinance not to exceed six (6) months.
3. The City Council may, without prior Planning Commission consideration or recommendation, enact an ordinance establishing a temporary land use regulation prohibiting construction, subdivision approval, and other development activities within an area that is the subject of an Environmental Impact Statement or a Major Investment Study examining the area as a proposed highway or transportation corridor. A regulation under this subsection may not exceed six (6) months in duration, may be renewed, if requested by the Transportation Commission created under U.C. A. Section 72-3-301, for up to two additional six (6) month periods by ordinance enacted before the expiration of the previous regulation and is effective only as long as the Environmental Impact Statement or Major Investment Study is in progress.

10-3-20: AMENDMENTS AND REZONING

1. The City Council may amend the number, shape, boundaries, or area of any zoning district, any regulations of or within the zoning district; or any other provision of a land use zoning ordinance.
2. The City Council may not make any amendment authorized by this subsection unless the amendment was proposed by the Planning Commission or is first submitted to the Planning Commission for its recommendation.
3. The City Council shall comply with the procedures specified in the Utah State Code for land use regulations and in preparing and adopting amendments.
4. A person seeking to amend this Code or City Zoning Map shall make application for such amendment by taking required actions and filing the following information and documents with the Planning Commission:
 - a) A written application describing the change desired and the reasons therefore.
 - b) A non-returnable amendment application fee as established per resolution.
 - c) A vicinity plan
 - d) Names of all owners of the subject property.
 - e) Names of all owners within 300 feet of the subject property boundary.
 - f) A sufficient number of plain white legal size envelopes, addressed to all owners within 300 feet of the boundaries of the subject property with proper postage affixed.

5. Where an application for zoning amendment has been denied, the Planning Commission and the City Council shall not review the same zoning amendment application within 2 years of a denial unless there is a substantial change of conditions since the earlier application. A new application and fee will be required.

10-3-21: APPEAL AUTHORITY

1. The Wendover City Council is hereby designated as the appeal authority for the City of Wendover to act in its individual jurisdiction as specified herein and in order to provide for just and fair treatment in the administration of local land use ordinance, and to insure that substantial justice is done.
2. The City Council while acting as the appeal authority may adopt such rules as it deems necessary to carry out its authority under this Section.
3. The City Council while acting as the appeal authority shall meet at the call of the Mayor or at any other times that the City Council may determine under Utah Law.
4. The Mayor or Mayor Pro-tem in the absence of the Mayor, may administer oath and compel the attendance of witnesses.
5. All meetings of the City Council meeting as the appeal authority hereunder shall be open to the public in compliance with Title 52, Chapter 4, Open and Public Meetings, Utah Code Annotated. The City Council acting as the appeal authority shall:
 - a) Keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating that fact;
 - b) Keep records of its examinations and other official actions;
 - c) Have its proceedings contemporaneously transcribed by a secretary or a tape/video recorder;
 - d) File its records in the office of the City Clerk
6. The concurring vote of three members of the City Council acting as the appeal authority is necessary to reverse any order, requirement, decision, or determination of any administrative official or agency to decide in favor of the appellant.
7. Decisions of the City Council acting as the appeal authority shall become effective at the meeting in which the decision is made, unless a different time is designated in the City Council's rules or at the time the decision is made.

10-3-22: POWERS AND DUTIES OF CITY COUNCIL AS APPEAL AUTHORITY

The City Council as the Appeal Authority shall:

1. hear and decide appeals applying to the land use ordinance
2. hear and decide special exceptions to the terms of the land use ordinance; and
3. hear and decide variances from the terms of the land use ordinance
4. hear and decide appeals from the Planning Commission regarding the existence, expansion, or modification of nonconforming uses.

10-3-23: APPEALS

1. The applicant or any other person or entity adversely affected by a decision administering or interpreting a land use ordinance may appeal that decision applying the land use ordinance by alleging that there is an error in any order. Requirement, decision, or determination made by an official or body in the administration, interpretation, or enforcement of the land use ordinances of the City within thirty (30) days of the decision.
2. Any officer, department, board, or bureau of the City of Wendover affected by the grant, or refusal of a building permit or by any other decisions of the Zoning Administrator or Secretary in the enforcement and administration of the zoning ordinance may appeal any decision of the City Council. The person or entity making the appeal has the burden of proving that an error had been made.
3. Only decisions applying the land use or related ordinance may be appealed to the City Council under this Chapter.
4. Appeals may not be used to waive or modify the terms or requirements of the land use ordinance.

10-3-24: HEARING OFFICER

1. The Mayor, with the consent of the City Council, may appoint a hearing officer to decide routine and uncontested matters that are being appealed. The City Council shall:
 - a) designate which matters may be decided by the hearing officer; and
 - b) establish guidelines for the hearing officer to comply with in making decisions.
2. Any person affected by a decision of the hearing officer may appeal the decision to the City Council as provided in this part.

10-3-25: VARIANCES

1. Any person or entity desiring a waiver or modifications of the requirements of this land use ordinance as applied to a parcel of property that he owns, leases, or in which he holds some other beneficial interest, may apply to the Planning Commission for a variance from the terms of the land use ordinance.
2. The Planning Commission may grant a variance only if:
 - a) literal enforcement of the land use ordinance would cause a hardship for the applicant that is not necessary to carry out the general purpose of the land use ordinance;
 - b) there are special circumstances attached to the property that do not generally apply to other properties in the same district;
 - c) granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district;
 - 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.
3. In determining whether or not enforcement of the zoning ordinance would cause unreasonable hardship under this subsection, the Planning Commission may not find an unreasonable hardship unless:
 - a) the alleged hardship is located on or associated with property for which the variance is sought; and

- b) the alleged hardship comes from circumstances peculiar to the property, not from conditions that are general in the neighborhood.
- 4. In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship the Planning Commission may not find an unreasonable hardship if the hardship is self-imposed or economic.
- 5. In determining whether or not there are special circumstances attached to the property under Section 10-3-25 (2)(b), the Planning Commission may find that special circumstances exist only if they:
 - a) relate to the hardship complained of, and
 - b) deprive the property of privileges granted to other properties in the same district.
- 6. The applicant shall bear the burden of proving that all of the conditions justifying a variance have been met.
- 7. Variances shall run with the land.
- 8. In granting a variance, the Planning Commission may impose additional requirements on the applicant that will:
 - a) mitigate any harmful affects of the variance; or
 - b) serve the purpose of the standard or requirement that is waived or modified

10-3-26: APPEAL OF PLANNING COMMISSION'S DECISION ON VARIANCE TO DISTRICT COURT.

Any person adversely affected by any decision of a Planning Commission as it relates to a requested variance may petition the district court for a review of the decision, within thirty (30) days after the decision is final. In the petition, the plaintiff may only allege that the Planning Commission's decision was arbitrary, capricious, or illegal.

Adopted this 16th day of April, 2015.