

## CHAPTER 3

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#### 3.1 Town Council

- (1) The Rush Valley Town Council has the following powers and duties in connection with the implementation of this Ordinance:
- (a) to adopt, amend, or reject a proposed General Plan for all or part of the area within the Town;
  - (b) 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.
  - (c) 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
  - (d) to take such other actions not delegated to other bodies which may be desirable and necessary to implement the provisions of this Ordinance.

#### 3.2 PLANNING COMMISSION, NUMBER OF MEMBERS, APPOINTMENT, TERM OF OFFICE.

- (1) The Rush Valley Planning Commission is hereby designated as one of the land use authorities for the Town of Rush Valley, to act in its individual jurisdiction.
- (2) The Planning Commission shall consist of six members, five voting members who do not hold a public office and one non-voting member from the Town Council. All members shall be appointed by the Mayor with the advice and consent of the Town Council. All members of said commission shall be residents of Town of Rush Valley and owners of real property within the Town of Rush Valley. At least four of these six members shall hold no other public office or position with the Town of Rush Valley. The sixth member of the Planning Commission shall be an ex-officio non-voting member, appointed from among members of the Town Council who shall act as a liaison between the Planning Commission and the Town Council.
- (3) The terms of the appointed members of the Planning Commission shall be three years, and until their respective successors shall have been appointed, except that the terms of appointment shall be such that the terms of two members shall expire each year. The ex-officio member shall serve at the pleasure of the Mayor and Town Council. The Planning Commission existing at the time of

passage of this Ordinance shall continue to serve, and the terms of its members shall be fixed by the Town Council in such a manner as to comply with the above provisions for staggering terms of service.

### 3.3 COMPENSATION.

(1) The members of the Planning Commission shall serve as such without compensation, except that the Town Council may fix per diem compensation for the members of the Planning Commission based on necessary and reasonable expenses and on meetings actually attended. The actual expenses incurred shall be based upon presentation of proper receipts and vouchers.

### 3.4 VACANCIES AND REMOVALS FOR CAUSE.

(1) Vacancies of appointed members occurring otherwise than through the expiration of terms shall be filled for the remainder of the unexpired term. The Town Council shall have the right to remove any member of the Planning Commission for misconduct and may remove any member for non-performance of duty. Unexcused absences from 3 consecutive regular scheduled meetings of the Planning Commission may be considered by the Town Council as non-performance of duty.

### 3.5 THE CHAIR.

(1) The Planning Commission shall elect from its members a Chair and Vice Chair, during the month of January of each year, whose term of office shall be twelve (12) months or until a successor is elected.

### 3.6 EMPLOYEES.

(1) The Planning Commission shall have power and authority to employ experts and a staff, and to pay such expenses as may be reasonable and necessary for carrying out the powers hereinafter set forth, but not in excess of such sums as may be appropriated by the Town Council and/or which may be placed at the disposal of the Planning Commission by gift or otherwise.

### 3.7 RULES AND REGULATIONS.

(1) The Planning Commission may adopt such rules and regulations governing its procedures as it may consider necessary or advisable, and shall keep record of its proceedings, which record shall be open to inspection by the public at all times.

### 3.8 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 prerequisite 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 Secretary for the Planning Commission or Zoning Administrator 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 Secretary of the Planning Commission or Zoning Administrator determines that the application is ready for Planning Commission review, the application will be placed on the next regular public meeting of the Planning Commission for review. Incomplete applications shall not be docketed for Planning Commission review.

(3) Applications and concept plans are required for all land uses.

### 3.9 PLANNING COMMISSION POWERS AND DUTIES.

(1) The Planning Commission shall prepare and make a recommendation to the Town Council 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) The Planning Commission shall administer provisions of the land use ordinance, where specifically provided in this Code.

(3) The Planning Commission shall hear or decide the approval or denial of, or recommendations to approve or deny, conditional use permits.

### 3.10 GENERAL PLAN.

(1) The Town of Rush Valley shall prepare and adopt a comprehensive, long range, general plan for the growth and development of the land within Town of Rush Valley considering the present and future needs of the Town of Rush Valley and the growth and development of the land.

(2) The plan may provide for:

- (a) the health, general welfare, safety, energy conservation, transportation, prosperity, civic activities, aesthetics, and recreational, educational and cultural opportunities;
- (b) the reduction of the waste of physical, financial, or human resources that result from either excessive congestion or excessive scattering of population;
- (c) the efficient and economical use, conservation, and production of the supply of food and water, drainage, sanitary, and other facilities and resources;
- (d) the use of energy conservation and solar and renewable energy resources;
- (e) the protection of urban development;
- (f) the protection and promotion of moderate income housing;
- (d) the protection and promotion of air quality;
- (e) historic preservation;
- (f) identifying future uses of land that are likely to require an expansion or significant modification of services or facilities provided by each affected entity;
- (g) an official map.

(3) (a) The Planning Commission shall provide notice, as provided in Section 1. 17, of its intent to make a recommendation the Town Council for a general plan or a comprehensive general plan amendment when the Planning Commission initiates the process of preparing its recommendation.

(b) The Planning Commission shall make and recommend to the Town Council a proposed general plan for the area within the Town;

(c) The general plan may include areas outside the boundary of the Town of Rush Valley if, in the Planning Commission's judgment, those areas are related to the planning of Town of Rush Valley's territory.

(d) Except as otherwise provided by law or with respect to the Town's power of eminent domain, when the plan of the Town involves territory outside the boundaries of Town of Rush Valley, the Town of Rush Valley may not take action affecting that territory without the concurrence of the county or other municipalities affected.

(4) (a) At a minimum, the proposed general plan, with the accompanying maps, charts, and descriptive and explanatory matter, shall include the Planning Commission's recommendations for the following plan elements:

- (i) a land use element that:

A.. designates the long-term goals and the proposed extent, general distribution, and location of land for housing, business, industry, agriculture, recreation, education, public buildings and grounds, open space, and other categories of public and private uses of land as appropriate; and

B. may include a statement of the projections for and standards of population density and building intensity recommended for the various land use categories covered by the plan;

(ii) a transportation and traffic circulation element consisting of the general location and extent of existing and proposed freeways, arterial and collector streets, mass transit, and any other modes of transportation that the planning commission considers appropriate, all correlated with the population projections and the proposed land use element of the general plan; and

(5) The proposed general plan may include:

(a) an environmental element that addresses:

- (i) the protection, conservation, development, and use of natural resources, including the quality of air, forests, soils, rivers and other waters, harbors, fisheries, wildlife, minerals, and other natural resources; and
- (ii) the reclamation of land, flood control, prevention and control of the pollution of streams and other waters, regulation of the use of land on hillsides, stream channels and other environmentally sensitive areas, the prevention, control, and correction of the erosion of soils, protection of watersheds and wetlands, and the mapping of known geologic hazards;

(b) a public services and facilities element showing general plans for sewage, water, waste disposal, drainage, public utilities, rights-of-way, easements, and facilities for them, police and fire protection, and other public services;

(c) a rehabilitation, redevelopment, and conservation element consisting of plans and programs for:

- (i) historic preservation; and
- (ii) the diminution or elimination of blight; and
- (iii) redevelopment of land, including housing sites, business and industrial sites, and public building sites;

(d) an economic element composed of appropriate studies and forecasts, as well as an economic development plan, which may include review of existing and projected municipal revenue and expenditures, revenue sources, identification of basic and secondary industry, primary and secondary market areas, employment, and retail sales activity;

(e) recommendations for implementing all or any portion of the general plan, including the use of land use ordinances, capital improvement plans, community development and promotion, and any other appropriate action;

(f) provisions addressing any of the matters listed in Subsection UCA Section 10-9a-401(2); and

(g) any other element the Town considers appropriate.

### 3.11 EFFECT OF GENERAL PLAN.

Except as provided in Section 3.12 hereafter the general plan is an advisory guide for land use decisions.

### 3.12 PUBLIC USES TO CONFORM TO GENERAL PLAN.

After the Town 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.

### 3.13 PREPARATION AND ADOPTION OF LAND USE ORDINANCE AND ZONING MAP.

The Planning Commission shall:

- (a) provide notice as required by Subsection 1.17
- (b) hold a public hearing on a proposed land use ordinance or zoning map; and
- (c) prepare and recommend to the Town Council a proposed land use ordinance or ordinances and zoning map that represent the planning commission's recommendation for regulating the use and development of land within all or any part of the area of the Town.

- (d) The Town Council shall consider each proposed land use ordinance and zoning map recommended to it by the Planning Commission, and after providing notice as required by Subsection 1.17 and holding a public meeting, the Town Council may adopt or reject the ordinance or map either as proposed by the Planning Commission or after making any revision the Town Council considers appropriate.

### 3.14 ZONING DISTRICTS.

- (1) (a) The Town 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 Town council may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings and structures, and the use of land
- (2) The Town 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.

### 3.15 TEMPORARY REGULATIONS.

- (1) (a) The Town 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 Town if The Town Council makes a finding of compelling, countervailing public interest or the area is unregulated.
- (a) 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 Town Council shall establish a period of limited effect for the ordinance not to exceed six months.
- (3) (a) The Town 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 months in duration, may be renewed, if requested by the Transportation Commission created under UCA Section 72-3-301, for up to two additional six-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.

### 3.16 AMENDMENTS AND REZONING.

- (1) The Town Council may amend the number, shape, boundaries, or area of any zoning district, any regulation of or within the zoning district; or any other provision of a land use zoning ordinance.
- (2) The Town 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 Town Council shall comply with the procedures specified in Section 3.13 for land use regulations and Section 3.14 for zoning maps of this chapter, in preparing and adopting an amendments.
- (4) A person seeking to amend this Code or a Town 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.
- (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 Town 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.

### 3.17 APPEAL AUTHORITY.

(1) The Rush Valley Town Council is hereby designated as the appeal authority for the Town of Rush Valley 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 ordinances, and to insure that substantial justice is done.

(2) The Town 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 Town Council while acting as the appeal authority shall meet at the call of the Mayor or at any other times that the Town Council may determine under Utah Law.

(4) The Mayor or Mayor Pro-tem in the absence of the Mayor, may administer oaths and compel the attendance of witnesses.

(5) All meetings of the Rush Valley Town 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 Town 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) and keep records of its examinations and other official actions;

(c) have its proceedings contemporaneously transcribed by a court reporter or a tape recorder;

(d) file its records in the office of the Town Clerk.

(6) The concurring vote of three members of the Town 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 Town 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 Town Council's rules or at the time the decision is made.

### 3.18 POWERS AND DUTIES OF TOWN COUNCIL AS APPEAL AUTHORITY.

(1) The Town Council as the Appeal Authority shall:

(a) hear and decide appeals applying the land use ordinance.

(b) hear and decide special exceptions to the terms of the land use ordinance; and

(c) hear and decide variances from the terms of the land use ordinance.

(d) hear and decide appeals from the Planning Commission regarding the existence, expansion, or modification of nonconforming uses.

### 3.19 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 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 Town within 30 days of the decision.

(2) Any officer, department, board, or bureau of the Town of Rush Valley affected by the grant, or refusal of a building permit or by any other decisions of the zoning administrator in the enforcement and administration of the zoning ordinance may appeal any decision to the Town Council. The person or entity making the appeal has the burden of proving that an error has been made.

- (3) Only decisions applying the land use or related ordinances may be appealed to the Town Council under this Chapter.
- (4) Appeals may not be used to waive or modify the terms or requirements of the land use ordinance.

### 3.20 HEARING OFFICER.

(1) The Mayor, with the consent of the Town Council, may appoint a hearing officer to decide routine and uncontested matters that are being appealed. The Town 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 Town Council as provided in this part.

### 3.21 VARIANCES.

(1) Any person or entity desiring a waiver or modification 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 3.21(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.

### 3.22 APPEAL OF PLANNING COMMISSION'S DECISION ON VARIANCE TO DISTRICT COURT.

(1) 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 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.

### 3.23 ZONING ADMINISTRATOR AUTHORITY AND DUTIES.

(1) The Zoning Administrator and secretary to the Planning Commission shall be appointed by the Mayor with the advice and consent of the Town Council. Assistant Zoning Administrators may also be appointed in the same manner as the Administrator and shall have the same authority as the Zoning Administrator. In the event of a failure to designate another party to hold said position, the duties of the Zoning Administrator shall be discharged by the Secretary to the Planning Commission, Building Inspector and/or Ordinance Enforcement Officer. The Zoning Administrator is hereby authorized to enforce this Code and all provisions thereof, and shall do so by any legal means available to him, including but not limited to the following:

- (a) Advise the Building Official on the issuance of building permits. When the Zoning Administrator gives written notification to the Building Official and applicant that an intended use, building, or structure would be in violation of this Code, such written notification shall be presumption of illegality and the Building Official shall not issue a building permit for such use, building, or structure. (If the offices of Building Official and Zoning Administrator are held concurrently by one person, this person shall detail the violation in writing on the permit refusal notification.)
- (b) Inspect the uses of buildings, structures or land to determine compliance with the Code. Such inspections shall be made at reasonable times.
- (c) Issue Notices of Violation wherever buildings or lands are being used contrary to the provisions of this Code. (This shall be done by providing notice in writing on any person engaged in said use and posting such notice on the premises.)
- (d) Inform the Mayor or Town Council of all Code violations and recommend specific courses of action with regard to such violations which are not being resolved through established zoning procedures.
- (e) Maintain a file of Code violations and action to be taken on such violations.



